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SENATE BILL NO. 5014**AMENDMENT IN THE NATURE OF A SUBSTITUTE**(Proposed by the Senate Committee on Finance
on April 27, 2006)

(Patron Prior to Substitute—Senator Quayle)

A *BILL 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.*

Be it enacted by the General Assembly of Virginia:

1. That 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 as described in § 33.1-391.12, pursuant to the conditions set forth in such section) 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 local 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 appointed by a majority vote of the respective local governing body and shall be a member of the local governing body by which he is appointed. 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 staggered terms, those members appointed by the City Council of the City of Hampton, the City Council of the City of Newport News, and the Board of Supervisors of James City County shall be appointed for terms of two years; those members who are appointed by the City

60 Council of the City of Norfolk, the City Council of the City of Chesapeake, and the City Council of the
61 City of Portsmouth shall be appointed for terms of three years; and the remaining representatives of
62 local governing bodies shall be appointed for terms of four years. Legislative members shall serve terms
63 coincident with their terms of office. Vacancies shall be filled by appointment for the unexpired term by
64 the same process as used to make the original appointment.

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

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

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

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

74 § 33.1-391.10. Additional powers of the Authority.

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

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

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

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

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

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

89 6. To acquire real and personal property or any interest therein by purchase, lease, gift, or
90 otherwise (and to the extent not inconsistent with the provisions of § 33.1-422) for purposes consistent
91 with this chapter; 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 the
94 provisions of § 33.1-422), highways, bridges, tunnels, railroads, rolling stock, and transit and rail
95 facilities and other transportation-related facilities; and to construct the same by purchase, lease,
96 contract, or otherwise in the manner and to the extent not inconsistent with the provisions of the first
97 paragraph of § 33.1-422;

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

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

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

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

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

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

119 § 33.1-391.11. Authority a responsible public entity under Public-Private Transportation Act of 1995.

120 The Authority is a responsible public entity as defined in the Public-Private Transportation Act of
121 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. The representative of the local governing body of the County of Accomack and the County of Northampton shall be appointed by a majority vote of the respective local governing body and shall be a member of the local governing body by which he is appointed. 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. 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 at such time as 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 at such time as 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

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

186 § 58.1-605.1. Additional local sales tax.

187 A. In addition to any other taxes, fees, or other charges imposed under law, each of the governing
188 bodies of the Counties of Isle of Wight, James City, and York and the Cities of Chesapeake, Hampton,
189 Newport News, Norfolk, Portsmouth, Suffolk, Virginia Beach, and Williamsburg may by ordinance levy a
190 local retail sales tax at the rate of 1% to generate revenue for transportation, provided that the
191 governing body of the county or city authorizes the Tax Commissioner to transfer the revenues collected
192 from such tax to the Hampton Roads Transportation Authority established under § 33.1-391.7. At such
193 time as the Chesapeake Bay Bridge-Tunnel becomes subject to the control of the Hampton Roads
194 Transportation Authority as provided in § 33.1-391.12, each of the governing bodies of the Counties of
195 Accomack and Northampton may also by ordinance levy the additional local sales tax authorized under
196 this section, provided that the governing body of the county authorizes the Tax Commissioner to transfer
197 the revenues collected from such tax to the Hampton Roads Transportation Authority. Such tax shall not
198 be levied upon food purchased for human consumption as defined in § 58.1-611.1. Such tax shall be
199 added to the rate of the local sales tax imposed pursuant to the authority granted under § 58.1-605 and
200 shall be subject to all the provisions of this chapter and the rules and regulations published with respect
201 thereto. No discount under § 58.1-622 shall be allowed for the tax described under this subsection. Such
202 tax shall be administered and collected by the Tax Commissioner in the same manner and subject to the
203 same penalties as provided for the state sales tax.

204 B. The revenue generated and collected pursuant to the tax authorized under this section, less the
205 applicable portion of any refunds to taxpayers, shall be deposited and held in a special trust fund under
206 the control of the State Treasurer entitled "Special Sales and Use Tax Fund Account of the Hampton
207 Roads Transportation Authority." The State Treasurer shall distribute the amounts deposited in the
208 special trust fund monthly to the Hampton Roads Transportation Authority. The Authority shall use such
209 funds solely for the purposes as provided in § 33.1-391.16.

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

216 § 58.1-606.1. Additional local use tax.

