

**REPORT OF THE
DEPARTMENT OF TRANSPORTATION**

**Report for Counties Assuming
Responsibility For Their Secondary
Construction Program**

**TO THE GOVERNOR AND
THE GENERAL ASSEMBLY OF VIRGINIA**



HOUSE DOCUMENT NO. 80

**COMMONWEALTH OF VIRGINIA
RICHMOND
2005**



COMMONWEALTH of VIRGINIA

DEPARTMENT OF TRANSPORTATION
1401 EAST BROAD STREET
RICHMOND, VIRGINIA 23219-2000

GREGORY A. WHIRLEY
ACTING COMMISSIONER

October 21, 2005

The Honorable Mark R. Warner
Members of the House and Senate Transportation Committees

Dear Governor Warner and Transportation Committee Members:

The Virginia Department of Transportation (VDOT) was directed through Item 492 D.7. of the 2005 Appropriation Act to develop and prepare legislative recommendations, in conjunction with representatives of counties, on the process for any county, at their request, to assume responsibility for their secondary construction program.

VDOT established a stakeholder group of county officials from areas across the state. The stakeholder group suggested changes to § 33.1-23.4 of the *Code of Virginia* to clarify and further define how a county could assume responsibility for their secondary program.

The stakeholder group also established a process for counties to follow when considering assuming responsibility of its secondary construction program. This process clearly defines what steps will be taken once a county expresses interest in assuming responsibility for its secondary program. The process includes a checklist to ensure all aspects of the program are addressed. Counties must determine if they can deliver the construction program better, faster and cheaper than VDOT and have identified some of the keys to help them with that goal.

Attached is the report that addresses the issues raised by the budget amendment. If you have questions or need additional information, please let me know.

Sincerely,

A handwritten signature in cursive script that reads "Gregory A. Whirley".

Gregory A. Whirley

Attachment

cc: The Honorable Leo C. Wardrup, Jr.
The Honorable Martin E. Williams
The Honorable Pierce R. Homer

Report for Counties Assuming Responsibility for their Secondary Construction Program

Preface

The Virginia Department of Transportation (VDOT) was directed by the 2005 General Assembly through Item 492.D.7 of the 2005 Appropriation Act to develop and prepare legislative recommendations, in conjunction with representatives of counties, on the process for any county, at their request, to assume responsibility for their secondary construction program.

The stakeholder group consisted of Pat Coffield, Augusta County Administrator, Arnold Covey, Roanoke County Director of Community Development, Steve Crosby, Stafford County Administrator, Mark Graham, Albemarle County Community Development Director, Kathy Ichter, Fairfax County Assistant Director of Transportation, Larry Land, VACO Director of Policy Development, John McCracken, Chesterfield County Director of Transportation, Sandon Rogers, Isle of Wight County Transportation Planner, and Randy Wheeler, Spotsylvania County Administrator.

The VDOT staff members that worked with the stakeholder group included Michael Estes, Local Assistance Director, Julie Brown, Assistant Director of Local Assistance, Tom Fahrney, Transportation Manager, Rob Crandol, Ashland Residency Administrator and Amy O'Leary, Associate Director of the Virginia Transportation Research Council.

This report was prepared by Penny Forrest of the Local Assistance Division of the Virginia Department of Transportation, which manages the locally administered programs for VDOT.

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Executive Summary

The Virginia Department of Transportation (VDOT) was directed by the 2005 General Assembly through Item 492.D.7 of the 2005 Appropriation Act to develop and prepare legislative recommendations, in conjunction with representatives of counties, on the process for any county, at their request, to assume responsibility for their secondary construction program.

In 1932, the General Assembly relieved counties of maintenance and construction responsibility for local roads. Counties could, by referendum, choose to keep the responsibility for their local or “secondary” roads. Today, only Henrico and Arlington counties maintain and construct their own secondary roads. As counties develop and citizen’s expectations increase, road construction needs exceed available funds and resources. To meet the transportation demands in their areas, many counties are providing additional funds toward secondary road construction and administering road construction projects. This effort defines and clarifies what is needed for counties to assume their entire secondary construction program.

VDOT established a stakeholder group of county officials from across the state. This group met on three occasions between June and August 2005. The stakeholder group suggested changes to § 33.1-23.4 of the *Code of Virginia* to clarify and further define how a county could assume responsibility for the secondary program within the county.

The stakeholder group also established a process for counties to follow when considering assuming responsibility of its secondary construction program. This process clearly defines what steps will be taken once a county expresses interest in assuming responsibility for its secondary program. The process includes a checklist to ensure all aspects of the program are addressed.

