

VIRGINIA ACTS OF ASSEMBLY -- 1994 SESSION

CHAPTER 233

An Act authorizing the issuance of Commonwealth of Virginia Transportation Program Revenue Bonds, by and with the consent of the Governor pursuant to the provisions of Article 5 (§ 33.1-267 et seq.) of Chapter 3 of Title 33.1 of the Code of Virginia and as permitted by Section 9 (d) of Article X of the Constitution of Virginia, in a principal amount not exceeding \$32,500,000 to finance the cost of the project specified in § 33.1-268, plus an amount for the issuance costs, capitalized interest, reserve funds, and other financing expenses, for the purpose of providing funds, with any other available funds, for paying all or a portion of the costs incurred or to be incurred for construction of the Oak Grove Connector in the City of Chesapeake, a Transportation Improvement Program project; authorizing the Commonwealth Transportation Board to fix the details of such bonds and to provide for the sale of such bonds at public or private sale; providing for the pledge of revenues under a payment agreement with the Treasury Board first from (i) any revenues received from any Set-aside Fund established pursuant to § 58.1-816.1, (ii) to the extent required, revenues received pursuant to a contract with the City of Chesapeake or any alternative mechanism for generation of local revenues for specific funding of the project satisfactory to the Commonwealth Transportation Board, (iii) to the extent required, funds appropriated and allocated, pursuant to the highway allocation formula as provided by law, to the city in which the project to be financed is located, (iv) to the extent required, legally available revenues of the Transportation Trust Fund, and (v) such other funds which may be appropriated by the General Assembly; and further providing that the interest income from such bonds shall be exempt from all taxation within the Commonwealth; and to amend and reenact §§ 33.1-269 and 33.1-277 of the Code of Virginia, relating to the State Revenue Bond Act.

[S 458]

Approved April 4, 1994

Whereas, Section 9 (d) of Article X of the Constitution of Virginia and §§ 33.1-267 through 33.1-295 of the Code of Virginia provide that the General Assembly may authorize the issuance of bonds secured by Transportation Trust Fund revenues under a payment agreement between the Commonwealth Transportation Board and the Treasury Board, subject to appropriations by the General Assembly and payable first from (i) any revenues received from any Set-aside Fund established pursuant to § 58.1-816.1, (ii) to the extent required, revenues received pursuant to a contract with the City of Chesapeake or any alternative mechanism for generation of local revenues for specific funding of the project satisfactory to the Commonwealth Transportation Board, (iii) to the extent required, funds appropriated and allocated, pursuant to the highway allocation formula as provided by law, to the city in which the project to be financed is located, (iv) to the extent required, legally available revenues of the Transportation Trust Fund, and (v) such other funds which may be appropriated by the General Assembly; and

Whereas, the project described herein will be a state highway operated and maintained by the Commonwealth Transportation Board; now, therefore,

Be it enacted by the General Assembly of Virginia:

1. § 1. This act shall be known and may be cited as the "Oak Grove Connector, City of Chesapeake, Commonwealth of Virginia Transportation Program Revenue Bond Act of 1994."

§ 2. The Commonwealth Transportation Board is hereby authorized, by and with the consent of the Governor, to issue, pursuant to the provisions of §§ 33.1-267 through 33.1-295, at one time or from time to time, bonds of the Commonwealth to be designated "Commonwealth of Virginia Transportation Program Revenue Bonds, Series", in an aggregate principal amount not exceeding \$32,500,000 to finance the cost of the project plus an amount for the issuance costs, capitalized interest, reserve funds, and other financing expenses including, without limitation, original issue discount (the "Bonds"). The proceeds of the Bonds shall be used exclusively for the purpose of providing funds, with any other available funds, for paying the costs incurred or to be incurred for construction or funding of the project known as the Oak Grove Connector in the City of Chesapeake, consisting of a four-lane divided highway connecting Dominion Boulevard (Route 104) and the Great Bridge Bypass (Route 168), and as established in Article 5 (§ 33.1-267 et seq.) of Chapter 3 of Title 33.1, consisting of environmental and engineering studies, rights-of-way acquisition, improvements to all modes of transportation, construction and related improvements (the "project"). Such costs may include the payment of interest on the Bonds for a period during construction and not exceeding one year after completion of construction of the projects.

The Bonds shall be issued by the Commonwealth Transportation Board and sold through the Treasury Board, which is hereby designated the sales and paying agent of the Commonwealth

Transportation Board with respect to the Bonds. The Treasury Board's duties shall include the approval of the terms and structure of the Bonds.

§ 3. The proceeds of the Bonds herein authorized shall be made available by the Commonwealth Transportation Board to pay the costs of the project and, where appropriate, may be paid to any authority, locality or commission for the purposes of paying for the costs of the project. The proceeds of the Bonds may be used with any federal, local or private funds which may be made available for said purpose.

