

Briefing Document: Roles and Responsibilities of Commonwealth Transportation Board, Commissioner of Highways, Virginia Department of Transportation

I. Commonwealth Transportation Board (CTB) Roles and Responsibilities

Section § 2.2-2100 of the *Code of Virginia* classifies boards, commissions or councils into three categories: advisory, policy, or supervisory. The Commonwealth Transportation Board is a policy board. Policy boards are defined as follows:

"Policy" -- A board, commission or council shall be classified as policy if it is specifically charged by statute to promulgate public policies or regulations. It may also be charged with adjudicating violations of those policies or regulations. Specific functions of the board, commission or council may include, but are not limited to, rate setting, distributing federal funds, and adjudicating regulatory or statutory violations, but each power shall be enumerated by law. Policy boards, commissions or councils are not responsible for supervising agencies or employing personnel. They may review and comment on agency budget requests.

In accord with § 2.2-2100 (B), the Commonwealth Transportation Board was designated as a policy board by Chapter 13 of the 1986 Special Session of the General Assembly.

Policy boards differ from advisory boards, whose purpose is to provide advice and comment to an agency. Advisory boards function as a formal liaison between the agency and the public to ensure that public concerns are understood by the agency, and that agency activities are communicated to the public. Advisory boards do not make regulations, but may participate in the development of public policy.

Policy boards differ from supervisory boards, which are responsible for agency operations, including approval of requests for appropriations. Supervisory boards appoint the director of an agency, who is subordinate to the board. Supervisory boards also ensure that its directives, as well as statutory directives, are met by the agency head.

A. Key Commonwealth Transportation Board Statutory Responsibilities/or Authorities

1. Financial

- a. Approving the Six-Year Improvement Program (SYIP) and changes/transfers thereto to facilitate coordinated financing plans for transportation needs, including needs for highways, railways, seaports, airports, and public transportation (§ 33.2-214 (B))
- b. Administering, distributing, and allocating funds in the Transportation Trust Fund (§ 33.2-221(C))
- c. Issuing bonds (§ 33.2-1700 et seq.)
- d. Employing financial and investment advisors to assist in planning and making decisions concerning the investment of funds and the use of bonds for transportation purposes (such work is to be coordinated with Secretary of Finance and State Treasurer) (§ 33.2-221 (D))
- e. Entering into payment agreements with the Treasury Board related to payments on bonds CTB issues (§ 33.2-221 (E))

- f. Allocating Virginia Transportation Infrastructure Bank funds/financial assistance to projects (§§ 33.2-1500 et seq.)
 - g. Allocating funds from the Toll Facilities Revolving Account (§ 33.2-1529)
 - h. Establishing reasonable fees for the Integrated Directional Sign Program (§ 33.2-218)
2. Promulgation and Oversight of Transportation-Related Policies and Programs
- a. SMARTSCALE prioritization (§ 33.2-214.1)
 - b. VTrans Long Range Plan (§ 33.2-353)
 - c. Surface Transportation Performance Targets (§§ 2.2-229, 33.2-353)
 - d. State of Good Repair prioritization (§ 33.2-369)
 - e. Establishing tolls, subject to certain limitations, on Interstate highways (§ 33.2-309)
 - f. High Priority Projects Program (§ 33.2-370)
 - g. Highway Construction District Grant Program (§ 33.2-371)
 - h. Special purpose funding programs established by state/federal law
 - i. Revenue Sharing Program (§ 33.2-357)
 - ii. Access programs – Economic Development, Airports, Recreational Access (§§ 33.2-1509, 23.2-1510)
 - iii. “Transportation Alternatives Set-aside” Project Selection Policy (§ 33.2-221(A))
 - i. Designating HOV/HOT lanes (§§ 33.2-501 and 33.2-502)
 - j. Reviewing/approving policies/transportation objectives of VDOT and DRPT (§ 33.2-215)
 - k. Design-build criteria (§ 33.2-209 (B))
3. Letting Contracts
- a. Contracts for construction, maintenance, and improvement of the highways comprising systems of state highways in excess of \$5 million (§ 33.2-209 (A))
 - b. Contracts for all activities related to passenger and freight rail and public transportation in excess of \$5 million (§ 33.2-209 (A))
 - c. Contracts for the construction of transportation projects on a design-build basis (may include alternative technical concepts) (§ 33.2-209 (B))
 - d. Contracts for the provision of equipment, materials, and supplies to be used in construction of transportation projects on a fixed-price basis (§ 33.2-209 (C))
 - e. Receiving reports from the Virginia Department of Transportation (VDOT) Commissioner of Highways (Commissioner) or the Department of Rail and Public Transportation (DRPT) Director (Director) on contracting activities performed by each position pursuant to statute (§ 33.2-209 (A))
4. Transportation System Decisions
- a. Locating routes in state highway system, including corridors of statewide significance (§ 33.2-208 (A))
 - b. Entering into agreements with localities, authorities and transportation districts for imposition of tolls on certain state highways (§ 33.2-221 (F))

