

# Code of Virginia

§ 33.1-1. State Highway and Transportation Board continued as Commonwealth Transportation Board; number and terms of members; removal from office; 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, 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, 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 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 "Commonwealth Transportation Commissioner"; and all references to "Department of Highways and Transportation" shall refer to the Department of Transportation.

(Code 1950, § 33-1; 1956, c. 87; 1970, c. 322; 1974, c. 462; 1984, c. 748; 1985, c. 448; 1986, Sp. Sess., c. 13; 1990, cc. 1, 317; 1995, cc. 195, 223; 1999, cc. 636, 673.)

§ 33.1-2. Residence requirements; statewide interest.

Of such Board, one member shall be a resident of the territory now included in the Bristol construction district, one in the Salem construction district, one in the Lynchburg construction district, one in the Staunton construction district, one in the Culpeper

construction district, one in the Fredericksburg construction district, one in the Richmond construction district, one in the Hampton Roads construction district and one in the Northern Virginia construction district. The remaining five members shall be appointed from the Commonwealth at large, but at least two shall reside in standard metropolitan statistical areas and be designated as urban at-large members, and at least two shall reside outside standard metropolitan statistical areas and be designated as rural at-large members. The at-large members shall be appointed to represent rural and urban transportation needs and be mindful of the concerns of seaports and seaport users, airports and airport users, railways and railway users, and mass transit and mass transit users. Each member so appointed shall be mindful of the best interest of the Commonwealth at large primarily instead of those of the district from which chosen or of the transportation interest represented.

(Code 1950, § 33-2; 1964, c. 265; 1970, c. 322; 1974, c. 462; 1982, c. 487; 1984, c. 748; 1986, Sp. Sess., c. 13; 2000, c. 49.)

§ 33.1-3. Secretary to be Chairman; Commonwealth Transportation Commissioner.

The Chairman of the Commonwealth Transportation Board shall be the Secretary of Transportation.

The Commonwealth Transportation Commissioner, hereinafter in this title sometimes called "the Commissioner," shall be the chief executive officer of the Department of Transportation. The Commissioner may, at the time of his appointment, be a nonresident of Virginia, shall be an experienced administrator, able to direct and guide the Department in the establishment and achievement of the Commonwealth's long-range highway and other transportation objectives and shall be appointed at large.

The Commissioner shall devote his entire time and attention to his duties as chief executive officer of the Department and shall receive such compensation as shall be fixed by the Commonwealth Transportation Board, subject to the approval of the Governor. He shall also be reimbursed for his actual travel expenses while engaged in the discharge of his duties.

In the event of a vacancy due to the death, temporary disability, retirement, resignation or removal of the Commissioner, the Governor may appoint and thereafter remove at his pleasure an "Acting Commonwealth Transportation Commissioner" until such time as the vacancy may be filled as provided in § 33.1-1. Such "Acting Commonwealth Transportation Commissioner" shall have all powers and perform all duties of the Commissioner as provided by law, and shall receive such compensation as may be fixed by the Governor. In the event of the temporary disability, for any reason, of the Commissioner, full effect shall be given to the provisions of § 2.2-605.

(Code 1950, § 33-3; 1960, c. 271; 1963, Ex. Sess., c. 3; 1964, c. 265; 1970, c. 322; 1974, c. 462; 1990, cc. 1, 317; 1995, cc. 195, 223; 2007, c. 896.)

§ 33.1-4. How testimony of members of Board and Commissioner taken in civil proceedings.

No member of the Commonwealth Transportation Board or the Commonwealth Transportation Commissioner shall be required to leave his office for the purpose of

testifying in any suit, action or other civil proceeding involving any of their official duties, but the deposition of any member of the Commonwealth Transportation Board or the Commonwealth Transportation Commissioner may be taken at the main office of the Commission in Richmond, after reasonable notice in writing has been given to the adverse party.

Any deposition taken pursuant to this section may be read in the pending suit, action or other civil proceeding. However, on motion to the court, filed at least ten days before the commencement of the trial, the judge may, for good cause shown, require any member of the Board or the Commissioner to attend and testify ore tenus.

(Code 1950, § 33-3.1; 1966, c. 369; 1970, c. 322; 1974, c. 462; 1995, cc. 195, 223.)

#### § 33.1-5.

Repealed by Acts 1980, c. 728.

#### § 33.1-6. Meetings; minutes.

The Board shall meet at least once in every three months and at such other times, on the call of the chairman or of a majority of the members, as may be deemed necessary to transact such business as may properly be brought before it. Six members shall constitute a quorum of the Board for all purposes.

It shall be the duty of the Board to keep accurate minutes of all meetings of the Board, in which shall be set forth all acts and proceedings of the Board in carrying out the provisions of this title.

(Code 1950, § 33-5; 1970, c. 322; 1974, c. 462.)

#### § 33.1-7. Offices.

The main office of the Board shall be located in the City of Richmond. In the discretion of the chairman, other offices may be established in the various construction districts of the Commonwealth as may be necessary or needful to carry out the provisions of this title.

(Code 1950, § 33-6; 1970, c. 322.)

#### § 33.1-8. Employees; delegation of responsibilities.

The Commonwealth Transportation Commissioner 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.

(Code 1950, § 33-7; 1952, c. 41; 1970, c. 322; 1974, c. 462; 1982, c. 177; 1983, c. 127; 1995, cc. 195, 223; 2001, cc. 69, 87.)

#### § 33.1-9. Oaths and bonds of members of Board.

The members of the Commonwealth Transportation Board shall each, before entering upon

the discharge of his duties, take an oath that he will faithfully and honestly execute the duties of the office during his continuance therein and each shall give a bond in such penalty as may be fixed by the Governor conditioned upon the faithful discharge of the duties of his office and the full and proper accounting for all public funds and property coming into his possession or under his control. The premium on such bonds shall be paid out of the state treasury out of the annual appropriation for the Commonwealth Transportation Board.

(Code 1950, § 33-9; 1970, c. 322; 1974, c. 462.)

§ 33.1-10. Salaries and expenses; how paid.

All salaries and expenses shall be paid from the state treasury out of the annual appropriation for the Commonwealth Transportation Board. Warrants for such salaries and expenses shall be issued by the Comptroller on certificates of the Commonwealth Transportation Commissioner to the parties entitled thereto, and shall be paid by the State Treasurer out of the funds appropriated for that purpose.

(Code 1950, § 33-10; 1970, c. 322; 1974, c. 462.)

§ 33.1-11. Defense of employees.

If any person employed by the Commonwealth Transportation Board shall be arrested or indicted or otherwise prosecuted on any charge arising out of any act committed in the discharge of his official duties, Commonwealth Transportation Commissioner may employ special counsel approved by the Attorney General to defend such employee. The compensation for special counsel employed, pursuant to this section, shall, subject to the approval of the Attorney General, be paid out of the funds appropriated for the administration of the Commonwealth Transportation Board.

(Code 1950, § 33-11.1; 1958, c. 542; 1970, c. 322; 1974, c. 462.)

§ 33.1-12. General powers and duties of Board, etc.; definitions.

The Commonwealth Transportation Board shall be vested with the following powers and shall have the following duties:

(1) Location of routes. To locate and establish the routes to be followed by the roads comprising systems of state highways between the points designated in the establishment of such systems. Such routes shall include corridors of statewide significance pursuant to § 33.1-23.03.

(2) Construction and maintenance contracts and activities related to passenger and freight rail and public transportation.

(a) To let all contracts to be administered by the Virginia Department of Transportation or the Department of Rail and Public Transportation for the construction, maintenance, and improvement of the roads comprising systems of state highways and for all activities related to passenger and freight rail and public transportation in excess of \$2 million. The Commonwealth Transportation Commissioner shall have authority to let all Virginia Department of Transportation-administered contracts for highway construction, maintenance, and improvements up to \$2 million in value. The Director of the Department

of Rail and Public Transportation shall have the authority to let contracts for passenger and freight rail and public transportation improvements up to \$2 million in value. The Commonwealth Transportation Commissioner is authorized to enter into agreements with localities, authorities, and transportation districts to administer projects and to allow those localities, authorities, and transportation districts to let contracts for highway construction, maintenance, and improvements within their jurisdictions. The Director of the Department of Rail and Public Transportation is authorized to enter into agreements with localities, authorities, and transportation districts to administer projects and to allow those localities, authorities, and transportation districts to let contracts for passenger and freight rail and public transportation activities within their jurisdictions. The Commonwealth Transportation Commissioner and the Director of the Department of Rail and Public Transportation shall report on their respective transportation contracting activities at least quarterly to the Board.

(b) The Commonwealth Transportation Board may award contracts for the construction of transportation projects on a design-build basis. These contracts may be awarded after a written determination is made by the Commonwealth Transportation Commissioner or the Director of the Department of Rail and Public Transportation, pursuant to objective criteria previously adopted by the Board regarding the use of design-build, that delivery of the projects must be expedited and that it is not in the public interest to comply with the design and construction contracting procedures normally followed. Such objective criteria will include requirements for prequalification of contractors and competitive bidding processes. These contracts shall be of such size and scope to encourage maximum competition and participation by agency prequalified and otherwise qualified contractors. Such determination shall be retained for public inspection in the official records of the Department of Transportation or the Department of Rail and Public Transportation, as the case may be, and shall include a description of the nature and scope of the project and the reasons for the Commissioner's or Director's determination that awarding a design-build contract will best serve the public interest. The provisions of this section shall supersede contrary provisions of subsection D of § 2.2-4303 and § 2.2-4306.

(c) For transportation construction projects valued in excess of \$100 million, the Commonwealth Transportation Board shall require that a financial plan be prepared. This plan shall include, but not be limited to, the following: (i) a complete cost estimate for all major project elements; (ii) an implementation plan with the project schedule and cost-to-complete information presented for each year; (iii) identified revenues by funding source available each year to meet project costs; (iv) a detailed cash-flow analysis for each year of the proposed project; and (v) efforts to be made to ensure maximum involvement of private enterprise and private capital.

(d) The Commonwealth Transportation Board may award contracts for the provision of equipment, materials, and supplies to be used in construction of transportation projects on a fixed-price basis. Any such contract may provide that the price to be paid for the provision of equipment, materials, and supplies to be furnished in connection with the projects shall not be increased but shall remain fixed until completion of the projects specified in the contracts. Material components of any such contract for annual and multi-year programs, including but not limited to maintenance, may be fixed at the outset of the projects and until completion based on best achievable prices.

(3) Traffic regulations. To make rules and regulations, from time to time, not in conflict with the laws of the Commonwealth, for the protection of and covering traffic on and the use of

systems of state highways and to add to, amend or repeal the same.

(4) Naming highways, bridges, and interchanges. To give suitable names to state highways, bridges, and interchanges and change the names of any highways, bridges, or interchanges forming a part of the systems of state highways, except such highways, bridges, or interchanges as have been or may hereafter be named by the General Assembly; provided that the name of living persons shall not be used for such purposes. The Department of Transportation shall place and maintain appropriate signs indicating the names of highways, bridges, and interchanges named by the Board or by the General Assembly. The costs of producing, placing, and maintaining these signs shall be paid by the counties, cities, and towns in which they are located. No name shall be given to any state highway, bridge or interchange by the Commonwealth Transportation Board unless and until the Commonwealth Transportation Board shall have received from the local governing body of the locality within which a portion of the facility to be named is located a resolution of that governing body requesting such naming.

(5) Compliance with federal acts. To comply fully with the provisions of the present or future federal aid acts. The Board may enter into all contracts or agreements with the United States government and may do all other things necessary to carry out fully the cooperation contemplated and provided for by present or future acts of Congress in the area of transportation.

(6) Information and statistics. To gather and tabulate information and statistics relating to transportation and disseminate the same throughout the Commonwealth. In addition, the Commissioner shall provide a report to the Governor, the General Assembly, the Commonwealth Transportation Board, and the public concerning the current status of all highway construction projects in the Commonwealth. This report shall be posted at least four times each fiscal year, but may be updated more often as circumstances allow. The report shall contain, at a minimum, the following information for every project in the Six-Year Improvement Program: (i) project description; (ii) total cost estimate; (iii) funds expended to date; (iv) project timeline and completion date; (v) statement of whether project is ahead of, on, or behind schedule; (vi) the name of the prime contractor; (vii) total expenditures of federal transportation funds in each county and city; (viii) total expenditures of state transportation funds in each county and city; (ix) statewide totals for federal, state, and local funds expended for highways; (x) statewide totals for federal, state, and local funds expended for transit; (xi) total funds expended on intercity passenger and freight rail line and trains; and (xii) total funds expended in each federal and state programmatic category. Use of one or more Internet websites may be used to satisfy this requirement. Project specific information posted on the Internet shall be updated daily as information is available.

(7) Policies and operation of Departments. To review and approve policies and transportation objectives of the Department of Transportation and the Department of Rail and Public Transportation, to assist in establishing such policies and objectives, to oversee the execution thereof, and to report thereon to the Commonwealth Transportation Commissioner and the Director of the Department of Rail and Public Transportation, respectively.

(8) Cooperation with other agencies and local governments.

(a) To cooperate with the federal government, the American Association of State Highway and Transportation Officials and any other organization in the numbering, signing and marking of highways, in the taking of measures for the promotion of highway safety, in research activities, in the preparation of standard specifications, in the testing of highway materials and otherwise with respect to transportation projects.

(b) To offer technical assistance and coordinate state resources to work with local governments, upon their request, in developing sound transportation components for their local comprehensive plans.

(9) Transportation.

(a) To monitor and, where necessary, approve actions taken by the Department of Rail and Public Transportation pursuant to Chapter 10.1 (§ 33.1-391.1 et seq.) of this title in order to ensure the efficient and economical development of public transportation, the enhancement of rail transportation, and the coordination of such rail and public transportation plans with highway programs.

(b) To coordinate the planning for financing of transportation needs, including needs for highways, railways, seaports, airports, and public transportation and to set aside funds as provided in § 33.1-23.03:1. To allocate funds for these needs pursuant to §§ 33.1-23.1 and 58.1-638, the Board shall adopt a Six-Year Improvement Program of anticipated projects and programs by July 1 of each year. This program shall be based on the most recent official Transportation Trust Fund revenue forecast and shall be consistent with a debt management policy adopted by the Board in consultation with the Debt Capacity Advisory Committee and the Department of the Treasury.

(c) To recommend to the General Assembly for their consideration at the next session of the General Assembly, objective criteria to be used by the Board in selecting those transportation projects to be advanced from the feasibility to the construction stage. If such criteria are enacted into law, such objectives shall apply to the interstate, primary, and urban systems of highways.

(d) To enter into contracts with local districts, commissions, agencies, or other entities created for transportation purposes.

(e) To promote increasing private investment in Virginia's transportation infrastructure, including but not limited to acquisition of causeways, bridges, tunnels, highways, and other transportation facilities.

(10) Contracts with other states. To enter into all contracts with other states necessary for the proper coordination of the location, construction, maintenance, improvement, and operation of transportation systems, including the systems of state highways with the highways of such other states and, where necessary, to seek the approval of such contracts by the Congress of the United States.

(11) Use of funds. To administer, distribute, and allocate funds in the Transportation Trust Fund as provided by law. The Commonwealth Transportation Board shall ensure that the total funds allocated to any highway construction project are equal to total expenditures within 12 months following completion of the project. However, this requirement shall not apply to debt service apportionments pursuant to § 33.1-23.3 or 33.1-23.4.

(12) Financial and investment advisors. With the advice of the Secretary of Finance and the State Treasurer, to engage a financial advisor and investment advisor who may be anyone within or without the government of the Commonwealth, to assist in planning and making decisions concerning the investment of funds and the use of bonds for transportation purposes. The work of these advisors shall be coordinated with the Secretary of Finance and the State Treasurer.

(13) The powers of the Virginia Aviation Board set out in Chapter 1 (§ 5.1-1 et seq.) of Title 5.1 and the Virginia Port Authority set out in Chapter 10 (§ 62.1-128 et seq.) of Title 62.1 are in no way diminished by the provisions of this title.

(14) To enter into payment agreements with the Treasury Board related to payments on bonds issued by the Commonwealth Transportation Board.

(15) Outdoor theaters. By regulation:

(a) To prevent the erection of moving picture screens of outdoor theaters in such a manner as to be ordinarily visible from any highway;

(b) To require that a sufficient space is left between any highway and the entrance to any outdoor theater to prevent congestion on the highway; and

(c) To require that outdoor theater entrances and exits are adequately lighted and marked.

(16) Establishment of highway user fees for the systems of state highways. When the traffic-carrying capacity of any system of state highways or a portion thereof is increased by construction or improvement, the Commonwealth Transportation Board may enter into agreements with localities, authorities, and transportation districts to establish highway user fees for such system of state highways or portion thereof that the localities, authorities, and transportation districts maintain.

(17) Subject to compliance with applicable federal regulations, the Commonwealth Transportation Board shall establish a plan for identification and acquisition of rights-of-way that may be needed within the corridors designated on the Statewide Transportation Plan.

The term "public transportation" or "mass transit" as used in this title means passenger transportation by rubber-tired, rail, or other surface conveyance which provides shared ride services open to the general public on a regular and continuing basis. The term does not include school buses; charter or sight-seeing service; vehicular ferry service that serves as a link in the highway network; or human service agency or other client-restricted transportation.

(Code 1950, § 33-12; 1956, c. 92; 1964, c. 265; 1970, c. 322; 1974, c. 462; 1977, c. 150; 1978, c. 650; 1986, Sp. Sess., c. 13; 1988, cc. 844, 903; 1989, c. 727; 1992, c. 167; 1995, c. 94; 2001, c. 349; 2003, cc. 281, 533, 560; 2004, c. 110; 2005, cc. 839, 919; 2006, cc. 197, 417, 833, 924; 2006, Sp. Sess. I, c. 8; 2007, c. 337; 2008, Sp. Sess. II, c. 5; 2009, cc. 670, 690.)

§ 33.1-12.01. Fees for participating in the Integrated Directional Sign Program.

In addition to the duties set forth in § 33.1-12 of the Code of Virginia, the Commonwealth Transportation Board shall establish reasonable fees to be collected by the Commonwealth



Transportation Commissioner from any qualified entity for the purpose of participating in the Integrated Directional Sign Program (IDSP) administered by the Department of Transportation or its agents that is designed to provide information to the motoring public relating to gasoline and motor vehicle services, food, lodging, attractions or other categories as defined by the IDSP. Such fees shall be deposited into a special fund specifically accounted for and used by the Commissioner solely to defray the actual costs of supervising and administering the signage programs. Included in these costs shall be a reasonable margin, not to exceed ten percent, in the nature of a reserve Fund.

(2005, c. 491.)

#### § 33.1-12.1. Agreements between Commissioner and certain cities and towns.

Notwithstanding the provisions of §§ 33.1-12 and 33.1-23.3, the Commonwealth Transportation Commissioner, pursuant to a resolution adopted by the Commonwealth Transportation Board and following receipt of a resolution adopted by a city or town council to which funds are apportioned pursuant to § 33.1-23.3, may enter into an agreement with any such city or town pursuant to which the city or town assumes responsibility for the design, right-of-way acquisition, and construction of urban system highways or portions thereof in such city or town, using funds allocated pursuant to subdivision 2 of subsection B of § 33.1-23.1.

(2004, c. 623.)

#### § 33.1-12.2. Commissioner to establish community service landscaping program.

The Commissioner shall establish a program whereby persons convicted of nonviolent misdemeanors who have received a suspended sentence or probation can fulfill their community service requirements by mowing rights-of-way and performing other landscaping maintenance tasks for roads and highways that the Department has the responsibility to maintain.

(2008, c. 688.)

#### § 33.1-13. General powers of Commissioner.

Except such powers as are conferred by law upon the Commonwealth Transportation Board, the Commonwealth Transportation Commissioner shall have the power to do all acts necessary or convenient for constructing, improving, maintaining, and preserving the efficient operation of the roads embraced in the systems of state highways and to further the interests of the Commonwealth in the areas of public transportation, railways, seaports, and airports. And as executive head of the Transportation Department, the Commissioner is specifically charged with the duty of executing all orders and decisions of the Board and he may, subject to the provisions of this chapter, require that all appointees and employees perform their duties under this chapter.

In addition, the Commissioner, in order to maximize efficiency, shall take such steps as may be appropriate to outsource or privatize any of the Department's functions that might reasonably be provided by the private sector.

(Code 1950, § 33-13; 1970, c. 322; 1974, c. 462; 1978, c. 652; 1986, Sp. Sess., c. 13;

2007, cc. 863, 896, 928.)

§ 33.1-13.01. Annual report on outsourcing, privatization and downsizing, maximizing revenue generation, and increasing the role of the private sector.

The Commonwealth Transportation Commissioner shall annually report in writing to the General Assembly, no later than November 30 of each year, on all actions and initiatives of the Virginia Department of Transportation in the preceding fiscal year that involved outsourcing, privatization, and downsizing. Further, the Commissioner shall provide, in writing to the General Assembly, detailed and specific plans for outsourcing, privatization, and downsizing in the current fiscal year, including, but not limited to, appropriate asset management and intelligent transportation system functions and services. Such report shall include a description of efforts that have been made, are under way, or are to be undertaken for maximizing the generation of revenue from existing assets of the Department of Transportation, including but not limited to real estate, and increasing the role of the private sector and public-private partnerships in the leasing of real estate and other assets in the development of highway projects.

(2006, cc. 420, 544; 2006, Sp. Sess. I, c. 7.)

§ 33.1-13.02. Biennial report on maintaining and operating existing transportation infrastructure.

No later than September 15 of each odd-numbered year, the Virginia Department of Transportation shall submit to the Governor, the Joint Legislative Audit and Review Commission, and the Commonwealth Transportation Board a report on the condition of and needs for maintaining and operating the existing transportation infrastructure in the Commonwealth for all asset management and maintenance, based on an asset management methodology. Such methodology shall, in accordance with generally accepted engineering principles and business practices, identify and prioritize maintenance and operations needs, including those for pavement, technology, bridges and other structures, pipes and draining, and congestion management and reduction. Reports shall include (i) the performance standards to be used to determine those needs, (ii) an estimate, for the upcoming two fiscal years, of the budget required to meet them, (iii) employment level goals for the next two years, and (iv) the percentage of asset management under private contract.

(2007, cc. 335, 355.)

§ 33.1-13.1. Policy of the Commonwealth regarding use of highways by motorcycles; discrimination by political subdivisions prohibited.

In formulating transportation policy; promulgating regulations; allocating funds; and planning, designing, constructing, equipping, operating and maintaining transportation facilities, no action of the Commonwealth Transportation Board, the Commonwealth Transportation Commissioner, or the Virginia Department of Transportation shall in any way have the effect of discriminating against motorcycles, motorcycle operators, or motorcycle passengers. No regulation or action of the Board, Commissioner or Department shall have the effect of enacting a prohibition or imposing a requirement that applies only to motorcycles or motorcyclists, and the principal purpose of which is to restrict or inhibit access of motorcycles and motorcyclists to any highway, bridge, tunnel, or other

transportation facility.

The provisions of this section shall also apply to transportation facilities and projects undertaken or operated by counties, cities, towns, and other political subdivisions of the Commonwealth where public funds have been used in whole or in part to plan, design, construct, equip, operate, or maintain the facility or project.

