

VIRGINIA ACTS OF ASSEMBLY -- 2019 SESSION

CHAPTER 749

An Act to amend and reenact §§ 33.2-214.3, 33.2-501, 33.2-2500, 33.2-2505, and 33.2-2510 of the Code of Virginia and to repeal § 33.2-257 of the Code of Virginia, relating to the analysis of transportation projects in the Northern Virginia Transportation District.

[S 1468]

Approved March 21, 2019

Be it enacted by the General Assembly of Virginia:

1. That §§ 33.2-214.3, 33.2-501, 33.2-2500, 33.2-2505, and 33.2-2510 of the Code of Virginia are amended and reenacted as follows:

§ 33.2-214.3. Transparency in project selection in Planning District 8.

At least annually, the Northern Virginia Transportation Authority, the Northern Virginia Transportation Commission, the Virginia Railway Express, and the Commonwealth Transportation Board shall conduct a joint public meeting for the purposes of presenting to the public, and receiving public comments on, the transportation projects proposed and conducted by each entity in Planning District 8. Such presentation shall include documentation regarding how the combined project selection, timing, and revenue sources employed by the entities represents the most efficient use of revenue sources. Such presentation shall include any evaluations or analyses conducted by such entities pursuant to § 33.2-214.1 or ~~33.2-257 subdivision 2 of § 33.2-2500~~ that relate to Planning District 8. Each entity shall have at least one designee physically assembled at such joint public meeting. Nothing herein shall require a quorum of each such entity to participate in such joint public meeting.

§ 33.2-501. Designation of HOV lanes; use of such lanes; penalties.

A. In order to facilitate the rapid and orderly movement of traffic to and from urban areas during peak traffic periods, the Board may designate one or more lanes of any highway in the Interstate System, primary state highway system, or secondary state highway system as HOV lanes. When lanes have been so designated and have been appropriately marked with signs or other markers as the Board may prescribe, they shall be reserved during periods designated by the Board for the exclusive use of buses and high-occupancy vehicles. Any local governing body may also, with respect to highways under its exclusive jurisdiction, designate HOV lanes and impose and enforce restrictions on the use of such lanes. Any highway for which the locality receives highway maintenance funds pursuant to § 33.2-319 shall be deemed to be within the exclusive jurisdiction of the local governing body for the purposes of this section. HOV lanes shall be reserved for high-occupancy vehicles of a specified number of occupants as determined by the Board or, for HOV lanes designated by a local governing body, by that local governing body. However, no designation of any lane or lanes of any highway as HOV lanes shall apply to the use of any such lanes by:

1. Emergency vehicles such as firefighting vehicles and emergency medical services vehicles;
2. Law-enforcement vehicles;
3. Motorcycles;
4. a. Transit and commuter buses designed to transport 16 or more passengers, including the driver;
- b. Any vehicle operating under a certificate issued under § 46.2-2075, 46.2-2080, 46.2-2096, 46.2-2099.4, or 46.2-2099.44;
5. Vehicles of public utility companies operating in response to an emergency call;
6. Vehicles bearing clean special fuel vehicle license plates issued pursuant to § 46.2-749.3, provided such use is in compliance with federal law;
7. Taxicabs having two or more occupants, including the driver; or
8. (Contingent effective date) Any active duty military member in uniform who is utilizing Interstate 264 and Interstate 64 for the purposes of traveling to or from a military facility in the Hampton Roads Planning District.

In the Hampton Roads Planning District, HOV restrictions may be temporarily lifted and HOV lanes opened to use by all vehicles when restricting use of HOV lanes becomes impossible or undesirable and the temporary lifting of HOV limitations is indicated by signs along or above the affected portion of highway.

The Commissioner of Highways shall implement a program of the HOV facilities in the Hampton Roads Planning District beginning not later than May 1, 2000. This program shall include the temporary lifting of HOV restrictions and the opening of HOV lanes to all traffic when an incident resulting from nonrecurring causes within the general lanes occurs such that a lane of traffic is blocked or is expected to be blocked for 10 minutes or longer. The HOV restrictions for the facility shall be reinstated when the general lane is no longer blocked and is available for use.

The Commissioner of Highways shall maintain necessary records to evaluate the effects of such

openings on the operation of the general lanes and the HOV lanes. This program will terminate if the Federal Highway Administration requires repayment of any federal highway construction funds because of the program's impact on the HOV facilities in Hampton Roads.

