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HOUSE BILL NO. 746

Offered January 22, 1996

A BILL to amend and reenact §§ 33.1-268, 33.1-269, 33.1-277, and 33.1-279.1 of the Code of Virginia, relating to authorization for local governments to contract for highway financing.

Patron—Howell

Referred to Committee on Transportation

Be it enacted by the General Assembly of Virginia:

1. That §§ 33.1-268, 33.1-269, 33.1-277, and 33.1-279.1 of the Code of Virginia are amended and reenacted as follows:

§ 33.1-268. Definitions.

As used in this article, the following words and terms shall have the following meanings:

(1) The word "Board" means the Commonwealth Transportation Board, or if the Commonwealth Transportation Board is abolished, any board, commission or officer succeeding to the principal functions thereof or upon whom the powers given by this article to the Board shall be given by law.

(2) The word "project" or "projects" means any one or more of the following:

(a) York River Bridges, extending from a point within the Town of Yorktown in York County, or within York County across the York River to Gloucester Point or some point in Gloucester County.

(b) Rappahannock River Bridge, extending from Greys Point, or its vicinity, in Middlesex County, across the Rappahannock River to a point in the vicinity of White Stone, in Lancaster County, or at some other feasible point in the general vicinity of the two respective points.

(c), (d) [Reserved.]

(e) James River Bridge, from a point at or near Jamestown, in James City County, across the James River to a point in Surry County.

(f), (g) [Reserved.]

(h) James River, Chuckatuck and Nansemond River Bridges, together with necessary connecting roads, in the Cities of Newport News and Suffolk and the County of Isle of Wight.

(i) [Reserved.]

(j) Hampton Roads Bridge, Tunnel, or Bridge and Tunnel System, extending from a point or points in the Cities of Newport News and Hampton on the northwest shore of Hampton Roads across Hampton Roads to a point or points in the City of Norfolk or Suffolk on the southeast shore of Hampton Roads.

(k) The Norfolk-Virginia Beach Highway, extending from a point in the vicinity of the intersection of Interstate Route 64 and Primary Route 58 at Norfolk to some feasible point between London Bridge and Primary Route 60.

(l) The Henrico-James River Bridge, extending from a point on the eastern shore of the James River in Henrico County to a point on the western shore, between Falling Creek and Bells Road interchanges of the Richmond-Petersburg Turnpike; however, the project shall be deemed to include all property, rights, easements and franchises relating to any of the foregoing projects and deemed necessary or convenient for the operation thereof and to include approaches thereto.

(m) The limited access highway between the Patrick Henry Airport area and the Newport News downtown area which generally runs parallel to tracks of the Chesapeake and Ohio Railroad.

(n) Dulles Access Road outer roadways, extending from a point on Route 7 in Loudoun County in an easterly direction to a point east of Route 123 on the Dulles Access Road in Fairfax County. These roadways are to be two or three lanes in each direction constructed adjacent to, and parallel to or extending west from, the Dulles Access Road.

(o), (p) [Repealed.]

(q) Subject to the limitations and approvals of § 33.1-279.1, any other highway for a primary highway transportation improvement district or transportation service district which the Board has agreed to finance under a contract with any such district or any other alternative mechanism for generation of local revenues for specific funding of a project satisfactory to the Commonwealth Transportation Board, the financing for which is to be secured by Transportation Trust Fund revenues under any appropriation made by the General Assembly for that purpose and payable first from revenues received under such contract or other local funding source, second, to the extent required, from funds appropriated and allocated, pursuant to the highway allocation formula as provided by law, to the highway construction district in which the project is located or to the county or counties in which the project is located and third, to the extent required from other legally available revenues of the Trust Fund and from any other available source of funds.

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(r) U.S. 58 Corridor Development Program projects as defined in §§ 33.1-221.1:2 and 58.1-815.

(s) The Northern Virginia Transportation District Program as defined in § 33.1-221.1:3.

