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HOUSE BILL NO. 1887

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on Transportation)

(Patron Prior to Substitute—Delegate Jones)

House Amendments in [] - February 3, 2015

A BILL to amend and reenact §§ 33.2-200, 33.2-232, 33.2-352, 33.2-357, 33.2-359, 33.2-1501, 33.2-1502, 33.2-1503, 33.2-1505, 33.2-1529, 33.2-1530, 58.1-815.4, 58.1-1741, and 58.1-2289 of the Code of Virginia; to amend the Code of Virginia by adding sections numbered 33.2-358.1, 33.2-369, 33.2-370, and 33.2-371 and by adding in Article 5 of Chapter 15 a section numbered 33.2-1529.1; and to repeal Article 2 (§ 33.2-1508) of Chapter 15 of Title 33.2 of the Code of Virginia, relating to the Commonwealth Transportation Board and transportation funding.

Be it enacted by the General Assembly of Virginia:

1. That §§ 33.2-200, 33.2-232, 33.2-352, 33.2-357, 33.2-359, 33.2-1501, 33.2-1502, 33.2-1503, 33.2-1505, 33.2-1529, 33.2-1530, 58.1-815.4, 58.1-1741, and 58.1-2289 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding sections numbered 33.2-358.1, 33.2-369, 33.2-370, and 33.2-371 and by adding in Article 5 of Chapter 15 a section numbered 33.2-1529.1 as follows:

§ 33.2-200. Commonwealth Transportation Board; membership; terms; vacancies.

The Board shall have a total membership of ~~four~~ 17 members that shall consist of 14 nonlegislative citizen members and ~~four~~ three ex officio members as follows: the Secretary of Transportation, the Commissioner of Highways, and the Director of the Department of Rail and Public Transportation, and the Executive Director of the Virginia Port Authority. The nonlegislative citizen members shall be appointed by the Governor as provided in § 33.2-201, subject to confirmation by the General Assembly, and shall serve at the pleasure of the Governor. Appointments of nonlegislative citizen members shall be for terms of four years commencing on July 1, upon the expiration of the terms of the existing members, respectively. Vacancies shall be filled by appointment by the Governor for the unexpired term and shall be effective until 30 days after the next meeting of the ensuing General Assembly and, if confirmed, thereafter for the remainder of the term. No nonlegislative citizen member shall be eligible to serve more than two consecutive four-year terms. The remainder of any term to which a member is appointed to fill a vacancy shall not constitute a term in determining that member's eligibility for reappointment. Ex officio members of the Board shall serve terms coincident with their terms of office.

The Secretary shall serve as chairman of the Board and shall have voting privileges only in the event of a tie. The ~~Commissioner of Highways~~ senior nonlegislative citizen member shall serve as vice-chairman of the Board and shall have voting privileges only in the event of a tie when he is presiding and shall preside during the absence of the chairman. The Director of the Department of Rail and Public Transportation and the Executive Director of the Virginia Port Authority ~~Commissioner of Highways~~ shall not have voting privileges.

§ 33.2-232. Annual report by Commissioner of Highways.

The Commissioner of Highways shall annually report in writing to the Governor and, the General Assembly, the Joint Legislative Audit and Review Commission, and the Board 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 the construction and maintenance programs, transportation costs and revenue, and federal allocations; (iv) the use of funds in the Innovation and Technology Transportation Fund established pursuant to § 33.2-1531; and (v) other such matters of importance to transportation in the Commonwealth.

The content of such report 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, 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 methodology used to determine allocations of construction funds or to state of good repair purposes as defined in § 33.2-369;

4. The performance targets and outcomes for (i) the current two-year period starting July 1 of

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

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

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

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

70 **§ 33.2-352. Asset management practices; report.**

71 A. The Department shall develop asset management practices in the operation and maintenance of the
72 systems of state highways. Such practices shall include a transparent methodology for the allocation of
73 funds from the Highway Maintenance and Operating Fund to highway systems maintenance and
74 operations programs, including the allocations among the highway construction districts and among the
75 Interstate System and primary and secondary state highway systems.

76 B. The Commissioner of Highways shall advise the Board on or before June 30 of even-numbered
77 years of performance targets and outcomes that are expected to be achieved, based on the funding
78 identified for maintenance, over the biennium beginning July 1 of that year. In addition, not later than
79 September 30 of even-numbered years, the Commissioner of Highways shall advise the Board on the
80 Department's accomplishments relative to the expected outcomes and budget expenditures for the
81 biennium ending June 30 of that year and also advise the Board as to the methodology used to
82 determine maintenance needs and the justification as to the maintenance funding by source.

83 **§ 33.2-357. Revenue-sharing funds for systems in certain localities.**

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

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

103 C. The Department shall contract with the locality for the implementation of the project. Such
104 contract may cover either a single project or may provide for the locality's implementation of several
105 projects. The locality shall undertake implementation of the particular project by obtaining the necessary
106 permits from the Department in order to ensure that the improvement is consistent with the Department's
107 standards for such improvements. At the request of the locality, the Department may provide the locality
108 with engineering, right-of-way acquisition, construction, or maintenance services for a project with its
109 own forces. The locality shall provide payment to the Department for any such services. If administered
110 by the Department, such contract shall also require that the governing body of the locality pay to the
111 Department within 30 days the local revenue-sharing funds upon written notice by the Department of its
112 intent to proceed. Any project having funds allocated under this program shall be initiated in such a
113 fashion that at least a portion of such funds have been expended within one year of allocation. Any
114 revenue-sharing funds for projects not initiated after two subsequent fiscal years of allocation may be
115 reallocated at the discretion of the Board.

116 D. Total Commonwealth funds allocated by the Board under this section shall be no less than \$15
117 million and no more than \$200 million in each fiscal year, subject to appropriation for such purpose.
118 For any fiscal year in which less than the full program allocation has been allocated by the Board to
119 specific governing bodies, those localities requesting the maximum allocation under subsection A may
120 be allowed an additional allocation at the discretion of the Board.