(1999, cc. 332, 496; 2001, cc. 68, 83.)

§ 33.1-14. Bookkeeping system.

The chairman shall, with the aid and advice of the Auditor of Public Accounts, cause to be maintained a complete and modern system of bookkeeping for the Department of Transportation and the books to be kept by the Department shall show in detail all receipts and disbursements of the Department, the source of such receipts and the purpose, amount and recipient of all disbursements.

(Code 1950, § 33-14; 1970, c. 322; 1974, c. 462.)

§ 33.1-15.

Reserved.

§ 33.1-16. Furnishing information regarding right-of-way transactions.

Upon written request to the central office of the Department of Transportation, the Commissioner shall furnish information regarding right-of-way transactions where any public funds are expended. Such information shall not be released prior to sixty days following the transaction to any person not a party directly interested in such transaction.

The information referred to herein shall consist of the following (1) name of the person to whom any sum was paid for land or interest therein; (2) the amount of land or interest therein acquired from such person; and (3) the amount paid such person for land and the amount paid for damage resulting to the remaining property of such person.

(Code 1950, § 33-15.1; 1958, c. 316; 1960, c. 352; 1970, c. 322; 1974, c. 462.)

§ 33.1-17.

Repealed by Acts 1976, c. 746.

§ 33.1-18. Location of routes.

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

If a public hearing is requested, written notice of the time and place of the hearing shall be given, not less than thirty days prior to the hearing, to the governing body of the county,

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

All public hearings on the location or possible location of a route shall be open forums that afford citizens opportunities to obtain route location information and other pertinent information on a proposed project, and to submit their hearing comments in writing or to present them directly to a verbatim recorder. In addition, upon the written request of a member of the governing body of the county, city, or town in which the route is proposed to be located, or upon the written request of twenty-five citizens, these public hearings shall afford citizens an opportunity to present their comments to representatives of the Department of Transportation directly, one speaker at a time, in a public forum following a traditional hearing format. A written request for a traditional hearing must be received within fourteen days following the first published notice of the hearing or willingness to hold a hearing.

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

(Code 1950, § 33-17; 1970, c. 322; 1992, c. 44; 2000, c. 489.)

#### § 33.1-19. Effect of Board's rules and regulations.

The rules and regulations together with any additions or amendments thereto, prescribed by the Board under the provisions of subdivision (3) of § 33.1-12, shall have the force and effect of law and any person, firm or corporation violating any such rule or regulation or any addition or amendment thereto shall be guilty of a misdemeanor and, upon conviction, be fined not less than \$5 nor more than \$100 for each offense. Such person shall be civilly liable to the Commonwealth for the actual damage sustained by the Commonwealth by reason of his wrongful act. Such damages may be recovered at the suit of the Commonwealth Transportation Board and, when collected, paid into the state treasury to the credit of the Department of Transportation. But no such rules and regulations or additions or amendments thereto, or repeals thereof, shall become effective until sixty days shall have elapsed following their adoption by the Board.

(Code 1950, § 33-18; 1970, c. 322; 1974, c. 462.)

#### § 33.1-19.1. Environmental permits for highway projects; timely review.

Notwithstanding any other provision of state law or regulation, any state agency, board, or commission that issues a permit required for a highway construction project pursuant to Title 10.1, 28.2, 29.1, or 62.1 of the Code of Virginia shall, within 15 days of receipt of an individual permit application, review the application for completeness and either accept the application or request additional specific information from the Department of Transportation. Unless a shorter period is provided by law, regulation, or agreement, the state agency, board, or commission shall within 120 days of receipt of a complete application issue the permit, issue the permit with conditions, deny the permit, or decide

whether a public meeting or hearing is required by law. If a public meeting or hearing is held, it shall be held within 45 days of the decision to conduct such a proceeding and a final decision as to the permit shall be made within 90 days of completion of the public meeting or hearing. For coverage under general permits issued pursuant to Title 10.1, 28.2, 29.1, or 62.1, the state agency, board, or commission that issues such permits shall, within 10 business days of receipt of an application from the Department of Transportation for a road or highway construction project, review the application for completeness and either accept the application or request additional specific information from the Department of Transportation. Coverage under the general permit shall be approved, approved with conditions, or denied within 30 business days of receipt of a complete application.

(2005, c. 781; 2007, c. 896.)

§ 33.1-20.

Repealed by Acts 1979, c. 607.

§ 33.1-21. Employees as policemen to enforce rules.

In order properly to enforce such rules and regulations, and additions and amendments thereto, the Board may designate and appoint any or all of the employees of the Board, special policemen, with the powers of a sheriff, for the purpose aforesaid.

(Code 1950, § 33-20; 1970, c. 322.)

§ 33.1-22. Copies of rules as evidence.

Copies of such rules and regulations and of additions or amendments thereto, printed under the authority of the Commonwealth Transportation Board, shall be admissible in all of the courts of this Commonwealth without further proof and given the force and effect prescribed hereby and the fact that such printed copies bear the name of the Commonwealth Transportation Board shall be prima facie evidence that they are duly adopted and promulgated under the provisions hereof and that they are true copies of the rules and regulations, or of any additions and amendments thereto, adopted pursuant to the provisions of subdivision (3) of § 33.1-12.

(Code 1950, § 33-21; 1970, c. 322; 1974, c. 462.)

§ 33.1-23. Sections not applicable to certain engines and tractors.

The provisions of subdivision (3) of § 33.1-12 and of the preceding three sections (§§ 33.1-19, 33.1-21, and 33.1-22) shall not apply to traction engines and tractors, weighing not less than five tons, when drawing threshing machines, hay balers or other farm machinery for local farm use.

(Code 1950, § 33-22; 1970, c. 322.)

§ 33.1-23.01. Definition of the term "allocation".

For the purposes of this article, the term "allocation" shall mean a commitment to expend funds available for construction during each fiscal year. Funds which cannot be expended as allocated within each fiscal year shall be identified as part of future commitments and

the reason for the failure to spend allocations shall be specifically included in the annual construction improvement program.

(1982, c. 418.)

§ 33.1-23.02. Definition of the terms "maintenance" and "asset management."

A. For the purpose of this title, unless otherwise explicitly provided, the term "maintenance" shall include (i) ordinary maintenance, (ii) maintenance replacement, (iii) operations that include, but are not limited to, traffic signal synchronization, incident management, other intelligent transportation system functions, and (iv) any other categories of maintenance which may be designated by the Commissioner.

B. 1. For the purposes of this title, unless otherwise explicitly provided, the term "asset management" shall mean a systematic process of operating and maintaining the state system of highways by combining engineering practices and analysis with sound business practices and economic theory to achieve cost-effective outcomes.

2. The Department shall develop asset management practices in the operation and maintenance of the state system of highways.

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

(1985, c. 42; 2002, cc. 302, 570; 2006, Sp. Sess. I, c. 9.)

§ 33.1-23.03. Board to develop and update Statewide Transportation Plan.

A. The Commonwealth Transportation Board shall, with the assistance of the Office of Intermodal Planning and Investment, conduct a comprehensive review of statewide transportation needs in a Statewide Transportation Plan setting forth assessment of capacity needs for all corridors of statewide significance, regional networks, and improvements to promote urban development areas established pursuant to § 15.2-2223.1. The assessment shall consider all modes of transportation. Such corridors shall be planned to include multimodal transportation improvements, and the plan shall consider corridor location in planning for any major transportation infrastructure, including environmental impacts and the comprehensive land use plan of the locality in which the corridor is planned. In the designation of such corridors, the Commonwealth Transportation Board shall not be constrained by local, district, regional, or modal plans.

This Statewide Transportation Plan shall be updated as needed, but no less than once every five years. The plan shall promote economic development and all transportation modes, intermodal connectivity, environmental quality, accessibility for people and freight, and transportation safety.

B. The Statewide Transportation Plan shall establish goals, objectives, and priorities that cover at least a 20-year planning horizon, in accordance with federal transportation planning requirements. The plan shall include quantifiable measures and achievable goals relating to, but not limited to, congestion reduction and safety, transit and high-occupancy vehicle facility use, job-to-housing ratios, job and housing access to transit and pedestrian facilities, air quality, movement of freight by rail, and per capita vehicle miles traveled. The Board shall consider such goals in evaluating and selecting transportation improvement projects for inclusion in the Six-Year Improvement Program pursuant to § 33.1-12.

C. The plan shall incorporate the approved long-range plans' measures and goals developed by the applicable regional organizations. Each such plan shall be summarized in a public document and made available to the general public upon presentation to the Governor and General Assembly.

D. It is the intent of the General Assembly that this plan assess transportation needs and assign priorities to projects on a statewide basis, avoiding the production of a plan which is an aggregation of local, district, regional, or modal plans.

(1985, c. 320; 2001, cc. 764, 772; 2002, c. 639; 2007, c. 896; 2009, cc. 670, 690, 864, 871.)

#### § 33.1-23.03:001. Statewide Pedestrian Policy.

The Commonwealth Transportation Board shall prepare and update as needed a Statewide Pedestrian Policy. The Board shall:

1. Provide opportunities for receipt of comments, suggestions, and information from local governments, business and civic organizations, and other concerned parties;
2. Identify and evaluate needs at statewide, regional and local levels for additional facilities required to promote pedestrian access to schools, places of employment and recreation, and major activity centers;
3. Consider and evaluate potential ways of meeting these needs; and
4. Set forth conclusions as to goals, objectives, and strategies to meet these needs in a safety-conscious manner.

The Board shall coordinate the development of the Statewide Pedestrian Policy with that of the Statewide Transportation Plan provided for in § 33.1-23.03 and cover the same twenty-year planning horizon. The Statewide Pedestrian Policy shall be summarized in a public document and made available to the general public upon presentation to the Governor and General Assembly, either in combination with the Statewide Transportation Plan or as a separate document.

(2002, c. 453.)

#### § 33.1-23.03:002. Goals for addressing transportation needs of populations with limited mobility.

The Commonwealth Transportation Board, in cooperation with other local, regional, or statewide agencies and entities vested with transportation planning responsibilities, shall

establish specific mobility goals for addressing the transportation needs of populations with limited mobility, including, but not necessarily limited to, the elderly, persons with disabilities that limit their mobility, persons not served by any form of mass transit, and those who, for whatever reasons, cannot afford motor vehicles or cannot be licensed to drive them. Such goals, once established, shall be considered in the development and implementation of the Statewide Transportation Plan required by § 33.1-23.03.

(2006, cc. 395, 508.)

§ 33.1-23.03:01. Distribution of certain federal funds.

Metropolitan Planning Organizations (MPOs) as defined under Title 23 U.S.C. 134 and Section 8 of the Federal Transit Act shall be authorized to issue contracts for studies and to develop and approve transportation plans and improvement programs to the full extent permitted by federal law.

(1994, c. 741.)

§ 33.1-23.03:1. Transportation Trust Fund.

There is hereby created in the Department of the Treasury a special nonreverting fund to be known as the Transportation Trust Fund, consisting of:

1. Funds remaining for highway construction purposes, among the several highway systems pursuant to § 33.1-23.1.
2. [Repealed.]
3. The additional revenues generated by enactments of Chapters 11, 12 and 15 of the Acts of Assembly, 1986 Special Session, and designated for this fund.
4. Tolls and other revenues derived from the projects financed or refinanced pursuant to this title which are payable into the state treasury and tolls and other revenues derived from other transportation projects, which may include upon the request of the applicable appointed governing body, as soon as their obligations have been satisfied, such tolls and revenue derived for transportation projects pursuant to § 33.1-253 (Chesapeake Bay Bridge and Tunnel District) and to the Richmond Metropolitan Authority, established in Chapter 70 (§ 15.2-7000 et seq.) of Title 15.2, or if the appointed governing body requests refunding or advanced refunding by the Board and such refunding or advanced refunding is approved by the General Assembly. Such funds shall be held in separate subaccounts of the Transportation Trust Fund to the extent required by law or the Board.
5. Tolls and other revenues derived from the Richmond-Petersburg Turnpike, provided that such funds shall be held in a separate subaccount of the Transportation Trust Fund and allocated as set forth in Chapter 574 of the Acts of Assembly of 1983 until expiration of that Act.
6. Such other funds as may be appropriated by the General Assembly from time to time, and designated for this fund.
7. All interest, dividends and appreciation which may accrue to the Transportation Trust Fund and the Highway Maintenance and Construction Fund, except that interest on funds



becoming part of the Transportation Trust Fund under subdivision 1 and the Highway Maintenance and Construction Fund shall not become part of the Transportation Trust Fund until July 1, 1988.

8. All amounts required by contract to be paid over to the Transportation Trust Fund.

9. Concession payments paid to the Commonwealth by a private entity pursuant to the Public-Private Transportation Act of 1995 (§ 56-556 et seq.).

(1986, Sp. Sess., c. 13; 1988, cc. 844, 903; 1991, cc. 666, 713; 1992, c. 108; 1993, c. 793; 2006, c. 922; 2009, c. 471.)

#### § 33.1-23.03:2. Commonwealth Port Fund, Commonwealth Airport Fund and Commonwealth Mass Transit Fund.

Of the funds becoming part of the Transportation Trust Fund pursuant to subdivision 3 of § 33.1-23.03:1, 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 14.5 percent in fiscal year 1998-1999 and 14.7 percent in fiscal year 1999-2000 and thereafter shall be set aside as the Commonwealth Mass Transit Fund. The remaining 78.9 percent of the funds deposited into or held in the Transportation Trust Fund in fiscal year 1998-1999, and 78.7 percent of the funds deposited into or held in the Transportation Trust Fund in fiscal year 1999-2000 and thereafter, pursuant to subdivision 3 of § 33.1-23.03:1, together with funds deposited pursuant to subdivisions 1 and 6 of § 33.1-23.03:1, shall be expended for capital improvements including construction, reconstruction, maintenance, and improvements of highways according to the provisions of § 33.1-23.1 B or to secure bonds issued for such purposes, as provided by the Board and the General Assembly.

(1986, Sp. Sess., c. 13; 1998, cc. 905, 907.)

#### § 33.1-23.03:3.

Repealed by Acts 1988, cc. 844, 903.

#### § 33.1-23.03:4. Toll Facilities Revolving Account.

A. Subject to any obligations to existing bondholders, but notwithstanding §§ 2.2-1806 and 58.1-13, funds deposited into the Transportation Trust Fund pursuant to subdivision 4 of § 33.1-23.03:1 shall be held in a separate subaccount to be designated the "Toll Facilities Revolving Account," hereinafter referred to as "the Account," together with all interest, dividends, and appreciation which accrue to the Transportation Trust Fund and which are not otherwise specifically directed by law or reserved by the Board in the resolution authorizing issuance of bonds to finance toll facilities. In addition, any funds received from the federal government or any agency or instrumentality thereof that, pursuant to federal law, may be made available, as loans or otherwise, to private persons or entities for transportation purposes, hereinafter referred to as "federal funds," shall be deposited in a segregated subaccount within the Account. Payments received with respect to any loan made from such segregated subaccount pursuant to subdivision 2 of subsection B of this section shall also be deposited into such segregated subaccount in the Account.

A1. User fees collected in excess of the annual debt service, operations and maintenance expenses, and necessary administrative costs including any obligations to the Toll Facilities Revolving Account and any other obligations for qualifying facilities with respect to which an agency of the Commonwealth is the Responsible Public Entity under the Public-Private Transportation Act of 1995 (§ 56-556 et seq.) shall be deposited and held in the "Regional Toll Facilities Revolving Subaccount," hereinafter referred to as the "Regional Account," together with all interest, dividends and appreciation for use within the metropolitan planning organization region within which the facility exists. Payments received with respect to any loan made from such Regional Account pursuant to subdivision 3 of subsection B of this section shall also be deposited into the Regional Account.

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

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

2. From funds in the segregated subaccount in the Account into which federal funds are deposited in conjunction with the Public-Private Transportation Act of 1995 (§ 56-556 et seq.) and pursuant to the terms of a comprehensive agreement between a responsible public entity and a private operator as provided for in that act:

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

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

All definitions of terms shall be as provided in the Public-Private Transportation Act of 1995;

3. From funds in the Regional Account:

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

b. To pay the Commonwealth's, its agency's, or its political subdivision's costs incurred or to be incurred in accordance with a comprehensive agreement with respect to a transportation facility within the same metropolitan planning organization region as the facility which generated the excess revenue. All definitions of terms shall be as provided in

the Public-Private Transportation Act of 1995; and

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

C. The Board may transfer from the Account to the Transportation Trust Fund for allocation pursuant to subsection B of § 33.1-23.1 any interest revenues and, subject to applicable federal limitations, federal funds not committed by the Board to the purposes provided for in subsection B of this section.

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

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

(1986, Sp. Sess., c. 13; 1995, cc. 545, 576; 1997, c. 501.)

#### § 33.1-23.03:5. Administration of Transportation Trust Fund.

The Transportation Trust Fund shall be established on the books of the Comptroller so as to segregate the amounts appropriated to the Fund and the amounts earned or accumulated by such trust fund. No portion of such trust fund shall be used for a purpose other than as provided herein. Funds remaining in the Transportation Trust Fund at the end of a biennium shall not revert to the general fund but shall remain in the trust fund, to be used for the purposes set forth in §§ 33.1-23.03:1 through 33.1-23.03:4 and shall accumulate interest and dividends throughout the existence of the trust fund. Whenever in the Board's opinion there are funds in the Transportation Trust Fund in excess of the amount required to meet the current needs and demands of the transportation program, the Board may invest such excess funds in securities that, in its judgment, will be readily convertible into money. Such securities may include, but not be limited to, debentures and other government and corporate obligations, common and preferred stocks limited to thirty percent of total trust funds investments based on cost, "prime quality" commercial paper, as defined and limited by § 2.2-4502, bankers' acceptances, bonds, money market funds, and overnight, term and open repurchase agreements. The investment of moneys held in the Transportation Trust Fund shall be administered by the state treasury under guidelines adopted by the Board pursuant to this section.

The Treasurer may, at his option, manage such funds, or hire professional outside investment counsel to manage part or all of such funds.

The selection of services related to the management, purchase or sale of authorized investments shall be governed by the foregoing standard and shall not be subject to the provisions of Chapter 43 (§ 2.2-4300 et seq.) of Title 2.2.

(1986, Sp. Sess., c. 13.)

§ 33.1-23.03:6. Funding for extraordinary repairs.

Notwithstanding any contrary provision of the Code, the Commonwealth Transportation Board shall have the authority to provide, from revenues available for highway capital improvements under § 33.1-23.03:2, except for revenues pledged to secure any bonds issued for transportation purposes, for exceptionally heavy expenditures for repairs or replacements made necessary by highway damage resulting from extraordinary accidents, vandalism, weather conditions, or acts of God as well as to respond to federal funding initiatives which require matching funds.

(1986, Sp. Sess., c. 13.)

§ 33.1-23.03:7. Liability exemption of officers and employees.

When investments are made in accordance with this section, no Board member or employee thereof, or treasury official shall be personally liable for any loss therefrom in the absence of negligence, malfeasance, misfeasance, or nonfeasance.

(1986, Sp. Sess., c. 13.)

§ 33.1-23.03:8. Priority Transportation Fund established.

A. There is hereby created in the state treasury a special nonreverting fund to be known as the Priority Transportation Fund, hereafter referred to as "the Fund." The Fund shall be established on the books of the Comptroller. Interest earned on moneys in the Fund shall remain in the Fund and be credited to it. All funds as may be designated in the appropriation act for deposit to the Fund shall be paid into the state treasury and credited to the Fund. Such funds shall include:

1. A portion of the moneys actually collected, including penalty and interest, attributable to any increase in revenues from the taxes imposed under Chapter 22 (§ 58.1-2200 et seq.) of Title 58.1, with such increase being calculated as the difference between such tax revenues collected in the manner prescribed under Chapter 22 less such tax revenues that would have been collected using the prescribed manner in effect immediately before the effective date of Chapter 22, computed without regard to increases in the rates of taxes under Chapter 22 pursuant to enactments of the 2007 Session of the General Assembly. The portion to be deposited to the Fund shall be the moneys actually collected from such increase in revenues and allocated for highway and mass transit improvement projects as set forth in § 33.1-23.03:2, but not including any amounts that are allocated to the Commonwealth Port Fund and the Commonwealth Airport Fund under such section. There shall also be deposited into the Fund all additional federal revenues attributable to Chapter 22 (§ 58.1-2200 et seq.) of Title 58.1;

2. Beginning with the fiscal year ending June 30, 2000, and for fiscal years thereafter, all revenues that exceed the official forecast, pursuant to § 2.2-1503, for (i) the Highway Maintenance and Operating Fund and (ii) the allocation to highway and mass transit improvement projects as set forth in § 33.1-23.03:2, but not including any amounts that are allocated to the Commonwealth Port Fund and the Commonwealth Airport Fund under such section;

3. All revenues deposited into the Fund pursuant to § 58.1-2531; and

4. Any other such funds as may be transferred, allocated, or appropriated.

All moneys in the Fund shall first be used for debt service payments on bonds or obligations for which the Fund is expressly required for making debt service payments, to the extent needed. The Fund shall be considered a part of the Transportation Trust Fund. Any moneys remaining in the Fund, including interest thereon, at the end of each fiscal year shall not revert to the general fund but shall remain in the Fund. Moneys in the Fund shall be used solely for the purposes enumerated in subsection B of this section. Expenditures and disbursements from the Fund shall be made by the State Treasurer on warrants issued by the Comptroller.

B. The Commonwealth Transportation Board shall use the Fund to facilitate the financing of priority transportation projects throughout the Commonwealth. The Board may use the Fund either (i) by expending amounts therein on such projects directly, (ii) by payment to any authority, locality, commission or other entity for the purpose of paying the costs thereof, or (iii) by using such amounts to support, secure, or leverage financing for such projects. No expenditures from or other use of amounts in the Fund shall be considered in allocating highway maintenance and construction funds under § 33.1-23.1 or apportioning Transportation Trust Fund funds under § 58.1-638, but shall be in addition thereto. The Board shall use the Fund to facilitate the financing of priority transportation projects as designated by the General Assembly; provided, however, that, at the discretion of the Commonwealth Transportation Board, funds allocated to projects within a transportation district may be allocated among projects within the same transportation district as needed to meet construction cash-flow needs.

C. Notwithstanding any other provision of this section, beginning July 1, 2007, no bonds, obligations, or other evidences of debt (the bonds) that expressly require as a source for debt service payments or for the repayment of such bonds the revenues of the Fund, shall be issued or entered into unless at the time of the issuance the revenues then in the Fund or reasonably anticipated to be deposited into the Fund pursuant to the law then in effect are by themselves sufficient to make 100% of the contractually required debt service payments on all such bonds, including any interest related thereto and the retirement of such bonds.

(2000, cc. 1019, 1044; 2007, c. 896.)

#### § 33.1-23.03:9. Concession Payments Account.

A. Concession payments to the Commonwealth deposited into the Transportation Trust Fund pursuant to subdivision 9 of § 33.1-23.03:1 from qualifying transportation facilities developed and/or operated pursuant to the Public-Private Transportation Act of 1995 (§ 56-556 et seq.) shall be held in a separate subaccount to be designated the "Concession Payments Account," hereinafter referred to as "the Account," together with all interest, dividends, and appreciation that accrue to the Account and that are not otherwise specifically directed by law or reserved by the Board for other purposes allowed by law.

