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HOUSE BILL NO. 1253

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Joint Conference Committee
on March 8, 2014)

(Patron Prior to Substitute—Delegate Jones)

A BILL to amend and reenact § 33.1-23.5:4 of the Code of Virginia and to amend the Code of Virginia by adding in Title 33.1 a chapter numbered 19, consisting of sections numbered 33.1-466 through 33.1-476, relating to establishment of the Hampton Roads Transportation Accountability Commission; funding.

Be it enacted by the General Assembly of Virginia:

1. That § 33.1-23.5:4 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding in Title 33.1 a chapter numbered 19, consisting of sections numbered 33.1-466 through 33.1-476, as follows:

§ 33.1-23.5:4. Hampton Roads Transportation Fund established.

There is hereby created in the state treasury a special nonreverting fund for Planning District 23 to be known as the Hampton Roads Transportation Fund, hereafter referred to in this section as "the Fund." The Fund shall be established on the books of the Comptroller. All revenues dedicated to the Fund pursuant to § 58.1-638 and Chapter 22.1 (§ 58.1-2291 et seq.) of Title 58.1 shall be paid into the state treasury and credited to the Fund. Interest earned on moneys in the Fund shall remain in the Fund and be credited to it. Any moneys remaining in the Fund, including interest thereon, at the end of each fiscal year shall not revert to the general fund but shall remain in the Fund. The moneys deposited in the fund shall be used solely for new construction projects on new or existing roads highways, bridges, and tunnels in the localities comprising Planning District 23 as approved by the Hampton Roads Transportation Planning Organization Accountability Commission. The Hampton Roads Transportation Planning Organization Accountability Commission shall give priority to those projects that are expected to provide the greatest impact on reducing congestion for the greatest number of citizens residing within Planning District 23 and shall ensure that the moneys shall be used for such construction projects in all localities comprising Planning District 23.

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

CHAPTER 19.

HAMPTON ROADS TRANSPORTATION ACCOUNTABILITY COMMISSION.

§ 33.1-466. Commission created.

The Hampton Roads Transportation Accountability Commission, referred to in this chapter as "the Commission," is hereby created as a body politic and as a political subdivision of the Commonwealth. The Commission shall embrace each county and city located in Planning District 23, which is established pursuant to Chapter 42 (§ 15.2-4200 et seq.) of Title 15.2.

§ 33.1-467. Composition of Commission.

The Commission shall consist of 23 members as follows:

1. The chief elected officer of the governing body of each of the 14 counties and cities embraced by the Commission;

2. Three members of the House of Delegates who reside in different counties or cities embraced by the Commission, appointed by the Speaker of the House, and two members of the Senate who reside in different counties or cities embraced by the Commission, appointed by the Senate Committee on Rules; and

3. The following four persons serving as nonvoting ex officio members of the Commission: a member of the Commonwealth Transportation Board who resides in a locality embraced by the Commission and is appointed by the Governor; the Director of the Department of Rail and Public Transportation, or his designee; the Commissioner of Highways, or his designee; and the Executive Director of the Virginia Port Authority, or his designee.

All members of the Commission shall serve terms coincident with their terms of office. Vacancies shall be filled in the same manner as the original appointment.

The Commission shall elect a chairman and vice-chairman from among its voting membership.

The Auditor of Public Accounts, or his legally authorized representatives, shall annually audit the financial accounts of the Commission, and the cost of such audit shall be borne by the Commission.

60 § 33.1-468. Staff.

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

66 § 33.1-469. Decisions of Commission.

67 *A majority of the Commission, which majority shall include at least a majority of the chief elected*
68 *officers of the counties and cities embraced by the Commission, shall constitute a quorum. Decisions of*
69 *the Commission shall require a quorum and shall be in accordance with voting procedures established*
70 *by the Commission. In all cases, decisions of the Commission shall require the affirmative vote of*
71 *two-thirds of the members of the Commission present and voting, and two-thirds of the chief elected*
72 *officers of the counties and cities embraced by Planning District 23 who are present and voting and*
73 *whose counties and cities include at least two-thirds of the population embraced by the Commission;*
74 *however, no motion to fund a specific facility or service shall fail because of this population criterion if*
75 *such facility or service is not located or to be located or provided or to be provided within the county*
76 *or city whose chief elected officer's sole negative vote caused the facility or service to fail to meet the*
77 *population criterion. The population of counties and cities embraced by the Commission shall be the*
78 *population as determined by the most recently preceding decennial census, except that on July 1 of the*
79 *fifth year following such census, the population of each county and city shall be adjusted, based on*
80 *population projections made by the Weldon Cooper Center for Public Service of the University of*
81 *Virginia.*

82 § 33.1-470. Annual budget and allocation of expenses.

