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SENATE BILL NO. 639

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on Finance
on February 9, 2012)

(Patron Prior to Substitute—Senator Wagner)

A *BILL to amend and reenact §§ 33.1-23.05, 33.1-49.1, 58.1-2201, 58.1-2217, 58.1-2249, 58.1-2251, 58.1-2289, as it may become effective, 58.1-2701, as it is currently effective and as it may become effective, and 58.1-2706 of the Code of Virginia; to amend the Code of Virginia by adding a section numbered 33.1-23.04:1; and to repeal § 58.1-549 of the Code of Virginia, relating to transportation funding and operation.*

Be it enacted by the General Assembly of Virginia:

1. That §§ 33.1-23.05, 33.1-49.1, 58.1-2201, 58.1-2217, 58.1-2249, 58.1-2251, 58.1-2289, as it may become effective, 58.1-2701, as it is currently effective and as it may become effective, and 58.1-2706 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 33.1-23.04:1 as follows:

§ 33.1-23.04:1. Contributions to toll road construction, maintenance, and operation by localities.

A. Notwithstanding any other provision of law, any county, city, or town that will be traversed by a road or other transportation facility, or that may have residents who will utilize such road or transportation facility on a regular basis, the construction, maintenance, or operation of which will be financed in whole or in part with tolls, may contribute funds for construction, maintenance, or operation of the toll road or transportation facility for the purpose of reducing the tolls charged for use of the toll road or transportation facility. Any funds contributed by such locality shall be appropriated from the locality's general fund for use by the Department of Transportation, any other public entity, or any private entity authorized to construct, maintain, or operate toll roads to reduce the costs of financing construction, maintenance, or operation of the toll road. The locality contribution must be committed to the project by a formal resolution of the locality's governing body prior to the execution of a comprehensive agreement and paid to the Department, other public entity, or private entity prior to financial close if the project will be constructed or operated pursuant to the Public-Private Transportation Act of 1995 (§ 56-556 et seq.) or prior to the issuance of bonds for projects that will be constructed, maintained, or operated by the Department or any other public entity with the authority to issue bonds for transportation projects. Nothing herein shall require the Department, other public entity, or any private entity to accept any such contribution in the event that the contribution would in any way require revision to previously established or executed financing or any previously executed interim or concession agreement, or that, in the opinion of the Department, other public entity, or private entity, could negatively impact operation or maintenance of the toll road or transportation facility. Contributions authorized pursuant to this subsection shall not be utilized for construction, maintenance, or operation of roads or transportation facilities where the toll rate is varied based on actual traffic volumes to manage traffic flow to defined traffic flow standards.

B. Notwithstanding any other provision of law, and subject to the provisions of this subsection, any county, city, or town traversed by an existing road or transportation facility that is subject to tolls or whose residents utilize such road or transportation facility on a regular basis may contribute funds annually for the purpose of reducing the tolls charged for such toll road or transportation facility. The funds contributed by such locality shall be appropriated from the locality's general fund and must be used by the Department of Transportation, other public entity, or a private entity who is a party to a concession agreement under the Public-Private Transportation Act of 1995 (§ 56-556 et seq.) to supplant all or a portion of the income to be derived from tolls charged to users of the toll road or transportation facility for the purpose of reducing the tolls charged. Nothing in this section shall require the Department, other public entity, or any private entity to accept any such contribution in the event that the contribution would in any way require revision to previously established or executed financing or any previously executed interim or concession agreement or that, in the opinion of the Department, other public entity, or the private entity, could negatively impact operation or maintenance of the toll road or transportation facility. Furthermore, contributions authorized pursuant to this subsection shall not be utilized for maintenance or operation of roads or transportation facilities where the toll rate is varied based on actual traffic volumes to manage traffic flow to defined traffic flow standards.

§ 33.1-23.05. Revenue-sharing funds for systems in certain counties, cities, and towns.

A. From revenues made available by the General Assembly and appropriated for the improvement, construction, or reconstruction, or maintenance of the systems of state highways, the Commonwealth Transportation Board may make an equivalent matching allocation to any county, city, or town for designations by the governing body of up to \$10 million for use by the county, city, or town to

60 improve, construct, or reconstruct the highway systems within such county, city, or town *with up to \$5*
61 *million for use by the county, city, or town to maintain the highway systems within such county, city, or*
62 *town.* After adopting a resolution supporting the action, the governing body may request revenue-sharing
63 funds to improve, construct, ~~or~~ reconstruct, *or maintain* a highway system located in another locality,
64 between two or more localities, or to bring subdivision streets, used as such prior to the date specified
65 in § 33.1-72.1, up to standards sufficient to qualify them for inclusion in the state primary and secondary
66 system of highways. All requests for funding shall be accompanied by a prioritized listing of specified
67 projects.

