COMMONWEALTH of VIRGINIA

Commonwealth Transportation Board

W. Sheppard Miller, III
Chairperson

1221 East Broad Street
Richmond, Virginia 23219

(804) 482-5818
Fax: (804) 786-2940

Agenda item # 10

RESOLUTION
OF THE
COMMONWEALTH TRANSPORTATION BOARD

November 10, 2025

MOTION

Made By: Mr. Good, **Seconded By:** Ms. Green
Action: Motion Carried, Unanimously

Title: Adoption of Policy on Use of Project Labor Agreements for Projects Funded with Allocations by the Board

WHEREAS, the Commonwealth Transportation Board (Board) recognizes that Va. Code § 2.2-4321.2 authorizes public bodies procuring products or services, and/or letting contracts for construction, manufacture, maintenance, or operation of public works to require bidders, offerors, contractors, or subcontractors to enter into or adhere to Project Labor Agreements (PLA) with one or more labor organizations, on the same or related public works projects; and

WHEREAS, the Commonwealth Transportation Board recognizes that Virginia's Right to Work law under Va. Code § 40.1-59 establishes that any agreement between an employer and any labor union or labor organization whereby persons not members of such union or organization are denied the right to work for the employer, or whereby such membership is made a condition of employment or continuation of employment by such employer, or whereby any such union or organization acquires an employment monopoly in any enterprise, is against public policy in the Commonwealth of Virginia; and

WHEREAS, under Va. Code § 33.2-214 the Commonwealth Transportation Board shall have the power and duty to coordinate the planning for and financing of transportation needs, including needs for highways, railways, seaports, airports, public transportation and spaceports, and set aside funds pursuant to a Six-Year Improvement Program of anticipated projects and programs by July 1 of each year; and

WHEREAS, under Va. Code § § 33.2-214 and 33.2-209 the Commonwealth Transportation Board shall have the power and duty to enter into contracts with the local districts, commissions, agencies, or other entities created for transportation purposes. Furthermore, the Commonwealth Transportation board shall have the power and duty to let all contracts to be administered by the Department of Transportation or the Department of Rail and Public Transportation for the construction, maintenance, and improvement of the highways compromising systems of state highways and for all activities related to passenger and freight rail and public transportation in excess of $5 million.

NOW THEREFORE BE IT RESOLVED, considering Va. Code § 2.2-4321.2 and pursuant to the Board's status as a "Policy Board", the Commonwealth Transportation Board believes that it is necessary to provide guidance in the form of a Policy on the use of Project Labor Agreements and the development of such agreements to carefully follow and/or reconcile with the laws of the Commonwealth of Virginia.

BE IT FURTHER RESOLVED, that the Commonwealth Transportation Board hereby adopts the *Policy on Use of Project Labor Agreements For Projects Funded with Allocations by the Board,* presented at the October 2025 Workshop and attached hereto as Attachment A, intending such Policy to be effective on the date of this Resolution.

####

Commonwealth Transportation Board (CTB) Decision Brief
Policy on Use of Project Labor Agreements for Projects Funded with Allocations by the Board

Issue: Considering Va. Code § 2.2-4321.2 and pursuant to the Board's status as a "Policy Board", the Commonwealth Transportation Board believes that it is necessary to consider whether it should provide guidance in the form of a Policy on the use of Project Labor Agreements and the development of such agreements to carefully follow and/or reconcile with the laws of the Commonwealth of Virginia.

Facts: Va. Code § 2.2-4321.2 authorizes public bodies procuring products or services, and/or letting contracts for construction, manufacture, maintenance, or operation of public works to require bidders, offerors, contractors, or subcontractors to enter into or adhere to Project Labor Agreements (PLA) with one or more labor organizations, on the same or related public works projects.

Virginia's Right to Work law under Va. Code § 40.1-59 establishes that any agreement between an employer and any labor union or labor organization whereby persons not members of such union or organization are denied the right to work for the employer, or whereby such membership is made a condition of employment or continuation of employment by such employer, or whereby any such union or organization acquires an employment monopoly in any enterprise, is against public policy in the Commonwealth of Virginia.

Under Va. Code § 33.2-214 the Commonwealth Transportation Board has the power and duty to coordinate the planning for and financing of transportation needs, including needs for highways, railways, seaports, airports, public transportation and spaceports, and set aside funds pursuant to a Six-Year Improvement Program of anticipated projects and programs by July 1 of each year.

