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SENATE BILL NO. 1401

Offered January 19, 2001

A BILL to amend and reenact § 33.1-46.2 of the Code of Virginia, relating to high-occupancy vehicle lanes.

Patron—Wagner

Referred to Committee on Transportation

Be it enacted by the General Assembly of Virginia:**1. That § 33.1-46.2 of the Code of Virginia is amended and reenacted as follows:**

§ 33.1-46.2. Designation of high-occupancy vehicle lanes; use of such lanes; penalties.

A. In order to facilitate the rapid and orderly movement of traffic to and from urban areas during peak traffic periods, the Commonwealth Transportation Board may designate one or more lanes of any highway in the interstate, primary, or secondary highway systems as high-occupancy vehicle lanes, hereinafter referred to in this section as HOV lanes. When lanes have been so designated and have been appropriately marked with such signs or other markers as the Board may prescribe, they shall be reserved during periods designated by the Board for the exclusive use of buses and high-occupancy vehicles. Any local governing body may also, with respect to highways under its exclusive jurisdiction, designate HOV lanes and impose and enforce restrictions on the use of such HOV lanes. Any highway for which the local jurisdiction receives highway maintenance funds pursuant to § 33.1-41.1 shall be deemed to be within the exclusive jurisdiction of the local governing body for the purposes of this section. HOV lanes shall be reserved for high-occupancy vehicles of a specified number of occupants as determined by the Board or, for HOV lanes designated by a local governing body, by that local governing body. Notwithstanding the foregoing provisions of this section, no designation of any lane or lanes of any highway as HOV lanes shall apply to the use of any such lanes by:

1. Emergency vehicles such as fire-fighting vehicles, ambulances, and rescue squad vehicles,

2. Law-enforcement vehicles,

3. Motorcycles,

4. a. Transit and commuter buses designed to transport sixteen or more passengers, including the driver,

b. Commuter buses and motor coaches operating under irregular route passenger certificates issued under § 46.2-2010 and any vehicle operating under a certificate of Public Convenience and Necessity or as a common carrier of passengers under § 46.2-2004 or § 46.2-2010,

5. Vehicles of public utility companies operating in response to an emergency call, or

6. Until July 1, 2004, vehicles bearing clean special fuel vehicle license plates issued pursuant to § 46.2-749.3, or

7. Vehicles bearing HOV stickers as provided for in this subdivision, provided any such vehicle is being operated either (i) to or from a duty shift at a fire station, rescue squad station, or comparable facility or (ii) in response to an emergency call. Such stickers shall be printed by the Department of Motor Vehicles and provided to the chief administrative officer and/or local fire chief of localities that employ professional emergency medical technicians and/or professional firefighters and to chiefs of volunteer rescue squads and volunteer fire departments, who shall issue them to professional firefighters, professional emergency medical technicians, and active volunteer rescue squad and volunteer fire department members. Such stickers shall remain valid for such period of time and shall be displayed in such a manner as shall be provided by regulations of the Department of Motor Vehicles.

In the Hampton Roads Planning District, HOV restrictions may be temporarily lifted and HOV lanes opened to use by all vehicles when, because of an accident, emergency, or other exceptional circumstance, restricting use of HOV lanes becomes impossible or undesirable and the temporary lifting of HOV limitations is indicated by law-enforcement officers at the scene or by signs along or above the affected portion of highway.

The Commissioner of VDOT shall implement a one-year pilot program of the HOV facilities in the Hampton Roads Planning District beginning not later than May 1, 2000. This program shall include the temporary lifting of HOV restrictions and the opening of HOV lanes to all traffic when an incident resulting from nonrecurring causes within the general lanes occurs such that a lane of traffic is blocked or is expected to be blocked for 10 minutes or longer. The HOV restrictions for the facility will be reinstated when the general lane is no longer blocked and is available for use.

The Commissioner shall maintain necessary records to evaluate the effects of such openings on the operation of the general lanes and the HOV lanes. He shall report on the effects of this pilot. This pilot

59 program will terminate if the Federal Highway Administration requires repayment of any federal
60 highway construction funds because of the pilot program's impact on the HOV facilities in Hampton
61 Roads.