68 B. In allocating funds under this section, the Board shall give priority to allocations that will
69 accelerate *those pavement resurfacing and bridge rehabilitation* projects in the Commonwealth
70 Transportation Six-Year Improvement Program or the locality's capital plan *for which the maintenance*
71 *needs analysis determines that the infrastructure is below the Department of Transportation's*
72 *maintenance performance targets.*

73 C. The Department of Transportation will contract with the county, city, or town for the
74 implementation of the project or projects. Such contract may cover either a single project or may
75 provide for the locality's implementation of several projects ~~during the fiscal year.~~ The county, city, or
76 town will undertake implementation of the particular project or projects by obtaining the necessary
77 permits from the Department of Transportation in order to ensure that the improvement is consistent
78 with the Department's standards for such improvements. At the request of the locality, the Department
79 may provide the locality with engineering, right-of-way acquisition, ~~and/or~~ construction, *or maintenance*
80 services for a project with its own forces. The locality shall provide payment to the Department for any
81 such services. If administered by the Department, such contract shall also require that the governing
82 body pay to the Department within 30 days the local revenue-sharing funds upon written notice by the
83 Department of its intent to proceed. Any project having funds allocated under this program shall be
84 initiated in such a fashion where at least a portion of such funds have been expended within ~~two~~
85 ~~subsequent fiscal years~~ *one year* of allocation. Any revenue-sharing funds for projects not initiated after
86 two subsequent fiscal years of allocation may be reallocated at the discretion of the Commonwealth
87 Transportation Board.

88 D. Total Commonwealth funds allocated by the Board under this section shall not exceed \$200
89 million in any one fiscal year and no less than \$15 million each fiscal year, subject to appropriation for
90 such purpose. *For any fiscal year in which less than the full program allocation has been allocated by*
91 *the Commonwealth Transportation Board to specific governing bodies, those localities requesting the*
92 *maximum allocation under subsection A may be allowed an additional allocation at the discretion of the*
93 *Board.*

94 E. The funds allocated by the Commonwealth Transportation Board under this section shall be
95 distributed and administered in accordance with the revenue-sharing program guidelines established by
96 the Board.

97 § 33.1-49.1. Contracts for maintenance of components of Interstate Highway System.

98 All maintenance on components of the Interstate Highway System in Virginia, excluding frontage
99 roads, shall be carried out under contracts awarded by the Commissioner of Highways ~~and approved~~
100 ~~by~~ the Commonwealth Transportation Board pursuant to § 33.1-12, except for instances where good
101 and sufficient reasons for not doing so shall have been shown in advance in writing by the
102 Commissioner of Highways to the Commonwealth Transportation Board and to the chairmen of the
103 House Committee on Transportation, the House Committee on Appropriations, the House Committee on
104 Finance, the Senate Committee on Transportation and the Senate Committee on Finance. Nothing in this
105 section shall be construed to prevent the Virginia Department of Transportation from performing
106 emergency work at any time on the Interstate System with its own employees or agents or to assume the
107 maintenance responsibilities of a contractor who has been determined to be in default or as a result of a
108 contract termination.

109 § 58.1-2201. Definitions.

110 As used in this chapter, unless the context requires otherwise:

111 "Alternative fuel" means a combustible gas, liquid or other energy source that can be used to
112 generate power to operate a highway vehicle and that is ~~not~~ *neither* a motor fuel *nor electricity used to*
113 *recharge an electric motor vehicle.*

114 "Assessment" means a written determination by the Department of the amount of taxes owed by a
115 taxpayer. Assessments made by the Department shall be deemed to be made when a written notice of
116 assessment is delivered to the taxpayer by the Department or is mailed to the taxpayer at the last known
117 address appearing in the Commissioner's files.

118 "Aviation consumer" means any person who uses in excess of 100,000 gallons of aviation jet fuel in
119 any fiscal year and is licensed pursuant to Article 2 (§ 58.1-2204 et seq.) of this chapter.

120 "Aviation fuel" means aviation gasoline or aviation jet fuel.

121 "Aviation gasoline" means fuel designed for use in the operation of aircraft other than jet aircraft,

and sold or used for that purpose.

"Aviation jet fuel" means fuel designed for use in the operation of jet or turbo-prop aircraft, and sold or used for that purpose.

"Blended fuel" means a mixture composed of gasoline or diesel fuel and another liquid, other than a de minimis amount of a product such as carburetor detergent or oxidation inhibitor, that can be used as a fuel in a highway vehicle.

"Blender" means a person who produces blended fuel outside the terminal transfer system.

"Bonded aviation jet fuel" means aviation jet fuel held in bonded storage under United States Customs Law and delivered into a fuel tank of aircraft operated by certificated air carriers on international flights.

"Bonded importer" means a person, other than a supplier, who imports, by transport truck or another means of transfer outside the terminal transfer system, motor fuel removed from a terminal located in another state in which (i) the state from which the fuel is imported does not require the seller of the fuel to collect motor fuel tax on the removal either at that state's rate or the rate of the destination state; (ii) the supplier of the fuel is not an elective supplier; or (iii) the supplier of the fuel is not a permissive supplier.

