

**SEPTEMBER 18 CODE COMMISSION MEETING
MATERIALS**

*Wednesday, August 7, 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; Charles S. Sharp; E.M. Miller, Jr.; Robert L. Tavenner; Robert L. Calhoun; Christopher R. Nolen; Wesley G. Russell, Jr.

MEMBERS ABSENT: Ryan T. McDougale; Thomas M. Moncure, Jr.; Jeffrey S. Palmore

OTHERS PRESENT: Joanne Maxwell, Dusty Holcomb, Phil Abraham, Edward Mullen

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: Hearing no objection, Senator Edwards stated that the minutes of the June 19, 2013, meeting of the Virginia Code Commission stand approved as printed and distributed to the members of the Code Commission.

Administrative Law Advisory Committee appointments: Senator Edwards advised that Chris Nolen had resigned from the Administrative Law Advisory Committee (ALAC) due to his appointment to the Code Commission. Mr. Nolen moved that Thomas Lisk be appointed Chairman of ALAC and that Edward Mullen be appointed to the vacancy left by Mr. Nolen's resignation. Upon second by Mr. Calhoun, the Code Commission unanimously adopted the motion. The Chairman thanked Mr. Nolen for his six years of service as chair of ALAC.

2014 Code of Virginia pricing and replacement volumes proposal: Before this item was introduced, Mr. Nolen stated, "Pursuant to §§ 2.2-3112 A 3 and 2.2-3114 G I am declaring that, in consideration of options regarding the Code of Virginia and Virginia Administrative Code, LexisNexis is a client of my law firm, and that I do not personally represent or provide services to LexisNexis, and that I am able to participate in the transaction fairly, objectively, and in the public interest." Senator Edwards asked if any member of the Code Commission wished for Mr. Nolen to recuse himself. No one requested recusal so Mr. Nolen participated in the consideration of this item.

Brian Kennedy with LexisNexis stated that typically his company presents its proposal for replacement volumes in late fall. However, at the request of Code Commission staff in light of the Code of Virginia volume update project, he was presenting the proposal at this meeting.

LexisNexis has identified six volumes for replacement: Volumes 1 (Titles 1-2.2), 4 (Title 18.2), 6A (Title 38.2), 7 (Title 46.2), and 9 (Titles 59.1-62.1) based on current sizes of the supplement and Volume 6 (Titles 33.1-37.1) because of the Title 33.1 recodification. A price increase of 4.0% based on the Producer Price Index is proposed for state agency and private purchases.

Without objection, the Commission approved the LexisNexis proposal to (i) replace the volumes recommended by Mr. Kennedy with the replacement of Volume 6 being contingent on the passage of the Title 33.1 recodification legislation at the 2014 General Assembly Session and (ii) increase the pricing by 4.0% as follows:

	2014 Prices with Six Replacement Volumes	
	State	Private
Cumulative Supplements	\$159.25	\$206.00
Index	\$ 80.75	\$ 85.25
Replacement Volumes 1, 4, 6 (contingent on passage of recodification), 6A, 7, and 9	\$259.50 (\$43.25 each)	\$324.00 (\$54 each)
Volume 11	\$ 32.75	\$ 43.25
Volume 11 Supplement	\$ 11.00	\$ 11.00
Advanced Code Service	N/A	\$ 62.50
TOTAL	\$543.25	\$732.00

Code of Virginia volume update project - list of types of changes: Lilli Hausenfluck, Chief Editor, explained that the Code Commission approved this project as part of its work plan at the last Code Commission meeting. The 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. 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. As requested by the Code Commission, staff prepared a list of the types of changes for review by the Code Commission members before starting the project.

Mrs. Hausenfluck reviewed the handout titled "Code of Virginia Style and Text Update Project by Volume." After a brief discussion of how these changes will be indicated, Mr. Calhoun suggested that a note to the reader, which explains the housekeeping changes, be included in the new volumes that contain these types of changes.

Recodification of Title 33.1: Highways, Bridges and Ferries: Nicole Brenner requested approval of the revised organization plan, noting that (i) in Subtitle II, the Virginia-North Carolina Interstate High-Speed Rail Compact will be a separate chapter and the chapter on Rail Funds will move to Subtitle III; (ii) the name of Subtitle III will be Transportation Funding and Development; and (iii) the Hampton Roads Transportation Fund will be added to Subtitle IV. Upon motion of Delegate LeMunyon, seconded by Judge Sharp, the amended organization plan was approved unanimously.

Ms. Brenner reviewed the proposed schedule for reviewing specific chapters, and then Ms. Brenner and Mr. Wambold presented the following chapters:

- Outdoor Advertising in Sight of Public Highways
- Rail and Public Transportation
- Public-Private Transportation Act of 1995
- Northern Virginia Transportation Authority

The Code Commission discussed or took action on the following:

Outdoor Advertising in Sight of Public Highways (part of Subtitle II; reviewed once before):

- § 33.1-351 (lines 9-18) - Mr. Calhoun asked if subsection A, containing a policy statement, should be removed as a general matter and not necessarily only in this section. Ms. Brenner stated that concerns previously were raised over removing a policy section in another chapter, so staff decided to leave them in so that the Commission can decide whether to

Monday, August 7, 2013

retain or remove such statements on a case-by-case basis. The Commission decided to retain the policy statement in this section.

- § 33.1-380 (lines 927-928) - Staff was previously asked to check with the Department of Transportation (VDOT) to determine whether the exemption for billboards erected before June 19, 1936, is still needed. Mr. Wambold confirmed with VDOT that the reference to signage before 1936 can be deleted. VDOT reported that the oldest permit noted is from 1941.

Rail and Public Transportation

- The Rail and Public Transportation chapter contains two articles that will be elevated to chapter level. Article 1 on Rail Funds will be moved into Subtitle III, Transportation Funding and Development, as a separate chapter, and Article 2 on the Virginia-North Carolina Interstate High-Speed Rail Compact will stay in Subtitle II and moved from article level to chapter level.

Public-Private Transportation Act of 1995 (PPTA)

- § 56-557 (line 16) - Ms. Brenner explained that the proposed amendment to change the word "jurisdiction" to "locality or entity" raised concerns so she recommends adding the word "public" before "entity" here in the definition section and then throughout the chapter for clarification. Dusty Holcomb, Deputy Director of the Office of Transportation Public-Private Partnerships, spoke in support of this change. Upon motion of Mr. Russell and second by Mr. Nolen, the Code Commission unanimously approved this change.
- Ms. Brenner advised that staff encountered some difficulties in regard to this chapter when trying to implement the Code Commission's policy to avoid using the term "and/or" (e.g., line 34). She gave some examples where replacing "and/or" works well (e.g., line 66 in the definition of "Revenues") and where it does not work (e.g., line 74 in the definition of "Service payments"). For this chapter only, staff has retained "and/or" in those places where the private partners raised an objection. Phil Abraham representing Transurban and Edward Mullen with Reed-Smith spoke in support of retaining "and/or" in certain places where the replacement language seems to be more cumbersome and causes excessive wordiness.

Northern Virginia Transportation Authority

- § 15.2-4838 (lines 167-168) - Ms. Brenner stated that the references to § 58.1-604.5 are deleted because the section does not exist in the Code of Virginia. The enactment of § 58.1-604.5 was contingent on the passage of a 2002 referendum, and that referendum did not pass. In clause (ii) of § 15.2-4838 B, staff proposes replacing "the counties and cities described in subsections A and B of § 58.1-604.5" with "Northern Virginia." After discussion, Mr. Calhoun moved that "Northern Virginia" be replaced with "localities embraced by the Authority" on line 159. Upon second by Mr. Nolen, the motion passed unanimously. Mr. Nolen moved that on line 168, "Northern Virginia" be replaced with "nonattainment areas embraced by the Authority." Upon second by Mr. Russell, the motion passed unanimously.
- § 15.2-4838.1 (lines 211, 213, 218, 220, 224, 227, 229, and 230) - Ms. Brenner advised that the proposal to change "locality" to "county or city" will not be made so that towns will be included.

Monday, August 7, 2013

109 **Other business:** Jane Chaffin reminded the Code Commission that the next meeting is
110 Wednesday, September 18, 2013, at 10 a.m.

111 **Public comment; adjournment:** The Chair opened the floor for public comment. As there was
112 no public comment and no further business to discuss, the meeting adjourned at 11:12 a.m.

SUMMARY

Right to Farm Act. Adds cities and towns to certain provisions of the Right to Farm Act that currently only apply to counties. The proposed amendments were in legislation that was enacted in 2007 but were omitted a year later in the 2008 revision of Title 3.1, Agriculture, Horticulture and Food.

SENATE BILL NO. _____ HOUSE BILL NO. _____

A BILL to amend and reenact § 3.2-301 of the Code of Virginia, relating to the Right to Farm Act.

Be it enacted by the General Assembly of Virginia:

1. That § 3.2-301 of the Code of Virginia is amended and reenacted as follows:

§ 3.2-301. Right to farm; restrictive ordinances.

In order to limit the circumstances under which agricultural operations may be deemed to be a nuisance, especially when nonagricultural land uses are initiated near existing agricultural operations, no ~~county~~ locality shall adopt any ordinance that requires that a special exception or special use permit be obtained for any production agriculture or silviculture activity in an area that is zoned as an agricultural district or classification. ~~Counties~~ Localities may adopt setback requirements, minimum area requirements, and other requirements that apply to land on which agriculture and silviculture activity is occurring within the locality that is zoned as an agricultural district or classification. No locality shall enact zoning ordinances that would unreasonably restrict or regulate farm structures or farming and forestry practices in an agricultural district or classification unless such restrictions bear a relationship to the health, safety, and general welfare of its citizens. This section shall become effective on April 1, 1995, and from and after that date all land zoned to an agricultural district or classification shall be in conformity with this section.

CODE COMMISSION POLICIES FOR DRAFTING AND TITLE RECODIFICATION

I. CODIFICATION OF AUTHORITIES AND COMPACTS

Authorities

Codify an authority only when it has (i) an unlimited duration of existence and (ii) more than local or regional application.

Compacts

Each compact will be assigned a Code section number in accordance with 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.

II. NOT SET OUT

When and When Not to Set Out Full Text in the Code

1. Set out provisions from the Acts of Assembly only when the provisions have general or permanent application.
2. Exclude policy statements.
3. Exclude sections that establish the purpose of the legislation or legislative intent.

Recodification Report

Include full text of "not set out" sections in recodification reports, and indicate in the drafting note that the section meets the criteria set by the Code Commission to not set out the provision in full in the Code.

III. MISCELLANEOUS DRAFTING POLICIES AND PRACTICES

Special Days Recognizing Certain Events

Avoid recognizing special days and certain events in the Code. In response to a request to draft a bill designating a day, month, or year, or a combination thereof, to recognize, commemorate, honor, or otherwise celebrate any person, group, program, occasion, event, or other period for special consideration, the Division of Legislative Services should prepare such legislation only in the form of a Senate or House Joint Resolution.

Terms Defined in Title 1

1. Avoid replicating in new legislation definitions of terms that are already defined in either Title 1 of the Code of Virginia (General Provisions) or in the title, chapter, or article where such new legislation is to be located.
2. Although the definition of "person" in Title 1 applies to the entire Code of Virginia and should not be repeated in individual titles, some titles may need a narrower definition of "person"; in such cases, it is appropriate to develop a titlewide or chapterwide definition.

Population Brackets

Retain "reasonable" population brackets when a provision is not intended to single out any particular locality; convert to named localities when population brackets are clearly intended to single out a specific locality. Use this rationale for replacing other types of locality descriptions.

Substantive Changes in Title Revisions

1. Substantive changes are appropriate in title revisions to provide for the express repeal of all sunset clauses affected by a title revision.
2. Substantive changes should be clearly noted in drafting notes and explained in the Executive Summary of the final recodification report.

CODE COMMISSION POLICIES FOR DRAFTING AND TITLE RECODIFICATION

Short Titles and Headings

1. Do not include a "short title" section. Name the chapter/article so it may be cited by its heading (also called a caption). See § 1-244 of the Code.
2. In general, do not use "Virginia" in the heading of a chapter or article.

Penalties

1. When standardizing "felonies," do not go beyond the existing maximum when a range is designated.
2. Add penalties in one place, usually at the end of a chapter, so that the penalties are listed only once.
3. For distinction, specify a penalty as either a "civil penalty" or a "criminal penalty."

Sunset Clauses

Draft sunset clauses as part of the section text so that the provisions are codified.

Code Commission Bill Draft Summary

When legislation is approved by the Code Commission, include a statement in the summary that reflects that the bill is a recommendation of the Virginia Code Commission.

IV. TERMINOLOGY

General Terminology Decisions (this list is NOT all-inclusive—see also DLS Drafting Manual and guidelines for Code Style and Text Update Project by Volume)

1. Change "court of competent jurisdiction" to "appropriate court" and "court of record" to "circuit court."
2. Change "rules and regulations" to "regulations."
3. Change "Virginia" to "the Commonwealth" unless otherwise appropriate.
4. Replace "county, city, or town" with "locality."
5. Avoid use of "or his designee" when delegating authority of "chief executive officer" because such delegation is covered in § 2.2-604.
6. Standardize references to fees charged by attorneys as "attorney fees."
7. Standardize references to Acts of Assembly as "Acts of Assembly of [year]."

TAB 4 - TITLE 33.1 RECODIFICATION

TITLE ~~33.1~~ 33.2.

~~HIGHWAYS, BRIDGES AND FERRIES AND OTHER SURFACE TRANSPORTATION~~
~~SYSTEMS.~~

Drafting note: The name of proposed Title 33.2 is amended to reflect the inclusion of rail and public transportation in addition to highways, bridges, and ferries.

SUBTITLE I.

GENERAL PROVISIONS AND TRANSPORTATION ENTITIES.

Drafting note: A new subtitle is created to bring together general provisions and those dealing with the transportation entities in this title: the Secretary of Transportation, the Commonwealth Transportation Board, the Commissioner of Highways, the Department of Transportation, and the Department of Rail and Public Transportation.

CHAPTER 1.

~~COMMONWEALTH TRANSPORTATION BOARD AND HIGHWAYS GENERALLY~~
~~DEFINITIONS; GENERAL PROVISIONS.~~

Drafting note: Existing Chapter 1 of Title 33.1, "Commonwealth Transportation Board and Highways Generally" contains 363 sections and was indeed fairly general. It is here retained as only definitions and general provisions.

§ 33.2-XXX. Definitions.

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

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

"Board" means the Commonwealth Transportation Board.

"Commissioner" means the Commissioner of Highways; the individual who serves as the chief executive officer of the Department of Transportation.

"Department" means the Department of Transportation.

"Federal-aid systems" are the Interstate System and the National Highway System as set forth in 23 U.S.C § 103.

"Highway" means the entire width between the boundary lines of every way or place open to the use of the public for purposes of vehicular travel in the Commonwealth.

"Interstate System" is as defined in 23 U.S.C. § 103(c). The "Interstate System" also includes highways or highway segments in the Commonwealth that constitute a part of the Dwight D. Eisenhower National System of Interstate and Defense Highways as authorized and designated in accordance with § 7 of the Federal-Aid Highway Act of 1944 and § 108(a) of the Federal-Aid Highway Act of 1956 and are declared by resolution of the Commonwealth Transportation Board to be portions of the Interstate System.

"Locality" has the meaning assigned to it in § 1-221.

"Maintenance" means (i) ordinary maintenance; (ii) maintenance replacement; (iii) operations that include traffic signal synchronization, incident management, and other intelligent transportation system functions; and (iv) any other categories of maintenance that may be designated by the Commissioner of Highways.

"National Highway System" means the same as that term is defined in 23 U.S.C. § 103(b).

"Primary highway" means any highway in or component of the primary state highway system.

"Primary state highway system" consists of all highways and bridges under the jurisdiction and control of the Commonwealth Transportation Board and the Commissioner of Highways and not in the secondary state highway system.

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

"Roadway" means that portion of a highway improved, designed, or ordinarily used for vehicular travel. A highway may include two or more roadways if divided by a physical barrier or barriers or unpaved areas.

"Secondary highway" means any highway in or component of the secondary state highway system.

"Secondary state highway system" consists of all public highways, causeways, bridges, landings, and wharves in the several counties of the Commonwealth not included in the primary state highway system and that have been accepted by the Department for supervision and maintenance.

"Secretary" means the Secretary of Transportation.

"Systems of state highways" has the meaning assigned to it in § 1-251.

"Urban highway system" consists of those public highways, or portions thereof, not included in the systems of state highways, to which the Commonwealth Transportation Board directs payments pursuant to § 33.1-41.1 [new 33.2 cite].

Drafting note: Unlike many other titles of the Code, existing Title 33.1 does not have a titlewide definitions section. The definitions in this new section are of a general nature and are used throughout the title. Definitions that apply specifically to a particular chapter, article, or section remain with the respective chapter, article, or section.

The definitions of "asset management" and "maintenance" are based on definitions in existing § 33.1-23.02. The definition of "highway" is based on the definition in § 46.2-100. The definition of "public transportation" or "mass transit" is based on the definition in existing § 33.1-12. The definition of "roadway" is based on the definition found in § 46.2-100. The definition of "primary state highway system" is derived from existing §§ 33.1-25 and 33.1-348. The definition of "Interstate System" is based on the definitions in existing §§ 33.1-48 and 33.1-348. The definition of "secondary state highway system" is based on definitions in existing §§ 33.1-348 and 33.1-67. The definition of "urban highway system" is based on existing § 33.1-23.3. Although many definitions

proposed in this section use the context from this title, modifications were made with input from the Department of Transportation.

~~§ 33.1-183. Statutes declaring streams and rivers to be highways continued.~~

~~All statutes heretofore enacted declaring certain streams and rivers to be highways and providing for removing obstructions therefrom and from other streams shall continue in force.~~

Drafting note: This section has not been amended since the 1950 Code of Virginia and is recommended for repeal because it is obsolete and only declares other statutes to be in force. Other statutes separately deal with issues such as navigation of water, not obstructing the passage of fish, etc.

~~§ 33.1-223.2:5~~ § 33.2-XXX. Governor to waive certain state statutory mandates and regulations to expedite certain highway construction projects.

Notwithstanding any contrary provision of ~~the this~~ Code ~~of Virginia~~, whenever the Governor finds in his emergency preparedness planning that certain transportation improvements are necessary to avert or respond to a natural disaster, prevent or respond to an act of terrorism, or contribute to military operations during a time of war or state of emergency as defined in § 44-146.16, the Governor may, to the maximum extent not inconsistent with federal law, waive statutory mandates and regulations of any state agency, institution, instrumentality, or political subdivision concerning the issuance of permits or related approvals in order to expedite the construction, reconstruction, alteration, or relocation of such highways, bridges, tunnels, and associated facilities or structures as he deems necessary.

Drafting note: Technical changes.

~~§ 33.1-215. Federal aid.~~

~~The assent of the Commonwealth of Virginia is hereby given to the terms and provisions of an act of Congress, approved July 11, 1916, entitled "An act to provide that the United States shall aid the states in the construction of rural post roads, and for other purposes," and the Commissioner shall have prepared and submit all such plans, specifications and data relating to~~

~~the construction of roads and bridges as may be required under the terms of such act and may do any and all things necessary to carry out the provisions of such act of Congress.~~

Drafting note: This obsolete section is recommended for repeal.

§ ~~33.1-216~~ 33.2-XXX. Authority of cities and towns and certain counties in connection with federal aid.

The cities and towns of ~~this the~~ Commonwealth and also the several counties ~~which that~~ have withdrawn from the provisions of Chapter 415 of the Acts of Assembly of 1932, as amended, may comply fully with the provisions of the present or future federal-aid road acts, and to this end they may enter into all contracts or agreements with the United States government or the appropriate agencies thereof relating to the survey, construction, improvement, and maintenance of roads, streets, and highways under their control and may do all other things necessary to carry out fully the cooperation contemplated and provided for by the present or future acts of Congress relating to the construction, improvement, and maintenance of roads, streets, and highways.

Such ~~cities, towns or counties~~ localities may also cooperate with the Board in connection with any project for the survey, construction, improvement, or maintenance of any road, street, or highway under their jurisdiction and control ~~which that~~ is eligible for federal aid under any present or future federal-aid road acts, and may by appropriate agreement or contract authorize the Board to act on their behalf in any dealings necessary with the United States or any agency thereof and may authorize the Board to carry out such survey, construction, improvement, or maintenance work on such projects either with or without participation ~~therein~~ by the ~~city, town or county~~ locality. Whenever the Board is given such authority by any such ~~city, town or county~~ locality, it may do all things contemplated and provided for by present or future federal-aid road acts and the agreements made with such ~~city, town or county~~ locality.

Drafting note: Technical changes are made, including changing the reference from "county, city, or town" to "locality" to maintain consistency throughout this title and this Code. Use of the word "road" is retained so as not to interfere with federal aid.

§ ~~33.1-13.04~~ 33.2-XXX. Certified mail; subsequent mail or notices may be sent by regular mail.

Whenever in this title the Board, the Commissioner of Highways, or the Department is required to send any mail or notice by certified mail and such mail or notice is sent certified mail, return receipt requested, then any subsequent, identical mail or notice that is sent by the Board, the Commissioner of Highways, or the Department may be sent by regular mail.

Drafting note: Technical changes.

§ ~~33.1-190.2~~ 33.2-XXX. ~~Expenditure of funds prohibited in connection with certain signs~~ English units of measure.

A. Neither the Commissioner of Highways nor the Department shall expend any funds whatsoever for the purpose of (i) converting the units of measure displayed on any highway sign from English units of measure to metric units of measure, (ii) replacing any highway sign displaying English units of measure with one bearing metric units of measure, or (iii) replacing any highway sign displaying English units of measure with one bearing both English and metric units of measure.

~~§ 33.1-190.3. Use of English units of measure in design or advertisement of projects.~~

B. The ~~Commonwealth Transportation~~ Board, Commissioner of Highways, and Department ~~of Transportation~~ shall use English units of measure in the design, advertisement, construction, and preparation of plans and specifications of every ~~road~~ highway, bridge, tunnel, or overpass construction or maintenance project. However, nothing in this ~~action section~~ shall prevent the Board, Commissioner of Highways, or Department from continuing the use of metric units of measure in the design, advertisement, or construction of any project or the preparation of plans or specifications for a project if, prior to July 1, 1999, metric units of measure were used in the design, advertisement, plans, or specifications for the project.

Drafting note: Two sections dealing with use of traditional English measurements are consolidated into one section. References are changed from "road" to "highway" to maintain consistency throughout this title. Technical changes are made.

§ ~~33.1-184~~ 33.2-XXX. Evidence as to existence of a public ~~road~~ highway.

When a way has been worked by ~~road~~ highway officials as a public ~~road~~ highway and is used by the public as such, proof of these facts shall be prima facie evidence that the same is a public ~~road~~ highway. And when a way has been regularly or periodically worked by ~~road~~ highway officials as a public ~~road~~ highway and used by the public as such continuously for a period of ~~twenty~~ 20 years, proof of these facts shall be conclusive evidence that the same is a public ~~road~~ highway. In all such cases, the center of the general line of passage, conforming to the ancient landmarks where such exist, shall be presumed to be the center of the way and in the absence of proof to the contrary, the width shall be presumed to be ~~thirty~~ 30 feet.

Nothing ~~herein~~ contained in this section shall be construed to convert into a public ~~road~~ highway a way of which the use by the public has been or is permissive and the work thereon by the ~~road~~ highway officials has been or is done under permission of the owner of the servient tenement.