121 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.

§ 33.2-358.1. Allocation of Commonwealth Transportation Board funds.

A. Notwithstanding § 33.2-358, the Board shall allocate each year from all funds made available for highway purposes such amount as it deems reasonable and necessary for the maintenance of roads within the Interstate System, the primary state highway system, and the secondary state highway system and for city and town street maintenance payments made pursuant to § 33.2-319 and payments made to counties that have withdrawn or elect to withdraw from the secondary state highway system pursuant to § 33.2-366.

B. For funds allocated for fiscal years beginning on and after July 1, 2020, after the allocation is made pursuant to subsection A and after funds are set aside for administrative and general expenses and pursuant to other provisions in this title that provide for the disposition of funds, the Board shall allocate all remaining funds, including funds apportioned pursuant to 23 U.S.C. § 104, subject to the exclusion in subsection C, as follows:

1. Forty percent of the remaining funds to state of good repair purposes as set forth in § 33.2-369;
2. Thirty percent of the remaining funds to the high-priority projects program established pursuant to § 33.2-370; and
3. Thirty percent of the remaining funds to the highway construction district grant programs established pursuant to § 33.2-371.

C. The funds allocated pursuant to this subsection B shall not include any federal funds and related state match for federal funds that restrict the type of project that may be funded, excluding any restriction regarding the location of projects, or federal funds not under the control of the Board.

§ 33.2-359. Unpaved secondary highway funds.

A. Before funds are allocated for distribution for highway construction pursuant to subdivisions C 1, 2, and 3 of § 33.2-358, a fund shall be established for the paving of nonsurface treated secondary highways that carry 50 vehicles or more per day. Such fund shall contain 5.67 percent of the total funds available for highway construction under subdivisions C 1, 2, and 3 of § 33.2-358. Funds from the highway construction district grant program established pursuant to § 33.2-371 shall be allocated for the improvement of nonsurface treated secondary highways that carry 50 or more vehicles per day. Funds shall be deducted from the allocation made to each highway construction district pursuant to subsection D of § 33.2-371 and such deduction shall be based on the ratio of nonsurface treated secondary highways in each highway construction district that carry 50 or more vehicles per day to the total number of such nonsurface treated secondary highways in the Commonwealth.

The statewide allocation shall not exceed \$25 million annually.

B. Such funds shall be distributed to counties in the secondary state highway system based on the ratio of nonsurface treated roads in each county carrying 50 vehicles or more per day to the total number of such nonsurface treated roads in the Commonwealth.

C. The governing body of any county may have funds allocated to the county under this section added to the county's secondary system construction funds allocated pursuant to § 33.2-364. For each \$250,000 or portion thereof added to secondary construction funds under this provision, the amount of the county's nonsurface treated roads used to distribute funds under this section in subsequent years shall be reduced by one mile or proportional part of one mile.

§ 33.2-369. State of good repair.

A. As used in this section, "state of good repair purposes" means improvement of deficient pavement conditions and improvement of structurally deficient bridges.

B. The Board shall use funds allocated in § 33.2-358.1 to state of good repair purposes for reconstruction and replacement of structurally deficient state and locally owned bridges and reconstruction and rehabilitation of pavement on the Interstate System and primary state highway system determined to be deteriorated by the Board, including municipality-maintained primary extensions.

The Board shall allocate these funds to projects in all nine highway construction districts for state of good repair purposes based on a priority ranking system that takes into consideration (i) the number, condition, and costs of structurally deficient bridges and (ii) the mileage, condition, and costs to replace deteriorated pavements. The Board shall ensure an equitable distribution of funding among the highway construction districts, with no district receiving more than 17.5 percent of the total funding allocated in any given year. The Board may waive the cap provided in this section for a fiscal year when it determines that due to extraordinary circumstances or needs that the cap inhibits the ability of the Department to address a key pavement or bridge need that has been identified.

In any year that the Department is not meeting the established targets for secondary pavements, the Board may allocate up to 20 percent of these funds to all nine highway construction districts to improve the condition of secondary pavements. The Board shall ensure an equitable distribution of funds among highway construction districts based on the mileage, condition, and cost to improve secondary pavements.

§ 33.2-370. High-priority projects program.

A. As used in this section, "high-priority projects" means those projects of regional or statewide significance, such as projects that reduce congestion or increase safety, accessibility, environmental quality, or economic development.

B. The Board shall establish a high-priority projects program and shall use funds allocated in § 33.2-358.1 to the program for projects and strategies that address a transportation need identified for a corridor of statewide significance or a regional network in the Statewide Transportation Plan pursuant to § 33.2-353. From funds allocated to this program, the Board shall allocate funds to the Innovation and Technology Transportation Fund, provided that the allocation shall not exceed \$25 million annually.

In selecting projects and strategies for funding under this program, the Board shall screen, evaluate, and select candidate projects and strategies according to the process established pursuant to subsection B of § 33.2-214.1.

§ 33.2-371. Highway construction district grant programs.

A. As used in this section:

"Land area" means the total land area of the counties within a highway construction district reduced by the area of any military reservations and state or national parks or forests within its boundaries and such other similar areas and facilities of five square miles in area or more, as may be determined by the Board.

"Population" means the population according to the latest U.S. census or the latest population estimates made by the Weldon Cooper Center for Public Service of the University of Virginia, whichever is more recent.

B. The Board shall establish a grant program in each highway construction district to fund projects and strategies that address a need in the Statewide Transportation Plan developed pursuant to § 33.2-353.

C. The Board shall solicit candidate projects and strategies from local governments for consideration in the applicable highway construction district's grant program. Candidate projects and strategies shall be screened, evaluated, and selected by the Board according to the process established pursuant to subsection B of § 33.2-214.1 but shall be within a highway construction district and not outside such highway construction district. Candidate projects and strategies from localities within a highway construction district shall be scored against projects and strategies within the same highway construction district. Only those candidate projects and strategies submitted by a locality shall be funded.