(t) Any program for highways or mass transit or transportation facilities, endorsed by the local jurisdiction or jurisdictions affected, which agree that certain distributions of state recordation taxes will be dedicated and used for the payment of any bonds or other obligations, including interest thereon, the proceeds of which were used to pay the cost of the program. Any such program shall be referred to as a "Transportation Improvement Program."

(u) *Any other highway for a special service district that the Board has agreed to finance under a contract with such district or the local government that formed the district, or under any other alternative mechanism for generation of local revenues from the specific fund of the project. Any such contract or alternative mechanism shall be satisfactory to the Board and may include payments that are derived from tax payments generated within the district from funds received by the local government pursuant to subsection H of § 15.1-466, or from private parties. Local governments that have formed service districts are authorized to enter into such contracts to accomplish any of the purposes of these districts. These contracts may provide for the locality to pay all or any portion of the annual tax levied within the special service district, and other revenues, to the Board. If a development board is formed by the local government in connection with the special service district, its membership shall include the Commissioner or his designee. Transportation Trust Fund revenues, other than those received from these local government pursuant to the contract or alternative mechanism authorized by this subdivision, shall not be pledged for or used to repay any principal or interest authorize by this subdivision.*

(3) The word "undertaking" means all of the projects authorized to be acquired or constructed under this article.

(4) The word "improvements" means such repairs, replacements, additions and betterments of and to a project acquired by purchase or by condemnation as are deemed necessary to place it in a safe and efficient condition for the use of the public, if such repairs, replacements, additions and betterments are ordered prior to the sale of any bonds for the acquisition of such project.

(5) The term "cost of project" as applied to a project to be acquired by purchase or by condemnation, includes the purchase price or the amount of the award, cost of improvements, financing charges, interest during any period of disuse before completion of improvements, cost of traffic estimates and of engineering and legal expenses, plans, specifications and surveys, estimates of cost and of revenues, other expenses necessary or incident to determining the feasibility or practicability of the enterprises, administrative expenses and such other expenses as may be necessary or incident to the financing herein authorized and the acquisition of the project and the placing of the project in operation.

(6) The term "cost of project" as applied to a project to be constructed, embraces the cost of construction, the cost of all lands, properties, rights, easements and franchises acquired which are deemed necessary for such construction, the cost of acquiring by purchase or condemnation any ferry which is deemed by the Board to be competitive with any bridge to be constructed, the cost of all machinery and equipment, financing charges, interest prior to and during construction and for one year after completion of construction, cost of traffic estimates and of engineering data, engineering and legal expenses, cost of plans, specifications and surveys, estimates of cost and of revenues, other expenses necessary or incident to determining the feasibility or practicability of the enterprise, administrative expense and such other expenses as may be necessary or incident to the financing herein authorized, the construction of the project, the placing of the project in operation and the condemnation of property necessary for such construction and operation.

(7) The word "owner" includes all individuals, incorporated companies, copartnerships, societies or associations having any title or interest in any property rights, easements or franchises authorized to be acquired by this article.

(8) [Repealed.]

(9) The words "revenue" and "revenues" include tolls and any other moneys received or pledged by the Board pursuant to this article, including, without limitation, legally available Trust Fund revenues.

(10) The terms "toll project" and "toll projects" mean projects financed in whole or in part through the issuance of revenue bonds which are secured by toll revenues generated by such project or projects.

§ 33.1-269. General powers of Board.

The Commonwealth Transportation Board may, subject to the provisions of this article:

1. Acquire by purchase or by condemnation, construct, improve, operate and maintain any one or more of the projects mentioned and included in the undertaking defined in this article;

2. Issue revenue bonds of the Commonwealth, to be known and designated as "Commonwealth of Virginia Toll Revenue Bonds," payable from earnings and from any other available sources of funds, to pay the cost of such projects;

