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SENATE BILL NO. 431

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on Transportation
on February 10, 2016)

(Patrons Prior to Substitute—Senators Ebbin and Surovell [SB 257])

*A BILL to amend and reenact §§ 33.2-501 and 33.2-503 of the Code of Virginia, relating to unpaid tolls and civil penalties on HOT lanes.***Be it enacted by the General Assembly of Virginia:****1. That §§ 33.2-501 and 33.2-503 of the Code of Virginia are amended and reenacted as follows:****§ 33.2-501. Designation of HOV lanes; use of such lanes; penalties.**

A. In order to facilitate the rapid and orderly movement of traffic to and from urban areas during peak traffic periods, the Board may designate one or more lanes of any highway in the Interstate System, primary state highway system, or secondary state highway system as HOV lanes. When lanes have been so designated and have been appropriately marked with signs or other markers as the Board may prescribe, they shall be reserved during periods designated by the Board for the exclusive use of buses and high-occupancy vehicles. Any local governing body may also, with respect to highways under its exclusive jurisdiction, designate HOV lanes and impose and enforce restrictions on the use of such lanes. Any highway for which the locality receives highway maintenance funds pursuant to § 33.2-319 shall be deemed to be within the exclusive jurisdiction of the local governing body for the purposes of this section. HOV lanes shall be reserved for high-occupancy vehicles of a specified number of occupants as determined by the Board or, for HOV lanes designated by a local governing body, by that local governing body. However, no designation of any lane or lanes of any highway as HOV lanes shall apply to the use of any such lanes by:

1. Emergency vehicles such as firefighting vehicles and emergency medical services vehicles;
2. Law-enforcement vehicles;
3. Motorcycles;
4. a. Transit and commuter buses designed to transport 16 or more passengers, including the driver;
- b. Any vehicle operating under a certificate issued under § 46.2-2075, 46.2-2080, 46.2-2096, 46.2-2099.4, or 46.2-2099.44;
5. Vehicles of public utility companies operating in response to an emergency call;
6. Vehicles bearing clean special fuel vehicle license plates issued pursuant to § 46.2-749.3, provided such use is in compliance with federal law;
7. Taxicabs having two or more occupants, including the driver; or
8. (Contingent effective date) Any active duty military member in uniform who is utilizing Interstate 264 and Interstate 64 for the purposes of traveling to or from a military facility in the Hampton Roads Planning District.

In the Hampton Roads Planning District, HOV restrictions may be temporarily lifted and HOV lanes opened to use by all vehicles when restricting use of HOV lanes becomes impossible or undesirable and the temporary lifting of HOV limitations is indicated by signs along or above the affected portion of highway.

The Commissioner of Highways shall implement a program of the HOV facilities in the Hampton Roads Planning District beginning not later than May 1, 2000. This program shall include the temporary lifting of HOV restrictions and the opening of HOV lanes to all traffic when an incident resulting from nonrecurring causes within the general lanes occurs such that a lane of traffic is blocked or is expected to be blocked for 10 minutes or longer. The HOV restrictions for the facility shall be reinstated when the general lane is no longer blocked and is available for use.

The Commissioner of Highways shall maintain necessary records to evaluate the effects of such openings on the operation of the general lanes and the HOV lanes. This program will terminate if the Federal Highway Administration requires repayment of any federal highway construction funds because of the program's impact on the HOV facilities in Hampton Roads.

B. In designating any lane or lanes of any highway as HOV lanes, the Board or local governing body shall specify the hour or hours of each day of the week during which the lanes shall be so reserved, and the hour or hours shall be plainly posted at whatever intervals along the lanes the Board or local governing body deems appropriate. Any person driving a motor vehicle in a designated HOV lane in violation of this section is guilty of a traffic infraction, which shall not be a moving violation, and on conviction shall be fined \$100. However, violations committed within the boundaries of Planning District 8 shall be punishable as follows:

1. For a first offense, by a fine of \$125;
2. For a second offense occurring within a period of five years ~~from~~ after a conviction of a first

60 offense, by a fine of \$250;

61 3. For a third offense *occurring* within a period of five years ~~from~~ *after a conviction* of a first
62 offense, by a fine of \$500; and

63 4. For a fourth or subsequent offense *occurring* within a period of five years ~~from~~ *after a conviction*
64 *of* a first offense, by a fine of \$1,000.

