

REVISION OF TITLE 33 OF THE CODE OF VIRGINIA

**REPORT OF THE
VIRGINIA CODE COMMISSION
To
THE GOVERNOR
And
THE GENERAL ASSEMBLY OF VIRGINIA**

33.1
Highway
Pavement
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HOUSE DOCUMENT NO. 3

COMMONWEALTH OF VIRGINIA
Department of Purchases and Supply

Richmond

1969

1970

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REVISION OF TITLE 33 OF THE CODE OF VIRGINIA

**REPORT OF
THE VIRGINIA CODE COMMISSION
TO
THE GOVERNOR AND THE GENERAL ASSEMBLY
OF VIRGINIA**

To:

HONORABLE MILLS E. GODWIN, JR., *Governor of Virginia*

and

THE GENERAL ASSEMBLY OF VIRGINIA

Richmond, Virginia, August 15, 1969

The General Assembly at its Regular Session of 1968 directed the Virginia Code Commission, by Chapter 679 of the Acts of that Session, to revise certain titles of the Code of Virginia, including Title 33, relating to "Highways, Bridges and Ferries".

Extracts from Chapter 679 follow:

"§ 1. The Code of Virginia shall be gradually revised by revising one or more titles at a time. In revising each title, all other sections of the Code relating to the same subject matter shall be revised to the extent necessary. Experts shall be employed by the Virginia Code Commission to assist in the project. The Commission may also accept the services of qualified volunteers who are willing to serve without pay. Tentative drafts of proposed revisions should be printed and circulated among interested persons and their comments solicited.

"§ 2. The Commission shall undertake the revision of Titles 27, 33, 34, 35, 36, 40, 41, 42, 43 and 53 of the Code of Virginia and submit to the Governor and the General Assembly on or before October one, nineteen hundred sixty-nine, a report of its recommendations, together with suggestive legislation necessary to carry such recommendations into effect. No substantive change shall be incorporated in such revisions, however, the Commission may suggest substantive change in each title being revised and submit separately legislation purposed to carry out each such recommendation."

Hugh Reid Thompson, Jr., Esquire, of the Richmond City Bar, was retained as the Commission's general counsel for these undertakings and Paul D. Stotts, Esquire, of the Richmond Bar was employed as special counsel.

The Virginia Code Commission examined the provisions of this Title in detail and consulted officials of the State agencies interested in and affected by this Title. The Commission met with Counsel on several occasions, and discussed in detail changes recommended by members of the Commission, by Counsel and by such officials.

As a result of its efforts, the Commission has caused counsel to prepare a draft of revision of Title 33 in the usual form, i.e., a bill suitable for introduction at the 1970 Session of the General Assembly of Virginia, together with a Table of Contents and a Table of Comparable Sections. Source references and appropriate notes follow each section of the text.

The draft purports to reflect the Commission's careful consideration of all recommendations and suggestions either brought to its attention or resulting from its own observations, inquiries and deliberations. It incorporates, among others, the following changes:

First—the repeal of Title 33 and the enactment in lieu thereof of Title 33.1.

Second—a general renumeration of the sections.

Third—a renumeration of the articles of Chapter 1.

Fourth—a rearrangement of the provisions of several sections.

Fifth—a change in the sequence of several sections for better context.

Sixth—the amendment of a number of sections in which certain provisions are ambiguous, redundant, obsolete, poorly expressed or contain words or phrases elsewhere redefined.

Seventh—the deletion of a number of sections, the provisions of which are obsolete, ambiguous, redundant or are incorporated into some other section.

The basic arrangement of chapters remains undisturbed. However, the internal rearrangement of chapter 1 is made necessary by the General Assembly's prior repeal of one article (article 6) and its addition of several others (articles 2.1, 3.1, 5.1, 5.2, 6.1, 6.2 and 6.3). There would be no change in the sequence of articles.

Only four sections of the entire title are relocated (sections 33-11, 33-117.2, 33-117.3 and 33-117.4), to give better sequence to the text, and only one section is added. Otherwise, the arithmetic of the proposed revision reflects the prior repeal by the General Assembly of 48 sections and a recommended deletion of 94 other sections. Even so, additions to Title 33 by the General Assembly during the past 20 years requires a total of 381 sections in Title 33.1, whereas Title 33 originally had only 327 sections.

The text of Title 33.1 as prepared by counsel purports to conform with the instructions and desires expressed by the Virginia Code Commission at its several meetings. Relying heavily upon established policies and procedures of the Commission, counsel has attempted to have the text of Title 33.1 reflect the Commission's judgment, both expressed and implied, in both form and substance.

Some of the changes which might be considered other than merely "technical" but which the Commission considers essential to this revision are:

Amending § 33-3 (§ 33.1-4) to more adequately provide for the temporary appointment and removal of an "Acting State Highway Commissioner" during the temporary disability of the State Highway Commissioner for any reason;

Broadening the powers of the State Highway Commission (particular reference is made to §§ 33.1-12 and 33.1-13) to embrace some of its de facto duties with respect to service roads, access roads, interstate highways and other roads not defined as part of the "State Highway System", which changes, in turn, contemplate the simultaneous enactment of a new § 1-13.4 defining "systems of State highways";

The deletion of § 33-5 as unnecessary and duplicating requirements that the Governor provide the General Assembly with certain annual reports;

Substituting, in a number of sections, the word "Commissioner" for the word "Commission" because it is the Commissioner who in fact is required to act and not the Commission;

Changing bidding procedures in § 33-100 (§ 33.1-186) to conform

with the general statute (§ 11-19) relating to public contracts (The change would permit the filing of a bid bond in lieu of a check.);

Equating (in § 33-172 [33.1-248] et seq.) tunnels with bridges for certain purposes, i.e., maintenance of approaches, interstate agreements, agreements with certain cities, etc.;

Deleting §§ 33-174 to 33-191, relating to ferries generally, as these sections have no present application;

Deleting as obsolete §§ 33-192 to 33-208 relating to ferries across the Elizabeth River;

Broadening the provisions of § 33-209 (§ 33.1-254) to permit the State Highway Commission to operate with free or toll ferries as needed;

Amending § 33-223 (33.1-263) to relieve the State Highway Commission of the restriction that toll bridges acquired by the State automatically become part of the primary system.

Those provisions relating to the Richmond-Petersburg Turnpike Authority would be continued in effect and incorporated in Title 33.1 by reference as § 33.1-319.

Those provisions relating to the Richmond-Metropolitan Authority would be continued in effect and incorporated in Title 33.1 by reference as § 33.1-320.

Although the Commission formally recommends no change in § 33-11.1 (§ 33.1-11), consideration of that section gave rise to the broad question: "Should the State provide legal counsel for the defense of its officers, employees, agents or servants when they are sued or criminally prosecuted as individuals?"

A few of the obvious subordinate questions raised are:

1. Should counsel be provided in civil suits or in criminal prosecutions, or in both?
2. Who should be eligible?
3. Under what circumstances?
4. Who chooses counsel?

Members of the General Assembly may be expected to be sensitive to the constitutional, political, equitable, moral and financial implications of any legislation on this subject.

Sections 33-11.1, 46.1-40, 37.1-38 and 2.1-121 of the Code deserve joint consideration. The first three of these sections give certain State officers the discretion of providing counsel for their employees in criminal prosecutions related to their employment. The last provides counsel to certain agents and employees of the State in civil actions. Should these sections be amended, coordinated, completely revised or repealed? The Code Commission feels that it can make no further recommendations with respect to § 33-11.1 until the General Assembly shall have provided additional guidance on the broader questions. However, the adoption of Title 33.1 should not be conditioned upon the resolution of those questions.

In an attempt to be helpful, the Commission suggests that any further legislation on this subject should be enacted only pursuant to a clearly defined general policy. The following propositions appropriately might be considered:

First—If it should be decided that legal counsel is to be provided employees of the Commonwealth in civil actions against them as individuals when such actions arise out of their agency or employment, consideration should be given to the following draft of amendment of § 2.1-121:

§ 2.1-121. *Legal service in civil matters.*—All legal service in

civil matters for the Commonwealth, the Governor, the State Corporation Commission and every State department, institution, division, commission, board, bureau or official, including the conduct of all civil litigation in which any of them are interested, shall be rendered and performed by the Attorney General, except as hereinafter provided in this chapter. No regular counsel shall be employed for or by the Governor, the State Corporation Commission or any State department, institution, division, commission, board, bureau or official. The Attorney General in his discretion may represent personally or through one of his assistants any member, agent or employee of any department, institution, division, commission, board, bureau or other agency of the State who shall be made defendant in any civil action for damages arising out of any matter connected with his official duties. If, in the opinion of the Attorney General, it is impracticable or uneconomical for such legal service to be rendered by him or one of his assistants, he may employ special counsel for this purpose, whose compensation shall be fixed by the Attorney General.

The compensation for such special counsel shall be paid out of the funds appropriated for the administration of the board, commission, division or department whose members, agents, or employees are defended pursuant to this section.

Source: §2.1-121.

Note: The preceding draft of revision would extend the discretionary powers of the Attorney General to cover employees of all agencies of the State. Presently, such powers extend only to certain employees of the ABC Board, the State Corporation Commission, the State Highway Commission, the Division of Motor Vehicles, the Department of Welfare and Institutions, the Department of State Police and the Commission of Game and Inland Fisheries.

Secondly—If it should be decided that legal counsel is to be provided employees of the Commonwealth in criminal actions arising out of their agency or employment, consideration should be given to the enactment of a new section along the following general lines:

§ 2.1-20.1. Every person who shall have been authorized and required to act for the Commonwealth as its paid or unpaid agent or employee shall be reimbursed by the Commonwealth for all reasonable attorneys' fees and costs incurred by him to defend himself when arrested, indicted or otherwise prosecuted on any charge arising out of any act done in the discharge of his official duties; provided, however, that such right shall accrue when such charge shall have been dismissed or a judgment of not guilty shall have been entered thereon.

Claims against the Commonwealth arising under this section shall be subject to the provisions of Article 5 of Chapter 14 of Title 2.1 (§§ 2.1-223.1 et seq.) of the Code of Virginia.

With every such claim there shall be filed an affidavit executed by the claimant setting forth sufficient facts to clearly show:

1. That he was both authorized and required to act as agent or employee of the State;

2. That he was arrested, indicted, or otherwise prosecuted on a criminal charge which arose from an act done in the regular course of his agency for or employment by the State;

3. That such act did not exceed or abuse his authority as such agent or occur outside the scope of his employment as such employee;

4. That an attorney at law, duly licensed to practice in Virginia, was employed to and did represent him upon such charge or in such proceedings;

5. That he either paid or incurred a bona fide legal obligation to pay attorney's fees in the sum claimed;

6. That such attorney's fees were reasonable; and

7. That such criminal charge or proceeding was dismissed or a judgment of not guilty was entered thereon.

Such affidavit shall be endorsed by the attorney or attorneys therein named as follows: "I do solemnly swear, or affirm, that, to the best of my knowledge and belief, the facts set forth by the claimant in his affidavit are true and that my fees represented therein conform with general practice."

Source: New.

Note: This draft of a new § 2.1-20.1 is intended to be illustrative only of one possible approach to the question of providing defense counsel in criminal cases to agents and employees of the State and should not be interpreted as definitive. However, any such legislation must take into consideration, first, an obligation of the State to protect its agents and employees, and thereby itself, from groundless or frivolous criminal prosecutions upon the relation of discontented persons generally, and, secondly, a high potential for abuses, conflicts of interest and personal advantage. Such protection for State employees would be in addition to the present statutory provisions for Court appointed counsel for indigents.

For the reasons given, § 33-11.1, together with §§ 46.1-40, 37.1-38 and 2.1-121 of the Code should receive timely attention of the General Assembly for special study.

RECOMMENDATIONS

The Commission considers the accompanying draft of Title 33.1 as a substantial improvement over the present Title 33 and recommends its introduction at the 1970 Session of the General Assembly.

The Commission wishes to express appreciation for the valuable assistance rendered by Counsel in the preparation of this Revision, and for the cooperation of the officials of the State agencies affected by this Title.

Respectfully submitted,

A. L. PHILPOTT, *Chairman*

WILLIAM H. HODGES, *Vice-Chairman*

G. M. LAPSLEY, *Secretary*

FREDERICK T. GRAY

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ROBERT D. McILWAINE, III

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TABLE OF CONTENTS

TITLE 33.1

HIGHWAYS, BRIDGES AND FERRIES

CHAPTER 1

STATE HIGHWAY COMMISSION AND HIGHWAYS GENERALLY

§§ 33.1-1 to 33.1-223

- Article 1. State Highway Commission
§§ 33.1-1 to 33.1-23
- Article 2. The State Highway System
§§ 33.1-24 to 33.1-47
- Article 3. The Interstate System
§§ 33.1-48 to 33.1-56
- Article 4. Limited Access Highways
§§ 33.1-57 to 33.1-61
- Article 5. Scenic Highways and Virginia Byways
§§ 33.1-62 to 33.1-66
- Article 6. Secondary System of State Highways
§§ 33.1-67 to 33.1-88
- Article 7. Eminent Domain and Damages
§§ 33.1-89 to 33.1-132
- Article 8. Acquisition of Land Used as Cemeteries
§§ 33.1-133 to 33.1-136
- Article 9. Highway Right of Way Fund; Acquisition of Properties for
Future Use
§§ 33.1-137 to 33.1-143
- Article 10. Abandonment and Discontinuance of Roads in State High-
way System
§§ 33.1-144 to 33.1-149
- Article 11. Abandonment and Discontinuance of Roads in Secondary
System
§§ 33.1-150 to 33.1-155
- Article 12. Abandonment of Roads Not in State Highway System or Sec-
ondary System
§§ 33.1-156 to 33.1-167
- Article 13. Abandonment of Roads for Flooding
§§ 33.1-168 to 33.1-175
- Article 14. Roads Over Dams
§§ 33.1-176 to 33.1-181
- Article 15. Miscellaneous Provisions
§§ 33.1-182 to 33.1-223

CHAPTER 2

LOCAL AUTHORITY OVER HIGHWAYS

§§ 33.1-224 to 33.1-246

- Article 1. Miscellaneous Provisions
§§ 33.1-224 to 33.1-228
- Article 2. Establishment, Alteration and Discontinuance of Highways
§§ 33.1-229 to 33.1-246

CHAPTER 3
FERRIES, BRIDGES AND TURNPIKES
§§ 33.1-247 to 33.1-320

- Article 1. General Provisions
§§ 33.1-247 to 33.1-252
- Article 2. Chesapeake Bay Bridge and Tunnel District
§§ 33.1-253
- Article 3. Operation of Ferries by State Highway Commission
§ 33.1-254
- Article 4. Toll Bridges Generally
§§ 33.1-255 to 33.1-266
- Article 5. State Revenue Bond Act
§§ 33.1-267 to 33.1-295
- Article 6. State Turnpike Projects
§§ 33.1-296 to 33.1-317
- Article 7. Municipal Turnpike Projects
§ 33.1-318
- Article 8. The Richmond-Petersburg Turnpike Authority
§ 33.1-319
- Article 9. Richmond Metropolitan Authority
§ 33.1-320

CHAPTER 4

BOND ISSUES

§§ 33.1-321 to 33.1-335

- Article 1. Assumption of District Road Indebtedness by Counties Generally
§§ 33.1-321 to 33.1-325
- Article 2. Assumption by County with Executive Form of Government
§§ 33.1-326 to 33.1-331
- Article 3. Redemption of District Road Bonds
§§ 33.1-332 to 33.1-335

CHAPTER 5

HIGHWAY CONTRACTORS' ASSOCIATION

§§ 33.1-336 to 33.1-343

CHAPTER 6

OFFENSES CONCERNING HIGHWAYS OR TRAVELERS THEREON

§§ 33.1-344 to 33.1-350

CHAPTER 7

OUTDOOR ADVERTISING IN SIGHT OF PUBLIC HIGHWAYS

§§ 33.1-351 to 33.1-381

- Article 1. General Regulations
§§ 33.1-351 to 33.1-378
- Article 2. False and Misleading Signs
§§ 33.1-379 to 33.1-381

CHAPTER 8

**ADJUSTMENT OF CLAIMS RESULTING FROM CONTRACTS FOR
CONSTRUCTION OF STATE HIGHWAYS**

§§ 33.1-382 to 33.1-385

TABLE OF COMPARABLE SECTIONS

TITLE 33	THIS REPORT	TITLE 33	THIS REPORT
33.1	33.1-1	33-40	Deleted
33-2	33.1-2	33-40.1	33.1-60
33-3	33.1-3	33-41	33.1-61
33-3.1	33.1-4	33-42	Deleted
33-4	33.1-5	33-43	Deleted
33-5	33.1-6	33-43.1	33.1-62
33-6	33.1-7	33-43.2	33.1-63
33-7	33.1-8	33-43.3	33.1-64
33-8	Deleted	33-43.4	33.1-65
33-9	33.1-9	33-43.5	33.1-66
33-10	33.1-10	33-44	33.1-67
33-11	33.1-25 ²	33-45	33.1-68
33-11.1	33.1-11	33-46	33.1-69
33-12	33.1-12	33-47	33.1-70
33-13	33.1-13	33-47.1	33.1-71
33-14	33.1-14	33-47.2	33.1-72
33-15	33.1-15	33-48	33.1-73
33-15.1	33.1-16	33-48.1	33.1-74
33-16	33.1-17	33-49	33.1-75
33-17	33.1-18	33-49.1	33.1-76
33-18	33.1-19	33-49.2	33.1-77
33-19	33.1-20	33-50	33.1-78
33-20	33.1-21	33-50.1	33.1-79
33-21	33.1-22	33-50.2	33.1-80
33-22	33.1-23	33-50.3	33.1-81
33-22.1	33.1-24	33-50.4	33.1-82
33-23	33.1-25	33-50.5	33.1-83
33-23.1	33.1-26	33-51	33.1-84
33-23.2	33.1-27	33-5 ²	Deleted
33-23.3	33.1-28	33-53	33.1-85
33-23.4	33.1-29	33-54	33.1-86
33-23.5	33.1-30	33-55	33.1-87
33-24	33.1-31	33-56	33.1-88
33-25	33.1-32	33-57	33.1-89
New	33.1-33	33-57.1	33.1-90
33-26	33.1-34	33-117.2	33.1-91
33-27	33.1-35	33-117.3	33.1-92
33-28	Deleted	33-117.4	33.1-93
33-29	Deleted	33-57.2	33.1-94
33-30	33.1-36	33-57.3	33.1-95
33-31	33.1-37	33-58	33.1-96
33-32	33.1-38	33-58.1	33.1-97
33-33	Deleted	33-59	33.1-98
33-34	Deleted	33-59.1	33.1-99
33-35	33.1-39	33-60	33.1-100
33-35.1	33.1-40	33-60.1	33.1-101
33-35.2	33.1-41	33-60.2	33.1-102
33-35.3	33.1-42	33-60.3	33.1-103
33-35.4	33.1-43	33-61	33.1-104
33-35.5	33.1-44	33-62	Repealed
33-35.6	33.1-45	33-62.1	33.1-105
33-35.7	33.1-46	33-63	33.1-106
33-36	33.1-47	33-63.1	33.1-107
33-36.1	33.1-48	33-64	33.1-108
33-36.2	33.1-49	33-64.1	33.1-109
33-36.3	33.1-50	33-65	33.1-110
33-36.4	Deleted	33-65.1	33.1-111
33-36.5	33.1-51	33-66	33.1-112
33-36.6	33.1-52	33-67	33.1-113
33-36.7	33.1-53	33-67.1	33.1-114
33-36.8	33.1-54	33-67.2	33.1-115
33-36.9	33.1-55	33-67.3	33.1-116
33-36.10	33.1-56	33-68	Deleted
33-37	33.1-57	33-69	33.1-117
33-38	33.1-58	33-70	33.1-118
33-39	33.1-59	33-70.1	33.1-119
33-39.1	Deleted	33-70.2	33.1-120

TABLE OF COMPARABLE SECTIONS—(Continued)

TITLE 33	THIS REPORT	TITLE 33	THIS REPORT
33-70.3	33.1-121	33-97	33.1-183
33-70.4	33.1-122	33-98	33.1-184
33-70.5	33.1-123	33-99	33.1-185
33-70.6	33.1-124	33-100	33.1-186
33-70.7	33.1-125	33-101	33.1-187
33-70.8	33.1-126	33-102	33.1-188
33-70.9	33.1-127	33-103	33.1-189
33-70.10	33.1-128	33-104	33.1-190
33-70.11	33.1-129	33-105	33.1-191
33-71	Deleted	33-106	33.1-192
33-72	Deleted	33-107	Repealed
33-73	33.1-130	33-108	Deleted
33-74	33.1-131	33-109	33.1-193
33-75	33.1-132	33-110	33.1-194
33-75.1	33.1-133	33-111	33.1-195
33-75.2	33.1-134	33-112	33.1-196
33-75.3	33.1-135	33-113 to 33-115	Repealed
33-75.4	33.1-136	33-116	33.1-197
33-75.5	33.1-137	33-116.1	33.1-198
33-75.6	33.1-138	33-117	33.1-199
33-75.7	33.1-139	33-117.1	33.1-200
33-75.8	33.1-140	33-117.2	33.1-91
33-75.9	33.1-141	33-117.3	33.1-92
33-75.10	33.1-142	33-117.4	33.1-93
33-75.11	33.1-143	33-118	33.1-201
33-76	Repealed	33-119	33.1-202
33-76.1	33.1-144	33-120	33.1-203
33-76.2	33.1-145	33-120.1	33.1-204
33-76.3	33.1-146	33-121	33.1-205
33-76.4	33.1-147	33-122	33.1-206
33-76.5	33.1-148	33-123	33.1-207
33-76.6	33.1-149	33-123.1	33.1-208
33-76.7	33.1-150	33-124	33.1-209
33-76.8	33.1-151	33-125	33.1-210
33-76.9	33.1-152	33-126	33.1-211
33-76.10	33.1-153	33-127	33.1-212
33-76.11	33.1-154	33-128	33.1-213
33-76.12	33.1-155	33-129	33.1-214
33-76.13	33.1-156	33-130	33.1-215
33-76.14	33.1-157	33-131	33.1-216
33-76.15	33.1-158	33-132	Deleted
33-76.16	33.1-159	33-133	33.1-217
33-76.17	33.1-160	33-133.1	33.1-218
33-76.18	33.1-161	33-134	33.1-219
33-76.19	33.1-162	33-135	33.1-220
33-76.20	33.1-163	33-136	Repealed
33-76.21	33.1-164	33-136.1	33.1-221
33-76.22	33.1-165	33-136.2	33.1-222
33-76.23	33.1-166	33-136.3	33.1-223
33-76.24	33.1-167	33-137	33.1-224
33-77 to 33-81	Repealed	33-138	33.1-225
33-82	33.1-168	33-139	33.1-226
33-83	33.1-169	Reserved	33.1-227
33-84	33.1-170	33-140	33.1-228
33-85	33.1-171	33-141	33.1-229
33-86	33.1-172	33-142	33.1-230
33-87	33.1-173	33-143	Deleted
33-88	33.1-174	33-144	33.1-231
33-89	33.1-175	33-145	33.1-232
33-90	33.1-176	33-146	33.1-233
33-91	33.1-177	33-147	33.1-234
33-92	33.1-178	33-148	33.1-235
33-93	33.1-179	33-149	33.1-236
33-94	33.1-180	33-150	33.1-237
33-95	33.1-181	33-151	33.1-238
33-96	33.1-182	33-152	33.1-239

TABLE OF COMPARABLE SECTIONS—(Continued)

TITLE 33	THIS REPORT	TITLE 33	THIS REPORT
33-153	33.1-240	33-255.6	33.1-301
33-154	33.1-241	33-255.7	33.1-302
33-155	33.1-242	33-255.8	33.1-303
33-155.1	33.1-243	33-255.9	33.1-304
33-156 to 33-158	Repealed	33-255.10	33.1-305
33-159	33.1-244	33-255.11	33.1-306
33-160	33.1-245	33-255.12	33.1-307
33-161	33.1-246	33-255.13	33.1-308
33-162 to 33-170	Deleted	33-255.14	33.1-309
33-171	33.1-247	33-255.15	33.1-310
33-172	33.1-248	33-255.16	33.1-311
33-172.1	33.1-249	33-255.17	33.1-312
33-173	33.1-250	33-255.18	33.1-313
33-173.1	33.1-251	33-255.19	33.1-314
33-11	33.1-252	33-255.20	33.1-315
33-174 to 33-191	Deleted	33-255.21	33.1-316
33-191.1	33.1-253	33-255.22	33.1-317
33-192 to 33-208	Deleted	33-255.23	33.1-318
33-209	33.1-254	33-255.24 to	
33-210 to 33-214	Deleted	33-255.44:9	33.1-319
33-215	33.1-255	33-255.44:10	Deleted
33-216	33.1-256	33-255.44:11 to	
33-217	33.1-257	33-255.44:32	33.1-320
33-218	33.1-258	33-255.45 to	
33-219	33.1-259	33-255.66	Repealed
33-220	33.1-260	33-256	33.1-321
33-221	33.1-261	33-257	33.1-322
33-222	33.1-262	33-258	33.1-323
33-223	33.1-263	33-259	33.1-324
33-224	33.1-264	33-260	33.1-325
33-225	33.1-265	33-261	33.1-326
33-226	33.1-266	33-262	33.1-327
33-227	33.1-267	33-263	33.1-328
33-228	33.1-268	33-264	33.1-329
33-229	33.1-269	33-265	33.1-330
33-230	33.1-270	33-266	33.1-331
33-231	33.1-271	33-267	33.1-332
33-232	33.1-272	33-268	33.1-333
33-233	33.1-273	33-269	33.1-334
33-234	33.1-274	33-269.1	33.1-335
33-235	33.1-275	33-270	33.1-336
33-236	33.1-276	33-271	33.1-337
33-237	33.1-277	33-272	33.1-338
33-238	33.1-278	33-273	33.1-339
33-239	33.1-279	33-274	33.1-340
33-240	33.1-280	33-275	33.1-341
33-241	33.1-281	33-276	33.1-342
33-242	33.1-282	33-277	33.1-343
33-243	33.1-283	33-278	33.1-344
33-244	33.1-284	33-279	33.1-345
33-245	33.1-285	33-279.1	Deleted
33-246	33.1-286	Reserved	33.1-346
33-247	33.1-287	33-279.2	33.1-347
33-248	33.1-288	33-279.3	33.1-348
33-249	33.1-289	33-280	Deleted
33-250	33.1-290	33-281 to 33-286	Repealed
33-251	33.1-291	33-287	33.1-349
33-252	33.1-292	33-288	Deleted
33-253	33.1-293	33-288.1	33.1-350
33-254	33.1-294	33-289 to 33-296	Repealed
33-255	33.1-295	33-297	Deleted
33-255.1	33.1-296	33-298	33.1-351
33-255.2	33.1-297	33-299	33.1-352
33-255.3	33.1-298	33-300	33.1-353
33-255.4	33.1-299	33-301	33.1-354
33-255.5	33.1-300	33-302	33.1-355

TABLE OF COMPARABLE SECTIONS—(Continued)

TITLE 33	THIS REPORT	TITLE 33	THIS REPORT
33-303	33.1-356	33-317.2	33.1-371
33-304	33.1-357	33-317.3	Repealed
33-305	33.1-358	33-318	33.1-372
33-306	33.1-359	33-319	33.1-373
33-307	33.1-360	33-320	33.1-374
33-308	33.1-361	33-321	33.1-375
33-309	33.1-362	33-322	33.1-376
33-310	33.1-363	33-323	33.1-377
33-311	33.1-364	33-324	33.1-378
33-312	33.1-365	33-325	33.1-379
33-313	33.1-366	33-326	33.1-380
33-314	33.1-367	33-327	33.1-381
33-315	Repealed	33-328	33.1-382
33-316	33.1-368	33-329	33.1-383
33-317	33.1-369	33-330	33.1-384
33-317.1	33.1-370	33-331	33.1-385

A BILL to revise, rearrange, amend and recodify the general laws of Virginia relating to highways, bridges and ferries; to that end to repeal, with certain exceptions, Title 33 of the Code of Virginia, which title includes chapter 1 to 8 and §§ 33-1 to 33-331, inclusive, of the Code of Virginia as amended, and which title relates to highways, bridges and ferries; to amend the Code of Virginia by adding thereto, in lieu of the foregoing title, chapters and sections of the Code repealed by this act, a new title numbered 33.1 which title includes new chapters numbered 1 to 8, inclusive, and new sections numbered §§ 33.1-1 to 33.1-385, inclusive, relating to highways, bridges and ferries; to prescribe when such revision and recodification shall become effective, and to repeal all acts and parts of acts in conflict with the provisions of this act.

Be it enacted by the General Assembly of Virginia:

1. That Title 33 of the Code of Virginia, which title includes chapters 1 to 8 and §§ 33-1 to 33-331, inclusive, of the Code of Virginia, as amended, is repealed except as hereinafter provided in §§ 33.1-316, 33.1-319 and 33.1-320 of Title 33.1, and the Code of Virginia is amended by adding thereto, in lieu of the title, chapters and sections of the Code of Virginia herein repealed, a new title numbered 33.1, new chapters numbered 1 to 8, inclusive, and new sections numbered 33.1-1 to 33.1-385, inclusive, which new title, chapters and sections are as follows:

TITLE 33.1

HIGHWAYS, BRIDGES AND FERRIES

CHAPTER 1

STATE HIGHWAY COMMISSION AND HIGHWAYS GENERALLY

Article 1. State Highway Commission.

§ 33.1-1. State Highway Commission; number and terms of members.—The State Highway Commission, hereinafter in this title sometimes called “the Commission”, shall consist of nine members, who shall be appointed by the Governor subject to confirmation by the General Assembly, and who shall be removable from office during their respective terms by the Governor at his pleasure. Appointments shall be for terms of four years commencing upon July first, upon the expiration of the terms of the existing members, respectively. Vacancies shall be filled by appointment by the Governor for the unexpired term and shall be effective until thirty days after the next meeting of the ensuing General Assembly and, if confirmed, thereafter for the remainder of the term. No person shall be eligible to serve more than two successive terms of four years, other than as State Highway Commissioner; provided, that a person heretofore or hereafter appointed to fill a vacancy may serve two additional successive terms.

Source : § 33-1.

Note: The last sentence of § 33-1 is deleted as obsolete.

§ 33.1-2. Residence requirements.—Of such Commission, one member shall be a resident of the territory now included in the Bristol construction district, one in the Salem construction district, one in the Lynchburg construction district, one in the Staunton construction district, one in the Culpeper construction district, one in the Fredericksburg construc-

tion district, one in the Richmond construction district and one in the Suffolk construction district.

Source: § 33-2.

Note: The last sentence of § 33-2 is deleted as having no binding legal effect.

§ 33.1-3. Chairman, State Highway Commissioner; Acting Commissioner.—The Chairman, whose official title shall be State Highway Commissioner, and who may, at the time of his appointment, be a nonresident of Virginia, shall be an experienced administrator, able to direct and guide the Department in the establishment and achievement of the State's long range highway objectives and shall be appointed at large. The State Highway Commissioner, hereinafter in this title sometimes called "the Commissioner," 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 the Governor, subject to the approval of the Commission, unless such salary be fixed by the General Assembly in the Appropriation Act. He shall also be reimbursed for his actual travel expenses while engaged in the discharge of his duties.

In the event of a vacancy due to the death, temporary disability, retirement, resignation or removal of the State Highway Commissioner, the Governor may appoint and thereafter remove at his pleasure an "Acting State Highway Commissioner" until such time as the vacancy may be filled as provided in § 33.1-1. Such "Acting State Highway Commissioner" shall have all powers and perform all duties of the State Highway Commissioner as provided by law, and shall receive such compensation as may be fixed by the Governor. All acts performed by the Deputy State Highway Commissioner between the time of any such vacancy and the effective date of the appointment of an "Acting State Highway Commissioner" or the State Highway Commissioner appointed to fill such vacancy are hereby validated. In the event of the temporary disability, for any reason, of the State Highway Commissioner, full effect shall be given to the provisions of § 2.1-20.

Nothing herein contained shall be construed so as to authorize or empower such "Acting State Highway Commissioner" to serve as a member of the Elizabeth River Tunnel Commission.

Source: § 33-3.

Note: The second paragraph of § 33-3 is amended to provide for the temporary appointments during temporary disability for any reason of the State Highway Commissioner.

§ 33.1-4. How testimony of members of Commission, Commissioner and Deputy Commissioner taken in civil proceedings.—No member of the State Highway Commission, the State Highway Commissioner or the Deputy State Highway Commissioner shall be required to leave his office for the purpose of testifying in any suit, action or other civil proceeding involving any of their official duties, but the deposition of any member of the State Highway Commission, the State Highway Commissioner or the Deputy State Highway Commissioner may be taken at the main office of the Commission in Richmond, after reasonable notice in writing has been given to the adverse party.

Any deposition taken pursuant to this section may be read in the pending suit, action or other civil proceeding. However, on motion to the court, filed at least ten days before the commencement of the trial, the

judge may, for good cause shown, require any member of the Commission, the Commissioner or the Deputy Commissioner to attend and testify *ore tenus*.

Source: § 33-3.1.
Note: No change.

§ 33.1-5. Pay and allowances of other members.—The members of the Commission, other than the chairman thereof, shall each receive twenty dollars per diem and their actual expenses while engaged in the work of the Commission, but no such member of the Commission shall receive in excess of fifteen hundred dollars and actual expenses in any one year.

Source: § 33-4.
Note: No change.

§ 33.1-6. Meetings.—The Commission shall meet at least once in every three months and at such other times, on the call of the chairman or of a majority of the members, as may be deemed necessary to transact such business as may properly be brought before it. Five members shall constitute a quorum of the Commission for all purposes.

It shall be the duty of the Commission to keep accurate minutes of all meetings of the Commission, in which shall be set forth all acts and proceedings of the Commission in carrying out the provisions of this title.

Source: § 33-5.
Note: No change.

§ 33.1-7. Offices.—The main office of the Commission shall be located in the city of Richmond. In the discretion of the chairman, other offices may be established in the various construction districts of the State as may be necessary or needful to carry out the provisions of this title.

Source: § 33-6.
Note: No change.

§ 33.1-8. Chief engineer and other employees; deputy commissioner.—The State Highway Commissioner shall employ a chief engineer and such other engineers, clerks, assistants, and other employees as may be needed, and shall prescribe and fix their duties. They shall receive such salaries and expenses as may be fixed in accordance with the provisions of law. The chief engineer will also act as deputy commissioner and perform such of the Commissioner's duties as may be delegated to him by the Commissioner.

Source: § 33-7.
Note: No change.

(§ 33-8 is deleted. The subject matter of this section is covered by the general provisions of § 33.1-8 and there appears to be no need to spell out one particular engineer.)

§ 33.1-9. Oaths and bonds of members of Commission.—The members of the State Highway Commission shall each, before entering upon the discharge of his duties, take an oath that he will faithfully and honestly execute the duties of the office during his continuance therein and each shall give a bond in such penalty as may be fixed by the Governor conditioned upon the faithful discharge of the duties of his office and the full and proper accounting for all public funds and property coming into his

possession or under his control. The premium on such bonds shall be paid out of the State treasury out of the annual appropriation for the State Highway Commission.

Source: § 33-9.

Note: No change.

§ 33.1-10. Salaries and expenses; how paid.—All salaries and expenses shall be paid from the State treasury out of the annual appropriation for the State Highway Commission. Warrants for such salaries and expenses shall be issued by the Comptroller on certificates of the State Highway Commissioner to the parties entitled thereto, and shall be paid by the State Treasurer out of the funds appropriated for that purpose.

Source: § 33-10.

Note: No change.

(§ 33-11 is amended and transferred to a new location in this Title following old § 33-173.1 in Chapter 3).

§ 13.1-11. Defense of employees.—If any person employed by the State Highway Commission shall be arrested or indicted or otherwise prosecuted on any charge arising out of any act committed in the discharge of his official duties, the State Highway Commissioner may employ special counsel approved by the Attorney General to defend such employee. The compensation for special counsel employed, pursuant to this section, shall, subject to the approval of the Attorney General, be paid out of the funds appropriated for the administration of the State Highway Commission.

Source: § 33-11.1.

Note: No change. However, attention is invited to a discussion of this and related sections in the Commission's letter transmitting this report.

§ 33.1-12. General powers and duties of Commission.—The State Highway Commission shall be vested with the following powers and shall have the following duties:

(1) Location of routes.—To locate and establish the routes to be followed by the roads comprising systems of State highways between the points designated in the establishment of such systems.

(2) Construction contracts.—To let all contracts for the construction, improvement and maintenance of the roads comprising systems of State highways.

(3) Traffic regulations.—To make rules and regulations, from time to time, not in conflict with the laws of this State, for the protection of and covering traffic on and the use of systems of State highways and to add to, amend or repeal the same.

(4) Naming highways.—To give suitable names to State highways and change the names of any highways forming a part of the systems of State highways, except such roads as have been or may hereafter be named by the General Assembly.

(5) Compliance with federal acts.—To comply fully with the provisions of the present or future federal aid acts. The Commission may enter into all contracts or agreements with the United States government and may do all other things necessary to carry out fully the co-operation

contemplated and provided for by present or future acts of Congress for the construction, improvement and maintenance of roads.

(6) Information and statistics.—To gather and tabulate information and statistics relating to highways and to disseminate the same throughout the State.

(7) Department policies and operation.—To review and approve policies of the Department and State highway objectives, to assist in establishing such policies and objectives, to oversee the execution thereof, and to report thereon to the Commissioner.

(8) Co-operation with other agencies—To co-operate with the Federal Government, the American Association of State Highway Officials and any other organization in the numbering, signing and marking of highways, in the taking of measures for the promotion of highway safety, in research activities, in the preparation of standard specifications, in the testing of highway materials and otherwise with respect to highways.

Throughout this title the term “systems of State highways” shall have the meaning ascribed thereto by § 1-13.40.

Source: § 33-12.

Note: The term “systems of State highways” has been substituted throughout this section for the term “State Highway System” to broaden the statutory authority of the State Highway Commission to conform with its de facto requirements. Subsections (5) and (6) have been revised to modernize the language and eliminate unnecessary verbiage. Subsection (8) is added to conform with [and replace] deleted § 33-132. The last unnumbered paragraph of § 33.1-12 is added. The revised wording of this section contemplates the simultaneous adoption of a new section numbered 1-13.40, as follows: “The words ‘systems of State highways’ shall mean all systems of highways within the Commonwealth over which the State Highway Commission exercises jurisdiction and control. In context, such words shall apply to the extent, but only to the extent, that the State Highway Commission exercises such jurisdiction and control.”

§ 33.1-13. General powers of the Commissioner.—Except such powers as are conferred by law upon the State Highway Commission, the State Highway Commissioner shall have plenary powers for construction, improving and maintaining the roads embraced in the systems of State highways. And as executive head of the Highway Department, the Commissioner is specifically charged with the duty of executing all orders and decisions of the Commission and he may, subject to the provisions of this chapter, require that all appointees and employees perform their duties under this chapter.

Source: § 33-13.

Note: The words “systems of State highways” are substituted for “State Highway System and the secondary system of State highways.” The last full sentence of former § 33-13 is deleted as purely permissive, without legislative effect and otherwise covered.

§ 33.1-14. Bookkeeping system.—The chairman shall, with the aid and advice of the Auditor of Public Accounts, cause to be maintained a complete and modern system of bookkeeping for the Highway Department

and the books to be kept by the Department shall show in detail all receipts and disbursements of the Department, the source of such receipts and the purpose, amount and recipient of all disbursements.

Source: § 33-14.

Note: No change.

§ 33.1-15. Reserved.

Source: § 33-15.

Note: § 33-15 is deleted as unnecessary. Technically, it requires duplication of distribution of annual reports. Also see §§ 2.1-51.2 and 2.1-57.

§ 33.1-16. Furnishing information regarding right of way transactions.—Upon written request to the central office of the Department of Highways, the Commissioner shall furnish information regarding right of way transactions where any public funds are expended. Such information shall not be released prior to sixty days following the transaction to any person not a party directly interested in such transaction.

The information referred to herein shall consist of the following: (1) Name of the person to whom any sum was paid for land or interest therein; (2) the amount of land or interest therein acquired from such person; and (3) the amount paid such person for land and the amount paid for damage resulting to the remaining property of such person.

Source: § 33-15.1.

Note: the word "Commissioner" has been substituted for the words "State Highway Commission".

§ 33.1-17. Destruction of papers.—The State Highway Commissioner, with the approval of the Governor, may destroy or have destroyed papers and records of the Department of Highways after they have remained in its offices for three years, which are of no permanent usefulness and which it is unnecessary to preserve as permanent records.

Source: § 33-16.

Note: No change.

§ 33.1-18. Location of routes.—When a route has already been located and established in pursuance of law no change shall be made in such route by the Commission under the provisions of paragraph (1) of § 33.1-12, and the Commission shall not locate and establish any route under such provisions unless and until thirty days' written notice of its proposed action shall have been given to the clerk of the circuit court of the county in which the route to be located and established, or any part thereof, is situated and also unless and until such notice shall have been published at least once in a newspaper published in such county or counties, or in some newspaper having general circulation therein, not less than thirty days before the proposed action of the Commission and until a local hearing shall have been had by the Commission, if the same be requested. Immediately upon the receipt of such notice, the clerk shall notify the board of supervisors or other governing body and the local road authorities of such county.

Within thirty days after the filing of such report with the clerk of the court, the board of supervisors or other governing body or local road authorities of such county, or any fifty or more freeholders thereof, may

apply to the Commission for a rehearing of its decision locating and establishing any such route and the Commission shall thereupon, within a reasonable time, hear such application and its decision on such rehearing shall be final.

Source: § 33-17.

Note: No change.

§ 33.1-19. Effect of Commission's rules and regulations.—The rules and regulations together with any additions or amendments thereto, prescribed by the Commission under the provisions of paragraph (3) of § 33.1-12, shall have the force and effect of law and any person, firm or corporation violating any such rule or regulation or any addition or amendment thereto shall be guilty of a misdemeanor and, upon conviction, be fined not less than five nor more than one hundred dollars for each offense. Such person shall be civilly liable to the Commonwealth for the actual damage sustained by the Commonwealth by reason of his wrongful act. Such damages may be recovered at the suit of the State Highway Commission and, when collected, paid into the State treasury to the credit of the State Highway Department. But no such rules and regulations or additions or amendments thereto, or repeals thereof, shall become effective until sixty days shall have elapsed following their adoption by the Commission.

Source: § 33-18.

Note: The words "to the credit of the State Highway Department" appearing at the end of the third sentence are added.

§ 33.1-20. Distribution and posting of such rules.—Such rules and regulations and any additions or amendments thereto or repeals thereof shall be printed by the Commission and two copies thereof mailed forthwith to the clerk of every court of record, one of which copies shall be posted immediately upon receipt by the clerk, at the front door of his courthouse, and the other copy retained in his office for the information of the public.

Source: § 33-19.

Note: No change.

§ 33.1-21. Employees as policemen to enforce rules.—In order properly to enforce such rules and regulations, and additions and amendments thereto, the Commission may designate and appoint any or all of the employees of the Commission special policemen with the powers of a sheriff, for the purpose aforesaid.

Source: § 33-20.

Note. No change.

§ 33.1-22. Copies of rules as evidence.—Copies of such rules and regulations and of additions or amendments thereto, printed under the authority of the State Highway Commission, shall be admissible in all of the courts of this Commonwealth without further proof and given the force and effect prescribed hereby and the fact that such printed copies bear the name of the State Highway Commission shall be prima facie evidence that they are duly adopted and promulgated under the provisions hereof and that they are true copies of the rules and regulations, or of any additions and amendments thereto, adopted pursuant to the provisions of paragraph (3) of § 33.1-12.

Source: § 33-21.
Note: No change.

§ 33.1-23. Sections not applicable to certain engines and tractors.—The provisions of subsection (3) of § 33.1-12 and of the preceding four sections shall not apply to traction engines and tractors, weighing not less than five tons, when drawing threshing machines, hay balers or other farm machinery for local farm use.

Source: § 33-22.
Note: No change.

Article 2. The State Highway System.

§ 33.1-24. Allocation of additional funds for nine-year program of highway improvement.—In carrying out the nine-year program of highway improvements, the State Highway Commission shall continue to allocate funds from existing sources of revenue to the secondary and urban systems in accordance with §§ 33.1-40 and 33.1-75. However, in order to accomplish the objectives for the arterial primary, secondary and urban programs, the Commission shall allocate to the various highway systems the additional funds provided as a result of action of the 1966 Session of the General Assembly, over the period of the program, in such a manner as may be necessary in order to accomplish the objectives of the program. Any revenue allocated pursuant to this section shall not be considered in determining the funds to be allocated under §§ 33.1-40 and 33.1-75.

Source: § 33-22.1.
Note: No change.

§ 33.1-25. Primary system of State highways.—Except as the same shall be changed as hereinafter provided, the roads and bridges now comprising the State Highway System, sometimes referred to as the primary system of State highways, shall continue to constitute and be known as the State Highway System and the terms "State Highway System" or "primary system of State highways" when used elsewhere in this Code or in any other act or statute shall refer to and mean such State Highway System, sometimes called the primary system of State highways, as so constituted. The term "State Highway System" shall not include the secondary system of State highways. The State Highway System shall be constructed and maintained by the State under the direction and supervision of the State Highway Commission and the State Highway Commissioner.

