

1 TITLE ~~33.1~~ 33.2.

2 HIGHWAYS, BRIDGES AND FERRIES AND OTHER SURFACE TRANSPORTATION
3 SYSTEMS.

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

6 SUBTITLE I.

7 GENERAL PROVISIONS AND TRANSPORTATION ENTITIES.

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

12 CHAPTER 1.

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

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

18 § 33.2-XXX. Definitions.

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

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

23 "Board" means the Commonwealth Transportation Board.

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

26 "Department" means the Department of Transportation.

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

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

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

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

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

42 "National Highway System" means the same as that term is defined in 23 U.S.C. §
43 103(b).

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

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

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

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

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

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

63 "Secretary" means the Secretary of Transportation.

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

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

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

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

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

83 ~~§ 33.1-183. Statutes declaring streams and rivers to be highways continued.~~

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

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

90 ~~§ 33.1-223.2:5~~ § 33.2-XXX. Governor to waive certain state statutory mandates and
91 regulations to expedite certain highway construction projects.

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

101 **Drafting note: Technical changes.**

102 ~~§ 33.1-215. Federal aid.~~

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

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

109 **Drafting note: This obsolete section is recommended for repeal.**

110 § ~~33.1-216~~ 33.2-XXX. Authority of cities and towns and certain counties in connection
111 with federal aid.

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

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

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

134 | § ~~33.1-13.04~~ 33.2-XXX. Certified mail; subsequent mail or notices may be sent by
135 | regular mail.

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

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

141 | § ~~33.1-190.2~~ 33.2-XXX. ~~Expenditure of funds prohibited in connection with certain~~
142 | ~~signs~~ English units of measure.

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

149 | ~~§ 33.1-190.3. Use of English units of measure in design or advertisement of projects.~~

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

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

161 § ~~33.1-184~~ 33.2-XXX. Evidence as to existence of a public ~~road~~ highway.
162 When a way has been worked by ~~road~~ highway officials as a public ~~road~~ highway and is
163 used by the public as such, proof of these facts shall be prima facie evidence that the same is a
164 public ~~road~~ highway. And when a way has been regularly or periodically worked by ~~road~~
165 highway officials as a public ~~road~~ highway and used by the public as such continuously for a
166 period of ~~twenty~~ 20 years, proof of these facts shall be conclusive evidence that the same is a
167 public ~~road~~ highway. In all such cases, the center of the general line of passage, conforming to
168 the ancient landmarks where such exist, shall be presumed to be the center of the way and in the
169 absence of proof to the contrary, the width shall be presumed to be ~~thirty~~ 30 feet.

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

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

176 § ~~33.1-223.2:24~~ 33.2-XXX. Secretary of Transportation to submit annual report on
177 actions taken to increase transit use, etc.

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

186 **Drafting note: Technical changes.**

187 | § ~~33.1-223.2:26~~ 33.2-XXX. Secretary of Transportation to conduct periodic examination
188 | of process.

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

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

195 | § ~~33.1-223.2:28~~ 33.2-XXX. Public hearings prior to undertaking ~~certain~~ projects
196 | requested by institutions of higher education.

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

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

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

210 | § ~~33.1-13.1~~ 33.2-XXX. Policy of the Commonwealth regarding use of highways by
211 | motorcycles; discrimination by political subdivisions prohibited.

212 | In formulating transportation policy_; promulgating regulations_; allocating funds_; and
213 | 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.

240 ~~§ 33.1-204. Gate or other obstruction across private roadway leading to forestlands;~~
241 ~~penalty for removal or leaving open or unlocked.~~

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

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

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

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

269 § ~~33.1-223.2:6~~ 33.2-XXX. Funding and undertaking of pedestrian ~~and/or or~~ bicycle
270 projects apart from highway projects not prohibited.

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

275 **Drafting note: Technical changes.**

276 § ~~33.1-205~~ 33.2-XXX. Sidewalks and walkways for pedestrian traffic.

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

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

285 **Drafting note: Technical changes.**

286 § ~~33.1-214~~ 33.2-XXX. Contributions by ~~towns or~~ cities or towns towards road highway
287 building, bridges, etc.

288 Any ~~incorporated town or~~ city or town, acting by and through its council governing
289 body, may, ~~when in the judgment of such council such action will tend to promote the material~~
290 ~~interest of such town or city~~, contribute funds or other aid within the control of ~~such town or the~~
291 city or town toward the building or improvement of permanent public roads highways leading to
292 ~~such town or the~~ city or town, or of bridges, or to the purchase of bridges, or the establishment,
293 maintenance, 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.**