



COMMONWEALTH of VIRGINIA

Commonwealth Transportation Board

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Agenda Item # 8

RESOLUTION OF THE COMMONWEALTH TRANSPORTATION BOARD

May 16, 2012

MOTION

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

AUTHORIZING THE ISSUANCE AND SALE OF COMMONWEALTH OF VIRGINIA FEDERAL TRANSPORTATION GRANT ANTICIPATION REVENUE NOTES, SERIES 2012B IN AN AGGREGATE PRINCIPAL AMOUNT NOT TO EXCEED \$200,000,000

WHEREAS, from time to time the Commonwealth of Virginia (the "Commonwealth") receives federal-aid highway construction reimbursements and other federal highway assistance under or in accordance with Title 23 of the United States Code, or any successor program established under federal law, from the Federal Highway Administration ("FHWA") or any successor or additional federal agencies ("Federal Highway Reimbursements");

WHEREAS, the receipt of Federal Highway Reimbursements is expected to continue;

WHEREAS, the State Revenue Bond Act (the "State Revenue Bond Act"), Article 5, Chapter 3, Title 33.1 of the Code of Virginia of 1950, as amended (the "Virginia Code"), empowers the Commonwealth Transportation Board (the "Board") to issue revenue bonds or notes 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 or notes;

WHEREAS, the Commonwealth of Virginia Federal Transportation Grant Anticipation Revenue Notes Act of 2011, Article 1.3, Chapter 1, Title 33.1 of the Virginia Code (the "GARVEEs Act" and, together with the State Revenue Bond Act, the "Act"), authorizes the Board, by and with the consent of the Governor of the Commonwealth (the "Governor"), to issue, pursuant to the provisions of the State Revenue Bond Act, in one or more series from time to time, revenue obligations of the Commonwealth to be designated "Commonwealth of Virginia Federal Transportation Grant Anticipation Revenue Notes, Series" (the "GARVEEs"), provided that the aggregate principal amount outstanding at any time shall not exceed the amount

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authorized pursuant to the second enactments of Chapters 1019 and 1044 of the Acts of Assembly of 2000 as amended by Chapter 655 of the Acts of Assembly of 2005, less any principal amounts outstanding from revenue obligations issued pursuant to those enactments prior to July 1, 2011 (which revenue obligations are commonly called, and will be referenced below as, the "FRANs"), and exclusive of (i) the amount of any revenue obligations that may be issued to refund GARVEEs issued under the GARVEEs Act or the FRANs in accordance with Section 33.1-293 of the Virginia Code, and (ii) any amounts issued for financing expenses (including, without limitation, any original issue discount);

WHEREAS, Section 33.1-23.23 of the Virginia Code provides that in connection with each series of GARVEEs issued, the Board shall establish a fund in accordance with Section 33.1-286 of the Virginia Code either in the state treasury or with a trustee in accordance with Section 33.1-283 of the Virginia Code, which fund secures and is used for the payment of such series of GARVEEs to the credit of which there shall be deposited such amounts, appropriated therefor by the General Assembly, as are required to pay principal or purchase price of, and redemption premium, if any, and interest on GARVEEs, as and when due and payable, and the amounts deposited in such fund shall be derived (i) first from Federal Highway Reimbursements received by the Commonwealth from time to time only with respect to the project or projects to be financed by the GARVEEs (the "Project-Specific Reimbursements"); (ii) then, at the discretion of the Board, to the extent required, from legally available revenues of the Transportation Trust Fund; and (iii) then from such other funds, if any, which are designated by the General Assembly for such purpose;

WHEREAS, Section 33.1-268 of the Virginia Code provides that with respect to bonds or notes issued pursuant to the State Revenue Bond Act, such as the GARVEEs, revenues include any moneys received or pledged by the Board pursuant to the State Revenue Bond Act, including, without limitation, legally available Transportation Trust Fund revenues and any Federal Highway Reimbursements, including Project-Specific Reimbursements and Federal Highway Reimbursements other than the Project-Specific Reimbursements (the "Indirect Reimbursements");

