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SENATE BILL NO. 5014

Offered April 19, 2006

A BILL to amend and reenact § 58.1-611.1 of the Code of Virginia and 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 33.1-391.16, by adding sections numbered 58.1-605.1 and 58.1-606.1, and by adding in Chapter 6 of Title 58.1 a section numbered 58.1-639.1, relating to the administration and funding of transportation in Hampton Roads; Hampton Roads Transportation Authority.

Patron—Quayle

Referred to Committee on Finance

Be it enacted by the General Assembly of Virginia:

1. That § 58.1-611.1 of the Code of Virginia is 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 33.1-391.16, by adding sections numbered 58.1-605.1 and 58.1-606.1, and by adding in Chapter 6 of Title 58.1 a section numbered 58.1-639.1 as follows:

CHAPTER 10.2.

HAMPTON ROADS TRANSPORTATION AUTHORITY.

§ 33.1-391.6. Short Title.

This chapter shall be known and may be cited as the Hampton Roads Transportation Authority Act.

§ 33.1-391.7. Authority created.

The Hampton Roads Transportation Authority, hereinafter in this chapter known as "the Authority" is hereby created as a body politic and as a political subdivision of the Commonwealth.

§ 33.1-391.8. Powers of the Authority.

Notwithstanding any contrary provision of this title and in accordance with all applicable federal statutes and requirements, the Authority shall control and operate and may impose and collect tolls in amounts established by the Authority for the use of any or all of (i) that portion of U.S. Route 17 in the City of Chesapeake which is between the North Carolina state line and the proposed Dominion Boulevard and (ii) any new or improved highway, bridge, tunnel, or transportation facility (including new construction relating to, or improvements to, the bridges, tunnels, roadways, and related facilities known collectively as the Chesapeake Bay Bridge-Tunnel, pursuant to the conditions set forth in § 33.1-391.12) constructed by the Authority or with funds provided in whole or in part by the Authority. The amount of any such toll may be varied from facility to facility, by lane, by congestion levels, by day of the week, time of day, type of vehicle, number of axles, or any similar combination thereof, and a reduced rate may be established for commuters as defined by the Authority.

§ 33.1-391.9. Composition of Authority; chairman and vice-chairman; quorum.

The Authority shall consist of the following members: (i) one member of the governing body of each of the following localities, provided that the locality imposes the taxes authorized by §§ 58.1-605.1 and 58.1-606.1: the Counties of Isle of Wight, James City, and York and the Cities of Chesapeake, Hampton, Newport News, Norfolk, Portsmouth, Suffolk, Virginia Beach, and Williamsburg; (ii) a member of the Commonwealth Transportation Board who resides in a county or city embraced by the Authority appointed by the Governor who shall serve ex officio without a vote; (iii) the Director of the Virginia Department of Rail and Public Transportation, or his designee, who shall serve ex officio without a vote; (iv) the Commonwealth Transportation Commissioner, or his designee, who shall serve ex officio without a vote; (v) three members of the Virginia House of Delegates who reside in a city or county named in this section or § 33.1-391.12 that is imposing the taxes authorized under §§ 58.1-605.1 and 58.1-606.1, no two of whom shall reside in the same city or county, appointed by the Speaker of the House of Delegates; and (vi) two members of the Senate of Virginia who reside in a city or county named in this section or § 33.1-391.12 that is imposing the taxes authorized under §§ 58.1-605.1 and 58.1-606.1, neither of whom shall reside in the same city or county, appointed by the Senate Committee on Rules. Each representative of a local governing body shall be a member of the governing body by which he is appointed and shall be appointed by majority vote of that body. In the event that a member of the Authority who is appointed by a local governing body ceases to be a member of that local governing body, he may no longer serve as 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 of four years. Any member of the Authority appointed by a local governing body who is initially appointed to serve a term of less than three years may thereafter be appointed for two successive four-year terms. For the purpose of initial appointments and in order to provide for

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SB5014

59 staggered terms, those members appointed by the City Council of the City of Hampton, the City Council
60 of the City of Newport News, and the Board of Supervisors of James City County shall be appointed for
61 terms of two years; those members who are appointed by the City Council of the City of Norfolk, the
62 City Council of the City of Chesapeake, and the City Council of the City of Portsmouth shall be
63 appointed for terms of three years; and the remaining members shall be appointed for terms of four
64 years. Vacancies shall be filled by appointment for the unexpired term by the same process as used to
65 make the original appointment.

66 The Authority shall annually elect a chairman and vice-chairman from among its membership, each
67 of whom shall continue to hold such office until their respective successors are elected.