D. Funds allocated to this program under § 33.2-358.1 shall be distributed to each highway construction district for that district's grant program as follows:

1. Thirty percent based on the ratio of the population of the cities and towns with a population over 3,500 within a highway construction district to the total population of the cities and towns with a population over 3,500 within the Commonwealth;

2. Twenty-eight percent based on the ratio of vehicle miles traveled on primary highways within the highway construction district to the total vehicle miles traveled on primary highways in the Commonwealth;

3. Twenty-four percent based on the ratio of the population of counties within a highway construction district to the total population of all counties within the Commonwealth;

4. Ten percent based on the ratio of the number of primary lane-miles in the highway construction district to the total number of primary lane-miles within the Commonwealth;

5. Six percent based on the ratio of the land area of counties within the highway construction district to the total land area of counties within the Commonwealth; and

6. Two percent based on a primary need factor based on addressing the largest under-allocation to highway construction districts relative to primary needs.

E. Projects awarded funds under a grant program established by this section may be administered by the Department or the local government.

§ 33.2-1501. Definitions.

As used in this article, unless the context requires a different meaning:

"Bank" means the Virginia Transportation Infrastructure Bank created in § 33.2-1502.

"Cost," as applied to any project financed under the provisions of this article, means the total of all costs, including the costs of planning, design, right-of-way acquisition, engineering, and construction, incurred by an eligible borrower or other project sponsor as reasonable and necessary for carrying out all works and undertakings necessary or incident to the accomplishment of any project. "Cost" also includes capitalized interest; reasonably required reserve funds; and financing, credit enhancement, and issuance costs.

"Credit enhancements" means surety bonds, insurance policies, letters of credit, guarantees, and other forms of collateral or security.

"Creditworthiness" means attributes such as revenue stability, debt service coverage, reserves, and other factors commonly considered in assessing the strength of the security for indebtedness.

"Eligible borrower" means any (i) private entity; (ii) governmental entity; (iii) instrumentality, corporation, or entity established by any of the foregoing pursuant to § 33.2-1505; or (iv) combination of two or more of the foregoing.

"Finance" and any variation of the term, when used in connection with a cost or a project, includes both the initial financing and any refinancing of the cost or project and any variation of such terms. *"Finance" does not include a grant.*

"Governmental entity" means any (i) locality; (ii) local, regional, state, or federal entity; transportation authority, planning district, commission, or political subdivision created by the General Assembly or pursuant to the Constitution and laws of the Commonwealth; or public transportation entity owned, operated, or controlled by one or more local entities; (iii) entity established by interstate compact; (iv) instrumentality, corporation, or entity established by any of the foregoing pursuant to § 33.2-1505; or (v) combination of two or more of the foregoing.

"Grant" means a transfer of moneys or property that does not impose any obligation or condition on the grantee to repay any amount to the transferor other than in connection with assuring that the transferred moneys or property will be spent or used in accordance with the governmental purpose of the transfer. "Grant" includes direct cash payments made to pay or reimburse all or a portion of interest payments made by a grantee on a debt obligation. As provided in §§ 33.2-1502 and 33.2-1503, only governmental entities may receive grants of moneys or property held in or for the credit of the Bank.

"Loan" means an obligation subject to repayment that is provided by the Bank to an eligible borrower to finance all or a part of the eligible cost of a project incurred by the eligible borrower or other project sponsor. A loan may be disbursed (i) in anticipation of reimbursement (including an advance or draw under a credit enhancement instrument), (ii) as direct payment of eligible costs, or (iii) to redeem or defease a prior obligation incurred by the eligible borrower or other project sponsor to finance the eligible costs of a project.

"Management agreement" means the memorandum of understanding or interagency agreement among the manager, the Secretary of Finance, and the Board as authorized under subsection B of § 33.2-1502.

"Manager" means the Virginia Resources Authority serving as the manager, administrator, and trustee of funds disbursed from the Bank in accordance with the provisions of this article and the management agreement.

"Other financial assistance" ~~means, but is not limited to, grants,~~ *includes* capital, or debt reserves for bonds or debt instrument financing, provision of letters of credit and other forms of credit enhancement, and other lawful forms of financing and methods of leveraging funds that are approved by the manager.

"Private entity" means any private or nongovernmental entity that has executed an interim or comprehensive agreement to develop and construct a transportation infrastructure project pursuant to the Public-Private Transportation Act of 1995 (§ 33.2-1800 et seq.).

"Project" means (i) the construction, reconstruction, rehabilitation, or replacement of any interstate, state highway, toll road, tunnel, local street or road, or bridge; (ii) the construction, reconstruction, rehabilitation, or replacement of any (a) mass transit, (b) commuter, passenger, or freight rail, (c) port, (d) airport, or (e) commercial space flight facility; or (iii) the acquisition of any rolling stock, vehicle, or equipment to be used in conjunction with clause (i) or (ii).

"Project obligation" means any bond, note, debenture, interim certificate, grant or revenue anticipation note, lease or lease-purchase or installment sales agreement, or credit enhancements issued, incurred, or entered into by an eligible borrower to evidence a loan, or any financing agreements, reimbursement agreements, guarantees, or other evidences of an obligation of an eligible borrower or other project sponsor to pay or guarantee a loan.

"Project sponsor" means any private entity or governmental entity that is involved in the planning, design, right-of-way acquisition, engineering, construction, maintenance, or financing of a project.

"Reliable repayment source" means any means by which an eligible borrower or other project sponsor generates funds that are dedicated to the purpose of retiring a project obligation.

"Substantial project completion" means the opening of a project for vehicular or passenger traffic or the handling of cargo and freight.

§ 33.2-1502. Creation of the Virginia Transportation Infrastructure Bank.