WHEREAS, Section 33.1-23.03:5 of the Virginia Code establishes the Transportation Trust Fund on the books of the Comptroller of the Commonwealth (the "Comptroller");

WHEREAS, Section 33.1-23.03:1 of the Virginia Code provides that the Transportation Trust Fund shall consist of, among other moneys, (i) revenues derived from the projects financed or refinanced pursuant to the provisions of Title 33.1 of the Virginia Code, including the Act, which are payable into the state treasury and shall be held in separate subaccounts of the Transportation Trust Fund to the extent required by law or the Board and (ii) all amounts required by contract to be paid over to the Transportation Trust Fund;

WHEREAS, in accordance with Sections 33.1-23.03:1 and 33.1-23.03:5 of the Virginia Code, the Board and the Comptroller have established within the Transportation Trust Fund a

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subaccount designated as the "Federal Fund" (the "Federal Fund"), into which all Federal Highway Reimbursements are deposited;

WHEREAS, Section 33.1-12 of the Virginia Code vests the Board with the power and duty (i) to coordinate the planning for financing of transportation needs, (ii) to allocate funds for these needs by adoption of a Six-Year Improvement Program of anticipated projects and programs by July 1 of each year, which 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, (iii) to administer, distribute, and allocate funds in the Transportation Trust Fund as provided by law, and (iv) to enter into payment agreements with the Treasury Board of the Commonwealth (the "Treasury Board") related to payments on bonds or notes issued by the Board;

WHEREAS, Section 33.1-23.22 of the Virginia Code authorizes the Board to receive any other funds that may be made available to pay costs of the projects to be financed by the GARVEEs and, subject to appropriation by the General Assembly or allocation or designation by the Board, as the case may be, to make available the same to pay the principal or purchase price of, and redemption premium, if any, and interest on GARVEEs and to enter into the appropriate agreements to allow for those funds to be paid into the state treasury, or to a trustee in accordance with Section 33.1-283 of the Virginia Code, to pay a part of the costs of such projects or to pay principal or purchase price of, and redemption premium, if any, and interest on GARVEEs;

WHEREAS, the Board is authorized to provide that the pledge of Federal Highway Reimbursements and any other federal highway assistance received for all or any series of the GARVEEs will be subordinate to any prior pledge thereof to the FRANS, and that the obligation to make transfers of Federal Highway Reimbursements and any other federal highway assistance received or other amounts into any fund established under subsection A of Section 33.1-23.23 of the Virginia Code will be subordinate to the obligation to make any required payments or deposits on or with respect to the FRANS;

WHEREAS, at its October 19, 2011 meeting, the Board adopted a resolution (the "October 2011 Resolution") that authorized the issuance of the first series of GARVEEs (the "2012A GARVEEs"), and the 2012A GARVEEs were issued on March 1, 2012 pursuant to the Master Trust Indenture (the "Master Indenture"), as supplemented by the First Supplemental Trust Indenture (the "First Supplement") each dated as of February 1, 2012 and each between the Board and U.S. Bank National Association, as trustee (the "Trustee");

WHEREAS, pursuant to the authority granted to the Board described herein, the Board now proposes (i) to authorize the issuance of the second series of GARVEEs (the "2012B GARVEEs") for certain purposes authorized under and in accordance with the provisions of the

GARVEEs Act, and (ii) to take such action as may be necessary or advisable in order to effect the issuance and sale of the 2012B GARVEEs;

WHEREAS, Section 33.1-23.16 of the Virginia Code provides that the net proceeds of the GARVEEs shall be used exclusively for the purpose of providing funds, together with any other available funds, for paying the costs incurred or to be incurred for construction or funding of such projects to be designated by the Board, and the Board intends that the net proceeds of the 2012B GARVEEs are to be used to pay costs of the Downtown Tunnel/Midtown Tunnel/Martin Luther King Freeway Extension Project (the "Hampton Roads Project"), the costs of the Interstate 95 HOV/HOT Lanes Project (the "Northern Virginia Project", and together with the Hampton Roads Project, the "Projects") and, if either Project or the financing plan for either is delayed, altered, or terminated, costs of such other project or projects as may be designated by the Board and approved by FHWA; and