68 A majority of the members of the Authority shall constitute a quorum for the transaction of business.

69 Members of the Authority shall be reimbursed for their actual and necessary expenses incurred in
70 the performance of their duties and, in addition, shall be paid a per diem equal to the amount paid
71 members of the Commonwealth Transportation Board for each day or portion thereof during which they
72 are engaged in the official business of the Authority.

73 The Auditor of Public Accounts, or his legally authorized representatives, shall annually audit the
74 financial accounts of the Authority, and the cost of such audit shall be borne by the Authority.

75 § 33.1-391.10. Additional powers of the Authority.

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

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

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

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

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

87 5. To apply for and accept money, materials, contributions, grants, or other financial assistance from
88 the United States and agencies or instrumentalities thereof, the Commonwealth, and any political
89 subdivision, agency, or instrumentality of the Commonwealth, and from any legitimate private source;

90 6. To acquire real and personal property or any interest therein by purchase, lease, gift, or
91 otherwise, and to hold, encumber, sell, or otherwise dispose of such land or interest, for purposes
92 consistent with this chapter;

93 7. To acquire by purchase, lease, contract, or otherwise (and to the extent not inconsistent with this
94 chapter and the provisions of § 33.1-422), highways, bridges, tunnels, railroads, rolling stock, and
95 transit and rail facilities and other transportation-related facilities, and to construct the same by lease,
96 contract, or otherwise;

97 8. In coordination with the Department of Transportation of the Commonwealth and with each city
98 or county in which the facility or any part thereof is or is to be located, to repair, expand, enlarge,
99 construct, reconstruct, or renovate any or all of the transportation facilities referred to in § 33.1-391.8,
100 and to acquire any real or personal property needed for any such purpose;

101 9. To enter into agreements or leases with public or private entities for the operation and
102 maintenance of bridges, tunnels, transit and rail facilities, and highways;

103 10. To make and execute contracts, deeds, mortgages, leases, and all other instruments and
104 agreements necessary or convenient for the performance of its duties and the exercise of its powers and
105 functions under this chapter;

106 11. To the extent funds are made or become available to the Authority to do so, to employ
107 employees, agents, advisors, and consultants, including without limitation, attorneys, financial advisers,
108 engineers, and other technical advisers and, the provisions of any other law to the contrary
109 notwithstanding, to determine their duties and compensation; and

110 12. To the extent not inconsistent with the other provisions of this chapter, and without limiting or
111 restricting the powers otherwise given the Authority, to exercise all of the powers given to
112 transportation district commissions by §§ 15.2-4518 and 15.2-4519.

113 Notwithstanding any other provision under this chapter, the Authority shall only undertake those
114 transportation projects that, at the time of undertaking by the Authority, are included in the Six-Year
115 Improvement Program described under subdivision (9) (b) of § 33.1-12 or that are currently approved
116 by the Metropolitan Planning Organization(s) (as established under federal law) for the counties and
117 cities embraced by the Authority.

118 § 33.1-391.11. Authority a responsible public entity under Public-Private Transportation Act of 1995.

119 The Authority is a responsible public entity as defined in the Public-Private Transportation Act of
120 1995 (§ 56-556 et seq.).

§ 33.1-391.12. Addition of the Chesapeake Bay Bridge-Tunnel to facilities controlled by Authority; expansion of Authority membership; applicability of taxes to Accomack and Northampton Counties.

The bridges, tunnels, roadways, and related facilities known collectively as the Chesapeake Bay Bridge-Tunnel, which provide a vehicular connection across the mouth of the Chesapeake Bay between the City of Virginia Beach and Northampton County, shall become subject to the control of the Authority subject to the provisions of § 33.1-391.8, at such time as all of the bonds and other evidences of debt now or hereafter issued by or on behalf of the Chesapeake Bay Bridge and Tunnel Commission shall have been satisfied or paid in full. Until such bonds and other evidences of debt have been satisfied or paid in full, control of and responsibility for the operation and maintenance of the Chesapeake Bay Bridge-Tunnel facilities shall remain with the Chesapeake Bay Bridge and Tunnel Commission.

In discharging its responsibilities for the operation and maintenance of the Chesapeake Bay Bridge-Tunnel facilities, the Authority shall have, in addition to the powers it is given by this chapter, all of the powers and authority given to the Chesapeake Bay Bridge and Tunnel Commission by Chapter 693 of the Acts of Assembly of 1954 and by Chapter 714 of the Acts of the Assembly of 1956, as amended and incorporated by reference as § 33.1-253.