Drafting note: References are changed from "road" to "highway" to maintain consistency throughout this title. Technical changes are made.

§ ~~33.1-223.2:24~~ 33.2-XXX. Secretary of Transportation to submit annual report on actions taken to increase transit use, etc.

The Secretary ~~of Transportation~~, in consultation and cooperation with the Commissioner of Highways and the Director of the Department of Rail and Public Transportation, shall annually, not later than November 1, submit to the General Assembly a report on actions taken by the Commonwealth, local governments, and regional transportation authorities to (i) increase transit use and (ii) reduce highway congestion and use of single occupant vehicles through programs and initiatives involving transportation demand management, transit use, telecommuting, carpooling, construction of commuter parking facilities, use of flexible work hours, and telecommunications technology.

Drafting note: Technical changes.

§ ~~33.1-223.2:26~~ 33.2-XXX. Secretary of Transportation to conduct periodic examination of process.

The Secretary ~~of Transportation~~ shall, at least once every four years, cause to be conducted an examination of the approval process for maintenance and improvements within the secondary and urban highway systems ~~of state highways~~ and adopt policies and procedures to reduce review redundancy and to allow approval at the district office level to the maximum extent practical.

Drafting note: Technical changes.

§ ~~33.1-223.2:28~~ 33.2-XXX. Public hearings prior to undertaking ~~certain~~ projects requested by institutions of higher education.

Before any safety-related or congestion management-related highway project requested by any college, university, or other institution of higher education is undertaken in the Commonwealth, the college, university, or other institution of higher education shall conduct at least one public hearing to afford owners of property in the vicinity of the project and users of highways in the vicinity of or likely to be affected by the project an opportunity to submit comments and make their views known regarding the project.

Not less than 30 days prior to any such hearing, a notice of the time and place of the hearing shall also be published by the college, university, or other institution of higher education at least once in a newspaper published or having a general circulation in the ~~county, city, or town~~ locality in which the project is to be located and established.

Drafting note: The catchline is amended to provide more complete information and a reference is changed from "county, city, or town" to "locality" to maintain consistency throughout this title.

§ ~~33.1-13.1~~ 33.2-XXX. Policy of the Commonwealth regarding use of highways by motorcycles; discrimination by political subdivisions prohibited.

In formulating transportation policy_; promulgating regulations_; allocating funds_; and planning, designing, constructing, equipping, operating_; and maintaining transportation

214 facilities, no action of the ~~Commonwealth Transportation~~ Board, the Commissioner of
215 Highways, or the ~~Virginia Department of Transportation~~ shall in any way have the effect of
216 discriminating against motorcycles, motorcycle operators, or motorcycle passengers. No
217 regulation or action of the Board, Commissioner of Highways, or Department shall have the
218 effect of enacting a prohibition or imposing a requirement that applies only to motorcycles or
219 motorcyclists; and the principal purpose of which is to restrict or inhibit access of motorcycles
220 and motorcyclists to any highway, bridge, tunnel, or other transportation facility.

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

225 **Drafting note: A reference is changed from "counties, cities, or towns" to**
226 **"localities" to maintain consistency throughout this title. Technical changes are made.**

227 ~~§ 33.1-202 33.2-XXX. Landowners may erect and maintain gates. Gates~~ across private
228 roads; leaving gates open; gates across private roads leading to forestlands; penalties.

229 A. Any person owning land over which another or others have a private road or right-of-
230 way may, except when it is otherwise provided by contract, erect and maintain gates across such
231 roads or right-of-way at all points at which fences extend to such roads on each side thereof; ~~;~~
232 provided, ~~however,~~ that a court of competent jurisdiction may, upon petition, where it is alleged
233 and proved by petitioner that the gates have been willfully and maliciously erected, ~~may~~ require
234 the ~~said~~ landowner to make such changes ~~therein~~ as may be necessary and reasonable in the use
235 of ~~said~~ such roads for both the landowner and the petitioner.

236 ~~§ 33.1-203. Leaving gates open; penalty.~~

237 B. If any person without permission of the owners of such gate or of the land on which
238 the ~~same~~ gate is located, leaves ~~such~~ the gate open, he ~~shall be~~ is guilty of a Class 1
239 misdemeanor.

~~§ 33.1-204. Gate or other obstruction across private roadway leading to forestlands; penalty for removal or leaving open or unlocked.~~

C. The owners of forest and timberlands may substantially obstruct or close private and seldom used ~~roadways~~ roads leading to or into such forest or timberlands from the public ~~roads~~ highways of ~~this the~~ Commonwealth at points at or near which ~~such the private~~ roads enter their property or forestlands; and, in all cases where any such private ~~roadway road~~ is subject to an easement for travel for the benefit of other lands not regularly and continuously inhabited, the owner of ~~the said such~~ forest or timberlands may obstruct the ~~roadway road~~ with a gate, chain, cable, or other removable obstruction, lock the ~~said~~ obstruction, and, after furnishing a key to the lock to the owner or owners of the land or lands to which the forestlands are servient, require those entitled to the easement to unlock and relock such obstruction upon making use of the ~~roadway road~~.

There shall be no penalty upon the owner of such forest or timberlands for failure to erect such obstructions, but, if such obstruction is erected, any person without the permission of the ~~said~~ owner, ~~destroying, removing or leaving who destroys, removes, or leaves~~ the obstruction open, or unlocked, in cases where the obstruction is locked by ~~said the~~ owner and the keys are furnished as ~~herein~~ provided in this subsection, shall be is guilty of a misdemeanor, ~~and, if upon trial is found guilty, shall be fined a sum punishable by a fine of~~ not less than \$25 nor more than \$500; provided, that in all cases of forest fires upon the owner's lands or those adjacent or near thereto, the expressed permission of the owner shall be deemed given to all persons aiding in extinguishing or preventing the spreading of the fire, to remove ~~said the~~ obstructions, including the breaking of locks.

Drafting note: Three sections dealing with road gates are consolidated into one and technical changes are made to modernize language. References are changed from "road" to "highway" to maintain consistency throughout this title. In describing the misdemeanor in subsection B, "Class 1" is added in keeping with the Code Commission guidance that since misdemeanors with no stated punishment or maximum punishment are designated

as Class 1 misdemeanors according to § 18.2-12, they should be stated as such in the Code when sections are amended or revised.

§ ~~33.1-223.2:6~~ 33.2-XXX. Funding and undertaking of pedestrian~~-and/or~~ or bicycle projects apart from highway projects not prohibited.

Nothing contained in this chapter and no regulation promulgated by the Commissioner of Highways or the ~~Commonwealth Transportation~~ Board shall be construed to prohibit or limit the ability of the ~~Commonwealth Transportation~~ Board or the Department to fund and undertake pedestrian~~-and/or~~ or bicycle projects except in conjunction with highway projects.

Drafting note: Technical changes.

§ ~~33.1-205~~ 33.2-XXX. Sidewalks and walkways for pedestrian traffic.

The ~~Commonwealth Transportation~~ Board may construct such sidewalks or walkways on the bridges and along the highways under its jurisdiction as it deems necessary for the protection of pedestrian traffic.

All~~-the~~ provisions of ~~general~~ law with respect to the acquisition of lands and interests therein and the construction, reconstruction, alteration, improvement₁, and maintenance of highways in the primary and secondary state highway systems~~-of state highways~~, including the exercise of the power of eminent domain by the ~~Commonwealth Transportation~~ Board and the Commissioner of Highways, shall be applicable to such sidewalks and walkways.

Drafting note: Technical changes.

§ ~~33.1-214~~ 33.2-XXX. Contributions by~~-towns-or~~ cities or towns towards~~-road~~ highway building, bridges, etc.

Any~~-incorporated town-or~~ city or town, acting by and through its~~-council governing body~~, may~~-, when in the judgment of such council such action will tend to promote the material interest of such town or city~~, contribute funds or other aid within the control of~~-such town or the~~ city or town toward the building or improvement of permanent public~~-roads~~ highways leading to~~-such town or the~~ city or town, or of bridges, or to the purchase of bridges, or the establishment, maintenance₁, or operation of ferries, when in the judgment of such governing body such action

294 will tend to promote the material interest of such city or town. But no ~~such~~ contribution shall be
295 made toward the building or improvement of any ~~such road~~ highway or bridge, or the purchase
296 of bridges, or ~~for such~~ any ferry, at any point more than ~~forty~~ 40 miles beyond the corporate
297 limits of ~~such town or the~~ city or town, as measured along the route of such ~~road~~ highway.

298 **Drafting note: Technical changes are made for clarity and modernization of**
299 **language. Since all towns in the Commonwealth are incorporated, "incorporated" is**
300 **removed when describing towns throughout this title.**

301 33.2-xxx. Virginia Aviation Board and Virginia Port Authority powers.

302 The powers of the Virginia Aviation Board set out in Chapter 1 (§ 5.1-1 et seq.) of Title
303 5.1 and the Virginia Port Authority set out in Chapter 10 (§ 62.1-128 et seq.) of Title 62.1 are in
304 no way diminished by the provisions of this title.

305 **Drafting note: This section is subdivision (11) of § 33.1-12 and will stand on its own**
306 **as a proposed section within the general provisions of this title.**

CHAPTER 2.

TRANSPORTATION ENTITIES.

Drafting note: A new chapter on Transportation Entities is created in Subtitle I. This chapter relocates all sections that relate to the powers, duties, and obligations of the Commonwealth Transportation Board, Commissioner of Highways, Department of Transportation, and Department of Rail and Public Transportation.

Article 1.

Commonwealth Transportation Board; Membership and Organization.

Drafting note: Existing Article 1, Commonwealth Transportation Board, is retained as the first article in Chapter 2 and includes all sections relating to the membership and organization of the Commonwealth Transportation Board in proposed Title 33.2.

~~§ 33.1-1 33.2-XXX. State Highway and Transportation Board continued as Commonwealth Transportation Board; number and terms of members; removal from office; Commonwealth Transportation Commissioner continued as Commissioner of Highways; membership; terms; vacancies.~~

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

The Board shall ~~consist~~ have a total membership of 18 members: that shall consist of 14 nonlegislative citizen members and four ex officio members as follows: the Secretary of Transportation, the Commissioner of Highways, the Director of the Department of Rail and Public Transportation, and the Executive Director of the Virginia Port Authority, ~~and 14 citizen members~~. The nonlegislative citizen members shall be ~~(i)~~ appointed by the Governor as provided in § ~~33.1-2 33.2-XXX, (ii)~~ subject to confirmation by the General Assembly, and ~~(iii)~~

~~removable from office during their respective terms by~~ shall serve at the pleasure of the Governor ~~at his pleasure~~. Appointments of nonlegislative citizen members shall be for terms of four years commencing ~~upon~~ on July 1, upon the expiration of the terms of the existing members, respectively. ~~The initial terms of the members appointed in January, 1987, shall commence when appointed and shall be for terms ending June 30, 1988, June 30, 1989, and June 30, 1990, respectively.~~ Vacancies shall be filled by appointment by the Governor for the unexpired term and shall be effective until 30 days after the next meeting of the ensuing General Assembly and, if confirmed, thereafter for the remainder of the term. No ~~person~~ nonlegislative citizen member shall be eligible to serve more than two ~~successive consecutive four-year~~ terms of four years, other than the Secretary of Transportation, the Commissioner of Highways, the Director of the Department of Rail and Public Transportation, and the Executive Director of the Virginia Port Authority. A person heretofore or hereafter appointed to fill a vacancy may serve two additional successive terms. The remainder of any term to which a member is appointed to fill a vacancy shall not constitute a term in determining that member's eligibility for reappointment. Ex officio members of the Board shall serve terms coincident with their terms of office.

The Secretary ~~of Transportation~~ shall serve as ~~Chairman~~ chairman of the Board. ~~The Secretary and~~ shall have voting privileges only in the event of a tie. The Commissioner of Highways shall serve as ~~Vice-Chairman~~ vice-chairman of the Board. ~~The Commissioner and~~ shall have voting privileges only in the event of a tie when he is presiding during the absence of the ~~Chairman~~ chairman. The Director of the Department of Rail and Public Transportation and the Executive Director of the Virginia Port Authority shall ~~serve without a vote~~ not have voting privileges.

~~Whenever in this title and in the Code of Virginia "State Highway Commission" or "State Highway and Transportation Board" is used, it shall mean "Commonwealth Transportation Board"; "State Highway Commissioner" or "State Highway and Transportation Commissioner" or "Commonwealth Transportation Commissioner" shall mean Commissioner~~

~~of Highways; and all references to "Department of Highways and Transportation" shall refer to the Department of Transportation.~~

Drafting note: Existing § 33.1-1 was amended by Chapters 762 and 794 of the Acts of Assembly of 2013; those changes have been incorporated into the existing language. Nonessential references to former styles of the Commonwealth Transportation Board are eliminated, and obsolete language regarding initial staggering of terms is removed. Use of the term "nonlegislative citizen member" is derived from § 1-225 and is used in the recent establishment of boards and commissions by the General Assembly. Technical changes to modernize language are also made.

~~§ 33.1-2 33.2-XXX. Residence Appointment~~ requirements; statewide interest.

Of ~~such~~ the members appointed to the Board, one member shall be a resident of the territory now included in the Bristol highway construction district, one in the Salem highway construction district, one in the Lynchburg highway construction district, one in the Staunton highway construction district, one in the Culpeper highway construction district, one in the Fredericksburg highway construction district, one in the Richmond highway construction district, one in the Hampton Roads highway construction district, and one in the Northern Virginia highway construction district. The remaining five members shall be appointed from the Commonwealth at large, ~~but provided that~~ at least two ~~shall~~ reside in ~~standard~~ metropolitan statistical areas and ~~be are~~ designated as urban at-large members; and at least two ~~shall~~ reside outside ~~standard~~ metropolitan statistical areas and ~~be are~~ designated as rural at-large members. The at-large members shall be appointed to represent rural and urban transportation needs and to be mindful of the concerns of seaports and seaport users, airports and airport users, railways and railway users, and mass transit and mass transit users. Each appointed member ~~so appointed of the Board~~ shall be primarily mindful of the best interest of the Commonwealth at large primarily instead of ~~those the interests~~ of the highway construction district from which chosen or of the transportation interest represented.

Drafting note: Technical changes include making the name for highway construction districts consistent throughout this title. The change to the catchline is made to more accurately reflect the content of the section. The term "standard metropolitan statistical area" was changed by the U.S. Office of Management and Budget and the U.S. Census Bureau to "metropolitan statistical area" in 1983; removing the word "standard" conforms the term to current usage. Each metropolitan statistical area must have at least one urbanized area of 50,000 or more inhabitants. Metropolitan statistical areas are defined in terms of whole counties or equivalent areas.

~~§ 33.1-5.~~

Drafting note: Repealed by Chapter 728 of the Acts of Assembly of 1980.

~~§ 33.1-6~~ 33.2-XXX. Meetings; quorum; minutes.

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

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

Drafting note: Technical change.

~~§ 33.1-10~~ 33.2-XXX. Salaries and expenses of the Commonwealth Transportation Board; how paid.

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

Drafting note: Technical changes.

§ ~~33.1-7~~ 33.2-XXX. Offices.

The main office of the Board, the Department of Transportation, and the Department of Rail and Public Transportation shall be located in the City of Richmond. In the discretion of the Commissioner of Highways, other offices of the Department of Transportation may be established in the various highway construction districts of the Commonwealth as may be necessary ~~or needful~~ to carry out the provisions of this title.

Drafting note: Existing § 33.1-7 was amended by Chapters 585 and 646 of the Acts of Assembly of 2013; those changes have been incorporated into the existing language. Technical changes are made, including using the full term "highway construction districts."

§ ~~33.1-9~~ 33.2-XXX. Oaths and bonds of members of the Commonwealth Transportation Board.

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

Drafting note: Technical changes.

§ ~~33.1-4~~ 33.2-XXX. How testimony of members of Commonwealth Transportation Board and Commissioner of Highways taken in civil proceedings.

No member of the ~~Commonwealth Transportation~~ Board or the Commissioner of Highways shall be required to leave his office for the purpose of testifying in any suit, action, or other civil proceeding involving any of ~~their~~ his official duties, but the deposition of any member of the ~~Commonwealth Transportation~~ Board or the Commissioner of Highways may be

134 taken at the main office of the ~~Commission~~ Board in Richmond, after reasonable notice in
135 writing has been given to the adverse party.

136 Any deposition taken pursuant to this section may be read in the pending suit, action, or
137 other civil proceeding. However, on motion to the court, filed at least ~~ten~~ 10 days before the
138 commencement of the trial, the judge may, for good cause shown, require any member of the
139 Board or the Commissioner of Highways to attend and testify ore tenus.

140 **Drafting note: Technical changes.**

141 ~~§ 33.1-14~~ 33.2-XXX. Bookkeeping system.

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

147 **Drafting note: Technical changes.**

148 Article 2.

149 Commonwealth Transportation Board; Powers and Duties.

150 **Drafting note: This new Article 2 consolidates the powers and duties of the Board,**
151 **generally by splitting existing § 33.1-12 into multiple sections, each dealing with one major**
152 **power or duty of the Board, and pulling related sections from other parts of existing**
153 **Chapter 1 of Title 33.1 with such powers and duties. Existing § 33.1-12 is first stricken in**
154 **its entirety; its reordered parts are reentered as existing language and amended in this**
155 **proposed Article 2. Existing § 33.1-12 was amended by Chapters 388, 569, 585, 646, and**
156 **741 of the Acts of Assembly of 2013; those changes have been incorporated into existing**
157 **language in this document.**

158 ~~§ 33.1-12. General powers and duties of Board, etc.; definitions.~~

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

~~(1) Location of routes. To locate and establish the routes to be followed by the roads comprising systems of state highways between the points designated in the establishment of such systems, except that such routes shall not include roads located within any local system of roads, within the urban system of highways, or those local roads in any county that has resumed full responsibility for all of the secondary system of highways within such county's boundaries pursuant to § 33.1-84.1. Such routes shall include corridors of statewide significance pursuant to § 33.1-23.03.~~

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

~~(a) To let all contracts to be administered by the Virginia Department of Transportation or the Department of Rail and Public Transportation for the construction, maintenance, and improvement of the roads comprising systems of state highways and for all activities related to passenger and freight rail and public transportation in excess of \$5 million. The Commissioner of Highways shall have authority to let all Virginia Department of Transportation-administered contracts for highway construction, maintenance, and improvements up to \$5 million in value. The Director of the Department of Rail and Public Transportation shall have the authority to let contracts for passenger and freight rail and public transportation improvements up to \$5 million in value. The Commissioner of Highways is authorized to enter into agreements with localities, authorities, and transportation districts to administer projects and to allow those localities, authorities, and transportation districts to let contracts with no limit on contract value, and without prior concurrence of the Commissioner of Highways or the Board for highway construction, maintenance, and improvements within their jurisdictions, in accordance with those provisions of the Code of Virginia providing those localities, authorities, and transportation districts the ability to let such contracts. The Director of the Department of Rail and Public Transportation is authorized to enter into agreements with localities, authorities, and transportation districts to administer projects and to allow those localities, authorities, and transportation districts to let contracts with no limit on contract value, and without prior~~

~~concurrence of the Director of the Department of Rail and Public Transportation or the Board for passenger and freight rail and public transportation activities within their jurisdictions, in accordance with those provisions of the Code of Virginia providing those localities, authorities, and transportation districts the ability to let such contracts. The Commissioner of Highways and the Director of the Department of Rail and Public Transportation shall report on their respective transportation contracting activities at least quarterly to the Board.~~

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

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

~~limited to maintenance, may be fixed at the outset of the projects and until completion based on best achievable prices.~~

~~(3) Traffic regulations. To make rules and regulations, from time to time, not in conflict with the laws of the Commonwealth, for the protection of and covering traffic on and the use of systems of state highways and to add to, amend or repeal the same.~~

~~(4) Naming highways, bridges, interchanges, and other transportation facilities. To give suitable names to state highways, bridges, interchanges, and other transportation facilities, and change the names of any highways, bridges, interchanges, or other transportation facilities forming a part of the systems of state highways. The name of private entities, as defined in § 56-557, located within the Commonwealth shall not be used for such purposes unless such private entity pays to the Department of Transportation an annual naming rights fee as determined by the Board. The Department of Transportation shall place and maintain appropriate signs indicating the names of highways, bridges, interchanges, and other transportation facilities named by the Board or by the General Assembly. The costs of producing, placing, and maintaining these signs shall be paid by the counties, cities, and towns in which they are located or by the private entity whose name is attached to the highway, bridge, interchange, or other transportation facility. No name shall be given to any state highway, bridge, interchange, or other transportation facility by the Commonwealth Transportation Board unless and until the Commonwealth Transportation Board shall have received from the local governing body of the locality within which a portion of the facility to be named is located a resolution of that governing body requesting such naming, except in such cases where a private entity has requested such naming. No highway, bridge, interchange, or other transportation facility previously named by the Board or the General Assembly shall be eligible for renaming by a private entity, unless such naming incorporates the previous name. The Board shall develop and approve guidelines governing the naming of highways, bridges, interchanges, and other transportation facilities by private entities and the applicable fees for such naming rights. Such fees shall be deposited in the Highway Maintenance and Operating Fund.~~

~~No name shall be eligible for the naming rights under this subdivision if it in any way reasonably connotes anything that (i) is profane, obscene, or vulgar; (ii) is sexually explicit or graphic; (iii) is excretory related; (iv) is descriptive of intimate body parts or genitals; (v) is descriptive of illegal activities or substances; (vi) condones or encourages violence; or (vii) is socially, racially, or ethnically offensive or disparaging.~~

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

~~(6) Policies and operation of Departments. To review and approve policies and transportation objectives of the Department of Transportation and the Department of Rail and Public Transportation, to assist in establishing such policies and objectives, to oversee the execution thereof, and to report thereon to the Commissioner of Highways and the Director of the Department of Rail and Public Transportation.~~

~~(7) Transportation.~~

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

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

~~policy adopted by the Board in consultation with the Debt Capacity Advisory Committee and the Department of the Treasury.~~

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

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

~~(e) To integrate land use with transportation planning and programming, consistent with the efficient and economical use of public funds. If the Board determines that a local transportation plan described in § 15.2-2223 or any amendment as described in § 15.2-2229 or a metropolitan regional long-range transportation plan or regional Transportation Improvement Program as described in § 33.1-223.2:25 is not consistent with the Commonwealth Transportation Board's Statewide Transportation Plan developed pursuant to § 33.1-23.03, the Six-Year Improvement Program adopted pursuant to subdivision (7)(b), and the location of routes to be followed by roads comprising systems of state highways pursuant to subdivision (1), the Board shall notify the locality of such inconsistency and request that the applicable plan or program be amended accordingly. If, after a reasonable time, the Board determines that there is a refusal to amend the plan or program, then the Board may reallocate funds that were allocated to the nonconforming project as permitted by state or federal law. However, the Board shall not reallocate any funds allocated pursuant to § 33.1-23.3, 33.1-23.5:1, 33.1-41.1, or 33.1-44, based on a determination of inconsistency with the Commonwealth Transportation Board's Statewide Transportation Plan or the Six-Year Improvement Program nor shall the Board reallocate any funds, allocated pursuant to subdivision B-3 of § 33.1-23.1, from any projects on highways controlled by any county that has withdrawn, or elects to withdraw, from the secondary system of state highways based on a determination of inconsistency with the Commonwealth Transportation Board's Statewide Transportation Plan or the Six-Year Improvement Program. If a locality or metropolitan planning organization requests the~~

~~termination of a project, and the Department of Transportation does not agree to the termination, or if a locality or metropolitan planning organization does not advance a project to the next phase of construction when requested by the Board and the Department of Transportation has expended state or federal funds, the locality or the localities within the metropolitan planning organization may be required to reimburse the Department of Transportation for all funds expended on the project. If, after design approval by the Chief Engineer of the Department of Transportation, a locality or metropolitan planning organization requests alterations to a project that, in the aggregate, exceeds 10 percent of the total project costs, the locality or the localities within the metropolitan planning organization may be required to reimburse the Department of Transportation for the additional project costs above the original estimates for making such alterations.~~

~~(8) Contracts with other states. To enter into all contracts with other states necessary for the proper coordination of the location, construction, maintenance, improvement, and operation of transportation systems, including the systems of state highways with the highways of such other states and, where necessary, to seek the approval of such contracts by the Congress of the United States.~~

~~(9) Use of funds. To administer, distribute, and allocate funds in the Transportation Trust Fund as provided by law. The Commonwealth Transportation Board shall ensure that the total funds allocated to any highway construction project are equal to total expenditures within 12 months following completion of the project. However, this requirement shall not apply to debt service apportionments pursuant to § 33.1-23.3 or 33.1-23.4.~~

~~(10) Financial and investment advisors. With the advice of the Secretary of Finance and the State Treasurer, to engage a financial advisor and investment advisor who may be anyone within or without the government of the Commonwealth, to assist in planning and making decisions concerning the investment of funds and the use of bonds for transportation purposes. The work of these advisors shall be coordinated with the Secretary of Finance and the State Treasurer.~~

~~(11) The powers of the Virginia Aviation Board set out in Chapter 1 (§ 5.1-1 et seq.) of Title 5.1 and the Virginia Port Authority set out in Chapter 10 (§ 62.1-128 et seq.) of Title 62.1 are in no way diminished by the provisions of this title.~~

~~(12) To enter into payment agreements with the Treasury Board related to payments on bonds issued by the Commonwealth Transportation Board.~~

~~(13) Establishment of highway user fees for the systems of state highways. When the traffic-carrying capacity of any system of state highways or a portion thereof is increased by construction or improvement, the Commonwealth Transportation Board may enter into agreements with localities, authorities, and transportation districts to establish highway user fees for such system of state highways or portion thereof that the localities, authorities, and transportation districts maintain.~~

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

Drafting note: Existing § 33.1-12 was amended by Chapters 388, 569, 646, and 741 of the 2013 Acts of Assembly and those changes are incorporated here and as each subdivision is set out. This section is split into multiple sections, each dealing with one major power or duty of the Board. To clearly indicate preservation of and changes to existing language, § 33.1-12 is stricken in its entirety; its reordered parts are reentered as existing language and amended in proposed Article 2.

