

VIRGINIA ACTS OF ASSEMBLY -- 2018 RECONVENED SESSION

CHAPTER 828

An Act to amend and reenact §§ 2.2-229, 15.2-2223, 33.2-201, 33.2-214, 33.2-223, 33.2-232, and 33.2-357 of the Code of Virginia, relating to transportation processes in the Commonwealth; responsibilities of transportation entities; funding.

[H 765]

Approved April 18, 2018

Be it enacted by the General Assembly of Virginia:

1. That §§ 2.2-229, 15.2-2223, 33.2-201, 33.2-214, 33.2-223, 33.2-232, and 33.2-357 of the Code of Virginia are amended and reenacted as follows:

§ 2.2-229. Office of Intermodal Planning and Investment of the Secretary of Transportation.

A. There is hereby established the Office of Intermodal Planning and Investment of the Secretary of Transportation (the Office), consisting of a director, appointed by the Secretary of Transportation, and such additional transportation professionals as the Secretary of Transportation shall determine. It shall be the duty of the Office to support and advise the Secretary in his role as chairman of the Commonwealth Transportation Board.

B. The goals of the Office shall be:

1. To promote transparency and accountability of the programming of transportation funds, including the development of the Six-Year Improvement Program pursuant to § 33.2-214 and the statewide prioritization process pursuant to § 33.2-214.1;

2. To ensure that the Commonwealth has a multimodal transportation system that promotes economic development and all transportation modes, intermodal connectivity, environmental quality, accessibility for people and freight, and transportation safety;

3. To encourage the use of innovation and best practices to improve the efficiency of the Commonwealth's surface transportation network and to enhance the efficacy of strategies to improve such efficiency; and

4. To promote the coordination between transportation investments and land use planning.

C. The responsibilities of the Office shall be:

1. To oversee and coordinate with the Department of Transportation and the Department of Rail and Public Transportation the development of, *for the Commonwealth Transportation Board's approval*, the Six-Year Improvement Program pursuant to § 33.2-214 for the Commonwealth Transportation Board;

2. To implement the statewide prioritization process developed by the Commonwealth Transportation Board pursuant to § 33.2-214.1 ~~in coordination with the Department of Transportation and the Department of Rail and Public Transportation;~~

3. To develop, for the Commonwealth Transportation Board's approval, the Statewide Transportation Plan pursuant to § 33.2-353;

4. To develop measures and targets related to the performance of the Commonwealth's surface transportation network for the Commonwealth Transportation Board's approval ~~and report annually on progress made to achieve such targets in coordination with the Department of Transportation and the Department of Rail and Public Transportation and to develop in coordination with applicable regional organizations quantifiable and achievable goals pursuant to § 33.2-353, including any performance measurement required by Title 23 or 49 of the United States Code and any measures adopted by the Board pursuant to § 33.2-353;~~

5. To undertake, identify, coordinate, and oversee studies of potential highway, transit, rail, and other improvements or strategies, to help address needs identified in the Statewide Transportation Plan pursuant to § 33.2-353;

6. To assist the Commonwealth Transportation Board in the development of a comprehensive, multimodal transportation policy, which may be developed as part of the Statewide Transportation Plan pursuant to § 33.2-353; ~~and~~

7. To provide technical assistance to local governments and regional entities, including assistance to establish and promote urban development areas pursuant to § 15.2-2223.1-;

8. ~~To oversee and coordinate with the Department of Transportation and the Department of Rail and Public Transportation the development of, for the Commonwealth Transportation Board's approval, the annual budget and the six-year financial plan for the Commonwealth Transportation Fund; and~~

9. ~~To oversee, subject to approval of the Commonwealth Transportation Board, the Virginia Transportation Infrastructure Bank established pursuant to § 33.2-1502 and the Toll Facilities Revolving Account established pursuant to § 33.2-1529.~~

D. *In carrying out its responsibilities pursuant to subsection C, the Office shall coordinate with the Department of Transportation and the Department of Rail and Public Transportation, as appropriate,*

and coordinate with the Department of Transportation on all road, bridge, and tunnel projects and with the Department of Rail and Public Transportation on all rail and transit projects.

§ 15.2-2223. Comprehensive plan to be prepared and adopted; scope and purpose.

A. The local planning commission shall prepare and recommend a comprehensive plan for the physical development of the territory within its jurisdiction and every governing body shall adopt a comprehensive plan for the territory under its jurisdiction.