B. The Board may make allocations from the Account upon such terms and subject to such conditions as the Board deems appropriate, to:

1. Pay or finance all or part of the costs of programs or projects, including without limitation, the costs of planning, operation, maintenance, and improvements incurred in connection

with the acquisition and construction of projects, provided that allocations from the Account shall be limited to programs and projects that are reasonably related to or benefit the users of the qualifying transportation facility that was the subject of a concession pursuant to the Public-Private Transportation Act. The priorities of metropolitan planning organizations, planning district commissions, local governments, and transportation corridors shall be considered by the Board in making project allocations from moneys in the Account.

2. Repay funds from the Toll Facilities Revolving Account or the Transportation Partnership Opportunity Fund.

3. Pay the Board's reasonable costs and expenses incurred in the administration and management of the Account.

C. Concession payments to the Commonwealth for a qualifying transportation facility located within the boundaries of a rapid rail project for which a federal Record of Decision has been issued shall be held in a subaccount separate from the Concession Payments Account together with all interest, dividends, and appreciation that accrue to the subaccount. The Board may make allocations from the subaccount, as the Board deems appropriate, to:

1. Pay or finance all or part of the costs of planning, design, land acquisition, and improvements incurred in connection with the construction of such rapid rail project consistent with the issued federal Record of Decision, as may be revised from time to time; and

2. Upon determination by the Board that sufficient funds are or will be available to meet the schedule for construction of such rapid rail project, pay or finance all or part of the costs of planning, design, land acquisition, and improvements incurred in connection with other highway and public transportation projects within the corridor of the rapid rail project or within the boundaries of the qualifying transportation facility. In the case of highway projects, the Board shall follow an approval process generally in accordance with § 33.1-18.

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

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

(2006, c. 922.)

§ 33.1-23.03:10. Tolls for use of Interstate Highway System components.

A. Notwithstanding any contrary provision of this title and in accordance with all applicable federal and state statutes and requirements, the Commonwealth Transportation Board may impose and collect tolls from all classes of vehicles in amounts established by the Board for the use of any component of the Interstate Highway System within the Commonwealth.

However, prior approval of the General Assembly shall be required prior to the imposition and collection of any toll for use of all or any portion of Interstate Route 81. Such funds so collected shall be deposited into the Transportation Trust Fund established pursuant to § 33.1-23.03:1, subject to allocation by the Board as provided in this section.

B. The toll facilities authorized by this section shall be subject to the provisions of federal law for the purpose of tolling motor vehicles to finance interstate construction and reconstruction, promote efficiency in the use of highways, reduce traffic congestion, improve air quality and for such other purposes as may be permitted by federal law.

C. In order to mitigate traffic congestion in the vicinity of the toll facilities, no toll facility shall be operated without high-speed automated toll collection technology designed to allow motorists to travel through the toll facilities without stopping to make payments. Nothing in this subsection shall be construed to prohibit a toll facility from retaining means of non-automated toll collection in some lanes of the facility. The Board shall also consider traffic congestion and mitigation thereof and the impact on local traffic movement as factors in determining the location of the toll facilities authorized pursuant to this section.

D. The revenues collected from each toll facility established pursuant to this section shall be deposited into segregated subaccounts in the Transportation Trust Fund and may be allocated by the Commonwealth Transportation Board as the Board deems appropriate to:

1. Pay or finance all or part of the costs of programs or projects, including without limitation the costs of planning, operation, maintenance and improvements incurred in connection with the toll facility provided that such allocations shall be limited to programs and projects that are reasonably related to or benefit the users of the toll facility. The priorities of metropolitan planning organizations, planning district commissions, local governments, and transportation corridors shall be considered by the Board in making project allocations from such revenues deposited into the Transportation Trust Fund.

2. Repay funds from the Toll Facilities Revolving Account or the Transportation Partnership Opportunity Fund.

3. Pay the Board's reasonable costs and expenses incurred in the administration and management of the Toll Facility.

(2007, c. 477; 2008, cc. 602, 838.)

§ 33.1-23.04.

Expired.

§ 33.1-23.05. Revenue-sharing funds for systems in certain counties, cities, and towns.

A. From revenues made available by the General Assembly after January 1, 2008, and appropriated for the improvement, construction, or reconstruction of the systems of state highways, the Commonwealth Transportation Board shall make an equivalent matching allocation to any county, city, or town for designations by the governing body of up to \$1 million in county, city, or town general funds for use by the county, city, or town to improve, construct, or reconstruct the highway systems within such county, city, or town. After adopting a resolution supporting the action, the governing body may request revenue-

sharing funds to improve, construct, or reconstruct a highway system located in another locality, between two or more localities, or to bring subdivision streets, used as such prior to July 1, 1992, up to standards sufficient to qualify them for inclusion in the state primary and secondary system of highways. All requests for funding shall be accompanied by a prioritized listing of specified projects.

B. The allocation of funds to localities shall be only for the purposes set forth in subsection A. In allocating funds under this section, the Board shall give priority (i) first when such project is administered by the county, city, or town, either directly or by contract with another entity, (ii) second, when such county, city, or town commits more local funding than the amount of revenue-sharing funding requested, and (iii) third when the allocation will accelerate an existing project in the Six-Year Improvement Program or the locality's capital plans. Any funds remaining may be applied to any other project that requires an equivalent matching allocation from the governing body.

C. The Department will contract with the county, city, or town for the implementation of the project or projects. Such contract may cover either a single project or may provide for the locality's implementation of several projects during the fiscal year. The county, city, or town will undertake implementation of the particular project or projects by obtaining the necessary permits from the Department of Transportation in order to ensure that the improvement is consistent with the Department's standards for such improvements. At the request of the locality, the Department may provide the locality with engineering, right-of-way acquisition, and/or construction services for a project with its own forces. The locality shall provide payment to the Department for any such services. If administered by the Department, such contract shall also require that the governing body pay to the Department within 30 days the local revenue-sharing funds from its general fund upon written notice by the Department of its intent to proceed. Any project having funds allocated under this program shall be initiated in such a fashion where at least a portion of such funds have been expended within two subsequent fiscal years of allocation. Any revenue-sharing funds for projects not initiated after two subsequent fiscal years of allocation may be reallocated at the discretion of the Commonwealth Transportation Board.

D. Total Commonwealth funds allocated by the Board under this section shall not exceed \$50 million in any one fiscal year and no less than \$15 million each fiscal year, subject to appropriation for such purpose.

E. No more than three months prior to the end of any fiscal year in which less than the full program allocation has been allocated by the Board to specific governing bodies, those localities requesting the maximum allocation under subsection A may be allowed an additional allocation.

(2006, c. 827; 2008, c. 608.)

#### § 33.1-23.1. Allocation of funds among highway systems.

A. The Commonwealth Transportation 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 of highways, the primary system of state highways, the secondary system of state highways and for city and town street maintenance payments made pursuant to § 33.1-41.1 and payments made to counties which have withdrawn or elect to withdraw from the secondary system of state highways



pursuant to § 33.1-23.5:1.

B. After funds are set aside for administrative and general expenses and pursuant to other provisions in this title which provide for the disposition of funds prior to allocation for highway purposes, and after allocation is made pursuant to subsection A of this section, the Commonwealth Transportation Board may allocate each year up to 10% of the funds remaining for highway purposes for the undertaking and financing of rail projects that, in the Board's determination, will result in mitigation of highway congestion. After the forgoing allocations have been made, the Board shall allocate the remaining funds available for highway purposes, exclusive of federal funds for the interstate system, among the several highway systems for construction first pursuant to §§ 33.1-23.1:1 and 33.1-23.1:2 and then as follows:

1. Forty percent of the remaining funds exclusive of federal-aid matching funds for the interstate system shall be allocated to the primary system of state highways, including the arterial network, and in addition, an amount shall be allocated to the primary system as interstate matching funds as provided in subsection B of § 33.1-23.2.

2. Thirty percent of the remaining funds exclusive of federal-aid matching funds for the interstate system shall be allocated to urban highways for state aid pursuant to § 33.1-44.

3. Thirty percent of the remaining funds exclusive of federal-aid matching funds for the interstate system shall be allocated to the secondary system of state highways.

C. In addition, the Commonwealth Transportation Board, from funds appropriated for such purpose in the general appropriation act, shall allocate additional funds to the Cities of Newport News, Norfolk, and Portsmouth and the County of Warren in such manner and apportion such funds among such localities as the Board may determine, unless otherwise provided in the general appropriation act. The localities shall use such funds to address highway maintenance and repair needs created by or associated with port operations in those localities.

D. Notwithstanding the foregoing provisions of this section, the General Assembly may, through the general appropriations act, permit the Governor to increase the amounts to be allocated to highway maintenance, highway construction, either or both.

(1977, c. 578; 1979, c. 84; 1985, c. 42; 1986, c. 572; 2006, c. 937; 2007, c. 305.)

§ 33.1-23.1:1. Unpaved secondary road fund created; allocations.

A. Before funds are allocated for distribution for highway construction pursuant to § 33.1-23.1 B 1, B 2, and B 3, a fund shall be established for the paving of nonsurface treated secondary roads which carry fifty vehicles or more per day. Such fund shall contain 5.67 percent of the total funds available for highway construction under § 33.1-23.1 B 1, B 2, and B 3.

B. Such funds shall be distributed to counties in the secondary system based on the ratio of nonsurface treated roads in each county carrying fifty 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 § 33.1-23.4. 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.

(1979, c. 84; 1985, c. 42.)

§ 33.1-23.1:2. Allocation of funds for interstate match.

After making the allocations provided for in subsection A of § 33.1-23.1, but before making any allocations under subsections B 1, B 2, and B 3 of § 33.1-23.1, a fund shall be established for matching federal-aid interstate funds.

This fund shall be established annually by allocating to it all federal-aid interstate matching funds needed for the year, less the total amount of district primary allocations for the interstate federal-aid match allocated under subsection B of § 33.1-23.2.

(1985, c. 42.)

§ 33.1-23.2. Allocation of construction funds for primary system and interstate match.

A. The Commonwealth Transportation Board shall allocate such funds as are available under § 33.1-23.1 B 1 to the primary system of state highways, including the arterial network, for construction and shall apportion such funds among the nine construction districts so that each construction district shall be allocated a share of such funds equal to the proportion that such construction district bears to the Commonwealth as a whole in terms of: vehicle-miles traveled on the primary system, primary road lane mileage and a primary road need factor which adjusts the weights in the allocation formula for the construction district with the largest under-allocation relative to primary needs, with vehicle-miles traveled weighted seventy percent, primary road lane mileage weighted twenty-five percent, and the primary road need factor weighted five percent.

B. Out of each district's total allocation of primary funds pursuant to paragraph 1 of subsection B of § 33.1-23.1, the Board shall allocate all needed interstate federal-aid matching funds, up to a maximum of twenty-five percent of the district's primary allocation. Any additional interstate federal-aid matching funds needed in a district shall be allocated by the Board from the Interstate Federal-Aid Matching Fund established in § 33.1-23.1:2.

C. Notwithstanding subsection A of this section, the Board may provide for exceptionally heavy expenditures for repairs or replacements made necessary by highway damage resulting from accidents, severe weather conditions, acts of God or vandalism.

D. Notwithstanding subsection A, the Board may, from funds available under subdivision B 1 of § 33.1-23.1, provide funding for the construction of highway projects maintained or to be maintained by a municipality, provided such project involves a component of the National Highway System and such funds are derived from allocations to the highway construction district in which such project is located. Any allocation under this subsection shall not diminish funds allocated or allocable to any such municipality under § 33.1-23.3.

E. Such funds allocated to the primary system shall, as far as possible, be allotted prior to

the commencement of the fiscal year and public announcement made of such allotment but the Board shall not approve such allotment until after a public hearing at which political subdivisions of the Commonwealth and interested citizens may be heard.

In any case where any allotment of funds is made under this subsection to any county, all or a part of which subsequently is incorporated as or into a city or town, such allocation shall not be impaired thereby and the funds so allocated shall be expended as if such county or any part thereof had never become an incorporated city, but that portion of such city shall not be eligible to receive funds as a city during the same year it receives the funds allocated as a county or as any part of a county.

(1977, c. 578; 1984, c. 748; 1985, c. 42; 2007, cc. 146, 178.)

### § 33.1-23.3. Allocation of construction funds for urban system highways.

A. Such funds as are allocated to urban highways in (i) all towns that have more than 3,500 inhabitants according to the last preceding United States Census, (ii) all towns which, according to evidence satisfactory to the Commonwealth Transportation Board, have attained a population of more than 3,500 since the last preceding United States census, (iii) all incorporated towns which, on June 30, 1985, maintained certain streets under § 33.1-80 as then in effect, (iv) all cities regardless of their populations, and (v) the Towns of Wise, Lebanon, and Altavista pursuant to subdivision 2 of subsection B of § 33.1-23.1 shall be apportioned among the cities and towns of this Commonwealth by the Commonwealth Transportation Board in such a manner that each city or town to which these funds are allocable receives the same proportion of total funds available as the population of that city or town bears to the total population of all cities and towns among which such funds are allocable. For the purposes of this section, the term "population" means either the population according to the latest United States census or the latest population estimate of the Center for Public Service, whichever is more recent. Whenever any city or town qualifies under this section for allocation of funds, such qualification shall continue to apply to such city or town notwithstanding any subsequent changes in population and shall cease to apply only upon the subsequent enactment by the General Assembly of a measure in which the intent is clearly stated. All allocations made prior to July 1, 2001, to cities and towns meeting the criteria above are hereby ratified, validated, and confirmed.

B. No apportionment hereunder shall be made to any city or town which does not have an urban project or projects approved by the Commonwealth Transportation Board and in no case shall the apportionment to any city or town exceed the total estimated cost of the project or projects for which funds are allocated. Such funds shall, as far as possible, be allotted prior to the commencement of the fiscal year and public announcement made of such allotment. Any apportionment due but not received by any city or town in a fiscal year for use under this section shall accrue as a credit to such city or town and be held for its construction projects for five succeeding fiscal years. Funds accrued shall be apportioned prior to any other distribution under this section in the fiscal year requested by the city or town.

A portion of allocations made to any city or town under this section may be used on streets functionally classified as arterial for (i) the purchase of residue parcels or land resulting from highway construction or reconstruction projects where the purchase will result in necessary access control or land use control directly related to the purpose and need for

the project, (ii) improvements to traffic safety, (iii) improvement to traffic flow and transportation system use, or any combination of (i), (ii), and (iii). Notwithstanding other provisions of this section, not more than two-thirds of the annual urban system highway funds apportioned to a city or town under this section may be used to reimburse the locality for debt service for bonds or eligible project costs incurred on approved projects included in the Six-Year Improvement Program of the Commonwealth Transportation Board and the city's or town's capital improvement program. Such funds may also be used by the locality for debt service for bonds issued for, or eligible project costs incurred or to be incurred on, approved projects included, at the time such bonds are issued or such costs are incurred or are to be incurred, in the Six-Year Improvement Program of the Commonwealth Transportation Board and the city's or town's capital improvement program. Any such funds so apportioned to and received by such city or town, or any portion thereof, may be deposited in a special fund that shall be established separate and apart from any other funds, general or special.

When the city or town presents a resolution requesting that a portion of its annual urban system apportionment be set aside for reimbursement for, or payment of, debt service under this section for a specific eligible project, the Commonwealth Transportation Board shall, subject to appropriation and allocation, set aside no more than two-thirds of the anticipated annual apportionment of urban system funding to the city or town for such purpose, provided such funds have not been previously committed by the Board for projects contained in the Six-Year Improvement Program.

The setting aside and use of funds under this section for reimbursement for, or payment of, debt service shall be subject to such terms and conditions as may be prescribed by the Commonwealth Transportation Commissioner.

The provisions of this section shall not constitute a debt or obligation of the Commonwealth Transportation Board or the Commonwealth of Virginia.

C. The governing body of any city or town may, with the consent of the Commonwealth Transportation Board, expend urban system highway construction funds allocated annually to the city or town by the Commonwealth Transportation Board for the design, land acquisition, and construction of transportation projects that have been included in the Commonwealth Transportation Board's Six-Year Improvement Program and for the resurfacing, restoration, rehabilitation, reconstruction, and improvement of streets within the city or town for which the city receives maintenance payments under § 33.1-41.1.

D. At the election of each city or town, payment of the funds may be made in equal amounts, one in each quarter of the fiscal year, and shall be reduced, in the case of each city and town, by the amount of federal-aid construction funds credited to each city or town and the amount of funds forecasted to be expended by the Department of Transportation or the Department of Rail and Public Transportation for any project or projects on behalf of the city or town. Those cities or towns who decide to take over the responsibility for their construction program shall notify the Commonwealth Transportation Board by July 1 for implementation the following year.

(1977, c. 578; 1985, c. 42; 1987, cc. 523, 536, 545; 1989, c. 303; 1997, c. 494; 2001, c. 590; 2002, cc. 575, 598, 673; 2003, cc. 288, 870; 2009, cc. 52, 693.)

§ 33.1-23.4. Allocation of construction funds within secondary system.

A. Such funds as are allocated to the secondary system of state highways pursuant to paragraph 3 of subsection B of § 33.1-23.1 shall be apportioned among the several counties in the secondary system by the Commonwealth Transportation Board so that each such county shall be allocated a share of such funds equal to the proportion that such county bears to the Commonwealth as a whole in terms of area and population with population being weighted 80 percent, and area being weighted 20 percent. For the purpose of this section, "area" means the total land area of a county 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 Commonwealth Transportation Board.

For the purposes of this section, the term "population" shall mean either population according to the latest United States census or the latest population estimate of the Center for Public Service of the University of Virginia, whichever is more recent.

If so requested in a resolution adopted by the local governing body, funds allocated to any county under this section may be used to support primary highway system construction projects within the county.

Before allocating funds under the foregoing provisions of this section, the Board may provide for exceptionally heavy expenditures for repairs or replacements made necessary by highway damage resulting from accidents, severe weather conditions, acts of God or vandalism.

B. Notwithstanding other provisions of this section, not more than one-third of the annual secondary system highway funds apportioned to a county under this section may be used to reimburse the county for (i) debt service for bonds or (ii) eligible project costs incurred on approved projects included in the county's Secondary Six-Year Plan and the county's capital improvement program. Such funds may also be used by the county for debt service for bonds issued for, or eligible project costs incurred or to be incurred on, approved projects included, at the time such bonds are issued or such costs are incurred or are to be incurred, in the Six-Year Improvement Program of the Commonwealth Transportation Board and the county's capital improvement program. Any such funds so apportioned to and received by such county, or any portion thereof, may be deposited in a special fund that shall be established separate and apart from any other funds, general or special.

When a county presents a resolution requesting that a portion of its annual secondary construction allocation be set aside for reimbursement for, or payment of, debt service under this section for a specific eligible project, the Commonwealth Transportation Board shall, subject to appropriation and allocation, set aside no more than one-third of the anticipated annual allocation of secondary system construction funding to the county for such purpose, provided such funds have not been previously committed for projects contained in the county's Secondary Six-Year Plan.

The setting aside and use of funds under this section for reimbursement for, or payment of, debt service shall be subject to such terms and conditions as may be prescribed by the Commonwealth Transportation Commissioner.

The provisions of this section shall not constitute a debt or obligation of the Commonwealth Transportation Board or the Commonwealth of Virginia.

C. In counties having elected to manage the construction program for the secondary system of state highways within the county, in accordance with § 33.1-84.1, payment of funds from the allocation of secondary construction funds for the county may be made in equal amounts, one in each quarter of the fiscal year, and shall be reduced by the amount of federal-aid construction funds credited to each county, which will be reimbursed as qualifying expenditures occur and by the amount of funds forecast by the Department of Transportation and by the Department of Rail and Public Transportation to be expended for any construction project or projects or county-wide activities on behalf of the county or other financial obligations. Those counties that decide to take over the responsibility for the secondary construction program shall notify the Commonwealth Transportation Board by July 1 for implementation the following year. Implementation shall take place as specified in the agreement referenced in § 33.1-84.1.

D. The chief administrative officer of counties receiving funds under subsection C of this section shall make annual reports of expenditures to the Department of Transportation in such form as the Commonwealth Transportation Board shall prescribe, accounting for all construction expenditures made from quarterly payments. Such reports shall be included in the scope of the annual audit of each county conducted by independent certified public accountants.

(1977, c. 578; 1978, c. 145; 1985, c. 42; 2003, c. 887; 2004, c. 791; 2007, c. 153.)

§ 33.1-23.4:01. Allocation of proceeds of Commonwealth of Virginia Transportation Capital Projects Revenue Bonds.

The Commonwealth Transportation Board shall allocate, use, and distribute the proceeds of any bonds it is authorized to issue on or after July 1, 2007, pursuant to subdivision 4f of § 33.1-269, as follows:

1. A minimum of 20% of the bond proceeds shall be used for transit capital consistent with subdivision A 4 g of § 58.1-638.
2. A minimum of 4.3% of the bond proceeds shall be used for rail capital consistent with the provisions of §§ 33.1-221.1:1.1 and 33.1-221.1:1.2.
3. The remaining amount of bond proceeds shall be used for paying the costs incurred or to be incurred for construction of transportation projects with such bond proceeds used or allocated as follows: (a) first, to match federal highway funds projected to be made available and allocated to highway and public transportation capital projects by the Commonwealth Transportation Board, for purposes of allowing additional state construction funds to be allocated to the primary, urban, and secondary systems of highways pursuant to subdivisions B 1, B 2, and B 3 of § 33.1-23.1; (b) next, to provide any required funding to fulfill the Commonwealth's allocation of equivalent revenue sharing matching funds pursuant to § 33.1-23.05; and (c) third, to pay or fund the costs of statewide or regional projects throughout the Commonwealth. Costs incurred or to be incurred for construction or funding of these transportation projects shall include, but are not limited to, environmental and engineering studies, rights-of-way acquisition, improvements to all modes of transportation, acquisition, construction and related improvements, and any financing costs or other financing expenses relating to such bonds. Such costs may include the payment of interest on such bonds for a period during construction and not exceeding one year after completion of construction of the relevant project.

4. The total amount of bonds authorized shall be used for purposes of applying the percentages in subdivisions 1 through 3.

(2007, c. 896.)

§ 33.1-23.5.

Not set out. (1977, c. 578.)

§ 33.1-23.5:1. Funds for counties which have withdrawn or elect to withdraw from the secondary system of state highways.

Notwithstanding the provisions of § 33.1-23.5, pursuant to subsection A of § 33.1-23.1, the Commonwealth Transportation Board shall make the following payments to counties which have withdrawn or elect to withdraw from the secondary system of state highways under the provisions of § 11 of Chapter 415 of the Acts of Assembly of 1932, and which have not elected to return: to any county having withdrawn prior to June 30, 1985, and having an area greater than 100 square miles, an amount equal to \$3,616 per lane-mile for fiscal year 1986, and to any county having an area less than 100 square miles, an amount equal to \$7,201 per lane-mile for fiscal year 1986; to any county that elects to withdraw after June 30, 1985, the Commonwealth Transportation Board shall establish a rate per lane-mile for the first year using (i) an amount for maintenance based on maintenance standards and unit costs used by the Department of Transportation to prepare its secondary system maintenance budget for the year in which the county withdraws, and (ii) an amount for administration equal to five percent of the maintenance figure determined in (i) above. The payment rates shall be adjusted annually by the Board in accordance with procedures established for adjusting payments to cities and towns under § 33.1-41.1, and lane mileage shall be adjusted annually to include (i) streets and highways accepted for maintenance in the county system by the local governing body, or (ii) streets and highways constructed according to standards set forth in the county subdivision ordinance or county thoroughfare plan, and being not less than the standards set by the Department of Transportation. Such counties shall, in addition, each receive for construction from funds allocated pursuant to subdivision B 3 of § 33.1-23.1 an annual amount calculated in the same manner as payments for construction in the state secondary highway system are calculated.