A. There is hereby created in the state treasury a special nonreverting, revolving loan fund, known as the Virginia Transportation Infrastructure Bank, that is a subfund of the Transportation Trust Fund, established pursuant to § 33.2-1524. The Bank shall be established on the books of the Comptroller. The Bank shall be capitalized with (i) *two-thirds of all interest, dividends, and appreciation that may accrue to the Transportation Trust Fund and the Highway Maintenance and Operating Fund* and (ii) moneys appropriated by the General Assembly and credited to the Bank. Disbursements from the Bank shall be made by the State Treasurer on warrants issued by the Comptroller upon written request signed by the

Commissioner of Highways or his or her designee. Payments on project obligations and interest earned on the moneys in the Bank shall be credited to the Bank. Any moneys remaining in the Bank, including interest thereon, at the end of each fiscal year shall not revert to the general fund but shall remain in the Bank. Notwithstanding anything to the contrary set forth in this article or in the management agreement, the Board will have the right to determine the projects for which loans or other financial assistance may be provided by the Bank. Moneys in the Bank shall be used solely for the purposes enumerated in subsections subsection C and D.

B. The Board, the manager, and the Secretary of Finance are authorized to enter into a management agreement which may include provisions (i) setting forth the terms and conditions under which the manager will advise the Board on the financial propriety of providing particular loans or other financial assistance;; (ii) setting forth the terms and conditions under which the substantive requirements of subsections C through F, D, and E and § 33.2-1505 will be applied and administered;; and (iii) authorizing the manager to request the Board to disburse from the moneys in the Bank the reasonable costs and expenses the manager may incur in the management and administration of the Bank and a reasonable fee to be approved by the Board for the manager's management and administrative services.

C. 1. Moneys deposited in the Bank shall be used for the purpose of making loans and other financial assistance to finance projects.

2. Each project obligation shall be payable, in whole or in part, from reliable repayment sources pledged for such purpose.

3. The interest rate on a project obligation shall be determined by reference to the current market rates for comparable obligations, the nature of the project and the financing structure therefor, and the creditworthiness of the eligible borrower and other project sponsors.

4. The repayment schedule for each project obligation shall require (i) the amortization of principal beginning within five years following the later of substantial project completion or the date of incurrence of the project obligation and (ii) a final maturity date of not more than 35 years following substantial project completion.

D. A portion not to exceed 20 percent of the capitalization of the Bank may be used for grants to governmental entities to finance projects.

E. The pledge of reliable repayment sources and other property securing any project obligation may be subordinate to the pledge securing any other senior debt obligations incurred to finance the project.

F. E. Notwithstanding subdivision C 4, the manager may at any time following substantial project completion defer payments on a project obligation if the project is unable to generate sufficient revenues to pay the scheduled payments.

G. F. No loan or other financial assistance may be provided or committed to be provided by the Bank in a manner that would cause such loan or other financial assistance to be tax-supported debt within the meaning of § 2.2-2713 or be deemed to constitute a debt of the Commonwealth or a pledge of the full faith and credit of the Commonwealth but shall be payable solely from legally available moneys held by the Bank.

H. G. Neither the Bank nor the manager is authorized or empowered to be or to constitute (i) a bank or trust company within the jurisdiction or under the control of the Commonwealth or an agency thereof or the Comptroller of Currency of the U.S. Treasury Department or (ii) a bank, banker, or dealer in securities within the meaning of, or subject to the provisions of, any securities, securities exchange, or securities dealers law of the United States or of the Commonwealth.

I. H. The Board or the manager may establish or direct the establishment of federal and state accounts or subaccounts as may be necessary to meet any applicable federal law requirements or desirable for the efficient administration of the Bank in accordance with this article.

§ 33.2-1503. Eligibility and project selection.

A. Any entity constituting an eligible borrower or other project sponsor is eligible to apply to the Board for project financing from the Bank.

B. Notwithstanding subsection A, only governmental entities are eligible to apply for a grant from the Bank.

C. Any governmental entity applying for a grant must demonstrate, among other things as determined by the manager, that the project cannot be financed on reasonable terms or would otherwise be financially infeasible without the grant.

D. All applicants for a loan or other financial assistance (other than a grant) must file an application with the Board, which must include all items determined by the Board in consultation with the manager to be necessary and appropriate for the Board to determine whether or not to approve the loan, including the availability of reliable repayment sources to retire the project obligation as well as creditworthiness.

E. C. Each applicant for a loan or other financial assistance must demonstrate that the project is of local, regional, or statewide significance and that it meets the goal of generating economic benefits, improving air quality, reducing congestion, or improving safety through enhancement of the state transportation network meets the public interest identified in subsection A of § 33.2-214.1. Another

368 criterion to be considered is whether or not the loan or other financial assistance will enable the project
 369 to be completed at an earlier date than would otherwise be feasible. The Board shall issue guidelines for
 370 scoring projects in accordance with the criteria set out in this subsection *subsection B of § 33.2-214.1*
 371 and any other criteria deemed necessary and appropriate for evaluating projects as determined by the
 372 Board in consultation with the manager and shall apply the scoring guidelines to each proposed project.
 373 Further, the Board shall promptly publish each proposed project and its score using the scoring
 374 guidelines.

375 *F. D.* All projects for which a loan or other financial assistance is provided must meet and remain in
 376 compliance with the policies and guidelines established by the Board and the manager.

377 **§ 33.2-1505. Project obligations.**

378 A. Subject to the terms determined by the manager in accordance with the management agreement,
 379 each loan or other financial assistance (~~which for purposes of this section shall not include grants~~) shall
 380 be evidenced or guaranteed by project obligations provided to finance the costs of any project. The
 381 manager may also sell any project obligations so acquired and apply the proceeds of such a sale to the
 382 making of additional loans and the provision of other financial assistance for financing the cost of any
 383 project or for any other corporate purpose of the Bank.