At such time as the Chesapeake Bay Bridge-Tunnel facilities become subject to the control of the Authority as contemplated by this section, the Authority shall be enlarged by two members, one of whom shall be a member of the governing body of the County of Accomack, provided that the County imposes the taxes authorized by §§ 58.1-605.1 and 58.1-606.1; and one of whom shall be a member of the governing body of the County of Northampton, provided that the County imposes the taxes authorized by §§ 58.1-605.1 and 58.1-606.1. Each representative of the governing bodies of the Counties of Accomack and Northampton shall be a member of the governing body by which he is appointed and shall be appointed by majority vote of that body. In the event that a member of the Authority who is appointed by the governing body of the County of Accomack or the County of Northampton ceases to be a member of that local governing body, he may no longer serve as a member of the Authority. Members of the Authority appointed by the County of Accomack or the County of Northampton shall serve for terms of four years and may be appointed for one additional term of four years.

§ 33.1-391.13. Restrictions on issuance of bonds by the Chesapeake Bay Bridge and Tunnel Commission.

On a prospective basis, prior to issuing any bond with a maturity date that extends beyond the maturity date of any bond that it refinances, the Chesapeake Bay Bridge and Tunnel Commission shall provide written notice of the contemplated issuance to the Chairmen of the Senate Committee on Finance and the House Committee on Appropriations when the General Assembly is in regular session. This provision shall not apply to any bond issued to provide for the payment of any temporary or interim financing.

On a prospective basis, prior to issuing any bonds for the purposes of financing the construction of new or additional tunnels, the Chesapeake Bay Bridge and Tunnel Commission shall provide written notice of the contemplated issuance to the Chairmen of the Senate Committee on Finance and the House Committee on Appropriations when the General Assembly is in regular session.

§ 33.1-391.14. Continuing responsibilities of the Commonwealth Transportation Board and the Virginia Department of Transportation.

Except as otherwise explicitly provided in this chapter, until such time as the Authority and the Virginia Department of Transportation, or the Authority and the Commonwealth Transportation Board, agree otherwise in writing, the Commonwealth Transportation Board shall allocate funding to and the Department of Transportation shall perform or cause to be performed all maintenance and operation of the bridges, tunnels, and roadways referred to in § 33.1-391.8, and shall perform such other required services and activities with respect to such bridges, tunnels, and roadways as were being performed on January 1, 2006.

§ 33.1-391.15. Hampton Roads Planning District Commission to provide administrative services and office facilities.

The staff of the Hampton Roads Planning District Commission and the Virginia Department of Transportation shall work cooperatively to assist the proper formation and effective organization of the Authority. Until such time as the Authority is fully established and functioning, the staff of the Hampton Roads Planning District Commission shall serve as its staff, and the Hampton Roads Planning District Commission shall provide the Authority with office space and administrative support. The Authority shall reimburse the Hampton Roads Planning District Commission for the cost of such staff, office space, and administrative support as appropriate.

§ 33.1-391.16. Use of revenues by the Authority.

Notwithstanding any other provision of this chapter, all moneys received by the Authority pursuant to subsection B of §§ 58.1-605.1 and 58.1-606.1 shall be used by the Authority solely for the primary

benefit of those counties and cities imposing the taxes authorized under §§ 58.1-605.1 and 58.1-606.1, and such moneys shall be used by the Authority in a manner that is consistent with purposes stated in this chapter.

§ 58.1-605.1. Additional local sales tax.

A. In addition to any other taxes, fees, or other charges imposed under law, each of the governing bodies of the Counties of Isle of Wight, James City, and York and the Cities of Chesapeake, Hampton, Newport News, Norfolk, Portsmouth, Suffolk, Virginia Beach, and Williamsburg may by ordinance levy a local retail sales tax at the rate of 1% to generate revenue for transportation, provided that the governing body of the county or city appropriates the revenues collected from such tax to Hampton Roads Transportation Authority established under § 33.1-391.7. At such time as the Chesapeake Bay Bridge-Tunnel becomes subject to the provisions of § 33.1-391.8 as provided in § 33.1-391.12, each of the governing bodies of the Counties of Accomack and Northampton may also by ordinance levy the additional local sales tax authorized under this section, provided that the governing body of the county appropriates the revenues collected from such tax to the Hampton Roads Transportation Authority. Such tax shall be added to the rate of the local sales tax imposed pursuant to the authority granted under § 58.1-605 and shall be subject to all the provisions of this chapter and the rules and regulations published with respect thereto. No discount under § 58.1-622 shall be allowed for the tax described under this subsection. Such tax shall be administered and collected by the Tax Commissioner in the same manner and subject to the same penalties as provided for the state sales tax.