In the preparation of a comprehensive plan, the commission shall make careful and comprehensive surveys and studies of the existing conditions and trends of growth, and of the probable future requirements of its territory and inhabitants. The comprehensive plan shall be made with the purpose of guiding and accomplishing a coordinated, adjusted and harmonious development of the territory which will, in accordance with present and probable future needs and resources, best promote the health, safety, morals, order, convenience, prosperity and general welfare of the inhabitants, including the elderly and persons with disabilities.

The comprehensive plan shall be general in nature, in that it shall designate the general or approximate location, character, and extent of each feature, including any road improvement and any transportation improvement, shown on the plan and shall indicate where existing lands or facilities are proposed to be extended, widened, removed, relocated, vacated, narrowed, abandoned, or changed in use as the case may be.

B. 1. As part of the comprehensive plan, each locality shall develop a transportation plan that designates a system of transportation infrastructure needs and recommendations that include the designation of new and expanded transportation facilities and that support the planned development of the territory covered by the plan and shall include, as appropriate, but not be limited to, roadways, bicycle accommodations, pedestrian accommodations, railways, bridges, waterways, airports, ports, and public transportation facilities. The plan shall recognize and differentiate among a hierarchy of roads such as expressways, arterials, and collectors. In developing the plan, the locality shall take into consideration how to align transportation infrastructure and facilities with affordable, accessible housing and community services that are located within the territory in order to facilitate community integration of the elderly and persons with disabilities. The Virginia Department of Transportation shall, upon request, provide localities with technical assistance in preparing such transportation plan.

2. The transportation plan shall include a map that shall show road and transportation improvements, including the cost estimates of such road and transportation improvements from the Virginia Department of Transportation, taking into account the current and future needs of residents in the locality while considering the current and future needs of the planning district within which the locality is situated.

3. The transportation plan, and any amendment thereto pursuant to § 15.2-2229, shall be consistent with the Commonwealth Transportation Board's Statewide Transportation Plan developed pursuant to § 33.2-353, the Six-Year Improvement Program adopted pursuant to subsection B of § 33.2-214, and the location of routes to be followed by roads comprising systems of state highways pursuant to subsection A of § 33.2-208. The locality shall consult with the Virginia Department of Transportation to assure such consistency is achieved. The transportation plan need reflect only those changes in the annual update of the Six-Year Improvement Program that are deemed to be significant new, expanded, or relocated roadways.

4. Prior to the adoption of the transportation plan or any amendment to the transportation plan, the locality shall submit such plan or amendment to the Department for review and comment. The Department shall conduct its review and provide written comments to the locality on the consistency of the transportation plan or any amendment to the provisions of subdivision 1. The Department shall provide such written comments to the locality within 90 days of receipt of the plan or amendment, or such other shorter period of time as may be otherwise agreed upon by the Department and the locality.

5. The locality shall submit a copy of the adopted transportation plan or any amendment to the transportation plan to the Department for informational purposes. If the Department determines that the transportation plan or amendment is not consistent with the provisions of subdivision 1, the Department shall notify the Commonwealth Transportation Board so that the Board may take appropriate action in accordance with subsection E F of § 33.2-214.

6. Each locality's amendments or updates to its transportation plan as required by subdivisions 2 through 5 shall be made on or before its ongoing scheduled date for updating its transportation plan.

C. The comprehensive plan, with the accompanying maps, plats, charts, and descriptive matter, shall show the locality's long-range recommendations for the general development of the territory covered by the plan. It may include, but need not be limited to:

1. The designation of areas for various types of public and private development and use, such as different kinds of residential, including age-restricted, housing; business; industrial; agricultural; mineral resources; conservation; active and passive recreation; public service; flood plain and drainage; and other areas;

2. The designation of a system of community service facilities such as parks, sports playing fields, forests, schools, playgrounds, public buildings and institutions, hospitals, nursing homes, assisted living facilities, community centers, waterworks, sewage disposal or waste disposal areas, and the like;

3. The designation of historical areas and areas for urban renewal or other treatment;
 4. The designation of areas for the implementation of reasonable ground water protection measures;
 5. A capital improvements program, a subdivision ordinance, a zoning ordinance and zoning district maps, mineral resource district maps and agricultural and forestal district maps, where applicable;
 6. The location of existing or proposed recycling centers;
 7. The location of military bases, military installations, and military airports and their adjacent safety areas; and
 8. The designation of corridors or routes for electric transmission lines of 150 kilovolts or more.
- D. The comprehensive plan shall include the designation of areas and implementation of measures for the construction, rehabilitation and maintenance of affordable housing, which is sufficient to meet the current and future needs of residents of all levels of income in the locality while considering the current and future needs of the planning district within which the locality is situated.

