



COMMONWEALTH of VIRGINIA

Commonwealth Transportation Board

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Agenda item #11

RESOLUTION OF THE COMMONWEALTH TRANSPORTATION BOARD

December 7, 2016

MOTION

Made By: Ms. Valentine, Seconded By: Mr. Whitworth
Action: Motion Carried, Unanimously

Title: Economic Development Access Fund Policy (Revision)

WHEREAS, The General Assembly has, from time to time, amended Section 33.2-1509 of the *Code of Virginia* (1950) (the *Code*) relating to the fund for construction of economic development access roads; and

WHEREAS, this Board has also, from time to time, revised its policy for the administration of the Economic Development Access Program (CTB EDA Policy); and

WHEREAS, in October 2010, recognizing that the economic downturn of the early 2000's impacted the ability of localities to attract qualifying businesses, the Board established a moratorium on the requirement to provide repayment for bonded projects and since 2010, the moratorium has been extended or modified four times, in June 2012, February 2014, April 2016, and October 2016.

WHEREAS, in January 2017, the moratorium for eight projects in eight localities will expire and payback, in accordance with the current CTB EDA Policy will be required and the Board has determined that no further extensions of the Moratorium will be granted; and

WHEREAS, localities have expressed concern regarding the required payback and have requested relief and VDOT staff has prepared a proposed modification to the CTB EDA Policy to provide relief in the form of a payback option to address these concerns; and.

WHEREAS, it is the sense of this Board that its present policy should be revised and restated to be more compatible with present conditions and to incorporate a payback option to address concerns of localities subject to the payback requirement.

NOW, THEREFORE, BE IT RESOLVED that the Commonwealth Transportation Board (CTB) hereby adopts the policy attached hereto and entitled *2016 Commonwealth Transportation Board Economic Development Access Fund Policy*, dated December 7, 2016 to govern the use of economic development access funds pursuant to Section 33.2-1509, as amended, of the *Code*:

BE IT FURTHER RESOLVED that the *2016 Commonwealth Transportation Board Economic Development Access Fund Policy* shall become effective immediately, and shall supersede all policies heretofore adopted by this Board governing the use of economic development access funds.

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CTB Decision Brief

Commonwealth Transportation Board Economic Development Access Policy

Issue: Localities are relying more heavily on the bonded project provisions of the Economic Development Access Program. Due to slowing economic conditions, the time it has taken localities to attract qualifying investment for bonded projects has been longer than in the past. A bond moratorium has been in effect for six and a half years that will expire on January 1st. Many localities benefitted from the extra time provided through that moratorium. Many of the localities under the moratorium for a shorter period of time and some with approaching bond expirations are still having some difficulty attracting qualifying industries and may be required to pay substantial funds back to the Department. The Virginia Department of Transportation is proposing, and seeks CTB approval of, a revision to the Commonwealth Transportation Board (CTB) Economic Development Access Fund Policy adopted by the CTB in June 2012 that would provide an extended payback option to localities that are subject to the payback requirement.

Facts: Virginia Code 33.2-1509 provides funds to the Commonwealth Transportation Board (the Board) to be expended by the Board for “constructing, reconstructing, maintaining, or improving access within localities to economic development sites ...” Those funds may be provided to traditional projects where an eligible business is known to the locality and sufficient capital investment can be documented prior to the CTB allocation, or to bonded projects where an eligible business has not committed or a business is known but cannot document sufficient capital investment prior to CTB allocation. In the case of a bonded project, the locality may guarantee that sufficient capital investment will be documented within five years of CTB allocation through a bond or other acceptable device. At the end of the five year period, the amount of economic development access funds expended on the project and not justified by eligible capital outlay of one or more eligible establishments acceptable to the Board shall be reimbursed to the Department of Transportation voluntarily by the locality or by forfeiture of the surety. Localities which can document sufficient capital investment by a qualified industry within two years of the five year bonded period may request a refund of 50% of their repayment. Virginia Code 33.2-1509 provides that the Board will set the bond period however the Board cannot waive the requirement for repayment at the end of the established timeframe. The Code also provides that the time limits of the bond shall be based on a regular review and consideration by the Board. Changes have not been made to the bond period provisions since 2006.

Since 2006, 37 of 54 projects requesting funding through the Economic Development Access Program have sought their funding through the bonded provisions of the program. Total allocations for those bonded projects are over \$18 million.

In October 2010, recognizing that the economic downturn of the early 2000’s impacted the ability of localities to attract qualifying businesses, the Board established a moratorium on the requirement to provide repayment for bonded projects. Since 2010, that moratorium has been extended or modified to include additional bonded projects, four times (June 2012, February 2014, April 2016 and October 2016). The moratorium has benefitted 21 projects and many

localities were able to meet the investment requirements with the extra time afforded during that period.

