

**Be Alert To The Legal And Practical  
Considerations Of Annexation And The Impact Of  
The 2007 Transportation Act On Land Use Matters**

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III. BE ALERT TO THE LEGAL AND PRACTICAL CONSIDERATIONS OF ANNEXATION AND THE IMPACT OF THE 2007 TRANSPORTATION ACT ON LAND USE MATTERS

A. UPDATE ON KEY ISSUES IN ANNEXATION LAW

1. ANNEXATION IS AN EXTREMELY RARE ISSUE IN VIRGINIA AT PRESENT.

A. The Virginia Constitution provides that the General Assembly shall provide by general law for the extension and contraction of corporate limits. The intent of the legislation is to provide a statutory method of enlarging the borders of towns and cities. Under current law, no city is permitted to institute any proceedings for the annexation of any territory not included in any proceedings commenced prior to January 1, 1987, unless the governing bodies of the affected areas agree to annexation. This stay of annexation proceedings will terminate on or before July 1, 2010. Va. Code § 15.2-3201.

B. Annexation proceedings may be initiated by the passage of an ordinance by the council of the city, or by petition to the circuit court judge of fifty-one percent (51%) of the qualified voters of outlying territory desired to be annexed. Proceedings for annexation by cities and towns and proceedings by citizens of an area desiring to be annexed to a city are separate and distinct actions, both as to method of instituting the proceedings and as to duties and obligations of the respective litigants. Annexation proceedings may be instituted by either of the two separate and distinct classes of petitioners. Once they have been instituted and the preliminary steps taken, the procedure thereafter by either class of petitioners is uniform, except as otherwise provided, but the respective rights, duties and obligations of the parties remain as set out in the annexation statutes read as a whole. There is nothing in the statute distinguishing the kind of territory which may be annexed, the designation being "outlying territory." To limit the meaning of outlying territory to outlying unincorporated territory, which

is not included within the boundaries of a town, can only be done by conceiving and supplying to the section a limitation which cannot be found in the language used. It appears that it was contemplated that a town might be annexed to a city under the provisions of the act.

C. A city or town instituting annexation proceedings shall give notice to the commonwealth's attorney and to the chairman of the governing body of the county wherein the territory sought to be annexed lies that it will, on a given day, move the court to grant the annexation.

D. The case will not be matured until that time, and it will be heard then or thereafter, depending on when it is called by the court. The annexation court is compromised of three (3) judges, all of whom are required to be judges of circuit courts remote from the territory sought to be annexed.

E. A copy of the notice mentioned above, together with the annexation ordinance or an informative summary thereof, must be published in a newspaper once a week for four (4) successive weeks.

F. The statute provides for additional parties in these words: "In any proceedings hereunder, any qualified voters or property owners in the territory proposed to be annexed or any adjoining city or town may, by petition, become parties to such proceeding...Any county whose territory is affected by the proceedings, or any city, town or persons affected thereby, may appear and shall be made parties defendant to the case, and be represented by counsel." The statute neither expressly nor impliedly limits the right to appear and be made parties to persons who have special interests in the proceedings beyond the interests of others in the city or in the remainder of the county.

G. When a city annexes territory from a county, the area annexed becomes part of a different political unit and the people in it pass into and under a different government. The area of the city is changed, the area of the county is changed, the taxable values of both are changed, and what is added to the city and what remains in the county and the terms and conditions of the changes are

matters that necessarily affect the interests of persons in the city, in the annexed area, and in the remainder of the county.

H. A city has the right or option under the provisions of the statutes to proceed for annexation of territory lying in two (2) counties at the same time and in a single proceeding, but it is not compelled to do so.

I. The Virginia statute directs consolidation and the hearing of the consolidated proceeding by "the court in which the original proceedings are pending" if another petition is "filed seeking the annexation of the same territory or a portion thereof to another city or town." The language of the statute cannot be read so as to make it applicable only when two or more annexation proceedings involving overlapping territory have matured.

J. The statute provides that after due notice is given, the case shall be docketed and heard by a special three (3) judge court, which will either grant the proposed annexation, setting forth all terms and conditions upon which the petition is granted, or dismiss the case. It should be noted that where the initiative is by the city or town, the ordinance must precede the filing of the petition, but where the initiative is taken by fifty-one percent (51%) of the voters in the territory involved, no ordinance need be passed before the filing of the petition, and consequently no certified copy of the ordinance need be served with the notice.

Either party may appeal from the judgment of the special court to the supreme court. The special court shall certify the facts in the case to the supreme court, and the evidence shall be considered as on appeal in condemnation proceedings under Chapter 1.1 of Title 25.

K. The statute provides that no city or town, having instituted proceedings to annex territory of a county, shall again seek to annex territory of such county within the ten (10) years next succeeding the entry of the final order in the annexation proceedings, except by mutual agreement of the governing bodies affected.

L. Where citizens institute an annexation proceeding soon after a prior proceeding, the annexation statutes give the court ample authority to act for the best interest of all the parties, and to render full justice on the merits of the proceeding. If, however, it appears that, by reason of material and substantial changes, annexation is necessary and expedient, considering the interest of all the parties involved, then the court will doubtlessly act accordingly.

**B. IMPACT OF THE 2007 TRANSPORTATION ACT ON LAND USE MATTER**

**1. COMPREHENSIVE PLANS.**

§ 15.2-2223.1. Comprehensive plan to include urban development areas; new urbanism.

