



COMMONWEALTH of VIRGINIA

Commonwealth Transportation Board

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Agenda item # 11

RESOLUTION OF THE COMMONWEALTH TRANSPORTATION BOARD

October 17, 2013

MOTION

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

Title: Repeal of Virginia Administrative Code (VAC) Entry for Recreational Access Fund Policy (24VAC30-301)

WHEREAS, in 1966, after the General Assembly amended the *Code of Virginia* to authorize funds for the construction, reconstruction, maintenance, or improvement of access roads to public recreational areas and historical sites, the State Highway Commission, predecessor to the Commonwealth Transportation Board, adopted a policy (the "Recreational Access Fund Policy" or "policy") for the administration of these funds; and

WHEREAS, the "Recreational Access Fund Policy" and related reference documents were filed as regulations as part of the *Virginia Administrative Code (VAC)* in 1994; and

WHEREAS, these regulations have been consolidated and amended since that time, and further, the "Recreational Access Fund Program Guide," which also incorporates the policy has been filed as a guidance document, a document that provides information or guidance of general applicability to interpret or implement statutes or a regulation; and

WHEREAS, the Board most recently amended the "Recreational Access Fund Policy" in February of 2008; and

WHEREAS, in 2012, Governor McDonnell began a Regulatory Reform Initiative; and

WHEREAS, the Initiative's objective is to eliminate unnecessary or obsolete regulations, and to lessen undue regulatory burdens on Virginia's citizens and businesses; and

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WHEREAS, during the 2013 General Assembly session, House Bill 2041, which amended § 33.1-223 of the *Code of Virginia* to authorize the Board to establish guidelines in lieu of regulations to administer the Recreational Access Fund, was enacted as Chapter 222 of the Acts of Assembly of 2013 (see Attachment A); and

WHEREAS, sufficient Board policy guidance for administration of the Recreational Access Fund has been, and will continue to be, available to the public as a guidance document; and

WHEREAS, repealing the “Recreational Access Fund Policy” as a regulation without substantively affecting the 2008 Board policy will streamline VDOT’s regulatory inventory and will render the program consistent with other CTB funding programs which require the development of guidelines, such as the Revenue Sharing Program; and

WHEREAS, pursuant to § 33.1-223, concurrence of the Director of the Department of Conservation and Recreation is required when the Board establishes guidelines relating to the Recreational Access Fund.

NOW, THEREFORE, BE IT RESOLVED, subject to receipt by the Commissioner of written concurrence from the Director of the Department of Conservation and Recreation, that the Commonwealth Transportation Board authorizes the repeal of the regulation “Recreational Access Fund Policy” (24VAC30-301), and directs VDOT to continue to maintain the "Recreational Access Fund Program Guide" as a guidance document.

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ATTACHMENT A

VIRGINIA ACTS OF ASSEMBLY -- 2013 SESSION

CHAPTER 222

An Act to amend and reenact § 33.1-223 of the Code of Virginia, relating to the fund for access roads and bikeways to public recreational areas and historical sites; guidelines.

[H 2041]

Approved March 12, 2013

Be it enacted by the General Assembly of Virginia:

1. That § 33.1-223 of the Code of Virginia is amended and reenacted as follows:

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

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

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

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

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

1. When the Director of the Department of Conservation and Recreation has designated a public recreational area as such or when the Director of the Department of Historic Resources has determined a site or area to be historic and recommends to the Commonwealth Transportation Board that an access road or bikeway be provided or maintained to that area;

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

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

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

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

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

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

not more than \$60,000 for each individual bikeway project to a public recreational area or historical site operated by a locality or an authority with an additional \$15,000 if supplemented on a dollar-for-dollar basis by a locality or authority from other than highway sources.

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