

**AUGUST 7 CODE COMMISSION MEETING
MATERIALS**

VIRGINIA CODE COMMISSION

DRAFT

July 15, 2013

*Wednesday, June 19, 2013 - 10 a.m.
General Assembly Building, 6th Floor
Speaker's Conference Room
Richmond, Virginia 23219*

MEMBERS PRESENT: John S. Edwards; Gregory D. Habeeb; James M. LeMunyon; Ryan T. McDougle; Charles S. Sharp; E.M. Miller, Jr.; Jeffrey S. Palmore; Robert L. Tavenner; Christopher R. Nolen; Wesley G. Russell, Jr.

MEMBERS ABSENT: Thomas M. Moncure, Jr.; Robert L. Calhoun

STAFF PRESENT: Jane Chaffin, Karen Perrine, Lilli Hausenfluck, Viki Wagner, Andrew Kubincanek, Nicole Brenner, Alan Wambold

Call to order: Senator Edwards called the meeting to order at 10:05 a.m.

Approval of minutes: Mr. Russell made a motion, seconded by Mr. Palmore, to approve the minutes of the May 20, 2013, meeting of the Virginia Code Commission. The motion carried and the minutes were approved as printed and distributed to the members of the Code Commission.

2013-2014 proposed work plan: The members reviewed the proposed work plan as presented by Ms. Chaffin. The Code Commission first considered which Code of Virginia title to undertake for recodification next year. Titles 23 (Educational Institutions), 36 (Housing), 8.01 (Civil Remedies & Procedures), 22.1 (Education), 40.1 (Labor & Employment), 45.1 (Mines & Mining), and 55 (Property & Conveyances) were presented as candidates at the May meeting. Ms. Chaffin advised that public comment was solicited through June 18 on the titles being considered by publishing notices on the Virginia Lawyers Weekly blog, on the Code Commission's website, and in the Virginia Register. Although no public comment was received, Kirsten Nelson, Director of Communications and Government Relations with the State Council of Higher Education for Virginia (SCHEV), telephoned for more information on the recodification process, and Delegate Habeeb sent an email in support of selecting Title 8.01. It was noted that Ms. Nelson was in the audience and Senator Edwards asked for her input. Ms. Nelson stated that SCHEV is currently looking at statutory provisions as they relate to SCHEV in response to Executive Directive No. 6. SCHEV plans to recommend an omnibus bill for the 2014 General Assembly session to remove duplicative and obsolete provisions that are identified. In response to an inquiry as to other reasons Title 23 should be recodified, Tom Stevens, DLS attorney, stated that Title 23 is lacking a definitions section, the existing numbering is cumbersome and unwieldy, the school charter provisions need better organization, and it would be helpful to add some general language that applies to all universities in one place.

After discussing the issue at length, Mr. Miller moved that the Code Commission begin working on the recodification of Title 23 next year and to tentatively put Title 8.01 on the work plan for 2015. Delegate Habeeb seconded the motion and the motion carried.

The Code Commission moved on to the next item on the work plan, Code of Virginia Volume Update Project. Mrs. Hausenfluck, Chief Editor for DLS, explained that this project is intended to make housekeeping changes to the Code on a volume by volume basis, instead of making these types of changes in proposed legislation. Legislators sometimes find such housekeeping changes to be a distraction from a bill's main focus. Titles will be selected based on volumes that are expected to be replaced in the following year. Since it is expected that Volume 6 containing Title 33.1 will be replaced next year in anticipation of the completion of the Title 33.1 recodification, the Editing Office currently is reading Titles 34 through 37.2, the other titles in

Volume 6. Only nonsubstantive changes consistent with the Code Commission's authority in § 30-149 of the Code of Virginia will be considered, including style, format, cross references, agency names, and punctuation. Mrs. Hausenfluck described the process as follows: (i) Bill Crammé, Deputy Executive Director of DLS, will approve a list of types of changes appropriate for the project, (ii) the DLS Editing Office will review a title and suggest appropriate changes within the scope of the project, (iii) DLS drafters familiar with the title content will review the changes to ensure none are of a substantive nature or beyond the scope of the project, and (iv) Mr. Crammé will conduct a final review and approve or disapprove each change. Mr. Palmore requested that a copy of the list of all types of changes to be made be sent to the Code Commission members for review before starting the process.

Jane Chaffin explained the next item on the work plan. The Code Commission is mandated by § 30-151 of the Code of Virginia to identify obsolete provisions in the acts of assembly and Code of Virginia and to make recommendations, as appropriate, to the General Assembly. Although the statute requires this process to be conducted no less than every four years, the Code Commission generally conducts the study every two years and proposes legislation in even-numbered years.

Hearing no objections, Senator Edwards declared that the volume update project and the obsolete provisions project were approved for the work plan.

The Code Commission agreed to Mr. Miller's suggestion to add to the work plan a review of policy decisions made by the Code Commission over the years related to title recodifications. Ms. Chaffin has compiled a list of these policies and will provide it to members for review and discussion at a future meeting.

Ms. Chaffin advised that work plan items continued from last year are the recodification of Title 33.1, comparison of the Model State Administrative Procedures Act with Virginia's Administrative Process Act, and update of the Virginia Code Commission Regulations Implementing the Virginia Register Act. Also, Boyd-Graves Conference and the Supreme Court have agreed to the Code Commission's request for assistance in reviewing various code provisions concerning whether to add commercial delivery service as an option in certain code provisions requiring delivery of notices by U.S. postal service, therefore, this work will be monitored.

Policy on codification of compacts. Ms. Chaffin referred the members to the policy on codifying compacts in their notebooks that was discussed at the May meeting. After discussion, the Code Commission approved the following policy: "Each compact will be assigned a code section number, depending on its proper title location. If a compact is general and permanent in nature, the compact will be set out in full in both the Code and in the Compacts volume. Otherwise, the compact will be set out in full only in the Compacts volume, and the section number in the Code of Virginia will contain only a reference directing the reader to the Compacts volume. The Code Commission expresses its desire to place the full text of all compacts online for free public access."

Administrative Law Advisory Committee (ALAC). Chris Nolen, ALAC chair, presented the ALAC 2013 work plan for approval. Continuing studies include the review of what constitutes the adoption of a regulation for the purposes of appealing the regulation, hearing officer deskbook updates, and Model State Administrative Procedure Act recommendations. A new

study being considered is guidance document availability and dissemination from the public's standpoint. Mr. Nolen moved approval of the work plan. Judge Sharp seconded the motion and the motion carried.

Mr. Nolen presented ALAC's proposed 2013-2014 budget for approval. The total amount requested is \$20,000 for meetings and related expenses, consultant and intern expenses, conferences and training, and publications and supplies. Mr. Nolen moved to approve the budget with the caveat that any expenditure related to consultants/interns would be made in consultation with the Director of Legislative Services. The motion was properly seconded and approved.

Recodification of Title 33.1: Highways, Bridges and Ferries. Nicole Brenner requested approval of the new organization plan, noting that the Chesapeake Bay Bridge and Tunnel District and Commission and the Northern Virginia Transportation Authority are not included on today's agenda. Upon motion of Mr. Russell, seconded by Judge Sharp, the amended organization plan was approved unanimously. Ms. Brenner and Mr. Wambold presented the following chapters:

- Eminent Domain
- Highway Construction Contracts
- Transportation Development & Revenue Bond Act
- Local Transportation Districts
- Transportation Districts within Certain Counties
- U.S. Route 58 Corridor Develop. Fund
- NoVA Transportation District Fund
- Transportation District within the City of Charlottesville and County of Albemarle
- Charlottesville-Albemarle Regional Transit Authority
- Richmond Metropolitan Authority
- Washington Metropolitan Area Transit Regulation Compact
- Washington Metro. Area Transit Auth. Compact
- Metropolitan Planning Organizations
- Virginia Coalfield Coalition Authority (Repeal)

The Code Commission discussed or took action on the following:

Eminent Domain

- § 33.1-128 B - Delete clause (i), which reads "any (i) interest that accrued before July 1, 1970, shall be paid at the rate of five percent" and make related necessary technical changes. This provision is no longer necessary because the Department of Transportation has no outstanding certificates in this category.

Transportation Development & Revenue Bond Act

- § 33.1-268 (lines 79-93) - Mr. Russell inquired if the updates should include the Monitor/Merrimac Bridge. Representatives of VDOT will check on this and report back.
- § 33.1-269 (new subdivision 13) - The term "railways" was added in one place based on Chapter 639 (Senator Petersen's bill) of the 2013 Acts of Assembly, but the word appears to have been inadvertently omitted later in the subdivision. The Code Commission directed staff to add "railways" where omitted and to notify Senator Petersen and the Department of Rail and Public Transportation of the change. Also, staff will update the drafting note accordingly.

- § 33.1-293 - The Code Commission discussed removing language that authorizes the board to spend money for something that does not exist. Staff will work with VDOT on the language and bring a recommendation back at a future meeting.

Transportation Districts within Certain Counties

- § 33.1-430 - The Code Commission discussed whether to identify "Fairfax" in the definition of "county" by name instead of by population bracket. The Code Commission decided to leave as a population bracket description.

Virginia Coalfield Coalition Authority - The Code Commission voted to repeal this authority at the May meeting.

Administrative Code. Karen Perrine, Assistant Registrar, presented a mock-up proposed by West for the new administrative code covers. The main volumes will be a dark blue with gray print and the cumulative supplement volumes will be gray with blue print.

Also, pursuant to the Virginia Administrative Code Contract, Mrs. Perrine advised the Code Commission that approval is needed when West replaces more than four volumes of the administrative code in any given year. West is recommending issuing five volumes this year as follows:

- Volume 1: Title 1 to 2VAC5-480 (approximately 796 text pages)
- Volume 2: 2VAC5-490 to end of Title 3 (approximately 744 text pages)
- Volume 3: 4VAC3-10 to 4VAC20-670 (approximately 802 text pages)
- Volume 4: 4VAC20-680 to 4VAC25-130 (approximately 958 text pages)
- Volume 5: 4VAC25-140 to end of Title 4 (approximately 679 text pages)

Mr. Miller made a motion, which was properly seconded, to replace the five volumes as proposed. The motion was approved.

Public comment; adjournment: The Chair opened the floor for public comment. As there was no public comment and no further business to discuss, the meeting adjourned at 12:20 p.m.

**TAB 2 - ADMINISTRATIVE LAW ADVISORY
COMMITTEE APPOINTMENTS**

McGuireWoods Consulting LLC
One James Center
901 East Cary Street
Richmond, VA 23219-4030
Phone: 804.775.1900
Fax: 804.775.1061
www.mwcllc.com

Christopher R. Nolen
Direct: 804.775.1938

McGUIREWOODS
CONSULTING
Public Affairs Solutions

cnolen@mwcllc.com
Fax: 804.775.1061

July 3, 2013

The Honorable John S. Edwards
Member, Senate of Virginia
Chair, Virginia Code Commission
Post Office Box 1179
Roanoke, VA 24006

Dear Senator Edwards:

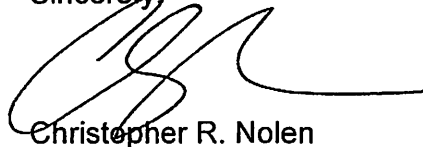
It has been an honor to serve the Virginia Code Commission for the last six years as Chairman of the Administrative Law Advisory Committee. Over that time period the committee has reviewed a variety of topics related to the implementation and use of the Administrative Code in Virginia. The committee's work has resulted in amendments to the Rules of the Virginia Supreme Court, various pieces of legislation being adopted by the General Assembly related to administrative law, and the updating and revision of the Commonwealth's Hearing Officer Handbook.

As I indicated after becoming a member of the Virginia Code Commission, I wanted to assist the committee in developing its current work plan before resigning as Chairman. The committee is in the beginning stages of implementing its current work plan and I feel that now is an appropriate time to turn the gavel over to another member of the committee to serve as chairman. Therefore, please accept my resignation as a member and Chairman of the Administrative Law Advisory Committee, effective upon the Code Commission selecting a new chairman of the committee.

Again, it has been a pleasure serving as the Chairman of the Administrative Law Advisory Committee.

With kind regards, I remain

Sincerely,



Christopher R. Nolen

CRN/mbt

cc: Andrew Kubincanek, Program Coordinator
Robert L. Tavenner, Director, Division of Legislative Services

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July 3, 2013

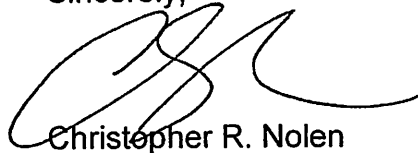
The Honorable John S. Edwards
Member, Senate of Virginia
Chair, Virginia Code Commission
Post Office Box 1179
Roanoke, VA 24006

Dear Senator Edwards:

Please find enclosed a brief biography of Tom Lisk for the Code Commission's consideration in the appointment of a chairman for the Administrative Law Advisory Committee. Tom is a valuable member of the committee and, given his legal practice would make an ideal chairman of the committee. Should you need any further information regarding Tom's credentials, his contact information is included on the attached biography. Thank you for considering Tom to chair the Administrative Law Advisory Committee. I ask that this issue be taken up at the next regularly scheduled meeting of the Code Commission.

With kind regards, I remain

Sincerely,



Christopher R. Nolen

CRN/mbt

Enclosure

cc: Andrew Kubincanek, Program Coordinator (w/enclosure)
Robert L. Tavenner, Director, Division of Legislative Services (w/enclosure)
Tom Lisk (without enclosure)

THOMAS A. LISK
ECKERT SEAMANS CHERIN & MELLOTT, LLC
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RICHMOND, VA 23219
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Cell: (804) 714-6915
E-Mail: TLisk@eckertseamans.com

Tom Lisk is a partner in the Richmond, Virginia office of Eckert Seamans Cherin & Mellott, LLC, where his practice focuses on regulatory matters before agencies, boards and commissions of the Commonwealth of Virginia, with special emphasis on the hospitality industry and the regulation of alcoholic beverages. Over the past twenty-eight years, Tom has represented a wide range of restaurants, hotels, amusement and entertainment establishments, as well as many breweries, wineries, distilleries, and wine and beer wholesalers and importers on legal, regulatory and legislative matters. In addition, Tom serves as legal and legislative counsel to the Virginia Hospitality & Travel Association, representing the Commonwealth's restaurant and lodging industries. Tom has been a registered lobbyist in Virginia, providing legislative representation to a wide range of business interests and trade associations before the Virginia General Assembly including matters relating to in matters relating to beverage alcohol regulation, antitrust, election law, franchise, gaming and lottery, healthcare, insurance, internet regulation, professional and occupational regulation, taxation and issues related to privatization of governmental services.

Tom serves as a member of the Virginia Administrative Law Advisory Committee and as a member and past Chair of the Administrative Law Council of the Virginia Bar Association. In addition, Tom serves as a member of the Editorial Board of the Virginia ABC Board's Licensee Newsletter. Tom previously served as chairman of the Industry Advisory Panel to the Virginia Alcoholic Beverage Control Board during its regulatory review process and as a member of the Industry Task Force to the Virginia Code Commission when the General Assembly recodified the Virginia Alcoholic Beverage Control Act. Tom is a member of the ABA's Administrative Law & Regulatory Practice Section Committee on Beverage Alcohol Practice, as well as a member of the National Association of Alcoholic Beverage Licensing Attorneys, the National Association of Licensing & Compliance Professionals, and the Alliance of Alcohol Industry Attorneys and Consultants.

Tom has been recognized by *Virginia Business* magazine as a member of its "Legal Elite" for Legislative/Regulatory/Administrative, by *Best Lawyers in America* for Administrative Law, Government Relations Law and Gaming Law, and by *Virginia Super Lawyers* for Administrative Law.

Tom is a graduate of Washington & Lee University where he was awarded a B.A., *cum laude*, in Politics in 1980 and a J.D. in 1985.

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July 3, 2013

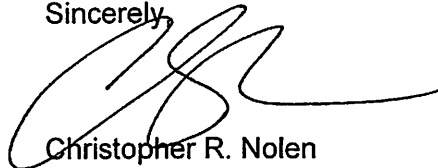
The Honorable John S. Edwards
Member, Senate of Virginia
Chair, Virginia Code Commission
Post Office Box 1179
Roanoke, VA 24006

Dear Senator Edwards:

Please find enclosed a brief biography of Edward Mullen for the Code Commission's consideration in the appointment of a new member to the Administrative Law Advisory Committee. My pending resignation from the committee will create a vacancy. Edward has expressed an interest in serving on the committee and I hope the Commission will approve his membership. His legal practice involves administrative law and I believe he would be a valuable addition to the committee.

With kind regards, I remain

Sincerely,



Christopher R. Nolen

CRN/mbt

Enclosure

cc: Andrew Kubincanek, Program Coordinator (w/enclosure)
Robert L. Tavenner, Director, Division of Legislative Services (w/enclosure)
Edward Mullen (without enclosure)

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Richmond, VA 23220
(804) 241-6994

Edward Augustus Mullen
emullen@reedsmith.com

901 East Byrd St., Suite 1700
Richmond, VA 23219
(804) 344-3435

PROFESSIONAL EXPERIENCE

Reed Smith LLP – Richmond, Virginia

Senior Associate, September 2008 – Present

- I have an administrative and regulatory law practice before all state agencies, a legislative practice before the Virginia General Assembly, a legislative practice before the United States Congress, and a commercial litigation practice.
- Representative clients include ExxonMobil, General Motors, the Home Builders Association of Virginia, Medical Facilities of America, National Vision, the Pamunkey Indian Tribe (pro bono), the Virginia Alliance for Tort Reform, and the Virginia Bar Association.

Commonwealth of Virginia, Office of the Governor – Richmond, Virginia

Senior Aide to the Governor, November 2001 – July 2005

- Assisted the Governor on gubernatorial, political, and personal matters as a confidential aide.
- Traveled full-time with the Governor, assisting in press relations, speech preparation, scheduling and advance work.

One Virginia PAC – Alexandria, Virginia

Deputy Finance Director, while on leave from the Governor's Office, September 2004 – December 2004

- Responsible for planning, organizing and raising money for various fundraising events.

MRW Enterprises/Warner 2001 – Alexandria, Virginia

Staff Aide, October 1999 – November 2001

- Served as aide and confidante to the candidate while carrying out the daily campaign schedule.
- Responsible for press relations, constituent contacts, and political concerns while traveling with the candidate.

EDUCATION

University of Virginia School of Law – Charlottesville, Virginia

Juris Doctor, May 2008

University of Virginia, College of Arts and Sciences – Charlottesville, Virginia

Bachelor of Arts in English Literature, May 1999

PROFESSIONAL AFFILIATIONS

Reed Smith PAC – Board Member (2013 – Present)

Sorensen Institute for Political Leadership – Fellow (2005)

Virginia Bar Association – Member (2011 – Present)

Virginia Chamber of Commerce, Civil Justice Committee – Member (2012 – Present)

Virginia Scenic River Board – Member (October 2005 – June 2011); Vice-Chair (May 2011-June 2012)

AWARDS & HONORS

Virginia Business Magazine – *Legal Elite for Legislative/Regulatory/Administrative Law* (2011, 2012)

Virginia Super Lawyers Magazine – *"Rising Star" for Administrative Law* (2010, 2011, 2012 and 2013)

PERSONAL

Born and raised in Old Town, Alexandria, Virginia, I attended both the Alexandria City Public Schools and the Sidwell Friends School in Washington, D.C. During college, I interned on Capitol Hill with a United States Senator, the Bank of America corporate headquarters in San Francisco, as well as a public policy think tank in Charlottesville, Virginia. During law school, in addition to Reed Smith, I interned with Richmond firms McGuire Woods Consulting, McCandlish Holton, and Hunton & Williams.

I am an avid reader, amateur historian, as well as a sportsman and an outdoorsman. In 2005, I married Jennifer Davis Mullen of Louisville, Kentucky. Jennifer is a partner in the Richmond office of the Roth Doner Jackson law firm, practicing commercial real estate and land use law. We reside in the Fan District of Richmond with our two sons Edward Huff ("Huff") Mullen, age 4, and Davis Cole Mullen, age 1.

**TAB 3 - LEXIS 2014 CODE PRICING & REPLACEMENT
VOLUME PROPOSAL**

Vol	Title	Subject	Edition	BV pp*	13 CS	%	Lexis*	Replacement Candidates
1	1-2.2	Gen. Prov., Adm. of Govt.	2011	1071	384	35.9%	1124	Stand alone
1A	3.2	Agriculture	2008	432	127	29.4%	541	
1B	4.1-7.1	Alcoholic Bev. -- Boundaries	2010	685	132	19.3%	705	
2	8.01	Civil Remedies & Procedure	2007	1109	308	27.8%	1360	
2A	8.1-8.11	UCC	2001	894	275	30.8%	1037	
2B	9-10.1	Commissions -- Conservation	2012	680	58	8.5%	698	
3	11-14.1	Contracts to Corporations	2011	544	100	18.4%	661	
3A	15.2	Counties, Cities, and Towns	2012	1346	99	7.4%	1355	
3B	16.1-17.1	Courts	2010	624	198	31.7%	685	
4	18.2	Crimes	2009	948	321	33.9%	1189	Stand alone
4A	19.2	Criminal Procedure	2008	646	244	37.8%	785	
4B	20, 21	Domestic Relations, Drainage	2008	548	139	25.4%	673	
5	22.1, 23	Education -- Eminent Domain	2011	785	198	25.2%	811	
5A	24.2-28.2	Fiduciaries -- Health	2011	808	173	21.4%	739	
5B	29.1-32.1		2011	834	211	25.3%	848	
6	33.1-37.2	Highways -- Institutions for the Mentally Ill	2011	838	221	26.4%	821	33.1 recod 2013
6A	38.2	Insurance	2007	913	394	43.2%	1188	Stand alone
6B	40.1-45.1	Labor & Employment -- Mines & Mining	2013	675				Stand alone
7	46.2	Motor Vehicles	2010	1094	404	36.9%	1196	
7A	47.1 - 53.1	Notaries to Prisons	2013	771				
7B	54.1	Professions	2013	717				
8	55-57	Property -- Religious & Charitable Matters	2012	1203	120	10.0%	1227	
8A	58.1	Taxation	2013	1205				Stand alone
9	59.1-62.1	Trade -- Waters	2006	884	403	45.6%	1168	
9A	63.2-67	Welfare -- Youth & Family Services	2012	1552	98	6.3%	1569	
10		Tables	2004	702	219	31.2%		
11		Rules	2011	n/a	n/a	n/a		
12		Index	2011	n/a	n/a	n/a		
13		Index	2011	n/a	n/a	n/a		
Compacts		Compacts	2010	514	57	11.1%	335	
Const.		Consts.	2008	296	61	20.6%	338	
LEO1		LEO/UPL	2002	631	56	8.9%		
LEO2		LEO/UPL	2013	945				

* BV and Lexis page counts do not include prelims.