"Bulk plant" means a motor fuel storage and distribution facility that is not a terminal and from which motor fuel may be removed at a rack.

"Bulk user" means a person who maintains storage facilities for motor fuel and uses part or all of the stored fuel to operate a highway vehicle, watercraft, or aircraft.

"Bulk user of alternative fuel" means a person who maintains storage facilities for alternative fuel and uses part or all of the stored fuel to operate a highway vehicle.

"Commercial watercraft" means a watercraft employed in the business of commercial fishing, transporting persons or property for compensation or hire, or any other trade or business unless the watercraft is used in an activity of a type generally considered entertainment, amusement, or recreation. The definition shall include a watercraft owned by a private business and used in the conduct of its own business or operations, including but not limited to the transport of persons or property.

"Commissioner" means the Commissioner of the Department of Motor Vehicles.

"Corporate or partnership officer" means an officer or director of a corporation, partner of a partnership, or member of a limited liability company, who as such officer, director, partner or member is under a duty to perform on behalf of the corporation, partnership, or limited liability company the tax collection, accounting, or remitting obligations.

"Department" means the Department of Motor Vehicles, acting directly or through its duly authorized officers and agents.

"Designated inspection site" means any state highway inspection station, weigh station, agricultural inspection station, mobile station, or other location designated by the Commissioner or his designee to be used as a fuel inspection site.

"Destination state" means the state, territory, or foreign country to which motor fuel is directed for delivery into a storage facility, a receptacle, a container, or a type of transportation equipment for the purpose of resale or use. The term shall not include a tribal reservation of any recognized Native American tribe.

"Diesel fuel" means any liquid that is suitable for use as a fuel in a diesel-powered highway vehicle or watercraft. The term shall include undyed #1 fuel oil and undyed #2 fuel oil, but shall not include gasoline or aviation jet fuel.

"Distributor" means a person who acquires motor fuel from a supplier or from another distributor for subsequent sale.

"Dyed diesel fuel" means diesel fuel that meets the dyeing and marking requirements of 26 U.S.C. § 4082.

"Elective supplier" means a supplier who (i) is required to be licensed in the Commonwealth and (ii) elects to collect the tax due the Commonwealth on motor fuel that is removed at a terminal located in another state and has Virginia as its destination state.

"Electric motor vehicle" means a motor vehicle that uses electricity as its only source of motive power.

"End seller" means the person who sells fuel to the ultimate user of the fuel.

"Export" means to obtain motor fuel in Virginia for sale or distribution in another state, territory, or foreign country. Motor fuel delivered out-of-state by or for the seller constitutes an export by the seller, and motor fuel delivered out-of-state by or for the purchaser constitutes an export by the purchaser.

"Exporter" means a person who obtains motor fuel in Virginia for sale or distribution in another state, territory, or foreign country.

"Fuel" includes motor fuel and alternative fuel.

"Fuel alcohol" means methanol or fuel grade ethanol.

183 "Fuel alcohol provider" means a person who (i) produces fuel alcohol or (ii) imports fuel alcohol
184 outside the terminal transfer system by means of a marine vessel, a transport truck, a tank wagon, or a
185 railroad tank car.

186 "Gasohol" means a blended fuel composed of gasoline and fuel grade ethanol.

187 "Gasoline" means (i) all products that are commonly or commercially known or sold as gasoline and
188 are suitable for use as a fuel in a highway vehicle, aircraft, or watercraft, other than products that have
189 an American Society for Testing Materials octane number of less than 75 as determined by the motor
190 method; (ii) a petroleum product component of gasoline, such as naphtha, reformat, or toluene; (iii)
191 gasohol; and (iv) fuel grade ethanol. The term does not include aviation gasoline sold for use in an
192 aircraft engine.

193 "Governmental entity" means (i) the Commonwealth or any political subdivision thereof or (ii) the
194 United States or its departments, agencies, and instrumentalities.

195 "Gross gallons" means an amount of motor fuel measured in gallons, exclusive of any temperature,
196 pressure, or other adjustments.

197 "Heating oil" means any combustible liquid, including but not limited to dyed #1 fuel oil, dyed #2
198 fuel oil, and kerosene, that is burned in a boiler, furnace, or stove for heating or for industrial
199 processing purposes.

200 "Highway" means every way or place of whatever nature open to the use of the public for purposes
201 of vehicular travel in the Commonwealth, including the streets and alleys in towns and cities.

202 "Highway vehicle" means a self-propelled vehicle designed for use on a highway.

203 "Import" means to bring motor fuel into Virginia by any means of conveyance other than in the fuel
204 supply tank of a highway vehicle. Motor fuel delivered into Virginia from out-of-state by or for the
205 seller constitutes an import by the seller, and motor fuel delivered into Virginia from out-of-state by or
206 for the purchaser constitutes an import by the purchaser.

207 "Importer" means a person who obtains motor fuel outside of Virginia and brings that motor fuel
208 into Virginia by any means of conveyance other than in the fuel tank of a highway vehicle. For
209 purposes of this chapter, a motor fuel transporter shall not be considered an importer.