§ 4. The Bonds of each issue shall be dated, shall bear interest at such rate or rates, shall mature at such time or times not exceeding thirty years from their date or dates, as may be determined by the Commonwealth Transportation Board, or by a formula or method established by resolution of the Commonwealth Transportation Board, and may be made redeemable before their maturity or maturities, at such price or prices and under such terms and conditions as may be fixed by the Commonwealth Transportation Board prior to the issuance of the Bonds. The principal of and the interest on the Bonds shall be made payable in lawful money of the United States of America. The Commonwealth Transportation Board shall determine the form of the Bonds and fix the denomination or denominations of the Bonds and the place or places of payment of principal and interest thereof, which may be at the office of the State Treasurer or any bank or trust company within or without the Commonwealth.

All Bonds issued under the provisions of this Act shall have and are hereby declared to have, as between successive holders, all the qualities and incidents of negotiable instruments under the negotiable instruments law of the Commonwealth.

The Bonds may be issued under a system of book entry for recording the ownership and transfer of ownership of rights to receive payments of principal of and premium, if any, and interest on the Bonds.

The Bonds may be sold at a public or private sale for such price or prices as the Commonwealth Transportation Board may determine to be in the best interests of the Commonwealth.

§ 5. The Bonds shall be signed on behalf of the Commonwealth by the Commonwealth Transportation Commissioner or shall bear his facsimile signature, shall bear the official seal of the Board, and shall be attested by the Secretary of the Board. Any interest coupons shall bear a facsimile of the signature of the Commonwealth Transportation Commissioner. In the event that the Bonds shall bear the facsimile signature of the Commonwealth Transportation Commissioner, the Bonds shall be signed by such administrative assistant as the Commonwealth Transportation Commissioner shall determine or by any Registrar/Paying Agent that may be designated by the Treasury Board. In case any officer, whose signature or a facsimile of whose signature appears on any Bonds or coupons, shall cease to be such officer before the delivery of such Bonds, his signature or facsimile signature shall nevertheless be valid and sufficient for all purposes as if he had remained in office until such delivery.

§ 6. All expenses incurred under this Act shall be paid from the proceeds of the Bonds or from any available funds as the Commonwealth Transportation Board shall determine.

§ 7. The Commonwealth Transportation Board is hereby authorized to borrow money at such rate or rates through the execution and issuance of notes of the Commonwealth for the same, but only in the following circumstances and under the following conditions:

1. In anticipation of the sale of the Bonds the issuance of which shall have been authorized by the Commonwealth Transportation Board and shall have been approved by the Governor, if the Commonwealth Transportation Board shall deem it advisable to postpone the issuance of the Bonds.

2. For the renewal of any loan evidenced by notes herein authorized.

§ 8. The proceeds of the Bonds and of the bond anticipation notes herein authorized (except the proceeds of bonds the issuance of which has been anticipated by such bond anticipation notes) shall be placed by the State Treasurer in a special fund in the state treasury, or with his concurrence may be placed in accordance with § 33.1-283, and shall be disbursed only for the purpose for which such Bonds and such bond anticipation notes shall be issued; however, proceeds derived from the sale of Bonds or renewal herein authorized shall be first used in the payment of any bond anticipation notes that may have been issued in anticipation of the sale of such Bonds and any renewals of such notes.

§ 9. The Commonwealth Transportation Board is hereby authorized to receive any other funds that may be made available to pay the cost of the project and to make available the same to the payment of the principal of and the interest on the debt authorized hereby and to enter into the appropriate agreements to allow for those funds to be paid into the state treasury to pay a part of the cost of the project or to pay the principal of and the interest on such debt.

§ 10. The Commonwealth Transportation Board, prior to the issuance of the Bonds, may establish a minimum reserve fund requirement for the Bonds.

§ 11. The Commonwealth Transportation Board, prior to the issuance of the Bonds, shall establish a sinking fund for the payment of the Bonds to the credit of which there shall be deposited such amounts as are required to pay debt service on the Bonds due and payable for such fiscal years first from (i) any revenues received from any Set-aside Fund established pursuant to § 58.1-816.1, (ii) to the extent required, revenues received pursuant to a contract with the City of Chesapeake or any alternative mechanism for generation of local revenues for specific funding of the project satisfactory to the Commonwealth Transportation Board, (iii) to the extent required, funds appropriated and allocated,

pursuant to the highway allocation formula as provided by law, to the city in which the project to be financed is located, (iv) to the extent required, legally available revenues of the Transportation Trust Fund, and (v) such other funds which may be appropriated by the General Assembly.

§ 12. Bond proceeds and moneys in any reserve funds and sinking funds shall be invested by the State Treasurer in accordance with the provisions of general law relating to the investment of such funds belonging to or in the control of the Commonwealth, or with the State Treasurer's concurrence by a trustee in accordance with § 33.1-283.

§ 13. The interest income from, but not any profit made on the sale of the Bonds, notes and coupons, if any, issued under the provisions of this Act, shall at all times be free and exempt from taxation by the Commonwealth and by any municipality, county or other political subdivision thereof.