Payment of the funds shall be made in four equal sums, one in each quarter of the fiscal year, and shall be reduced, in the case of each such county, by the amount of federal-aid construction funds credited to each such county.

The chief administrative officer of such counties receiving such funds shall make annual reports of expenditures to the Board, in such form as the Board shall prescribe, accounting for all expenditures, including delineation between construction and maintenance expenditures and reporting on their performance as specified in subdivision B 3 of § 33.1-23.02. Such reports shall be included in the scope of the annual audit of each county conducted by independent certified public accountants.

(1985, c. 42; 2004, c. 118.)

§ 33.1-23.5:2. Use of recycled materials in highway construction.

The Department shall create a Recycled Materials in Highway Construction Advisory

Committee which shall include, but not be limited to: one person representing the Department, one person representing the Virginia Roadbuilders Association, one person representing the Virginia Aggregates Association, one person representing the Virginia Asphalt Association, one person representing the Virginia Waste Industries Association, one person representing the Virginia Department of Waste Management, one person representing Virginians for Recycling, Inc., and one person representing a Virginia local government or authority which operates or contracts for the operation of a recycling facility. The Advisory Committee shall make recommendations to the Department on the specifications to be set by the Department pursuant to this section. The Advisory Committee shall also make recommendations to the Department on the components of a five-year plan for encouraging the increased use by the Department of recycled glass and other recyclable materials in Virginia highway projects. The Department shall report to the 1994 Session of the General Assembly actions taken to comply with the provisions of this section.

The Department, after receiving the recommendations of the Recycled Materials in Highway Construction Advisory Committee, shall (i) set specifications, in conjunction with its road and bridge specifications and in all of its similar publications and documents, which authorize and govern the use of recycled glass as construction material in highway-related construction in Virginia and (ii) adopt a five-year plan encouraging the increased use by the Department of recycled glass and other recycled materials in Virginia highway projects.

The Department shall maintain and make available to its contractors a list of the sites in Virginia from which they may obtain recycled glass and other recycled materials for use in Virginia highway construction projects.

(1992, c. 255.)

§§ 33.1-24. , 33.1-24.1.

Repealed by Acts 1977, c. 578.

§ 33.1-25. Primary system of state highways; "State Highway System" construed.

Except as the same shall be changed as hereinafter provided, the roads and bridges now comprising the State Highway System, sometimes referred to as the primary system of state highways, shall continue to constitute and be known as the State Highway System and the terms "State Highway System" or "primary system of state highways" when used elsewhere in this Code or in any other act or statute shall refer to and mean such State Highway System, sometimes called the primary system of state highways, as so constituted. The term "State Highway System" shall not include the secondary system of state highways. The State Highway System shall be constructed and maintained by the State under the direction and supervision of the Commonwealth Transportation Board and the Commonwealth Transportation Commissioner.

(Code 1950, § 33-23; 1970, c. 322.)

§§ 33.1-26. through 33.1-30.

Repealed by Acts 2003, c. 302, cl. 2.



§ 33.1-31. Certain park roads in primary system.

All roads in the several state parks providing connections between highways, either primary or secondary, outside of such parks and the recreation centers in such parks shall continue to be and constitute portions of the primary system of state highways and as such be constructed, reconstructed, improved and maintained.

All roads, bridges and toll facilities constructed by way of revenue bonds issued by the Department of Conservation and Recreation shall operate under the terms of their establishment as a park facility, notwithstanding the right of the Commonwealth Transportation Commissioner to use highway funds to maintain them.

(Code 1950, § 33-24; 1970, c. 322; 1986, c. 498; 1989, c. 656.)

§ 33.1-32. Maintenance of roads, bridges and toll facilities within boundaries of state parks.

The Commonwealth Transportation Commissioner may maintain all roads, bridges and toll facilities situated within the boundaries of any state park heretofore or hereafter established by, and under the control of, the Department of Conservation and Recreation. For the purpose of maintaining the roads in any such park the Commonwealth Transportation Commissioner may expend funds under his control and available for expenditures upon the maintenance of roads in the secondary system of state highways in the county or counties in which such state park is located. This section shall not affect the jurisdiction, control and right to establish such roads, bridges and toll facilities which are now vested in the Department of Conservation and Recreation.

(Code 1950, § 33-25; 1970, c. 322; 1986, c. 498; 1989, c. 656.)

§ 33.1-33. Maintenance of roads at state institutions.

The Commonwealth Transportation Commissioner may when requested by the governing body of a state institution assume the maintenance of any road situated within the grounds of such state institution which has heretofore been or is hereafter established and constructed by such institution to standards acceptable to the Commissioner. Any such roads accepted for maintenance by the Commonwealth Transportation Commissioner under the provisions of this section shall be a part of the State Highway System, but the state institution shall continue to exercise police power over such roads.

(1970, c. 322.)

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

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.

(Code 1950, § 33-26; 1952, c. 17; 1970, c. 322.)

§ 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.

(Code 1950, § 33-27; 1956, c. 39; 1970, c. 322; 2009, c. 476.)

§ 33.1-36. Map.

The Commissioner shall prepare and keep on file in his office for public inspection a complete map showing the routes of the State Highway System located and established in pursuance of the law.

(Code 1950, § 33-30; 1970, c. 322.)

§ 33.1-37. Establishment, construction and maintenance exclusively by Commonwealth; funds.

The roads embraced within "The State Highway System" shall be established, constructed and maintained exclusively by the Commonwealth under the direction and supervision of the Commissioner, with such state funds as may hereafter be appropriated and made available for such purposes, together with such appropriations as may be hereafter made by any county, district, city or town in this Commonwealth and such funds as are now available or which may hereafter be derived from the federal government for road building and improvement in this Commonwealth.

(Code 1950, § 33-31; 1970, c. 322.)

§ 33.1-38.

Repealed by Acts 1977, c. 578.

§ 33.1-39. Bypasses through or around cities and incorporated towns.

The Commonwealth Transportation Commissioner may acquire by gift, purchase,

exchange, condemnation or otherwise, such lands or interest therein, necessary or proper for the purpose, and may construct and improve thereon such bypasses or extensions and connections of the primary system of state highways through or around cities and incorporated towns, as the Board may deem necessary for the uses of the State Highway System; provided, that the respective cities and the incorporated towns of 3,500 population, or more, by action of their governing bodies agree to participate in accordance with the provisions of § 33.1-44 in all costs of such construction and improvement, including the cost of rights-of-way, on that portion of any such bypass or extension which is located within any such city or incorporated town. The maintenance of that portion of a bypass or extension located within a city or incorporated town shall be borne by the city or town. However, the Board shall contribute to such maintenance in accordance with the provisions of law governing its contribution to the maintenance of streets, roads and bridges in such cities and incorporated towns. The location, form and character of informational, regulatory and warning signs, curb and pavement or other markings and traffic signals installed or placed by any public authority shall be subject to the approval of the Commissioner. At both ends of bypasses through or around cities and incorporated towns the Commissioner shall erect and maintain adequate directional signs of sufficient size and suitable design to indicate clearly the main route or routes leading directly into such cities and incorporated towns.

Notwithstanding the above, in any case where a municipality refuses to contribute to the construction of a bypass or an extension or connection of the primary system within said municipality the Commonwealth Transportation Commissioner may construct such bypass or extension and connection without any contribution by the municipality when the Board determines that such bypass or extension and connection is primarily rural in character and that the most desirable and economical location is within said municipality. Any bypass or extension and connection built under this provision shall be maintained by the Commissioner as a part of the primary system and the municipality shall receive no payment for such bypass or extension and connection under § 33.1-41.1.

All the provisions of general law relating to the exercise of eminent domain by the Commissioner shall be applicable to such bypasses, or extensions or connections of the primary system of state highways.

The Board may expend out of funds appropriated to the Board under § 33.1-23.1 A and B 1 such funds as may be necessary to carry out the provisions of this section.

(Code 1950, § 33-35; 1964, c. 258; 1970, c. 322; 1977, c. 578.)

§ 33.1-40.

Repealed by Acts 1977, c. 578.

§ 33.1-41.

Repealed by Acts 1985, c. 42.

§ 33.1-41.1. Payments to cities and certain towns for maintenance of certain highways.

The Commonwealth Transportation Commissioner, subject to the approval of the Commonwealth Transportation Board, shall make payments for maintenance, construction,

or reconstruction of highways, as hereinafter provided, to all cities and towns eligible for allocation of construction funds for urban highways under § 33.1-23.3. Such payments, however, shall only be made if those highways functionally classified as principal and minor arterial roads are maintained to a standard satisfactory to the Department of Transportation. Whenever any city or town qualifies under this section for allocation of funds, such qualification shall continue to apply to such city or town regardless of any subsequent change in population and shall cease to apply only when so specifically provided by an act of the General Assembly. All allocations made prior to July 1, 2001, to cities and towns meeting the criteria of the foregoing provisions of this section are hereby confirmed.

No payments shall be made by the Commissioner to any such city or town unless the portion of the highway for which such payment is made either (a) has (i) an unrestricted right-of-way at least 50 feet wide and (ii) a hard-surface width of at least 30 feet; or (b) has (i) an unrestricted right-of-way at least 80 feet wide, (ii) a hard-surface width of at least 24 feet, and (iii) approved engineering plans for the ultimate construction of an additional hard-surface width of at least 24 feet within the same right-of-way; or (c) (i) is a cul-de-sac, (ii) has an unrestricted right-of-way at least 40 feet wide, and (iii) has a turnaround that meets applicable standards set by the Department of Transportation; or (d) either (i) has been paved and has constituted part of the primary or secondary system of state highways prior to annexation or incorporation or (ii) has constituted part of the secondary system of state highways prior to annexation or incorporation and is paved to a minimum width of 16 feet subsequent to such annexation or incorporation and with the further exception of streets or portions thereof which have previously been maintained under the provisions of § 33.1-79 or § 33.1-82; or (e) was eligible for and receiving such payments under the laws of the Commonwealth in effect on June 30, 1985; or (f) is a street established prior to July 1, 1950, which has an unrestricted right-of-way width of not less than 30 feet and a hard-surface width of not less than 16 feet; or (g) is a street functionally classified as a local street and constructed on or after January 1, 1996, which at the time of approval by the city or town met the criteria for pavement width and right-of-way of the then-current edition of the subdivision street requirements manual for secondary roads of the Department of Transportation (24 VAC 30-90-10 et seq.); (h) is a street previously eligible to receive street payments that is located in the City of Norfolk and the City of Richmond and is closed to public travel, pursuant to legislation enacted by the governing body of the city in which it is located, for public safety reasons, within the boundaries of a publicly funded housing development owned and operated by the local housing authority; or (i) is a local street, otherwise eligible, containing one or more physical protuberances placed within the right-of-way for the purpose of controlling the speed of traffic.

However, the Commissioner may waive the requirements as to hard-surface pavement or right-of-way width for highways where the width modification is at the request of the local governing body and is to protect the quality of the affected local government's drinking water supply or, for highways constructed on or after July 1, 1994, to accommodate some other special circumstance where such action would not compromise the health, safety, or welfare of the public. The modification is subject to such conditions as the Commissioner may prescribe.

For the purpose of calculating allocations and making payments under this section, the Department shall divide affected highways into two categories, which shall be distinct from but based on functional classifications established by the Federal Highway Administration:

(i) principal and minor arterial roads and (ii) collector roads and local streets. Payments to affected localities shall be based on the number of moving-lane-miles of highways or portions thereof available to peak-hour traffic in each category of highways in that locality. For the fiscal year 1986, payment to each city and town shall be an amount equal to \$7,787 per moving-lane-mile for principal and minor arterials and \$4,572 per moving-lane-mile for collector roads and local streets.

The Department of Transportation shall establish a statewide maintenance index of the unit costs for labor, equipment, and materials used on roads and bridges in the fiscal year 1986, and use changes in that index to calculate and put into effect annual changes in the base per-lane-mile rate payable under this section.

The fund allocated by the Board shall be paid in equal sums in each quarter of the fiscal year, and no payment shall be made without the approval of the Board.

The chief administrative officer of the city or town receiving this fund shall make annual categorical reports of expenditures to the Board, in such form as the Board shall prescribe, accounting for all expenditures, certifying that none of the money received has been expended for other than maintenance, construction or reconstruction of the streets, and reporting on their performance as specified in subdivision B 3 of § 33.1-23.02. Such reports shall be included in the scope of the annual audit of each municipality conducted by independent certified public accountants.

(1985, c. 42; 1991, c. 353; 1992, c. 267; 1994, c. 459; 1996, cc. 149, 821; 1997, c. 49; 1998, c. 441; 2000, c. 97; 2002, c. 673; 2004, c. 118; 2007, c. 813.)

§ 33.1-42. Incorporation into State Highway System of connecting streets and roads in certain other towns and cities; maintenance, etc., costs.

The Commonwealth Transportation Board may, by and with the consent of the Governor and the governing body of any incorporated town or city having a population of 3,500 inhabitants or less, incorporate in the State Highway System such streets and roads or portions thereof in such incorporated town or city as may in its judgment be best for the handling of traffic through such town or city from or to any road in the State Highway System and may, in its discretion, eliminate any of such roads or streets or portions thereof from the State Highway System. Every such action of the Commonwealth Transportation Board incorporating any such road or street or portion thereof in the State Highway System or eliminating it therefrom, shall be recorded in its minutes.

Any such road or street or portion thereof in any such city or town so incorporated in the State Highway System shall be subject to the rules, regulations and control of the state road authorities as are other roads in the State Highway System. But such town or city shall be obligated to pay the maintenance and construction and reconstruction costs of such roads or streets or portions thereof so incorporated in the State Highway System in excess of the amounts authorized to be spent by the Commonwealth Transportation Commissioner on such roads or streets.

Every provision in the charter of any such town or city insofar as it is in conflict with this section is hereby repealed.

The Commonwealth Transportation Commissioner may in his discretion permit such town

or city to maintain any such road or street, or portion thereof, incorporated in the State Highway System, and reimburse such city or town up to such amount as he is authorized to expend on the maintenance of such road or street, or portion thereof.

(Code 1950, § 33-35.3; 1964, c. 256; 1970, c. 322.)

§§ 33.1-43. , 33.1-43.1.

Repealed by Acts 1985, c. 42.

§ 33.1-43.2. Minimum road standards for certain towns.

Notwithstanding any other provisions of § 33.1-43, § 33.1-80 or § 33.1-82, any incorporated town in which seventy per centum or more of developable land within its boundaries has a natural grade of twenty per centum or more may by ordinance provide for streets or roads established on or after July 1, 1980, with an unrestricted right-of-way width of not less than forty feet and a hard surface width of not less than eighteen feet; provided, however, no such requirement of any such town shall be less stringent than that of the county in which such town is located. Streets and roads so established and constructed shall be eligible for payment in accordance with §§ 33.1-43, 33.1-80 and 33.1-82.

(1980, c. 374.)

§ 33.1-44. Matching highway funds; funding of urban system construction projects, generally.

In any case in which an act of Congress requires that federal-aid highway funds made available for the construction or improvement of federal or state highways be matched, the Commonwealth Transportation Board shall contribute such matching funds. However, in the case of municipalities of 3,500 or more population eligible for an allocation of construction funds for urban highways under § 33.1-23.3 and the Town of Wise, the Town of Lebanon, and the Town of Altavista, the Board may contribute toward the cost of construction of any federal-aid highway or street project ninety-eight percent of the necessary funds, including the federal portion, if the municipality contributes the other two percent, and provided further, that within such municipalities the Board may contribute all the required funds on highways in the interstate system.

In the case of municipalities of 3,500 or more population eligible for an allocation of construction funds for urban highways under § 33.1-23.3 and the Town of Wise, the Town of Lebanon, and the Town of Altavista, the Commonwealth Transportation Board may contribute toward the costs of construction or improvement of any highway or street project for which no federal-aid highway funds are made available ninety-eight percent of the necessary funds if the municipality contributes the other two percent.

For purposes of matching highway funds, such contributions shall continue to apply to such municipality regardless of any subsequent change in population and shall cease to apply only when so specifically provided by an act of the General Assembly. All actions taken prior to July 1, 2001, by municipalities meeting the criteria of the foregoing provisions of this section are hereby confirmed.

In the case of municipalities of less than 3,500 in population that on June 30, 1985,

maintained certain streets under § 33.1-80 as then in effect, the Commonwealth Transportation Board shall contribute toward the costs of construction or improvement of any highway or street project 100 percent of the necessary funds. The contribution authorized by this paragraph shall be in addition to any other contribution, and projects established in reference to municipalities of less than 3,500 in population shall not in any way be interpreted to change any other formula or manner for the distribution of funds to such municipalities for construction, improvement or maintenance of highways or streets. The Board may accept from a municipality, for right-of-way purposes, contributions of real estate to be credited, at fair market value, against the matching obligation of such municipality under the provisions of this section.

The term "construction or improvement" means the supervising, inspecting, actual building, and all expenses incidental to the construction or reconstruction of a highway, including locating, surveying, design and mapping, costs of rights-of-way, signs, signals and markings, elimination of hazards of railroad grade crossings and expenses incidental to the relocation of any utility or its facilities owned by a municipality or by a public utility district or public utility authority.

If any municipality requesting such Commonwealth Transportation Board contribution subsequently decides to cancel such construction or improvement after the Board has initiated the project at the request of the municipality, such municipality shall reimburse the Board the net amount of all funds expended by the Board for planning, engineering, right-of-way acquisition, demolition, relocation and construction between the date of initiation by the municipality and the date of cancellation. The Board shall have the authority to waive all or any portions of such reimbursement at its discretion.

For purposes of this section, on any construction or improvement project in the Cities of Chesapeake, Hampton, Newport News, or Richmond and funded in accordance with subdivision 2 of subsection B of § 33.1-23.1, the additional cost for placing aboveground utilities below ground may be paid from funds allocated for that project. The maximum cost due to this action shall not exceed five million dollars. Nothing contained herein shall relieve utility owners of their responsibilities and costs associated with the relocation of their facilities when required to accommodate a construction or improvement project.

(Code 1950, § 33-35.5; 1958, c. 584; 1964, c. 256; 1970, cc. 322, 403; 1977, c. 578; 1979, c. 84; 1980, c. 128; 1981, c. 370; 1987, c. 545; 1989, c. 303; 1991, c. 353; 2000, c. 762; 2002, c. 673; 2007, c. 813.)

§ 33.1-45.

Repealed by Acts 1985, c. 42.

§ 33.1-46. Character of signs, etc., in event of matching public funds.

On any urban highway upon which the Board has expended funds in the manner provided in §§ 33.1-23.3 and 33.1-44, the location, form and character of informational, regulatory and warning signs, curb and pavement or other markings and traffic signals installed or placed by any public authority shall be subject to the approval of the Commissioner.

(Code 1950, § 33-35.7; 1964, c. 256; 1970, c. 322; 1977, c. 578.)

#### § 33.1-46.1. Highway aid to mass transit.

In allocating highway funds the Commonwealth Transportation Board may use such funds for highway aid to mass transit facilities when such use will best accomplish the purpose of serving the transportation needs of the greatest number of people.

Highway aid to mass transit may be accomplished (i) by using highway funds to aid in paying transit operating costs borne by localities and/or (ii) by acquisition or construction of transit-related highway facilities such as exclusive bus lanes, bus turn-outs, bus passenger shelters, fringe parking facilities, including necessary access roads, to promote transit use and relieve highway congestion, off-street parking facilities to permit exclusive use of curb lane by buses, and by permitting mass transit facilities to occupy highway median strips without the reimbursement required by § 33.1-97, all to the end that highway traffic may be relieved through the development of more efficient mass transit.

Expenditures of funds under the authority of this section shall be made from funds available for the construction of state highways within the construction district in which the transit facilities are wholly or partly located.

The Board may at its discretion contract with the governing bodies comprising a transportation district, or in its discretion, other local governing bodies, for the accomplishment of a project to which funds have been allocated under the provisions of this section. Whenever such projects are being financed by advance annual allocation of funds, the Board may make such funds available to the contracting governing bodies in annual increments which may be used for other transit purposes until needed for the project for which allocated; however, the Board may require bond or other satisfactory assurance of final completion of the contract.

The Board may also, at the request of local governing bodies, use funds allocated for urban highways or secondary roads within their jurisdiction to accomplish the purposes of this section.

The General Assembly may, through the general appropriation act, (i) provide for limits on the amounts or purposes of allocations made under this section and (ii) provide for the transfer of allocations from one eligible recipient to another.

(Code 1950, § 33-35.8; 1970, c. 503; 1972, c. 490; 1973, c. 508; 1977, c. 578; 1980, c. 373; 1986, c. 392; 1998, cc. 905, 907.)

#### § 33.1-46.2. (For expiration date - see Editor's note) Designation of high-occupancy vehicle lanes; use of such lanes; penalties.

A. In order to facilitate the rapid and orderly movement of traffic to and from urban areas during peak traffic periods, the Commonwealth Transportation Board may designate one or more lanes of any highway in the interstate, primary, or secondary highway systems as high-occupancy vehicle lanes, hereinafter referred to in this section as HOV lanes. When lanes have been so designated and have been appropriately marked with such signs or other markers as the Board may prescribe, they shall be reserved during periods designated by the Board for the exclusive use of buses and high-occupancy vehicles. Any local governing body may also, with respect to highways under its exclusive jurisdiction, designate HOV lanes and impose and enforce restrictions on the use of such HOV lanes.



Any highway for which the local jurisdiction receives highway maintenance funds pursuant to § 33.1-41.1 shall be deemed to be within the exclusive jurisdiction of the local governing body for the purposes of this section. HOV lanes shall be reserved for high-occupancy vehicles of a specified number of occupants as determined by the Board or, for HOV lanes designated by a local governing body, by that local governing body. Notwithstanding the foregoing provisions of this section, no designation of any lane or lanes of any highway as HOV lanes shall apply to the use of any such lanes by:

1. Emergency vehicles such as fire-fighting vehicles, ambulances, and rescue squad vehicles,
2. Law-enforcement vehicles,
3. Motorcycles,
4. a. Transit and commuter buses designed to transport 16 or more passengers, including the driver,  
b. Commuter buses and motor coaches operating under irregular route passenger certificates issued under § 46.2-2010 and any vehicle operating under a certificate of Public Convenience and Necessity or as a common carrier of passengers under § 46.2-2075 or 46.2-2080,
5. Vehicles of public utility companies operating in response to an emergency call,
6. Until July 1, 2010, vehicles bearing clean special fuel vehicle license plates issued pursuant to § 46.2-749.3, or
7. Taxicabs having two or more occupants, including the driver.

