

# VIRGINIA ACTS OF ASSEMBLY -- 2011 SESSION

## CHAPTER 36

*An Act to amend and reenact §§ 33.1-1, 33.1-8, 33.1-34, 33.1-35, 33.1-148, 33.1-149, 33.1-150, 33.1-154, and 33.1-155 of the Code of Virginia; to amend the Code of Virginia by adding a section numbered 33.1-13.03; and to repeal §§ 33.1-13.01 and 33.1-13.02 of the Code of Virginia, relating to the office of Commonwealth Transportation Commissioner.*

[H 1825]

Approved March 10, 2011

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

**1. That §§ 33.1-1, 33.1-8, 33.1-34, 33.1-35, 33.1-148, 33.1-149, 33.1-150, 33.1-154, and 33.1-155 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 33.1-13.03 as follows:**

§ 33.1-1. State Highway and Transportation Board continued as Commonwealth Transportation Board; number and terms of members; removal from office; Commonwealth Transportation Commissioner continued as Commissioner of Highways; vacancies.

The State Highway and Transportation Board, formerly known as the State Highway and Transportation Commission, is continued and shall hereafter be known as the Commonwealth Transportation Board. Wherever either "Commission" or "Board" is used in this title referring to the State Highway and Transportation Board or the State Highway and Transportation Commission, it shall mean the Commonwealth Transportation Board.

The Board shall consist of seventeen members: the Secretary of Transportation, the ~~Commonwealth Transportation~~ Commissioner of Highways, the Director of the Department of Rail and Public Transportation, and fourteen citizen members. The citizen members shall be (i) appointed by the Governor as provided in § 33.1-2, (ii) subject to confirmation by the General Assembly, and (iii) removable from office during their respective terms by the Governor at his pleasure. Appointments of citizen members shall be for terms of four years commencing upon July 1, upon the expiration of the terms of the existing members, respectively. The initial terms of the members appointed in January, 1987, shall commence when appointed and shall be for terms ending June 30, 1988, June 30, 1989, and June 30, 1990, respectively. Vacancies shall be filled by appointment by the Governor for the unexpired term and shall be effective until thirty days after the next meeting of the ensuing General Assembly and, if confirmed, thereafter for the remainder of the term. No person shall be eligible to serve more than two successive terms of four years, other than the Secretary of Transportation, the ~~Commonwealth Transportation~~ Commissioner of Highways, and the Director of the Department of Rail and Public Transportation. A person heretofore or hereafter appointed to fill a vacancy may serve two additional successive terms.

The Secretary of Transportation shall serve as Chairman of the Board. The Secretary shall have voting privileges only in the event of a tie. The ~~Commonwealth Transportation~~ Commissioner of Highways shall serve as Vice-Chairman of the Board. The Commissioner shall have voting privileges only in the event of a tie when he is presiding during the absence of the Chairman. The Director of the Department of Rail and Public Transportation shall serve without a vote.

Whenever in this title and in the Code of Virginia "State Highway Commission" or "State Highway and Transportation Board" is used, it shall mean "Commonwealth Transportation Board"; "State Highway Commissioner" or "State Highway and Transportation Commissioner" ~~shall mean or~~ "Commonwealth Transportation Commissioner" *shall mean Commissioner of Highways*; and all references to "Department of Highways and Transportation" shall refer to the Department of Transportation.

§ 33.1-8. Employees; delegation of responsibilities.

The ~~Commonwealth Transportation~~ Commissioner of Highways shall employ ~~an assistant commissioner for the environment, transportation planning, and regulatory affairs~~ and such engineers, clerks, assistants, and other employees as may be needed, and shall prescribe and fix their duties, including the delegation of duties and responsibilities conferred or imposed upon the Commissioner by law. They shall receive all salaries and expenses as may be fixed in accordance with the provisions of law.

