



COMMONWEALTH of VIRGINIA

Commonwealth Transportation Board

Sean T. Connaughton
Chairman

1401 East Broad Street
Richmond, Virginia 23219

(804) 786-2701
Fax: (804) 225-2940

Agenda item # 14

RESOLUTION OF THE COMMONWEALTH TRANSPORTATION BOARD

March 16, 2011

**Made By: Mr. Koelemay Seconded By: Mr. Layne
Action: Motion Carried, Unanimously**

AUTHORIZING THE ISSUANCE AND SALE OF COMMONWEALTH OF VIRGINIA TRANSPORTATION CAPITAL PROJECTS REVENUE BONDS, SERIES 2011

WHEREAS, pursuant to the State Revenue Bond Act (the "State Revenue Bond Act"), Sections 33.1-267 *et seq.* of the Code of Virginia of 1950, as amended (the "Virginia Code"), the Commonwealth Transportation Board (the "Board") has the power to issue revenue bonds to finance the costs of transportation projects authorized by the General Assembly of Virginia (the "General Assembly"), including any financing costs or other financing expenses related to such bonds;

WHEREAS, pursuant to the Commonwealth Transportation Capital Projects Bond Act of 2007, enactment clause 2 of Chapter 896 of the Acts of the General Assembly of the Commonwealth of Virginia, 2007 Regular Session, as amended (the "Bond Act"), the Board is authorized, by and with the consent of the Governor, to issue, pursuant to the provisions of the State Revenue Bond Act, revenue obligations of the Commonwealth of Virginia (the "Commonwealth") to be designated "Commonwealth of Virginia Transportation Capital Projects Revenue Bonds, Series" (the "Chapter 896 Bonds") at one or more times in an aggregate principal amount not to exceed \$3,000,000,000, subject to certain annual limitations;

WHEREAS, pursuant to Item 459.H. of Chapter 781 of the Acts of the General Assembly of the Commonwealth of Virginia, 2009 Regular Session, as amended, and Item 456.H. of Chapter 874 of the Acts of the General Assembly of the Commonwealth of Virginia, 2010 Regular Session, as amended (collectively, the "Appropriation Act" and, together with the Bond Act, the "Act"), the Board is authorized, by and with the consent of the Governor, to issue, pursuant to the State Revenue Bond Act, revenue obligations of the Commonwealth to be designated "Commonwealth of Virginia Transportation Capital Projects Revenue Bonds, Series XXXX" (the "Appropriation Act Bonds" and, together with the Chapter 896 Bonds, the "Bonds") at one or more times in an aggregate principal amount not to exceed \$180,000,000, after all costs, with the net proceeds of the Appropriation Act Bonds to be used exclusively for the

purpose of providing funds for paying the costs incurred or to be incurred for construction or funding of transportation projects set forth in Item 449.10 of Chapter 847 of the Acts of the General Assembly, 2007 Regular Session, including but not limited to environmental and engineering studies; rights-of-way acquisition; improvements to all modes of transportation; acquisition, construction and related improvements; and any financing costs and other financing expenses;

WHEREAS, pursuant to the Act, the aggregate principal amount of Bonds that may be issued is \$3,180,000,000, consisting of \$3,000,000,000 in aggregate principal amount of Chapter 896 Bonds and \$180,000,000 in aggregate principal amount of Appropriation Act Bonds, and the Appropriation Act Bonds are not subject to the annual limitations to which the Chapter 896 Bonds are subject;

WHEREAS, Section 33.1-269 of the Virginia Code provides that the Bonds shall be secured, subject to their appropriation by the General Assembly, (i) by revenues deposited into the Priority Transportation Fund created under Section 33.1-23.03:8 of the Virginia Code (the "Priority Transportation Fund"), (ii) to the extent required, by revenues legally available from the Transportation Trust Fund, and (iii) to the extent required, by any other legally available funds;

