

## Use of Industrial Access Railroad Track Funds

Approved: 11/16/1995

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WHEREAS, the General Assembly had declared it to be in the public interest to provide for the construction or reconstruction of industrial access railroad tracks and facilities to serve new or substantially expanded industrial access substantially expanded industrial or commercial business, as described in Section 33.1-221.1:1 of the *Code of Virginia*, as amended; and

WHEREAS, the administration of a program to ensure equitable allocation of available funds, to maintain consistent standards of facility construction and to protect the interest of the Commonwealth requires that several provisions of the law be more fully explained; and

WHEREAS, the 1992 General Assembly amended the *Code of Virginia* pertaining to administration of the Industrial Access Railroad Track Program; and

WHEREAS, the Commonwealth Transportation Board (CTB) desire to update its policy to reflect changes which have occurred.

NOW, THEREFORE, BE IT RESOLVED that the Commonwealth Transportation Board hereby rescinds its previous policy adopted on June 156, 1989, and adopts the following policy to govern the use of the industrial access railroad track funds:

1. The Industrial Access Railroad Track Program will be administered by the Director of the Department of Rail and Public Transportation in accordance with decisions of the Commonwealth Transportation Board. The Director may consult with the Commissioner of Agriculture and Consumer Services, and the Director of the Department of Economic Development (or their designated representatives) concerning applications for funds in accordance with the *Code of Virginia*. The Department of Rail and Public Transportation will act as staff to receive and process applications, to make recommendations and to supervise the program and approve the costs incurred.
2. Funding for the program will be provided from funds allocated for Access Programs under the Virginia Department of Transportation's budget.
3. All applications for industrial access railroad track funds shall be discussed with the appropriate local government. Each application shall be accompanied by a resolution from the local governing body requesting that such funds be allocated to the proposed project.
4. All applications shall be submitted to the Department of Rail and Public Transportation in accordance with the procedures outlines in the Procedural Memorandum. The Department will process the applications, including making recommendations, and transmit same to the Department of Rail and Public Transportation Director for review and concurrence prior to submittal to the appropriate Board Committee. The Board Committee will make recommendation to the Board which will select projects and establish priorities, in accordance with the policies and procedures contained herein.
5. Funds for the construction of industrial access railroad tracks may be provided if the construction will have a positive impact upon the economic development of the Commonwealth or a region of the Commonwealth. Financial assistance will be limited to certain industrial or commercial sites where rail freight service is or may be needed by new or substantially expanded industry for the furnishing of rail freight trackage and facilities between the normal limits of existing or proposed common carrier railroad tracks and facilities and the actually site of existing or propose commercial or industrial buildings or facilities.

6. Funds may be used to construct, reconstruct or improve part or all of the necessary tracks and related facilities on public or private property currently used or being developed, existent or prospective, for single industries or industrial subdivisions under firm contract or already constructed, including those subdivisions owned and promoted by railroad companies and others. No funds shall be expended until all agreements are executed and certifications are provided as set forth in Items 9, 10, and 15 of the Policy.
7. Industrial access railroad track funds shall not be used for the acquisition of right of way or adjustment of utilities. If the total project costs exceed the available fund for a specific project, the expenditures will be approved in the following priority order: 1) track materials, 2) installation, 3) engineering, 4) drainage, 5) grading, and 6) environmental mitigation. Eligible items of construction shall be limited to those necessary to provide adequate and safe rail service between the clear point and the industry being served. Construction shall not include siding track. A siding is defined by American Association of State Highway and Transportation Officials (AASHTO) as a track secondary to a main secondary track for a meeting or passing trains.
8. Plans and construction of all projects utilizing industrial access railroad track funds shall be subject to approval by the serving railroad prior to transmittal to the Director.
9. All facilities constructed and improved with industrial access railroad track funds shall be made available for use by all common carriers using the railway system to which they connect. The railroad company owning the main track to which an industrial access track is connected must acknowledge that any other carrier having trackage rights over the main track will also have unrestricted access to the industrial track.
10. Industrial access railroad track funds shall be allocated only after certification that the manufacturing, industrial, or commercial establishment is constructed and operating or will be constructed and operated under firm contract, or upon the presentation of acceptable surety in accordance with Section 33.1-221(A) of the *Code of Virginia* (1950), as amended.
11. No more than \$300,000 of the funds shall be allocated to any one county, town, or city in any fiscal year. No more than \$100,000 of unmatched funds may be allocated to any one project in any fiscal year. The unmatched funds may be supplemented with additional matched funds, in which case the matched state funds shall not be more than \$50,000. Any funds in excess of \$100,000 shall be matched dollar-for-dollar by the recipient or from other non-program sources. The amount of industrial access railroad track funds allocated to a project shall not exceed 15 percent of the capital outlay of the designation business. The 15 percent limitation and the maximums on matched or unmatched funding may be waived at the discretion of the Board.
12. The Board shall, in the evaluation of projects, consider the cost of construction of an access track in relation to the prospective volume of rail traffic, capital investment, potential employment, or other economic and public benefits.
13. Committed industrial access railroad track funds are those funds which have been allocated to a project but not necessarily spent in the year of allocation. Committed but unexpended industrial access railroad track funds will be allowed to accumulate and be carried forward from one year to another. Committed funds shall be expended within 24 months. The Director may extend this time limit for a reasonable period. Any funds allocated but not used, or returned for any reason and uncommitted access funds will be allowed to accumulate and carried forward from one year to another in the access fund.
14. The applicant shall be contractually committed to providing the Commonwealth with a contingent interest in that portion of trackage and facilities constructed or improved with the use of industrial access railroad track funds. Said portion shall be defined by the agreement. Maintenance and liability of such facilities shall be the responsibility of the landowner, using business or developer. Any cost involved in any subsequent relocation or