Source: § 33-23.
Note: No change.

§ 33.1-26. Arterial highways; criteria.—The State Highway Commission is hereby authorized to establish within the State Highway System an arterial network of highways to supplement and complement the Interstate System as established under article 3 (§ 33.1-48 et seq.) of chapter 1 of Title 33.1 of this Code.

Arterial highways shall be those highways which meet the following criteria:

(1) Supplement and complement the Interstate System to form a complete network of through highways to serve both interstate and principal intrastate traffic flow;

(2) Carry a sufficient volume of traffic by 1975 to warrant a minimum of four lanes;

(3) Carry a substantial volume of heavy trucks and buses and through traffic;

(4) Serve as the principal routes of major traffic corridors;

(5) Provide reasonable connections to or between the major cities and towns in the State; and

(6) Have been declared by resolution of the State Highway Commission to be portions of the arterial network of the State Highway System.

Existing highways and streets, even though established as turnpikes, toll projects, revenue bond projects, or streets of cities and towns may be included in the arterial network of highways established by this section.

Source: § 33-23.1.

Note: No change.

§ 33.1-27. Extensions of arterial highways within cities and towns.—Extensions of the arterial network of highways into and through cities and towns of thirty-five hundred or more population shall be constructed or improved in the same manner as other urban projects, and the funds for such construction shall be provided in accordance with § 33.1-44.

When such extensions of the arterial network of highways have been constructed or improved, they shall be maintained and controlled by the governing bodies of such cities and towns and be eligible for maintenance payments under § 33.1-41.

Notwithstanding the above paragraph, the State Highway Commission is authorized in its discretion to assume the maintenance and control of any extension of the arterial network of highways within a municipality of thirty-five hundred or more population when such extension has been constructed without contribution by the municipality and such action is deemed by the Commission to be in the best interest of the Commonwealth. The Commission shall have the same jurisdiction and control over extensions of the arterial network which it assumes for maintenance as is vested in it relative to other highways in the State Highway System and the municipality shall thereafter be relieved from all civil liability arising from the physical condition of such extensions. No payment shall be made by the Commissioner to any city or town pursuant to § 33.1-41 for any extension which the Commission assumes for maintenance.

Nothing contained herein shall relieve the cities and towns from the responsibility for the preservation of public peace, prevention of crime, apprehension of criminals, protection of the rights of persons and property and enforcement of the laws of the Commonwealth and the rules and regulations enacted pursuant thereto on any extension of the arterial network maintained by the Commission, nor shall anything contained herein be considered as a waiver by the Commonwealth of its immunity from liability for tort.

Source: § 33-23.2.

Note: No change.

§ 33.1-28. Funds for establishment and maintenance of arterial network of highways.—The roads and streets embraced within the arterial network of the State Highway System shall be established, constructed and

maintained by the State under the direction and supervision of the Commissioner with such funds as may hereafter be appropriated and made available for such purposes to the State Highway System under §§ 33.1-37 and 33.1-38.

Source: § 33-23.3.
Note: No change.

§ 33.1-29. Transfer of streets and roads in connection with establishment, etc., of arterial network.—In connection with the establishment and construction of the arterial network of the State Highway System the State Highway Commission may transfer to and from the State Highway System such streets, roads, and bridges as the Commission shall deem proper.

Such transfers shall be made in accordance with § 33.1-34 or § 33.1-35 but without regard to the limitations or conditions set forth in such sections.

Source: § 33-23.4.
Note: No change.

§ 33.1-30. Portions of arterial network within annexed areas.—The State Highway Commission is authorized in its discretion, after consultation with the municipality, to continue the maintenance and control of any portion of the arterial network of highways which is located within an area that is annexed, merged, or incorporated into a city or town of thirty-five hundred or more population, subsequent to the construction of such portion of the highway, when such action is deemed by the Commissioner to be in the best interest of the Commonwealth. The Commission shall have the same jurisdiction and control over those portions of the arterial network which it continues to maintain as is vested in it relative to other highways in the State Highway System and the municipality shall incur no civil liability as a result of the physical condition of such portions. No payment shall be made by the Commissioner to any city or town pursuant to § 33.1-41 for any portion of the arterial network which the Commission continues to maintain under this section.

Nothing contained herein shall relieve the cities and town from the responsibility for the preservation of public peace, prevention of crime, apprehension of criminals, protection of the rights of persons and property and enforcement of the laws of the Commonwealth and the rules and regulations enacted pursuant thereto on any portion of the arterial network maintained by the Commission under this section, nor shall anything contained herein be considered as a waiver by the Commonwealth of its immunity from liability for tort.

Source: § 33-23.5.
Note: No change.

§ 33.1-31. Certain park roads in primary system.—All roads in the several State parks providing connections between highways, either primary or secondary, outside of such parks and the recreation centers in such parks shall continue to be and constitute portions of the primary system of State highways and as such be constructed, reconstructed, improved and maintained.

Source: § 33-24.
Note: No change.

§ 33.1-32. Maintenance of roads within boundaries of State Parks.—The State Highway Commissioner may maintain all roads situated within the boundaries of any State park heretofore or hereafter established by, and under the control of, the Department of Conservation and Development. For the purpose of maintaining the roads in any such park the State Highway Commissioner may expend funds under his control and available for expenditures upon the maintenance of roads in the secondary system of State highways in the county or counties in which such State park is located. This section shall not affect the jurisdiction and control over such roads which is now vested in the Department of Conservation and Development.

Source: § 33-25.

Note: No change.

§ 33.1-33. Maintenance of roads at State institutions.—The State Highway Commissioner may when requested by the governing body of a State institution assume the maintenance of any road situated within the grounds of such State institution which has heretofore been or is hereafter established and constructed by such institution to standards acceptable to the Commissioner. Any such roads accepted for maintenance by the State Highway Commissioner under the provisions of this section shall be a part of the State highway system, but the State institution shall continue to exercise police power over such roads.

Source: New.

Note: The State Highway Commission assumes the maintenance of roads within the grounds of State institutions pursuant to chapter 263 of the Acts of Assembly of 1932, but such authority has never been included in the Code. It is felt that this inclusion should be made in order to codify the authority.

§ 33.1-34. Transfer of roads, etc., from secondary to primary system; additions to primary system.—The State Highway Commission may transfer such roads, bridges and streets as the Commission shall deem proper from the secondary system of State highways to the primary system of State highways; upon such transfer the roads, bridges and streets so transferred shall become for all purposes parts of the primary system of State highways and thereafter cease being parts of the secondary system of State highways. The Commission may add such roads, bridges and streets as it shall deem proper to the primary system. The total mileage of such roads, bridges and streets so transferred or added by the Commission shall not, however, exceed fifty miles during any one year.

Source: § 33-26.

Note: No change.

§ 33.1-35. Transfer of roads, etc., from primary to secondary system.—The State Highway Commission may transfer such roads, bridges and streets as the Commission shall deem proper from the primary system of State highways to the secondary system of State highways; upon such transfer, the roads, bridges and streets so transferred shall become for all purposes parts of the secondary system of State highways and thereafter cease being parts of the primary system of State highways. The total mileage of such roads, bridges and streets so transferred by the Commission shall not, however, exceed one hundred and fifty miles during any one year.

No resolution for any such transfer shall be adopted until (1) notice of intention to propose the same for adoption shall have been given for sixty days to the governing body of each county, city and town in which is located any part of any such roads, bridges and streets proposed to be transferred; and (2) if any such governing body requests, a public hearing is held on such proposal.

Source: § 33-27.

Note: No change.

—— (§§ 33-28 and 33-29 are deleted as unnecessary)

§ 33.1-36. Map.—The Commissioner shall prepare and keep on file in his office for public inspection a complete map showing the routes of the State Highway System located and established in pursuance of the law.

Source: § 33-30.

Note: No change.

§ 33.1-37. Establishment, construction and maintenance exclusively by State; funds.—The roads embraced within “The State Highway System” shall be established, constructed and maintained exclusively by the State under the direction and supervision of the Commissioner, with such State funds as may hereafter be appropriated and made available for such purposes, together with such appropriations as may be hereafter made by any county, district, city or town in this State and such funds as are now available or which may hereafter be derived from the federal government for road building and improvement in this State.

Source: § 33-31.

Note: The second paragraph of § 33-31 has been deleted. §§ 58-730 and 58-757 provide that motor fuel tax funds may be used for maintenance of roads.

§ 33.1-38. Construction districts; allocation of funds.—The State shall be divided into not less than eight construction districts. All funds allocated to the primary system from existing sources of revenue shall be, as nearly as possible, apportioned among the various construction districts in an equitable manner taking into account such factors as area, population and road mileage. Funds allocated from new sources of revenue shall be apportioned among the various construction districts entirely on the basis of the needs of each district in relation to the needs of the State as a whole for the construction of the arterial network of highways created under § 33.1-26.

The Commission shall program the primary construction activities of each district in a manner which will insure the completion of the arterial network of highways by 1975 and, to the extent that the funds from new sources of revenue are insufficient to finance the program, shall make available the necessary funds from existing sources of revenue to finance the program.

The funds for each year shall, as far as possible, be allotted prior to the commencement of the fiscal year and public announcement made of such allotment but the Commission shall not approve such allotment until after public hearing at which political subdivisions of the State and interested citizens may be heard.

In any case where any allotment of funds is made under this section

to any county all or a part of which subsequently is incorporated as or into a city or town such allocation shall not be impaired thereby and the funds so allocated shall be expended as if such county or any part thereof had never become an incorporated city, but such city shall not be eligible to receive funds as a city during the same year it receives the funds allocated as a county or as any part of a county.

For the purpose of this section "new sources of revenue" shall include all revenue received from the increase in existing taxes or levies as well as the revenue from new taxes or levies, both as provided by the General Assembly in 1964 and in subsequent years.

Source: § 33-32.

Note: The first two sentences of § 33-32 are deleted and the sentence "The State shall be divided into not less than eight construction districts." has been inserted in lieu thereof. The words "both as provided by the General Assembly in 1964 and in subsequent years" have been added at the end of the last paragraph. The third paragraph of § 33-32 is deleted as being unnecessarily restrictive. That paragraph provided: "The Commission shall give preference to projects on which the right of way is donated."

— (§§ 33-33 and 33-34 are deleted. That portion of § 33-33 which relates to county funds and bond issues is outmoded and the other portion of the section is covered by § 33-23.1, which would be revised § 33.1-26. § 33-34 is adequately covered by § 33-31, which would be revised § 33.1-37).

§ 33.1-39. By-passes through or around cities and incorporated towns.
—The State Highway Commissioner may acquire by gift, purchase, exchange, condemnation or otherwise, such lands or interest therein, necessary or proper for the purpose, and may construct and improve thereon such by-passes or extensions and connections of the primary system of State highways through or around cities and incorporated towns, as the Commission may deem necessary for the uses of the State Highway System; provided, that the respective cities and the incorporated towns of thirty-five hundred population, or more, by action of their governing bodies agree to participate in accordance with the provisions of § 33.1-44 in all costs of such construction and improvement, including the cost of rights of way, on that portion of any such by-pass or extension which is located within any such city or incorporated town. The maintenance of that portion of a by-pass or extension located within a city or incorporated town shall be borne by the city or town. However, the Commission shall contribute to such maintenance in accordance with the provisions of law governing its contribution to the maintenance of streets, roads and bridges in such cities and incorporated towns. The location, form and character of informational, regulatory and warning signs, curb and pavement or other markings and traffic signals installed or placed by any public authority shall be subject to the approval of the Commissioner. At both ends of by-passes through or around cities and incorporated towns the Commissioner shall erect and maintain adequate directional signs of sufficient size and suitable design to indicate clearly the main route or routes leading directly into such cities and incorporated towns.

Notwithstanding the above, in any case where a municipality refuses to contribute to the construction of a by-pass or an extension or connection of the primary system within said municipality the State Highway Commissioner may construct such by-pass or extension and connection without any contribution by the municipality when the Commission de-

termines that such by-pass or extension and connection is primarily rural in character and that the most desirable and economical location is within said municipality. Any by-pass or extension and connection built under this provision shall be maintained by the Commissioner as a part of the primary system and the municipality shall receive no payment for such by-pass or extension and connection under § 33.1-41.

All the provisions of general law relating to the exercise of eminent domain by the Commissioner shall be applicable to such by-passes, or extensions or connections of the primary system of State highways.

The Commission may expend out of funds appropriated to the Commission such funds as may be necessary to carry out the provisions of this section.

Source: § 33-35.

Note: The word "Commissioner" has been substituted for the word "Commission" in five places in the section because the stated actions are acts performed by the Commissioner and not by the Commission.

§ 33.1-40. Allocation of funds for urban highways.—The State Highway Commission shall allocate during each year from all funds made available for highway purposes such sum as it may deem reasonable and necessary for the best interests of the several cities and towns of the State and of the State at large to be expended in the maintenance and improvement, including construction and reconstruction, of urban streets and highways; provided, however, that the funds allocated by this section to be spent on urban streets and highways shall not be less than fourteen per centum of all funds available to the State Highway Commission, exclusive of any federal funds made available for the Interstate System.

The funds allocated under this section shall be used to make payments to cities and towns pursuant to §§ 33.1-41 and 33.1-43. The balance of the allocated funds shall be used as the State's portion of urban construction cost and be apportioned among the cities and towns of the State in an equitable manner taking into account State-wide urban construction needs.

The State Highway Commission is authorized to apportion the urban construction funds in a manner which will permit a city to accumulate credits for the undertaking of major highway construction projects.

Source: § 33-35.1.

Note: No change.

§ 33.1-41. Selection of connecting streets and roads in certain incorporated towns and cities; payments for maintenance from State highway funds.—The State Highway Commissioner, subject to the approval of the State Highway Commission, shall select such streets and roads, or portions thereof, in incorporated towns and cities having more than thirty-five hundred inhabitants according to the last preceding United States census, and in all towns situated within one mile of the corporate limits of a city of the first class and having a population in excess of thirty-five hundred inhabitants according to the census of nineteen hundred and thirty, and in all cities operating under a charter designating them as cities notwithstanding the number of inhabitants, and in all towns having a population in excess of thirty-five hundred inhabitants according to the last preceding United States census through which passes any primary road in the State Highway System directly connecting and over which moves a substantial

portion of the traffic between two cities of the State each of which has a population in excess of forty thousand inhabitants according to the said census, as may in his judgment be best for the handling of traffic in such towns and cities, from or to any road in the State Highway System, and from time to time make such changes in the selection thereof as may be reasonable and proper. If such streets and roads, or portions thereof, in such towns or cities so selected by the Commissioner shall, in the opinion of the Commission, be maintained up to the standard of maintenance of the State Highway System adjoining such town or city, the Commissioner shall cause to be paid to such town or city, for the streets and roads selected under this section, to be used by it in the maintenance and improvement, including construction and reconstruction, of streets, roads and bridges within such town or city, subject to the approval of the Commission, the sum of ten thousand dollars annually for each mile of such streets and roads or portions thereof.

Notwithstanding any other provisions of this section, in any county having a population of more than fourteen thousand eight hundred sixty-five but less than fourteen thousand nine hundred according to the last preceding United States census, and which county entirely surrounds any town therein, such towns shall share in the distribution herein provided for towns having a population of more than thirty-five hundred. The Commissioner shall be shown evidence that the population of such town exceeds thirty-five hundred before the provisions of this paragraph shall apply.

Allocations and payments made pursuant to this section to such cities and incorporated towns shall be paid by the Commissioner to the governing bodies of such cities and towns from funds allocated under § 33.1-40.

Notwithstanding any other provisions of this section, any incorporated town which shows to the Commission by satisfactory evidence that its population has increased to thirty-five hundred inhabitants, or more, since the last preceding United States census, shall be included in the provisions of this section.

Plans and specifications for construction and reconstruction shall be approved by the Commissioner.

The fund allotted by the Commission shall be paid in equal sums in each quarter of the fiscal year, and no payment shall be made without the approval of the Commission.

The town or city receiving such fund shall make quarterly reports accounting for all expenditures, and certifying that none of the money received has been expended for other than the maintenance, improvement, construction or reconstruction of the roads and streets in such town or city.

Source: § 33-35.2.

Note: No change.

§ 33.1-42. Incorporation into State Highway System of connecting streets and roads in certain other towns and cities; maintenance, etc., costs.—The State Highway Commission may, by and with the consent of the Governor and the governing body of any incorporated town or city having a population of thirty-five hundred inhabitants or less, incorporate in the State Highway System such streets and roads or portions thereof in such incorporated town or city as may in its judgment be best for the handling of traffic through such town or city from or to any road in the the State Highway System and may, in its discretion, eliminate any of such roads or streets or portions thereof from the State Highway System. Every such

action of the State Highway Commission incorporating any such road or street or portion thereof in the State Highway System or eliminating it therefrom, shall be recorded in its minutes.

Any such road or street or portion thereof in any such city or town so incorporated in the State Highway System shall be subject to the rules, regulations and control of the State road authorities as are other roads in the State Highway System. But such town or city shall be obligated to pay the maintenance and construction and reconstruction costs of such roads or streets or portions thereof so incorporated in the State Highway System in excess of the amounts authorized to be spent by the State Highway Commissioner on such roads or streets.

Every provision in the charter of any such town or city insofar as it is in conflict with this section is hereby repealed.

The State Highway Commissioner may in his discretion permit such town or city to maintain any such road or street, or portion thereof, incorporated in the State Highway System, and reimburse such city or town up to such amount as he is authorized to expend on the maintenance of such road or street, or portion thereof.

Source: § 33-35.3.

Note: No change.

§ 33.1-43. Payments to certain cities and towns for maintenance, etc., of streets not a part or extension of State highway primary system.—The State Highway Commission is authorized and empowered to allocate and pay to all cities and incorporated towns having a population of thirty-five hundred or more according to the last United States census for which population figures are available, for maintenance, improvement, construction or reconstruction of streets which are not a part or an extension of the State highway primary system in the corporate limits of such cities and incorporated towns, the sum of eleven hundred dollars per mile annually, if such streets and roads or portions thereof be maintained up to a standard satisfactory to the Commission. However, with the exception of streets or portions thereof located within territory annexed or incorporated since July one, nineteen hundred fifty, or hereafter, which streets a portion thereof (1) have been paved and have constituted parts of the secondary system of State highways prior to such annexation or incorporation, or (2) have constituted parts of the secondary system of State highways prior to such annexation or incorporation and are paved to a minimum width of sixteen feet subsequent to such annexation or incorporation and with the further exception of streets or portions thereof which have previously been maintained under the provisions of §§ 33.1-79 or 33.1-82, or which have been eligible for maintenance payments under §33.1-80, no such allocation or payments shall be made by the Commission to any such city or incorporated town unless the portion of the street for which said allocation is made has an unrestricted right-of-way width of not less than thirty feet and a hard surface width of not less than sixteen feet; and any such street established after July first, nineteen hundred fifty, shall have an unrestricted right-of-way width of not less than fifty feet and a hard surface width of not less than thirty feet; provided, however, that cul-de-sacs may have an unrestricted right-of-way width of not less than forty feet and a turnaround that meets State Highway Commission standards.

Allocations and payments made pursuant to this section to such cities and incorporated towns, shall be paid by the Commission to the governing bodies of such cities and towns from funds allocated under § 33.1-40.

Notwithstanding any other provisions of this section, any incorporated town which shows to the Commission by satisfactory evidence that its population has increased to thirty-five hundred inhabitants, or more, since the last preceding United States census, shall be included in the provisions of this section.

Plans and specifications for construction and reconstruction shall be approved by the State Highway Commissioner.

The fund allocated by the Commission shall be paid in equal sums in each quarter of the fiscal year, and no payment shall be made without the approval of the Commission.

The city or town receiving this fund will be required to make quarterly reports accounting for all expenditures and certifying that none of the money received has been expended for other than the maintenance, improvement, construction or reconstruction of the streets in such city or town.

Source: § 33-35.4.

Note: No change.

§ 33.1-44. Matching highway funds.—In any case in which an act of Congress requires that federal aid highway funds made available for the construction or improvement of federal or State highways be matched, the State Highway Commission may contribute such matching funds; provided, however, that within municipalities of thirty-five hundred or more population, the Commission may contribute toward the cost of construction of any federal aid highway or street project eighty-five per cent of the necessary funds, including the federal portion, if the municipality contributes the other fifteen per cent, and provided further, that within such municipalities the Commission may contribute all the required funds on highways in the Interstate System.

Within municipalities of thirty-five hundred or more population, the State Highway Commission may contribute toward the costs of construction or improvement of any highway or street project for which no federal aid highway funds are made available eighty-five per cent of the necessary funds if the municipality contributes the other fifteen per cent.

The term “construction or improvement” means the supervising, inspecting, actual building, and all expenses incidental to the construction or reconstruction of a highway, including locating, surveying, design and mapping, costs of rights of way, signs, signals and markings and elimination of hazards of railroad grade crossings.

Source: § 33-35.5.

Note: No change.

§ 33.1-45. Use of funds allocated to cities and towns for construction, etc., of highways, streets, roads and bridges.—Notwithstanding any other provisions of law, the governing bodies of the cities and towns defined in §§ 33.1-39, 33.1-41, 33.1-42, 33.1-43 and 33.1-44 of the Code of Virginia may hereafter authorize the use of the funds allocated and paid to such cities and towns under the authority of said sections to pay debts created by such cities and towns to finance the cost of constructing, reconstructing, maintaining and improving the highways, streets, roads and bridges defined in said sections, provided such projects have received the prior approval of the Highway Commissioner.

Source: § 33-35.6.

Note: No change.

§ 33.1-46. Character of signs, etc., in event of matching public funds.—On any urban highway upon which the Commission has expended funds in the manner provided in § 33.1-44, the location, form and character of informational, regulatory and warning signs, curb and pavement or other markings and traffic signals installed or placed by any public authority shall be subject to the approval of the Commissioner.

Source: § 33-35.7.

Note: The word "Commissioner" is substituted for "State Highway Commission".

§ 33.1-47. Approval of markings and traffic lights erected by towns.—Notwithstanding any provision of law contrary to this section, all markings and traffic lights installed or erected by towns on the primary roads therein maintained by the State Highway Department shall first be approved by the Commissioner.

Source: § 33-36.

Note: The word "Commissioner" is substituted for the words "State Highway Commission".

Article 3. The Interstate System.

§ 33.1-48. Interstate System authorized; what constitutes.—There is hereby authorized a system of interstate highways to constitute a part of the National System of Interstate and Defense Highways as authorized and designated in accordance with sec. 7 of the Federal-Aid Highway Act of 1944 and sec. 108 (a) of the Federal-Aid Highway Act of 1956, hereinafter referred to as "Interstate System."

The Interstate System, as used in this article and elsewhere in the Code of Virginia, shall be those highways, or sections thereof, declared by resolution of the State Highway Commission to be portions of the Interstate System, and may include existing highways and streets, even though established as turnpikes, toll projects, revenue bond projects, or streets of cities and towns.

Source: § 33-36.1.

Note: No change.

§ 33.1-49. Power and authority of State Highway Commission generally.—The State Highway Commission may plan, designate, acquire, open, construct, reconstruct, improve, maintain, discontinue, abandon and regulate the use of the Interstate System in the same manner in which it is now or may be authorized to plan, designate, acquire, open, construct, reconstruct, improve, maintain, discontinue, abandon and regulate the use of the primary system of State highways. The Commission may vacate, close or change the location of any street or public way in the manner in which it is now authorized by law to vacate, close or change the location of a highway in the primary system. The Commission shall have any and all other authority and power relative to such Interstate System as is vested in it relative to highways in the primary system and shall include the right to acquire by purchase, eminent domain, grant or dedication title to lands or rights of way for such interstate highways whether within or without the limits of any city or town, and in addition thereto, shall have such

other power, control and jurisdiction necessary to comply with the provisions of the Federal-Aid Highway Act of 1956 and all acts amendatory or supplementary thereto, all other provisions of law to the contrary notwithstanding.

Source: § 33-36.2.
Note: No change.

§ 33.1-50. Funds for establishment and maintenance generally.—The roads embraced within the Interstate System shall be established, constructed and maintained by the State under the direction and supervision of the Commissioner with such State funds as may hereafter be appropriated and made available for such purposes, together with such appropriations as may hereafter be made by any county, city or town in this State and such funds as are now available or which may hereafter be derived from the federal government for such purposes.

Source: § 33-36.3.
Note: No change.

— (§ 33-36.4 is deleted. §§ 58-730 and 58-757 provide that funds for motor fuel tax may be used for maintenance of all highways and this section is unnecessary.)

§ 33.1-51. Portions of System within cities and towns.—Whenever any portion of the Interstate System which is to be constructed within cities or towns is to occupy existing streets, the right of way in the street shall be occupied by the Interstate System free of cost to the Commonwealth.

When the Interstate System extending into or through cities or towns has been constructed to the required standards, streets or roads occupied thereby, shall cease to be maintained and controlled by the governing bodies of such cities or towns and such cities and towns shall thereafter be relieved from all civil liability arising from the physical condition of such streets or roads. Such streets and roads shall not be considered as mileage for which the State Highway Commission is required to make payment to such cities or towns by any other provisions of law.

Nothing contained in this article shall relieve the cities or towns through which any portion of the Interstate System is projected from the responsibility for the preservation of public peace, prevention of crime, apprehension of criminals, protection of the rights of persons and property, and enforcement of the laws of the Commonwealth, and the rules and regulations enacted pursuant thereto, nor shall anything contained herein be considered as a waiver by the Commonwealth of its immunity from liability for tort.

Source: § 33-36.5.
Note: No change.

§ 33.1-52. Transfer of roads, etc., from secondary and primary systems to Interstate System.—The State Highway Commission may transfer such roads, bridges and streets as the Commission shall deem proper from the secondary or primary system of State highways to the Interstate System of State Highways. Upon such transfer the roads, bridges and streets so transferred shall become for all purposes parts of the Interstate System of State Highways and thereafter cease being parts of the secondary or primary system of State highways. The Commission may add such roads,

bridges and streets as it deems proper to the Interstate System without limitations as to mileage.

Source: § 33-36.6.

Note: No change.

§ 33.1-53. Transfer of roads, etc., from Interstate System to secondary or primary system.—The State Highway Commission may transfer such roads, bridges and streets as the Commission shall deem proper from the Interstate System of State Highways to the primary system or secondary system of State highways without limitations as to mileage; upon such transfer, the roads, bridges and streets so transferred shall become for all purposes parts of the primary system or secondary system of State highways and thereafter cease being parts of the Interstate System of State Highways.

Source: § 33-36.7.

Note: No change.

§ 33.1-54. Applicability of § 33.1-49 through 33.1-53, to toll projects.—The provisions of §§ 33.1-49 to 33.1-53, inclusive, of this article 3 shall not become effective with respect to those segments of the Interstate System constructed and financed as toll projects until the revenue bonds and the interest thereon issued on account of said toll projects shall have been paid or a sufficient amount for the payment of all such bonds and the interest to maturity thereon shall have been set aside in trust for the benefit of the respective bondholders. When the bonds and interest thereon, outstanding on account of such projects, shall have been paid or a sufficient amount for the payment of such bonds and the interest thereon to the maturity thereof shall have been so set aside in trust, and when the State Highway Commission shall have by formal action, recorded in its minutes, determined the existence of such fact, then and in such event, the provisions of this article shall fully apply to such projects.

Source: § 33-36.8.

Note: No change.

§ 33.1-55. Relocation or removal of utility facilities.—Whenever the Commission shall determine that it is necessary that any tracks, pipes, mains, conduits, cables, wires, towers or other structures, equipment and appliances (herein called “facilities”) of any utility as herein defined, in, on, under, over or along existing streets which are to be included within any project on the Interstate System within cities or towns should be relocated or removed, the owner or operator of such facilities shall relocate or remove the same in accordance with the order of the Commission. The cost of such relocation or removal, as herein defined, including the cost of installing such facilities in a new location or locations, and the cost of any lands, or any rights or interest in lands, and any other rights, required to accomplish such relocation or removal, shall be ascertained and paid by the Commission as a part of the cost of such project.

For the purposes of this section, the term “utility” shall include publicly, privately, and cooperatively owned utilities and the term “cost of relocation or removal” shall include the entire amount paid by such utility properly attributable to such relocation or removal after deducting therefrom any increase in the value of the new facility and any salvage value derived from the old facility.

The cost of relocating or removing utility facilities in connection with

any project on the Interstate System within cities or towns is hereby declared to be a cost of highway construction.

Source: § 33-36.9.

Note: No change.

§ 33.1-56. Same; additional provisions.—Whenever the Commission shall determine that it is necessary that any pipes, mains, storm sewers, water lines, sanitary sewers or other structures, equipment and appliances (herein called “facilities”) of any utility owned by a county or a political subdivision of the State or county, or storm sewers, water lines or sanitary sewers owned by a city and extending into any county, in, on, under, over or along existing streets or roads which are to be included within any project on the Interstate System within any county should be relocated or removed, the county or political subdivision of the State or county, or city, as the case may be, shall relocate or remove the same in accordance with the order of the Commission. The cost of such relocation or removal, as herein defined, including the cost of installing such facilities in a new location or locations, and the cost of any lands, or any rights or interest in lands, and any other rights, required to accomplish such relocation or removal, shall be ascertained and paid by the Commission as a part of the cost of such project.

For the purposes of this section, the term “cost of relocation or removal” shall include the entire amount paid for the relocation or removal of such utility facilities properly attributable to such relocation or removal after deducting therefrom any increase in the value of the new facility and any salvage value derived from the old facility.

The cost of relocating or removing such utility facilities in connection with any project on the Interstate System within counties is hereby declared to be a cost of highway construction.

Source: §33-36.10.

Note: No change.

Article 4. Limited Access Highways.

§ 33.1-57. Definition.—A limited access highway is defined as a highway especially designed for through traffic, over which abutters have no easement or right of light, air or access to by reason of the fact that their property abuts upon such limited access highway.

Source: § 33-37.

Note: No change.

§ 33.1-58. Power and authority of Commission.—The State Highway Commission may plan, designate, acquire, open, construct, reconstruct, improve, maintain, discontinue, abandon and regulate the use of limited access highways, in the same manner in which it is now or may be authorized to plan, designate, acquire, open, construct, reconstruct, improve, maintain, discontinue and regulate the use of other highways within this State. The Commission shall also have any and all other additional authority and power relative to other highways, which shall include the right to acquire by purchase, eminent domain, grant or dedication title to such lands or rights of way for such limited access highways.

Notwithstanding any other provisions of this Code, any highway, street, or portion thereof, to which access rights of abutters have been ac-

quired by the State Highway Commission and which is subsequently incorporated into the street system of a city or town by any method, shall remain limited access until and unless the governing body of the city or town, after securing the approval of the State Highway Commission, acts to discontinue such limited access feature.

Source: § 33-38.

Note: In the first sentence of the first paragraph, after the word “discontinue”, the word “abandon” has been added. The purpose of the amendment is to clarify the section and to bring it into conformity with practice.

§ 33.1-59. Designating existing highway as limited access highway; extinguishing easements of access; service roads.—The Commissioner may designate all or any part of an existing highway as a limited access highway. When an existing highway is so designated the Commissioner shall, where necessary, extinguish all existing easements of access, light or air.

Source: § 33-39.

Note: This section is reworded to clarify the purpose and to eliminate the reference to service roads, since § 33-41 deals with that subject.

—— (§ 33-39.1 is deleted. It relates to the subject matter of § 33-41 and is included in that section as revised).

—— (§ 33-40 is deleted. The subject matter is covered under § 33.1-58).

§ 33.1-60. Business enterprises restricted.—No commercial establishment or business enterprise shall be constructed or located upon any right of way of any limited access highway.

Source: § 33-40.1.

Note: The words “after constructed and opened as such” have been deleted from the end of the first sentence of § 33-40.1. The last sentence of § 33-40.1, relating to permits for essential public service facilities, has been deleted as unnecessary.

§ 33.1-61. Parallel service roads.—The Commission may construct service roads parallel to a limited access highway in order to provide access at designated points for property owners abutting on the limited access highway and after the construction of such service roads shall maintain and regulate traffic over them.

The construction or alteration of any access, feeder or service road which is to serve properties isolated by construction of a limited access highway shall meet all minimum State standards or the standards of the cities or towns of more than thirty-five hundred population, or of counties which maintain their own road networks, as provided for by ordinance, whichever is more strict.

Source: § 33-41.

Note: The revision of this section combines the provisions of § 33-39.1 with the provisions of this section and places all reference to service roads under the single section.

—— (§§ 33-42 and 33-43 are deleted as unnecessary).

Article 5. Scenic Highways and Virginia Byways.

§ 33.1-62. **Designation.**—The State Highway Commission is hereby authorized to designate any highways as a scenic highway or as a Virginia byway. Such designation shall be made in cooperation with the Commission of Outdoor Recreation and shall be subject to the approval of the local governing body.

Source: § 33-43.1.

Note: No change.

§ 33.1-63. **“Virginia byway” defined; preference in selecting.**—For the purposes of this article, a “Virginia byway” is defined as a road, designated as such by the State Highway Commission, having relatively high aesthetic or cultural value, leading to or within areas of historical, natural or recreational significance. In selecting a Virginia byway, the State Highway Commission and the Commission of Outdoor Recreation shall give preference to corridors controlled by zoning or otherwise, so as to reasonably protect the aesthetic or cultural value of the highway.

Source: § 33-43.2.

Note: No change.

§ 33.1-64. **“Scenic highway” defined.**—For the purpose of this article, a “scenic highway” is defined as a road designed as such by the State Highway Commission, within a protected scenic corridor located, designed and constructed so as to preserve and enhance the natural beauty and cultural value of the countryside.

Source: § 33-43.3.

Note: No change.

§ 33.1-65. **Signs.**—When the State Highway Commission designates a highway as a scenic highway or as a Virginia byway, it shall be appropriately signed as such.

Source: § 33-43.4.

Note: No change.

§ 33.1-66. **Acquisition of adjacent land.**—When the State Highway Commission has designated a highway as a Virginia byway or as a scenic highway, the State Highway Commissioner may acquire by gift or purchase such land, or interests therein, of primary importance for the preservation of natural beauty adjacent to scenic highways.

Source: § 33-43.5.

Note: No change.

Article 6. Secondary System of State Highways.

§ 33.1-67. **Secondary system of highways.**—The secondary system of State highways shall consist of all of the public roads, causeways, bridges, landings and wharves in the several counties of the State not included in the State Highway System, including such roads and community roads leading to and from public school buildings, streets, causeways, bridges, landings and wharves in incorporated towns having thirty-five hundred inhabitants or less according to the census of nineteen hundred and twenty, and in all towns having such a population incorporated since nineteen

hundred and twenty, as constitute connecting links between roads in the secondary system in the several counties and between roads in the secondary system and roads in the primary system of the State highways, not, however, to exceed two miles in any one town. If in any such town, which is partly surrounded by water, less than two miles of the roads and streets therein constitute parts of the secondary system of State highways, the State Highway Commission shall, upon the adoption of a resolution by the council or other governing body of such town designating for inclusion in the secondary system of State highways certain roads and streets in such town not to exceed a distance of two miles, less the length of such roads and streets in such town which constitute parts of the secondary system of State highways, accept and place in the secondary system of State highways such additional roads and streets.

Source: § 33-44.

Note: No change.

§ 33.1-68. Certain school roads in secondary system.—All roads leading from the State highways, either primary or secondary, to public schools in the counties of the Commonwealth to which school buses are operated shall continue to constitute portions of the secondary system of State highways in so far as these roads lead to or are on school property as such shall be improved and maintained.

Source: § 33-45.

Note: Change.

§ 33.1-69. Control, supervision and management.—The control, supervision, management and jurisdiction over the secondary system of State highways shall be vested in the Department of Highways and the maintenance and improvement, including construction and reconstruction, of such secondary system of State highways shall be by the State under the supervision of the State Highway Commissioner. The boards of supervisors or other governing bodies of the several counties and the county road board or county road commission of any county operating under a county road board or county road commission shall have no control, supervision, management and jurisdiction over such public roads, causeways, bridges, landings and wharves, constituting the secondary system of State highways. Except as otherwise provided in this article, the State Highway Commission shall be vested with the same powers, control and jurisdiction over the secondary system of State highways in the several counties and towns of the State, and such additions as may be made from time to time, as were vested in the boards of supervisors or other governing bodies of the several counties or in the county road board or county road commission in any county operating under a county road board or county road commission on June twenty-first nineteen hundred and thirty-two and in addition thereto shall be vested with the same power, authority and control as to the secondary system of State highways as is vested in the Commission in connection with the State Highway System.

Source: § 33-46.

Note: No change.

§ 33.1-70. Annual meeting with county officers; recommendations.—At least once in each calendar year the representative of the Department of Highways in charge of such secondary system of State highways in each county or some representative of the Department designated by the State Highway Commissioner shall meet with the board of supervisors or other

governing body of each county at a regular or special meeting of such board or other governing body, notice of which meeting shall be published in a newspaper published in or having a general circulation in the county once a week for two successive weeks and posted by the county clerk at the front door of the courthouse of such county ten days before such meeting, and there discuss and advise, with the board of supervisors or other governing body and the citizens present, plans and proposals for the maintenance and improvement, including construction and reconstruction, of such roads in the secondary system of State highways in such county and in the towns therein as were maintained by such board of supervisors or other governing body before June twenty-first, nineteen hundred and thirty-two. After such discussion each such board of supervisors or other governing body shall make written recommendations to the Department of Highways as to the expenditure of funds for such work in such county and towns; and the Department of Highways shall observe and follow such recommendations in so far as they are compatible with the Department's general plans and available funds will permit, having due regard to the maintenance and improvement of all existing roads in the county and towns in the secondary system, and shall notify the several boards of supervisors or other governing bodies, respectively, of its changes, if any, in the recommendations so made to it, in writing. Upon receipt of the plans approved by the Department of Highways the same shall be made a public document and shall be followed unless timely notice of any changes is given the board of supervisors or other governing body in each case.

Source: § 33-47.

Note: No change.

§ 33.1-71. Annual statement concerning improvements to be filed with county governing bodies.—The Department of Highways shall within a reasonable time after the close of each fiscal year file with each of the several boards of supervisors or other governing bodies of counties a statement setting forth: (a) Each highway, designated by number, located in the county upon which improvements were made during such fiscal year, (b) the amount expended for improvements on each such highway during such fiscal year, and (c) the nature of such improvement.

Source: § 33-47.1.

Note: No change.

§ 33.1-72. Taking certain streets into secondary system.—(a) "*Street*" as used in this section means a street or highway shown on a plat which was recorded prior to July one, nineteen hundred fifty-eight, at which time it was open to and used by motor vehicles, and which, for any reason, has not been taken into the secondary system of State highways and has on it at least three families per mile.

(b) "*County*" means a county in which the secondary system of the State highways is constructed and maintained by the Department of Highways and which has adopted a local ordinance for control of the development of subdivision streets to the necessary standards for acceptance into the secondary system.

(c) Whenever the governing body of a county, at the meeting referred to in § 33.1-70, recommends in writing to the Department of Highways that any street in the county be taken into and become a part of the secondary system of the State highways in such county, the Department of Highways thereupon, within the limit of available funds and the mileage

available for the Interstate System, in any one fiscal year; and provided further that the Highway Commission is authorized to lower the minimum if substantial reduction in the mileage of the secondary system results from incorporation, annexation or merger of areas which are now in the secondary system.

Notwithstanding any other provision of law to the contrary, the Commission shall, before apportioning secondary funds derived from new sources of revenue to the counties in the secondary system, pay to the counties which have withdrawn their roads from the secondary system a portion of such new revenue equal to the percentage such counties received of the total motor fuel tax for the preceding fiscal year.

For the purpose of this section "new sources of revenue" shall include all revenue received from the increase in existing taxes or levies as well as the revenue from new taxes or levies both as provided by the General Assembly in 1964 and subsequent years.

Source: § 33-49.

Note: The third paragraph is added to more affirmatively establish what is meant by new sources of revenue as set out in §§ 33-32 and 33-48.1.

§ 33.1-76. Motor fuel tax funds for counties withdrawn from secondary system; local levies, etc.—Any county which has withdrawn its roads from the secondary system of State highways under the provisions of § 11 of chapter 415 of the Acts of 1932, approved March 31, 1932, and which has not elected to return as provided in § 33.1-85, shall continue to receive from the motor fuel tax, for expenditure as provided by law, the amount of motor fuel tax to which it was entitled for the calendar year nineteen hundred thirty-one, including the normal increase, if any, but not including any additional amount for equalization as provided for that year. Such county shall continue with county and district road levies and shall otherwise continue to operate as provided by law for counties so withdrawn from the secondary system.

Source: § 33-49.1.

Note. No change.

§ 33.1-77. Counties of Henrico and Arlington to share in one cent motor fuel tax increase of 1946.—The counties of Henrico and Arlington shall also receive their proportionate share of the revenue produced by the increase of one cent per gallon on motor fuel imposed by chapter 196 of the Acts of 1946, upon the same basis of apportionment upon which the motor fuel tax was apportioned among the several counties of the State for the calendar year nineteen hundred thirty-one.

Source: § 33-49.2.

Note: The section is amended to delete reference to Warwick County, which no longer exists.

§ 33.1-78. Reduction in funds to counties withdrawn from secondary system.—If the receipts from the motor fuel tax shall in any calendar year fall below the receipts therefrom for the calendar year nineteen hundred and thirty-one, the amount to be received by those counties which have withdrawn their roads from the secondary system of State highways and which have not elected to bring themselves back within the operation of this chapter pursuant to § 33.1-85 shall be decreased proportionately.

available in such county for the inclusion of roads and streets in the secondary system, shall take such street into the secondary system of State highways provided such street has a dedicated width of forty feet at the time of such recommendation, and thereafter maintain the same in the manner provided by law, provided the governing body of the county agrees to contribute from county revenue one-half of the cost to bring the streets up to the necessary minimum standards for acceptance.

Notwithstanding any limitation in § 33.1-225 the local governing body of the county may expend general county revenue for the purposes of this section and may levy county or district road taxes for such purposes.

Source: § 33-47.2.

Note: No change.

§ 33.1-73. Motor fuel tax fund for secondary system.—The amount on hand from, and the proceeds of, the motor vehicle fuel tax available for apportionment among the several counties of the State under the law with reference to the levy, collection and expenditure of motor vehicle fuel taxes shall be set aside as a fund for the secondary system of State highways and disbursed by the State under the supervision of the State Highway Commissioner for the maintenance and improvement, including construction and reconstruction, of the secondary system of State highways.

Source: § 33-48.

Note: No change.

§ 33.1-74. Apportionment of funds among counties in secondary system.—All funds allocated to the secondary system from existing sources of revenue shall be, as nearly as possible, apportioned among the counties in the secondary system in an equitable manner, taking into account such factors as area, population, road mileage and vehicular travel.

Those funds allocated to the secondary system from new sources of revenue shall be apportioned among the counties in the secondary system entirely on the basis of the needs of each county in relation to the needs of the system as a whole.

For the purpose of this section “new sources of revenue” shall include all revenue received from the increase in existing taxes or levies as well as the revenue from new taxes or levies both, as provided by the General Assembly in 1964 and subsequent years.

Source: § 33-48.1.

Note: The words “both, as provided by the General Assembly in 1964 and subsequent years” are added. The purpose of the amendment is to affirmatively establish 1964 as the date for the change in allocation of revenue.

§ 33.1-75. Funds for system.—The State Highway Commission shall allocate during each year from all funds made available for highway purposes such sum as it may deem reasonable and necessary for the best interests of the several counties of the State and of the State at large to be expended in the maintenance and improvement, including construction and reconstruction of the secondary system of State highways; provided, however, that the funds spent upon the secondary system of highways for maintenance and improvement, including construction and reconstruction, shall not be less than thirty-three per centum of all funds available to the State Highway Commission, exclusive of any federal funds made

Source: § 33-50.
Note: No change.

§ 33.1-79. Maintenance, etc., of streets and roads in certain towns from secondary funds.—The State Highway Commissioner of Virginia is hereby authorized and empowered, subject to the approval of the State Highway Commission, upon request of the governing bodies of incorporated towns of less than three thousand five hundred inhabitants, according to the last United States census, to select certain streets and roads in such towns for maintenance, improvement, construction and reconstruction from allocations available from secondary funds not to exceed two miles of streets or roads in such incorporated towns included in the secondary system of highways, whether such two miles of streets or roads constitute connecting links between roads in the secondary system in the several counties, or between roads in the secondary system and roads in the primary system, of the State highways or not.

The said Commissioner is hereby authorized and empowered, with the approval of the State Highway Commission, in addition to the said two miles to increase the mileage of streets and roads in such incorporated towns annually, not to exceed, however, in any one year one-fourth mile, exclusive of any mileage transferred from the primary system under the provisions of § 33.1-35, or any mileage maintained by the State Highway Department prior to its annexation by such incorporated town.

Source: § 33-50.1.
Note: No change.