In January 2017, the moratorium for eight projects in eight localities will expire and payback, in accordance with current CTB Policy will be required. Several of these localities have expressed concern regarding the required payback and have requested relief. VDOT staff has prepared a proposed modification to the CTB Economic Development Access Fund Policy to address these concerns.

Recommendations: The proposed revisions to the current Economic Development Access Policy recommended by staff include, pursuant to Section 33.2-1509 of the *Code of Virginia*, a modification to the Board's Policy so that a locality may after their initial five year bonded period and provided that they extend their current bond, reimburse the Department, on an annual basis, 20% of those funds expended on the project but not justified by eligible capital outlay, with the first annual payment to be made on or before the 1st day of the new bonded period, until such time that 100% of the required reimbursement is provided or until the locality can document sufficient capital investment by an eligible establishment. The locality's bond or other acceptable surety may be reduced annually by the amount repaid to the Department. Pursuant to the proposed revision, any payments submitted pursuant to the new payback provision could not be refunded by the Department under any circumstances.

Action Required by the CTB: Implementation of the recommended changes necessitates revision of the CTB's current policy for administering the funds. A resolution is provided for formal vote.

Result, if Approved: The CTB's policy for administering the funds set aside under Section 33.1-221 of the *Code of Virginia* will be revised to reflect the recommended changes.

Options: Approve, Deny, or Defer.

Public Comments/Reactions: None

2016 Commonwealth Transportation Board

Economic Development Access Fund Policy

1. The use of economic development access funds shall be limited to: (a) providing adequate access to economic development sites on which new or substantially expanding manufacturing, processing, research and development facilities, distribution centers, regional service centers, corporate headquarters or other establishments that also meet basic employer criteria as determined by the Virginia Economic Development Partnership in consultation with the Virginia Department of Business Assistance; (b) improving existing roads that may not be adequate to serve the establishments as described in (a); and (c) providing for costs associated directly with program administration and management of project requests prior to CTB approval with such costs not expected to exceed 1% of the allocation annually.
2. Economic development access funds shall not be used for the acquisition of rights of way or adjustment of utilities. These funds are to be used only for the actual construction and engineering of a road facility adequate to serve the traffic generated by the new or expanding eligible establishments.
3. Economic development access funds may not be used for the construction of access roads to schools, hospitals, libraries, airports, armories, speculative office buildings, shopping centers, apartment buildings, professional offices, residential developments, churches, hotels, motels, or similar facilities, whether public or private. (Access roads to licensed, public-use airports, while provided for in Section 33.2-1509, are funded and administered separately).
4. No cost incurred prior to this Board's approval of an allocation from the economic development access fund may be reimbursed by such funds. Economic development access funds shall be authorized only after certification that the economic development establishment as listed or meeting the criteria as described will be built under firm contract, or is already constructed, or upon presentation of acceptable surety in accordance with paragraph A. of Section 33.2-1509 of the *Code*.
5. When an eligible establishment is not yet constructed or under firm contract and a local governing body guarantees by bond or other acceptable surety that such will occur, the maximum time limit for such bond shall be five years, beginning on the date of the allocation of the economic development access funds by the Commonwealth Transportation Board. At the end of the five-year period, the amount of economic development access funds expended on the project and not justified by eligible capital outlay of one or more eligible establishments acceptable to the Board shall be reimbursed to the Department of Transportation voluntarily by the locality or by forfeiture of the surety unless the locality elects to utilize the payback provisions outlined in paragraph 6.
6. At the end of the five year time bond period specified in paragraph 5 or at the termination of an extended bond period, rather than reimbursing the Department in

full those funds expended on the project but not justified by eligible capital outlay, the locality may elect to extend the bond or other acceptable surety for another 4 year period and, on an annual basis, reimburse the Department 20% of those funds expended on the project but not justified by eligible capital outlay, with the first annual payment to be made on or before the 1st day of the new bonded period, until such time that 100% of the required reimbursement is provided or until the locality can document sufficient capital investment by an eligible establishment. The locality's bond or other acceptable surety may be reduced annually by the amount repaid to the Department. In the event that during the extended bonded period, the locality can document sufficient capital investment by an eligible establishment, the locality may request a refund of any reimbursements made to the Department. Such request may be granted if funds are available and on a first come, first served basis in competition with applications for economic development access funds from other localities.