VIRGINIA CODE ANNOTATED

	2014 PRICES				2013 PRICES			
	STATE (6 Replacement Volumes)	PRIVATE	STATE (5 Replacement Volumes)	PRIVATE	STATE (4 Replacement Volumes)	PRIVATE	STATE (5 Replacement Volumes)	PRIVATE
SUPPLEMENT	\$159.25	\$206.00	\$174.25	\$225.75	\$190.75	\$253.75	\$167.50	\$217.00
INDEX	\$80.75	\$85.25	\$ 80.75	\$ 85.25	\$80.75	\$85.25	\$ 77.50	\$ 82.00
VOLUMES (EACH)	\$43.25	\$54.00	\$ 43.25	\$ 54.00	\$43.25	\$54.00	\$ 41.50	\$ 52.00
VOLUME 11	\$32.75	\$43.25	\$ 32.75	\$ 43.25	\$32.75	\$43.25	\$ 31.50	\$ 41.50
VOLUME 11 SUPP	\$11.00	\$11.00	\$11.00	\$ 11.00	\$11.00	\$11.00	\$ 10.50	\$ 10.50
ADVANCE CODE SERVICE		\$62.50		\$ 62.50		\$62.50		\$ 60.00
TOTAL	\$543.25	\$732.00	\$515.00	\$697.75	\$488.25	\$671.75	\$494.50	\$671.00

(STATE GOVERNMENT PRICING FOR PURCHASES OUTSIDE OF THE CODE COMMISSION PURCHASE)

PPI increase is 4%

**TAB 4 - CODE OF VIRGINIA VOLUME UPDATE
PROJECT**

Reasons for making proposed style and text updates title by title rather than in sections being amended in bills:

The presentation of the proposed style and text updates in individual bills is often distracting to General Assembly members and the public when they are considering substantive changes in the bills.

The updates get made only to the sections being amended that subsequently become law but do not get made to other sections in a title that are not amended, therefore inconsistency within titles has gotten worse over time.

Some sections are proposed to be amended year after year but the amendments do not pass; therefore, the same text and style updates are made by editors and drafters year after year and appear as distractions to bill readers year after year.

Since these updates are being made to all bills, including those that do not pass and get incorporated into the Code of Virginia, the current process is not an efficient use of drafter and editor time.

The proposed style and text updates are being made in titles as they are recodified, but some titles are not likely to be recodified, such as Title 18.2, Crimes and Offenses Generally, and Title 20, Domestic Relations.

Example of project timeline (based on editing and drafting staff availability in June through September)

In summer 2013, DLS editing staff will prepare drafts of titles in Volume 6, which contains the recodification of Title 33.1 and Titles 34 through 37.2, with changes from the Code Commission's approved list in those volumes for review by subject-matter drafters and by Bill Cramme. (In future years, DLS staff will work with Michie staff in June and July to determine volumes that Michie will likely recommend be reprinted the following year.)

Final versions of prepared titles will be submitted to Michie staff in early fall 2013 for use in updating text for 2014 reprinted volumes with 2014 Session changes incorporated by Michie staff.

Changes or corrections identified in this process that Bill Cramme determines need General Assembly approval will be presented to the Code Commission in fall 2013 to consider whether they want to propose legislation in the 2014 Session.

Code of Virginia Style and Text Update Project by Volume*

1. Update numbers style:
 - change eleven through ninety-nine from words to Arabic numerals
 - update dollars and cents to current Code style
 - change percentages to current Code style using "percent" rather than "%"
2. Update paragraph designations to current Code style (i.e., A, B, etc.; 1, 2, etc.)
3. Conform cross-reference terminology to Code style by removing "of this title," "of this chapter," etc.
4. Correct terminology of cross-references to subsections and subdivisions (e.g., subdivision A 4, rather than subdivision 4 of subsection A)
5. Correct internal paragraph clause numbering and cross-references to clauses
6. Conform references to Acts of Assembly chapters to current Code style (e.g., "Chapter 123 of the Acts of Assembly of 2013")
7. Change "this Commonwealth" to "the Commonwealth"
8. Correct punctuation as needed, including use of serial commas and punctuation of "provided that"
9. *Correct use of "which" and "that"
10. Make spelling, capitalization, and hyphenation of terms consistent with the Code style list, for example:
 - attorney fees
 - recordkeeping
 - firefighting, firefighters
 - Internet, website, email
 - attorney for the Commonwealth
11. Conform hyphenation to current Code style, including removing hyphenation in words with prefixes such as non and multi and repairing hyphenation use when terms modify nouns
12. Correct use of section marks (§) in lists using "and" and "or"
13. Correct names and style of state and federal agencies based on authority in § 30-149; use U.S. to indicate federal agency or officer and generally do not include Virginia before state agency names unless needed to differentiate between state and federal entities
14. Close spaces as appropriate in citations to the U.S. Code and the Code of Federal Regulations
15. Close spaces in VAC cross-references to conform to Register of Regulations and VAC usage
16. Remove "or she" and "or her" as appropriate in "he or she" and "him or her" based on Code-wide treatment of gender in § 1-216, "A word used in the masculine includes the feminine and neuter."

*Make only nonsubstantive changes and be particularly careful with items marked; when in doubt, don't make the change

17. Change "must" to "shall" in limited circumstances as appropriate
18. *Conform usage to Code style by changing "shall be guilty of" to "is guilty of" and "shall be punishable as" to "is punishable as"
19. Conform definitions to current rules:
 - Alphabetize defined terms and do not number
 - Change "shall mean" to "means"; "shall include" to "includes"; and "shall not include" to "does not include"
 - Remove use of "the term" before defined words and phrases as appropriate to conform to current Code style
20. Change abbreviated references to commissions, funds, etc., from, for example, ("Fund") to (Fund); both quotation marks and parentheses are not needed
21. *Correct catchlines to reflect amendments made and to remove outdated use of "same" that referred to the catchline of the previous section
22. *Change "herein," "above," and similar terms to more precise terms, such as "in this section"
23. *Clean up uses of words such as hereof, hereinafter, and thereafter as archaic and imprecise

*Make only nonsubstantive changes and be particularly careful with items marked; when in doubt, don't make the change

TAB 5 - TITLE 33.2 ORGANIZATION & CHAPTERS

TITLE 33.2 ORGANIZATION OUTLINE

Proposed Title 33.2. Highways and Other Surface Transportation Systems.

SUBTITLE I. GENERAL PROVISIONS; TRANSPORTATION ENTITIES.

Chapter 1		Definitions; General Provisions
Chapter 2		Transportation Entities
	Article 1	Commonwealth Transportation Board; Membership and Organization
	Article 2	Commonwealth Transportation Board; Powers and Duties
	Article 3	Commissioner of Highways
	Article 4	Department of Transportation
	Article 5	Department of Rail and Public Transportation

SUBTITLE II. MODES OF TRANSPORTATION: HIGHWAYS, BRIDGES, FERRIES, RAIL, AND PUBLIC TRANSPORTATION.

Chapter		Highway Systems
	Article 1	The Interstate System
	Article 2	The Primary State Highway System
	Article 3	The Secondary State Highway System
	Article 4	Allocation of Highway Funds
Chapter		Limited Access Highways, Scenic Highways and Virginia Byways, and Highways over Dams
Chapter		HOV Lanes and HOT Lanes
Chapter		Toll Facilities and Ferries
Chapter		Local Authority over Highways
	Article	
	Article	
	Article	
Chapter		Offenses Concerning Highways
Chapter		Woodrow Wilson Bridge and Tunnel Compact
Chapter		Abandonment and Discontinuance of Highways and Roads
	Article 1	Abandonment and Discontinuance of Highways in Primary State Highway System
	Article 2	Abandonment and Discontinuance of Highways in Secondary State Highway System
	Article 3	Abandonment of Roads Not in Primary or Secondary State Highway System
	Article 4	Abandonment of Highways for Flooding Secondary System Highways in Connection with Municipal Water Supply Projects

Chapter		Eminent Domain
	Article 1	Eminent Domain and Damages
	Article 2	Acquisition of Land Used as Cemeteries
Chapter		Highway Construction Contracts; Highway Contractors' Association
	Article 1	Highway Construction Contracts, Limitations on Suits, and Adjustment of Claims
	Article 2	Highway Contractors' Association
Chapter		Outdoor Advertising in Sight of Public Highways
	Article 1	General Regulations
	Article 2	False and Misleading Signs
Chapter		Rail and Public Transportation
	Article 1	Rail Funds
	Article 2	Virginia-North Carolina Interstate High-Speed Rail Compact

**SUBTITLE III.
TRANSPORTATION FUNDING.**

Chapter		Transportation Funding
	Article 1	Virginia Transportation Infrastructure Bank
	Article 2	Highway Right-of-Way Fund
	Article 3	Transportation Partnership Opportunity Fund
	Article 4	Virginia Alternative Fuels Revolving Fund
	Article 5	Funds for Access Roads
	Article 6	Commonwealth of Virginia Federal Transportation Grant Anticipation Revenue Notes
Chapter		Transportation Development and Revenue Bond Act
Chapter		Public-Private Transportation Act of 1995 (§ 56-556 et seq.)

**SUBTITLE IV.
LOCAL AND REGIONAL TRANSPORTATION.**

Chapter		Transportation District Act of 1964
	Article 1	General Provisions
	Article 2	Creation of Districts
	Article 3	Incorporation of District; Creation, Organization, etc., of Commission
	Article 4	Powers and Functions of Commission
	Article 5	Financing
	Article 6	Powers and Duties of Localities; Liability of Commonwealth and Localities
	Article 7	Planning Process and Procedures
	Article 8	Enlargement of Transportation Districts
	Article 9	Withdrawal from Transportation Districts
	Article 10	Exemption from Taxation; Tort Liability
	Article 11	Construction of Chapter

Chapter		Local Transportation Districts
Chapter		Transportation Districts within Certain Counties
Chapter		Chesapeake Bay Bridge and Tunnel District and Commission
Chapter		U.S. Route 58 Corridor Development Program
Chapter		Northern Virginia Transportation District Program
Chapter		Northern Virginia Transportation Authority (§ 15.2-4829 et seq.)
Chapter		Transportation District within the City of Charlottesville and the County of Albemarle
Chapter		Charlottesville-Albemarle Regional Transit Authority (§ 15.2-7022 et seq.)
Chapter		Richmond Metropolitan Authority (§ 15.2-7000 et seq.)
Chapter		Washington Metropolitan Area Transit Regulation Compact (§ 56-529 et seq.)
Chapter		Washington Metropolitan Area Transit Authority (Title 56)
Chapter		Metropolitan Planning Organizations
Chapter		Virginia Coalfield Coalition Authority

CHAPTER ~~7~~ XX.

OUTDOOR ADVERTISING IN SIGHT OF PUBLIC HIGHWAYS.

Drafting note: Existing Chapter 7 of Title 33.1 is retained and relocated as a chapter in Subtitle II of proposed Title 33.2.

Article 1.

General Policies and Regulations.

Drafting note: An existing article on General Regulations is retained and renamed General Policies and Regulations.

§ ~~33.1-351~~ 33.2-XXX. Policy; definitions.

A. In order to promote the safety, convenience, and enjoyment of travel on and protection of the public investment in highways within ~~this~~ the Commonwealth, to attract tourists and promote the prosperity, economic well-being, and general welfare of the Commonwealth, and to preserve and enhance the natural scenic beauty or aesthetic features of the highways and adjacent areas, the General Assembly declares it to be the policy of the Commonwealth that the erection and maintenance of outdoor advertising in areas adjacent to the rights-of-way of the highways within the Commonwealth shall be regulated in accordance with the terms of this article and regulations promulgated by the ~~Commonwealth Transportation~~ Board pursuant thereto.

~~The following terms, wherever used or referred to in this article, shall have the following meanings unless a different meaning clearly appears from the context~~ B. As used in this article, unless the context requires a different meaning:

"Advertisement" means any writing, printing, picture, painting, display, emblem, drawing, sign, or similar device ~~which~~ that is posted or displayed outdoors on real property and is intended to invite or to draw the attention or to solicit the patronage or support of the public to any goods, merchandise, real or personal property, business, services, entertainment, or amusement manufactured, produced, bought, sold, conducted, furnished, or dealt in by any

person; ~~the term shall also include.~~ "Advertisement" includes any part of an advertisement recognizable as such.

"Advertising structure" means any rigid or semirigid material, with or without any advertisement displayed thereon, situated upon or attached to real property outdoors, primarily or principally for the purpose of furnishing a background or base or support upon which an advertisement may be posted or displayed.

"Area of an advertising structure" means the area determined from its outside measurements, excluding as a part thereof the height and overall width of supports and supporting structure and any other portion or portions thereof beneath the normal area upon which an advertisement is posted or intended to be posted.

"Billboard sign" means any sign, advertisement, or advertising structure as defined in this section owned by a person, firm, or corporation in the business of outdoor advertising.

"Business of outdoor advertising" means the erection, use, or maintenance of advertising structures or the posting or display of outdoor advertisements by any person who receives profit gained from rentals or any other compensation from any other person for the use or maintenance of such advertising structures or the posting or display of such advertisements, except reasonable compensation for materials and labor used or furnished in the actual erection of advertising structures or the actual posting of advertisements. The "business of outdoor advertising" ~~shall~~ does not include the leasing or rental of advertising structures or advertisements used to advertise products, services, or entertainment sold or provided on the premises where the advertising structures or advertisement is located.

"Centerline of the highway" means a line equidistant from the edges of the median separating the main traveled ways of a divided highway; or the centerline of the main traveled way of a nondivided highway.

"Distance from edge of a right-of-way" ~~shall be~~ means the horizontal distance measured along a line normal or perpendicular to the centerline of the highway.

"Federal-aid primary highway" means any highway within that portion of the ~~State Highway System~~ primary state highway system as established and maintained under ~~Article 2 (§ 33.1-25 et seq.) of Chapter 1 of Title 33.1 XXX~~, including extensions of such system within municipalities, ~~which~~ that has been approved by the Secretary of Transportation pursuant to ~~§ 103 of Title 23, United States Code 23 U.S.C. § 103(b)~~, as that system existed on June 1, 1991.

"Highway" means every way or place of whatever nature open to the use of the public for purposes of vehicular travel in ~~this~~ the Commonwealth.

"Historic place, museum, or shrine" includes only places that are maintained wholly at public expense or by a nonprofit organization.

"Information center" means an area or site established and maintained at rest areas for the purpose of informing the public of places of interest within the Commonwealth and providing such other information as the Commonwealth may consider desirable.

"Interchange" means a grade separated intersection with one or more turning roadways for travel between intersection legs, or an intersection at grade, where two or more highways join or cross.

"Lawfully erected" means any sign that was erected pursuant to the issuance of a permit from the Commissioner of Highways under ~~§ 33.1-360 33.2-XXX~~ unless the local governing body has evidence of noncompliance with ordinances in effect at the time the sign was erected.

"Legible" means capable of being read without visual aid by a person of normal visual acuity.

"Main traveled way" means the traveled way of a highway on which through traffic is carried. In the case of a divided highway, the traveled way of each of the separated roadways for traffic in opposite directions is a main traveled way. ~~It~~ "Main traveled way" does not include such facilities as frontage roads, turning roadways, or parking areas.

"Maintain" means to allow to exist.

"Municipalities" means cities and ~~incorporated~~ towns.

"National Highway System" means the federal-aid highway system referenced in ~~§ 103 of Title 23, United States Code~~ 23 U.S.C. § 103(b), and regulations adopted pursuant thereto. For the purpose of this article, outdoor advertising controls on the National Highway System shall be implemented as those highways are designated and approved by congressional action or designation by the U.S. Secretary of Transportation and such designation and approval shall be kept on file in the central office of the Department of Transportation and placed in the minutes of the Commonwealth Transportation Board by the Commissioner of Highways. Prior to congressional approval or designation by the U.S. Secretary of Transportation, highways classified as National System of Interstate and Defense Highways, Dwight D. Eisenhower National System of Interstate and Defense Highways, Interstate System, or federal-aid primary as defined ~~herein in this section~~ shall be considered as the National Highway System.

"National System of Interstate and Defense Highways," "Dwight D. Eisenhower National System of Interstate and Defense Highways," and "Interstate System" means the system presently defined in ~~§ 103 of Title 23, United States Code~~ 23 U.S.C. § 103(c).

~~A "nonconforming"~~ "Nonconforming" sign," "nonconforming advertisement," or "nonconforming advertising structure" ~~is means~~ one ~~which that~~ was lawfully erected adjacent to any highway in the Commonwealth; but ~~which that~~ does not comply with the provisions of state law, state regulations, or ordinances adopted by local governing bodies passed at a later date or ~~which that~~ later fails to comply with state law, state regulations, or ordinances adopted by local governing bodies due to changed conditions.

"Person" includes an individual, partnership, association, or corporation.

"Post" means post, display, print, paint, burn, nail, paste, or otherwise attach.

"Real property" includes any property physically attached or annexed to real property in any manner whatsoever.

"Rest area" means an area or site established and maintained within or adjacent to the right-of-way or under public supervision or control; for the convenience of the traveling public.

"Scenic area" means any public park, ~~or~~ area of particular scenic beauty or historical significance designated as a scenic area by the ~~Commonwealth Transportation~~ Board.

"Sign" means any outdoor sign, display, device, figure, painting, drawing, message, placard, poster, billboard, or other thing ~~which~~ that is designed, intended, or used to advertise or inform, any part of the advertising or informative contents of which is visible from any highway.

~~"Town" means an incorporated town.~~

"Trade name" ~~shall include~~ includes a brand name, trademark, distinctive symbol, or other similar device or thing used to identify particular products or services.

"Traveled way" means the portion of a roadway for the movement of vehicles, exclusive of shoulders.

"Turning roadway" means a connecting roadway for traffic turning between two intersection legs of an interchange.

"Urban area" means an urbanized area or, in the case of an urbanized area encompassing more than one state, that part of the "urbanized area" within the Commonwealth, or an urban place.

"Urban place" means an area so designated by the ~~United States~~ U.S. Census Bureau ~~of the Census~~ having a population of 5,000 or more and not within any urbanized area, within boundaries fixed by the Commissioner of Highways, in his discretion, in cooperation with the governing bodies of the several ~~counties, towns or cities~~ localities affected and the appropriate federal authority. Such boundaries shall, ~~as~~ at a minimum, encompass the entire urban place designated by the ~~United States~~ U.S. Census Bureau ~~of the Census~~.

"Urbanized area" means an area so designated by the ~~United States~~ U.S. Census Bureau ~~of the Census~~, within boundaries fixed by the Commissioner of Highways, in his discretion, in cooperation with the governing bodies of the several ~~counties, towns or cities~~ localities affected and the appropriate federal authority. Such boundaries shall, ~~as~~ at a minimum, encompass the

entire urbanized area within a state as designated by the ~~United States~~ U.S. Census Bureau ~~of the Census~~.

"Virginia byway" and "scenic highway" mean those highways designated by the ~~Commonwealth Transportation~~ Board pursuant to ~~Article 5 (§ 33.1-62 et seq.) of Chapter 1 of this title XXX~~. For the purposes of ~~the this~~ article, a Virginia byway ~~shall mean~~ means a scenic byway as referenced in ~~Title 23, United States Code, § 131 (s)~~ 23 U.S.C. § 131(s).

"Visible" means capable of being seen (whether or not legible) without visual aid by a person of normal visual acuity.

Drafting note: The definition of "town" is removed as unnecessary, and incorrect citations to the United States Code are corrected. This section was amended by Chapter 127 of the Acts of Assembly of 2013 and those changes are reflected in the existing language. Technical changes are also made.

~~§ 33.1-352~~ 33.2-XXX. Enforcement of provisions by Commissioner of Highways.

The Commissioner of Highways shall administer and enforce the provisions of this article. He may, ~~in the performance of his duties hereunder~~, assign to division engineers and other employees in the Department ~~of Transportation~~ such duties other than ~~discretionary~~ discretionary powers as he may ~~think~~ deem appropriate.

Drafting note: Technical changes.

~~§ 33.1-353~~ 33.2-XXX. Territory to which article applies.

The territory under the jurisdiction of the Commissioner of Highways for the purposes of this article shall include all of the Commonwealth, exclusive of that portion thereof ~~which that~~ lies within the corporate limits of municipalities, except the jurisdiction of the Commissioner of Highways shall apply to all the territory within municipalities on which signs, advertisements, or advertising structures are visible from the main traveled way of any ~~interstate~~ Interstate System highway, federal-aid primary highway as that system existed on June 1, 1991, or ~~national highway system~~ National Highway System highway.

Drafting note: Technical changes.

§ ~~33.1-354~~ 33.2-XXX. Entry upon lands; hindering Commissioner of Highways or agent.

The Commissioner of Highways and all employees under his direction may enter upon such lands as may be necessary in the performance of their functions and duties as prescribed by this article. Any person who ~~shall hinder~~ hinders or ~~obstruct~~ obstructs the Commissioner of Highways or any assistant or agent of the Commissioner of Highways in carrying out such functions and duties ~~shall be~~ is guilty of a Class 1 misdemeanor.

Drafting note: Technical change.

§ ~~33.1-355~~ 33.2-XXX. Excepted signs, advertisements, and advertising structures.