210 "In-state-only supplier" means (i) a supplier who is required to have a license and who elects not to
211 collect the tax due the Commonwealth on motor fuel that is removed by that supplier at a terminal
212 located in another state and has Virginia as its destination state or (ii) a supplier who does business only
213 in Virginia.

214 "Licensee" means any person licensed by the Commissioner pursuant to Article 2 (§ 58.1-2204 et
215 seq.) of this chapter or § 58.1-2244.

216 "Liquid" means any substance that is liquid above its freezing point.

217 "Motor fuel" means gasoline, diesel fuel, blended fuel, and aviation fuel.

218 "Motor fuel transporter" means a person who transports motor fuel for hire by means of a pipeline, a
219 tank wagon, a transport truck, a railroad tank car, or a marine vessel.

220 "Net gallons" means the amount of motor fuel measured in gallons when adjusted to a temperature of
221 60 degrees Fahrenheit and a pressure of 14.7 pounds per square inch.

222 "Occasional importer" means any person who (i) imports motor fuel by any means outside the
223 terminal transfer system and (ii) is not required to be licensed as a bonded importer.

224 "Permissive supplier" means an out-of-state supplier who elects, but is not required, to have a
225 supplier's license under this chapter.

226 "Person" means any individual; firm; cooperative; association; corporation; limited liability company;
227 trust; business trust; syndicate; partnership; limited liability partnership; joint venture; receiver; trustee in
228 bankruptcy; club, society or other group or combination acting as a unit; or public body, including but
229 not limited to the Commonwealth, any other state, and any agency, department, institution, political
230 subdivision or instrumentality of the Commonwealth or any other state.

231 "Position holder" means a person who holds an inventory position of motor fuel in a terminal, as
232 reflected on the records of the terminal operator. A person holds an "inventory position of motor fuel"
233 when he has a contract with the terminal operator for the use of storage facilities and terminaling
234 services for fuel at the terminal. The term includes a terminal operator who owns fuel in the terminal.

235 "Principal" means (i) if a partnership, all its partners; (ii) if a corporation, all its officers, directors,
236 and controlling direct or indirect owners; (iii) if a limited liability company, all its members; and (iv) or
237 an individual.

238 "Provider of alternative fuel" means a person who (i) acquires alternative fuel for sale or delivery to
239 a bulk user or a retailer; (ii) maintains storage facilities for alternative fuel, part or all of which the
240 person sells to someone other than a bulk user or a retailer to operate a highway vehicle; (iii) sells
241 alternative fuel and uses part of the fuel acquired for sale to operate a highway vehicle by means of a
242 fuel supply line from the cargo tank of the vehicle to the engine of the vehicle; or (iv) imports
243 alternative fuel into Virginia, by a means other than the usual tank or receptacle connected with the
244 engine of a highway vehicle, for sale or use by that person to operate a highway vehicle.

"Rack" means a facility that contains a mechanism for delivering motor fuel from a refinery, terminal, or bulk plant into a transport truck, railroad tank car, or other means of transfer that is outside the terminal transfer system.

"Refiner" means any person who owns, operates, or otherwise controls a refinery.

"Refinery" means a facility for the manufacture or reprocessing of finished or unfinished petroleum products usable as motor fuel and from which motor fuel may be removed by pipeline or marine vessel or at a rack.

"Removal" means a physical transfer other than by evaporation, loss, or destruction. A physical transfer to a transport truck or other means of conveyance outside the terminal transfer system is complete upon delivery into the means of conveyance.

"Retailer" means a person who (i) maintains storage facilities for motor fuel and (ii) sells the fuel at retail or dispenses the fuel at a retail location.

"Retailer of alternative fuel" means a person who (i) maintains storage facilities for alternative fuel and (ii) sells or dispenses the fuel at retail, to be used to generate power to operate a highway vehicle.

"Supplier" means (i) a position holder, or (ii) a person who receives motor fuel pursuant to a two-party exchange. A licensed supplier includes a licensed elective supplier and licensed permissive supplier.

"System transfer" means a transfer (i) of motor fuel within the terminal transfer system or (ii) of fuel grade ethanol by transport truck or railroad tank car.

"Tank wagon" means a straight truck or straight truck/trailer combination designed or used to carry fuel and having a capacity of less than 6,000 gallons.

"Terminal" means a motor fuel storage and distribution facility (i) to which a terminal control number has been assigned by the Internal Revenue Service, (ii) to which motor fuel is supplied by pipeline or marine vessel, and (iii) from which motor fuel may be removed at a rack.

"Terminal operator" means a person who owns, operates, or otherwise controls a terminal.

"Terminal transfer system" means a motor fuel distribution system consisting of refineries, pipelines, marine vessels, and terminals, and which is a "bulk transfer/terminal system" under 26 C.F.R. Part 48.4081-1.