A. Every county, city, or town that has adopted zoning pursuant to Article 7 (§ 15.2-2280 et seq.) of Chapter 22 of Title 15.2 and that (i) has a population of at least 20,000 and population growth of at least 5% or (ii) has population growth of 15% or more, shall, and any county, city or town may, amend its comprehensive plan to incorporate one or more urban development areas. For purposes of this section, population growth shall be the difference in population from the next-to-latest to the latest decennial census year, based on population reported by the United States Bureau of the Census. For purposes of this section, an urban development area is an area designated by a locality that is appropriate for higher density development due to proximity to transportation facilities, the availability of a public or community water and sewer system, or proximity to a city, town, or other developed area. The comprehensive plan shall provide for commercial and residential densities within urban development areas that are appropriate for reasonably compact development at a density of at least four residential units per gross acre and a minimum floor area ratio of 0.4 per gross acre for commercial development. The comprehensive plan shall designate one or more urban development areas sufficient to meet projected residential and commercial growth in the locality for an ensuing period of at least 10 but not

more than 20 years, which may include phasing of development within the urban development areas. Future growth shall be based on official estimates and projections of the Weldon Cooper Center for Public Service of the University of Virginia or other official government sources. The boundaries and size of each urban development area shall be reexamined and, if necessary, revised every five years in conjunction with the update of the comprehensive plan and in accordance with the most recent available population growth estimates and projections. Such districts may be areas designated for redevelopment or infill development.

B. The comprehensive plan shall further incorporate principles of new urbanism and traditional neighborhood development, which may include but need not be limited to (i) pedestrian-friendly road design, (ii) interconnection of new local streets with existing local streets and roads, (iii) connectivity of road and pedestrian networks, (iv) preservation of natural areas, (v) satisfaction of requirements for stormwater management, (vi) mixed-use neighborhoods, including mixed housing types, (vii) reduction of front and side yard building setbacks, and (viii) reduction of subdivision street widths and turning radii at subdivision street intersections.

C. The comprehensive plan shall describe any financial and other incentives for development in the urban development areas.

D. No county, city, or town that has amended its comprehensive plan in accordance with this section shall limit or prohibit development pursuant to existing zoning or shall refuse to consider any application for rezoning based solely on the fact that the property is located outside the urban development area.

E. Any county, city, or town that would be required to amend its plan pursuant to this section that determines that its plan accommodates growth in a manner consistent with this section, upon adoption of a resolution certifying such compliance, shall not be required to further amend its plan.

F. Any county that amends its comprehensive plan pursuant to this section may designate one or more urban development areas in any incorporated town within such county, if the governing body of the town has also amended its comprehensive plan to designate the same areas as urban development areas with at least the same density designated by the county.

G. To the extent possible, state and local transportation, housing, and economic development funding shall be directed to the urban development area.

## **2. ROAD IMPACT FEES**

### **§ 15.2-2318. Definitions.**

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

"Cost" includes, in addition to all labor, materials, machinery and equipment for construction, (i) acquisition of land, rights-of-way, property rights, easements and interests, including the costs of moving or relocating utilities, (ii) demolition or removal of any structure on land so acquired, including acquisition of land to which such structure may be moved, (iii) survey, engineering, and architectural expenses, (iv) legal, administrative, and other related expenses, and (v) interest charges and other financing costs if impact fees are used for the payment of principal and interest on bonds, notes or other obligations issued by the locality to finance the road improvement.

"Impact fee" means a charge or assessment imposed against new development in order to generate revenue to fund or recover the costs of reasonable road improvements-benefiting the new development. Impact fees may not be assessed and imposed for road repair, operation and maintenance, nor to meet demand which existed prior to the new development.

"Impact fee service area" means—an area designated within the comprehensive plan of a locality having clearly defined boundaries and clearly

related traffic needs and within which development is to be subject to the assessment of impact fees.

"Road improvement" includes construction of new roads or improvement or expansion of existing roads and related appurtenances as required by applicable standards of the Virginia Department of Transportation, or the applicable standards of a locality with road maintenance responsibilities, to meet increased demand attributable to new development. Road improvements do not include on-site construction of roads which a developer may be required to provide pursuant to §§ 15.2-2241 through 15.2-2245.

§ 15.2-2319. Authority to assess and impose impact fees.

Any applicable locality may, by ordinance pursuant to the procedures and requirements of this article, assess and impose impact fees on new development to pay all or a part of the cost of reasonable road improvements that benefit the new development.

Prior to the adoption of the ordinance, a locality shall establish an impact fee advisory committee. The committee shall be composed of not less than five nor more than ten members appointed by the governing body of the locality and at least forty percent of the membership shall be representatives from the development, building or real estate industries. The planning commission or other existing committee that meets the membership requirements may serve as the impact fee advisory committee. The committee shall serve in an advisory capacity to assist and advise the governing body of the locality with regard to the ordinance. No action of the committee shall be considered a necessary prerequisite for any action taken by the locality in regard to the adoption of an ordinance.



§ 15.2-2320. Impact fee service areas to be established.

The locality shall delineate one or more impact fee service areas within its comprehensive plan. Impact fees collected from new development within an impact fee service area shall be expended for road improvements benefiting that impact fee service area. An impact fee service area may encompass more than one road improvement project. A locality may exclude urban development areas designated pursuant to § 15.2-2223.1 from impact fee service areas.

§ 15.2-2321. Adoption of road improvements program.

Prior to adopting a system of impact fees, the locality shall conduct an assessment of road improvement needs benefiting an impact fee service area and shall adopt a road improvements plan for the area showing the new roads proposed to be constructed and the existing roads to be improved or expanded and the schedule for undertaking such construction, improvement or expansion. The road improvements plan shall be adopted as an amendment to the required comprehensive plan and shall be incorporated into the capital improvements program or, in the case of the counties where applicable, the six-year plan for secondary road construction pursuant to § 33.1-70.01.

The locality shall adopt the road improvements plan after holding a duly advertised public hearing. The public hearing notice shall identify the impact fee service area or areas to be designated, and shall include a summary of the needs assessment and the assumptions upon which the assessment is based, the proposed amount of the impact fee, and information as to how a copy of the complete study may be examined. A copy of the complete study shall be available for public inspection and copying at reasonable times prior to the public hearing.

The locality at a minimum shall include the following items in assessing road improvement needs and preparing a road improvements plan:

1. An analysis of the existing capacity, current usage and existing commitments to future usage of existing roads, as indicated by (i) current and projected service levels, (ii) current valid building permits outstanding, and (iii) approved and pending site plans and subdivision plats. If the current usage and commitments exceed the existing capacity of the roads, the locality also shall determine the costs of improving the roads to meet the demand. The analysis shall include any off-site road improvements or cash payments for road improvements accepted by the locality and shall include a plan to fund the current usages and commitments that exceed the existing capacity of the roads.