The following signs and advertisements, if securely attached to real property or advertising structures, and the advertising structures, or parts thereof, upon which they are posted or displayed are excepted from all the provisions of this article ~~save~~ except those enumerated in §§ ~~33.1-353~~ 33.2-XXX, ~~33.1-356~~ 33.2-XXX, ~~33.1-360~~ and 33.2-XXX, subdivisions ~~(2)~~ 2 through ~~(13)~~ 12 of § ~~33.1-369~~ 33.2-XXX and §§ ~~33.1-370~~ 33.2-XXX and 33.1-375 33.2-XXX:

~~(1)~~ 1. Advertisements securely attached to a place of business or residence, and ~~not to exceed~~ no more than 10 advertising structures, with a combined total area of such advertisements and advertising structures, exclusive of the area occupied by the name of the business, owner, or lessee, of ~~advertisements and advertising structures not to exceed~~ no more than 500 square feet, erected or maintained, or caused to be erected or maintained, by the owner or lessee of such place of business or residence, within 250 feet of such place of business or residence or located on the real property of such place of business or residence and relating solely to merchandise, services, or entertainment sold, produced, manufactured, or furnished at such place of business or residence;

~~(2)~~ 2. Signs erected or maintained, or caused to be erected or maintained, on any farm by the owner or lessee of such farm and relating solely to farm produce, merchandise, services, or entertainment sold, produced, manufactured, or furnished on such farm;

~~(3)~~ 3. Signs upon real property posted or displayed by the owner, or by the authority of the owner, stating that the property, upon which the sign is located, or a part of such property, is for sale or rent or stating any data pertaining to such property and its appurtenances, and the name and address of the owner and the agent of such owner;

~~(4)~~ 4. Official notices or advertisements posted or displayed by or under the direction of any public or court officer in the performance of his official or directed duties, or by trustees under deeds of trust, deeds of assignment, or other similar instruments;

~~(5)~~ 5. Danger or precautionary signs relating to the premises or signs warning of the condition of or dangers of travel on a highway, erected or authorized by the Commissioner of Highways; ~~or~~ forest fire warning signs erected under authority of the State Forester; and forest fire warning signs, notices, or symbols erected by the United States government under the direction of the ~~United States Forestry~~ U.S. Forest Service;

~~(6)~~ 6. Notices of any telephone company, telegraph company, railroad, bridges, ferries, or other transportation company necessary in the discretion of the Commissioner of Highways for the safety of the public or for the direction of the public to such utility or to any place to be reached by it;

~~(7)~~ 7. Signs, notices, or symbols for the information of aviators as to location, direction, and landings and conditions affecting safety in aviation erected or authorized by the Commissioner of Highways;

~~(8)~~ 8. Signs ~~containing of~~ 16 square feet or less and bearing an announcement of any ~~county, town, village or city~~ locality, or historic place or shrine, situated in ~~this~~ the Commonwealth, advertising itself or local industries, meetings, buildings, or attractions, provided ~~the same is such signs are~~ maintained wholly at public expense, or at the expense of such historic place or shrine;

~~(9)~~ 9. Signs or notices ~~containing of~~ two square feet or less, placed at a junction of two or more roads in the ~~State Highway System~~ primary state highway system denoting only the

distance or direction of a church, residence, or place of business, provided such signs or notices do not exceed a reasonable number in the discretion of the Commissioner of Highways;

~~(10)~~ 10. Signs or notices erected or maintained upon property giving the name of the owner, lessee, or occupant of the premises;

~~(11)~~ 11. Advertisements and advertising structures within the corporate limits of cities and towns, except as specified in § ~~33.1-353~~ 33.2-XXX;

~~(12)~~ 12. Historical markers erected by duly constituted and authorized public authorities;

~~(13)~~ 13. Highway markers and signs erected, or caused to be erected, by the Commissioner of Highways or the ~~Commonwealth Transportation~~ Board or other authorities in accordance with law;

~~(14)~~ 14. Signs erected upon property warning the public against hunting, fishing, or trespassing thereon;

~~(15)~~ 15. Signs erected by Red Cross authorities relating to Red Cross Emergency Stations. ~~And, with~~ authority ~~is~~ hereby expressly given for the erection and maintenance of such signs upon the right-of-way of all highways in ~~this~~ the Commonwealth at such locations as may be approved by the Commissioner of Highways;

~~(16)~~ 16. Signs advertising agricultural products and horticultural products, or either, when such products are produced by the person who erects and maintains the signs; ~~provided,~~ ~~however,~~ that restriction of the location and number of such signs shall be in the sole discretion of the Commissioner of Highways;

~~(17)~~ 17. Signs advertising only the name, time, and place of bona fide agricultural, county, district, or state fairs, together with announcements of related special events ~~in connection therewith which that~~ do not consume more than 50 percent of the display area of such signs, provided the person who posts the signs or causes them to be posted will post a cash bond as may be prescribed by the Commissioner of Highways; adequate to reimburse the Commonwealth for the actual cost of removing such signs ~~as that~~ are not removed within 30 days after the last day of the fair so advertised;

(18)-18. Signs of eight square feet or less, or one sign structure containing more than one sign of eight square feet or less, ~~which~~ that denote only the name of a civic service club or church, location and directions for reaching same, and time of meeting of such organization, provided such signs or notices do not exceed a reasonable number as determined by the Commissioner of Highways;

(19)-19. Notwithstanding the provisions of § ~~33.1-373~~ 33.2-XXX, signs containing advertisements or notices that have been authorized by a county and that are securely affixed to a public transit passenger shelter that is owned by that county, provided, ~~however~~, that no advertisement shall be placed within the right-of-way of the ~~federal interstate system~~ Interstate System, National Highway System, or ~~the~~ federal-aid primary system of highways in violation of federal law. The prohibition in subdivision ~~8.7~~ of § ~~33.1-369~~ 33.2-XXX against placing signs within 15 feet of the nearest edge of the pavement of any highway shall not apply to such signs. The Commissioner of Highways may require the removal of any particular sign located on such a shelter as provided in this subdivision if, in his ~~judgement~~ judgment, such sign constitutes a safety hazard.

Drafting note: In subdivision 5, the reference to the "Forestry" Service is corrected to the U.S. Forest Service. In subdivision 8, the term "village" is removed as an inaccurate term. Technical changes are also made.

§ ~~33.1-356~~ 33.2-XXX. License required of outdoor ~~advertiser~~ advertisers.

No person shall engage or continue in the business of outdoor advertising in ~~this~~ the Commonwealth outside ~~of~~ the corporate limits of municipalities or within the corporate limits of municipalities if their off-premises sign, advertisement, or advertising structure is visible from the main traveled way of any ~~interstate~~ Interstate System, federal-aid primary, or ~~national highway system~~ National Highway System highway without first obtaining a license therefor from the Commissioner of Highways. ~~Persons engaged in the business of outdoor advertising who own signs, advertisements, or advertising structures visible from the main traveled way of any interstate, federal-aid primary, or national highway system highway within municipalities~~

~~shall have until October 1, 1993, to obtain a license from the Commissioner of Highways or remove such sign, advertisement, or advertising structure from the view from the main traveled way of any interstate, federal aid primary, or national highway system highway. The Commissioner of Highways shall notify persons known to be engaged in the business of outdoor advertising within municipalities by August 1, 1993, of the need to obtain a license.~~ The fee for such license, hereby imposed for revenue for the use of the Commonwealth, shall be \$500 per year, payable annually in advance. Applications for licenses, or renewal of licenses, shall be made on forms furnished by the Commissioner of Highways, shall contain such information as the Commissioner of Highways may require, and shall be accompanied by the annual fee. Licenses granted under this section shall expire on December 31 of each year and shall not be prorated. Applications for renewal of licenses shall be made not less than ~~thirty~~ 30 days prior to the date of expiration. Nothing in this section shall be construed to require any person ~~who~~ that advertises upon a structure or fixture on ~~his~~ its property or a licensed advertiser's structure or other space to obtain a license.

Drafting note: Obsolete language regarding those engaged in outdoor advertising prior to 1993 is deleted. Technical changes are also made.

~~§ 33.1-357.33.2-XXX.~~ Revocation of license and judicial review.

A. The Commissioner ~~shall have the right, of Highways may~~ after ~~thirty~~ 30 days' notice in writing to the licensee, ~~to~~ revoke any license granted by him upon repayment of a proportionate part of the license fee, in any case in which he ~~shall find~~ finds that any of the information required to be given in the application for the license is knowingly false or misleading or that the licensee has violated any of the provisions of this article, unless such licensee ~~shall~~, before the expiration of such ~~thirty~~ 30 days, ~~correct~~ corrects such false or misleading information and ~~comply~~ complies with the provisions of this article.

Drafting note: Technical changes.

~~§ 33.1-358. Judicial review of revocation.~~

B. Any person whose license is so revoked is entitled to judicial review of such revocation in accordance with the provisions of the Administrative Process Act (§ 2.2-4000 et seq.). Any person aggrieved by ~~the such~~ judgment ~~of such court~~ shall have the right of appeal to the Court of Appeals.

Drafting note: Two related sections regarding revocation of licenses are combined. Technical changes are also made.

§ ~~33.1-359~~ 33.2-XXX. Bond required from out-of-state licensee.

No license to engage or continue in the business of outdoor advertising shall be granted to any person having ~~his~~ its principal place of business outside the Commonwealth or ~~which that~~ is incorporated outside the Commonwealth for the posting or display of any advertisement or the erection, use, or maintenance of any advertising structure, until such person ~~shall have~~ has furnished and filed with the Commissioner of Highways a bond payable to the Commonwealth, with surety approved by the Commissioner of Highways and in a form approved by the Attorney General, in the sum of \$1,000, conditioned that such licensee ~~shall fulfill~~ fulfills all requirements of law and the regulations and orders of the Commissioner, of Highways relating to the display of advertisements or the erection of advertising structures. Such bond ~~shall remain~~ remains in full force and effect so long as any obligations of such licensee to the Commonwealth ~~shall~~ remain unsatisfied.

Drafting note: Technical changes.

§ ~~33.1-360~~ 33.2-XXX. Permits required.

Except as ~~in this article~~ otherwise provided in this article, no person, whether engaged in the business of outdoor advertising or not, shall erect, use, maintain, post, or display any advertisement or advertising structure outside municipalities ~~in this the~~ Commonwealth, ~~outside of municipalities~~, without first obtaining a permit therefor from the Commissioner of Highways and paying the annual fee therefor, as provided in this article. A permit ~~shall be~~ is required for an off-premises sign, advertisement, or advertising structure authorized by § ~~33.1-370~~ 33.2-XXX if it is located within a municipality and is visible from the main traveled way of any

~~interstate~~ Interstate System, federal-aid primary, or ~~national highway system~~ National Highway System highway.

No bond or permit ~~shall be~~ is required for the posting or display of any advertisement posted or displayed on any advertising structure or space for which a permit has been issued or renewed for the ~~then-current~~ then-current calendar year under the provisions of this article unless such permit has been revoked.

Drafting note: Technical changes.

§ ~~33.1-361~~ 33.2-XXX. Applications for permits; fees.

A. A separate application for a permit shall be made for each separate advertisement or advertising structure, on a form furnished by the Commissioner of Highways, which application shall be signed by the applicant or his representative duly authorized in writing to act for him and shall describe and set forth the size, shape, and ~~the~~ nature of the advertisement or advertising structure it is proposed to post, display, erect, or maintain and its actual or proposed location with sufficient accuracy to enable the Commissioner of Highways to identify such advertisement or advertising structure and to find its actual or proposed location.

B. Each application shall be accompanied by an application fee in an amount determined ~~as follows~~ on the basis of the area of the advertisement or advertising structure for which the permit is sought, according to the following schedule:

1. ~~Fifteen dollars~~ \$15 if such area does not exceed 74 square feet;
2. ~~Thirty dollars~~ \$30 if such area exceeds 74 square feet but does not exceed 1,824 square feet; and
3. ~~One hundred sixty-five dollars~~ \$165 if such area exceeds 1,824 square feet.

In the computation of fees under this ~~section subsection~~, each side of the advertisement or advertising structure used or constructed to be used shall be separately considered. If the applicant elects to use an electronic application, the fee shall be reduced by \$5 per application.

The fee shall be retained by the Commissioner of Highways if the permit is issued. If the permit is refused, the Commissioner of Highways shall refund one-half of the application fee to the applicant.

C. In addition to the ~~above~~ fees required by subsection B, on any original application for an advertisement or advertising structure there shall be imposed an inspection charge of \$50 for any advertisement or advertising structure to be located on an ~~interstate~~ Interstate System, federal-aid primary, or ~~national highway system~~ National Highway System highway and \$25 for any advertisement or advertising structure to be located on any other highway.

D. Each application shall be accompanied by the written consent, or in lieu thereof a copy certified by an officer authorized to take acknowledgments to deeds in ~~this~~ the Commonwealth, of the owner of the real property upon which such advertisement or advertising structure is to be erected, used, maintained, posted, or displayed, or of such other person having the legal right to grant such consent, or of the duly authorized agent of such owner, or other person; ~~provided~~, except that in the marsh or meadowland owned by the Commonwealth along either side of the causeway leading from the mainland to the ~~town~~ Town of Chincoteague, the legal right to grant such consent shall be vested in the local governing body of such town.

E. Application shall be made in like manner for a permit to use, maintain, or display an existing advertisement or advertising structure.

Drafting note: Technical changes.

§ ~~33.1-362~~ 33.2-XXX. Duration and renewal of permit.

Except as provided in § ~~33.1-365~~ 33.2-XXX, permits issued ~~hereunder~~ in accordance with this article shall run for the calendar year, and may be renewed upon application made upon forms furnished by the Commissioner of Highways and the payment of the same fee required to be paid upon application for a permit. Fees for renewal of permits using the ~~Virginia Department of Transportation's~~ Department's electronic application renewal process shall be reduced by \$5 per permit being renewed. Permits ~~will~~ shall not be extended or renewed in cases where the permittee has not exercised the privilege of erecting such advertising structure or

displayed such advertisement during the period for which the permit was issued. Annual permits issued after December ~~fifteenth will~~ 15 shall cover the following calendar year.

Drafting note: Technical changes.

~~§ 33.1-363. Area of advertising structure.~~

~~The area of an advertising structure shall be determined from its outside measurements, excluding as a part thereof, the height and overall width of supports and supporting structure and any other portion or portions thereof beneath the normal area upon which an advertisement is posted or intended to be posted.~~

Drafting note: This section is moved to the definitions section for this article because so much of this article uses the area of the advertising structure.

~~§ 33.1-364~~ 33.2-XXX. Revocation of permit.

The Commissioner of Highways may, after ~~thirty~~ 30 days' notice in writing to the permittee, revoke any permit issued by him under ~~§ 33.1-360~~ 33.2-XXX upon repayment of a proportionate part of the fee in any case in which it ~~shall appear~~ appears to the Commissioner of Highways that the application for the permit contains knowingly false or misleading information, that the permittee has failed to keep in a good general condition and in a reasonable state of repair the advertisement or advertising structure for which such permit was issued, or that the permittee has violated any of the provisions of this article, unless such permittee ~~shall~~, before the expiration of such ~~thirty~~ 30 days, ~~correct~~ corrects such false or misleading information, or ~~make~~ makes the necessary repairs or improvement in the general condition of such advertisement or advertising structure or ~~comply~~ complies with the provisions of this article, as the case may be. If the erection, maintenance, and display of any advertisement or advertising structure for which a permit is issued by the Commissioner of Highways and the permit fee has been paid as above provided, ~~shall be~~ is prevented by any zoning board, commission, or other public agency ~~which that~~ also has jurisdiction over the proposed advertisement or advertising structure or its site, the application fee for such advertisement or advertising structure shall be returned by the Commissioner of Highways and the permit

397 | revoked. ~~But~~ However one-half of the application fee shall be deemed to have accrued upon the
398 | erection of an advertising structure or the display of an advertisement followed by an inspection
399 | by the Commissioner of Highways or his representative.

400 | **Drafting note: Technical changes.**

401 | § ~~33.1-365~~ 33.2-XXX. Temporary permit.

402 | In any case ~~if in which~~ an applicant for a permit ~~shall certify~~ certifies in his application
403 | that he is unable to state the actual or proposed location of the advertisement or advertising
404 | structure or to file the written consent of the landowner or other person having the legal right to
405 | the real estate upon which the advertisement or advertising structure is to be erected, used,
406 | maintained, posted, or displayed, the Commissioner of Highways shall issue to such applicant a
407 | temporary permit, which shall expire 60 days from the date of issue, together with the proper
408 | identification number to be attached to such advertisement or advertising structure, ~~which~~
409 | ~~temporary permit shall expire sixty days from the date of its issue~~. Applications for temporary
410 | permits must indicate the county and route on which the advertisement or advertising structure
411 | is to be located and must be accompanied by a fee of ~~two dollars~~ \$2 to cover the cost of issuance
412 | of the temporary permit. If within such ~~sixty~~ 60 days, the applicant ~~shall file~~ files with the
413 | Commissioner of Highways an application setting forth all of the information required in § ~~33.1-~~
414 | ~~364~~ 33.2-XXX, together with the required fees, the Commissioner of Highways shall issue to
415 | such applicant a permit. In the event that the permit is not issued, the fees submitted shall be
416 | returned, except the ~~two dollars~~ \$2 for the temporary permit.

417 | **Drafting note: Technical changes.**

418 | § ~~33.1-366~~ 33.2-XXX. Appeal from refusal or revocation of permit.

419 | Any person aggrieved by any action of the Commissioner of Highways in refusing to
420 | grant or in revoking a permit under § ~~33.1-364~~ 33.2-XXX or ~~§ 33.1-364~~ 33.2-XXX may appeal
421 | from the decision of the Commissioner of Highways in accordance with the provisions of the
422 | Administrative Process Act (§ 2.2-4000 et seq.).

423 | **Drafting note: Technical changes.**

§ ~~33.1-367~~ 33.2-XXX. Transfer of licenses and permits to successor concerns.

Any license or permit issued pursuant to this article may be transferred to any person ~~who that~~ acquires as a successor the business of the person for whom such license or permit was issued.

Drafting note: Technical change.

§ ~~33.1-368~~ 33.2-XXX. Identification of advertising structure or advertisement.

The Commissioner of Highways shall require that each advertising structure and each advertisement not posted or displayed on an advertising structure ~~shall~~ bear an identification number, furnished by the Commissioner, of Highways and, if erected, maintained, or displayed by a licensed outdoor advertiser ~~shall~~, also bear ~~his its~~ name. The Commissioner of Highways shall make suitable provisions for the details thereof.

Drafting note: Technical changes.

§ ~~33.1-369~~ 33.2-XXX. Certain advertisements or structures prohibited.

No advertisement or advertising structure shall be erected, maintained, or operated:

~~(1)-1.~~ Within 660 feet of the nearest edge of the right-of-way of the Blue Ridge Parkway, the Colonial National Parkway, the Mount Vernon Boulevard, or any other parkway within ~~this the~~ Commonwealth or within 660 feet of any public cemetery, public park reservation, public playground, national forest, or state forest, outside the limits of any municipality; however, any advertisement or advertising structure ~~which that~~ is lawfully in place on April 6, 1966, and ~~which that~~ does not conform to the 660-foot distance requirement may be maintained for the life of ~~such the~~ advertisement or advertising structure;

~~(2)-Which-2.~~ That involves motion or rotation of any part of the structure, moving reflective disks, or running animation, or that displays an intermittent light or lights visible from any highway. The prohibition of this ~~subsection subdivision~~ shall not apply to: ~~(a) (i)~~ an advertisement or advertisement structure with messages that change no more than once every four seconds and that is consistent with agreements entered into between the Commissioner of Highways and the ~~United States U.S.~~ Department of Transportation or ~~(b) (ii)~~ an on-premises

advertisement or advertising structure with messages displayed as scrolling words ~~and/or~~ or numbers;

~~(3) Which 3. That~~ uses the words "stop" or "danger" prominently displayed or presents or implies the need or requirement of stopping or the existence of danger on any highway; ~~or which that~~ is a copy or imitation of official highway signs;

~~(4) [Reserved.]~~

~~(5) Which 4. That~~, within visible distance of any highway, advertises any county, city, town, ~~village~~, historic place, or shrine without the consent, in writing of such county, city, or town ~~or village~~ or of the owner of such historic place or shrine;

~~(6) Which 5. That~~ is mobile and is designed to and effectively does distract the attention of passing motorists on any highway by flashing lights, loud and blatant noises, or movable objects;

~~(7) Which involve 6. That involves~~ red, green, or amber lights or reflectorized material and ~~which resemble resembles~~ traffic signal lights or traffic control signs and ~~are~~ is within visible distance of any highway;

~~(8) 7. Within fifteen 15~~ feet of the nearest edge of the pavement of any highway; however, the Commissioner of Highways may waive this restriction whenever the advertisement or advertising structure is actually anchored outside of the right-of-way; and, within his discretion, does not constitute a safety hazard or conflict with any other restriction contained in this section;

~~(9) 8.~~ At any public road intersection in such a manner as would obstruct the clear vision in either direction between a point on the center line of the side road 20 feet from the nearest edge of the pavement of the main road and points on the main road 400 feet distant, measured along the nearest edge of the pavement of the main road;

~~(10) 9.~~ At any grade intersection of a public road and a railroad in such a manner as would obstruct the clear vision in either direction within triangular areas formed by ~~(a) (i)~~ a point at the center of the railroad-public road intersection, ~~(b) (ii)~~ a point on the public road 400

feet from the center of the railroad-public road intersection as measured along the center of the public road, and ~~(e) (iii)~~ a point on the railroad 500 feet from the center of the railroad-public road intersection as measured along the center of the railroad;

~~(11) 10.~~ At or near any curve in a road in such a manner as to obstruct the clear vision of traffic from any one point on such curve to any other point not more than 400 feet apart, as measured between each point from the nearest edge of the pavement;

~~(12) Which 11. That~~ advertises activities ~~which that~~ are illegal under state or federal laws or regulations in effect at the location of such sign or advertisement or at the location of such activities;

~~(13) Which 12. That~~ is obsolete or inconsistent with this article or regulations adopted by the ~~Commonwealth Transportation~~ Board pursuant to this article; or

~~(14) 13.~~ After December 18, 1991, adjacent to any ~~interstate Interstate System~~, federal-aid primary, or ~~national highway system National Highway System~~ highway in the Commonwealth ~~which that~~ has been designated as a Virginia byway or scenic highway, except directional and official signs and notices defined in this article and regulations adopted ~~under pursuant to~~ this article, on-premises signs, and signs advertising the sale or lease of property upon which they are located.

Drafting note: Technical changes.

§ ~~33.1-370 33.2-XXX~~. Special provisions pertaining to ~~interstate Interstate System~~, ~~national highway system National Highway System~~, and federal-aid primary highways.

A. Notwithstanding the territorial limitation set out in § ~~33.1-353 33.2-XXX~~, no sign or advertisement adjacent to any ~~interstate Interstate System~~, ~~national highway system National Highway System~~, or federal-aid primary highway shall be erected, maintained, or displayed ~~which that~~ is visible from the main traveled way within 660 feet of the nearest edge of the right-of-way, except as provided in subsections B and D ~~of this section~~, and outside of an urban area, no sign or advertisement beyond 660 feet of the nearest edge of the right-of-way of any ~~interstate Interstate System~~, ~~national highway system National Highway System~~, or federal-aid

primary highway ~~which that~~ is visible from the main traveled way shall be erected, maintained, or displayed with the purpose of its message being read from the main traveled way, except as set forth in subsection C.

B. The following signs, advertisements, or advertising structures may be erected, maintained, and displayed within 660 feet of the right-of-way of any ~~interstate~~ Interstate System, ~~national highway system~~ National Highway System, or federal-aid primary highway:

Class 1—: Official signs. ~~Directional and official signs and notices, which signs and notices shall include, but not be limited to, including~~ signs and notices pertaining to the availability of food, lodging, vehicle service and tourist information, natural wonders, scenic areas, museums, and historic attractions, as authorized or required by law; however, where such signs or notices pertain to facilities or attractions ~~which that~~ are barrier free, such signs or notices shall contain the International ~~Barrier-Free~~ Symbol of Access. The ~~Commonwealth Transportation~~ Board shall determine the type, lighting, size, location, number, and other requirements of signs of this class.