7. Economic development access funds shall not be used to construct or improve roads on a privately owned economic development site. Nor shall the construction of a new access road to serve any economic development site on a parcel of land which abuts a road constituting a part of the systems of state highways or the road system of the locality in which it is located be eligible for economic development access funds, unless the existing road is a limited access highway and no other access exists. Further, where the existing road is part of the road system of the locality in which it is located, or the secondary system of state highways, economic development funds may be used to upgrade the existing road only to the extent required to meet the needs of traffic generated by new or expanding eligible establishment.

In the event an economic development site has access according to the foregoing provisions of this policy, but it can be determined that such access is not adequate in that it does not provide for safe and efficient movement of the traffic generated by the eligible establishment on the site or that the site's traffic conflicts with the surrounding road network to the extent that it poses a safety hazard to the general public, consideration will be given to funding additional improvements. Such projects shall be evaluated on a case-by-case basis upon request, by resolution, from the local governing body. Localities are encouraged to establish planning policies which will discourage incompatible mixes such as industrial and residential traffic.

8. Not more than \$500,000 of unmatched economic development access funds may be allocated in any fiscal year for use in any county, city or town which receives highway maintenance payments under Section 33.2-319, of the *Code*. A town whose streets are maintained under either Section 33.2-339 or 33.2-340, of the *Code*, shall be considered as part of the county in which it is located. The maximum eligibility of unmatched funds shall be limited to 20% of the capital outlay of the designated eligible establishments and certain investment by the locality in the land and/or the building on the site occupied by the designated eligible establishment. The unmatched eligibility may be supplemented with additional economic development access funds, in which case the supplemental access funds shall not be more than \$150,000, to be matched dollar-for-dollar from funds other than those administered by this Board.

Such supplemental funds shall be considered only if the total estimated cost of eligible items for the economic development access improvement exceeds \$500,000.

If an eligible site is owned by a regional industrial facility authority, as defined in Section 15.2-6400 et seq., of the *Code*, funds may be allocated for construction of an access road project to that site without penalty to the jurisdiction in which the site is located. This provision may be applied to one regional project per fiscal year in any jurisdiction, with the same funding limitations as prescribed for other individual projects.

9. Notwithstanding the provisions herein, for Major Employment and Investment (MEI) projects as defined in Section 2.2-2260, of the *Code* and administered by the Virginia Economic Development Partnership, the locality may receive up to the maximum unmatched allocation and matched allocation for a design-only project. The local governing body shall guarantee by bond or other acceptable surety that plans for a MEI project will be developed to standards acceptable to VDOT.

In addition, for projects utilizing economic development access funds to serve approved MEI projects, the locality may receive up to the maximum unmatched allocation and an additional \$500,000 matched allocation for a road construction project. Project allocations for a given MEI project may be cumulative for not more than two years.

10. Eligible items of construction and engineering shall be limited to those which are essential to providing an adequate facility to serve the anticipated traffic while meeting all appropriate CTB and state policies and standards. However, additional pavement width or other features may be eligible where necessary to qualify the road facility in a city or town for maintenance payments under Section 33.2-319, of the *Code*.
11. Except as provided for in paragraph 9. pertaining to MEI projects, it is the intent of the Board that economic development access funds not be anticipated from year to year. Unused eligibility cannot be allowed to accumulate and be carried forward from one fiscal year to another.
12. The Commonwealth Transportation Board will consult and work closely with the Virginia Economic Development Partnership (VEDP) and the Department of Business Assistance (DBA) in determining the use of economic development access funds and will rely on the recommendations of the VEDP and the DBA in making decisions as to the allocation of these funds. In making its recommendations to this Board, the VEDP and the DBA will take into consideration the impact of the proposed facility on the employment and tax base of both the area in which the facility is to be located and the Commonwealth of Virginia.
13. Prior to the formal request for the use of economic development access funds to provide access to new or expanding eligible establishments, the location of the access road shall be submitted for approval by the Virginia Department of Transportation. VDOT shall take into consideration the cost of the facility as it relates to the location and as it relates to the possibility of the future extension of the road to serve other

possible eligible establishments, as well as the future development of the area traversed.

14. Prior to this Board's allocation of funds for such construction or road improvements to an eligible economic development establishment proposing to locate or expand in a county, city or town, the governing body shall by resolution request the access funds and shall be responsible for the preliminary negotiations with the eligible establishment and others interested. Engineers of the Virginia Department of Transportation will be available for consultation with the governing bodies and others, and may prepare surveys, plans, engineering studies, and cost estimates.
15. The Commonwealth Transportation Commissioner is directed to establish administrative procedures to assure the provisions of this policy and legislative directives are adhered to and complied with.