2. The projected need for and costs of construction of new roads or improvement or expansion of existing roads attributable in whole or in part to projected new development. Road improvement needs shall be projected for the impact fee service area when fully developed in accord with the comprehensive plan and, if full development is projected to occur more than 20 years in the future, at the end of a 20-year period. The assumptions with regard to land uses, densities, intensities, and population upon which road improvement projections are based shall be presented.

3. The total number of new service units projected for the impact fee service area when fully developed and, if full development is projected to occur more than ~~ten~~ 20 years in the future, at the end of a 20-year period. A "service unit" is a standardized measure of traffic use or generation. The locality shall develop a table or method for attributing service units to various types of development and land use, including but not limited to residential, commercial and industrial uses. The table shall be based upon the ITE manual (published by the Institute of Transportation Engineers) or locally conducted trip generation

studies, and consistent with the traffic analysis standards adopted pursuant to § 15.2-2222.1.

§ 15.2-2322. Adoption of impact fee and schedule.

After adoption of a road improvement program, the locality may adopt an ordinance establishing a system of impact fees to fund or recapture all or any part of the cost of providing reasonable road improvements benefiting new development. The ordinance shall set forth the schedule of impact fees.

§ 15.2-2323. When impact fees assessed and imposed.

The amount of impact fees to be imposed on a specific development or subdivision shall be determined before or at the time the site plan or subdivision is approved. The ordinance shall specify that the fee is to be collected at the time of the issuance of a building permit. The ordinance shall provide that fees (i) may be paid in lump sum or (ii) be paid on installment at a reasonable rate of interest for a fixed number of years. The locality by ordinance may provide for negotiated agreements with the owner of the property as to the time and method of paying the impact fees.

The maximum impact fee to be imposed shall be determined (i) by dividing projected road improvement costs in the impact fee service area when fully developed by the number of projected service units when fully developed, or (ii) for a reasonable period of time, but not less than ten years, by dividing the projected costs necessitated by development in the next ten years by the service units projected to be created in the next ten years.

The ordinance shall provide for appeals from administrative determinations, regarding the impact fees to be imposed, to the governing body or such other body as designated in the ordinance. The ordinance may provide for the resolution of disputes over an impact fee by arbitration or otherwise.

§ 15.2-2324. Credits against impact fee.

The value of any dedication, contribution or construction from the developer for off-site road or other transportation improvements benefiting the impact fee service area shall be treated as a credit against the impact fees imposed on the developer's project. The locality shall treat as a credit any off-site transportation dedication, contribution, or construction, whether it is a condition of a rezoning or otherwise committed to the locality. The locality may by ordinance provide for credits for approved on-site transportation improvements in excess of those required by the development.

The locality also shall calculate and credit against impact fees the extent to which (i) other developments have already contributed to the cost of existing roads which will benefit the development, (ii) new development will contribute to the cost of existing roads, and (iii) new development will contribute to the cost of road improvements in the future other than through impact fees, including any special taxing districts, special assessments, or community development authorities.

§ 15.2-2325. Updating plan and amending impact fee.

The locality shall update the needs assessment and the assumptions and projections at least once every two years. The road improvement plan shall be updated at least every two years to reflect current assumptions and projections. The impact fee schedule may be amended to reflect any substantial changes in such assumptions and projections. Any impact fees not yet paid shall be assessed at the updated rate.

§ 15.2-2326. Use of proceeds.

A separate road improvement account shall be established for the impact fee service area and all funds collected through impact fees shall be deposited in the interest-bearing account. Interest earned on deposits shall become funds of the

account. The expenditure of funds from the account shall be only for road improvements benefiting the impact fee service area as set out in the road improvement plan for the impact fee service area.

§ 15.2-2327. Refund of impact fees.

The locality shall refund any impact fee or portion thereof for which construction of a project is not completed within a reasonable period of time, not to exceed fifteen years. In the event that impact fees are not committed to road improvements benefiting the impact fee service area within seven years from the date of collection, the locality may commit any such impact fees to the secondary or urban system construction program of that locality for road improvements that benefit the impact fee service area.

Upon completion of a project, the locality shall recalculate the impact fee based on the actual cost of the improvement. It shall refund the difference if the impact fee paid exceeds actual cost by more than fifteen percent. Refunds shall be made to the record owner of the property at the time the refund is made.

**3. IMPACT FEES.**

§ 15.2-2328. Applicability of article.

The provisions of this article shall apply in their entirety to any locality that has established an urban transportation service district in accordance with § 15.2-2403.1. However, the authority granted by this article may be exercised only in areas outside of urban transportation service districts and on parcels that are currently zoned agricultural and are being subdivided for by-right residential development. The authority granted by this article shall expire on December 31, 2008, for any locality that has not established an urban transportation service district and adopted an impact fee ordinance pursuant to this article by such date.

§ 15.2-2329. Imposition of impact fees.

A. Any locality that includes within its comprehensive plan a calculation of the capital costs of public facilities necessary to serve residential uses may impose and collect impact fees in amounts consistent with the methodologies used in its comprehensive plan to defray the capital costs of public facilities related to the residential development.

B. Impact fees imposed and collected pursuant to this section shall only be used for public facilities that are impacted by residential development.

C. A locality imposing impact fees as provided in this section shall allow credit against the impact fees for cash proffers collected for the purpose of defraying the capital costs of public facilities related to the residential development. A locality imposing impact fees as provided in this section shall also include within its comprehensive plan a methodology for calculating credit for the value of proffered land donations to accommodate public facilities, and for the construction cost of any public facilities or public improvements the construction of which is required by proffer.

D. A locality imposing impact fees under this section may require that such impact fees be paid prior to and as a condition of the issuance of any necessary building permits for residential uses.