384 B. The manager may require, as a condition to provision of a loan or other financial assistance and
 385 the acquisition of any project obligations, that the eligible borrower or any other project sponsor
 386 covenant to perform any of the following:

387 1. Establish and collect tolls, rents, rates, fees, and other charges to produce revenue sufficient to pay
 388 all or a specified portion of (i) the costs of operation, maintenance, replacement, renewal, and repairs of
 389 the project; (ii) any outstanding indebtedness incurred for the purposes of the project, including the
 390 principal of and premium, if any, and interest on the project obligations; and (iii) any amounts necessary
 391 to create and maintain any required reserve, including any rate stabilization fund deemed necessary or
 392 appropriate by the manager to offset the need, in whole or part, for future increases in tolls, rents, rates,
 393 fees, or charges;

394 2. Create and maintain a special fund or funds as security for or the source of the scheduled
 395 payments on the project obligations or for the operation, maintenance, repair, or replacement of the
 396 project or any portions thereof or other property of the eligible borrower or any other project sponsor
 397 and deposit into any fund or funds amounts sufficient to make any payments as they become due and
 398 payable;

399 3. Create and maintain other special funds as required by the manager; and

400 4. Perform other acts, including the conveyance or mortgaging of real and personal property together
 401 with all right, title, and interest therein to secure project obligations, or take other actions as may be
 402 deemed necessary or desirable by the manager to secure payment of the project obligations and to
 403 provide for remedies in the event of any default or nonpayment by the eligible borrower or any other
 404 project sponsor, including any of the following:

405 a. The procurement of credit enhancements or liquidity arrangements for project obligations from any
 406 source, public or private, and the payment therefor of premiums, fees, or other charges.

407 b. The combination of one or more projects, or the combination of one or more projects with one or
 408 more other undertakings, facilities, or systems, for the purpose of operations and financing, and the
 409 pledging of the revenues from such combined projects, undertakings, facilities, and systems to secure
 410 project obligations issued in connection with such combination or any part or parts thereof.

411 c. The payment of such fees and charges in connection with the acquisition of the project obligations
 412 as may be determined by the manager.

413 C. All eligible borrowers and other project sponsors, including any governmental entities, providing
 414 project obligations to the Bank are authorized to perform any acts, take any action, adopt any
 415 proceedings, and make and carry out any contracts with the Bank, the manager, or the Board that are
 416 contemplated by this article. Such contracts need not be identical among all eligible borrowers or other
 417 project sponsors, but may be structured as determined by the manager according to the needs of the
 418 contracting eligible borrowers and other project sponsors and the purposes of the Bank.

419 In addition, subject to the approval of the manager, any project sponsor is authorized to establish and
 420 contract with a special purpose or limited purpose instrumentality, corporation, or other entity for the
 421 purpose of having such entity serve as the eligible borrower with respect to a particular project.

422 **§ 33.2-1529. Toll Facilities Revolving Account.**

423 A. All definitions of terms in this section shall be as set forth in the Public-Private Transportation
 424 Act of 1995 (§ 33.2-1800 et seq.).

425 B. Subject to any obligations to existing bondholders, but notwithstanding §§ 2.2-1806 and 58.1-13,
 426 funds deposited into the Transportation Trust Fund pursuant to subdivision 3 of § 33.2-1524 shall be
 427 held in a separate subaccount to be designated the Toll Facilities Revolving Account; (the Account)
 428 together with all interest, dividends, and appreciation that accrue to the Transportation Trust Fund and

429 that are not otherwise specifically directed by law or reserved by the Board in the resolution authorizing
430 issuance of bonds to finance toll facilities. In addition, any funds received from the federal government
431 or any agency or instrumentality thereof that, pursuant to federal law, may be made available, as loans
432 or otherwise, to private persons or entities for transportation purposes, hereinafter referred to as "federal
433 funds," shall be deposited in a segregated subaccount within the Account. Payments received with
434 respect to any loan made from such segregated subaccount pursuant to subdivision D 2 shall also be
435 deposited into such segregated subaccount in the Account.

436 C. User fees collected in excess of the annual debt service, operations, and maintenance expenses and
437 necessary administrative costs including any obligations to the Account and any other obligations for
438 qualifying facilities with respect to which an agency of the Commonwealth is the responsible public
439 entity shall be deposited and held in the Regional Toll Facilities Revolving Subaccount, (the Regional
440 Account), together with all interest, dividends, and appreciation for use within the metropolitan planning
441 organization region within which the facility exists. Payments received with respect to any loan made
442 from such Regional Account pursuant to subdivision D 3 shall also be deposited into the Regional
443 Account.

444 D. The Board may make allocations upon such terms and subject to such conditions as the Board
445 deems appropriate from the following funds for the following purposes:

446 1. From any funds in the Account, exclusive of those in the Regional Account, to pay or finance all
447 or part of the costs, including the cost of planning, operation, maintenance, and improvements, incurred
448 in connection with the acquisition and construction of projects financed in whole or in part as toll
449 facilities or to refinance existing toll facilities, provided that any such funds allocated from the Account
450 for a planned or operating toll facility shall be considered as an advance of funding for which the
451 Account shall be reimbursed;

452 2. From funds in the segregated subaccount in the Account into which federal funds are deposited in
453 conjunction with the Public-Private Transportation Act of 1995 (§ 33.2-1800 et seq.) and pursuant to the
454 terms of a comprehensive agreement between a responsible public entity and a private operator as
455 provided for in that act:

456 a. To make a loan to such operator to pay any cost of a qualifying transportation facility, provided
457 that (i) the operator's return on its investment is limited to a reasonable rate and (ii) such loan is limited
458 to a reasonable term; or

459 b. To pay the Commonwealth's or its agency's portion of costs incurred or to be incurred in
460 accordance with a comprehensive agreement with respect to a transportation facility;

461 3. From funds in the Regional Account:

462 a. To pay or finance all or part of the costs, including the cost of planning, operation, maintenance,
463 and improvements incurred in connection with the acquisition and construction of projects financed in
464 whole or in part as toll facilities or to refinance existing toll facilities, provided that (i) allocations from
465 the Regional Account shall be limited to projects located within the same metropolitan planning
466 organization region as the facility that generated the excess revenue and (ii) any such funds allocated
467 from the Regional Account for a planned or operating toll facility shall be considered as an advance of
468 funding for which the Regional Account shall be reimbursed; or

469 b. To pay the Commonwealth's, its agency's, or its political subdivision's costs incurred or to be
470 incurred in accordance with a comprehensive agreement with respect to a transportation facility within
471 the same metropolitan planning organization region as the facility that generated the excess revenue; and

472 4. From any funds in the Account or Regional Account, to pay the Board's reasonable costs and
473 expenses incurred in (i) the administration and management of the Account, (ii) its program of financing
474 or refinancing costs of toll facilities, and (iii) the making of loans and paying of costs described in
475 subdivisions 1 and 2.