65 Upon a conviction under this section, the court shall furnish to the Commissioner of the Department
66 of Motor Vehicles in accordance with § 46.2-383 an abstract of the record of such conviction, which
67 shall become a part of the person's driving record. Notwithstanding the provisions of § 46.2-492, no
68 driver demerit points shall be assessed for any violation of this section, except that persons convicted of
69 second, third, fourth, or subsequent violations *occurring* within five years *after a conviction* of a first
70 offense committed in Planning District 8 shall be assessed three demerit points for each such violation.

71 C. In the prosecution of an offense, committed in the presence of a law-enforcement officer, of
72 failure to obey a road sign restricting a highway, or portion thereof, to the use of high-occupancy
73 vehicles, proof that the vehicle described in the HOV violation summons was operated in violation of
74 this section, together with proof that the defendant was at the time of such violation the registered
75 owner of the vehicle, shall constitute in evidence a rebuttable presumption that such registered owner of
76 the vehicle was the person who committed the violation. Such presumption shall be rebutted if the
77 registered owner of the vehicle testifies in open court under oath that he was not the operator of the
78 vehicle at the time of the violation. A summons for a violation of this section may be executed in
79 accordance with § 19.2-76.2. Such rebuttable presumption shall not arise when the registered owner of
80 the vehicle is a rental or leasing company.

81 D. Notwithstanding the provisions of § 19.2-76, whenever a summons for a violation of this section
82 is served in any locality, it may be executed by mailing by first-class mail a copy thereof to the address
83 of the owner of the vehicle as shown on the records of the Department of Motor Vehicles. If the
84 summoned person fails to appear on the date of return set out in the summons mailed pursuant to this
85 section, the summons shall be executed in the manner set out in § 19.2-76.3.

86 No proceedings for contempt or arrest of a person summoned by mailing shall be instituted for his
87 failure to appear on the return date of the summons.

88 E. Notwithstanding § 33.2-613, high-occupancy vehicles having three or more occupants (HOV-3)
89 may be permitted to use the Omer L. Hirst-Adelard L. Brault Expressway (Dulles Toll Road) without
90 paying a toll.

91 F. Notwithstanding the contrary provisions of this section, the following conditions shall be met
92 before the HOV-2 designation of Interstate Route 66 outside the Capital Beltway can be changed to
93 HOV-3 or any more restrictive designation:

94 1. The Department of Transportation shall publish a notice of its intent to change the existing
95 designation and also immediately provide similar notice of its intent to all members of the General
96 Assembly representing districts that touch or are directly impacted by traffic on Interstate Route 66.

97 2. The Department of Transportation shall hold public hearings in the corridor to receive comments
98 from the public.

99 3. The Department of Transportation shall make a finding of the need for a change in such
100 designation, based on public hearings and its internal data, and present this finding to the Board for
101 approval.

102 4. The Board shall make written findings and a decision based upon the following criteria:

103 a. Is changing the HOV-2 designation to HOV-3 in the public interest?

104 b. Is there quantitative and qualitative evidence that supports the argument that HOV-3 will facilitate
105 the flow of traffic on Interstate Route 66?

106 c. Is changing the HOV-2 designation beneficial to comply with the federal Clean Air Act
107 Amendments of 1990?

