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HOUSE BILL NO. 5091

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on Transportation
on September 25, 2006)

(Patron Prior to Substitute—Delegate Wardrup)

A BILL to amend and reenact §§ 33.1-23.03:1, 33.1-223.2:12, 33.1-287, and 33.1-288 of the Code of Virginia, to amend the Code of Virginia by adding in Title 33.1 a chapter numbered 10.2, consisting of sections numbered 33.1-391.6 through 33.1-391.12, and to repeal § 33.1-253 of the Code of Virginia, Chapter 693 of the Acts of Assembly of 1954, as amended, and Chapter 714 of the Acts of Assembly of 1956, as amended and incorporated by reference as § 33.1-253 of the Code of Virginia, relating to the creation of the Hampton Roads Bridge and Tunnel Authority; transferring to the Authority responsibility for the operation and maintenance of the James River Bridge, the Monitor-Merrimack Memorial Bridge-Tunnel, the Hampton Roads Bridge-Tunnel, the Midtown Tunnel, the Downtown Tunnel, the Interstate Route 64 bridge in Chesapeake, and the Chesapeake Bay Bridge-Tunnel; authorizing the Authority to impose and collect tolls for use of those facilities; and requiring use of certain technologies in connection with toll collections.

Be it enacted by the General Assembly of Virginia:

1. That §§ 33.1-23.03:1, 33.1-223.2:12, 33.1-287, and 33.1-288 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Title 33.1 a chapter numbered 10.2, consisting of sections numbered 33.1-391.6 through 33.1-391.12, as follows:

§ 33.1-23.03:1. Transportation Trust Fund.

There is hereby created in the Department of the Treasury a special nonreverting fund to be known as the Transportation Trust Fund, consisting of:

1. Funds remaining for highway construction purposes, among the several highway systems pursuant to § 33.1-23.1.

2. [Repealed.]

3. The additional revenues generated by enactments of Chapters 11, 12 and 15 of the Acts of Assembly, 1986 Special Session, and designated for this fund.

4. Tolls and other revenues derived from the projects financed or refinanced pursuant to this title which are payable into the state treasury and tolls and other revenues derived from other transportation projects, which may include upon the request of the applicable appointed governing body, as soon as their obligations have been satisfied, such tolls and revenue derived for transportation projects pursuant to ~~§ 33.1-253 (Chesapeake Bay Bridge and Tunnel District)~~ and § 33.1-320 (Richmond Metropolitan Authority) or if the appointed governing body requests refunding or advanced refunding by the Board and such refunding or advanced refunding is approved by the General Assembly. Such funds shall be held in separate subaccounts of the Transportation Trust Fund to the extent required by law or the Board.

5. Tolls and other revenues derived from the Richmond-Petersburg Turnpike, provided that such funds shall be held in a separate subaccount of the Transportation Trust Fund and allocated as set forth in Chapter 574 of the Acts of Assembly of 1983 until expiration of that Act.

6. Such other funds as may be appropriated by the General Assembly from time to time, and designated for this fund.

7. All interest, dividends and appreciation which may accrue to the Transportation Trust Fund and the Highway Maintenance and Construction Fund, except that interest on funds becoming part of the Transportation Trust Fund under subdivision 1 and the Highway Maintenance and Construction Fund shall not become part of the Transportation Trust Fund until July 1, 1988.

8. All amounts required by contract to be paid over to the Transportation Trust Fund.

9. Concession payments paid to the Commonwealth by a private entity pursuant to the Public-Private Transportation Act of 1995 (§ 56-556 et seq.).

§ 33.1-223.2:12. Tolls may vary to encourage travel during off-peak hours; certain toll facilities to fully electronic.

A. In order to provide an incentive for motorists to travel at off-peak hours, *and in accordance with federal requirements*, wherever a toll is imposed and collected by the Department or such other entity as may be responsible for imposing or collecting such toll, the amount of such toll may vary according to the time of day, day of the week, traffic volume, vehicle speed, vehicle type, or ~~any or all of these~~ *similar variables or combination thereof*. The amount of such toll and the time of day when such toll shall change shall be as fixed and revised by the Commonwealth Transportation Board or such other entity as may be responsible for fixing or revising the amount of such toll; provided, however, that any such variation shall be reasonably calculated to minimize the reduction in toll revenue generated by such

60 toll.