§ 33.2-201. Appointment requirements; statewide interest.

Of the members appointed to the Board, one member shall be a resident of the territory now included in the Bristol highway construction district, one in the Salem highway construction district, one in the Lynchburg highway construction district, one in the Staunton highway construction district, one in the Culpeper highway construction district, one in the Fredericksburg highway construction district, one in the Richmond highway construction district, one in the Hampton Roads highway construction district, and one in the Northern Virginia highway construction district. The remaining five members shall be appointed from the Commonwealth at large, provided that at least two reside in ~~metropolitan statistical areas~~ *urbanized areas with populations greater than 200,000* and are designated as urban at-large members and at least two reside outside ~~metropolitan statistical areas~~ *urbanized areas with populations greater than 200,000* and are designated as rural at-large members. The at-large members shall be appointed to represent rural and urban transportation needs and to be mindful of the concerns of seaports and seaport users, airports and airport users, railways and railway users, and mass transit and mass transit users. Each appointed member of the Board shall be primarily mindful of the best interest of the Commonwealth at large instead of the interests of the highway construction district from which chosen or of the transportation interest represented.

No member of a governing body of a locality shall be eligible, during the term of office for which he was elected or appointed, to serve as an appointed member of the Board.

§ 33.2-214. Transportation; Six-Year Improvement Program.

A. The Board shall have the power and duty to monitor and, where necessary, approve actions taken by the Department of Rail and Public Transportation pursuant to Article 5 (§ 33.2-281 et seq.) in order to ensure the efficient and economical development of public transportation, the enhancement of rail transportation, and the coordination of such rail and public transportation plans with highway programs.

B. The Board shall have the power and duty to coordinate the planning for financing of transportation needs, including needs for highways, railways, seaports, airports, and public transportation and set aside funds as provided in § 33.2-1524. To allocate funds for these needs pursuant to §§ 33.2-358 and 58.1-638, the Board shall adopt a Six-Year Improvement Program of anticipated projects and programs by July 1 of each year. This program shall be based on the most recent official Transportation Trust Fund revenue forecast and shall be consistent with a debt management policy adopted by the Board in consultation with the Debt Capacity Advisory Committee and the Department of the Treasury.

C. The Board shall have the power and duty to enter into contracts with local districts, commissions, agencies, or other entities created for transportation purposes.

D. The Board shall have the power and duty to promote increasing private investment in the Commonwealth's transportation infrastructure, including acquisition of causeways, bridges, tunnels, highways, and other transportation facilities.

E. The Board shall only include a project or program wholly or partially funded with funds from the State of Good Repair Program pursuant to § 33.2-369, the High Priority Projects Program pursuant to § 33.2-370, or the Highway Construction District Grant Programs pursuant to § 33.2-371 in the Six-Year Improvement Program if the allocation of funds from those programs and other funding committed to such project or program within the six-year horizon of the Six-Year Improvement Program is sufficient to complete the project or program.

F. The Board shall have the power and duty to integrate land use with transportation planning and programming, consistent with the efficient and economical use of public funds. If the Board determines that a local transportation plan described in § 15.2-2223 or any amendment as described in § 15.2-2229 or a metropolitan regional long-range transportation plan or regional Transportation Improvement Program as described in § 33.2-3201 is not consistent with the Board's Statewide Transportation Plan developed pursuant to § 33.2-353, the Six-Year Improvement Program adopted pursuant to subsection B, and the location of routes to be followed by roads comprising systems of state highways pursuant to subsection A of § 33.2-208, the Board shall notify the locality of such inconsistency and request that the applicable plan or program be amended accordingly. If, after a reasonable time, the Board determines that there is a refusal to amend the plan or program, then the Board may reallocate funds that were

allocated to the nonconforming project as permitted by state or federal law. However, the Board shall not reallocate any funds allocated pursuant to § 33.2-319 or 33.2-366, based on a determination of inconsistency with the Board's Statewide Transportation Plan or the Six-Year Improvement Program nor shall the Board reallocate any funds, allocated pursuant to subsection C or D of § 33.2-358, from any projects on highways controlled by any county that has withdrawn, or elects to withdraw, from the secondary system of state highways based on a determination of inconsistency with the Board's Statewide Transportation Plan or the Six-Year Improvement Program. If a locality or metropolitan planning organization requests the termination of a project, and the Department does not agree to the termination, or if a locality or metropolitan planning organization does not advance a project to the next phase of construction when requested by the Board and the Department has expended state or federal funds, the locality or the localities within the metropolitan planning organization may be required to reimburse the Department for all funds expended on the project. If, after design approval by the Chief Engineer of the Department, a locality or metropolitan planning organization requests alterations to a project that, in the aggregate, exceeds 10 percent of the total project costs, the locality or the localities within the metropolitan planning organization may be required to reimburse the Department for the additional project costs above the original estimates for making such alterations.