Finally, but most importantly, the group developed the “keys to success”, which is a list of items to be considered for counties to successfully administer their secondary construction program. The stakeholder group recorded several significant factors that will be essential to the counties successfully assuming responsibility for their secondary construction program, some of which may require legislative changes. These factors or “keys” are included in appendix D of this report. The principal point throughout the stakeholder meetings was that in order for counties to assume responsibility of their secondary construction program, it should be a value added, financially expedited program. Counties must determine if they can deliver the construction program better, faster, cheaper than VDOT and have identified some of the keys to help them with that goal.

Introduction

The Virginia Department of Transportation (VDOT) has been responsible for the construction and maintenance of all secondary roads in the Commonwealth, except those in Henrico and Arlington counties, since 1932. For more than 70 years, the County Boards of Supervisors and VDOT have cooperatively established priority lists of secondary construction projects within each county, with VDOT subsequently designing and constructing a majority of the roads.

As localities and the Commonwealth strive to meet the needs of the traveling public, it is often noted that Virginia is one of few states where the state Department of Transportation has responsibility for all local roads. In 2001, The General Assembly added § 33.1-84.1 to the *Code of Virginia*, allowing counties to assume responsibility for planning, constructing, maintaining, or operating all or a portion of their secondary system. This section provided counties the means to assume responsibility but did not establish a process to do so. Acknowledging that a reasonable method must be established for counties to assume responsibility for any portion of their secondary system, the 2005 General Assembly directed that:

“The Department of Transportation, working with representatives of counties, shall develop and prepare legislative recommendations on the process for any county, at their request, to assume responsibility for their secondary construction program. Such work shall be completed by November 1, 2005 and be provided to the Governor and the Senate and House Transportation Committees for their consideration.”

Background

The General Assembly in 1932 approved a means by which the counties could be relieved of road construction and maintenance responsibility. The “Byrd Road Act”, authorized the establishment of the state secondary road system. It permitted each county to give its road responsibility to the Highway Commission. Four counties - Arlington, Henrico, Nottoway and Warwick chose, by referendum, to keep the responsibility; the other counties joined the new secondary system. In 1933, Nottoway reversed its earlier decision and joined the system. Years later, Warwick gave up its county status to become a city that eventually merged with Newport News. Arlington and Henrico counties continue to operate their own local roads.

When the secondary system was established, it totaled 35,900 miles. It included 2,000 miles hard-surfaced, 8,900 miles with soil or gravel surfaces, and more than 25,000 miles, or almost 70 percent, of largely unimproved dirt roads. Some counties had no hard-surfaced roads at all. Within a decade, the amount of hard-surfaced roads had tripled, the mileage of soil or gravel roads had doubled, and the unimproved roads had been reduced by almost half. The secondary system currently totals over 48,000 miles of roads.

While the focus of the secondary construction program at its inception was to provide hard surfaced roads to the citizens of the Commonwealth, the program now provides funds to construct all types of roads, from rural hard surfacing to constructing urban multilane highways. Virginia has changed tremendously from the predominantly rural state it was in the 1930s, when many counties were unable to keep local roads in passable condition. The distinction between counties and cities has blurred in many instances, especially in the urbanized “golden crescent” that extends from Northern Virginia to Hampton Roads. A 1988 report by the Local Government Attorneys of Virginia noted, “The growth of the urban counties in the last 20 years has been nothing short of explosive, and the urban counties are now much more like cities in the intensity of their development and the service requirements of their citizens.” Virginia cities have considerably more autonomy over their streets than counties do, although they must meet certain VDOT requirements in order to receive state funding.

As counties develop and citizen’s expectations increase, road construction needs exceed available funds and resources. To meet the transportation demands in their areas, many counties provide additional county funds to supplement secondary allocations provided through VDOT. To have more control over construction project delivery, many counties administer some of their improvement projects. Defining the process in which a county can assume responsibility for its entire secondary construction program allows counties to better evaluate this option.

