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HOUSE BILL NO. 1726

Offered January 17, 2020

A *BILL to amend and reenact §§ 33.2-2600, 33.2-2605, 58.1-811, as it is currently effective, 58.1-1743, and 58.1-2295, as it is currently effective, of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 58.1-802.4, and by adding in Chapter 17 of Title 58.1 an article numbered 12, consisting of a section numbered 58.1-1745, relating to transportation funding in the Hampton Roads region.*

Patrons—Askew, Bourne, Jones, Lindsey and Scott

Referred to Committee on Appropriations

Be it enacted by the General Assembly of Virginia:

1. That §§ 33.2-2600, 33.2-2605, 58.1-811, as it is currently effective, 58.1-1743, and 58.1-2295, as it is currently effective, of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 58.1-802.4, and by adding in Chapter 17 of Title 58.1 an article numbered 12, consisting of a section numbered 58.1-1745 as follows:

§ 33.2-2600. Hampton Roads Transportation Fund.

There is hereby created in the state treasury a special nonreverting fund for Planning District 23 to be known as the Hampton Roads Transportation Fund, referred to in this chapter as "the Fund." The Fund shall be established on the books of the Comptroller. All revenues dedicated to the Fund pursuant to §§ 58.1-638, 58.1-802.4, 58.1-1743, and 58.1-1745, and Chapter 22.1 (§ 58.1-2291 et seq.) of Title 58.1 shall be paid into the state treasury and credited to the Fund. Interest earned on moneys in the Fund shall remain in the Fund and be credited to it. Any moneys remaining in the Fund, including interest thereon, at the end of each fiscal year shall not revert to the general fund but shall remain in the Fund. The moneys deposited in the Fund shall be used solely for (i) new construction projects on new or existing highways, bridges, and tunnels in the localities comprising Planning District 23 as approved by the Hampton Roads Transportation Accountability Commission, (ii) *transit facilities and projects as set forth in subsection B of § 33.2-2605*, and ~~(ii)~~ (iii) administrative and operating expenses as specified in subsection B C of § 33.2-2605. The Commission shall give priority to those projects that are expected to provide the greatest impact on reducing congestion for the greatest number of citizens residing within Planning District 23 and shall ensure that the moneys shall be used for such construction projects.

The amounts dedicated to the Fund shall be deposited monthly by the Comptroller into the Fund and thereafter distributed to the Commission as soon as practicable for use in accordance with this chapter. If the Commission determines that such moneys distributed to it exceed the amount required to meet the current needs and demands to fund transportation projects pursuant to this chapter, the Commission may invest such excess moneys to the same extent and in the same manner as provided in subsection A of § 33.2-1525 for excess funds in the Transportation Trust Fund.

The amounts deposited into the Fund and the distribution and expenditure of such amounts shall not be used to calculate or reduce the share of federal, state, or local revenues otherwise available to participating localities. Further, such revenues and moneys shall not be included in any computation of, or formula for, a locality's ability to pay for public education, upon which appropriations of state revenues to local governments for public education are determined.

§ 33.2-2605. Annual budget and allocation of expenses.

A. The Commission shall adopt an annual budget and develop a funding plan and shall provide for such adoption in its bylaws. The funding plan shall provide for the expenditure of funds over a four- to six-year period and shall align with the Statewide Transportation Plan established pursuant to § 33.2-353 as much as possible. The Commission shall solicit public comment on its budget and funding plan by posting a summary of such budget and funding plan on its website and holding a public hearing. Such public hearing shall be advertised on the Commission's website and in a newspaper of general circulation in Planning District 23.

B. *The annual budget adopted pursuant to subsection A shall provide for the revenues deposited from the Fund pursuant to §§ 58.1-802.4, 58.1-1743, and 58.1-1745, and an amount equivalent to a one percent tax on a gallon of fuel and diesel fuel pursuant to § 58.1-2295, to be allocated for the operation of a regional system of inter-jurisdictional, high-frequency bus service, as recommended by the Transportation District Commission of Hampton Roads.*

C. The administrative and operating expenses of the Commission shall be provided in an annual budget adopted by the Commission and to the extent funds for such expenses are not provided from other sources shall be paid from the Fund. Such budget shall be limited solely to the administrative and

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operating expenses of the Commission and shall not include any funds for construction or acquisition of transportation facilities or the performance of any transportation service.