3. Subject to the limitations and approvals of § 33.1-279.1, issue revenue bonds of the Commonwealth to be known and designated as "Commonwealth of Virginia Transportation Contract Revenue Bonds," secured by Transportation Trust Fund revenues under a payment agreement between

the Board and the Treasury Board, subject to their appropriation by the General Assembly and payable first from revenues received pursuant to contracts with a primary highway transportation improvement district or transportation service district or other local revenue sources for which specific funding of any such bonds may be authorized by law; second, to the extent required, from funds appropriated and allocated, pursuant to the highway allocation formula as provided by law, to the highway construction district in which the project or projects to be financed are located or to the county or counties in which the project or projects to be financed are located; and third, to the extent required, from other legally available revenues of the Trust Fund and from any other available source of funds;

4. *Subject to the limitations and approvals of § 33.1-279.1, issue revenue bonds of the Commonwealth to be known and designated as "Commonwealth of Virginia Local Transportation Contract Revenue Bonds," secured by Transportation Trust Fund revenues, but only such revenues as are available for payment, under a payment agreement between the Board and Treasury Board, subject to their appropriation by the General Assembly and payable solely from revenues received pursuant to contracts with local governments or special service districts as otherwise authorized by law;*

4 5. Issue revenue bonds of the Commonwealth to be known and designated as "Commonwealth of Virginia Transportation Revenue Bonds," secured (i) by revenues received from the U.S. Route 58 Corridor Development Fund, subject to their appropriation by the General Assembly, (ii) to the extent required, from revenues legally available from the Transportation Trust Fund and (iii) to the extent required, from any other legally available funds which have been appropriated by the General Assembly;

4a 6. Issue revenue bonds of the Commonwealth to be known and designated as "Commonwealth of Virginia Transportation Revenue Bonds," secured, subject to their appropriation by the General Assembly, first from (i) revenues received from the Northern Virginia Transportation District Fund, (ii) to the extent required, funds appropriated and allocated, pursuant to the highway allocation formula as provided by law, to the highway construction district in which the project or projects to be financed are located or to the city or county in which the project or projects to be financed are located, (iii) to the extent required, legally available revenues of the Transportation Trust Fund, and (iv) such other funds which may be appropriated by the General Assembly;

4b 7. Issue revenue bonds of the Commonwealth to be known and designated as "Commonwealth of Virginia Transportation Program Revenue Bonds" secured, subject to their appropriation by the General Assembly, first from (i) any revenues received from any Set-aside Fund established by the General Assembly pursuant to § 58.1-816.1, (ii) to the extent required, revenues received pursuant to any contract with a local jurisdiction or any alternative mechanism for generation of local revenues for specific funding of a project satisfactory to the Commonwealth Transportation Board, (iii) to the extent required, funds appropriated and allocated, pursuant to the highway allocation formula as provided by law, to the highway construction district in which the project or projects to be financed are located or to the city or county in which the project or projects to be financed are located, (iv) to the extent required, legally available revenues of the Transportation Trust Fund, and (v) such other funds which may be appropriated by the General Assembly. No bonds for any project or projects shall be issued under the authority of this subsection unless such project or projects are specifically included in a bill or resolution passed by the General Assembly;

§ 8. Fix and collect tolls and other charges for the use of such projects or to refinance the cost of such projects;

6 9. Construct grade separations at intersections of any projects with public highways, streets or other public ways or places and change and adjust the lines and grades thereof so as to accommodate the same to the design of such grade separations, the cost of such grade separations and any damage incurred in changing and adjusting the lines and grades of such highways, streets, ways and places to be ascertained and paid by the Board as a part of the cost of the project;

7 10. Vacate or change the location of any portion of any public highway, street or other public way or place and reconstruct the same at such new location as the Board deems most favorable for the project and of substantially the same type and in as good condition as the original highway, streets, way or place, the cost of such reconstruction and any damage incurred in vacating or changing the location thereof to be ascertained and paid by the Board as a part of the cost of the project. Any public highway, street or other public way or place vacated or relocated by the Board shall be vacated or relocated in the manner provided by law for the vacation or relocation of public roads and any damages awarded on account thereof may be paid by the Board as a part of the cost of the project;