§ 33.1-80. Annual allocations and payments to such towns; conditions.—The State Highway Commissioner of Virginia is hereby authorized and empowered, subject to the approval of the State Highway Commission, upon request of the governing bodies of incorporated towns of less than thirty-five hundred inhabitants, according to the last United States census for which population figures are available, to allocate and pay to such towns for maintenance, improvement, construction or reconstruction of streets which are not a part or an extension of the State highway primary system in the corporate limits of such towns, the sum of eleven hundred dollars per mile annually, if such streets and roads or portions thereof be maintained up to a standard satisfactory to the State Highway Commission. However, no such allocation of payment shall be made by the State Highway Commission to any such incorporated town, unless the portion of the street for which said allocation is made has an unrestricted right-of-way width of not less than thirty feet and a hard surface width of not less than twelve feet: and any such street hereafter established shall have a right-of-way width of not less than fifty feet and a hard surface width of not less than twenty feet. Allocations and payments made pursuant to this section to such incorporated towns shall be paid by the State Highway Commission to the governing bodies of such towns from allocations available from secondary funds. Plans and specifications for construction and reconstruction of such streets shall be approved by the State Highway Commissioner.

The funds allocated by the Commission shall be paid in equal sums in such quarter of the fiscal year and no payment shall be made without the approval of the State Highway Commission.

Source: § 33-50.2.
Note: No change.

§ 33.1-81. Accounting for funds received by such towns.—Any town receiving this fund shall make quarterly reports accounting for all expenditures and certifying that none of the money received has been expended for other than the maintenance, improvement, construction and reconstruction of the streets in such town.

Source: § 33-50.3.

Note: No change.

§ 33.1-82. Maintenance, etc., by State Highway Commissioner when no request for allocation.—If no request is made to the State Highway Commission of Virginia by the governing body of any such town as herein provided for an allocation of three hundred dollars per mile, the State Highway Commissioner is authorized and empowered, subject to the approval of the State Highway Commission, to maintain, improve, construct and reconstruct all streets in such incorporated town having an unrestricted right of way width of not less than thirty feet and a hard surface width of not less than twelve feet and any such streets hereafter established by said incorporated town having a right of way width of not less than fifty feet and a hard surface width of not less than twenty feet.

Source: § 33-50.4.

Note: No change.

§ 33.1-83. Allocations, or cost of maintenance, etc., by Department of Highways, to be from secondary funds.—Allocations and payments made pursuant to § 33.1-80 to such incorporated towns shall be paid by the State Highway Commission to the governing bodies of such towns from allocations available from secondary funds; and where the maintenance, improvement, construction and reconstruction is done by the Department of Highways, the cost thereof shall be taken from said secondary funds.

Source: § 33-50.5.

Note: No change.

§ 33.1-84. Maps of secondary system; classification.—The Commissioner shall prepare and keep on file in his office for public inspection a complete map for each county showing the route of the secondary system of State highways.

Source: § 33-51.

Note: The section has been completely rewritten to simplify and clarify the provision relating to the map of each county's secondary system.

— (§ 33-52 is deleted as unnecessary. Article 7 of chapter 1 of this Title gives the Highway Commissioner the power of eminent domain for all highway systems.

§ 33.1-85. Return after withdrawal from secondary system.—Any county which has withdrawn its roads from the secondary system of State highways under the provisions of § 11 of chapter 415 of the Acts of 1932, approved March 31, 1932, shall have the right at any time to bring itself back within such secondary system of State highways, provided the same shall be approved by a majority of the qualified voters of such county voting in an election called for that purpose, as hereafter provided in this article.

Source: § 33-53.
Note: No change.

§ 33.1-86. Election to determine return.—The circuit court of any such county, or the judge thereof in vacation, shall, upon the petition of qualified voters of the county equal in number to at least twenty per centum of the number counted in such county for presidential electors at the last preceding presidential election, but in no event less than two hundred and fifty, make and order requiring the judges of election, on such day as may be fixed in the order, but not less than thirty days after the date of entry thereof, to open a poll and take the sense of the qualified voters of the county on the question of whether or not such county shall come back within such secondary system of State highways. The qualifications of voters at each such election shall be as provided by § 24-22.

The form of ballot for use in any such election shall be as follows:

“Shall county (the name of such county to be inserted) come back within the secondary system of State highways for maintenance and construction by the State?

Yes
No”

Each qualified voter, who shall approve the coming back within the secondary system of State highways shall express such approval by striking out the word “No,” and each voter who shall disapprove the same shall express his disapproval by striking out the word “Yes.” All other proceedings in connection with any such election shall be in conformity with the proceedings prescribed in § 11 of chapter 415 of the Acts of 1932, approved March 31, 1932.

Source: § 33-54.
Note: No change.

§ 33.1-87. Effect of election.—If the result of such election shall be in favor of the county coming back within the secondary system of State highways, such county shall, after the entry by the court of an order so declaring the result of such election and on and after the first day of July next succeeding, be within the secondary system of State highways as fully and completely as if it had not withdrawn therefrom. All provisions of this article shall thereupon apply to and be enforced as to such county to the same extent as if the dates in such chapter 415 of the Acts of 1932 had been changed to correspond with the year in which such county shall come within the secondary system of State highways. Such county shall not be allowed again to withdraw from the secondary system of State highways.

Source: § 33-55.
Note: No change.

§ 33.1-88. Machinery, etc., owned by returning county.—The State Highway Commissioner shall, as promptly as practicable, make or cause to be made an inventory and appraisal of all road machinery, equipment, teams, material and supplies, on hand or belonging to the local road authorities of any county that shall so return within the secondary system of State highways or any district thereof, which may be deemed by him suitable for work on the secondary system of State highways, and shall file such inventory and appraisal with the State Highway Commission. The

local road authorities may, if they so elect, turn over to the State such road machinery, equipment, teams, material and supplies at the appraised value thereof, which shall be paid within two years out of funds available for expenditure on roads in the secondary system of State highways or, if they so prefer, the local road authorities may retain or sell any of such property otherwise or, if they so elect, may turn over to the Commissioner all or any of such property for use upon the secondary system of State highways without reimbursement therefor. Any sums received by the local road authorities under the provision of this section shall, so far as may be necessary, be applied on account of obligations theretofore contracted for county or district road purposes and the balance, if any, for general county purposes.

Source: § 33-56.

Note: No change.

Article 7. Eminent Domain and Damages.

§ 33.1-89. Power to acquire lands, etc., by purchase, gift or eminent domain; conveyance to municipality after acquisition.—The State Highway Commissioner is hereby vested with the power to acquire by purchase, gift, or power of eminent domain such lands, structures, rights-of-way, franchises, easements and other interest in lands, including lands under water and riparian rights, of any person, association, partnership, corporation, or municipality or political subdivision, deemed to be necessary for the construction, reconstruction, alteration, maintenance and repair of the public highways of the State and for these purposes and all other purposes incidental thereto may condemn property in fee simple and rights-of-way of such width and on such routes and grades and locations as by the Commissioner may be deemed requisite and suitable, including locations for permanent, temporary, continuous, periodical or future use, and rights or easements incidental thereto and lands, quarries, and locations, with rights of ingress and egress, containing gravel, clay, sand, stone, rock, timber and any other road materials deemed useful or necessary in carrying out the purposes aforesaid. For the purpose of this article “public highway” means highway, road and street; and when applicable, the term “public highway” also includes bridge, ferry, causeway, landing and wharf.

The Commissioner is authorized to exercise the above power within municipalities on projects which are constructed with State or federal participation, if requested by the municipality concerned. Whenever the Commissioner has acquired property pursuant to a request of the municipality he is authorized to convey the title so acquired to the municipality in accordance with the terms of the agreement between the State and the municipality. The authority for such conveyance shall apply to acquisitions made by the Commissioner pursuant to previous requests of the municipality as well as any subsequent request.

Source: § 33-57.

Note: No change.

§ 33.1-90. Acquisition of real property which may be needed for highways or projects.—When the State Highway Commissioner determines that any real property will be required in connection with the construction of a highway, or “project” as defined in § 33.1-268 of the Code, within a period not exceeding twelve years for the Interstate Highway System or ten years for any other highway system from the time of such determination, and that it would be advantageous to the State to acquire such real

property, he may proceed to do so. The State Highway Commissioner may lease any real property so acquired to the owner from whom such real property is acquired, if requested by him, upon such terms and conditions as in the judgment of the Commissioner may be in the public interest. In the event that the highway or project contemplated has not been substantially completed within a period of twelve years, if in the Interstate Highway System, or eleven years, if in any other system of highways, from the date of the acquisition of such property, upon written demand of the owner or owners, their heirs or assigns, such property shall be reconveyed by the Commonwealth of Virginia to such owner or owners, their heirs or assigns, upon repayment of the original purchase price, without interest.

Source: § 33-57.1.

Note: No change.

§ 33.1-91. Authority to acquire entire tract of land, or parcel thereof, when only part to be utilized for highway purposes.—In acquiring rights of way for highway construction, reconstruction or improvement, and lands incidental to such construction, reconstruction or improvement, the Commissioner is authorized and empowered, whenever a portion of a tract of land is to be utilized for right of way, or a purpose incidental to the construction, reconstruction or improvement of a public highway, to acquire by purchase, gift or by the exercise of the power of eminent domain the entire tract of land or any part thereof, whenever the remainder of such tract or part thereof can no longer be utilized for the purpose for which the entire tract is then being utilized, or a portion of a building is to be taken or the cost of removal or relocation of the buildings, or other improvements on the remaining portion, necessitated by the taking, would exceed the cost of destroying such buildings or other improvements, or the highway project will leave the remaining portions without a means of access to a public highway, or whenever in the judgment of the Commissioner the resulting damages to the remainder of such tract or part thereof lying outside the proposed right of way, or the area being acquired for a purpose incidental to the construction, reconstruction or improvement of a public highway, will approximate or equal the fair market value of such remaining lands; provided, however, that the Commissioner shall not acquire the remainder of such tracts by purchase where the remaining portion is in excess of ten acres or, by condemnation where the remaining portion is in excess of two acres.

Source: § 33-117.2.

Note: The word "Commissioner" is substituted for the words "State Highway Commission".

§ 33.1-92. Acquisition of residue parcels declared to be in public interest.—The acquisition of such residue parcels in addition to the lands necessary for the immediate use for highway rights of way or purposes incidental to the construction, reconstruction or improvement of public highways, is hereby declared to be in the public interest and constitutes a public use as the term public uses is used in § 58 of the Constitution of Virginia.

Source: § 33-117.3.

Note: No change.

§ 33.1-93. Use and disposition of residue parcels of land.—The Commissioner may lease, sell or exchange such residue parcels of land upon such terms and conditions as in the judgment of the Commissioner may be in the public interest; provided, however, the Commissioner shall not use

such parcels for any commercial purpose. The Commissioner may lease, sell, or exchange such residue parcels of land, as may have been acquired under the provisions of article 5 (§ 33.1-267 et seq.) of chapter 3 of Title 33.1 of the Code of Virginia, upon such terms and conditions as in the judgment of the Commissioner may be in the public interest. The Commissioner may lease such parcels of land, as may have been acquired under the provisions of § 33.1-90 of the Code of Virginia in the event the former owner fails to make the request authorized under the aforesaid section to others than the former owner, upon such terms and conditions as in the judgment of the Commissioner may be in the public interest. The provisions of articles 10 (§ 33.1-144 et seq.) and 11 (§ 33.1-150 et seq.) of chapter 1 of Title 33.1 of the Code of Virginia shall not be construed to apply to the disposition of land hereinabove authorized.

Source: § 33-117.4.

Note: The word "Commissioner" is substituted for the words "State Highway Commission".

§ 33.1-94. Right to enter on land to ascertain its suitability for highway purposes; damage resulting from such entry.—The State Highway Commissioner, through his duly authorized officers, agents, or servants, may enter upon any land in the Commonwealth for the purposes of making examination and survey thereof, with a view to ascertainment of its suitability for highway purposes, or for any other purpose incidental thereto. Such officers, agents, or servants shall exercise care to protect any improvements, growing crops, or timber in making such examination or survey.

In the event that the Commissioner and any landowner affected cannot agree as to the amount of damage, if any, sustained by reason of the entry upon land for the purposes herein stated, the Commissioner shall institute condemnation proceedings, as hereinafter provided in this chapter, for the purpose of determining the amount of such damage, if any.

Source: § 33-57.2.

Note: No change.

§ 33.1-95. Limitations in Title 25 not applicable to Commissioner.—The State Highway Commissioner shall not be subject to any limitations in Title 25 of this Code in exercising the power of eminent domain pursuant to this title. Nevertheless, the provisions of § 25-233 shall apply to every statute not in this article which purports to incorporate by reference any provision of this article and which incorporation by reference does not specifically provide that § 25-233 shall not apply thereto.

Source: § 33-57.3.

Note: The second sentence is added as a legislative precaution.

§ 33.1-96. Acquisition of interests for exchange with railroad or public utility company; relocation of poles, lines, etc.—Whenever any railroad or public utility company owns any land or any easement, right-of-way or other interest in land which the Commissioner deems necessary and intends to acquire for any highway project and such land, easement, right-of-way or other interest in land owned by the railroad or public utility company is devoted to a public use, the Commissioner may acquire by gift, purchase or by the exercise of the power of eminent domain additional land or easement, right-of-way or interest in land adjacent to or approximately adjacent to such land needed and proposed to be acquired for such

highway project and may then convey the same to the railroad or public utility company for use by it in lieu of the land, easement, right-of-way or other interest in land theretofore owned by it but needed by the Commissioner for such highway project. The condemnation of such land, easement, rights-of-way or other interest in land to be conveyed to any railroad or public utility company shall be governed by the procedure prescribed by this article and may be carried out at the same time if against the same property owner and if against the same landowner or in the same proceedings in which land is condemned for highway purposes. The Commissioner may, under the same procedure and conditions prescribed by this article, with respect to property needed for highway purposes, enter upon and take possession of such property to be conveyed to any railroad or public utility company in the manner provided in §§ 33.1-119 through 33.1-129 of the Code, and proceed with the relocation of the installations of the railroad or public utility company in order that the construction of the highway project may be carried out without delay.

After the acquisition of the land, easement, right-of-way, or other interest in land of railroads or public utility companies, and the acquisition of the additional land, easement, right-of-way or other interest in land for such railroads or utility companies as hereinabove provided for in the event the poles, lines or other facilities are not removed by such railroads or utility companies within sixty days from the date of the taking by the Commissioner, the Commissioner is hereby vested with the power to remove and relocate such facilities at his own cost.

Any conveyance previously made by the Commissioner in exchange for land which was needed for a highway project is hereby declared to be valid and effective in all respects.

Source: § 33-58.

Note: No change.

§ 33.1-97. Acquisition of land in median strips of highways for public mass transportation; disposition of such property.—When acquiring land for the construction of highways with divided roadways, the Commissioner may, if he deems it necessary and appropriate, also acquire by gift, purchase or by the exercise of the power of eminent domain as vested in him by § 33.1-89, in addition to the land necessary for such highways, sufficient land in the median strips for use for public mass transportation and may convey or otherwise make available the same to a public agency or authority or public service corporation or public service company for the construction and operation thereon of public facilities for mass transportation of passengers.

Such additional land shall be acquired only after an agreement has been made between the Commissioner and a public agency or authority or public service corporation or public service company whereby such agency, authority, corporation or company has agreed to pay the cost of the additional land acquired and all expense incidental to its acquisition.

The condemnation of such land to be conveyed for use for public mass transportation shall be governed by the procedure prescribed by this article and may be carried out at the same time if against the same property owner and if against the same landowner or in the same proceedings in which land is condemned for highway purposes. The Commissioner may, under the same procedure and conditions prescribed by this article with respect to property needed for highway purposes, enter upon and take possession of such property to be conveyed to a public agency or authority

or public service corporation or public service company in the manner provided in §§ 33.1-119 through 33.1-129 of the Code.

Source: § 33-58.1.

Note: No change.

§ 33.1-98. Procedure in general; suits in name of Commissioner; survival; validation of suits.—Proceedings for condemnation under this article shall be instituted and conducted in accordance with the procedures provided herein.

All suits shall be instituted and conducted in the name of the State Highway Commissioner as petitioner without naming the individual who may be such Commissioner or acting Commissioner. In the event of the death, removal, retirement or resignation of the Commissioner or acting Commissioner, the suit shall automatically survive to a successor Commissioner or acting Commissioner, as the case may be. All suits heretofore filed in accordance with the provisions of this section are hereby ratified, validated and confirmed.

Source: § 33-59.

Note: No change.

§ 33.1-99. Necessity for attempt to acquire property by purchase.—No proceedings shall be taken to condemn land or other property, nor any interest therein, until a bona fide but ineffectual effort has been made to acquire the same from the owner or owners thereof by purchase, except where consent cannot be obtained because of the incapacity of one or more owners, or one or more of them will not or cannot convey legal title or because such owner, or owners, be unknown or cannot with reasonable diligence be found within this State.

Source: § 33-59.1.

Note: No change.

§ 33.1-100. Reserved.

Source: § 33-60.

Note: § 33-60 was repealed in 1960.

§ 33.1-101. Petition.—The proceedings for such condemnation shall be by petition for the appointment of commissioners to the circuit court of the county, or the court of any city which is vested with jurisdiction of eminent domain proceedings, in which the land, property and rights, or the major portion thereof sought to be acquired is located, or to the judge of such court in vacation. The petition shall set forth with reasonable particularity a description and designation of the interests, rights and property intended to be taken, the name or names of the owners whose property is to be taken or affected, and such other facts, if any, as may be deemed necessary by the Commissioner to give full information to the court and all persons in interest and shall be certified by oath of the Commissioner or by his duly authorized agent or attorney.

Source: § 33-60.1.

Note: No change.

§ 33.1-102. Plat to be filed with petition.—There shall be filed with such petition a plat of the project plan, with a profile showing the cuts and fills, together with the grade of the proposed highway.

Source: § 33-60.2.
Note: No change.

§ 33.1-103. Notice to owner or tenant; notice that grounds of defense shall be filed.—Upon or after the filing of the petition as provided for hereinabove, the Commissioner shall give twenty-one days' notice to the owner or owners or the tenant or tenants of his intention to apply to the court for the appointment of commissioners to ascertain what will be a just compensation for the land or for the interest or estate therein, proposed to be condemned and to award damages, if any, resulting to the adjacent or remaining property of the owner by reason of the taking. The Commissioner may, in his notice provided for herein, also give notice that grounds of defense shall be filed, if the Commissioner be of the opinion that grounds of defense are necessary or desirable.

Such notice shall be served on the owner or owners or the tenant or tenants of the freehold.

Source: § 33-60.3.
Note: No change.

§ 33.1-104. If tenant or owner infant, insane, nonresident, etc.—If any such tenant of the freehold to whom it is required to give such notice, or any such owner to whom it is required to give such notice, be an infant or insane person and have no guardian or committee in this State, the court, or the judge thereof in vacation, or the clerk of such court shall appoint a guardian ad litem for such infant or insane person. If any such tenant or owner be not a resident of this State, or cannot with reasonable diligence be found therein, or if it appears by affidavit that his residence is unknown, he may be proceeded against by an order of publication, which order, however, need not be published more than once a week for two consecutive weeks and shall be posted not less than ten days previous to such application. The publication shall in other respects conform to §§ 8-71, 8-72 and 8-76.

Source: § 33-61.
Note: No change.

—— § 33-62 was repealed in 1960.

§ 33.1-105. Filing of grounds of defense; effect of failure to file.—Within twenty-one days from the service of the notice provided for in § 33.1-103 the owner or owners may file, or if notified so to do by the Commissioner as hereinabove provided, shall file in writing, grounds of defense, such grounds of defense to include valuations of the land and interest to be taken and appraisal of any damages which may result to the residue by reason of the taking.

Should the owner fail to file such grounds of defense as hereinabove provided, such failure shall not preclude the owner from appearing on the date set for the appointment of commissioners nor from presenting evidence as to valuation and damage and to otherwise protect his rights, but such failure shall preclude such owner from any other defense by way of pleas in bar, abatement, or otherwise. Provided, however, for good cause shown, the time for filing such grounds of defense may be extended by the court.

Source: § 33-62.1.
Note: No change.

§ 33.1-106. Reserved.

Source: § 33-63.

Note: § 33-63 was repealed in 1960.

§ 33.1-107. Appointment and oath of commissioners.—Upon or after the expiration of twenty-one days from the return date of the notice for appointment of commissioners as provided for in § 33.1-103 the parties to the eminent domain proceeding may agree upon five or nine disinterested freeholders to act as commissioners, or if the parties cannot agree upon the names of commissioners to be summonsed, then each party shall present to the court a list containing the names of at least six freeholders from which lists the court shall select persons to be summonsed as commissioners, all of whom shall be residents of the county or city wherein the land or the greater portion thereof to be condemned is situate. If nine are summonsed, the Commissioner and the landowner shall each have two peremptory challenges and the remaining five, or the original five if only five are summonsed, shall be appointed, any three or more of whom may act, and shall fix the value of the land taken and damages, if any, which may accrue to the residue, beyond the enhancement in value, if any, to such residue, by reason of the taking. Before executing their duties, the commissioners shall take an oath before some officer authorized by the laws of this State to administer an oath, that they will faithfully and impartially ascertain what will be the value of the land taken, and the damages, if any, which may accrue to the residue, beyond the enhancement in value, if any, to such residue, by reason of the taking. In addition to those freeholders summoned as provided in subsection hereof, two additional disinterested freeholders may at the same time be summoned by the court to act as alternate commissioners in the event of the death, absence, or disability of any acting commissioner. Alternate commissioners shall be deemed commissioners for all purposes of this chapter except that they shall not report as provided in § 25-46.21 unless having been assigned by the court to do so because of the death, absence or disability of an acting commissioner.

Source: § 33-63.1.

Note: No change.

§ 33.1-108. View, testimony and report; exceptions to report; when report confirmed or set aside.—Upon the selection of the commissioners, the court, or the judge thereof in vacation, shall direct them, in the custody of the sheriff, or one of his deputies, to view the land described in the petition with the landowner and the State Highway Commissioner, or any representative of either party, and none other, unless otherwise directed by the court; and, upon motion of either party, the judge shall accompany the commissioners upon their view of the land. Upon completion of the view, the court or the judge in vacation shall hear the testimony in open court on the issues joined. When the commissioners shall have arrived at their conclusion they shall make their report in writing to the court, or to the judge thereof in vacation. The report may be confirmed or set aside forthwith by the court, or the judge, as the case may be, provided that when the report is so filed and before the court or judge passes thereon, either party shall have the right to file written exceptions to the report, which shall be filed not later than ten days after the rendering of the report by the commissioners. The court or the judge, as the case may be, shall have the same power over the commissioners' reports as it now has over verdicts of juries in civil actions.

Upon hearing of exceptions to the commissioners' report the court, or the judge in vacation, shall not recall and question the commissioners as to the manner in which their report was determined unless there be an allegation in such written exceptions that fraud, collusion, corruption or improper conduct entered into the report. If such allegation is made the judge shall summon the commissioners to appear and he alone shall question them concerning their actions. If the court be satisfied that fraud, collusion, corruption or improper conduct entered into the report of the commissioners, the report shall be set aside and new commissioners appointed to rehear the case.

If the court be satisfied that no such fraud, collusion, corruption or improper conduct entered into the report of commissioners, or no other cause exists which would justify setting aside or modifying a jury verdict in civil actions, the report shall be confirmed.

Source: § 33-64.

Note: No change.

§ 33.1-109. Participation of certain tenants in condemnation proceedings.—Any tenant for a term expiring more than twelve months after the filing of the petition referred to in § 33.1-101 may participate in the proceedings described in § 33.1-108 to the same extent as his landlord or the owner, if, not less than ten days prior to the date for the trial of the issue of just compensation, such tenant shall file his petition for intervention therein, including a certified copy of the lease under which he is in possession, and an affidavit by the tenant or his duly authorized agent or attorney, stating

- (1) That he claims an interest in the award; and
- (2) That he desires to offer admissible evidence concerning the value of the property being taken or damaged.

For the purposes of this section, the unexpired portion of the term of a tenant's lease shall include any renewals or extensions for which the tenant has an enforceable written option. The term "tenant" shall include the assignee of the original tenant, as well as any sublessee of the entire demised premises of the owner for the full unexpired term of the sublessor.

Nothing in this section shall be construed, however, as authorizing such tenant to offer any evidence in the proceedings described in § 33.1-108 concerning the value of his leasehold interest in the property involved therein or as authorizing the commissioners to make any such determination in formulating their report.

Source: § 33-64.1.

Note: No change.

§ 33.1-110. Costs.—All costs of the proceedings in the trial court under this article which are fixed by statute shall be taxed as any other suit in equity and shall be borne by the Commissioner. The court may in its discretion tax as a cost a fee for a survey for the owner, such fee not to exceed fifty dollars.

Source: § 33-65.

Note: No change.

§ 33.1-111. Compensation of commissioners and persons summoned but not appointed as commissioners.—The commissioners appointed shall,

for every day or portion thereof they may be employed in the performance of their duties, receive compensation in an amount to be fixed by the court at not more twenty dollars per diem, regardless of the number of cases heard on any particular day, to be paid by the State Highway Commissioner. The persons summoned who appear, but are not appointed to serve as commissioners, shall be paid an amount to be fixed by the court not to exceed five dollars for each day they are summoned to appear.

Source: § 33-65.1.

Note: No change.

§ 33.1-112. Writ of error.—Either party may apply for a writ of error to the Supreme Court of Appeals as in other cases at law and a supersedeas may be granted in such cases in the same manner as now provided by law in cases other than cases of appeals of right.

Source: § 33-66.

Note: No change.

§ 33.1-113. Payment and vesting of title.—Upon the return of the report of the commissioners appointed in such proceedings and the confirmation, alteration or modification thereof in the manner provided in this article, the sum so ascertained by the court as compensation and damages, if any, to the property owners may be paid into court or to the clerk thereof, upon which title to the property and rights condemned shall vest in the Commonwealth of Virginia in fee simple, or to such extent as may be prayed for in the petition, unless such title shall have vested in the Commonwealth pursuant to the provisions of §§ 33.1-119 through 33.1-129 of the Code, and the Commissioner or his agent shall have the right to enter upon the construction upon, or use of, the property and rights condemned as may be authorized by the report.

Source: § 33-67.

Note: No change.

§ 33.1-114. Record of proceedings.—The clerk of the court wherein condemnation is had, shall make and certify a copy of so much of the orders, judgments and proceedings in the case as shall show such condemnation, including therein a plat and description of the land, or the estate or interest in the land, condemned, and shall record the same in his deed book; provided, that such plat may be recorded in the State Highway Plat Book in the clerk's office, unless such plat be already of record; in either case the same shall be indexed in the names of the parties. In the event any portion of the land lies in two or more counties or cities, the clerk shall certify a copy of the proceedings above mentioned to the clerk of the court of each county or city and such clerks shall record and index the same as above provided. The fees of the clerk for recording shall be the same as for recording a deed, and such fees shall be paid by the Commissioner.

Source: § 33-67.1.

Note: No change.

§ 33.1-115. Distribution of award.—Upon the award being paid into court or to the clerk thereof, and the court being satisfied that the persons having an interest therein are before the court, the court shall make such distribution of such money as to it may seem proper, having due regard

to the interest of all persons therein, and in what proportions such money is properly payable.

If it shall appear that the petition for the appointment of commissioners states the person or persons or classes of persons, who, ~~in the~~ opinion of the Commissioner, are vested with the superior right or claim of title in the land or estate or interest therein condemned, or in the proceeds of the award of commissioners, and that the record does not disclose any denial or dispute, by any person or party in interest, of such statement in the petition, the court may direct that the fund, after the payment therefrom of any taxes, be disbursed and distributed in accordance with the statement in the petition, among the persons entitled thereto, except that with respect to any persons appearing to be infants, insane, or under any other legal disability, the court may inquire into their rights or claims, independent of any statement in the petition, and any order for distribution shall conserve and protect the right of such parties in and to the fund. The cost of a commissioner in chancery appointed by the court to assist in making the proper distribution in cases of legal disability as herein set forth may be taxed as a cost of the proceeding, to be paid by the State Highway Commissioner.

If it shall appear to the court that there exists a controversy among claimants to the fund, or to the ownership of the land subject to the condemnation, the court shall enter an order setting a time for hearing the case and determining the rights and claims of all persons entitled to the fund or to any interest or share therein. In order to enable the court in determining a proper disposition of the fund, the court may appoint a commissioner in chancery to take evidence of the conflicting claims. No costs incident to or arising out of a trial or a determination of such issues or out of a determination of the ownership of the fund or the distribution thereof shall be taxed against the State Highway Commissioner.

Upon a determination by the court of the rights and claims of the persons entitled to the fund, judgment shall be entered directing the disbursement among the persons entitled thereto. Any party believing himself aggrieved thereby may apply for writ of error as provided in § 33.1-112 of the Code.

Source: § 33-67.2.

Note: No change.

§ 33.1-116. Payment of costs to persons displaced by highway construction.—(a) For the purposes of this section the following definitions shall apply:

1. *“Eligible person.”*—Any individual, family, business concern or nonprofit organization to be displaced by construction of a project.

2. *“Individual.”*—A person who is not a member of a family as hereinafter defined.

3. *“Family.”*—Two or more persons, whether or not related, who are living together in the same quarters.

4. *“Business concern.”*—A corporation, partnership, individual or other private entity, engaged in a business or professional activity necessitating fixtures, equipment, stock in trade or other tangible property for the carrying on of the business or profession on the premises, including the operation of a farm.

5. *"Nonprofit organization."*—A corporation, partnership, individual or other private entity, engaged in a business, professional institutional activity on a nonprofit basis, necessitating fixtures, equipment, stock in trade, or other tangible property for the carrying on of the business, profession or institution on the premises.

6. *"Moving expenses."*—The cost of packing, loading, transporting, unloading and reinstalling personal property, exclusive of the cost of any additions, improvements, alterations or other physical changes in or to any structure in connection with effecting such reinstallation.

(b) Whenever the State Highway Commissioner acquires any real property by purchase, gift, or the power of eminent domain for a project and the acquisition results in the displacement of any eligible persons, such persons shall be entitled to receive reasonable and necessary moving expenses for personal property caused by their displacement; provided, however, that in the case of an individual or family, such payment shall not exceed the cost of moving 15 miles from the point of displacement or the sum of two hundred dollars, whichever is less, and in the case of a business concern or a nonprofit organization such payment shall not exceed the cost of moving thirty miles from the point of displacement or the sum of three thousand dollars, whichever is less.

(c) The Commissioner is authorized to adopt such regulations as may be necessary to implement the provisions of this section and such regulations may include, among other things, provision for payment of fixed amounts in lieu of actual expenses of individuals and families.

(d) In the event the Commissioner and an eligible person are unable to agree on the amount payable under this section, the eligible person may petition the court having jurisdiction of eminent domain proceedings to be paid his reasonable moving expenses. Service on the State Highway Commissioner may be had by mailing a copy of the petition to him by registered mail. Upon hearing the matter the court shall ascertain the proper amount due the petitioner, subject to the limits in subsection (b), and order the Commissioner to pay the amount so ascertained.

(e) Evidence of any moving expenses or payments made pursuant to this section is inadmissible in any eminent domain proceeding to determine the compensation for property to be acquired.

(f) The provisions of this section shall not be construed to apply to any action or proceeding brought or agreement made prior to March thirty-first, nineteen hundred and sixty-four.

Source: § 33-67.3.

Note: No change.

— (§ 33-68 is deleted). That section is unnecessary and is not utilized by the Commissioner.

§ 33.1-117. Taking road materials from streams, rivers and watercourses.—Whenever the State Highway Commissioner determines that it is necessary or desirable to remove materials from the streams, rivers or watercourses for use on public roads, he shall submit to the Marine Resources Commission his plan for the removal and all conditions relating thereto for its review and concurrence. After receiving the concurrence of the Commission of Fisheries, the State Highway Commissioner may

take for use on the public roads in this State sand, gravel, rock and any other materials deemed by him suitable for road purposes from the streams, rivers and watercourses, title to the bed of which is in the Commonwealth, and in addition to the power of eminent domain already vested in him may acquire by condemnation all property, rights and easements necessary to enable him to obtain and make use of such materials. All such proceedings shall be governed by the provisions of law governing the exercise by the State Highway Commissioner of the power of eminent domain for State highway purposes.

Source: § 33-69.

Note: No change.

§ 33.1-118. Reserved.

Source: § 33-70.

Note: § 33-70 was repealed in 1958.

§ 33.1-119. Authority to take possession and title to property before or during condemnation; purpose and intent of provisions.—In addition to the exercise of the power of eminent domain prior to the entry upon land being condemned, as provided hereinabove, the Commissioner is authorized to acquire title and to enter upon and take possession of such property and rights of way, for the purposes set out in § 33.1-89, as the Commissioner may deem necessary, and proceed with the construction of such highway, such taking to be made pursuant to the following sections.

It is the intention of these sections to provide that such property and rights of way may, in the discretion of the Commissioner, be condemned during or after the construction of the highway, as well as prior thereto, and to direct the fund out of which the judgment of the court in condemnation proceedings shall be paid, and to provide that in all other respects the provisions of this article shall apply, whether the property and rights of way are condemned before, during or after the construction of the highway. But the authorities constructing such highway under the authority of these sections, shall use diligence to protect growing crops and pastures and to prevent damage to any property not taken. So far as possible all rights of way shall be acquired or contracted for before any condemnation is resorted to.

Source: § 33-70.1.

Note: No change.

§ 33.1-120. Payments into court before entering upon land.—The Commissioner shall pay into court, or to the clerk thereof, such sum as he shall estimate to be the fair value of the land taken, or interest therein sought, and damage done, before entering upon such land pursuant to the foregoing section.

Source: § 33-70.2.

Note: No change.

§ 33.1-121. Certificates in lieu of payments; payment of certificates; notice to owner.—A certificate issued by the State Highway Commissioner and countersigned by the State Treasurer, stating that any sum or sums of money designated therein will be paid pursuant to the order of court, when filed with the court wherein condemnation proceedings are pending, or are to be instituted, shall be deemed and held for the purpose of this article to be payment into the custody of such court. Payment against

any such certificate so issued and countersigned, when ordered by the court named therein, shall be paid by the State Treasurer on warrants of the Comptroller, issued on vouchers signed by the State Highway Commissioner. A duplicate of each such certificate so issued and countersigned shall be kept as a record in the office of the State Highway Commissioner and a copy thereof shall be filed with the State Treasurer.

The Commissioner shall give notice to the owner or tenant of the freehold by registered mail, if known, that such certificate will be filed.

Source: § 33-70.3.

Note: No change.

§ 33.1-122. Recordation of certificates; transfer of title or interest; land situate in two or more counties or cities.—The certificate of the Commissioner shall be recorded in the clerk's office of the court where deeds are recorded. Upon such recordation, the interest or estate of the owner of such property shall terminate and the title to such property or interest or estate of the owner shall be vested in the Commonwealth and such owner shall have such interest or estate in the funds held on deposit by virtue of the certificate as he had in the property taken or damaged, and all liens by deed of trust, judgment or otherwise upon such property or estate or interest shall be transferred to such funds. The title in the Commonwealth shall be defeasible until the reaching of an agreement between the Commissioner and such owner, as provided in § 33.1-129, or the compensation determined by condemnation proceedings as hereinafter provided.

If the land affected by the certificate aforesaid is situate in two or more counties or cities, the clerk of the court wherein the certificate is recorded, shall certify a copy of such certificate to the clerk of the court of the counties or cities in which any portion of the land lies, who shall record the same in his deed book and index it in the name of the person who had the land before and also in the name of the Commonwealth.

Source: § 33-70.4.

Note: No change.

§ 33.1-123. Certificates to describe land and list owners.—The certificate shall set forth the description of the land or interest therein being taken or damaged, and the owner or owners, if known.

Source: § 33-70.5.

Note: No change.

§ 33.1-124. Proceedings for distribution of funds; effect of acceptance of payments; evidence as to amount of deposit or certificate.—Any person or persons shown by such certificate to be entitled thereto may petition the court for the distribution of all or any part of the funds deposited with the court pursuant to § 33.1-120 or represented by a certificate recorded pursuant to § 33.1-121. A copy of such petition shall be served on the State Highway Commissioner, his deputy or any attorney authorized to accept service with a notice returnable to the court or judge thereof in vacation not less than twenty-one days after such service, to show cause, if any, the said Commissioner can, why such amount should not be distributed in accordance with the prayers of the petition. If said Commissioner shall not, on or before the return day of the petition, show such cause, and if the record in the proceeding does not disclose any denial or dispute with respect thereto, the court shall enter an order directing the distribution

of such amount in accordance with the prayers of the petition; provided, however, that in the case of a nonresident petitioner the court may in its discretion require a bond before ordering the distribution. If funds are not then on deposit with the court but are represented by a certificate pursuant to § 33.1-121, a certified copy of such order shall forthwith be sent to the Commissioner by the clerk. It shall be the duty of the Commissioner to deposit such funds with the court within twenty-one days of the date of such order. Interest at the rate of five per centum shall be payable on such funds for any period in excess of twenty-one days from the date of the order directing the distribution of such funds if the court finds that the Commissioner is responsible for the delay in depositing the funds, and the order of the court directing the distribution shall be amended as shall be necessary to provide for the payment of accrued interest.

If the Commissioner shall show such cause, or if the record in the proceeding disclose any denial or dispute as to the persons entitled to such distribution or to any interest or share therein, the court shall direct such proceedings as are provided by § 33.1-115 for the distribution of awards.

Provided, however, that the acceptance of such payment shall not limit the amount to be allowed by a commissioner in a condemnation proceeding, nor limit the rights of any party or parties to the proceeding to appeal from any decision therein; nor shall any party to such proceeding be entitled to introduce evidence of any amount deposited with the court or represented by a certificate, nor of any amount which has been accepted by any party entitled thereto pursuant to this section.

Source: § 33-70.6.

Note: No change.

§ 33.1-125. Reformation, alteration, revision, amendment or invalidation of certificate.—Upon the recordation of such certificate, no reformation, alteration, revision, amendment or invalidation shall be made for any purpose without the prior consent of the court wherein such certificate is recorded. The court or judge in vacation, shall have jurisdiction to reform, alter, revise, amend or invalidate in whole or in part any certificate to correct mistakes in the description of the property affected by such certificate, to correct the name or names of the owner or owners in the certificate, to correct any other error which may exist with respect to such certificate or for any other purpose. A petition filed by the Commissioner with the court setting forth any error made in such certificate or the necessity of any change therein, shall be deemed sufficient basis for the reformation, alteration, revision, amendment or invalidation in whole or in part of such certificate. The court may enter an order permitting the reformation, alteration, revision, amendment or invalidation in whole or in part and such order, together with any revised certificate which may be necessary shall be spread in the current deed book, and reference made showing the book and page number of the order on the margin of the page wherein the original certificate was spread. The filing of any certificate pursuant to the provisions of this section shall not alter the date of taking as established by the filing of the original certificate pursuant to § 33.1-122 as to any land which is included in the amended certificate, and no such amended certificate shall include any land not in the original certificate. Nothing herein contained shall be construed to prohibit or preclude any person damaged thereby, from showing in the proper proceeding the damage suffered by reason of such mistake or the invalidation of a certificate of deposit as herein provided.

Source: § 33-70.7.
Note: No change.

§ 33.1-126. Fees of clerk of court.—Notwithstanding any other law to the contrary, the clerk of the court wherein any such certificate is filed shall receive the following fees, and no other:

(1) For the filing of any petition as provided in §§ 33.1-124, 33.1-125 and 33.1-129, the clerk shall be entitled to a fee of fifty cents to be paid by the petitioner.

(2) For the recordation of such certificate or copy thereof, as well as for any order of the court as herein provided, the clerk shall be entitled to a fee of two dollars and fifty cents, to be paid by the party upon whose request such certificate is recorded or order is entered.

Source: § 33-70.8.
Note: No change.

§ 33.1-127. When condemnation proceedings instituted; payment of compensation or damages; order confirming award; recording.—At any time after the recordation of such certificate, but within sixty days after the completion of the construction of such highway, if the Commissioner and the owner or owners of such lands or interest therein taken or damaged by the Commissioner are unable to agree as to the compensation or damages, if any, caused thereby, or such consent cannot be obtained due to the incapacity of the owners or one or more of them, or because such owner, or owners, be unknown or cannot with reasonable diligence be found within this State, the Commissioner shall institute condemnation proceedings, as provided in this article, unless said proceedings shall have been instituted prior to the recordation of such certificate. The amount of such compensation and damages, if any, awarded to the owner or owners in such proceedings shall be paid out of the appropriations to the Virginia Department of Highways. The final order confirming the commissioners' award shall confirm absolute and indefeasible title to the land, or interest therein sought, in the Commonwealth and shall be spread in the current deed book and reference be made showing the book and page number recordation on the margin of the page where the certificate was spread.

Source: § 33-70.9.
Note: No change.

§ 33.1-128. Awards in greater or lesser amounts than deposit; interest.—In the event of an award in a condemnation proceedings being of a greater amount than that deposited by virtue of a certificate, the excess amount, together with interest accrued on such excess amount at the rate of five per centum per annum from the date of such deposit to the date of payment into court, shall be paid into court for the person or persons entitled thereto. In no other instance shall interest be allowed on any award. In the event of an award in a condemnation proceeding being of a lesser amount than that deposited with the court, the Commissioner shall recover the amount of such excess and, if any person has been paid a greater sum than that to which he is entitled as determined by the award, judgment shall be entered for the Commissioner against such person for the amount of such excess.

Source: § 33-70.10.
Note: No change.

§ 33.1-129. Agreements as to compensation; petition and order of court thereon; disposition of deposit.—At any time after the recordation of such certificate, but prior to the institution of condemnation proceedings, if the Commissioner and the owner, or owners of the land or interest therein taken or damaged are able to agree as to compensation for the land taken and damages, if any, caused by such taking, the Commissioner shall file with the court a petition so stating, with a copy of the agreement attached. If condemnation proceedings are already pending at the time of reaching such agreement, no such petition shall be required, but the motion for dismissal of such proceedings shall contain an averment that such agreement has been reached. Upon the filing of such a petition, or a motion to dismiss, as herein provided, the court shall thereupon enter an order confirming absolute and indefeasible title to the land or interest therein in the Commonwealth. Such order shall be spread in the current deed book, and reference be made showing the book and page number recordation on the margin of the page where the certificate was spread. Upon entry of such order, the Commissioner and State Treasurer shall be relieved of further obligation by virtue of having filed such certificate of deposit with the court.

If it shall appear from such petition and agreement, or motion to dismiss a pending suit, that no person or persons other than those executing such agreement are entitled to the fund on deposit, the court shall direct that such fund, after payment therefrom of any taxes which may be charged against such land taken, be disbursed and distributed in accordance with the statement or charge in the petition, or motion, among the parties or persons entitled thereto. If it shall appear that a controversy exists as to the persons entitled to such fund, such distribution shall be made in accordance with the provisions of § 33.1-124 of the Code.

Source: § 33-70.11.

Note: No change.

____ (§ 33-71 is deleted. It is unnecessary and is not utilized by the Commissioner.)

____ (§ 33-72 is deleted. It is unnecessary and is not utilized by the Commissioner.)

§ 33.1-130. Enhancement to be offset against damage.—In all cases under the provisions of this article, the enhancement, if any, in value of the remaining property of the landowner by reason of the construction or improvement contemplated or made by the Commissioner, shall be offset against the damage, if any, resulting to such remaining property of such landowner by reason of such construction or improvement. But such enhancement in value shall not be offset against the value of the property taken. And if such enhancement in value shall exceed the damage, there shall be no recovery over against the landowner for such excess.

Source: § 33-73.

Note: No change.

§ 33-1-131. Reserved.

Source: § 33-74.

Note: § 33-74 was repealed in 1958.

§ 33.1-132. Remedy of landowners under certain conditions.—Whenever the Commissioner enters upon and takes possession of property under

the provisions of §§ 33.1-119 through 33.1-121 and has not completed the construction of the highway project after a reasonable time for such purpose has elapsed or has not instituted condemnation proceedings within sixty days after completion of the construction of the highway project, or within one year after he has entered upon and taken possession of the property, whether the construction of the highway project has been completed or not, the property owner may, if no agreement has been made with the Commissioner as to compensation and damage, if any, petition the circuit court of the county in which the greater portion of the property lies, or the judge thereof in vacation, for the appointment of commissioners to determine just compensation for the property taken and damages done, if any. A copy of such petition shall be served upon the Commissioner at least ten days before it is presented to the court, or the judge thereof in vacation and the Commissioner shall file an answer thereto within five days after the petition is so presented. If it be found by the court, or the judge thereof in vacation, that a reasonable time has elapsed for the completion of the construction of the highway project or that sixty days have elapsed since the completion of the construction of the highway project or that more than one year has elapsed since the Commissioner entered upon and took possession of the property, without condemnation proceedings being instituted and without an agreement having been made between the property owner and the Commissioner as to compensation and damages, if any, commissioners shall be appointed to ascertain the amount of compensation to be paid for the property taken and damages done, if any. The proceedings shall thereafter be governed by the procedure prescribed by §§ 33.1-98 to 33.1-113 insofar as the same may be applicable.

Source: § 33-75.

Note: No change.

Article 8. Acquisition of Land Used as Cemeteries.