C. D. Members may be reimbursed for all reasonable and necessary expenses provided in §§ 2.2-2813 and 2.2-2825, if approved by the Commission. Funding for the costs of compensation and expenses of the members shall be provided by the Commission.

§ 58.1-802.4. Regional transportation improvement fee.

In addition to any other tax or fee imposed under the provisions of this chapter, a fee, delineated as the "regional transportation improvement fee," is hereby imposed on each deed, instrument, or writing by which lands, tenements, or other realty located in a county or city located in the Hampton Roads Transportation District is sold and is granted, assigned, transferred, or otherwise conveyed to or vested in the purchaser or any other person, by such purchaser's direction. The rate of the fee, when the consideration or value of the interest, whichever is greater, equals or exceeds \$100, shall be \$0.15 for each \$100 or fraction thereof, exclusive of the value of any lien or encumbrance remaining thereon at the time of the sale, whether such lien is assumed or the realty is sold subject to such lien or encumbrance.

The fee imposed by this section shall be paid by the grantor, or any person who signs on behalf of the grantor, of any deed, instrument, or writing subject to the fee imposed by this section.

No such deed, instrument, or other writing shall be admitted to record unless certification of the clerk wherein first recorded has been affixed thereto that the fee imposed pursuant to this section has been paid.

Fees imposed by this section shall be collected by the clerk of the court and deposited into the state treasury as soon as practicable. Such fees shall then be deposited into the fund established in § 33.2-2600.

§ 58.1-811. (Contingent expiration date) Exemptions.

A. The taxes imposed by §§ 58.1-801 and 58.1-807 shall not apply to any deed conveying real estate or lease of real estate:

1. To an incorporated college or other incorporated institution of learning not conducted for profit, where such real estate is intended to be used for educational purposes and not as a source of revenue or profit;

2. To an incorporated church or religious body or to the trustee or trustees of any church or religious body, or a corporation mentioned in § 57-16.1, where such real estate is intended to be used exclusively for religious purposes, or for the residence of the minister of any such church or religious body;

3. To the United States, the Commonwealth, or to any county, city, town, district, or other political subdivision of the Commonwealth;

4. To the Virginia Division of the United Daughters of the Confederacy;

5. To any nonstock corporation organized exclusively for the purpose of owning or operating a hospital or hospitals not for pecuniary profit;

6. To a corporation upon its organization by persons in control of the corporation in a transaction which qualifies for nonrecognition of gain or loss pursuant to § 351 of the Internal Revenue Code as it exists at the time of the conveyance;

7. From a corporation to its stockholders upon complete or partial liquidation of the corporation in a transaction which qualifies for income tax treatment pursuant to § 331, 332, 333, or 337 of the Internal Revenue Code as it exists at the time of liquidation;

8. To the surviving or new corporation, partnership, limited partnership, business trust, or limited liability company upon a merger or consolidation to which two or more such entities are parties, or in a reorganization within the meaning of § 368(a)(1)(C) and (F) of the Internal Revenue Code as amended;

9. To a subsidiary corporation from its parent corporation, or from a subsidiary corporation to a parent corporation, if the transaction qualifies for nonrecognition of gain or loss under the Internal Revenue Code as amended;

10. To a partnership or limited liability company, when the grantors are entitled to receive not less than 50 percent of the profits and surplus of such partnership or limited liability company, provided that the transfer to a limited liability company is not a precursor to a transfer of control of the assets of the company to avoid recordation taxes;

11. From a partnership or limited liability company, when the grantees are entitled to receive not less than 50 percent of the profits and surplus of such partnership or limited liability company, provided that the transfer from a limited liability company is not subsequent to a transfer of control of the assets of the company to avoid recordation taxes;

12. To trustees of a revocable inter vivos trust, when the grantors in the deed and the beneficiaries of the trust are the same persons, regardless of whether other beneficiaries may also be named in the trust instrument, when no consideration has passed between the grantor and the beneficiaries;

13. When the grantor is an organization exempt from taxation under § 501(c)(3) of the Internal Revenue Code that is organized and operated primarily to acquire land and purchase materials to erect

or rehabilitate low-cost homes on such land, which homes are sold at cost to persons who otherwise would be unable to afford to buy a home through conventional means;

14. When it is a deed of partition, or any combination of deeds simultaneously executed and having the effect of a deed of partition, among joint tenants, tenants in common, or coparceners; or

15. When it is a deed transferring property pursuant to a decree of divorce or of separate maintenance or pursuant to a written instrument incident to such divorce or separation.