- c. Promulgating, amending, or repealing regulations for the protection of and covering traffic on and for the use of systems of state highways (§ 33.2-210); examples include:
 - 1) Land Use Permits Regulations
 - 2) Subdivision Street Requirements Regulations
 - 3) Outdoor Advertising Regulations
 - d. Naming, state highways, bridges, interchanges, and other transportation facilities (§ 33.2-213)
 - e. Interstate System and Primary Highways: planning, designating, acquiring opening constructing, reconstructing, improving, maintaining, discontinuing, abandoning and regulating the use of Interstates and Primary Highways (§§ 33.2-300 and 33.2-310)
 - f. Designating Limited Access Highways (§ 33.2-402) (General powers (to plan, designate, acquire, open, construct, reconstruct, improve, maintain, discontinue, abandon and regulate the use of) over Limited Access Highways are set out in § 33.2-401)
 - g. Designating Scenic Highways and Virginia Byways (in cooperation with Department of Conservation and Recreation) (§ 33.2-405)
 - h. Transferring real estate constituting parts of highways in the primary and secondary highway systems to local governing bodies (§§ 33.2-907 (C), 33.2-913)
 - i. Approving abandonments of primary highways, discontinuances of primary and secondary highways, and addition of certain streets in towns into the secondary system (§§ 33.2-902, 33.2-901, 33.2-908, 33.2-324)
 - j. Approving transfers of roads between systems (interstate/primary/secondary, etc.) (§§ 33.2-304, 33.2-305, 33.2-314, 33.2-315)
 - k. Monitoring and approving actions taken by DRPT to ensure the efficient and economical development of public transportation, the enhancement of rail transportation, and the coordination of such rail and public transportation plans with highway programs (§ 33.2-214 (A))
 - l. Ensuring subordinate local plans are consistent with VTrans (§ 33.2-214 (E))
 - m. Developing/updating Statewide Pedestrian Policy (§ 33.2-354 (A))
 - n. Establishing Regulations relating to roadside memorials (§ 33.2-216)
5. Entering Into Contracts with Other Entities for Transportation Purposes
- a. Federal government and its agencies (§ 33.2-221 (A))
 - b. Other states for coordination of maintenance and operation of Commonwealth transportation systems/highways with those of the other states (§ 33.2-221 (B))
 - c. Local districts, commissions, agencies or other entities created for transportation purposes – Hampton Roads Transportation Accountability Commission, Northern Virginia Transportation Authority, etc. (§ 33.2-214 (C))

II. Commissioner of Highways Roles and Responsibilities

The current roles and responsibilities of the Commissioner of Highways can be found throughout the *Code of Virginia*, but his role as enumerated in § 33.2-222 is as follows:

The Commissioner of Highways shall be the chief executive officer of the Department of Transportation. The Commissioner of Highways shall be an experienced administrator able to direct and guide the Department in the establishment and achievement of the Commonwealth's long-range highway and other transportation objectives.

The Commissioner of Highways shall devote his entire time and attention to his duties as chief executive officer of the Department and shall receive such compensation as shall be fixed by law.