In the Hampton Roads Planning District, HOV restrictions may be temporarily lifted and HOV lanes opened to use by all vehicles when restricting use of HOV lanes becomes impossible or undesirable and the temporary lifting of HOV limitations is indicated by signs along or above the affected portion of highway.

The Commissioner of VDOT shall implement a program of the HOV facilities in the Hampton Roads Planning District beginning not later than May 1, 2000. This program shall include the temporary lifting of HOV restrictions and the opening of HOV lanes to all traffic when an incident resulting from nonrecurring causes within the general lanes occurs such that a lane of traffic is blocked or is expected to be blocked for 10 minutes or longer. The HOV restrictions for the facility will be reinstated when the general lane is no longer blocked and is available for use.

The Commissioner shall maintain necessary records to evaluate the effects of such openings on the operation of the general lanes and the HOV lanes. He shall report on the effects of this program. This program will terminate if the Federal Highway Administration requires repayment of any federal highway construction funds because of the program's impact on the HOV facilities in Hampton Roads.

B. In designating any lane or lanes of any highway as HOV lanes, the Board, or local governing body as the case may be, shall specify the hour or hours of each day of the week during which the lanes shall be so reserved, and the hour or hours shall be plainly

posted at whatever intervals along the lanes the Board or local governing body deems appropriate. Any person driving a motor vehicle in a designated HOV lane in violation of this section shall be guilty of a traffic infraction which shall not be a moving violation and on conviction shall be fined \$100. However, violations committed within the boundaries of Planning District Eight shall be punishable as follows:

For a first offense, by a fine of \$125;

For a second offense within a period of five years from a first offense, by a fine of \$250;

For a third offense within a period of five years from a first offense, by a fine of \$500; and

For a fourth or subsequent offense within a period of five years from a first offense, by a fine of \$1,000.

Upon a conviction under this section, the court shall furnish to the Commissioner of the Department of Motor Vehicles in accordance with § 46.2-383 an abstract of the record of such conviction which shall become a part of the person's driving record. Notwithstanding the provisions of § 46.2-492, no driver demerit points shall be assessed for any violation of this section; except that persons convicted of second, third, fourth, or subsequent violations within five years of a first offense committed in Planning District Eight shall be assessed three demerit points for each such violation.

C. In the prosecution of an offense, committed in the presence of a law-enforcement officer, of failure to obey a road sign restricting a highway, or portion thereof, to the use of high-occupancy vehicles, proof that the vehicle described in the HOV violation summons was operated in violation of this section, together with proof that the defendant was at the time of such violation the registered owner of the vehicle, shall constitute in evidence a rebuttable presumption that such registered owner of the vehicle was the person who committed the violation. Such presumption shall be rebutted if the registered owner of the vehicle testifies in open court under oath that he was not the operator of the vehicle at the time of the violation. A summons for a violation of this section may be executed in accordance with § 19.2-76.2. Such rebuttable presumption shall not arise when the registered owner of the vehicle is a rental or leasing company.

D. Notwithstanding the provisions of § 19.2-76, whenever a summons for a violation of this section is served in any county, city, or town, it may be executed by mailing by first-class mail a copy thereof to the address of the owner of the vehicle as shown on the records of the Department of Motor Vehicles. If the summoned person fails to appear on the date of return set out in the summons mailed pursuant to this section, the summons shall be executed in the manner set out in § 19.2-76.3.

No proceedings for contempt or arrest of a person summoned by mailing shall be instituted for his failure to appear on the return date of the summons.

E. Notwithstanding § 33.1-252, high-occupancy vehicles having three or more occupants (HOV-3) may be permitted to use the Omer L. Hirst-Adelard L. Brault Expressway (Dulles Toll Road) without paying a toll.

F. Notwithstanding the contrary provisions of this section, the following conditions shall be met before the HOV-2 designation of Interstate Route 66 outside the Capital Beltway can

be changed to HOV-3 or any more restrictive designation:

1. The Department shall publish a notice of its intent to change the existing designation and also immediately provide similar notice of its intent to all members of the General Assembly representing districts that touch or are directly impacted by traffic on Interstate Route 66.
2. The Department shall hold public hearings in the corridor to receive comments from the public.
3. The Department shall make a finding of the need for a change in such designation, based on public hearings and its internal data and present this finding to the Commonwealth Transportation Board for approval.
4. The Commonwealth Transportation Board shall make written findings and a decision based upon the following criteria:
  - a. Is changing the HOV-2 designation to HOV-3 in the public interest?
  - b. Is there quantitative and qualitative evidence that supports the argument that HOV-3 will facilitate the flow of traffic on Interstate Route 66?
  - c. Is changing the HOV-2 designation beneficial to comply with the federal Clean Air Act Amendments of 1990?

G. [Repealed.]

(1973, c. 197; 1983, c. 339; 1988, c. 637; 1989, cc. 573, 744; 1993, cc. 82, 587; 1994, cc. 212, 426, 439; 1995, c. 55; 1996, cc. 34, 187, 191, 695, 921, 1037; 1997, c. 504; 1998, c. 321; 1999, cc. 914, 960; 2000, c. 322; 2002, cc. 89, 757; 2003, c. 324; 2004, c. 704; 2006, cc. 600, 873, 908; 2007, c. 317; 2008, c. 511; 2009, c. 676.)

§ 33.1-46.2. (For effective date - see Editor's note) Designation of high-occupancy vehicle lanes; use of such lanes; penalties.

A. In order to facilitate the rapid and orderly movement of traffic to and from urban areas during peak traffic periods, the Commonwealth Transportation Board may designate one or more lanes of any highway in the interstate, primary, or secondary highway systems as high-occupancy vehicle lanes, hereinafter referred to in this section as HOV lanes. When lanes have been so designated and have been appropriately marked with such signs or other markers as the Board may prescribe, they shall be reserved during periods designated by the Board for the exclusive use of buses and high-occupancy vehicles. Any local governing body may also, with respect to highways under its exclusive jurisdiction, designate HOV lanes and impose and enforce restrictions on the use of such HOV lanes. Any highway for which the local jurisdiction receives highway maintenance funds pursuant to § 33.1-41.1 shall be deemed to be within the exclusive jurisdiction of the local governing body for the purposes of this section. HOV lanes shall be reserved for high-occupancy vehicles of a specified number of occupants as determined by the Board or, for HOV lanes designated by a local governing body, by that local governing body. Notwithstanding the foregoing provisions of this section, no designation of any lane or lanes of any highway as HOV lanes shall apply to the use of any such lanes by:

1. Emergency vehicles such as fire-fighting vehicles, ambulances, and rescue squad

vehicles,

2. Law-enforcement vehicles,

3. Motorcycles,

4. a. Transit and commuter buses designed to transport 16 or more passengers, including the driver,

b. Commuter buses and motor coaches operating under irregular route passenger certificates issued under § 46.2-2010 and any vehicle operating under a certificate of Public Convenience and Necessity or as a common carrier of passengers under § 46.2-2075 or 46.2-2080,

5. Vehicles of public utility companies operating in response to an emergency call,

6. Until July 1, 2004, vehicles bearing clean special fuel vehicle license plates issued pursuant to § 46.2-749.3, or

7. Taxicabs having two or more occupants, including the driver.

In the Hampton Roads Planning District, HOV restrictions may be temporarily lifted and HOV lanes opened to use by all vehicles when restricting use of HOV lanes becomes impossible or undesirable and the temporary lifting of HOV limitations is indicated by signs along or above the affected portion of highway.

The Commissioner of VDOT shall implement a program of the HOV facilities in the Hampton Roads Planning District beginning not later than May 1, 2000. This program shall include the temporary lifting of HOV restrictions and the opening of HOV lanes to all traffic when an incident resulting from nonrecurring causes within the general lanes occurs such that a lane of traffic is blocked or is expected to be blocked for 10 minutes or longer. The HOV restrictions for the facility will be reinstated when the general lane is no longer blocked and is available for use.

The Commissioner shall maintain necessary records to evaluate the effects of such openings on the operation of the general lanes and the HOV lanes. He shall report on the effects of this program. This program will terminate if the Federal Highway Administration requires repayment of any federal highway construction funds because of the program's impact on the HOV facilities in Hampton Roads.

B. In designating any lane or lanes of any highway as HOV lanes, the Board, or local governing body as the case may be, shall specify the hour or hours of each day of the week during which the lanes shall be so reserved, and the hour or hours shall be plainly posted at whatever intervals along the lanes the Board or local governing body deems appropriate. Any person driving a motor vehicle in a designated HOV lane in violation of this section shall be guilty of a traffic infraction which shall not be a moving violation and on conviction shall be fined \$100. However, violations committed within the boundaries of Planning District Eight shall be punishable as follows:

For a first offense, by a fine of \$125;

For a second offense within a period of five years from a first offense, by a fine of \$250;

For a third offense within a period of five years from a first offense, by a fine of \$500; and

For a fourth or subsequent offense within a period of five years from a first offense, by a fine of \$1,000.

Upon a conviction under this section, the court shall furnish to the Commissioner of the Department of Motor Vehicles in accordance with § 46.2-383 an abstract of the record of such conviction which shall become a part of the person's driving record. Notwithstanding the provisions of § 46.2-492, no driver demerit points shall be assessed for any violation of this section; except that persons convicted of second, third, fourth, or subsequent violations within five years of a first offense committed in Planning District Eight shall be assessed three demerit points for each such violation.

C. In the prosecution of an offense, committed in the presence of a law-enforcement officer, of failure to obey a road sign restricting a highway, or portion thereof, to the use of high-occupancy vehicles, proof that the vehicle described in the HOV violation summons was operated in violation of this section, together with proof that the defendant was at the time of such violation the registered owner of the vehicle, shall constitute in evidence a rebuttable presumption that such registered owner of the vehicle was the person who committed the violation. Such presumption shall be rebutted if the registered owner of the vehicle testifies in open court under oath that he was not the operator of the vehicle at the time of the violation. A summons for a violation of this section may be executed in accordance with § 19.2-76.2. Such rebuttable presumption shall not arise when the registered owner of the vehicle is a rental or leasing company.

D. Notwithstanding the provisions of § 19.2-76, whenever a summons for a violation of this section is served in any county, city, or town, it may be executed by mailing by first-class mail a copy thereof to the address of the owner of the vehicle as shown on the records of the Department of Motor Vehicles. If the summoned person fails to appear on the date of return set out in the summons mailed pursuant to this section, the summons shall be executed in the manner set out in § 19.2-76.3.

No proceedings for contempt or arrest of a person summoned by mailing shall be instituted for his failure to appear on the return date of the summons.

E. Notwithstanding § 33.1-252, high-occupancy vehicles having three or more occupants (HOV-3) may be permitted to use the Omer L. Hirst-Adelard L. Brault Expressway (Dulles Toll Road) without paying a toll.

F. Notwithstanding the contrary provisions of this section, the following conditions shall be met before the HOV-2 designation of Interstate Route 66 outside the Capital Beltway can be changed to HOV-3 or any more restrictive designation:

1. The Department shall publish a notice of its intent to change the existing designation and also immediately provide similar notice of its intent to all members of the General Assembly representing districts that touch or are directly impacted by traffic on Interstate Route 66.
2. The Department shall hold public hearings in the corridor to receive comments from the public.
3. The Department shall make a finding of the need for a change in such designation,

based on public hearings and its internal data and present this finding to the Commonwealth Transportation Board for approval.

4. The Commonwealth Transportation Board shall make written findings and a decision based upon the following criteria:

a. Is changing the HOV-2 designation to HOV-3 in the public interest?

b. Is there quantitative and qualitative evidence that supports the argument that HOV-3 will facilitate the flow of traffic on Interstate Route 66?

c. Is changing the HOV-2 designation beneficial to comply with the federal Clean Air Act Amendments of 1990?

G. [Repealed.]

(1973, c. 197; 1983, c. 339; 1988, c. 637; 1989, cc. 573, 744; 1993, cc. 82, 587; 1994, cc. 212, 426, 439; 1995, c. 55; 1996, cc. 34, 187, 191, 695, 921, 1037; 1997, c. 504; 1998, c. 321; 1999, cc. 914, 960; 2000, c. 322; 2002, cc. 89, 757; 2004, c. 704; 2006, cc. 600, 873, 908; 2007, c. 317.)

§ 33.1-46.3. Agreements between Board and certain counties for operation of certain devices on state highways.

The Commonwealth Transportation Commissioner is empowered to enter into agreements with the governing bodies of Arlington and Henrico Counties, upon such terms as may be agreeable between the parties, in order to authorize such counties to install, maintain and control traffic signals, parking meters, lane-use control signals and other traffic control devices at specific locations on the state systems of highways within such counties. Such counties and the Commissioner shall have the authority to do all things which are reasonable or convenient to effectuate the purposes of this section.

(1977, c. 175.)

§ 33.1-46.4. Counties may perform certain maintenance.

Any county may enter into an agreement with the Department of Transportation to permit the county to landscape and maintain any or all medians and other nontraveled portions of primary roads located in the county.

(1980, c. 147.)

§ 33.1-47. Approval of markings and traffic lights erected by towns.

Notwithstanding any provision of law contrary to this section, all markings and traffic lights installed or erected by towns on the primary roads therein maintained by the Department of Transportation shall first be approved by the Commissioner.

(Code 1950, § 33-36; 1970, c. 322.)

§ 33.1-47.1. Landscape studies for urban highway construction projects.

Prior to final design of any urban highway funded in part by any municipality, such

municipality may have conducted a landscape study by a competent authority which shall assess the effect such proposed highway construction may have on existing trees, shrubbery and other flora and shall make recommendations as to modifications to such project which would minimize damage to existing flora. The Department of Transportation shall consider such recommendations and modify such highway construction plans to protect trees, shrubbery, and other flora if determined by the Department to be reasonable and practicable. The cost of such landscape study shall be payable by the municipality which initiates such statement.

(1975, c. 555.)

§ 33.1-48. Interstate System authorized; what constitutes.

There is hereby authorized a system of interstate highways to constitute a part of the National System of Interstate and Defense Highways as authorized and designated in accordance with § 7 of the Federal-Aid Highway Act of 1944 and § 108 (a) of the Federal-Aid Highway Act of 1956, hereinafter referred to as "Interstate System."

The Interstate System, as used in this article and elsewhere in the Code of Virginia, shall be those highways, or sections thereof, declared by resolution of the Commonwealth Transportation Board to be portions of the Interstate System, and may include existing highways and streets, even though established as turnpikes, toll projects, revenue bond projects, or streets of cities and towns.

(Code 1950, § 33-36.1; 1958, c. 589; 1970, c. 322.)

§ 33.1-49. Power and authority of Commonwealth Transportation Board generally.

The Commonwealth Transportation Board may plan, designate, acquire, open, construct, reconstruct, improve, maintain, discontinue, abandon and regulate the use of the Interstate System in the same manner in which it is now or may be authorized to plan, designate, acquire, open, construct, reconstruct, improve, maintain, discontinue, abandon and regulate the use of the primary system of state highways. The Board may vacate, close or change the location of any street or public way in the manner in which it is now authorized by law to vacate, close or change the location of a highway in the primary system. The Board shall have any and all other authority and power relative to such Interstate System as is vested in it relative to highways in the primary system and shall include the right to acquire by purchase, eminent domain, grant or dedication title to lands or rights-of-way for such interstate highways whether within or without the limits of any city or town, and in addition thereto, shall have such other power, control and jurisdiction necessary to comply with the provisions of the Federal-Aid Highway Act of 1956 and all acts amendatory or supplementary thereto, all other provisions of law to the contrary notwithstanding.

(Code 1950, § 33-36.2; 1958, c. 589; 1970, c. 322.)

§ 33.1-49.1. Contracts for maintenance of components of Interstate Highway System.

All maintenance on components of the Interstate Highway System in Virginia, excluding frontage roads, shall be carried out under contracts awarded by the Commonwealth Transportation Commissioner and approved by the Commonwealth Transportation Board pursuant to § 33.1-12, except for instances where good and sufficient reasons for not doing

so shall have been shown in advance in writing by the Commonwealth Transportation Commissioner to the Commonwealth Transportation Board and to the chairmen of the House Committee on Transportation, the House Committee on Appropriations, the House Committee on Finance, the Senate Committee on Transportation and the Senate Committee on Finance. Nothing in this section shall be construed to prevent the Virginia Department of Transportation from performing emergency work at any time on the Interstate System with its own employees or agents or to assume the maintenance responsibilities of a contractor who has been determined to be in default or as a result of a contract termination.

(2006, c. 782.)

§ 33.1-50. Funds for establishment and maintenance generally.

The roads embraced within the Interstate System shall be established, constructed and maintained by the Commonwealth under the direction and supervision of the Commissioner with such state funds as may hereafter be appropriated and made available for such purposes, together with such appropriations as may hereafter be made by any county, city or town in this Commonwealth and such funds as are now available or which may hereafter be derived from the federal government for such purposes. State funds for repayment of federal construction advances may be raised by toll facilities, if approved by the Federal Highway Administration.

(Code 1950, § 33-36.3; 1958, c. 589; 1970, c. 322; 1982, c. 261.)

§ 33.1-51. Portions of System within cities and towns.

Whenever any portion of the Interstate System which is to be constructed within cities or towns is to occupy existing streets, the right-of-way in the street shall be occupied by the Interstate System free of cost of the Commonwealth.

When the Interstate System extending into or through cities or towns has been constructed to the required standards, streets or roads occupied thereby, shall cease to be maintained and controlled by the governing bodies of such cities or towns and such cities and towns shall thereafter be relieved from all civil liability arising from the physical condition of such streets or roads. Such streets and roads shall not be considered as mileage for which the Commonwealth Transportation Board is required to make payment to such cities or towns by any other provisions of law.

Nothing contained in this article shall relieve the cities or towns through which any portion of the Interstate System is projected from the responsibility for the preservation of public peace, prevention of crime, apprehension of criminals, protection of the rights of persons and property, and enforcement of the laws of the Commonwealth, and the rules and regulations enacted pursuant thereto, nor shall anything contained herein be considered as a waiver by the Commonwealth of its immunity from liability for tort.

(Code 1950, § 33-36.5; 1958, c. 589; 1970, c. 322.)

§ 33.1-52. Transfer of roads, etc., from secondary and primary systems to Interstate System.



The Commonwealth Transportation Board may transfer such roads, bridges and streets as the Board shall deem proper from the secondary or primary system of state highways to the Interstate System of State Highways. Upon such transfer the roads, bridges and streets so transferred shall become for all purposes parts of the Interstate System of State Highways and thereafter cease being parts of the secondary or primary system of state highways. The Board may add such roads, bridges and streets as it deems proper to the Interstate System without limitations as to mileage.

(Code 1950, § 33-36.6; 1958, c. 589; 1970, c. 322.)

§ 33.1-53. Transfer of roads, etc., from Interstate System to secondary or primary system.

The Commonwealth Transportation Board may transfer such roads, bridges and streets as the Board shall deem proper from the Interstate System of State Highways to the primary system or secondary system of state highways without limitations as to mileage; upon such transfer, the roads, bridges and streets so transferred shall become for all purposes parts of the primary system or secondary system of state highways and thereafter cease being parts of the Interstate System of State Highways.

(Code 1950, § 33-36.7; 1958, c. 589; 1970, c. 322.)

§ 33.1-54. Applicability of §§ 33.1-49 through 33.1-53, to toll projects.

The provisions of §§ 33.1-49 to 33.1-53, inclusive, of this article shall not become effective with respect to those segments of the Interstate System constructed and financed as toll projects until the revenue bonds and the interest thereon issued on account of said toll projects shall have been paid or a sufficient amount for the payment of all such bonds and the interest to maturity thereon shall have been set aside in trust for the benefit of the respective bondholders. When the bonds and interest thereon, outstanding on account of such projects, shall have been paid or a sufficient amount for the payment of such bonds and the interest thereon to the maturity thereof shall have been so set aside in trust, and when the Commonwealth Transportation Board shall have by formal action, recorded in its minutes, determined the existence of such fact, then and in such event, the provisions of this article shall fully apply to such projects.

(Code 1950, § 33-36.8; 1958, c. 589; 1970, c. 322.)

§ 33.1-55. Relocation or removal of utility facilities within projects on Interstate System.

Whenever the Board shall determine that it is necessary that any tracks, pipes, mains, conduits, cables, wires, towers or other structures, equipment and appliances (herein called "facilities") of any utility as herein defined, in, on, under, over or along existing streets which are to be included within any project on the Interstate System within cities or towns should be relocated or removed, the owner or operator of such facilities shall relocate or remove the same in accordance with the order of the Board. The cost of such relocation or removal, as herein defined, including the cost of installing such facilities in a new location or locations, and the cost of any lands, or any rights or interest in lands, and any other rights, required to accomplish such relocation or removal, shall be ascertained and paid by the Board as a part of the cost of such project.

For the purposes of this section, the term "utility" shall include publicly, privately, and

cooperatively owned utilities and the term "cost of relocation or removal" shall include the entire amount paid by such utility properly attributable to such relocation or removal after deducting therefrom any increase in the value of the new facility and any salvage value derived from the old facility.

The cost of relocating or removing utility facilities in connection with any project on the Interstate System within cities or towns is hereby declared to be a cost of highway construction.

(Code 1950, § 33-36.9; 1958, c. 589; 1970, c. 322; 1972, c. 79; 1983, c. 162; 2003, c. 302.)

§ 33.1-56. Relocation or removal of utility facilities within projects on interstate system; additional provisions.

Whenever the Board determines that it is necessary to relocate or remove any pipes, mains, storm sewers, water lines, sanitary sewers, natural gas facilities, or other structures, equipment, and appliances (herein called facilities) of any utility owned by (i) a county, (ii) a political subdivision of the Commonwealth or county, or (iii) a nonprofit, consumer-owned company, located in a county having a population of at least 32,000 but no more than 34,000, that (a) is exempt from income taxation under § 501 (c) (3) of the Internal Revenue Code, (b) is organized to provide suitable drinking water, (c) has no assistance from investors, (d) does not pay dividends, and (e) does not sell stock to the general public, or storm sewers, water lines, natural gas facilities, or sanitary sewers owned by a city and extending into any county, in, on, under, over, or along existing highways which are to be included within any project on the interstate system or primary system within any county, the county or political subdivision of the Commonwealth or county, consumer-owned company, or city, as the case may be, shall relocate or remove the same in accordance with the order of the Board. The cost of such relocation or removal, as herein defined, including the cost of installing such facilities in a new location or locations, and the cost of any lands, or any rights or interest in lands, and any other rights, required to accomplish such relocation or removal, shall be ascertained and paid by the Board as a part of the cost of such project.

For the purposes of this section, the term "cost of relocation or removal" shall include the entire amount paid for the relocation or removal of such utility facilities properly attributable to such relocation or removal after deducting therefrom any increase in the value of the new facility and any salvage value derived from the old facility.

The cost of relocating or removing such utility facilities in connection with any project on the interstate system or primary system within counties is hereby declared to be a cost of highway construction.

(Code 1950, § 33-36.10; 1964, c. 353; 1970, c. 322; 1989, c. 46; 1998, c. 219; 1999, c. 942.)

§ 33.1-56.1. Definitions.