WHEREAS, at its March 17, 2010 meeting, the Board adopted a resolution that authorized the issuance of the first series of Bonds (the "2010 Bonds"), and the 2010 Bonds were issued on May 26, 2010 pursuant to the Master Indenture of Trust (the "Master Indenture"), as supplemented by the First Supplemental Indenture of Trust (the "First Supplement"), each dated as of May 1, 2010 and each between the Board and Wells Fargo Bank, National Association, as trustee (the "Trustee");

WHEREAS, the Board wishes to authorize the issuance of one or more series of Bonds to be known as the "Commonwealth of Virginia Transportation Capital Projects Revenue Bonds," with one or more series designations, as appropriate (the "2011 Bonds");

WHEREAS, the Board also wishes to authorize the establishment of a fund (the "Revenue Stabilization Fund") with the Trustee and the transfer or transfers thereto from time to time of an aggregate amount not to exceed \$50,000,000 from the Priority Transportation Fund to provide an additional source of payment and security for the Bonds;

WHEREAS, the following documents that provide for the issuance and sale of the 2011 Bonds and the establishment of, and funding mechanism for, the Revenue Stabilization Fund, which shall be filed with the records of the Board, have been prepared by bond counsel to the Board ("Bond Counsel") and the staff of the Virginia Department of Transportation (the "Department") at the direction of the Board and have been presented at this meeting in substantially final form:

(1) a Second Supplemental Indenture of Trust, dated as of May 1, 2011 (the "Second Supplement" and, together with the Master Indenture and the First Supplement, the "Indenture"), both between the Board and the Trustee;

(2) a Preliminary Official Statement of the Board relating to the offering for sale of the 2011 Bonds (the "Preliminary Official Statement"); and

(3) a Continuing Disclosure Agreement of the Board relating to the obligations of the Board to disclose certain information on an ongoing basis in connection with the 2011 Bonds (the "Continuing Disclosure Agreement").

NOW, THEREFORE, BE IT RESOLVED BY THE COMMONWEALTH TRANSPORTATION BOARD:

1. Authorization of the 2011 Bonds. The Board determines that it is in the best interest of the Commonwealth and the Board for the Board (i) to enter into the Second Supplement to provide for the issuance of the 2011 Bonds, (ii) to issue the 2011 Bonds for the purposes authorized under and in accordance with the provisions of the Act and the Indenture, (iii) to sell the 2011 Bonds, and (iv) to authorize the establishment of the Revenue Stabilization Fund and the transfer or transfers thereto from time to time of an aggregate amount not to exceed \$50,000,000 from the Priority Transportation Fund to provide an additional source of payment and security for the Bonds. The aggregate principal amount of the 2011 Bonds shall not exceed \$600,000,000, the final maturity date of the 2011 Bonds shall not exceed 25 years from their date of issuance, and the aggregate true interest cost of the 2011 Bonds shall not exceed the maximum aggregate true interest cost approved by the Treasury Board, which is empowered pursuant to Section 2.2-2416(7) of the Virginia Code to approve the terms and structure of all proposed bond issues by state agencies, boards or authorities where debt service payments are expected by such agency, board or authority to be made, in whole or in part, directly or indirectly, from appropriations of the Commonwealth. The Board expects the debt service payments to be made from appropriations of the Commonwealth.

2. Transfer from Priority Transportation Fund to Revenue Stabilization Fund. At one time or from time to time, an aggregate amount not to exceed \$50,000,000 may be transferred from the Priority Transportation Fund and deposited in the Revenue Stabilization Fund to be held in trust by the Trustee for the benefit of the owners of the Bonds pursuant to terms and conditions as set forth in the Indenture.

3. Limited Obligations. The 2011 Bonds shall be limited obligations of the Board and the Commonwealth, payable from and secured by a pledge of the Revenues (as defined in the Indenture) and amounts in certain funds established pursuant to the

Indenture. Nothing in this Resolution or the 2011 Bonds shall be deemed to create or constitute a debt or a pledge of the faith and credit of the Commonwealth or any political subdivision thereof.

