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## SENATE BILL NO. 1008

Offered January 10, 2007

Prefiled January 9, 2007

A BILL to amend and reenact §§ 33.1-56.1 and 33.1-56.3 of the Code of Virginia, relating to HOT lanes enforcement.

\_\_\_\_\_  
Patron—Saslaw

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Referred to Committee on Transportation

**Be it enacted by the General Assembly of Virginia:****1. That §§ 33.1-56.1 and 33.1-56.3 of the Code of Virginia are amended and reenacted as follows:**

## § 33.1-56.1. Definitions.

For purposes of this section ~~article~~:

"Board" means the Commonwealth Transportation Board;

"High-occupancy requirement" means the number of persons required to be traveling in a vehicle for the vehicle to use HOT lanes without the payment of a toll. Emergency vehicles, law-enforcement vehicles using HOT lanes in the performance of their duties, and transit and commuter buses shall meet the high-occupancy requirement for HOT lanes, regardless of the number of occupants in the vehicle;

"High-occupancy toll lanes" or "HOT lanes" means a portion of a highway containing one or more travel lanes separated from other lanes, that is accessed through an electronic toll collection system, provides for free passage by vehicles carrying a certain number of persons, and contains a photo-enforcement system for use in such electronic toll collection. HOT lanes shall not be a "toll facility" or "HOV lanes" for the purposes of any other provision of law or regulation;

"HOT lanes operator" means the operator of the facility containing HOT lanes, which may include the Virginia Department of Transportation or some other entity;

"Owner" means the registered owner of a vehicle on record with the Department of Motor Vehicles, or with the equivalent agency in another state. "Owner" does not mean a vehicle rental or vehicle leasing company; and

"Photo-enforcement system" means a sensor installed in conjunction with a toll collection device to detect the presence of a vehicle that automatically produces one or more photographs, one or more microphotographs, a videotape, or other recorded images of each vehicle's license plate at the time it is detected by the toll collection device.

## § 33.1-56.3. HOT lanes enforcement.

Any person ~~operating~~ driving a motor vehicle on designated HOT lanes shall make arrangements with the HOT lanes operator for payment of the required toll prior to entering such HOT lanes. The driver of a vehicle who enters the HOT lanes without payment of the required toll, or without having made arrangements with the operator for payment of the required toll, shall have committed a violation of this section, which may be enforced in the following manner:

A. ~~A~~ *On a form prescribed by the Supreme Court*, a summons for civil violation of this section may be executed by a law-enforcement officer, when such violation is observed by such officer. ~~Upon a finding by a court of competent jurisdiction that the driver of a vehicle observed by a law-enforcement officer was in violation of this section, the court shall impose a fine upon the driver of such vehicle, together with applicable court costs, as follows: for a first offense, \$50; for a second offense, \$250; for a third offense within a period of two years of the second offense, \$500; and for a fourth and subsequent offense within a period of three years of the second offense, \$1,000. A person convicted under this subsection shall be guilty of a traffic infraction that shall not be a moving violation. Notwithstanding the provisions of § 46.2-492, no driver demerit points shall be assessed for any violation of this subsection. No person shall be subject to both prosecution under this subsection and under subsection B for actions arising out of the same transaction or occurrence. Such form shall contain the option for the driver or registered owner to prepay all penalties, fees, and costs.~~

B. 1. A HOT lanes operator may install and operate or cause to be installed and operated a photo-enforcement system as defined in this article at locations where tolls are collected for the use of such HOT lanes.

2. A summons for civil violation of this section may be executed pursuant to ~~§ 19.2-76.2~~ this subsection, when such violation is evidenced by information obtained from a photo-enforcement system as defined in this article. A certificate, sworn to or affirmed by a technician employed or authorized by the HOT lanes operator, or a facsimile of such a certificate, based on inspection of photographs, microphotographs, videotapes, or other recorded images produced by a photo-enforcement system, shall

59 be prima facie evidence of the facts contained therein. Any photographs, microphotographs, videotape,  
60 or other recorded images evidencing such a violation shall be available for inspection in any proceeding  
61 to adjudicate the liability for such violation under this subsection. Any vehicle rental or vehicle leasing  
62 company, if named in a summons, shall be released as a party to the action if it provides the HOT lanes  
63 operator a copy of the vehicle rental agreement or lease or an affidavit identifying the renter or lessee  
64 prior to the date of hearing set forth in the summons. Upon receipt of such rental agreement, lease, or  
65 affidavit, a summons shall be issued for the renter or lessee identified therein. Release of this  
66 information shall not be deemed a violation of any provision of the Government Data Collection and  
67 Dissemination Practices Act (§ 2.2-3800 et seq.) or the Insurance Information and Privacy Protection Act  
68 (§ 38.2-600 et seq.).