For purposes of this article:

"Board" means the Commonwealth Transportation Board;

"High-occupancy requirement" means the number of persons required to be traveling in a vehicle for the vehicle to use HOT lanes without the payment of a toll. Emergency vehicles, law-enforcement vehicles using HOT lanes in the performance of their duties, and mass transit vehicles and commuter buses shall meet the high-occupancy requirement for HOT lanes, regardless of the number of occupants in the vehicle;

"High-occupancy toll lanes" or "HOT lanes" means a portion of a highway containing one or more travel lanes separated from other lanes, that has an electronic toll collection system, provides for free passage by vehicles that meet the high-occupancy requirement, and contains a photo-enforcement system for use in such electronic toll collection. HOT lanes shall not be a "toll facility" or "HOV lanes" for the purposes of any other provision of law or regulation;

"HOT lanes operator" means the operator of the facility containing HOT lanes, which may include the Virginia Department of Transportation or some other entity;

"Mass transit vehicles" and "commuter buses" mean vehicles providing a scheduled transportation service to the general public. Such vehicles shall comprise nonprofit, publicly or privately owned or operated transportation services, programs, or systems that may be funded pursuant to § 58.1-638;

"Owner" means the registered owner of a vehicle on record with the Department of Motor Vehicles, or with the equivalent agency in another state. "Owner" does not mean a vehicle rental or vehicle leasing company;

"Photo-enforcement system" means a sensor installed in conjunction with a toll collection device to detect the presence of a vehicle that automatically produces one or more photographs, one or more microphotographs, a videotape, or other recorded images of each vehicle's license plate at the time it is detected by the toll collection device; and

"Unauthorized vehicle" means a motor vehicle that is restricted from use of the HOT lanes pursuant to subdivision D 1 of § 33.1-56.3.

(2004, c. 783; 2008, cc. 167, 280.)

#### § 33.1-56.2. Designation of HOT lanes.

The Board may designate one or more lanes of any highway, including lanes that may previously have been designated HOV lanes under § 33.1-46.2, in the interstate system of highways, primary system of highways, or national highway system, or any portion thereof, as high-occupancy toll lanes, or HOT lanes. In making HOT lanes designations, the Board shall also specify the high-occupancy requirement and conditions for use of such HOT lanes, or may authorize the Commissioner to make such determination consistent with the terms of a comprehensive agreement executed pursuant to § 56-566. The high-occupancy requirement for a HOT lanes facility constructed or operated as a result of the Public-Private Transportation Act (§ 56-556 et seq.) shall not be less than three.

(2004, c. 783.)

#### § 33.1-56.3. HOT lanes enforcement.

Any person operating a motor vehicle on designated HOT lanes shall make arrangements

with the HOT lanes operator for payment of the required toll prior to entering such HOT lanes. The driver of a vehicle who enters the HOT lanes in an unauthorized vehicle, in violation of the conditions for use of such HOT lanes established pursuant to § 33.1-56.2, without payment of the required toll, or without having made arrangements with the HOT lanes operator for payment of the required toll, shall have committed a violation of this section, which may be enforced in the following manner:

A. On a form prescribed by the Supreme Court, a summons for civil violation of this section may be executed by a law-enforcement officer, when such violation is observed by such officer. The form shall contain the option for the driver of the vehicle to prepay all penalties, unpaid toll, administrative fees, and costs.

B. 1. A HOT lanes operator shall install and operate, or cause to be installed or operated, a photo-enforcement system at locations where tolls are collected for the use of such HOT lanes.

2. A summons for civil violation of this section may be executed pursuant to this subsection, when such violation is evidenced by information obtained from a photo-enforcement system as defined in this article. A certificate, sworn to or affirmed by a technician employed or authorized by the HOT lanes operator, or a facsimile of such a certificate, based on inspection of photographs, microphotographs, videotapes, or other recorded images produced by a photo-enforcement system, shall be prima facie evidence of the facts contained therein. Any photographs, microphotographs, videotape, or other recorded images evidencing such a violation shall be available for inspection in any proceeding to adjudicate the liability for such violation under this subsection. Any vehicle rental or vehicle leasing company, if named in a summons, shall be released as a party to the action if it provides the HOT lanes operator a copy of the vehicle rental agreement or lease or an affidavit identifying the renter or lessee prior to the date of hearing set forth in the summons. Upon receipt of such rental agreement, lease, or affidavit, a summons shall be issued for the renter or lessee identified therein. Release of this information shall not be deemed a violation of any provision of the Government Data Collection and Dissemination Practices Act (§ 2.2-3800 et seq.) or the Insurance Information and Privacy Protection Act (§ 38.2-600 et seq.).

3. On a form prescribed by the Supreme Court, a summons issued under this subsection may be executed pursuant to § 19.2-76.2. Such form shall contain the option for the driver or registered owner to prepay all penalties, unpaid toll, administrative fees, and costs. HOT lanes operator personnel or their agents mailing such summons shall be considered conservators of the peace for the sole and limited purpose of mailing such summons. Notwithstanding the provisions of § 19.2-76, a summons for a violation of this section may be executed by mailing by first-class mail a copy thereof to the address of the owner of the vehicle as shown on the records of the Department of Motor Vehicles or, if the registered owner has named and provided a valid address for the operator of the vehicle at the time of the violation in an affidavit executed pursuant to this subsection, such named operator of the vehicle. If the summoned person fails to appear on the date of return set out in the summons mailed pursuant to this section, the summons shall be executed in the manner set out in § 19.2-76.3.

4. The registered owner of such vehicle shall be given reasonable notice by way of a summons as provided in this subsection that his vehicle had been used in violation of this

section, and such owner shall be given notice of the time and place of the hearing and notice of the civil penalty and costs for such offense.

Upon the filing of an affidavit with the court at least 14 days prior to the hearing date by the registered owner of the vehicle stating that he was not the driver of the vehicle on the date of the violation and providing the legal name and address of the driver of the vehicle at the time of the violation, a summons will also be issued to the alleged driver of the vehicle at the time of the offense. The affidavit shall constitute prima facie evidence that the person named in the affidavit was driving the vehicle at all the relevant times relating to the matter named in the affidavit.

If the registered owner of the vehicle produces a certified copy of a police report showing that the vehicle had been reported to the police as stolen prior to the time of the alleged offense and remained stolen at the time of the alleged offense, then the court shall dismiss the summons issued to the registered owner of the vehicle.

C. 1. The HOT lanes operator may impose and collect an administrative fee in addition to the unpaid toll so as to recover the expenses of collecting the unpaid toll, which administrative fee shall be reasonably related to the actual cost of collecting the unpaid toll and not exceed \$100 per violation. The operator of the vehicle shall pay the unpaid tolls and any administrative fee detailed in a notice or invoice issued by a HOT lanes operator. If paid within 30 days of notification, the administrative fee shall not exceed \$25.

2. Upon a finding by a court of competent jurisdiction that the driver of the vehicle observed by a law-enforcement officer under subsection A, or the vehicle described in the summons for civil violation issued pursuant to evidence obtained by a photo-enforcement system under subsection B was in violation of this section, the court shall impose a civil penalty upon the driver of such vehicle issued a summons under subsection A, or upon the driver or registered owner of such vehicle issued a summons under subsection B, payable to the HOT lanes operator as follows: for a first offense, \$50; for a second offense, \$250; for a third offense within a period of two years of the second offense, \$500; and for a fourth and subsequent offense within a period of three years of the second offense, \$1,000, together with, in each case, the unpaid toll, all accrued administrative fees imposed by the HOT lanes operator as authorized by this section, and applicable court costs. The court shall remand penalties, unpaid toll, and administrative fees assessed for violation of this section to the treasurer or director of finance of the county or city in which the violation occurred for payment to the HOT lanes operator for expenses associated with operation of the HOT lanes and payments against any bonds or other liens issued as a result of the construction of the HOT lanes. No person shall be subject to prosecution under both subsections A and B for actions arising out of the same transaction or occurrence.

3. Upon a finding by a court that a person has violated this section, in the event such person fails to pay the required penalties, fees, and costs, the court shall notify the Commissioner of Motor Vehicles, who shall suspend all of the registration certificates and license plates issued for any motor vehicles registered solely in the name of such person and shall not issue any registration certificate or license plate for any other vehicle that such person seeks to register solely in his name until the court has notified the Commissioner that such penalties, fees, and costs have been paid. The HOT lanes operator and the Commissioner may enter into an agreement whereby the HOT lanes operator may reimburse the Department of Motor Vehicles for their reasonable costs to

develop, implement, and maintain this enforcement mechanism, and that specifies that the Commissioner shall have an obligation to suspend such registration certificates so long as the HOT lanes operator makes the required reimbursements in a timely manner in accordance with the agreement.

4. Except as provided in subsections D and E, imposition of a civil penalty pursuant to this section shall not be deemed a conviction as an operator of a motor vehicle under Title 46.2 and shall not be made part of the driving record of the person upon whom such civil penalty is imposed, nor shall it be used for insurance purposes in the provision of motor vehicle insurance coverage.

D. 1. The HOT lanes operator may restrict the usage of the HOT lanes to designated vehicle classifications pursuant to an interim or final comprehensive agreement executed pursuant to § 56-566 or 56-566.1. Notice of any such vehicle classification restrictions shall be provided through the placement of signs or other markers prior to and at all HOT lanes entrances.

2. Any person driving an unauthorized vehicle on the designated HOT lanes shall be guilty of a traffic infraction, which shall not be a moving violation, and shall be punishable as follows: for a first offense, by a fine of \$125; for a second offense within a period of five years from a first offense, by a fine of \$250; for a third offense within a period of five years from a first offense, by a fine of \$500; and for a fourth and subsequent offense within a period of five years from a first offense, by a fine of \$1,000.

Upon a conviction under this subsection, the court shall furnish to the Commissioner of the Department of Motor Vehicles, in accordance with § 46.2-383, an abstract of the record of such conviction that shall become a part of the person's driving record. Notwithstanding the provisions of § 46.2-492, no driver demerit points shall be assessed for any violation of this subsection, except that persons convicted of a second, third, fourth, or subsequent violation within five years of a first offense shall be assessed three demerit points for each such violation.

E. The driver of a vehicle who enters the HOT lanes by crossing through any barrier, buffer or other area separating the HOT lanes from other lanes of travel shall have committed a violation of § 46.2-852. No person shall be subject to both prosecution under this subsection and under subsection A, B, or D for actions arising out of the same transaction or occurrence.

Upon a conviction under this subsection, the court shall furnish to the Commissioner of the Department of Motor Vehicles in accordance with § 46.2-383 an abstract of the record of such conviction, which shall become a part of the convicted person's driving record.

F. No person shall be subject to prosecution under both this section and under § 33.1-46.2, 46.2-819 or 46.2-819.1 for actions arising out of the same transaction or occurrence.

G. Any action under this section shall be brought in the general district court of the county or city in which the violation occurred.

(2004, c. 783; 2008, cc. 167, 280.)

§ 33.1-56.4. Release of personal information; penalty.

A. The HOT lanes operator may enter into an agreement with the Department of Motor Vehicles, in accordance with the provisions of subdivision 21 of subsection B of § 46.2-208, to obtain vehicle owner information regarding the registered owners of vehicles that use HOT lanes, and with the Department of Transportation to obtain any information that is necessary to conduct electronic toll collection and otherwise operate HOT lanes. No HOT lanes operator shall disclose or release any personal information received from the Department of Motor Vehicles or the Department of Transportation to any third party, except in the issuance of a summons and institution of court proceedings in accordance with § 33.1-56.3. Information in the possession of a HOT lanes operator under this section shall be exempt from disclosure under the Virginia Freedom of Information Act (§ 2.2-3700 et seq.).

B. Information collected by a photo-enforcement system shall be limited exclusively to that information that is necessary for the collection of unpaid tolls. Notwithstanding any other provision of law, all photographs, microphotographs, electronic images, or other data collected by a photo-enforcement system shall be used exclusively for the collection of unpaid tolls and shall not (i) be open to the public; (ii) be sold and/or used for sales, solicitation, or marketing purposes; (iii) be disclosed to any other entity except as may be necessary for the collection of unpaid tolls or to a vehicle owner or operator as part of a challenge to the imposition of a toll; and (iv) be used in a court in a pending action or proceeding unless the action or proceeding relates to a violation of § 33.1-56.3 or upon order from a court of competent jurisdiction. Information collected under this section shall be purged and not retained later than 30 days after the collection and reconciliation of any unpaid tolls, administrative fees, and/or civil penalties. Any entity operating a photo-enforcement system shall annually certify compliance with this section and make all records pertaining to such system available for inspection and audit by the Commonwealth Transportation Commissioner or the Commissioner of the Department of Motor Vehicles or their designee. Any violation of this subsection shall constitute a Class 1 misdemeanor. In addition to any fines or other penalties provided for by law, any money or other thing of value obtained as a result of a violation of this section shall be forfeited to the Commonwealth.

(2004, c. 783; 2006, c. 859.)

§ 33.1-56.5. Exclusion from other laws.

Notwithstanding any other provision of law, the provisions of §§ 22.1-187, 33.1-46.2, 33.1-252, 46.2-819, and 46.2-819.1 shall not apply to HOT lanes.

(2004, c. 783.)

§ 33.1-57. "Limited access highway" defined.

A limited access highway is defined as a highway especially designed for through traffic, over which abutters have no easement or right of light, air or access to by reason of the fact that their property abuts upon such limited access highway.

(Code 1950, § 33-37; 1970, c. 322.)

§ 33.1-58. Power and authority of Board.

The Commonwealth Transportation Board may plan, designate, acquire, open, construct, reconstruct, improve, maintain, discontinue, abandon and regulate the use of limited access highways, in the same manner in which it is now or may be authorized to plan, designate, acquire, open, construct, reconstruct, improve, maintain, discontinue, abandon and regulate the use of other highways within this Commonwealth. The Board shall also have any and all other additional authority and power relative to other highways, which shall include the right to acquire by purchase, eminent domain, grant or dedication title to such lands or rights-of-way for such limited access highways.

Notwithstanding any other provisions of this Code, any highway, street, or portion thereof, to which access rights of abutters have been acquired by the Commonwealth Transportation Board and which is subsequently incorporated into the street system of a city or town by any method, shall remain limited access until and unless the governing body of the city or town, after securing the approval of the Commonwealth Transportation Board, acts to discontinue such limited access feature.

(Code 1950, § 33-38; 1950, p. 476; 1962, c. 348; 1970, c. 322.)

§ 33.1-59. Designating existing highway as limited access highway; extinguishing easements of access.

The Board may designate all or any part of an existing highway as a limited access highway. When an existing highway is so designated the Board shall, where necessary, extinguish all existing easements of access, light or air.

(Code 1950, § 33-39; 1950, p. 476; 1958, c. 571; 1970, c. 322.)

§ 33.1-60. Business enterprises restricted.

No commercial establishment or business enterprise shall be constructed or located upon any right-of-way of any limited access highway.

(Code 1950, § 33-40.1; 1958, c. 490; 1970, c. 322.)

§ 33.1-61. Parallel service roads; standards for access, service, etc., roads.

The Board may construct service roads parallel to a limited access highway in order to provide access at designated points for property owners abutting on the limited access highway and after the construction of such service roads shall maintain and regulate traffic over them.

The construction or alteration of any access, feeder or service road which is to serve properties isolated by construction of a limited access highway shall meet all minimum state standards or the standards of the cities or towns of more than 3,500 population, or of counties which maintain their own road networks, as provided for by ordinance, whichever is more strict.

(Code 1950, § 33-41; 1970, c. 322.)

§ 33.1-62. Designation.

The Commonwealth Transportation Board is hereby authorized to designate any highway



as a scenic highway or as a Virginia byway. This designation shall be made in cooperation with the Director of the Department of Conservation and Recreation. Prior to designation, the local governing body and local planning commission, if any, in each county or city wherein the proposed scenic highway or Virginia byway is located shall be given notice and, upon request by any of the local governing bodies, the Commonwealth Transportation Board shall hold a hearing in one of the counties or cities wherein the proposed scenic highway or Virginia byway is located.

(Code 1950, § 33-43.1; 1966, c. 11; 1970, c. 322; 1974, c. 319; 1984, c. 739; 1989, c. 656.)

§ 33.1-63. "Virginia byway" defined; preference in selecting.

For the purposes of this article, a "Virginia byway" is defined as a road, designated as such by the Commonwealth Transportation Board, having relatively high aesthetic or cultural value, leading to or within areas of historical, natural or recreational significance. In selecting a Virginia byway, the Commonwealth Transportation Board and the Director of the Department of Conservation and Recreation shall give preference to corridors controlled by zoning or otherwise, so as to reasonably protect the aesthetic or cultural value of the highway.

(Code 1950, § 33-43.2; 1966, c. 11; 1970, c. 322; 1984, c. 739; 1989, c. 656.)

§ 33.1-64. "Scenic highway" defined.

For the purpose of this article, a "scenic highway" is defined as a road designated as such by the Commonwealth Transportation Board, within a protected scenic corridor located, designed and constructed so as to preserve and enhance the natural beauty and cultural value of the countryside.

(Code 1950, § 33-43.3; 1966, c. 11; 1970, c. 322.)

§ 33.1-65. Signs.

When the Commonwealth Transportation Board designates a highway as a scenic highway or as a Virginia byway, it shall be appropriately signed as such.

(Code 1950, § 33-43.4; 1966, c. 11; 1970, c. 322.)

§ 33.1-66. Acquisition of adjacent land.

When the Commonwealth Transportation Board has designated a highway as a Virginia byway or as a scenic highway, the Commonwealth Transportation Commissioner may acquire by gift or purchase such land, or interests therein, of primary importance for the preservation of natural beauty adjacent to scenic highways.

(Code 1950, § 33-43.5; 1966, c. 11; 1970, c. 322.)

§ 33.1-67. Secondary system of highways.

The secondary system of state highways shall consist of all of the public roads, causeways, bridges, landings and wharves in the several counties of the Commonwealth not included in the State Highway System, including such roads and community roads leading to and

from public school buildings, streets, causeways, bridges, landings and wharves in incorporated towns having 3,500 inhabitants or less according to the census of 1920, and in all towns having such a population incorporated since 1920, as constitute connecting links between roads in the secondary system in the several counties and between roads in the secondary system and roads in the primary system of the state highways, not, however, to exceed two miles in any one town. If in any such town, which is partly surrounded by water, less than two miles of the roads and streets therein constitute parts of the secondary system of state highways, the Commonwealth Transportation Board shall, upon the adoption of a resolution by the council or other governing body of such town designating for inclusion in the secondary system of state highways certain roads and streets in such town not to exceed a distance of two miles, less the length of such roads and streets in such town which constitute parts of the secondary system of state highways, accept and place in the secondary system of state highways such additional roads and streets.

(Code 1950, § 33-44; 1970, c. 322.)

§ 33.1-68. Certain school roads in secondary system.

All roads leading from the state highways, either primary or secondary, to public schools in the counties of the Commonwealth to which school buses are operated shall continue to constitute portions of the secondary system of state highways insofar as these roads lead to or are on school property and as such shall be improved and maintained.

(Code 1950, § 33-45; 1952, c. 505; 1964, c. 380; 1970, c. 322.)

§ 33.1-69. Control, supervision and management.

A. The control, supervision, management and jurisdiction over the secondary system of state highways shall be vested in the Department of Transportation and the maintenance and improvement, including construction and reconstruction, of such secondary system of state highways shall be by the Commonwealth under the supervision of the Commonwealth Transportation Commissioner. The boards of supervisors or other governing bodies of the several counties and the county road board or county road commission of any county operating under a county road board or county road commission shall have no control, supervision, management and jurisdiction over such public roads, causeways, bridges, landings and wharves, constituting the secondary system of state highways. Except as otherwise provided in this article, the Commonwealth Transportation Board shall be vested with the same powers, control and jurisdiction over the secondary system of state highways in the several counties and towns of the Commonwealth, and such additions as may be made from time to time, as were vested in the boards of supervisors or other governing bodies of the several counties or in the county road board or county road commission in any county operating under a county road board or county road commission on June 21, 1932, and in addition thereto shall be vested with the same power, authority and control as to the secondary system of state highways as is vested in the Board in connection with the State Highway System.

B. Nothing in this chapter shall be construed as requiring the Department, when undertaking improvements to any state secondary highway system component or any portion of any such component, to fully reconstruct such component or portion thereof to bring it into compliance with all design and engineering standards that would be applicable

to such component or portion thereof if the project involved new construction.

(Code 1950, § 33-46; 1970, c. 322; 2008, Sp. Sess. II, c. 3.)

§ 33.1-69.01. Department to install and maintain certain signs.

Whenever so requested by the governing body of a county, the Department of Transportation shall install a system of street name signs on state-maintained highways at such time and upon such terms and conditions as may be mutually agreed to between the county and the Commonwealth Transportation Commissioner.

The Department shall install, using state forces or contract, the initial signing system and the county shall be responsible for continuing maintenance of the signs. Supply of the signs by the Department, either by manufacture or purchase, and initial installation shall be paid for from appropriate secondary construction funds allocated to the county or from primary construction funds available to the Department.

No highway funds shall be used by the county for the cost of maintaining the signing system.

(1993, c. 340.)

§ 33.1-69.1. Transfer of control, etc., of landings, docks and wharves to Department of Game and Inland Fisheries.

A. Notwithstanding any other provision of law, the Commonwealth Transportation Board may transfer the control, possession, supervision, management, and jurisdiction of landings, wharves, and docks in the secondary system of state highways to the Department of Game and Inland Fisheries, at the request or with the concurrence of the Department of Game and Inland Fisheries. Such transfer may be by lease, agreement, or otherwise, approved by resolution of the Board, and signed by the Commissioner or his designee, for such period and upon such terms and conditions as the Board may direct.

B. All such transfers effected prior to the enactment of this section by lease, agreement, or otherwise, from the Department to the Department of Game and Inland Fisheries, and all regulations of the Department of Game and Inland Fisheries controlling the use of such facilities, shall be and are hereby declared valid in every respect.

(1980, c. 301.)

§ 33.1-69.2. Relocation or removal of utility facilities within secondary highway construction projects.

Whenever it is necessary that any tracks, pipes, mains, conduits, cables, wires, towers, or other structures, equipment and appliances (herein called facilities) of any utility as herein defined, in, on, under, over or along an existing highway that is to be included within any construction project on the secondary highway system should be relocated or removed, the owner or operator of such facilities shall relocate or remove the same in accordance with the order of the Board. The cost of such relocation or removal, as herein defined, including the cost of installing such facilities in a new location or locations, and the cost of any lands, or any rights or interest in lands, and any other rights, required to accomplish such relocation or removal, shall be ascertained and paid by the Board as a part of the cost of

such project.

For the purposes of this section, "utility" includes utilities owned by a county, city, town, public authority or nonprofit, consumer-owned company, located in a county having a population of at least 32,000 but no more than 34,000, that (i) is exempt from income taxation under § 501 (c) (3) of the Internal Revenue Code, (ii) is organized to provide suitable drinking water, (iii) has no assistance from investors, (iv) does not pay dividends, and (v) does not sell stock to the general public, and "cost of relocation or removal" includes the entire amount paid by such utility properly attributable to such relocation or removal after deducting therefrom any increase in the value of the new facility and any salvage value derived from the old facility.

The cost of relocating or removing utility facilities in connection with any project on the secondary highway system is hereby declared to be a cost of highway construction.

(1995, cc. 680, 688; 1999, c. 942.)

