

Revision with CTB-R Member comments: Hynes, Rosen, Johnsen

The following is a draft resolution with proposed policy changes discussed with the CTB Rail Committee at the March, April, and May CTB Rail Committee meetings. This draft will be considered by the CTB Rail Committee before it is presented to the full CTB workshop. A final version for CTB action would update the last program policy resolution on the Industrial Access Railroad Tracks Fund (Rail Industrial Access Program), which was approved in November 1995:

WHEREAS, the General Assembly declares it to be in the public interest that access railroad tracks and facilities be constructed to certain industrial commercial sites where rail freight service is or may be needed by new or substantially expanded industry as described in Section 33.2-1600 of the Code of Virginia, and;

WHEREAS, Section 33.2-1600 E. sets forth considerations for the Commonwealth Transportation Board (the Board) when evaluating whether to construct access tracks, and further instructs the Board to adopt procedures to encourage widespread use of the funds, and;

WHEREAS, the Board will retain the current Performance Policy adopted April 15, 2015, which is incorporated below and was the result of the Board's reevaluation of the Rail Industrial Access Program Performance Policy based on repayment by 11 grantees after an economic downturn, and;

WHEREAS, the Board desires to update its policies regarding projects which qualify for application of industrial access railroad track funds.

NOW, THEREFORE, BE IT RESOLVED that the Commonwealth Transportation Board rescinds the previous policies adopted November 16, 1995, and adopts the following policies to govern the use of industrial access railroad track funds administered by the Director of the Department of Rail and Public Transportation:

1. The Industrial Access Railroad Track Program will be administered by the Director of the Department of Rail and Public Transportation (Director) in accordance with decisions of the Commonwealth Transportation Board. The Director may consult with the Commissioner of Agriculture and Consumer Services, and the Director of the Virginia Department of Economic Development Partnership (or their designated representatives) concerning applications for funds in accordance with the *Code of Virginia*. The Department of Rail and Public Transportation will act as staff to receive and process applications, to make recommendations and to supervise the program and approve the costs incurred.
2. Funding for the program will be provided from funds allocated for Access Programs under the Virginia Department of Transportation's budget.
3. All applications for industrial access railroad track funds shall be discussed with the appropriate local government. Each application shall be accompanied by a resolution from the local governing body requesting that such funds be allocated to the proposed project. Applications shall require the grantee to estimate the rail and truck utilization ratio of the proposed facility.
4. All applications shall be submitted to the Department of Rail and Public Transportation in accordance with the procedures outlined in the Procedural Memorandum outlined by the Department's Rail Industrial Access Program Guidelines. The Department will process the

applications, including making recommendations, and transmit same to the ~~Department of Rail and Public Transportation~~ Director for review and concurrence prior to submittal to the ~~appropriate Board Committee~~. ~~The Board Committee will make recommendation to the Board which will select projects and establish priorities, in accordance with the policies and procedures contained herein.~~

5. Funds for the construction of industrial access railroad tracks may be provided if the construction will have a positive impact upon the economic development of the Commonwealth or a region of the Commonwealth. Financial assistance will be limited to certain industrial or commercial sites where rail freight service is or may be needed by new or ~~substantially expanded~~ expanding industry for the ~~furnishing of rail freight trackage and construction and/or rehabilitation of railroad track facilities~~ between the normal limits of existing or proposed common carrier railroad tracks and facilities and the actual site of existing or proposed ~~commercial or industrial buildings or facilities~~.
6. Funds may be used to construct, reconstruct, or improve part or all of the necessary tracks and related facilities on public or private property currently used or being ~~developed, existent or prospective, for developed for~~ single industries ~~of or~~ industrial subdivisions under firm contract or already constructed, including those subdivisions owned and promoted by railroad companies and others. No funds shall be ~~expended-reimbursed~~ until all agreements are executed and certifications are provided as set forth in Items 9, 10, and ~~15-14~~ of the Policy.
7. Industrial access railroad track funds shall not be used for the acquisition of right of way or adjustment of utilities. If the total project costs exceed the available fund for a specific project, the expenditures will be approved in the following priority order: 1) track materials, including mainline switches, 2) installation, 3) engineering, 4) drainage, 5) grading, and 6) environmental mitigation. Eligible items of construction shall be limited to those necessary to provide adequate and safe rail service ~~between the clear point and and shall include the mainline switch to~~ the industry being served. Construction shall not include siding tracks. A sliding track is ~~defined by American Association of State Highway and Transportation Officials (AASHTO) as defined as~~ a track secondary to a main ~~secondary~~ track for a meeting or passing trains.
8. Plans and construction of all projects utilizing industrial access railroad track funds shall be subject to approval by the serving railroad prior to transmittal to the Director.
9. All facilities constructed and improved with industrial access railroad track funds shall be made available for use by all common carriers using the railway system to which they connect. The railroad company owning the main track to which an industrial access track is connected must acknowledge that any other carrier having trackage rights over the main track will also have unrestricted access to the industrial track.
10. Industrial access railroad track funds shall be ~~allocated paid as reimbursement for approved project activities~~ only after certification that the manufacturing, industrial, or commercial establishment is constructed and operating ~~or will be constructed and operated under firm contract, or upon the presentation of acceptable surety in accordance with Section 33.1-221(A) of the Code of Virginia (1950), as amended.~~
11. No more than ~~\$300,000~~ \$450,000 of the funds shall be allocated to any one county, town, or city in any fiscal year, unless authorized by the Board.
12. No more than \$450,000 of the funds shall be allocated to a project by the Board, unless, pursuant to Section 33.2-1600 E of the Code of Virginia, sufficient funds remain in the Access Program. ~~No more than \$100,000 of unmatched funds may be allocated to any one project in any fiscal year~~
- ~~11-13. Funds shall be matched with a minimum 30% local or private match. The unmatched funds may be supplemented with additional matched funds, in which case the matched state funds shall not be more than \$50,000. Any funds in excess of \$100,000 shall be matched dollar-for-dollar by the recipient or from other non-program sources. The amount of industrial access railroad track funds allocated to a project shall not exceed 15 percent of the capital outlay of the designation~~