B. The revenue generated and collected pursuant to the tax authorized under this section, less the applicable portion of any refunds to taxpayers, shall be deposited and held in a special trust fund under the control of the State Treasurer entitled "Special Sales and Use Tax Fund Account of the Hampton Roads Transportation Authority." The State Treasurer shall distribute the amounts deposited in the special trust fund monthly to the Hampton Roads Transportation Authority. The Authority shall use such funds solely for the purposes as provided in Chapter 10.2 (§ 33.1-391.6 et seq.) of Title 33.1.

C. No locality imposing the tax pursuant to this section shall cease to impose such tax so long as the Hampton Roads Transportation Authority (i) is currently engaged in a transportation project within the boundaries of the locality, (ii) has entered into a binding commitment to begin a transportation project within the boundaries of the locality, or (iii) has issued bonds or incurred other evidence of debt that has not been satisfied or paid in full and that relates to a transportation project undertaken by the Authority within the boundaries of the locality.

§ 58.1-606.1. Additional local use tax.

A. In addition to any other taxes, fees, or other charges imposed under law, each of the governing bodies of the Counties of Isle of Wight, James City, and York and the Cities of Chesapeake, Hampton, Newport News, Norfolk, Portsmouth, Suffolk, Virginia Beach, and Williamsburg may by ordinance levy a local use tax at the rate of 1% to generate revenue for transportation, provided that the governing body of the county or city appropriates the revenues collected from such tax to Hampton Roads Transportation Authority established under § 33.1-391.7. At such time as the Chesapeake Bay Bridge-Tunnel becomes subject to the provisions of § 33.1-391.8 as provided in § 33.1-391.12, each of the governing bodies of the Counties of Accomack and Northampton may also by ordinance levy the additional local use tax authorized under this section, provided that the governing body of the county appropriates the revenues collected from such tax to the Hampton Roads Transportation Authority. Such tax shall be added to the rate of the local use tax imposed pursuant to the authority granted under § 58.1-606 and shall be subject to all the provisions of this chapter and the rules and regulations published with respect thereto. No discount under § 58.1-622 shall be allowed for the tax described under this subsection. Such tax shall be administered and collected by the Tax Commissioner in the same manner and subject to the same penalties as provided for the state use tax.

B. The revenue generated and collected pursuant to the tax authorized under this section, less the applicable portion of any refunds to taxpayers, shall be deposited and held in a special trust fund under the control of the State Treasurer entitled "Special Sales and Use Tax Fund Account of the Hampton Roads Transportation Authority." The State Treasurer shall distribute the amounts deposited in the special trust fund monthly to the Hampton Roads Transportation Authority. The Authority shall use such funds solely for the purposes as provided in Chapter 10.2 (§ 33.1-391.6 et seq.) of Title 33.1.

C. No locality imposing the tax pursuant to this section shall cease to impose such tax so long as the Hampton Roads Transportation Authority (i) is currently engaged in a transportation project within the boundaries of the locality, (ii) has entered into a binding commitment to begin a transportation project within the boundaries of the locality, or (iii) has issued bonds or incurred other evidence of debt that has not been satisfied or paid in full and that relates to a transportation project undertaken by the Authority within the boundaries of the locality.

§ 58.1-611.1. Rate of tax on sales of food purchased for human consumption.

A. The tax imposed by §§ 58.1-603 and 58.1-604 on food purchased for human consumption shall be levied and distributed as follows:

1. From January 1, 2000, through midnight on June 30, 2005, the tax rate on such food shall be three percent of the gross sales price. The revenue from the tax shall be distributed as follows: (i) the revenue from the tax at the rate of one-half percent shall be distributed as provided in subsection A of § 58.1-638, (ii) the revenue from the tax at the rate of one percent shall be distributed as provided in subsections B, C and D of § 58.1-638, and (iii) the revenue from the tax at the rate of one and one-half percent shall be used for general fund purposes.

2. On and after July 1, 2005, the tax rate on such food shall be one and one-half percent of the gross sales price. The revenue from the tax shall be distributed as follows: (i) the revenue from the tax at the rate of one-half percent shall be distributed as provided in subsection A of § 58.1-638 and (ii) the revenue from the tax at the rate of one percent shall be distributed as provided in subsections B, C and D of § 58.1-638.

B. The provisions of this section shall not affect the imposition of tax on food purchased for human consumption pursuant to §§ 58.1-605 ~~and~~ 58.1-605.1, 58.1-606, and 58.1-606.1.