§ 33.1-13.03. *Annual report by the Virginia Department of Transportation.*

*The Commissioner of Highways shall annually report in writing to the Governor and General Assembly, no later than November 30 each year, on (i) the condition and performance of the existing transportation infrastructure, using an asset management methodology and generally accepted engineering principles and business practices to identify and prioritize maintenance and operations needs and to identify performance standards to be used to determine those needs, and funding required*

to meet those needs, (ii) the Department's strategies for improving safety and security, increasing efficiency in agency programs and projects, and collaborating with the private sector and local government in the delivery of services, (iii) the operating and financial activities of the Department including, but not limited to, the construction and maintenance programs, transportation costs and revenue, and federal allocations, and (iv) other such matters of importance to transportation in the Commonwealth.

§ 33.1-34. Transfer of roads, etc., from secondary to primary system; additions to primary system.

A. The Commonwealth Transportation Board may transfer such roads, bridges and streets as the Board shall deem proper from the secondary system of state highways to the primary system of state highways; upon such transfer the roads, bridges and streets so transferred shall become for all purposes parts of the primary system of state highways and thereafter cease being parts of the secondary system of state highways. The Board may add such roads, bridges and streets as it shall deem proper to the primary system. The total mileage of such roads, bridges and streets so transferred or added by the Board shall not, however, exceed fifty miles during any one year.

B. *In cases where the Chief Engineer of the Department of Transportation recommends that it is appropriate in connection with the completion of a construction or maintenance project to transfer roads, bridges, and streets from the secondary system of state highways to the primary system of state highways, the Commissioner of Highways may transfer such roads, bridges, and streets as he deems proper. Upon such transfer, the roads, bridges, and streets so transferred shall become, for all purposes, parts of the primary system of state highways and thereafter cease being parts of the secondary system of state highways.*

§ 33.1-35. Transfer of roads, etc., from primary to secondary system.

The Commonwealth Transportation Board may transfer such roads, bridges and streets as the Board shall deem proper from the primary system of state highways to the secondary system of state highways or if requested by the local governing body, to the local system of roads operated by a locality receiving payments pursuant to § 33.1-23.5:1 or 33.1-41.1; upon such transfer, the roads, bridges and streets so transferred shall become for all purposes parts of the secondary system of state highways or the local system of roads operated by a locality receiving payments pursuant to § 33.1-23.5:1 or 33.1-41.1, and thereafter cease being parts of the primary system of state highways. The total mileage of such roads, bridges and streets so transferred by the Board shall not, however, exceed 150 miles during any one year.

~~Except when such a transfer is requested by the local governing body, no resolution for any such transfer shall be adopted until (1) notice of intention to propose the same for adoption shall have been given for sixty days to the governing body of each county, city and town in which is located any part of any such roads, bridges and streets proposed to be transferred; and (2) if any such governing body requests, a public hearing is held on such proposal~~ *In cases where the Chief Engineer of the Department of Transportation recommends that it is appropriate in connection with the completion of a construction or maintenance project to transfer roads, bridges, and streets from the primary system of state highways to the secondary system of state highways, the Commissioner of Highways may transfer such roads, bridges, and streets as he deems proper. Upon such transfer, the roads, bridges, and streets so transferred shall become for all purposes parts of the secondary system of state highways and thereafter cease being parts of the primary system of state highways.*

§ 33.1-148. Alternative procedure for abandonment of old road or crossing to extent of alteration.

~~When~~ *The Commissioner of Highways may declare any road in the State Highway System or any road in the State Highway System containing a railway-highway grade crossing, abandoned when (i) it has been or is altered and a new road, which serves the same citizens as the old road, is constructed in lieu thereof and approved by the Commonwealth Transportation Commissioner of Highways or (ii) the Chief Engineer of the Department of Transportation recommends that it is appropriate in connection with the completion of a construction or maintenance project, the* The old road and/or the public crossing may be abandoned to the extent of such alteration, but no further, by a ~~resolution of the Commonwealth Transportation Board declaring the old road and/or the public crossing abandoned the~~ entry by the Commissioner of such abandonment upon the records of the Department of Transportation.