E. For the purposes of this section, "public facilities" shall be deemed to include: (i) roads, streets, and bridges, including rights-of-way, traffic signals, landscaping, and any local components of federal or state highways; (ii) stormwater collection, retention, detention, treatment, and disposal facilities, flood control facilities, and bank and shore protection and enhancement improvements; (iii) parks, open space, and recreation areas and related facilities; (iv) public safety facilities, including police, fire, emergency medical, and rescue facilities; (v) primary and secondary schools and related facilities; and (vi)

libraries and related facilities; however, the definition "public facilities" for counties within the Richmond MSA shall be deemed to include: roads, streets, and bridges, including rights-of-way, traffic signals, landscaping, and any local components of federal or state highways.

§ 15.2-2403. Powers of service districts.

After adoption of an ordinance or ordinances or the entry of an order creating a service district, the governing body or bodies shall have the following powers with respect to the service districts:

1. To construct, maintain, and operate such facilities and equipment as may be necessary or desirable to provide additional, more complete, or more timely governmental services within a service district, including but not limited to water supply, sewerage, garbage removal and disposal, heat, light, fire-fighting equipment and power and gas systems and sidewalks; economic development services; promotion of business and retail development services; beautification and landscaping; beach and shoreline management and restoration; control of infestations of insects that may carry a disease that is dangerous to humans, gypsy moths, cankerworms or other pests identified by the Commissioner of the Department of Agriculture and Consumer Services in accordance with the Virginia Pest Law (§ 3.1-188.20 et seq.); public parking; extra security, street cleaning, snow removal and refuse collection services; sponsorship and promotion of recreational and cultural activities; upon petition of over 50 percent of the property owners who own not less than 50 percent of the property to be served, construction, maintenance, and general upkeep of streets and construction, maintenance, and general upkeep of streets and roads through creation of urban transportation service districts pursuant to § 15.2-2403.1; and other services, events, or activities that will enhance the public use and enjoyment of and the public safety, public convenience, and public well-being within a service district.

Such services, events, or activities shall not be undertaken for the sole or dominant benefit of any particular individual, business or other private entity.

2. To provide, in addition to services authorized by subdivision 1, transportation and transportation services within a service district, including, but not limited to: public transportation systems serving the district; transportation management services; road construction; rehabilitation and replacement of existing transportation facilities or systems; and sound walls or sound barriers. However, any transportation service, system, facility, roadway, or roadway appurtenance established under this subdivision that will be operated or maintained by the Virginia Department of Transportation shall be established with the involvement of the governing body of the locality and meet the appropriate requirements of the Department. The proceeds from any annual tax or portion thereof collected for road construction pursuant to subdivision 6 may be accumulated and set aside for such reasonable period of time as is necessary to finance such construction; however, the governing body or bodies shall make available an annual disclosure statement, which shall contain the amount of any such proceeds accumulated and set aside to finance such road construction.

3. To acquire in accordance with § 15.2-1800, any such facilities and equipment and rights, title, interest or easements therefor in and to real estate in such district and maintain and operate the same as may be necessary and desirable to provide the governmental services authorized by subdivisions 1 and 2.

4. To contract with any person, municipality or state agency to provide the governmental services authorized by subdivisions 1 and 2 and to construct, establish, maintain, and operate any such facilities and equipment as may be necessary and desirable in connection therewith.

5. To require owners or tenants of any property in the district to connect with any such system or systems, and to contract with the owners or



tenants for such connections. The owners or tenants shall have the right of appeal to the circuit court within 10 days from action by the governing body.

6. To levy and collect an annual tax upon any property in such service district subject to local taxation to pay, either in whole or in part, the expenses and charges for providing the governmental services authorized by subdivisions 1, 2 and 11 and for constructing, maintaining, and operating such facilities and equipment as may be necessary and desirable in connection therewith; however, such annual tax shall not be levied for or used to pay for schools, police, or general government services not authorized by this section, and the proceeds from such annual tax shall be so segregated as to enable the same to be expended in the district in which raised. In addition to the tax on property authorized herein, in any city having a population of 350,000 or more and adjacent to the Atlantic Ocean, the city council shall have the power to impose a tax on the base transient room rentals, excluding hotels, motels, and travel campgrounds, within such service district at a rate or percentage not higher than five percent which is in addition to any other transient room rental tax imposed by the city. The proceeds from such additional transient room rental tax shall be deposited in a special fund to be used only for the purpose of beach and shoreline management and restoration. Any locality imposing a tax pursuant to this subdivision may base the tax on the full assessed value of the taxable property within the service district, notwithstanding any special use value assessment of property within the service district for land preservation pursuant to Article 4 (§ 58.1-3229 et seq.) of Chapter 32 of Title 58.1, provided the owner of such property has given written consent. In addition to the taxes and assessments described herein, a locality creating a service district may contribute from its general fund any amount of funds it deems appropriate to pay for the governmental services authorized by subdivisions 1, 2, and 11 of this section.

7. To accept the allocation, contribution or funds of, or to reimburse from, any available source, including, but not limited to, any person, authority, transportation district, locality, or state or federal agency for either the whole or any part of the costs, expenses and charges incident to the acquisition, construction, reconstruction, maintenance, alteration, improvement, expansion, and the operation or maintenance of any facilities and services in the district.

8. To employ and fix the compensation of any technical, clerical, or other force and help which from time to time, in their judgment may be necessary or desirable to provide the governmental services authorized by subdivisions 1, 2 and 11 or for the construction, operation, or maintenance of any such facilities and equipment as may be necessary or desirable in connection therewith.

9. To create and terminate a development board or other body to which shall be granted and assigned such powers and responsibilities with respect to a special service district as are delegated to it by ordinance adopted by the governing body of such locality or localities. Any such board or alternative body created shall be responsible for control and management of funds appropriated for its use by the governing body or bodies, and such funds may be used to employ or contract with, on such terms and conditions as the board or other body shall determine, persons, municipal or other governmental entities or such other entities as the development board or alternative body deems necessary to accomplish the purposes for which the development board or alternative body has been created. If the district was created by court order, the ordinance creating the development board or alternative body may provide that the members appointed to the board or alternative body shall consist of a majority of the landowners who petitioned for the creation of the district, or their designees or nominees.

10. To negotiate and contract with any person or municipality with regard to the connections of any such system or systems with any other system or systems now in operation or hereafter established, and with regard to any other

matter necessary and proper for the construction or operation and maintenance of any such system within the district.