§ 33.1-133. Commissioner may enter into agreement with person, church, association, etc.—Whenever it becomes necessary for the State Highway Commissioner to acquire land or other interest therein, for the purposes set forth in Title 33.1 of the Code, and such land to be acquired is a part or the whole of a cemetery or graveyard owned by any person, church, association, corporation, or any other legal entity, which has the legal authority to make disposition of the same, the State Highway Commissioner may enter into agreements with such person, church, association, corporation, or other legal entity, for the removal of any remains which may be interred upon the land. Such agreement shall provide for reinterment in some suitable repository.

Source: § 33-75.1.

Note: No change.

§ 33.1-134. Commissioner may file petition for condemnation when no agreement can be reached; notice of condemnation proceedings.—In the event no agreement can be reached as provided hereinabove or whenever such land is a part or the whole of a cemetery or graveyard owned by persons unknown, or by any person, church, association, corporation, or other legal entity, not having legal authority to make disposition of the same, the State Highway Commissioner shall petition the court of the city or county in which the land is situate, and in which condemnation proceedings are instituted to acquire land, for the purpose of condemning

such land and having the remains interred in such cemetery or graveyard removed to some suitable repository. To such petition the owner or owners of the land and next of kin to the persons interred therein, if known, shall be made defendants and served with notice. If such owner or owners and next of kin be unknown, or infant, insane or incompetent, or nonresident of this State, such notice shall be served in the manner prescribed by § 33.1-104 of the Code.

Source: § 33-75.2.

Note: No change.

§ 33.1-135. Contents of petition for condemnation.—The contents of such petition shall comply with all statutory requirements prescribed for the exercise of the power of eminent domain by the State Highway Commissioner, and shall contain the reasons why it is practical to acquire such land and remove any remains which may be interred therein.

Source: § 33-75.3.

Note: No change.

§ 33.1-136. Removal and reinterment of remains; other proceedings.—The trial court shall determine a suitable repository for reinterment and the manner in which the removal and reinterment is to be undertaken, and shall tax the cost and expense of such removal and reinterment against the State Highway Commissioner. Insofar as possible and reasonable, the court shall consider the wishes of the next of kin of those interred in such graves in making the determination as to a suitable repository and manner of removal and reinterment. All other proceedings in the condemnation of such land and the determination of just compensation for such taking the manner in which the removal and reinterment is to be undertaken, and damages suffered shall be conducted in accordance with the statutes made and provided for the exercise of the power of eminent domain by the State Highway Commissioner.

Source: § 33-75.4.

Note: No change.

Article 9. Highway Right of Way Fund; Acquisition of Properties for Future Use.

§ 33.1-137. Fund established.—There is hereby established and created in the State treasury the Highway Right of Way Fund.

Source: § 33-75.5.

Note: No change.

§ 33.1-138. How Fund expended.—All money deposited in or transferred to the Highway Right of Way Fund shall be expended by the State Highway Commission for the acquisition of properties to constitute rights of way for highways and streets, including those within cities and towns. The Commission shall expend such Fund for acquisition of properties which will be needed for future highway construction purposes, whenever the State Highway Commissioner deems such acquisition necessary, due to the probability of development of such properties, and after the State Right of Way Engineer declares prompt acquisition is required to prevent such development and consequent higher acquisition and construction costs when the highway project is to be constructed.

Such acquisition is hereby declared to be in the public interest and any properties so acquired are deemed to be acquired for a public use.

Source: § 33-75.6.

Note: No change.

§ 33.1-139. Procedure for acquisition of properties.—The procedure for acquiring such properties shall be mutatis mutandis the same as provided for the acquisition of land or interest therein by the State Highway Commissioner in article 7 (§ 33.1-89 et seq.), chapter 1 of Title 33.1, except that no proceeding instituted for the purposes of acquiring property hereunder shall fail for lack of a completed construction plan for the highway for which property is being acquired. In lieu of a centerline description, any land or interest therein acquired hereunder may be described by metes and bounds, or any other recognized method of describing boundaries to land.

Source: § 33-75.7.

Note: No change.

§ 33.1-140. Sale or lease of properties acquired.—The Commissioner may sell or otherwise dispose of any improvements on lands acquired under the terms of this chapter, or lease such land and improvements until such time as the land is needed for immediate highway construction purposes. Any residue parcels of lands so acquired which are found to be unnecessary for highway purposes may be sold or otherwise disposed of by the Commissioner.

All revenues received from the rental or disposition of such land and improvements shall be deposited in the Highway Right of Way Fund.

Source: § 33-75.8.

Note: The word "Commissioner" is substituted for the words "State Highway Commission".

§ 33.1-141. Amount to be set aside annually for fund; revenues available for purposes of this article.—Notwithstanding any other provisions of law, from all funds available to the State Highway Commission for highway purposes, and after the cost of administration but before any of such funds are distributed and allocated for any road or street purposes the Commission shall set aside a minimum of five million dollars each year of the 1968-1970 biennium for the Highway Right of Way Fund and each year thereafter set aside such funds as the Commission deems necessary and desirable to carry out the purpose of the fund.

In addition to the above, all revenues paid into the State treasury from the proceeds of taxes on motor vehicle fuels, motor vehicle licenses, and any other sources which are required by law to be segregated for the construction, reconstruction and maintenance of State highways, not otherwise expressly appropriated, are hereby declared to be available funds to be expended as provided in this article. For purposes of this article any revenue paid into the State treasury in excess of the estimated receipts from such segregated revenues in the appropriation act for the current biennium shall be considered as available funds; provided, however, in the event there should be any expenditures by the State Highway Commission in any fiscal year in excess of the amount appropriated for such purpose, by virtue of a deficit appropriation authorized by the Governor, any revenues paid into the State treasury in excess of the estimated receipts for such fiscal year shall not be considered as available funds under this

section until such deficit appropriation has been repaid. The State Comptroller is directed to transfer such available funds to the special fund herein created at such time as it appears that current revenues segregated for highway purposes exceed the estimated sums otherwise appropriated.

Source: § 33-75.9.

Note: No change.

§ 33.1-142. Deposit in Fund of amount expended in acquisition of properties.—Whenever, after acquisition of any property under this article, the State Highway Commission proceeds with the construction of a highway project which will require the use of any of the property so acquired, the Commission shall deposit in the Highway Right of Way Fund, from other funds available, the amount expended to pay the cost of such properties.

Source: § 33-75.10.

Note: No change.

§ 33.1-143. Intention of article.—It is the intention of this article to provide a revolving fund for the purpose of acquiring properties to be used for highway rights of way at a time before development of such properties so as to minimize the costs of highway construction and reduce the inconvenience to owners of property within a proposed highway project.

Source: § 33-75.11

Note: No change.

Article 10. Abandonment and Discontinuance of Roads in State Highway System.

§ 33.1-144. Discontinuance of road or railway crossing as part of State Highway System.—In any case in which a section of a road is deemed by the Commissioner no longer necessary for the uses of the State Highway System or when in heretofore or hereafter laying out, constructing or maintaining sections of roads in the State Highway System, a part of a road has been or is straightened or the location of a part thereof altered and a section of the road is deemed by the Commissioner no longer necessary for the uses of the State Highway System, or an existing crossing by such road of the lines of a railway company, or a crossing by the lines of a railway company of such road is deemed by the Commissioner no longer necessary as a part of the State Highway System, the Commissioner by and with the approval of the State Highway Commission, may discontinue as a part of the State Highway System the section of the road no longer deemed necessary for the uses of the State Highway System, or such crossing by the road of the lines of a railway company, or crossing by the lines of the railway company of the road, as the case may be, but discontinuance under this section shall not operate as an abandonment of such road as a public road unless the procedure thereon conforms to § 33.1-145.

The opening of the new section of road by the Commissioner and the entry by the State Highway Commission upon its minutes of the discontinuance of the section of the road or the railroad crossing, as the case may be, and its approval thereof, shall be sufficient to constitute such discontinuance.

Source: § 33-76.1.

Note: The last sentence of § 33-76.1 has been deleted. That section provided that "Upon abandonment as herein provided the Commissioner may convey same in accordance with provisions of § 33-76.6." It is unnecessary.

§ 33.1-145. Abandonment of road or crossing; procedure.—The Commissioner on his own motion or on petition of any interested landowner may also cause any section of a road of the State Highway System, or any crossing by such road of the lines of a railway company, or crossing by the lines of a railway company of such road, to be abandoned altogether as a public road or as a public crossing, as the case may be, by complying substantially with the following procedure:

The Commissioner or any interested landowner may file application with the State Highway Commission, setting out the section of the road or the crossing sought to be abandoned as a public road. The State Highway Commission, upon the filing of such application, shall give notice thereof by (a) posting a notice of such application at least three days before the first day of a regular term of the circuit court, at the front door of the courthouse of the county in which the section of the road or crossing sought to be abandoned as a public road or crossing is located, or if it be partly in two or more counties, at the front door of the courthouse of each of such counties, or (b) by publication in two or more issues of some newspaper published in the county, or one of them, and shall also mail by registered mail a notice of the application to the board of supervisors or other governing body of the county or counties. If such road or crossing be in a town of thirty-five hundred population or less, notice shall be given to the governing body of the town in the same manner as notice is required to be given to the governing body of the county in which the town is located.

Upon petition of one or more landowners in the county or counties, affected by such proposed abandonment, or of the board of supervisors or other governing body of either of such counties, or upon petition of the governing body of any such town in which the road or crossing is located, filed with the State Highway Commission within thirty days after notice is posted or published and mailed as aforesaid, but not thereafter, the State Highway Commission or a representative thereof shall hold a public hearing in one of the counties for the consideration of the application and shall give notice of the time and place of the hearing by at least two publications thereof in some newspaper published in the county, or one of them, or having general circulation therein and also mail notice of the hearing to the board of supervisors or other governing body of the county or counties and to the town council of the town in which the road is located.

If a petition be not filed as aforesaid for a public hearing, or if after public hearing is held the State Highway Commission, or a majority thereof, is satisfied that no public necessity exists for the continuance of the section of road as a public road, or the crossing as a public crossing, or that the welfare of the public would be served best by abandoning the section of road or the crossing, as a public road or crossing, it may enter an order on its minutes abandoning the section of road as a public road or the crossing as a public crossing, and thereupon the section of road shall cease to be a public road, unless taken over by the board of supervisors or other governing body or local road authorities as hereinafter provided, or the crossing shall cease to be a public crossing; or if the Commission be not so satisfied it may enter an order dismissing the application.

Source: § 33-76.2.

Note: No change.

§ 33.1-146. Effect of such abandonment.—In case of the abandonment of any section of road or any railroad crossing under the provisions of this article as a part of the State Highway System, such section of road or such crossing shall not thereafter be a public road or crossing as the case may be, unless conveyed to the county or town and subject to the authority of the board of supervisors or other governing body or other local road authorities, or town council, as provided by law. In case of proceedings for the abandonment of any section of road, not including a railroad crossing situated less than one and one-half miles from another public crossing over the same railroad, as a public road, under the provisions of this article, the board of supervisors or other governing body or the local road authorities, as the case may be, in so far as such section of road is located within the county of such board of supervisors or local road authorities, shall have authority to take over such section of road, not including the railroad crossing, and maintain it as a public road, as provided by law; provided, however, the board of supervisors or other governing body or local road authorities, as the case may be, shall have entered an order or resolution to that effect upon its minutes and shall have given notice thereof to the Commissioner within thirty days from the posting or publishing and the mailing of the notice of the application for the abandonment of such section of road as a public road, as hereinbefore provided.

Source: § 33-76.3.

Note: No change.

§ 33.1-147. Appeal to circuit court.—Any one or more of the petitioners, or the board of supervisors, or other governing body of any county or town council of the town in which the section of road or the crossing is wholly or partly located, or the Commissioner may within thirty days from the entry of the order by the State Highway Commission, but not afterwards, appeal from the order to the circuit court of the county in which the section of road or the crossing, or the major portion thereof, sought to be abandoned, under § 33.1-145, is located. Such appeal shall be by petition filed in the clerk's office of such court, setting out the order appealed from and the grounds of such appeal. Upon the filing of such petition, the clerk of the circuit court shall docket the appeal and if the appeal be by any of the landowners who filed a petition with the State Highway Commission for a public hearing shall have notice of such appeal served upon the Commonwealth's attorney and the Commissioner and if the appeal be by the board of supervisors or other governing body or Commissioner notice thereof shall be served upon the landowners who filed petition with the State Highway Commission for a public hearing. No such appeal shall be tried by the court within ten days after notice is given, as hereinabove provided, unless such notice be waived. The circuit court shall hear the matter de novo with further right of appeal as provided by the general law. Upon the hearing of the appeal, the court shall ascertain and by its order determine whether public necessity exists for the continuance of the section of road or the crossing as a public road or crossing, or whether the welfare of the public will be served best by abandoning the section of the road or the said crossing as a public road or crossing and shall enter its order accordingly. The clerk of the court shall certify a copy of the order of the court to the State Highway Commission.

Upon any such appeal, if it shall appear to the court that by the

abandonment of such section of road or such crossing as a public road or crossing any party to such appeal would be deprived of access to a public road, the court may cause the railway company and the board of supervisors or other governing body, or either, to be made parties to the proceedings, if not already parties, and may enter such orders as seem to it just and proper for keeping open such section of road or such crossing for the benefit of such party or parties as would by such abandonment be deprived of access to a public road. The provisions of this section shall not apply to any discontinuance of a portion of the State Highway System under § 33.1-144.

Source: § 33-76.4.

Note: No change.

§ 33.1-148. Alternative procedure for abandonment of old road or crossing to extent of alteration.—When any road in the State Highway System or any road in the State Highway System containing a railway-highway grade crossing, has been or is altered and a new road, which serves the same citizens as the old road, is constructed in lieu thereof and approved by the State Highway Commissioner, the old road and/or the public crossing may be abandoned to the extent of such alteration, but no further, by a resolution of the State Highway Commission declaring the old road and/or the public crossing abandoned.

Source: § 33-76.5.

Note: No change.

§ 33.1-149. Conveying sections of roads or other property no longer necessary.—Whenever a road or a portion thereof has been abandoned in accordance with the provisions of § 33.1-145 or § 33.1-148 of this article and is deemed by the Commissioner no longer necessary for the uses of the State Highway System, the Commissioner shall so certify in writing to the State Highway Commission such facts, and it may authorize the Commissioner to execute, in the name of the Commonwealth, a deed or deeds conveying such section or sections of road, either for a consideration or in exchange for other lands that may be necessary for the uses of the State Highway System. But before any such deed either for the sale or exchange of land is executed conveying any section of a highway upon or along which any person or persons reside, notice shall be given by the Commissioner to the governing body of the county and town and to the owner or owners of the land upon which such person or persons reside of the intention to convey the section of road and if, after a reasonable notice of such intention, any such landowner or governing body so requests, a hearing shall be ordered by the Commissioner as now provided by law. If, upon such hearing, it is made to appear that such section of road should be left open for the reasonable convenience of such land owner or the public, then such section of road shall not be conveyed. But no hearing shall be held if such road was abandoned under § 31.1-145.

When real estate acquired incidental to the construction, reconstruction, alteration, maintenance and repair of the State Highway System which does not constitute a section of the public road, is deemed by the Commissioner no longer necessary for the uses of the State Highway System, the Commissioner shall so certify in writing, to the State Highway Commission such facts, and it may authorize the Commissioner to execute, in the name of the Commonwealth, a deed or deeds conveying such real estate, interest therein, or any portion thereof, either for a consideration or

in exchange for other lands that may be necessary for the uses of the State Highway System.

Any such conveyance shall have the approval of the Commission by resolution recorded in the minutes of a meeting of the Commission.

Source: § 33-76.6.

Note: No change.

Article 11. Abandonment and Discontinuance of Roads in Secondary System.

§ 33.1-150. Discontinuance of road or railway crossing as part of secondary system.—On petition of the governing body of any county in which a road or crossing is located or upon petition of the town council of a town having a population of thirty-five hundred or less, or on its own motion the Commission may discontinue any road or crossing in the secondary system as a part thereof in any case in which the Commission deems such road or crossing not required for public convenience. If the Commission on its own motion desires to discontinue any such road or crossing, notice shall be given the governing body of the county and town at least thirty days prior to any discontinuance of a road or crossing under this section. If the governing body of any county or town requests a hearing, the Commission, or a representative thereof, shall hold a hearing in the county in which the road or crossing is located in order to ascertain whether or not such road or crossing should be discontinued. From the finding of the Commission an appeal shall lie to the circuit court of the county in which such road or crossing is located and the procedure thereon shall conform to the procedure prescribed in § 33.1-147. The jurisdiction and procedure for abandonment of roads discontinued as parts of the secondary system in accordance with this article shall remain in the local road authorities.

Source: § 33-76.7.

Note: In the third sentence the words “a hearing” are substituted for the words “the same”. The purpose of this change is to clarify what some persons have considered an ambiguity in this section.

§ 33.1-151. Abandonment of road or crossing; procedure.—The governing body of any county on its own motion or upon petition of any interested landowner may cause any section of the secondary system of highways or any crossing by the road of the lines of a railway company, or crossing by the lines of a railway company of the road, deemed by it to be no longer necessary for the uses of the secondary system of highways, to be abandoned altogether as a public road or as a public crossing, as the case may be, by complying substantially with the following procedure:

The governing body of the county shall give notice of intention to abandon any such road or crossing by (a) posting a notice of such application at least three days before the first day of a regular term of the circuit court, at the front door of the courthouse of the county in which the section of the road or crossing sought to be abandoned as a public road or crossing is located, or (b) by posting notice in at least three places on and along the road or crossing sought to be abandoned for at least thirty days, and, in either case, by publication in two or more issues of some newspapers having general circulation in the county, and the governing body shall also give notice of its intention to abandon such road or crossing to the State Highway Commission or the Commissioner thereof. In any case in which the road or crossing proposed to be abandoned lies in two or more

counties, the governing bodies concerned shall not abandon such road or crossing unless and until the governing bodies of the other county or counties in which such road or crossing is located agree thereto; the procedure in such cases shall conform mutatis mutandis to the procedure prescribed for the abandonment of a road or crossing located entirely within a county.

Upon petition of one or more landowners in the county affected by such proposed abandonment or of the State Highway Commission filed with the governing body of the county within thirty days after notice is posted and published as aforesaid, but not thereafter, the governing body shall hold a public hearing on the proposed abandonment and shall give notice of the time and place of the hearing by at least two publications thereof in some newspaper having general circulation in the county and shall also give notice to the State Highway Commission thereof.

If a petition be not filed as aforesaid for a public hearing, or if after a public hearing is held the governing body is satisfied that no public necessity exists for the continuance of the section of the secondary road as a public road, or the crossing as a public crossing, or that the welfare of the public would be served best by abandoning the section of road or the crossing, as a public road or crossing, it may enter an order on its minutes abandoning the section of road as a public road or the crossing as a public crossing, and thereupon the section of road shall cease to be a public road, or if the governing body be not so satisfied it may dismiss the application.

Source: § 33-76.8.

Note: No change.

§ 33.1-152. Appeal to circuit court.—Any one or more of the petitioners, or the State Highway Commissioner, may within thirty days from the entry of the order by the governing body, but not afterwards, appeal from the order to the circuit court of the county in which the section of road or the crossing sought to be abandoned is located. Such appeal shall be by petition filed in the clerk's office of such court, setting out the order appealed from and the grounds of such appeal. Upon the filing of such petition, the clerk of the circuit court shall docket the appeal and if the appeal be by any of the landowners who filed a petition with the governing body for a public hearing shall have notice of such appeal served upon the Commonwealth's attorney and the Commissioner and if the appeal be by the Commissioner notice thereof shall be served upon the governing body of the county and landowners who filed petition with the governing body for a public hearing. No such appeal shall be tried by the court within ten days after notice is given, as hereinabove provided, unless such notice be waived. The circuit court shall hear the matter de novo with further right of appeal as provided by the general law. Upon the hearing of the appeal, the court shall ascertain and by its order determine whether public necessity exists for the continuance of the section of road or the crossing as a public road or crossing, or whether the welfare of the public will be served best by abandoning the section of the road or the said crossing as a public road or crossing and shall enter its order accordingly.

Upon any such appeal, if it shall appear to the court that by the abandonment of such section of road or such crossing as a public road or crossing any party to such appeal would be deprived of access to a public road, the court may cause the railway company and the governing body, or either, to be made parties to the proceedings, if not already parties, and may enter such orders as seem to it just and proper for keeping open such

section of road or such crossing for the benefit of such party or parties as would by such abandonment be deprived of access to a public road.

Source: § 33-76.9.

Note: No change.

§ 33.1-153. Effect of abandonment.—In case of the abandonment of any section of road or any crossing under the provisions of this article as a part of the secondary system of highways, such section of road or such crossing, shall not remain a public road or crossing.

Source: § 33-76.10.

Note: No change.

§ 33.1-154. Conveying sections of roads or other property no longer necessary.—Whenever a secondary road has been abandoned in accordance with the provisions of §§ 33.1-151 or 33.1-152 or in accordance with § 33.1-155, and its use is no longer deemed necessary by the Commissioner, the Commissioner shall so certify, in writing, to the State Highway Commission, and governing body of the county in which such road is located, such facts, and the governing body or the Commission shall thereupon be authorized to execute, in the name of the Commonwealth or the county, as the case may be, a deed or deeds conveying such sections, either for a consideration or in exchange for other lands that may be necessary for the uses of the secondary system. But before any such deed either for the sale or exchange of land is executed conveying any section of a road upon or along which any person or persons reside, notice shall be given by the Commissioner or the governing body of the county, as the case may be, and to the owner or owners of the land upon which such person or persons reside of the intention to convey the section of road and if, after a reasonable notice of such intention, any such landowner so requests a hearing shall be ordered by the Commissioner or governing body, as the case may be, as now provided by law. If, upon such hearing, it is made to appear that such section of road should be kept open for the reasonable convenience of such landowner, or the public, then such section of road shall not be conveyed.

Any such conveyance by the Commissioner shall have the approval of the Commission by resolution recorded in the minutes of a meeting of the Commission. Any such conveyance by the governing body of a county shall not be subject to § 15.1-262.

When real estate heretofore or hereafter acquired by the Commonwealth incidental to the construction, reconstruction, alteration, maintenance and repair of the secondary system of State highways which does not constitute a section of the public road, is deemed by the Commissioner no longer necessary for the uses of the secondary system of State highways, the Commissioner shall so certify, in writing, to the Commission such facts, and it may authorize the Commissioner to execute, in the name of the Commonwealth, a deed or deeds conveying such real estate, interest therein or any portion thereof, either for a consideration or in exchange for other lands that may be necessary for the uses of the secondary system of State highways.

Any such conveyance shall have the approval of the Commission by resolution recorded in the minutes of a meeting of the Commission.

Source: § 33-76.11.

Note: No change.

§ 33.1-155. Alternative procedure for abandonment of old road or crossing to extent of alteration.—When any road in the secondary system or any road in the secondary system containing a railway-highway grade crossing has been or is altered and a new road which serves the same citizens as the old road is constructed in lieu thereof and approved by the State Highway Commission, the old road and/or the public crossing may be abandoned to the extent of such alteration, but no further, by a resolution of the board of supervisors or other governing body of the county, declaring the old road and/or the public crossing abandoned.

Source: § 33-76.12.

Note: No change.

Article 12. Abandonment of Roads Not in State Highway System or Secondary System.

§ 33.1-156. Application of article; “road” defined.—The provisions of this article shall apply mutatis mutandis to county roads maintained by a county and not part of the secondary system, and to roads dedicated to the public but which are not parts of the State Highway System, or the secondary highway system. The term road shall include streets and alleys in case of dedication to the public and shall likewise include an existing crossing by the lines of a railway company of such road and a crossing by such road of the lines of a railway company.

Source: § 33-76.13.

Note: No change.

§ 33.1-157. Abandonment of certain roads and railway crossings by governing body of county.—When in heretofore or hereafter laying out, constructing or maintaining sections of roads, a part of a road has been or is straightened or the location of a part thereof altered and a section of the road is deemed by the governing body of the county, hereinafter in this article referred to as governing body, no longer necessary for public use, or an existing crossing by such road of the lines of a railway company, or a crossing by the lines of a railway company of such road, is deemed by such governing body no longer necessary for public use, the governing body by proceeding as hereinafter prescribed may abandon the section of the road no longer deemed necessary for public use, or such crossing by the road of the lines of a railway company, or crossing by the lines of the railway company of the road, as the case may be.

Source: § 33-76.14.

Note: No change.

§ 33.1-158. Notice of proposed abandonment.—In case of a proposed abandonment of a road referred to in this article, the governing body shall give at least thirty days’ notice of intention so to do by posting notice at the front door of the courthouse, by posting notices on at least three places along and on the road proposed to be abandoned, and by publication of intention so to do at least twice in a newspaper having general circulation in the county. All such notices shall state the time and place at which the governing body will meet to consider the abandonment of such road.

Source: § 33-76.15.

Note: No change.

§ 33.1-159. Petition for abandonment.—Any person desiring to have any such road abandoned may petition the governing body therefor and shall file with it and in the clerk's office of the county a reasonably accurate plat and description of the section to be abandoned. The governing body may then proceed to have such road abandoned as above provided but the expenses thereof shall be borne by the petitioner.

Source: § 33-76.16.

Note: No change.

§ 33.1-160. Petition for hearing on proposed abandonment.—Upon petition of one or more landowners in the county affected by such proposed abandonment filed with the governing body within thirty days after notice is posted and published, as aforesaid, but not thereafter, the governing body shall hold a public hearing in the county for the consideration of the proposal.

Source: § 33-76.17.

Note: No change.

§ 33.1-161. Action of governing body.—If a petition be not filed as aforesaid for a public hearing, or if after a public hearing is held, the governing body is satisfied that no public necessity exists for the continuance of the section of road as a public road, or the crossing as a public crossing, or that the welfare of the public would be served best by abandoning the section of road or the crossing, as a public road or crossing, it may enter an order on its minutes abandoning the section of road as a public road or the crossing as a public crossing, and thereupon the section of road shall cease to be a public road or if the governing body be not so satisfied it may enter an order dismissing the application.

Source: § 33-76.18.

Note: No change.

§ 33.1-162. Appeal to circuit court.—Any one or more of the petitioners or the governing body, within thirty days from the entry of the action of the governing body on the proposal but not afterwards, may appeal from the action of the governing body to the circuit court of the county. Such appeal shall be by petition filed in the clerk's office of such court, setting out the action appealed from and the grounds for appeal. Upon the filing of such petition the clerk of the circuit court shall docket the appeal, and if the appeal be by any of the landowners who filed a petition with the governing body for a public hearing, shall have notice of such appeal served upon the Commonwealth's attorney and the governing body. No such appeal shall be tried by the court within ten days after notice is given, as hereinabove provided, unless such notice be waived. The circuit court shall hear the matter de novo with further right of appeal as provided by the general law. The court may appoint viewers to make such investigation and findings as the court requires of them. Upon the hearing of the appeal, the court shall ascertain and by its order determine whether public necessity exists for the continuance of the section of road or the crossing as a public road or crossing, or whether the welfare of the public will be served best by abandoning the section of the road or the crossing as a public road or crossing and shall enter its order accordingly.

Upon any such appeal, if it shall appear to the court that by the abandonment of such section of road or such crossing as a public road or crossing any party to such appeal would be deprived of access to a public road,

the court may cause the railway company and the governing body, or either, to be made parties to the proceedings, if not already parties, and may enter such orders as seem to it just and proper for keeping open such section of road or such crossing for the benefit of such party or parties as would by such abandonment be deprived of access to a public road.

Source: § 33-76.19.

Note: No change.

§ 33.1-163. Effect of abandonment.—In case of the abandonment of any section of road or any railroad crossing under the provisions of this article, such section of road or such crossing shall cease to be a public road or crossing as the case may be.

Source: § 33-76.20.

Note: No change.

§ 33.1-164. Alternative procedure for abandonment of old road or crossing to extent of alteration.—When any road or any road containing a railway-highway grade crossing has been or is altered and a new road, which serves the same citizens as the old road, is constructed in lieu thereof and approved by the governing body, the old road and/or the public crossing may be abandoned to the extent of such alteration, but no further, by a resolution of the board of supervisors or other governing body of the county, declaring the old road and/or the public crossing abandoned.

Source: § 33-76.21.

Note: No change.

§ 33.1-165. Conveying sections of roads or other property no longer necessary.—When any road abandoned as above provided is deemed by the governing body no longer necessary for the public use, it shall so certify such facts upon its minutes and it may authorize the sale and conveyance in the name of the county a deed or deeds conveying such sections, either for a consideration or in exchange for other lands that may be necessary for the uses of the county. But before any such deed either for the sale or exchange of land is executed conveying any section of a road upon or along which any person or persons reside, notice shall be given by the governing body to the owner or owners of the land upon which such person or persons reside of the intention to convey the section of road and if, after a reasonable notice of such intention, any such landowner requests, a hearing shall be ordered by the governing body. If, upon such hearing, it is made to appear that such section of road should be kept open for the reasonable convenience of such landowner, or the public, then such section of road shall not be conveyed. The action of the governing body under this section shall not be subject to § 15.1-262.

Source: § 33-76.22.

Note: No change.

§ 33.1-166. Certain abandonments validated.—All abandonments of roads sought to be effected before July first, nineteen hundred fifty, are hereby validated notwithstanding any defects or deficiencies in the proceedings provided the rights of third parties have not intervened.

Source: § 33-76.23.

Note: No change.

§§ 33.1-167. Chapter 10 of Title 15.1 not affected by Articles 10, 11 or 12.—None of the provisions of Articles 10, 11 and 12 of this chapter shall affect the provisions of chapter 10 of Title 15.1 of this Code.

Source: § 33-76.24.

Note. No change.

— (§§ 33-77 through 33-81 were repealed in 1950).

Article 13. Abandonment of Roads for Flooding.

§ 33.1-168. **Abandonment to be flooded for purpose of municipal water supply.**—Whenever any city or town which owns and operates a water works system for the purpose of supplying such city or town and its inhabitants with water finds it necessary to enlarge its water supply, for the accomplishment of which it is necessary to impound the water of a stream without the corporate limits of such city or town, by means of a dam erected in such stream, and the impounding of the water thereof would result in the overflow, or flooding, of a section or sections of a road or roads within the secondary system of State highways, thereby necessitating the alteration and relocation of the road or roads and the council of the city or town shall by ordinance declare such necessity and that it is the intention of such city or town to comply with the requirements of this article, as hereinafter set forth, the road proposed to be flooded may be discontinued and abandoned but only after the city or town has complied with the provisions and requirements of the six following sections.

Source: § 33-82.

Note: No change.

§ 33.1-169. **Procedure to secure such abandonment.**—Such city or town shall certify to the board of supervisors or other governing body of the county in which the road or the greater part thereof lies a copy of the ordinance adopted by its council as aforesaid, and the board of supervisors or other governing body, upon receipt of the same, shall within thirty days consider the question of the reasonableness of the action contemplated by the city ordinance and shall propose and publish as required by law an ordinance approving or disapproving the action contemplated by the city or town and shall conduct a hearing thereon. In the event that, after such hearing, the board of supervisors or other governing body disapproves the proposed flooding, discontinuance and abandonment of the road, the city or town shall have, as of right, an appeal to the circuit court of the county where the question of the reasonableness of the proposed flooding and abandonment shall be heard de novo by the circuit court, or the judge thereof in vacation, and judgment shall be rendered according to its decision. From the judgment a writ of error will lie, in the discretion of the Supreme Court of Appeals, as in other cases at law.

Source: § 33-83.

Note: No change.

§ 33.1-170. **Plans for relocation of such highway.**—When and if there shall be a final approval of the abandonment of the road by the board of supervisors or other governing body or the court, as the case may be, the city or town shall, solely at its own expense, submit to the Commissioner plans and specifications for a proposed relocation of the highway, containing such information and facts as a location, elevations and other matters as the Commissioner may require. The Commissioner shall have the power

to change, alter and amend the plans so as to conform to the Commissioner's views as to the location, width and type of construction of such road to be built on the new location, provided, however, that the new road shall be so located that it will not be flooded by the water to be impounded, and provided further, that the Commissioner may not require a more expensive type or character of road than the one to be abandoned. The Commissioner shall either approve such plans and specifications as proposed by the city or town or as so amended by the Commissioner.

Source: § 33-84.

Note: The word "Commissioner" is substituted for the words "Commission" and "State Highway Commission". The subject matter of this section is properly a duty of the Commissioner and not the Commission.

§ 33.1-171. Acquisition of lands for such relocation.—Upon the approval of such plans and specifications by the Commissioner the city or town shall solely at its own expense, acquire, in the name of the Commonwealth of Virginia, either by purchase or condemnation, the right of way necessary to construct the highway on the new location as shown by the plans approved by the Commissioner and, in the event of condemnation, the proceedings shall be instituted in the name of the city or town and shall in all respects conform to the proceedings which would be applicable if they had been instituted by the State Highway Commissioner, but the title to the lands acquired in the proceedings shall, when the award of the commissioners has been paid, vest in the Commonwealth of Virginia in the same manner as if the Commissioner had instituted and conducted the proceedings and had paid the amount of the award.

Source: § 33-85.

Note: The word "Commissioner" is substituted in two places for the word "Commission".

§ 33.1-172. Cost.—Such city or town shall pay out of its own funds all costs incident to all surveys, plans, specifications, blueprints or other matters relating to the relocation of the highway and the entire cost of acquiring, by purchase or by condemnation, the right of way aforesaid.

Source: § 33-86.

Note: No change.

§ 33.1-173. Construction of relocated road.—Upon the acquisition of the right of way as hereinabove provided, the city or town shall grade the same and construct thereon, in accordance with the plans and specifications approved by the Commissioner, as aforesaid, the road or highway thereby required.

Source: § 33-87.

Note: The word "Commissioner" is substituted for the word "Commission". The subject matter of this section is more properly a duty of the Commissioner than the Commission.

§ 33.1-174. Approval or disapproval of such construction.—When such road or highway shall have been completed, the city or town shall notify the Commissioner, who shall promptly cause an inspection thereof to be made by the Highway Department. If the Department approves the same the Commissioner shall notify the city or town, in writing, of such fact. If the Department disapproves the same, it shall notify the city or town, specifying the Department's objections and recommendations for remedy-

ing or removing them, and the city or town shall promptly carry out such recommendations.

Source: § 33-88.

Note: No change.

§ 33.1-175. New road part of secondary system; former road to vest in municipality.—When the city or town shall have been notified by the State Highway Commissioner of final approval of the construction of the road or highway, the same shall immediately become a part of the secondary system of State highways and the public shall be vested with the same rights of travel thereover as it possesses with respect to the other highways in the system. And thereupon the part of the road or highway which it is proposed to flood shall be deemed to be abandoned and all public rights therein shall vest in the city or town.

Source: § 33-89.

Note: No change.

Article 14. Roads Over Dams.

§ 33.1-176. Duty of owner or occupier of dam.—Every owner or occupier of a dam shall, so far as any state highway passes over the same, keep such dam in good order, at least twelve feet wide at the top, and also keep in good order the substructure of a bridge of like width over the pier heads, floodgates or any wastecut through or around the dam; provided, however, that when the above has been done, the superstructure of any such bridge shall be maintained by the State Highway Commissioner. The Commissioner shall inspect all such bridges and report to the owner in writing needed repairs. If such owner fails to comply with the provisions of this article, he shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall be fined two dollars for every such failure of twenty-four hours. But if a mill dam is carried away or destroyed by flood or any other extraordinary natural cause, the owner or occupier thereof shall not be subject to such fine until one month after any mill, operated in whole or in part by water impounded by such dam, has been put into operation by such water power.

Source: § 33-90.

Note: In the second sentence the word "Commissioner" is substituted for the word "Commission". The subject matter of this section is more properly a duty of the Commissioner than the Commission. In reviewing the provisions of §§ 33-90 through 33-95, the Virginia Code Commission's attention was invited to numerous problems which exist with respect to highways over dams. Although a study in depth of these problems is beyond the scope of the Code Commission's undertaking, the General Assembly is urged to initiate a study of problems related to highways over dams.

§ 33.1-177. Duties of Commissioner.—The Commissioner may, at his own cost and expense, widen or strengthen any such dam or bridge to a width sufficient properly to provide for the traffic which uses that section of road of which such dam or bridge forms a part. The Commissioner shall maintain the road surface on such sections of road.

Source: § 33-91.

Note: The word "Commissioner" is substituted for "Commission". The subject matter of this section is more properly a duty of the Commissioner than the Commission.

§ 33.1-178. Raising or lowering floodgates.—The owner or occupier of a dam shall raise or lower the floodgates on such dam when there is an impending flood in order to reduce the level of the water in the pond and when it comes to the attention of the State Highway Commissioner, or his authorized agent, that this has not been done, or that the owner is unable to reach the spillway in order to do so, the Commissioner, or his authorized agent, may perform this duty.

Source : § 33-92.

Note: No change.

§ 33.1-179. Reconstruction if dam is washed out.—In case such a dam is washed out and the owner refuses to replace the same, the Commissioner, with or without the consent of such owner or occupier, may construct a highway across the same; but in case the owner desires to replace the dam and use the pond, he shall be permitted to do so by paying to the Commissioner one-half of the cost and expenses of replacing the dam, up to a width of twelve feet at the top, and the difference between the cost, if any, of replacing the bridge normally required to carry the water of the stream and the cost of a bridge which included floodgates and adequate spillway.

Source: § 33-93.

Note: The word "Commissioner" is substituted for the word "Commission." The subject matter of this section is more properly a duty of the Commissioner than the Commission.

§ 33.1-180. When larger spillway required.—In case the earthen portion of a dam has been washed away and it is determined by the Commissioner that the washout was caused by a spillway of insufficient opening to carry flood water, the dam shall not be restored for the purpose of impounding water unless the owner or occupier agrees with the Commissioner for the construction of a spillway with adequate opening, conforming to plans and specifications of the Department of Highways. In the event that such construction is required, the Commissioner shall be responsible for such part of the cost as would be necessary to provide a bridge with sufficient opening to carry the flood water of the stream and the owner or occupier of the dam shall be required to pay the difference in cost, if any, of providing adequate floodgates and spillways in addition to the bridge.

Source: § 33-94.

Note: The word "Commissioner" is substituted for the word "Commission". The subject matter of this section is more properly a duty of the Commissioner than the Commission.

§ 33.1-181. Article applicable to county roads.—The foregoing sections of this article shall also apply to dams, and to the owners and occupiers thereof over which pass public roads which are not in the State Highway System or secondary system of State highways. As to any such dam and the owner or occupier thereof, the powers hereinabove in this article conferred and imposed upon the Commissioner shall be vested in and imposed upon the board of supervisors or other governing body of the county in which such dam is located.

Source: § 33-95.

Note: The words "the Commission and" which appear in § 33-95 after the words "imposed upon" are deleted. This reference is unnecessary if all the duties are imposed upon the Commissioner.

Article 15. Miscellaneous Provisions.

§ 33.1-182. Route names.—All laws now in effect designating certain names for certain routes or combinations of routes in the State Highway System and/or the secondary system of State highways, as hereafter amended, are continued in effect.

Source: § 33-96.

Note: No change.

§ 33.1-183. Statutes declaring streams and rivers to be highways continued.—All statutes heretofore enacted declaring certain streams and rivers to be highways and providing for removing obstructions therefrom and from other streams shall continue in force.

Source: § 33-97.

Note: No change.

§ 33.1-184. Evidence as to existence of a public road.—When a way has been worked by road officials as a public road and is used by the public as such, proof of these facts shall be prima facie evidence that the same is a public road. And when a way has been regularly or periodically worked by road officials as a public road and used by the public as such continuously for a period of twenty years, proof of these facts shall be conclusive evidence that the same is a public road. In all such cases the center of the general line of passage, conforming to the ancient landmarks where such exist, shall be presumed to be the center of the way and in the absence of proof to the contrary the width shall be presumed to be thirty feet.

Nothing herein contained shall be construed to convert into a public road a way of which the use by the public has been or is permissive and the work thereon by the road officials has been or is done under permission of the owner of the servient tenement.

Source: § 33-98.

Note: No change.

§ 33.1-185. Advertising for bids.—All contracts, except in cases of emergency, over five thousand dollars that the State Highway Commission may let for construction, or any other kind of work necessary to carry out the provisions of this title, shall be let after public advertising. The Commission shall advertise for bids for such work at least two weeks (fourteen days) prior to the letting of any contract therefor. The advertisement shall state the place where bidders may examine the plans and specifications and the time and place when bids for such work will be opened by the Commission.

Source: § 33-99.

Note: No change.

§ 33.1-186. Checks to accompany bids.—Each bidder shall tender with his bid a certified check, payable to the State Treasurer, for a reasonable sum to be fixed by the Commission, as guarantee that, if the contract is awarded to him, he will enter into a contract with the Commission for the construction of the road or for the doing of the work mentioned in the bid.

It shall be sufficient for a bidder to file, in lieu of such certified check, a bond, with some solvent guaranty company as surety, for a sum twenty

per centum in excess of the amount required when a certified check is filed.

Source: § 33-100.

Note: In the first sentence, the words "tender with" are substituted for the word "accompany". The second paragraph is added. This change will authorize the filing of a bid bond in lieu of the check and conforms to § 11-19 relating to public contracts in general.

§ 33.1-187. Successful bidder; bond.—The contract shall be let to the lowest responsible bidder for the particular work covered in the bid and the successful bidder shall enter into a bond, payable to the Commonwealth of Virginia, in the sum of one hundred per centum of the estimated cost of the work, which bond must be approved by the State Highway Commissioner and conditioned upon the faithful performance of the work in strict conformity with the plans and specifications for the same. The bond shall be kept on file in the office of the Commission.

Source: § 33-101.

Note: No change.

§ 33.1-188. Rejection of bids and readvertisement.—The Commission is authorized to reject any and all bids. In the event that all bids are rejected the Commission shall advertise for new bids as in the first instance.

Source: § 33-102.

Note: No change.

§ 33.1-189. Bids and contracts open to public inspection.—All bids filed with the Commission and all contracts awarded by it shall be kept on file in its office and be public records, subject to inspection at all times.

Source: § 33-103.

Note: No change.

§ 33.1-190. Construction by force account.—Irrespective of the provisions of §§ 33.1-185 to 33.1-189, inclusive, the Commission may, in its discretion, build or maintain, by force account, any of the roads in any system of State highways.

Source: § 33-104.

Note: The words "any system of State highways" are substituted for the words "the State highway system." The purpose of this change is to broaden the provisions of the section to make them applicable to all highway systems.

§ 33.1-191. Contracts.—Every contractor whose bid is accepted shall, before commencing work, enter into a contract with the State Highway Commissioner, which shall fully set out the time when work shall commence and when the contract shall be completed, as well as the time and manner for the payment for the work.

Source: § 33-105.

Note: No change.

§ 33.1-192. Limitation of suits on such contracts.—No suit or action shall be brought against the Department of Highways, Commonwealth of Virginia, by any contractor or any persons claiming under him, on any

contract executed pursuant to this chapter or by others on any claim arising from the prosecution of the project by the contractor, unless the same shall be brought within one year after the completion of the work on the project to the satisfaction of the chief engineer, Department of Highways.

No suit or action shall be brought against the contractor or surety on any such contract or claim unless the same shall be brought within five years after the completion of the work on the project to the satisfaction of the chief engineer, Department of Highways.

Source: § 33-106.

Note: No change.

— (§ 33-107 was repealed in 1958).

.. — (§ 33-108 is deleted. This was a depression section and is unnecessary today.)

§ 33.1-193. Closing highways for safety of public or proper completion of construction; injury to barriers, signs, etc.—If it shall appear to the Commissioner necessary for the safety of the traveling public or for proper completion of work which is being performed to close any road or highway coming under his jurisdiction to all traffic or any class of traffic, the Commissioner may close, or cause to be closed, the whole or any portion of such road or highway deemed necessary to be excluded from public travel and may exclude all or any class of traffic from such closed portion. While any such road or highway, or portion thereof, is so closed, or while any such road or highway, or portion thereof, is in process of construction or maintenance, the Commissioner or contractor, under authority from the Commissioner, may erect, or cause to be erected, suitable barriers or obstructions thereon, may post, or cause to be posted, conspicuous notices to the effect that the road or highway, or portion, is closed and may place warning signs, lights and lanterns on such road or highway, or portions thereof. When such road or highway is closed for the safety of the traveling public or in process of construction or maintenance, as provided in this section, any person who willfully breaks down, drives into new construction work, removes, injures or destroys any such barrier or barriers or obstructions, tears down, removes, or destroys any such notices or extinguishes, removes, injures or destroys any such warning lights or lanterns so erected, posted or placed shall be guilty of a misdemeanor.

Source: § 33-109.

Note: No change.

§ 33.1-194. Providing road detours.—Whenever necessary, the Commissioner shall select, lay out, maintain and keep in as good repair as possible suitable detours, by the most practical route, while the highways or roads are being improved or constructed and he shall place or cause to be placed explicit directions to the traveling public during repair of any such highway or road under process of construction.

Source: § 33-110.

Note: This section is rewritten to modernize it and to eliminate unnecessary verbage.

§ 33.1-195. Sale of materials to, and use of equipment by, cities, towns, counties and school boards.—The Commission may lend or rent equipment and sell materials and supplies used in the building or repairing of roads

and streets to any city, town, county, or school board, upon such terms and conditions as may be agreed upon by the Commission and such city, town, county, or school board. Provided the governing body of such city, town, county, or school board submits to the Commission a certificate setting forth that the material or equipment cannot be furnished from private sources within a reasonable time. Provided further that the foregoing proviso shall not apply to towns with a population of less than thirty-five hundred inhabitants or to the purchase of paint for traffic marking purposes by any city, town, county, or school board.