§ 14. All bonds and notes issued under the provisions of this Act are hereby made securities in which all public officers and bodies of the Commonwealth; all counties, cities, towns and municipal subdivisions; all insurance companies and associations; all savings banks and savings institutions, including savings and loan associations; administrators; guardians; executors; trustees; and other fiduciaries in the Commonwealth may properly and legally invest funds under their control.

2. That §§ 33.1-269 and 33.1-277 of the Code of Virginia are amended and reenacted as follows:

§ 33.1-269. General powers of Board.

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

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

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

3. Subject to the limitations and approvals of § 33.1-279.1, issue revenue bonds of the Commonwealth to be known and designated as "Commonwealth of Virginia Transportation Contract Revenue Bonds," secured by Transportation Trust Fund revenues under a payment agreement between the Board and the Treasury Board, subject to their appropriation by the General Assembly and payable first from revenues received pursuant to contracts with a primary highway transportation improvement district or transportation service district or other local revenue sources for which specific funding of any such bonds may be authorized by law; second, to the extent required, from funds appropriated and allocated, pursuant to the highway allocation formula as provided by law, to the highway construction district in which the project or projects to be financed are located or to the county or counties in which the project or projects to be financed are located; and third, to the extent required, from other legally available revenues of the Trust Fund and from any other available source of funds;

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

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

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

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

6. Construct grade separations at intersections of any projects with public highways, streets or other public ways or places and change and adjust the lines and grades thereof so as to accommodate the

same to the design of such grade separations, the cost of such grade separations and any damage incurred in changing and adjusting the lines and grades of such highways, streets, ways and places to be ascertained and paid by the Board as a part of the cost of the project;

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

8. Make reasonable regulations for the installation, construction, maintenance, repair, renewal and relocation of pipes, mains, sewers, conduits, cables, wires, towers, poles and other equipment and appliances herein called "public utility facilities," of the Commonwealth and of any municipality, county, or other political subdivision or public utility or public service corporation owning or operating the same in, on, along, over or under the project. Whenever the Board determines that it is necessary that any such public utility facilities should be relocated or removed, the Commonwealth or such municipality, county, political subdivision, public utility or public service corporation shall relocate or remove the same in accordance with the order of the Board; however, the cost and expense of such relocation or removal, including the cost of installing such public utility facilities in a new location or locations, and the cost of any lands or any rights or interests in lands, and any other rights acquired to accomplish such relocation or removal shall be ascertained and paid by the Board as a part of the cost of the project. The Commonwealth or such municipality, county, political subdivision, public utility or public service corporation may maintain and operate such public utility facilities with the necessary appurtenances, in the new location or locations, for as long a period and upon the same terms and conditions as it had the right to maintain and operate such public utility facilities in their former location or locations;

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

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

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

§ 33.1-277. Credit of Commonwealth not pledged.

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

B. Commonwealth of Virginia Transportation Contract Revenue Bonds issued under the provisions of this article shall not be deemed to constitute a debt of the Commonwealth of Virginia or a pledge of the faith and credit of the Commonwealth, but such bonds shall be payable solely from the funds herein provided therefor (i) from revenues received pursuant to contracts with a primary highway transportation district or transportation service district or any other alternative mechanism for generation of local revenues for specific funding of a project satisfactory to the Commonwealth Transportation Board, (ii) to the extent required, from funds appropriated and allocated, pursuant to the highway allocation formula as provided by law, to the highway construction district in which the project or projects to be financed are

located or to the county or counties in which such project or projects are located, (iii) from bond proceeds or earnings thereon, (iv) to the extent required, from other legally available revenues of the Trust Fund, and (v) from any other available source of funds. All such bonds shall state on their face that the Commonwealth of Virginia is not obligated to pay the same or the interest thereon except from revenues in clauses (i) and (iii) hereof and that the faith and credit of the Commonwealth are not pledged to the payment of the principal and interest of such bonds. The issuance of such revenue bonds under the provisions of this article shall not directly or indirectly or contingently obligate the Commonwealth to levy or to pledge any form of taxation whatever or to make any appropriation for their payment, other than to appropriate available funds derived as revenues under this article from the sources set forth in clauses (i) and (iii) hereof. Nothing in this article shall be construed to obligate the General Assembly to make any appropriation of the funds set forth in clause (ii) or (iv) hereof for payment of such bonds.

C. Commonwealth of Virginia Transportation Revenue Bonds issued under the provisions of this article shall not be deemed to constitute a debt of the Commonwealth of Virginia or a pledge of the full faith and credit of the Commonwealth, but such bonds shall be payable solely from the funds herein provided therefor (i) from revenues received from the U.S. Route 58 Corridor Development Fund, subject to their appropriation by the General Assembly, (ii) to the extent required, from revenues legally available from the Transportation Trust Fund and (iii) to the extent required, from any other legally available funds which shall have been appropriated by the General Assembly.

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

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

3. That if any part of this Act or the application thereof to any person or circumstance is held invalid by a court of competent jurisdiction, such holding shall not affect the validity of the remainder of the provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.