476 E. The Board may transfer from the Account to the Transportation Trust Fund for allocation pursuant
477 to subsection C of § 33.2-358 or the Virginia Transportation Infrastructure Bank pursuant to Article 1
478 (§ 33.2-1500 et seq.) any interest revenues and, subject to applicable federal limitations, federal funds
479 not committed by the Board to the purposes provided for in subsection D.

480 F. The provisions of this section shall be liberally construed to the end that its beneficial purposes
481 may be effectuated. Insofar as this provision is inconsistent with the provisions of any other general,
482 special, or local law, this provision shall be controlling.

483 G. If any provision of this section or the application thereof to any person or circumstances is held
484 invalid by a court of competent jurisdiction, such invalidity shall not affect other provisions or
485 applications of this section that can be given effect without the invalid provision or application, and to
486 this end the provisions of this section are declared to be severable.

487 **§ 33.2-1529.1. Transportation Partnership Opportunity Fund.**

488 A. There is hereby created the Transportation Partnership Opportunity Fund (the Fund) to be used
489 by the Governor to provide funds to address the transportation aspects of economic development
490 opportunities. The Fund shall consist of (i) one-third of all interest, dividends, and appreciation that

may accrue to the Transportation Trust Fund and the Highway Maintenance and Operating Fund and (ii) any funds appropriated to it by the general appropriation act and revenue from any other source, public or private. The Fund shall be established on the books of the Comptroller, and any funds remaining in the Fund at the end of a biennium shall not revert to the general fund but shall remain in the Fund. All interest and dividends that are earned on the Fund shall be credited to the Fund. The Governor shall report to the Chairmen of the House Committees on Appropriations, Finance, and Transportation and the Senate Committees on Finance and Transportation as funds are awarded in accordance with this section.

B. The Fund shall be a subfund of the Transportation Trust Fund. Provisions of this title and Title 58.1 relating to the allocations or disbursements of proceeds of the Commonwealth Transportation Fund, the Transportation Trust Fund, or the Highway Maintenance and Operating Fund shall not apply to the Fund.

C. Funds shall be awarded from the Fund by the Governor as grants, revolving loans, or other financing tools and equity contributions to an agency or political subdivision of the Commonwealth. Loans shall be approved by the Governor and made in accordance with procedures established by the Board and approved by the Comptroller. Loans shall be interest-free and shall be repaid to the Fund. The Governor may establish the duration of any loan, but such term shall not exceed seven years. The Department shall be responsible for monitoring repayment of such loans and reporting the receivables to the Comptroller as required.

D. Grants or revolving loans may be used for transportation capacity development on and off site; road, rail, mass transit, or other transportation access costs beyond the funding capability of existing programs; studies of transportation projects, including environmental analysis, geotechnical assessment, survey, design and engineering, advance right-of-way acquisition, traffic analysis, toll sensitivity studies, and financial analysis; or anything else permitted by law. Funds may be used for any transportation project or any transportation facility. Any transportation infrastructure completed with moneys from the Fund shall not become private property, and the results of any studies or analysis completed as a result of a grant or loan from the Fund shall be property of the Commonwealth.

E. The Board, in consultation with the Secretary of Transportation and the Secretary of Commerce and Trade, shall develop guidelines and criteria that shall be used in awarding grants or making loans from the Fund; however, no grant shall exceed \$5 million and no loan shall exceed \$30 million. No grant or loan shall be awarded until the Governor has provided copies of the guidelines and criteria to the Chairmen of the House Committees on Appropriations, Finance, and Transportation and the Senate Committees on Finance and Transportation. The guidelines and criteria shall include provisions including the number of jobs and amounts of investment that must be committed in the event moneys are being used for an economic development project, a statement of how the studies and analysis to be completed using moneys from the Fund will advance the development of a transportation facility, a process for the application for and review of grant and loan requests, a timeframe for completion of any work, the comparative benefit resulting from the development of a transportation project, assessment of the ability of the recipient to repay any loan funds, and other criteria as necessary to support the timely development of transportation projects. The criteria shall also include incentives to encourage matching funds from any other local, federal, or private source.

F. Within 30 days of each six-month period ending June 30 and December 31, the Governor shall provide a report to the Chairmen of the House Committees on Appropriations, Finance, and Transportation and the Senate Committees on Finance and Transportation that shall include the following information: the locality in which the project is being developed, the amount of the grant or loan made or committed from the Fund and the purpose for which it will be used, the number of jobs created or projected to be created, and the amount of a company's investment in the Commonwealth if the project is part of an economic development opportunity.

G. The Governor shall provide grants and commitments from the Fund in an amount not to exceed the total value of the moneys contained in the Fund. If the Governor commits funds for years beyond the fiscal years covered under the existing appropriation act, the State Treasurer shall set aside and reserve the funds the Governor has committed, and the funds set aside and reserved shall remain in the Fund for those future fiscal years. No grant or loan shall be payable in the years beyond the existing appropriation act unless the funds are currently available in the Fund.

§ 33.2-1530. Highway Maintenance and Operating Fund.

There is hereby created in the state treasury a special nonreverting fund to be known as the Highway Maintenance and Operating Fund, referred to in this section as "the Fund." The Fund shall be established on the books of the Comptroller. Any moneys remaining in the Fund at the end of each fiscal year shall not revert to the general fund but shall remain in the Fund.