Source: § 33-111.

Note: No change.

§ 33.1-196. Oiling of highways.—The State Highway Commission may oil the highways in any town in this State upon request of the council thereof and may oil the highways in any county of this State, the secondary roads within which are not a part of the secondary system of State highways, upon request of the board of supervisors or other governing body thereof; provided that such council or such board of supervisors or other governing body, as the case may be, shall pay to the State Highway Commission the cost of such oiling. This section does not apply to any highway which is a part of the State highway system or the secondary system of State highways.

Source: § 33-112.

Note: No change.

— (§§ 33-113 through 33-115 were repealed in 1964)

§ 33.1-197. Connections over shoulders of highways for intersecting private roads.—The State Highway Commissioner shall permit, at places where private roads leading to and from private homes intersect improved highways, suitable connections from such points of intersection, over and across the shoulders and unimproved parts of such highways to the paved or otherwise improved parts thereof, so as to provide for the users of such private roads safe and convenient means of ingress and egress with motor vehicles to and from the paved or otherwise improved parts of such highways.

Source: § 33-116.

Note: The word “Commissioner” is substituted for the word “Commission”. This is properly a duty of the Commissioner and not the Commission.

§ 33.1-198. Connections over shoulders of highways for intersecting commercial establishment entrances.—The State Highway Commissioner shall permit, at places where commercial establishment entrances are desired to intersect improved highways, suitable connections from such points of intersection over and across the shoulders and unimproved parts of such highways to the paved or otherwise improved parts thereof, so as to provide for the users of such entrances safe and convenient means of ingress and egress with motor vehicles to and from the paved or otherwise improved parts of such highways; provided, however, that any person desiring such an entrance shall first be required to obtain a permit therefor from the State Highway Commissioner and shall provide the entrance at his expense and construct or have constructed the same, including such safety structures as are required by the State Highway Commissioner, pursuant to “Minimum Standards of Entrances to State Highways” on file

in the Department of Highways, Richmond, Virginia, and in the office of the Highway District Engineer and Resident Engineers.

All commercial entrances whether or not constructed under this section shall be maintained by the owner of the premises at all times in a manner satisfactory to the State Highway Commissioner.

Any person violating the provisions of this section shall be guilty of a misdemeanor, and, upon conviction, shall be fined not less than five dollars nor more than one hundred dollars for each offense. Following a conviction and fifteen days for correction, each day during which the violation continues shall constitute a separate and distinct offense and be punishable as such. Such person shall be civilly liable to the Commonwealth for actual damage sustained by the Commonwealth by reason of his wrongful act.

Source: § 33-116.1.

Note: No change.

§ 33.1-199. Replacing entrances destroyed by Commissioner.—The State Highway Commissioner shall replace any entrance destroyed by him in the repair or construction of his highways and replace any such entrance and leave any such entrance in the same condition as it was prior to such repair or improvement.

Source: § 33-117.

Note: “Commissioner” is substituted for “Commission”. This is a duty of the Commissioner and not the Commission.

§ 33.1-200. Paying for damages sustained to personal property by reason of work projects, etc.—The State Highway Commissioner is authorized and empowered, in his discretion, to pay and settle claims and demands against the Commonwealth arising as a result of damages sustained to personal property by reason of work projects or the operation of State owned or operated equipment when engaged in the construction, reconstruction or maintenance of the State Highway system, unless said claims or demands arise as a result of negligence of the person or persons asserting such claims or demands. Nothing herein contained shall be construed as imposing any legal liability upon the State to pay such claims or demands, nor as giving the consent of the Commonwealth to be sued in any action or suit to recover on such claims or demands in the event the said Commissioner refuses payment of said claims or demands.

Source: § 33-117.1.

Note: “Commissioner” is substituted for “Commission”. This is a duty of the Commissioner and not the Commission.

— (§§ 33-117.2, 117.3 and 117.4 are relocated for better sequence. They are renumbered in Title 33.1 as §§ 33.1-91, 92 and 93.)

§ 33.1-201. Improving certain private roads and certain town streets and roads.—The State Highway Commissioner may, in his discretion, upon the request of the board of supervisors or other governing body of any county and at the expense of the owner of the land, improve private roads giving direct access from the home or other central buildings on the property along the shortest practical route to the nearest public highway; provided, however, that:

(1) The Commissioner shall in no case undertake any such work

until certification is made by the board of supervisors or other governing body that the property owner cannot secure the services of a private contractor to perform the work nor then until the owner has deposited with him a certified check in the amount estimated by the Commissioner as the cost of the work;

(2) Not more than one thousand dollars shall be expended on any one such private project in any one year;

(3) No work of ordinary maintenance shall be done on any such private road under the provisions of this section.

And the Commissioner may, upon the request of the council of any town having a population of less than fifteen hundred, and at the expense of such town, improve and maintain any streets or roads therein not in the State Highway System. As to streets and roads in such town, no certification by the board of supervisors or deposit shall be necessary.

Any work done by the Commissioner pursuant to the provisions of this section shall only be done with the equipment and employees of the State Highway Commission.

Source: § 33-118.

Note: No change.

§ 33.1-202. Landowners may erect and maintain gates across private roads.—Any person owning land over which another or others have a private road or right of way may, except when it is otherwise provided by contract, erect and maintain gates across such roads or right of way at all points at which fences extend to such roads on each side thereof; provided, however, that a court of competent jurisdiction may, upon petition, where it is alleged and proved by petitioner that the gates have been willfully and maliciously erected, may require the said landowner to make such changes therein as may be necessary and reasonable in the use of said roads for both the landowner and the petitioner.

Source: § 33-119.

Note: No change.

§ 33.1-203. Leaving gates open; penalty.—If any person without permission of the owners of such gate or of the land on which the same is located, leaves such gate open, he shall be guilty of a misdemeanor.

Source: § 33-120.

Note: The punishment under § 33-120 provides for the forfeiture of “not less than one nor more than five dollars, to be recovered before a trial justice”. The section is amended to provide for punishment under the general misdemeanor statute, § 18.1-9.

§ 33.1-204. Gate or other obstruction across private roadway leading to forest lands; penalty for removal or leaving open or unlocked.—The owners of forest and timber lands may substantially obstruct or close private and seldom used roadways leading to or into such forest or timber lands from the public roads of this State at points at or near which such roads enter their property or forest lands; and, in all cases where any such private roadway is subject to an easement for travel for the benefit of other lands not regularly and continuously inhabited, the owner of the said forest or timber lands may obstruct the roadway with a gate, chain, cable or other removable obstruction, lock the said obstruction and, after furnishing a key to the lock to the owner or owners of the land or lands to

which the forest lands are servient, require those entitled to the easement to unlock and relock such obstruction upon making use of the roadway.

There shall be no penalty upon the owner of such forest or timber lands for failure to erect such obstructions, but, if such obstruction is erected, any person without the permission of the said owner, destroying, removing or leaving the obstruction open, or unlocked, in cases where the obstruction is locked by said owner and the keys are furnished as herein provided, shall be guilty of a misdemeanor, and, if upon trial is found guilty, shall be fined a sum not less than twenty-five dollars nor more than five hundred dollars; provided, that in all cases of forest fires upon the owner's lands or those adjacent or near thereto, the expressed permission of the owner shall be deemed given to all persons aiding in extinguishing or preventing the spreading of the fire, to remove said obstructions, including the breaking of locks.

Source: § 33-120.1.

Note: No change.

§ 33.1-205. Sidewalks and walkways for pedestrian traffic.—The State Highway Commission may construct such sidewalks or walkways on the bridges and along the highways under its jurisdiction as it deems necessary for the protection of pedestrian traffic.

All the provisions of general law with respect to the acquisition of lands and interests therein and the construction, reconstruction, alteration, improvement and maintenance of highways in the primary and secondary systems of State highways, including the exercise of the power of eminent domain by the State Highway Commission and the State Highway Commissioner, shall be applicable to such sidewalks and walkways.

Source: § 33-121.

Note: The last sentence of the second paragraph of § 33-121 is deleted.

§ 33.1-206. Erection and maintenance of newspaper route boxes.—The publishers of all newspapers having a circulation in rural sections of the State may erect and maintain suitable newspaper route boxes along and on the rights of way of the public roads and highways throughout such rural sections, in which to deposit such papers for their subscribers. The short name of the newspaper to be deposited in each such box, but nothing more, may be plainly printed thereon. All such boxes shall be so located as not to interfere with or endanger public travel on such roads and highways. All such locations, however, shall meet with the approval of the State Highway Commissioner, who shall designate one color which color shall be used for painting all boxes upon which is to be printed the name of the newspapers to be deposited therein.

Source: § 33-122.

Note: No change.

§ 33.1-207. Facilities for persons desiring to fish from bridges.—The State Highway Commission may, in its discretion, upon the request in writing of any department or agency of the State, construct and maintain, on or in connection with any bridges which now constitute a part of any system of State highways, such platforms, walkways or other facilities as may be necessary or proper for the safety and convenience of persons who desire to fish therefrom, the cost thereof to be paid out of funds furnished by the department or agency making the request from its own funds or funds furnished to such department or agency by gift from private sources.

The Department of Highways shall not be held responsible for damage caused by the construction or use of such facilities.

Source: § 33-123.

Note: "any system of State highways" has been substituted for the words "the State Highway System". The purpose of the change is to broaden the application of this section to apply to all State highway systems.

§ 33.1-208. Use of streams and low lands obstructed by newly constructed highways as fish ponds or water storage areas.—Whenever any highway is being constructed and the highway is to pass over any stream or low land the obstruction of which is necessary to such construction or if the present highway construction can be utilized to provide a suitable dam for a fish pond or water storage area, then upon application of the adjacent property owner requesting that it be so used, the State Highway Commission may permit such use, provided that such dam should be subject to the provisions of article 14 of this chapter, and any additional cost incurred thereby shall be borne by such property owner.

Source: § 33-123.1.

Note: No change.

§ 33.1-209. Prohibition of certain weeds and plants on highway rights of way.—Neither the State Highway Commission nor the State Highway Commissioner shall plant or cause or suffer to be planted on the right of way of any State highway any of the weeds or plants known as devil shoestring (*tephrosia virginiana*), Johnson grass (*sorghum halepense*), or barberry (*berberis vulgaris*), if the board of supervisors or other governing body of the county in which the highway is located shall by resolution declare such weeds or plants to be injurious to adjacent property.

The Commission shall cause all such weeds or plants heretofore planted or caused to be planted by the Commission or the Commissioner on any State highway right of way to be dug up and destroyed.

Any owner of land adjacent to any State or other public highway right of way, or his agents and employees, may dig up, cut down or otherwise remove and destroy any of such plants or weeds and any other plants or weeds which are or may become noxious or otherwise injurious to his property found growing upon any State or other public highway right of way adjacent to his land.

Source: § 33-124.

Note: No change.

§ 33.1-210. Livestock on right of way of any system of State highways.—No person, firm or corporation shall pasture or graze, or cause to be pastured or grazed, or otherwise permit to be on any right of way of any road in any system of State highways, except as herein otherwise provided, any livestock, unless such animal or animals be securely tied or held by chain or rope so as to prevent such animal from getting on the traveled portion of the highway; provided, however, that this section shall not apply when such livestock are being driven along such road or right of way while under the control of a responsible drover or drovers.

Any person, firm or corporation who shall violate any of the provisions of this article shall be fined not less than ten dollars nor more than fifty dollars for such offense.

Source: § 33-125.

Note: “[A]ny system of State highways” has been substituted for the words “the State Highway System”. The purpose of this change is to broaden the application of this section to apply to all State highway systems.

§ 33.1-211. Tramways and railways along or across public highways.—Whenever any person, firm, or chartered company engaged in mining, manufacturing or lumber getting has acquired the right of way for a tramway or railway, except across or upon a public highway, and desires to cross such highway, or some part thereof, and if such person, firm or chartered company cannot agree with the State Highway Commissioner, or board of supervisors or other governing body of a county if the road be a county road in a county the roads of which are not within the secondary system of State highways, as to the terms and conditions of such crossing, the circuit court of the county in which such highway may be, may prescribe such regulations for the crossing of such highway as will protect the public, and when such regulations have been prescribed such tramway or railway may be constructed and maintained or, if already constructed, may be maintained in accordance with such regulations as may be made on the application of the owner of such tramway or railway or on the motion of the attorney for the Commonwealth after notice to such owner.

Source: § 33-126.

Note: No change.

§ 33.1-212. Appeals.—The State Highway Commissioner or board of supervisors or other governing body or the applicant or owner of the tramway or railway may appeal from the order of the circuit court in the manner prescribed for appeals in controversies concerning roads.

Source: § 33-127.

Note: No change.

§ 33.1-213. Private property not to be condemned for such tramways, etc.—Nothing contained in § 33.1-211 shall be construed as giving the right to condemn private property for such tramway or railway; nor shall the rights of any tramway or railway heretofore lawfully acquired be affected.

Source: § 33-128.

Note: No change.

§ 33.1-214. Contributions by towns or cities towards road building, bridges, etc.—Any incorporated town or city, acting by and through its council, may, when in the judgment of such council such action will tend to promote the material interest of such town or city, contribute funds or other aid within the control of such town or city toward the building or improvement of permanent public roads leading to such town or city, or of bridges, or to purchase of bridges, or the establishment, maintenance or operation of ferries. But no such contribution shall be made toward the building or improvement of any such road or bridge, or the purchase of bridges, or for such ferry, at any point more than forty miles beyond the corporate limits of such town or city, as measured along the route of such road.

Source: § 33-129.

Note: No change.

§ 33.1-215. Federal aid.—The assent of the Commonwealth of Virginia is hereby given to the terms and provisions of an act of Congress, approved July eleventh, nineteen hundred and sixteen, entitled “An act to provide that the United States shall aid the states in the construction of rural post roads, and for other purposes”, and the Commissioner shall have prepared and submit all such plans, specifications and data relating to the construction of roads and bridges as may be required under the terms of such act and may do any and all things necessary to carry out the provisions of such act of Congress.

Source: § 33-130.

Note: No change.

§ 33.1-216. Authority of cities and towns and certain counties in connection with federal aid.—The cities and towns of this State and also the several counties which have withdrawn from the provisions of chapter 415 of the Acts of 1932, as amended, may comply fully with the provisions of the present or future Federal-Aid Road Acts and to this end they may enter into all contracts or agreements with the United States government or the appropriate agencies thereof relating to the survey, construction, improvement and maintenance of roads, streets and highways under their control and may do all other things necessary to carry out fully the cooperation contemplated and provided for by the present or future acts of Congress relating to the construction, improvement and maintenance of roads, streets and highways.

Such cities, towns or counties may also co-operate with the Commission in connection with any project for the survey, construction, improvement or maintenance of any road, street or highway under their jurisdiction and control which is eligible for federal aid under any present or future Federal-Aid Road Acts, and may by appropriate agreement or contract authorize the Commission to act on their behalf in any dealings necessary with the United States or any agency thereof and may authorize the Commission to carry out such survey, construction, improvement or maintenance work on such projects either with or without participation therein by the city, town or county. Whenever the Commission is given such authority by any such city, town or county, it may do all things contemplated and provided for by present or future Federal-Aid Road Acts and the agreements made with such city, town or county.

Source: § 33-131.

Note: No change.

—— (§ 33-132 is deleted. The provisions of this section have been re-located under § 33.1-12 (8), as this is a power of the Commission).

§ 33.1-217. Establishment of recreational waysides.—(a) To promote the safety, convenience and enjoyment of travel on, and protection of the public investment in, highways of this State, and for the restoration, preservation, and enhancement of scenic beauty within and adjoining such highways, it is hereby declared to be in the public interest to acquire and establish recreational waysides and areas of scenic beauty adjoining the highways of this State.

(b) The State Highway Commissioner may, whenever in his opinion it is to the best interest of the State, accept from the United States, or any authorized agency thereof, a grant or grants of any recreational waysides established and constructed by the United States, or any such agency

thereof, or a grant or grants of funds for landscaping and scenic enhancement of highways, and the Commissioner may, on behalf of the Commonwealth, enter into a contract or contracts with the United States or any such agency to maintain and operate any such recreational waysides which may be so granted to the Commonwealth and may do all things necessary to receive and expend federal funds for landscaping and scenic enhancement.

(c) The Commissioner may, whenever it is to the best interest of the operation of the interstate, the primary or the secondary system of State highways, establish, construct, maintain, and operate adjoining the State highway appropriate recreational waysides and areas of scenic beauty.

(d) The Commissioner is authorized to acquire by purchase, gift or the power of eminent domain such land or interest in land as may be necessary to carry out the provisions of this section, provided that in exercising the power of eminent domain for areas of scenic beauty such areas must adjoin and lie within one hundred feet of the right-of-way of the highway, and the procedure shall be *mutatis mutandis* the same as provided for the acquisition of land by the State Highway Commissioner in article 7 (§ 33.1-89 et seq.), chapter 1 of this title.

Source: § 33-133.

Note: No change.

§ 33.1-218. Rules and regulations for use of recreational waysides.—The State Highway Commission is authorized and empowered to establish rules and regulations for the use of recreational waysides including rules and regulations relating to (a) the time, place and manner of parking of vehicles, (b) activities which may be conducted within such waysides, (c) solicitation and selling within the waysides, (d) such other matters as may be necessary or expedient in the interest of the motoring public.

The rules and regulations when adopted by the State Highway Commission shall be posted in a conspicuous place at each wayside, along with such other signs as the Highway Commissioner deems necessary to advise the public.

Any person violating any rule and regulation adopted under this section shall be guilty of a misdemeanor and upon conviction be fined not less than five dollars nor more than one hundred dollars for each offense.

Source: § 33-133.1.

Note: No change.

§ 33.1-219. Such waysides part of interstate, primary or secondary system.—Such recreational waysides and areas of scenic beauty, when so acquired, established, maintained, and operated shall be deemed to be a part of the interstate, primary or secondary system, but land acquired for areas of scenic beauty shall not be deemed a part of the right-of-way for the purpose of future acquisition of areas of scenic beauty under the provisions of § 33.1-217.

Source: § 33-134.

Note: No change.

§ 33.1-220. Co-operation with persons maintaining marine museums.—Chapter 425 of the Acts of 1930, approved March 25, 1930, codified as § 19691 (1) of Michie Code 1942, authorizing the Commission to co-operate

with the person who may establish a marine museum in some county in this State adjoining a city located on navigable water, with a population of thirty thousand or more, is continued in effect.

Source: § 33-135.

Note: No change.

— (§ 33-136 was repealed in 1954.)

§ 33.1-221. Revolving fund for access roads to industrial sites; construction, maintenance, etc., of such roads.—(a) Notwithstanding any other provision of law, from the funds available to the State Highway Commission derived from taxes on motor fuels, fees and charges on motor vehicle registrations, road taxes or any other State revenue allocated for highway purposes, and after the costs of administration but before any of such funds are distributed and allocated for any road or street purposes, the Commission shall initially set aside one million five hundred thousand dollars.

This fund shall be expended by the Commission for constructing, reconstructing, maintaining or improving access roads within counties, cities and towns to industrial sites on which manufacturing, processing or other establishments will be built under firm contract or are already constructed. At the close of each succeeding fiscal year the Commission 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 one million five hundred thousand dollars.

(b) In deciding whether or not to construct or improve any such access road, and in determining the nature of the road to be constructed, the Commission shall base its considerations on the cost thereof in relation to the volume and nature of the traffic to be generated as a result of developing the industrial establishment. No such access road shall be constructed or improved on a privately owned plant site.

(c) Any access road constructed or improved under this section shall constitute a part of the secondary system of State highways or the road system of the locality in which it is located and shall thereafter be constructed, reconstructed, maintained and improved as other roads in such system.

Source: § 33-136.1.

Note: No change.

§ 33.1-222. Maps or plats prepared at request and expense of local governing bodies and other groups; Department of Conservation and Economic Development to receive and expend funds.—The State Highway Commissioner is hereby authorized in his discretion to have prepared photogrammetric maps or plats of specific sites or areas at the request of the governing bodies of counties, cities and towns of this Commonwealth, local nonprofit industrial development agencies, and local chambers of commerce, provided that such request is concurred in by the Board of Conservation and Economic Development or its designated agent and provided further that such governing body, agency or chamber agrees to reimburse the State Highway Department for the cost of making such maps or plats. The Department of Conservation and Economic Development is hereby authorized to receive from such governing body, agency or chamber the funds for such reimbursement and to pay the same over

to the State Highway Department, and to expend any State funds made available for such purpose.

Source: § 33-136.2.

Note: No change.

§ 33.1-223. Fund for access roads to public recreational areas and historical sites; construction, maintenance, etc., of such roads.—(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 such 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 to public recreational areas and historical sites be provided by using highway funds obtained from unclaimed refundable marine motor fuel tax collections. This section is enacted in furtherance of these purposes.

(b) Notwithstanding any other provision of law, (and in order to provide equal matching of funds hereinafter appropriated from the general fund), the State Highway Commission shall, from funds allocated to the primary system, secondary system, or urban system of State highways, set aside the sum of one million five hundred thousand dollars initially. This fund shall be expended by the Commission for the construction, reconstruction, maintenance or improvement of access roads within counties, cities and towns. At the close of each succeeding fiscal year the Commission 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 one million five hundred thousand dollars.

(c) Upon the setting aside of such funds as herein provided, the State Highway Commissioner shall construct, reconstruct, maintain or improve access roads to public recreational areas and historical sites upon the following conditions:

(1) When the Commission of Outdoor Recreation has designated a public recreational area as such or a historic area as such and recommends to the State Highway Commission that an access road be provided or maintained to such area; and

(2) When the State Highway Commission pursuant to such recommendation from the Commission of Outdoor Recreation declares by resolution that such access road be provided or maintained; and

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

(4) When the governing body of the county, city, or town in which such access road is to be provided or maintained adopts an ordinance pursuant to article 8 (§ 15.1-486 et seq.), chapter 11, Title 15.1.

No access road 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 be designated as a scenic highway or byway as provided for in article 5 (§ 33.1-62 et seq.), chapter 1, Title 33.1, and shall thereafter be constructed, reconstructed, maintained and improved as other roads in such systems.

The State Highway Commission and the Commission of Outdoor Recreation are hereby authorized to make regulations to carry out the provisions of this section.

Source: § 33-136.3.

Note: No change.

CHAPTER 2

LOCAL AUTHORITY OVER HIGHWAYS

Article 1. Miscellaneous Provisions.

§ 33.1-224. Transfer of streets, etc., from secondary system to local authorities.—Whenever any incorporated town has a population of more than thirty-five hundred inhabitants, all the roads, streets, causeways, bridges, landings and wharves in such town theretofore incorporated within the secondary system of State highways shall be eliminated from such system and the control and jurisdiction over them shall be vested in the local authorities. This section shall in no way affect the rights of such towns to receive the benefits provided elsewhere in this title.

Source: § 33-137.

Note: At the end of the section the words “elsewhere in this title” are substituted for the words “for by § 33-113”.

§ 33.1-225. Levies.—The boards of supervisors or other governing bodies of the several counties shall not make any levy of county or district road taxes or contract any further indebtedness for the construction, maintenance or improvement of roads; provided, however, that the boards of supervisors or other governing bodies of the several counties shall continue to make county or district levies, as the case may be, upon all real and personal property subject to local taxation, in such county or magisterial district, and not embraced within the corporate limits of any incorporated town which maintains its own streets and is exempt from county and district road taxes unless the citizens of such towns voted on the question of issuing county or district road bonds, sufficient only to provide for the payment of any bonded or other indebtedness and for the interest contracted thereon that may be outstanding as an obligation of any county or district contracted for road purposes or for the sinking fund for the retirement of any bonded indebtedness established for county or district road purposes; and provided, further, that the boards of supervisors or other governing bodies of counties adjacent to cities of the first class may, for the purpose of supplementing funds available for expenditure by the State for the maintenance and improvement of roads in such counties when such supplementary funds are necessary on account of the existence of suburban conditions adjacent to such cities, levy county or district road taxes, as the case may be, the proceeds thereof to be expended at the option of the board of supervisors or other governing body either by or under the supervision of the State Highway Commissioner in the maintenance and improvement, including construction and reconstruction, of roads in such suburban district and provided further, that any expenditure heretofore made by the board of supervisors of any county having a population of

more than seventeen thousand two hundred but less than seventeen thousand three hundred from the general funds of the county for the improvement of roads which are not in the secondary system of State highways and which are open to public use is hereby validated.

All balances in the hands of the local authorities for county or district road purposes and any taxes levied for years prior to nineteen hundred and thirty-two for county or district road purposes and not collected shall, when collected, and to the extent necessary, be disbursed in payment of obligations heretofore contracted for county or district road purposes and remaining unpaid and the balance, if any, for general county or district purposes.

For the purpose of this section the term "district" shall mean magisterial, sanitary or other special district created by the governing body of a county for the levy of road taxes.

Source: § 33-138.

Note: No change.

§ 33.1-226. Local legislation; compensation of supervisors.—Chapter 112 of the Acts of 1923, approved March 29, 1923, codified as Michie Code 1942, §§ 2014a-2014c, relating to the enactment of county road regulations and the compensation of members of boards of supervisors for work in connection with roads in counties having less than fifteen thousand population and adjoining one or more cities of the first class, is continued in effect.

Source: § 33-139.

Note: No change.

§ 33.1-227. Reserved.

§ 33.1-228. County road laws continued in effect for certain counties.—Sections 1970 to 1972, and 2109 to 2122, both inclusive, of the Code of 1919, as amended; section 1 of chapter 367 of the Acts of 1918, approved March 16, 1918, codified as section 2014e of Michie Code 1942; chapter 370 of the Acts of 1920, approved March 20, 1920, codified as § 2014d of Michie Code 1942; chapter 28 of the Acts of 1919, approved September 5, 1919, codified as sections 2124a to 2124m of Michie Code 1942, as amended by chapter 513 of the Acts of 1922, approved March 28, 1922, by chapter 519 of the Acts of 1922, approved March 29, 1922, and by chapter 527 of the Acts of 1926, approved March 25, 1926; sections 1, 11, 12, 12½, 13, 14, 17, 19, 29, 30 and 33 to 45 of chapter 159 of the Acts of 1928, approved March 10, 1928, included in sections codified as sections 2039(1) to 2039(46) of Michie Code 1942, as amended as to such sections 12 and 12½ by chapter 51 of the Acts of 1932, approved February 26, 1932, and as amended as to such section 43 by chapter 368 of the Acts of 1932, approved March 26, 1932, codified as section 2773(54) of Michie Code 1942; chapter 215 of the Acts of 1928, approved March 15, 1928, and chapter 257 of the Acts of 1946, approved March 25, 1946, codified as section 2039(38a) of Michie Suppl. 1946, relating to roads in counties that have withdrawn their roads from the secondary system of State highways and to the issue of bonds to pay for the same, are continued in effect in and for the counties of Arlington and Henrico for so long as such counties continue to maintain such roads without such secondary system of State highways. Should any of such counties bring itself back within such secondary system of State highways under the provisions of § 33.1-85, such section or acts shall

thereupon cease to be in effect in and as to such county. And such sections 2117, 2118 and 2119, of the Code of 1919, as heretofore amended, and sections 7 and 8 of such chapter 28 of the Acts of 1919, approved September 5, 1919, as heretofore amended as aforesaid, are continued in effect with respect to any counties that still have outstanding bonds issued under sections 2110 to 2122, inclusive, of the Code of 1919, as heretofore amended or under such chapter 28 of the Acts of 1919, as amended as aforesaid, and are continued in effect also with respect to all such bonds so issued and still outstanding.

Source: § 33-140.

Note: Reference in this section to Warwick County is deleted. Warwick County no longer exists.

Article 2. Establishment, Alteration and Discontinuance of Highways.

§ 33.1-229. Continuance of powers of county authorities.—The local road authorities shall continue to have the powers vested in them on June twentieth, nineteen hundred and thirty-two, for the establishment of new roads in their respective counties, which shall, upon such establishment, become parts of the secondary system of State highways within such counties and they shall likewise have the power to alter or change the location of any road now in the secondary system of State highways within such counties or which may hereafter become a part of the secondary system of State highways within such counties; provided, however, that the State Highway Commissioner shall be made a party to any proceeding before the local road authorities for the establishment of any such road or for the alteration or change of the location of any such road; and provided further, that when any such board or commission appointed by the board of supervisors or other governing body of a county to view a proposed road or to alter or change the location of an existing road shall award damages for the right of way for the same, in either case to be paid in money, it may be paid by the board of supervisors or other governing body of the county out of the general county levy funds; and, provided further, that no expenditure by the State shall be required upon any new road so established or any old road the location of which is altered or changed by the local road authorities, except as may be approved by the Commissioner. The Commissioner, by and with the approval of the State Highway Commission and the board of supervisors or other governing body of a county shall have power and authority to make such changes in routes in, and additions to, the secondary system of State highways from time to time as the public safety or convenience may require.

The service of any process or notice in any such proceedings upon the district engineer of the State Highway Department having the supervision of maintenance and construction of highways in any such county shall be termed sufficient service on the Commissioner.

Source: § 33-141.

Note: No change.

§ 33.1-230. How roads and bridges in counties established or altered; examination and report; width and grade of roads; employing engineer.—Whenever the board of supervisors or other governing body of any county shall be of opinion that it is necessary to establish or alter the location of a public road or bridge or any other person applies to the board or other governing body therefor it may appoint five viewers, who shall be resident free-holders of the county, any three of whom may act, to examine

such roads or routes and report upon the expediency of establishing or altering the location of such public road or bridge or, in lieu of such viewers, it may direct the county road engineer or county road manager, if any, to examine such road or route and make such report and such board may establish or alter such road or bridge upon such location and of such width and grade as it may prescribe; provided, that the right of way for any public road shall not be less than thirty feet wide, except that in any case in which the cost of constructing and maintaining any such road is to be borne by any individual or individuals the right of way for such road may be less than thirty, not less than fifteen, feet in width. If no one of the viewers be an engineer, appointed for the purpose of making survey and map, the board of supervisors or other governing body may employ one, if necessary, to assist the viewers.

Source: § 33-142.

Note: No change.

—— (§ 33-143 is deleted as unnecessary.)

§ 33.1-231. Duty of viewers, etc.; report.—The viewers, or the county road engineer or county road manager, as the case may be, shall, as early as practicable after receiving the order of the board or other governing body to that effect, proceed to make the view, and may examine other routes and locations than that proposed and if of opinion that there is a necessity to establish or alter the location of the public road or bridge shall locate the same, return a map or diagram thereof with their report, and make a report to the board or other governing body, stating:

- (1) Their reasons for preferring the location made,
- (2) The probable cost of establishing or altering the location of such road or bridge,
- (3) The convenience and inconvenience that will result as well to individuals as to the public,
- (4) Whether the road or bridge will be one of such mere private convenience as to make it proper that it should be opened, established or altered and kept in order by the person or persons for whose convenience it is desired,
- (5) Whether any yard, garden, or orchard will have to be taken,
- (6) The names of the landowners on such route,
- (7) Which of such landowners require compensation,
- (8) What will be a just compensation to the landowners requiring compensation for the land so taken and for the damages to the residue of the tract, if any, beyond the peculiar benefits to be derived in respect to such residue, from the road or bridge to be established, and
- (9) All other facts and circumstances in their opinion useful in enabling the board of supervisors or other governing body to determine the expediency of establishing or altering the road or bridge.

They shall file such report with the clerk of the board or other governing body.

Source: § 33-144.

Note: No change.

§ 33.1-232. Consent of landowners.—In the event that some of the landowners do not require compensation and will execute their written consent giving the right of way in question, the viewers, or the county road engineer or county road manager, as the case may be, shall obtain such consent and return it with their report and such written consent shall operate and have the force and effect of a deed from the landowners of the county for the right of way so long as it is used by the public, in case the road is established, and it shall be recorded in the deed books of the county.

Should any of the landowners require compensation and not unite in such deed, the subsequent proceedings as to them shall be as herein prescribed.

Source: § 33-145.

Note: No change.

§ 33.1-233. Proceedings on report, notice to proprietors and tenants.—At the next meeting of the board of supervisors or other governing body after receipt of such report, unless the opinion of the board or other governing body be against establishing or altering the road or bridge, they shall require their clerk to issue process to summon the proprietors and tenants of the land on which it is proposed to establish or alter such road or bridge to show cause against the same. The summons shall be directed, executed and returned as a summons may be in other cases, except that it may be personally served in the county on an agent or tenant of any proprietor not within the same and such service shall be equivalent to service on such proprietor. And if any proprietor resides out of this State and be not within the county, or have no agent or tenant known to the board of supervisors or other governing body or its clerk residing therein, or if the true owners or proprietors of the lands, or any part thereof, be not known to the clerk or board or other governing body, the clerk or board or other governing body may order notice to all whom it may concern to be published for four successive weeks in some newspaper having general circulation in the county or posted at the front door of the courthouse of the county on some court day, to appear and show cause against establishing or altering the road or bridge, as the case may be. The cost of such publication shall be paid by the county.

Source: § 33-146.

Note: No change.

§ 33.1-234. Guardian ad litem for persons under disability.—If any such owner or proprietor be an infant, insane or feeble-minded, the circuit court of the county, or the judge thereof in vacation, shall, at the time the clerk shall issue such process, or as soon thereafter as practicable, upon the court's or judge's own motion, or upon the suggestion of any party in interest, appoint for such person a guardian ad litem, who shall faithfully represent the interest of the infant, insane or feeble-minded person and whose fees shall be fixed by the court or judge making the appointment.

Source: § 33-147.

Note: No change.

§ 33.1-235. Defense allowed; what board may do.—Upon the return of the process duly executed, defense may be made to the proceedings by any party and the board of supervisors or other governing body may hear testimony touching the expediency or propriety of establishing or altering

the road or bridge. Upon such hearing, unless the board of supervisors or other governing body be of opinion that the road or bridge ought not to be established or altered, in which case it shall so order, it shall proceed to fix upon a just compensation to the proprietors and tenants for the land proposed to be taken and the damage accruing therefrom.

Source: § 33-148.

Note: No change.

§ 33.1-236. Appointment of commissioners to assess damages.—If any tenant or proprietor desire, or if the board of supervisors or other governing body see cause for doing it, it shall appoint five disinterested resident freeholders of the county as commissioners, any three of whom may act, for the purpose of ascertaining a just compensation for the land to be taken for such road or bridge and damages, if any, to the residue, beyond the benefits to be derived by such residue, from such road or bridge..

Source: § 33-149.

Note: No change.

§ 33.1-237. Enhancement in value of residue.—The enhancement, if any, in value of the residue by reason of the establishment or alteration of such road or bridge shall be offset against the damage to the residue, but there shall be no recovery over against such landowner for any excess nor shall enhancement be offset against the value of land taken.

Source: § 33-150.

Note: No change.

§ 33.1-238. Action of commissioners; report.—The commissioners shall meet on the lands of such proprietors and tenants as may be named in the order of the board of supervisors or other governing body at a certain place and day therein also specified, of which notice shall be given by the sheriff to such proprietors and tenants or their agents, except only that it need not be given to one present at the time of making the order. Any one or more of the commissioners attending on the land as aforesaid may adjourn, from time to time, till the business shall be finished. The commissioners, in the discharge of their duties, shall comply in all respects with the provisions of chapter 1.1 of Title 25 so far as applicable. They shall forthwith make return to their report and the certificate required by § 25-46.20 to the board of supervisors or other governing body and, unless good cause be shown against the report, it shall be confirmed. If, however, good cause be shown against the report or the commissioners report their disagreement, or fail to report within a reasonable time, the board of supervisors or other governing body, as often as it seems proper, may appoint other commissioners for the purpose of ascertaining the compensation and damages as aforesaid. When any report is confirmed, the board of supervisors or other governing body shall establish or alter the road or bridge with or without gates, as to it may seem proper, and provide for the payment of the compensation and damages allowed.

Source: § 33-151.

Note: No change.

§ 33.1-239. Appeal to circuit court.—If such applicant, proprietor or tenant is dissatisfied with the decision of the board of supervisors or other

governing body in respect to the amount of compensation or damages allowed, he may of right appeal, but only on the question of compensation and damages, to the circuit court of the county, provided such appeal is filed within sixty days. The court shall hear the matter de novo as to the amount of compensation and damages with the further right of appeal as provided by general law. Upon the hearing of the appeal, the court shall ascertain the amount of compensation and damages, if any, to which such proprietor is entitled, and shall certify the same to the board of supervisors or other governing body, who shall proceed to carry out the judgment of the court; provided, however, that the board of supervisors or other governing body shall be summoned to appear at the hearing of the appeal.

Source: § 33-152.

Note: No change.

§ 33.1-240. Who shall pay costs, compensation and damages.—When the road or bridge is established or altered the county shall be chargeable with the compensation and damages to the proprietor or tenant and all costs incurred in the proceedings; provided, however, that when the record shows that the sum allowed by the circuit court on appeal, as compensation and damages to any proprietor or tenant, is not more than the amount allowed him by the board of supervisors or other governing body from whose decision the appeal was taken, such proprietor or tenant shall be adjudged to pay the costs occasioned by such appeal. When the board of supervisors or other governing body decides against the application to establish or alter a road or bridge, the applicant shall pay the costs incurred in the case, except the compensation of the viewers.

But when it shall appear to the board of supervisors or other governing body that the opening and establishing or altering of such road will be for mere private convenience, then the board of supervisors or other governing body may order the same upon condition that such applicant pay, in whole or in part, the compensation and damages to the proprietor or tenant and the costs of the proceedings and keep the road in order. In any such case the road shall not be opened and established or altered until such compensation and damages and costs shall have been first paid or the written consent of the proprietor or tenant given.

Source: § 33-153.

Note: No change.

§ 33.1-241. Roads not to be established through cemetery or seminary of learning without owners' consent.—No road shall be established upon or through the lands of any cemetery or through the lands of any seminary of learning without the consent of the owners thereof.

Source: § 33-154.

Note: No change.

§ 33.1-242. Pay to viewers, commissioners and engineers.—A statement in writing showing the number of days each viewer or commissioner and engineer, appointed or employed under the provisions of this article, was employed shall be sworn to and presented to the governing body, and the governing body may allow a reasonable compensation not exceeding ten dollars per day to each viewer or commissioner and not exceeding seven dollars and fifty cents per day and necessary traveling expenses for the engineer; provided that in any county adjoining a county having a population in excess of one thousand per square mile the governing body

may pay the viewers, commissioners and engineers in addition to expenses not exceeding twenty-five dollars a day for each day they were respectively employed hereunder.

Source: § 33-155.

Note: No change.

§ 33.1-243. Abandonment of certain roads and railway crossings.—The governing body of any county which has chosen or hereafter chooses not to be included in the provisions of article 6 of chapter 1 of this title, whenever it deems that any part of a road subject to its jurisdiction is no longer required or an existing crossing by any such road of the lines of a railway company, or any existing crossing by the lines of a railway company of such road, is no longer necessary as a part of such road system, may abandon the section of road, or the crossing.

The procedure for any such abandonment shall be governed by the provisions applicable to the State Highway Commission as provided in §§ 33.1-144 to 33.1-167 and all provisions applicable to the Commission shall apply, mutatis mutandis, to the governing body of the county.

Source: § 33-155.1.

Note: In the second paragraph, reference to those sections on abandonment passed in 1950 has been substituted for §§ 33-76 through 33-79, which were repealed in 1950.

— (§§ 33-156, 157 and 158 were repealed in 1950).

§ 33.1-244. Supervisors may issue process.—The board of supervisors or other governing body of a county shall have power to cause process to issue and compel the attendance of witnesses and other parties.

Source: § 33-159.

Note: No change.

§ 33.1-245. Compensation of clerk of board.—Except in the county of Henrico the clerk of the board of supervisors or other governing body of a county shall receive for the duties to be performed by him under the provisions of this chapter, compensation to be fixed and allowed to him by the board or other governing body, not less, however, than one hundred dollars and not to exceed three hundred dollars per annum.

Source: § 33-160.

Note: No change.

§ 33.1-246. Discontinuance of gates on public roads.—Whenever a public road is, or has been, established with gates, any person may apply to the board or other governing body of the county to have such gate or gates discontinued, on which application proceedings shall be had in accordance with the applicable provisions of §§ 33.1-230 to 33.1-240. If the board or other governing body decides that the gate or gates shall be removed, it shall direct the sheriff of the county to remove the same and the sheriff shall do so at such time as the board or other governing body may direct.

When damages are allowed to any person or persons on account of the removal of such gate or gates, such damages and the costs incident to the proceeding shall be paid out of the county levy. Any such person shall have an appeal of right to the circuit court of the county, at any time

within ten days from the date of the order making such allowance, but only from the amount of damages allowed.

Source: § 33-161.

Note: No change.

____ (§§ 33-162 through 33-170 are deleted. These sections, relating to private ferries and related matters, are obsolete).

CHAPTER 3

FERRIES, BRIDGES AND TURNPIKES

Article 1. General Provisions.

§ 33.1-247. **Ferry across Corotoman river.**—The public free ferry across the Corotoman river, in the county of Lancaster, authorized by the act of the twelfth of March, eighteen hundred and forty-seven, shall be kept according to such act, except as in this section provided, that is to say: The circuit court of Lancaster may, in its discretion, have the contract for keeping the same let to the lowest bidder for a period of five years and the bonds thereby directed shall be to the county of Lancaster instead of the justices thereof. Furthermore, the ferry shall cross from Merry Point to the upper side of the wharf and canning factory at Ottoman wharf; provided, that the circuit court of the county shall have the right, upon the application of the board of supervisors, to discontinue the ferry if it shall be made to appear that public necessity therefor no longer exists. No such application shall be made unless and until notice thereof, to whom it may concern, be given by publication once a week for two successive weeks in some newspaper published in the county, or having general circulation therein, and by posting copies of the notice at the front door of the courthouse of the county and at both landings of the ferry, such notice to be so posted, and the first publication thereof made, at least thirty days before the day on which the application will be made to the court.

Source: § 33-171.

Note: No change.

§ 33.1-248. **Expenditure of funds upon interstate bridges and approaches.**—The State Highway Commissioner may expend from funds now or hereafter available for construction or maintenance of roads, either alone or in cooperation with public road authorities of other states, such funds as he may deem necessary for the construction, maintenance, operation and repair of interstate highway bridges, tunnels and approaches forming connecting links between roads now or hereafter in the State Highway System or the secondary system of State highways and public roads of other states.

Source: § 33-172.

Note: The words "in the State Highway System" which appeared in § 33-172 after the words "maintenance of roads" have been deleted. The word "tunnels" is added.

§ 33.1-249. **Maintenance and operation of city and State line bridges.**—The governing bodies of cities and towns having more than thirty-five hundred population and the State Highway Commissioner may enter into agreements, upon such terms and conditions as may be necessary, for the

maintenance of public highway bridges or tunnels lying partly within and partly without the incorporated limits of such cities and towns.

The State Highway Commissioner may enter into agreements, with other states and the District of Columbia, upon such terms and conditions as may be necessary, for the maintenance and operation, including the issuance of permits, of public highway bridges or tunnels lying partly within and partly without the territorial limits of this Commonwealth.

Source: § 33-172.1.

Note: The words "or tunnels" are added.

§ 33.1-250. Naming bridges.—The State Highway Commissioner may, upon the request of any county, town or city, evidenced by a resolution of the governing body thereof, name in honor or memory of a deceased person named in such resolution, any bridge not heretofore named by the Commission in pursuance of an act of the General Assembly, in such county, town or city and on any route of a State highway and may place an appropriate marker on such bridge, provided such county, town or city, by such resolution of its governing body, agrees to pay the cost and expense incident thereto. Provided, further, that where any bridge is within three miles of the corporate limits of a city or town the governing body of such city or town shall have equal rights with the board of supervisors or other governing body of the county in the naming of any such bridge and the name shall have the joint concurrence of the board of supervisors or other governing body of the county and the governing body of the city or town.

Source: § 33-173.

Note: After the words "General Assembly" the words "across any stream" have been deleted from § 33-173. Also, the words "a State highway" have been substituted for the words "the State Highway System".

§ 33.1-251. Unlawful for State Highway Department to permit free passage over certain bridges and ferries; exceptions.—It shall be unlawful for the State Highway Department or any employee thereof to give or permit free passage over any bridge, tunnel or ferry which has been secured through the issuance of revenue bonds and which bonds are payable from the revenues of such project. Every vehicle shall pay the same toll as others similarly situated. The provisions hereof shall apply with full force and effect to vehicles and employees of the State government, governments of counties, cities and towns or other political subdivisions, and to vehicles and persons of all other categories and descriptions, public, private, eleemosynary, or otherwise. There shall be excepted from the provisions of this section vehicles and persons in the employ of the State Department of Highways when actually engaged in the performance of their duties as such, and personnel and vehicles of the Virginia State Police and employees and vehicles of the Division of Motor Vehicles when actually engaged in the performance of their duties as such, local police officers, sheriffs and their deputies, and fire-fighting equipment and ambulances owned by a political subdivision or a nonprofit association or corporation, including passengers therein and operators thereof, when engaged in the performance of their official duties.

Source: § 33-173.1.

Note: The word "tunnels" is added.