~~(1) § 33.2-XXX.~~ Location of routes.

~~To~~ A. The Board shall have the power and duty to locate and establish the routes to be followed by the ~~roads~~ highways comprising systems of state highways between the points designated in the establishment of such systems, except that such routes shall not include ~~roads~~ highways located within any local system of ~~roads~~ highways, within the urban highway system

~~of highways~~, or those local ~~roads~~ highways in any county that has resumed full responsibility for all of the secondary state highway system ~~of highways~~ within such county's boundaries pursuant to § ~~33.1-84.1~~ 33.2-XXX. Such routes to be located and established shall include corridors of statewide significance pursuant to § ~~33.1-23.03~~ 33.2-XXX.

~~§ 33.1-18. Location of routes.~~

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

If a public hearing is requested, written notice of the time and place of the hearing shall be given, not less than ~~thirty~~ 30 days prior to the hearing, to the governing body of the ~~county, city, or town~~ locality in which the route is to be located and established. Not less than ~~thirty~~ 30 days prior to the hearing, a notice of the time and place of the hearing shall also be published by the Department ~~of Transportation~~ at least once in a newspaper published or having a general circulation in the ~~county, city, or town~~ locality in which the route is to be located and established.

All public hearings on the location or possible location of a route shall be open forums that afford citizens opportunities to obtain route location information and other pertinent information on a proposed project, and to submit their hearing comments in writing or to present them directly to a verbatim recorder. In addition, upon the written request of a member of the governing body of the ~~county, city, or town~~ locality in which the route is proposed to be located, or upon the written request of ~~twenty-five~~ 25 citizens, these public hearings shall afford citizens an opportunity to present their comments to representatives of the Department ~~of Transportation~~ directly, one speaker at a time, in a public forum following a traditional hearing format. A

written request for a traditional hearing must be received within ~~fourteen~~ 14 days following the first published notice of the hearing or willingness to hold a hearing.

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

Drafting note: Existing § 33.1-12 is split into multiple sections, each dealing with one major power or duty of the Board. In this instance, existing § 33.1-18 is combined with subdivision (1) of existing § 33.1-12 so that all powers, etc., relating to location of routes are in a single location. References are changed from "road" to "highway" and from "county, city, or town" to "locality" to maintain consistency throughout proposed Title 33.2 and the Code. Technical changes are also made.

~~(2) Construction § 33.2-XXX. Commonwealth Transportation Board powers and duties regarding construction~~ and maintenance contracts and activities related to passenger and freight rail and public transportation.

~~(a) To~~ A. The Board shall have the power and duty to let all contracts to be administered by the ~~Virginia~~ Department of Transportation or the Department of Rail and Public Transportation for the construction, maintenance, and improvement of the ~~roads~~ highways comprising systems of state highways and for all activities related to passenger and freight rail and public transportation in excess of \$5 million. The Commissioner of Highways shall have the authority to let all ~~Virginia~~ Department of Transportation-administered contracts for highway construction, maintenance, and improvements up to \$5 million in value. The Director of the Department of Rail and Public Transportation shall have the authority to let contracts for passenger and freight rail and public transportation improvements up to \$5 million in value. The Commissioner of Highways is authorized to enter into agreements with localities, authorities, and transportation districts to administer projects and to allow those localities, authorities, and transportation districts to let contracts with no limit on contract value; and without prior

concurrence of the Commissioner of Highways or the Board for highway construction, maintenance, and improvements within their jurisdictions, in accordance with those provisions of ~~the this~~ Code ~~of Virginia~~ providing those localities, authorities, and transportation districts the ability to let such contracts. The Director of the Department of Rail and Public Transportation is authorized to enter into agreements with localities, authorities, and transportation districts to administer projects and to allow those localities, authorities, and transportation districts to let contracts with no limit on contract value, and without prior concurrence of the Director of the Department of Rail and Public Transportation or the Board for passenger and freight rail and public transportation activities within their jurisdictions, in accordance with those provisions of ~~the this~~ Code ~~of Virginia~~ providing those localities, authorities, and transportation districts the ability to let such contracts. The Commissioner of Highways and the Director of the Department of Rail and Public Transportation shall report on their respective transportation contracting activities at least quarterly to the Board.

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

awarding a design-build contract will best serve the public interest. The provisions of this section shall supersede contrary provisions of subsection D of § 2.2-4303 and § 2.2-4306.

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

Drafting note: This proposed section is derived from subdivision (2) of existing § 33.1-12, including subdivisions (2) (a) through (c). In subsection C and in other proposed sections, "but not limited to" or similar language is removed when using the term "including" based on § 1-218, which states, "'Includes' means includes, but not limited to." A reference is changed from "road" to "highway" to maintain consistency throughout proposed Title 33.2. Technical changes are also made.

~~(3) § 33.2-XXX.~~ Traffic regulations.

~~To A. The Board shall have the power and duty to~~ make ~~rules and~~ regulations, ~~from time to time, that are~~ not in conflict with the laws of the Commonwealth, for the protection of and covering traffic on and for the use of systems of state highways and ~~to shall have the authority to~~ add to, amend, or repeal the same such regulations.

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

B. The ~~rules and~~ regulations, together with any additions or amendments thereto, prescribed by the Board under the provisions authority of ~~subdivision (3) of § 33.1-12, this section~~ shall have the force and effect of law, and any person, firm, or corporation violating any such ~~rule or~~ regulation or any addition or amendment thereto ~~shall be is~~ guilty of a misdemeanor and, ~~upon conviction, be fined~~ punishable by a fine of not less than \$5 nor more than \$100 for

each offense. Such person shall be civilly liable to the Commonwealth for the actual damage sustained by the Commonwealth by reason of his wrongful act. Such damages may be recovered at the suit of the ~~Commonwealth Transportation~~ Board and, when collected, paid into the state treasury to the credit of the Department ~~of Transportation~~. Any ~~rules and~~ regulations promulgated by the Board shall be developed in accordance with the Administrative Process Act (§ 2.2-4000 et seq.) except when specifically exempted by law.

Drafting note: Existing subdivision (3) of § 33.1-12 and existing § 33.1-19 are combined since both pertain to traffic regulations created by the Board. Per recommendation of the Code Commission, use of "regulations" is preferred over "rules and regulations" in the Code; this phrase is changed accordingly. Technical changes are also made.

~~§ 33.1-22~~ § 33.2-XXX. Copies of ~~rules~~ regulations as evidence.

Copies of ~~such rules and~~ regulations of the Board and of additions or amendments thereto, printed under the authority of the ~~Commonwealth Transportation~~ Board, shall be admissible in all of the courts of ~~this the~~ Commonwealth without further proof and given the force and effect prescribed hereby, and the fact that such printed copies bear the name of the ~~Commonwealth Transportation~~ Board shall be prima facie evidence that they are duly adopted and promulgated under the provisions ~~hereof of this title~~ and that they are true copies of the ~~rules and~~ regulations, or of any additions and amendments thereto, adopted pursuant to the provisions of ~~subdivision (3) of § 33.1-12~~ § 33.2-XXX.

Drafting note: Technical changes. Per recommendation of the Code Commission, use of "regulations" is preferred over "rules and regulations" in the Code; this phrase is changed accordingly.

~~§ 33.1-23~~ § 33.2-XXX. Sections not applicable to certain engines and tractors.

The provisions of ~~subdivision (3) of § 33.1-12 and of §§ 33.1-19 and 33.1-22~~ §§ 33.2-XXX and 33.2-XXX shall not apply to traction engines and tractors, weighing not less than five tons, when drawing threshing machines, hay balers, or other farm machinery for local farm use.

Drafting note: This section is moved to this proposed Article 2 on powers and duties of the Board because it relates to regulations of the Board in the two previous sections. Technical changes are made.

~~(4)~~ § 33.2-XXX. Naming highways, bridges, interchanges, and other transportation facilities.

~~To A. The Board shall have the power and duty to~~ give suitable names to state highways, bridges, interchanges, and other transportation facilities; and change the names of any highways, bridges, interchanges, or other transportation facilities forming a part of the systems of state highways. The ~~name~~ names of private entities, as defined in ~~§ 56-557~~ § 33.2-XXX, located within the Commonwealth shall not be used for such purposes unless such private entity pays ~~to the~~ Department ~~of Transportation~~ an annual naming rights fee as determined by the Board. The Department ~~of Transportation~~ shall place and maintain appropriate signs indicating the names of highways, bridges, interchanges, and other transportation facilities named by the Board or by the General Assembly. The costs of producing, placing, and maintaining these signs shall be paid by the ~~counties, cities, and towns~~ localities in which they are located or by the private entity whose name is attached to the highway, bridge, interchange, or other transportation facility. No name shall be given to any state highway, bridge, interchange, or other transportation facility by the ~~Commonwealth Transportation~~ Board unless and until the ~~Commonwealth Transportation~~ Board ~~shall have received~~ receives from the ~~local~~ governing body of the locality within which a portion of the facility to be named is located a resolution of that governing body requesting such naming, except in such cases where a private entity has requested ~~such~~ the naming. No highway, bridge, interchange, or other transportation facility previously named by the Board or the General Assembly shall be eligible for renaming by a private entity, unless such naming incorporates the previous name. The Board shall develop and approve guidelines governing the naming of highways, bridges, interchanges, and other transportation facilities by private entities and the applicable fees for such naming rights. Such fees shall be deposited in the Highway Maintenance and Operating Fund.

No name shall be eligible for the naming rights under this ~~subdivision~~ section if it in any way reasonably connotes anything that (i) is profane, obscene, or vulgar; (ii) is sexually explicit or graphic; (iii) is excretory related; (iv) is descriptive of intimate body parts or genitals; (v) is descriptive of illegal activities or substances; (vi) condones or encourages violence; or (vii) is socially, racially, or ethnically offensive or disparaging.

Drafting note: This proposed section is derived from subdivision (4) of existing § 33.1-12, which is split into multiple sections, each dealing with one major power or duty of the Board. This power of the Board deals with naming of highways and similar transportation facilities by the Board. Technical changes are also made.

~~§ 33.1-182. Route names.~~

~~All laws now in effect designating certain names for certain routes or combinations of routes in the State Highway System and/or the secondary system of state highways, as hereafter amended, are continued in effect.~~

Drafting note: This obsolete section continuing statutes in effect is recommended for repeal, consistent with other recommendations made to the Code Commission.

~~§ 33.1-223.2:15. Use of certain federal "transportation enhancement" grants.~~

~~The Commonwealth Transportation Board shall, in accordance with federal law and guidelines for projects qualifying as "transportation enhancements" as defined in 23 U.S.C. § 101(a)(35), take such measures as may appear necessary or convenient to consider projects that will (i) address improvements to highway rest areas and welcome centers and (ii) accommodate anticipated quadricentennial tourism in Virginia.~~

Drafting note: This section is recommended for repeal because the projects contemplated in this section no longer qualify as federal "transportation enhancements," now called "transportation alternatives."

~~(7) § 33.2-XXX. Transportation: Six-Year Improvement Program.~~

~~(a) To A. The Board shall have the power and duty to monitor and, where necessary, approve actions taken by the Department of Rail and Public Transportation pursuant to Chapter~~

~~10.1 Article XXX~~ (§ ~~33.1-391.1~~ ~~33.2-XXX~~ et seq.) in order to ensure the efficient and economical development of public transportation, the enhancement of rail transportation, and the coordination of such rail and public transportation plans with highway programs.

~~(b) To B. The Board shall have the power and duty to~~ coordinate the planning for financing of transportation needs, including needs for highways, railways, seaports, airports, and public transportation and ~~to~~ set aside funds as provided in § ~~33.1-23.03:1~~ ~~33.2-XXX~~. To allocate funds for these needs pursuant to §§ ~~33.1-23.1~~ ~~33.2-XXX~~ and 58.1-638, the Board shall adopt a Six-Year Improvement Program of anticipated projects and programs by July 1 of each year. This program shall be based on the most recent official Transportation Trust Fund revenue forecast and shall be consistent with a debt management policy adopted by the Board in consultation with the Debt Capacity Advisory Committee and the Department of the Treasury.

~~(c) To C. The Board shall have the power and duty to~~ enter into contracts with local districts, commissions, agencies, or other entities created for transportation purposes.

~~(d) To D. The Board shall have the power and duty to~~ promote increasing private investment in ~~Virginia's the Commonwealth's~~ transportation infrastructure, including ~~but not limited to~~ acquisition of causeways, bridges, tunnels, highways, and other transportation facilities.

~~(e) To E. The Board shall have the power and duty to~~ integrate land use with transportation planning and programming, consistent with the efficient and economical use of public funds. If the Board determines that a local transportation plan described in § 15.2-2223 or any amendment as described in § 15.2-2229 or a metropolitan regional long-range transportation plan or regional Transportation Improvement Program as described in § ~~33.1-223.2:25~~ ~~33.2-XXX~~ is not consistent with the ~~Commonwealth Transportation~~ Board's Statewide Transportation Plan developed pursuant to § ~~33.1-23.03~~ ~~33.2-XXX~~, the Six-Year Improvement Program adopted pursuant to ~~subdivision (7)(b)~~ subsection B, and the location of routes to be followed by roads comprising systems of state highways pursuant to ~~subdivision (1)~~ § 33.2-XXX, the Board shall notify the locality of such inconsistency and request that the applicable

plan or program be amended accordingly. If, after a reasonable time, the Board determines that there is a refusal to amend the plan or program, then the Board may reallocate funds that were allocated to the nonconforming project as permitted by state or federal law. However, the Board shall not reallocate any funds allocated pursuant to § ~~33.1-23.3, 33.1-23.5:1, 33.1-41.1, or 33.1-44~~ 33.2-XXX, based on a determination of inconsistency with the ~~Commonwealth Transportation~~ Board's Statewide Transportation Plan or the Six-Year Improvement Program nor shall the Board reallocate any funds, allocated pursuant to subdivision B 3 of § ~~33.1-23.1~~ 33.2-XXX, from any projects on highways controlled by any county that has withdrawn, or elects to withdraw, from the secondary system of state highways based on a determination of inconsistency with the ~~Commonwealth Transportation~~ Board's Statewide Transportation Plan or the Six-Year Improvement Program. If a locality or metropolitan planning organization requests the termination of a project, and the Department ~~of Transportation~~ does not agree to the termination, or if a locality or metropolitan planning organization does not advance a project to the next phase of construction when requested by the Board and the Department ~~of Transportation~~ has expended state or federal funds, the locality or the localities within the metropolitan planning organization may be required to reimburse the Department ~~of Transportation~~ for all funds expended on the project. If, after design approval by the Chief Engineer of the Department ~~of Transportation~~, a locality or metropolitan planning organization requests alterations to a project that, in the aggregate, exceeds 10 percent of the total project costs, the locality or the localities within the metropolitan planning organization may be required to reimburse the Department ~~of Transportation~~ for the additional project costs above the original estimates for making such alterations.

Drafting note: This proposed section is derived from subdivision (7) of existing § 33.1-12, including subdivisions (7) (a) through (e). Technical changes are also made.

~~(6)~~ § 33.2-XXX. Policies and operation of Departments.

~~To~~ The Board shall have the power and duty to review and approve policies and transportation objectives of the Department of Transportation and the Department of Rail and

Public Transportation, to assist in establishing such policies and objectives, to oversee the execution thereof, and to report ~~thereon~~ on these policies and objectives to the Commissioner of Highways and the Director of the Department of Rail and Public Transportation, respectively.

Drafting note: This proposed section is derived from subdivision (6) of existing § 33.1-12. Technical changes are also made.

§ ~~33.1-206.1~~ 33.2-XXX. Roadside memorials; installation, maintenance, and removal standards; installation of nonconforming memorial prohibited; penalty.

A. The ~~Commonwealth Transportation~~ Board shall establish regulations regarding size, distance from the roadway, and other safety concerns, to govern the installation, maintenance, and removal of roadside memorials, plaques, and other devices placed within the right-of-way that commemorate the memory of persons killed in vehicle crashes within the right-of-way of any state highway.

B. Any person who installs any plaque, device, sign, object, material, or other memorial within the right-of-way of any highway controlled by the Department except in accordance with criteria established as provided in this section may be assessed a civil penalty of no more than \$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.

Drafting note: This section is moved to this proposed Article 2 on powers and duties of the Board. Technical changes are made.

§ ~~33.1-209~~ 33.2-XXX. Prohibition of certain weeds and plants on highway rights-of-way.

Neither the ~~Commonwealth Transportation~~ Board nor the Commissioner of Highways shall plant or cause or suffer to be planted on the right-of-way of any state highway any of the weeds or plants known as devil shoestring (~~tephrosia~~ Tephrosia virginiana), Johnson grass (~~sorghum~~ Sorghum halepense), or barberry (~~berberis~~ Berberis vulgaris); if the ~~board of supervisors or other~~ governing body of the county in which the highway is located shall by resolution declare such weeds or plants to be injurious to adjacent property.

The Board shall cause all such weeds or plants ~~heretofore~~ planted or caused to be planted by the Board or Commissioner of Highways on any state highway right-of-way to be dug up and destroyed.

Any owner of land adjacent to any state or other public highway right-of-way, or his agents and employees, may dig up, cut down, or otherwise remove and destroy any of such plants or weeds and any other plants or weeds ~~which that~~ are or may become noxious or otherwise injurious to his property found growing upon any state or other public highway right-of-way adjacent to his land.

Drafting note: This section is moved to this proposed Article 2 on powers and duties of the Board because it relates to responsibilities of the Board. Technical changes are made.

§ ~~33.1-12.01~~ 33.2-XXX. Fees for participating in the Integrated Directional Sign Program.

~~In addition to the duties set forth in § 33.1-12 of the Code of Virginia, the Commonwealth Transportation~~ The Board shall establish reasonable fees to be collected by the Commissioner of Highways from any qualified entity for the purpose of participating in the Integrated Directional Sign Program (IDSP) administered by the Department ~~of Transportation~~ or its agents that is designed to provide information to the motoring public relating to gasoline and motor vehicle services, food, lodging, attractions, or other categories as defined by the IDSP. Such fees shall be deposited into a special fund specifically accounted for and used by the Commissioner of Highways solely to defray the actual costs of supervising and administering the signage programs. Included in these costs shall be a reasonable margin, not to exceed ~~ten~~ 10 percent, in the nature of a reserve ~~Fund fund~~.

Drafting note: Technical changes.

§ ~~33.1-223.1~~ 33.2-XXX. Statements to be filed with Commonwealth Transportation Board by transit systems.

Any transit system ~~as defined in § 15.2-4502 which that~~ conducts its operations within the exclusive jurisdiction of any ~~county, city or town~~ locality or within the boundaries of any district as defined in § ~~15.2-4502~~ 33.2-XXX, and any ~~jurisdiction contiguous thereto adjoining~~ locality, shall file annually with the ~~Commonwealth Transportation~~ Board such financial and other statistical data as the ~~Commonwealth Transportation~~ Board shall require in order to effectively administer the provisions of § 46.2-206, and shall file with the Department of Rail and Public Transportation, at such times as the Department of Rail and Public Transportation shall require, such information as the Department of Rail and Public Transportation shall require to carry out its duties under ~~subdivision 4 of § 33.1-391.5~~ 33.2-XXX.

The provisions of this section shall not be construed so as to exempt any such transit system from any provision of law or regulation made pursuant to law ~~which that~~ requires the filing of data with any other agency of the Commonwealth.

Drafting note: This section is moved to this proposed Article 2 on powers and duties of the Board because it relates to responsibilities of the Board. Technical changes are made.

§ ~~33.1-223.2:17~~ 33.2-XXX. Commonwealth Transportation Board may transfer interest in and control over certain highways, highway rights-of-way, and landings.

Notwithstanding any contrary provision of this title, the ~~Commonwealth Transportation~~ Board, upon receipt of a written request from a public access authority established pursuant to Title 15.2 and without first abandoning or discontinuing such highway, highway right-of-way, or landing, ~~(including a wharf, pier, or dock)~~, may transfer to such requesting authority any and all rights and interests of the Board in ~~such a~~ highway, highway right-of-way, ~~and or~~ landing as the Board may deem in the public interest. Such transfer may be either with or without compensation from the requesting authority.

Drafting note: This section is moved to this proposed Article 2 on powers and duties of the Board because it relates to authority of the Board. Technical changes are made.

~~(5) Compliance with federal acts. To § 33.2-XXX. Other powers, duties, and responsibilities of Commonwealth Transportation Board.~~

~~A. The Board shall have the power and duty to~~ comply fully with the provisions of the present or future federal aid acts. The Board may enter into all contracts or agreements with the United States government and may do all other things necessary to carry out fully the cooperation contemplated and provided for by present or future acts of Congress ~~in the area of related to~~ transportation.