61 *B. On or before July 1, 2008, every agency of the Commonwealth or any political subdivision or*
62 *instrumentality thereof having control of or day-to-day responsibility for the operation of any toll facility*
63 *in the Commonwealth shall take all necessary actions to ensure that every toll facility under its control*
64 *is capable of fully automated electronic operation, employing technologies and procedures that permit*
65 *the collection of tolls from users of the facility without requiring vehicles using the facility to reduce*
66 *their speed below the speed of traffic on the facility. The provisions of this section shall apply equally*
67 *to existing facilities and to future construction. The provisions of this section shall also apply to any*
68 *non-governmental or quasi-governmental entity operating a toll facility under a comprehensive*
69 *agreement entered into, pursuant to the Public-Private Transportation Act of 1995 (§ 56-556 et seq.), on*
70 *or after January 1, 2008.*

71 § 33.1-287. Cessation of tolls.

72 When the particular revenue bonds issued for any project or projects and the interest thereon have
73 been paid, or a sufficient amount has been provided for their payment and continues to be held for that
74 purpose, the Board shall cease to charge tolls for the use of such project or projects and thereafter such
75 project or projects shall be free; however, the Board may thereafter charge tolls for the use of any such
76 project when tolls are required for maintaining, repairing, operating, improving, and reconstructing such
77 project, when such tolls have been or are pledged by the Board to the payment of revenue bonds issued
78 under the provisions of the article for another project or projects on approval of the General Assembly
79 or when such tolls are designated by the Board to be deposited into the Transportation Trust Fund. But
80 any such pledge of tolls of a project to the payment of bonds issued for another project shall not be
81 effectual until the principal and interest of the bonds issued for the first mentioned project shall have
82 been paid or provision made for their payment.

83 The foregoing provisions shall also apply to tolls on projects constructed pursuant to the acts
84 incorporated by reference by § 33.1-253 (~~Chesapeake Bay Bridge and Tunnel District~~), and § 33.1-320
85 (Richmond Metropolitan Authority), provided ~~their~~ *its* governing bodies have ~~body~~ *has* acted as set forth
86 in subdivision 4 of § 33.1-23.03:1.

87 § 33.1-288. Use of certain funds by Board.

88 The Board may, in its discretion, use any part of funds available for the construction of state
89 highways, in any construction district in which any project authorized for toll revenue bond financing by
90 the Commonwealth Transportation Board as described in § 33.1-268 or by the Richmond Metropolitan
91 Authority as described by § 33.1-320 is wholly or partly located, to aid in the payment of the cost of
92 such projects and for the payment, purchase or redemption of revenue bonds issued in connection with
93 any such project, or in connection with any such project and any one or more other projects. The Board
94 may also, in its discretion, use any part of funds available for the maintenance of state highways, in any
95 construction district in which any such project is wholly or partly located, to provide for the operation,
96 maintenance and repair of any such project and for the payment of interest on revenue bonds issued in
97 connection with any such project, or in connection with any such project and any one or more other
98 projects; ~~provided further, the Commonwealth Transportation Board may, in its discretion, use funds~~
99 ~~under the terms of this section for the emergency operation, maintenance and repair of the project of the~~
100 ~~Chesapeake Bay Bridge and Tunnel Commission as described by § 33.1-253 in the event of damage to~~
101 ~~the bridge under a repayment agreement approved by the bond trustee, and may also pay to the~~
102 ~~Chesapeake Bay Bridge and Tunnel Commission, for aid in the maintenance of the project, the same~~
103 ~~amounts authorized by § 33.1-41.1 for payments for maintenance to certain incorporated towns and~~
104 ~~cities.~~

105 ~~Provided, however, that in the event~~ *However, if* the Board uses any part of the fund available to
106 itself for the construction of roads in the State Highway System without reference to construction
107 districts, commonly called the "gap fund," for any purpose permitted by this section, it shall not expend
108 in excess of three eighths of the amount of such fund, including other amounts of such fund that may be
109 expended in the three districts in which such projects are located; and provided, further, that in no case
110 shall any of the funds of any construction district other than those in which the projects are located be
111 used for the purposes of this article.