11. To acquire by purchase, gift, devise, bequest, grant, or otherwise title to or any interests or rights of not less than five years' duration in real property that will provide a means for the preservation or provision of open-space land as provided for in the Open-Space Land Act (§ 10.1-1700 et seq.). Notwithstanding the provisions of subdivision 3, the governing body shall not use the power of condemnation to acquire any interest in land for the purposes of this subdivision.

12. To contract with any state agency or state or local authority for services within the power of the agency or authority related to the financing, construction, or operation of the facilities and services to be provided within the district; however, nothing in this subdivision shall authorize a locality to obligate its general tax revenues, or to pledge its full faith and credit.

13. In the Town of Front Royal, to construct, maintain, and operate facilities, equipment, and programs as may be necessary or desirable to control, eradicate, and prevent the infestation of rats and removal of skunks and the conditions that harbor them.

#### **4. URBAN TRANSPORTATION DISTRICTS**

##### **§ 15.2-2403.1. Creation of urban transportation service districts.**

A. The boundaries of any urban transportation service district created pursuant to this article shall be agreed upon by both the local governing body of an urban county and by the Commonwealth Transportation Board. The overall density of an urban transportation service district shall be one residential unit per gross acre or greater. In the event of a disagreement between the Board and the governing body of an urban county in regard to the boundaries of an urban transportation service district, the parties may request that the Commission on

Local Government serve as a mediator. For purposes of this section, an "urban county" means any county with a population of greater than 90,000, according to the United States Census of 2000, that did not maintain its roads as of January 1, 2007.

B. Any urban county that has established an urban transportation service district in accordance with this section shall maintain the roads within such district. Any such county shall receive an amount equal to the per lane mile maintenance payments made to cities and certain towns pursuant to § 33.1-41.1 for the area within the district for purposes of road maintenance.

## **5. HAMPTON ROADS TRANSPORTATION AUTHORITY.**

§ 33.1-391.6. Short Title.

This chapter shall be known and may be cited as the Hampton Roads Transportation Authority Act.

§ 33.1-391.7. Authority created.

The Hampton Roads Transportation Authority, hereinafter in this chapter known as "the Authority" is hereby created as a body politic and as a political subdivision of the Commonwealth. The Authority shall embrace the Counties of Isle of Wight, James City, and York and the Cities of Chesapeake, Hampton, Newport News, Norfolk, Poquoson, Portsmouth, Suffolk, Virginia Beach, and Williamsburg. The membership of the Authority shall be as provided in §§ 33.1-391.9 and 33.1-391.12. In addition, the Counties of Accomack and Northampton shall also be embraced by the Authority at such time that the Chesapeake Bay Bridge-Tunnel facilities become subject to the control of the Authority as provided under § 33.1-391.12.

§ 33.1-391.8. Powers of the Authority.

Notwithstanding any contrary provision of this title and in accordance with all applicable federal statutes and requirements, the Authority shall control and operate and may impose and collect tolls in amounts established by the Authority for the use of any new or improved highway, bridge, tunnel, or transportation facility to increase capacity on such facility (including new construction relating to, or improvements to, the bridges, tunnels, roadways, and related facilities known collectively as the Chesapeake Bay Bridge-Tunnel as described in § 33.1-391.12, pursuant to the conditions set forth in such section) constructed by the Authority or solely with revenues of the Authority or revenues under the control of the Authority. The amount of any such toll may be varied from facility to facility, by lane, by congestion levels, by day of the week, time of day, type of vehicle, number of axles, or any similar combination thereof, and a reduced rate may be established for commuters as defined by the Authority. For purposes of this section, the Midtown and Downtown tunnels located within the Cities of Norfolk and Portsmouth shall be considered a single transportation facility and both facilities may be tolled if improvements are made to either tunnel. Any tolls imposed by the Authority shall be collected by an electronic toll system that, to the extent possible, shall not impede the traffic flow of the facility or prohibit a toll facility from retaining means of nonautomated toll collection in some lanes of the facility. For all facilities tolled by the Authority, there shall be signs erected prior to the point of toll collection that clearly state how the majority of the toll revenue is being spent by the Authority to benefit the users of the facility.

§ 33.1-391.9. Composition of Authority; chairman and vice-chairman; quorum.

The Authority shall consist of the following members: (i) the chief elected officer of the governing body (or in the discretion of the chief elected officer, his

designee, who shall be a current elected officer of such governing body) of each of the Counties of Isle of Wight, James City, and York and the Cities of Chesapeake, Hampton, Newport News, Norfolk, Poquoson, Portsmouth, Suffolk, Virginia Beach, and Williamsburg, who shall serve with voting privileges; (ii) a member of the Commonwealth Transportation Board who resides in a county or city embraced by the Authority appointed by the Governor who shall serve ex officio without a vote; (iii) the Director of the Virginia Department of Rail and Public Transportation, or his designee, who shall serve ex officio without a vote; (iv) the Commonwealth Transportation Commissioner, or his designee, who shall serve ex officio without a vote; (v) two members of the Virginia House of Delegates each of whom shall reside in a city or county whose governing body has a voting member on the Authority, neither of whom shall reside in the same city or county, appointed by the Speaker of the House of Delegates, who shall serve ex officio without a vote; and (vi) one member of the Senate of Virginia who shall reside in a city or county whose governing body has a voting member on the Authority, appointed by the Senate Committee on Rules who shall serve ex officio without a vote. Legislative members shall serve terms coincident with their terms of office. Vacancies shall be filled by appointment for the unexpired term by the same process as used to make the original appointment.

The Authority shall appoint a chairman and vice-chairman from among its voting membership.

A majority of the voting members of the Authority shall constitute a quorum for the transaction of business.

Decisions of the Authority shall require a quorum and shall be in accordance with voting procedures established by the Authority. Decisions of the Authority shall require the affirmative vote of a majority of the voting members of the Authority present and voting and such members present and voting in the affirmative shall be representatives of counties and cities that collectively include

at least 51% of the population embraced by the Authority at the time of the vote. The population of counties and cities embraced by the Authority shall be the population as determined by the most recently preceding decennial census, except that after July 1 of the fifth year following such census, the population of each county and city shall be adjusted, based on final population estimates made by the Weldon Cooper Center for Public Service of the University of Virginia.