8 11. Make reasonable regulations for the installation, construction, maintenance, repair, renewal and relocation of pipes, mains, sewers, conduits, cables, wires, towers, poles and other equipment and appliances herein called "public utility facilities," of the Commonwealth and of any municipality, county, or other political subdivision or public utility or public service corporation owning or operating the same in, on, along, over or under the project. Whenever the Board determines that it is necessary that any such public utility facilities should be relocated or removed, the Commonwealth or such municipality,

183 county, political subdivision, public utility or public service corporation shall relocate or remove the
184 same in accordance with the order of the Board; however, the cost and expense of such relocation or
185 removal, including the cost of installing such public utility facilities in a new location or locations, and
186 the cost of any lands or any rights or interests in lands, and any other rights acquired to accomplish
187 such relocation or removal shall be ascertained and paid by the Board as a part of the cost of the
188 project. The Commonwealth or such municipality, county, political subdivision, public utility or public
189 service corporation may maintain and operate such public utility facilities with the necessary
190 appurtenances, in the new location or locations, for as long a period and upon the same terms and
191 conditions as it had the right to maintain and operate such public utility facilities in their former location
192 or locations;

193 9 12. Acquire by the exercise of the power of eminent domain any lands, property, rights,
194 rights-of-way, franchises, easements and other property, including public lands, parks, playgrounds,
195 reservations, highways or parkways, or parts thereof or rights therein, of any municipality, county or
196 other political subdivision, deemed necessary or convenient for the construction or the efficient operation
197 of the project or necessary in the restoration, replacement or relocation of public or private property
198 damaged or destroyed.

199 The cost of such projects shall be paid solely from the proceeds of Commonwealth of Virginia Toll
200 or Transportation Contract Revenue Bonds or a combination thereof or from such proceeds and from
201 any grant or contribution which may be made thereto pursuant to the provisions of this article; and

202 10 13. Notwithstanding any provision of this article to the contrary, the Board shall be authorized to
203 exercise the powers conferred herein, in addition to its general powers to acquire rights-of-way and to
204 construct, operate and maintain state highways, with respect to any project which the General Assembly
205 has authorized or may hereafter authorize to be financed in whole or in part through the issuance of
206 bonds of the Commonwealth pursuant to the provisions of Section 9 (c) of Article X of the Constitution
207 of Virginia.

208 § 33.1-277. Credit of Commonwealth not pledged.

209 A. Commonwealth of Virginia Toll Revenue Bonds issued under the provisions of this article shall
210 not be deemed to constitute a debt of the Commonwealth of Virginia or a pledge of the faith and credit
211 of the Commonwealth, but such bonds shall be payable solely from the funds herein provided therefor
212 from tolls and revenues, from bond proceeds or earnings thereon and from any other available sources
213 of funds. All such bonds shall state on their face that the Commonwealth of Virginia is not obligated to
214 pay the same or the interest thereon except from the special fund provided therefor from tolls and
215 revenues under this article, from bond proceeds or earnings thereon and from any other available sources
216 of funds and that the faith and credit of the Commonwealth are not pledged to the payment of the
217 principal or interest of such bonds. The issuance of such revenue bonds under the provisions of this
218 article shall not directly or indirectly or contingently obligate the Commonwealth to levy or to pledge
219 any form of taxation whatever therefor or to make any appropriation for their payment, other than
220 appropriate available funds derived as revenues from tolls and charges under this article or derived from
221 bond proceeds or earnings thereon and from any other available sources of funds.