Class 2—: On-premises signs. ~~Signs not prohibited by other parts of this article which that~~ are consistent with the applicable provisions of this section and ~~which that~~ advertise the sale or lease of, or activities being conducted upon, the real property where the signs are located; provided, that any such signs, ~~which that~~ are located adjacent to and within 660 feet of any ~~interstate~~ Interstate System highway and do not lie in commercial or industrial zones within the boundaries of incorporated municipalities, as such boundaries existed on September 21, 1959, wherein the use of real property adjacent to the Interstate System is subject to municipal regulation or control, or in areas where land use as of September 21, 1959, was clearly established by state law as industrial or commercial, shall comply with the following requirements:

1. Not more than one sign advertising the sale or lease of the same property may be erected or maintained in such manner as to be visible to traffic proceeding in any one direction on any one ~~interstate~~ Interstate System highway;

2. Not more than one sign, visible to traffic proceeding in any one direction on any one ~~interstate~~ Interstate System highway and advertising activities being conducted upon the real property where the sign is located, may be erected or maintained more than ~~fifty~~ 50 feet from the advertised activity, and no such sign may be located more than 250 feet from the center of the advertised activity; and

3. No sign, except one ~~which that~~ is not more than ~~fifty~~ 50 feet from the advertised activity, that displays any trade name ~~which that~~ refers to or identifies any service rendered or product sold, ~~shall~~ may be erected or maintained unless the name of the advertised activity is displayed as conspicuously as such trade name.

Class 3—: Other signs. —Any signs or advertisements ~~which that~~ are located within areas adjacent to any ~~interstate~~ Interstate System, ~~national highway system~~ National Highway System, or federal-aid primary highway ~~which that~~ are zoned industrial or commercial under authority of state law, or in unzoned commercial or industrial areas as determined by the ~~Commonwealth Transportation~~ Board from actual land uses. The ~~Commonwealth Transportation~~ Board shall determine the size, lighting, and spacing of signs of this class, provided that such determination shall be no more restrictive than valid federal requirements on the same subject.

C. The following signs, advertisements, or advertising structures may be erected, maintained, and displayed beyond 660 feet of the right-of-way of any ~~interstate~~ Interstate System, ~~national highway system~~ National Highway System, or federal-aid primary highway outside ~~of~~ urban areas:

1. Class 1 and Class 2 signs, advertisements, or advertising structures set forth in subsection B ~~of this section~~.

2. All other signs, advertisements, or advertising structures erected, maintained, or displayed more than 660 feet from the nearest edge of the right-of-way of an ~~interstate~~ Interstate System, ~~national highway system~~ National Highway System, or federal-aid primary highway, unless ~~said~~ such sign or advertisement is visible from the main traveled way of ~~said~~ such

highways and erected, maintained₂ or displayed with the purpose of its message being read from the main traveled way of ~~said~~ such highways.

In determining whether a sign, advertisement₂ or advertising structure is "erected, maintained₂ or displayed with the purpose of its message being read₂" the Commissioner ~~is not limited to, but will of Highways shall~~ consider, at a minimum, the nature of the business or product advertised thereon, the availability of such business or product to users of the controlled highway, and the visibility of the sign, advertisement₂ or advertising structure from the main traveled way of the controlled highway ~~(such. Such~~ visibility may be measured by considering the size or height of the sign, advertisement₂ or advertising structure; the configuration, size, and height of recognizable emblems, images, and lettering thereon; the angle of the sign, advertisement₂ or advertising structure to the main traveled way of the controlled highway; the degree to which physical obstructions hinder the view of the sign, advertisement₂ or advertising structure from the main traveled way of the controlled highway; and the time during which such sign, advertisement₂ or advertising structure is exposed to view by travelers on the main traveled way of the controlled highway traveling at the maximum and minimum speeds posted).

D. In order to provide information in the specific interest of the traveling public, the Department is ~~hereby~~ authorized to maintain maps ~~and to~~₂ permit informational directories and advertising pamphlets to be made available at rest areas, and ~~to~~ establish information centers at rest areas for the purpose of informing the public of places of interest within the Commonwealth and providing such other information as may be considered desirable.

E. Notwithstanding any other provision of law, lawfully erected and maintained nonconforming signs, advertisements, and advertising structures shall not be removed or eliminated by amortization under state law or local ordinances without compensation as described in subsection F ~~of this section~~.

F. The Commissioner of Highways is authorized to acquire by purchase, gift₂ or the power of eminent domain and to pay just compensation upon the removal of nonconforming signs, advertisements₂ or advertising structures lawfully erected and maintained under state law

or state regulations. ~~Provided, however,~~ provided that subsequent to November 6, 1978, whenever any local ordinance ~~which that~~ is more restrictive than state law requires the removal of such signs, advertisements, or advertising structures, the local governing body shall initiate the removal of such signs, advertisements, or advertising structures with the Commissioner of Highways, who shall have complete authority to administer the removal of such signs, advertisements, or advertising structures. Upon proof of payment presented to the local governing bodies, the local governing bodies shall reimburse the Commissioner of Highways the funds expended ~~which that~~ are associated with the removal of such signs, advertisements, or advertising structures required by local ordinances, less any federal funds received for such purposes. Notwithstanding the ~~above provisions of this subsection~~, nothing shall prohibit the local governing bodies from removing signs, advertisements, or advertising structures ~~which that~~ are made nonconforming solely by local ordinances so long as those ordinances require the local governing bodies to pay 100 percent of the cost of removing them and just compensation upon their removal.

Such compensation is authorized to be paid only for the taking from the owner of such sign or advertisement of all right, title, leasehold, and interest in such sign or advertisement; and the taking from the owner of the real property on which the sign or advertisement is located; of the right to erect and maintain such sign or advertisement thereon.

The Commissioner of Highways shall not be required to expend any funds under this section unless and until federal-aid matching funds are made available for this purpose.

Drafting note: Technical changes are made, including removing the phrase "but not limited to" based on § 1-218. In subsection B, the "International Barrier Free Symbol" name is updated to the "International Symbol of Access." This section was amended by Chapters 585 and 646 of the Acts of Assembly of 2013 and that change is reflected in the existing language here.

§ ~~33.1-370.1~~ 33.2-XXX. Removal of billboard signs under this chapter prohibited without just compensation.

Notwithstanding any other provision of law, no billboard sign subject to this chapter may be removed by action of a county, city, or town under Chapter 22 (§ 15.2-2200 et seq.) of Title 15.2 without the payment of just compensation by the county, city, or town unless the billboard sign cannot remain on the property due to the site constraints of the property and removal of the billboard sign is therefore necessary for development on the property. The property owner may terminate the leasehold or other right of the billboard sign to remain on the property in accordance with the terms and conditions of the contract between the property owner and the billboard sign owner, but may not be required to do so by the county, city, or town as a condition of obtaining development approval for the property; unless removal of the billboard sign is necessary for development of the property or the billboard sign is nonconforming and is the principal use on the property and the zoning ordinance permits only one principal use on the property.

Drafting note: Technical change.

§ ~~33.1-370.2~~ 33.2-XXX. Maintenance and repair of nonconforming billboard signs.

Notwithstanding any other provision of law, maintenance of and repairs to nonconforming billboard signs shall be governed by this section and any applicable regulations promulgated by the Commissioner of Highways, known as the "Control and Continuance of Nonconforming Signs, Advertisements, and Advertising ~~Structure~~ Structures." Nonconforming billboard signs shall be maintained in a good state of repair and shall be subject to removal for failure to do so, in accordance with § ~~33.1-375~~ 33.2-XXX. In order to make repairs to a nonconforming billboard sign, the owner shall make a written request to the Commissioner of Highways and submit the documentation required by 24 VAC 30-120-170. The Commissioner of Highways shall review the written request, and if the Commissioner of Highways determines that the cost of requested repairs does not exceed a dollar amount greater than 50 percent of the current replacement cost of the entire billboard sign or structure, the Commissioner of Highways shall provide the owner of the billboard sign with a letter approving the billboard sign repairs. However, in no case shall a nonconforming billboard sign be replaced or rebuilt if the

cost of the replacement or rebuilding exceeds 50 percent of the current replacement cost. The owner of the billboard sign shall apply for a building permit from the locality in which the billboard sign is located and provide a copy of the approval letter from the Commissioner of Highways as part of the application for the building permit. The Commissioner's determination as to whether the owner of the billboard sign has complied with this section shall be binding upon the locality; unless the building official, for good cause shown, submits to the Commissioner of Highways documentation objecting to the Commissioner's determination; within 30 days of the building permit application, with a copy of such documentation being provided to the billboard sign owner. The Commissioner of Highways shall consider any documentation submitted by the building official and shall reissue a determination in accordance with this section, which determination shall be binding upon the locality.

Drafting note: Technical changes. VDOT may want to suggest more generic language to replace the VAC reference.

§ ~~33.1-371~~ 33.2-XXX. Regulations and agreements with United States implementing § ~~33.1-370~~ 33.2-XXX.

The ~~Commonwealth Transportation~~ Board may issue regulations; and is authorized to enter into agreements with the United States as provided in 23 ~~United States Code~~ U.S.C. § 131; with respect to the regulation and control of signs, advertisements, and advertising structures in conformity with § ~~33.1-370~~; 33.2-XXX, provided that such agreements shall not prevent the General Assembly of Virginia from amending or repealing § ~~33.1-370~~ 33.2-XXX at any time, and provided further; that in the event the federal law is amended to lessen the special restrictions applicable to signs, advertisements, and advertising structures adjacent to ~~interstate~~ Interstate System or federal-aid primary highways, the ~~Commonwealth Transportation~~ Board is authorized to adopt regulations to conform to such change in federal law and to amend any agreement with the United States relating to such control.

Drafting note: Technical changes.

§ ~~33.1-371.1~~ 33.2-XXX. Selective pruning permits; fees; penalty.

A. As used in this section "local beautification project" means any project in a locality that includes installation of plant materials, using public or other funds, in any public right-of-way within a county, city, or town.

B. Notwithstanding the provisions of § ~~33.1-353~~ 33.2-XXX or any other provision of law, ~~general or special~~:

1. The Commissioner of Highways shall by permit authorize the selective pruning, within highway rights-of-way, as highways are defined in § ~~33.1-354~~ 33.2-XXX, including within corporate limits of municipalities, of vegetation that obstructs motorists' view of signs displayed on outdoor advertising structures legally erected and properly maintained along the highways. Permits authorizing such pruning shall be issued in accordance with this section.

~~(a)~~ a. All work performed under the permit shall be (i) subject to the direction of the Commissioner ~~or his designee of Highways~~, (ii) supervised on-site by a certified arborist approved by the Commissioner of Highways, (iii) completed to the satisfaction of the Commissioner ~~or his designee of Highways~~, and (iv) performed solely at the expense of the permittee.

~~(b)~~ b. All pruning shall be performed in a manner that (i) creates a picture frame effect around the sign and (ii) beautifies the area surrounding the advertising structure. All cutting shall be limited to vegetation with trunk base diameters of less than six inches. Pruning cuts of limbs or branches or other vegetation with diameters greater than four inches and clear cutting shall not be authorized and shall be strictly prohibited. Pruning of vegetation in a highway median shall not be permitted where the locality within which the pruning is to be done has a local beautification project, as defined in this section, in the area within the scope of the selective pruning application; however, relocation or replanting of such vegetation shall be permitted in accordance with a landscaping plan as provided in this section.

~~(c)~~ c. Any diseased or unsightly vegetation or any vegetation that endangers the health or retards the growth of desirable vegetation may be removed at the discretion of the certified

arborist supervising the work. Any such removed vegetation shall be replaced at the permittee's expense with desirable vegetation.

2. The requirements of this section shall not apply to the owner or authorized agent of the owner of any sign, advertisement, or advertising structure exempted from the provisions of this article by § ~~33.1-355~~ 33.2-XXX.

3. The Commissioner of Highways shall promulgate such regulations as he deems necessary or desirable to carry out the provisions of this section. Such regulations shall include ~~but not necessarily be limited to~~ the following requirements:

~~(a)-a.~~ Every application for a permit submitted under this section shall be accompanied by photographs of the affected site and a detailed description of work proposed to be performed.

~~(b)-b.~~ A fee of \$400 shall accompany every application made to the Commissioner, of Highways or, if applicable, to the locality within which the pruning is to be performed. All such fees collected by the Commissioner of Highways shall be paid by the Commissioner of Highways into the state treasury, and allocated to the ~~Commonwealth Transportation~~ Board.

~~(e)-c.~~ Every applicant shall post a bond payable to the Commonwealth, with surety approved by the Commissioner of Highways and in a form approved by the Attorney General, in the sum of \$2,500, conditioned on the permittee's fulfillment of all requirements of the permit.

~~(d)-d.~~ No permit shall be issued under this section in order to create a new site for an outdoor advertising structure.

4. Where the applicant is seeking a vegetation control permit in a locality where the public right-of-way is within the jurisdictional limits of a city or town on a highway or street not within the jurisdiction of the Commissioner of Highways under § ~~33.1-353~~ 33.2-XXX or on a highway or street in a county having the county manager form of government, the Commissioner of Highways shall delegate the administration of this section to that locality, and, if so delegated, the locality shall apply the provisions of this section.

5. If there are plant materials in the public right-of-way that are part of a local beautification project, the Commissioner of Highways or the locality, as the case may be, may include a requirement, in accordance with the provisions of subdivisions 4 through 7, that, as a condition of the issuance of a vegetation control permit for selective pruning, the applicant must submit a landscaping plan, showing how the applicant will relocate or replant the vegetation obstructing the motorists' view from the main traveled way of the highway or street of signs displayed on outdoor advertising structures, in lieu of the selective pruning of such plant materials. ~~For purposes of this section, "local beautification project" means any project in a locality that includes installation of plant materials, using public or other funds, in any public right of way within a county, city, or town.~~ In the absence of the existence of a local beautification project in the area within the scope of the selective pruning application, no landscaping plan requirement shall be imposed on the applicant.

6. If subdivision 5 is applicable, the applicant shall pay the reasonable costs of implementing the landscaping plan, which may include ~~but not be limited to,~~ relocating existing plant materials, purchasing new replacement plant materials, and planting vegetation that will not grow to a height or position in the future so as to obstruct motorists' view from the main traveled way of the highway or street of signs displayed on outdoor advertising structures, as otherwise set out in the landscaping plan.

7. The provisions of subdivisions 4 through ~~7.6~~ shall apply to any local beautification project installed prior to July 1, 2006. On and after July 1, 2006, the locality shall not plant materials that obstruct motorists' view from the main traveled way of the highway or street of signs displayed on outdoor advertising structures. If the local beautification project violates this section, in addition to other applicable penalties, the locality shall bear the costs to bring such beautification project into compliance with this section.

8. The locality shall provide a 30-day written notice to the Commissioner of Highways prior to installation of a local beautification project within the right-of-way of a ~~Virginia~~ Department ~~of Transportation~~ maintained highway that may obstruct the motorists' view of

signs displayed on outdoor advertising structures. Such notice shall include a description of the plant materials to be used in, and a copy of the plans for, such beautification project.

9. Any application for vegetation control in compliance with this section submitted to the Commissioner of Highways shall be ~~approved~~ acted upon within 60 days of submission or shall be deemed approved. Any application for vegetation control in compliance with this section submitted to any city or town or on a highway or street in a county with the county manager form of government shall be ~~approved~~ acted upon within 60 days of submission or shall be deemed approved. The locality may impose conditions in approval of the landscaping plan consistent with this section and the regulations promulgated thereto. If the locality is not satisfied that the landscaping plan submitted by the applicant complies with this section, the locality may appeal to the Commissioner of Highways prior to the expiration of the 60-day period from the date of submission. If the applicant objects to the conditions imposed by the locality as part of the approval of the landscaping plan, the applicant may appeal to the Commissioner of Highways within 30 days after the final action on the landscaping plan. The appealing party shall submit a written appeal to the Commissioner of Highways, stating the reasons for such appeal, along with a fee of \$400. The Commissioner of Highways shall review the landscaping plan and the reasons for the appeal and shall issue a determination in accordance with this section within 30 days after filing of the appeal, which determination shall be binding upon the applicant and the locality.

10. Upon issuance of a vegetation control permit in accordance with this section, the applicant shall give written notice, at least seven days in advance of any site work, as authorized by the permit, of the date and time of the commencement of the site work as approved by the permit. Such written notice shall be given to the Commissioner of Highways unless the public right-of-way is within the jurisdictional limits of a city or town on a highway or street not within the jurisdiction of the Commissioner under § ~~33.1-353~~ 33.2-XXX, in which case, the written notice shall be given to the local government official who approved the permit.

11. Any person, firm, or corporation found by a court of competent jurisdiction to have violated any provision of this section, any regulation adopted pursuant to this section, or any permit issued under this section, shall be subject to the penalties provided in § ~~33.1-377.1~~ 33.2-XXX.

Drafting note: Technical changes are made, including removing the phrase "but not limited to" in subdivisions 3 and 6 based on § 1-218 of the Code of Virginia. Existing § 33.1-371.1 was amended by Chapter 737 of the Acts of Assembly of 2013 and those changes are reflected in the existing language here.

§ ~~33.1-372~~ 33.2-XXX. Pasting advertisements prohibited in certain instances.

No advertisement shall be pasted or glued on any building, fence, wall, tree, rock, or other similar structure or object, unless the same ~~be structure or object is~~ an advertising structure for which a permit has been issued and is in effect.

Drafting note: Technical changes.

§ ~~33.1-373~~ 33.2-XXX. Signs or advertising on rocks, poles, etc., within limits of highway; civil penalty.

Any person who in any manner (i) paints, prints, places, puts, or affixes any sign or advertisement upon or to any rock, stone, tree, fence, stump, pole, mile-board, milestone, danger-sign, guide-sign, guidepost, highway sign, historical marker, building, or other object lawfully within the limits of any highway or (ii) erects, paints, prints, places, puts, or affixes any sign or advertisement within the limits of any highway ~~shall be assessed~~ is subject to a civil penalty of \$100. Each occurrence shall be subject to a separate penalty. All civil penalties collected under this section shall be paid into the Highway Maintenance and Operating Fund. Signs or advertisements placed within the limits of the highway are hereby declared a public and private nuisance and may be forthwith removed, obliterated, or abated by the Commissioner of Highways or his representatives without notice. The Commissioner of Highways may collect the cost of such removal, obliteration, or abatement from the person erecting, painting, printing, placing, putting, affixing, or using such sign or advertisement. When no one is observed

erecting, painting, printing, placing, putting, or affixing such sign or advertisement, the person, firm, or corporation being advertised shall be presumed to have placed the sign or advertisement and shall be punished accordingly. Such presumption, however, shall be rebuttable by competent evidence. In addition, the Commissioner of Highways or his representative may seek to enjoin any recurring violator of this section. The Commissioner of Highways may enter into agreements with any local governing body authorizing local law-enforcement agencies or other local governmental entities to act as agents of the Commissioner of Highways for the purpose of (i) enforcing the provisions of this section and (ii) collecting the penalties and costs provided for in this section. Any such agreement may provide that penalties and costs collected pursuant to such agreement shall be paid as agreed.

The provisions of this section shall not apply to signs or ~~other~~ outdoor advertising regulated under ~~Chapter 7 (§ 33.1-351 et seq.)~~ other provisions of this ~~title~~ chapter.

Drafting note: Technical changes. The last sentence of this section was added in SB 572 (1994) and does not make sense as it is written. Existing § 33.1-373 was amended by Chapter 457 of the 2013 Acts of Assembly and those changes are reflected in the existing language here.

§ ~~33.1-375.1~~ 33.2-XXX. Commissioner of Highways may enter into certain agreements; civil penalties.

A. The Commissioner of Highways may enter into agreements with the local governing body of Fairfax County authorizing local law-enforcement agencies or other local governmental entities to act as agents of the Commissioner of Highways for the purpose of (i) enforcing the provisions of § ~~33.1-373~~ 33.2-XXX and (ii) collecting the civil penalties and costs provided for in that section. However, ~~no~~ the local governing body of Fairfax County shall not enter into any such agreement until it has held a public hearing thereon.

B. Notwithstanding the provisions of § ~~33.1-373~~ 33.2-XXX, the penalties and costs collected under this section shall be paid to ~~the affected locality~~ Fairfax County.

C. Notwithstanding ~~the foregoing provisions of this section~~ subsections A and B, signs and advertising promoting ~~and/or~~ or providing directions to a special event erected from Saturday through the following Monday shall not be subject to an agreement provided for in subsection A.

D. If ~~a county~~ Fairfax County acts as an agent of the Commissioner of Highways under this section, ~~the county then it~~ shall require each of its employees and any volunteers who are authorized to act on behalf of the ~~county~~ County to comply with the provisions of this section and any other applicable law. If a lawfully placed sign is confiscated by an employee or volunteer authorized to act for the ~~county~~ County in violation of the authority granted under this section, the sign owner shall have the right to reclaim the sign within five business days of the date of such confiscation.

Drafting note: References to a county are changed to Fairfax County to maintain consistency with the first reference because Fairfax is the only county to which this section applies. Technical changes are also made, including replacing "and/or" with "or."

~~§ 33.1-374~~ 33.2-XXX. Harmony of regulations.

No zoning board or commission or any other public officer or agency shall permit any sign, advertisement, or advertising structure ~~which that~~ is prohibited under the provisions of this article, nor shall the Commissioner of Highways permit any sign, advertisement, or advertising structure ~~which that~~ is prohibited by any other public board, officer, or agency in the lawful exercise of its ~~or their~~ powers.

Drafting note: Technical changes.

~~§ 33.1-375~~ 33.2-XXX. Violation a nuisance; abatement.

Any sign, advertisement, or advertising structure ~~which that~~ is erected, used, maintained, operated, posted, or displayed for which no permit has been obtained where such is required, or after revocation or more than 30 days after expiration of a permit, is hereby declared to be a public and private nuisance and may be forthwith removed, obliterated, or abated by the Commissioner ~~or his representatives of Highways~~. The Commissioner of Highways may collect

the cost of such removal, obliteration, or abatement from the person erecting, using, maintaining, operating, posting, or displaying such sign, advertisement, or advertising structure.

Drafting note: Technical changes.

~~§ 33.1-376~~ 33.2-XXX. Disposition of fees.

All moneys received by the Commissioner of Highways under the provisions of this article shall be paid by him into the state treasury, except as provided in 33.2-XXX and 33.2-XXX (existing 33.1-373 and 33.1-377.1), and allocated to the ~~Commonwealth Transportation~~ Board for use in the regulation and control of outdoor advertising and landscaping of highways.

Drafting note: Technical changes.

~~§ 33.1-377.~~

Drafting note: Repealed by Acts 2012, cc. 760 and 818, cl. 2, effective April 18, 2012.

~~§ 33.1-377.1~~ 33.2-XXX. Penalties for violation.

A. Notwithstanding any other provision of law, any person, firm, or corporation that violates any provision of this article or applicable regulations that fails to take corrective action within 30 days as specified in a written notice from the Commissioner of Highways shall be subject to any or all of the following penalties:

1. A civil penalty of not more than \$250 per violation. Each day during which the violation continues after a final determination by the Commissioner of Highways of such violation shall be deemed a separate violation;

2. Revocation by the Commissioner of Highways of any permit for the sign; or

3. Removal of the sign by the Commissioner ~~or his designee~~ of Highways. The Commissioner of Highways may collect the costs of the removal from the owner of the sign.

B. Any person aggrieved by the action of the Commissioner of Highways in enforcing the provisions of subsection A may appeal the decision of the Commissioner of Highways in accordance with the Administrative Process Act (§ 2.2-4000 et seq.).