112 CHAPTER 10.2.

113 HAMPTON ROADS BRIDGE AND TUNNEL AUTHORITY.

114 § 33.1-391.6. Short title.

115 *This chapter shall be known and may be cited as the Hampton Roads Bridge and Tunnel Authority*
116 *Act.*

117 § 33.1-391.7. Authority created.

118 *There is hereby created a body corporate and a political subdivision of the Commonwealth to be*
119 *known as the Hampton Roads Bridge and Tunnel Authority, hereinafter in this chapter known as "the*
120 *Authority."*

121 § 33.1-391.8. Powers of Authority.

The Authority shall be responsible for the operation, maintenance, improvement, and tolling of the following bridges and tunnels:

1. The James River Bridge (U.S. Routes 17 and 258 and Virginia Route 32 bridge between Newport News and Isle of Wight County);

2. The Monitor-Merrimac Memorial Bridge-Tunnel (Interstate Route 664 bridge-tunnel across/beneath Hampton Roads between Newport News and Suffolk);

3. The Hampton Roads Bridge-Tunnel (Interstate Route 64 and U.S. Route 60 bridge-tunnel across/beneath Hampton Roads between Hampton and Norfolk);

4. The Midtown Tunnel (U.S. Route 58 tunnel beneath the Elizabeth River between Norfolk and Portsmouth);

5. The Downtown Tunnel (Interstate Route 264 tunnel beneath the Elizabeth River between Norfolk and Portsmouth);

6. The Interstate Route 64 bridge over the Elizabeth River in Chesapeake; and

7. The Chesapeake Bay Bridge-Tunnel (U.S. Route 13 bridge-tunnel across/beneath the Chesapeake Bay between Virginia Beach and Northampton County).

The Authority may impose and collect tolls in amounts established by the Authority for the use of any or all of the facilities listed in this section. The amount of any such toll may be varied from facility to facility, by lane, by time of day, and by day of the week, vehicle type, weight, number of axles, size, or some combination thereof. The Authority's ability to impose tolls for use of the Chesapeake Bay Bridge-Tunnel shall be subject to requirements of any bond indenture, trust agreement, contract, or resolution applicable to any tolls for use of that facility imposed immediately prior to July 1, 2007. Any tolls imposed for the use of any facility, as authorized by this section, shall be used by the Authority exclusively for (i) the maintenance of the facility for whose use such tolls are collected and/or (ii) improvements that reduce congestion or enhance the capacity of (a) the facility for whose use such tolls are collected and/or (b) other facilities whose improvements would reduce congestion or enhance the capacity of the facility for whose use such tolls are collected.

§ 33.1-391.9. Authority a responsible public entity under Public-Private Transportation Act of 1995.

The Authority is a responsible public entity as defined in the Public-Private Transportation Act of 1995 (§ 56-556 et seq.) for any project under its purview.

§ 33.1-391.10. Creation of Authority; local governing body participation and public hearing.

The Authority shall be composed of representatives of local governing bodies as outlined in § 33.1-391.11, except that prior to the creation of the Authority, each local governing body shall conduct a public hearing at a regularly scheduled meeting of that body for the purpose of allowing public comment on the locality's participation in the Authority. Following such hearing, the local governing body shall vote on its participation in the Authority. A majority vote of the members of the local governing body shall be required to approve such participation. Any local governing body that shall have failed, prior to January 1, 2007, to vote on participation in the Authority as provided in this section, shall be deemed to have voted to approve such participation. The Authority shall be deemed to have been created upon the affirmative vote of six or more local governing bodies as provided in this section.

§ 33.1-391.11. Composition of Authority; chairman and vice-chairman; quorum; administrative support services and office space.