§ 33.2-223. General powers of Commissioner of Highways.

Except such powers as are conferred by law upon the Board *and the Office of Intermodal Planning and Investment of the Secretary of Transportation*, the Commissioner of Highways shall have the power to do all acts necessary or convenient for constructing, improving, maintaining, and preserving the efficient operation of the highways embraced in the systems of state highways and to further the interests of the Commonwealth in the areas of public transportation, railways, seaports, and airports. And as executive head of the Department, the Commissioner of Highways is specifically charged with the duty of executing all orders and decisions of the Board and may, subject to the provisions of this chapter, require that all appointees and employees perform their duties under this chapter.

In addition, the Commissioner of Highways, in order to maximize efficiency, shall take such steps as may be appropriate to outsource or privatize any of the Department's functions that might reasonably be provided by the private sector. Procuring equipment and labor to ensure that adequate resources will be available to address emergency and weather-related events as they may arise, including snow and ice removal services, shall be considered an emergency under subsection F of § 2.2-4303, and the Commissioner of Highways shall have the authority to establish and utilize such procedures as he deems necessary and most efficient to obtain and ensure the availability of such services to protect the safety and security of the traveling public.

§ 33.2-232. Annual reports by Commissioner of Highways and the Office of Intermodal Planning and Investment.

A. The Secretary of Transportation shall ensure that the reports required under subsections B and C are provided in writing to the Governor, the General Assembly, and the Commonwealth Transportation Board by the dates specified.

B. The Commissioner of Highways shall annually report in writing to the Governor, the General Assembly, the Joint Legislative Audit and Review Commission, and the Board provide to each recipient specified in subsection A, no later than November 30 1 of each even-numbered year. The Commissioner shall make such report available on the Department's website. The, a report, the content of such report which shall be specified by the Board and shall contain, at a minimum:

1. The condition of existing transportation assets, using asset management methodology pursuant to § 33.2-352;

2. The methodology used to determine maintenance needs, including an explanation of the transparent methodology used for the allocation of funds from the Highway Maintenance and Operating Fund pursuant to subsection A of § 33.2-352;

3. The allocations to the reconstruction and rehabilitation of functionally obsolete or structurally deficient bridges and to the reconstruction of pavements determined to have a combined condition index of less than 60 and beginning with the November 2020 report, the 2. The methodology used to determine allocations approved by the Board for the allocation of construction funds for state of good repair purposes as defined in § 33.2-369 and, if necessary, an explanation and rationale for any waiver of the cap provided for in subsection B of § 33.2-369;

4. The performance targets and outcomes for (i) the current two-year period starting July 1 of even-numbered years and (ii) the following two-year period starting July 1 of the next even-numbered year. The targets and outcomes shall state what is expected to be achieved, based on funding identified for maintenance and state of good repair purposes, over each two-year period

3. The expenditures from the Highway Maintenance and Operating Program for the past fiscal year by asset class or activity and by construction district as well as the planned expenditure for the current fiscal year;

4. A description of transportation systems management and operations in the Commonwealth and the operating condition of primary and secondary state highways, including location and average duration of incidents;

5. A listing of prioritized pavement and bridge needs based on the priority ranking system developed by the Board pursuant to § 33.2-369 and a description of the priority ranking system;

6. ~~The Department's (i) strategies for improving safety and security and (ii) strategies and activities A description of actions taken to improve highway operations within the Commonwealth, including the use of funds in the Innovation and Technology Transportation Fund established pursuant to § 33.2-1531 and improved incident management; and~~

7. A review of the Department's collaboration with the private sector in delivering services;

8. ~~Traffic modeling results for all federally funded projects requiring a multi-alternative National Environmental Policy Act analysis;~~

C. The Office of Intermodal Planning and Investment of the Secretary of Transportation shall provide to each recipient specified in subsection A, no later than November 1 of each odd-numbered year, a report, the content of which shall be specified by the Board and shall contain, at a minimum:

9. 1. A list of transportation projects approved or modified during the prior fiscal year (i) in each transportation district, including whether each such project was evaluated pursuant to § 33.2-214.1, including project costs, and (ii) in each transportation district not subject to § 33.2-214.1 and the program from which each such project received funding; and

10. A listing, by transportation district for the prior fiscal year, of the total number of lane miles of all primary and secondary roads that (i) have been resurfaced with asphalt or sealant and (ii) based on records of the Department at the close of the fiscal year, reflect a rating of "poor" or "very poor."

