

# VIRGINIA ACTS OF ASSEMBLY -- 2015 SESSION

## CHAPTER 179

*An Act to amend and reenact § 33.2-335 of the Code of Virginia, relating to taking certain streets into secondary state highway system.*

[S 792]

Approved March 16, 2015

**Be it enacted by the General Assembly of Virginia:**

**1. That § 33.2-335 of the Code of Virginia is amended and reenacted as follows:**

**§ 33.2-335. Taking certain streets into secondary state highway system.**

A. For the purposes of this section:

"County" means a county in which the secondary state highway system is constructed and maintained by the Department and that has adopted a local ordinance for control of the development of subdivision streets to the necessary standards for acceptance into the secondary state highway system.

"Qualifying rural addition cost" means that portion of the estimated engineering and construction cost to improve the street to the minimum standards for acceptance remaining after reducing the total estimated cost by any prorated amount deemed the responsibility of others based on speculative interests.

"Rural addition funds" means those funds reserved from the county's annual allocation of secondary state highway system construction funds, as defined in § 33.2-324, for the purpose of this section. If such funds are not used by such county for such purpose during the fiscal year they are so allocated, the funds may be held for such purpose for the four succeeding fiscal years. A maximum of five percent of the annual secondary state system highway construction allocation may be reserved by the local governing body for rural additions.

"Speculative interest" means that the original developer or a successor developer retains ownership in any lot abutting such street for development or speculative purposes. In instances where it is determined that speculative interest is retained by the original developer, developers, or successor developers and the governing body of the county deems that extenuating circumstances exist, the governing body of the county shall require a pro rata participation by such original developer, developers, or successor developers as prescribed in subsection D as a condition of the county's recommendation pursuant to this section.

"Street" means a street or highway shown on a plat that ~~was~~ *has been* recorded or otherwise opened to public use ~~prior to July 1, 1992, at which time it was open to~~ and used by motor vehicles, *for at least 20 years* and that, for any reason, has not been taken into the secondary state highway system and serves at least three families per mile.

B. Whenever the governing body of a county recommends in writing to the Department that any street in the county be taken into and become a part of the secondary state highway system in such county, the Department thereupon, within the limit of available funds and the mileage available in such county for the inclusion of highways and streets in the secondary state highway system, shall take such street into the secondary state highway system for maintenance, improvement, construction, and reconstruction if such street, at the time of such recommendation, (i) has a minimum dedicated width of 40 feet or (ii) in the event of extenuating circumstances as determined by the Commissioner of Highways, has a minimum dedicated width of 30 feet. In either case, such streets must have easements appurtenant thereto that conform to the policy of the Board with respect to drainage. After the streets are taken into the secondary state highway system, the Department shall maintain the same in the manner provided by law. However, no such street shall be taken into and become a part of the secondary state highway system unless and until any and all required permits have been obtained and any outstanding fees, charges, or other financial obligations of whatever nature have been satisfied or provision has been made, whether by the posting of a bond or otherwise, for their satisfaction.

C. Such street shall only be taken into the secondary state highway system if the governing body of the county has identified and made available the funds required to improve the street to the required minimum standards. The county may consider the following options to fund the required improvements for streets accepted under this section:

1. The governing body of the county may use a portion of the county's annual secondary state highway system construction allocation designated as rural addition funds to fund the qualifying rural addition costs for qualifying streets if the county agrees to contribute from county revenue or the special assessment of the landowners on the street in question one-half of the qualifying rural addition cost to bring the streets up to the necessary minimum standards for acceptance. No such special assessment of landowners on such streets shall be made unless the governing body of the county receives written declarations from the owners of 75 percent or more of the platted parcels of land abutting upon such streets stating their acquiescence in such assessments. The basis for such special assessments, at the

option of the local governing body, shall be either (i) the proportion the value of each abutting parcel bears to the total value of all abutting parcels on such street as determined by the current evaluation of the property for real estate tax purposes, (ii) the proportion the abutting road front footage of each parcel abutting the street bears to the total abutting road front footage of all parcels abutting on the street, or (iii) an equal amount for each parcel abutting on such street. No such special assessment on any parcel shall exceed one-third of the current valuation of such property for real estate tax purposes. Special assessments under this section shall be conducted in the manner provided in Article 2 (§ 15.2-2404 et seq.) of Chapter 24 of Title 15.2, *mutatis mutandis*, for assessments for local improvements.

2. The governing body of any county may use a portion of its annual secondary state highway system construction allocation designated as rural addition funds to fund the qualifying rural addition cost for qualifying streets within the limitation of funds and the mileage limitation of the Board's policy on rural additions.

3. The governing body of any county may use revenues derived from the sale of bonds to finance the construction of rural additions to the secondary state highway system of such county. In addition, from the funds allocated by the Commonwealth for the construction of secondary state highway improvements, such local governing body may use funds allocated within the Board policy for the construction of rural additions to pay principal and interest on bonds associated with rural additions in such county, provided the revenue derived from the sale of such bonds is not used as the county matching contribution under § 33.2-357. The provisions of this section shall not constitute a debt or obligation of the Board or the Commonwealth.

4. The governing body of the county may expend general county revenue for the purposes of this section.

5. The governing body of the county may permit one or more of the landowners on the street in question to pay to the county a sum equal to one-half of the qualifying rural addition cost to bring the street up to the necessary minimum standards for acceptance into the secondary state highway system, which funds the county shall then utilize for such purpose. Thereafter, upon collection of the special assessment of landowners on such street, the county shall use such special assessment funds to reimburse, without interest, the one or more landowners for those funds that they previously advanced to the county to bring the street up to the necessary minimum standards for acceptance.

6. The governing body of the county may utilize the allocations made to the county in accordance with § 33.2-357.

D. In instances where it is determined that speculative interest exists, the basis for the pro rata percentage required of such developer, developers, or successor developers shall be the proportion that the value of the abutting parcels owned or partly owned by the developer, developers, or successor developers bears to the total value of all abutting property as determined by the current valuation of the property for real estate purposes. The pro rata percentage shall be applied to the Department's total estimated cost to construct such street to the necessary minimum standards for acceptance to determine the amount of costs to be borne by the developer, developers, or successor developers. Property so valued shall not be assessed in the special assessment for the determination of the individual pro rata share attributable to other properties. Further, when such pro rata participation is accepted by the governing body of the county from such original developer, developers, or successor developers, such amount shall be deducted from the Department's total estimated cost, and the remainder of such estimated cost, the qualifying rural addition cost, shall then be the basis of determining the assessment under the special assessment provision or determining the amount to be provided by the county when funded from general county revenue under the definition of speculative interest in subsection A or determining the amount to be funded as a rural addition under the definition of qualifying rural addition cost in subsection A.

E. Acceptance of any street into the secondary state highway system for maintenance, improvement, construction, and reconstruction shall not impose any obligation on the Board to acquire any additional right-of-way or easements should they be necessary by virtue of faulty construction or design.