§ 33.1-149. Conveying sections of roads or other property no longer necessary.

Whenever a road or a portion thereof has been abandoned in accordance with the provisions of § 33.1-145 or § 33.1-148 of this article and is deemed by the Commissioner no longer necessary for the uses of the State Highway System, the Commissioner shall so certify in writing to the Commonwealth Transportation Board such facts, and it may authorize the Commissioner and is authorized to execute, in the name of the Commonwealth, a deed or deeds conveying such section or sections of road, either for a consideration or in exchange for other lands that may be necessary for the uses of the State Highway System. But before any such deed either for the sale or exchange of land is executed conveying any section of a highway upon or along which any person or persons reside, notice shall be given by the Commissioner to the governing body of the county and town and to the owner or owners of the land upon which such person or persons reside of the intention to convey the section of road and if, after a reasonable notice of such intention, any such landowner or governing body so requests, a hearing shall

be ordered by the Commissioner as now provided by law. If, upon such hearing, it is made to appear that such section of road should be left open for the reasonable convenience of such landowner or the public, then such section of road shall not be conveyed. But no hearing shall be held if such road was abandoned under § 33.1-145.

When real estate acquired incidental to the construction, reconstruction, alteration, maintenance and repair of the State Highway System which does not constitute a section of the public road, is deemed by the Commissioner no longer necessary for the uses of the State Highway System, the Commissioner shall so certify in writing; ~~to the Commonwealth Transportation Board such facts, and it may authorize the Commissioner and is authorized to execute,~~ in the name of the Commonwealth, a deed or deeds conveying such real estate, interest therein, or any portion thereof, either for a consideration or in exchange for other lands that may be necessary for the uses of the State Highway System.

Upon petition of a local governing body, the Commonwealth Transportation Board may transfer real estate acquired incidental to the construction, reconstruction, alteration, maintenance, or repair of the State Highway System which constitutes a section of public road, to the local governing body, and upon such transfer, such section of road shall cease being a part of the State Highway System.

~~Any such conveyance shall have the approval of the Board by resolution recorded in the minutes of a meeting of the Board.~~

§ 33.1-150. Discontinuance of road, public landing, or railway crossing as part of secondary system; procedures.

A. On petition of the governing body of any county in which a road, public landing, or crossing is located or upon petition of the town council of a town having a population of 3,500 or less, or on its own motion the Board may discontinue any road, public landing, or crossing in the secondary system as a part thereof in any case in which the Board deems such road, public landing, or crossing not required for public convenience. If the Board on its own motion desires to discontinue any such road, public landing, or crossing, notice shall be given the governing body of the county and town at least thirty days prior to any discontinuance of a road or crossing under this section. In addition, in cases where only a road or public landing or the maintenance thereof is to be discontinued, notice of such intention shall be given to the public, at least thirty days prior to such action by one publication in a newspaper having general circulation in the county in which the affected road is situated and, where practicable, by a registered letter to each landowner whose property abuts the section of road or public landing to be discontinued; for the purposes of this section, the representative of the Board charged with giving notice may, where practicable, rely upon the tax records of the county to determine the names and addresses of such owners. These additional notice provisions shall not be required in cases where the section of road to be discontinued has been replaced by a new road serving the same citizens. If the governing body of any county or town requests a hearing, or upon petition of any landowner whose property abuts a road or public landing which is to be discontinued, the Board, or a representative thereof, shall hold a hearing in the county in which the road, public landing, or crossing is located in order to ascertain whether or not such road, public landing, or crossing should be discontinued. From the finding of the Board an appeal shall lie to the circuit court of the county in which such road, public landing, or crossing is located and the procedure thereon shall conform to the procedure prescribed in § 33.1-147. The jurisdiction and procedure for abandonment of roads and public landings discontinued as parts of the secondary system in accordance with this article shall remain in the local road authorities.