The sources of funds for the Fund shall be paid into the state treasury and credited to the Fund and, in addition to all funds appropriated by the General Assembly, includes the following:

1. Revenues generated pursuant to § 33.2-213;
2. Civil penalties collected pursuant to § 33.2-216;
3. Civil penalties collected pursuant to § 33.2-1224;
4. Civil penalties collected pursuant to § 33.2-1229;
5. Permit fees as outlined in § 46.2-652.1;
6. Revenues generated pursuant to § 46.2-702.1;
7. Permit fees pursuant to §§ 46.2-1128, 46.2-1140.1, 46.2-1142.1, 46.2-1143, 46.2-1148, and 46.2-1149.1;
8. Applicable portions of emissions inspection fees from on-road emissions inspectors as designated in § 46.2-1182;
9. Revenues from subsection G of § 58.1-638 and § 58.1-638.3;
10. ~~Revenues from subdivision 2 of § 58.1-815.4;~~
- ~~11. Revenues generated pursuant to subsection B of § 58.1-2249;~~
- ~~12. 11. Revenues as apportioned in subsection E of § 58.1-2289;~~
- ~~13. 12. Revenues as outlined in subsection A of § 58.1-2425; and~~
- ~~14. 13. Taxes and fees pursuant to § 58.1-2701.~~

§ 58.1-815.4. (Contingent expiration) Distribution of recordation tax for certain transportation-related purposes.

~~Effective July 1, 2008, of~~ *Of* the state recordation taxes imposed pursuant to §§ 58.1-801 and 58.1-803, the revenues collected each fiscal year from \$0.03 of the total tax imposed under each section shall be deposited by the Comptroller as follows:

1. The revenues collected from \$0.02 of the total tax shall be deposited into the Commonwealth Mass Transit Fund pursuant to subdivision A 4 b (1) (b) of § 58.1-638; and
2. The revenues collected from \$0.01 of the total tax shall be deposited into the ~~Highway Maintenance and Operating Fund established pursuant to § 33.2-1530~~ *Commonwealth Transit Capital Fund established pursuant to subdivision A 4 c of § 58.1-638.*

§ 58.1-1741. Disposition of revenues.

A. After the direct costs of administering this article are recovered by the Department of Taxation, the remaining revenues collected hereunder by the Tax Commissioner shall be forthwith paid into the state treasury. Except as otherwise provided in this section, these funds shall constitute special funds within the Commonwealth Transportation Fund. Any balances remaining in these funds at the end of the year shall be available for use in subsequent years for the purposes set forth in this article, and any interest income on such funds shall accrue to these funds. The revenue so derived, after refunds have been deducted, is hereby allocated for the construction, reconstruction, and maintenance of highways and the regulation of traffic thereon and for no other purpose. However, (i) all funds collected from the additional tax imposed by subdivision A 2 of § 58.1-1736 on the rental of daily rental vehicles shall be distributed quarterly to the county, city, or town wherein such vehicle was delivered to the rentee; (ii) except as provided in clause (iii) ~~of this sentence~~, an amount equivalent to the net additional revenues from the motor vehicle rental tax generated by enactments of the 1986 Special Session of the Virginia General Assembly which amended §§ 46.2-694, 46.2-697, and by §§ 58.1-1735, 58.1-1736 and this section, shall be distributed to and paid into the Transportation Trust Fund established pursuant to § 33.2-1524, a special fund within the Commonwealth Transportation Fund, and are hereby appropriated to the Commonwealth Transportation Board for transportation needs; (iii) all moneys collected from the tax on the gross proceeds from the rental in Virginia of any motor vehicle pursuant to subdivision A 1 of § 58.1-1736 at the tax rate in effect on December 31, 1986, shall be paid by the Tax Commissioner into the state treasury and *two-thirds of which* shall be paid into the Rail Enhancement Fund established by § 33.2-1601 *and one-third of which shall be deposited into the Transportation Trust Fund established pursuant to § 33.2-1524 and set aside for state of good repair purposes pursuant to § 33.2-369;* and (iv) all additional revenues resulting from the fee imposed under subdivision A 3 of § 58.1-1736 shall be used to pay the debt service on the bonds issued by the Virginia Public Building Authority for the Statewide Agencies Radio System (STARS) for the Department of State Police pursuant to the authority granted by the 2004 Session of the General Assembly.

B. As provided in subsection A of § 58.1-638, of the funds becoming part of the Transportation Trust Fund pursuant to clause (ii) of subsection A ~~of this section~~, an aggregate of 4.2 percent shall be set aside as the Commonwealth Port Fund; an aggregate of 2.4 percent shall be set aside as the Commonwealth Airport Fund; and an aggregate of 14.7 percent shall be set aside as the Commonwealth Mass Transit Fund.

§ 58.1-2289. Disposition of tax revenue generally.

A. Unless otherwise provided in this section, all taxes and fees, including civil penalties, collected by the Commissioner pursuant to this chapter, less a reasonable amount to be allocated for refunds, shall be promptly paid into the state treasury and shall constitute special funds within the Commonwealth Transportation Fund. Any balances remaining in these funds at the end of the year shall be available for

use in subsequent years for the purposes set forth in this chapter, and any interest income on such funds shall accrue to these funds.

The Governor is hereby authorized to transfer out of such fund an amount necessary for the inspection of gasoline and motor grease measuring and distributing equipment, and for the inspection and analysis of gasoline for purity.

B. The tax collected on each gallon of aviation fuel sold and delivered or used in this Commonwealth, less refunds, shall be paid into a special fund of the state treasury. Proceeds of this special fund within the Commonwealth Transportation Fund shall be disbursed upon order of the Department of Aviation, on warrants of the Comptroller, to defray the cost of the administration of the laws of this Commonwealth relating to aviation, for the construction, maintenance and improvement of airports and landing fields to which the public now has or which it is proposed shall have access, and for the promotion of aviation in the interest of operators and the public generally.