108 **§ 33.2-503. HOT lanes enforcement.**

109 Any person operating a motor vehicle on designated HOT lanes shall make arrangements with the
110 HOT lanes operator for payment of the required toll prior to entering such HOT lanes. The driver of a
111 vehicle who enters the HOT lanes in an unauthorized vehicle, in violation of the conditions for use of
112 such HOT lanes established pursuant to § 33.2-502, without payment of the required toll or without
113 having made arrangements with the HOT lanes operator for payment of the required toll shall have
114 committed a violation of this section, which may be enforced in the following manner:

115 1. On a form prescribed by the Supreme Court, a summons for civil violation of this section may be
116 executed by a law-enforcement officer, when such violation is observed by such officer. The form shall
117 contain the option for the driver of the vehicle to prepay the unpaid toll and all penalties, administrative
118 fees, and costs.

119 2. a. A HOT lanes operator shall install and operate, or cause to be installed or operated, a
120 photo-enforcement system at locations where tolls are collected for the use of such HOT lanes.

121 b. A summons for civil violation of this section may be executed pursuant to this subdivision, when

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

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

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

Upon the filing of an affidavit with the court at least 14 days prior to the hearing date by the registered owner of the vehicle stating that he was not the driver of the vehicle on the date of the violation and providing the legal name and address of the driver of the vehicle at the time of the violation, a summons will also be issued to the alleged driver of the vehicle at the time of the offense. The affidavit shall constitute prima facie evidence that the person named in the affidavit was driving the vehicle at all the relevant times relating to the matter named in the affidavit.

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

3. a. The HOT lanes operator may impose and collect an administrative fee in addition to the unpaid toll so as to recover the expenses of collecting the unpaid toll, which administrative fee shall be reasonably related to the actual cost of collecting the unpaid toll and not exceed \$100 per violation. The operator of the vehicle shall pay the unpaid tolls and any administrative fee detailed in a notice or invoice issued by a HOT lanes operator. If paid within ~~30~~ 60 days of notification, the administrative fee shall not exceed \$25.

b. Upon a finding by a court of competent jurisdiction that the driver of the vehicle observed by a law-enforcement officer under subdivision 1 or the vehicle described in the summons for civil violation issued pursuant to evidence obtained by a photo-enforcement system under subdivision 2 was in violation of this section, the court shall impose a civil penalty upon the driver of such vehicle issued a summons under subdivision 1, or upon the driver or registered owner of such vehicle issued a summons under subdivision 2, payable to the HOT lanes operator as follows: for a first offense, *not more than* \$50; for a second offense *occurring within a period of one year after a conviction of a first offense*, ~~\$250~~ *not more than* \$100; for a third offense *occurring within a period of two years after a conviction of the second offense*, ~~\$500~~ *not more than* \$250; and for a fourth and subsequent offense *occurring within a period of three years after a conviction of the second offense*, ~~\$1,000~~ *not more than* \$500, together with, in each case, the unpaid toll, all accrued administrative fees imposed by the HOT lanes operator as authorized by this section, and applicable court costs. *In fixing punishment, the court may consider extenuating circumstances including the failure to receive notification of the offense by mail, technical errors with an electronic toll collection device or account, or offenses occurring within such close proximity as to not allow for receipt of notification.* The court shall remand penalties, the unpaid toll, and administrative fees assessed for violation of this section to the treasurer or director

183 of finance of the county or city in which the violation occurred for payment to the HOT lanes operator
184 for expenses associated with operation of the HOT lanes and payments against any bonds or other liens
185 issued as a result of the construction of the HOT lanes. No person shall be subject to prosecution under
186 both subdivisions 1 and 2 for actions arising out of the same transaction or occurrence.