"Transmix" means (i) the buffer or interface between two different products in a pipeline shipment or (ii) a mix of two different products within a refinery or terminal that results in an off-grade mixture.

"Transport truck" means a tractor truck/semitrailer combination designed or used to transport cargoes of motor fuel over a highway.

"Trustee" means a person who (i) is licensed as a supplier, an elective supplier, or a permissive supplier and receives tax payments from and on behalf of a licensed or unlicensed distributor, or other person pursuant to § 58.1-2231 or (ii) is licensed as a provider of alternative fuel and receives tax payments from and on behalf of a bulk user of alternative fuel, retailer of alternative fuel or other person pursuant to § 58.1-2252.

"Two-party exchange" means a transaction in which fuel is transferred from one licensed supplier to another licensed supplier pursuant to an exchange agreement, which transaction (i) includes a transfer from the person who holds the inventory position in taxable motor fuel in the terminal as reflected on the records of the terminal operator and (ii) is completed prior to removal of the product from the terminal by the receiving exchange partner.

"Undyed diesel fuel" means diesel fuel that is not subject to the United States Environmental Protection Agency or Internal Revenue Service fuel-dyeing requirements.

"Use" means the actual consumption or receipt of motor fuel by any person into a highway vehicle, aircraft, or watercraft.

"Watercraft" means any vehicle used on waterways.

§ 58.1-2217. Taxes levied; rate.

A. There is hereby levied a tax at the rate of ~~seventeen and one-half~~ 17.5 cents (\$0.175) per gallon on gasoline and gasohol.

Beginning July 1, 2012, the rate shall be adjusted each year on July 1 by a percentage, as determined by the Commissioner and rounded up to the closest one-tenth of one percent, equal to the percentage change in the U.S. Department of Labor's Producer Price Index for Other Nonresidential Construction from January 1 through December 31 of the year immediately preceding the affected year.

B. (Contingent expiration date - see Editor's notes) There is hereby levied a tax *on each gallon of diesel fuel* at the same rate of ~~seventeen and one-half cents per gallon on diesel fuel~~ as the rate in effect pursuant to subsection A.

B. (Contingent effective date - see Editor's notes) There is hereby levied a tax *on each gallon of diesel fuel* at the rate of ~~sixteen~~ 1.5 cents per gallon ~~on diesel fuel~~ (\$0.015) less than the rate in effect in subsection A.

C. Blended fuel that contains gasoline shall be taxed at the rate levied on gasoline. Blended fuel that

contains diesel fuel shall be taxed at the rate levied on diesel fuel.

D. There is hereby levied a tax at the rate of five cents (\$0.05) per gallon on aviation gasoline. Any person, whether or not licensed under this chapter, who uses, acquires for use, sells or delivers for use in highway vehicles any aviation gasoline shall be liable for the tax at the rate of ~~seventeen and one-half~~ 17.5 cents (\$0.175) per gallon, along with any penalties and interest that may accrue.

E. (Contingent expiration date - see Editor's notes) There is hereby levied a tax at the rate of five cents (\$0.05) per gallon on aviation jet fuel purchased or acquired for use by a user of aviation fuel other than an aviation consumer. There is hereby levied a tax at the rate of five cents (\$0.05) per gallon upon the first 100,000 gallons of aviation jet fuel, excluding bonded aviation jet fuel, purchased or acquired for use by any aviation consumer in any fiscal year. There is hereby levied a tax at the rate of one-half cent (\$0.005) per gallon on all aviation jet fuel, excluding bonded aviation jet fuel, purchased or acquired for use by an aviation consumer in excess of 100,000 gallons in any fiscal year. Any person, whether or not licensed under this chapter, who uses, acquires for use, sells or delivers for use in highway vehicles any aviation jet fuel taxable under this chapter shall be liable for the tax imposed at the rate of ~~seventeen and one-half~~ 17.5 cents (\$0.175) per gallon, along with any penalties and interest that may accrue.

E. (Contingent effective date - see Editor's notes) There is hereby levied a tax at the rate of five cents (\$0.05) per gallon on aviation jet fuel purchased or acquired for use by a user of aviation fuel other than an aviation consumer. There is hereby levied a tax at the rate of five cents (\$0.05) per gallon upon the first 100,000 gallons of aviation jet fuel, excluding bonded aviation jet fuel, purchased or acquired for use by any aviation consumer in any fiscal year. There is hereby levied a tax at the rate of one-half cent (\$0.005) per gallon on all aviation jet fuel, excluding bonded aviation jet fuel, purchased or acquired for use by an aviation consumer in excess of 100,000 gallons in any fiscal year. Any person, whether or not licensed under this chapter, who uses, acquires for use, sells or delivers for use in highway vehicles any aviation jet fuel taxable under this chapter shall be liable for the tax imposed at the rate of ~~sixteen~~ 16 cents (\$0.16) per gallon, along with any penalties and interest that may accrue.