The Authority shall consist of 13 members as follows: (i) one member appointed by the City Council of the City of Chesapeake, (ii) one member appointed by the City Council of the City of Hampton, (iii) one member appointed by the Board of Supervisors of Isle of Wight County, (iv) one member appointed by the City Council of the City of Newport News, (v) one member appointed by the City Council of the City of Norfolk, (vi) one member appointed by the Board of Supervisors of Northampton County, (vii) one member appointed by the City Council of the City of Portsmouth, (viii) one member appointed by the City Council of the City of Suffolk, (ix) one member appointed by the City Council of the City of Virginia Beach, (x) the Virginia Department of Transportation's district administrator for the Hampton Roads highway construction district, (xi) two members of the Virginia House of Delegates who reside in different counties or cities embraced by the Authority, appointed by the Speaker of the House, and (xii) one member of the Senate of Virginia who resides in a county or city embraced by the Authority, appointed by the Senate Committee on Rules. Members shall serve coincident with their terms of office as members of the House of Delegates and the Senate. Members may be reappointed for successive terms. All members appointed by local governing bodies shall be members of the local governing bodies by whom they are appointed and shall be selected by majority vote. If a sitting member ceases to serve as a member of the local governing body, he shall cease to be a member of the Authority. Members of the Authority appointed by local governing bodies shall serve for terms of four years and may be reappointed for one additional term. For the initial appointments only: the members appointed by the City Council of the City of Chesapeake and by the Board of Supervisors of Northampton County shall

183 *be appointed a term of one year; those members appointed by the City Council of the City of Hampton*
184 *and by the Board of Supervisors of Isle of Wight County shall be appointed for terms of two years;*
185 *those members appointed by the City Council of the City of Newport News and by the City Council of*
186 *the City of Norfolk shall be appointed for terms of three years; and the remaining members shall be*
187 *appointed for terms of four years. Any such initial appointment of two years or less shall not count*
188 *against the term limitation. Vacancies shall be filled by appointment for the unexpired term by the local*
189 *governing body making the original appointment. The Hampton Roads highway construction district*
190 *administrator shall serve ex officio without a vote.*

191 *The Authority shall annually elect from its membership a chairman and vice-chairman, who shall*
192 *continue to hold such office until their respective successors are elected. A majority of the Authority*
193 *shall constitute a quorum.*

194 *The members of the Authority shall be reimbursed for their actual and necessary expenses incurred*
195 *in carrying out their duties and, in addition, shall be paid a per diem equal to the amount paid*
196 *members of the Commonwealth Transportation Board for each day or portion thereof when engaged in*
197 *Authority official business.*

198 *The Auditor of Public Accounts, or his legally authorized representatives, shall annually audit the*
199 *financial accounts of the Authority.*

200 *§ 33.1-391.12. Additional powers of Authority.*

201 *The Authority shall have the following powers together with all powers incidental thereto or*
202 *necessary for the performance of those hereinafter stated:*

203 *1. To sue and be sued and to prosecute and defend, at law or in equity, in any court having*
204 *jurisdiction of the subject matter and of the parties;*

205 *2. To adopt and use a corporate seal and to alter the same at pleasure;*

206 *3. To procure insurance, participate in insurance plans, and provide self-insurance; however, the*
207 *purchase of insurance, participation in an insurance plan, or the creation of a self-insurance plan by*
208 *the Authority shall not be deemed a waiver or relinquishment of any sovereign immunity to which the*
209 *Authority or its officers, directors, employees, or agents are otherwise entitled;*

210 *4. To establish bylaws and make all rules and regulations, not inconsistent with the provisions of this*
211 *chapter, deemed expedient for the management of the Authority's affairs;*

212 *5. To apply for and accept money, materials, contributions, grants, or other financial assistance from*
213 *the United States and agencies or instrumentalities thereof, the Commonwealth, or any political*
214 *subdivision, agency, or instrumentality of the Commonwealth;*

215 *6. To acquire real and personal property or any interest therein by purchase, lease, gift, or*
216 *otherwise, and to hold, encumber, sell, or otherwise dispose of such land or interest, for purposes*
217 *consistent with this chapter and the provisions of § 33.1-422;*

218 *7. To construct or acquire, by purchase, lease, contract, or otherwise, highways, bridges, tunnels,*
219 *railroads and rail facilities and other transportation-related facilities in the manner and to the extent*
220 *not inconsistent with the provisions of § 33.1-422;*

221 *8. To enter into agreements or leases with public or private entities for the operation of bridges and*
222 *tunnels;*