WHEREAS, the provisions for the foregoing arrangements and transactions will be set forth in the following documents, forms of which have been presented to the Board at this meeting:

(1) a Second Supplemental Trust Indenture, expected to be dated as of July 1, 2012, between the Board and the Trustee (the "Second Supplement" and together with the Master Indenture and the First Supplement, the "Indenture");

(2) a Preliminary Official Statement of the Board containing, among other things, information relating to the Commonwealth, the Board, the Virginia Department of Transportation (the "Department") and the terms of the 2012B GARVEEs to be used in the public offering for sale of the 2012B GARVEEs (the "Preliminary Official Statement");

(3) a Note Purchase Agreement, to be dated as of the sale date of the 2012B GARVEEs (the "Note Purchase Agreement"), between the Board and Citigroup Global Markets, Inc., as the representative of the underwriters of the 2012B GARVEEs (collectively, the "Underwriters"); and

(4) 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 2012B GARVEEs (the "Continuing Disclosure Agreement" and, together with the Second Supplement, the Preliminary Official Statement and the Note Purchase Agreement, the "Basic Documents").

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

1. Authorization of the 2012B GARVEEs. 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 2012B GARVEEs, (ii) to issue the 2012B

GARVEEs in accordance with the provisions of the Act, the Indenture and the Basic Documents, (iii) to sell the 2012B GARVEEs in the manner provided herein, and (iv) to use the net proceeds of the 2012B GARVEEs to pay costs of the Projects and, if either Project or the financing plan for either is delayed, altered, or terminated, costs of such other project or projects as may be designated by the Board and approved by FHWA. The Board authorizes the issuance and sale of the 2012B GARVEEs within the following parameters: (i) the aggregate principal amount of the 2012B GARVEEs shall not exceed \$200,000,000, (ii) the final maturity date of the 2012B GARVEEs shall not exceed 20 years from their date of issuance, and (iii) the aggregate true interest cost of the GARVEEs shall not exceed the maximum true interest cost approved by the Treasury Board. The Treasury Board is required pursuant to Section 2.2-2416 of the Virginia Code to approve the terms and structure of the 2012B GARVEEs.

2. Federal Fund and Federal Highway Reimbursements. The Board affirms its commitment to (i) maintain the Federal Fund, (ii) provide for the deposit of Federal Highway Reimbursements into the Federal Fund and the debt service fund (the "GARVEEs Debt Service Fund") created under the Indenture to pay the debt service due on the GARVEEs, (iii) provide for payment of debt service on all GARVEEs (including the 2012B GARVEEs) from the GARVEEs Debt Service Fund all as more particularly set forth in the October 2011 Resolution and memorialized in the Indenture and the Payment Agreement (as defined in the Indenture).

3. Limited Obligations. The 2012B GARVEEs shall be limited obligations of the Board and the Commonwealth, payable from and secured by a pledge of the Federal Highway Reimbursements and the other Revenues (as defined in the Indenture) and amounts in certain funds established pursuant to the Indenture. Nothing in this Resolution, the 2012B GARVEEs, the Indenture, the Payment Agreement or the Basic Documents 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 Final Terms and Details and Delivery of the 2012B GARVEEs. The Board authorizes the Chairman of the Board (the "Chairman"), subject to the parameters set forth in paragraph 1 of this Resolution, to determine the final terms and details of the 2012B GARVEEs, including, without limitation, the final series designation, the aggregate principal amount, the maturity schedule, the interest rates, the redemption provisions, the sale date, the sale price and the reoffering prices. Further, once the terms and details of the 2012B GARVEEs have been determined, the Board authorizes and directs the Chairman and the Secretary of the Board (the "Secretary") (i) to have the 2012B GARVEEs prepared and executed in accordance with the Indenture, (ii) to deliver the 2012B GARVEEs to the Trustee for authentication, and (iii) to cause the 2012B GARVEEs so executed and authenticated to be delivered to or for the account of the Underwriters upon payment of the purchase price of the 2012B GARVEEs, all in accordance with the executed Note Purchase Agreement. Execution and delivery by the Chairman and the Secretary of the 2012B GARVEEs shall constitute

conclusive evidence of the approval of the 2012B GARVEEs and the terms and details thereof by the Chairman and the Secretary on behalf of the Board.