Stakeholder Group

As directed by the General Assembly, a stakeholder group was created consisting of county government officials and VDOT staff from across the state. The members of the stakeholder group were:

Pat Coffield,	County Administrator	Augusta County
Arnold Covey	Director of Community Development	Roanoke County
Steve Crosby	County Administrator	Stafford County
Cellell Dalton	County Administrator	Wythe County
Mark Graham	Community Development Director	Albemarle County
Kathy Ichter	Asst Director of Transportation	Fairfax County
Larry Land	Director of Policy Development	Virginia Association of Counties
John McCracken	Director of Transportation	Chesterfield County
Sandon Rogers	County Transportation Planner	Isle of Wight County
Randy Wheeler	County Administrator	Spotsylvania County

VDOT staff that worked with the stakeholder group included:

Julie Brown	Assistant Division Administrator, Local Assistance Division	Central Office
Rob Crandol	Residency Administrator	Richmond District
Mike Estes	Director, Local Assistance	Central Office
Tom Fahrney	NOVA Transportation Manager	Nova District
Penny Forrest	Special Projects Manager	Central Office
Amy O'Leary	Associate Director for Environmental and Business Practices	Virginia Transportation Research Council
Bernie Schmelz	Program Manager, Locally Administered Programs	Central Office

The stakeholder group met on June 10, July 22, and August 26 in Charlottesville to discuss what was needed for counties to successfully assume responsibility for their secondary construction program.

Recommendations

The stakeholder group was charged with developing draft legislation for counties to assume responsibility of their secondary construction program. Section 33.1-84.1 of the *Code* allows counties to resume control of any portion of their secondary system for the purposes of planning, constructing, maintaining and operating such highways. This section requires a resolution and agreement between the county and VDOT. In addition to the provisions of § 33.1-84.1 of the *Code*, the stakeholder group suggested a change to § 33.1-23.4 of the *Code*. This revision to the *Code* will provide the state portion of the county's secondary construction budget to the county in quarterly payments. This will give counties their construction funds as they need them rather than waiting for reimbursement. The suggested change is based on language added to § 33.1-23.3 of the *Code* in 2003 that provided cities the opportunity to assume responsibility for their construction program. The draft legislation is provided in Appendix B.

Also, along with this proposed legislative revision, the process is defined for a county to assume responsibility for its secondary construction program. If a county were interested in assuming responsibility for their construction program, the county would provide an authorized letter of intent to VDOT one year prior to assuming responsibility. The county would then work with VDOT on their proposal and through their county review processes which could range from public involvement meetings to ordinance changes. A resolution from the county board of supervisors would be required once the county made the decision they definitely wanted to move forward with assuming that responsibility. VDOT and the county would then enter into an agreement stipulating what portions of the program will become county responsibility and what items will remain under VDOT purview. A process outline was developed to illustrate the steps the county and VDOT would take during the one-year transition period. This process outline is provided as Appendix C.

The proposed legislative changes in § 33.1-23.4 of the *Code* and process guidelines are the first step in encouraging counties to take over responsibility for their secondary construction program. In addition, the stakeholder group believes it is essential to illuminate concerns that may impact whether counties are interested in taking over this responsibility. Some of the concerns may require legislative action while others lie within VDOT and the remaining items are requirements outside of VDOT. The principal point throughout the stakeholder meetings was that for counties to assume responsibility of their secondary construction program, this must be a value added, financially expedited program. Counties must determine if they can deliver the construction program better, faster, and cheaper than VDOT. The stakeholder group offered several significant recommendations they felt are important to move counties to a successful transition of their secondary construction program. These “keys to success” are briefly summarized below with a more detailed discussion of these items included in Appendix D.

- Amend the *Code* to provide counties the same authority as VDOT to enter property for surveying transportation projects.
- Amend the *Code* to provide counties the same authority as VDOT to have utilities relocated at the utility owner’s expense when located within the right of way of a construction project.
- Provide a consistent funding stream for roads.
- Provide counties the ability to raise funds without referendums.
- Provide localities an incentive to assume responsibility of their construction program.
- Fund secondary construction projects solely with state funds to eliminate federal requirements.
- Modify PPTA policies to encourage developers or private contractors to construct secondary roads.

Appendix A – Item 492.D.7 of the 2005 Appropriation Act

492. Financial Assistance to Localities for Ground Transportation
(60700).....

7. The Department of Transportation, working with representatives of counties, shall develop and prepare legislative recommendations on the process for any county, at their request, to assume responsibility for their secondary construction program. Such work shall be completed by November 1, 2005 and be provided to the Governor and the Senate and House Transportation Committees for their consideration.

Appendix B – Suggested legislative change; adding items C & D to § 33.1-23.4

§ 33.1-23.4. Allocation of construction funds within secondary system.

Statute text

A. Such funds as are allocated to the secondary system of state highways pursuant to paragraph 3 of subsection B of § 33.1-23.1 shall be apportioned among the several counties in the secondary system by the Commonwealth Transportation Board so that each such county shall be allocated a share of such funds equal to the proportion that such county bears to the Commonwealth as a whole in terms of area and population with population being weighted 80 percent, and area being weighted 20 percent. For the purpose of this section, "area" means the total land area of a county reduced by the area of any military reservations and state or national parks or forests within its boundaries and such other similar areas and facilities of five square miles in area or more, as may be determined by the Commonwealth Transportation Board.