Members of the Authority shall be reimbursed for their actual and necessary expenses incurred in the performance of their duties and, in addition, shall be paid a per diem equal to the amount paid members of the Commonwealth Transportation Board for each day or portion thereof during which they are engaged in the official business of the Authority.

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

§ 33.1-391.10. Additional powers of the Authority.

The Authority shall have the following powers together with all powers incidental thereto or necessary for the performance of those hereinafter stated:

1. To sue and be sued and to prosecute and defend, at law or in equity, in any court having jurisdiction of the subject matter and of the parties;
2. To adopt and use a corporate seal and to alter the same at its pleasure;
3. To procure insurance, participate in insurance plans, and provide self-insurance; however, the purchase of insurance, participation in an insurance plan, or the creation of a self-insurance plan by the Authority shall not be deemed a waiver or relinquishment of any sovereign immunity to which the Authority or its officers, directors, employees, or agents are otherwise entitled;

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

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

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

7. To acquire by purchase, lease, contract, or otherwise, highways, bridges, tunnels, railroads, rolling stock, and transit and rail facilities and other transportation-related facilities; and to construct the same by purchase, lease, contract, or otherwise;

8. In consultation with the Commonwealth Transportation Board and with each city or county in which the facility or any part thereof is or is to be located, to repair, expand, enlarge, construct, reconstruct, or renovate any or all of the transportation facilities referred to in this section, and to acquire any real or personal property needed for any such purpose;

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

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



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

12. The authority shall comply with the provisions governing localities contained in § 15.2-2108.23;

13. To decide and vote to impose all of the fees and taxes authorized under law for use by the Authority. Furthermore, no such fee or tax shall apply to Accomack or Northampton County until such time that the Chesapeake Bay Bridge-Tunnel facilities become subject to the control of the Authority as provided under § 33.1-391.12; and

14. To the extent not inconsistent with the other provisions of this chapter, and without limiting or restricting the powers otherwise given the Authority, to exercise all of the powers given to transportation district commissions by §§ 15.2-4518 and 15.2-4519. The Authority shall only undertake those transportation projects that are included in the federally mandated 2030 Regional Transportation Plan approved by the Metropolitan Planning Organization, or any successive plan, and that are located in, or which provide a benefit to, the counties and cities that are members of the Authority, subject to the limitations related to those projects contained in this section.

The Authority shall phase construction of the transportation projects that are included in the federally mandated 2030 Regional Transportation Plan, or any successive plan. Except as specifically provided herein, projects listed in the second phase shall not be undertaken until the Authority has considered and acted upon a financing plan for the maintenance, operation, and construction for the projects listed in the first phase that meet the requirements of this section.

First Phase Projects:

Route 460 Upgrade; I-64 Widening on the Peninsula; I-64 Widening on the Southside; Downtown Tunnel/Midtown Tunnel/MLK Extension; Southeastern Parkway/Dominion Blvd/Route 17; I-664 Widening in Newport News; I-664 Widening on the Southside; I-664 Monitor Merrimac Memorial Bridge Tunnel Widening.

Second Phase Projects:

I-564 from I-64 to the Intermodal Connector; I-564 Connector to the Monitor Merrimac Memorial Bridge Tunnel; Craney Island Connector.

§ 33.1-391.11. Authority a responsible public entity under Public-Private Transportation Act of 1995.

The Authority is a responsible public entity as defined in the Public-Private Transportation Act of 1995 (§ 56-556 et seq.) (the PPTA).

It is the intent of the General Assembly that the Authority shall encourage private sector participation in the aforementioned projects. Any cost savings realized under the PPTA relating to the construction of first phase projects may be applied to advancing the future construction of second phase projects. Further, nothing herein shall prohibit the Authority from receiving and acting on PPTA proposals on projects in either phase.

§ 33.1-391.12. Addition of the Chesapeake Bay Bridge-Tunnel to facilities controlled by Authority; expansion of Authority membership; applicability of local transportation fees to Accomack and Northampton Counties.

The bridges, tunnels, roadways, and related facilities known collectively as the Chesapeake Bay Bridge-Tunnel, which provide a vehicular connection across the mouth of the Chesapeake Bay between the City of Virginia Beach and Northampton County, shall become subject to the control of the Authority subject

to the provisions of § 33.1-391.8, at such time as all of the bonds and other evidences of debt now or hereafter issued by or on behalf of the Chesapeake Bay Bridge and Tunnel Commission shall have been satisfied or paid in full. Until such bonds and other evidences of debt have been satisfied or paid in full, control of and responsibility for the operation and maintenance of the Chesapeake Bay Bridge-Tunnel facilities shall remain with the Chesapeake Bay Bridge and Tunnel Commission.

In discharging its responsibilities for the operation and maintenance of the Chesapeake Bay Bridge-Tunnel facilities, the Authority shall have, in addition to the powers it is given by this chapter, all of the powers and authority given to the Chesapeake Bay Bridge and Tunnel Commission by Chapter 693 of the Acts of Assembly of 1954 and by Chapter 714 of the Acts of the Assembly of 1956, as amended and incorporated by reference as § 33.1-253.

At such time as the Chesapeake Bay Bridge-Tunnel facilities become subject to the control of the Authority as contemplated by this section, the Authority shall be enlarged by two members, who shall serve with voting privileges, one of whom shall be the chief elected officer of the governing body of the County of Accomack (or in the discretion of the chief elected officer, his designee, who shall be a current elected officer of such governing body), and one of whom shall be the chief elected officer of the governing body of the County of Northampton (or in the discretion of the chief elected officer, his designee, who shall be a current elected officer of such governing body).

§ 33.1-391.13. Issuance of bonds by the Chesapeake Bay Bridge and Tunnel Commission.

On a prospective basis, prior to issuing any bonds for the purposes of financing the construction of new or additional tunnels, the Chesapeake Bay Bridge and Tunnel Commission shall affirm that no bond, or payment of any

temporary or interim financing shall have a maturity date that extends beyond the maturity date of any existing bond or note until such time as the Authority is consulted about such issuance.