§ 33.1-70.

Repealed by Acts 1977, c. 578.

§ 33.1-70.01. Annual meeting with county officers; six-year plan for secondary highways; certain reimbursements required.

The governing body of each county in the secondary system may, jointly with the representatives of the Department of Transportation as designated by the Commonwealth Transportation Commissioner, prepare a six-year plan for the improvements to the secondary highway system in that county. Each such six-year plan shall be based upon the best estimate of funds to be available to the county for expenditure in the six-year period on the secondary highway system. Each such plan shall list the proposed improvements, together with an estimated cost of each project so listed. Following the preparation of the plan, the board of supervisors or other governing body shall conduct a public hearing after publishing notice in a newspaper published in or having general circulation in the county once a week for two successive weeks, and posting notice of the proposed hearing at the front door of the courthouse of such county 10 days before such meeting. At the public hearings, which shall be conducted jointly by the board of supervisors and the representative of the Department of Transportation, the entire six-year plan shall be discussed with the citizens of the county and their views considered. Following such discussion, the governing body, together with the representative of the Department of Transportation, shall finalize and officially adopt the six-year plan which shall then be considered the official plan of the county.

At least once in each calendar year representatives of the Department of Transportation in charge of the secondary system of highways in each county, or some representative of the Department designated by the Commonwealth Transportation Commissioner, shall meet with the governing body of each county in a regular or special meeting of such governing body for the purpose of preparing a budget for the expenditure of improvement funds for the next fiscal year. The representative of the Department of Transportation shall furnish the governing body with an updated estimate of funds and the board and the representative of the Department of Transportation shall jointly prepare the list of projects to be carried out in that fiscal year taken from the six-year plan by order of priority, and following generally

the policies of the Commonwealth Transportation Board in regard to the statewide secondary highway system improvements. Such list of priorities shall then be presented at a public hearing duly advertised in accordance with the procedure hereinbefore outlined, and comments of citizens shall be obtained and considered. Following this public hearing, the board, with the concurrence of the representative of the Department of Transportation, shall adopt, as official, a priority program for the ensuing year, and the Department of Transportation shall include such listed projects in its secondary highways budget for the county for that year.

At least once every two years, following the adoption of the original six-year plan, the governing body of each county, together with the representative of the Department of Transportation, shall update the six-year plan of such county by adding to it and extending it as necessary so as to maintain it as a plan encompassing six years. Whenever additional funds for secondary highway purposes become available, the governing body may request a revision in such six-year plan in order that such plan be amended to provide for the expenditure of such additional funds. Such additions and extensions to each six-year plan shall be prepared in the same manner and following the same procedures as outlined herein for its initial preparation. Where the governing body and the representative of the Department of Transportation fail to agree upon a priority program, the governing body may appeal to the Commonwealth Transportation Commissioner. The Commissioner shall consider all proposed priorities and render a decision establishing a priority program based upon a consideration by the Commissioner of the welfare and safety of county citizens. Such decision shall be binding.

Nothing in this section shall preclude a governing body, with the concurrence of the representative of the Department of Transportation, from combining the public hearing required for revision of a six-year plan with the public hearing required for review of the list of priorities, provided that notice of such combined hearing is published in accordance with procedures provided in this section.

All such six-year plans shall consider all existing highways in the secondary highway system, including those in the towns located in the county that are maintained as a part of the state secondary highway system, and shall be made a public document.

If any county cancels any highway construction or improvement project included in its six-year plan after the Commonwealth Transportation Board has adopted the location and design for the project, such county shall reimburse the Board the net amount of all funds expended by the Board for planning, engineering, right-of-way acquisition, demolition, relocation, and construction between the date on which project development was initiated and the date of cancellation. To the extent that funds from secondary road allocations pursuant to § 33.1-23.4 have been expended to pay for a highway construction or improvement project, all revenues generated from a reimbursement by the county shall be deposited into that same county's secondary allocation. The board may waive all or any portion of such reimbursement at its discretion.

The provisions of this section shall not apply in instances where less than 100 percent of the right-of-way is available for donation for unpaved road improvements.

For purposes of this section, "cancellation" means complete elimination of a highway construction or improvement project from the six-year plan.

(Code 1950, § 33.1-70; 1970, c. 322; 1977, c. 578; 1979, c. 64; 1981, c. 240; 1993, c. 802; 2001, cc. 105, 130; 2005, c. 645.)

§ 33.1-70.1. Requesting Department to hard-surface secondary roads; paving of certain secondary roads within existing rights-of-way; designation as Rural Rustic Road.

A. Whenever the governing body of any county, after consultation with personnel of the Department of Transportation, adopts a resolution requesting the Department of Transportation to hard-surface any secondary road in such county that carries 50 or more vehicles per day with a hard surface of width and strength adequate for such traffic volume, the Department of Transportation shall give consideration to such resolution in establishing priority in expending the funds allocated to such county. The Department shall consider the paving of roads with a right-of-way width of less than 40 feet under this subsection when land is, has been, or can be acquired by gift for the purpose of constructing a hard-surface road.

B. Notwithstanding the provisions of subsection A of this section, any unpaved secondary road that carries at least 50 but no more than 750 vehicles per day may be paved or improved and paved within its existing right-of-way or within a wider right-of-way that is less than 40 feet wide if the following conditions are met:

1. The governing body of the county in which the road is located has requested paving of such road as part of the six-year plan for the county under § 33.1-70.01 and transmitted that request to the Commonwealth Transportation Commissioner.

2. The Commonwealth Transportation Commissioner, after having considered only (i) the safety of such road in its current condition and in its paved or improved condition, including the desirability of reduced speed limits and installation of other warning signs or devices, (ii) the views of the residents and owners of property adjacent to or served by such road, (iii) the views of the governing body making the request, (iv) the historical and aesthetic significance of such road and its surroundings, (v) the availability of any additional land that has been or may be acquired by gift or other means for the purpose of paving such road within its existing right-of-way or within a wider right-of-way that is less than 40 feet wide, and (vi) environmental considerations, shall grant or deny the request for the paving of such road under this subsection.

C. Notwithstanding the provisions of subsections A and B, the governing body of any county, in consultation with the Department, may designate a road or road segment as a Rural Rustic Road provided such road or road segment is located in a low-density development area and has an average daily traffic volume of no more than 1,500 vehicles per day. For a road or road segment so designated, improvements shall utilize a paved surface width based on reduced and flexible standards that leave trees, vegetation, side slopes and open drainage abutting the roadway undisturbed to the maximum extent possible without compromising public safety. The Department, in consultation with the affected local governing body, shall first consider the paving of a road or road segment meeting the criteria for a Rural Rustic Road in accordance with this subsection before making a decision to pave it to another standard as set forth in this section. The provisions of this subsection shall become effective July 1, 2003.

D. The Commonwealth, its agencies, instrumentalities, departments, officers, and employees acting within the scope of their duties and authority shall be immune for

damages by reason of actions taken in conformity with the provisions of this section. Immunity for the governing body of any political subdivision requesting paving under this section and the officers and employees of any such political subdivision shall be limited to that immunity provided pursuant to § 15.2-1405.

(1973, c. 360; 1977, c. 578; 1985, c. 440; 1997, cc. 715, 729; 1999, cc. 306, 320; 2001, cc. 355, 366; 2002, c. 414; 2003, c. 599; 2006, c. 546; 2008, c. 195.)

§ 33.1-70.2. Emergency paving of unpaved secondary roads; notice and public hearing required.

In the event of an emergency, no unpaved road within the secondary system of highways shall be paved unless the following procedures are satisfied:

1. The Commonwealth Transportation Commissioner shall provide notice of such intended paving to the governing body of the jurisdiction wherein the affected highway or portion thereof is located. The Commissioner shall provide such notice following his decision to pave the unpaved secondary road within the jurisdiction affected.
2. The local governing body shall hold a public hearing concerning the proposed emergency paving, and all plans to pave the affected secondary highway shall be suspended until after the public hearing is held. Such hearing shall be conducted jointly by representatives of the local governing body and a representative of the Department of Transportation. The local governing body's recommendation regarding the proposed paving shall then be forwarded to the Commissioner within thirty days following the receipt of the Commissioner's notice.
3. The Commissioner shall consider the following factors in determining whether the unpaved secondary road, as the result of an emergency, shall be paved: (i) the safety of the secondary highway in its current condition; (ii) the feasibility of restoring the unpaved highway to its functional level prior to the emergency; (iii) the concerns of the citizens in the jurisdiction wherein the affected highway is located, particularly those persons who own land adjacent to such highway; (iv) the concerns of the local governing body of the jurisdiction affected; and (v) the historical and aesthetic significance of the unpaved secondary highway and its surroundings.

(1996, c. 923.)

§ 33.1-70.3. Requirements for taking new streets into state secondary highway system.

A. The local governing body of any county that has not withdrawn from the state secondary highway system or any town within which the Virginia Department of Transportation maintains the streets, may, by resolution, request the Commonwealth Transportation Board to take any new street into the secondary system of state highways for maintenance if such street has been developed and constructed in accordance with the Board's secondary street acceptance requirements. Only those streets constructed in compliance with the secondary street acceptance requirements shall be taken into the state secondary highway system for maintenance. The Board shall promulgate regulations establishing such secondary street acceptance requirements. The secondary street acceptance requirements established pursuant to this section shall include such provisions as the Board deems necessary or appropriate to achieve the safe and efficient operation of the

Commonwealth's transportation network.

B. In addition to such other provisions deemed necessary or appropriate by the Board, the regulations shall include, but not be limited to (i) requirements to ensure the connectivity of road and pedestrian networks with the existing and future transportation network; (ii) provisions to minimize stormwater runoff and impervious surface area, and (iii) provisions for performance bonding of new secondary streets and associated cost recovery fees.

C. No initial regulation establishing secondary street acceptance requirements pursuant to this section shall apply to subdivision plats and subdivision construction plans that have been submitted and accepted for review by the Virginia Department of Transportation on or before the effective date of such initial regulations. No locality shall be obligated to approve any subdivision plat or subdivision construction plans that are inconsistent with these regulations.

(2007, c. 382.)

§ 33.1-71.

Repealed by Acts 1992, c. 94.

§ 33.1-72.

Repealed by Acts 1979, c. 321.

§ 33.1-72.1. Taking certain streets into secondary system.

A. "Street," as used in this section, means a street or highway shown on a plat which was recorded or otherwise opened to public use prior to July 1, 1992, at which time it was open to and used by motor vehicles, and which, for any reason, has not been taken into the secondary system of state highways and serves at least three families per mile.

B. "County," as used in this section, means a county in which the secondary system of the state highways is constructed and maintained by the Department of Transportation and which has adopted a local ordinance for control of the development of subdivision streets to the necessary standards for acceptance into the secondary system.

C. "Speculative interest," as used in this section, means that the original developer or a successor developer retains ownership in any lot abutting such street for development or speculative purposes. In instances where it is determined that speculative interest is retained by the original developer, developers, or successor developers and the governing body of the county deems that extenuating circumstances exist, the governing body of the county shall require a pro rata participation by such original developer, developers, or successor developers as prescribed in subsection G of this section as a condition of the county's recommendation pursuant to this section.

D. "Qualifying rural addition cost," as used in this section, means that portion of the estimated engineering and construction cost to improve the street to the minimum standards for acceptance remaining after reducing the total estimated cost by any prorated amount deemed the responsibility of others based on speculative interests as defined in subsection C.



E. Whenever the governing body of a county recommends in writing to the Department of Transportation that any street in the county be taken into and become a part of the secondary system of the state highways in such county, the Department of Transportation thereupon, within the limit of available funds and the mileage available in such county for the inclusion of roads and streets in the secondary system, shall take such street into the secondary system of state highways for maintenance, improvement, construction and reconstruction if such street, at the time of such recommendation, either: (i) has a minimum dedicated width of 40 feet or (ii) in the event of extenuating circumstances as determined by the Commonwealth Transportation Commissioner, such street has a minimum dedicated width of 30 feet at the time of such recommendation. In either case such streets must have easements appurtenant thereto which conform to the policy of the Commonwealth Transportation Board with respect to drainage. After the streets are taken into the secondary system of state highways, the Department shall maintain the same in the manner provided by law. However, no such street shall be taken into and become a part of the secondary system of state highways unless and until any and all required permits have been obtained and any outstanding fees, charges, or other financial obligations of whatsoever nature have been satisfied or provision has been made, whether by the posting of a bond or otherwise, for their satisfaction.

F. Such street shall only be taken into the secondary system of state highways if the governing body of the county has identified and made available the funds required to improve the street to the required minimum standards. The county may consider the following options to fund the required improvements for streets accepted under this section:

1. The local governing body of the county may use a portion of the county's annual secondary highway system construction allocation designated as "rural addition funds" to fund the qualifying rural addition costs for qualifying streets if the county agrees to contribute from county revenue or the special assessment of the landowners on the street in question one-half of the qualifying rural addition cost to bring the streets up to the necessary minimum standards for acceptance. No such special assessment of landowners on such streets shall be made unless the governing body of the county receives written declarations from the owners of 75 percent or more of the platted parcels of land abutting upon such street stating their acquiescence in such assessments. The basis for such special assessments, at the option of the local governing body, shall be either (i) the proportion the value of each abutting parcel bears to total value of all abutting parcels on such street as determined by the current evaluation of the property for real estate tax purposes, or (ii) the proportion the abutting road front footage of each parcel abutting the street bears to the total abutting road front footage of all parcels abutting on the street, or (iii) an equal amount for each parcel abutting on such street. No such special assessment on any parcel shall exceed one-third of the current evaluation of such property for real estate tax purposes. Special assessments under this section shall be conducted in the manner provided in Article 2 (§ 15.2-2404 et seq.) of Chapter 24 of Title 15.2, *mutatis mutandis*, for assessments for local improvements.

2. The local governing body of any county may use a portion of its annual secondary highway system construction allocation designated as "rural addition funds" to fund the qualifying rural addition cost for qualifying streets within the limitation of funds and the mileage limitation of the Commonwealth Transportation Board's policy on rural additions.

3. The local governing body of any county may use revenues derived from the sale of

bonds to finance the construction of rural additions to the secondary system of such county. In addition, from the funds allocated by the Commonwealth for the construction of secondary road improvements, such governing body may use funds allocated within the Commonwealth Transportation Board policy for the construction of rural additions to pay principal and interest on bonds associated with rural additions in such county, provided the revenue derived from the sale of such bonds is not used as the county matching contribution under § 33.1-23.05. The provisions of this section shall not constitute a debt or obligation of the Commonwealth Transportation Board or the Commonwealth of Virginia.

4. The local governing body of the county may expend general county revenue for the purposes of this section.

5. The local governing body of the county may permit one or more of the landowners on the street in question to pay to the county a sum equal to one-half of the qualifying rural addition cost to bring the street up to the necessary minimum standards for acceptance into the secondary system of state highways, which funds the county shall then utilize for such purpose. Thereafter, upon collection of the special assessment of landowners on such street, the county shall use such special assessment funds to reimburse, without interest, the one or more landowners for those funds which they previously advanced to the county to bring the street up to the necessary minimum standards for acceptance.

6. The local governing body of the county may utilize the allocations made to the county in accordance with § 33.1-23.05.

G. In instances where it is determined that speculative interest, as defined in subsection C, exists the basis for the pro rata percentage required of such developer, developers, or successor developers shall be the proportion that the value of the abutting parcels owned or partly owned by the developer, developers, or successor developers bears to the total value of all abutting property as determined by the current evaluation of the property for real estate purposes. The pro rata percentage shall be applied to the Department of Transportation's total estimated cost to construct such street to the necessary minimum standards for acceptance to determine the amount of costs to be borne by the developer, developers, or successor developers. Property so evaluated shall not be assessed in the special assessment for the determination of the individual pro rata share attributable to other properties. Further, when such pro rata participation is accepted by the governing body of the county from such original developer, developers, or successor developers, such amount shall be deducted from the Department of Transportation's total estimated cost and the remainder of such estimated cost, the qualifying rural addition cost, shall then be the basis of determining the assessment under the special assessment provision or determining the amount to be provided by the county when funded from general county revenue under subsection C of this section or determining the amount to be funded as a rural addition under subsection D of this section.

H. Acceptance of any street into the secondary system of state highways for maintenance, improvement, construction, and reconstruction shall not impose any obligation on the Board to acquire any additional right-of-way or easements should they be necessary by virtue of faulty construction or design.

I. "Rural addition funds" means those funds reserved from the county's annual allocation of secondary system highway construction funds, as defined in § 33.1-67, for the purpose of

this section. If such funds are not used by such county for such purpose during the fiscal year they are so allocated, the funds may be held for such purpose for the four succeeding fiscal years. A maximum of five percent of the annual secondary system highway construction allocation may be reserved by the governing body for rural additions.

(Code 1950, § 33.1-72; 1968, c. 601; 1970, c. 322; 1972, c. 393; 1976, c. 391; 1977, cc. 214, 578; 1978, c. 487; 1979, c. 321; 1980, c. 96; 1981, c. 232; 1982, c. 167; 1983, cc. 171, 455; 1984, c. 146; 1987, cc. 156, 207; 1989, c. 274; 1991, c. 250; 1993, c. 71; 1995, c. 416; 1997, c. 740; 1998, cc. 330, 338, 340; 2001, c. 95; 2004, c. 677; 2006, c. 827; 2009, c. 635.)

§ 33.1-72.2. Funds allocated to counties for Rural Addition Program; street standards.

A. Notwithstanding any other provision of law, the Commonwealth Transportation Board and the Commonwealth Transportation Commissioner shall not diminish funds allocated or allocable to any county for use under the Rural Addition Program by reason of any county ordinance authorizing the use of private roads not built to standards set by the Department of Transportation or construction of subdivisions streets built to standards other than those established by the Department.

B. In those counties where this section is applicable, the ordinance shall also state that any and all streets that are not constructed to meet the standards necessary for inclusion in the system of state highways will be privately maintained and will not be eligible for acceptance into the system of state highways unless improved to current Department of Transportation standards with funds other than those appropriated by the General Assembly and allocated by the Commonwealth Transportation Board. For any street that is not constructed to Department of Transportation standards, the subdivision plat and all approved deeds of subdivision, or similar instruments, shall contain a statement advertising that the streets in the subdivision do not meet the standards necessary for inclusion in the system of state highways and will not be maintained by the Department of Transportation or the county approving the subdivision and are not eligible for rural addition funds or any other funds appropriated by the General Assembly and allocated by the Commonwealth Transportation Board.

(2006, c. 566.)

§§ 33.1-73. through 33.1-75.

Repealed by Acts 1977, c. 578.

§ 33.1-75.1.

Repealed by Acts 2006, c. 827, cl. 2.

§ 33.1-75.2. Contributions to primary or secondary road construction by counties.

Notwithstanding any other provision of law, any county having roads in the primary or secondary system of state highways may contribute funds annually for the construction of primary or secondary roads. The funds contributed by such county shall be appropriated from the county's general revenues for use by the Department of Transportation on the primary or secondary system within such county as may be determined by the board of

supervisors of such county in cooperation with the Department. The funds to which any county may be entitled under the provisions of §§ 33.1-23.1, 33.1-23.2 and 33.1-23.4 for construction, improvement or maintenance of primary or secondary roads shall not be diminished by reason of any funds contributed for that purpose by such county or by any person or entity, regardless of whether such contributions are matched by state or federal funds.

(1977, c. 578; 1982, c. 218.)

§ 33.1-75.3. Construction and improvement of primary or secondary highways by counties.

A. Notwithstanding any other provisions of this article, the governing body of any county may expend general revenues or revenues derived from the sale of bonds for the purpose of constructing or improving highways, including curbs, gutters, drainageways, sound barriers, sidewalks, and all other features or appurtenances conducive to the public safety and convenience, which either have been or may be taken into the primary or secondary system of state highways. Project planning and the acquisition of rights-of-way shall be under the control and at the direction of the county, subject to the approval of project plans and specifications by the Department of Transportation. All costs incurred by the Department of Transportation in administering such contracts shall be reimbursed from the county's general revenues or from revenues derived from the sale of bonds or such costs may be charged against the funds which the county may be entitled to under the provisions of § 33.1-23.1, 33.1-23.2 or 33.1-23.4.

B. Projects undertaken under the authority of subsection A of this section shall not diminish the funds to which a county may be entitled under the provisions of § 33.1-23.1, 33.1-23.2, 33.1-23.4, or 33.1-23.05.

C. At the request of the county, the Department of Transportation may agree to undertake the design, right-of-way acquisition or construction of projects funded by the county. In such situations, the Department of Transportation and the county will enter into an agreement specifying all relevant procedures and responsibilities concerning the design, right-of-way acquisition, construction or contract administration of projects to be funded by the county. The county will reimburse the Department of Transportation for all costs incurred by the Department in carrying out the aforesaid activities from general revenues or revenues derived from the sale of bonds.

D. Notwithstanding any contrary provision of law, any county may undertake activities towards the design, land acquisition, or construction of primary or secondary highway projects that have been included in the six-year plan pursuant to § 33.1-70.01, or in the case of a primary highway, an approved project included in the six-year improvement program of the Commonwealth Transportation Board. In such situations, the Department of Transportation and the county shall enter into an agreement specifying all relevant procedures and responsibilities concerning the design, right-of-way acquisition, construction, or contract administration of projects to be funded by the Department. Such activities shall be undertaken with the prior concurrence of the Department of Transportation, and the Department shall reimburse the county for expenses incurred in carrying out these activities. Such reimbursement shall be derived from primary or secondary highway funds which the county may be entitled to under the provisions of this chapter. The county may undertake these activities in accordance with all applicable county

procedures, provided the Commissioner finds that those county procedures are substantially similar to departmental procedures and specifications.

E. If funding for the construction of a primary or interstate project is scheduled in the Commonwealth Transportation Board's Six-Year Improvement Program as defined in § 33.1-12, a locality may choose to advance funds to the project. If such advance is offered, the Board may consider such request and agree to such advancement and the subsequent reimbursement of the locality of the advance in accordance with terms agreed upon by the Board or its designee and the locality.

F. Any county carrying out any construction project as authorized in this section may, in so doing, exercise the powers granted the Commonwealth Transportation Commissioner under Article 7 (§ 33.1-89 et seq.) of this chapter to enter property for the purpose of making an examination and survey thereof, with a view to ascertainment of its suitability for highway purposes and any other purpose incidental thereto.

G. For the purposes of this section, any county without an existing franchise agreement, when administering a Department-sanctioned project under a land-use permit or transportation project agreement, shall have the same authority as the Department pertaining to the relocation of utilities.

H. Whenever so requested by any county, funding of any project undertaken as provided in this section may be supplemented solely by state funds in order to avoid the necessity of complying with additional federal requirements, provided a determination has been made by the Department that (i) adequate state funds are available to fully match available federal transportation funds and (ii) the Department can meet its federal obligation authority, as permitted by federal law.

(1981, c. 321; 1982, c. 218; 1983, cc. 321, 325; 1984, c. 127; 1985, c. 562; 1988, c. 654; 1989, c. 143; 1990, c. 36; 1995, c. 105; 1998, cc. 334, 341, 342; 2000, c. 88; 2003, c. 303; 2005, c. 342; 2006, cc. 115, 827.)

§§ 33.1-76. through 33.1-78.1.