C. The Commissioner of Highways may remove signs without giving a corrective action notice as provided in subsection A (i) for any violation of subdivision 3, 6, 7, 8, 9, or 10 of § 33.1-369 (3), (7), (8), (9), (10), or (11), 33.2-XXX or of § 33.1-372, 33.2-XXX or (ii) if the Commissioner of Highways determines that the sign poses a risk to highway safety.

D. The Commissioner ~~or his designee~~ of Highways may recover all civil penalties authorized in subsection A in any manner permitted by law, including (i) the placement of a tax lien on the owner's real property upon which the sign is located and (ii) the use of the Setoff Debt Collection Act (§ 58.1-520 et seq.).

E. All civil penalties collected under this section shall be paid into the Highway Maintenance and Operating Fund.

Drafting note: Technical changes.

~~§ 33.1-378~~ 33.2-XXX. Construction of article.

This article shall be liberally construed with a view to the effective accomplishment of its purposes.

Drafting note: No change.

Article 2.

False and Misleading Signs.

Drafting note: An existing article on false and misleading signs is retained in proposed Chapter XX of Title 33.2.

~~§ 33.1-379~~ 33.2-XXX. Prohibition of ~~such false and misleading~~ signs.

It shall be unlawful for any person to erect or maintain alongside, or in plain view of, any public highway any false or misleading sign of any kind or character purporting to furnish travel information relating to place or direction. It shall be unlawful for any person to erect or maintain alongside, or in plain view of, any public highway any sign of any kind or character purporting to furnish travel information relating to merchandise or services unless the design of such sign, the information thereon, and the location thereof, be approved in writing by the

Commissioner of Highways; provided, ~~however,~~ that the provisions of this section as to merchandise and service shall not:

~~(1)~~ 1. Apply to or restrict the right of any person to post, display, erect, or maintain on any store, dwelling house, or other building, together with so much land therewith as shall be necessary for the convenience, use, and enjoyment thereof, or on any mercantile appliances, contrivances, or machinery annexed or immediately adjacent thereto, any sign advertising goods, merchandise, real or personal property, ~~real or personal~~, business services, entertainment, or amusements actually and in good faith manufactured, produced, bought, sold, conducted, furnished, or dealt in on the premises;

~~(2)~~ 2. Limit or restrict the publication of official notices by or under the direction of any public or court officer in the performance of his official or directed duties;

~~(3)~~ 3. Limit or restrict notice of sale by a trustee under a deed of trust, deed of assignment, or other similar instrument; or

~~(4)~~ 4. Apply to or restrict the right of any property owner, or his agent, lessee, or tenant to maintain any sign offering to the public farm products, including livestock of every kind, or board or lodging or similar entertainment, ~~or of~~ the sale, rental, or lease of the property.

Nothing in this section shall limit the right of any person, firm, or corporation to erect signs ~~which~~ that advertise natural scenic attractions in the Commonwealth.

Drafting note: Technical changes.

§ ~~33.1-380~~ 33.2-XXX. Penalty for violation of ~~preceding section; existing signs~~ § 33.2-XXX.

Any person who ~~shall violate~~ violates any of the provisions of § ~~33.1-379~~ 33.2-XXX shall, ~~upon conviction thereof,~~ be ~~punished by~~ subject to a fine not to exceed ~~ten dollars~~ \$10 for each offense, and it shall be deemed a separate offense for the same person to erect, or permit to be erected, a similar sign at each of two or more places; ~~provided, however, as to any such sign erected before June 19, 1936, if it be satisfactorily proven that the information thereon given is~~

~~correct, the person who erected the same, as well as the person who permitted the same to be erected, shall not be deemed guilty of such violation.~~

Drafting note: Language regarding signs erected before June 19, 1936, is removed as obsolete.

~~§ 33.1-381 33.2-XXX. Removal of such false or misleading signs by Commissioner of Highways.~~

~~The Whenever the Commissioner of Highways, whenever he shall ascertain determines that any such a sign gives incorrect information in violation of this article, he shall notify the person who erected the same, such sign and the person on whose property it is located, in writing, to remove it forthwith immediately, and if it be is not removed within ten 10 days after receipt of such notice, the Commissioner of Highways shall remove and destroy the same such sign, or cause it to be removed and destroyed, without liability for damages therefor; and, if any person convicted of erecting or maintaining any such sign, or of permitting the same to be erected or maintained, as hereinabove provided, in this article shall fail or refuse to remove the same such sign within ten 10 days after such judgment of conviction, the Commissioner of Highways shall remove and destroy such sign, or cause the same to be removed and destroyed, without liability for damages therefor.~~

Drafting note: Technical changes.

~~CHAPTER 8.~~

~~ADJUSTMENT OF CLAIMS RESULTING FROM CONTRACTS ENTERED INTO PRIOR TO JULY 1, 1976, FOR CONSTRUCTION OF STATE HIGHWAYS.~~

~~§§ 33.1-382. through 33.1-385.~~

Drafting note: Repealed by Acts 2006, c. 81, cl. 1.

CHAPTER XX.

RAIL AND PUBLIC TRANSPORTATION.

Drafting note: A new chapter on rail and public transportation is created within proposed Subtitle II. This chapter separates sections in existing Title 33.1 that relate to rail and public transportation but not directly to the responsibilities and duties of the Department of Rail and Public Transportation.

Article 1.

Rail Funds.

Drafting note: The first proposed article gathers all sections related to funding for rail and public transportation.

§ ~~33.1-221.1-1~~ 33.2-XXX. Fund for construction of industrial access railroad tracks.

A. The General Assembly declares it to be in the public interest that access railroad tracks and facilities be constructed to certain industrial commercial sites where rail freight service is or may be needed by new or substantially expanded industry and that financial assistance be provided to areas seeking to furnish rail freight trackage between the normal limits of existing or proposed common carrier railroad tracks and facilities and the actual site of existing or proposed commercial or industrial buildings or facilities. This section is enacted in furtherance of these purposes and is intended to be comparable to the fund for access roads to economic development sites, established pursuant to § ~~33.1-221~~ 33.2-XXX.

B. The funding for this program shall be set forth in the ~~Appropriations Act~~ appropriation act.

C. The Director of the Department of Rail and Public Transportation shall administer and expend or commit, subject to the approval of the ~~Commonwealth Transportation~~ Board, such funds for constructing, reconstructing, or improving industrial access railroad tracks and related facilities. The Director of the Department of Rail and Public Transportation may consult with the Commissioner of Agriculture and Consumer Services and the Chief Executive Officer of the Virginia Economic Development Partnership, or their designated representatives,

concerning applications for funds. Funds shall be spent directly by the Director of the Department of Rail and Public Transportation or by reimbursement of the local entities, private or public.

D. Funds may be used to construct, reconstruct, or improve part or all of the necessary tracks and related facilities on public or private property currently used or being developed, existent or prospective, for single industries or industrial subdivisions under firm contract or already constructed, including those subdivisions owned or promoted by railroad companies and others. Applications for funds must be approved by the local governing body.

E. In deciding whether to construct any such access track, the ~~Commonwealth Transportation~~ Board shall consider the cost thereof in relation to prospective volume of rail traffic, capital investment, potential employment, and other economic and public benefits. The ~~Commonwealth Transportation~~ Board shall adopt procedures to encourage widespread use of the funds; ~~it~~ shall limit allocation of funds so that no county, city, or town receives more than 50 percent of the funds in any one fiscal year unless there are not sufficient applications prior to May 1 of each year to use the available funds; ~~it~~ and shall consider the practices of the Department of Transportation in distributing funds for access roads to economic development sites under § ~~33.1-221~~ 33.2-XXX.

F. Tracks and facilities constructed with such funds shall be the property of the Commonwealth for the useful life of the project as determined by the Director of the Department of Rail and Public Transportation and shall be made available for use by all common carriers using the railway system to which they connect. The landowners or using businesses shall, prior to the commitment of funds by the Director of the Department of Rail and Public Transportation, be contractually committed to the perpetual maintenance of such tracks and facilities so constructed and to the payment of any costs related to the future relocation or removal of such tracks and facilities.

Drafting note: Technical changes.

§ ~~33.1-221.1-1.1~~ 33.2-XXX. Rail Enhancement Fund.

55 A. The General Assembly declares it to be in the public interest that railway preservation
56 and development of railway transportation facilities are an important element of a balanced
57 transportation system of the Commonwealth for freight and passengers and further declares it to
58 be in the public interest that the retention, maintenance, improvement, and development of
59 freight and passenger railways are essential to the Commonwealth's continued economic
60 growth, vitality, and competitiveness in national and world markets, ~~and there.~~

61 B. There is hereby created in the state treasury a special nonreverting fund to be known
62 as the Rail Enhancement Fund, hereafter referred to as "the Fund," which shall be considered a
63 special fund within the Transportation Trust Fund, ~~hereafter referred to as "the Fund."~~ B. The
64 Fund shall be established on the books of the Comptroller, and shall consist of dedications
65 pursuant to § 58.1-1741 and such funds from other sources as may be set forth in the
66 appropriation act and shall be paid into the state treasury and credited to the Fund. Interest
67 earned on moneys in the Fund shall remain in the Fund and be credited to it. Any moneys
68 remaining in the Fund, including interest thereon, at the end of each fiscal year shall not revert
69 to the general fund but shall remain in the Fund. Moneys in the Fund shall be used solely as
70 provided in this section. Expenditures and disbursements from the Fund shall be made by the
71 State Treasurer on warrants issued by the Comptroller upon written request signed by the
72 Director of the ~~Virginia~~ Department of Rail and Public Transportation or the Director's
73 designee.

74 C. The Director of the Department of Rail and Public Transportation shall administer
75 and expend or commit, subject to the approval of the ~~Commonwealth Transportation~~ Board, the
76 Fund for acquiring, leasing, ~~and/or or~~ improving railways or railroad equipment, rolling stock,
77 rights-of-way, or facilities, or assisting other appropriate entities to acquire, lease, or improve
78 railways or railroad equipment, rolling stock, rights-of-way, or facilities, for freight ~~and/or or~~
79 passenger rail transportation purposes whenever the Board ~~shall have~~ has determined that such
80 acquisition, lease, ~~and/or or~~ improvement is for the common good of a region of the

Commonwealth or the Commonwealth as a whole. Funds provided in this section may also be used as matching funds for federal grants to support passenger or freight rail projects.

D. Projects undertaken pursuant to this section shall be limited to those the ~~Commonwealth Transportation Board shall have~~ has determined will result in public benefits to ~~the Commonwealth or to~~ a region of the Commonwealth or the Commonwealth as a whole that are equal to or greater than the investment of funds under this section. Such public benefits shall include, ~~but not be limited to,~~ the impact of the project on traffic congestion, and environmental quality, and whenever possible, give due consideration to passenger rail capacity on corridors identified by the ~~Commonwealth Transportation~~ Board that have existing or proposed passenger rail service. Such projects shall include a minimum of 30 percent cash or in-kind matching contribution from a private source, which may include a railroad, a regional authority, ~~or~~ a local government source, or a combination of such sources.

Drafting note: Technical changes are made, including removing the language "but not limited to" per the definition of "includes" in § 1-218.

~~§ 33.1-221.1-1.2 33.2-XXX~~. Shortline Railway Preservation and Development Fund.

A. For the purposes of this section:

"Fund" means the Shortline Railway Preservation and Development Fund.

"Railway transportation support facilities" means facilities required for the loading, transfer, or additional track capacity to facilitate the shipment of goods by rail other than as provided for in § 33.2-XXX or 33.2-XXX.

"Shortline railway" means any Class II or Class III railroad as defined by the U.S. Surface Transportation Board.

B. The General Assembly declares it to be in the public interest that shortline railway preservation and development of railway transportation support facilities are important elements of a balanced transportation system of the Commonwealth for freight and passengers, and further declares it to be in the public interest that the retention, maintenance, and improvement of the shortline railway and development of railway transportation support facilities are essential

to the Commonwealth's continued economic growth, vitality, and competitiveness in national and world markets, ~~and there.~~

C. There is hereby created in the state treasury a special nonreverting fund to be known as the Shortline Railway Preservation and Development Fund, ~~hereinafter in this section referred to as "the Fund." A "shortline railway," for the purposes of this section, shall mean any Class II or Class III railroad as defined by the United States Surface Transportation Board. "Railway transportation support facilities," for the purposes of this section, shall mean facilities required for the loading, transfer, or additional track capacity to facilitate the shipment of goods by rail other than as provided for in § 33.1-221.1:1 or 33.1-221.1:1.1. B.~~ The Fund shall be

established on the books of the Comptroller and shall consist of such funds from such sources as shall be set forth in the general appropriation act and shall be paid into the state treasury and credited to the Fund. Interest earned on moneys in the Fund shall remain in the Fund and be credited to it. 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 as provided in this section. Expenditures and disbursements from the Fund shall be made by the State Treasurer on warrants issued by the Comptroller upon written request signed by the Director of the ~~Virginia~~ Department of Rail and Public Transportation or the Director's designee.

~~C. D.~~ To fulfill this purpose, there shall be funding set forth each year in the budget bill and appropriated by the General Assembly in the Rail Assistance Program of the Department of Rail and Public Transportation. These funds shall be used by the Department of Rail and Public Transportation to administer a Shortline Railway Preservation and Development Program for the purposes described in subsection ~~A. B.~~ Furthermore, the ~~Commonwealth Transportation~~ Board shall include an annual allocation for such purpose in its allocation of transportation revenues.

~~D. E.~~ The Director of the Department of Rail and Public Transportation shall administer and expend or commit, subject to the approval of the ~~Commonwealth Transportation~~ Board, the

Fund for acquiring, leasing, ~~and/or or~~ improving shortline railways and the development of railway transportation support facilities or assisting other appropriate entities to acquire, lease, or improve shortline railways and the development of railway transportation purposes whenever the Board ~~shall have~~ has determined that such acquisition, lease, ~~and/or or~~ improvement is for the common good of a region of the Commonwealth or the Commonwealth as a whole. The Director of the Department of Rail and Public Transportation may consult with other agencies or their designated representatives concerning projects to be undertaken under this section.

~~E.~~ F. Tracks and facilities constructed, and property and equipment purchased, with funds under this section shall be the property of the Commonwealth for the useful life of the project, as determined by the Director of the Department of Rail and Public Transportation, and shall be made available for use by all common carriers using the railway system to which they connect under the trackage rights agreements between the parties. Projects undertaken pursuant to this section shall be limited to those of a region of the Commonwealth or the Commonwealth as a whole. Such projects shall include a minimum of ~~30%~~ 30 percent cash or in-kind matching contribution from a private source, which may include a railroad, a regional authority, private industry, ~~or~~ a local government source, or a combination of such sources. No single project shall be allocated more than ~~50%~~ 50 percent of total available funds.

Drafting note: Technical changes are made, including moving definitions to the beginning of the section.

~~§ 33.1-221.1:1.3~~ 33.2-XXX. Intercity Passenger Rail Operating and Capital Fund.

A. The General Assembly declares it to be in the public interest that developing and continuing intercity passenger rail operations and the development of rail infrastructure, rolling stock, and support facilities to support intercity passenger rail service are important elements of a balanced transportation system in the Commonwealth and further declares it to be in the public interest that the retention, maintenance, improvement, and development of intercity passenger rail-related infrastructure improvements and operations are essential to the Commonwealth's continued economic growth, vitality, and competitiveness in national and world markets.

162 B. (Contingent expiration date) There is hereby created in the state treasury a special
163 nonreverting fund to be known as the Intercity Passenger Rail Operating and Capital Fund,
164 hereafter referred to as "the Fund," which shall be considered a special fund within the
165 Transportation Trust Fund. The ~~Intercity Passenger Rail Operating and Capital~~ Fund shall be
166 established on the books of the Comptroller and shall consist of funds designated pursuant to
167 subdivision A 2 of § 58.1-638.3 and as may be set forth in the appropriation act and by
168 allocation of funds for operations and projects pursuant to this section by the ~~Commonwealth~~
169 ~~Transportation~~ Board in accordance with § ~~33.1-23.1~~ 33.2-XXX. Interest earned on moneys in
170 the ~~Intercity Passenger Rail Operating and Capital~~ Fund shall remain in the ~~Intercity Passenger~~
171 ~~Rail Operating and Capital~~ Fund and be credited to it. Any moneys remaining in the ~~Intercity~~
172 ~~Passenger Rail Operating and Capital~~ Fund, including interest thereon, at the end of each fiscal
173 year shall not revert to the general fund but shall remain in the ~~Intercity Passenger Rail~~
174 ~~Operating and Capital~~ Fund. Moneys in the ~~Intercity Passenger Rail Operating and Capital~~ Fund
175 shall be used solely as provided in this section. Expenditures and disbursements from the
176 ~~Intercity Passenger Rail Operating and Capital~~ Fund shall be made by the State Treasurer on
177 warrants issued by the Comptroller upon written request signed by the Director of the ~~Virginia~~
178 Department of Rail and Public Transportation or his designee.

179 B. (Contingent effective date) There is hereby created in the state treasury a special
180 nonreverting fund to be known as the Intercity Passenger Rail Operating and Capital Fund,
181 hereafter referred to as "the Fund," which shall be considered a special fund within the
182 Transportation Trust Fund. The ~~Intercity Passenger Rail Operating and Capital~~ Fund shall be
183 established on the books of the Comptroller and shall consist of funds as may be set forth in the
184 appropriation act and by allocation of funds for operations and projects pursuant to this section
185 by the ~~Commonwealth Transportation~~ Board in accordance with § ~~33.1-23.1~~ 33.2-XXX. Interest
186 earned on moneys in the ~~Intercity Passenger Rail Operating and Capital~~ Fund shall remain in the
187 ~~Intercity Passenger Rail Operating and Capital~~ Fund and be credited to it. Any moneys
188 remaining in the ~~Intercity Passenger Rail Operating and Capital~~ Fund, including interest

thereon, at the end of each fiscal year shall not revert to the general fund but shall remain in the ~~Intercity Passenger Rail Operating and Capital~~ Fund. Moneys in the ~~Intercity Passenger Rail Operating and Capital~~ Fund shall be used solely as provided in this section. Expenditures and disbursements from the ~~Intercity Passenger Rail Operating and Capital~~ Fund shall be made by the State Treasurer on warrants issued by the Comptroller upon written request signed by the Director of the ~~Virginia~~ Department of Rail and Public Transportation or his designee.

C. The Director of the ~~Virginia~~ Department of Rail and Public Transportation or his designee shall administer and expend or commit, subject to the approval of the ~~Commonwealth Transportation~~ Board, the ~~Intercity Passenger Rail Operating and Capital~~ Fund to support the cost of operating intercity passenger rail service; acquiring, leasing, ~~and/or or~~ improving railways or railroad equipment, rolling stock, rights-of-way, or facilities; or assisting other appropriate entities to acquire, lease, or improve railways or railroad equipment, rolling stock, rights-of-way, or facilities for intercity passenger rail transportation purposes whenever the Board ~~shall have~~ has determined that such acquisition, lease, ~~and/or or~~ improvement is for the common good of a region of the Commonwealth or the Commonwealth as a whole. Funds provided in this section may also be used as matching funds for federal grants to support intercity passenger rail projects.

D. Capital projects including tracks and facilities constructed and property, equipment, and rolling stock purchased with funds under this section shall be the property of the Commonwealth for the useful life of the project, as determined by the Director of the Department of Rail and Public Transportation, and shall be made available for use by all intercity passenger rail operations and common carriers using the railway system to which they connect under the trackage rights or operating agreements between the parties. Projects undertaken pursuant to this section shall be limited to those of a region of the Commonwealth or the Commonwealth as a whole. Such projects undertaken pursuant to this section shall not require a matching contribution; however, projects proposed with matching funds may receive

more favorable consideration. Matching funds may be provided from any source except Commonwealth Transportation Fund revenues.

Drafting note: Technical changes. This section was amended by Chapter 766 of the Acts of Assembly of 2013 and those changes are reflected in the existing language here.

Article 2.

Virginia-North Carolina Interstate High-Speed Rail Compact.

Drafting note: This compact, which is currently published with other Title 33.1 compacts in the Compacts volume, is given a section number in the Code of Virginia and placed in this proposed Article 2.

§ 33.2-XXX. Virginia-North Carolina Interstate High-Speed Rail Compact.

§ 1. Short title.

This act shall be known and may be cited as the Virginia-North Carolina Interstate High-Speed Rail Compact.

§ 2. Compact established.

Pursuant to the invitation in 49 U.S.C. § 24101 Interstate Compacts, in which the United States Congress grants consent to states with an interest in a specific form, route, or corridor of intercity passenger rail service (including high-speed rail service) to enter into interstate compacts, there is hereby established the Virginia-North Carolina Interstate High-Speed Rail Compact.

§ 3. Agreement.

The Commonwealth of Virginia and the State of North Carolina agree, upon adoption of this compact:

1. To study, develop, and promote a plan for the design, construction, financing, and operation of interstate high-speed rail service through and between points in the Commonwealth of Virginia and the State of North Carolina and adjacent states;

2. To coordinate efforts to establish high-speed rail service at the federal, state, and local governmental levels;

3. To advocate for federal funding to support the establishment of high-speed interstate rail service within and through Virginia and North Carolina and to receive federal funds made available for rail development; and

4. To provide funding and resources to the Virginia-North Carolina High-Speed Rail Compact Commission from funds that are or may become available and are appropriated for that purpose.

§ 4. Commission established; appointment and terms of members; chairman; reports; Commission funds; staff.

The Virginia-North Carolina High-Speed Rail Compact Commission is hereby established as a regional instrumentality and a common agency of each signatory party, empowered in a manner hereinafter set forth to carry out the purposes of the Compact.

The Virginia members of the Commission shall be appointed as follows: three members of the House of Delegates appointed by the Speaker of the House of Delegates, and two members of the Senate appointed by the Senate Committee on Rules. The North Carolina members of the Commission shall be composed of five members as follows: two members of the Senate appointed by the General Assembly upon recommendation of the President Pro Tempore of the Senate, two members of the House of Representatives appointed by the General Assembly upon recommendation of the Speaker of the House of Representatives, and one appointed by the Governor.

The chairman of the Commission shall be chosen by the members of the Commission from among its membership for a term of one year, and shall alternate between the member states.

The Commission shall meet at least twice each year, at least once in Virginia and once in North Carolina, and shall issue a report of its activities each year.

The Commission may utilize, for its operation and expenses, funds appropriated to it therefor by the legislatures of Virginia and North Carolina or received from federal sources.

268 Virginia members of the Commission shall receive compensation and reimbursement for
269 the necessary and actual expenses as provided in the general appropriations act; North Carolina
270 members of the Commission shall receive per diem, subsistence and travel allowances in
271 accordance with applicable statutes of North Carolina, as appropriate.

272 Primary staff to the Commission shall be provided by the Virginia Department of Rail
273 and Public Transportation and the North Carolina Department of Transportation.

274 **Drafting note: This compact, which is currently published with other Title 33.1**
275 **compacts in the Compacts volume, is given a section number in the Code of Virginia.**

276 #

CHAPTER ~~22~~ XX.