~~(8) Contracts with other states. To B. The Board shall have the power and duty to~~ enter into all contracts with other states necessary for the proper coordination of the location, construction, maintenance, improvement, and operation of transportation systems, including the systems of state highways with the highways of such other states, and, where necessary, ~~to seek~~ the approval of such contracts by the Congress of the United States.

~~(9) Use of funds. To C. The Board shall have the power and duty to~~ administer, distribute, and allocate funds in the Transportation Trust Fund as provided by law. The ~~Commonwealth Transportation~~ Board shall ensure that the total funds allocated to any highway construction project are equal to total expenditures within 12 months following completion of the project. However, this requirement shall not apply to debt service apportionments pursuant to ~~§ 33.1-23.3 33.2-XXX or 33.1-23.4 33.2-XXX.~~

~~(10) Financial and investment advisors. With D. The Board shall have the power and duty, with~~ the advice of the Secretary of Finance and the State Treasurer, to engage a financial advisor and investment advisor who may be anyone within or without the government of the Commonwealth, to assist in planning and making decisions concerning the investment of funds and the use of bonds for transportation purposes. The work of these advisors shall be coordinated with the Secretary of Finance and the State Treasurer.

~~(11) The powers of the Virginia Aviation Board set out in Chapter 1 (§ 5.1-1 et seq.) of Title 5.1 and the Virginia Port Authority set out in Chapter 10 (§ 62.1-128 et seq.) of Title 62.1 are in no way diminished by the provisions of this title.~~

~~(12) To~~ E. The Board shall have the power and duty to enter into payment agreements with the Treasury Board related to payments on bonds issued by the Commonwealth Transportation Board.

~~(13) Establishment of highway user fees for the systems of state highways.~~ F. When the traffic-carrying capacity of any ~~system of the systems~~ of state highways or a portion thereof is increased by construction or improvement, the ~~Commonwealth Transportation~~ Board may enter into agreements with localities, authorities, and transportation districts to establish highway user fees for such system of state highways or portion thereof that the localities, authorities, and transportation districts maintain.

Drafting note: This section combines subdivisions (5), (8), (9), (10), (12), and (13) of existing § 33.1-12. Subdivision (11) is placed in Chapter 1 of proposed Title 33.2, relating to General Provisions.

Article 3.

Commissioner of Highways.

Drafting note: Proposed Article 3 delineates the duties and responsibilities of the Commissioner of Highways. Existing sections are reordered for a more logical placement in the Code.

~~§ 33.1-3 33.2-XXX. Secretary to be Chairman;~~ Commissioner of Highways.

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

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

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

In the event of a vacancy due to the death, temporary disability, retirement, resignation, or removal of the Commissioner of Highways, the Governor may appoint and thereafter remove at his pleasure an "Acting Commissioner of Highways" until such time as the vacancy may be filled as provided in § ~~33.1-1~~ 33.2-XXX. Such "Acting Commissioner of Highways" shall have all powers and perform all duties of the Commissioner of Highways as provided by law, and shall receive such compensation as may be fixed by the Governor. In the event of the temporary disability, for any reason, of the Commissioner of Highways, full effect shall be given to the provisions of § 2.2-605.

Drafting note: The provision designating the Secretary of Transportation as chairman of the Board is already in the section describing the membership of the Commonwealth Transportation Board, that is, existing § 33.1-1 and proposed § 33.2-XXX, so it is not needed in this section. Technical changes are also made.

§ ~~33.1-13~~ 33.2-XXX. General powers of Commissioner of Highways.

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

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

Drafting note: Technical changes.

~~§ 33.1-8~~ 33.2-XXX. Employees; delegation of responsibilities.

The Commissioner of Highways shall employ such engineers, clerks, assistants, and other employees as may be needed, and shall prescribe and fix their duties, including the delegation of duties and responsibilities conferred or imposed upon the Commissioner of Highways by law. They shall receive all salaries and expenses as may be fixed in accordance with the provisions of law.

Drafting note: Technical changes.

~~§ 33.1-190.4~~ 33.2-XXX. Liaison duties with other organizations.

Tasks and responsibilities concerning transportation program or project delivery shall be carried out as follows:

~~(1)-1.~~ The Commissioner of Highways shall cooperate with the federal government, the American Association of State Highway and Transportation Officials, and any other organization in the numbering, signing, and marking of highways; in the taking of measures for the promotion of highway safety; in research activities; in the preparation of standard specifications; in the testing of highway materials; and otherwise with respect to transportation projects.

~~(2)-2.~~ The Department of Transportation and the Department of Rail and Public Transportation may offer technical assistance and coordinate state resources, as available, to work with local governments, upon their request, in developing sound transportation components for their local comprehensive plans.

Drafting note: § 33.1-190.4 was added by Chapters 585 and 646 of the Acts of Assembly of 2013 and is placed in this proposed Article 3 with other duties of the Commissioner of Highways. Technical changes are made.

§ ~~33.1-183.1~~ 33.2-XXX. Authority to lease or convey airspace; ~~terms of lease or conveyance; advertisement and bids; disposition of compensation for lease or conveyance.~~

The Commissioner of Highways may lease or sell and convey the airspace superjacent or subjacent to any highway in ~~this the~~ Commonwealth ~~which that~~ is within his jurisdiction and in which the Commonwealth owns fee simple title after satisfying itself that use of the airspace will not impair the full use and safety of the highway or otherwise interfere with the free flow of traffic thereon and it cannot be reasonably foreseen as needed in the future for highway and other transit uses and purposes. The Commissioner of Highways may provide in such leases and conveyances of airspace for columns of support, in fee or otherwise, ingress, egress and utilities.

No lease or conveyance shall be entered into by the Commissioner of Highways until after the time the ~~county, city or town~~ locality, by action of its governing body by majority recorded vote, approves the projected use and has zoned the airspace in question or has otherwise taken such steps as it deems proper to regulate the type and use of the improvements to be erected in such airspace.

All leases and conveyances shall contain those terms deemed necessary by the Commissioner of Highways to protect the interests of the Commonwealth and the public and shall not be entered into until after public advertising for bids for such airspace. The Commissioner of Highways shall advertise for bids at least 14 days prior to the execution of a lease or a conveyance. The advertisement shall state the place where bidders may examine a map of the airspace, the general terms of the lease or conveyance and the time and place when bids will be opened by the Commissioner of Highways. The highest bid from a responsible bidder, in the sole discretion of the Commissioner of Highways, shall be accepted; however the Commissioner of Highways may reject all bids and advertise the property again.

Compensation paid for such leases and conveyances shall be credited to the ~~fund for highway maintenance and construction~~ Transportation Trust Fund or the Highway Maintenance and Operating Fund.

Drafting note: Existing § 33.1-183.1 was amended by Chapters 585 and 646 of the Acts of Assembly of 2013; those changes have been incorporated into the existing language in this document. A reference to "the fund for highway maintenance and construction" is changed to "the Transportation Trust Fund or the Highway Maintenance and Operating Fund." Technical changes are also made.

§ ~~33.1-11~~ 33.2-XXX. Defense of employees.

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

Drafting note: Existing § 33.1-11 was amended by Chapters 585 and 646 of the Acts of Assembly of 2013; those changes have been incorporated into the existing language in this document. Technical changes are made.

§ ~~33.1-12.1~~ 33.2-XXX. Agreements between Commissioner of Highways and certain cities and towns.

Notwithstanding the provisions of §§ ~~33.1-12~~ 33.2-XXX and ~~33.1-23.3~~ 33.2-XXX, the Commissioner of Highways, pursuant to a resolution adopted by the ~~Commonwealth Transportation~~ Board and following receipt of a resolution adopted by the governing body of a city or town ~~council~~ to which funds are apportioned pursuant to § ~~33.1-23.3~~ 33.2-XXX, may enter into an agreement with any such city or town pursuant to which the city or town assumes responsibility for the design, right-of-way acquisition, and construction of urban system

highways or portions thereof in such city or town, using funds allocated pursuant to subdivision
~~B 2 of subsection B~~ of § ~~33.1-23.1~~ 33.2-XXX.

Drafting note: The reference to "council" has been changed to "governing body" so as to remain consistent with the terminology used throughout this title. Technical changes are also made.

~~§ 33.1-15. Reserved.~~

Drafting note: This section is removed because it is carried as reserved in the existing title.

~~§ 33.1-16~~ 33.2-XXX. Furnishing information regarding right-of-way transactions.

Upon written request to the central office of the Department ~~of Transportation~~, the Commissioner of Highways shall furnish information regarding right-of-way transactions where any public funds are expended. Such information shall not be released prior to ~~sixty~~ 60 days following the transaction to any person not a party directly interested in such transaction.

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

Drafting note: Technical changes.

~~§ 33.1-17.~~

Drafting note: Repealed by Chapter 746 of the Acts of Assembly of 1976.

§ ~~33.1-223.2:2~~ 33.2-XXX. Commissioner of Highways to provide written notice of decision to dispose of real property.

Whenever the ~~Commonwealth Transportation~~ Board or the Department decides to sell or otherwise dispose of any surplus real property, the Commissioner of Highways shall provide written notice of such decision to the mayor or chairman of the governing body of the locality in

which the property or any portion thereof is located. Any failure to provide or receive such notice shall not create a cloud on the title to the property.

Drafting note: Technical changes.

§ ~~33.1-12.2~~ 33.2-XXX. Commissioner of Highways to establish community service landscaping program.

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

Drafting note: Technical changes.

~~§§ 33.1-13.01, 33.1-13.02.~~

Drafting note: Repealed by Chapters 36 and 152 of the Acts of Assembly of 2011.

§ ~~33.1-13.03~~ 33.2-XXX. Annual report by ~~the Virginia Department of Transportation~~ Commissioner of Highways.

The Commissioner of Highways shall annually report in writing to the Governor and General Assembly, no later than November 30 each year, on (i) the condition and performance of the existing transportation infrastructure, using an asset management methodology and generally accepted engineering principles and business practices to identify and prioritize maintenance and operations needs and to identify performance standards to be used to determine those needs, and funding required to meet those needs; (ii) the Department's strategies for improving safety and security, increasing efficiency in agency programs and projects, and collaborating with the private sector and local government in the delivery of services; (iii) the operating and financial activities of the Department, including, ~~but not limited to,~~ the construction and maintenance programs, transportation costs and revenue, and federal allocations; and (iv) other such matters of importance to transportation in the Commonwealth.

Drafting note: The catchline is amended to reflect the actual content of the section. Here and in other proposed sections, "but not limited to" or similar language is removed when using the term "including" based on § 1-218, which states, "'Includes' means includes, but not limited to." Technical changes are also made.

§ ~~33.1-13.05~~ 33.2-XXX. Gathering and reporting of information and statistics.

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

Drafting note: Section 33.1-13.05 was added by Chapters 585 and 646 of the Acts of Assembly of 2013. Technical changes are made.

§ ~~33.1-190~~ 33.2-XXX. Construction by state or local employees.

909 A. Irrespective of the provisions of § ~~33.1-185~~ 33.2-XXX, in cases of emergency or on
910 any project reasonably estimated to cost not more than \$600,000, the Commissioner of
911 Highways may, ~~at his discretion,~~ build or maintain any of the ~~roads~~ highways in ~~any system the~~
912 systems of state highways by state employees or local employees as he may designate.

913 B. Notwithstanding the provisions of subsection A, the Commissioner of Highways may
914 enter into a written agreement with a locality for the building and maintenance of any of the
915 ~~roads~~ highways in ~~any system the~~ systems of state highways by local employees provided that:
916 (i) the locality has obtained a cost estimate for the work of not more than \$1 million and (ii) the
917 locality has issued an invitation for bid and has received fewer than two bids from private
918 entities to build or maintain such roads.

919 **Drafting note: This section is moved to this proposed Article 3 on powers and**
920 **duties of the Commissioner of Highways because it relates to his responsibilities. Technical**
921 **changes are made.**

922 § ~~33.1-185~~ 33.2-XXX. Advertising for bids.

923 All projects reasonably estimated to cost \$300,000 or more that the ~~Commonwealth~~
924 ~~Transportation~~ Board or the Commissioner of Highways may undertake for construction shall,
925 ~~when such projects are reasonably estimated to cost \$300,000 or more,~~ be let in accordance with
926 ~~Chapter 43 the Virginia Public Procurement Act~~ (§ 2.2-4300 et seq.) ~~of Title 2.2~~. When such
927 projects are reasonably estimated to cost below \$300,000, the Commissioner of Highways may
928 let them to contract, and if such projects are let to contract, they shall be let only in accordance
929 with ~~Chapter 43 of Title 2.2 the Virginia Public Procurement Act~~.

930 ~~The word "project" as As~~ used in this section ~~shall mean,~~ "project" means construction
931 and ~~shall does~~ not include routine maintenance work or the installation of traffic control devices,
932 unless such work is to be performed under contract.

933 **Drafting note: This section is moved to this proposed Article 3 on powers and**
934 **duties of the Commissioner of Highways because it relates to his responsibilities. The**

reference to the Virginia Public Procurement Act is changed to reflect current cross-referencing practices for named chapters of the Code. Other technical changes are made.

~~§§ 33.1-186. through 33.1-189.~~

Drafting note: Repealed by Chapter 647 of the Acts of Assembly of 1982.

§ ~~33.1-222~~ 33.2-XXX. Maps or plats prepared at request and expense of local governing bodies and other groups; Department of Mines, Minerals and Energy to seek other existing sources.

The Commissioner of Highways ~~is hereby authorized in his discretion to have prepared~~ may prepare photogrammetric maps or plats of specific sites or areas at the request of the governing bodies of ~~counties, cities and towns~~ localities of ~~this~~ the Commonwealth, local nonprofit industrial development agencies, planning district commissions, soil and water conservation districts, metropolitan planning organizations, public service authorities, and local chambers of commerce. The request shall have been first reviewed by the Department of Mines, Minerals and Energy to determine whether suitable or alternate maps or plats are currently available, and the local governing body, agency, or chamber must agree to reimburse the Department of Transportation for the cost of producing the maps or plats.

Drafting note: This section is moved to this proposed Article 3 on powers and duties of the Commissioner of Highways because it relates to his responsibilities. Technical changes are made, including changing "counties, cities, and towns" to "localities" in keeping with the titlewide definition of "locality" in § 1-221.

§ ~~33.1-223.2:3~~ 33.2-XXX. Directional signs for certain educational institutions.

For the purpose of this section, "Virginia educational institution" means a for-profit educational institution with its main campus located in the Commonwealth that (i) has, for at least five consecutive years prior to making a request under this section, awarded academic degrees approved by the State Council of Higher Education for Virginia; (ii) offers programs in workforce training or job readiness that contribute to Virginia's economic growth and

development; and (iii) has a combined annual enrollment of at least 1,000 students at its main campus and any branch location situated within a radius of 25 miles from the main campus.

Upon request from the institution, the Commissioner of Highways shall erect and maintain signs at appropriate and conspicuous locations along interstate, primary, or secondary highways, ~~signs~~ providing motorists directions to the main or branch location of any Virginia educational institution. All costs associated with production and erection of signs under this section shall be borne by the affected institution, but all costs associated with maintenance of those signs shall be borne by the ~~Virginia Department of Transportation~~.

~~For the purpose of this section, "Virginia educational institution" means a for-profit educational institution with its main campus located in Virginia that (i) has, for at least five consecutive years prior to making a request under this section, awarded academic degrees approved by the State Council of Higher Education; (ii) offers programs in workforce training or job readiness that contribute to Virginia's economic growth and development; and (iii) has a combined annual enrollment of at least 1,000 students at its main campus and any branch location situated within a radius of twenty-five miles from the main campus.~~ Signs erected by the ~~Virginia Department of Transportation~~ under this section shall be placed in accordance with all applicable Departmental regulations.

Drafting note: This section is moved to this proposed Article 3 on powers and duties of the Commissioner of Highways because it relates to his responsibilities. Technical changes are made. Technical changes are made, including moving the definition in this section to the beginning for clarity.

§ ~~33.1-193~~ 33.2-XXX. Closing highways for safety of public or proper completion of construction; injury to barriers, signs, etc.

If it ~~shall appear~~ appears to the Commissioner of Highways necessary for the safety of the traveling public or for proper completion of work ~~which that~~ is being performed to close any ~~road or~~ highway ~~coming~~ under his jurisdiction to all traffic or any class of traffic, the Commissioner of Highways may close, or cause to be closed, the whole or any portion of such

~~road or~~ highway deemed necessary to be excluded from public travel and may exclude all or any class of traffic from such closed portion. While any such ~~road or~~ highway, or portion thereof, is so closed, or while any such ~~road or~~ highway, or portion thereof, is in process of construction or maintenance, the Commissioner of Highways, or contractor, under authority from the Commissioner of Highways, may erect, or cause to be erected, suitable barriers or obstructions thereon, may post, or cause to be posted, conspicuous notices to the effect that the ~~road or~~ highway, or portion, is closed and may place warning signs, lights, and lanterns on such ~~road or~~ highway, or portions thereof. When such ~~road or~~ highway is closed for the safety of the traveling public or in process of construction or maintenance, as provided in this section, any person who willfully breaks down, drives into new construction work, removes, injures, or destroys any such barrier or barriers or obstructions, tears down, removes, or destroys any such notices, or extinguishes, removes, injures, or destroys any such warning lights or lanterns so erected, posted, or placed ~~shall be~~ is guilty of a Class 1 misdemeanor.

Drafting note: This section is moved to this proposed Article 3 on powers and duties of the Commissioner of Highways because it relates to his responsibilities. This section is one of a great many in which "road" and "highway" are used interchangeably, sometimes in the same sentence. This draft has sought to use "highway" to refer to state-controlled and state-maintained thoroughfares and to use "road" to refer to other thoroughfares. Technical changes are also made.

~~§ 33.1-194 33.2-XXX~~. Providing ~~road~~ highway detours.

Whenever necessary, the Commissioner of Highways shall select, lay out, maintain, and keep in as good repair as possible suitable detours, by the most practical route, while the highways ~~or roads~~ are being improved or constructed, and he shall place or cause to be placed explicit directions to the traveling public during repair of any such highway ~~or road~~ under process of construction.

Drafting note: This section is moved to this proposed Article 3 on powers and duties of the Commissioner of Highways because it relates to his responsibilities.

References to "road" are stricken to maintain the practice of using the term "highway." A technical change is also made.

§ ~~33.1-197~~ 33.2-XXX. Connections over shoulders of highways for intersecting private roads.

The Commissioner of Highways shall permit, ~~at places~~ suitable connections from where private roads leading to and from private homes intersect improved highways, ~~suitable connections from such points of intersection, and~~ over and across the shoulders and unimproved parts of such highways to the paved or otherwise improved parts thereof, ~~so as~~ to provide ~~for~~ the users of such private roads safe and convenient means of ingress and egress with motor vehicles to and from the paved or otherwise improved parts of such highways.

Drafting note: This section is moved to this proposed Article 3 on powers and duties of the Commissioner of Highways because it relates to his responsibilities. Technical changes are made, including modernization of language.

§ ~~33.1-198~~ 33.2-XXX. Connections over shoulders of highways for intersecting commercial establishment entrances.

The Commissioner of Highways shall permit, ~~at places~~ suitable connections from where commercial establishment entrances are desired to intersect improved highways, ~~suitable connections from such points of intersection and~~ over and across the shoulders and unimproved parts of such highways to the paved or otherwise improved parts thereof that comply with the ~~Commissioner of Highways'~~ access management standards of the Commissioner of Highways for the location, spacing, and design of entrances, taking into account the operating characteristics and federal functional classification of the highway, ~~so as~~ to provide ~~for~~ the users of such entrances safe and convenient means of ingress and egress with motor vehicles to and from the paved or otherwise improved parts of such highways while minimizing the impact of such ingress and egress on the operation of such highways, provided, ~~however,~~ that any person desiring such an entrance shall:

1. Be required first to obtain a permit therefor from the Commissioner of Highways;

- 1042 2. Provide the entrance at his expense;
- 1043 3. If required by the Commissioner of Highways, provide for the joint use of the desired
- 1044 entrance with adjacent property owners or provide evidence of such efforts; and
- 1045 4. Construct the entrance or have the entrance constructed, including such safety
- 1046 structures as are required by the Commissioner of Highways, pursuant to the Department of
- 1047 Transportation's ~~design standards and "Land Use Permit Manual," the latter of which is filed as~~
- 1048 ~~part of the Virginia Administrative Code applicable regulations, standards, or guidelines~~
- 1049 concerning highway access management standards and land use permits.

1050 All commercial entrances whether or not constructed under this section shall be

1051 maintained by the owner of the premises at all times in a manner satisfactory to the

1052 Commissioner of Highways.

1053 Any person violating the provisions of this section ~~shall be~~ is guilty of a misdemeanor,

1054 ~~and, upon conviction, shall be fined~~ punishable as a fine of not less than \$5 nor more than \$100

1055 for each offense. Following a conviction and 15 days for correction, each day during which the

1056 violation continues shall constitute a separate and distinct offense and be punishable as such.

1057 Such person shall be civilly liable to the Commonwealth for actual damage sustained by the

1058 Commonwealth by reason of his wrongful act.

1059 **Drafting note: This section is moved to this proposed Article 3 on powers and**

1060 **duties of the Commissioner of Highways because it relates to his responsibilities. The Land**

1061 **Use Permit Manual was repealed from the Virginia Administrative Code in 2010 and**

1062 **replaced in VAC with a chapter named Land Use Permit Regulations; accordingly, its**

1063 **reference is stricken and replaced with more generic and up-to-date language from the**

1064 **Department of Transportation. Technical changes are also made.**

1065 § ~~33.1-199~~ 33.2-XXX. Replacing entrances destroyed ~~by Commissioner in the repair or~~

1066 construction of highways.

1067 The Commissioner of Highways shall review the existing access to any parcel of land

1068 having an entrance destroyed in the repair or construction of the systems of state highways and

shall provide access to the systems of state highways in a manner that will serve the parcel of land and ensure efficient and safe highway operation.

Drafting note: This section is moved to this proposed Article 3 on powers and duties of the Commissioner of Highways because it relates to his responsibilities. The catchline is amended to better reflect the content of the section.

§ ~~33.1-200~~ 33.2-XXX. Paying for damages sustained to personal property ~~by reason~~ because of work projects, etc.

The Commissioner of Highways ~~is authorized and empowered, in his discretion, to may~~ pay and settle claims and demands against the Commonwealth arising as a result of damages sustained to personal property by reason of work projects or the operation of state-owned or operated equipment when engaged in the construction, reconstruction, or maintenance of the ~~State Highway System~~ primary state highway system, unless said claims or demands arise as a result of negligence of the person or persons asserting such claims or demands. Nothing ~~herein contained in this section~~ shall be construed as imposing any legal liability upon the Commonwealth to pay such claims or demands, nor as giving the consent of the Commonwealth to be sued in any action or suit to recover on such claims or demands in the event the ~~said~~ Commissioner of Highways refuses payment of said claims or demands.

Drafting note: This section is moved to this proposed Article 3 on powers and duties of the Commissioner of Highways because it relates to his responsibilities. For clarity and in keeping with the convention followed throughout this title, a reference to "the State Highway System" is amended to "the primary state highway system" because both terms refer to the same highway system. Technical changes are also made.

§ ~~33.1-200.2~~ 33.2-XXX. Removal of snow and ice from public highways by private entities.