B. In designating any lane or lanes of any highway as HOV lanes, the Board or local governing body shall specify the hour or hours of each day of the week during which the lanes shall be so reserved, and the hour or hours shall be plainly posted at whatever intervals along the lanes the Board or local governing body deems appropriate. Any person driving a motor vehicle in a designated HOV lane in violation of this section is guilty of a traffic infraction, which shall not be a moving violation, and on conviction shall be fined \$100. However, violations committed within the boundaries of Planning District 8 shall be punishable as follows:

1. For a first offense, by a fine of \$125;
2. For a second offense within a period of five years from a first offense, by a fine of \$250;
3. For a third offense within a period of five years from a first offense, by a fine of \$500; and
4. For a fourth or subsequent offense within a period of five years from a first offense, by a fine of \$1,000.

Upon a conviction under this section, the court shall furnish to the Commissioner of the Department of Motor Vehicles in accordance with § 46.2-383 an abstract of the record of such conviction, which shall become a part of the person's driving record. Notwithstanding the provisions of § 46.2-492, no driver demerit points shall be assessed for any violation of this section, except that persons convicted of second, third, fourth, or subsequent violations within five years of a first offense committed in Planning District 8 shall be assessed three demerit points for each such violation.

C. In the prosecution of an offense, committed in the presence of a law-enforcement officer, of failure to obey a road sign restricting a highway, or portion thereof, to the use of high-occupancy vehicles, proof that the vehicle described in the HOV violation summons was operated in violation of this section, together with proof that the defendant was at the time of such violation the registered owner of the vehicle, shall constitute in evidence a rebuttable presumption that such registered owner of the vehicle was the person who committed the violation. Such presumption shall be rebutted if the registered owner of the vehicle testifies in open court under oath that he was not the operator of the vehicle at the time of the violation. A summons for a violation of this section may be executed in accordance with § 19.2-76.2. Such rebuttable presumption shall not arise when the registered owner of the vehicle is a rental or leasing company.

D. Notwithstanding the provisions of § 19.2-76, whenever a summons for a violation of this section is served in any locality, it may be executed by mailing by first-class mail a copy thereof to the address of the owner of the vehicle as shown on the records of the Department of Motor Vehicles. If the summoned person fails to appear on the date of return set out in the summons mailed pursuant to this section, the summons shall be executed in the manner set out in § 19.2-76.3.

No proceedings for contempt or arrest of a person summoned by mailing shall be instituted for his failure to appear on the return date of the summons.

E. Notwithstanding § 33.2-613, high-occupancy vehicles having three or more occupants (HOV-3) may be permitted to use the Omer L. Hirst-Adelard L. Brault Expressway (Dulles Toll Road) without paying a toll.

F. (Effective until January 1, 2020) Notwithstanding the contrary provisions of this section, the HOV-2 designation of Interstate 66 shall not be changed to HOV-3 or any more restrictive designation.

F. (Effective January 1, 2020) Notwithstanding the contrary provisions of this section, the following conditions shall be met before the HOV-2 designation of Interstate 66 can be changed to HOV-3 or any more restrictive designation:

1. The Department of Transportation shall publish a notice of its intent to change the existing designation and also immediately provide similar notice of its intent to all members of the General Assembly representing districts that touch or are directly impacted by traffic on Interstate 66.

2. The Department of Transportation shall hold public hearings in the corridor to receive comments from the public.

3. The Department of Transportation shall make a finding of the need for a change in such designation, based on public hearings and its internal data, and present this finding to the Board for approval.

4. The Board shall make written findings and a decision based upon the following criteria:

- a. Is changing the HOV-2 designation to HOV-3 in the public interest?
- b. Is there quantitative and qualitative evidence that supports the argument that HOV-3 will facilitate the flow of traffic on Interstate 66?

- c. Is changing the HOV-2 designation beneficial to comply with the federal Clean Air Act Amendments of 1990?

- d. Has the change in designation been screened and evaluated by the ~~Department of Transportation~~ *Northern Virginia Transportation Authority* according to the process established pursuant to ~~§ 33.2-257 subdivision 2 of § 33.2-2500?~~

§ 33.2-2500. Northern Virginia Transportation Authority created.

There is hereby created a political subdivision of the Commonwealth known as the Northern Virginia Transportation Authority, for purposes of this chapter referred to as "the Authority."