PUBLIC-PRIVATE TRANSPORTATION ACT OF 1995.

Drafting note: Chapter 22 (§ 56-556 et seq.) of Title 56 is relocated to Title 33.2 because it has a more logical nexus with Transportation. Throughout the chapter, the use of the term "and/or," a grammatical shortcut that often leads to confusion or ambiguity, has been amended in a list of more than two to reflect that any combination is permitted but has been retained when used with only two options, such as "development and/or operation."

~~§ 56-556. Title.~~

~~This chapter may be cited as the "Public Private Transportation Act of 1995."~~

Drafting note: This section is deleted as unnecessary because of the Code-wide application of § 1-244, which states that the caption of a subtitle, chapter, or article serves as a short title citation.

~~§ 56-557~~ 33.2-xxx. Definitions.

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

"Affected-~~jurisdiction~~ locality or entity" means any county, city, or town in which all or a portion of a qualifying transportation facility is located and any other responsible public entity directly affected by the qualifying transportation facility.

~~"Asset management" means a systematic process of operating and maintaining the state system of highways by combining engineering practices and analyses with sound business practices and economic theory to achieve cost effective outcomes.~~

"Commission" means the State Corporation Commission.

"Comprehensive agreement" means the comprehensive agreement between the private entity and the responsible public entity required by ~~§ 56-566 of this chapter~~ 33.2-xxx.

"Concession" means any lease, license, franchise, easement, or other binding agreement transferring rights for the use or control, in whole or in part, of a qualifying transportation facility by a responsible public entity to a private entity for a definite term during which the

private entity will provide transportation-related services, including, ~~but not limited to,~~ operations and maintenance, revenue collection, toll-collection enforcement, design, construction, and other activities that enhance throughput, reduce congestion, or otherwise manage the facility, in return for the right to receive all or a portion of the revenues of the qualifying transportation facility.

"Concession payment" means a payment from a private entity to a responsible public entity in connection with the development and/or operation of a qualifying transportation facility pursuant to a concession.

"Develop" or "development" means to plan, design, develop, finance, lease, acquire, install, construct, or expand.

"Interim agreement" means an agreement, including a memorandum of understanding or binding preliminary agreement, between the private entity and the responsible public entity that provides for completion of studies and any other activities to advance the development and/or operation of a qualifying transportation facility.

~~"Maintenance" means that term as defined in § 33.1-23.02.~~

"Material default" means any default by the private entity in the performance of its duties under subsection E of § ~~56-565 of this chapter~~ 33.2-xxx that jeopardizes adequate service to the public from a qualifying transportation facility and remains unremedied after the responsible public entity has provided notice to the private entity and a reasonable cure period has elapsed.

"Multimodal transportation facility" means a transportation facility consisting of multiple modes of transportation.

"Operate" or "operation" means to finance, maintain, improve, equip, modify, repair, or operate.

"Private entity" means any natural person, corporation, general partnership, limited liability company, limited partnership, joint venture, business trust, public benefit corporation, ~~non-profit~~ nonprofit entity, or other business entity.

"Public entity" means the Commonwealth and any agency or authority thereof; any county, city, or town; and any other political subdivision of any of the foregoing, but ~~shall~~ does not include any public service company.

"Qualifying transportation facility" means one or more transportation facilities developed and/or operated by a private entity pursuant to this chapter.

"Responsible public entity" means a public entity, including local governments and regional authorities, that has the power to develop and/or operate the qualifying transportation facility.

"Revenues" means all revenues, including, ~~but not limited to,~~ income; earnings; user fees; lease payments; allocations; federal, state, regional, and local appropriations or the appropriations or other funds available to any political subdivision, authority, or instrumentality thereof; bond proceeds; equity investments, ~~and/or;~~ service payments; or any combination thereof arising out of or in connection with supporting the development and/or operation of a qualifying transportation facility, including ~~without limitation,~~ money received as grants or otherwise from the United States of America, from any public entity, or from any agency or instrumentality of the foregoing in aid of such facility.

"Service contract" means a contract entered into between a public entity and the private entity pursuant to § ~~56-561 of this chapter~~ 33.2-XXX.

"Service payments" means payments to the private entity in connection with the development and/or operation of a qualifying transportation facility pursuant to a service contract.

~~"State" means the Commonwealth of Virginia.~~

"Transportation facility" means any road, bridge, tunnel, overpass, ferry, airport, mass transit facility, vehicle parking facility, port facility, or similar commercial facility used for the transportation of persons or goods, together with any buildings, structures, parking areas, appurtenances, and other property needed to operate such facility; however, "transportation

81 facility" does not include a commercial or retail use or enterprise not essential to the
82 transportation of persons or goods ~~shall not be a "transportation facility."~~

83 "User fees" mean the rates, tolls, fees, or other charges imposed by the private entity for
84 use of all or a portion of a qualifying transportation facility pursuant to the interim or
85 comprehensive agreement.

86 **Drafting note: "Affected jurisdiction" is changed to "affected locality or entity" to**
87 **comport with practice throughout this title. The reference to a locality means a county,**
88 **city, or town and is the correct usage within transportation. The term "jurisdiction" is**
89 **used to mean "authority over." The definitions for "asset management" and**
90 **"maintenance" are stricken because they are defined for the title in proposed § 33.2-100.**
91 **The definition of "state" is stricken according to the preferred use of the term "the**
92 **Commonwealth." The phrases "but not limited to" and "without limitation" in the**
93 **definitions of "concession" and "revenues" are removed based on § 1-218, which states:**
94 **"'Includes' means includes, but not limited to." Other changes are technical or made to**
95 **comport with current practice.**

96 § ~~56-558~~ 33.2-xxx. Policy.

97 A. The General Assembly finds that:

98 1. There is a public need for timely development and/or operation of transportation
99 facilities within the Commonwealth that address the needs identified by the appropriate state,
100 regional, or local transportation plan by improving safety, reducing congestion, increasing
101 capacity, ~~and/or~~ enhancing economic efficiency, or any combination thereof and that such
102 public need may not be wholly satisfied by existing methods of procurement in which
103 qualifying transportation facilities are developed and/or operated;

104 2. Such public need may not be wholly satisfied by existing ways in which transportation
105 facilities are developed and/or operated; and

106 3. Authorizing private entities to develop and/or operate one or more transportation
107 facilities may result in the development and/or operation of such transportation facilities to the

public in a more timely, more efficient, or less costly fashion, thereby serving the public safety and welfare.

B. An action, other than the approval of the responsible public entity under § ~~56-560~~ of ~~this chapter~~ 33.2-XXX, shall serve the public purpose of this chapter if such action, including undertaking a concession, facilitates the timely development and/or operation of a qualifying transportation facility.

C. It is the intent of this chapter, among other things, to encourage investment in the Commonwealth by private entities that facilitates the development and/or operation of transportation facilities. Accordingly, public and private entities may have the greatest possible flexibility in contracting with each other for the provision of the public services ~~which that~~ are the subject of this chapter.

D. This chapter shall be liberally construed in conformity with the purposes hereof.

Drafting note: Technical changes are made.

§ ~~56-559~~ 33.2-xxx. Prerequisite for operation.

A. Any private entity seeking authorization under this chapter to develop and/or operate a transportation facility shall first obtain approval of the responsible public entity under § ~~56-560~~ 33.2-xxx. Such private entity may initiate the approval process by requesting approval pursuant to subsection A of § ~~56-560~~ 33.2-xxx or the responsible public entity may request proposals pursuant to subsection B of § ~~56-560~~ 33.2-xxx.

B. Any responsible public entity that is an agency or institution of the Commonwealth receiving a detailed proposal from a private entity for a qualifying transportation facility that is a port facility as defined in § 62.1-140 shall provide notice of the receipt of such proposal to the Public-Private Partnership Advisory Commission established in § 30-279.

Drafting note: Technical changes.

§ ~~56-560~~ 33.2-xxx. Approval by the responsible public entity.

A. The private entity may request approval by the responsible public entity. Any such request shall be accompanied by the following material and information unless waived by the

responsible public entity in its guidelines or other instructions given, in writing, to the private entity with respect to the transportation facility or facilities that the private entity proposes to develop and/or operate as a qualifying transportation facility:

1. A topographic map (1:2,000 or other appropriate scale) indicating the location of the transportation facility or facilities;

2. A description of the transportation facility or facilities, including the conceptual design of such facility or facilities and all proposed interconnections with other transportation facilities;

3. The proposed date for development and/or operation of the transportation facility or facilities along with an estimate of the life-cycle cost of the transportation facility as proposed;

4. A statement setting forth the method by which the private entity proposes to secure any property interests required for the transportation facility or facilities;

5. Information relating to the current transportation plans, if any, of each affected ~~jurisdiction~~ locality or entity;

6. A list of all permits and approvals required for developing and/or operating improvements to the transportation facility or facilities from local, state, or federal agencies and a projected schedule for obtaining such permits and approvals;

7. A list of public utility facilities, if any, that will be crossed by the transportation facility or facilities and a statement of the plans of the private entity to accommodate such crossings;

8. A statement setting forth the private entity's general plans for developing and/or operating the transportation facility or facilities, including identification of any revenue, public or private, or proposed debt or equity investment or concession proposed by the private entity;

9. The names and addresses of the persons who may be contacted for further information concerning the request;

10. Information on how the private entity's proposal will address the needs identified in the appropriate state, regional, or local transportation plan by improving safety, reducing

congestion, increasing capacity, ~~and/or~~ enhancing economic efficiency, or any combination thereof; and

11. Such additional material and information as the responsible public entity may reasonably request pursuant to its guidelines or other written instructions.

B. The responsible public entity may request proposals from private entities for the development and/or operation of transportation facilities. The responsible public entity shall not charge a fee to cover the costs of processing, reviewing, and evaluating proposals received in response to such requests.

C. The responsible public entity may grant approval of the development and/or operation of the transportation facility or facilities as a qualifying transportation facility if the responsible public entity determines that it serves the public purpose of this chapter. The responsible public entity may determine that the development and/or operation of the transportation facility or facilities as a qualifying transportation facility serves such public purpose if:

1. There is a public need for the transportation facility or facilities the private entity proposes to develop and/or operate as a qualifying transportation facility;

2. The transportation facility or facilities and the proposed interconnections with existing transportation facilities, and the private entity's plans for development and/or operation of the qualifying transportation facility or facilities, are, in the opinion of the responsible public entity, reasonable and will address the needs identified in the appropriate state, regional, or local transportation plan by improving safety, reducing congestion, increasing capacity, ~~and/or~~ enhancing economic efficiency, or any combination thereof;

3. The estimated cost of developing and/or operating the transportation facility or facilities is reasonable in relation to similar facilities; and

4. The private entity's plans will result in the timely development and/or operation of the transportation facility or facilities or their more efficient operation.

187 In evaluating any request, the responsible public entity may rely upon internal staff
188 reports prepared by personnel familiar with the operation of similar facilities or the advice of
189 outside advisors or consultants having relevant experience.

190 D. The responsible public entity may charge a reasonable fee to cover the costs of
191 processing, reviewing, and evaluating the request submitted by a private entity pursuant to
192 subsection A, including ~~without limitation,~~ reasonable ~~attorney's~~ attorney fees and fees for
193 financial and other necessary advisors or consultants. The responsible public entity shall also
194 develop guidelines that establish the process for the acceptance and review of a proposal from a
195 private entity pursuant to subsections A and B. Such guidelines shall establish a specific
196 schedule for review of the proposal by the responsible public entity, a process for alteration of
197 that schedule by the responsible public entity if it deems that changes are necessary because of
198 the scope or complexity of proposals it receives, the process for receipt and review of competing
199 proposals, and the type and amount of information that is necessary for adequate review of
200 proposals in each stage of review. For qualifying transportation facilities that have approved or
201 pending state and federal environmental clearances, have secured significant right of way, have
202 previously allocated significant state or federal funding, or exhibit other circumstances that
203 could reasonably reduce the amount of time to develop and/or operate the qualifying
204 transportation facility in accordance with the purpose of this chapter, the guidelines shall
205 provide for a prioritized documentation, review, and selection process.

206 E. The approval of the responsible public entity shall be subject to the private entity's
207 entering into an interim agreement or a comprehensive agreement with the responsible public
208 entity. For any project with an estimated construction cost of over \$50 million, the responsible
209 public entity also shall require the private entity to pay the costs for an independent audit of any
210 and all traffic and cost estimates associated with the private entity's proposal, as well as a review
211 of all public costs and potential liabilities to which taxpayers could be exposed (including
212 improvements to other transportation facilities that may be needed as a result of the proposal,
213 failure by the private entity to reimburse the responsible public entity for services provided, and

potential risk and liability in the event the private entity defaults on the comprehensive agreement or on bonds issued for the project). This independent audit shall be conducted by an independent consultant selected by the responsible public entity, and all such information from such review shall be fully disclosed.

F. In connection with its approval of the development and/or operation of the transportation facility or facilities as a qualifying transportation facility, the responsible public entity shall establish a date for the acquisition of or the beginning of construction of or improvements to the qualifying transportation facility. The responsible public entity may extend such date from time to time.

G. The responsible public entity shall take appropriate action, as more specifically set forth in its guidelines, to protect confidential and proprietary information provided by the private entity pursuant to an agreement under subdivision 11 of § 2.2-3705.6.

H. The responsible public entity may also apply for, execute, and/or endorse applications submitted by private entities to obtain federal credit assistance for qualifying projects developed and/or operated pursuant to this chapter.

Drafting note: The term "jurisdiction" is changed to "locality" to comport with practice throughout this title. The reference to a locality means a county, city, or town and is the correct usage within transportation. The term "jurisdiction" is used to mean "authority over." Technical changes are made.

~~§ 56-561.33.2-xxx.~~ Service contracts.

In addition to any authority otherwise conferred by law, any public entity may contract with a private entity for transportation services to be provided by a qualifying transportation facility in exchange for such service payments and other consideration as such public entity may deem appropriate.

Drafting note: No change.

~~§ 56-562. Repealed.~~

Drafting note: Repealed by Acts 1995, c. 647.

§ ~~56-563~~ 33.2-xxx. Affected ~~jurisdictions~~ localities or entities.

A. Any private entity requesting approval from, or submitting a proposal to, a responsible public entity under § ~~56-560~~ 33.2-xxx shall notify each affected ~~jurisdiction~~ locality or entity by furnishing a copy of its request or proposal to each affected ~~jurisdiction~~ locality or entity.

B. Each affected ~~jurisdiction~~ locality or entity that is not a responsible public entity for the respective qualifying transportation facility shall, within 60 days after receiving a request for comments from the responsible public entity, submit in writing any comments it may have ~~in writing~~ on the proposed qualifying transportation facility to the responsible public entity and ~~indicating~~ indicate whether the facility will address the needs identified in the appropriate state, regional, or local transportation plan by improving safety, reducing congestion, increasing capacity, ~~and/or~~ enhancing economic efficiency, or any combination thereof.

C. Any qualifying transportation facility, title or easement to which is held by the Commonwealth or an agency or authority therefor and the rights to develop or operate which have been granted to the private entity through a concession as defined in § ~~56-557~~ 33.2-XXX, shall be subject to the provisions of Title 15.2 in the same manner as a facility of the Commonwealth, mutatis mutandis, except that such private entity shall comply with the provisions of subsections B and C of § 15.2-2202 as they relate to the affected ~~jurisdiction's~~ locality's or entity's comprehensive plan.

Drafting note: The term "jurisdiction" is changed to "locality" to comport with practice throughout this title. The reference to a locality means a county, city, or town, and is the correct usage within transportation. The term "jurisdiction" is used to mean "authority over." Technical changes are made.

§ ~~56-564~~ 33.2-xxx. Dedication of public property.

Any public entity may dedicate any property interest that it has for public use as a qualified transportation facility if it finds that so doing will serve the public purpose of this chapter. In connection with such dedication, a public entity may convey any property interest

that it has, subject to the conditions imposed by general law governing such conveyances, to the private entity, subject to the provisions of this chapter, for such consideration as such public entity may determine. The aforementioned consideration may include, ~~without limitation,~~ the agreement of the private entity to develop and/or operate the qualifying transportation facility. The property interests that the public entity may convey to the private entity in connection with a dedication under this section may include licenses, franchises, easements, concessions, or any other right or interest the public entity deems appropriate. Such property interest including, ~~but not limited to,~~ a leasehold interest in and/or rights to use real property constituting a qualifying transportation facility shall be considered property indirectly owned by a government if described in § 58.1-3606.1.

Drafting note: The phrases "without limitation" and "but not limited to" are removed based on § 1-218, which states: "'Includes' means includes, but not limited to."

Other technical changes are made.

§ ~~56-565~~ 33.2-xxx. Powers and duties of the private entity.

A. The private entity shall have all power allowed by law generally to a private entity having the same form of organization as the private entity and shall have the power to develop and/or operate the qualifying transportation facility and impose user fees and/or enter into service contracts in connection with the use thereof. However, no tolls or user fees may be imposed by the private entity on ~~any existing rural Interstate highway Interstate 81~~ without the prior approval of the General Assembly ~~if the affected Interstate System component is Interstate Route 81~~.

B. The private entity may own, lease, or acquire any other right to use or develop and/or operate the qualifying transportation facility.

C. Subject to applicable permit requirements, the private entity shall have the authority to cross any canal or navigable watercourse so long as the crossing does not unreasonably interfere with then current navigation and use of the waterway.

D. In operating the qualifying transportation facility, the private entity may:

1. Make classifications according to reasonable categories for assessment of user fees;
and

2. With the consent of the responsible public entity, make and enforce reasonable rules to the same extent that the responsible public entity may make and enforce rules with respect to a similar transportation facility.

E. The private entity shall:

1. Develop and/or operate the qualifying transportation facility in a manner that meets the standards of the responsible public entity for transportation facilities operated and maintained by such responsible public entity, all in accordance with the provisions of the interim agreement or the comprehensive agreement;

2. Keep the qualifying transportation facility open for use by the members of the public in accordance with the terms and conditions of the interim or comprehensive agreement after its initial opening upon payment of the applicable user fees, and/or service payments, provided that the qualifying transportation facility may be temporarily closed because of emergencies or, with the consent of the responsible public entity, to protect the safety of the public or for reasonable construction or maintenance procedures;

3. Maintain, or provide by contract for the maintenance of, the qualifying transportation facility;

4. Cooperate with the responsible public entity in establishing any interconnection with the qualifying transportation facility requested by the responsible public entity; and

5. Comply with the provisions of the interim or comprehensive agreement and any service contract.

Drafting note: Technical changes.

~~§ 56-566.33.2-xxx~~. Comprehensive agreement.

A. Prior to developing and/or operating the qualifying transportation facility, the private entity shall enter into a comprehensive agreement with the responsible public entity. The comprehensive agreement shall, as appropriate, provide for:

322 1. Delivery of performance and payment bonds in connection with the development
323 and/or operation of the qualifying transportation facility, in the forms and amounts satisfactory
324 to the responsible public entity;

325 2. Review of plans for the development and/or operation of the qualifying transportation
326 facility by the responsible public entity and approval by the responsible public entity if the plans
327 conform to standards acceptable to the responsible public entity;

328 3. Inspection of construction of or improvements to the qualifying transportation facility
329 by the responsible public entity to ensure that ~~they~~ such construction or improvements conform
330 to the standards acceptable to the responsible public entity;

331 4. Maintenance of a policy or policies of public liability insurance (copies of which shall
332 be filed with the responsible public entity accompanied by proofs of coverage) or self-insurance,
333 each in form and amount satisfactory to the responsible public entity and reasonably sufficient
334 to insure coverage of tort liability to the public and employees and to enable the continued
335 operation of the qualifying transportation facility;

336 5. Monitoring of the maintenance practices of the private entity by the responsible public
337 entity and the taking of such actions as the responsible public entity finds appropriate to ensure
338 that the qualifying transportation facility is properly maintained;

339 6. Reimbursement to be paid to the responsible public entity for services provided by the
340 responsible public entity;

341 7. Filing of appropriate financial statements in a form acceptable to the responsible
342 public entity on a periodic basis;

343 8. Compensation to the private entity ~~which~~ that may include a reasonable development
344 fee, a reasonable maximum rate of return on investment, and/or reimbursement of development
345 expenses in the event of termination for convenience by the responsible public entity as agreed
346 upon between the responsible public entity and the private entity;

347 9. The date of termination of the private entity's authority and duties under this chapter
348 and dedication to the appropriate public entity; and

10. Guaranteed cost and completion guarantees related to the development and/or operation of the qualified transportation facility and payment of damages for failure to meet the completion guarantee.

B. The comprehensive agreement shall provide for such user fees as may be established from time to time by agreement of the parties. Any user fees shall be set at a level that takes into account any lease payments, service payments, and compensation to the private entity or as specified in the comprehensive agreement. A copy of any service contract shall be filed with the responsible public entity. A schedule of the current user fees shall be made available by the private entity to any member of the public on request. In negotiating user fees under this section, the parties shall establish fees that are the same for persons using the facility under like conditions except as required by agreement between the parties to preserve capacity and prevent congestion on the qualifying transportation facility. The execution of the comprehensive agreement or any amendment thereto shall constitute conclusive evidence that the user fees provided for therein comply with this chapter. User fees established in the comprehensive agreement as a source of revenues may be in addition to, or in lieu of, service payments.

C. In the comprehensive agreement, the responsible public entity may agree to make grants or loans for the development and/or operation of the qualifying transportation facility from time to time from amounts received from the federal government or any agency or instrumentality thereof.

D. The comprehensive agreement shall incorporate the duties of the private entity under this chapter and may contain such other terms and conditions that the responsible public entity determines serve the public purpose of this chapter. Without limitation, the comprehensive agreement may contain provisions under which the responsible public entity agrees to provide notice of default and cure rights for the benefit of the private entity and the persons specified therein as providing financing for the qualifying transportation facility. The comprehensive agreement may contain such other lawful terms and conditions to which the private entity and the responsible public entity mutually agree, including, ~~without limitation,~~ provisions regarding

unavoidable delays or provisions providing for a loan of public funds for the development and/or operation of one or more qualifying transportation facilities.

E. The comprehensive agreement shall provide for the distribution of any earnings in excess of the maximum rate of return as negotiated in the comprehensive agreement. Without limitation, excess earnings may be distributed to the ~~Commonwealth's~~ Transportation Trust Fund, to the responsible public entity, or to the private entity for debt reduction or they may be shared with appropriate public entities. Any payments under a concession arrangement for which the Commonwealth is the responsible public entity shall be paid into the Transportation Trust Fund.

F. Any changes in the terms of the comprehensive agreement, as may be agreed upon by the parties from time to time, shall be added to the comprehensive agreement by written amendment.

G. Notwithstanding any contrary provision of this chapter, a responsible public entity may enter into a comprehensive agreement with multiple private entities if the responsible public entity determines in writing that it is in the public interest to do so.

H. The comprehensive agreement may provide for the development and/or operation of phases or segments of the qualifying transportation facility.

Drafting note: Changes made were to comport with current practice.

§ ~~56-566.1~~ 33.2-xxx. Interim agreement.