217 A. In addition to any other taxes, fees, or other charges imposed under law, each of the governing
218 bodies of the Counties of Isle of Wight, James City, and York and the Cities of Chesapeake, Hampton,
219 Newport News, Norfolk, Portsmouth, Suffolk, Virginia Beach, and Williamsburg may by ordinance levy a
220 local use tax at the rate of 1% to generate revenue for transportation, provided that the governing body
221 of the county or city authorizes the Tax Commissioner to transfer the revenues collected from such tax
222 to the Hampton Roads Transportation Authority established under § 33.1-391.7. At such time as the
223 Chesapeake Bay Bridge-Tunnel becomes subject to the control of the Hampton Roads Transportation
224 Authority as provided in § 33.1-391.12, each of the governing bodies of the Counties of Accomack and
225 Northampton may also by ordinance levy the additional local use tax authorized under this section,
226 provided that the governing body of the county authorizes the Tax Commissioner to transfer the
227 revenues collected from such tax to the Hampton Roads Transportation Authority. Such tax shall not be
228 levied upon food purchased for human consumption as defined in § 58.1-611.1. Such tax shall be added
229 to the rate of the local use tax imposed pursuant to the authority granted under § 58.1-606 and shall be
230 subject to all the provisions of this chapter and the rules and regulations published with respect thereto.
231 No discount under § 58.1-622 shall be allowed for the tax described under this subsection. Such tax
232 shall be administered and collected by the Tax Commissioner in the same manner and subject to the
233 same penalties as provided for the state use tax.

234 B. The revenue generated and collected pursuant to the tax authorized under this section, less the
235 applicable portion of any refunds to taxpayers, shall be deposited and held in a special trust fund under
236 the control of the State Treasurer entitled "Special Sales and Use Tax Fund Account of the Hampton
237 Roads Transportation Authority." The State Treasurer shall distribute the amounts deposited in the
238 special trust fund monthly to the Hampton Roads Transportation Authority. The Authority shall use such
239 funds solely for the purposes as provided in § 33.1-391.16.

240 C. No locality imposing the tax pursuant to this section shall cease to impose such tax so long as the
241 Hampton Roads Transportation Authority (i) is currently engaged in a transportation project within the
242 boundaries of the locality, (ii) has entered into a binding commitment to begin a transportation project
243 within the boundaries of the locality, or (iii) has issued bonds or incurred other evidence of debt that
244 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.

§ 58.1-639.1. 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 adopting such tax by ordinance 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 local sales and use tax provided under this act in §§ 58.1-605.1 and 58.1-606.1 of the Code of Virginia 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.

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 each governing body of a county or city adopting by ordinance the taxes authorized under §§ 58.1-605.1 and 58.1-606.1 of the Code of Virginia shall provide a copy of the ordinance to the Clerk of the House of Delegates and the Clerk of the Senate as soon as practicable.

6. That, if the Hampton Roads Transportation Authority becomes effective January 1, 2007, pursuant to the third enactment of this act, the 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.

7. That each county or city that imposes the tax pursuant to § 58.1-605.1 or 58.1-606.1 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 taxes) 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.

8. That any revenues distributed to the Hampton Roads Transportation Authority pursuant to § 58.1-605.1 or 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 of the Code of Virginia. 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.

9. 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 provides in part that (i) each of the Counties of Arlington, Fairfax, Loudoun, and Prince William and the Cities of Alexandria, Fairfax, Falls Church, Manassas, and Manassas Park are authorized to impose a local 0.50% retail sales tax, in addition to the tax set forth under § 58.1-605 of the Code of Virginia, with the revenues therefrom required to be transferred to the Northern Virginia Transportation Authority established under § 15.2-4830 of the Code of Virginia and (ii) (a) in each fiscal year all revenues collected from the tax imposed under Chapter 25 (§ 58.1-2500 et seq.) of Title 58.1 of the Code of Virginia are deposited into the Transportation Trust established under § 33.1-23.03:1 of the Code of Virginia until the amount of such revenues deposited into the Fund in such fiscal year equals one-third of the total revenues collected from such tax for the immediately preceding calendar year, with such revenues deposited to be designated for the funding of transportation-related purposes; (b) the rate of specific state charges, fees, or taxes in effect as of January 1, 2006, are increased with no expiration date for such increase, or new state charges, fees, or taxes are established with no expiration date, with the revenues generated from such increase in rate(s) and new state charges, fees, or taxes deposited by the Comptroller into the Transportation Trust Fund and designated for the funding of transportation-related purposes; and (c) the revenues deposited to the Transportation Trust Fund under (b) are anticipated to generate an annual amount of state

306 net revenue that is not less than 15% of the fiscal year 2007-2008 Commonwealth Transportation
307 revenue included on line 47 of page 409 of Senate Bill No. 5002, as introduced during the 2006
308 Special Session I of the General Assembly.
309 For purposes of this enactment, "new state charges, fees, or taxes" means state charges, fees, or
310 taxes that were not imposed as of January 1, 2006.