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HOUSE BILL NO. 2634

Offered January 21, 1999

A BILL to amend and reenact § 33.1-18 of the Code of Virginia, relating to location of routes by the Commonwealth Transportation Board.

Patrons—Darner, Brink, Cranwell, Deeds, Jackson, Joannou, Keating, Puller, Scott, Van Yahres and Watts; Senators: Couric, Howell, Maxwell, Reynolds, Saslaw, Ticer and Whipple

Referred to Committee on Transportation

Be it enacted by the General Assembly of Virginia:

1. That § 33.1-18 of the Code of Virginia is amended and reenacted as follows:

§ 33.1-18. Location of routes.

The Commonwealth Transportation Board shall not locate and establish any route under subdivision (1) of § 33.1-12 until: the Department of Transportation has (i) published in a newspaper published or having a general circulation in the county, city, or town in which the route is to be located and established a notice of its willingness to hold a public hearing on the matter, (ii) notified the governing body of the county, city, or town in which the route is to be located of its willingness to hold a public hearing on the matter, and (iii) held a public hearing, if one has been requested.

If a public hearing is requested, written notice of the time and place of the hearing shall be given, not less than thirty days prior to the hearing, to the governing body of the county, city, or town in which the route is to be located and established. Not less than thirty days prior to the hearing, a notice of the time and place of the hearing shall also be published by the Department of Transportation at least once in a newspaper published or having a general circulation in the county, city, or town in which the route is to be located and established.

Following the public hearing, if one is held as provided in this section, the Department of Transportation shall notify the local governing body of the affected county, city, or town of the Commonwealth Transportation Board's decision regarding the location and establishment of the route.

In locating and establishing routes pursuant to § 33.1-12 or altering existing routes, for projects with a total estimated budget exceeding one million dollars, the Board shall proceed as follows:

1. For purposes of this section, "route" or "alteration to an existing route" shall be limited in meaning to any new route or alteration to an existing route described in writing, or on a map or chart, with sufficient specificity to locate such route or alteration to an area of no more than one mile in width at any point along its width.

2. The Board shall provide notice of any proposed route or alteration to an existing route to the clerk of the circuit court and the clerk of the governing body in each county, city, and town in which the route to be located, established, or altered, or any part thereof, is situated. Such notice shall be provided within three months of any public announcement of such route or alteration by the Department or Board, but in no event less than thirty days prior to the designation of such route or alteration. The Board shall also provide such notice of its designation or alteration of any route within ten days of any such designation. Notice of the designation shall also be sent to any persons notifying the Department in writing of their desire to receive such notification. Such notice shall be sent within ten days of any such designation.

3. Prior to the designation of any route or alteration of an existing route, the Board shall hold a public hearing in the county, city, or town in which the route to be located, established, or altered, or any part thereof, is situated. Such hearing shall be held in a public building as close as practicable to the majority of the property which may be acquired for such route. Such hearing shall be held no less than three months prior to the designation of such route or alteration. The Board shall publish at least once, in a newspaper of general circulation in the county, city, or town, a notice describing the proposed location or alteration of such route, including any proposed alternate locations or alterations, the nature of improvements to be made, and the date, time, and location of the public hearing. The notice shall appear at least thirty but not more than sixty days prior to such hearing.

All such public hearings shall afford citizens an opportunity to present their comments to members and/or representatives of the Board directly, one speaker at a time, in a public forum following a traditional hearing format. The Board shall make a video tape and/or audio tape recording. As supplements to these hearings, the Board and/or its representatives may hold less structured open forums to afford citizens additional opportunities to obtain route location information and present their views. These open forums, however, shall be held only in addition to hearings conducted according to a traditional format, and shall not be substituted for such hearings. The Board shall respond to all issues

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60 raised in the hearings, and make such responses part of the formal record of the hearings.

61 Upon the filing of a petition therefor with the Board, a hearing before the full Board shall be
62 granted to (i) the governing body of any county, city, or town in which a route or alteration of an
63 existing route, or portion thereof, designated by the Board, is proposed to be constructed or (ii) fifty or
64 more freeholders of any such county, city, or town. The petition shall be filed within sixty days of the
65 formal designation of the route or alteration. The hearing shall be scheduled within a reasonable time
66 and shall be for the purpose of hearing objections by the petitioner to the designated route or alteration
67 for failure to comply with the provisions of this section. The Board shall make a record of the hearing.
68 Its decision on the appeal, which shall set forth the reasons for its decision, shall be in writing. The
69 petitioner may appeal the decision of the Board made in response to the hearing. The appeal shall be
70 made to the circuit court having jurisdiction over the county, city, or town from which the petition
71 originated. The appeal shall be filed with the clerk of the court within thirty days of the decision of the
72 Board on the appeal.