Although the role and duties of the CTB with respect to highway transportation matters are strictly and explicitly defined by the *Code of Virginia*, the Commissioner of Highways has been provided more general/broader authority. Section 33.2-223 confers the following general powers upon the Commissioner:

Except such powers as are conferred by law upon the Board, the Commissioner of Highways shall have the power to do all acts necessary or convenient for constructing, improving, maintaining, and preserving the efficient operation of the highways embraced in the systems of state highways and to further the interests of the Commonwealth in the areas of public transportation, railways, seaports, and airports. And as executive head of the Department, the Commissioner of Highways is specifically charged with the duty of executing all orders and decisions of the Board and may, subject to the provisions of this chapter, require that all appointees and employees perform their duties under this chapter.

Examples of statutory duties of the Commissioner include but are not limited to:

- a. Letting contracts for construction, maintenance, and improvement of the highways comprising systems of state highways up to \$5 million (§ 33.2-209 (A))
- b. Acquiring land for transportation projects by voluntary acquisition or eminent domain (§ 33.2-1001).
- c. Leasing/conveying airspace over state-owned highways (§33.2-226)
- d. Closing/limiting use of highways in certain instances/for safety/operational reasons/setting speed limits (§§ 33.2-238, 33.2-239, 46.2-878)
- e. Establishing and implementing highway access management standards for managing access to and preserving and improving the efficient operation of the systems of state highways (§ 33.2-245)
- f. Abandoning and/or discontinuing portions of primary and secondary state highways no longer necessary because of/replaced by highway projects (§§ 33.2-906, 33.2-912, 33.2-908)

- g. Administering and enforcing laws relating to outdoor advertising on highways (§ 33.2-1201)

III. Virginia Department of Transportation Roles and Responsibilities

Section 33.2-256 establishes the Department of Transportation and provides:

There is hereby created a Department of Transportation within the executive branch, which shall be under the supervision and management of the Commissioner of Highways and responsible to the Secretary of Transportation.

Effective July 1, 2017, the General Assembly amended § 33.2-256 of the *Code of Virginia* to add explicit statements establishing the core mission of VDOT:

The core mission of the Department shall be as follows:

1. To maintain and operate the system of state highways;
2. To develop, oversee, and manage highway projects included in the Six-Year Improvement Program pursuant to § 33.2-214 based on guidance from the Commonwealth Transportation Board or funded pursuant to § 33.2-1524; and
3. To ensure the safety of the traveling public on the system of state highways.

The statute states that nothing in the language specifying the core mission of the agency is intended to limit or restrict the powers otherwise granted to the Department or Commissioner.

Examples of specific statutory duties of VDOT include but are not limited to:

- a. Serving as the responsible public entity (the entity that has the power to develop and/or operate the qualifying transportation facility) for PPTA projects (§ 33.2-1800)
- b. Issuing public notices relating to public hearings for projects valued in excess of \$100 million (§ 33.2-257.1)
- c. Performing a variety of duties pursuant to Article 4, Chapter 2 of Title 33.2 such as maintaining drainage easements, using value engineering in certain projects, promulgating regulations for a roadside management program, providing for training and certification of local governments for administration of highway maintenance and construction projects, performing and reporting periodic quantitative ratings of primary and secondary highways, treating highway surfaces for stabilization and dust control.

IV. Key Code Sections Relating to Authority of the Commonwealth Transportation Board (Attached)

1. Office of Intermodal Planning and Investment of the Secretary of Transportation (§ 2.2-229).
2. Transportation; Six-Year Improvement Program (§ 33.2-214).
3. Statewide Prioritization Process for Project Selection (§ 33.2-214.1).
4. Commonwealth Transportation Board to Develop and Update Statewide Transportation Plan (§ 33.2-353).

Code of Virginia
Title 2.2. Administration of Government
Chapter 2. Governor's Secretaries

§ 2.2-229. Office of Intermodal Planning and Investment of the Secretary of Transportation.