4. Determination of Details of the 2011 Bonds. The Board authorizes the Chairman of the Board, subject to the criteria set forth in paragraph 1 of this Resolution, to determine the details of the 2011 Bonds, including, without limitation, the aggregate principal amount, the maturity schedule, the interest rates, the redemption provisions, the sale date, the sale price and the reoffering prices. In addition, the Board authorizes the Chairman to allocate portions of the 2011 Bonds to the authorizations provided by the Bond Act and the Appropriations Act, respectively, in accordance with the actual or projected application of the proceeds of the 2011 Bonds as he shall deem to be in the best interests of the Board, the Department and the Commonwealth; provided, however, that the aggregate principal amount of the 2011 Bonds and the 2010 Bonds to be allocated to the Appropriations Act authorization shall not exceed \$180,000,000.

5. Sale of the 2011 Bonds. The Chairman is authorized to sell the 2011 Bonds pursuant to a competitive sale and to prepare, publish and distribute a Notice of Sale in connection therewith (the "Notice of Sale"), provided that the Notice of Sale may not be published or distributed prior to the approval of the 2011 Bonds by resolution of the Treasury Board. Alternatively, if determined by the Chairman to be in the best interest of the Commonwealth, the Board authorizes the Chairman to solicit and consider proposals for a negotiated sale of the 2011 Bonds and to negotiate the terms of such sale. The Chairman is authorized to execute and deliver a purchase contract or an agreement reflecting such proposal, provided that no such purchase contract or agreement may be executed prior to approval of the terms and structure of the 2011 Bonds by resolution of the Treasury Board.

6. Preliminary Official Statement. The Board approves the Preliminary Official Statement in the substantially final form presented at this meeting. The Board authorizes and directs the Chairman, in collaboration with the staff of the Department and the Board's financial advisor (the "Financial Advisor"), to prepare the final form of the Preliminary Official Statement with such completions, omissions, insertions, and changes as are necessary or desirable to effect the issuance and sale of the 2011 Bonds, as the Chairman may approve. The Board authorizes the Chairman to deem the Preliminary Official Statement to be final for purposes of Securities and Exchange Commission Rule 15c2-12 (the "Rule") and to approve the distribution thereof, provided that the Preliminary Official Statement may not be distributed prior to approval of the terms and structure of the 2011 Bonds by resolution of the Treasury Board.

7. Official Statement. The Board authorizes and directs the Chairman, in collaboration with Bond Counsel, Department staff and Financial Advisor, to complete

the Preliminary Official Statement as an official statement in final form (the "Official Statement") in order to reflect the provisions of the winning bid or the executed purchase contract, as appropriate, for the purchase and sale of the 2011 Bonds. The Board authorizes and directs the Chairman to execute the Official Statement, which execution shall constitute conclusive evidence of the approval of the Official Statement by the Chairman on behalf of the Board and that it has been deemed final within the meaning of the Rule. The Board authorizes and directs Department staff to arrange for delivery to the winning bidders or underwriters, as appropriate, within seven business days after the date thereof, a sufficient number of copies of the Official Statement for the winning bidders or underwriters to distribute to each potential investor requesting a copy and to each person to whom the winning bidders or underwriters initially sell the 2011 Bonds. The Board authorizes and approves the distribution by the winning bidders or underwriters of the Official Statement as executed by the Chairman.

8. Financing Documents. The Board approves the Second Supplement in its substantially final form presented at this meeting. The Board authorizes and directs the Chairman to prepare, execute, and deliver the final form of the Second Supplement with such completions, omissions, insertions, and changes as are necessary or desirable to effect the issuance and sale of the 2011 Bonds, including without limitation changes to the dated dates thereof, as the Chairman may approve. Execution and delivery of the Second Supplement shall constitute conclusive evidence of the approval of such documents by the Chairman on behalf of the Board.