62 B. In designating any lane or lanes of any highway as HOV lanes, the Board, or local governing
63 body as the case may be, shall specify the hour or hours of each day of the week during which the
64 lanes shall be so reserved, and the hour or hours shall be plainly posted at whatever intervals along the
65 lanes the Board or local governing body deems appropriate. Any person driving a motor vehicle in a
66 designated HOV lane in violation of this section shall be guilty of a traffic infraction which shall not be
67 a moving violation and on conviction shall be fined fifty dollars. However, violations committed within
68 the boundaries of Planning District Eight shall be punishable as follows:

69 For a first offense, by a fine of \$50;

70 For a second offense, by a fine of \$100;

71 For a third offense within a period of two years of the second offense, by a fine of \$250; and

72 For a fourth or subsequent offense within a period of three years of the second offense, by a fine of
73 \$500.

74 Upon a conviction under this section, the court shall furnish to the Commissioner of the Department
75 of Motor Vehicles in accordance with § 46.2-383 an abstract of the record of such conviction which
76 shall become a part of the person's driving record. Notwithstanding the provisions of § 46.2-492, no
77 driver demerit points shall be assessed for any violation of this section.

78 C. In the prosecution of an offense, committed in the presence of a law-enforcement officer, of
79 failure to obey a road sign restricting a highway, or portion thereof, to the use of high-occupancy
80 vehicles, proof that the vehicle described in the HOV violation summons was operated in violation of
81 this section, together with proof that the defendant was at the time of such violation the registered
82 owner of the vehicle, shall constitute in evidence a rebuttable presumption that such registered owner of
83 the vehicle was the person who committed the violation. Such presumption shall be rebutted if the
84 registered owner of the vehicle testifies in open court under oath that he was not the operator of the
85 vehicle at the time of the violation. A summons for a violation of this section may be executed in
86 accordance with § 19.2-76.2. Such rebuttable presumption shall not arise when the registered owner of
87 the vehicle is a rental or leasing company.

88 D. Notwithstanding the provisions of § 19.2-76, whenever a summons for a violation of this section
89 is served in any county, city, or town, it may be executed by mailing by first-class mail a copy thereof
90 to the address of the owner of the vehicle as shown on the records of the Department of Motor
91 Vehicles. If the summoned person fails to appear on the date of return set out in the summons mailed
92 pursuant to this section, the summons shall be executed in the manner set out in § 19.2-76.3.

93 No proceedings for contempt or arrest of a person summoned by mailing shall be instituted for his
94 failure to appear on the return date of the summons.

95 E. Notwithstanding § 33.1-252, high-occupancy vehicles having three or more occupants (HOV-3)
96 may be permitted to use the Omer L. Hirst-Adelard L. Brault Expressway (Dulles Toll Road) without
97 paying a toll.

98 F. Notwithstanding the contrary provisions of this section, the following conditions shall be met
99 before the HOV-2 designation of Interstate Route 66 outside the Capital Beltway can be changed to
100 HOV-3 or any more restrictive designation:

101 1. The Department shall publish a notice of its intent to change the existing designation and also
102 immediately provide similar notice of its intent to all members of the General Assembly representing
103 districts that touch or are directly impacted by traffic on Interstate Route 66.

104 2. The Department shall hold public hearings in the corridor to receive comments from the public.

105 3. The Department shall make a finding of the need for a change in such designation, based on
106 public hearings and its internal data and present this finding to the Commonwealth Transportation Board
107 for approval.

108 4. The Commonwealth Transportation Board shall make written findings and a decision based upon
109 the following criteria:

110 a. Is changing the HOV-2 designation to HOV-3 in the public interest?

111 b. Is there quantitative and qualitative evidence that supports the argument that HOV-3 will facilitate
112 the flow of traffic on Interstate Route 66?

113 c. Is changing the HOV-2 designation beneficial to comply with the federal Clean Air Act
114 Amendments of 1990?

115 G. Not in effect.