A. There is hereby established the Office of Intermodal Planning and Investment of the Secretary of Transportation (the Office), consisting of a director, appointed by the Secretary of Transportation, and such additional transportation professionals as the Secretary of Transportation shall determine. It shall be the duty of the Office to support and advise the Secretary in his role as chairman of the Commonwealth Transportation Board.

B. The goals of the Office shall be:

1. To promote transparency and accountability of the programming of transportation funds, including the development of the Six-Year Improvement Program pursuant to § 33.2-214 and the statewide prioritization process pursuant to § 33.2-214.1;
2. To ensure that the Commonwealth has a multimodal transportation system that promotes economic development and all transportation modes, intermodal connectivity, environmental quality, accessibility for people and freight, and transportation safety;
3. To encourage the use of innovation and best practices to improve the efficiency of the Commonwealth's surface transportation network and to enhance the efficacy of strategies to improve such efficiency; and
4. To promote the coordination between transportation investments and land use planning.

C. The responsibilities of the Office shall be:

1. To oversee and coordinate with the Department of Transportation and the Department of Rail and Public Transportation the development of the Six-Year Improvement Program pursuant to § 33.2-214 for the Commonwealth Transportation Board;
2. To implement the statewide prioritization process developed by the Commonwealth Transportation Board pursuant to § 33.2-214.1 in coordination with the Department of Transportation and the Department of Rail and Public Transportation;
3. To develop for the Commonwealth Transportation Board's approval the Statewide Transportation Plan pursuant to § 33.2-353;
4. To develop measures and targets related to the performance of the Commonwealth's surface transportation network for the Commonwealth Transportation Board's approval and report annually on progress made to achieve such targets in coordination with the Department of Transportation and the Department of Rail and Public Transportation and to develop in coordination with applicable regional organizations quantifiable and achievable goals pursuant to § 33.2-353;

5. To undertake, identify, coordinate, and oversee studies of potential highway, transit, rail, and other improvements or strategies, to help address needs identified in the Statewide Transportation Plan pursuant to § 33.2-353;

6. To assist the Commonwealth Transportation Board in the development of a comprehensive, multimodal transportation policy, which may be developed as part of the Statewide Transportation Plan pursuant to § 33.2-353; and

7. To provide technical assistance to local governments and regional entities, including assistance to establish and promote urban development areas pursuant to § 15.2-2223.1.

2002, c. 361; 2006, c. 942; 2007, cc. 80, 219; 2009, cc. 670, 690; 2017, cc. 166, 273.

Code of Virginia
Title 33.2. Highways and Other Surface Transportation Systems
Chapter 2. Transportation Entities

§ 33.2-214. Transportation; Six-Year Improvement Program.

A. The Board shall have the power and duty to monitor and, where necessary, approve actions taken by the Department of Rail and Public Transportation pursuant to Article 5 (§ 33.2-281 et seq.) in order to ensure the efficient and economical development of public transportation, the enhancement of rail transportation, and the coordination of such rail and public transportation plans with highway programs.

B. The Board shall have the power and duty to coordinate the planning for financing of transportation needs, including needs for highways, railways, seaports, airports, and public transportation and set aside funds as provided in § 33.2-1524. To allocate funds for these needs pursuant to §§ 33.2-358 and 58.1-638, the Board shall adopt a Six-Year Improvement Program of anticipated projects and programs by July 1 of each year. This program shall be based on the most recent official Transportation Trust Fund revenue forecast and shall be consistent with a debt management policy adopted by the Board in consultation with the Debt Capacity Advisory Committee and the Department of the Treasury.

C. The Board shall have the power and duty to enter into contracts with local districts, commissions, agencies, or other entities created for transportation purposes.

D. The Board shall have the power and duty to promote increasing private investment in the Commonwealth's transportation infrastructure, including acquisition of causeways, bridges, tunnels, highways, and other transportation facilities.

