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HOUSE BILL NO. 802

Offered January 11, 2012

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A BILL to amend and reenact §§ 33.1-23.03:10 and 58.1-2278 of the Code of Virginia and to amend the Code of Virginia by adding in Title 58.1 a chapter numbered 22.1, consisting of sections numbered 58.1-2291 through 58.1-2297, relating to transportation funding and administration.

Patrons—May, Albo and Rust

Referred to Committee on Finance

Whereas, the General Assembly finds that:

1. There exists in the Commonwealth a critical need for additional sources of funding to finance the present and future maintenance of Virginia's roads and bridges, and that this need results from inflation in the cost of road maintenance, increased motor vehicle fuel efficiency, and the introduction of alternative fuel vehicles, including hybrid, plug-in electric, and natural gas motor vehicles;

2. The Virginia gas tax was last increased in 1986, and that due to inflation the purchasing power of the 17.5 cents (\$0.175) per gallon gas tax enacted in 1986 has declined to about eight cents (\$0.08) per gallon in 2011, which means Virginians are actually paying nearly 46 percent less in inflation-adjusted gas taxes today than they were in 1986; and

3. The declining nature of gas tax revenues, both in dollars generated and buying power, has resulted in a maintenance deficit that beginning in 2002 has required the diversion of hundreds of millions of dollars intended for construction to meet basic road maintenance needs, and that this maintenance deficit is projected to grow to more than \$700 million by 2017, leaving virtually no state funds available for construction at that time; and

Whereas, the General Assembly finds that all of the foregoing trends will continue and will accelerate in the years ahead unless new funding sources are identified that ensure that all vehicles, including alternative vehicles, pay a fair share of road maintenance costs; and

Whereas, the General Assembly further finds that a new system for meeting Virginia's road maintenance needs is required and that such a system must account for inflation in the costs of road maintenance over time and make sure all vehicles of today and tomorrow pay their fair share of the cost of highway maintenance; now, therefore,

Be it enacted by the General Assembly of Virginia:

1. That §§ 33.1-23.03:10 and 58.1-2278 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Title 58.1 a chapter numbered 22.1, consisting of sections numbered 58.1-2291 through 58.1-2297, as follows:

§ 33.1-23.03:10. Tolls for use of Interstate Highway System components.

A. Notwithstanding any contrary provision of this title and in accordance with all applicable federal and state statutes and requirements, the Commonwealth Transportation Board may impose and collect tolls from all classes of vehicles in amounts established by the Board for the use of any component of the Interstate Highway System within the Commonwealth. However, prior approval of the General Assembly shall be required prior to the imposition and collection of any toll for use of all or any portion of Interstate Route 81, *and no tolls shall be imposed on any existing component of the Interstate Highway System within the Commonwealth unless such tolls are for the purpose of constructing and maintaining a new highway or bridge or for the primary purpose of expanding the lane mile capacity of an existing highway or bridge.* Such funds so collected shall be deposited into the Transportation Trust Fund established pursuant to § 33.1-23.03:1, subject to allocation by the Board as provided in this section.

B. The toll facilities authorized by this section shall be subject to the provisions of federal law for the purpose of tolling motor vehicles to finance interstate construction and reconstruction, promote efficiency in the use of highways, reduce traffic congestion, improve air quality and for such other purposes as may be permitted by federal law.

C. In order to mitigate traffic congestion in the vicinity of the toll facilities, no toll facility shall be operated without high-speed automated toll collection technology designed to allow motorists to travel through the toll facilities without stopping to make payments. Nothing in this subsection shall be construed to prohibit a toll facility from retaining means of non-automated toll collection in some lanes of the facility. The Board shall also consider traffic congestion and mitigation thereof and the impact on local traffic movement as factors in determining the location of the toll facilities authorized pursuant to this section.

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59 D. The revenues collected from each toll facility established pursuant to this section shall be
 60 deposited into segregated subaccounts in the Transportation Trust Fund and may be allocated by the
 61 Commonwealth Transportation Board as the Board deems appropriate to:

62 1. Pay or finance all or part of the costs of programs or projects, including without limitation the
 63 costs of planning, operation, maintenance and improvements incurred in connection with the toll facility
 64 provided that such allocations shall be limited to programs and projects that are reasonably related to or
 65 benefit the users of the toll facility. The priorities of metropolitan planning organizations, planning
 66 district commissions, local governments, and transportation corridors shall be considered by the Board in
 67 making project allocations from such revenues deposited into the Transportation Trust Fund.