In addition to such other powers vested in the Authority by this chapter, the Authority shall have the following powers and functions:

1. The Authority shall prepare a regional transportation plan for Planning District 8 that includes transportation improvements of regional significance and those improvements necessary or incidental thereto and shall revise and amend the plan. The provisions of Article 7 (§ 33.2-1928 et seq.) of Chapter 19 shall apply, mutatis mutandis, to preparation of such transportation plan.

2. *The Authority shall evaluate all significant transportation projects, including highway, mass transit, and technology projects, in and near Planning District 8, to the extent that funds are available for such purpose. The evaluation shall provide an objective, quantitative rating for each project according to the degree to which the project is expected to reduce congestion and, to the extent feasible, the degree to which the project is expected to improve regional mobility in the event of a homeland security emergency. Such evaluation shall rely on analytical techniques and transportation modeling, including those that employ computer simulations currently and customarily employed in transportation planning. The Authority may rely on the results of transportation modeling performed by other entities, including the Department of Transportation and private entities contracted for this purpose, provided that such modeling is in accordance with this section. The Authority shall publicize the quantitative ratings determined for each project on its website and complete the evaluation at least once every four years, with interim progress reports provided on the website at least once every six months.*

a. For purposes of this section, the significant transportation projects to be evaluated may include:

(1) Projects included in the version of the Financially Constrained Long-Range Transportation Plan of the National Capital Region Transportation Planning Board in effect when the evaluation is made, plus additional projects in the plan adopted according to subdivision 1; and

(2) Other highway, rail, bus, and technology projects that could make a significant impact on mobility in the region, including additional Potomac River crossings west and south of Washington, D.C.; extension of the Metro Orange Line, Metro Yellow Line, and Metro Blue Line; bus rapid transit on Interstate 66; vehicle capacity and mass transit improvements on the U.S. Route 1 corridor; and implementation of relevant portions of the Statewide Transportation Plan established pursuant to § 33.2-353.

3. The Authority may, when a transportation plan is adopted according to subdivision 1, construct or acquire, by purchase, lease, contract, or otherwise, the transportation facilities specified in such transportation plan.

3. 4. The Authority may enter into agreements or leases with public or private entities for the operation of its facilities or may operate such facilities itself.

4. 5. The Authority may enter into contracts or agreements with the counties and cities embraced by the Authority, with other transportation commissions of transportation districts adjoining any county or city embraced by the Authority, with any transportation authority, or with any federal, state, local, or private entity to provide, or cause to be provided, transportation facilities and services to the area embraced by the Authority. Such contracts or agreements, together with any agreements or leases for the operation of such facilities, may be used by the Authority to finance the construction and operation of transportation facilities and such contracts, agreements, or leases shall inure to the benefit of any creditor of the Authority.

Notwithstanding subdivisions 1 through 4 5, the Authority shall not have the power to regulate services provided by taxicabs, either within municipalities or across municipal boundaries; such regulation is expressly reserved to the municipalities within which taxicabs operate.

5. 6. Notwithstanding any other provision of law to the contrary, the Authority may:

a. Acquire land or any interest therein by purchase, lease, or gift and provide transportation facilities thereon for use in connection with any transportation service;

b. Acquire land or any interest therein by purchase, lease, or gift in advance of the need for sale or contribution to an agency, for use by that agency in connection with an adopted transportation plan; and

c. Prepare a plan for mass transportation services with persons, counties, cities, agencies, authorities, or transportation commissions and may further contract with any such person or entity to provide necessary facilities, equipment, operations and maintenance, access, and insurance pursuant to such plan.

§ 33.2-2505. Allocation of certain Authority expenses among component counties and cities.

~~The~~ *Notwithstanding the provisions of subdivision C 1 of § 33.2-2510, the administrative and operating expenses of the Authority as shall be provided in an annual budget adopted by the Authority, to the extent funds for such expenses are not provided from other sources, shall be allocated among the component counties and cities on the basis of the relative population, as determined pursuant to § 33.2-2504 paid from the Fund.* Such budget shall be limited solely to the administrative and operating expenses of the Authority and shall not include any funds for construction or acquisition of transportation facilities or for the performance of any transportation service.

§ 33.2-2510. Use of certain revenues by the Authority.

A. All moneys received by the Authority and the proceeds of bonds issued pursuant to § 33.2-2511

shall be used by the Authority solely for transportation purposes benefiting those counties and cities that are embraced by the Authority.