E. The Board shall have the power and duty to integrate land use with transportation planning and programming, consistent with the efficient and economical use of public funds. If the Board determines that a local transportation plan described in § 15.2-2223 or any amendment as described in § 15.2-2229 or a metropolitan regional long-range transportation plan or regional Transportation Improvement Program as described in § 33.2-3201 is not consistent with the Board's Statewide Transportation Plan developed pursuant to § 33.2-353, the Six-Year Improvement Program adopted pursuant to subsection B, and the location of routes to be followed by roads comprising systems of state highways pursuant to subsection A of § 33.2-208, the Board shall notify the locality of such inconsistency and request that the applicable plan or program be amended accordingly. If, after a reasonable time, the Board determines that there is a refusal to amend the plan or program, then the Board may reallocate funds that were allocated to the nonconforming project as permitted by state or federal law. However, the Board shall not reallocate any funds allocated pursuant to § 33.2-319 or 33.2-366, based on a determination of inconsistency with the Board's Statewide Transportation Plan or the Six-Year Improvement Program nor shall the Board reallocate any funds, allocated pursuant to subsection C or D of § 33.2-358, from any projects on highways controlled by any county that has withdrawn, or elects to withdraw, from the secondary system of state highways based on a determination of inconsistency with the Board's Statewide Transportation Plan or the Six-Year Improvement Program. If a locality or metropolitan planning organization requests the termination of a project,

and the Department does not agree to the termination, or if a locality or metropolitan planning organization does not advance a project to the next phase of construction when requested by the Board and the Department has expended state or federal funds, the locality or the localities within the metropolitan planning organization may be required to reimburse the Department for all funds expended on the project. If, after design approval by the Chief Engineer of the Department, a locality or metropolitan planning organization requests alterations to a project that, in the aggregate, exceeds 10 percent of the total project costs, the locality or the localities within the metropolitan planning organization may be required to reimburse the Department for the additional project costs above the original estimates for making such alterations.

Code 1950, § 33-12; 1956, c. 92; 1964, c. 265; 1970, c. 322, § 33.1-12; 1974, c. 462; 1977, c. 150; 1978, c. 650; 1986, Sp. Sess., c. 13; 1988, cc. 844, 903; 1989, c. 727; 1992, c. 167; 1995, c. 94; 2001, c. 349; 2003, cc. 281, 533, 560; 2004, c. 110; 2005, cc. 839, 919; 2006, cc. 197, 417, 833, 924; 2006, Sp. Sess. I, c. 8; 2007, c. 337; 2008, Sp. Sess. II, c. 5; 2009, cc. 670, 690; 2011, cc. 104, 164; 2012, cc. 729, 733; 2013, cc. 388, 569, 585, 646, 741; 2014, c. 805; 2015, c. 684.

Code of Virginia
Title 33.2. Highways and Other Surface Transportation Systems
Chapter 2. Transportation Entities

§ 33.2-214.1. Statewide prioritization process for project selection.

A. The General Assembly declares it to be in the public interest that a prioritization process for projects funded by the Commonwealth Transportation Board be developed and implemented to improve the efficiency and effectiveness of the state's transportation system, transportation safety, transportation accessibility for people and freight, environmental quality, and economic development in the Commonwealth.

B. Subject to the limitations in subsection C, the Commonwealth Transportation Board shall develop, in accordance with federal transportation requirements, and in cooperation with metropolitan planning organizations wholly within the Commonwealth and with the Northern Virginia Transportation Authority, a statewide prioritization process for the use of funds allocated pursuant to §§ 33.2-358, 33.2-370, and 33.2-371 or apportioned pursuant to 23 U.S.C. § 104. Such prioritization process shall be used for the development of the Six-Year Improvement Program pursuant to § 33.2-214 and shall consider, at a minimum, highway, transit, rail, roadway, technology operational improvements, and transportation demand management strategies.

1. The prioritization process shall be based on an objective and quantifiable analysis that considers, at a minimum, the following factors relative to the cost of the project or strategy: congestion mitigation, economic development, accessibility, safety, and environmental quality.

2. Prior to the analysis in subdivision 1, candidate projects and strategies shall be screened by the Commonwealth Transportation Board to determine whether they are consistent with the assessment of capacity needs for all for corridors of statewide significance, regional networks, and improvements to promote urban development areas established pursuant to § 15.2-2223.1, undertaken in the Statewide Transportation Plan in accordance with § 33.2-353.