C. As used in this section, "food purchased for human consumption" has the same meaning as "food" defined in the Food Stamp Act of 1977, 7 U.S.C. § 2012, as amended, and federal regulations adopted pursuant to that Act, except it shall not include seeds and plants which produce food for human consumption. For the purpose of this section, "food purchased for human consumption" shall not include food sold by any retail establishment where the gross receipts derived from the sale of food prepared by such retail establishment for immediate consumption on or off the premises of the retail establishment constitutes more than 80 percent of the total gross receipts of that retail establishment, including but not limited to motor fuel purchases, regardless of whether such prepared food is consumed on the premises of that retail establishment. For purposes of this section, "retail establishment" means each place of business for which any "dealer," as defined in § 58.1-612, is required to apply for and receive a certificate of registration pursuant to § 58.1-613.

§ 58.1-639.1. *Exemptions for local sales and use tax.*

Any exemption set forth in this chapter, or established pursuant to the administrative process under § 58.1-609.11, for a state sales or use tax or a local sales or use tax under § 58.1-605 or 58.1-606 shall also apply to the taxes imposed pursuant to §§ 58.1-605.1 and 58.1-606.1.

2. That the local sales and use tax provided under this act in §§ 58.1-605.1 and 58.1-606.1 of the Code of Virginia shall be levied and imposed by a local governing body only if such tax is adopted by ordinance on or before November 30, 2006, by the governing bodies of at least eight of the localities set forth in clause (i) of the first paragraph of § 33.1-391.9 of the Code of Virginia. If the requirements in the first sentence of this enactment are satisfied, the local taxes provided under this act in §§ 58.1-605.1 and 58.1-606.1 shall first become effective on February 1, 2007, in the localities in which such taxes were adopted by the local governing body.

3. That the provisions of this act relating to the creation of the Hampton Roads Transportation Authority shall not become effective until January 1, 2007, and then only if the requirements set forth in the second enactment of this act are satisfied.

4. That the Department of Taxation shall promulgate all necessary and reasonable regulations to govern the administration of the taxes authorized by this act pursuant to §§ 58.1-605.1 and 58.1-606.1 of the Code of Virginia.

5. That the Hampton Roads Transportation Authority shall also develop as part of a long-range transportation plan, performance measures for Hampton Roads relating to, but not limited to, transportation congestion reduction, transit and high-occupancy vehicle (HOV) usage, job/housing ratios, job and housing access to transit and pedestrian facilities, air quality, and per-capita vehicle miles traveled.

6. That each county or city that imposes the tax under § 58.1-605.1 of the Code of Virginia pursuant to the provisions of this act shall for each fiscal year in which it imposes such tax expend or disburse for transportation purposes an amount (computed without regard to any revenues generated in the fiscal year from such tax) that is at least equal to the total amount expended or disbursed for transportation purposes by the county or city in its fiscal year that began in calendar year 2005.

7. That any revenues distributed to the Hampton Roads Transportation Authority pursuant to §§ 58.1-605.1 and 58.1-606.1 of the Code of Virginia shall not be used to calculate or reduce the share of local, federal, and state revenues otherwise available to any county or city set forth in subsection A of § 58.1-605.1 or subsection A of § 58.1-606.1. Further, such revenues and moneys shall not be included in any computation of, or formula for, a locality's ability to pay for public education, upon which appropriations of state revenues to local governments for public education are determined.

8. That no provision of this act shall become effective unless under legislation passed by a session of the General Assembly held in 2006 that becomes law (i) each of the Counties of Arlington,

305 Fairfax, Loudoun, and Prince William, and the Cities of Alexandria, Fairfax, Falls Church,
306 Manassas, and Manassas Park are authorized to impose a local general retail sales tax, in addition
307 to the tax set forth under § 58.1-605, with the revenues therefrom required to be appropriated to
308 the Northern Virginia Transportation Authority established under § 15.2-4830 of the Code of
309 Virginia and (ii) taxes collected pursuant to Chapter 25 (§ 58.1-2500 et seq.) of Title 58.1 of the
310 Code of Virginia attributable to any policy of motor vehicle insurance as defined in § 38.2-124 of
311 the Code of Virginia are dedicated to the Transportation Trust Fund established under
312 § 33.1-23.03:1 of the Code of Virginia and specific nongeneral fund fees and/or taxes, in effect as
313 of January 1, 2006, are increased, or new nongeneral fund fees and/or taxes are established,
314 sufficiently to generate an annual amount of revenue equivalent to at least 15 percent of the fiscal
315 year 2007-2008 Commonwealth Transportation revenue included in Senate Bill 5002, as introduced
316 during Special Session I of the 2006 General Assembly, and which amount of revenue shall be
317 distributed annually through a transportation formula.