A. Prior to or in connection with the negotiation of the comprehensive agreement, the responsible public entity may enter into an interim agreement with the private entity proposing the development and/or operation of the facility or facilities. Such interim agreement may (i) permit the private entity to commence activities for which it may be compensated relating to the proposed qualifying transportation facility, including project planning and development, advance right-of-way acquisition, design and engineering, environmental analysis and mitigation, survey, conducting transportation and revenue studies, and ascertaining the availability of financing for the proposed facility or facilities; (ii) establish the process and

timing of the negotiation of the comprehensive agreement; and (iii) contain any other provisions related to any aspect of the development and/or operation of a qualifying transportation facility that the parties may deem appropriate.

B. Notwithstanding ~~anything to the contrary in any provision of~~ this chapter ~~to the contrary~~, a responsible public entity may enter in to an interim agreement with multiple private entities if the responsible public entity determines in writing that it is in the public interest to do so.

Drafting note: Technical changes.

§ ~~56-566.2~~ 33.2-xxx. Multiple public entities.

A. If a private entity submits a proposal pursuant to subsection A of § ~~56-560~~ 33.2-xxx to develop and/or operate a qualifying transportation facility or a multimodal transportation facility that may require approval by more than one public entity, representatives of each of the affected public entities shall, prior to acceptance of such proposal, convene and determine which public entity shall serve as the coordinating responsible public entity. Such determination shall occur within 60 days of the receipt of a proposal by the respective public entities.

B. If public entities request proposals from private entities for the development and/or operation of a qualifying transportation facility or a multimodal transportation facility pursuant to subsection B of § ~~56-560~~ 33.2-xxx, the determination of which public entity shall serve as the coordinating responsible public entity shall be made prior to any request for proposals.

C. Once a determination has been made in accordance with ~~subsections~~ subsection A or B, the coordinating responsible public entity and the private entity shall proceed in accordance with this chapter.

Drafting note: Technical changes.

§ ~~56-567~~ 33.2-xxx. Federal, state, and local assistance.

A. The responsible public entity may take any action to obtain federal, state, or local assistance for a qualifying transportation facility that serves the public purpose of this chapter and may enter into any contracts required to receive such federal assistance. If the responsible

public entity is a state agency, any funds received from the state or federal government or any agency or instrumentality thereof shall be subject to appropriation by the General Assembly. The responsible public entity may determine that it serves the public purpose of this chapter for all or any portion of the costs of a qualifying transportation facility to be paid, directly or indirectly, from the proceeds of a grant or loan made by the ~~local, state or~~ federal, state, or local government or any agency or instrumentality thereof.

B. The responsible public entity may agree to make grants or loans for the development and/or operation of the qualifying transportation facility from time to time from amounts received from the federal, state, or local government, or any agency or instrumentality thereof.

C. Nothing in this chapter or in an interim or comprehensive agreement entered into pursuant to this chapter shall be deemed to enlarge, diminish, or affect the authority, if any, otherwise possessed by the responsible public entity to take action that would impact the debt capacity of the Commonwealth or the affected ~~jurisdictions~~ localities or entities.

Drafting note: The term "jurisdiction" is changed to "locality or entity" to comport with practice throughout this title. The reference to a locality means a county, city, or town, and is the correct usage within transportation. The term "jurisdiction" is used to mean "authority over." Other changes made were to comport with current practice of ordering entities from the largest to the smallest.

~~§ 56-567.1~~ 33.2-xxx. Financing.

Any financing of a qualifying transportation facility may be in such amounts and upon such terms and conditions as may be determined by the parties to the interim or comprehensive agreement. Without limiting the generality of the foregoing, the private entity and the responsible public entity may propose to utilize any and all revenues that may be available to them and may, to the fullest extent permitted by applicable law, issue debt, equity, or other securities or obligations, enter into leases, concessions, and grant and loan agreements, access any designated transportation trust funds, borrow or accept grants from any state infrastructure

bank; and secure any financing with a pledge of, security interest in, or lien on; any or all of its property, including all of its property interests in the qualifying transportation facility.

Drafting note: Technical changes are made including reorganization through punctuation for clarity.

§ ~~56-568~~ 33.2-xxx. Material default; remedies.

A. Upon the occurrence and during the continuation of material default, the responsible public entity may exercise any or all of the following remedies:

1. The responsible public entity may elect to take over ~~the~~ a qualifying transportation facility ~~or facilities~~ and in such case ~~it~~ shall succeed to all of the right, title, and interest in such transportation facility or facilities, subject to any liens on revenues previously granted by the private entity to any person providing financing therefor.

2. The responsible public entity may terminate the interim or comprehensive agreement and exercise any other rights and remedies ~~which that~~ may be available ~~to it~~ at law or in equity.

3. The responsible public entity may make or cause to be made any appropriate claims under the performance and/or payment bonds required by § ~~56-566~~ 33.2-xxx.

B. In the event the responsible public entity elects to take over a qualifying transportation facility pursuant to subsection A, the responsible public entity may develop and/or operate the qualifying transportation facility, impose user fees for the use thereof, and comply with any service contracts as if it were the private entity. Any revenues that are subject to a lien shall be collected for the benefit of, and paid to, secured parties, as their interests may appear, to the extent necessary to satisfy the private entity's obligations to secured parties, including the maintenance of reserves, and such liens shall be correspondingly reduced and, when paid off, released. Before any payments to, or for the benefit of, secured parties, the responsible public entity may use revenues to pay current operation and maintenance costs of the qualifying transportation facility ~~or facilities~~, including compensation to the responsible public entity for its services in operating and maintaining the qualifying transportation facility. Remaining revenues, if any, after all payments for operation and maintenance of the

transportation facility or facilities, and to, or for the benefit of, secured parties, have been made, shall be paid to the private entity, subject to the negotiated maximum rate of return. The right to receive such payment, if any, shall be considered just compensation for the transportation facility or facilities. The full faith and credit of the responsible public entity shall not be pledged to secure any financing of the private entity by the election to take over the qualifying transportation facility. Assumption of operation of the qualifying transportation facility shall not obligate the responsible public entity to pay any obligation of the private entity from sources other than revenues.

Drafting note: Technical changes.

~~§ 56-569~~ 33.2-xxx. Condemnation.

A. At the request of the private entity, the responsible public entity may exercise any power of condemnation that it has under law for the purpose of acquiring any lands or estates or interests therein to the extent that the responsible public entity finds that such action serves the public purpose of this chapter. Any amounts to be paid in any such condemnation proceeding shall be paid by the private entity.

B. Except as provided in subsection A, until the Commission, after notice to the private entity and the secured parties, as may appear in the private entity's records, and an opportunity for hearing, has entered a final declaratory judgment that a material default has occurred and is continuing, the power of condemnation may not be exercised against a qualifying transportation facility.

C. After the entry of such final order by the Commission, any responsible public entity having the power of condemnation under state law may exercise such power of condemnation, in lieu of, or at any time after taking over the transportation facility pursuant to subdivision A 1 of ~~§ 56-568~~ 33.2-xxx, to acquire the qualifying transportation facility or facilities. Nothing in this chapter shall be construed to limit the exercise of the power of condemnation by any responsible public entity against a qualifying transportation facility after the entry by the Commission of a final declaratory judgment order pursuant to subsection B. Any person that has

provided financing for the qualifying transportation facility and the private entity, to the extent of its capital investment, may participate in the condemnation proceedings with the standing of a property owner.

Drafting note: Technical changes.

§ ~~56-570~~ 33.2-xxx. Utility crossings.

The private entity and each public service company, public utility, railroad, and cable television provider, whose facilities are to be crossed or affected shall cooperate fully with the other in planning and arranging the manner of the crossing or relocation of the facilities. Any such entity possessing the power of condemnation is hereby expressly granted such powers in connection with the moving or relocation of facilities to be crossed by the qualifying transportation facility or that must be relocated to the extent that such moving or relocation is made necessary or desirable by construction of or improvements to the qualifying transportation facility, which shall be construed to include construction of or improvements to temporary facilities for the purpose of providing service during the period of construction or improvement. Should the private entity and any such public service company, public utility, railroad, and cable television provider ~~not be able~~ unable to agree upon a plan for the crossing or relocation, the Commission may determine the manner in which the crossing or relocation is to be accomplished and any damages due arising out of the crossing or relocation. The Commission may employ expert engineers who shall examine the location and plans for such crossing or relocation, hear any objections and consider modifications, and make a recommendation to the Commission. In such a case, the cost of the experts is to be borne by the private entity. Any amount to be paid for such crossing, construction, moving, ~~or relocating~~ relocation of facilities shall be paid for by the private entity or any other person contractually responsible therefor under the interim or comprehensive agreement or under any other contract, license, or permit. The Commission shall make a determination within 90 days of notification by the private entity that the qualifying transportation facility will cross utilities subject to the Commission's jurisdiction.

Drafting note: Technical changes.

§ ~~56-571~~ 33.2-xxx. Police powers; violations of law.

A. All police officers of the Commonwealth and of each affected ~~local jurisdiction,~~ locality shall have the same powers and jurisdiction within the limits of such qualifying transportation facility as they have in their respective areas of jurisdiction, and such police officers shall have access to the qualifying transportation facility at any time for the purpose of exercising such powers and jurisdiction. This authority does not extend to the private offices, buildings, garages, and other improvements of the private entity to any greater degree than the police power extends to any other private buildings and improvements.

B. To the extent the transportation facility is a road, bridge, tunnel, overpass, or similar transportation facility for motor vehicles, the traffic and motor vehicle laws of the Commonwealth or, if applicable, any ~~local jurisdiction~~ locality shall be the same as those applying to conduct on similar transportation facilities in the Commonwealth or such ~~local jurisdiction~~ locality. Punishment for offenses shall be as prescribed by law for conduct occurring on similar transportation facilities in the Commonwealth or such ~~local jurisdiction~~ locality.

Drafting note: The term "jurisdiction" is changed to "locality" or "locality or entity" to comport with practice throughout this title. The reference to a locality means a county, city, or town, and is the correct usage within transportation. The term "jurisdiction" is used to mean "authority over."

§ ~~56-572~~ 33.2-xxx. Dedication of assets.

The responsible public entity shall terminate the private entity's authority and duties under this chapter on the date set forth in the interim or comprehensive agreement. Upon termination, the authority and duties of the private entity under this chapter shall cease, and the qualifying transportation facility shall be dedicated to the responsible public entity or, if the qualifying transportation facility was initially dedicated by an affected ~~jurisdiction~~ locality or entity, to such affected ~~local jurisdiction~~ locality for public use.

Drafting note: The term "jurisdiction" is changed to "locality or entity" to comport with practice throughout this title. The reference to a locality means a county, city, or town, and is the correct usage within transportation. The term "jurisdiction" is used to mean "authority over."

§ ~~56-573.33.2-xxx~~. Sovereign immunity.

Nothing in this chapter shall be construed as or deemed a waiver of the sovereign immunity of the Commonwealth, any responsible public entity, or any affected ~~local jurisdiction~~ locality or any officer or employee thereof with respect to the participation in, or approval of all or any part of the qualifying transportation facility or its operation, including ~~but not limited to~~ interconnection of the qualifying transportation facility with any other transportation facility. ~~Counties, cities, and towns~~ Localities in which a qualifying transportation facility is located shall possess sovereign immunity with respect to its construction and operation.

Drafting note: The term "jurisdiction" is changed to "locality" to comport with practice throughout this title. The reference to a locality means a county, city, or town, and is the correct usage within transportation. The term "jurisdiction" is used to mean "authority over."

§ 56-573.1. (Effective until July 1, 2014) Procurement.

The Virginia Public Procurement Act (§ 2.2-4300 et seq.) shall not apply to this chapter; however, a responsible public entity may enter into an interim or a comprehensive agreement only in accordance with guidelines adopted by it as follows:

1. A responsible public entity may enter into an interim or a comprehensive agreement in accordance with guidelines adopted by it that are consistent with procurement through "competitive sealed bidding" as defined in § 2.2-4301 and subsection B of § 2.2-4310.

2. A responsible public entity may enter into an interim or a comprehensive agreement in accordance with guidelines adopted by it that are consistent with the procurement of "other than professional services" through competitive negotiation as defined in § 2.2-4301 and subsection B of § 2.2-4310. Such responsible public entity shall not be required to select the proposal with

the lowest price offer, but may consider price as one factor in evaluating the proposals received. Other factors that may be considered include (i) the proposed cost of the qualifying transportation facility; (ii) the general reputation, qualifications, industry experience, and financial capacity of the private entity; (iii) the proposed design, operation, and feasibility of the qualifying transportation facility; (iv) the eligibility of the facility for priority selection, review, and documentation timelines under the responsible public entity's guidelines; (v) local citizen and public entity comments; (vi) benefits to the public; (vii) the private entity's compliance with a minority business enterprise participation plan or good faith effort to comply with the goals of such plan; (viii) the private entity's plans to employ local contractors and residents; (ix) the safety record of the private entity; (x) the ability of the facility to address the needs identified in the appropriate state, regional or local transportation plan by improving safety, reducing congestion, increasing capacity, ~~and/or~~ enhancing economic efficiency, or any combination thereof; and (xi) other criteria that the responsible public entity deems appropriate.

A responsible public entity shall proceed in accordance with the guidelines adopted by it pursuant to subdivision 1 unless it determines that proceeding in accordance with the guidelines adopted by it pursuant to this subdivision is likely to be advantageous to the responsible public entity and the public, based on (i) the probable scope, complexity, or urgency of a project; (ii) risk sharing including guaranteed cost or completion guarantees, added value, or debt or equity investments proposed by the private entity; or (iii) an increase in funding, dedicated revenue source or other economic benefit that would not otherwise be available. When the responsible public entity determines to proceed according to the guidelines adopted by it pursuant to this subdivision, it shall state the reasons for its determination in writing. If a state agency is the responsible public entity, the approval of the Secretary of Transportation shall be required as more specifically set forth in the guidelines before the comprehensive agreement is signed.

3. Interim or comprehensive agreements for maintenance or asset management services for a transportation facility that is a highway, bridge, tunnel, or overpass, and any amendment or change order thereto that increases the highway lane-miles receiving services under such an

agreement, shall be procured in accordance with guidelines that are consistent with procurement through "competitive sealed bidding" as defined in § 2.2-4301 and subsection B of § 2.2-4310. Furthermore, such contracts shall be of a size and scope to encourage maximum competition and participation by agency prequalified contractors and otherwise qualified contractors.

4. The provisions of subdivision 3 shall not apply to maintenance or asset management services agreed to as part of the initial provisions of any interim or comprehensive agreement entered into for the original construction, reconstruction, or improvement of any highway pursuant to Chapter 22 (§ 56-556 et seq.) of Title 56 and shall not apply to any concession that, at a minimum, provides for (i) the construction, reconstruction, or improvement of any transportation facility or (ii) the operation and maintenance of any transportation facility with existing toll facilities.

5. Nothing in this section shall require that professional services be procured by any method other than competitive negotiation in accordance with the Virginia Public Procurement Act (§ 2.2-4300 et seq.).

~~§ 56-573.1~~ 33.2-xxx. (Effective July 1, 2014) Procurement.

The Virginia Public Procurement Act (§ 2.2-4300 et seq.) shall not apply to this chapter; however, a responsible public entity may enter into an interim or a comprehensive agreement only in accordance with guidelines adopted by it as follows:

1. A responsible public entity may enter into an interim or a comprehensive agreement in accordance with guidelines adopted by it that are consistent with procurement through "competitive sealed bidding" as set forth in § 2.2-4302.1 and subsection B of § 2.2-4310.

2. A responsible public entity may enter into an interim or a comprehensive agreement in accordance with guidelines adopted by it that are consistent with the procurement of "other than professional services" through competitive negotiation as set forth in § 2.2-4302.2 and subsection B of § 2.2-4310. Such responsible public entity shall not be required to select the proposal with the lowest price offer, but may consider price as one factor in evaluating the proposals received. Other factors that may be considered include (i) the proposed cost of the

qualifying transportation facility; (ii) the general reputation, qualifications, industry experience, and financial capacity of the private entity; (iii) the proposed design, operation, and feasibility of the qualifying transportation facility; (iv) the eligibility of the facility for priority selection, review, and documentation timelines under the responsible public entity's guidelines; (v) local citizen and public entity comments; (vi) benefits to the public; (vii) the private entity's compliance with a minority business enterprise participation plan or good faith effort to comply with the goals of such plan; (viii) the private entity's plans to employ local contractors and residents; (ix) the safety record of the private entity; (x) the ability of the facility to address the needs identified in the appropriate state, regional or local transportation plan by improving safety, reducing congestion, increasing capacity, ~~and/or~~ enhancing economic efficiency, or any combination thereof; and (xi) other criteria that the responsible public entity deems appropriate.

A responsible public entity shall proceed in accordance with the guidelines adopted by it pursuant to subdivision 1 unless it determines that proceeding in accordance with the guidelines adopted by it pursuant to this subdivision is likely to be advantageous to the responsible public entity and the public, based on ~~(i) (a)~~ the probable scope, complexity, or urgency of a project; ~~(ii) (b)~~ risk sharing including guaranteed cost or completion guarantees, added value, or debt or equity investments proposed by the private entity; or ~~(iii) (c)~~ an increase in funding, dedicated revenue source or other economic benefit that would not otherwise be available. When the responsible public entity determines to proceed according to the guidelines adopted by it pursuant to this subdivision, it shall state the reasons for its determination in writing. If a state agency is the responsible public entity, the approval of the Secretary ~~of Transportation~~ shall be required as more specifically set forth in the guidelines before the comprehensive agreement is signed.

3. Interim or comprehensive agreements for maintenance or asset management services for a transportation facility that is a highway, bridge, tunnel, or overpass, and any amendment or change order thereto that increases the highway lane-miles receiving services under such an agreement, shall be procured in accordance with guidelines that are consistent with procurement

through "competitive sealed bidding" as set forth in § 2.2-4302.1 and subsection B of § 2.2-4310. Furthermore, such contracts shall be of a size and scope to encourage maximum competition and participation by agency prequalified contractors and otherwise qualified contractors.

4. The provisions of subdivision 3 shall not apply to maintenance or asset management services agreed to as part of the initial provisions of any interim or comprehensive agreement entered into for the original construction, reconstruction, or improvement of any highway pursuant to ~~Chapter 22 (§ 56-556 et seq.) of Title 56~~ this chapter and shall not apply to any concession that, at a minimum, provides for (i) the construction, reconstruction, or improvement of any transportation facility or (ii) the operation and maintenance of any transportation facility with existing toll facilities.

5. Nothing in this section shall require that professional services be procured by any method other than competitive negotiation in accordance with the Virginia Public Procurement Act (§ 2.2-4300 et seq.).

Drafting note: Technical changes.

§ 56-573.1:1. Posting of conceptual proposals; public comment; public access to procurement records.

A. Conceptual proposals submitted in accordance with subsection A or B of § ~~56-560~~ 33.2-xxx to a responsible public entity shall be posted by the responsible public entity within 10 working days after acceptance of such proposals as follows:

1. For responsible public entities that are state agencies, authorities, departments, institutions, and other units of state government, posting shall be on the Department of General Services' central electronic procurement website. For proposals submitted pursuant to subsection A of § 56-560, the notice posted shall (i) provide for a period of 120 days for the submission of competing proposals; (ii) include specific information regarding the proposed nature, timing, and scope of the qualifying transportation facility; and (iii) outline the opportunities that will be provided for public comment during the review process; and

2. For responsible public entities that are local public bodies, posting shall be on the responsible public entity's website or on the Department of General Services' central electronic procurement website. In addition, such public bodies may publish in a newspaper of general circulation in the area in which the contract is to be performed a summary of the proposals and the location where copies of the proposals are available for public inspection. Such local public bodies are encouraged to utilize the Department of General Services' central electronic procurement website to provide the public with centralized visibility and access to the Commonwealth's procurement opportunities.

In addition to the posting requirements, at least one copy of the proposals shall be made available for public inspection. Nothing in this section shall be construed to prohibit the posting of the conceptual proposals by additional means deemed appropriate by the responsible public entity so as to provide maximum notice to the public of the opportunity to inspect the proposals. Trade secrets, financial records, or other records of the private entity excluded from disclosure under the provisions of subdivision 11 of § 2.2-3705.6 shall not be required to be posted, except as otherwise agreed to by the responsible public entity and the private entity.

B. In addition to the posting requirements of subsection A, for 30 days prior to entering into an interim or comprehensive agreement, a responsible public entity shall provide an opportunity for public comment on the proposals. The public comment period required by this subsection may include a public hearing in the sole discretion of the responsible public entity. After the end of the public comment period, no additional posting shall be required.

C. Once the negotiation phase for the development of an interim or a comprehensive agreement is complete and a decision to award has been made by a responsible public entity, the responsible public entity shall (i) post the major business points of the interim or comprehensive agreement, including the projected use of any public funds, on the Department of General Services' central electronic procurement website; (ii) outline how the public can submit comments on those major business points; and (iii) present the major business points of the

interim or comprehensive agreement, including the use of any public funds, to its oversight board at a regularly scheduled meeting of the board that is open to the public.

D. Once an interim agreement or a comprehensive agreement has been entered into, a responsible public entity shall make procurement records available for public inspection, in accordance with the Virginia Freedom of Information Act (§ 2.2-3700 et seq.). For the purposes of this subsection, procurement records shall not be interpreted to include (i) trade secrets of the private entity as defined in the Uniform Trade Secrets Act (§ 59.1-336 et seq.) or (ii) financial records, including balance sheets or financial statements of the private entity that are not generally available to the public through regulatory disclosure or otherwise.

E. Cost estimates relating to a proposed procurement transaction prepared by or for a responsible public entity shall not be open to public inspection.

F. Any inspection of procurement transaction records under this section shall be subject to reasonable restrictions to ensure the security and integrity of the records.

G. The provisions of this section shall apply to accepted proposals regardless of whether the process of bargaining will result in an interim or a comprehensive agreement.

Drafting note: Technical changes.

§ ~~56-573.2~~ 33.2-xxx. Jurisdiction.

The Commission shall have exclusive jurisdiction to adjudicate all matters specifically committed to its jurisdiction by this chapter.

Drafting note: No change.

§ ~~56-573.3~~ 33.2-xxx. Contributions and gifts; prohibition during approval process.

A. No private entity that has submitted a bid or proposal to a public entity that is an executive branch agency directly responsible to the Governor and is seeking to develop or operate a transportation facility pursuant to this chapter, and no individual who is an officer or director of such private entity, shall knowingly provide a contribution, gift, or other item with a value greater than \$50 or make an express or implied promise to make such a contribution or gift to the Governor, his political action committee, or the Governor's Secretaries, if the

Secretary is responsible to the Governor for an executive branch agency with jurisdiction over the matters at issue, following the submission of a proposal under this chapter until the execution of a comprehensive agreement thereunder. The provisions of this section shall apply only for any proposal or an interim or comprehensive agreement where the stated or expected value of the contract is \$5 million or more.