Under Va. Code § § 33.2-214 and 33.2-209 the Commonwealth Transportation Board has the power and duty to enter into contracts with the local districts, commissions, agencies, or other entities created for transportation purposes. Furthermore, the Commonwealth Transportation board shall have the power and duty to let all contracts to be administered by the Department of Transportation or the Department of Rail and Public Transportation for the construction, maintenance, and improvement of the highways compromising systems of state highways and for all activities related to passenger and freight rail and public transportation in excess of $5 million.

On October 14, 2025, the Commonwealth Transportation Board was presented with information and a draft Policy on the Use of Project Labor Agreements for its consideration.

Recommendations: Considering the foregoing, and pursuant to the Board's status as a Policy Board, it is recommended that the Commonwealth Transportation Board consider whether it is necessary to provide guidance in the form of a Policy on the use of Project Labor Agreements

and the development of such agreements to carefully follow and/or reconcile with the laws of the Commonwealth of Virginia, and if the Board determines that such a policy is necessary, it is recommended that the Board adopt the *Policy on Use of Project Labor Agreements for Projects Funded with Allocations by the Board*, set forth in Attachment A.

Action Required by CTB: Should the Commonwealth Transportation Board determine that it is necessary to provide guidance in the form of a Policy on the use of Project Labor Agreements and seek to adopt the Policy set forth in Attachment A, a majority of the Board must approve a resolution adopting said Policy.

Result, if Approved: The Policy on Use of Project Labor Agreements set forth in Attachment A shall become effective.

Options: Approve, Deny, Defer

Public Comments/ Reaction: No comments or reaction from the public have been received regarding this matter.

ATTACHMENT A

Commonwealth Transportation Board
Policy on Use of Project Labor Agreements for Projects Funded with Allocations by the Board
October 2025

Whereas the Commonwealth Transportation Board (Board) recognizes that Va. Code § 2.2-4321.2 authorizes public bodies procuring products or services, and/or letting contracts for construction, manufacture, maintenance, or operation of public works to require bidders, offerors, contractors, or subcontractors to enter into or adhere to Project Labor Agreements (PLA) with one or more labor organizations, on the same or related public works projects; and

Whereas the Commonwealth Transportation Board recognizes that Virginia's Right to Work law under Va. Code § 40.1-59 establishes that any agreement between an employer and any labor union or labor organization whereby persons not members of such union or organization are denied the right to work for the employer, or whereby such membership is made a condition of employment or continuation of employment by such employer, or whereby any such union or organization acquires an employment monopoly in any enterprise, is against public policy in the Commonwealth of Virginia; and

Whereas under Va. Code § 33.2-214 the Commonwealth Transportation Board shall have the power and duty to coordinate the planning for and financing of transportation needs, including needs for highways, railways, seaports, airports, public transportation and spaceports, and set aside funds pursuant to a Six-Year Improvement Program of anticipated projects and programs by July 1 of each year; and

Whereas under Va. Code § § 33.2-214 and 33.2-209 the Commonwealth Transportation Board shall have the power and duty to enter into contracts with the local districts, commissions, agencies, or other entities created for transportation purposes. Furthermore, the Commonwealth Transportation board shall have the power and duty to let all contracts to be administered by the Department of Transportation or the Department of Rail and Public Transportation for the construction, maintenance, and improvement of the highways compromising systems of state highways and for all activities related to passenger and freight rail and public transportation in excess of $5 million.

Therefore, considering Va. Code § 2.2-4321.2 and pursuant to the Board's status as a "Policy Board", the Commonwealth Transportation Board believes that it is necessary to provide guidance on the use of Project Labor Agreements and the development of such

agreements to carefully follow and/or reconcile with the laws of the Commonwealth of Virginia.

It is the belief of the Commonwealth Transportation Board that the use of a Project Labor Agreement may be considered when such an agreement would clearly and significantly benefit the project and advance the interests of the Public and the Commonwealth. The Commonwealth Transportation Board will require entities seeking Board funded use of a PLA to demonstrate: (1) quantifiable cost savings through the use of such an agreement, (2) evidence of increased effectiveness and efficiency of the project, and (3) quality, safety and timeliness benefits to the project. Accordingly, a Project Labor Agreement may be used on a project funded in whole or in part with state or federal funding allocated by the Board pursuant to the six-year improvement program, upon a finding by the Board that a Project Labor Agreement satisfies the requirements of this Policy.

I. Definitions

For the purposes of this Policy, the following terms shall have the meaning set forth below:

Independent Third-Party means an entity with no organizational ties to the Project Sponsor that has a minimum of five years demonstrated experience in performing evaluations and assessing the potential and actual impacts of Project Labor Agreements on projects.