Upon request by a person, the Commissioner of Highways may authorize such person to hire private persons, firms, contractors, or entities to remove snow and ice from any public highway in Planning District ~~Eight~~ 8, provided that there will be no costs to the Commonwealth

or its political subdivisions for work pursuant to this section. No private person, firm, contractor, or entity employed to remove snow and ice from any public highway shall be afforded sovereign immunity or immunity in any form whatsoever. Private persons, firms, contractors, or entities so employed shall be liable for civil damages, including, ~~but not limited to,~~ damages for death, injury, or property damage resulting from any act or omission relating to the removal of snow and ice from public highways. Nothing contained in this section shall limit the authority of the Commissioner, of Highways granted under other provisions of law, to authorize or contract for the removal of snow and ice from public highways.

Drafting note: This section is moved to this proposed Article 3 on powers and duties of the Commissioner of Highways because it relates to his responsibilities. Here and in other proposed sections, "but not limited to" or similar language is removed when using the term "including" based on § 1-218, which states, "'Includes' means includes, but not limited to." Technical changes are also made.

~~§ 33.1-198.1 33.2-XXX. Comprehensive Commissioner of Highways to develop and implement comprehensive~~ highway access management standards.

A. ~~Comprehensive For purposes of this section, "comprehensive~~ highway access management ~~standards are defined as standards" means~~ a coordinated set of state standards and guidelines that allow the Commonwealth and its localities to manage access to the systems of state highways according to their federal functional classification or operational characteristics through the control of and improvements to the location, number, spacing, and design of entrances, median openings, turn lanes, street intersections, traffic signals, and interchanges.

B. The General Assembly declares it to be in the public interest that comprehensive highway access management standards be developed and implemented to enhance the operation and safety of the systems of state highways in order to protect the public health, safety, and general welfare while ensuring that private property is entitled to reasonable access to the systems of state highways. The goals of the comprehensive highway access management standards are:

- 1123 1. To reduce traffic congestion and impacts to the level of service of highways, leading
1124 to reduced fuel consumption and air pollution;
1125 2. To enhance public safety by decreasing traffic crash rates;
1126 3. To support economic development in the Commonwealth by promoting the efficient
1127 movement of people and goods;
1128 4. To reduce the need for new highways and road widening by improving the
1129 performance of the existing systems of state highways; and
1130 5. To preserve public investment in new highways by maximizing their performance.

1131 C. The Commissioner of Highways shall develop and implement comprehensive
1132 highway access management standards for managing access to and preserving and improving
1133 the efficient operation of the ~~state~~ systems of state highways. The comprehensive highway
1134 access management standards shall include ~~but not be limited to~~ standards and guidelines for the
1135 location, number, spacing, and design of entrances, median openings, turn lanes, street
1136 intersections, traffic signals, and interchanges.

1137 Nothing in such standards shall preempt the authority of a local government to regulate
1138 the type or density of land uses abutting the ~~state system of~~ systems of state highways.

1139 **Drafting note: This section is moved to this proposed Article 3 on powers and**
1140 **duties of the Commissioner of Highways because it relates to his responsibilities.**
1141 **References to the "state system of highways" are amended to reflect the definition in § 1-**
1142 **251, "systems of state highways" meaning all roads within the jurisdiction and control of**
1143 **the Commonwealth Transportation Board. Technical changes are also made.**

1144 § ~~33.1-217~~ 33.2-XXX. ~~Establishment of recreational~~ Recreational waysides; regulations;
1145 penalties for violations.

1146 (a) ~~A.~~ To promote the safety, convenience, and enjoyment of travel on, and protection of
1147 the public investment in, highways of ~~this the~~ Commonwealth, and for the restoration,
1148 preservation, and enhancement of scenic beauty within and adjoining such highways, it is

hereby declared to be in the public interest to acquire and establish recreational waysides and areas of scenic beauty adjoining the highways of ~~this~~ the Commonwealth.

~~(b)~~ B. The Commissioner of Highways may, whenever in his opinion it is ~~to~~ in the best interest of the Commonwealth, accept from the United States, or any authorized agency thereof, a grant or grants of any recreational waysides established and constructed by the United States, or any such agency thereof, or a grant or grants of funds for landscaping and scenic enhancement of highways, and the Commissioner of Highways may, on behalf of the Commonwealth, enter into a contract or contracts with the United States, or any such agency thereof, to maintain and operate any such recreational waysides ~~which that~~ may be so granted to the Commonwealth and may do all things necessary to receive and expend federal funds for landscaping and scenic enhancement.

~~(c)~~ C. The Commissioner of Highways may, whenever it is ~~to~~ in the best interest of the operation of the ~~interstate, Interstate System or~~ the primary or ~~the~~ secondary state highway system ~~of state highways~~, establish, construct, maintain, and operate ~~adjoining the state highway~~ appropriate recreational waysides and areas of scenic beauty adjoining such highways.

~~(d)~~ D. The Commissioner ~~is authorized to~~ of Highways may acquire by purchase, gift, or the power of eminent domain such land or interest in land as may be necessary to carry out the provisions of this section, provided that in exercising the power of eminent domain for areas of scenic beauty, such areas ~~must~~ must adjoin and lie within ~~one hundred~~ 100 feet of the right-of-way of the highway, and the procedure shall be, mutatis mutandis, ~~the same~~ as provided for the acquisition of land by the Commissioner of Highways in ~~Article 7 (§ 33.1-89 et seq.) of this chapter XXX.~~

~~§ 33.1-218. Rules and regulations for use of recreational waysides.~~

E. The ~~Commonwealth Transportation~~ Board ~~is authorized and empowered to~~ may establish ~~rules and~~ regulations for the use of recreational waysides including ~~rules and~~ regulations relating to ~~(a)~~ (i) the time, place, and manner of parking of vehicles, ~~(b);~~ (ii) activities ~~which that~~ may be conducted within such waysides, ~~(c);~~ (iii) solicitation and selling

within the waysides, ~~(d); and (iv)~~ such other matters as may be necessary or expedient in the interest of the motoring public.

The ~~rules and~~ regulations when adopted by the ~~Commonwealth Transportation~~ Board shall be posted in a conspicuous place at each wayside, along with such other signs as the Commissioner of Highways deems necessary to advise the public.

Any person violating any ~~rule and~~ regulation adopted under this section ~~shall be is~~ guilty of a misdemeanor ~~and upon conviction be fined~~ punishable as a fine of not less than \$5 nor more than \$100 for each offense.

~~§ 33.1-219. Such waysides part of interstate, primary or secondary system.~~

F. Such recreational waysides and areas of scenic beauty, when so acquired, established, maintained, and operated shall be deemed to be a part of the ~~interstate, Interstate System or~~ primary or secondary state highway system, but land acquired for areas of scenic beauty shall not be deemed a part of the right-of-way for the purpose of future acquisition of areas of scenic beauty under the provisions of ~~§ 33.1-217~~ subsections A through D.

Drafting note: This proposed section combines existing §§ 33.1-217, 33.1-218, and 33.1-219, all of which deal in some way with recreational waysides. Technical changes are also made, including use of "regulations" rather than "rules and regulations" per recommendation of the Code Commission.

~~§ 33.1-220.~~

Drafting note: Repealed by Chapter 428 of the Acts of Assembly of 2011.

~~§ 33.1-223.2:1~~ 33.2-XXX. Wetlands mitigation banking.

When authorization is required by federal or state law for any project affecting wetlands and such authorization is conditioned upon compensatory mitigation for adverse impacts to wetlands, the Commissioner of Highways is authorized to expend funds for the purchase of, or is authorized to use, credits from any wetlands mitigation bank, including any owned by the Department, that has been approved and is operating in accordance with applicable federal and state guidance, laws, or regulations for the establishment, use, and operation of mitigation banks

as long as: ~~(1) (i)~~ the bank is in the same fourth order subbasin, as defined by the hydrologic unit boundaries of the National Watershed Boundary Dataset, as the impacted site, or in an adjacent subbasin within the same river watershed; as the impacted site, or it meets all the conditions found in clauses ~~(i) (a)~~ through ~~(iv) (d)~~ and either clause ~~(v) (e)~~ or ~~(vi) of this section (f)~~; ~~(2) (ii)~~ the bank is ecologically preferable to practicable on-site and off-site individual mitigation options, as defined by federal wetland regulations; and ~~(3) (iii)~~ the banking instrument, if approved after July 1, 1996, has been approved by a process that included public review and comment. When the bank is not located in the same subbasin or adjacent subbasin within the same river watershed as the impacted site, the purchase or use of credits shall not be allowed unless the Commissioner of Highways demonstrates to the satisfaction of the agency requiring compensatory mitigation that ~~(i) (a)~~ the impacts will occur as a result of a ~~Virginia~~ Department of Transportation linear project; ~~(ii) (b)~~ there is no practical same river watershed mitigation alternative; ~~(iii) (c)~~ the impacts are less than one acre in a single and complete project within a subbasin; ~~(iv) (d)~~ there is no significant harm to water quality or fish and wildlife resources within the river watershed of the impacted site; and either ~~(v) (e)~~ impacts within the Chesapeake Bay watershed are mitigated within the Chesapeake Bay watershed as close as possible to the impacted site or ~~(vi) (f)~~ impacts within subbasins 02080108, 02080208, and 03010205, as defined by the National Watershed Boundary Dataset, are mitigated in-kind within those subbasins, as close as possible to the impacted site. After July 1, 2002, the provisions of clause ~~(vi) (f)~~ shall apply only to impacts within subdivisions of the listed subbasins where overlapping watersheds exist, as determined by the Department of Environmental Quality, provided the Department of Environmental Quality has made such a determination by that date.

For the purposes of this section, "river watershed" means the Potomac River Basin, Shenandoah River Basin, James River Basin, Rappahannock River Basin, Roanoke and Yadkin Rivers Basin, Chowan River Basin (including the Dismal Swamp and Albemarle Sound), Tennessee River Basin, Big Sandy River Basin, Chesapeake Bay and its Small Coastal Basins, Atlantic Ocean, York River Basin, and the New River Basin.

Drafting note: This section is moved to this proposed Article 3 on powers and duties of the Commissioner of Highways because it relates to his responsibilities. For clarity, the reference to "the Department" is amended to "the Department of Environmental Quality," since two Departments are discussed in this section. Technical changes are also made.

§ ~~33.1-248~~ 33.2-XXX. Expenditure of funds ~~upon~~ for interstate bridges and approaches.

The Commissioner of Highways may expend from funds now or hereafter available for construction or maintenance of roads, either alone or in cooperation with public road authorities of other states, such funds as he may deem necessary for the construction, maintenance, operation, and repair of interstate highway bridges, tunnels, and approaches forming connecting links between roads now or hereafter in the systems of state highways and public roads of other states.

Drafting note: This section is moved to this proposed Article 3 on powers and duties of the Commissioner of Highways because it relates to his responsibilities. Technical changes are made.

§ ~~33.1-249~~ 33.2-XXX. Maintenance and operation of city and state line bridges.

The governing bodies of cities and towns having ~~more populations greater~~ than 3,500 ~~population~~ and the Commissioner of Highways may enter into agreements, upon such terms and conditions as may be necessary, for the maintenance of public highway bridges or tunnels lying partly within and partly ~~without~~ outside the incorporated limits of such cities and towns.

The Commissioner of Highways may enter into agreements, with other states and the District of Columbia, upon such terms and conditions as may be necessary, for the maintenance and operation, including the issuance of permits, of public highway bridges or tunnels lying partly within and partly ~~without~~ outside the territorial limits of ~~this the~~ Commonwealth.

Drafting note: This section is moved to this proposed Article 3 on powers and duties of the Commissioner of Highways because it relates to his responsibilities. Technical changes are made.

1257 ~~§ 33.1-250.~~

1258 **Drafting note: Repealed by Chapter 65 of the Acts of Assembly of 2009.**

1259 ~~§ 33.1-201~~ 33.2-XXX. Improving certain private roads and certain town streets and
1260 roads.

1261 A. The Commissioner of Highways may, ~~in his discretion,~~ upon the request of the ~~board~~
1262 ~~of supervisors or other~~ governing body of any county and at the expense of the owner of the
1263 land, improve private roads giving direct access from the home or other central buildings on the
1264 property along the shortest practical route to the nearest public highway; ~~provided, however,~~
1265 that:

1266 ~~(4)-1.~~ The Commissioner of Highways shall in no case undertake any such work until
1267 certification is made by the ~~board of supervisors or other~~ governing body of the county that the
1268 property owner cannot secure the services of a private contractor to perform the work nor then
1269 until the owner has deposited with him a certified check in the amount estimated by the
1270 Commissioner of Highways as the cost of the work;

1271 ~~(2)-2.~~ Not more than \$1,000 shall be expended on any one such private project in any
1272 one year; and

1273 ~~(3)-3.~~ No work of ordinary maintenance shall be done on any such private road under the
1274 provisions of this section.

1275 ~~And B. In addition,~~ the Commissioner of Highways may, upon the request of the council
1276 of any town having a population of less than 1,500 and at the expense of such town, improve
1277 and maintain any streets or roads therein not in the ~~State Highway System~~ primary state
1278 highway system. As to streets and roads in such town, no certification by the board of
1279 supervisors or deposit shall be necessary.

1280 C. Any work done by the Commissioner of Highways pursuant to the provisions of this
1281 section shall only be done with the equipment and employees of the ~~Commonwealth~~
1282 ~~Transportation~~ Board.

Drafting note: This section is moved to this proposed Article 3 on powers and duties of the Commissioner of Highways because it relates to his responsibilities. For clarity, references to "the State Highway System" are amended to "the primary state highway system." Technical changes are also made.

§ ~~33.1-210.2~~ 33.2-XXX. Installation and maintenance of ~~certain~~ "children at play" signs in counties and towns.

The governing body of any county or town may enter into an agreement with the Commissioner of Highways allowing the county or town to install and maintain, at locations specified in such agreement, signs alerting motorists that children may be at play nearby. The cost of the signs and their installation shall be paid by the county or town.

The provisions of this section shall not apply to any county that has withdrawn its roads from the secondary state highway system ~~of state highways~~ under the provisions of § 11 of Chapter 415 of the Acts of Assembly of 1932 and has not elected to return.

Drafting note: This section is moved to this proposed Article 3 on powers and duties of the Commissioner of Highways because it relates to his responsibilities. Technical changes are made.

§ ~~33.1-211~~ 33.2-XXX. Tramways and railways along or across public highways; appeals.

A. Whenever any person, firm, or chartered company engaged in mining, manufacturing, or lumber getting has acquired the right-of-way for a tramway or railway, except across or upon a public highway, and desires to cross such highway; or some part thereof; and if such person, firm, or chartered company cannot agree with the Commissioner of Highways, or ~~board of supervisors or other~~ governing body of a county if the road ~~be is~~ is a county road in a county where the roads ~~of which~~ are not within the secondary state highway system ~~of state highways~~, as to the terms and conditions of such crossing, the circuit court of the county in which such highway may be; may prescribe such regulations for the crossing of such highway as will protect the public, and when such regulations have been prescribed, such tramway or railway

may be constructed and maintained or, if already constructed, may be maintained in accordance with such regulations as may be made on the application of the owner of such tramway or railway or on the motion of the attorney for the Commonwealth after notice to such owner.

~~§ 33.1-212. Appeals.~~

B. The Commissioner of Highways or ~~board of supervisors or other~~ governing body or the applicant or owner of the tramway or railway may appeal from the order of the circuit court in the manner prescribed for appeals in controversies concerning roads.

~~§ 33.1-213. Private property not to be condemned for such tramways, etc.~~

C. Nothing contained in ~~§ 33.1-214~~ this section shall be construed as giving the right to condemn private property for such tramway or railway, nor shall the rights of any tramway or railway heretofore lawfully acquired be affected.

Drafting note: The provisions of existing §§ 33.1-211, 33.1-212, and 33.1-213, all dealing with construction of tramways or railways along or across public highways, are consolidated in this single section. Technical changes are also made.

~~§ 33.1-223.2:8~~ § 33.2-XXX. Highway safety corridor program.

The Commissioner of Highways shall establish a highway safety corridor program, under which a portion of ~~Virginia~~ primary state highway system ~~highways~~ and ~~interstate system~~ highways Interstate System may be designated by the Commissioner of Highways as highway safety corridors, to address highway safety problems through law enforcement, education, and safety enhancements. In consultation with the Department of Motor Vehicles and the Superintendent of State Police, the Commissioner of Highways shall establish criteria for the designation and evaluation of highway safety corridors, ~~to include~~ including a review of crash data, accident reports, type and volume of vehicle traffic, and engineering and traffic studies. The Commissioner of Highways shall hold a public hearing prior to the adoption of the criteria to be used for designating a highway safety corridor. The Commissioner of Highways shall hold a minimum of one public hearing before designating any specific highway corridor as a

highway safety corridor. The public hearing or hearings for a specific corridor shall be held at least 30 days prior to the designation at a location as close to the proposed corridor as practical.

The Department of Transportation shall erect signs that designate highway safety corridors and the penalties for violations committed within the designated corridors.

Drafting note: This section is moved to this proposed Article 3 on powers and duties of the Commissioner of Highways because it relates to his responsibilities. References to highways and highway systems are amended to maintain consistency throughout proposed Title 33.2. Technical changes are also made.

~~§ 33.1-206~~ 33.2-XXX. Erection and maintenance of newspaper route boxes.

The publishers of all newspapers having a circulation in rural sections of the Commonwealth may erect and maintain suitable newspaper route boxes along and on the rights-of-way of the public ~~roads and~~ highways throughout such rural sections, in which to deposit ~~such papers~~ newspapers for their subscribers. The short name of the newspaper to be deposited in each such box, but nothing more, may be plainly printed thereon. All such boxes shall be ~~so~~ located as so they do not ~~to~~ interfere with or endanger public travel on ~~such roads and~~ highways. All such locations shall meet with the approval of the Commissioner of Highways.

Drafting note: This section is moved to this proposed Article 3 on powers and duties of the Commissioner of Highways because it relates to his responsibilities. Technical changes are made.

Article 4.

Department of Transportation.

Drafting note: Proposed Article 4 of Chapter 2 is composed of sections relating to the powers, duties, and obligations of the Department of Transportation. Existing sections are reordered for a more logical placement in the Code.

~~§ 33.1-13.03:1~~ 33.2-XXX. Responsibilities of the Department of Transportation for analysis of transportation projects in the Northern Virginia Transportation District.

1362 A. The Department of Transportation, in ongoing coordination with the Commonwealth
1363 Transportation Board, the Department of Rail and Public Transportation, and the Northern
1364 Virginia Transportation Authority, shall evaluate all significant transportation projects,
1365 including highway, mass transit, and technology projects, in and near the Northern Virginia
1366 Transportation District, to the extent that funds are available for such purpose. The evaluation
1367 shall provide an objective, quantitative rating for each project according to the degree to which
1368 the project is expected to reduce congestion and, to the extent feasible, the degree to which the
1369 project is expected to improve regional mobility in the event of a homeland security emergency.
1370 Such evaluation shall rely on analytical techniques and transportation modeling, including those
1371 that employ computer simulations currently and customarily employed in transportation
1372 planning. The Department of Transportation may rely on the results of transportation modeling
1373 performed by other entities, including the Northern Virginia Transportation Authority and
1374 private entities contracted for this purpose, provided that such modeling is in accordance with
1375 this section. The Department of Transportation shall publicize the quantitative ratings
1376 determined for each project on its website and complete the evaluation at least once every four
1377 years, with interim progress reports provided on the website at least once every six months
1378 starting January 1, 2013.

1379 B. In determining the allocation of highway construction funding in the Northern
1380 Virginia Transportation District, the ~~Commonwealth Transportation~~ Board shall, in ongoing
1381 coordination with the Northern Virginia Transportation Authority, give priority to projects that
1382 most effectively reduce congestion in the most congested corridors and intersections. However,
1383 nothing in this section shall limit the ability of the ~~Commonwealth Transportation~~ Board to
1384 consider other criteria, including the performance-based criteria set forth in § ~~15.2-4838~~ 33.2-
1385 XXX.

1386 C. Nothing in this section shall be construed or implied to direct funding to the Northern
1387 Virginia Transportation District from another transportation district.

D. For purposes of this section, the significant transportation projects to be evaluated shall comprise at least 25 such projects selected according to priorities determined by the ~~Commonwealth Transportation~~ Board, in ongoing coordination with the Northern Virginia Transportation Authority, without regard to the funding source of the project, and may include ~~but not be limited to:~~

1. Projects included in the version of the Financially Constrained Long-Range Transportation Plan of the National Capital Region Transportation Planning Board in effect when the evaluation is made, plus additional projects in the Northern Virginia Transportation Authority's TransAction 2030 Regional Transportation Plan and subsequent updates; and

2. Other highway, rail, bus, and technology projects that could make a significant impact on mobility in the region, ~~to include~~ including additional Potomac River crossings west and south of Washington, D.C.; extension of the Metro Orange Line, Metro Yellow Line, and Metro Blue Line; bus rapid transit on Interstate ~~Route~~ 66; vehicle capacity and mass transit improvements on the U.S. Route 1 corridor; and implementation of relevant portions of the Statewide Transportation Plan established pursuant to § ~~33.1-23.03~~ 33.2-XXX.

Drafting note: Existing § 33.1-13.03:1 was amended by Chapters 786 and 825 of the Acts of Assembly of 2013; those changes have been incorporated into the existing language in this document. In subsection D, "but not be limited to" is removed based on § 1-218, which states, "'Includes' means includes, but not limited to." Technical changes are also made.

§ ~~33.1-19.1~~ 33.2-XXX. Environmental permits for highway projects; timely review.

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

1415 shall within 120 days of receipt of a complete application issue the permit, issue the permit with
1416 conditions, deny the permit, or decide whether a public meeting or hearing is required by law. If
1417 a public meeting or hearing is held, it shall be held within 45 days of the decision to conduct
1418 such a proceeding, and a final decision as to the permit shall be made within 90 days of
1419 completion of the public meeting or hearing. For coverage under general permits issued
1420 pursuant to Title 10.1, 28.2, 29.1, or 62.1, the state agency, board, or commission that issues
1421 such permits shall, within 10 business days of receipt of an application from the Department-of
1422 ~~Transportation~~ for-a-road or highway construction project, review the application for
1423 completeness and either accept the application or request additional specific information from
1424 the Department-of-Transportation. Coverage under the general permit shall be approved,
1425 approved with conditions, or denied within 30 business days of receipt of a complete
1426 application.

1427 **Drafting note: Technical changes.**

1428 ~~§ 33.1-20.~~

1429 **Drafting note: Repealed by Chapter 607 of the Acts of Assembly of 1979.**

1430 ~~§ 33.1-21.~~

1431 **Drafting note: Repealed by Chapters 104 and 164 of the Acts of Assembly of 2011.**

1432 ~~§ 33.1-223.2:4~~ 33.2-XXX. Department of Transportation to maintain drainage
1433 easements.

1434 Whenever, in connection with or as a precondition to the construction or reconstruction
1435 of any highway, the Department shall have acquired any permanent drainage easement, the
1436 Department shall, until such time as such easement shall have been terminated, perform repairs
1437 required to protect the roadway and to ensure the proper function of the easement within the
1438 right-of-way and within the boundaries of such easement.

1439 **Drafting note: This section is moved to this proposed Article 4 on the Department**
1440 **because it relates to its duties and responsibilities. Technical changes are made.**

1441 ~~§ 33.1-189.1~~ 33.2-XXX. Specifications in purchasing lubricating motor oil.