68 2. Repay funds from the Toll Facilities Revolving Account or the Transportation Partnership
 69 Opportunity Fund.

70 3. Pay the Board's reasonable costs and expenses incurred in the administration and management of
 71 the Toll Facility.

72 § 58.1-2278. Equipment requirements.

73 A. All fuel dispensed at retail shall be dispensed from metered pumps that indicate the total amount
 74 of fuel measured through the pumps. Each pump shall be marked to indicate the type of fuel dispensed.
 75 *Each pump shall be marked with a label, approved by the Commissioner of Agriculture and Consumer*
 76 *Services, which includes the following: "Virginia Pump Toll 50¢, all motor vehicles." Such label for*
 77 *electronic pumps as defined by § 58.1-2293 shall additionally state: "50¢ added to sales price at start of*
 78 *sale to fund road maintenance in this Highway Construction District; additional 50¢ added when*
 79 *refueling is concluded for sales of 35 gallons or more." Such label for mechanical pumps as defined by*
 80 *§ 58.1-2293 shall additionally state: "50¢ added to sales price when refueling is concluded to fund road*
 81 *maintenance in this Highway Construction District; additional 50¢ added for sales of 35 gallons or*
 82 *more." The dollar amount of the FareShare on the label shall change to reflect any change in the*
 83 *FareShare imposed pursuant to § 58.1-2294. Each charging station facility that provides a retail electric*
 84 *vehicle charging service as defined in § 56-1 shall be marked with the label required by this section that*
 85 *reflects the method of FareShare collection selected by the retail dealer pursuant to subsection A of*
 86 *§ 58.1-2294.*

87 B. A highway vehicle that transports fuel in a tank that is separate from the fuel supply tank of the
 88 vehicle shall not have a connection from the transporting tank to the motor or to the supply tank of the
 89 vehicle.

90 CHAPTER 22.1. 91 VIRGINIA PUMP TOLL.

92 § 58.1-2291. Short title.

93 *This chapter shall be known and may be cited as the "FareShare Road Relief Act."*

94 § 58.1-2292. Definitions.

95 *As used in this chapter, unless the context requires a different meaning:*

96 *"Bulk fuel purchase transaction" means a sale of conventional or clean fuel other than electricity, to*
 97 *a consumer for any purpose other than resale when such fuel is delivered to such consumer from a*
 98 *transport truck or tank wagon as defined by § 58.1-2201, or from a vehicle delivering clean fuel, other*
 99 *than electricity, for business vehicle use.*

100 *"Clean fuel" means electricity to replenish the battery of a plug-in electric motor vehicle that is*
 101 *provided at retail by an electric vehicle charging service, compressed or liquefied natural gas, propane,*
 102 *hydrogen, or other fuel not subject to tax under Chapter 22 (§ 58.1-2200 et seq.).*

103 *"Consumer" means any person who purchases conventional or clean fuel from a distributor or*
 104 *purchases conventional or clean fuel from a retail dealer for any purpose other than resale.*

105 *"Conventional fuel" means any gasoline, gasohol, diesel fuel, or blended fuel that contains gasoline*
 106 *or diesel fuel subject to tax under Chapter 22 (§ 58.1-2200 et seq.).*

107 *"Distributor" means any person licensed by the Department of Motor Vehicles pursuant to Chapter*
 108 *22 (§ 58.1-2200 et seq.) who (i) is engaged in the business of selling conventional fuels in the*
 109 *Commonwealth and who brings, or causes to be brought, into the Commonwealth from outside the*
 110 *Commonwealth conventional fuels for purposes other than resale, or any other person engaged in the*
 111 *business of selling conventional fuels for purposes other than resale in the Commonwealth; (ii) makes,*
 112 *manufactures, fabricates, processes, or stores conventional fuels in the Commonwealth for purposes*
 113 *other than resale in the Commonwealth; or (iii) is engaged in the business of selling conventional fuels*
 114 *outside the Commonwealth who ships or transports conventional fuels to any person in the business of*
 115 *selling conventional fuels in the Commonwealth.*

116 *"Electric vehicle charging service" means the same as that term is defined in § 56-1.*

117 *"Electronic pumps" means metered conventional fuel or clean fuel pumps with an electronic digital*
 118 *display.*

119 *"Mechanical pumps" means metered conventional fuel pumps whose displays comprise a series of*
 120 *wheels with inscribed numbers.*

"Person" means any individual, corporation, partnership, association, company, business, trust, joint venture, or other legal entity.