73 4. Whenever the Board proposes to revoke any plan already approved, it shall hold a public hearing
74 prior to doing so. Whenever a federal agency is required by federal law to comment, consult, issue
75 permits, or take other action associated with any route designation or alteration, such public hearing
76 shall include (i) testimony by a representative of such federal agency and (i) the written concurrence of
77 all such federal officials. At least one representative of the governing body of each affected locality shall
78 be afforded an opportunity to address the Board prior to the Board's final decisions.

79 5. The Board shall designate only those routes or alterations of existing routes that will provide a
80 demonstrable public benefit significantly exceeding the combined financial, social, and environmental
81 costs associated with the design, construction, maintenance, and operation of such route or alteration.

82 In making such evaluation, the Board shall actively consult and cooperate with the governing body
83 of the county, city, or town in which any proposed route, alteration, or portion thereof is proposed to be
84 located. The Board shall also take into account in the evaluation the potential effect of the proposed
85 route or alteration upon the objectives of the county, city, or town in which the proposed route,
86 alteration, or portion thereof is to be located, as such objectives are set forth in the locality's duly
87 adopted comprehensive plan. Prior to the designation of any route or alteration, the Board shall give
88 due consideration to any route, alteration, or other method formally proposed in a timely manner by the
89 governing body of the county, city, or town in which the proposed route, alteration, or portion thereof is
90 to be located.

91 The Board shall designate or formally reject any route or alteration which has been publicly
92 announced by the Department or Board. Such designation or rejection shall be within three years of the
93 date of the announcement. However, to such three-year period shall be added such reasonable amount
94 of time as may be required for the (i) consideration of any route, alteration, or other method formally
95 proposed by the governing body of the county, city, or town in which the proposed route, alteration, or
96 portion thereof is to be located and (ii) hearing of any appeal as provided in the foregoing provisions of
97 this section. For a period of at least ten years from the date of such rejection, there shall be no further
98 consideration by the Department or Board of any route rejected by the Board. Any failure by the Board
99 to designate or reject any route or alteration shall be deemed a formal rejection of such route or
100 alteration.

101 6. The Board shall designate only those routes or alterations of existing routes that will provide
102 demonstrable public benefit significantly exceeding the combined financial, social and environmental
103 costs associated with the design, construction, maintenance, and operation of such route or alteration.
104 Damage to or alteration or elimination of historic areas shall be avoided whenever and wherever
105 possible.

106 7. In making its final decision, the Board shall actively consult with the local governing body of the
107 county, city, or town in which any proposed route, alteration, or portion thereof is proposed to be
108 located. The Board shall take into account, in evaluating the potential effect of the proposed route or
109 alteration, the objectives of the locality in which the proposed route, alteration, or portion thereof is to
110 be located, as such objectives are set forth in the locality's comprehensive plan.

111 8. In all cases, the basis for the Board's decision shall be provided, either orally at the time of the
112 decision, or in writing no later than ten days following its decision. In either case, the Board shall make
113 the basis for its decision a part of the formal record of its proceedings.

114 9. The Board shall promptly commence and diligently pursue acquisition of all rights-of-way
115 necessary for any route or alteration of an existing route upon the designation of such route. The Board
116 shall acquire any right-of-way required by such route or alteration within three years of the written
117 request to the Department by the owner thereof that it do so.

118 10. Provisions of this section may be enforced through an injunction or a writ of mandamus
119 pursuant to Article 2 (§ 8.01-644 et seq.) of Chapter 25 of Title 8.01. Any person whose property is
120 located within any proposed or designated route or alteration, and any county, city, or town within
121 which any proposed or designated route or alteration, or portion thereof lies, shall have standing to

122 *petition for such injunction or writ of mandamus.*

123 *The provisions of this section shall apply with respect to route designations or alterations of existing*
124 *routes made by the Board prior to July 1, 1993, where right-of-way acquisitions are not complete. With*
125 *respect to such routes or alterations, the date of designation shall be deemed to be July 1, 1993.*

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