83 *A. The Commission shall adopt an annual budget and develop a funding plan and shall provide for*
84 *such adoption in its bylaws. The funding plan shall provide for the expenditure of funds over a four- to*
85 *six-year period and shall align with the Statewide Transportation Plan established pursuant to*
86 *§ 33.1-23.03 as much as possible. The Commission shall solicit public comment on its budget and*
87 *funding plan by posting a summary of such budget and funding plan on its website and holding a public*
88 *hearing. Such public hearing shall be advertised on the Commission's website and in a newspaper of*
89 *general circulation in Planning District 23.*

90 *B. The administrative expenses of the Commission, as provided in an annual budget adopted by the*
91 *Commission, to the extent funds for such expenses are not provided from other sources, shall be*
92 *allocated among the component counties and cities on the basis of the relative population, as*
93 *determined pursuant to § 33.1-469. Such budget shall be limited solely to the administrative expenses of*
94 *the Commission and shall not include any funds for construction or acquisition of transportation*
95 *facilities or the performance of any transportation service.*

96 *C. Members may be reimbursed for all reasonable and necessary expenses provided in §§ 2.2-2813*
97 *and 2.2-2825, if approved by the Commission. Funding for the costs of compensation and expenses of*
98 *the members shall be provided by the Commission.*

99 § 33.1-471. Authority to issue bonds.

100 *The Commission may issue bonds and other evidences of debt as may be authorized by this section*
101 *or other law. The provisions of Article 5 (§ 15.2-4519 et seq.) of Chapter 45 of Title 15.2 shall apply,*
102 *mutatis mutandis, to the issuance of such bonds or other debt. The Commission may issue bonds or*
103 *other debt in such amounts as it deems appropriate. The bonds may be supported by any funds*
104 *available, except that funds from tolls collected pursuant to § 33.1-472 shall be used only as provided in*
105 *that section.*

106 § 33.1-472. Powers of the Commission.

107 *Notwithstanding any contrary provision of this title and in accordance with all applicable federal*
108 *statutes and requirements, the Commission shall control and operate and may impose and collect tolls*
109 *in amounts established by the Commission for the use of any new or improved highway, bridge, or*
110 *tunnel, to increase capacity on such facility or to address congestion within Planning District 23,*
111 *constructed by the Commission (i) with federal, state, or local funds, (ii) solely with revenues of the*
112 *Commission, or (iii) with revenues under the control of the Commission. The amount of any such toll*
113 *may be varied from facility to facility, by lane, by congestion levels, by day of the week, by time of day,*
114 *by type or size of vehicle, by number of axles, or by any similar combination thereof or any other factor*
115 *the Commission may deem proper, and a reduced rate may be established for commuters as defined by*
116 *the Commission. All such tolls shall be used for programs and projects that are reasonably related to or*
117 *benefit the users of the new or improved highway, bridge, or tunnel, including, but not limited to, for*
118 *the debt service and other costs of bonds whose proceeds are used for construction or improvement of*
119 *such highway, bridge, or tunnel.*

120 *Any tolls imposed by the Commission shall be collected by an electronic toll system that, to the*
121 *extent possible, shall not impede the traffic flow of the facility or prohibit a toll facility from retaining*

122 means of nonautomated toll collection in some lanes of the facility. For all facilities tolled by the
123 Commission, there shall be signs erected prior to the point of toll collection that clearly state how the
124 majority of the toll revenue is being spent by the Commission to benefit the users of the facility.