A. Standard specifications adopted for lubricating motor oil for competitive bidding contracts to be let by the Department ~~of Transportation~~ shall be prescribed so as to include re-refined or recycled lubricating motor oil. Specifications adopted for circumstances or equipment ~~which that~~ require specialized treatment or products may be excluded.

B. The Department shall compile and publish a list of business entities ~~which that~~ commercially distribute re-refined or recycled lubricating motor oil ~~which that~~ complies with the standard specifications adopted by the Department pursuant to the provisions of this section. The Department shall make the list available to local governing bodies upon request.

Drafting note: This section is moved to this proposed Article 4 on the Department because it relates to its duties and responsibilities. Technical changes are made.

§ ~~33.1-190.1~~ 33.2-XXX. Value engineering required in certain projects.

The Department shall employ value engineering in conjunction with any project on any highway system using criteria established by the Department ~~and~~, including ~~but not limited to~~ all projects costing more than \$5 million. For the purposes of this section, "value engineering" ~~shall mean~~ means a systematic process of review and analysis of an engineering project by a team of persons not originally involved in the project. Such team may offer suggestions ~~which that~~ would improve project quality and reduce total project cost, ranging from combination or elimination of inefficient or expensive parts or steps in the original proposal to total redesign of the project using different technologies, materials, or methods.

After a review, the Commissioner of Highways may waive the requirements of this section for any project for compelling reasons. Any such waiver shall be in writing, state the reasons for the waiver, and apply only to a single project.

Drafting note: This section is moved to this proposed Article 4 on the Department because it relates to its duties and responsibilities. Here and in other proposed sections, "but not limited to" or similar language is removed when using the term "including" based on § 1-218, which states, "'Includes' means includes, but not limited to." Technical changes are also made.

§ ~~33.1-200.1~~ 33.2-XXX. Removal of snow from driveways of volunteer fire departments and rescue squads.

~~The On the roads under the jurisdiction of the Department, the Department of Transportation shall remove snow from the driveways and entrances on the roads under the jurisdiction of the Department of Transportation of volunteer fire departments and volunteer rescue squads when the chief of any individual volunteer fire department, or the head of any individual volunteer rescue squad, makes a written request for such snow removal service; provided that such service shall only be performed when such service can be performed during the normal course of snow removal activities of the Department of Transportation without interfering with, or otherwise inconveniencing, such snow removal activities; provided further, that such.~~ Such service shall not extend to any parking lots adjacent to such driveways and entranceways not normally used by the volunteer fire department or volunteer rescue squad vehicles as their direct driveway or entrance.

Drafting note: This section is moved to this proposed Article 4 on the Department because it relates to its duties and responsibilities. Technical changes are made.

§ ~~33.1-223.2:18~~ 33.2-XXX. School bus ~~stops~~ stop signs or other indicators.

The Department shall allow any local school board to install signs or other devices to indicate school bus stops. ~~Installation of school bus stop signs or other devices on any state-maintained highway shall be,~~ provided the installation is approved by the Department prior to installation. ~~This is not a requirement~~ No local school board shall be required to install signs at all school bus stops. Maintenance, repair, and replacement of school bus stop signs shall be the responsibility of the local school board. The Department, in conformance with the Department's current policies for emergency snow removal operations, shall use its best efforts to ensure that signed school bus stop areas shall not be obstructed by snow removal operations. Installation of school bus stop signs shall not designate the area as school property.

Drafting note: This section is moved to this proposed Article 4 on the Department because it relates to its duties and responsibilities. Technical changes are made.

§ ~~33.1-210~~ 33.2-XXX. Livestock on right-of-way of ~~any system~~ the systems of state highways.

No person, firm, or corporation shall pasture or graze, or cause to be pastured or grazed, or otherwise permit to be on any right-of-way of any ~~road~~ highway in ~~any system~~ the systems of state highways, except as ~~herein~~ otherwise provided in this section, any livestock, unless such animal or animals be securely tied or held by chain or rope so as to prevent such animal from getting on the traveled portion of the highway; ~~provided, however,~~ that this section shall not apply when such livestock are being driven along such ~~road or right-of-way~~ highway while under the control of a responsible drover or drovers.

~~However, nothing~~ Nothing in this section shall prevent the owners of abutting parcels of land from grazing livestock unsecured by chain or rope on secondary roads ~~which that~~ (i) have been taken into the system as gated roads and (ii) carry fewer than ~~fifty~~ 50 vehicles per day.

On gated roads carrying ~~fifty~~ 50 or more vehicles per day, the Department ~~of Transportation~~ shall, upon the request of the local governing body and upon the recordation of a deed of gift or donation by such landowner of not less than ~~forty-foot~~ a 40-foot right-of-way, reimburse abutting landowners a sum equal to ~~one-dollar~~ \$1 per foot of fencing ~~which that~~ must be installed to keep cattle from entering the right-of-way from such abutting land. Where such fencing separates pasture land from a water source used by the owner of such pasture land to water his livestock, the Department ~~of Transportation~~ shall construct or have constructed a means of access by which stock may reach the water source from the pasture land. Moneys for such fencing and construction of access to water shall be taken from highway construction funds. For purposes of this section, a "gated" road is a road on which, prior to July 1, 1986, abutting landowners have maintained a gate or cattle guard.

Any person, firm, or corporation who ~~shall violate~~ violates any of the provisions of this article shall be fined not less than ~~ten-dollars~~ \$10 nor more than ~~fifty-dollars~~ \$50 for such offense.

Nothing herein shall be construed to transfer the liability for injuries or property damage caused by such grazing livestock.

Drafting note: This section is moved to this proposed Article 4 on the Department because it relates to its duties and responsibilities. Technical changes are made.

~~§ 33.1-210.1.~~

Drafting note: Repealed by Chapter 251 of the Acts of Assembly of 1991.

~~§ 33.1-223.2:9~~ § 33.2-XXX. Comprehensive roadside management program.

The Department shall promulgate regulations for a comprehensive roadside management program. Such program shall include, ~~but not be limited to,~~ opportunities for participation by individuals, communities, and local governments and shall address items ~~to include,~~ including safety, landscape materials, services, funding, recognition, and appropriate signing.

Drafting note: This section is moved to this proposed Article 4 on the Department because it relates to its duties and responsibilities. Technical changes are made, including removing the phrase "but not be limited to" based on § 1-218, which states, "'Includes' means includes, but not limited to."

~~§ 33.1-223.2~~ § 33.2-XXX. Intermittent closing of ~~roads~~ highways subject to flooding; costs; application for permit; notice; issuance of permit.

A. Upon application of the board of directors of any soil and water conservation district and of the board of supervisors of the county wherein the ~~road~~ highway is located, the Department ~~of Transportation~~ is ~~hereby~~ authorized to permit the intermittent closing of any ~~road~~ highway located within the boundaries of such district and county whenever in its judgment it is necessary to do so and when the ~~road~~ highway will be intermittently subject to inundation by floodwaters retained by an approved watershed retention structure. All costs associated with such closing shall be borne by the board of supervisors of the county, including the costs of furnishing, erecting, and removing the necessary signs, barricades, signals, and lights to safeguard and direct traffic.

B. Before any permit may be issued for the temporary inundation and closing of such a ~~road highway~~, an application for such permit shall be made to the Department ~~of Transportation~~ by the board of directors of the soil and water conservation district and the board of supervisors of the county wherein the ~~road highway~~ is located. The application shall specify the ~~road highway~~ involved and shall request that a permit be granted to the county to allow the intermittent closing of the ~~road highway~~.

C. Before making such application, the board of supervisors of the county wherein such ~~road highway~~ is located shall give notice of the proposed action by publication once each week for two consecutive weeks in a newspaper of general circulation in the county, and such notice shall contain a description of the places of beginning and the places of ending of such intermittent closing. In addition to such publication, the board of supervisors of such county shall give notice to all public utilities having facilities located within the rights-of-way of any ~~road highway~~ being closed by mailing a copy of such notice to the office of each such public utility located within the county, or if no office is located within the county, then to the office of such utility located nearest to the county. Furthermore, no such application shall be accepted by the Department ~~of Transportation which that~~ does not certify compliance by the applicants with the ~~aforsaid~~ requirements of publication and notice in the manner prescribed ~~herein in this section~~. All costs associated with the application procedure and notice to the public and to public utilities shall be borne by the board of supervisors of the county.

D. Not sooner than ~~thirty 30~~ days after the last publication and not sooner than ~~thirty 30~~ days after the mailing of such notice, the Department ~~of Transportation~~ may issue the permit with respect to such ~~road highway~~. Nothing herein contained shall require the Department to issue such a permit when the Department, in its sole discretion, does not consider such intermittent closing of ~~roads highways~~ to be in the best interest of fulfilling the Department's duties to the traveling public.

Drafting note: This section is moved to this proposed Article 4 on the Department because it relates to its duties and responsibilities. References to "road" and "roads" are amended to "highway" and "highways." Technical changes are also made.

§ ~~33.1-223.2:7~~ 33.2-XXX. Family restrooms.

The Department ~~of Transportation~~ shall provide family restrooms at all rest areas along ~~interstate~~ Interstate System highways in the Commonwealth. All such family restrooms shall be constructed in accordance with federal law. The provisions of this section shall apply only to rest stops constructed on or after July 1, 2003.

Drafting note: This section is moved to this proposed Article 4 on the Department because it relates to its duties and responsibilities. The reference to "interstate highways" is amended to "Interstate System highways" to maintain consistency throughout proposed Title 33.2. A technical change is also made.

§ ~~33.1-223.2:22~~ 33.2-XXX. Contractor performance bonds for locally administered transportation improvement projects.

Whenever any ~~county, city, or town~~ locality undertakes administration of a transportation improvement project and obtains, in connection therewith, contractor performance bonds that include the ~~Virginia~~ Department ~~of Transportation~~ as a dual obligee, the amount of such bonds shall be no greater than would have been required had the Department not been included as a dual obligee. The surety's obligation to the Department shall be no greater than its obligation to the ~~county, city, or town~~ locality administering the project, and the amount of the bond is the limit of the surety's obligation to either or both obligees.

Drafting note: This section is moved to this proposed Article 4 on the Department because it relates to its duties and responsibilities. Technical changes are made.

§ ~~33.1-223.2:16~~ 33.2-XXX. Localities may use design-build contracts.

~~Counties, cities, and towns~~ Localities may award contracts for the construction of transportation projects on a design-build basis. These contracts may be awarded after a written determination is made by the chief executive officer of the ~~county, city, or town~~ locality that

delivery of the projects must be expedited and that it is not in the public interest to comply with the design and construction contracting procedures normally followed. These contracts shall be of such size and scope to encourage maximum competition and participation by qualified contractors. Such determination shall be retained for public inspection in the official records of the ~~county, city, or town~~ locality and shall include a description of the nature and scope of the project and the reasons for the determination that awarding a design-build contract will best serve the public interest. If state or federal transportation funds are used for the contract, then the ~~county, city, or town~~ locality shall comply with the provisions of § ~~33.1-12, 33.2-XXX~~ and shall request from the Department the authority to administer the project in accordance with pertinent state or federal requirements.

Drafting note: This section is moved to this proposed Article 4 on the Department because it relates to its duties and responsibilities. Technical changes are made.

§ ~~33.1-223.2:27~~ 33.2-XXX. Department of Transportation to provide for training of certain local employees.

The Department ~~of Transportation~~ shall provide for the training and certification of local governments in order that such local governments are capable of administering local maintenance and construction projects that involve the secondary or urban highway system. Such training and certification shall enable such local governments to carry out locally administered projects in compliance with federal and state law and regulations with minimal oversight by Department personnel.

Drafting note: This section is moved to this proposed Article 4 on the Department because it relates to its duties and responsibilities. Technical changes are made.

§ ~~33.1-223.2:10~~ 33.2-XXX. Department of Transportation to maintain property acquired for construction of transportation projects.

Subject to requirements of federal law or regulations and prior to the initiation of project construction, the Department shall mow the grass and remove weeds and debris on property acquired for the construction of a transportation project by the Department. Such activities shall

be performed in accordance with the same schedules used for these activities on other ~~right-of-~~
~~way rights-of-way~~ maintained by the Department in the same locality. At the written request of
the local governing body or a locality, the Department shall provide additional services on the
property acquired for the construction of a transportation project, including removal of
abandoned vehicles. Such additional services shall be funded from the construction allocations
to the project.

**Drafting note: This section is moved to this proposed Article 4 on the Department
because it relates to its duties and responsibilities. Technical changes are made.**

§ ~~33.1-223.2:11~~ 33.2-XXX. Location of landfill gas pipelines in highway right-of-way;
Department of Transportation to provide notice to counties.

Whenever the Department grants its permission for the construction, installation,
location, or placement of a landfill gas pipeline within any highway right-of-way, notice ~~thereof~~
shall be provided by the Department to every county through which such pipeline or any portion
thereof will pass.

For the purposes of this section, "landfill gas pipeline" means those facilities exempted
from the definition of public utility in subdivisions (b) (6), ~~(b)~~ (7), and ~~(b)~~ (8) of § 56-265.1.

**Drafting note: This section is moved to this proposed Article 4 on the Department
because it relates to its duties and responsibilities. Technical changes are made.**

§ ~~33.1-223.2:14~~ 33.2-XXX. Use of steel plates in connection with highway repairs.

Any person using steel plates in connection with a temporary or permanent repair to the
roadway of any highway shall follow the standards of the ~~Virginia~~ Department ~~of~~
~~Transportation~~ regarding warnings thereof and the marking of such plates. The provisions of
this section shall not apply to any portion of a roadway that is closed to vehicular traffic.

**Drafting note: This section is moved to this proposed Article 4 on the Department
because it relates to its duties and responsibilities. Technical changes are made.**

§ ~~33.1-223.2:19~~ 33.2-XXX. Application and installation of traffic control measures.

Nothing in this title shall be construed to prevent the application and installation of traffic control measures to reduce the negative effects of traffic through residential areas on any component of the secondary highway system that meets the definition of "residence district" ~~contained~~ in § 46.2-100, even if such component also provides access to a "business district" as defined in the same section. Installation of traffic control measures on any state-maintained highway shall be approved by the Department prior to installation.

~~§ 33.1-223.2:20. Application and installation of traffic control measures.~~

~~Nothing Furthermore, nothing~~ in this title shall be construed to prevent the acceptance by the Department ~~of Transportation~~ of private financing for the application and installation of traffic control measures if and when such measures meet the Department's standards.

Drafting note: This proposed section combines two very similar sections, both related to traffic control measures. Technical changes are also made.

~~§ 33.1-223.2:29~~ 33.2-XXX. Periodic quantitative rating of certain highways.

The Department ~~of Transportation~~ shall determine a quantitative rating on the pavement condition and ride quality of every highway in the primary and secondary state highway systems at least once every five years, using metrics generally accepted in the United States for this purpose. The Department shall post these ratings on its website, organized by transportation district, updated at least quarterly, with interpretive guidance, identifying each (i) primary and secondary highway or segment thereof that has been rated, the pavement condition and ride quality rating given, and the date it was last rated and (ii) primary or secondary highway or segment thereof that has not been rated and the approximate date, if available, that the rating is scheduled to be made.

Drafting note: Section 33.1-223.2:29 was added by Chapter 290 of the Acts of Assembly of 2013 and placed in this proposed Article 4 on the Department because it relates to its duties and responsibilities. Technical changes are made.

~~§ 33.1-223.2:21~~ 33.2-XXX. Noise abatement practices and technologies.

1679 | A. Whenever the ~~Commonwealth Transportation~~ Board or the Department plan for or
1680 | undertake any highway construction or improvement project and such project includes or may
1681 | include the requirement for the mitigation of traffic noise impacts, first consideration should be
1682 | given to the use of noise reducing design and low noise pavement materials and techniques in
1683 | lieu of construction of noise walls or sound barriers. Vegetative screening, such as the planting
1684 | of appropriate conifers, in such a design would be utilized to act as a visual screen if visual
1685 | screening is required.

1686 | B. The Department shall expedite the development of quiet pavement technology such
1687 | that applicable contract solicitations for paving shall include specifications for quiet pavement
1688 | technology and other sound mitigation alternatives in any case in which sound mitigation is a
1689 | consideration. To that end, the Department shall construct demonstration projects sufficient in
1690 | number and scope to assess applicable technologies. The assessment shall include evaluation of
1691 | the functionality and public safety of these technologies in Virginia's climate and shall be
1692 | evaluated over at least two full winters. The Department shall provide an initial interim report to
1693 | the Governor and the General Assembly by June 30, 2012, a second interim report by June 30,
1694 | 2013, and a final report by June 30, 2015. The report shall include results of demonstration
1695 | projects in Virginia, results of the use of quiet pavement in other states, a plan for routine
1696 | implementation of quiet pavement, and any safety, cost, or performance issues that have been
1697 | identified by the demonstration projects.

1698 | C. The governing body of any ~~county, city, or town~~ locality, at its own expense, may
1699 | evaluate noise from highways it may designate for analysis. Such evaluation shall be accepted
1700 | and relied upon by the Department if such evaluation is prepared in accordance with and
1701 | complies with applicable federal law, regulations, and requirements, as well as guidelines and
1702 | policies issued by the ~~Commonwealth Transportation~~ Board, relating to noise abatement and
1703 | evaluation. This provision shall not apply to projects for which the ~~Virginia~~ Department ~~of~~
1704 | ~~Transportation~~ is required to perform a noise analysis.

Drafting note: Existing § 33.1-223.2:21 was amended by Chapter 120 of the Acts of Assembly of 2013; those changes have been incorporated into the existing language in this document. This section is moved to this proposed Article 4 on the Department because it relates to its duties and responsibilities. Technical changes are made.

§ ~~33.1-195~~ 33.2-XXX. Sale of materials to, and use of equipment by, ~~cities, towns, counties, localities~~ and school boards.

The Department may lend or rent equipment and sell materials and supplies used in the building or repairing of ~~roads~~ highways and streets to any ~~city, town, county, locality~~ or school board, upon such terms and conditions as may be agreed upon by the Department and such ~~city, town, county, locality~~ or school board. ~~Provided, provided that~~ the governing body of ~~such city, town, county, locality~~ or school board submits to the Department a certificate setting forth that the material or equipment cannot be furnished from private sources within a reasonable time. ~~Provided, further, that the foregoing provide~~ This section shall not apply to towns with a population of less than 3,500 inhabitants or to the purchase of paint for traffic marking purposes by any ~~city, town, county, locality~~ or school board.

Drafting note: Existing § 33.1-195 was amended by Chapters 585 and 646 of the Acts of Assembly of 2013; those changes have been incorporated into the existing language in this document. This section is moved to this proposed Article 4 on the Department because it relates to its duties and responsibilities. References are changed from "road" to "highway" and references to "city, town, county" are changed to "locality" to maintain consistency throughout proposed Title 33.2. Technical changes are also made.

§ ~~33.1-207~~ 33.2-XXX. Facilities for persons desiring to fish from bridges.

The Department may, ~~in its discretion,~~ upon the request in writing of any department or agency of the Commonwealth, construct and maintain, on or in connection with any bridges ~~which that~~ now constitute a part of any system of state highways, ~~such~~ platforms, walkways, or other facilities as may be necessary or proper for the safety and convenience of persons who desire to fish therefrom, ~~the~~. The cost ~~thereof to shall~~ be paid out of funds furnished by the

department or agency making the request from its own funds or funds furnished to such department or agency by gift from private sources. The Department~~of Transportation~~ shall not be held responsible for damage caused by the construction or use of such facilities.

Drafting note: Existing § 33.1-207 was amended by Chapters 585 and 646 of the Acts of Assembly of 2013; those changes have been incorporated into the existing language in this document. This section is moved to this proposed Article 4 on the Department because it relates to its duties and responsibilities. Technical changes are made.

~~§ 33.1-208 33.2-XXX.~~ Use of streams and lowlands obstructed by newly constructed highways as fishponds or water storage areas.

Whenever any highway is being constructed and the highway is to pass over any stream or lowland the obstruction of which is necessary to such construction or if the present highway construction can be utilized to provide a suitable dam for a fishpond or water storage area, then upon application of the adjacent property owner requesting that it be so used, the Department may permit such use, provided that such dam~~should~~ shall be subject to the provisions of ~~Article 14 (§ 33.1-176 et seq.) of this chapter, §§ 33.2-XXX through 33.2-XXX~~ and any additional cost incurred~~thereby~~ shall be borne by ~~such the requesting~~ property owner.

Drafting note: Existing § 33.1-208 was amended by Chapters 585 and 646 of the Acts of Assembly of 2013; those changes have been incorporated into the existing language in this document. Technical changes are made.

~~§ 33.1-196 33.2-XXX. Oiling of highways Treatment of highway surfaces for dust control.~~

The Department may~~oil the highways~~ treat highway surfaces for stabilization and dust control in any town in ~~this the~~ Commonwealth upon request of the ~~council thereof governing body of such town~~ and may~~oil the highways~~ treat highway surfaces for stabilization and dust control in any county of ~~this the~~ Commonwealth, the secondary~~roads~~ highways within which are not a part of the secondary state highway system~~of state highways~~, upon request of the ~~board of supervisors or other~~ governing body thereof; provided that such ~~council or such board~~

~~of supervisors or other county or town~~ governing body, ~~as the case may be~~, shall pay to the Department the cost of such ~~oiling treatment~~. This section ~~does apply~~ applies to any highway ~~which that~~ is a part of the ~~State Highway System~~ primary or ~~the~~ secondary state highway system ~~of state highways~~.

Drafting note: Existing § 33.1-196 was amended by Chapters 585 and 646 of the Acts of Assembly of 2013; those changes have been incorporated into the existing language in this document. Technical changes are made.

~~Chapter 10.1~~ Article 5.

~~DEPARTMENT OF RAIL AND PUBLIC TRANSPORTATION~~ Department of Rail and Public Transportation.

Drafting note: Existing Chapter 10.1 of Title 33.1 is now proposed Article 5 of Chapter 2 of Title 33.2, composed of sections relating to the Department of Rail and Public Transportation.

~~§ 33.1-391.1 33.2-XXX.~~ Department of Rail and Public Transportation; establishment and agreement.

Upon establishment of the Department of Rail and Public Transportation, the Department of Rail and Public Transportation shall enter into an agreement with the Department of Transportation and the Commonwealth Transportation Board, to be signed by the Secretary of Transportation, the Commonwealth Transportation Commissioner, and the Director of the Department of Rail and Public Transportation, providing that administrative, research, policy analysis, planning, right-of-way acquisition, and such other services as are currently provided by the Department of Transportation shall continue to be provided to the Department of Rail and Public Transportation under the same arrangements as are currently provided to the Directorate of Public Transportation.

Drafting note: This section is currently not set out in full in the Code but is retained per the Department of Rail and Public Transportation.

§ ~~33.1-391.2~~ 33.2-XXX. Department of Rail and Public Transportation created; appointment of Director.

There is hereby created a Department of Rail and Public Transportation reporting to the Secretary of Transportation and subject to the policy oversight of the Commonwealth Transportation Board. The Department shall be headed by a Director, ~~hereinafter referred to in this title as "Director,"~~ who shall be appointed by and serve at the pleasure of the Governor. The Director shall serve as a nonvoting ~~ex-officio~~ ex officio member of the ~~Commonwealth Transportation~~ Board and any committee of the Board dealing with passenger and freight rail, transportation demand management, ridesharing, and public transportation issues.

Drafting note: Technical changes are made, including omitting the definition of "Director," which is now included in the preceding definitions section.