removal of industrial access railroad track facilities shall be borne by the landowner, using business or developer. Following relocation, the Commonwealth's interest will be redefined. In case of removal, the Commonwealth will be reimbursed the value of facilities in which it has an interest. Two percent of the total allocation shall be deducted from the monies to the industry or business and held in a special escrow account for any potential unfunded removal cost to protect the Commonwealth's interest. This two percent deduction will not be required whenever the special escrow account contains \$30,000.

15. The Commonwealth may, at its option, allow the industry, using business or developer, to purchase the Commonwealth's interest in an industrial access railroad track facility at a value determined by the Director.
16. In the event the landowner, using business or developer, desires to sell their property or interest on which access tracks have been constructed under this program, said sale will be subject to the Commonwealth's vested interest and written approval.
17. General, funding will not be recommended in cases where an industry is relocating within Virginia, unless there is a substantial expansion, excluding the value of transferred capital assets. The capital investment value used to determine its eligibility and maximum funding level will be calculated on a net basis. The value of existing capital assets sold or transferred to the new location will be subtracted from the gross capital investment to determine the new figure.

BE IT FURTHER RESOLVED that the Director shall develop procedural guidelines for the implementation of this policy and that the above policy shall become effective on December 1, 1995.

§ 33.2-1600. Fund for construction of industrial access railroad tracks.

A. The General Assembly declares it to be in the public interest that access railroad tracks and facilities be constructed to certain industrial commercial sites where rail freight service is or may be needed by new or substantially expanded industry and that financial assistance be provided to areas seeking to furnish rail freight trackage between the normal limits of existing or proposed common carrier railroad tracks and facilities and the actual site of existing or proposed commercial or industrial buildings or facilities. This section is enacted in furtherance of these purposes and is intended to be comparable to the fund for access roads to economic development sites established pursuant to § [33.2-1509](#).

B. The funding for this program shall be set forth in the appropriation act.

C. The Director of the Department of Rail and Public Transportation shall administer and expend or commit, subject to the approval of the Board, such funds for constructing, reconstructing, or improving industrial access railroad tracks and related facilities. The Director of the Department of Rail and Public Transportation may consult with the Commissioner of Agriculture and Consumer Services and the Chief Executive Officer of the Virginia Economic Development Partnership, or their designated representatives, concerning applications for funds. Funds shall be spent directly by the Director of the Department of Rail and Public Transportation or by reimbursement of the local entities, private or public.

D. Funds may be used to construct, reconstruct, or improve part or all of the necessary tracks and related facilities on public or private property currently used or being developed, existent or prospective, for single industries or industrial subdivisions under firm contract or already constructed, including those subdivisions owned or promoted by railroad companies and others. Applications for funds must be approved by the local governing body.

E. In deciding whether to construct any such access track, the Board shall consider the cost thereof in relation to prospective volume of rail traffic, capital investment, potential employment, and other economic and public benefits. The Board shall adopt procedures to encourage widespread use of the funds, shall limit allocation of funds so that no locality receives more than 50 percent of the funds in any one fiscal year unless there are not sufficient applications prior to May 1 of each year to use the available funds, and shall consider the practices of the Department of Transportation in distributing funds for access roads to economic development sites under § [33.2-1509](#).

F. Tracks and facilities constructed with such funds shall be the property of the Commonwealth for the useful life of the project as determined by the Director of the Department of Rail and Public Transportation and shall be made available for use by all common carriers using the railway system to which they connect. The landowners or using businesses shall, prior to the commitment of funds by the Director of the Department of Rail and Public Transportation, be contractually committed to the perpetual maintenance of such tracks and facilities so constructed and to the payment of any costs related to the future relocation or removal of such tracks and facilities.

1987, c. 495, § 33.1-221.1:1; 1992, c. 167; 1996, cc. [590](#), [598](#); 2010, c. [869](#); 2011, c. [64](#); 2012, c. [19](#); 2014, c. [805](#).