Project Labor Agreement (PLA), as set forth in Va. Code § 2.2-4321.2, means a pre-hire collective bargaining agreement with one or more labor organizations that establishes the terms and conditions of employment for a specific public works project.

Project Sponsor means the public entity responsible for administration and/or delivery of the project.

II. Requirements

The following requirements shall apply in the determination of whether or not a Project Labor Agreement may be used on a project funded in whole or in part with state or federal funding allocated by the Board pursuant to the six-year improvement program.

1. Commonwealth Transportation Board's Determination of a Project's PLA Eligibility

While the Commonwealth Transportation Board agrees and understands that a public body may (in its bid specifications, project agreements, or other controlling documents) allow or require bidders, offerors, contractors, or subcontractors to enter into PLAs on projects, the

Board must work to balance the use of PLAs as it relates to the Public's and Commonwealth's best interest and subsequent use of Board allocated transportation funds. The Board must weigh a PLA's usefulness based on a declaration of need by the Project Sponsor and evidence that, based on its size and complexity, the project requires predictability in costs, an extended period, timely completion, multiple contractors and trades, and a need to ensure a unified, skilled and trained workforce.

In accordance with the effort to be effective stewards of Commonwealth resources; to balance the right to work policy of the Commonwealth of Virginia embodied in the Right to Work statutes (Va. Code §§ 40.1-58 through 40.1-69); and acknowledging that a PLA may be permitted by public bodies, the Commonwealth Transportation Board finds it necessary to develop a policy with appropriate criteria to determine if the use of a PLA is in the Public's and Commonwealth's best interest.

The Commonwealth Transportation Board shall, on a project-by-project basis, render a determination of PLA eligibility and may approve the use of a PLA on a project only if the Project Sponsor has submitted a written request along with an evaluation prepared by an Independent Third- Party that make a clear and compelling case that the use of a PLA on the project will significantly benefit the project and advance the interests of the Public and the Commonwealth from the standpoint of quantifiable cost savings, effectiveness, efficiency, quality, safety and timeliness and shall meet the requirements of the Virginia Right to Work statutes.

In considering whether the Project Sponsor made a clear and compelling case that use of a PLA will benefit the project and advance the Interests of the Public and the Commonwealth, the Commonwealth Transportation Board shall consider the Project Sponsor's request combined with an Independent Third-Party evaluation that address, at a minimum, each of the following factors:

A. The PLA's usefulness as it relates to the size and complexity of the project;

B. Whether, and the extent to which, use of a PLA will increase or decrease the costs of the project, based on:

    i. Project cost estimates with use of a PLA, and
    ii. Project cost estimates without use of a PLA;

C. The importance of the project and need to adhere to a certain timeline; whether the project cannot be completed in accord with the timeline needed by the Commonwealth without a PLA and the risks presented by use of a PLA on the timeline;

D. Impacts (positive/negative) of a PLA on competition, including but not limited to:
    i. Impacts (positive/negative) on the number of contractors that would otherwise be willing or able to bid or offer proposals on the project, including but not limited to their union/non-union status or participation/non-participation in collective bargaining agreements;
    ii. Impacts (positive/negative) on the ability of Virginia-based contractors or Virginia residents to participate in the contract;

E. Whether use of a PLA will deny work to any Virginia worker based on their union or non-union membership status;

F. Whether there is an actual shortage of skilled labor needed for the project, considering the availability of labor inside and outside the project area and whether use of a PLA will resolve/address the labor shortage;

G. Whether VDOT's or DRPT's prequalification requirements do not adequately address the Interests of the Public and the Commonwealth; and

H. Whether use of a PLA would impact the risks of labor disputes or unrest affecting the project, to include:
    i. the circumstances that are present which may lead to a heightened risk of labor disruption, such as the history of labor unrest in the area, the anticipated working conditions of the project relating to the environment or work schedules, and the expiration of one or more collective bargaining agreements that could lead to jurisdictional disputes and evidence that use of a PLA will prevent strikes from occurring during the project;
    ii. impacts of a labor disruption to the users, the operation of the facility, the region and the impact that use of a PLA would have on the potential for labor disruption; and
    iii. the costs of a delay should a labor disruption occur.

The Board shall consider the Project Sponsor's request and will only approve the use of a PLA for the project, if the Board, by a formal resolution, finds that Project Sponsor's request and the Independent Third-Party Evaluation have, taking into consideration each of the factors above, made a clear and compelling case that use of a PLA will have a positive impact and will benefit the project and advance the Interests of the Public and the Commonwealth.