"Plug-in electric motor vehicle" means the same as that term is defined in § 56-1.

"Retail dealer" means any person who sells conventional fuel or clean fuel to a consumer for any purpose other than resale.

§ 58.1-2293. Virginia Pump Toll ("FareShare") for vehicular use in the Commonwealth.

A. In addition to all other taxes and fees now imposed by law, there is hereby imposed the Virginia Pump Toll, referred to as "FareShare," of 50 cents (\$0.50), in the Highway Construction Districts of Bristol, Culpeper, Fredericksburg, Hampton Roads, Lynchburg, Northern Virginia, Richmond, Salem, and Staunton on each sale of conventional fuel or clean fuel by a retail dealer in the Commonwealth that is subject to the tax imposed pursuant to § 58.1-2217. In the case of fuel dispensed from electronic pumps, the FareShare shall be imposed and collected by the retail dealer at the time of sale to the consumer, by setting the starting price of each sale at 50 cents (\$0.50) before any fuel is dispensed. In the case of fuel dispensed from mechanical pumps, the FareShare shall be imposed and collected by the retail dealer at the time of sale to the consumer, by adding 50 cents (\$0.50) to the sales price when pumping is completed. An additional 50 cents (\$0.50) FareShare is hereby imposed and collected by the retail dealer at the time of sale to the consumer on every sale of 35 gallons or more when pumping is concluded. In the case of clean fuel provided at an electric vehicle charging service facility, the FareShare shall be imposed and collected by the retail dealer at the time of sale to the consumer, either by setting the starting price of each sale at 50 cents (\$0.50) before charging commences or by adding 50 cents (\$0.50) to the sales price when charging is completed, as selected by the retail dealer.

B. In addition to all other taxes and fees now imposed by law, there is hereby imposed a FareShare on each bulk fuel purchase transaction. The FareShare for bulk conventional fuel purchase transactions containing gasoline shall be \$1.00 for each 12 gallons sold. The FareShare for bulk conventional fuel purchase transactions containing diesel fuel shall be \$1.00 for each 60 gallons sold. The FareShare for bulk clean fuel purchase transactions shall be established by the Commissioner of the Department of Motor Vehicles at a rate equivalent to \$1.00 times the volume of clean fuel required to fill the average size fuel tank for such clean fuel vehicle to three quarters full. For each type of clean fuel, a single, separate rate shall be established for purposes of bulk clean fuel for (i) passenger vehicles and (ii) commercial vehicles. The FareShare imposed by this subsection shall be paid by the distributor, but the distributor shall separately state the amount of the FareShare and add such FareShare to the sale price or charge. Thereafter, such FareShare shall be a debt of the consumer until paid and shall be recoverable at law in the same manner as other debts.

C. The amount of the FareShare imposed under this section shall increase by 10 percent on January 1, 2018, and on January 1 every fifth year thereafter.

D. 1. Every retail dealer of conventional fuel collecting the FareShare imposed under this chapter shall file a monthly return no later than the twentieth of each month, on a form prescribed by the Department of Taxation, covering the sale of conventional fuels by such retail dealer during the preceding month for which FareShares are imposed pursuant to subsection A. The Department of Taxation is hereby granted the same authority to establish recordkeeping requirements, conduct audits, and impose penalties and interest for late filings required to implement its responsibilities in collecting FareShare under this chapter as it is granted for the collection of sales and use tax under Chapter 6 (§ 58.1-600 et seq.).

2. Every retail dealer of clean fuel and every distributor of conventional fuel collecting the FareShare imposed under this chapter shall file a monthly return no later than the twentieth of each month, on a form prescribed by the Department of Motor Vehicles, covering the sale of clean fuels by such retail dealer, and the sale of conventional fuels by such distributor, during the preceding month for which FareShares are imposed pursuant to subsections A and B. The Department of Motor Vehicles is hereby granted the same authority to establish recordkeeping requirements, conduct audits, and impose penalties and interest for late filings required to implement its responsibilities under this chapter as it is granted under Chapter 22 (§ 58.1-2200 et seq.).

