Construction vs. Maintenance

History

Excerpt from the August 1, 1986 letter to the Governor transmitting the findings and recommendations of the Commission on Transportation in the Twenty-First Century:
> "...specifically, you requested in Phase I of our study, we ... 3. Examine the feasibility of establishing a separate fund of highway construction."

Excerpt from the accompany findings and recommendations:
> "Under the current system, funds for highway maintenance and other non-construction items are funded first, and whatever is remaining is used for highway construction ... Certainly the stable, predictable, long-term construction program so critical to smooth industry adjustment is lacking in such a situation. The question is thus, how can highway funds be allocated so as to guarantee that the Commonwealth's critical highway construction needs will be met?..."

To carry-out the above, §33.1-23.03:2 was amended by the 1986 Special Session to prevent money being taken from the TTF for maintenance. The relevant language reads

> "...78.7 percent of the funds deposited into or held in the Transportation Trust Fund ... pursuant to subdivision 3 of § 33.1-23.03:1*,...**shall be expended for capital improvements** <u>including construction, reconstruction, maintenance, and improvements of highways</u> according to the provisions of § 33.1-23.1 B or to secure bonds..."
>
> *Funds from 1986 Special Session: ½-cent retail sales tax, 1% tax on vehicle sales, 2½-cent gas tax, and $3 of annual license tag.

It was the clear intent of the 1986 Special Session to keep construction funds in the TTF from being taken for maintenance, in order to support bonding, provide stable construction planning, and address the politics of maintenance versus construction.

Budget Language

Nevertheless, starting in 2002, when the HMOF could no longer cover all maintenance needs, the shortfall was taken from the TTF. The transfer reflected VDOT's institutional tradition of taking care of what we have, which hadn't been tested in 15 years. In 2004, budget language formalized the transfer and now over-rides the Code language.

The loss to construction funds has grown from $50 million in 2002 to over $500 million today. This is 1/3 of total construction funds or very close to all state funds. For all intents and purposes: the state no longer funds construction.

FY2009-2010 Adopted Budget

Revenue	TTF - Construction*	HMOF - Maintenance and Operating
Motor Fuels Tax	$ 85,074,700	$733,600,000
Vehicle Sales and Use Tax	$126,864,400	$296,000,000
Vehicle License Tax	$ 16,448,300	$221,000,000
Retail Sales and Use Tax	$416,323,000	0
Total State Construction Revenue	$644,709,400	
Transfer to HMOF	($523,898,114)	$523,898,114
Federal Revenue (includes stimulus)	$812,447,863	0
Other Sources, which include toll facilities, state recordation tax, NVTC Commercial R.E. ($105,106,557)	$672,348,252	$ 86,943,261

* Revenue is after 14.7% allocated to Mass Transit, 4.2% to Port Authority and 2.4% to Aviation.

Politics

The 1986 Commission noted: "...as the level of funding for highways in real dollars has decreased, revenue for highway construction has dropped off dramatically–so much so that by 1991 the non-construction items will consume all revenues for existing state sources."

That comment parallels our current reality. It underscores that the 1986 Special Session was held 5 years before Virginia reached the point we're now facing...in part, because the need for funding was felt statewide. Because budget language over-rides the 1986 strategy by taking us back to funding maintenance out of construction, only growth areas of the Commonwealth feel the need for change.

Construction vs. Crape Mrytle

Most city representatives say "we maintain our own roads." In reality, cities are paid out of state maintenance funds to do so ($349 million in FY10). What's become critical about this arrangement is that the **payments to cities has grown to be twice what is spent in counties**.

History
The votes of legislators who represented cities were a crucial part of the coalition to change the transportation formula. They wanted payments equal to what VDOT spent in counties and the Code language reads

> § 33.1-41.1. Payments to cities and certain towns for maintenance of certain highways.... "The Department of Transportation shall establish a statewide maintenance index of the unit costs for labor, equipment, and materials used on roads and bridges in the fiscal year 1986, and use changes in that index to calculate and put into effect annual changes in the base per-lane-mile rate payable under this section..."

Budget Language
Unfortunately, this Code language was interpreted to provide an automatic CPI annual increase to cities ($10 million in FY10) for what VDOT paid for maintaining county roads in 1986 – as opposed to, creating an index that identifies the cost of maintenance done by VDOT and annually updating the payments to cities based on that cost. To fend off challenges to this interpretation, Budget language now reads:

> Notwithstanding §§ 33.1-23.5:1 and 33.1-41.1, Code of Virginia, the Department of Transportation shall adjust for inflation the payments made as part of Financial Assistance to Localities distributions...

Politics
Because their maintenance needs are fully met, many Virginia cities feel little pain – just like many non-growth counties whose roads are un-congested and whose maintenance needs have been met. Over-riding Code intent, severely undercuts the ability to put together a coalition of a majority of members who have a vested interest in change.

Talking points:

1. Virtually all state road construction funds go to maintenance. $524 of $645 million
    (Transit, ports, and aviation are not affected)

    Not the Code intent
    1986 Special Session created the Transportation Trust Fund to be used only for construction:
    - to provide a bondable source of revenue,
    - to support stable construction planning, and
    - to guard against the politics (which we are seeing) that if maintenance needs are met throughout the state, when the gas tax inevitably must be increased (as it routinely had been prior to 1986) the only legislators who will vote for it will be those who have construction and transit needs.

    Note: The word "maintenance" is used in §33.1-23.03:2 only in the context of being a form of capital improvement. This wording was necessary to be able to qualify for federal maintenance funds that are for projects that are in fact construction

2. Maintenance is dis-proportionately impacted by payments to cities
    Payments to cities increased $10Million for this year
    There was no cutback despite significant cuts in most other areas
    In 2007, the amount paid to cities per lane mile was twice what VDOT spent in counties.
    The gap continues to grow.

    Not the Code intent
    The intent of the language of § 33.1-41.1 was that an index of costs would be established (meaning creating a list* of items to be included) and that the annual payments to cities would be based on what VDOT spends on those items maintaining county roads.
    *The word "index" is used as a noun in § 33.1-41.1 and therefore, according to Webster's, this means it is a "list."   Instead, "index" is being carried out as if it were a verb requiring that payments be indexed to inflation.

3. Unlike the federal process, in Virginia, Budget language over-rides Code language because the Budget Bill is the last bill passed. This does not allow for adequate debate and has increasingly gotten out of control especially regarding the formulas that should control transportation allocation.
    (The formula that controls state payments to localities for K-12 public education is equally not subjected to full floor debate because the Composite Index always has been just Budget language and has never been adopted as stand-alone Code language.)

The way to change this is to pass a Constitutional Amendment. The amendment must prohibit the Transportation Trust Fund from being used for maintenance. It is inadequate to say transportation funds can't be used for non-transportation purposes, which by comparison has been a relatively small problem.