B. Any person who knowingly violates this section shall be subject to a civil penalty of \$500 or up to two times the amount of the contribution or gift, whichever is greater. The attorney for the Commonwealth shall initiate civil proceedings to enforce the civil penalties. Any civil penalties collected shall be payable to the State Treasurer for deposit to the general fund.

Drafting note: No change.

§ ~~56-574~~ 33.2-xxx. Preservation of the Virginia Highway Corporation Act of 1988.

Nothing in this chapter shall be construed to repeal or change in any manner the Virginia Highway Corporation Act of 1988, ~~as amended~~ (§ 56-535 et seq.), as amended. Nothing in the Virginia Highway Corporation Act of 1988, as amended, shall apply to qualifying transportation facilities undertaken pursuant to the authority of this chapter.

Drafting note: Technical changes.

§ ~~56-575~~ 33.2-xxx. Severability.

If any provision of this chapter 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 chapter that can be given effect without the invalid provision or application, and to this end the provisions of this chapter are declared to be severable.

Not set out. (1994, c. 855.)

Drafting note: This section is a severability clause and is therefore not set out. It was passed as § 56-572 in Chapter 855 of the Acts of Assembly of 1994.

1 CHAPTER ~~48.2~~ XX.

2 NORTHERN VIRGINIA TRANSPORTATION AUTHORITY.

3 **Drafting note:** Existing Chapter 48.2 (§ 15.2-4829 et seq.) of Title 15.2 is relocated
4 here as Chapter __ of proposed Title 33.2 because it relates to local and regional
5 transportation and this relocation places it with other sections related to transportation in
6 Northern Virginia, such as the Northern Virginia Transportation District Program found
7 in proposed Chapter __.

8 ~~§ 15.2-4829. Short title.~~

9 ~~This chapter shall be known and may be cited as the Northern Virginia Transportation~~
10 ~~Authority Act.~~

11 **Drafting note:** This section is deleted as unnecessary because of the Code-wide
12 application of § 1-244, which states that the caption of a subtitle, chapter, or article serves
13 as a short title citation.

14 ~~§ 15.2-4830~~ 33.2-XXX. Northern Virginia Transportation Authority created.

15 There is hereby created a political subdivision of the Commonwealth known as the
16 Northern Virginia Transportation Authority, ~~hereinafter known for purposes of this chapter~~
17 referred to as "the Authority."

18 In addition to such other powers vested in the Authority by this chapter, the Authority
19 shall have the following powers and functions:

20 1. The Authority shall prepare a regional transportation plan for Planning District ~~Eight,~~
21 ~~to include, but not necessarily be limited to,~~ 8 that includes transportation improvements of
22 regional significance; and those improvements necessary or incidental thereto; and shall from
23 time to time revise and amend the plan. The provisions of Article ~~7~~ __ (§ ~~15.2-4527~~ 33.2-XXX
24 et seq.) of Chapter ~~45 of this title~~ __ shall apply, mutatis mutandis, to preparation of such
25 transportation plan.

26 2. The Authority may, when a transportation plan is adopted according to subdivision 1,
27 construct or acquire, by purchase, lease, contract, or otherwise, the transportation facilities
28 specified in such transportation plan.

29 3. The Authority may enter into agreements or leases with public or private entities for
30 the operation of its facilities; or may operate such facilities itself.

31 4. The Authority may enter into contracts or agreements with the counties and cities
32 embraced by the Authority, with other transportation commissions of transportation districts
33 adjoining any county or city embraced by the Authority, with any transportation authority, or
34 with any federal, state, local, or private ~~or federal~~ entity to provide, or cause to be provided,
35 transportation facilities and services to the area embraced by the Authority. Such contracts or
36 agreements, together with ~~any~~ all agreements or leases for the operation of such facilities, may
37 be used by the Authority to finance the construction and operation of transportation facilities
38 and such contracts, agreements, or leases shall inure to the benefit of any creditor of the
39 Authority.

40 Notwithstanding ~~the above, however~~ subdivisions 1 through 4, the Authority shall not
41 have the power to regulate services provided by taxicabs, either within municipalities or across
42 municipal boundaries; ~~which; such~~ regulation is expressly reserved to the municipalities within
43 which taxicabs operate.

44 5. Notwithstanding any other provision of law to the contrary, the Authority may:

45 a. Acquire land or any interest therein by purchase, lease, or gift and provide
46 transportation facilities thereon for use in connection with any transportation service;

47 b. Acquire land or any interest therein by purchase, lease, or gift in advance of the need
48 for sale or contribution to an agency, for use by that agency in connection with an adopted
49 transportation plan; and

50 c. Prepare a plan for mass transportation services with persons, ~~cities, counties~~ counties,
51 cities, agencies, authorities, or transportation commissions and may further contract with any

such person or ~~other~~ entity to provide necessary facilities, equipment, operations and maintenance, access, and insurance pursuant to such plan.

Drafting note: Technical changes.

§ ~~15.2-4831~~ 33.2-XXX. Counties and cities embraced by the Authority.

The Authority shall embrace the Counties of Arlington, Fairfax, Loudoun, and Prince William, and the Cities of Alexandria, Fairfax, Falls Church, Manassas, and Manassas Park.

Drafting note: Technical changes.

§ ~~15.2-4832~~ 33.2-XXX. Composition of Authority; membership; terms.

The Authority shall consist of 17 members as follows:

1. The chief elected officer of the governing body of each county and city embraced by the Authority or, in the discretion of the chief elected officer, his designee, who shall be a current elected officer of such governing body;

2. Two members of the House of Delegates who reside in different counties or cities embraced by the Authority, appointed by the Speaker of the House, and to the extent practicable, from the membership of the House Committee on Appropriations, the House Committee on Finance, or the House Committee on Transportation;

3. One member of the Senate who resides in a county or city embraced by the Authority, appointed by the Senate Committee on Rules, and to the extent practicable, from the membership of the Senate Committee on Finance and the Senate Committee on Transportation;

~~and~~

4. Two ~~citizens~~ nonlegislative citizen members who reside in different counties ~~and or~~ cities embraced by the Authority, appointed by the Governor. One such gubernatorial appointment shall ~~include be~~ a member of the Commonwealth Transportation Board ~~who resides in a county or city embraced by the Authority. The remaining gubernatorial appointment and one~~ shall be a person who has significant experience in transportation planning, finance, engineering, construction, or management; ~~and shall be a resident of a county or city embraced~~

by the Authority, but shall not be a resident of the same county or city as the other gubernatorial appointee to the Authority.

~~Legislative members shall serve terms coincident with their terms of office. The gubernatorial appointee who is not a member of the Commonwealth Transportation Board shall serve for a term of four years. Vacancies occurring other than by expiration of a term shall be filled for the unexpired term. Vacancies shall be filled in the same manner as the original appointments.~~

In addition, the 5. The following three persons who shall serve as nonvoting ex officio members of the Authority: the Director of the Virginia Department of Rail and Public Transportation, or his designee; the Commissioner of Highways, or his designee; and the chief elected officer of one town in a county which embraced by the Authority ~~embraces~~ to be chosen by the Authority.

All members of the Authority shall serve terms coincident with their terms of office, except the gubernatorial appointee who is not a member of the Board shall serve for a term of four years. A vacancy occurring other than by expiration of a term shall be filled for the unexpired term. Vacancies shall be filled in the same manner as the original appointments.

The Authority shall appoint ~~the~~ a chairman and vice-chairman from among its members.

Drafting note: Technical changes are made to conform language to current appointment language used in the Code and to specify that the chief elected officers of the localities in the Authority and other nonlegislative ex officio members are also serving terms coincident with their terms of office.

~~§ 15.2-4833~~ 33.2-XXX. Staff.

The Authority shall employ a chief executive officer and such staff as it shall determine to be necessary to carry out its duties and responsibilities under this chapter. No such person shall contemporaneously serve as a member of the Authority. The ~~Virginia~~ Department of Transportation and the ~~Virginia~~ Department of Rail and Public Transportation shall make their employees available to assist the Authority, upon request.

Drafting note: Technical changes.

§ ~~15.2-4834~~ 33.2-XXX. Decisions of Authority.

A majority of the Authority, which majority shall include at least a majority of the representatives of the counties and cities embraced by the Authority, shall constitute a quorum. Decisions of the Authority shall require a quorum and shall be in accordance with voting procedures established by the Authority. In all cases, decisions of the Authority shall require the affirmative vote of two-thirds of the members of the Authority present and voting, and two-thirds of the representatives of the counties and cities embraced by the Authority who are present and voting and whose counties and cities include at least two-thirds of the population embraced by the Authority; however, no motion to fund a specific facility or service shall fail because of this population criterion if such facility or service is not located or to be located or provided or to be provided within the county or city whose representative's sole negative vote caused the facility or service to fail to meet the population criterion. The population of counties and cities embraced by the Authority shall be the population as determined by the most recently preceding decennial census, except that on July 1 of the fifth year following such census, the population of each county and city shall be adjusted, based on population projections made by the Weldon Cooper Center for Public Service of the University of Virginia.

Drafting note: No changes.

§ ~~15.2-4835~~ 33.2-XXX. Allocation of certain Authority expenses among component counties and cities.

The administrative expenses of the Authority, as provided in an annual budget adopted by the Authority, to the extent funds for such expenses are not provided from other sources, shall be allocated among the component counties and cities on the basis of the relative population, as determined pursuant to § ~~15.2-4834~~ 33.2-XXX. Such budget shall be limited solely to the administrative expenses of the Authority and shall not include any funds for construction or acquisition of transportation facilities ~~and/or or for the performing performance~~ of any transportation service.

Drafting note: Technical changes.

§ ~~15.2-4836~~ 33.2-XXX. Payment to members of Authority.

The members of the Authority may be paid for their services compensation in either (i) the amount provided in the general ~~appropriations~~ appropriation act for members of the General Assembly engaged in legislative business between sessions or (ii) a lesser amount as determined by the Authority. Members may be reimbursed for all reasonable and necessary expenses provided in §§ 2.2-2813 and 2.2-2825, if approved by the Authority. Funding for the costs of compensation and expenses of the members shall be provided by the Authority.

Drafting note: Technical change.

§ ~~15.2-4837~~ 33.2-XXX. Formation of advisory committees.

A. The Authority shall have a technical advisory committee, consisting of nine individuals who reside or are employed in counties and cities embraced by the Authority and have experience in transportation planning, finance, engineering, construction, or management. Six members shall be appointed by ~~local jurisdictions~~ counties and cities embraced by the Authority and three members shall be appointed by the ~~chairman~~ Chairman of the Commonwealth Transportation Board. The technical advisory committee shall advise and provide recommendations on the development of projects as required by § ~~15.2-4838~~ 33.2-XXX and funding strategies and other matters as directed by the Authority.

B. The Authority also shall have a planning coordination advisory committee, ~~which that~~ shall include, ~~but not be limited to,~~ at least one elected official from each town that is located in any county embraced by the Authority and receives street maintenance payments under § ~~33.1-41.1~~ 33.2-XXX.

C. The Authority may, in its discretion, form additional advisory committees.

Drafting note: Technical changes.

§ ~~15.2-4838~~ 33.2-XXX. Responsibilities of Authority for long-range transportation planning.

158 A. The Authority shall be responsible for long-range transportation planning for regional
159 transportation projects in Northern Virginia. In carrying out this responsibility, the Authority
160 shall, on the basis of a regional consensus, whenever possible, set regional transportation
161 policies and priorities for regional transportation projects. The policies and priorities shall be
162 guided by performance-based criteria such as the ability to improve travel times, reduce delays,
163 connect regional activity centers, improve safety, improve air quality, and move the most people
164 in the most cost-effective manner.

165 B. The Authority shall report annually on the (i) ~~the~~ allocation and expenditure of all
166 moneys deposited to the Special Fund Account of the Northern Virginia Transportation
167 Authority ~~pursuant to subsection D of § 58.1-604.5~~; (ii) use of these moneys to reduce traffic
168 congestion in ~~the counties and cities described in subsections A and B of § 58.1-604.5~~ Northern
169 Virginia; and (iii) use of these moneys to improve air quality in such counties and cities and in
170 the Washington Metropolitan Area.

171 **Drafting note: Section 58.1-604.5, enacted by Chapter 853 of the Acts of Assembly**
172 **of 2002 and referenced in this section, was deleted at the direction of the Virginia Code**
173 **Commission because the referenda held pursuant to Chapter 853 of the Acts of Assembly**
174 **of 2002 failed to pass. References to § 58.1-604.5 in this section are deleted. Technical**
175 **changes are also made.**

176 § ~~15.2-4838.01~~ 33.2-XXX. Northern Virginia Transportation Authority Fund
177 established.

178 There is hereby created in the state treasury a special nonreverting fund for Planning
179 District 8 to be known as the Northern Virginia Transportation Authority Fund, hereafter
180 referred to as "the Fund." The Fund shall be established on the books of the Comptroller. All
181 revenues dedicated to the Fund pursuant to §§ 58.1-638, 58.1-802.2, and 58.1-1742, any other
182 funds that may be appropriated by the General Assembly, and any funds that may be received
183 for the credit of the Fund from any other source shall be paid into the state treasury and credited
184 to the Fund. Interest earned on moneys in the Fund shall remain in the Fund and be credited to

it. 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.

The amounts dedicated to the Fund pursuant to §§ 58.1-638, 58.1-802.2, and 58.1-1742 shall be deposited monthly by the Comptroller into the Fund and thereafter distributed to the Northern Virginia Transportation Authority as soon as practicable for use in accordance with § ~~15.2-4838.1~~ 33.2-XXX. If the Authority determines that such moneys distributed to it exceed the amount required to meet the current needs and demands to fund transportation projects pursuant to § ~~15.2-4838.1~~ 33.2-XXX, the Authority may invest such excess moneys to the same extent as provided in § ~~33.1-23.03:5~~ 33.2-XXX for excess funds in the Transportation Trust Fund.

The amounts deposited into the Fund and the distribution and expenditure of such amounts shall not be used to calculate or reduce the share of ~~local~~, federal, ~~or~~ state, or local revenues otherwise available to participating jurisdictions. Further, such revenues and moneys shall not be included in any computation of, or formula for, a locality's ability to pay for public education, upon which appropriations of state revenues to local governments for public education are determined.

Drafting note: Existing § 15.2-4838.01 was added by Chapter 766 of the Acts of Assembly of 2013 and is retained and relocated here with the Northern Virginia Transportation Authority chapter. Only technical changes are made.

§ ~~15.2-4838.1~~ 33.2-XXX. Use of certain revenues by the Authority.

A. All moneys received by the Authority and the proceeds of bonds issued pursuant to § ~~15.2-4839~~ 33.2-XXX shall be used by the Authority solely for transportation purposes benefiting those counties and cities that are embraced by the Authority.

B. 1. Except as provided in subdivision 2, 30 percent of the revenues received by the Authority under subsection A shall be distributed on a pro rata basis, with each ~~locality's~~ county's or city's share being the total of such fee and taxes received by the Authority that are generated or attributable to the ~~locality~~ county or city divided by the total of such fee and taxes

received by the Authority. Of the revenues distributed pursuant to this subsection, as determined solely by the applicable ~~locality county or city~~, such revenues shall be used for additional urban or secondary ~~road~~ highway construction; for other capital improvements that reduce congestion; for other transportation capital improvements ~~which that~~ have been approved by the most recent ~~long-range~~ long-range transportation plan adopted by the Authority; or for public transportation purposes. None of the revenue distributed by this subsection may be used to repay debt issued before July 1, 2013. Each ~~locality county or city~~ shall create a separate, special fund in which all revenues received pursuant to this subsection and from the tax imposed pursuant to § 58.1-3221.3 shall be deposited. Each ~~locality county or city~~ shall provide annually to the Northern Virginia Transportation Authority sufficient documentation as required by the Authority showing that the funds distributed under this subsection were used as required by this subsection.

2. If a ~~locality county or city~~ has not deposited into its special fund (i) revenues from the tax collected under § 58.1-3221.3 pursuant to the maximum tax rate allowed under that section or (ii) an amount, from sources other than moneys received from the Authority, that is equivalent to the revenue that the ~~locality county or city~~ would receive if it was imposing the maximum tax authorized by § 58.1-3221.3, then the amount of revenue distributed to the ~~locality county or city~~ pursuant to subdivision 1 shall be reduced by the difference between the amount of revenue that the ~~locality county or city~~ would receive if it was imposing the maximum tax authorized by such section and the amount of revenue deposited into its special fund pursuant to clause (i) or (ii), as applicable. The amount of any such reduction in revenue shall be redistributed according to subsection C. The provisions of this subdivision shall be ongoing and apply over annual periods as determined by the Authority.

C. 1. The remaining 70 percent of the revenues received by the Authority under subsection A, plus the amount of any revenue to be redistributed pursuant to subsection B, shall be used by the Authority solely to fund (i) transportation projects selected by the Authority that are contained in the regional transportation plan in accordance with § ~~15.2-4830~~ 33.2-XXX and

that have been rated in accordance with § ~~33.1-13.03:1~~ 33.2-XXX or (ii) mass transit capital projects that increase capacity. For only those regional funds received in fiscal year 2014, the requirement for rating in accordance with § ~~33.1-13.03:1~~ 33.2-XXX shall not apply. The Authority shall give priority to selecting projects that are expected to provide the greatest congestion reduction relative to the cost of the project and shall document this information for each project selected. Such projects selected by the Authority for funding shall be located (a) only in localities embraced by the Authority or (b) in adjacent localities but only to the extent that such extension is an insubstantial part of the project and is essential to the viability of the project within the ~~localities~~ counties and cities embraced by the Authority.

2. All transportation projects undertaken by the Northern Virginia Transportation Authority shall be completed by private contractors accompanied by performance measurement standards, and all contracts shall contain a provision granting the Authority the option to terminate the contract if contractors do not meet such standards. Notwithstanding the foregoing, any ~~locality~~ county or city may provide engineering services or right-of-way acquisition for any project with its own forces. The Authority shall avail itself of the strategies permitted under the Public-Private Transportation Act (§ ~~56-556~~ 33.2-XXX et seq.) whenever feasible and advantageous. The Authority is independent of any state or local entity, including the ~~Virginia Department of Transportation (VDOT)~~ and the Commonwealth Transportation Board (~~CTB~~), but the Authority, ~~VDOT~~ the Department, and ~~CTB~~ the Commonwealth Transportation Board shall consult with one another to avoid duplication of efforts and, at the option of the Authority, may combine efforts to complete specific projects. Notwithstanding the foregoing, at the request of the Authority, ~~VDOT~~ the Department may provide the Authority with engineering services or right-of-way acquisition for the project with its own forces.

3. With regard to the revenues distributed under subdivision 1, each ~~locality's~~ county's or city's total long-term benefit shall be approximately equal to the proportion of the total of the fees and taxes received by the Authority that are generated by or attributable to the ~~locality~~ county or city divided by the total of such fees and taxes received by the Authority.

D. For road construction and improvements pursuant to subsection B, the Department ~~of Transportation~~ may, on a reimbursement basis, provide the ~~locality county or city~~ with planning, engineering, right-of-way, and construction services for projects funded in whole by the revenues provided to the ~~locality county or city~~ by the Authority.

Drafting note: Existing § 15.2-4838.1 was amended by Chapter 766 of the Acts of Assembly of 2013. Those changes are shown in the existing language here. Only technical changes are made.

§ ~~15.2-4839~~ 33.2-XXX. Authority to issue bonds.

The Authority may issue bonds and other evidences of debt as may be authorized by this section or other law. The provisions of ~~Article 5 (§ 15.2-4519 et seq.) of Chapter 45 of this title~~ [new cite] shall apply, mutatis mutandis, to the issuance of such bonds or other debt. The Authority may issue bonds or other debt in such amounts as it deems appropriate. The bonds may be supported by any funds available except that funds from tolls collected pursuant to subdivision 7 of § ~~15.2-4840~~ 33.2-XXX shall be used only as provided in that subdivision.

Drafting note: Technical changes.

§ ~~15.2-4840~~ 33.2-XXX. Other duties and responsibilities of Authority.

In addition to other powers ~~herein~~ granted in this chapter, the Authority shall have the following duties and responsibilities:

1. ~~General~~ Providing general oversight of regional programs involving mass transit or congestion mitigation, including, ~~but not necessarily limited to,~~ carpooling, vanpooling, and ridesharing;

2. ~~Long-range~~ Providing long-range regional planning, both financially constrained and unconstrained;

3. Recommending to federal, state, and regional, ~~and federal~~ agencies regional transportation priorities, including public-private transportation projects, and funding allocations;

4. Developing, in coordination with affected counties and cities, regional priorities and policies to improve air quality;

5. Allocating to priority regional transportation projects ~~any~~ funds made available to the Authority and, at the discretion of the Authority, directly overseeing such projects;

6. Recommending to the Commonwealth Transportation Board priority regional transportation projects for receipt of federal and state funds;

7. Imposing, collecting, and setting the amount of tolls for use of facilities in the area embraced by the Authority, when the facility is either newly constructed or reconstructed solely with revenues of the Authority or solely with revenues under the control of the Authority in such a way as to increase the facility's traffic capacity, with the amount of ~~any~~ tolls variable by time of day, day of the week, vehicle size or type, number of axles, or other factors as the Authority may deem proper, and with all such tolls to be used for programs and projects that are reasonably related to or benefit the users of the applicable facility, including, ~~but not limited to,~~ for the debt service and other costs of bonds whose proceeds are used for such construction or reconstruction;

8. ~~General~~ Providing general oversight of regional transportation issues of a multijurisdictional nature, including ~~but not limited to~~ intelligent transportation systems, signalization, and preparation for and response to emergencies;

9. Serving as an advocate for the transportation needs of Northern Virginia before the state and federal governments;

10. Applying to and negotiating with the government of the United States, the Commonwealth ~~of Virginia~~, or any agency, instrumentality, or political subdivision thereof, for grants and ~~any~~ other funds available to carry out the purposes of this chapter and receiving, holding, accepting, and administering from any source gifts, bequests, grants, aid, or contributions of money, property, labor, or other things of value to be held, used, and applied to carry out the purposes of this chapter subject, however, to any ~~conditions~~ condition upon which gifts, bequests, grants, aid, or contributions are made. Unless otherwise restricted by the terms

of the gift, bequest, or grant, the Authority may sell, exchange, or otherwise dispose of such money, securities, or other property given or bequeathed to it in furtherance of its purposes;

11. Acting as a "responsible public entity" for the purpose of the acquisition, construction, improvement, maintenance~~and/or,~~ operation, or any combination thereof of a "qualifying transportation facility" under the Public-Private Transportation Act of 1995 (§~~56-556~~ 33.2-XXX et seq.); and

12. ~~To decide~~ Deciding on and ~~vote~~ voting to impose certain fees and taxes authorized under law for imposition or assessment by the Authority, provided that any such fee or tax assessed or imposed is assessed or imposed in all counties and cities embraced by the Authority. The revenues from such certain fees and taxes shall be kept in a separate account and shall be used only for the purposes provided in this chapter.

Drafting note: Technical changes.

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