For purposes of compensating a dealer or distributor for accounting for and remitting the FareShare levied under this section, such dealer or distributor shall be allowed to deduct 1.2 percent of the amount of FareShare otherwise due in submitting his return and paying the amount due by him if the amount was not delinquent at the time of payment.

§ 58.1-2294. Exemptions and refunds.

A. No FareShare shall be imposed on the sale of fuel that is exempt from the tax imposed pursuant to § 58.1-2217 as set forth in § 58.1-2226.

B. A refund of the FareShare paid shall be granted for the sale of fuel that qualifies for a refund of tax pursuant to § 58.1-2259. The provisions of Article 6 (§ 58.1-2259 et seq.) of Chapter 22 shall govern such refunds mutatis mutandis, including but not limited to the partial refund provisions set forth

182 in subsections B and D of § 58.1-2259.

183 § 58.1-2295. Disposition of Virginia Pump Toll revenues.

184 A. All Virginia Pump Toll revenue paid to the Department of Taxation or the Department of Motor
185 Vehicles pursuant to this chapter, after subtraction of the direct costs of administration by the
186 applicable Department, and after payment to the Department of Agriculture and Consumer Services for
187 the costs incurred in fulfilling its obligations under § 58.1-2278 regarding pump labels associated with
188 the FareShare imposed under this chapter, shall be allocated among special subfunds of the Highway
189 Maintenance and Operating Fund entitled "Special Fund Account of the Highway Construction District
190 of " according to the highway construction district in which the conventional fuel or clean fuel
191 is sold to the consumer by the distributor or retail dealer. The amounts deposited in the special
192 subfunds shall be used solely for highway and road maintenance in the applicable highway construction
193 district as provided in subsection B.

194 B. Virginia Pump Toll revenues shall be used solely to meet the highway and road maintenance
195 needs, as determined by the Department of Transportation, of the highway construction district in which
196 such revenues are generated. Of the amounts deposited in each special subfund established pursuant to
197 subsection A, (i) no less than 30 percent shall be dedicated to maintenance of the Interstate Highway
198 System, if any is located in the district, (ii) no less than 30 percent shall be dedicated to maintenance of
199 primary roads, and (iii) no less than 30 percent shall be dedicated to the maintenance of secondary
200 roads. The allocation of construction funds for each highway district in each six-year plan shall be
201 increased annually to include the amount of revenue deposited in its special subfund established
202 pursuant to this section in the immediately preceding fiscal year. Any highway construction district in
203 which the Virginia Pump Toll under this chapter is not imposed shall be ineligible for any such increase
204 in construction fund allocations, and the Department may not shift maintenance funds beyond those
205 established by the Department for fiscal year 2012 from other highway construction districts to address
206 future maintenance deficiencies in any such district.

207 § 58.1-2296. Registration of dealers and filing returns.

208 1. The Department of Taxation shall promulgate rules and regulations for the registration of retail
209 dealers of conventional fuel and procedures for filing returns for the payment of the FareShare imposed
210 pursuant to this chapter.

211 2. The Department of Motor Vehicles shall promulgate rules and regulations for the registration of
212 retail dealers of clean fuel and distributors who make bulk fuel purchase transactions, and develop
213 procedures for filing returns for the payment of the FareShare imposed pursuant to this chapter.

214 § 58.1-2297. Exclusion from professional license tax.

215 The amount of the FareShare imposed under this chapter and collected by a distributor or retail
216 dealer in any taxable year shall be excluded from gross receipts for purposes of any tax imposed under
217 Chapter 37 (§ 58.1-3700 et seq.).

218 2. That the provisions of this act shall become effective on January 1, 2013.

219 3. That the provisions of this act imposing a Virginia Pump Toll on the sale of conventional fuels
220 by retail dealers and by distributors who make conventional fuel bulk fuel purchase transactions
221 shall be repealed effective on the date that a cents per gallon increase in the rate of tax imposed
222 pursuant to § 58.1-2217 of the Code of Virginia becomes effective for road maintenance purposes.
223 Such repeal shall not occur if the rate increases solely because an act of the General Assembly (i)
224 indexes such tax to an inflation gauge, (ii) changes the tax from a cents per gallon tax to a
225 percentage tax, or (iii) does both. If the FareShare for conventional fuels is repealed pursuant to
226 this enactment, all provisions of this act shall remain in effect that apply to the sale of clean fuels
227 by retail dealers and to distributors who make bulk clean fuel purchase transactions for purposes
228 other than resale.