187 *c. Notwithstanding subdivisions a and b, the total amount for a first court appearance by a driver or*
188 *registered owner of a vehicle under this section shall not exceed \$2,200, including civil penalties and*
189 *administrative fees but excluding unpaid tolls.*

190 *d. Upon a finding by a court that a person has violated this section, in the event such person fails to*
191 *pay the required penalties, fees, and costs, the court shall notify the Commissioner of the Department of*
192 *Motor Vehicles, who shall suspend all of the registration certificates and license plates issued for any*
193 *motor vehicles registered solely in the name of such person and shall not issue any registration*
194 *certificate or license plate for any other vehicle that such person seeks to register solely in his name*
195 *until the court has notified the Commissioner of the Department of Motor Vehicles that such penalties,*
196 *fees, and costs have been paid. The HOT lanes operator and the Commissioner of the Department of*
197 *Motor Vehicles may enter into an agreement whereby the HOT lanes operator may reimburse the*
198 *Department of Motor Vehicles for its reasonable costs to develop, implement, and maintain this*
199 *enforcement mechanism, and that specifies that the Commissioner of the Department of Motor Vehicles*
200 *shall have an obligation to suspend such registration certificates so long as the HOT lanes operator*
201 *makes the required reimbursements in a timely manner in accordance with the agreement.*

202 ~~*e.*~~ *e. Except as provided in subdivisions 4 and 5, imposition of a civil penalty pursuant to this*
203 *section shall not be deemed a conviction as an operator of a motor vehicle under Title 46.2 and shall*
204 *not be made part of the driving record of the person upon whom such civil penalty is imposed, nor shall*
205 *it be used for insurance purposes in the provision of motor vehicle insurance coverage.*

206 4. a. The HOT lanes operator may restrict the usage of the HOT lanes to designated vehicle
207 classifications pursuant to an interim or final comprehensive agreement executed pursuant to § 33.2-1808
208 or 33.2-1809. Notice of any such vehicle classification restrictions shall be provided through the
209 placement of signs or other markers prior to and at all HOT lanes entrances.

210 b. Any person driving an unauthorized vehicle on the designated HOT lanes is guilty of a traffic
211 infraction, which shall not be a moving violation, and shall be punishable as follows: for a first offense,
212 by a fine of \$125; for a second offense *occurring* within a period of five years ~~from~~ *after a conviction*
213 *of a first offense*, by a fine of \$250; for a third offense *occurring* within a period of five years ~~from~~
214 *after a conviction of a first offense*, by a fine of \$500; and for a fourth and subsequent offense
215 *occurring* within a period of five years ~~from~~ *after a conviction of a first offense*, by a fine of \$1,000.

216 Upon a conviction under this subdivision, the court shall furnish to the Commissioner of the
217 Department of Motor Vehicles, in accordance with § 46.2-383, an abstract of the record of such
218 conviction, which shall become a part of the person's driving record. Notwithstanding the provisions of
219 § 46.2-492, no driver demerit points shall be assessed for any violation of this subdivision, except that
220 persons convicted of a second, third, fourth, or subsequent violation *occurring* within five years *after a*
221 *conviction* of a first offense shall be assessed three demerit points for each such violation.

222 5. The driver of a vehicle who enters the HOT lanes by crossing through any barrier, buffer, or other
223 area separating the HOT lanes from other lanes of travel is guilty of a violation of § 46.2-852, unless
224 the vehicle is a state or local law-enforcement vehicle, firefighting truck, or emergency medical services
225 vehicle used in the performance of its official duties. No person shall be subject to prosecution both
226 under this subdivision and under subdivision 1, 2, or 4 for actions arising out of the same transaction or
227 occurrence.

228 Upon a conviction under this subdivision, the court shall furnish to the Commissioner of the
229 Department of Motor Vehicles in accordance with § 46.2-383 an abstract of the record of such
230 conviction, which shall become a part of the convicted person's driving record.

231 6. No person shall be subject to prosecution both under this section and under § 33.2-501, 46.2-819,
232 or 46.2-819.1 for actions arising out of the same transaction or occurrence.

233 7. Any action under this section shall be brought in the general district court of the county or city in
234 which the violation occurred.

235 **2. That annual data on toll violations, civil penalties, and administrative fees shall be reported by**
236 **toll operators and HOT lanes operators and compiled by the Department of Transportation and**
237 **submitted to the Chairmen of the House and Senate Committees on Transportation by December**
238 **1.**