For the purposes of this section, the term "population" shall mean either population according to the latest United States census or the latest population estimate of the Center for Public Service of the University of Virginia, whichever is more recent.

If so requested in a resolution adopted by the local governing body, funds allocated to any county under this section may be used to support primary highway system construction projects within the county.

Before allocating funds under the foregoing provisions of this section, the Board may provide for exceptionally heavy expenditures for repairs or replacements made necessary by highway damage resulting from accidents, severe weather conditions, acts of God or vandalism.

B. Notwithstanding other provisions of this section, not more than one-third of the annual secondary system highway funds apportioned to a county under this section may be used to reimburse the county for (i) debt service for bonds or (ii) eligible project costs incurred on approved projects included in the county's Secondary Six-Year Plan and the county's capital improvement program. Such funds may also be used by the county for debt service for bonds issued for, or eligible project costs incurred or to be incurred on, approved projects included, at the time such bonds are issued or such costs are incurred or are to be incurred, in the Six-Year Improvement Program of the Commonwealth Transportation Board and the county's capital improvement program. Any such funds so apportioned to and received by such county, or any portion thereof, may be deposited in a special fund that shall be established separate and apart from any other funds, general or special.

When a county presents a resolution requesting that a portion of its annual secondary construction allocation be set aside for reimbursement for, or payment of, debt service under this section for a specific eligible project, the Commonwealth Transportation Board shall, subject to appropriation and allocation, set aside no more than one-third of the anticipated annual allocation of secondary system construction funding to the county for such purpose, provided such funds have not been previously committed for projects contained in the county's Secondary Six-Year Plan.

The setting aside and use of funds under this section for reimbursement for, or payment of, debt service shall be subject to such terms and conditions as may be prescribed by the Commonwealth Transportation Commissioner.

The provisions of this section shall not constitute a debt or obligation of the Commonwealth Transportation Board or the Commonwealth of Virginia.

C. In counties having elected to manage the construction program for the secondary system of state highways within the county, in accordance with § 33.1-84.1, payment of funds from the allocation of secondary construction funds for the county may be made in equal amounts, one in each quarter of the fiscal year, and shall be reduced by the amount of federal-aid construction funds credited to each county, which will be reimbursed as qualifying expenditures occur, and by the amount of funds forecast by the Department of Transportation and by the Department of Rail and Public Transportation to be expended for any construction project or projects or county wide activities on behalf of the county or other financial obligations. Those counties who decide to take over the responsibility for the secondary construction program shall notify the Commonwealth Transportation Board by July 1 for implementation the following year. Implementation shall take place as specified in the agreement referenced in § 33.1-84.1.

D. The chief administrative officer of counties receiving funds under subsection C of this section shall make annual reports of expenditures to the Commonwealth Transportation Board, in such form as the Board shall prescribe, accounting for all construction expenditures made from quarterly payments. Such reports shall be included in the scope of the annual audit of each county conducted by independent certified public accountants.

Appendix C – Proposed process

County Construction Program Assumption Process and Checklist

- County provides VDOT with a County Board authorized letter of intent to consider assumption of responsibility for the secondary construction program initiating the one-year review period.
- VDOT receives letter of intent from county by July 1st.
- Residency Administrator arranges meeting with county and VDOT staff to define areas of responsibility within 60 days of notification of intent. County and VDOT will discuss specifics about projects/work that will be performed or administered by VDOT. Items to be discussed may include all county wide construction activities in addition to projects.
- The county holds public involvement meetings as deemed appropriate.
- VDOT drafts program administration agreement based on agreed to specifics.
- VDOT conducts a series of workshops with the counties expressing notice of intent regarding programmatic responsibilities during the one-year transition period.
- VDOT receives resolution indicating county will be taking over responsibility for the secondary construction program on July 1st. This resolution should be passed by May 1st to allow time for agreement approval.
- County and VDOT execute agreement for the county to assume responsibility for secondary construction program. The agreement will provide the implementation details.
- County assumes responsibility for its secondary construction program on July 1, one year after notice of intent.

Appendix D – Keys to success identified by Stakeholders Group

The information presented below is the set of recommendations stemming from the stakeholder group meetings held June 10, July 22 and August 26. The group identified these items as essential in ensuring a county would be successful in administering its secondary construction program.

Legislative changes

The stakeholder group identified operational and financial items that may require changes to the *Code*.