2. Process

A Project Sponsor seeking to utilize a PLA for a project funded with state or federal funds allocated by the Board pursuant to the six-year improvement program shall submit to the Commissioner of Highways or Director of DRPT a PLA Request Packet consisting of its written request along with an evaluation prepared by an Independent Third-Party that make a clear and compelling case that the use of a PLA will significantly benefit the project and advance the Interests of the Public and the Commonwealth. The Independent Third-Party evaluation shall, at a minimum, address each of the factors set forth in Section II-1(Commonwealth Transportation Board's Determination of a Project's PLA Eligibility)

The Commissioner of Highways or Director of DRPT shall, upon receipt of a PLA Request Packet from the Project Sponsor, assess the packet for completeness, to ensure that all factors required in Section II-1 (Commonwealth Transportation Board's Determination of a Project's PLA Eligibility) have been addressed. The Commissioner or Director shall notify the Project Sponsor of the results of the assessment no later than 60 calendar days after receipt of the PLA Request Packet. Failure by the Commissioner or Director to satisfy the timeline for the assessment set forth herein shall not constitute or be construed as a finding that a PLA Request Packet is complete; the Commissioner or Director shall, however, notify the Project Sponsor of the reasons for the delay. If the submission is determined to be incomplete, the Commissioner or Director shall provide the Project Sponsor with a written assessment advising of the reasons the PLA Request Packet was assessed as being incomplete.

If it is determined that the submission is complete and ready for the Board's consideration, the Commissioner or Director shall coordinate with the Chair of the Commonwealth Transportation Board to include the matter as an agenda item for the Board's consideration at the next, (if practicable), but no later than the second regularly scheduled workshop meeting of the Board following completion of the assessment.

The Board shall by resolution, at the next month's regularly scheduled action meeting, (if practicable), but no later than the second month's regularly scheduled action meeting of the Board following the Commissioner's or Director's presentation of a PLA Request Packet, render its determination on whether or not a request for use of a PLA makes a clear and compelling case that the project will significantly benefit from a PLA and advance the Interests of the Public and the Commonwealth. Failure by the Board to render a

determination in accord with the timeline set forth herein shall not constitute or be construed as an approval for the Project Sponsor to use a PLA on the subject project; the Board shall however notify the Project Sponsor of the reasons for the delay.

Upon a determination by the Board that a PLA may be used on a project, the Commissioner or Director shall work with the Project Sponsor to ensure that the PLA complies with state and federal laws. To the extent that a project is funded in whole or in part with federal funds, in addition to approval by the Board, use of a PLA on the project and possibly terms of the PLA may require federal approval. Accordingly, the Commissioner or Director shall work with the Project Sponsor to ensure that the Project Sponsor has met all requirements for submission, review and approval at the federal level and that the requisite federal entity(ies) has/have approved the PLA for the project.

3. Reporting Requirements

It is in the interest of the Commonwealth and the Commonwealth Transportation Board that information be collected and reported relating to administration of and benefits/disadvantages attributable to the use of Project Labor Agreements in the Commonwealth for projects funded in whole or in part with state or federal funds allocated by the Board pursuant to the six-year improvement program. Accordingly, if the Board makes a determination that a project is eligible for use of a PLA, and the Project Sponsor elects to use a PLA for the project, the Board will require annual reporting of the following information relating to the project for the prior calendar year as well as information substantiating the benefits of such PLA. This information must be submitted by the Project Sponsor to the Board by January 31 of each year.

A. Project Name/Description, Letting Date, Award Date, and Type of Procurement (Low-bid, Design Build Best Value, etc.),
B. Original Contract dollar value, Number of responsive bidders, Total project costs inclusive of change orders issued since contract award,
C. Unapproved or pending change order value since contract award,
D. Original contract completion date,
E. Actual or anticipated contract completion date, including approved, pending or unapproved schedule extensions,
F. Project Workforce – Total number of workers and number of Virginia permanent resident workers[1] participation,

[1] *For this reporting requirement, a Virginia permanent resident is defined as a worker employed on the project who meets the definition of a domiciliary resident as defined in Virginia Code Section 23VAC10-110-30.*

G. Any and all occurrences and details of labor disruptions, regardless of the impact to the project experienced by any contractor or subcontractor on the project.

Further, no later than 60 calendar days after the project closeout, the Project Sponsor shall also submit to the Board a final report bearing the information above as well as information substantiating the overall benefits of the PLA for the entire project period.

The Commonwealth Transportation Board shall post on its website the reports submitted pursuant to this policy.