§ ~~33.1-391.3~~ 33.2-XXX. (Effective July 1, 2014) Powers and duties of the Director of the Department of Rail and Public Transportation.

Except such powers as are conferred by law upon the ~~Commonwealth Transportation~~ Board, or such services as are performed by the Department of Transportation pursuant to law, the Director of the Department of Rail and Public Transportation shall have the power to do all acts necessary or convenient for establishing, maintaining, improving, and promoting public transportation, transportation demand management, ridesharing, and passenger and freight rail transportation in the Commonwealth and to procure architectural and engineering services for rail and public transportation projects as specified in § 2.2-4302.2.

Drafting note: Existing § 33.1-391.3 was amended by Chapter 583 of the Acts of Assembly of 2013 with a delayed effective date of July 1, 2014; those changes have been incorporated into the existing language in this document. A technical change is made.

~~§ 33.1-391.3:1.~~

Drafting note: Repealed by Chapters 86, 594, and 681 of the Acts of Assembly of 2011.

§ ~~33.1-391.4~~ 33.2-XXX. General powers of the Department of Rail and Public Transportation.

The Department of Rail and Public Transportation shall have the following general powers:

1. To accept grants from the United States government and agencies and instrumentalities thereof and any other source. To these ends, the Department of Rail and Public Transportation shall have the power to comply with such conditions and execute such agreements as may be necessary, convenient or desirable;

2. To make and enter into all contracts and agreements necessary or incidental to the performance of its duties and the execution of its powers under this chapter, including ~~but not limited to~~, contracts with the United States government, other states, agencies and governmental subdivisions of Virginia, and other appropriate public and private entities;

3. To assist other appropriate entities, public or private, in the implementation and improvement of passenger and freight rail, transportation demand management, ridesharing, and public transportation services and the retention of rail corridors for public purposes;

4. To represent and promote the Commonwealth's interests in passenger and freight rail, transportation demand management, ridesharing, and public transportation; and

5. To acquire and hold title to the land necessary to construct railway lines in order to reduce traffic congestion on highways and shift traffic to rail transportation. To acquire by any means whatsoever, lease, improve, and construct railway lines, passenger and freight rail, transportation demand management, ridesharing, and public transportation facilities, and passenger and freight rail, transportation demand management, ridesharing, and public transportation equipment determined to be for the common good of the Commonwealth or a region of the Commonwealth and ~~to~~ assist other appropriate entities in the implementation and improvement of passenger and freight rail, transportation demand management, ridesharing, and public transportation services and the retention of rail corridors for public purposes.

Drafting note: Existing § 33.1-391.4 was amended by Chapter 211 of the Acts of Assembly of 2013; those changes have been incorporated into the existing language in this document. Technical changes are made, including removing the language "but not limited to" per the definition of "includes" in § 1-218.

§ ~~33.1-391.5~~ 33.2-XXX. Responsibilities of Department of Rail and Public Transportation.

The Department of Rail and Public Transportation shall have the ~~following responsibilities~~ responsibility to:

1. Determine present and future needs for, and economic feasibility of providing, public transportation, transportation demand management, and ridesharing facilities and services and the retention, improvement, and addition of passenger and freight rail transportation in the Commonwealth;

2. Formulate and implement plans and programs for the establishment, improvement, development and coordination of public transportation, transportation demand management, and ridesharing facilities and services, and the development, retention, and improvement of passenger and freight rail transportation services and corridors in the Commonwealth, including lines for higher speed passenger rail that will shift traffic from the highways to passenger rail and thereby reduce traffic congestion, and coordinate transportation demand management and innovative technological transportation initiatives with the Department of Transportation;

3. Coordinate with the Department of Transportation in the conduct of research, policy analysis, and planning for the rail and public transportation modes as may be appropriate to alleviate traffic congestion on highways by shifting traffic to passenger rail and to ensure the provision of effective, safe, and efficient public transportation and passenger and freight rail services in the Commonwealth;

4. Develop uniform financial and operating data on and criteria for evaluating all public transportation activities in the Commonwealth, develop specific methodologies for the collection of such data by public transit operators, regularly and systematically verify such data

by means of financial audits and periodic field reviews of operating data collection methodologies, and develop such other information as may be required to evaluate the performance and improve the economy or efficiency of public transit or passenger and freight rail operations, transportation demand management programs, and ridesharing in the Commonwealth;

5. Compile and maintain an up-to-date inventory of all abandoned railroad corridors in the Commonwealth abandoned after January 1, 1970;

6. Provide training and other technical support services to transportation operators and ridesharing coordinators as may be appropriate to improve public transportation, ridesharing, and passenger and freight rail services;

7. Maintain liaison with state, local, district and federal agencies or other entities, private and public, having responsibilities for passenger and freight rail, transportation demand management, ridesharing, and public transportation programs;

8. Receive, administer and allocate all planning, operating, capital, and any other grant programs from the Federal Transit Administration, the Federal Railroad Administration, the Federal Highway Administration, and other agencies of the United States government for public transportation, passenger and freight rail transportation, transportation demand management, and ridesharing purposes with approval of the Board and to comply with all conditions attendant thereto;

9. Administer all state grants for public transportation, rail transportation, ridesharing, and transportation demand management purposes with approval of the Board;

10. Promote the use of public transportation, transportation demand management, ridesharing, and passenger and freight rail services to improve the mobility of Virginia's citizens and the transportation of goods;

11. Represent the Commonwealth on local, regional, and national agencies, industry associations, committees, task forces, and other entities, public and private, having

responsibility for passenger and freight rail, transportation demand management, ridesharing, and public transportation;

12. Represent the Commonwealth's interests in passenger and freight rail, transportation demand management, ridesharing, and public transportation and coordinate with the Department of Transportation in the planning, location, design, construction, implementation, monitoring, evaluation, purchase, and rehabilitation of facilities and services that affect or are used by passenger and freight rail, transportation demand management, ridesharing, or public transportation;

13. Coordinate with the State Corporation Commission on all matters dealing with rail safety inspections and rail regulations ~~which~~ that fall within its purview;

14. Prepare and review state legislation and Commonwealth recommendations on federal legislation and regulations as directed by the Secretary of Transportation;

15. Promote public transportation, ridesharing, and passenger and freight rail safety; and

16. Ensure the safety of rail fixed guideway transit systems within the Commonwealth and carry out state safety and security oversight responsibilities for rail fixed guideway transit systems as required by the Federal Transit Administration and federal law. For any rail fixed guideway transit system operated within the Commonwealth pursuant to an interstate compact, the Department shall perform its oversight responsibilities in accordance with the interstate compact governing the operation of such system and any applicable federal law.

Drafting note: Existing § 33.1-391.5 was amended by Chapter 211 of the Acts of the Assembly of 2013; those changes have been incorporated into the existing language in this document. Technical changes are made.

~~§§ 33.1-391.6. through 33.1-391.15.~~

Drafting note: Repealed by Chapters 864 and 871 of the Acts of Assembly of 2009.

~~§§ 33.1-392. through 33.1-399.~~

Drafting note: Repealed by Chapter 778 of the Acts of Assembly of 1984.

~~§§ 33.1-400. through 33.1-408.~~

1917

Drafting note: Repealed by Chapters 815 and 842 of the Acts of Assembly of 2001.

SUBTITLE III.

TRANSPORTATION FUNDING AND DEVELOPMENT.

Drafting note: The third subtitle of proposed Title 33.2 gathers all information relating to transportation funding.

CHAPTER XX.

TRANSPORTATION FUNDING.

Drafting note: This is a new chapter called Transportation Funding that relocates existing Article 1.2, Virginia Transportation Infrastructure Bank; Article 9, Highway Right-of-Way Fund; Acquisition of Properties for Future Use; Article 16, Virginia Alternative Fuels Revolving Fund; and Article 1.3, Virginia Transportation Infrastructure Bank, of Chapter 1 of Title 33.1 and adds two new articles, one called Transportation Partnership Opportunity Fund and one called Funds for Access Roads, that group related sections into articles as appropriate.

Article ~~1.2~~ XXX.

Virginia Transportation Infrastructure Bank.

Drafting note: Article 1.2, Virginia Transportation Infrastructure Bank, is relocated from Chapter 1 of Title 33.1 to this new chapter.

§ ~~33.1-23.6~~ 33.2-XXX. Legislative findings and purposes.

The General Assembly finds that there exists in the Commonwealth a critical need for additional sources of funding to finance the present and future needs of the Commonwealth for the design and construction of ~~roads and~~ highways, including toll facilities; mass transit; freight, passenger and commuter rail, including rolling stock; ~~and~~ port, airport, and other transportation facilities. This need can be alleviated in part through the creation of a transportation infrastructure bank. The purpose of such bank is to encourage the investment of both public and private funds and to make loans and other financial assistance available to localities, private entities, and other ~~Eligible Borrowers~~ eligible borrowers to finance eligible transportation projects. The General Assembly determines that the creation of a transportation

infrastructure bank for this purpose is in the public interest, serves a public purpose, and will promote the health, safety, welfare, convenience, or prosperity of the people of the Commonwealth.

Drafting note: Technical changes are made.

§ ~~33.1-23.7~~ 33.2-XXX. Definitions.

As used in this article, ~~whether in capitalized or uncapitalized form, each of the following terms has the meaning given it in this section,~~ unless the context requires a different meaning ~~to be consistent with the manifest intention of the General Assembly:~~

"Bank" means the Virginia Transportation Infrastructure Bank created in § ~~33.1-23.8~~ 33.2-XXX.

~~"Board" means the Commonwealth Transportation Board.~~

"Cost," as applied to any project financed under the provisions of this article, means the total of all costs, including, ~~but not limited to,~~ the costs of planning, design, right-of-way acquisition, engineering, and construction, incurred by an ~~Eligible Borrower~~ eligible borrower or other ~~Project Sponsor~~ project sponsor as reasonable and necessary for carrying out all works and undertakings necessary or incident to the accomplishment of any project. ~~The term "Cost"~~ also includes capitalized interest; reasonably required reserve funds; and financing, credit enhancement, and issuance costs.

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

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

"~~Eligible Borrower~~" borrower means any (i) ~~Private Entity~~ private entity; (ii) ~~Governmental Entity~~ governmental entity; (iii) instrumentality, corporation, or entity established by any of the foregoing pursuant to § ~~33.1-23.11~~ 33.2-XXX; or (iv) combination of two or more of the foregoing.

"Finance" and any variation of the term, when used in connection with a cost or a project, includes both the initial financing and any refinancing of the cost or project and any variation of such terms.

"Governmental ~~Entity~~ entity" means any (i) ~~Locality~~ locality; (ii) local, regional, state, or federal entity; transportation authority, planning district, commission, or political subdivision created by the General Assembly or pursuant to the Constitution and laws of the Commonwealth; or public transportation entity owned, operated, or controlled by one or more local entities; (iii) entity established by interstate compact; (iv) instrumentality, corporation, or entity established by any of the foregoing pursuant to § ~~33.1-23.11~~ 33.2-XXX; or (v) any combination of two or more of the foregoing.

"Grant" means a transfer of moneys or property that does not impose any obligation or condition on the grantee to repay any amount to the transferor other than in connection with assuring that the transferred moneys or property will be spent or used in accordance with the governmental purpose of the transfer. ~~Such term "Grant" includes, without limitation,~~ direct cash payments made to pay or reimburse all or a portion of interest payments made by a grantee on a debt obligation. As provided in §§ ~~33.1-23.8~~ 33.2-XXX and ~~33.1-23.9~~ 33.2-XXX, only ~~Governmental Entities~~ governmental entities may receive grants of moneys or property held in or for the credit of the Bank.

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

~~"Locality" means any county, city, or town in the Commonwealth.~~

81 "Management agreement" means the memorandum of understanding or interagency
82 agreement among the ~~Manager~~ manager, the Secretary of Finance, and the Board as authorized
83 under subsection B of § ~~33.1-23.8~~ 33.2-XXX.

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

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

91 "Private ~~Entity~~ entity" means any private or nongovernmental entity that has executed
92 an interim or comprehensive agreement to develop and construct a transportation infrastructure
93 project pursuant to the Public-Private Transportation Act of 1995 (§ ~~56-556~~ 33.2-XXX et seq.).

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

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

105 "Project ~~Sponsor~~ sponsor" means any ~~Private Entity~~ private entity or ~~Governmental~~
106 Entity governmental entity that is involved in the planning, design, right-of-way acquisition,
107 engineering, construction, maintenance, or financing of a project.

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

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

Drafting note: Changes made to the introduction to the definitions section are to comport with current practice. Stricken definitions were repetitive of those in the proposed definitions section, § 33.2-100, which apply to the entire title. The phrases "but not limited to" and "without limitation" in the definitions of "cost," "grant," and "other financial assistance" are removed based on § 1-218, which states: "'Includes' means includes, but not limited to." The definition of "locality" is removed because it is defined in the proposed title-wide definitions section. Other changes are technical.

~~§ 33.1-23.8~~ § 33.2-XXX. Creation of the Virginia Transportation Infrastructure Bank.

A. There is hereby created in the state treasury a special nonreverting, revolving loan fund that is a subfund of the Transportation Trust Fund, known as the Virginia Transportation Infrastructure Bank. The Bank shall be established on the books of the Comptroller. The Bank shall be capitalized with moneys appropriated by the General Assembly and credited to the Bank. Disbursements from the Bank shall be made by the State Treasurer on warrants issued by the Comptroller upon written request signed by the Commissioner of Highways or his or her designee. Payments on project obligations and interest earned on the moneys in the Bank shall be credited to the Bank. Any moneys remaining in the Bank, including interest thereon, at the end of each fiscal year shall not revert to the general fund but shall remain in the Bank. Notwithstanding anything to the contrary set forth in this article or in the management agreement, the Board will have the right to determine the projects for which loans or other financial assistance may be provided by the Bank. Moneys in the Bank shall be used solely for the purposes enumerated in subsections C and D.

B. The Board, the ~~Manager~~ manager, and the Secretary of Finance are authorized to enter into a management agreement which may include provisions (i) setting forth the terms and conditions under which the ~~Manager~~ manager will advise the Board on the financial propriety of providing particular loans or other financial assistance, (ii) setting forth the terms and conditions under which the substantive requirements of subsections C through F and § ~~33.1-23.11~~ 33.2-XXX will be applied and administered, and (iii) authorizing the ~~Manager~~ manager to request the Board to disburse from the moneys in the Bank, the reasonable costs and expenses the ~~Manager~~ manager may incur in the management and administration of the Bank and a reasonable fee to be approved by the Board for the ~~Manager's~~ manager's management and administrative services.

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

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

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

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

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

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

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

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

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

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

Drafting note: Changes made were to comport with current practice. Other changes are technical.

§ ~~33.1-23.9~~ 33.2-XXX. Eligibility and project selection.

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

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

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

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

E. Each applicant for a loan or other financial assistance must demonstrate that the project is of local, regional, or statewide significance, and that it meets the goal of generating economic benefits, improving air quality, reducing congestion, ~~and/or~~ or improving safety through enhancement of the state transportation network. Another criterion to be considered is whether or not the loan or other financial assistance will enable the project to be completed at an earlier date than would otherwise be feasible. The Board shall issue guidelines for scoring projects in accordance with the criteria set out in this subsection and any other criteria deemed necessary and appropriate for evaluating projects as determined by the Board in consultation with the ~~Manager~~ manager and shall apply the scoring guidelines to each proposed project. Further, the Board shall promptly publish each proposed project and its score using the scoring guidelines.

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

Drafting note: Technical changes.

~~§ 33.1-23.10~~ § 33.2-XXX. Grants from the Commonwealth Transportation Board.

The Board may make grants of money or property to the Bank for the purpose of enabling it to carry out its corporate purposes and for the exercise of its powers. This section shall not be construed to limit any other power the Board may have to make grants to the Bank.

Drafting note: No change.

§ ~~33.1-23.11~~ 33.2-XXX. Project ~~Obligations~~ obligations.

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

B. The ~~Manager~~ manager may require, as a condition to provision of a loan or other financial assistance and the acquisition of any project obligations, that the ~~Eligible Borrower~~ eligible borrower or any other ~~Project Sponsor~~ project sponsor covenant to perform any of the following:

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

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

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

4. Perform other acts, including the conveyance or mortgaging of real and personal property together with all right, title, and interest therein to secure project obligations, or take other actions as may be deemed necessary or desirable by the ~~Manager~~ manager to secure payment of the project obligations and to provide for remedies in the event of any default or nonpayment by the ~~Eligible Borrower~~ eligible borrower or any other ~~Project Sponsor~~ project sponsor, including ~~without limitation~~, any of the following:

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

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

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

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

In addition, subject to the approval of the ~~Manager~~ manager, any ~~Project Sponsor~~ project sponsor is authorized to establish and contract with a special purpose or limited purpose

instrumentality, corporation, or other entity for the purpose of having such entity serve as the ~~Eligible Borrower~~ eligible borrower with respect to a particular project.

Drafting note: The phrase "without limitation" in subdivision B 4 is removed based on § 1-218, which states: "'Includes' means includes, but not limited to." Technical changes are made.

§ ~~33.1-23.12~~ 33.2-XXX. Exemption from taxation; exemption from Virginia Public Procurement Act.

A. The Bank will be performing an essential governmental function in the exercise of the powers conferred upon it by this article. Accordingly, the Bank shall not be required to pay any taxes or assessments to the Commonwealth or its localities or any political subdivision thereof upon any capital, moneys or any property or upon any operations of the Bank or the income therefrom, or any taxes or assessments upon any project or any property or project obligation acquired by the Bank under the provisions of this article or upon the income therefrom.

B. The provisions of the Virginia Public Procurement Act (§ 2.2-4300 et seq.) shall not apply to the Bank in the exercise of any power conferred under this article.

Drafting note: No change.

§ ~~33.1-23.13~~ 33.2-XXX. Reporting requirement.

A. No loan or other financial assistance shall be awarded from the Bank until the Secretary ~~of Transportation~~ has provided copies of the management agreement and related criteria and guidelines to the Chairmen of the House Committees on Appropriations, Finance, and Transportation and the Senate Committees on Finance and Transportation.

B. Within 30 days after each six-month period ending June 30 and December 31, the ~~Manager~~ manager shall provide a report to the Chairmen of the House Committees on Appropriations, Finance, and Transportation and the Senate Committees on Finance and Transportation, which shall include, ~~but not be limited to,~~ the amounts of loans and other financial assistance provided by the Bank and the projects for which the loans and other financial assistance were provided.

Drafting note: Technical changes are made to keep references consistent with the titlewide definitions section. The phrase "but not be limited to" is stricken per the definition of "includes" found in § 1-218, which states "'includes' means includes, but not limited to."

~~Article 9.~~

~~Highway Right-of-Way Fund; Acquisition of Properties for Future Use.~~

~~§ 33.1-137. Fund established.~~

~~There is hereby established and created in the state treasury the Highway Right-of-Way Fund.~~

~~§ 33.1-138. How fund expended.~~

~~All money deposited in or transferred to the Highway Right-of-Way Fund shall be expended by the Commonwealth Transportation Board for the acquisition of properties to constitute rights-of-way for highways and streets, including those within cities and towns. The Board shall expend such fund for acquisition of properties which will be needed for future highway construction purposes, whenever the Commissioner of Highways deems such acquisition necessary, due to the probability of development of such properties, and after the State Right-of-Way Engineer declares prompt acquisition is required to prevent such development and consequent higher acquisition and construction costs when the highway project is to be constructed.~~

~~Such acquisition is hereby declared to be in the public interest and any properties so acquired are deemed to be acquired for a public use.~~

~~§ 33.1-139. Procedure for acquisition of properties.~~

~~The procedure for acquiring such properties shall be mutatis mutandis the same as provided for the acquisition of land or interest therein by the Commissioner of Highways in Article 7 (§ 33.1-89 et seq.) of this chapter, except that no proceeding instituted for the purposes of acquiring property hereunder shall fail for lack of a completed construction plan for the highway for which property is being acquired. In lieu of a centerline description, any land or~~

~~interest therein acquired hereunder may be described by metes and bounds, or any other recognized method of describing boundaries to land.~~

~~§ 33.1-140. Sale or lease of properties acquired.~~

~~The Commissioner may sell or otherwise dispose of any improvements on lands acquired under the terms of this chapter, or lease such land and improvements until such time as the land is needed for immediate highway construction purposes. Any residue parcels of lands so acquired which are found to be unnecessary for highway purposes may be sold or otherwise disposed of by the Commissioner.~~

~~All revenues received from the rental or disposition of such land and improvements shall be deposited in the Highway Right of Way Fund.~~

~~§ 33.1-141. Amount to be set aside annually for fund.~~

~~Notwithstanding any other provisions of law, from all funds available to the Commonwealth Transportation Board for highway purposes, and after the cost of administration but before any of such funds are distributed and allocated for any road or street purposes the Board shall set aside a minimum of five million dollars each year of the 1968-1970 biennium for the Highway Right of Way Fund and each year thereafter may set aside such funds as the Board deems necessary and desirable to carry out the purpose of the fund.~~

~~§ 33.1-142. Deposit in fund of amount expended in acquisition of properties.~~

~~Whenever, after acquisition of any property under this article, the Commonwealth Transportation Board proceeds with the construction of a highway project which will require the use of any of the property so acquired, the Board shall deposit in the Highway Right of Way Fund, from other funds available, the amount expended to pay the cost of such properties.~~

~~§ 33.1-143. Intention of article.~~

~~It is the intention of this article to provide a revolving fund for the purpose of acquiring properties to be used for highway rights of way at a time before development of such properties so as to minimize the costs of highway construction and reduce the inconvenience to owners of property within a proposed highway project.~~

Drafting note: This section is recommended for repeal because it is obsolete.

Article XXX.

Transportation Partnership Opportunity Fund.

Drafting note: Existing Article is retained as an article in proposed Title 33.2

§ ~~33.1-221.1:8~~ 33.2-XXX. Transportation Partnership Opportunity Fund.

A. There is hereby created the Transportation Partnership Opportunity Fund (the Fund) to be used by the Governor to encourage the development of transportation projects through design-build pursuant to subdivision (2)(b) of § ~~33.1-12~~ 33.2-XXX, the Public-Private Transportation Act (§ ~~56-556~~ 33.2-XXX et seq.) and to provide funds to address the transportation aspects of economic development opportunities. The Fund shall consist of any funds appropriated to it by the general appropriation act and revenue from any other source, public or private. The Fund shall be established on the books of the Comptroller, and any funds remaining in the Fund at the end of a biennium shall not revert to the general fund but shall remain in the Fund. All interest and dividends that are earned on the Fund shall be credited to the Fund. The Governor shall report to the ~~chairmen~~ Chairmen of the House Committees on Appropriations, Finance, and Transportation and the Senate Committees on Finance and Transportation as funds are awarded in accordance with this section.

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

C. Funds shall be awarded from the Fund by the Governor as grants, revolving loans, or other financing tools and equity contributions to (i) an agency or political subdivision of the Commonwealth or (ii) a private entity or operator ~~which that~~ has submitted a proposal or signed a comprehensive agreement to develop a transportation facility pursuant to the Public-Private Transportation Act of 1995 (§ ~~56-556~~ 33.2-XXX et seq.). Loans shall be approved by the

373 Governor and made in accordance with procedures established by the ~~Commonwealth~~
374 ~~Transportation~~ Board and approved by the Comptroller. Loans shall be interest-free and shall be
375 repaid to the Fund. The Governor may establish the duration of any loan, but such term shall not
376 exceed seven years. The ~~Virginia Department of Transportation~~ shall be responsible for
377 monitoring repayment of such loans and reporting the receivables to the Comptroller as
378 required.