Operational - In order to effectively and efficiently design roadways, access to proposed right of way is needed. VDOT enjoys right of access to properties along proposed construction projects in accordance with § 33.1-94 of the *Code*. Counties have indicated they would need that same consideration to efficiently survey future projects.

§ 33.1-94. Right to enter on land to ascertain its suitability for highway purposes; damage resulting from such entry.

Statute text

The Commonwealth Transportation 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.

Currently, the Commonwealth Transportation Commissioner can assign this right through local/state project agreements, but a change in the *Code* would grant localities the same authority when administering a transportation project. Counties specifically request that legislative authority when administering transportation projects.

Utilities located in the right of way by permit with VDOT must be relocated at the utility company's expense. Counties have indicated they would need that same consideration to prevent project costs from increasing. Utility companies would likely dispute transferable authority to use VDOT permit requirements. A change in the *Code* would grant localities the same authority when administering a transportation project. Counties specifically request that legislative authority when administering transportation projects.

Financial - Counties have indicated they may more readily support taking over their secondary program if they had more consistent funding options available to address identified needs.

Options discussed included the ability to raise funds without referendums similar to the Virginia Public School Authority pooled bond program. The counties would also like a more predictable formula for roads, similar to the current formulas for schools and law enforcement, which would commit the funds to the localities.

Localities have indicated they would like to see an incentive to take on additional responsibility for their secondary system. Additional resources, including staffing, facilities and funds may be required. The stakeholder group discussed their concerns with a county's ability to assume the construction program. Several counties that have managed individual projects expressed concerns that administering the entire secondary construction program would be challenging based on current staffing and resources. Counties voiced a need to identify options for staffing and resources. They reiterated the need for a consistent funding stream to keep capable staff.

In order to ensure a successful transition, localities would depend on capable experienced professionals. Current and former VDOT staff would most likely provide the needed skills.

The stakeholder group held that citizens would expect a higher level of service from their county if the county assumed responsibility for the program. For counties to successfully administer their secondary construction program, projects need to be delivered more efficiently than a VDOT managed program.

VDOT Changes

In addition to the legislative changes identified by the stakeholder group, they also emphasized that VDOT needs to keep processes flexible. The transition from VDOT administration of the secondary program to county administration can follow the structure put in place with the "first cities" initiative, which allows cities to administer their construction program. This process is a phased implementation, allowing a locality to take over the program, but with more oversight initially that diminishes as the locality gains more experience.

Over the last twenty years, some counties have begun to administer individual construction projects. Administration of a road construction project can be a complex and sometimes cumbersome process. In these instances, counties have depended upon VDOT to assist them in understanding and implementing state and federal requirements. Administering the entire secondary construction program will present even greater challenges for the county. Counties have differing levels of expertise in road design and construction. It was suggested that VDOT create a "how to get into the road business" program to certify both counties and individual project managers. Counties should be able to receive certification after proven success with less VDOT oversight after that. Individual project managers from consultant firms could be certified to do local work.

Counties expect VDOT to retain a partnership role in their construction program. Specifically the stakeholder group asked if counties try to do the right thing, but make a mistake, VDOT should act as advocate with the Federal Highway Administration (FHWA) or other regulatory authorities similar to the role they would have if VDOT were administering. Counties

indicated that VDOT further needs to evaluate its locally administered project process for streamlining opportunities.

The stakeholder group identified several items in the financial area that could hinder a county's desire to assume responsibility of its secondary construction program. Counties are concerned that federal requirements on construction projects can slow down the project development process and often increase costs. Counties request consideration that all secondary construction money be state money instead of federal with the other systems (primary, interstate, and urban systems) obligating most if not all of Virginia's federal funds. The stakeholder group asked that VDOT investigate how other states handle federal funds on local roads. If all federal funds cannot be removed from local road projects, counties would initiate dialog with the Congressional delegation to consider reducing some of the requirements on locally administered projects. It was suggested that there be a pilot project with reduced federal requirements.

Counties requested consideration for VDOT to modify its policies to encourage design build or Public Private Transportation Act relationships. These relationships could allow developers or private contractors to use secondary construction funds to construct projects on the six-year plan using their normal processes.

Localities want assurance their allocations will not be reduced based on taking over system; that there would be no off the top fee for VDOT oversight. It is recognized VDOT would be able to charge the locality for activities that VDOT must do on their behalf, such as the state environmental review process (SERP) and for the activities reflected in the program agreement (required plan reviews, etc). It is also recognized VDOT would retain the federal portion of the allocation as well as funds for activities VDOT is still performing such as county wide activities if requested.