*B. In cases where the Chief Engineer of the Department of Transportation recommends that it is appropriate in connection with the completion of a construction or maintenance project to discontinue any road, public landing, or crossing in the secondary system, the Commissioner of Highways may discontinue such road, public landing, or crossing as he deems proper. The entry by the Commissioner upon the records of the Department of Transportation of the discontinuance shall be sufficient to constitute such discontinuance.*

§ 33.1-154. Conveying sections of roads, public landings, or other property no longer necessary.

Whenever a secondary road or public landing has been abandoned in accordance with the provisions of § 33.1-151 or § 33.1-152 or in accordance with § 33.1-155, and its use is no longer deemed necessary by the Commissioner, the Commissioner shall so certify; in writing; ~~to the Commonwealth Transportation Board,~~ and governing body of the county in which such road or public landing is located, such facts, and the governing body or the ~~Board~~ Commissioner shall thereupon be authorized to execute, in the name of the Commonwealth or the county, as the case may be, a deed or deeds conveying such sections, or public landing either for a consideration or in exchange for other lands that may be necessary for the uses of the secondary system. But before any such deed either for the sale or exchange of land is executed conveying any section of a road or public landing upon or along which any person or persons reside, notice shall be given by the Commissioner or the governing body of the county, as the case may be, and to the owner or owners of the land upon which such person or persons reside of the intention to convey the section of road or public landing and if, after a reasonable notice of such intention, any such landowner so requests a hearing shall be ordered by the Commissioner or governing body, as the case may be, as now provided by law. If, upon such hearing, it is made to appear that such section of road or public landing should be kept open for the reasonable convenience of such landowner,

or the public, then such section of road or public landing shall not be conveyed.

~~Any such conveyance by the Commissioner shall have the approval of the Board by resolution recorded in the minutes of a meeting of the Board.~~ Any such conveyance by the governing body of a county shall not be subject to § 15.2-1800.

When real estate heretofore or hereafter acquired by the Commonwealth incidental to the construction, reconstruction, alteration, maintenance and repair of the secondary system of state highways which does not constitute a section of the public road is deemed by the Commissioner no longer necessary for the uses of the secondary system of state highways, the Commissioner shall so certify, in writing, ~~to the Board such facts, and it may authorize the Commissioner~~ *and is authorized* to execute, in the name of the Commonwealth, a deed or deeds conveying such real estate, interest therein or any portion thereof, either for a consideration or in exchange for other lands that may be necessary for the uses of the secondary system of state highways.

Upon petition of a local governing body, the Commonwealth Transportation Board may transfer real estate acquired incidental to the construction, reconstruction, alteration, maintenance, or repair of the Secondary System of State Highways which constitutes a section of public road, to the local governing body, and upon such transfer, such section of road shall cease being a part of the Secondary System of State Highways.

Any such conveyance shall have the approval of the Board by resolution recorded in the minutes of a meeting of the Board.

§ 33.1-155. Alternative procedure for abandonment of old road or crossing to extent of alteration.

~~When~~ *The Commissioner may declare* any road in the secondary system or any road in the secondary system containing a railway-highway grade crossing *abandoned when (i) it has been or is altered and a new road which serves the same citizens as the old road is constructed in lieu thereof and approved by the Commonwealth Transportation Commissioner, the of Highways or (ii) the Chief Engineer of the Department of Transportation recommends that it is appropriate in connection with the completion of a construction or maintenance project. The old road and/or the public crossing may be abandoned to the extent of such alteration, but no further, by a resolution of the board of supervisors or other governing body of the county, declaring the old road and/or the public crossing abandoned the entry by the Commissioner of such abandonment upon the records of the Department of Transportation.*

**2. That §§ 33.1-13.01 and 33.1-13.02 of the Code of Virginia are repealed.**

**3. That the Virginia Code Commission shall carry out such editorial changes to the Code of Virginia as may be required to reflect the provisions of this act changing the title "Commonwealth Transportation Commissioner" to "Commissioner of Highways."**