C. One-half cent of the tax collected on each gallon of fuel on which a refund has been paid for gasoline, gasohol, diesel fuel, blended fuel, or alternative fuel, for fuel consumed in tractors and unlicensed equipment used for agricultural purposes shall be paid into a special fund of the state treasury, known as the Virginia Agricultural Foundation Fund, to be disbursed to make certain refunds and defray the costs of the research and educational phases of the agricultural program, including supplemental salary payments to certain employees at Virginia Polytechnic Institute and State University, the Department of Agriculture and Consumer Services and the Virginia Truck and Ornamentals Research Station, including reasonable expenses of the Virginia Agricultural Council.

D. One and one-half cents of the tax collected on each gallon of fuel used to propel a commercial watercraft upon which a refund has been paid shall be paid to the credit of the Game Protection Fund of the state treasury to be made available to the Board of Game and Inland Fisheries until expended for the purposes provided generally in subsection C of § 29.1-701, including acquisition, construction, improvement and maintenance of public boating access areas on the public waters of this Commonwealth and for other activities and purposes of direct benefit and interest to the boating public and for no other purpose. However, one and one-half cents per gallon on fuel used by commercial fishing, oystering, clamming, and crabbing boats shall be paid to the Department of Transportation to be used for the construction, repair, improvement and maintenance of the public docks of this Commonwealth used by said commercial watercraft. Any expenditures for the acquisition, construction, improvement and maintenance of the public docks shall be made according to a plan developed by the Virginia Marine Resources Commission.

From the tax collected pursuant to the provisions of this chapter from the sales of gasoline used for the propelling of watercraft, after deduction for lawful refunds, there shall be paid into the state treasury for use by the Marine Resources Commission, the Virginia Soil and Water Conservation Board, the State Water Control Board, and the Commonwealth Transportation Board to (i) improve the public docks as specified in this section, (ii) improve commercial and sports fisheries in Virginia's tidal waters, (iii) make environmental improvements including, without limitation, fisheries management and habitat enhancement in the Chesapeake and its tributaries, and (iv) further the purposes set forth in § 33.2-1510, a sum as established by the General Assembly.

E. Of the remaining revenues deposited into the Commonwealth Transportation Fund pursuant to this chapter less refunds authorized by this chapter: (i) 80 percent shall be deposited into the Highway Maintenance and Operating Fund established pursuant to § 33.2-1530, (ii) 11.3 percent shall be deposited into the Transportation Trust Fund established pursuant to § 33.2-1524, (iii) four percent shall be deposited into the Priority Transportation Fund, ~~and~~ (iv) 3.11 percent shall be deposited into the Commonwealth Transit Capital Fund established pursuant to subdivision A 4 c of § 58.1-638, (v) one percent shall be transferred to a special fund within the Commonwealth Transportation Fund in the state treasury, to be used to meet the necessary expenses of the Department of Motor Vehicles, (vi) 0.35 of one percent shall be deposited into the Commonwealth Mass Transit Fund established pursuant to subdivision A 4 of § 58.1-638 and allocated to subdivision A 4 b (1) (b), and (vii) 0.24 of one percent shall be deposited into the Commonwealth Mass Transit Fund established pursuant to subdivision A 4 of § 58.1-638 and allocated to subdivision A 4 b (1) (a).

2. That the Commonwealth Transportation Board shall develop the priority ranking system pursuant to § 33.2-369 as added by this act by July 1, 2016.

3. That the provisions of this act amending §§ 58.1-815.4, 58.1-1530, 58.1-1741, and 58.1-2289 of the Code of Virginia shall become effective on July 1, 2016.

4. That the provisions of this act amending § 33.2-200 of the Code of Virginia shall become effective on July 1, 2016.

5. That prior to January 1, 2018, the Department of Rail and Public Transportation is authorized to enter into an agreement with a private entity pursuant to the Public-Private Transportation Act of 1995 (§ 33.2-1800 et seq. of the Code of Virginia) to improve passenger rail service within the

675 Commonwealth where the private entity finances the improvements in return for annual payments
676 from funds allocated by the Commonwealth Transportation Board pursuant to §§ 33.2-1601 and
677 33.2-1604 of the Code of Virginia for a period not to exceed 20 years.

678 6. That notwithstanding allocations pursuant to § 33.2-358 of the Code of Virginia, in order to
679 promote implementation of § 33.2-214.1 of the Code of Virginia and transition to the allocation of
680 funds pursuant to § 33.2-358.1 as added by this act, the Board shall allocate from July 1, 2016,
681 through June 30, 2021, funds not programmed to a project as follows: 50 percent for high-priority
682 projects pursuant to § 33.2-370 as added by this act and 50 percent for the highway construction
683 district grant program pursuant to § 33.2-371 as added by this act. This allocation shall not
684 include unprogrammed federal funds and related state match for federal funds that restrict the
685 type of project that may be funded, excluding any restriction regarding the location of projects, or
686 federal funds not under the control of the Board.

687 7. That Article 2 (§ 33.2-1508) of Chapter 15 of Title 33.2 of the Code of Virginia is repealed.

688 8. That the Commonwealth Transportation Board shall develop no later than December 1, 2015, a
689 legislative proposal to revise the public benefit requirements of the Rail Enhancement Fund
690 established pursuant to § 33.2-1601.

691 9. That the provisions of this act amending §§ 33.2-1530, 58.1-815.4, 58.1-1741, and 58.1-2289 shall
692 expire if the Commonwealth collects sales and use tax from remote retailers on sales made into the
693 Commonwealth pursuant to legislation enacted by the federal government that grants states that
694 meet minimum simplification requirements specified in such legislation the authority to compel
695 remote retailers to collect sales and use tax on sales made into the respective state.

696 [10. That the provisions of subsection B. of § 33.2-214.1 establishing a project selection process
697 shall apply to revenues of the Commonwealth Mass Transit Capital Fund allocated to the
698 construction of new fixed rail projects.]