F. In accordance with § 62.1-44.34:13, a storage tank fee is imposed on each gallon of gasoline, aviation gasoline, diesel fuel (including dyed diesel fuel), blended fuel, and heating oil sold and delivered or used in the Commonwealth.

§ 58.1-2249. Tax on alternative fuel.

A. (Contingent expiration date - see Editor's notes) There is hereby levied a tax at the rate of ~~seventeen and one-half cents per gallon~~ *in effect under subsection A of § 58.1-2217 on each gallon of liquid alternative fuel used to operate a highway vehicle by means of a vehicle supply tank that stores fuel only for the purpose of supplying fuel to operate the vehicle. There is hereby levied a tax at a rate equivalent to ~~seventeen and one-half cents per gallon~~ the rate in effect pursuant to subsection A of § 58.1-2217 on each gallon of all other alternative fuel used to operate a highway vehicle. The Commissioner shall determine the equivalent rate applicable to such other alternative fuels.*

A. (Contingent effective date - see Editor's notes) There is hereby levied a tax at the rate of ~~sixteen~~ 1.5 cents ~~per gallon~~ (\$0.015) *less than the rate in effect pursuant to subsection A of § 58.1-2217 on each gallon of liquid alternative fuel used to operate a highway vehicle by means of a vehicle supply tank that stores fuel only for the purpose of supplying fuel to operate the vehicle. There is hereby levied a tax at a rate equivalent to ~~sixteen~~ 1.5 cents per gallon (\$0.015) less than the rate in effect pursuant to subsection A of § 58.1-2217 on each gallon of all other alternative fuel used to operate a highway vehicle. The Commissioner shall determine the equivalent rate applicable to such other alternative fuels.*

B. In addition to any tax imposed by this article, there is hereby levied an annual license tax of ~~fifty dollars~~ \$50 per vehicle on each highway vehicle *registered in Virginia that is fueled from a private source if the alternative fuels tax levied under this article has not been paid on fuel used in the vehicle an electric motor vehicle. Beginning July 1, 2012, and each July 1 thereafter, the amount of the license tax shall be adjusted by the same percentage adjustment to the tax rate pursuant to subsection A of § 58.1-2217. If such a highway vehicle is not in operation by January 1 of any year registered for a period other than one year as provided under § 46.2-646, the license tax shall be reduced by one-twelfth for each complete month which shall have elapsed since the beginning of such year multiplied by the number of years or fraction thereof that the vehicle will be registered.*

§ 58.1-2251. Liability for tax; filing returns; payment of tax.

A. A bulk user of alternative fuel or retailer of alternative fuel who stores highway and nonhighway alternative fuel in the same storage tank shall be liable for the tax imposed by this article, and shall file tax returns and remit taxes in accordance with subsection D. The tax payable by a bulk user of alternative fuel or retailer of alternative fuel is imposed at the point that alternative fuel is withdrawn from the storage tank.

B. A provider of alternative fuel who sells or delivers alternative fuel shall be liable for the tax imposed by this article (i) on sales to a bulk user of alternative fuel or retailer of alternative fuel who stores highway product in a separate storage tank or (ii) if the alternative fuel is sold or used by the

provider of alternative fuel for highway use.

C. The owner of a highway vehicle subject to an annual license tax pursuant to subsection B of § 58.1-2249 shall be liable for such annual license tax. The annual license tax shall be due ~~on or before~~ *the last day of December of each year at the time the vehicle is registered in Virginia and upon each subsequent renewal of registration.*

D. 1. Each (i) bulk user of alternative fuel or retailer of alternative fuel liable for tax pursuant to subsection A and (ii) provider of alternative fuel liable for the tax pursuant to subsection B shall file a monthly tax return with the Department. The tax on alternative fuel levied by this article, except for the annual license tax imposed under subsection B of § 58.1-2249, that is required to be remitted to the Commonwealth shall be payable to the Commonwealth not later than the date on which the return is due. A return and payment shall be (i) postmarked on or before the fifteenth day of the second month succeeding the month for which the return and payment are due or (ii) received by the Department by the twentieth day of the second month succeeding the month for which the return and payment are due. However, a monthly return of the tax for the month of May shall be (i) postmarked by June 25 or (ii) received by the Commissioner by the last business day the Department is open for business in June.

2. If a tax return and payment due date falls on a Saturday, Sunday, or a state or banking holiday, the return shall be postmarked on or before the fifteenth day of the second month succeeding the month for which the return and payment are due or received by the Department by midnight of the next business day the Department is open for business. This provision shall not apply to a return of the tax for the month of May.

3. A return and payment shall be deemed postmarked if it carries the official cancellation mark of the United States Postal Service or other postal or delivery service.

4. A return shall be filed with the Commissioner and shall be in the form and contain the information required by the Commissioner.

§ 58.1-2289. (Contingent effective date - see Editor's notes) Disposition of tax revenue generally.