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

388 E. The ~~Commonwealth Transportation~~ Board, in consultation with the Secretary of
389 Transportation and the Secretary of Commerce and Trade, shall develop guidelines and criteria
390 that shall be used in awarding grants or making loans from the Fund; however, no grant shall
391 exceed \$5 million and no loan shall exceed \$30 million. No grant or loan shall be awarded until
392 the Governor has provided copies of the guidelines and criteria to the ~~chairmen~~ Chairmen of the
393 House Committees on Appropriations, Finance, and Transportation and the Senate Committees
394 on Finance and Transportation. The guidelines and criteria shall include provisions including,
395 ~~but not limited to~~, the number of jobs and amounts of investment that must be committed in the
396 event moneys are being used for an economic development project, a statement of how the
397 studies and analysis to be completed using moneys from the Fund will advance the development
398 of a transportation facility, a process for the application for and review of grant and loan
399 requests, a timeframe for completion of any work, the comparative benefit resulting from the

development of a transportation project, assessment of the ability of the recipient to repay any loan funds, and other criteria as necessary to support the timely development of transportation projects. The criteria shall also include incentives to encourage matching funds from any other local, federal, or private source.

F. Within 30 days of each six-month period ending June 30 and December 31, the Governor shall provide a report to the ~~chairmen~~ Chairmen of the House Committees on Appropriations, Finance, and Transportation and the Senate Committees on Finance and Transportation ~~which that~~ shall include, ~~but is not limited to~~, the following information: the ~~location (county, city, or town) of~~ locality in which the project is taking place; the amount of the grant or loan made or committed from the Fund and the purpose for which it will be used; the number of jobs created or projected to be created; and the amount of a company's investment in the Commonwealth if the project is part of an economic development opportunity.

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

Drafting note: Changes made were to keep references consistent with the definitions of the title. The phrases "but not limited to" and "but is not limited to" in subsections D, E, and F are removed based on § 1-218, which states: "'Includes' means includes, but not limited to." Other changes are technical.

~~Article 16.~~

~~Virginia Alternative Fuels Revolving Fund.~~

~~§ 33.1-223.3. Definitions.~~

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

~~"Alternative fuel" means a motor fuel used as an alternative to gasoline and diesel fuel. Alcohol/gasoline blended fuels which contain less than eighty five percent ethanol or methanol shall not be considered alternative fuels for the purposes of this article.~~

~~"Commissioner" means the Commissioner of Highways.~~

~~"Fund" means the Virginia Alternative Fuels Revolving Fund.~~

~~"Program" means a voluntary program undertaken by the Commonwealth or a municipal or county government to convert its public vehicles, including school buses, in order to use alternative fuels.~~

~~§ 33.1-223.4. Creation and management of Fund.~~

~~There shall be a permanent revolving fund known as the Virginia Alternative Fuels Revolving Fund.~~

~~The goal of the Fund shall be:~~

~~1. To improve air quality in Virginia.~~

~~2. To reduce dependence on imported fuels.~~

~~3. To reduce the costs of the purchase and operation of publicly owned vehicles in Virginia, including costs of fuel, life of the vehicle and personnel costs.~~

~~4. To improve the economy of Virginia.~~

~~5. To accomplish such goals by loans or grants, with matching grants to be given preference.~~

~~6. To include all kinds of alternative fuels, including but not limited to, electric, hydrogen, and natural gas-powered vehicles.~~

~~7. To improve infrastructure such as refueling stations.~~

~~The Fund shall be comprised of (i) sums appropriated to it by the General Assembly, (ii) receipts by the Fund from loans made by it, (iii) all income from the investment of moneys held by the Fund, and (iv) any other sums designated for deposit to the Fund from any source, public or private. The Fund shall be administered and managed by the Commissioner and shall be used solely for the purpose of financing programs as provided in § 33.1-223.7.~~

~~§ 33.1-223.5. Deposit of money.~~

~~All money belonging to the Fund shall be recorded on the books of the State Comptroller and deposited in accounts in banks or trust companies organized under the laws of the Commonwealth, in federally chartered banking institutions located in Virginia, or in savings institutions located in Virginia organized under the laws of the Commonwealth or the United States. Money in the Fund not needed for immediate use or disbursement may be invested or reinvested by the State Treasurer in obligations or securities that are considered lawful investments for public funds under the laws of the Commonwealth. Earnings from investments and interest shall be returned to the Fund.~~

~~§ 33.1-223.6. Collection of money due to the Fund.~~

~~The Commissioner or his designated agent is empowered to collect amounts due to the Fund under any loan made to a municipal or county government, including, if appropriate, taking the action required by § 15.2-2659 to obtain payment of any amounts in default. Proceedings to recover amounts due to the Fund may be instituted by the Commissioner in the name of the Fund in any appropriate circuit court.~~

~~§ 33.1-223.7. Loans to municipal and county governments and to the Commonwealth.~~

~~A. Except as otherwise provided in this chapter, money in the Fund shall be used to make loans to municipal and county governments and to the Commonwealth for the purpose of supporting programs and assisting localities with costs incurred for the conversion of fuel systems and other necessary vehicle alternative fuel components, the maintenance and repair of vehicle alternative fuel components, and the testing and evaluating needed to determine the benefits and savings realized by using such alternative fuels.~~

~~B. The Commissioner shall determine the terms and conditions of any loan from the Fund, including but not limited to, the interest rate and repayment terms of each loan. Such interest rates shall be based on the savings realized by utilizing the alternative fuel; however, no interest shall be charged if no savings are realized. All loans shall be evidenced by appropriate security. The Commissioner is authorized to require in connection with any loans from the Fund~~

~~any documents, instruments, certificates, legal opinions, or other information deemed necessary or convenient.~~

~~C. The buying down or making of interest rate subsidies shall be accorded the same priority as the making of loans.~~

~~D. The Commissioner shall adopt regulations to administer the Fund. The Commissioner shall also adopt regulations which establish the standards and criteria by which grants and loans will be made. Such standards shall give priority to nonattainment areas and to fleets.~~

~~§ 33.1-223.8. Annual audit.~~

~~The Auditor of Public Accounts shall annually audit the accounts of the Fund when he audits the records of the Department of Transportation.~~

~~§ 33.1-223.9. Liberal construction of article.~~

~~The provisions of this article shall be liberally construed. If a provision of this article is in conflict with the provision of any other general, special, or local law, the provision of this article shall be controlling.~~

Drafting note: The Virginia Alternative Fuels Revolving Fund is recommended for repeal because it is obsolete.

Article XXX.

Funds for Access Roads.

Drafting note: Existing Article is retained as an article in proposed Title 33.2

~~§ 33.1-221~~ 33.2-XXX. (Effective January 1, 2014) Funds for access roads to economic development sites and airports; construction, maintenance, etc., of such roads.

A. Notwithstanding any other provision of law, there shall be appropriated to the ~~Commonwealth Transportation~~ Board funds derived from taxes on motor fuels, fees and charges on motor vehicle registrations, road taxes or any other state revenue allocated for highway purposes, which shall be used by the Board for the purposes hereinafter specified, after deducting the costs of administration before any of such funds are distributed and allocated for any road or street purposes.

Such funds shall be expended by the Board for constructing, reconstructing, maintaining or improving access roads within ~~counties, cities and towns~~ localities to economic development sites on which manufacturing, processing, research and development facilities, distribution centers, regional service centers, corporate headquarters, or other establishments that also meet basic employer criteria as determined by the Virginia Economic Development Partnership in consultation with the Virginia Department of Small Business and Supplier Diversity will be built under firm contract or are already constructed and to licensed, public-use airports; in the event there is no such establishment or airport already constructed or for which the construction is under firm contract, a ~~county, city, or town~~ locality may guarantee to the Board by bond or other acceptable device that such will occur and, should no establishment or airport acceptable to the Board be constructed or under firm contract within the time limits of the bond, such bond shall be forfeited. The time limits of the bond shall be based on regular review and consideration by the Board. Towns ~~which that~~ receive highway maintenance payments under § ~~33.1-41.1~~ 33.2-XXX shall be considered separately from the counties in which they are located when receiving allocations of funds for access roads.

B. In deciding whether or not to construct or improve any such access road, and in determining the nature of the road to be constructed, the Board shall base its considerations on the cost thereof in relation to the volume and nature of the traffic to be generated as a result of developing the airport or the economic development site. Within any economic development site or airport, the total volume of traffic to be generated shall be taken into consideration in regard to the overall cost thereof. No such access road shall be constructed or improved on a privately owned economic development site.

C. Any access road constructed or improved under this section shall constitute a part of the secondary ~~system of state highways~~ state highway system or the road system of the locality in which it is located and shall thereafter be constructed, reconstructed, maintained and improved as other roads or highways in such system.

Drafting note: Changes are made to keep references consistent with the definitions of the title.

~~§ 33.1-221.1.~~

Drafting note: Repealed by Acts 1997, c. 61.

~~§ 33.1-223~~ 33.2-XXX. Fund for access roads and bikeways to public recreational areas and historical sites; construction, maintenance, etc., of such facilities.

A. The General Assembly finds and declares that there is an increasing demand by the public for more public recreational areas throughout the Commonwealth, therefore creating a need for more access to these areas. There are also many sites of historical significance to which access is needed.

The General Assembly hereby declares it to be in the public interest that access roads and bikeways to public recreational areas and historical sites be provided by using funds obtained from motor fuel tax collections on motor fuel used for propelling boats and ships and funds contained in the highway portion of the Transportation Trust Fund.

B. The ~~Commonwealth Transportation~~ Board shall, from funds allocated to the primary system, secondary system, or urban system of ~~state~~ highways, set aside the sum of \$3 million initially. This fund shall be expended by the Board for the construction, reconstruction, maintenance, or improvement of access roads and bikeways within ~~counties, cities and towns~~ localities. At the close of each succeeding fiscal year the Board shall replenish this fund to the extent it deems necessary to carry out the purpose intended, provided the balance in the fund plus the replenishment does not exceed ~~the aforesaid~~ \$3 million.

C. Upon the setting aside of the funds as herein provided, the ~~Commonwealth Transportation~~ Board shall construct, reconstruct, maintain or improve access roads and bikeways to public recreational areas and historical sites upon the following conditions:

1. When the Director of the Department of Conservation and Recreation has designated a public recreational area as such or when the Director of the Department of Historic Resources

has determined a site or area to be historic and recommends to the ~~Commonwealth Transportation~~ Board that an access road or bikeway be provided or maintained to that area;

2. When the ~~Commonwealth Transportation~~ Board pursuant to the recommendation from the Director of the Department of Conservation and Recreation declares by resolution that the access road or bikeway be provided or maintained;

3. When the governing body of the ~~county, city or town~~ locality in which the access road or bikeway is to be provided or maintained passes a resolution requesting the road; and

4. When the governing body of the ~~county, city or town~~ locality in which the bikeway is to be provided or maintained adopts an ordinance pursuant to Article 7 (§ 15.2-2280 et seq.) of Chapter 22 of Title 15.2.

No access road or bikeway shall be constructed, reconstructed, maintained, or improved on privately owned property.

D. Any access road constructed, reconstructed, maintained, or improved pursuant to the provisions of this section shall become part of the primary state highway system ~~of state highways~~, the secondary state highway system ~~of state highways~~ or the road system of the locality in which it is located in the manner provided by law, and shall thereafter be constructed, reconstructed, maintained and improved as other roads or highways in such systems. Any bikeway path constructed, reconstructed, maintained, or improved pursuant to the provisions of this section which is not situated within the right-of-way limits of an access road ~~which that~~ has become, or which is to become, part of the primary state highways system ~~of state highways~~, the secondary state highway system ~~of state highways~~, or the road system of the locality, shall, upon completion, become part of and be regulated and maintained by the authority or agency maintaining the public recreational area or historical site. It shall be the responsibility of the authority, agency, or locality requesting that a bicycle path be provided for a public recreational or historical site to provide the right-of-way needed for the construction, reconstruction, maintenance, or improvement of the bicycle path if such is to be situated outside the right-of-way limits of an access road.

To maximize the impact of the Fund, not more than \$400,000 of recreational access funds may be allocated for each individual access road project to or within any public recreational area or historical site operated by a state agency and not more than \$250,000 of recreational access funds may be allocated for each individual access road project to or within a public recreational area or historical site operated by a locality or an authority with an additional \$100,000 if supplemented on a dollar-for-dollar basis by the locality or authority from other than highway sources. Not more than \$75,000 of recreational access funds may be allocated for each individual bikeway project to a public recreational area or historical site operated by a state agency and not more than \$60,000 of recreational access funds may be allocated for each individual bikeway project to a public recreational area or historical site operated by a locality or an authority with an additional \$15,000 if supplemented on a dollar-for-dollar basis by a locality or authority from other than highway sources.

The ~~Commonwealth Transportation~~ Board, with the concurrence of the Director of the Department of Conservation and Recreation, is hereby authorized to establish guidelines to carry out the provisions of this section.

Drafting note: Technical changes are made, including those to maintain consistency throughout this title and to keep references consistent with the definitions of the title. Subsection A is a policy statement, which is not normally set out.

Article ~~1.3~~ XXX.

Commonwealth of Virginia Federal Transportation Grant Anticipation Revenue Notes Act of 2011.

Drafting note: Existing Article 1.3 of Chapter 1 is retained as an article in proposed Title 33.2.

~~§ 33.1-23.14 33.2-XXX. Short title; definitions Definitions.~~

~~A. This article shall be known and may be cited as the "Commonwealth of Virginia Federal Transportation Grant Anticipation Revenue Notes Act of 2011."~~

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

"Federal highway reimbursements" means all federal-aid highway construction reimbursements and any other federal highway assistance received from time to time by the Commonwealth under or in accordance with Title 23 of the United States Code or any successor program established under federal law from the Federal Highway Administration and any successor or additional federal agencies.

"GARVEE" means an "eligible debt financing instrument" as defined under 23 U.S.C. § 122 ~~of Chapter 1 of Title 23 of the United States Code~~, the principal of and interest on which and certain other costs associated therewith may be reimbursed by federal highway reimbursements.

"Notes" means those notes authorized and issued pursuant to § ~~33.1-23.15~~ 33.2-XXX.

"Project-specific reimbursements" means the federal highway reimbursements received by the Commonwealth from time to time only with respect to the project or projects to be financed by the Notes or any series thereof.

"Series" means any grouping of Notes issued at one time or from time to time as designated as such by the Board as necessary or desirable for administrative convenience, satisfaction of federal tax or securities law requirements, or any similar purpose.

Drafting note: Subsection A is deleted as unnecessary because of the titlewide application of § 1-244, which states that the caption of a subtitle, chapter, or article serves as a short title citation. Application of § 1-244 changes the way this article is referred to; the existing article name does not include "Act of 2011" as the short title does. This additional language is added to the name of the article so as not to interfere with the existing language in the bond documents.

§ ~~33.1-23.15~~ 33.2-XXX. Authorization of Notes.

The Board is hereby authorized, by and with the consent of the Governor, to issue, pursuant to the provisions of the State Revenue Bond Act (§ ~~33.1-267~~ 33.2-XXX et seq.), in one or more series from time to time revenue obligations of the Commonwealth to be designated "Commonwealth of Virginia Federal Transportation Grant Anticipation Revenue Notes, Series

_____ " (the Notes), provided that the aggregate principal amount outstanding at any time shall not exceed the amount authorized pursuant to the second enactments of Chapters 1019 and 1044 of the Acts of Assembly of 2000 as amended by Chapter 655 of the Acts of Assembly of 2005, less any principal amounts outstanding from revenue obligations issued pursuant to those enactments prior to July 1, 2011, and exclusive of (i) the amount of any revenue obligations that may be issued to refund Notes issued under this Article or the revenue obligations issued under those enactments in accordance with § ~~33.1-293~~, 33.2-XXX and (ii) any amounts issued for financing expenses (including, ~~without limitation~~, any original issue discount).

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

§ ~~33.1-23.16~~ 33.2-XXX. Use of proceeds of Notes.

A. The net proceeds of the Notes shall be used exclusively for the purpose of providing funds, together with any other available funds, for paying the costs incurred or to be incurred for construction or funding of such projects to be designated by the Board.

B. The proceeds of Notes, including any premium received on the sale thereof, shall be made available by the Board to pay costs of the projects and, where appropriate, may be paid to any authority, locality, commission, or other entity for the purposes of paying for costs of the projects. The proceeds of Notes may be used together with any federal, local, or private funds that may be made available for such purpose. The proceeds of Notes, together with any investment earnings thereon, may at the discretion of the Board secure the payment of principal or purchase price of and redemption premium, if any, and interest on Notes.

Drafting note: No change.

§ ~~33.1-23.17~~ 33.2-XXX. Details of Notes.

A. The terms and structure of each issue of Notes shall be determined by the Board, subject to approval by the Treasury Board if required in accordance with § 2.2-2416. The Notes of each issue shall be dated; shall be issued in a principal amount (subject to the limitation as to amount outstanding at any one time set forth in § ~~33.1-23.15~~ 33.2-XXX); shall bear interest at

such rate or rates that may be fixed, adjustable, variable, or a combination thereof, and may be determined by a formula or other method; shall mature at such time or times not exceeding 20 years after the issuance thereof; and may be made subject to purchase or redemption before their maturity or maturities, at such price or prices and under such terms and conditions, all as may be determined by the Board. The Board shall determine the form and series designations of Notes, whether Notes are certificated or uncertificated, and fix the authorized denomination or denominations of Notes and the place or places of payment of principal or purchase price of, and redemption premium, if any, and interest on, Notes, which may be at the office of the State Treasurer or any bank or trust company within or without the Commonwealth. The principal or purchase price of, and redemption premium, if any, and interest on, Notes shall be made payable in lawful money of the United States of America. Each issue of Notes may be issued under a system of book entry for recording the ownership and transfer of ownership of rights to receive payments of principal or purchase price of and redemption premium, if any, and interest on such Notes. All Notes shall have and are hereby declared to have, as between successive holders, all the qualities and incidents of negotiable instruments under the negotiable instruments law of the Commonwealth.

B. The Board may sell Notes from time to time at public or private sale, by competitive bidding, negotiated sale, or private placement, for such price or prices as it may determine to be in the best interests of the Commonwealth.

Drafting note: Technical changes.

§ ~~33.1-23.18~~ 33.2-XXX. Form and manner of execution; signature of person ceasing to be officer.

The Notes shall be signed on behalf of the Board by the Chairman or Vice-Chairman of the Board, or shall bear the facsimile signature of such officer, and shall bear the official seal of the Board, which shall be attested by the manual or facsimile signature of the secretary or assistant secretary of the Board. In the event that Notes shall bear the facsimile signature of the Chairman or Vice-Chairman of the Board, such Notes shall be signed by such administrative

assistant as the Chairman of the Board shall determine or by any registrar/paying agent that may be designated by the Board. In case any officer whose signature or a facsimile of whose signature appears on any Notes shall cease to be such officer before the delivery of such Notes, such signature or facsimile signature nevertheless shall be valid and sufficient for all purposes as if such officer had remained in office until such delivery.

Drafting note: No change.

§ ~~33.1-23.19~~ 33.2-XXX. Authority to obtain GARVEE approval.

The Board is authorized to seek any necessary approvals for the issuance of Notes as GARVEEs from the Federal Highway Administration and any successor or additional federal agencies.

Drafting note: No change.

§ ~~33.1-23.20~~ 33.2-XXX. Expenses.

All expenses incurred under this article or in connection with issuance of Notes shall be paid from the proceeds of such Notes or from any available funds as the Board shall determine.

Drafting note: No change.

§ ~~33.1-23.21~~ 33.2-XXX. Deposit of proceeds.

The proceeds of each series of Notes shall be placed by the State Treasurer in a special fund in the state treasury or may be placed with a trustee in accordance with § ~~33.1-283~~ 33.2-XXX and shall be disbursed only for the purpose for which such series shall be issued.

Drafting note: No change.

§ ~~33.1-23.22~~ 33.2-XXX. Other funds.

The Board is hereby authorized to receive any other funds that may be made available to pay costs of the projects and, subject to appropriation by the General Assembly or allocation or designation by the Board, as the case may be, to make available the same to the payment of the principal or purchase price of, and redemption premium, if any, and interest on Notes authorized hereby and to enter into the appropriate agreements to allow for those funds to be paid into the state treasury, or to a trustee in accordance with § ~~33.1-283~~ 33.2-XXX to pay a part of the costs

of the projects or to pay principal or purchase price of, and redemption premium, if any, and interest on Notes.

Drafting note: No change.

§ ~~33.1-23.23~~ 33.2-XXX. Application of project-specific reimbursements.

A. In accordance with Article X, Section 7 of the Constitution of Virginia, and § 2.2-1802, all federal highway reimbursements are paid into the state treasury. In connection with each series of Notes issued pursuant to this article, the Board shall establish a fund in accordance with § ~~33.1-286~~ 33.2-XXX either in the state treasury or with a trustee in accordance with § ~~33.1-283~~ 33.2-XXX, which secures and is used for the payment of such series of Notes to the credit of which there shall be deposited such amounts, appropriated therefor by the General Assembly, as are required to pay principal or purchase price of, and redemption premium, if any, and interest on Notes, as and when due and payable, (i) first from the project-specific reimbursements; (ii) then, at the discretion of the Board, to the extent required, from legally available revenues of the Transportation Trust Fund; and (iii) then from such other funds, if any, ~~which~~ that are designated by the General Assembly for such purpose.

B. The Board is authorized to provide that the pledge of federal highway reimbursements and any other federal highway assistance received for all or any series of the Notes will be subordinate to any prior pledge thereof to notes issued pursuant to subdivision ~~4d~~ XXX of § ~~33.1-269~~ 33.2-XXX and the second enactments of Chapters 1019 and 1044 of the Acts of Assembly of 2000, as amended, and that the obligation to make transfers of federal highway reimbursements and any other federal highway assistance received or other amounts into any fund established under subsection A will be subordinate to the obligation to make any required payments or deposits on or with respect to notes issued pursuant to subdivision ~~4d~~ XXX of § ~~33.1-269~~ 33.2-XXX and the second enactments of Chapters 1019 and 1044 of the Acts of Assembly of 2000, as amended.

Drafting note: No change.

§ ~~33.1-23.24~~ 33.2-XXX. Investment of proceeds and other amounts.

749 Notes proceeds and moneys in any reserve funds and sinking funds in respect of Notes
750 shall be invested by the State Treasurer in accordance with the provisions of general law relating
751 to the investment of such funds belonging to or in the control of the Commonwealth, or by a
752 trustee in accordance with § ~~33.1-283~~ 33.2-XXX.

753 **Drafting note: No change.**

754 § ~~33.1-23.25~~ 33.2-XXX. Exemption from taxation.

755 The interest income from and any profit made on the sale of the Notes issued under the
756 provisions of this article shall at all times be free and exempt from taxation by the
757 Commonwealth ~~and by any municipality, county, or other political subdivision thereof~~.

758 **Drafting note: No change.**

759 § ~~33.1-23.26~~ 33.2-XXX. Notes as eligible securities.

760 All Notes issued under the provisions of this article are hereby made securities in which
761 all persons and entities listed in § ~~33.1-280~~ 33.2-XXX may properly and legally invest funds
762 under their control.

763 **Drafting note: No change.**

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