§ 33.1-391.14. Continuing responsibilities of the Commonwealth Transportation Board and the Virginia Department of Transportation.

Except as otherwise explicitly provided in this chapter, until such time as the Authority and the Virginia Department of Transportation, or the Authority and the Commonwealth Transportation Board, agree otherwise in writing, the Commonwealth Transportation Board shall allocate funding to and the Department of Transportation shall perform or cause to be performed all maintenance and operation of the bridges, tunnels, and roadways pursuant to § 33.1-391.10, and shall perform such other required services and activities with respect to such bridges, tunnels, and roadways as were being performed on January 1, 2008.

§ 33.1-391.15. Use of revenues by the Authority.

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

§ 46.2-206.1. Imposition of certain additional fees on certain drivers.

A. The purpose of the civil remedial fees imposed in this section is to generate revenue from drivers whose proven dangerous driving behavior places significant financial burdens upon the Commonwealth. The civil remedial fees established by this section shall be in addition to any other fees, costs, or penalties imposed pursuant to the Code of Virginia.....

**6. SALES TAX**

§ 58.1-605. To what extent and under what conditions cities and counties may levy local sales taxes; collection thereof by Commonwealth and return of revenue to each city or county entitled thereto.

A. No county, city or town shall impose any local general sales or use tax or any local general retail sales or use tax except as authorized by this section.

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K. 1. Notwithstanding the other provisions of this chapter, the Hampton Roads Transportation Authority and the Northern Virginia Transportation Authority may impose a retail sales tax at the rate of 5% on (i) charges for separately stated labor or services in the repair of motor vehicles and (ii) charges for the repair of a motor vehicle in cases in which the true object of the repair is a service provided within a city or county embraced by the respective Authority.

2. The revenue generated and collected pursuant to the tax authorized under this subsection, less the applicable portion of any refunds to taxpayers and after subtraction of the direct costs of administration by the Department, shall be deposited and held in a special trust fund under the control of the State Treasurer entitled "Special Sales and Use Tax Motor Vehicle Repair Fund." The State Treasurer on a monthly basis shall distribute the amounts deposited in the special trust fund to the Hampton Roads Transportation Authority or the Northern Virginia Transportation Authority as appropriate.

**7. USE TAX**

§ 58.1-606. To what extent and under what conditions cities and counties may levy local use tax; collection thereof by Commonwealth and return of revenues to the cities and counties.

A. The council of any city and the governing body of any county which has levied or may hereafter levy a city or county sales tax under § 58.1-605 may levy a city or county use tax at the rate of one percent to provide revenue for the general fund of such city or county. Such tax shall be added to the rate of the state use tax imposed by this chapter and shall be subject to all the provisions of this chapter, and all amendments thereof, and the rules and regulations published with respect thereto, except that no discount under § 58.1-622 shall be allowed on a local use tax.

## **8. REPAIR COSTS**

§ 58.1-625.1. Certain dealers required to separately state labor or service charges in the repair of motor vehicles.

Any dealer or other person required to collect any tax imposed under this chapter, or pursuant to any authority granted under this chapter, who is located in any county or city embraced by the Northern Virginia Transportation Authority established under § 15.2-4830 or the Hampton Roads Transportation Authority established under § 33.1-391.7, shall separately state on any bill, invoice, ticket, or other billing statement the amount charged by such dealer or person for labor or services performed in the repair of motor vehicles. This section shall apply only in the counties or cities embraced by the Northern Virginia Transportation Authority if the Authority is imposing the taxes authorized pursuant to subsection K of § 58.1-605 and subsection H of § 58.1-606, or in the counties or cities embraced by the Hampton Roads Transportation Authority if the Authority is imposing the taxes authorized pursuant to subsection K of § 58.1-605 and subsection H of § 58.1-606.

## 9. REGIONAL CONGESTION RELIEF

### § 58.1-802.1. Regional congestion relief fee.

In addition to any other tax imposed under the provisions of this chapter, the Hampton Roads Transportation Authority established pursuant to § 33.1-391.7 and the Northern Virginia Transportation Authority established pursuant to § 15.2-4830 may impose a fee, delineated as the "Regional congestion relief fee," on each deed, instrument, or writing by which lands, tenements, or other realty located in any county or city embraced by the respective Authority is sold and is granted, assigned, transferred, or otherwise conveyed to or vested in the purchaser or any other person, by such purchaser's direction. The rate of the fee, when the consideration or value of the interest, whichever is greater, equals or exceeds \$100, shall be \$0.40 for each \$100 or fraction thereof, exclusive of the value of any lien or encumbrance remaining thereon at the time of the sale, whether such lien is assumed or the realty is sold subject to such lien or encumbrance.

The fee imposed by this section shall be paid by the grantor, or any person who signs on behalf of the grantor, of any deed, instrument, or writing subject to the fee imposed by this section.

Fees imposed by this section shall be collected pursuant to subsection B of § 58.1-802. However, the compensation allowed to the clerk of the court under such subsection shall not be applicable with regard to the fee collected under this section. The clerk shall return all fees collected pursuant to the authority granted under this section to the Hampton Roads Transportation Authority or the Northern Virginia Transportation Authority, as appropriate, as soon as practicable.

§ 58.1-815.4. Distribution of recordation tax for certain transportation-related purposes.

Effective July 1, 2008, of the state recordation taxes imposed pursuant to §§ 58.1-801 and 58.1-803, the revenues collected each fiscal year from \$0.03 of

the total tax imposed under each section shall be deposited by the Comptroller as follows:

1. The revenues collected from \$0.02 of the total tax shall be deposited into the Commonwealth Mass Transit Fund pursuant to subdivision A 4 e of § 58.1-638; and

2. The revenues collected from \$0.01 of the total tax shall be deposited into the Highway Maintenance and Operating Fund.

§ 58.1-1724.3. Sales tax on fuel in certain localities.