2. The results of the most recent project evaluations pursuant to § 33.2-214.1, including a comparison of (i) projects selected for funding with projects not selected for funding, (ii) funding allocated by district and by mode of transportation, and (iii) the size of projects selected for funding;

3. The current performance of the Commonwealth's surface transportation system, the targets for future performance, and the progress toward such targets based on the measures developed pursuant to § 2.2-229;

4. The status of the Virginia Transportation Infrastructure Bank, including the balance in the Bank, funding commitments made over the prior fiscal year, and performance of the current loan portfolio;

5. The status of the Toll Facilities Revolving Account, including the balance in the account, project commitments from the account, repayment schedules, and the performance of the current loan portfolio; and

6. Progress made toward achieving the performance targets established by the Commonwealth Transportation Board.

D. The purpose of the reports required pursuant to this section is to ensure transparency and accountability in the use of transportation funds. Reports required by this section shall be made available to the public on the website of the Commonwealth Transportation Board.

§ 33.2-357. Revenue-sharing funds for systems in certain localities.

A. From revenues made available by the General Assembly and appropriated for the improvement, construction, reconstruction, or maintenance of the systems of state highways, the Board may make an equivalent matching allocation to any locality for designations by the governing body of up to \$10 \$5 million for use by the locality to improve, construct, *maintain*, or reconstruct the highway systems within such locality with up to \$5 \$2.5 million for use by the locality to maintain the highway systems within such locality. After adopting a resolution supporting the action, the governing body of the locality may request revenue-sharing funds to improve, construct, reconstruct, or maintain a highway system located in another locality or between two or more localities or to bring subdivision streets, used as such prior to the date specified in § 33.2-335, up to standards sufficient to qualify them for inclusion in the primary or secondary state highway system. All requests for funding shall be accompanied by a prioritized listing of specified projects.

B. In allocating funds under this section, the Board shall give priority to projects as follows: first, to projects that have previously received an allocation of funds pursuant to this section; second, to projects that (i) meet a transportation need identified in the Statewide Transportation Plan pursuant to § 33.2-353 or (ii) accelerate a project in a locality's capital plan; and third, to projects that address pavement resurfacing and bridge rehabilitation projects where the maintenance needs analysis determines that the infrastructure does not meet the Department's maintenance performance targets.

C. The Department shall contract with the locality for the implementation of the project. Such contract may cover either a single project or may provide for the locality's implementation of several projects. The locality shall undertake implementation of the particular project by obtaining the necessary permits from the Department in order to ensure that the improvement is consistent with the Department's standards for such improvements. At the request of the locality, the Department may provide the locality with engineering, right-of-way acquisition, construction, or maintenance services for a project with its own forces. The locality shall provide payment to the Department for any such services. If administered by the Department, such contract shall also require that the governing body of the locality pay to the Department within 30 days the local revenue-sharing funds upon written notice by the Department of its intent to proceed. Any project having funds allocated under this program shall be initiated in such a fashion that at least a portion of such funds have been expended within one year of allocation. Any

revenue-sharing funds for projects not initiated after two subsequent fiscal years of allocation may be reallocated at the discretion of the Board.

D. Total Commonwealth funds allocated by the Board under this section shall ~~be no less than \$15 million and no more than \$200 million~~ *not exceed the greater of \$100 million or seven percent of funds available for distribution pursuant to subsection D of § 33.2-358 prior to the distribution of funds pursuant to this section, whichever is greater*, in each fiscal year, subject to appropriation for such purpose. For any fiscal year in which less than the full program allocation has been allocated by the Board to specific governing bodies, those localities requesting the maximum allocation under subsection A may be allowed an additional allocation at the discretion of the Board.

E. The funds allocated by the Board under this section shall be distributed and administered in accordance with the revenue-sharing program guidelines established by the Board.