5. Basic Documents. The Board approves each of the Basic Documents in substantially the form presented at this meeting. The Board authorizes and directs the Chairman to prepare, execute, and deliver the final forms of the Basic Documents with such completions, omissions, insertions, and changes as are necessary or desirable to effect the issuance and sale of the 2012B GARVEEs, including without limitation changes to the dated dates thereof, as the Chairman may approve. The Chairman's execution and delivery of the Basic Documents shall constitute conclusive evidence of the approval of the final forms of such documents by the Chairman on behalf of the Board.

6. Sale of the 2012B GARVEEs. The Chairman is authorized to sell the 2012B GARVEEs pursuant to a negotiated sale with the Underwriters and to negotiate the terms of such sale, as substantially set forth in the form of the Note Purchase Agreement presented at this meeting. The Chairman is authorized to execute and deliver the Note Purchase Agreement with the Underwriters, provided that the Note Purchase Agreement may not be executed prior to approval of the terms and structure of the 2012B GARVEEs in accordance with a resolution of the Treasury Board.

7. 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 Department staff, McGuireWoods LLP, the Board's bond counsel ("Bond Counsel"), the Underwriters, and Public Resources Advisory Group, 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 2012B GARVEEs, 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 2012B GARVEEs in accordance with a resolution of the Treasury Board.

8. Official Statement. The Board authorizes and directs the Chairman, in collaboration with Department staff, Bond Counsel, the Underwriters, and the 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 executed purchase contract for the purchase and sale of the 2012B GARVEEs. 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 Underwriters within seven business days after the date thereof, a sufficient number of copies of the Official Statement for the Underwriters to distribute to each

potential investor requesting a copy and to each person to whom the Underwriters initially sell the 2012B GARVEEs. The Board authorizes and approves the distribution by the Underwriters of the Official Statement as executed by the Chairman.

9. Continuing Disclosure. The Board covenants to undertake ongoing disclosure and to provide "annual financial information" and "material event notices" for the benefit of holders of the 2012B GARVEEs and to assist the Underwriters in complying with the Rule, all in accordance with the Continuing Disclosure Agreement. 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.

10. Authorization of Further Action. The Board authorizes Department staff (i) to request the Treasury Board to approve the terms and structure of the 2012B GARVEEs in accordance with Section 2.2-2416 of the Virginia Code and the Act, (ii) to request the Governor to approve issuance of the 2012B GARVEEs 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 2012B GARVEEs 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 2012B GARVEEs. 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 2012B GARVEEs, including, without limitation, the execution and delivery documents, certificates or instruments that include without limitation (i) agreements or amendments to existing agreements concerning Federal Highway Reimbursements or the GARVEEs generally to account for the 2012B GARVEEs or the proceeds of the 2012B GARVEEs or other GARVEEs in a manner consistent with the intent of this Resolution, and (ii) certificates or agreements concerning tax items related to the 2012B GARVEES, such as: (A) the expected use and investment of the proceeds of the 2012B GARVEEs to show that such expected use and investment will not cause the 2012B GARVEEs to be deemed to be "private activity bonds" or "arbitrage bonds" under Section 141 or Section 148 of the Internal Revenue Code of 1986, as amended (the "Tax Code"), (B) providing for the computation and payment to the United States of any arbitrage rebate liability under Section 148(f) of the Tax Code. 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 2012B GARVEEs 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.

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11. Authorizations and Directions to Certain Officers. Any authorization of or direction to the Chairman or the Secretary under this Resolution shall also be deemed to be an authorization of or a direction to (i) the Vice-Chairman of the Board or any Assistant Secretary of the Board, respectively, and (ii) any other officer or employee of the Board or the Department designated for such purpose by the Chairman or the Secretary, respectively, including without limitation the Commonwealth's Commissioner of Highways or the Chief Financial Officer of the Department.

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

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