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**HOUSE BILL NO. 876**

Offered January 11, 2006

Prefiled January 10, 2006

*A BILL to amend and reenact § 33.1-46.2 of the Code of Virginia, as it is currently effective and as it may become effective, relating to high-occupancy vehicles; penalties.*

\_\_\_\_\_  
 Patron—Frederick

\_\_\_\_\_  
 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 as currently effective and as it may become effective is amended and reenacted as follows:**

§ 33.1-46.2. (For expiration date /- See Editor's note) 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 16 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 § 46.2-2075 or § 46.2-2080,
5. Vehicles of public utility companies operating in response to an emergency call,
6. Until July 1, 2006, vehicles bearing clean special fuel vehicle license plates issued pursuant to § 46.2-749.3, or
7. Taxicabs having two or more occupants, including the driver.

In the Hampton Roads Planning District, HOV restrictions may be temporarily lifted and HOV lanes opened to use by all vehicles when restricting use of HOV lanes becomes impossible or undesirable and the temporary lifting of HOV limitations is indicated by signs along or above the affected portion of highway.

The Commissioner of VDOT shall implement a 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 program. This program will terminate if the Federal Highway Administration requires repayment of any federal highway construction funds because of the program's impact on the HOV facilities in Hampton Roads.

B. In designating any lane or lanes of any highway as HOV lanes, the Board, or local governing body as the case may be, shall specify the hour or hours of each day of the week during which the lanes shall be so reserved, and the hour or hours shall be plainly posted at whatever intervals along the lanes the Board or local governing body deems appropriate. Any person driving a motor vehicle in a designated HOV lane in violation of this section shall be guilty of a traffic infraction which shall not be

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59 a moving violation and on conviction shall be ~~fin~~*ed subject to a civil penalty of \$50*. However,  
60 violations committed within the boundaries of Planning District Eight shall be punishable as follows:

61 For a first offense, by a ~~fine~~ *civil penalty of \$50*;

62 For a second offense within a period of five years from a first offense, by a ~~fine~~ *civil penalty of*  
63 *\$200*;

64 For a third offense within a period of five years from a first offense, by a ~~fine~~ *civil penalty of \$500*;  
65 and

66 For a fourth or subsequent offense within a period of five years from a first offense, by a ~~fine~~ *civil*  
67 *penalty of \$1,000*.

68 Upon a conviction under this section, the court shall furnish to the Commissioner of the Department  
69 of Motor Vehicles in accordance with § 46.2-383 an abstract of the record of such conviction which  
70 shall become a part of the person's driving record. Notwithstanding the provisions of § 46.2-492, no  
71 driver demerit points shall be assessed for any violation of this section; except that persons convicted of  
72 third, fourth, or subsequent violations within five years of a first offense committed in Planning District  
73 Eight shall be assessed three demerit points for each such violation.

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

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

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

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

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

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

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

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

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

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

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

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

111 G. [Repealed.]

112 H. *All civil penalties collected for violation of this section shall be paid into the state treasury and*  
113 *credited to the special nonreverting fund known as the Virginia State Police HOV Lane Enforcement*  
114 *Fund of Accounts Fund, established within the Department of Accounts. These funds shall be paid*  
115 *monthly to the Department of State Police for use in paying the salary and benefits of State Police*  
116 *officers in enforcing the provisions of this section. The Superintendent of State Police shall calculate the*  
117 *number of State Police officers whose salaries and benefits can be funded exclusively from the proceeds*  
118 *of this Fund, hire that number of State Police officers, and assign them solely to the enforcement of the*  
119 *provisions of this section.*

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