Repealed by Acts 1977, c. 578.

§ 33.1-79. Maintenance, etc., of streets and roads in certain towns from secondary funds.

The Commonwealth Transportation Commissioner of Virginia is hereby authorized and empowered, subject to the approval of the Commonwealth Transportation Board, upon request of the governing bodies of incorporated towns of less than 3,500 inhabitants, according to the last United States census, to select certain streets and roads in such towns for maintenance, improvement, construction and reconstruction from allocations available from secondary funds not to exceed 2 miles of streets or roads in such incorporated towns included in the secondary system of highways, whether such 2 miles of streets or roads constitute connecting links between roads in the secondary system in the several counties, or between roads in the secondary system and roads in the primary system, of the state highways or not.

The said Commissioner is hereby authorized and empowered, with the approval of the Commonwealth Transportation Board, in addition to the said two miles to increase the

mileage of streets and roads in such incorporated towns annually, not to exceed, however, in any one year one-fourth mile, exclusive of any mileage transferred from the primary system under the provisions of § 33.1-35, or any mileage maintained by the Department of Transportation prior to its annexation by such incorporated town.

(Code 1950, § 33-50.1; 1954, c. 534; 1970, c. 322.)

§§ 33.1-80. , 33.1-81.

Repealed by Acts 1985, c. 42.

§ 33.1-82. Maintenance, etc., by Commonwealth Transportation Commissioner when no request for allocation.

If no request is made to the Commonwealth Transportation Board of Virginia by the governing body of any such town as provided in § 33.1-79, the Commonwealth Transportation Commissioner, subject to the approval of the Commonwealth Transportation Board, may maintain, improve, construct, and reconstruct all streets in such incorporated town that (i) have an unrestricted right-of-way width of not less than thirty feet and a hard surface width of not less than twelve feet, (ii) were established after July 1, 1950, by such town and have a right-of-way width of not less than fifty feet and a hard surface width of not less than twenty feet, or (iii) are functionally classified as local streets and were constructed on or after January 1, 1996, and at the time of approval by the town, met the criteria for pavement width and right-of-way of the then-current edition of the subdivision street requirements manual for secondary roads of the Department of Transportation (24 VAC 30-90-10 et seq.).

(Code 1950, § 33-50.4; 1950, p. 162; 1970, c. 322; 1992, c. 108; 1999, c. 318.)

§ 33.1-83.

Repealed by Acts 1985, c. 42.

§ 33.1-84. Maps of secondary system.

The Commissioner shall prepare and keep on file in his office for public inspection a complete map for each county showing the route of the secondary system of state highways.

(Code 1950, § 33-51; 1970, c. 322.)

§ 33.1-84.1. Resumption of responsibility for secondary highways by counties.

Notwithstanding any provisions of § 11 of Chapter 415 of the Acts of Assembly of 1932 and §§ 33.1-84, 33.1-85, 33.1-87, and 33.1-88, the Commonwealth Transportation Commissioner, following receipt of a resolution adopted by the Board of Supervisors of a county requesting such action, may enter into an agreement with any county that desires to resume responsibility over all or any portion of the state secondary system of highways within such county's boundaries for the purposes of planning, constructing, maintaining, and operating such highways. Such agreement shall specify the equipment, facilities, personnel, and funding that will be provided to the county in order to implement such agreement's provisions.

Any county that resumes full responsibility for all of the state secondary system of highways within such county's boundaries (i) shall have authority and control over the secondary system of highways within its boundaries, (ii) shall be deemed to have withdrawn from the state secondary system of highways, and (iii) will receive payments in accordance with § 33.1-23.5:1. The resolution requesting resumption of all responsibilities shall also include a request for the transfer and release of all rights-of-way and rights of access along the state secondary system of highways within the county's boundaries.

(2001, cc. 257, 273, 277; 2009, c. 476.)

§ 33.1-85. Return after withdrawal from secondary system.

Any county which has withdrawn its roads from the secondary system of state highways under the provisions of § 11 of Chapter 415 of the Acts of 1932, approved March 31, 1932, shall have the right at any time to bring itself back within such secondary system of state highways, provided the same shall be approved by a majority of the qualified voters of such county voting in an election called for that purpose, as hereafter provided in this article.

(Code 1950, § 33-53; 1970, c. 322.)

§ 33.1-86. Election to determine return.

The circuit court of any such county, or the judge thereof in vacation, shall, upon the petition of qualified voters of the county equal in number to at least twenty per centum of the number counted in such county for presidential electors at the last preceding presidential election, but in no event less than 250, make an order requiring the judges of election, on such day as may be fixed in the order, but not less than 30 days after the date of entry thereof, to open a poll and take the sense of the qualified voters of the county on the question of whether or not such county shall come back within such secondary system of state highways. The qualifications of voters at each such election shall be as provided by §§ 24.2-400 through 24.2-403.

The form of ballot for use in any such election shall be as follows:

"Shall ..... county (the name of such county to be inserted)  
come back within the secondary system of state highways for maintenance and  
construction by the State?

Yes

No "

Each qualified voter, who shall approve the coming back within the secondary system of state highways shall express such approval by striking out the word "No," and each voter who shall disapprove the same shall express his disapproval by striking out the word "Yes." All other proceedings in connection with any such election shall be in conformity with the proceedings prescribed in § 11 of Chapter 415 of the Acts of 1932, approved March 31,

1932.

(Code 1950, § 33-54; 1970, c. 322.)

§ 33.1-87. Effect of election.

If the result of such election shall be in favor of the county coming back within the secondary system of state highways, such county shall, after the entry by the court of an order so declaring the result of such election and on and after the first day of July next succeeding, be within the secondary system of state highways as fully and completely as if it had not withdrawn therefrom. All provisions of this article shall thereupon apply to and be enforced as to such county to the same extent as if the dates in such Chapter 415 of the Acts of 1932 had been changed to correspond with the year in which such county shall come within the secondary system of state highways. Such county shall not be allowed again to withdraw from the secondary system of state highways.

(Code 1950, § 33-55; 1970, c. 322.)

§ 33.1-88. Machinery, etc., owned by returning county.

The Commonwealth Transportation Commissioner shall, as promptly as practicable, make or cause to be made an inventory and appraisal of all road machinery, equipment, teams, material and supplies, on hand or belonging to the local road authorities of any county that shall so return within the secondary system of state highways or any district thereof, which may be deemed by him suitable for work on the secondary system of state highways, and shall file such inventory and appraisal with the Commonwealth Transportation Board. The local road authorities may, if they so elect, turn over to the Commonwealth such road machinery, equipment, teams, material and supplies at the appraised value thereof, which shall be paid within two years out of funds available for expenditure on roads in the secondary system of state highways or, if they so prefer, the local road authorities may retain or sell any of such property otherwise or, if they so elect, may turn over to the Commissioner all or any of such property for use upon the secondary system of state highways without reimbursement therefor. Any sums received by the local road authorities under the provisions of this section shall, so far as may be necessary, be applied on account of obligations theretofore contracted for county or district road purposes and the balance, if any, for general county purposes.

(Code 1950, § 33-56; 1970, c. 322.)

§ 33.1-89. Power to acquire lands, etc., by purchase, gift or eminent domain; conveyance to municipality after acquisition; property owners to be informed and briefed.

A. The Commonwealth Transportation Commissioner is hereby vested with the power to acquire by purchase, gift, or power of eminent domain such lands, structures, rights-of-way, franchises, easements and other interest in lands, including lands under water and riparian rights, of any person, association, partnership, corporation, or municipality or political subdivision, deemed to be necessary for the construction, reconstruction, alteration, maintenance and repair of the public highways of the Commonwealth and for these purposes and all other purposes incidental thereto may condemn property in fee simple and rights-of-way of such width and on such routes and grades and locations as the Commissioner may deem requisite and suitable, including locations for permanent,



temporary, continuous, periodical or future use, and rights or easements incidental thereto and lands, quarries, and locations, with rights of ingress and egress, containing gravel, clay, sand, stone, rock, timber and any other road materials deemed useful or necessary in carrying out the purposes aforesaid. For the purpose of this article "public highway" means highway, road and street; and when applicable, the term "public highway" also includes bridge, ferry, causeway, landing and wharf.

B. The Commissioner is authorized to exercise the above power within municipalities on projects which are constructed with state or federal participation, if requested by the municipality concerned. Whenever the Commissioner has acquired property pursuant to a request of the municipality, he shall convey the title so acquired to the municipality, except that rights-of-way or easements acquired for the relocation of a railroad, public utility company, public service corporation or company, another political subdivision, or cable television company in connection with said projects shall be conveyed to that entity in accordance with § 33.1-96. The authority for such conveyance shall apply to acquisitions made by the Commissioner pursuant to previous requests as well as any subsequent request.

C. Any offer by the Commissioner to a property owner with respect to payment of compensation for the prospective taking of property and damage to property not taken incident to the purposes of this section shall separately state (i) the property to be taken and the amount of compensation offered therefor and (ii) the nature of the prospective damage or damages and the amount of compensation offered for each such prospective damage. The amount of the offer shall not be less than the amount of the approved appraisal of the fair market value of such property, in accordance with the provisions of § 25.1-417. Any such appraisal used by the Commissioner as the basis for an offer shall be prepared by a real estate appraiser licensed in accordance with Chapter 20.1 (§ 54.1-2009 et seq.) of Title 54.1.

D. The Commissioner shall also provide to a property owner a copy of any report of status of title prepared in connection with such acquisition, if prepared pursuant to subsection D of § 25.1-204.

E. In negotiating with a property owner with respect to payment for prospective damage to property not taken incident to the purposes of this section, the Commissioner shall ensure that such property owner or his authorized representative is properly informed as to the type and amount of foreseeable damage and/or enhancement. Adequate briefing includes: (i) the giving of plats and profiles of the project, showing cuts and fills, together with elevations and grades; (ii) explanation, in lay terms, of all proposed changes in profile, elevation and grade of the highway and entrances, including the elevations of proposed pavement and shoulders, both center and edges, with relation to the present pavement, and approximate grade of entrances to the property.

F. Any option or deed executed by the property owner shall contain a statement that the plans as they affect his property have been fully explained. However, the requirements of this section with respect to information and briefing and the acknowledgment thereof in options and deeds shall in no way be construed to affect the validity of any conveyance or to create any right to compensation or to limit the Commissioner's authority to reasonably control the use of public highways so as to promote the public health, safety and welfare.

G. For the purposes of this article, "owner" means any person owning land, buildings, structures or improvements upon land where such ownership is of record in the land records of the clerk's office of the circuit court of the city or county where the property is located. Owner shall not include trustees or beneficiaries under a deed of trust, any person with a security interest in the property, or any person with a judgment or lien against the property. In proceedings instituted by the Commonwealth Transportation Commissioner under Title 25.1 or this title, owner also includes persons owning structures or improvements for which an outdoor advertising permit has been issued by the Commonwealth Transportation Commissioner pursuant to § 33.1-360. This definition of owner shall not alter in any way the valuation of such land, buildings, structures or improvements under existing law.

(Code 1950, § 33-57; 1956, c. 152; 1966, c. 65; 1968, c. 700; 1970, c. 322; 1976, c. 430; 1993, c. 67; 1999, c. 88; 2000, c. 1029; 2002, c. 878; 2003, c. 940.)

§ 33.1-89.1. Limitation on power of eminent domain.

No property that is within an agricultural and forestal district as provided by § 15.2-4300 et seq., shall be condemned by the Commonwealth Transportation Commissioner except in accordance with § 15.2-4313.

(1977, c. 681.)

§ 33.1-89.2. Additional power to acquire lands, etc., by purchase, gift or eminent domain.

The Commonwealth Transportation Commissioner may use the powers granted in this title to acquire needed property interests for purposes set out in Chapter 10.1 (§ 33.1-391.1 et seq.) of this title. Whenever the term "highway purpose or purposes," "highway project," or "highway construction" appears in this title, it means "highway, passenger and freight rail or public transportation purposes."

(1992, c. 167.)

§ 33.1-90. Acquisition of real property which may be needed for transportation projects; sale of certain real property.

A. When the Commonwealth Transportation Commissioner determines that any real property will be required in connection with the construction of a transportation project, or project as defined in § 33.1-268, within a period not exceeding twelve years for the Interstate Highway System or ten years for any other highway system or transportation project from the time of such determination, and that it would be advantageous to the Commonwealth to acquire such real property, he may proceed to do so. The Commonwealth Transportation Commissioner may lease any real property so acquired to the owner from whom such real property is acquired, if requested by him, and if not so requested, to another person upon such terms and conditions as in the judgment of the Commissioner may be in the public interest. If the transportation project contemplated, or project as defined in § 33.1-268, has not been let to contract or construction commenced within a period of twenty years from the date of the acquisition of such property and a need for the use of such property has not been determined for any alternative transportation project, upon written demand of the owner or owners, their heirs or assigns, received within ninety days from the expiration of such twenty-year period or such extension as provided

for in this section or within thirty days from publication in a newspaper of general circulation in the political subdivision in which the property is located of a notice of the Commissioner's intent to dispose of such property and shall notify to the extent practical, the last known owner(s) of said property by certified mail, such property shall be reconveyed by the Commonwealth of Virginia to such owner or owners, their heirs or assigns, upon repayment of the original purchase price, without interest. Unless the reconveyance is concluded no later than six months from the receipt by the Commissioner of a written demand, the reconveyance opportunity shall lapse. However, the twenty-year limit established by this section within which the Department must let to contract or begin construction in order to avoid reconveyance shall be extended by the number of days of delay occasioned by litigation involving the project or by the failure of the Commonwealth to receive anticipated federal funds for such project. The twenty-year limit may also be extended in those instances when a project is included in the six-year improvement program of the Commonwealth Transportation Board or the six-year improvement program for secondary roads prepared by the county boards of supervisors and where steps have been taken to move forward. No such reconveyance shall be required for rights-of-way acquired for future transportation improvements at the request of local governing bodies; or for rights-of-way acquired for state construction designed to provide future additional lanes or other enhancements to existing transportation facilities.

B. If any real property acquired under this article for use in connection with a transportation project is subsequently offered for sale by the Department and such property is suitable for independent development, the Department shall offer the property for sale at fair market value to the owner from whom it was acquired, before such property is offered for sale to any other person. The Commissioner shall notify, to the extent practicable, the last known owner of such property by certified mail, and the owner shall have thirty days from the date of such notice to advise the Commissioner of his interest in purchasing the property. The purchase of the property by the owner from which it was acquired is to be concluded no later than six months from the receipt by the Commissioner of a written notice, or the purchase opportunity shall lapse. The provisions of this subsection shall apply only to property to which the provisions of subsection A of this section do not apply.

C. Subsection B of this section shall not apply to Department projects carried out in cooperation with the United States Army Corps of Engineers as part of a nonstructural flood control project. No property acquired by the Commonwealth under this article in connection with such a project shall subsequently be offered for sale by the Commonwealth, but, if such property is no longer needed by the Commonwealth for such project, shall be conveyed to the locality in which such project is located and used in connection with the redevelopment. Should property not be used for economic development, property will revert to the Commonwealth and shall be used for any purposes deemed appropriate including resale.

(Code 1950, § 33-57.1; 1958, c. 345; 1964, c. 261; 1970, cc. 110, 322; 1972, c. 396; 1973, c. 430; 1983, c. 146; 1988, c. 80; 1992, c. 108; 1997, c. 93; 1998, c. 426; 2000, c. 998.)

§ 33.1-90.1.

Repealed by Acts 1992, c. 108.

§ 33.1-90.2. Same; reconveyance where property deemed suitable for mass transit

purposes.

In the event any real property which, under the provisions of § 33.1-90, is or may become eligible for reconveyance and is deemed suitable for the mass transit purposes of a public agency, authority, instrumentality or public service corporation or company, and such entity has submitted tentative plans to the Commissioner for a mass transit facility utilizing such real property, or portions thereof, and, prior to the eligibility of that real property for reconveyance under § 33.1-90 et seq., the Commissioner has approved the use of such real property for mass transit purposes, such real estate shall not be eligible for reconveyance under those sections. Upon the formulation of final plans for the facility, the Commissioner is authorized to enter into an agreement with any of the above-described entities for the conveyance of the property to such entity. Any property or portions thereof not necessary for the mass transit facility shall become eligible for reconveyance under the provisions of § 33.1-90 upon a determination of the final plans for the facility. Such agreement shall provide for the payment to the Commonwealth of an amount equal to that expended by the Commonwealth in the acquisition of such real property including proportionate administrative costs and costs under the Uniform Relocation and Real Property Acquisition Act. Upon payment of the agreed consideration, the Commissioner shall convey the specified property to the facility. However, if construction of such planned facilities is not commenced within ten years from the date of the agreement between the transit agency and the Commissioner, the persons who would otherwise have been authorized to petition for reconveyance under § 33.1-90 or their heirs or assigns may seek reconveyance under the same procedures and on the same basis as established in § 33.1-90.

This section shall not compel the Commissioner to convey any such property to such entities in contravention of any federal law or regulation affecting the disposition of real property acquired for highway purposes when such property is no longer needed for such purposes when such property has been acquired with federal funding participation.

(1976, c. 724; 1992, c. 108.)

§ 33.1-91. Authority to acquire entire tract of land, or parcel thereof, when only part to be utilized for highway purposes.

In acquiring rights-of-way for highway construction, reconstruction or improvement, and lands incidental to such construction, reconstruction or improvement, the Commissioner is authorized and empowered, whenever a portion of a tract of land is to be utilized for right-of-way, or a purpose incidental to the construction, reconstruction or improvement of a public highway, to acquire by purchase, gift or by the exercise of the power of eminent domain the entire tract of land or any part thereof, whenever the remainder of such tract or part thereof can no longer be utilized for the purpose for which the entire tract is then being utilized, or a portion of a building is to be taken or the cost of removal or relocation of the buildings, or other improvements on the remaining portion, necessitated by the taking, would exceed the cost of destroying such buildings or other improvements, or the highway project will leave the remaining portions without a means of access to a public highway, or whenever in the judgment of the Commissioner the resulting damages to the remainder of such tract or part thereof lying outside the proposed right-of-way, or the area being acquired for a purpose incidental to the construction, reconstruction or improvement of a public highway, will approximate or equal the fair market value of such remaining lands;

provided, however, that the Commissioner shall not acquire the remainder of such tracts by purchase where the remaining portion is in excess of 10 acres or, by condemnation where the remaining portion is in excess of two acres. Nothing contained herein shall be construed as preventing the Commissioner from complying, where applicable, with the provisions of § 25.1-417.

(Code 1950, § 33-117.2; 1960, c. 546; 1964, c. 262; 1970, c. 322; 1973, c. 166; 2003, c. 940.)

§ 33.1-91.1. Authority to acquire land to replace parkland; applicability.

Notwithstanding any contrary provision of this title, the Commonwealth Transportation Commissioner may acquire by gift or purchase any property without a permanent residential structure, or an interest in property, needed to replace parkland that is acquired for the improvement, maintenance, construction, or reconstruction of highways. Land acquired to replace parkland shall be abutting or appurtenant to the property of rights-of-way acquired for the improvement, maintenance, construction, or reconstruction of highways. For the purposes of this section, the term "parkland" shall only include parks and recreational areas under the jurisdiction of local governing bodies or state agencies. Before exercising the authority granted by this section, the Commonwealth Transportation Commissioner shall notify the local governing body or state agency having jurisdiction over the parkland and shall obtain the concurrence of the local governing body or state agency that replacement parklands should be acquired and conveyed to the local governing body or state agency in exchange for the parkland needed for the improvement, maintenance, construction, or reconstruction of the highway.

The provisions of this section shall apply only in Albemarle County and the City of Charlottesville.

(2000, c. 310.)

§ 33.1-92. Acquisition of residue parcels declared to be in public interest.

The acquisition of such residue parcels in addition to the lands necessary for the immediate use for highway rights-of-way or purposes incidental to the construction, reconstruction or improvement of public highways, is hereby declared to be in the public interest and constitutes a public use as the term public uses is used in Article I, Section 11 of the Constitution of Virginia.

(Code 1950, § 33-117.3; 1960, c. 546; 1964, c. 262; 1970, c. 322; 1971, Ex. Sess., c. 1.)

§ 33.1-93. Use and disposition of residue parcels of land.

The Commissioner may lease, sell or exchange such residue parcels of land upon such terms and conditions as in the judgment of the Commissioner may be in the public interest; provided, however, the Commissioner shall not use such parcels for any commercial purpose. The Commissioner may lease, sell, or exchange such residue parcels of land, as may have been acquired under the provisions of Article 5 (§ 33.1-267 et seq.) of Chapter 3 of Title 33.1, upon such terms and conditions as in the judgment of the Commissioner may be in the public interest. The Commissioner may lease such parcels of land, as may have been acquired under the provisions of § 33.1-90 in the event the former owner fails to make

the request authorized under the aforesaid section to others than the former owner, upon such terms and conditions as in the judgment of the Commissioner may be in the public interest. The provisions of Articles 10 (§ 33.1-144 et seq.) and 11 (§ 33.1-150 et seq.) of Chapter 1 of Title 33.1 shall not be construed to apply to the disposition of land hereinabove authorized.

(Code 1950, § 33-117.4; 1960, c. 546; 1970, c. 322.)

§ 33.1-94. Right to enter on land to ascertain its suitability for highway and other transportation purposes; damage resulting from such entry.

A. The Commonwealth Transportation Commissioner, through his duly authorized officers, agents, or servants, may enter upon any land in the Commonwealth for the purposes of making examination and survey thereof, including but not limited to photographing, testing, including but not limited to soil borings or testing for contamination, making appraisals, and taking such actions as may be necessary or desirable to determine its suitability for highway and other transportation purposes, or for any other purpose incidental thereto. Such officers, agents, or servants shall exercise care to protect any improvements, growing crops, or timber in making such examination or survey.

B. Notice shall be sent to the owner by certified mail, at the address recorded in the tax records, return receipt requested, or delivered by guaranteed overnight courier or otherwise delivered to the owner in person with proof of delivery not less than 15 days prior to the first date of the proposed entry. Notice of intent to enter shall be deemed made on the earlier of the date of mailing, if mailed, or on the date delivered.

C. The notice shall include the anticipated date or dates such entry is proposed to be made and the purpose of such entry. Any entry authorized by this section shall be for the purposes of making examination and survey thereof, including but not limited to photographing, testing, including but not limited to soil borings or testing for contamination, making appraisals, and taking such other actions as may be necessary or desirable to determine the suitability of such property for highway and transportation purposes and shall not be deemed a trespass.

D. The Commonwealth Transportation Commissioner, through his duly authorized officers, agents, or servants, shall make reimbursement for any actual damages to real or personal property resulting from entry upon the property. In any action filed under this section, the court may award the owner his reasonable attorney fees, court costs, and fees for no more than three expert witnesses testifying at trial if: (i) the court finds that the Commissioner maliciously, willfully, or recklessly damaged the owner's property and (ii) the court awards the owner actual damages in an amount 30 percent or more greater than the Commissioner's final written offer made no later than 30 days after the filing of an answer in circuit court or the return date in general district court. A proceeding under this subsection shall not preclude the owner from pursuing any additional remedies available to the landowner.

(Code 1950, § 33-57.2; 1960, c. 491; 1970, c. 322; 2007, c. 755.)

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