69 *2-3. On a form prescribed by the Supreme Court, a summons issued under this subsection may be*  
70 *executed pursuant to § 19.2-76.2. Such form shall contain the option for the driver or registered owner*  
71 *to prepay all penalties, fees, and costs. HOT lanes operator personnel or their agents mailing such*  
72 *summons shall be considered conservators of the peace for the sole and limited purpose of mailing such*  
73 *summons. Notwithstanding the provisions of § 19.2-76, a summons for a violation of this section may be*  
74 *executed by mailing by first-class mail a copy thereof to the address of the owner of the vehicle as*  
75 *shown on the records of the Department of Motor Vehicles or, if the registered owner has named and*  
76 *provided a valid address for the operator of the vehicle at the time of the violation in an affidavit*  
77 *executed pursuant to this subsection, such named operator of the vehicle. If the summoned person fails*  
78 *to appear on the date of return set out in the summons mailed pursuant to this section, the summons*  
79 *shall be executed in the manner set out in § 19.2-76.3.*

80 *4. The registered owner of such vehicle shall be given reasonable notice by way of a summons as*  
81 *provided in this subsection that his vehicle had been used in violation of this section, and such owner*  
82 *shall be given notice of the time and place of the hearing and notice of the civil penalty and costs for*  
83 *such offense.*

84 *Upon the filing of an affidavit with the court at least 14 days prior to the hearing date by the*  
85 *registered owner of the vehicle stating that he was not the driver of the vehicle on the date of the*  
86 *violation and providing the legal name and address of the driver of the vehicle at the time of the*  
87 *violation, a summons will also be issued to the alleged driver of the vehicle at the time of the offense.*

88 *In any action against a driver alleged by the registered owner of the vehicle to be the driver of the*  
89 *vehicle at the time of the offense, an affidavit made by the registered owner providing the name and*  
90 *address of the driver of the vehicle at the time of the violation shall constitute prima facie evidence that*  
91 *the person named in the affidavit was driving the vehicle at all the relevant times relating to the matter*  
92 *named in the affidavit.*

93 *If the registered owner of the vehicle produces a certified copy of a police report showing that the*  
94 *vehicle had been reported to the police as stolen prior to the time of the alleged offense and remained*  
95 *stolen at the time of the alleged offense, then the court shall dismiss the summons issued to the*  
96 *registered owner of the vehicle.*

97 *C. 1. Upon a finding by a court of competent jurisdiction that the driver of the vehicle observed by a*  
98 *law-enforcement officer under subsection A or the vehicle described in the summons for civil violation*  
99 *issued pursuant to evidence obtained by a photo-enforcement system under subsection B was in violation*  
100 *of this subsection section, the court shall impose a civil penalty upon the driver of such vehicle issued a*  
101 *summons under subsection A or upon the driver or registered owner of such vehicle issued a summons*  
102 *under subsection B, payable to the HOT lanes operator as follows: for a first offense, \$50; for a second*  
103 *offense, \$250; for a third offense within a period of two years of the second offense, \$500; and for a*  
104 *fourth and subsequent offense within a period of three years of the second offense, \$1,000, together with*  
105 *an administrative fee payable to the HOT lanes operator to cover costs of enforcement and the toll due,*  
106 *and applicable court costs. The court shall remand penalties and fees assessed for violation of this*  
107 *section to the treasurer or director of finance of the county or city in which the violation occurred for*  
108 *payment to the HOT lanes operator's operator account for expenses associated with operation of the*  
109 *HOT lanes and payments against any bonds or other liens issued as a result of the construction of the*  
110 *HOT lanes. No person shall be subject to both prosecution under this subsection and under subsection*  
111 *both subsections A and B for actions arising out of the same transaction or occurrence.*

112 *3- 2. Upon a finding by a court that a person has violated this subsection section, in the event such*  
113 *person fails to pay the required penalties, fees, and costs, the court shall notify the Commissioner of*  
114 *Motor Vehicles, who shall suspend all of the registration certificates and license plates issued for any*  
115 *motor vehicles registered solely in the name of such person and shall not issue any registration*  
116 *certificate or license plate for any other vehicle that such person seeks to register solely in his name*  
117 *until the court has notified the Commissioner that such penalties, fees, and costs have been paid. The*  
118 *HOT lanes operator and the Commissioner may enter into an agreement whereby the HOT lanes*  
119 *operator may reimburse the Department of Motor Vehicles for their reasonable costs to develop,*  
120 *implement, and maintain this enforcement mechanism, and that specifies that the Commissioner shall*

121 have an obligation to suspend such registration certificates so long as the HOT lanes operator makes the  
122 required reimbursements in a timely manner in accordance with the agreement.

123 *3. Imposition of a civil penalty pursuant to this section shall not be deemed a conviction as an*  
124 *operator of a motor vehicle under Title 46.2 and shall not be made part of the driving record of the*  
125 *person upon whom such civil penalty is imposed, nor shall it be used for insurance purposes in the*  
126 *provision of motor vehicle insurance coverage.*

127 *ED.* The driver of a vehicle who enters the HOT lanes by crossing through any barrier, buffer or  
128 other area separating the HOT lanes from other lanes of travel shall have committed a violation of  
129 § 46.2-852. No person shall be subject to both prosecution under this subsection and under subsection A  
130 or B for actions arising out of the same transaction or occurrence. *In addition to any punishment and*  
131 *costs imposed by the court for a violation of this subsection, the court shall order the driver of such*  
132 *vehicle to pay restitution to the HOT lanes operator in an amount sufficient to cover the HOT lanes*  
133 *operator's costs of enforcement and the toll due.*

134 ~~D.~~ Upon a conviction under *this* subsection ~~A or C of this section~~, the court shall furnish to the  
135 Commissioner of the Department of Motor Vehicles in accordance with § 46.2-383 an abstract of the  
136 record of such conviction which shall become a part of the convicted person's driving record.

137 E. No person shall be subject to prosecution under both this section and under §§ 33.1-46.2, 46.2-819  
138 or § 46.2-819.1 for actions arising out of the same transaction or occurrence.

139 *F.* Any action under this section shall be brought in the general district court of the city or county in  
140 which the violation occurred.