B. 1. Except as provided in subdivision 2, 30 percent of the revenues received by the Authority under subsection A shall be distributed on a pro rata basis, with each locality's share being the total of such fee and taxes received by the Authority that are generated or attributable to the locality divided by the total of such fee and taxes received by the Authority. Of the revenues distributed pursuant to this subsection, as determined solely by the applicable locality, such revenues shall be used for additional urban or secondary highway construction, for other capital improvements that reduce congestion, for other transportation capital improvements that have been approved by the most recent long-range transportation plan adopted by the Authority, or for public transportation purposes. None of the revenue distributed by this subsection may be used to repay debt issued before July 1, 2013. Each locality shall create a separate, special fund in which all revenues received pursuant to this subsection and from the tax imposed pursuant to § 58.1-3221.3 shall be deposited. Each locality shall provide annually to the Authority sufficient documentation as required by the Authority showing that the funds distributed under this subsection were used as required by this subsection.

2. If a locality has not deposited into its special fund (i) revenues from the tax collected under § 58.1-3221.3 pursuant to the maximum tax rate allowed under that section or (ii) an amount, from sources other than moneys received from the Authority, that is equivalent to the revenue that the locality would receive if it was imposing the maximum tax authorized by § 58.1-3221.3, then the amount of revenue distributed to the locality pursuant to subdivision 1 shall be reduced by the difference between the amount of revenue that the locality would receive if it was imposing the maximum tax authorized by such section and the amount of revenue deposited into its special fund pursuant to clause (i) or (ii), as applicable. The amount of any such reduction in revenue shall be redistributed according to subsection C. The provisions of this subdivision shall be ongoing and apply over annual periods as determined by the Authority.

C. 1. The remaining 70 percent of the revenues received by the Authority under subsection A, plus the amount of any revenue to be redistributed pursuant to subsection B, shall be used by the Authority solely to fund transportation projects selected by the Authority that are contained in the regional transportation plan in accordance with *subdivision 1 of § 33.2-2500* and that have been rated in accordance with ~~§ 33.2-257 subdivision 2 of § 33.2-2500~~. For only those regional funds received in fiscal year 2014, the requirement for rating in accordance with ~~§ 33.2-257 subdivision 2 of § 33.2-2500~~ shall not apply. The Authority shall give priority to selecting projects that are expected to provide the greatest congestion reduction relative to the cost of the project and shall document this information for each project selected. Such projects selected by the Authority for funding shall be located (i) only in localities embraced by the Authority or (ii) in adjacent localities but only to the extent that such extension is an insubstantial part of the project and is essential to the viability of the project within the localities embraced by the Authority.

2. Not less than 15 days prior to any decision by the Authority for the expenditure of funds pursuant to subdivision 1 for any project to create or improve any transportation facility, the Authority shall make the following publicly available: (i) the project evaluation pursuant to ~~§ 33.2-257 subdivision 2 of § 33.2-2500~~, (ii) the total amount of funds from the Authority to be used for the project, (iii) the total amount of funds from sources other than the Authority to be used for the project, and (iv) any other rating or scoring of other factors to be taken into account by the Authority related to each such transportation facility.

3. All transportation projects undertaken by the Authority shall be completed by private contractors accompanied by performance measurement standards, and all contracts shall contain a provision granting the Authority the option to terminate the contract if contractors do not meet such standards. Notwithstanding the foregoing, any locality may provide engineering services or right-of-way acquisition for any project with its own forces. The Authority shall avail itself of the strategies permitted under the Public-Private Transportation Act (§ 33.2-1800 et seq.) whenever feasible and advantageous. The Authority is independent of any state or local entity, including the Department and the Commonwealth Transportation Board, but the Authority, the Department, and the Commonwealth Transportation Board shall consult with one another to avoid duplication of efforts and, at the option of the Authority, may combine efforts to complete specific projects. Notwithstanding the foregoing, at the request of the Authority, the Department may provide the Authority with engineering services or right-of-way acquisition for the project with its own forces.

4. With regard to the revenues distributed under subdivision 1, each locality's total long-term benefit shall be approximately equal to the proportion of the total of the fees and taxes received by the Authority that are generated by or attributable to the locality divided by the total of such fees and taxes received by the Authority.

D. For road construction and improvements pursuant to subsection B, the Department may, on a reimbursement basis, provide the locality with planning, engineering, right-of-way, and construction services for projects funded in whole by the revenues provided to the locality by the Authority.

2. That § 33.2-257 of the Code of Virginia is repealed.