223 *9. To make and execute contracts and all other instruments and agreements necessary or convenient*
224 *for the performance of its duties and the exercise of its powers and functions under this chapter;*

225 *10. To the extent funds are made available to the Authority to do so, to employ employees, agents,*
226 *advisors, and consultants, including without limitation, attorneys, financial advisers, engineers, and*
227 *other technical advisers and, the provisions of any other law to the contrary notwithstanding, to*
228 *determine their duties and compensation;*

229 *11. To the extent not inconsistent with other provisions of this chapter, and without limiting or*
230 *restricting the powers otherwise given the Authority, to exercise all the powers given to transportation*
231 *district commissions by §§ 15.2-4518 and 15.2-4519; and*

232 *12. To serve as the governing body of the Chesapeake Bay Bridge and Tunnel District created*
233 *pursuant to Chapter 693 of the Acts of Assembly of 1954, as amended, and incorporated by reference as*
234 *§ 33.1-253.*

235 *In exercise of its powers and performance of its duties under this chapter, the Authority shall comply*
236 *with all provisions of the Virginia Freedom of Information Act (§ 2.2-3700 et seq.).*

237 **2. That § 33.1-253 of the Code of Virginia, Chapter 693 of the Acts of Assembly of 1954, as**
238 **amended, and Chapter 714 of the Acts of Assembly of 1956, as amended and incorporated by**
239 **reference as § 33.1-253 of the Code of Virginia, are repealed.**

240 **3. That no provision of this act shall be so construed as to infringe any bond indenture, trust**
241 **agreement, resolution or contract associated with any bonds or other financial obligations entered**
242 **into by the Chesapeake Bay Bridge and Tunnel Commission or the Chesapeake Bay Bridge and**
243 **Tunnel District prior to July 1, 2007, and any and all financial obligations of the Chesapeake Bay**
244 **Bridge and Tunnel Commission or the Chesapeake Bay Bridge and Tunnel District entered into**

245 prior to July 1, 2007, shall, on and after July 1, 2007, be deemed to be obligations of the Hampton
246 Roads Bridge and Tunnel Authority established by this act. Subject to the requirements of any
247 bond indenture, trust agreement, resolution, or contract relating to outstanding bonds of the
248 Commission or the District, revenues of the Commission or the District shall be transferred to the
249 Authority for any of the purposes of the Authority.

250 4. That the staff of the Hampton Roads Planning District Commission, Chesapeake Bay Bridge
251 and Tunnel Commission, and the Virginia Department of Transportation shall work cooperatively
252 to assist the proper formation and effective organization of the Hampton Roads Bridge and
253 Tunnel Authority. Until such time as the Hampton Roads Bridge and Tunnel Authority is fully
254 established, the staff of the Hampton Roads Planning District Commission shall serve as its staff,
255 and its office facilities shall be used by the Hampton Roads Bridge and Tunnel Authority. The
256 Authority shall pay the costs of such staff and office facilities as appropriate.

257 5. That the Commonwealth Transportation Board shall continue to allocate sufficient funding to
258 and the Department of Transportation shall perform or caused to be performed all maintenance
259 and operation of such bridges and tunnels enumerated in § 33.1-391.8 of the Code of Virginia,
260 except that funding for the maintenance and operation of the Chesapeake Bay Bridge-Tunnel shall
261 be derived from revenues generated by such facility.

262 6. That when the Hampton Roads Bridge and Tunnel Authority is fully established, the
263 Chesapeake Bay Bridge and Tunnel Commission and its staff shall work cooperatively with the
264 Hampton Roads Bridge and Tunnel Authority and its staff to take such measures as shall be
265 necessary or desirable to effectuate and complete the transfer of all property, structures, staff,
266 employees, equipment, and supplies owned or controlled by the Chesapeake Bay Bridge and
267 Tunnel Commission to the Hampton Roads Bridge and Tunnel Authority. All such transfers shall
268 be completed prior to January 1, 2008.

269 7. That the Virginia Department of Transportation shall, on or prior to July 1, 2007, submit a
270 written report to the General Assembly on its plans to create opportunities to enhance mobility
271 and free-flowing traffic on Department-controlled toll facilities by embracing technological
272 advances.