A. Unless otherwise provided in this section, all taxes and fees, including civil penalties, collected by the Commissioner pursuant to this chapter, less a reasonable amount to be allocated for refunds, shall be promptly paid into the state treasury and shall constitute special funds within the Commonwealth Transportation Fund. Any balances remaining in these funds at the end of the year shall be available for use in subsequent years for the purposes set forth in this chapter, and any interest income on such funds shall accrue to these funds. Except as provided in § 33.1-23.03:1, no portion of the revenue derived from taxes collected pursuant to §§ 58.1-2217, 58.1-2249 or § 58.1-2701, and remaining after authorized refunds for nonhighway use of fuel, shall be used for any purpose other than the construction, reconstruction or maintenance of the roads and projects comprising the State Highway System, the Interstate System and the secondary system of state highways and expenditures directly and necessarily required for such purposes, including the retirement of revenue bonds.

Revenues collected under this chapter may be also used for (i) contributions toward the construction, reconstruction or maintenance of streets in cities and towns of such sums as may be provided by law and (ii) expenditures for the operation and maintenance of the Department of Transportation, the Department of Rail and Public Transportation, the Department of Aviation, the Virginia Port Authority, and the Department of Motor Vehicles as may be provided by law.

The Governor is hereby authorized to transfer out of such fund an amount necessary for the inspection of gasoline and motor grease measuring and distributing equipment, and for the inspection and analysis of gasoline for purity.

B. The tax collected on each gallon of aviation fuel sold and delivered or used in this Commonwealth, less refunds, shall be paid into a special fund of the state treasury. Proceeds of this special fund within the Commonwealth Transportation Fund shall be disbursed upon order of the Department of Aviation, on warrants of the Comptroller, to defray the cost of the administration of the laws of this Commonwealth relating to aviation, for the construction, maintenance and improvement of airports and landing fields to which the public now has or which it is proposed shall have access, and for the promotion of aviation in the interest of operators and the public generally.

C. One-half cent (*\$0.005*) of the tax collected on each gallon of fuel on which the refund has been paid at the rate of ~~seventeen cents per gallon, or in the case of diesel fuel, fifteen and one-half cents per gallon,~~ *in effect pursuant to subsection A of § 58.1-2217 for each gallon of fuel consumed in tractors and unlicensed equipment used for agricultural purposes shall be paid into a special fund of the state treasury, known as the Virginia Agricultural Foundation Fund, to be disbursed to make certain refunds and defray the costs of the research and educational phases of the agricultural program, including supplemental salary payments to certain employees at Virginia Polytechnic Institute and State University, the Department of Agriculture and Consumer Services and the Virginia Truck and Ornamentals Research Station, including reasonable expenses of the Virginia Agricultural Council.*

D. One and one-half cents (*\$0.015*) of the tax collected on each gallon of fuel used to propel a

commercial watercraft upon which a refund has been paid shall be paid to the credit of the Game Protection Fund of the state treasury to be made available to the Board of Game and Inland Fisheries until expended for the purposes provided generally in subsection C of § 29.1-701, including acquisition, construction, improvement and maintenance of public boating access areas on the public waters of this Commonwealth and for other activities and purposes of direct benefit and interest to the boating public and for no other purpose. However, ~~one and one-half~~ 1.5 cents (\$0.015) per gallon on fuel used by commercial fishing, oystering, clamming, and crabbing boats shall be paid to the Department of Transportation to be used for the construction, repair, improvement and maintenance of the public docks of this Commonwealth used by said commercial watercraft. Any expenditures for the acquisition, construction, improvement and maintenance of the public docks shall be made according to a plan developed by the Virginia Marine Resources Commission.

From the tax collected pursuant to the provisions of this chapter from the sales of gasoline used for the propelling of watercraft, after deduction for lawful refunds, there shall be paid into the state treasury for use by the Marine Resources Commission, the Virginia Soil and Water Conservation Board, the State Water Control Board, and the Commonwealth Transportation Board to (i) improve the public docks as specified in this section, (ii) improve commercial and sports fisheries in Virginia's tidal waters, (iii) make environmental improvements including, without limitation, fisheries management and habitat enhancement in the Chesapeake and its tributaries, and (iv) further the purposes set forth in § 33.1-223, a sum as established by the General Assembly.

E. Notwithstanding other provisions of this section, there shall be transferred from moneys collected pursuant to this section to a special fund within the Commonwealth Transportation Fund in the state treasury, to be used to meet the necessary expenses of the Department of Motor Vehicles, an amount equal to one percent of a sum to be calculated as follows: the tax revenues collected pursuant to this chapter, at the tax rates in effect on December 31, 1986, less refunds authorized by this chapter and less taxes collected for aviation fuels.

§ 58.1-2701. (Contingent expiration date - see Editor's notes) Amount of tax.

A. Except as provided in subsection B, every motor carrier shall pay a road tax equivalent to ~~\$0.24~~ 3.5 cents (\$0.035) more per gallon than the rate in effect pursuant to subsection A of § 58.1-2217, calculated on the amount of motor fuel, diesel fuel or liquefied gases (which would not exist as liquids at a temperature of ~~sixty~~ 60 degrees Fahrenheit and a pressure of 14.7 pounds per square inch absolute); used in its operations within the Commonwealth.