§ 33.1-252. Free use of toll bridges, etc., by certain State officers and employees.—The State Highway Commissioner, the Commissioner of the

Division of Motor Vehicles, the Superintendent of State Police, members of the State Highway Commission and all officers, agents and employees of the Department of Highways, the Division of Motor Vehicles and the Department of State Police when actually engaged in the performance of their duties as such and having and exhibiting the certificates hereinafter mentioned, may use all toll bridges, toll tunnels and toll ferries in this State without the payment of toll.

The possession by any person of a certificate of the State Highway Commissioner, the Commissioner of the Division of Motor Vehicles or the Superintendent of State Police to the effect that such person is the State Highway Commissioner, the Commissioner of the Division of Motor Vehicles, the Superintendent of State Police, a member of the State Highway Commission, or an officer, agent or employee of the Department of Highways, Division of Motor Vehicles and the Department of State Police, together with such person's declaration that he is actually engaged in the performance of his duties as such shall be conclusive evidence that such person is entitled to use such bridge, toll tunnel or ferry without the payment of toll.

Any toll gate keeper who shall refuse to permit the State Highway Commissioner, Commissioner of the Division of Motor Vehicles, the Superintendent of State Police, member of the Commission, or officer, agent or employee of the Department of Highways, Division of Motor Vehicles, or the Department of State Police to pass through such toll gate or over such toll bridge, toll tunnel or ferry, upon such declaration and presentation of such certificate, shall be guilty of a misdemeanor and punished by a fine of not more than fifty dollars, and not less than two dollars and fifty cents. Any person other than the State Highway Commissioner, the Commissioner of the Division of Motor Vehicles, the Superintendent of State Police, a member of the Commission, or officer, agent or employee of the Department of Highways, Division of Motor Vehicles or the Department of State Police who shall exhibit any such certificate and make such declaration for the purpose of using any toll bridge, toll tunnel or ferry shall be guilty of a misdemeanor and punished.

Source: § 33-11.

Note: The references to toll tunnels have been added.

— (§§ 33-174 through 33-191 are deleted. These sections relate to the operation of ferries and have no present application.)

Article 2. Chesapeake Bay Bridge and Tunnel District.

§ 33.1-253. Chesapeake Bay Bridge and Tunnel District.—Chapter 693 of the Acts of 1954, creating the Chesapeake Bay Ferry District, and creating the Chesapeake Bay Ferry Commission with authority to acquire and operate ferry projects within the District, is incorporated in this Code by this reference.

The following amendments to chapter 693 of the Acts of 1954, incorporated in this Code by this section, are also incorporated herein by this reference:

Chapter 462 of the Acts of 1956.

Chapter 228 of the Acts of 1962.

Chapter 605 of the Acts of 1962.

Chapter 348 of the Acts of 1964.

Chapter 714 of the Acts of 1956, conferring additional powers on the Chesapeake Bay Ferry Commission, is incorporated in this Code by this reference.

The following amendment to chapter 714 of the Acts of 1956, incorporated in this Code by this section, is also incorporated herein by this reference:

Chapter 24 of the Acts of 1959, Ex. Sess., changing the names of the Chesapeake Bay Ferry District and the Chesapeake Bay Ferry Commission to the Chesapeake Bay Bridge and Tunnel District and the Chesapeake Bay Bridge and Tunnel Commission.

Source: § 33-191.1.

Note: No change.

— (§§ 33-192 through 33-208 are deleted. §§ 33-192 to 33-201 all relate to ferries across the Elizabeth River, which matter is now handled by the Elizabeth River Tunnel Commission under its separate act. §§ 33-202 through 33-208 all relate to temporary State operation of ferries and have no present application.)

Article 3. Operation of Ferries by State Highway Commission.

§ 33.1-254. **Acquisition or establishment.**—The State Highway Commission may acquire by purchase, condemnation or gift any ferry within the State which forms a connecting link in a State highway and may purchase all equipment and other things necessary for the establishment of new ferries to become connecting links in the State highway systems, whenever it shall determine such action to be advisable and expedient. The Commission may expend from State highway construction funds of the highway district or districts where the ferries are located and are under its control at any time such sums as may be necessary to acquire or establish, maintain and operate any such ferry.

The Commission may operate such ferry either as a free or toll ferry and may establish a toll for the use of such ferry at such rates as are deemed by the Commission to be reasonable and proper without regulation by any other governmental body.

Source: § 33-209.

Note: The last sentence is added, incorporating provisions from other sections of the same article, making it possible to delete such other sections.

— (§§ 33-210 through 33-214 are deleted. All of these sections relate to ferry operations and are no longer needed.)

Article 4. Toll Bridges Generally.

§ 33.1-255. **Toll bridges; when privilege ceases.**—When an act is passed to authorize the erection of a toll bridge, if the work be not commenced within one year from the passage of such act or be not completed within two years after such commencement or if, after its completion, there be an abandonment of the bridge or a failure for three successive years to keep it in good order, the privileges granted by the act shall cease.

Source: § 33-215.
Note: No change.

§ 33.1-256. Bridge not to obstruct navigation or fish.—Every such bridge shall be so made as not to obstruct the navigation of the water course over which it is erected nor the passage of fish.

Source: § 33-216.
Note: No change.

§ 33.1-257. How right to demand tolls ascertained and rates fixed or changed.—No tolls shall be received for passing any such bridge until it shall appear to the circuit court of the county wherein the same is that it is completed according to the act authorizing it. The court shall ascertain whether it is or is not so completed by appointing three disinterested freeholders to view it. If they report in writing that it is so completed and their report be confirmed by the court, the person authorized to erect it, his heirs or assigns, may thenceforth demand and receive, on persons and things passing the same, tolls at the rates fixed by such act or, if none be so fixed, then at such rates as may, from time to time, be fixed by the State Corporation Commission or by law. Though rates of toll be specified in such act, they may, from time to time, be changed by law, unless in such act otherwise expressly provided.

Source: § 33-217.
Note: No change.

§§ 33.1-258. Appointment of special police.—The circuit court of any county, or the judge thereof in vacation, in which there is a toll bridge or its approaches, or the circuit court of any county, or the judge thereof in vacation, in which lies any part of any toll bridge, or bridges, or their approaches belonging to the same proprietor, but which bridge or bridges and/or their approaches lie in more than one county or counties, may, upon the application of such proprietor, appoint any employee of such proprietor, employed in and about the control or the operation of such bridge or bridges and approaches, a special police officer, who may exercise all the powers and duties imposed and conferred upon sheriffs in this State, in criminal matters, upon any such bridge, or bridges and their approaches. And such power shall extend throughout the State when such special police officer is actually in pursuit of a person accused of crime, or when acting under authority of a warrant duly issued for the arrest of a person charged with a crime. But no special policeman appointed under this section whose duties as such special policeman are merely incidental to such private employment shall be deemed to be an employee of the State or county or counties within which such bridges and their approaches lie, within the meaning of the Virginia Workmen's Compensation Act.

Source: § 33-218.
Note: No change.

§ 33.1-259. Qualifications of such police.—Before any such appointment is made the court, or judge thereof in vacation, shall be satisfied that such person has been a bona fide resident of this State for more than one year immediately preceding such appointment and is of good moral character. And before any such person shall be permitted to discharge any of the duties of such special policeman, he shall take the oath required by

law and shall give a bond payable to the Commonwealth of Virginia in the penalty of not less than five hundred dollars, conditioned for the faithful discharge of his official duties.

Source: § 33-219.

Note: No change.

§ 33.1-260. Salary and fees.—No salary shall be paid to any special police officer appointed under § 33.1-258 by the State or county, or counties, in which such properties lie; nor shall he receive any fees for making any arrest, executing any warrant, summoning a witness, or carrying a person to or from jail.

Source: § 33-220.

Note: No change.

§ 33.1-261. Permission required to erect or maintain toll bridges over navigable water.—No toll bridge erected after March nineteenth, nineteen hundred and twenty-eight, shall be constructed, maintained or operated across, in or over any navigable waters in or of this Commonwealth, anything in the charter of any company to the contrary notwithstanding, unless and until a permit therefor be first obtained from the State Highway Commission. The Commission may grant or withhold such permit or prescribe the terms and conditions thereof, as it may deem for the best interest of the State, except so far as such terms and conditions may be provided for herein.

Source: § 33-221.

Note: No change.

§ 33.1-262. Approval of plans by Commission; inspection; costs.—Before construction is commenced on any such bridge or approaches under any permit granted hereunder, detailed plans, estimates and specifications must be submitted to the Commission for approval and no such bridge shall be constructed unless and until such plans, estimates and specifications shall have been approved by the Commission. Access to such work at all times during construction shall be granted to the Commission, the Commissioner and authorized representatives of either. The permittee shall keep accurate records of the cost of such bridge and approaches and real and personal property used in the operation thereof and of all replacements and repairs and shall submit a copy thereof to the Commission.

Source: § 33-222.

Note: No change.

§ 33.1-263. Bridges deemed public utilities.—Every such bridge, unless and until it is acquired by the State, shall be deemed a public utility, and its rates and charges, tolls and rules and regulations shall be subject to the control and supervision of the State Corporation Commission as is, or may be provided by law for public utilities.

Source: § 33-223.

Note: The last sentence of § 33-223 is deleted. It provided: "When and if such bridge is acquired by the State it shall be deemed a part of the State Highway System". The sentence is considered unnecessary and perhaps unduly restrictive.

§ 33.1-264. Toll bridges may be purchased by State.—In addition to the power of eminent domain as provided by law for roads in the State

Highway System, the Commonwealth, acting through the State Highway Commissioner, may purchase any such bridge and the approaches thereto with the real estate and tangible personal property necessary for their proper operation, at such time as may be specified in the permit granted for such bridge, or at the expiration of any two-year period after such time, all at a price equal to the original cost, to be determined as herein-after provided, less depreciation.

In order to exercise the right of the Commonwealth to purchase and take over any such bridge and approaches and real estate and tangible personal property, the Commonwealth, through the Commissioner, shall give to the permittee, or its successor in title of record to such bridge and other property, not less than two months' notice of its intention so to do, specifying the date on which the conveyance will be required. Title to such bridge and approaches and property shall be vested in the Commonwealth free of lien at the time set out in such notice and upon the payment or offer of the purchase price determined in accordance with this article, to such permittee or successor in title of record to such bridge and other property, or to the trustee or trustees, or mortgagor or mortgagees in any deed of trust or mortgage on such property, or to the lien creditor or creditors, as their interest may appear of record.

The original cost of such bridge and approaches and real estate and tangible personal property shall be determined by the Commissioner and shall include the actual cost thereof and an additional amount equal to interest at the rate of six per cent per annum on the amount actually invested by such permittee, or successor in title of record, in such property, or in hand for investment therein, during the period of construction. There shall be included in "actual costs" all costs including the cost of improvements, financing charges, cost of traffic estimate and of engineering and legal expenses, plans, specifications and surveys, estimates of cost and of revenue, other expenses necessary or incident to determining the feasibility or practicability of the enterprise, administrative expenses and such other expenses as may be necessary or incident to the financing of the project and the placing of the project in operation. The Commissioner shall determine the depreciation and the reasonableness of each item of "actual cost."

Source: § 33-224.

Note: The word "Commissioner" is substituted for the word "Commission". The action taken under this section is taken by the Commissioner and not by the Commission.

§ 33.1-265. Conveyance of toll bridge by State.—In the event any such bridge, at the time it may be purchased by the State under the provisions of this article, is not on the line of a road then in one of the systems of State highways, the State Highway Commissioner may convey such bridge and approaches and other property to such county or counties in which it may be in whole or in part located, upon the payment by such county or counties of the amount paid by the State for such bridge and approaches and other property, with interest on such amount at six per centum per annum from the time of such payment by the State, such conveyance to be executed in the name and on behalf of the Commonwealth by the State Highway Commissioner.

Source: § 33-225.

Note: The words "one of the system of State highways" are substituted for the words "the State Highway System or the sec-

ondary system of State highways". Also, the word "Commissioner" is substituted for "Commission". The purpose of these changes is to broaden the language to cover all systems of State highways and to authorize the Commissioner to convey this property.

§ 33.1-266. Sections not applicable to certain bridges.—Nothing contained in the five preceding sections, however, shall be construed to apply to any bridge existing or under construction on March twentieth, nineteen hundred and twenty-eight or to bridges constructed within or adjacent to towns or cities having a population of more than three thousand five hundred.

Source: § 33-226.
Note: No change.

Article 5. State Revenue Bond Act.

§ 33.1-267. Short title.—This article shall be known, and may be cited, as the "State Revenue Bond Act."

Source: § 33-227.
Note: No change.

§ 33.1-268. Definitions.—As used in this article, the following words and terms shall have the following meanings:

(1) The word "*Commission*" shall mean the State Highway Commission or, if the State Highway Commission shall be abolished, any board, commission or officer succeeding to the principal functions thereof or upon whom the powers given by this article to the Commission shall be given by law.

(2) The word "*project*" or "*projects*" shall mean any one or more of the following:

(a) York River Bridge, extending from a point within the town of Yorktown, in York County, or within York County across the York river to Gloucester Point or some point in Gloucester County;

(b) Rappahannock River Bridge, extending from Greys Point, or its vicinity, in Middlesex County, across the Rappahannock river to a point in the vicinity of White Stone, in Lancaster County, or at some other feasible points in the general vicinity of the two respective points;

(d) James River Bridge, extending from or near the city of Hopewell across the James river to a point in Charles City County;

(e) James River Bridge, extending from Glasshouse Point, north of Jamestown, in James City County, across the James river to a point at or near Swann's Point, in Surry County;

(h) James river, Chuckatuck and Nansemond River Bridges, together with necessary connecting roads, in the city of Warwick and the counties of Isle of Wight and Nansemond;

(j) Hampton Roads Bridge, Tunnel, or Bridge and Tunnel System, extending from a point or points in the cities of Newport News, Hampton, or Warwick on the northwest shore of Hampton Roads across Hampton Roads to a point or points in the city of Norfolk or in the county of Norfolk on the southeast shore of Hampton Roads;

(k) The Norfolk-Virginia Beach Highway, extending from a point in the vicinity of the intersection of interstate route sixty-four and primary route fifty-eight at Norfolk to some feasible point between Londonbridge and primary route sixty; however, the project authorized by this subsection shall not be coupled or united with any other project or projects for the purpose of financing its construction and operation.

(l) The Henrico-James River Bridge, extending from a point on the eastern shore of the James river in Henrico County to a point on the western shore, between Falling Creek and Bells Road interchanges of the Richmond-Petersburg Turnpike; however, the project authorized by this subsection shall not be coupled or united with any other project or projects for the purpose of financing its construction and operation.

And shall be deemed to include all property, rights, easements and franchises relating to any of the foregoing projects and deemed necessary or convenient for the operation thereof and to include approaches thereto.

(3) The word "*undertaking*" shall mean all of the projects authorized to be acquired or constructed under this article.

(4) The word "*improvements*" shall mean such repairs, replacements, additions and betterments of and to a project acquired by purchase or by condemnation as are deemed necessary to place it in a safe and efficient condition for the use of the public, if such repairs, replacements, additions and betterments are ordered prior to the sale of any bonds for the acquisition of such project.

(5) The term "*cost of project*", as applied to a project to be acquired by purchase or by condemnation, shall include the purchase price or the amount of the award, cost of improvements, financing charges, interest during any period of disuse before completion of improvements, cost of traffic estimates and of engineering and legal expenses, plans, specifications and surveys, estimates of cost and of revenues, other expenses necessary or incident to determining the feasibility or practicability of the enterprises, administrative expenses and such other expenses as may be necessary or incident to the financing herein authorized and the acquisition of the project and the placing of the project in operation.

(6) The term "*cost of project*", as applied to a project to be constructed, shall embrace the cost of construction, the cost of all lands, properties, rights, easements and franchises acquired, which are deemed necessary for such construction, the cost of acquiring by purchase or condemnation any ferry which is deemed by the Commission to be competitive with any bridge to be constructed, the cost of all machinery and equipment, financing charges, interest prior to and during construction and for one year after completion of construction, cost of traffic estimates and of engineering data, engineering and legal expenses, cost of plans, specifications and surveys, estimates of cost and of revenues, other expenses necessary or incident to determining the feasibility or practicability of the enterprise, administrative expense and such other expenses as may be necessary or incident to the financing herein authorized, the construction of the project, the placing of the project in operation and the condemnation of property necessary for such construction and operation.

(7) The word "*owner*" shall include all individuals, incorporated companies, copartnerships, societies or associations having any title or

interest in any property rights, easements or franchises authorized to be acquired by this article.

Source: § 33-228.

Note: No change.

§ 33.1-269. General powers of Commission.—The State Highway Commission may, subject to the provisions of this article:

(1) Acquire by purchase or by condemnation, construct, improve, operate and maintain any one or more of the projects hereinbefore mentioned and included in the undertaking hereinbefore defined in this article.

(2) Issue revenue bonds of the State, to be known and designated as “State of Virginia Toll Revenue Bonds”, payable solely, from earnings to pay the cost of such projects;

(3) Fix and collect tolls and other charges for the use of such projects;

(4) Construct grade separations at intersections of any projects with public highways, streets or other public ways or places and change and adjust the lines and grades thereof so as to accommodate the same to the design of such grade separations, the cost of such grade separations and any damage incurred in changing and adjusting the lines and grades of such highways, streets, ways and places to be ascertained and paid by the Commission as a part of the cost of the project;

(5) Vacate or change the location of any portion of any public highway, street or other public way or place and reconstruct the same at such new location as the Commission shall deem most favorable for the project and of substantially the same type and in as good condition as the original highway, street, way or place. the cost of such reconstruction and any damage incurred in vacating or changing the location thereof to be ascertained and paid by the Commission as a part of the cost of the project, and any public highway, street or other public way or place vacated or relocated by the Commission shall be vacated or relocated in the manner provided by law for the vacation or relocation of public roads and any damages awarded on account thereof shall be paid by the Authority as a part of the cost of the project.

(6) Make reasonable regulations for the installation, construction, maintenance, repair, renewal and relocation of pipes, mains, sewers, conduits, cables, wires, towers, poles and other equipment and appliances herein called “public utility facilities,” of the Commonwealth and of any municipality, county, or other political subdivision or public utility or public service corporation owning or operating the same in, on, along, over or under the project, and whenever the Commission shall determine that it is necessary that any such public utility facilities should be relocated or removed, the Commonwealth or such municipality, county, political subdivision, public utility or public service corporation shall relocate or remove the same in accordance with the order of the Commission, provided, however, the cost and expense of such relocation or removal, including the cost of installing such public utility facilities in a new location or locations, and the cost of any lands or any rights or interests in lands, and any other rights acquired to accomplish such relocation or removal shall be ascertained and paid by the Commission as a part of the cost of the project, and the Commonwealth or such municipality, county, political subdivision, public utility or public service corporation may maintain and operate such public utility facilities with the necessary appurtenances, in

the new location or locations for as long a period and upon the same terms and conditions as it had the right to maintain and operate such public utility facilities in their former location or locations; and

(7) Acquire by the exercise of the power of eminent domain any lands, property, rights, rights of way, franchises, easements and other property, including public lands, parks, playgrounds, reservations, highways or parkways, or parts thereof or rights therein, of any municipality, county or other political subdivision, deemed necessary or convenient for the construction or the efficient operation of the project or necessary in the restoration, replacement or relocation of public or private property damaged or destroyed.

The cost of such projects shall be paid solely from the proceeds of State of Virginia Toll Revenue Bonds or from such proceeds and from any grant or contribution which may be made thereto pursuant to the provisions of this article.

Source: § 33-229.

Note: No change.

§ 33.1-270. Acquisition and construction of projects.—The Commission shall acquire or construct, as the case may be, under the provisions of this article, each of the projects included in the undertaking, at the earliest dates deemed by the Commission to be feasible for the acquisition or construction of each such project and the financing thereof under this article; provided, however, that if the Commission shall acquire any project which is, at the time of the passage of this article, in competition with any other named herein, which is not, at the same time acquired, such project so acquired shall not be operated so as to increase the competition existing as of January first, nineteen hundred and forty; nor shall any project which may be constructed under this article be so operated as to deprecate the value thereof.

Source: § 33-230.

Note: No change.

§ 33.1-271. Purchase of projects.—The Commission may acquire by purchase, whenever it shall deem such purchase expedient, any of the projects set forth in subsection (2) of § 33.1-268, upon such terms and at such prices as may be reasonable and can be agreed upon between the Commission and the owner thereof, title thereto to be taken in the name of the State. The Commission shall issue revenue bonds of the State, as hereinafter provided, to pay the cost of such acquisition.

Source: § 33-231.

Note: The words “numbered (c), (f), (g), (h) and (i) as” which appeared in § 33-231 after the word “projects” have been deleted for clarification and to broaden this section.

§ 33.1-272. Condemnation of projects and property.—The Commission, whenever a reasonable price cannot be agreed upon or whenever the owner is legally incapacitated or is absent or is unable to convey valid title or is unknown, may acquire by condemnation any project or projects contemplated by § 32.1-271 or interest or interests therein and any lands, rights, easements, franchises and other property deemed necessary or convenient for the improvement or the efficient operation of any project acquired or constructed under this article or for the purpose of constructing any project or portion thereof hereunder, or for securing a right of way leading to

any such project or its approaches, in the manner hereinafter provided. Such condemnation proceedings shall be conducted and the compensation to be paid shall be ascertained and paid in the manner provided by law with reference to the condemnation of property by the Commission for State highway purposes.

Title to any property condemned by the Commission shall be taken in the name of the State. The State shall be under no obligation to accept and pay for any property condemned or any cost incidental to any condemnation proceedings and shall, in no event, pay for the same except from the funds provided by this article; and in any condemnation proceedings, the court having jurisdiction of the suit, action or proceeding may make such orders as may be just to the State and to the owners of the property to be condemned and may require an undertaking or other security to secure such owners against any loss or damage to be sustained by reason of the failure of the State to accept and pay for the property, but such undertaking or security shall impose no liability upon the State, except such as may be paid from the funds provided under the authority of this article; provided, however, that condemnation shall not lie in any case when the State, in granting a franchise to any project named herein, has stipulated the terms upon which it may acquire such project.

Source: § 33-232.

Note: No change.

§ 33.1-273. Improvement of projects acquired.—The Commission, at or before the time any such project shall be acquired by purchase or by condemnation, shall determine what repairs, replacements, additions or betterments will be necessary to place the project in safe and efficient condition for the use of the public and shall cause an estimate of the cost of such improvement to be made. The Commission shall authorize such improvements before the sale of any revenue bonds for the acquisition of such project and the cost of such improvements shall be paid for out of the proceeds of such bonds.

Source: § 33-233.

Note: No change.

§ 33.1-274. Construction of projects.—The Commission may construct, whenever it shall deem such construction expedient, any of the projects set forth in subsection (2) of § 33.1-268. The Commission may purchase within this State, solely from funds provided under the authority of this article, such lands, structures, rights of way, franchises, easements and other interests in lands, including lands under water and riparian rights of any person, copartnership, association, railroad or other corporation, or municipality or political subdivision, deemed necessary for the construction of any project, upon such terms and at such prices as may be considered by it to be reasonable and can be agreed upon between it and the owner thereof and may take title thereto in the name of the State. The State hereby consents to the use of all lands lying under water, which are within the State and are necessary for the construction and operation of any project and the approaches and appurtenances thereto, which may be constructed under the provisions of this article. All public or private property damaged or destroyed in carrying out the powers granted hereunder shall be restored or repaired and placed in the original condition, as nearly as practicable, or adequate compensation made therefor, out of funds provided under the authority of this article.

Source: § 33-234.

Note: The words “numbered paragraphs (a), (b), (d), (e), (j) and (k) as” which follow the words “projects” in § 33-234 have been deleted for clarification and to broaden the section.

§ 33.1-275. Highway connections.—Upon the letting of a contract for the construction of a project under the provisions of this article, the Commission shall proceed with the construction of any highways which may be necessary to connect such project with State highways in the State and to complete the construction of such connecting highways on or before the date such project shall be opened for traffic.

Source: § 33-235.

Note: No change.

§ 33.1-276. Revenue bonds.—The Commission may provide by resolution, at one time or from time to time, for the issuance of revenue bonds of the State for the purpose of paying all or any part of the cost as hereinabove defined of any one or more projects as hereinabove defined. The principal and interest of such bonds shall be payable solely from the special fund herein provided for such payment.

Source: § 33-236.

Note: No change.

§ 33.1-277. Credit of State not pledged.—Revenue bonds issued under the provisions of this article shall not be deemed to constitute a debt of the State of Virginia or a pledge of the faith and credit of the State, but such bonds shall be payable solely from the funds herein provided therefor from tolls and revenues. All such bonds shall state on their face that the State of Virginia is not obligated to pay the same or the interest thereon except from the special fund provided therefor from tolls and revenues under this article, and that the faith and credit of the State are not pledged to the payment of the principal or interest of such bonds. The issuance of revenue bonds under the provisions of this article shall not directly or indirectly or contingently obligate the State to levy or to pledge any form of taxation whatever therefor or to make any appropriation for their payment, other than to appropriate available funds derived as revenues from tolls and charges collected under this article.

Source: § 33-237.

Note: No change.

§ 33.1-278. Form and terms of bonds.—The bonds of such issue shall be dated, shall bear interest at such rate or rates not exceeding six per centum per annum, payable semiannually and shall mature at such time or times, not exceeding forty years from their date or dates, as may be determined by the Commission, and may be made redeemable before maturity, at the option of the Commission, at such price or prices and under such terms and conditions as may be fixed by the Commission prior to the issuance of the bonds. The principal and interest of such bonds may be made payable in any lawful medium. The Commission shall determine the form of the bonds, including any interest coupons to be attached thereto, and shall fix the denomination or denominations of the bonds and the place or places of payment of principal and interest thereof, which may be at any bank or trust company within or without the State. The bonds shall be signed by the State Highway Commissioner and the official seal of the Commission shall be affixed thereto and attested by the secretary

of the Commission and any coupons attached thereto shall bear the facsimile signatures of the State Highway Commissioner. In case any officer whose signature shall appear on the bonds or coupons shall cease to be such officer before the delivery of such bonds, such signature shall nevertheless be valid and sufficient for all purposes the same as if he had remained in office until such delivery. All revenue bonds issued under the provisions of this article shall have and are hereby declared to have, as between successive holders, all the qualities and incidents of negotiable instruments under the negotiable instruments law of the State. Such bonds and the income thereof shall be exempt from all taxation within the State. The bonds may be issued in coupon or in registered form, or both, as the Commission may determine, and provision may be made for the registration of any coupon bond as to principal alone and also as to both principal and interest and for the reconversion of any bonds registered as to both principal and interest into coupon bonds. Prior to the preparation of definite bonds, the Commission may, under like restrictions, issue temporary bonds with or without coupons, exchangeable for definitive bonds upon the issuance of the latter. The Commission may also provide for the replacement of any bond which shall become mutilated or be destroyed or lost.

Source: § 238.

Note: No change.

§ 33.1-279. No other prerequisites to issue of bonds.—Such revenue bonds may be issued without any other proceedings or the happening of any other conditions or things than those proceedings, conditions and things which are specified and required by this article.

Source: § 239.

Note: No change.

§ 33.1-280. Sale of bonds; bonds as legal investments.—The Commission may sell such bonds in such manner and for such price as it may determine to be for the best interests of the State, but no such sale shall be made at a price so low as to require the payment of interest on the money received therefor at more than six per centum per annum, computed with relation to the absolute maturity of the bonds in accordance with standard tables of bond values, excluding, however, from such computations the amount of any premium to be paid on redemption for any bonds prior to maturity.

All bonds heretofore or hereafter issued pursuant to the authority of this article are hereby made securities in which all public officers and bodies of this State and all political subdivisions thereof, all insurance companies and associations, all national banks and trust companies, and savings institutions, including savings and loan associations, in the State, and all executors, administrators, trustees, and other fiduciaries, both individual or corporate, may properly and legally invest funds within their control.

Source: § 33-240.

Note: No change.

§ 33.1-281. Use of proceeds of sale of bonds.—The proceeds of such bonds shall be used solely for the payment of the cost of the project or projects for which they are issued and shall be disbursed by the Commission under such restrictions, if any, as the Commission may provide. If

the proceeds of the bonds of any issue, by error of estimates or otherwise, shall be less than the cost of the project or projects on account of which such bonds are issued, additional bonds may in like manner be issued to provide the amount of such deficit and unless otherwise provided in the resolution authorizing the issuance of the bonds or in the trust indenture hereinafter mentioned shall be deemed to be of the same issue and shall be entitled to payment from the same fund without preference or priority of the bonds first issued for the same project or projects. If the proceeds of bonds issued for any project or projects shall exceed the cost thereof, the surplus shall be paid into the fund hereinafter provided for the payment of principal and interest of such bonds.

Source: § 33-241.

Note: No change.

§ 33.1-282. Financing two or more projects together.—The Commission may, in its discretion, couple or unite into one unit for financing purposes any two or more of such projects, whether acquired by purchase or condemnation or constructed, and revenue bonds of a single issue may be issued for the purpose of paying the cost of any one or more projects, unless otherwise restricted by statute.

Source: § 33-242.

Note: The words “unless otherwise restricted by statute” are added. Certain projects mentioned in § 33.1-268 (2) are prohibited from being coupled with other projects for financing purposes and this additional language will remove any possible conflicts with the two statutes.

§ 33.1-283. All moneys to be trust funds.—All moneys received pursuant to the authority of this article, whether as proceeds from the sale of revenue bonds, as grants or other contributions, or as tolls and revenues, shall be held and applied solely as provided in this article. The Commission shall, in the resolution authorizing the issuance of bonds or in the trust indenture, provide for the payment of the proceeds of the sale of the bonds and the tolls and revenues to be received into the State treasury and carried on the books of the Comptroller in a special account and may provide for the turning over, transfer or paying over of such funds from the State treasury to any officer, agency, bank or trust company, who shall act as trustee of such funds, and hold and apply the same to the purposes hereof, subject to such regulations as this article and such resolution or trust indenture may provide.

All moneys paid into the State treasury pursuant to the provisions of this article are hereby appropriated to the Commission for the purpose of carrying out the provisions of this article; disbursements and payments of moneys so paid into the State treasury shall be made by the State Treasurer upon warrants of the State Comptroller which he shall issue upon vouchers signed by such person or persons as shall be designated by the Commission for such purpose.

Source: § 33-243.

Note: No change.

§ 33.1-284. Trust indenture.—In the discretion of the Commission, each or any issue of revenue bonds may be secured by a trust indenture by and between the Commission and a corporate trustee, which may be any trust company or bank having the powers of a trust company within

or outside of the State. Such trust indenture may pledge tolls and revenues to be received, but no such trust indenture shall convey or mortgage any project or any part thereof. Either the resolution providing for the issuance of revenue bonds or such trust indenture may contain such provisions for protecting and enforcing the rights and remedies of the bondholders as may be reasonable and proper and not in violation of law, including covenants setting forth the duties of the Commission in relation to the acquisition, construction, improvement, maintenance, operation, repair and insurance of the projects and the custody, safeguarding and application of all moneys. Such resolution or trust indenture may also provide that the project or projects shall be acquired, or acquired and improved, or constructed, and paid for under the supervision and approval of consulting engineers employed or designated by the Commission and satisfactory to the original purchasers of the bonds issued therefor and may also require that the security given by contractors and by any depository of the proceeds of the bonds or revenues of the project or projects or other moneys pertaining thereto be satisfactory to such purchasers. Any bank or trust company incorporated under the laws of this State may act as such depository and furnish such indemnifying bonds or pledge such securities as may be required by the Commission. Such indenture may set forth the rights and remedies of the bondholders and of the trustee and may restrict the individual right of action of bondholders as is customary in trust indentures securing bonds and debentures of corporations. In addition to the foregoing, such trust indenture may contain such other provisions as the Commission may deem reasonable and proper for the security of the bondholders. Except as in this article otherwise provided, the Commission may provide, by resolution or by such trust indenture, that after the payment of the proceeds of the sale of the bonds and the revenues of the project or projects into the State treasury the Commission will immediately transfer or pay same over to such officer, board or depository as it may determine for the custody thereof and for the method of disbursement thereof, with such safeguards and restrictions as it may determine. All expenses incurred in carrying out such trust indenture may be treated as a part of the cost of maintenance, operation and repairs of the project or projects affected by such indenture.

Source: § 244.

Note: No change.

§ 33.1-285. Tolls.—The Commission shall fix and revise from time to time as may be necessary tolls for the use of each project or projects on account of which bonds are used under the provisions of this article and shall charge and collect the same and may contract with any person, partnership, association or corporation desiring the use of such project or projects, approaches and appurtenances, and any part thereof, for placing thereon water, gas, oil pipelines, telephone, telegraph, electric light or power lines, or for any other purpose, and may fix the terms, conditions and rates and charges for such use. Such tolls shall be so fixed and adjusted, in respect of the aggregate of tolls from the project or projects on account of which a single issue of bonds is issued under this article, as to provide a fund sufficient with other revenues of such project or projects, if any, to pay (a) the cost of maintaining, repairing and operating such project or projects unless such cost shall be otherwise provided for and (b) such bonds and the interest thereon as the same shall become due. Such tolls shall not be subject to supervision or regulation by any other State commission, board, bureau or agency. Notwithstanding § 33.1-252 and § 22-277, as amended, it shall be unlawful for the State Highway De-

partment or any employee thereof to give or permit free passage over any project set forth in subsection (2) of § 33.1-268 which has been secured through the issuance of revenue bonds and which bonds are payable from the revenues of such project. Every vehicle and person shall pay the same toll as others similarly situated. The provisions hereof shall apply with full force and effect to vehicles and employees of the State government, governments of counties, cities and towns or other political subdivisions, and to vehicles and persons of all other categories and descriptions, public, private, eleemosynary or otherwise. There shall be excepted from the provisions of this section vehicles and persons in the employ of the State Department of Highways when actually engaged in the performance of their duties as such, and personnel and vehicles of the Virginia State Police and employees and vehicles of the Division of Motor Vehicles when actually engaged in the performance of their duties as such, local police officers, sheriffs and their deputies, and fire-fighting equipment and ambulances owned by a political subdivision or a nonprofit association or corporation, including passengers therein and operators thereof, when engaged in the performance of their official duties.

Source: § 245.

Note: No change.

§ 33.1-286. Sinking fund.—The tolls and all other revenues derived from the project or projects for which a single issue of bonds is issued, except such part thereof as may be required to pay the cost of maintaining, repairing and operating such project or projects and to provide such reserves therefor as may be provided for in the resolution authorizing the issuance of such bonds or in the trust indenture, shall be set aside at such regular intervals as may be provided in such resolution or such trust indenture, in a sinking fund which is hereby pledged to, and charged with the payment of: (1) The interest upon such bonds as such interest shall fall due, (2) the principal of the bonds as the same shall fall due, (3) the necessary charges of paying agents for paying principal and interest, and (4) any premium upon bonds retired by call or purchase as herein provided.

The use and disposition of such sinking fund shall be subject to such regulations as may be provided in the resolution authorizing the issuance of the bonds or in the trust indenture but, except as may otherwise be provided in such resolution or trust indenture, such sinking fund shall be a fund for all such bonds without distinction or priority of one over another. Subject to the provisions of the resolution authorizing the issuance of the bonds or of the trust indenture, any moneys in such sinking fund in excess of an amount equal to one year's interest on all bonds then outstanding may be applied to the purchase or redemption of bonds. All bonds so purchased or redeemed shall forthwith be cancelled and shall not again be issued.

Source: § 33-246.

Note: No change.

§ 33.1-287. Cessation of tolls.—When the particular revenue bonds issued for any project or projects and the interest thereon shall have been paid, or a sufficient amount shall have been provided for their payment and shall continue to be held for that purpose, the Commission shall cease to charge tolls for the use of such project or projects and thereafter such project or projects shall be free; provided, however, that the Commission may thereafter charge tolls for the use of any such project in the event

that tolls are required for maintaining, repairing and operating such project due to the lack of funds from other sources than tolls or in the event that such tolls shall have been pledged by the Commission to the payment of revenue bonds issued under the provisions of the article for another project or projects. But any such pledge of tolls of a project to the payment of bonds issued for another project shall not be effectual until the principal and interest of the bonds issued for the first mentioned project shall have been paid or provision made for their payment.

Source: § 33-247.

Note: No change.

§ 33.1-288. Use of certain funds by Commission.—The Commission may, in its discretion, use any part of funds available for the construction of State highways, in any construction district in which any project is wholly or partly located, to aid in the payment of the cost of such projects and for the payment, purchase or redemption of revenue bonds issued in connection with any such project, or in connection with any such project and any one or more other projects. The Commission may also, in its discretion, use any part of funds available for the maintenance of State highways, in any construction district in which any project is wholly or partly located, to provide for the operation, maintenance and repair of any such project and for the payment of interest on revenue bonds issued in connection with any such project, or in connection with any such project and any one or more other projects.

Provided, however, that in the event the Commission uses any part of the fund available to itself for the construction of roads in the State Highway System without reference to construction districts, commonly called the “gap fund”, for any purpose permitted by this section, it shall not expend in excess of three-eighth of the amount of such fund, including other amounts of such fund that may be expended in the three districts in which such projects are located; and provided further that in no case shall any of the funds of any construction district other than those in which the projects are located be used for the purposes of this article.

Source: § 33-248.

Note: No change.

§ 33.1-289. Contributions.—The Commission, in addition to the revenues which may be received from the sale of revenue bonds and from the collection of tolls and other revenues derived under the provisions of this article, shall have authority to receive and accept from any federal agency or other public or private body contributions of either money or property or other things of value, to be held, used and applied for the purposes in this article provided.

Source: § 33-249.

Note: No change.

§ 33.1-290. Remedies of bondholders and trustee.—Any holder of revenue bonds issued under the provisions of this article or any of the coupons attached thereto and the trustee under the trust indenture, if any, except to the extent the rights herein given may be restricted by resolution passed before the issuance of the bonds or by the trust indenture, may, either at law or in equity, by suit, action, mandamus or other proceedings protect and enforce any and all rights under the laws of the United States or of this State or granted hereunder or under such resolution or trust

indenture and may enforce and compel performance of all duties required by this article, or by such resolution or trust indenture, to be performed by the State or by the Commission, or any officer thereof, including the fixing, charging, and collecting of tolls for the use of such project or projects.

Source: § 33-250.

Note: No change.

§ 33.1-291. Competing bridges, ferries and tunnels.—No bridge or tunnel other than those specified in § 33.1-268 for the use of the traveling public shall hereafter be constructed and operated by the State or by any county, municipal corporation or political subdivision of the State, or by any agency or instrumentality, copartnership, association or corporation, within ten miles of any terminus of any project acquired or constructed under the provisions of this article, and no franchise shall hereafter be granted for the operation of a ferry within ten miles of any projects for the acquisition or construction of which revenue bonds shall have been authorized under this article, except under a written permit granted by the Commission, which is hereby exclusively authorized to grant such permits under the terms and conditions hereof. No such permit shall be granted by the Commission until it shall ascertain by an investigation, including a hearing upon such notice and under such rules as the Commission may prescribe that there is an urgent public need for the operation of such bridge, tunnel or ferry and that its operation will not affect the revenues of any such project of the State so as to impair the security of any revenue bonds issued for the acquisition or construction of such project.

The distance of ten miles hereinabove mentioned in this section shall be measured in a straight line between the nearest points of such projects. However, nothing in this article shall apply to an existing ferry route, temporarily discontinued, if said ferry was established prior to 1940.

Source: § 33-251.

Note: The entire second paragraph of § 33-251 has been deleted. The project referred to in that paragraph has been completed and the purpose for the paragraph no longer exists.

§ 33.1-292. Incidental powers of the Commission.—The Commission may make and enter into all contracts or agreements necessary or incidental to the execution of its powers under this article and may employ engineering, architectural and construction experts and inspectors, brokers and such other employees as may be deemed necessary, who shall be paid such compensation as may be provided in accordance with law. All such compensation and all expenses incurred in carrying out the provisions of this article shall be paid solely from funds provided under the authority of this article and no liability or obligation shall be incurred hereunder beyond the extent to which money shall have been provided under the authority of this article. The Commission may exercise any powers which are necessary or convenient for the execution of its powers under this article.

The Commission shall maintain and keep in good condition and repair, or cause to be maintained and kept in good condition and repair, the projects authorized under this article, when acquired or constructed and opened to traffic, including any project or part thereof that may include portions of existing streets or roads within a county, municipality or other political subdivision.

The Commission is authorized and empowered to establish rules and regulations for the use of any one or more of the projects defined in §§ 33.1-268, as amended, including reasonable rules and regulations relating to (a) maximum and minimum speed limits applicable to motor vehicles using such project, any other provision of law to the contrary notwithstanding; (b) the types, kinds and sizes of vehicles which may use such projects; (c) the nature, size, type of materials or substances which shall not be transported over such project and (d) such other matters as may be necessary or expedient in the interest of public safety with respect to the use of such project; provided, however, that as to project (j) authorized under the terms of § 33.1-268, the provisions of (a), (b), (c) and (d) of this paragraph shall not apply to existing streets within a municipality and embraced within said project, except as may be otherwise agreed upon by the Commission and the municipality.

The projects acquired or constructed under this article may be policed in whole or in part by officers of the Department of State Police even though all or some portions of any such projects lie within the corporate limits of a municipality or other political subdivision. Such officers shall be under the exclusive control and direction of the Superintendent of State Police and shall be responsible for the preservation of public peace, prevention of crime, apprehension of criminals, protection of the rights of persons and property, and enforcement of the laws of the Commonwealth, and rules and regulations enacted pursuant thereto, within the limits of any such projects. All other police officers of the Commonwealth and of each county, city, town or other political subdivision of the Commonwealth through which any project, or portion thereof, extends shall have the same powers and jurisdiction within the limits of such projects as they have beyond such limits and shall have access to the projects at any time for the purpose of exercising such powers and jurisdiction.

The Commission is authorized and empowered to employ and appoint "project guards" for the purpose of protecting the projects and to enforce the rules and regulations of the Commission, except those paralleling State law, established for the use of such projects. Such guards may issue summons to appear or arrest on view without warrant and conduct before the nearest officer authorized by law to admit to bail, any persons violating, within or upon the projects, any such rule or regulation. The provisions of §§ 46.1-178 and 46.1-179 of the Code shall apply mutatis mutandis to the issuance of summons or arrests without warrants pursuant to this section.

The violation of any rule or regulation adopted by the Commission pursuant to the authority hereby granted shall be punishable as follows: If such violation would have been a violation of law if committed on any public road, street or highway in the county, city or town in which such violation occurred, it shall be punishable in the same manner as if it had been committed on such public road, street or highway; otherwise it shall be punishable as a misdemeanor.

The powers and duties of the Commission hereinabove enumerated in this article shall not be construed as a limitation of the general powers or duties of the Commission. The Commission, in addition to the powers and duties enumerated in this article, shall do and perform any and all things and acts necessary in the construction or acquisition, maintenance and operation of any project to be constructed or acquired under the provisions of this article, to the end that such project or projects may become and be operated free of tolls as early as possible and practicable, subject

only to the express limitations of this article and the limitations of other laws and constitutional provisions applicable thereto.

Source: § 33-252.

Note: No change.

§ 33.1-293. Revenue refunding bonds and revenue bonds for combined purposes.—Notwithstanding any of the other provisions of this article and without regard to any other restrictions or limitations contained in this article, the Commission is hereby authorized to provide by resolution (a) for the issuance of revenue refunding bonds of the State for the purpose of refunding any revenue bonds issued under the provisions of this article and then outstanding, including interest to the earliest call date of such outstanding bonds and premiums, if any, payable on such call date, and (b) for the issuance of a single issue of revenue bonds of the State for the combined purpose of providing funds (i) to pay the cost of either or both of the projects described in paragraphs (b) and (j) of subsection (2) of § 33.1-268 of this article in event the Commission has decided or shall decide to construct either or both of said projects under authority heretofore granted, and (ii) to refund revenue bonds of the State theretofore issued under the provisions of this article and then outstanding, including interest to the earliest call date of such outstanding bonds and premiums, if any, payable on such call date. For the purposes of this § 33.1-293, the word “project” shall, in relation to the project described in said paragraph (j), include approach highways thereto and bus facilities for the transportation of passengers through or over said project if the Commission shall deem it advisable to construct such approach highways or acquire such bus facilities; and the term “cost of the project” shall, in relation to the projects described in said paragraphs (b) and (j), include an amount sufficient to reimburse the Commission for expenditures or advances theretofore made by the Commission on account of the cost of either or both of said projects, and shall, in relation to the project described in said paragraph (j), include provision of a sum, deemed by the Commission to be sufficient for the purpose, to be utilized by the Commission for the payment of employment severance benefits to employees of the Commission rendering services in connection with the projects mentioned in paragraphs (g) and (i) of subsection (2) of said § 33.1-268 and shall include the cost of constructing approach highways and of providing bus facilities if the Commission shall deem it expedient to construct such approach highways or acquire such facilities as a part of the project described in said paragraph (j). In the event bonds shall be issued for the combined purpose set forth in clause (b) of this section, such amount of the proceeds of such bonds as may be required, together with other funds available for such purpose, for the redemption of the outstanding bonds to be refunded shall be deposited by the Commission in trust with the trustee under the trust indenture securing such outstanding bonds for the sole and exclusive purpose of paying and redeeming such bonds, and the balance of such proceeds shall be used solely for the payment of the cost of the project or projects to be constructed.