9. Execution and Delivery of the 2011 Bonds. The Board authorizes and directs the Chairman and the Secretary of the Board (the "Secretary") to have the 2011 Bonds prepared and to execute the 2011 Bonds in accordance with the Indenture, to deliver the 2011 Bonds to the Trustee for authentication, and to cause the 2011 Bonds so executed and authenticated to be delivered to or for the account of the winning bidders or underwriters upon payment of the purchase price of the 2011 Bonds, all in accordance with the Notice of Sale or executed purchase contract, as appropriate. Execution and delivery by the Chairman and the Secretary of the 2011 Bonds shall constitute conclusive evidence of the approval of the 2011 Bonds by the Chairman and the Secretary on behalf of the Board.

10. Continuing Disclosure. The Board approves the Continuing Disclosure Agreement in the substantially final form presented at this meeting. The Board covenants to undertake ongoing disclosure and to provide "annual financial information" and "material event notices" for the benefit of holders of the 2011 Bonds and to assist the winning bidders or the underwriters, as appropriate, in complying with the Rule, all in accordance with the Continuing Disclosure Agreement. The Board authorizes and directs the Chairman to prepare, execute, and deliver the final form of the Continuing Disclosure

Agreement, with such completions, omissions, insertions, and changes as are necessary or desirable to effect the issuance and sale of the 2011 Bonds, as the Chairman may approve. The Chief Financial Officer of the Department is designated as the Dissemination Agent under the Continuing Disclosure Agreement. Execution and delivery by the Chairman of the Continuing Disclosure Agreement shall constitute conclusive evidence of the approval of the Continuing Disclosure Agreement by the Chairman on behalf of the Board.

11. Authorization of Further Action. The Board authorizes Department staff (i) to request the Treasury Board to approve the terms and structure of the 2011 Bonds in accordance with Section 2.2-2416(7) of the Virginia Code and the Act, (ii) to request the Governor of the Commonwealth to approve the issuance of the 2011 Bonds in accordance with the Act, (iii) if determined by Department staff to be cost beneficial, to procure and negotiate a contract with a credit facility provider to issue a credit facility with respect to some or all of the 2011 Bonds and to execute such contract, together with any other documents related to such credit facility, and (iv) to collaborate with the staff of the Department of the Treasury of the Commonwealth or the State Treasurer to procure and to negotiate investments and investment contracts for any of the proceeds of the 2011 Bonds and amounts in the Revenue Stabilization Fund. The Board further authorizes the Chairman to execute and deliver all documents and certificates and to take all such further action as he may consider necessary or desirable in connection with the issuance and sale of the 2011 Bonds, including, without limitation, execution and delivery of (a) an amendment to the Payment Agreement dated as of May 1, 2010, between the Board, the Treasury Board, and the Secretary of Finance of the Commonwealth, if necessary, to provide for the issuance and payment of debt service of the 2011 Bonds and the establishment and funding of the Revenue Stabilization Fund and (b) a document (i) setting forth the expected use and investment of the proceeds of the 2011 Bonds to show that such expected use and investment will not violate the provisions of Section 148 of the Tax Code, and the Treasury Regulations promulgated thereunder and applicable to "arbitrage bonds" (as defined in the Tax Code) and (ii) providing for the rebate of any "arbitrage rebate amounts" (as defined in the Tax Code) earned on the investment of the proceeds of the 2011 Bonds to the United States. The Chairman is further authorized to make on behalf of the Board such elections under the Tax Code and the applicable Treasury Regulations with respect to the 2011 Bonds as the Chairman may deem to be in the best interests of the Commonwealth and the Board, in consultation with Bond Counsel and the Financial Advisor.

12. Authorizations and Directions to Certain Officers. Any authorization or direction to the Chairman or to the Secretary under this Resolution shall also be deemed to be an authorization or a direction to the Vice-Chairman or to an Assistant Secretary, respectively, the Commonwealth Transportation Commissioner, and any officer or employee of the Board or the Department designated for such purpose by the Chairman or the Secretary.

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13. Effective Date. This Resolution shall be effective immediately.

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