~~business. The 15 percent limitation and the maximums on matched or unmatched funding may be waved at the discretion of the Board.~~

~~12.~~14. The Board shall, in the evaluation of projects, consider the cost of construction of an access track in relation to the prospective volume of rail traffic, capital investment, potential employment, or other economic and public benefits.

~~13.~~15. Committed industrial access railroad track funds are those funds which have been allocated to a project but not necessarily spent in the year of allocation. ~~Committed but unexpected.~~ Committed but unexpended industrial access railroad track funds will be allowed to accumulate and be carried forward from one year to another. Committed funds shall be expended within 24 months. ~~The Director any extend this time limit for a reasonable period.~~ Any funds allocated but ~~not un~~used, or returned ~~for any reason~~funds, and uncommitted ~~access~~ funds will be allowed to accumulate and carried forward from one year to another in the access fund.

~~14.~~16. The applicant shall be contractually committed to providing the Commonwealth with a contingent interest in that portion of tracks and facilities constructed or improved with the use of industrial access railroad track funds. Maintenance and liability of such facilities shall be the responsibility of the grantee, or others. Any cost involved in any subsequent relocation or removal of industrial access railroad track facilities shall be borne by the grantee, or others. Following relocation, the Commonwealth's interest will be redefined. In case of removal, the Director shall recoup the value of the facilities in which the Commonwealth has any remaining interest. ~~Two percent of the total allocation shall be deducted from the monies to the industry or business and held in a special escrow account for any potential unfunded removal cost to protect the Commonwealth's interest. This two percent deduction will not be required whenever the special escrow account contains \$30,000.~~

~~15.~~17. The Director may allow the grantee, ~~using~~ business tenant, or others, to purchase the Commonwealth's interest in an industrial access railroad track facility at a value determined by the Director.

~~16.~~18. In the event the grantee desires to sell the property or interest on which access tracks have been constructed with funds from this program, the sale will be subject to the Commonwealth's vested interest and Director's written approval.

19. Funding will not be recommended in cases where an industry is relocating within Virginia, unless there is a substantial expansion, excluding the value of transferred capital assets. The capital investment value used ~~to determine its eligibility and maximum funding level~~to evaluate applications for industrial access funds will be calculated on a net basis. The value of existing capital assets sold or transferred to the new location will be subtracted from the gross capital investment to determine the new figure.

20. Performance shall be based on achieving a minimum threshold for rail cars, with the following criteria:

1. The performance evaluation period shall last three years.

2. The minimum threshold is defined as the minimum number of rail cars required to achieve 50 application points.

~~1-3.~~3. The minimum threshold must be met in at least one of three years of performance.

21. The Director may grant one (1) three-year extension to the performance period, subject to the following:

2. Determination of the extension shall include an evaluation of the actual mode split between rail and truck carloads compared to the forecasted mode split.

3. If an extension is granted, the grantee must meet the target threshold at lease once during the total six-year performance period.

4. Determination of the extension shall also include evaluation of the grantee's progress toward its performance targets, including a review of the actual mode split of rail and truck loads.

21. Repayment shall be based on the percentage of performance target achieved. The percentage for partial repayment of the grant amount shall be determined by the difference between the highest actual carload count reported and the minimum threshold necessary to achieve 50 application points.

BE IT FURTHER RESOLVED that the Director shall develop procedural guidelines for the implementation of this policy and that the above policy shall become effective on ~~December 1, 1995~~October 1, 2018.

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