The issuance of such bonds, the maturities and other details thereof, the rights of the holders thereof and the duties of the State and of the Commission in respect to the same shall be governed by the foregoing provisions of this article in so far as the same may be applicable.

Source: § 33-253.

Note: No change.

Article 6. State Turnpike Projects.

§ 33.1-294. Article provides alternative method.—This article shall be deemed to provide an additional and alternative method for the doing of the things authorized hereby and shall be regarded as supplemental and additional to powers conferred by other laws and shall not be regarded as in derogation of any powers now existing.

Source: § 33-254.
Note: No change.

§ 33.1-295. Article liberally construed.—This article, being necessary for the welfare of the State and its inhabitants, shall be liberally construed to effect the purposes hereof.

Source: § 33-255.
Note: No change.

§ 33.1-296. Projects authorized.—In order to provide for the construction of modern express highways or superhighways embodying safety devices, including center division, ample shoulder widths, long sight distances, grade separations at intersections with other highways and railroads, and thereby facilitate vehicular traffic, remove many of the present handicaps and hazards on the congested highways in the Commonwealth, and promote the agricultural and industrial development of the Commonwealth, the State Highway Commission of Virginia is hereby authorized and empowered to construct, maintain, repair and operate turnpike projects (as hereinafter defined), and to issue revenue bonds of the Commonwealth, payable solely from revenues, and any other funds made available to the Commission for such purpose, to finance such projects.

Source: § 33-255.1.
Note: No change.

§ 33.1-297. Credit of the Commonwealth not pledged.—Revenue bonds issued under the provisions of this article shall not be deemed to constitute a debt of the Commonwealth or of any political subdivision thereof or a pledge of the faith and credit of the Commonwealth or of any such political subdivision but all such bonds shall be payable solely from tolls and revenues and any other funds made available to the Commission for such purpose. All such revenue bonds shall contain on the face thereof a statement to the effect that the Commonwealth shall not be obligated to pay the same or the interest thereon except from the special fund provided therefor from tolls and revenues of the project for which they are issued and any other funds made available to the Commission for such purpose, and that neither the faith and credit nor the taxing power of the Commonwealth is pledged to the payment of the principal of or interest on such bonds.

Except as otherwise provided in this article, all expenses incurred in carrying out the provisions of this article shall be payable solely from funds provided under the authority of this article and no liability or obligation shall be incurred by the Commission hereunder beyond the extent to which money shall have been provided under the provisions of this article.

Source: § 33-255.2.
Note: No change.

§ 33.1-298. Definitions.—As used in this article, the following words and terms shall have the following meanings, unless the context shall indicate another or different meaning or intent:

(a) The word “*Commission*” shall mean the State Highway Commission or, if said Commission shall be abolished, the board, body or commission succeeding to the principal functions thereof or to whom the powers given by this article to the Commission shall be given by law.

(b) The word “*project*” or the words “*turnpike project*” shall mean any express highway or superhighway constructed under the provisions of this article by the Commission, including all bridges, tunnels, overpasses, underpasses, interchanges, entrance plazas, approaches, toll houses, service stations, and administration, storage and other buildings and facilities which the Commission may deem necessary for the operation of such project, together with all property, rights, easements and interest which may be acquired by the Commission for the construction or the operation of such project.

(c) The word “*cost*” as applied to a turnpike project shall embrace the cost of construction, the cost of the acquisition of all land, rights of way, property, rights, easements and interests acquired by the Commission for such construction, the cost of demolishing or removing any buildings or structures on land so acquired, including the cost of acquiring any lands to which such buildings or structures may be moved, the cost of all machinery and equipment, financing charges, interest prior to and during construction and, if deemed advisable by the Commission, for one year after completion of construction, cost of traffic estimates and of engineering and legal expenses, plans, specifications, surveys, estimates of cost and of revenues, other expenses necessary or incident in determining the feasibility or practicability of constructing any such project, administrative expense, and such other expense as may be necessary or incident to the construction of the project, the financing of such construction and the placing of the project in operation. Any obligation or expense hereafter incurred by the Commission for traffic surveys, borings, preparation of plans and specifications, and other engineering services in connection with the construction of a project shall be regarded as a part of the cost of such project and shall be reimbursed to the Commission out of the proceeds of turnpike revenue bonds hereinafter authorized.

(d) The words “*public highways*” shall include all public highways, roads and streets in the Commonwealth, whether maintained by the Commonwealth or by any county, city, town or other political subdivision.

(e) The word “*bonds*” or the words “*turnpike revenue bonds*” shall mean revenue bonds of the Commonwealth authorized under the provisions of this article.

(f) The word “*owner*” shall include all individuals, copartnerships, associations or corporations having any title or interest in any property, rights, easements and interests authorized to be acquired by this article.

Source: § 33-255.3.

Note: No change.

§ 33.1-299. General grant of powers.—The Commission is hereby authorized and empowered:

(a) To construct, maintain, repair and operate turnpike projects at such locations within the Commonwealth as may be determined by the Commission and approved by the Governor; provided, however, the Commission shall have no power to fix, charge or collect tolls for transit over any existing free public highway;

(a1) To designate any project constructed under the provisions of this article as a portion of one of the systems of State highways and to assign an appropriate number therefor;

(b) To issue turnpike revenue bonds of the Commonwealth payable solely from the toll and revenues pledged for their payment, including any other funds made available to the Commission for the purpose of paying the cost of any turnpike project, all as provided in this article;

(c) To fix and revise from time to time and charge and collect tolls for transit over each turnpike project constructed by it;

(d) To establish rules and regulations for the use of any such turnpike project;

(e) To acquire, hold and dispose of real and personal property in the exercise of its powers and the performance of its duties under this article;

(f) To designate the locations, and establish, limit and control such points of ingress to and egress from each turnpike project as may be necessary or desirable in the judgment of the Commission to insure the proper operation and maintenance of such project, and to prohibit entrance to such project from any point or points not so designated;

(g) To make and enter into all contracts and agreements necessary or incidental to the performance of its duties and the execution of its powers under this article;

(h) To employ, in its own discretion and without further approval, consulting engineers, attorneys, accountants, construction and financial experts, superintendents, managers, and such other employees and agents as may be necessary in its judgment, and to fix their compensation;

(i) To receive and accept from any federal agency grants for or in aid of the construction of any turnpike project, and to receive and accept aid or contributions from any source of either money, property, labor or other things of value, to be held, used and applied only for the purposes for which such grants and contributions may be made; and

(j) To do all acts and things necessary or convenient to carry out the powers expressly granted in this article.

Source: § 33-255.4.

Note: No change.

§ 33.1-300. Acquisition of property.—The Commission is hereby authorized and empowered to acquire by purchase, whenever it shall deem such purchase expedient, solely from funds provided under the authority of this article, such lands, structures, property, rights, rights of way, franchises, easements and other interests in lands, including lands lying under water and riparian rights, which are located within the Commonwealth, as it may deem necessary or convenient for the construction and operation of any project, upon such terms and at such prices as may be considered by it to be reasonable and can be agreed upon between it and the owner thereof, and to take title thereto in the name of the Commonwealth.

Whenever a reasonable price cannot be agreed upon, or whenever the owner is legally incapacitated or is absent, unknown or unable to convey valid title, the Commission is hereby authorized and empowered to acquire by condemnation or by the exercise of the power of eminent domain any lands, property, rights, rights of way, franchises, easements and other property, including public lands, parks, playgrounds, reservations, highways or parkways, or parts thereof or rights therein, of any person, co-partnership, association, railroad, public service, public utility or other corporation, or municipality or political subdivision deemed necessary or convenient for the construction or the efficient operation of any project or necessary in the restoration of public or private property damaged or destroyed. Such proceedings shall be in accordance with and subject to the provisions of any and all laws applicable to condemnation of property in the name of the State Highway Commissioner under the laws of the State of Virginia. Title to any property acquired by the Commission shall be taken in the name of the Commonwealth. In any condemnation proceedings the court having jurisdiction of the suit, action or proceeding may make such orders as may be just to the Commission and to the owners of the property to be condemned and may require an undertaking or other security to secure such owners against any loss or damage by reason of the failure of the Commission to accept and pay for the property, but neither such undertaking or security nor any act or obligation of the Commission shall impose any liability upon the Commonwealth except as may be paid from the funds provided under the authority of this article.

If the owner, lessee or occupier of any property to be condemned shall refuse to remove his personal property therefrom or give up possession thereof, the Commission may proceed to obtain possession in any manner now or hereafter provided by law.

With respect to any railroad property or right of way upon which railroad tracks are located, any powers of condemnation or of eminent domain may be exercised to acquire only an easement interest therein which shall be located either sufficiently far above or sufficiently far below the grade of any railroad track or tracks upon such railroad property so that neither the proposed project nor any part thereof, including any bridges, abutments, columns, supporting structures and appurtenances, nor any traffic upon it shall interfere in any manner with the use, operation or maintenance of the trains, tracks, works or appurtenances or other property of the railroad nor endanger the movement of the trains or traffic upon the tracks of the railroad. Prior to the institution of condemnation proceedings for such easement over or under railroad property or right of way, plans and specifications of the proposed project showing compliance with the above-mentioned above or below grade requirements and showing sufficient and safe plans and specifications of such overhead or undergrade structure and appurtenances shall be submitted to the railroad for examination and approval. If the railroad fails or refuses within thirty days to approve the plans and specifications so submitted, the matter shall be submitted to the Corporation Commission, as to the sufficiency and safety of such plans and specifications and as to such elevations or distances above or below the tracks. Said overhead or undergrade structure and appurtenances shall be constructed only in accordance with such plans and specifications and in accordance with such elevations or distances above or below the tracks so approved by the railroad or the Corporation Commission as the case may be. A copy of the plans and specifications approved by the railroad or the Corporation Commission shall be filed as an exhibit with the petition for condemnation. The cost of any such overhead or undergrade projects and appurtenances and any expense and cost in-

curred in changing, adjusting, relocating or removing the lines and grades of such railroad in connection with any such projects shall be paid by the Commission as a part of the cost of such turnpike project.

Source: § 33-255.5.

Note: No change.

§ 33.1-301. Incidental powers.—The Commission shall have power to construct grade separations at intersections of any turnpike project with public highways and to change and adjust the lines and grades of such highways so as to accommodate the same to the design of such grade separation. The cost of such grade separations and any damage incurred in changing and adjusting the lines and grades of such highways shall be ascertained and paid by the Commission as a part of the cost of such turnpike project.

If the Commission shall find it necessary to change the location of any portion of any public highway, it shall cause the same to be reconstructed at such location as the Commission shall deem most favorable and of substantially the same type and in as good condition as the original highway. The cost of such reconstruction and any damage incurred in changing the location of any such highway shall be ascertained and paid by the Commission as a part of the cost of such turnpike project.

Any public highway affected by the construction of any turnpike project may be vacated or relocated by the Commission in the manner now provided by law for the vacation or relocation of public roads, and any damages awarded on account thereof shall be paid by the Commission as a part of the cost of such project.

In addition to the foregoing powers, the Commission and its authorized agents and employees may enter upon any lands, waters and premises in the Commonwealth for the purpose of making surveys, soundings, drillings and examinations as they may deem necessary or convenient for the purposes of this article, and such entry shall not be deemed a trespass, nor shall an entry for such purposes be deemed an entry under any condemnation proceedings which may be then pending. The Commission shall make reimbursement for any actual damage resulting to such lands, waters and premises as a result of such activities.

The Commission shall also have power to make reasonable regulations for the installation, construction, maintenance, repair, renewal, relocation and removal of tracks, pipes, mains, conduits, cables, wires, towers, poles and other equipment and appliances (herein called "public utility facilities") of any public utility in, on, along, over or under any turnpike project. Whenever the Commission shall determine that it is necessary that any such public utility facilities which now are, or hereafter may be, located in, on, along, over or under any turnpike project should be relocated in such turnpike project, or should be removed from such turnpike project, the public utility owning or operating such facilities shall relocate or remove the same in accordance with the order of the Commission; provided, however, that the cost and expenses of such relocation or removal, including the cost of installing such facilities in a new location or new locations, and the cost of any lands, or any rights or interest in lands, and any other rights, acquired to accomplish such relocation or removal, shall be ascertained and paid by the Commission as a part of the cost of such turnpike project. In case of any such relocation or removal of facilities, the public utility owning or operating the same, its successors or assigns, may maintain and operate such facilities, with the necessary appurtenances, in the

new location or new locations, for as long a period, and upon the same terms and conditions, as it had the right to maintain and operate such facilities in their location or locations.

The Commonwealth hereby consents to the use of all lands owned by it, including lands lying under water, which are deemed by the Commission to be necessary for the construction or operation of any turnpike project.

Source: § 33-255.6.

Note: No change.

§ 33.1-302. Turnpike revenue bonds.—The Commission is hereby authorized to provide by resolution, at one time or from time to time, for the issuance of turnpike revenue bonds of the Commonwealth for the purpose of paying all or any part of the cost of any turnpike project. The principal of and the interest on such bonds shall be payable solely from the funds herein provided for such payment and any other funds made available to the Commission for such purpose. The bonds of each issue shall be dated, shall bear interest at such rate or rates not exceeding six per centum per annum, shall mature at such time or times not exceeding forty years from their date or dates, as may be determined by the Commission, and may be made redeemable before maturity, at the option of the Commission, at such price or prices and under such terms and conditions as may be fixed by the Commission prior to the issuance of bonds. The Commission shall determine the form of the bonds, including any interest coupons to be attached thereto, and shall fix the denomination or denominations of the bonds and the place or places of payment of principal and interest, which may be at any bank or trust company within or without the Commonwealth. The bonds shall be signed by the State Highway Commissioner or shall bear his facsimile signature, and the official seal of the Commission shall be impressed thereon and attested by the secretary of the Commission, and any coupons attached thereto shall bear the facsimile signature of the chairman of the Commission. In case any officer whose signature or a facsimile of whose signature shall appear on any bonds or coupons shall cease to be such officer before the delivery of such bonds, such signature or such facsimile shall nevertheless be valid and sufficient for all purposes the same as if he had remained in office until such delivery. All bonds issued under the provisions of this article shall have and are hereby declared to have all the qualities and incidents of negotiable instruments under the negotiable instruments law of the Commonwealth. The bonds may be issued in coupon or in registered form, or both, as the Commission may determine, and provision may be made for the registration of any coupon bonds as to principal alone and also as to both principal and interest, and for the reconversion into coupon bonds of any bonds registered as to both principal and interest. The Commission may sell such bonds in such manner and for such price as it may determine will best effect the purposes of this article.

The proceeds of the bonds of each issue shall be used solely for the payment of the cost of the turnpike project for which such bonds shall have been issued, and shall be disbursed in such manner and under such restrictions, if any, as the Commission may provide in the resolution authorizing the issuance of such bonds or in the trust agreement hereinafter mentioned securing the same. If the proceeds of the bonds of any issue, by error of estimates or otherwise, shall be less than such cost, additional bonds may in like manner be issued to provide the amount of such deficit, and unless otherwise provided in the resolution authorizing the issuance of such bonds

or in the trust agreement securing the same, shall be deemed to be of the same issue and shall be entitled to payment from the same fund without preference or priority of the bonds first issued. If the proceeds of the bonds of any issue shall exceed such cost, the surplus shall be deposited to the credit of the sinking fund for such bonds.

Prior to the preparation of definitive bonds the Commission may, under like restrictions, issue interim receipts of temporary bonds, with or without coupons, exchangeable for definitive bonds when such bonds shall have been executed and are available for delivery. The Commission may also provide for the replacement of any bonds which shall become mutilated or shall be destroyed or lost. Bonds may be issued under the provisions of this article without obtaining the consent of any department, division, commission, board, bureau or agency of the Commonwealth, and without any other proceedings or the happening of any other conditions or things than those proceeding, conditions or things which are specifically required by this article.

Source: § 33-255.7.

Note: No change.

§ 33.1-303. Trust agreement.—In the discretion of the Commission any bonds issued under the provisions of this article may be secured by a trust agreement by and between the Commission and a corporate trustee, which may be any trust company or bank having the powers of a trust company within or without the Commonwealth. Such trust agreement or the resolution providing for the issuance of such bonds may pledge or assign the tolls and other revenues to be received including any other funds made available to the Commission for such purpose, but shall not convey or mortgage any turnpike project or any part thereof. Such trust agreement or resolution providing for the issuance of such bonds may contain such provisions for protecting and enforcing the rights and remedies of the bondholders as may be reasonable and proper and not in violation of law, including covenants setting forth the duties of the Commission in relation to the acquisition of property and the construction, improvement, maintenance, repair, operation and insurance of the turnpike project in connection with which such bonds shall have been authorized, and the rates of toll to be charged, and the custody, safeguarding and application of all moneys. It shall be lawful for any bank or trust company incorporated under the laws of the Commonwealth which may act as depository of the proceeds of bonds or of revenues to furnish them indemnifying bonds or to pledge such securities as may be required by the Commission. Such trust agreement or resolution may contain a covenant that, at all times while any bonds issued hereunder for the project shall be outstanding, the Commission will pay all costs of maintenance, repair and operation of such project from funds available to it for the maintenance of State highways. Any such trust agreement may set forth the rights and remedies of the bondholders and of the trustee, and may restrict the individual right of action by bondholders. In addition to the foregoing, any such trust agreement or resolution may contain such other provisions as the Commission may deem reasonable and proper for the security of the bondholders. All expenses incurred in carrying out the provisions of such trust agreement or resolution may be treated as a part of the cost of the operation of the turnpike project.

Source: § 255.8.

Note: No change.

§ 33.1-304. Revenues.—The Commission is hereby authorized to fix, revise, charge and collect tolls for the use of each turnpike project and the different parts or sections thereof, and to contract with any person, partnership, association or corporation desiring the use of any part thereof, including the right of way adjoining the paved portion, for placing thereon telephone, telegraph, electric light or power lines, gas stations, garages, stores, hotels and restaurants, or for any other purpose except tracks for railroad or railway use, and to fix the terms, conditions, rents and rates of charges for such use, provided, that a sufficient number of the aforementioned facilities shall be authorized to be established in each service area along any such turnpike project to permit reasonable competition by private business in the public interest. Such tolls shall be fixed and adjusted in respect of the aggregate of tolls from the turnpike project in connection with which the bonds of any issue shall have been issued as to provide a fund sufficient with other revenues, if any, to pay (a) the cost of maintaining, repairing and operating such turnpike project and (b) the principal of and interest on such bonds as the same shall become due and payable, and to create reserves for such purposes. Such tolls shall not be subject to supervision or regulation by any other commission, board, bureau or agency of the Commonwealth. The tolls and all other revenues derived from the turnpike project in connection with which the bonds of any issue shall have been issued, except such part thereof as may be necessary to pay such cost of maintenance, repair and operation and to provide such reserves therefor as may be provided for in the resolution authorizing the issuance of such bonds or in the trust agreement securing the same, shall be set aside at such regular intervals as may be provided in such resolution or such trust agreement in a sinking fund which is hereby pledged to, and charged with, the payment of the principal of and the interest on such bonds as the same shall become due, and the redemption price or the purchase price of bonds retired by call or purchase as therein provided. Such pledge shall be valid and binding from the time when the pledge is made; the tolls or other revenues or other moneys so pledged and thereafter received by the Commission shall immediately be subject to the lien of such pledge without any physical delivery thereof or further act, and the lien of any such pledge shall be valid and binding as against all parties having claims of any kind in tort, contract or otherwise against the Commission, irrespective of whether such parties have notice thereof. Neither the resolution nor any trust agreement by which a pledge is created need be filed or recorded except in the records of the Commission. The use and disposition of moneys to the credit of such sinking fund shall be subject to the provisions of the resolution authorizing the issuance of such bonds or of such trust agreement. Except as may otherwise be provided in such resolution or such trust agreement, such sinking fund shall be a fund for all such bonds without distinction or priority of one over another.

Notwithstanding the provisions of the foregoing paragraph of this section, the Commission may provide that no tolls shall be charged on any project during any period for which there are available to the Commission from sources other than tolls amounts sufficient to meet the maintenance, repair, operation, sinking fund and reserve requirements of the resolution authorizing the issuance of bonds for such project or of the trust agreement securing such bonds, and may also provide that the tolls on any such project may be reduced upon compliance with the conditions, restrictions and limitations contained in such resolution or trust agreement. During any such period the Commission shall collect any rates and charges other than tolls, and such rates and charges shall remain subject to the provisions of such resolution or trust agreement applicable thereto.

Any funds made available to the Commission to meet the sinking fund requirements of the resolution authorizing the issuance of bonds for any project or of the trust agreement securing such bonds shall be paid by the Commission into the sinking fund for such bonds from time to time as shall be necessary to meet such requirements.

Source: § 33-255.9.

Note: No change.

§ 33.1-305. Trust funds.—All moneys received pursuant to the authority of this article, whether as proceeds from the sale of bonds or as revenues, shall be deemed to be trust funds to be held and applied solely as provided in this article. The Commission shall, in the resolution authorizing the bonds of any issue or in the trust agreement securing such bonds, provide for the payment of the proceeds of the sale of the bonds and the revenues to be received into the State treasury and carried on the books of the Comptroller in a special account and may provide for the turning over, transfer or paying over such funds from the State treasury to any officer, agency, bank or trust company, who shall act as trustee of funds, and hold and apply the same to the purposes hereof, subject to such regulations as this article and such resolution or trust agreement may provide.

All moneys paid into the State treasury pursuant to the provisions of this article are hereby appropriated to the Commission for the purpose of carrying out the provisions of this article; disbursements and payments of money so paid into the State treasury shall be made by the State Treasurer upon warrants of the State Comptroller which he shall issue upon vouchers signed by such person or persons as shall be designated by the Commission for such purpose.

Source: § 33-255.10.

Note: No change.

§ 33.1-306. Remedies.—Any holder of bonds issued under the provisions of this article or any of the coupons appertaining thereto, and the trustee under any trust agreement, except to the extent the rights herein given may be restricted by such trust agreement, may, either at law or in equity, by suit, action, mandamus or other proceedings, protect and enforce any and all rights under the laws of the Commonwealth or granted hereunder or under such trust agreement or the resolution authorizing the issuance of such bonds, and may enforce and compel the performance of all duties required by this article or by such trust agreement or resolution to be performed by the Commission or by any officer thereof, including the fixing, charging and collecting of tolls.

Source: § 33-255.11.

Note: No change.

§ 33.1-307. Exemption from taxation.—The exercise of the powers granted by this article will be in all respects for the benefit of the people of the Commonwealth, for the increase of their commerce and prosperity, and for the improvement of their health and living conditions, and as the operation and maintenance of turnpike projects by the Commission will constitute the performance of essential government functions, the Commission shall not be required to pay any taxes or assessments upon any turnpike project or any property acquired or used by the Commission under the provisions of this article or upon the income therefrom, and the bonds issued under the provisions of this article, their transfer and the income

therefrom (including any profit made on the sale thereof) shall at all times be free from taxation within the Commonwealth.

Source: § 33-255.12.

Note: No change.

§ 33.1-308. Bonds eligible for investment.—Bonds issued by the Commission under the provisions of this article are hereby made securities in which all public officers and public bodies of the Commonwealth and its political subdivisions, all insurance companies, trust companies, banking association, investment companies, executors, advisers, trustees and other fiduciaries, and all other persons whatsoever who are now or may hereafter be authorized to invest in bonds or other obligations of a similar nature may properly and legally invest funds, including capital in their control or belonging to them. Such bonds are hereby made securities which may properly and legally be deposited with and received by any State or municipal officer or any agency or political subdivision of the Commonwealth for any purpose for which the deposit of bonds or other obligations of the Commonwealth is now or may hereafter be authorized by law.

Source: § 33-255.13.

Note: No change.

§ 33.1-309. Miscellaneous.—Each turnpike project when constructed and opened to traffic shall be maintained and kept in good condition and repair by the Commission. Each such project shall also be policed and operated by such force of police, tolltakers and other operating employees as the Commission may in its discretion employ.

All private property damaged or destroyed in carrying out the powers granted by this article shall be restored or repaired and placed in its original condition as nearly as practicable or adequate compensation made therefor out of funds provided under the authority of this article.

All counties, cities, towns and other political subdivisions and all public agencies and commissions of the Commonwealth, notwithstanding any contrary provision of law, are hereby authorized and empowered to lease, lend, grant or convey to the Commission at its request upon such terms and conditions as the proper authorities of such counties, cities, towns, political subdivisions, agencies or commissions of the Commonwealth may deem reasonable and fair and without the necessity of any advertisement, order of court or other action or formality, other than the regular and formal action of the authorities concerned, any real property which may be necessary or convenient to the effectuation of the authorized purposes of the Commission, including public roads and other real property already devoted to public use.

The governing body of any county or city may levy road taxes, or appropriate funds from general revenues, to supplement funds available to the State Highway Commission for the purpose of maintaining and operating any project constructed under the provisions of this article, or for meeting the sinking fund requirements of the resolution authorizing the issuance of bonds for any project or of the trust indenture securing such bonds.

On or before the thirtieth day of January in each year the Commission shall make an annual report of its activities for the preceding calendar year to the Governor and to the General Assembly. Each such report shall

set forth a complete operating and financial statement covering its operation during the year. The Commission shall cause an audit of its books and accounts to be made at least once in each year by certified public accountants and the cost thereof may be treated as a part of the cost of construction or operation of the project.

Any member, agent or employee of the Commission who contracts with the Commission or is interested, either directly or indirectly, in any contract with the Commission or in the sale of any property, either real or personal, to the Commission shall be punished by a fine of not more than one thousand dollars or by imprisonment for not more than one year, or both.

The Commission may, in its discretion, use any part of funds available for the construction of State highways, in any construction district in which any project is wholly or partly located to aid in the payment of the cost of such project and for the payment, purchase or redemption of revenue bonds issued in connection with any such project. The Commission, may also in its discretion, use any part of funds available for the maintenance of State highways, in any construction district in which any project is wholly or partly located to provide for the operation, maintenance and repair of any such project and for the payment of interest on revenue bonds issued in connection with any such project.

Source: § 33-255.14.

Note: No change.

§ 33.1-310. Turnpike revenue refunding bonds.—The Commission is hereby authorized to provide by resolution for the issuance of turnpike revenue refunding bonds of the Commonwealth for the purpose of refunding any bonds then outstanding which shall have been issued under the provisions of this article, including the payment of any redemption premium thereon and any interest accrued or to accrue to the date of redemption of such bonds, and, if deemed advisable by the Commission, for the additional purpose of constructing improvements, extensions, or enlargements of the turnpike project in connection with which the bonds to be refunded shall have been issued. The issuance of such bonds, the maturities and other details thereof, the rights of the holders thereof, and the rights, duties and obligations of the Commission in respect of the same, shall be governed by the provisions of this article insofar as the same may be applicable.

Source: § 33-255.15.

Note: No change.

§ 33.1-311: Transfer to Commonwealth.—When all bonds issued under the provisions of this article in connection with any turnpike project and the interest thereon shall have been paid or a sufficient amount for the payment of all such bonds and the interest thereon to the maturity thereof shall have been set aside in trust for the benefit of the bondholders, such project shall become part of one of the systems of State highways if not theretofore made a part of one of the systems of State highways under the provisions of § 33.1-299 of this article and shall thereafter be maintained by the Commission free of tolls.

Source: § 33-255.16.

Note: The words "one of the systems of State highways" have been substituted for the words "the State Highway System".

§ 33.1-312. Competing turnpikes and toll roads.—In the event bonds shall be issued and outstanding under the provisions of this article to finance the construction of any turnpike project, no bonds shall thereafter be issued under the authority of this article to finance any additional turnpike project, except as permitted by any resolution or trust indenture authorizing or securing any such outstanding bonds, unless and until the Commission shall have determined that the construction of such additional turnpike project will not adversely affect the revenues of any turnpike project theretofore financed under the provisions of this article. No permit or franchise for the construction of a toll turnpike by any other public body, authority, person, copartnership, association or corporation shall be granted until after hearing by the Commission, on such notice and under such rules as the Commission may prescribe, and a finding by the Commission that the operation of such toll turnpike will not adversely affect the revenues of any turnpike project theretofore financed by the Commission under the provisions of this article and an account of which bonds may then be outstanding.

Source: § 33-255.17.

Note: No change.

§ 33.1-313. Preliminary expenses.—The Commission is hereby authorized in its discretion to expend out of any funds available for the purpose such moneys as may be necessary for the study of any turnpike project or projects and to use its engineering and other forces and employ consulting engineers, traffic engineers and legal counsel for the purpose of effecting such study, and to pay for such additional engineering and traffic, legal and other expert studies as it may deem expedient. All such expenses incurred by the Commission prior to the issuance of turnpike revenue bonds under the provisions of this article shall be paid by the Commission and charged to the appropriate turnpike project or projects, and the Commission shall keep proper records and accounts showing each amount so charged. Upon the sale of turnpike revenue bonds for any turnpike project or projects, the funds so expended by the Commission in connection with such project or projects shall be reimbursed to the Commission from the proceeds of such bonds.

Source: § 33-255.18.

Note: No change.

§ 33.1-314. Additional method.—The foregoing sections of this article shall be deemed to provide an additional and alternative method for the doing of the things authorized thereby, and shall be regarded as supplemental and additional to powers conferred by other laws, and shall not be regarded as in derogation of any powers now existing; provided, however, that the issuance of turnpike revenue bonds or turnpike revenue refunding bonds under the provisions of this article need not comply with the requirements of any other law applicable to the issuance of bonds.

Source: § 33-255.19.

Note: No change.

§ 33.1-315. Article liberally construed.—This article, being necessary for the welfare of the Commonwealth and its inhabitants, shall be liberally construed to effect the purposes thereof.

Source: § 33-255.20.

Note: No change.

§ 33.1-316. Constitutional construction.—Notwithstanding the repeal of Title 33 of the Code of Virginia, § 33-255.21 of chapter 3 of former Title 33 is continued in effect and is incorporated into this Title by this reference.

Source: § 33-255.21.

Note: The purpose of this section is to continue in effect the severability clause of the State Turnpike Projects article.

§ 33.1-317. Inconsistent laws inapplicable.—All other general or special laws, or parts thereof, inconsistent herewith are hereby declared to be inapplicable to the provisions of this article.

Source: § 33-255.22.

Note: No change.

Article 7. Municipal Turnpike Projects.

§ 33.1-318. Cities and towns charging tolls for transit over street, roads, bridges or tunnels connecting with State turnpike projects.—Whenever the State Highway Commission constructs any project defined in article 9 of this chapter outside of the corporate limits of any city or town which connects with any streets, roads, bridges or tunnels within the corporate limits of the city or town and charges or collects tolls for transit over such project, such city or town may construct a project or projects defined in this article within its corporate limits and charge or collect tolls for transit over such project or projects, and such city or town shall have all the power with respect thereto as is conferred upon the State Highway Commission by this title, and wherever the word “Commission” is used in this title in connection with any such project it shall be construed to include “city or town”; provided that no tolls or compensation shall ever be imposed or collected for the use of Robert E. Lee Bridge in the city of Richmond by any vehicle or pedestrian.

Source: § 33-255.23.

Note: No change.

Article 8. The Richmond-Petersburg Turnpike Authority.

§ 33.1-319. Richmond-Petersburg Turnpike Authority.—Notwithstanding the repeal of Title 33 of the Code of Virginia, articles 11 and 11.1 and §§ 33-255.24 to 33-255.44:9 of chapter 3 of former Title 33 are continued in effect and are incorporated into this Title by this reference.

Source: §§ 33-255.24 to 33-255.44:9.

Note: The purpose of this section is to continue the Richmond-Petersburg Turnpike Authority in effect undisturbed.

—— (§ 33-255.44:10 is deleted.)

Article 9. Richmond Metropolitan Authority.

§ 33.1-320. Richmond Metropolitan Authority.—Notwithstanding the repeal of Title 33 of the Code of Virginia, article 11.2 and §§ 33-255.44:11 to 33-255.44:32 of chapter 3 of former Title 33 are continued in effect and are incorporated into this Title by this reference.

Source: §§ 33-255.44:11 to 33-255.44:32.

Note: The purpose of this section is to continue the Richmond Metropolitan Authority in effect undisturbed.

— (§§ 33-255.45 to 33-255.66 were repealed in 1962.)

CHAPTER 4

BOND ISSUES

Article 1. Assumption of District Road Indebtedness by Counties Generally.

§ 33.1-321. County authorized to assume indebtedness.—Any county may assume the payment of and pay any outstanding indebtedness of any magisterial district or districts thereof, incurred for the purpose of constructing public roads which were subsequently taken over by the State, provided the assumption thereof be approved by a majority of the qualified voters of the county voting on the question at an election to be held as hereinafter provided.

Source: § 33-256.

Note: No change.

§ 33.1-322. Resolution for election; notice thereof.—The governing body, of the county may, by a resolution entered of record in its minute book, require the judges of election to open a poll at the next regular election and take the sense of the qualified voters of the county upon the question whether or not the county shall assume the road indebtedness of district, or districts. The governing body shall cause notice of such election to be given by the posting of written notice thereof at the front door of the county courthouse at least thirty days prior to the date the same is to be held and by publication thereof once a week for two successive weeks in some newspaper published in the county, and if none such, then in some newspaper having general circulation therein, which notice shall set forth the date of such election and the question to be voted on.

Source: § 33-257.

Note: No change.

§ 33.1-323. Conduct of election; certification and recording of returns.—The ballots for use in voting upon the question so submitted shall be prepared, printed, distributed, voted and counted and the returns made and canvassed in accordance with the provisions of § 24-141. The results shall be certified by the commissioners of election to the county clerk, who shall certify the same to the governing body of the county, and such returns shall be entered of record in the minute book of the governing body.

Source: § 33-258.

Note: No change.

§ 33.1-324. Favorable vote renders indebtedness county obligation.—If a majority of the voters voting on the question vote in favor of the assumption by the county of the road indebtedness of any district or districts of the county, such indebtedness shall become and be an obligation or obligations of the county and as binding thereon as if the same has been

originally contracted by the county. In such event the governing body of the county is authorized to levy and collect taxes throughout the county for the payment of the district indebtedness so assumed, both as to principal and interest.

Source: § 33-259.
Note: No change.

§ 33.1-325. District road obligations not affected by adverse vote.—Nothing herein contained shall in any way affect the validity of such district road obligations in the event of the result of such election being against the assumption thereof by the county, but they shall continue to be as valid and binding in all respects, as they were in their inception.

Source: § 33-260.
Note: No change.

Article 2. Assumption by County with Executive Form of Government.

§ 33.1-326. Authorization of assumption.—Any county operating under the executive form of government may assume indebtedness of one or more of its magisterial districts incurred prior to June fourteenth, nineteen hundred and forty-five for the construction of road, provided the voters in the county vote in favor of the assumption of such indebtedness.

Source: § 33-261.
Note: No change.

§ 33.1-327. Election to determine assumption.—The circuit court of the county, or the judge thereof in vacation, upon the petition of a majority of the board of county supervisors of such county, shall make an order requiring the judges of election at the next regular election, or at any other time not less than thirty days from the date of such order, which shall be designated therein, to open a poll and take the sense of the qualified voters of the county upon the question of whether the county shall assume the road indebtedness of district, or districts.

Source: § 33-262.
Note: No change.

§ 33.1-328. Conduct of election.—The regular election officers of the county at the time designated in the order authorizing the vote shall open the polls at the various voting places in the county and the ballots for such election shall be prepared, distributed and voted, the election conducted and the result thereof ascertained and certified in the manner provided by law in other elections, except that there shall be printed upon the ballots the question, "Shall the county assume the road indebtedness of district or districts?" (as the case may be), and the following:

- For
- Against

Source: § 33-263.
Note: No change.

§ 33.1-329. Effect of favorable vote.—If a majority of the voters at the election vote in favor of the assumption of indebtedness of districts, or a district, of the county, such indebtedness shall become an obligation of the

county as binding thereon as if contracted by the county in its inception and may be enforced against it like any debt of the county as provided by law and the obligation shall be validated and shall not be questioned thereafter by the county.

Source: § 33-264.

Note: No change.

§ 33.1-330. Payment; refunding issue.—If a majority of the voters at the election vote in favor of the assumption of such indebtedness, the board of county supervisors may appropriate any part or all of the surplus in the general funds of the county, not otherwise appropriated, toward payment of the indebtedness assumed; and the board may likewise issue new bonds of the county at the same or a lower rate of interest for such amount as may then be necessary to retire outstanding bonds of the districts, and thereafter the board of county supervisors shall provide for the imposition and collection annually of a tax in addition to all other taxes on property subject to local taxation and not exempt from the levy of taxes formerly levied for the payment of bonds refunded, sufficient in amount to pay the interest on such bonds and the principal thereof, as the same respectively become due, notwithstanding any tax rate limitations which would otherwise be applicable to the levy of such taxes. Such tax shall be levied and collected by the same officers, at the same time and in the same manner as general taxes of the county.

The sale of such bonds, deposit of proceeds, security for deposits, provisions for sinking funds and expenses of authorization and issuance shall be in accordance with the provisions of general law except that the taxes for the payment of such bonds, principal and interest, shall be uniformly levied throughout the county. The refunding bonds may be issued at any time within three years prior to the date of maturity, or the optional redemption date, of the bonds to be refunded, and the proceeds of the sale of such refunding bonds shall be invested in obligations of the United States of America maturing or redeemable at the option of the holder, not later than the date of maturity or the optional redemption date of the bonds to be refunded.

Source: § 33-265.

Note: Reference to §§ 15-647 through 15-649 has been deleted, as those sections have been repealed.

§ 33.1-331. Validity of existing bonds not affected.—Nothing contained in this article shall affect the validity of existing bonds of any district in a county now operating under the executive form of government.

Source: § 33-266.

Note: No change.

Article 3. Redemption of District Road Bonds.

§ 33.1-332. Election to determine redemption.—Whenever the holders of the majority amount of any issue of bonds made by any road district in the State, together with twenty-five freeholders of the district, shall petition the circuit court of the county in which such district is located for an election to ascertain whether the people of such district desire that such bonds shall be redeemed before maturity at their face value with accrued interest, if any, and whether they will authorize the board of supervisors or other governing body of such county to provide a special levy to provide

a fund to be used for that purpose along with other funds accumulated to the credit of such district for road purposes, the court shall order an election to be held in the same manner as elections are held when ordered upon the question of the issuance of county or district bonds and there shall be printed on the ballot used at such election the words "for redemption of bonds" and "against redemption of bonds" and voters at such election shall express their preference by erasing the words which do not express such preference.

Source: § 33-267.

Note: No change.

§ 33.1-333. **Redemption of such bonds.**—If the majority of the voters of the district, voting at such election, shall vote in favor of the redemption of the bonds prior to their maturity, the court shall direct its clerk to notify all the holders of the bonds, as far as they may be ascertained, whose names are not already among those who petition for the election, to communicate in writing to the clerk, within thirty days, whether or not they wish the bonds which they hold to be redeemed prior to their maturity. The clerk shall communicate to the chairman of the board of supervisors or other governing body of the county the names, number and amount of bonds, the holders of which have consented to have them redeemed prior to their maturity; and the board of supervisors or other governing body in making up its next levy shall provide for sufficient taxes upon the property of the residents of the district to redeem the bonds within three years. As the accumulations from the several levies shall accrue the treasurer of the county shall redeem the bonds, in the order of their presentation, and cancel and retire the same.

Source: § 33-268.

Note: No change.

§ 33.1-334. **Subsequent election.**—No second or subsequent election shall be held upon the question of redeeming any one issue of bonds at intervals shorter than five years.

Source: § 33-269.

Note: No change.

§ 33.1-335. **Application of balance to payment of bonds.**—Should there be a balance in the hands of any board of supervisors or other governing body of any county a district of which has issued such bonds, which has not been used for the building of roads in the district, the board of supervisors or other governing body may, should they deem it advisable, apply such balance to the payment of such bonds as hereinbefore provided for, with the consent of the holders of such bonds.

Source: § 33-269.1.

Note: No change.

CHAPTER 5

HIGHWAY CONTRACTORS' ASSOCIATION

§ 33.1-336. **"Highway contractors' association" defined.**—For the purposes of this chapter "highway contractors' association" shall mean any association, bureau, agency or other medium, incorporated or unincorporated, whose object or work is to promote the common welfare of, to

furnish information to, to promote co-operation among, to stimulate the demand for the services of, or to advertise the members thereof.

Source: § 33-270.

Note: No change.

§ 33.1-337. "Member of highway contractors' association" defined.—For the purposes of this chapter "member of highway contractors' association" shall mean any individual, copartnership or corporation engaged in contracting for the construction, repair and maintenance of highways and highway bridges and for supplying labor, material, machinery and supplies for use in highways and highway bridges, who are members of, stockholders in, subscribers of, contributors to, or in any way affiliated with, any highway contractors' association.

Source: § 33-271.

Note: No change.

§ 33.1-338. Semi-annual statements to be furnished.—Every highway contractors' association domiciled in this State shall semi-annually, on or before the first day of January and July, furnish in writing to the Secretary of the Commonwealth the following information:

(1) The names and post office addresses of all of its members. When any such member is a firm, the names and addresses of the members of the firm shall be furnished. When any such member is a corporation, the names of the officers of such corporation shall be furnished.

(2) The names and post office addresses of the officers of such highway contractors' association and the duties of such officers and their salaries.

(3) The property and income of such highway contractor's association and by whom the same is paid.

(4) An itemized statement of the expenditures of such association.

(5) A copy of the charter and by-laws, if incorporated, and a copy of the constitution and by-laws, if unincorporated, of such association.

Such statements shall become public records.

Source: § 33-272.

Note: No change.

§ 33.1-339. Papers, accounts and records open to examination by certain officers.—All papers, accounts and records of every nature, of every highway contractors' association, a member of which submits a bid for any construction, maintenance or repair of any public highway or bridge or for the supplying of labor, material or supplies for any such construction, repair or maintenance, whether such highway association be domiciled in Virginia or be a foreign highway contractors' association doing business in Virginia, shall be at all times during the ordinary business hours of the day open to examination and inspection by the Governor, Attorney General, Comptroller, Auditor of Public Accounts, the State Highway Commission and any member thereof and the duly authorized agent or representative of any of such officers or of the Commission.

Source: § 33-273.

Note: No change.

§ 33.1-340. Effect of refusal to permit or withholding from examination of papers, etc.—If any highway contractors' association, whether domiciled in Virginia or not, on application of any person authorized by this chapter to examine and inspect its records, shall refuse to permit such examination and inspection of its papers, accounts and records or fail to produce at its principal office for examination and inspection any of its papers, accounts or records when requested so to do, or shall knowingly withhold from examination and inspection any of its papers, accounts and records, for the purpose of secreting any of its acts or activities, or the amount of sources of, or the use made of its revenue, the person requesting or making such examination and inspection shall report the fact to the Governor, who shall certify that fact to the State Highway Commissioner.

No contract for highway or highway bridge construction, repair or maintenance or for the supplying of any labor, materials or supplies for such construction, repair or maintenance shall be thereafter let to any member of such association until the Governor shall have certified to the Commission that a full examination and inspection of the papers, accounts and records of such association has been made with the free consent and co-operation of such association and that such examination and inspection discloses nothing in the purposes, methods, or activities of such association detrimental to the public interest or tending to prevent competition in or increase the cost of highway and highway bridge construction, repair or maintenance in this State and that none of its revenue has been used for political purposes.

Source: § 33-274.

Note: No change.

§ 33.1-341. Effect of using certain methods or engaging in certain activities.—If upon any such inspection or examination as is herein provided for, it shall be found that any highway contractors' association of which any individual, partnership or corporation holding a contract for the construction, maintenance or repair of any public highway or bridge or for supplying any labor, materials or supplies for any such construction, repair or maintenance, is a member, has made use of methods or engaged in activities tending to prevent competition in the bidding on such contract or to increase the cost of such contract to the State or county or has brought to bear or endeavored to bring to bear political influence to secure for such member such contract, then the State Highway Commission may, at its option, cancel and annul such contract, paying thereon for the work done or labor, material and supplies furnished only the reasonable value of the work done or labor, material and supplies furnished.

Source: 33-275.

Note: No change.

§ 33.1-342. Certificate to be filed with bid for highway or bridge construction, etc.—Every individual, partnership or corporation bidding upon any proposed contract for the construction, repair or maintenance of any part of any public highway or bridge and for supplying any labor, material or supplies to be used in any such construction, repair or maintenance shall file with such bid a sworn statement giving the name and location of the principal office of every highway contractors' association of which he is or has been a member during the preceding twelve months; and no bid not accompanied by such certificate shall be considered by the State Highway Commission in letting any contract bid upon, nor shall any such con-

tract be let by the Commission to any bidder failing to file the certificate required by this section.

Source: § 33-276.

Note: No change.

§ 33.1-343. Affidavit to be filed with bid upon work.—Every member of any highway contractors' association who bids upon any work let by the State Highway Commission shall file with his bid an affidavit in substance as follows: that the bidder neither directly or indirectly has entered into any combination or arrangement with any person, firm or corporation or entered into any agreement, the effect of which is to prevent competition or increase the cost of construction or maintenance of roads or bridges.