The tax imposed by this chapter shall be in addition to all other taxes of whatever character imposed on a motor carrier by any other provision of law.

B. In lieu of the tax imposed in subsection A, motor carriers registering qualified highway vehicles that are not registered under the International Registration Plan shall pay a fee of \$150 per year for each qualified highway vehicle regardless of whether such vehicle will be included on the motor carrier's IFTA return. *Beginning July 1, 2012, and each July 1 thereafter, the amount of the fee under this subsection shall be adjusted by the same percentage of the tax rate adjustment pursuant to subsection A of § 58.1-2217.* The fee is due and payable when the vehicle registration fees are paid pursuant to the provisions of Article 7 (§ 46.2-685 et seq.) of Chapter 6 of Title 46.2.

If a vehicle becomes a qualified highway vehicle before the end of its registration period, the fee due at the time the vehicle becomes a qualified highway vehicle shall be prorated monthly to the registration expiration month. Fees paid under this subsection shall not be refunded unless a full refund of the registration fee paid is authorized by law.

C. All taxes and fees paid under the provisions of this chapter shall be credited to the Highway Maintenance and Operating Fund, a special fund within the Commonwealth Transportation Fund.

§ 58.1-2701. (Contingent effective date - see Editor's notes) Amount of tax.

A. Except as provided in subsection B, every motor carrier shall pay a road tax equivalent to ~~nineteen and one-half~~ two cents (\$0.02) more per gallon than the rate in effect pursuant to subsection A of § 58.1-2217, calculated on the amount of motor fuel, diesel fuel or liquefied gases (which would not exist as liquids at a temperature of ~~sixty~~ 60 degrees Fahrenheit and a pressure of 14.7 pounds per square inch absolute); used in its operations within the Commonwealth.

The tax imposed by this chapter shall be in addition to all other taxes of whatever character imposed on a motor carrier by any other provision of law.

B. In lieu of the tax imposed in subsection A, motor carriers registering qualified highway vehicles that are not registered under the International Registration Plan shall pay a fee of \$100 per year for each qualified highway vehicle, regardless of whether such vehicle will be included on the motor carrier's IFTA return. The fee is due and payable when the vehicle registration fees are paid pursuant to the provisions of Article 7 (§ 46.2-685 et seq.) of Chapter 6 of Title 46.2. *Beginning July 1, 2012, and each July 1 thereafter, the amount of the fee under this subsection shall be adjusted by the same percentage adjustment to the tax rate pursuant to subsection A of § 58.1-2217.*

If a vehicle becomes a qualified highway vehicle before the end of its registration period, the fee due

at the time the vehicle becomes a qualified highway vehicle shall be prorated monthly to the registration expiration month. Fees paid under this subsection shall not be refunded unless a full refund of the registration fee paid is authorized by law.

C. All taxes and fees paid under the provisions of this chapter shall be credited to the Highway Maintenance and Operating Fund, a special fund within the Commonwealth Transportation Fund.

§ 58.1-2706. Credit for payment of motor fuel, diesel fuel or liquefied gases tax.

A. Every motor carrier subject to the road tax shall be entitled to a credit on such tax equivalent to ~~seventeen and one-half cents per gallon~~ *the rate in effect pursuant to subsection A of § 58.1-2217* on each gallon of all motor fuel, diesel fuel and liquefied gases purchased by such carrier within the Commonwealth for use in its operations either within or without the Commonwealth and upon which the motor fuel, diesel fuel or liquefied gases tax imposed by the laws of the Commonwealth has been paid by such carrier. Evidence of the payment of such tax in such form as may be required by, or is satisfactory to, the Department shall be furnished by each carrier claiming the credit herein allowed.

B. When the amount of the credit to which any motor carrier is entitled for any quarter exceeds the amount of the tax for which such carrier is liable for the same quarter, the excess may: (i) be allowed as a credit on the tax for which such carrier would be otherwise liable for any of the eight succeeding quarters or (ii) be refunded, upon application, duly verified and presented and supported by such evidence as may be satisfactory to the Department.

C. The Department may allow a refund upon receipt of proper application and review. It shall be at the discretion of the Department to determine whether an audit is required.

D. The refund may be allowed without a formal hearing if the amount of refund is agreed to by the applicant. Otherwise, a formal hearing on the application shall be held by the Department after notice of not less than ~~ten~~ 10 days to the applicant and the Attorney General.

E. Whenever any refund is ordered it shall be paid out of the Highway Maintenance and Construction Fund.

F. Whenever a person operating under lease to a motor carrier to perform transport services on behalf of the carrier purchases motor fuel, diesel fuel or liquefied gases relating to such services, such payments or purchases may, at the discretion of the Department, be considered payment or purchases by the carrier.

2. That § 58.1-549 of the Code of Virginia is repealed.