3. The Commonwealth Transportation Board shall weight the factors used in subdivision 1 for each of the state's highway construction districts. The Commonwealth Transportation Board may assign different weights to the factors, within each highway construction district, based on the unique needs and qualities of each highway construction district.

4. The Commonwealth Transportation Board shall solicit input from localities, metropolitan planning organizations, transit authorities, transportation authorities, and other stakeholders in its development of the prioritization process pursuant to this section. Further, the Board shall explicitly consider input provided by an applicable metropolitan planning organization or the Northern Virginia Transportation Authority when developing the weighting of factors pursuant to subdivision 3 for a metropolitan planning area with a population over 200,000 individuals.

C. The prioritization process developed under subsection B shall not apply to the following: projects or activities undertaken pursuant to § 33.2-352; projects funded by the Congestion Mitigation Air Quality funds apportioned to the state pursuant to 23 U.S.C. § 104(b)(4) and state matching funds; projects funded by the Highway Safety Improvement Program funds

apportioned to the state pursuant to 23 U.S.C. § 104(b)(3) and state matching funds; projects funded by the Transportation Alternatives funds set-aside pursuant to 23 U.S.C. § 213 and state matching funds; projects funded by the revenue-sharing program pursuant to § 33.2-357; and projects funded by federal programs established by the federal government after June 30, 2014, with specific rules that restrict the types of projects that may be funded, excluding restrictions on the location of projects with regard to highway functional classification. The Commonwealth Transportation Board may, at its discretion, develop a prioritization process for any of the funds covered by this subsection, subject to planning and funding requirements of federal law.

2014, c. 726; 2015, c. 684; 2016, c. 129; 2017, cc. 166, 273.

Code of Virginia

Title 33.2. Highways and Other Surface Transportation Systems

Chapter 3. Highway Systems

§ 33.2-353. Commonwealth Transportation Board to develop and update Statewide Transportation Plan.

A. The Board shall, with the assistance of the Office of Intermodal Planning and Investment, conduct a comprehensive review of statewide transportation needs in a Statewide Transportation Plan setting forth assessment of capacity needs for all corridors of statewide significance, regional networks, and improvements to promote urban development areas established pursuant to § 15.2-2223.1. The assessment shall consider all modes of transportation. Such corridors shall be planned to include multimodal transportation improvements, and the plan shall consider corridor location in planning for any major transportation infrastructure, including environmental impacts and the comprehensive land use plan of the locality in which the corridor is planned. In the designation of such corridors, the Board shall not be constrained by local, district, regional, or modal plans.

The Statewide Transportation Plan shall be updated as needed but no less than once every four years. The plan shall promote economic development and all transportation modes, intermodal connectivity, environmental quality, accessibility for people and freight, and transportation safety.

B. The Statewide Transportation Plan shall establish goals, objectives, and priorities that cover at least a 20-year planning horizon, in accordance with federal transportation planning requirements. The plan shall include quantifiable measures and achievable goals relating to, but not limited to, congestion reduction and safety, transit and high-occupancy vehicle facility use, job-to-housing ratios, job and housing access to transit and pedestrian facilities, air quality, movement of freight by rail, and per capita vehicle miles traveled. The Board shall consider such goals in evaluating and selecting transportation improvement projects for inclusion in the Six-Year Improvement Program pursuant to § 33.2-214.

C. The plan shall incorporate the measures and goals of the approved long-range plans developed by the applicable regional organizations. Each such plan shall be summarized in a public document and made available to the general public upon presentation to the Governor and General Assembly.

D. It is the intent of the General Assembly that this plan assess transportation needs and assign priorities to projects on a statewide basis, avoiding the production of a plan that is an aggregation of local, district, regional, or modal plans.

1985, c. 320, § 33.1-23.03; 2001, cc. 764, 772; 2002, c. 639; 2007, c. 896; 2009, cc. 670, 690, 864, 871; 2011, cc. 104, 164; 2014, c. 805.