A. In addition to all other taxes, fees, and other charges imposed on fuels subject to tax under Chapter 22 (§ 58.1-2200 et seq.) of this title, the Hampton Roads Transportation Authority may impose a sales tax of 2% of the retail price of such fuels sold at retail within any county or city embraced by the Authority. The Commissioner shall transfer the revenues collected to the Hampton Roads Transportation Authority established under § 33.1-391.7. As used in this section "sold at retail" means a sale to a consumer or to any person for any purpose other than resale..

§ 58.1-3221.2. Classification of certain commercial and industrial real property and taxation of such property by certain localities included in the Northern Virginia Transportation Authority and the Hampton Roads Transportation Authority.

A. Beginning January 1, 2008, and solely for the purposes of imposing the tax authorized pursuant to this section, in the counties and cities that are embraced by the Northern Virginia Transportation Authority and the Hampton Roads Transportation Authority, all real property used for or zoned to permit commercial or industrial uses is hereby declared to be a separate class of real property for local taxation. Such classification of real property shall exclude all residential uses and all multifamily residential uses, including but not limited to



single family residential units, cooperatives, condominiums, townhouses, apartments, or homes in a subdivision when leased on a unit by unit basis even though these units may be part of a larger building or parcel of real estate containing more than four residential units.

B. In addition to all other taxes and fees permitted by law, (i) the governing body of any locality embraced by the Northern Virginia Transportation Authority may, by ordinance, annually impose on all real property in the locality specially classified in subsection A: an amount of real property tax, in addition to such amount otherwise authorized by law, at a rate not to exceed \$0.25 per \$100 of assessed value as the governing body may, by ordinance, impose upon the annual assessed value of all real property used for or zoned to permit commercial or industrial uses; and (ii) the governing body of any locality embraced by the Hampton Roads Transportation Authority may, by ordinance, annually impose on all real property in the locality specially classified in subsection A: an amount of real property tax, in addition to such amount otherwise authorized by law, at a rate not to exceed \$0.10 per \$100 of assessed value as the governing body may, by ordinance, impose upon the annual assessed value of all real property used for or zoned to permit commercial or industrial uses. The authority granted in this subsection shall be subject to the following conditions:

(1) Upon appropriation, all revenues generated from the additional real property tax imposed shall be used exclusively for transportation purposes that benefit the locality imposing the tax; and

(2) The additional real property tax imposed shall be levied, administered, enforced, and collected in the same manner as set forth in Subtitle III of Title 58.1 for the levy, administration, enforcement, and collection of local taxes. In addition, the local assessor shall separately assess and set forth upon the locality's land book the fair market value of

that portion of property that is defined as a separate class of real property for local taxation in accordance with the provisions of this section.

C. Beginning January 1, 2008, in lieu of the authority set forth in subsections A and B above and solely for the purposes of imposing the tax authorized pursuant to this section, in the counties and cities embraced by the Northern Virginia Transportation Authority and the Hampton Roads Transportation Authority, all real property used for or zoned to permit commercial or industrial uses is hereby declared to be a separate class of real property for local taxation. Such classification of real property shall exclude all residential uses and all multifamily residential uses, including but not limited to single family residential units, cooperatives, condominiums, townhouses, apartments, or homes in a subdivision when leased on a unit by unit basis even though these units may be part of a larger building or parcel of real estate containing more than four residential units.

D. In addition to all other taxes and fees permitted by law, (i) the governing body of any locality embraced by the Northern Virginia Transportation Authority may, by ordinance, create within its boundaries, one or more special regional transportation tax districts and, thereafter, may, by ordinance, impose upon the real property located in special regional transportation tax districts specially classified in subsection C within such special regional transportation tax districts: an amount of real property tax, in addition to such amounts otherwise authorized by law, at a rate not to exceed \$0.25 per \$100 of assessed value as the governing body may, by ordinance, impose upon the annual assessed value of all real property used for or zoned to permit commercial or industrial uses; and, (ii) the governing body of any locality embraced by the Hampton Roads Transportation Authority may, by ordinance, create within its boundaries,

one or more special regional transportation tax districts and, thereafter, may, by ordinance, impose upon the real property specially classified in subsection C within such special regional transportation tax districts: an amount of real property tax, in addition to such amounts otherwise authorized by law, at a rate not to exceed \$0.10 per \$100 of assessed value as the governing body may, by ordinance, impose upon the annual assessed value of all real property used for or zoned to permit commercial or industrial uses. The authority granted in this subsection shall be subject to the following conditions:

(1) Notwithstanding any other provisions of law to the contrary, upon appropriation, all revenues generated from the additional real property taxes imposed in accordance with subsection C and this subsection shall be used for transportation purposes that benefit the special regional transportation tax district to which such revenue is attributable;

(2) Any local ordinance adopted in accordance with the provisions of subsection C and this subsection shall include the requirement that the additional real property taxes so authorized are to be imposed annually in accordance with applicable law;

(3) Any locality that imposes the additional real property taxes set forth in subsections A and B shall not be permitted to also impose the additional real property taxes set forth in subsection C and this subsection. In addition, any locality electing to impose the additional real property taxes on all real property located in such locality that is specially classified in subsections A and B must do so in the manner prescribed in subsections A and B and not by creation of a special transportation tax district as set forth in subsection C and this subsection. The

creation of such special regional transportation tax districts shall not, however, affect the authority of a locality to establish tax districts pursuant to other provisions of law;

(4) The total revenues generated from the additional real property taxes imposed in accordance with subsection C and this subsection shall not be less than 85% of the revenues estimated to be generated when imposing the additional real property taxes in accordance with subsections A and B at the rate of \$0.25 per \$100 of assessed value in any locality embraced by the Northern Virginia Transportation Authority and at the rate of \$0.10 per \$100 of assessed value in any locality embraced by the Hampton Roads Transportation Authority; and

(5) The additional real property taxes imposed pursuant to subsection C and this subsection shall be levied, administered, enforced, and collected, in the same manner as set forth in Subtitle III of Title 58.1 for the levy, administration, enforcement, and collection of all local taxes. In addition, the local assessor shall separately assess and set forth upon the locality's land book the fair market value of that portion of property that is defined as separate class of real property for local taxation in accordance with the provisions of this section.

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