The State Highway Commission shall prescribe the form of this affidavit and no bid shall be accepted unless accompanied by such affidavit.

Source: § 33-277.

Note: No change.

CHAPTER 6

OFFENSES CONCERNING HIGHWAYS OR TRAVELERS THEREON

§ 33.1-344. "Road" construed.—In this chapter, the word "road" shall be construed to mean any State or county road.

Source: § 33-278.

Note: No change.

§ 33.1-345. Cutting or injuring trees near highways, injuring bridges, markers, etc.; obstructing roads, etc.; riding animals on sidewalks.—Any person shall be guilty of a misdemeanor who shall:

(1) Cut or injure a tree within fifty feet of a road so as to render it liable to fall and leave it standing;

(2) Knowingly and willfully, without lawful authority, break down, destroy or injure any bridge, bench or log placed across a stream for the accommodation of pedestrians or any signboard, milestone or post placed for the direction of travelers;

(3) Obstruct any road or any ditch made for the purpose of draining any such road;

(4) Willfully ride any horse, mule or other animal upon any sidewalk, constructed of any material other than dirt or earth, along any highway through any unincorporated village.

(5) Dump or otherwise dispose of trash, garbage or other unsightly matter on a public highway, right of way or on private property without the written consent of the owner thereof or his agent.

(6) Willfully or maliciously displace, remove, destroy or injure a mile-board, mile-stone, danger sign, signal, guide sign, guidepost, highway sign or historical marker or any inscription thereon lawfully within a highway.

(7) Put or cast into any public road any glass, bottles, glassware, crockery, porcelain or pieces thereof, or any pieces of iron or hard or sharp

adequate screening or such would not be feasible, the Commissioner may exercise the same authority to relocate such junkyards as is vested in him in regard to interstate and federal-aid primary highways.

(f) Any junkyard which comes into existence after April four, nineteen hundred sixty-eight, and which cannot be made to conform to this section is declared to be a public and private nuisance and may be forthwith removed, obliterated or abated by the Commissioner or his representatives. The Commissioner may collect the cost of such removal, obliteration or abatement from the person owning or operating such junkyard.

(g) The State Highway Commission is authorized to enter into agreements with the Secretary of Commerce of the United States as provided in 23 U.S.C. § 136 with respect to control of junkyards.

(h) The State Highway Commissioner shall not be required to expend any funds for screening or relocation under this section unless and until federal-aid matching funds are made available for this purpose.

Source: § 279.3.

Note: No change.

—— (§ 33-280 is deleted. Its provisions are incorporated into § 33.1-345).

—— (§§ 33-281 through 33-286 were repealed in 1958).

§ 33.1-349. Shooting in or along road or in a street.—If any person shoot in or along any road, or within one hundred yards thereof, or in a street of any city or town, whether the town be incorporated or not, he shall, for each offense, be fined not less than five dollars.

The provisions of this section shall not apply to firing ranges or shooting matches maintained, and supervised or approved, by law-enforcement officers and military personnel in performance of their lawful duties.

Source: § 33-287.

Note: No change.

—— (§ 33-288 is deleted. Its provisions are incorporated into § 33.1-345.)

§ 33.1-350. Throwing or depositing certain substances upon highway; removal of such substances.—No person shall throw or deposit or cause to be deposited upon any highway any glass bottle, glass, nail, tack, wire, can, or any other substance likely to injure any person or animal, or damage any vehicle upon such highway, nor shall any person throw or deposit or cause to be deposited upon any highway any soil, sand, mud, gravel or other substances so as to create a hazard to the traveling public. Any person who drops, or permits to be dropped or thrown, upon any highway any destructive, hazardous or injurious material shall immediately remove the same or cause it to be removed. Any person removing a wrecked or damaged vehicle from a highway shall remove any glass or other injurious substance dropped upon the highway from such vehicle. Any persons violating the provisions of this section shall be guilty of a misdemeanor and, upon conviction, punished accordingly.

Source: § 33-288.1.

Note: No change.

(6) "*Federal-aid primary Highway*" shall mean any highway within that portion of the State Highway System as established and maintained under article 2 (§ 33.1-24 et seq.), chapter 1, Title 33.1 of this Code, including extensions of such System within municipalities, which has been approved by the Secretary of Commerce pursuant to subsection (b) of § 103 of Title 23, United States Code.

(7) "*Visible*" shall mean capable of being seen without visual aid by a person of normal visual acuity.

(c) No junkyard shall be hereafter established, any portion of which is within one thousand feet of the nearest edge of the right-of-way of any interstate or primary highway or within five hundred feet of the nearest edge of the right-of-way of any other highway or city street, except the following:

(1) Junkyards which are screened by natural objects, plantings, fences, or other appropriate means so as not to be visible from the main-traveled way of the highway or city street, or otherwise removed from sight.

(2) Junkyards which are located in areas which are zoned for industrial use under authority of State law or in unzoned industrial areas as determined by the State Highway Commission.

(3) Junkyards which are not visible from the main-traveled way of the highway or city street.

(d) Any junkyard lawfully in existence on April four, nineteen hundred sixty-eight, which is within one thousand feet of the nearest edge of the right-of-way and visible from the main-traveled way of any interstate or federal-aid primary highway, and not located within an industrial area, shall be screened, if feasible, by the State Highway Commissioner at locations on the highway right-of-way or in areas acquired for such purposes outside the right-of-way, so as not to be visible from the main-traveled way of such highways.

Any junkyard lawfully in existence on April four, nineteen hundred sixty-eight, which is within one thousand feet of the nearest edge of the right-of-way of any other primary highway or within five hundred feet of the nearest edge of the right-of-way of any other highway and visible from the main-traveled way of such highway, and not located within an industrial area, may be screened by the State Highway Commissioner in the same manner as junkyards adjacent to interstate or federal-aid primary highways.

The State Highway Commissioner is hereby authorized to acquire by purchase, gift or the power of eminent domain such lands or interests in lands as may be necessary to provide adequate screening of such junkyards.

(e) When the State Highway Commissioner determines that the topography of the land adjoining an interstate or federal-aid primary highway will not permit adequate screening of such junkyards or the screening of such junkyards would not be economically feasible, the State Highway Commissioner shall have the authority to acquire by gift, purchase or the power of eminent domain, such interests in lands as may be necessary to secure the relocation, removal, or disposal of the junkyards, and to pay for the costs of relocation, removal, or disposal, thereof. When the State Highway Commissioner determines that the topography of the land adjoining any other highway will not permit

metal, or any nails, tacks or sharp-pointed instruments of any kind, likely in their nature to cut or puncture any tire of any vehicle or injure any animal traveling thereon.

Source: § 33-279.

Note: The last three sub-sections are added. They incorporate the provisions of former §§ 33-279.1, 33-280 and 33-288.

— (§ 33-279.1 is deleted. Its provisions are incorporated into new § 33.1-345).

§ 33.1-346. Reserved.

§ 33.1-347. **Dump creating fire hazard to public bridge.**—It shall be unlawful for any person to establish or maintain a public or private dump containing inflammable articles within five hundred feet of any public bridge constructed wholly or partly of wood so as to create a fire hazard to such bridge. Any person violating this section shall be guilty of a misdemeanor and punished as provided by law. Each day of operation in violation hereof shall constitute a separate offense. An offense hereunder may be enjoined in the manner provided by law for the abatement of public nuisances.

Source: § 33-279.2.

Note: No change.

§ 33.1-348. **Junkyards.**—(a) For the purpose of promoting the public safety, health, welfare, convenience and enjoyment of public travel, to protect the public investment in public highways, and to preserve and enhance the scenic beauty of lands bordering public highways, it is hereby declared to be in the public interest to regulate and restrict the establishment, operation, and maintenance of junkyards in areas adjacent to the highways within this State.

(b) For the purpose of this section the following definitions shall apply:

(1) “*Junk*” shall mean old or scrap copper, brass, rope, rags, batteries, paper, trash, rubber, debris, waste, or junked, dismantled, or wrecked automobiles, or parts thereof, iron, steel, and other old or scrap ferrous or nonferrous material.

(2) “*Automobile graveyard*” shall mean any lot or place which is exposed to the weather and upon which more than five motor vehicles of any kind, incapable of being operated, and which it would not be economically practical to make operative, are placed, located or found.

(3) “*Junkyard*” shall mean an establishment or place of business which is maintained, operated, or used for storing, keeping, buying, or selling junk, or for the maintenance or operation of an automobile graveyard, and the term shall include garbage dumps and sanitary fills.

(4) “*Interstate system*” shall mean the system presently defined in subsection (d) of § 103 of Title 23, United States Code.

(5) “*Primary highway*” shall mean any highway within the State Highway System as established and maintained under article 2 (§ 33.1-24 et seq.), chapter 1, Title 33.1 of this Code, including extensions of such System within municipalities.

— (§§ 33-289 through 33-296 were repealed, § 33-289 in 1954 and the remainder in 1958).

— (§ 33-297 is deleted as obsolete).

CHAPTER 7

OUTDOOR ADVERTISING IN SIGHT OF PUBLIC HIGHWAYS

Article 1. General Regulations.

§ 33.1-351. Definitions.—(a) In order to promote the safety, convenience and enjoyment of travel on and protection of the public investment in highways within this State, to attract tourists and promote the prosperity, economic well-being and general welfare of the State, and to preserve and enhance the natural scenic beauty or aesthetic features of the highways and adjacent areas, the General Assembly declares it to be the policy of this State that the erection and maintenance of outdoor advertising in areas adjacent to the rights-of-way of the highways within this State shall be regulated in accordance with the terms of this act and regulations promulgated by the State Highway Commission pursuant thereto.

(b) The following terms, wherever used or referred to in this article, shall have the following meanings unless a different meaning clearly appears from the context:

(1) “*Advertisement*” means any writing, printing, picture, painting, display, emblem, drawing, sign or similar device which is posted or displayed outdoors on real property and is intended to invite or to draw the attention or to solicit the patronage or support of the public to any goods, merchandise, property, real or personal, business, services, entertainment or amusement manufactured, produced, bought, sold, conducted, furnished or dealt in by any person or for any political party or for the candidacy of any individual for any nomination or office; the term shall also include any part of an advertisement recognizable as such;

(2) “*Advertising structure*” means any rigid or semirigid material, with or without any advertisement displayed thereon, situated upon or attached to real property outdoors, primarily or principally for the purpose of furnishing a background or base or support upon which an advertisement may be posted or displayed;

(3) “*Business of outdoor advertising*” means the erection, use or maintenance of advertising structures or the posting or display of outdoor advertisements by any person who receives profit gained from rentals or any other compensation from any other person for the use or maintenance of such advertising structures or the posting or display of such advertisements, except reasonable compensation for materials and labor used or furnished in the actual erection of advertising structures or the actual posting of advertisements;

(4) “*Highway*” means every way or place of whatever nature open to the use of the public for purposes of vehicular travel in this State;

(5) “*Municipalities*” means cities and incorporated towns;

(6) *“Person”* includes an individual, partnership, association or corporation;

(7) *“Post”* means post, display, print, paint, burn, nail, paste or otherwise attach;

(8) *“Real property”* includes any property physically attached or annexed to real property in any manner whatsoever;

(9) *“Town”* means an incorporated town;

(10) *“Historic place, museum or shrine”* includes only places that are maintained wholly at public expense or by a nonprofit organization;

(11) *“Information center”* means an area or site established and maintained at rest areas for the purpose of informing the public of places of interest within the State and providing such other information as the State Highway Commission may consider desirable;

(12) *“Rest area”* means an area or site established and maintained within or adjacent to the right-of-way or under public supervision or control, for the convenience of the traveling public;

(13) *“Centerline of the highway”* means a line equidistant from the edges of the median separating the main-traveled ways of a divided highway, or the centerline of the main-traveled way of a nondivided highway;

(14) *“Interchange”* means a grade separated intersection with one or more turning roadways for travel between intersection legs, or an intersection at grade, where two or more highways join or cross;

(15) *“Legible”* means capable of being read without visual aid by a person of normal visual acuity;

(16) *“Maintain”* means to allow to exist;

(17) *“Main-traveled way”* means the traveled way of a highway on which through traffic is carried. In the case of a divided highway, the traveled way of each of the separated roadways for traffic in opposite directions is a main-traveled way. It does not include such facilities as frontage roads, turning roadways, or parking areas;

(17a) *“National System of Interstate and Defense Highways”* and *“Interstate System”* means the system presently defined in subsection (d) of § 103 of Title 23, United States Code;

(18) *“Federal-aid primary highway”* means any highway within that portion of the State Highway System as established and maintained under article 2 (§ 33.1-24 et seq.), chapter 1, Title 33.1 of this Code, including extensions of such system within municipalities, which has been approved by the Secretary of Commerce pursuant to subsection (b) of § 103 of Title 23, United States Code;

(19) *“Scenic area”* means any public park, area of particular scenic beauty or historical significance designated as a scenic area by the State Highway Commission;

(20) *“Sign”* means any outdoor sign, display, device, figure, painting, drawing, message, placard, poster, billboard, or other thing which is designed, intended, or used to advertise or inform, any part of the advertising or informative contents of which is visible from any highway;

(21) *“Trade name”* shall include brand name, trademark, distinc-

tive symbol, or other similar device or thing used to identify particular products or services;

(22) *“Traveled way”* means the portion of a roadway for the movement of vehicles, exclusive of shoulders;

(23) *“Turning roadway”* means a connecting roadway for traffic turning between two intersection legs of an interchange;

(24) *“Visible”* means capable of being seen (whether or not legible) without visual aid by a person of normal visual acuity;

(25) *“Distance from edge of a right-of-way”* shall be the horizontal distance measured along a line normal or perpendicular to the centerline of the highway.

Source: § 33-298.

Note: No change.

§ 33.1-352. Enforcement of provisions by Commissioner.—The Commissioner shall administer and enforce the provisions of this article. He may, in the performance of his duties hereunder, assign to division engineers and other employees in the Department of Highways such duties other than discretionary powers as he may think appropriate.

Source: § 33-299.

Note: No change.

§ 33.1-353. Territory to which article applies.—The territory under the jurisdiction of the Commissioner for the purposes of this article shall include all of the State, exclusive of that portion thereof which lies within the corporate limits of municipalities.

Source: § 33-300.

Note: No change.

§ 33.1-354. Entry upon lands; hindering Commissioner or agent.—The Commissioner and all employees under his direction may enter upon such lands as may be necessary in the performance of their functions and duties as prescribed by this article. Any person who shall hinder or obstruct the Commissioner or any assistant or agent of the Commissioner in carrying out such functions and duties shall be guilty of a misdemeanor.

Source: § 33-301.

Note: No change.

§ 33.1-355. Excepted signs, advertisements and advertising structures.—The following signs and advertisements, if securely attached to real property or advertising structures, and the advertising structures, or parts thereof, upon which they are posted or displayed are excepted from all the provisions of this article save those enumerated in §§ 33.1-369, 33.1-370 and 33.1-375:

(1) Advertisements securely attached to a place of business or residence, and not to exceed ten advertising structures with combined total area, exclusive of the area occupied by the name of the business, owner or lessee, of advertisements and advertising structures not to exceed five hundred square feet, erected or maintained, or caused to be erected or maintained, by the owner or lessee of such place of business or residence, within two hundred fifty feet of such place of business or residence and

relating solely to merchandise, services or entertainment sold, produced, manufactured or furnished at such place of business or residence;

(2) Signs erected or maintained, or caused to be erected or maintained, on any farm by the owner or lessee of such farm and relating solely to farm produce, merchandise, services or entertainment sold, produced, manufactured or furnished on such farm;

(3) Signs upon real property posted or displayed by the owner, or by the authority of the owner, stating that the property, upon which the sign is located, or a part of such property, is for sale or rent or stating any data pertaining to such property and its appurtenances, and the name and address of the owner and the agent of such owner;

(4) Official notices or advertisements posted or displayed by or under the direction of any public or court officer in the performance of his official or directed duties, or by trustees under deeds of trust, deeds of assignment or other similar instruments;

(5) Danger or precautionary signs relating to the premises or signs warning of the condition of or dangers of travel on a highway, erected or authorized by the Commissioner; or forest fire warning signs erected under authority of the Board of Conservation and Economic Development and signs, notices or symbols erected by the United States government under the direction of the United States Forestry Service;

(6) Notices of any railroad, bridges, ferries or other transportation or transmission company necessary in the discretion of the Commissioner for the safety of the public or for the direction of the public to such utility or to any place to be reached by it;

(7) Signs, notices or symbols for the information of aviators as to location, direction and landings and conditions affecting safety in aviation erected or authorized by the Commissioner;

(8) Signs containing sixteen square feet or less and bearing an announcement of any county, town, village or city, or historic place or shrine, situated in this State, advertising itself or local industries, meetings, buildings or attractions, provided the same is maintained wholly at public expense, or at the expense of such historic place or shrine;

(9) Signs or notices containing two square feet or less, placed at a junction of two or more roads in the State Highway System denoting only the distance or direction of a church, residence or place of business, provided such signs or notices do not exceed a reasonable number in the discretion of the Commissioner;

(10) Signs or notices erected or maintained upon property giving the name of the owner, lessee or occupant of the premises;

(11) Advertisements and advertising structures within the corporate limits of cities and towns;

(12) Historical markers erected by duly constituted and authorized public authorities;

(13) Highway markers and signs erected, or caused to be erected, by the Commissioner or the State Highway Commission or other authorities in accordance with law;

(14) Signs erected upon property warning the public against hunting, fishing or trespassing thereon;

(15) Signs erected by Red Cross authorities relating to Red Cross Emergency Stations. And authority is hereby expressly given for the erec-

tion and maintenance of such signs upon the right of way of all highways in this State at such locations as may be approved by the **Commissioner**;

(16) Signs advertising agricultural products and horticultural products, or either, when such products are produced by the person who erects and maintains the signs; provided, however, that the location and number of such signs shall be in the sole discretion of the **Commissioner**;

(17) Signs advertising only the name, time and place of bona fide agricultural, county, district or State fairs, together with announcements of special events in connection therewith which do not consume more than fifty per centum of the display area of such signs, provided the person who posts the signs or causes them to be posted will post or cash bond as may be prescribed by the **Commissioner**, adequate to reimburse the Commonwealth for the actual cost of removing such signs as are not removed within thirty days after the last day of the fair so advertised.

Source: § 33-302.

Note: The first paragraph is amended to make all rather than a part of the provisions of § 33-317 (§ 33.1-369) applicable to the signs and advertisements enumerated in the section.

§ 33.1-356. License required of outdoor advertiser.—No person shall engage or continue in the business of outdoor advertising in this State outside of the corporate limits of municipalities without first **obtaining** a license therefor from the **Commissioner**. The fee for such license, hereby imposed for revenue for the use of the State, shall be two hundred and fifty dollars per annum, payable annually in advance. Applications for licenses, or renewal of licenses, shall be made on forms furnished by the **Commissioner**, shall contain such information as the **Commissioner** may **require** and shall be accompanied by the annual fee. Licenses granted under this section shall expire on the thirty-first day of December of each year and shall not be prorated. Applications for renewal of licenses shall be made not less than thirty days prior to the date of expiration. Nothing in this section shall be construed to require any person who advertises upon a structure or fixture on his property or a licensed advertiser's structure or other space to obtain a license.

Source: § 33-303.

Note: No change.

§ 33.1-357. Revocation of license.—The **Commissioner** shall have the right, after thirty days' notice in writing to the licensee, to revoke any license granted by him upon repayment of a proportionate part of the license fee, in any case in which he shall find that any of the information required to be given in the application for the license is knowingly false or misleading or that the licensee has violated any of the provisions of this article, unless such licensee shall, before the expiration of such thirty days, correct such false or misleading information and comply with the provisions of this article.

Source: § 33-304.

Note: No change.

§ 33.1-358. Judicial review of revocation.—Any person whose license is so revoked may, within thirty days from the date of such revocation, appeal from the decision of the **Commissioner** to the circuit court of the city of Richmond or, at the election of the licensee, to the circuit court of the county or city in which the licensee resides, by presenting to the court

or the judge thereof, after five days' notice in writing to the Commissioner, an affidavit made by the licensee or by his duly authorized agent or attorney, setting forth the fact of such revocation and that the same was contrary to law. Any person aggrieved by the judgment of such court shall have the right of appeal to the Supreme Court of Appeals.

Source: § 33-305.

Note: No change.

§ 33.1-359. Bond required from out-of-State licensee.—No license to engage or continue in the business of outdoor advertising shall be granted to any person having his principal place of business outside the State or which is incorporated outside the State for the posting or display of any advertisement or the erection, use or maintenance of any advertising structure, until such person shall have furnished and filed with the Commissioner a bond payable to the Commonwealth, with surety approved by the Commissioner and in form approved by the Attorney General, in the sum of one thousand dollars, conditioned that such licensee shall fulfill all requirements of law and the regulations and orders of the Commissioner, relating to the display of advertisements or the erection of advertising structures. Such bond shall remain in full force and effect so long as any obligations of such licensee to the State shall remain unsatisfied.

Source: § 33-306.

Note: No change.

§ 33.1-360. Permits required.—Except as in this article otherwise provided, no person, whether engaged in the business of outdoor advertising or not, shall erect, use, maintain, post or display any advertisement or advertising structure in this State, outside of municipalities, without first obtaining a permit therefor from the Commissioner and paying the annual fee therefor, as herein provided.

No bond or permit shall be required for the posting or display of any advertisement posted or displayed on any advertising structure or space for which a permit has been issued or renewed for the then current calendar year under the provisions of this article unless such permit has been revoked.

Source: § 33-307.

Note: No change.

§ 33.1-361. Applications for permits; fees.—A separate application for a permit shall be made for each separate advertisement or advertising structure, on a form furnished by the Commissioner, which application shall be signed by the applicant or his representative duly authorized in writing to act for him and shall describe and set forth the size, shape and the nature of the advertisement or advertising structure it is proposed to post, display, erect or maintain and its actual or proposed location with sufficient accuracy to enable the Commissioner to identify such advertisement or advertising structure and to find its actual or proposed location.

Each application shall be accompanied by an application fee in an amount determined as follows on the basis of the area of the advertisement or advertising structure for which the permit is sought, according to the following schedule:

(1) One dollar and fifty cents if such area does not exceed seventy-four square feet;

(2) Six dollars if such area exceeds seventy-four square feet but does not exceed four hundred and twenty-four square feet;

(3) Eight dollars if such area exceeds four hundred and twenty-four square feet but does not exceed six hundred and twenty-four square feet; and

(4) An additional five dollars for each two hundred square feet of such area in excess of six hundred and twenty-four square feet.

In the computation of fees under this section, each side of advertisement or advertising structure used or constructed to be used shall be separately considered.

The fee shall be retained by the Commissioner if the permit is issued. If the permit is refused, the Commissioner shall refund one half the application fee to the applicant if the application fee does not exceed two dollars; if the application fee exceeds two dollars the Commissioner shall upon refusal of the permit return to the applicant all of the application fee in excess of two dollars.

In addition to the above, on any original application for an advertisement or advertising structure there shall be imposed an inspection charge of twelve dollars for any advertisement or advertising structure to be located on an interstate or federal-aid primary highway and six dollars on any other highway.

Each application shall be accompanied by the written consent, or in lieu thereof a copy certified by an officer authorized to take acknowledgments to deeds in this State, of the owner of the real property upon which such advertisement or advertising structure is to be erected, used, maintained, posted or displayed, or of such other person having the legal right to grant such consent, or of the duly authorized agent of such owner, or other person; provided, that in the marsh or meadowland owned by the Commonwealth along either side of the causeway leading from the mainland to the town of Chincoteague, the legal right to grant such consent shall be vested in the governing body of such town.

Application shall be made in like manner for a permit to use, maintain or display an existing advertisement or advertising structure.

Source: § 33-308.

Note: No change.

§ 33.1-362. Duration and renewal of permit.—Except as provided in § 33.1-365, permits issued hereunder shall run for the calendar year, and may be renewed upon application made upon forms furnished by the Commissioner and the payment of the same fee required to be paid upon application for a permit. Permits will not be extended or renewed in cases where the permittee has not exercised the privilege of erecting such advertising structure or displayed such advertisement during the period for which the permit was issued. Annual permits issued after December fifteenth will cover the following calendar year.

Source: § 33-309.

Note: No change.

§ 33.1-363. Area of advertising structure.—The area of an advertising structure shall be determined from its outside measurements, excluding as a part thereof, the height and overall width of supports and supporting

structure and any other portion or portions thereof beneath the normal area upon which an advertisement is posed or intended to be posted.

Source: § 33-310.

Note: No change.

§ 33.1-364. Revocation of permit.—The Commissioner may, after thirty days' notice in writing to the permittee, revoke any permit issued by him under § 33.1-360 upon repayment of a proportionate part of the fee in any case in which it shall appear to the Commissioner that the application for the permit contains knowingly false or misleading information, that the permittee has failed to keep in a good general condition and in a reasonable state of repair the advertisement or advertising structure for which such permit was issued or that the permittee has violated any of the provisions of this article unless such permittee shall, before the expiration of such thirty days, correct such false or misleading information, or make the necessary repairs or improvement in the general condition of such advertisement or advertising structure or comply with the provisions of this article, as the case may be. If the erection, maintenance and display of any advertisement or advertising structure for which a permit is issued by the Commissioner and the permit fee has been paid as above provided, shall be prevented by any zoning board, commission or other public agency which also has jurisdiction over the proposed advertisement or advertising structure or its site, the application fee for such advertisement or advertising structure shall be returned by the Commissioner and the permit revoked. But one-half of the application fee shall be deemed to have accrued upon the erection of an advertising structure or the display of an advertisement followed by an inspection by the Commissioner or his representative.

Source: § 33-311.

Note: No change.

§ 33.1-365. Temporary permit.—In any case if an applicant for a permit shall certify in his application that he is unable to state the actual or proposed location of the advertisement or advertising structure or to file the written consent of the landowner or other person having the legal right to the real estate upon which the advertisement or advertising structure is to be erected, used, maintained, posted or displayed, the Commissioner shall issue to such applicant a temporary permit, together with the proper identification number to be attached to such advertisement or advertising structure, which temporary permit shall expire sixty days from the date of its issue. Applications for temporary permits must indicate the county and route on which the advertisement or advertising structure is to be located and must be accompanied by a fee of one dollar to cover the cost of issuance of the temporary permit. If within such sixty days, the applicant shall file with the Commissioner an application setting forth all of the information required in § 33.1-361, together with the required fees, the Commissioner shall issue to such applicant a permit. In the event that the permit is not issued, the fees submitted shall be returned, except the one dollar for the temporary permit.

Source: § 33-312.

Note: No change.

§ 33.1-366. Appeal from refusal or revocation of permit.—Any person aggrieved by any action of the Commissioner in refusing to grant or in revoking a permit under §§ 33.1-361 or 33.1-364 may, within thirty days

from the date of such refusal or revocation, appeal from the decision of the Commissioner to the Circuit Court of the city of Richmond, or, at the election of such person, to the circuit or corporation court of the county or city in which such person resides, by presenting to the court or the judge thereof in vacation, after five days' notice in writing to the **Commissioner**, an affidavit made by such person or by his duly authorized agent or attorney, setting forth the fact of such refusal or revocation, as the case may be, and that the action of the Commissioner was without just cause.

Source: § 33-313.
Note: No change.

§ 33.1-367. Transfer of licenses and permits to successor concerns.—Any license or permit issued pursuant to this article may be transferred to any person who acquires as a successor the business of the person for whom such license or permit was issued.

Source: § 33-314.
Note: No change.

—— (§ 33-315 was repealed in 1954).

§ 33.1-368. Identification of advertising structure or advertisement.—The Commissioner shall require that each advertising structure and each advertisement not posted or displayed on an advertising structure shall bear an identification number, furnished by the Commissioner, and if erected, maintained or displayed by a licensed outdoor advertiser shall also bear his name. The Commissioner shall make suitable provisions for the details thereof.

Source: § 33-316.
Note: No change.

§ 33.1-369. Certain advertisements or structures prohibited.—No advertisement or advertising structure shall be erected, maintained or operated:

(1) Within six hundred sixty feet of the nearest edge of the right-of-way of the Blue Ridge Parkway, the Colonial National Parkway, the Mount Vernon Boulevard, or any other parkway within this State or within six hundred sixty feet of any public cemetery, public park reservation, public playground, national forest or State forest, outside the limits of any municipality; provided, however, that any advertisement or advertising structure which is lawfully in place on April six, nineteen hundred sixty-six, and which does not conform to the six hundred sixty foot distance requirement may be maintained for the life of such advertisement or advertising structure; or

(2) Which involves motion or rotation of any part of the structure or displays intermittent lights within one hundred feet of the nearest edge of the pavement of any highway; or

(3) Which uses the words "stop" or "danger" prominently displayed or presents or implies the need or requirement of stopping or the existence of danger on any highway, or which is a copy or imitation of official highway signs; or

(5) Which, within visible distance of any highway, advertises any county, city, town, village, historic place or shrine without the consent, in

writing, of such county, city, town or village or of the owner of such historic place or shrine; or

(6) Which is mobile and is designed to and effectively does distract the attention of passing motorists on any highway by flashing lights, loud and blatant noises or movable objects; or

(7) Which involve red, green or amber lights or reflectorized material and which resemble traffic signal lights or traffic control signs and are within visible distance of any highway; or

(8) Within fifteen feet of the nearest edge of the pavement of any highway; provided, however, that the Commissioner may waive this restriction whenever the advertisement or advertising structure is actually anchored outside of the right-of-way, and, within his discretion, does not constitute a safety hazard or conflict with any other restriction contained in this section; or

(9) At any public road intersection in such manner as would obstruct the clear vision in either direction between a point on the center line of the side road twenty feet from the nearest edge of the pavement of the main road and points on the main road four hundred feet distant, measured along the nearest edge of the pavement of the main road; or

(10) At any grade intersection of a public road and a railroad in such manner as would obstruct the clear vision in either direction within triangular areas formed by (a) a point at the center of the railroad-public road intersections, (b) a point on the public road four hundred feet from the center of the railroad-public road intersection as measured along the center of the public road, and (c) a point on the railroad five hundred feet from the center of the railroad-public road intersection as measured along the center of the railroad; or

(11) At or near any curve in a road in such a manner as to obstruct the clear vision of traffic from any one point on such curve to any other point not more than four hundred feet apart, as measured between each point from the nearest edge of the pavement; or

(12) Which advertises activities which are illegal under State or federal laws or regulations in effect at the location of such sign or advertisement or at the location of such activities; or

(13) Which is obsolete or inconsistent with this act or regulations adopted by the State Highway Commission pursuant to this act.

Source: § 33-317.

Note: No change.

§ 33.1-370. Special provisions pertaining to interstate and federal-aid primary highways.—(a) Notwithstanding the territorial limitation set out in § 33.1-353, no sign or advertisement which is visible from the main-traveled way of any interstate or federal-aid primary highway shall be erected, maintained, or displayed within six hundred sixty feet of the nearest edge of the right-of-way of any highway within either system, except as provided in subsections (b) and (c).

(b) The following signs may be erected, maintained and displayed within six hundred sixty feet of any interstate or federal-aid primary highway:

Class 1—*Official signs.*—Directional and other official signs and no-

tices, which signs and notices shall include, but not be limited to, signs and notices pertaining to the availability of food, lodging, vehicle service and tourist information, natural wonders, scenic areas, museums and historic attractions, as authorized or required by law. The State Highway Commission shall determine the type, lighting, size, location, number and other requirements of signs of this class.

Class 2—*On premise signs.*—Signs not prohibited by other parts of this article which are consistent with the applicable provisions of this section and which advertise the sale or lease of, or activities being conducted upon, the real property where the signs are located; provided, that any such signs, which are located adjacent to and within six hundred sixty feet of any interstate highway and do not lie in commercial or industrial zones within the boundaries of incorporated municipalities, as such boundaries existed on September twenty-one, nineteen hundred fifty-nine, wherein the use of real property adjacent to the Interstate System is subject to municipal regulation or control, or in areas where land use as of September twenty-one, nineteen hundred fifty-nine was clearly established by State law as industrial or commercial, shall comply with the following requirements:

(1) Not more than one sign advertising the sale or lease of the same property may be erected or maintained in such manner as to be visible to traffic proceeding in any one direction on any one interstate highway;

(2) Not more than one sign, visible to traffic proceeding in any one direction on any one interstate highway and advertising activities being conducted upon the real property where the sign is located, may be erected or maintained more than fifty feet from the advertised activity, and no such sign may be located more than two hundred fifty feet from the center of the advertised activity; and

(3) No sign, except one which is not more than fifty feet from the advertised activity, that displays any trade name which refers to or identifies any service rendered or product sold, shall be erected or maintained unless the name of the advertised activity is displayed as conspicuously as such trade name.

Class 3—*Other signs.*—Any signs or advertisements which are located within areas adjacent to any interstate or federal-aid primary highway which are zoned industrial or commercial under authority of State law, or in unzoned commercial or industrial areas as determined by the State Highway Commission from actual land uses. The State Highway Commission shall determine the size, lighting and spacing of signs of this class, provided that such determination shall be no more restrictive than valid federal requirements on the same subject.

(c) In order to provide information in the specific interest of the traveling public, the State Highway Commission is hereby authorized to maintain maps and to permit informational directories and advertising pamphlets to be made available at rest areas, and to establish information centers at rest areas for the purpose of informing the public of places of interest within the State and providing such other information as may be considered desirable.

(d) Any signs or advertisements lawfully in existence along any interstate or federal-aid primary highway on April six, nineteen hundred sixty-six, and which are not in conformity with the provisions contained herein, shall not be required to be removed until July one, nineteen hun-

dred seventy. Any other signs or advertisements lawfully erected which do not conform to this act shall not be required to be removed until the end of the fourth year after they become nonconforming.

(e) The State Highway Commissioner is authorized to acquire by purchase, gift or the power of eminent domain and to pay just compensation upon the removal of the following signs or advertisements:

(1) Those lawfully in existence on October twenty-two, nineteen hundred sixty-five.

(2) Those lawfully on any highway made a part of the Interstate System or approved by the Secretary of Commerce pursuant to subsection (b) of § 103 of Title 23, United States Code, on or after October twenty-two, nineteen hundred sixty-five, and before January one, nineteen hundred sixty-eight; and

(3) Those lawfully erected on or after January one, nineteen hundred sixty-eight.

Such compensation is authorized to be paid only for the taking from the owner of such sign or advertisement of all right, title, leasehold and interest in such sign or advertisement, and the taking from the owner of the real property on which the sign or advertisement is located, of the right to erect and maintain such sign or advertisement thereon.

The Commissioner shall not be required to expend any funds under this section unless and until federal-aid matching funds are made available for this purpose.

Source: § 33-317.1.

Note: No change.

§ 33.1-371. Regulations and agreements with United States implementing § 33.1-370.—The State Highway Commission may issue regulations, and is authorized to enter into agreements with the United States as provided in 23 U.S.C. § 131, with respect to the regulation and control of signs, advertisements and advertising structures in conformity with § 33.1-370; provided that such agreements shall not prevent the General Assembly of Virginia from amending or repealing § 33.1-370 at any time.

Source: § 33-317.2.

Note: The words "the Secretary of Commerce of" have been deleted. The function of the Secretary of Commerce has now been taken over by the Secretary of Transportation. Therefore, this reference has been deleted and refers only to entering into agreements with the United States.

— (§ 33-317.3 was repealed in 1962).

§ 33.1-372. Pasting advertisements prohibited in certain instances.—No advertisement shall be pasted or glued on any building, fence, wall, tree, rock or other similar structure or object, unless the same be an advertising structure for which a permit has been issued and is in effect.

Source: § 33-318.

Note: No change.

§ 33.1-373. Advertising on rocks, poles, etc., within limits of highway.
— ny per on who in any manner paints, prints, places, puts or affixes any

advertisement upon or to any rock, stone, tree, fence, stump, pole, mile-board, mile-stone, danger-sign, guide-sign, guide-post, highway sign, historical marker, building or other object lawfully within the limits of any highway, shall be guilty of a misdemeanor and shall be punished accordingly.

Source: § 33-319.

Note: No change.

§ 33.1-374. Harmony of regulations.—No zoning board or commission or any other public officer or agency shall permit any advertisement or advertising structure which is prohibited under the provisions of this article, nor shall the Commissioner permit any advertisement or advertising structure which is prohibited by any other public board, officer or agency in the lawful exercise of its or their powers.

Source: § 33-320.

Note: No change.

§ 33.1-375. Violation a nuisance; abatement.—Any advertisement or advertising structure which is erected, used, maintained, operated, posted or displayed in violation of §§ 33.1-369, 33.1-370, or 33.1-372 or for which no permit has been obtained where such is required, or after revocation or more than thirty days after expiration of a permit, or which, whether or not excepted under the provisions of § 33.1-355, is not kept in a good general condition and in a reasonably good state of repair and is not, after thirty days' written notice to the person erecting, using, maintaining, posting or displaying the same, put into good general condition and in a reasonably good state of repair, is hereby declared to be a public and private nuisance and may be forthwith removed, obliterated or abated by the Commissioner or his representatives. The Commissioner may collect the cost of such removal, obliteration or abatement from the person erecting, using, maintaining, operating, posting or displaying such advertisement or advertising structure.

Source: § 33-321.

Note: No change.

§ 33.1-376. Disposition of fees.—All moneys received by the Commissioner under the provisions of this article shall be paid by him into the State treasury and allocated to the State Highway Commission for use in the regulation and control of outdoor advertising and landscaping of highways.

Source: § 33-322.

Note: No change.

§ 33.1-377. Penalty for violation.—Any person, firm or corporation violating any provision of this article for which violation no other penalty is prescribed by this article shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than ten dollars nor more than fifty dollars. Each day during which such violation is continued after conviction may be treated for all purposes as a separate offense.

Source: § 33-323.

Note: No change.

§ 33.1-378. Construction of article.—This article shall be liberally construed with a view to the effective accomplishment of its purposes.

Source: § 33-324.
Note: No change.

Article 2. False and Misleading Signs.

§ 33.1-379. **Prohibition of such signs.**—It shall be unlawful for any person to erect or maintain alongside, or in plain view of, any public highway any false or misleading sign of any kind or character purporting to furnish travel information relating to place or direction. It shall be unlawful for any person to erect or maintain alongside, or in plain view of, any public highway any sign of any kind or character purporting to furnish travel information relating to merchandise or services unless the design of such sign, the information thereon, and the location thereof, be approved in writing by the State Highway Commissioner; provided, however, that the provisions of this section as to merchandise and service shall not:

(1) Apply to or restrict the right of any person to post, display, erect or maintain on any store, dwelling house or other building, together with so much land therewith as shall be necessary for the convenience, use and enjoyment thereof, or on any merchantile appliances, contrivances or machinery annexed or immediately adjacent thereto, any sign advertising goods, merchandise, property, real or personal, business services, entertainment or amusements actually and in good faith manufactured, produced, bought, sold, conducted, furnished or dealt in on the premises;

(2) Limit or restrict the publication of official notices by or under the direction of any public or court officer in the performance of his official or directed duties;

(3) Limit or restrict notice of sale by a trustee under a deed of trust, deed of assignment, or other similar instrument; or

(4) Apply to or restrict the right of any property owner, his agent, lessee or tenant to maintain any sign offering to the public farm products, including live stock of every kind, or board or lodging or similar entertainment, or of the sale, rental or lease of the property.

Nothing in this section shall limit the right of any person, firm or corporation to erect signs which advertise natural scenic attractions in the State.

Source: § 33-325.
Note: No change.

§ 33.1-380. **Penalty for violation of preceding section; existing signs.**—Any person who shall violate any of the provisions of the preceding section shall, upon conviction thereof, be punished by a fine not to exceed ten dollars for each offense, and it shall be deemed a separate offense for the same person to erect, or permit to be erected, a similar sign at each of two or more places; provided, however, as to any such sign erected before June nineteenth, nineteen hundred and thirty-six, if it be satisfactorily proven that the information thereon given is correct, the person who erected the same, as well as the person who permitted the same to be erected, shall not be deemed guilty of such violation.

Source: § 33-326.
Note: No change.

§ 33.1-381. Removal of such signs by Commissioner.—The State Highway Commissioner, whenever he shall ascertain that any such sign gives incorrect information, shall notify the person who erected the same, and the person on whose property it is located, in writing, to remove it forthwith, and if it be not removed within ten days after receipt of such notice, the Commissioner shall remove and destroy the same, or cause it to be removed and destroyed, without liability for damages therefor; and, if any person convicted of erecting or maintaining any such sign, or of permitting the same to be erected or maintained, as hereinabove provided, shall fail or refuse to remove the same within ten days after such judgment of conviction, the Commissioner shall remove and destroy such sign, or cause the same to be removed and destroyed, without liability for damages therefor.

Source: § 33-327.

Note: The words “so erected before June nineteenth, nineteen hundred and thirty-six” are deleted. This eliminates the specific date and authorizes the Commissioner to remove any signs erected which give false or misleading information.

CHAPTER 8

ADJUSTMENT OF CLAIMS RESULTING FROM CONTRACTS FOR CONSTRUCTION OF STATE HIGHWAYS

§ 33.1-382. Submission of claims; initial investigation and notice of decision; appearance before Commissioner; further investigation and notice of decision; settlement.—Upon the completion of any contract for the construction of any State highway project awarded by the State Highway Commission to any contractor, if the contractor fails to receive such settlement as he claims to be entitled to under his contract, he may, within sixty days from the time of payment of his final estimate, submit to the Highway Department, through proper administrative channels as determined by the Department, a written claim for such amount as he deems himself entitled to under the said contract setting forth the facts upon which said claim is based, provided that written notice of the contractor’s intention to file such claim shall have been given to the Department at the time of the occurrence or beginning of the work upon which the claim and subsequent action is based. Within sixty (60) days from receipt of said claim, the Department shall make an investigation and notify the claimant in writing of its decision, and if dissatisfied with the decision, the claimant, either in person or through counsel, may appear before the Highway Commissioner and present any additional facts and argument in support of his claim. Within thirty days from the date of the appearance before him, the Highway Commissioner shall make an investigation of said claim and notify the contractor in writing of his decision. In the event the Commissioner deems that all or any portion of a claim is valid, he shall have the authority to negotiate a settlement with the contractor, but any such settlement shall be subject to the provisions of § 2.1-127 of this Code.

Source: § 33-328.

Note: No change.

§ 33.1-383. Civil action.—As to such portion of the claim as is denied by the Highway Commissioner, the contractor may institute a civil action

for such sum as he claims to be entitled to under said contract by the filing of a petition in the Circuit Court of the city of Richmond for trial by the court without a jury. The submission of the claim to the Highway Department within the time and as set out in § 33.1-382 shall be a condition precedent to bringing an action under this chapter.

Source: § 33-329.

Note: No change.

§ 33.1-384. Application of chapter to pending proceedings or existing contracts.—The provisions of this chapter shall not apply to those actions or proceedings pending upon June twenty-seven, nineteen hundred sixty-six, but these provisions may be made applicable to existing contracts by mutual consent of the contracting parties.

Source: § 33-330.

Note: No change.

§ 33.1-385. Provisions of chapter deemed part of contract.—The provisions of this chapter shall be deemed to enter into and form a part of every contract entered into between the State Highway Commission and any contractor, and no provision in said contracts shall be valid that is in conflict herewith.

Source: § 33-331.

Note: No change.

2. All acts and parts of acts, all sections of the Code of Virginia, and all provisions of municipal charters inconsistent with the provisions of this act are, except as otherwise provided, repealed to the extent of such inconsistency.

3. The repeal of Title 33, effective October 1, 1970, shall not affect any act or offense done or committed, or any penalty or forfeiture incurred, or any right established, accrued or accruing on or before such date, or any prosecution, suit or action pending on that date. Except as in this act otherwise provided, neither the repeal of Title 33 nor the enactment of Title 33.1 shall apply to offenses committed prior to October 1, 1970, and prosecutions for such offenses shall be governed by the prior law, which is continued in effect for that purpose. For the purposes of this act, an offense was committed prior to October 1, 1969, if any of the essential elements of the offense occurred prior thereto.

4. Whenever in Title 33.1 any of the conditions, requirements, provisions or contents of any section, article or chapter of Title 33 as such title existed prior to October 1, 1970, are transferred in the same or in modified form to a new section, article or chapter of Title 33.1, and whenever any such former section, article or chapter of Title 33 is given a new number in Title 33.1, all references to any such former section, article or chapter of Title 33 appearing in the Code of Virginia shall be construed to apply to the new and renumbered section, article or chapter containing such conditions, requirements, provisions or contents or portions thereof.

5. It is the intention of the General Assembly that this act shall be liberally construed to effect the purposes set out herein, and if any clause, sentence, paragraph or section of this act shall ever be declared unconstitutional, it shall be deemed severable, and the remainder of this act shall continue in full force and effect.

6. This act shall become effective October 1, 1970.

APPENDIX A

A BILL, to amend the Code of Virginia by adding a section numbered 1-13.40 defining the phrase "systems of State highways".

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia be amended by adding a section numbered 1-13.40 as follows:

§ 1-13.40. Systems of State Highways.—The words "systems of State highways" shall mean all systems of highways within the Commonwealth over which the State Highway Commission exercises jurisdiction and control. In context, such words shall apply to the extent, but only to the extent, that the State Highway Commission exercises such jurisdiction and control.

2. This act shall become effective October 1, 1970.