125 **§ 33.1-473. Additional powers of the Commission.**

126 A. The Commission shall have the following powers together with all powers incidental thereto or
127 necessary for the performance of those hereinafter stated:

128 1. To sue and be sued and to prosecute and defend, at law or in equity, in any court having
129 jurisdiction of the subject matter and of the parties;

130 2. To adopt and use a corporate seal and to alter the same at its pleasure;

131 3. To procure insurance, participate in insurance plans, and provide self-insurance; however, the
132 purchase of insurance, participation in an insurance plan, or the creation of a self-insurance plan by
133 the Commission shall not be deemed a waiver or relinquishment of any sovereign immunity to which the
134 Commission or its officers, directors, employees, or agents are otherwise entitled;

135 4. To establish bylaws and make all rules and regulations, not inconsistent with the provisions of this
136 chapter, deemed expedient for the management of the Commission's affairs;

137 5. To apply for and accept money, materials, contributions, grants, or other financial assistance from
138 the United States and agencies or instrumentalities thereof; the Commonwealth; and any political
139 subdivision, agency, or instrumentality of the Commonwealth; and from any legitimate private source;

140 6. To acquire real and personal property or any interest therein by purchase, lease, gift, or
141 otherwise for purposes consistent with this chapter and to hold, encumber, sell, or otherwise dispose of
142 such land or interest for purposes consistent with this chapter;

143 7. To acquire by purchase, lease, contract, or otherwise, highways, bridges, or tunnels and to
144 construct the same by purchase, lease, contract, or otherwise;

145 8. In consultation with the Commonwealth Transportation Board and with each city or county in
146 which the facility or any part thereof is or is to be located, to repair, expand, enlarge, construct,
147 reconstruct, or renovate any or all highways, bridges, and tunnels within Planning District 23 and to
148 acquire any real or personal property needed for any such purpose;

149 9. To enter into agreements or leases with public or private entities for the operation and
150 maintenance of bridges, tunnels, transit and rail facilities, and highways;

151 10. To make and execute contracts, deeds, mortgages, leases, and all other instruments and
152 agreements necessary or convenient for the performance of its duties and the exercise of its powers and
153 functions under this chapter;

154 11. To the extent funds are made or become available to the Commission to do so, to employ
155 employees, agents, advisors, and consultants, including without limitation attorneys, financial advisers,
156 engineers, and other technical advisers and, the provisions of any other law to the contrary
157 notwithstanding, to determine their duties and compensation; and

158 12. To the extent not inconsistent with the other provisions of this chapter, and without limiting or
159 restricting the powers otherwise given the Commission, to exercise all of the powers given to
160 transportation district commissions by § 15.2-4518.

161 B. The Commission shall comply with the provisions governing localities contained in
162 § 15.2-2108.23.

163 **§ 33.1-474. Commission a responsible public entity under Public-Private Transportation Act of**
164 **1995.**

165 The Commission is a responsible public entity as defined in § 56-557 and shall be regulated in
166 accordance with the terms of the Public-Private Transportation Act of 1995 (§ 56-556 et seq.) and
167 regulations and guidelines adopted pursuant thereto.

168 **§ 33.1-475. Continuing responsibilities of the Commonwealth Transportation Board and the**
169 **Department of Transportation.**

170 Except as otherwise explicitly provided in this chapter, until such time as the Commission and the
171 Department of Transportation, or the Commission and the Commonwealth Transportation Board, agree
172 otherwise in writing, the Commonwealth Transportation Board shall allocate funding to and the
173 Department of Transportation shall perform or cause to be performed all maintenance and operation of
174 the bridges, tunnels, and roadways and shall perform such other required services and activities with
175 respect to such bridges, tunnels, and roadways as were being performed on July 1, 2014.

176 **§ 33.1-476. Use of revenues by the Commission.**

177 Notwithstanding any other provision of this chapter, all moneys received by the Commission shall be
178 used by the Commission solely for the benefit of those counties and cities that are embraced by the
179 Commission, and such moneys shall be used by the Commission in a manner that is consistent with the
180 purposes stated in this chapter.

181 **2. That the staff of the Hampton Roads Transportation Planning Organization and the**
182 **Department of Transportation shall work cooperatively to assist the proper formation and effective**

183 organization of the Hampton Roads Transportation Accountability Commission. Until such time as
184 the Commission is fully established and functioning, the staff of the Hampton Roads
185 Transportation Planning Organization shall serve as its staff, and the Hampton Roads
186 Transportation Planning Organization shall provide the Commission with office space and
187 administrative support. The Commission shall reimburse the Hampton Roads Transportation
188 Planning Organization for the cost of such staff, office space, and administrative support as
189 appropriate.

190 3. That should any portion of this act be held unconstitutional by a court of competent
191 jurisdiction, the remaining portions of this act shall remain in effect.