222 B. Commonwealth of Virginia Transportation Contract Revenue Bonds *and Commonwealth of*
223 *Virginia Local Transportation Contract Revenue Bonds* issued under the provisions of this article shall
224 not be deemed to constitute a debt of the Commonwealth of Virginia or a pledge of the faith and credit
225 of the Commonwealth, but such bonds shall be payable solely from the funds herein provided therefor
226 (i) from revenues received pursuant to contracts with a primary highway transportation district or
227 transportation service district, *a special service district or a local government*, or any other alternative
228 mechanism for generation of local revenues for specific funding of a project satisfactory to the
229 Commonwealth Transportation Board, (ii) to the extent required, *but only if pledged* from funds
230 appropriated and allocated, pursuant to the highway allocation formula as provided by law, to the
231 highway construction district in which the project or projects to be financed are located or to the county
232 or counties in which such project or projects are located, (iii) from bond proceeds or earnings thereon,
233 (iv) to the extent required, *but only if pledged* from other legally available revenues of the Trust Fund,
234 and (v) from any other available source of funds. All such bonds shall state on their face that the
235 Commonwealth of Virginia is not obligated to pay the same or the interest thereon except from revenues
236 in clauses (i) and (iii) hereof and that the faith and credit of the Commonwealth are not pledged to the
237 payment of the principal and interest of such bonds. The issuance of such revenue bonds under the
238 provisions of this article shall not directly or indirectly or contingently obligate the Commonwealth to
239 levy or to pledge any form of taxation whatever or to make any appropriation for their payment, other
240 than to appropriate available funds derived as revenues under this article from the sources set forth in
241 clauses (i) and (iii) hereof. Nothing in this article shall be construed to obligate the General Assembly to
242 make any appropriation of the funds set forth in clause (ii) or (iv) hereof for payment of such bonds.

243 C. Commonwealth of Virginia Transportation Revenue Bonds issued under the provisions of this
244 article shall not be deemed to constitute a debt of the Commonwealth of Virginia or a pledge of the full

faith and credit of the Commonwealth, but such bonds shall be payable solely from the funds herein provided therefor (i) from revenues received from the U.S. Route 58 Corridor Development Fund, subject to their appropriation by the General Assembly, (ii) to the extent required, from revenues legally available from the Transportation Trust Fund and (iii) to the extent required, from any other legally available funds which shall have been appropriated by the General Assembly.

D. Commonwealth of Virginia Transportation Revenue Bonds issued under this article for Category 1 projects as provided in subdivision (2) (s) of § 33.1-268 shall not be deemed to constitute a debt of the Commonwealth of Virginia or a pledge of the faith and credit of the Commonwealth. Such bonds shall be payable solely, subject to their appropriation by the General Assembly, first from (i) revenues received from the Northern Virginia Transportation District Fund, (ii) to the extent required, funds appropriated and allocated, pursuant to the highway allocation formula as provided by law, to the highway construction district in which the project or projects to be financed are located or to the city or county in which the project or projects to be financed are located, (iii) to the extent required, legally available revenues of the Transportation Trust Fund, and (iv) such other funds which may be appropriated by the General Assembly.

E. Commonwealth of Virginia Transportation Program Revenue Bonds issued under this article for projects defined in subdivision (2) (t) of § 33.1-268 shall not be deemed to constitute a debt of the Commonwealth or a pledge of the faith and credit of the Commonwealth. Such bonds shall be payable solely, subject to their appropriation by the General Assembly, first from (i) any revenues received from any Set-aside Fund established by the General Assembly pursuant to § 58.1-816.1, (ii) to the extent required, revenues received pursuant to any contract with a local jurisdiction or any alternative mechanism for generation of local revenues for specific funding of a project satisfactory to the Commonwealth Transportation Board, (iii) to the extent required, funds appropriated and allocated, pursuant to the highway allocation formula as provided by law, to the highway construction district in which the project or projects to be financed are located or to the city or county in which the project or projects to be financed are located, (iv) to the extent required, legally available revenues from the Transportation Trust Fund, and (v) such other funds which may be appropriated by the General Assembly.

§ 33.1-279.1. Limitations and approvals for revenue bonds secured by Transportation Trust Fund revenues under payment agreement and payable first from such revenues received pursuant to contracts with a transportation district.

No bonds payable from Trust Fund revenues under a payment agreement between the Board and the Treasury Board and payable first from revenues of that Fund received pursuant to contracts with a primary highway transportation improvement district or a transportation service district, *or with a local government of a special service district* shall be issued unless specifically included in a bill or resolution passed by the General Assembly. The Treasury Board is hereby designated the sales and paying agent of the Board with respect to such bonds.