B. The taxes imposed by §§ 58.1-803 and 58.1-804 shall not apply to any deed of trust or mortgage:

1. Given by an incorporated college or other incorporated institution of learning not conducted for profit;

2. Given by the trustee or trustees of a church or religious body or given by an incorporated church or religious body, or given by a corporation mentioned in § 57-16.1;

3. Given by any nonstock corporation organized exclusively for the purpose of owning and/or operating a hospital or hospitals not for pecuniary profit;

4. Given by any local governmental entity or political subdivision of the Commonwealth to secure a debt payable to any other local governmental entity or political subdivision;

5. Securing a loan made by an organization described in subdivision A 13;

6. Securing a loan made by a county, city, or town, or an agency of such a locality, to a borrower whose household income does not exceed 80 percent of the area median household income established by the U.S. Department of Housing and Urban Development, for the purpose of erecting or rehabilitating a home for such borrower, including the purchase of land for such home; or

7. Given by any entity organized pursuant to Chapter 9.1 (§ 56-231.15 et seq.) of Title 56.

C. The tax imposed by § 58.1-802 and the fee imposed by §§ 58.1-802.3 and 58.1-802.4 shall not apply to any:

1. Transaction described in subdivisions A 6 through 12, 14, and 15;

2. Instrument or writing given to secure a debt;

3. Deed conveying real estate from an incorporated college or other incorporated institution of learning not conducted for profit;

4. Deed conveying real estate from the United States, the Commonwealth or any county, city, town, district, or other political subdivision thereof;

5. Conveyance of real estate to the Commonwealth or any county, city, town, district, or other political subdivision thereof, if such political unit is required by law to reimburse the parties taxable pursuant to § 58.1-802 or subject to the fee under § 58.1-802.3; or

6. Deed conveying real estate from the trustee or trustees of a church or religious body or from an incorporated church or religious body, or from a corporation mentioned in § 57-16.1.

D. No recordation tax shall be required for the recordation of any deed of gift between a grantor or grantors and a grantee or grantees when no consideration has passed between the parties. Such deed shall state therein that it is a deed of gift.

E. The tax imposed by § 58.1-807 shall not apply to any lease to the United States, the Commonwealth, or any county, city, town, district, or other political subdivision of the Commonwealth.

F. The taxes and fees imposed by §§ 58.1-801, 58.1-802, 58.1-802.3, 58.1-807, 58.1-808, and 58.1-814 shall not apply to (i) any deed of gift conveying real estate or any interest therein to The Nature Conservancy or (ii) any lease of real property or any interest therein to The Nature Conservancy, where such deed of gift or lease of real estate is intended to be used exclusively for the purpose of preserving wilderness, natural, or open space areas.

G. The words "trustee" or "trustees," as used in subdivisions A 2, B 2, and C 6, include the trustees mentioned in § 57-8 and the ecclesiastical officers mentioned in § 57-16.

H. No recordation tax levied pursuant to this chapter shall be levied on the release of a contractual right, if the release is contained within a single deed that performs more than one function, and at least one of the other functions performed by the deed is subject to the recordation tax.

I. No recordation tax levied pursuant to this chapter shall be levied on a deed, lease, easement, release, or other document recorded in connection with a concession pursuant to the Public-Private Transportation Act of 1995 (§ 33.2-1800 et seq.) or similar federal law.

J. No recordation tax shall be required for the recordation of any transfer on death deed or any revocation of transfer on death deed made pursuant to the Uniform Real Property Transfer on Death Act (§ 64.2-621 et seq.) when no consideration has passed between the parties.

K. No recordation tax levied pursuant to this chapter shall be required for the recordation of any deed of distribution when no consideration has passed between the parties. Such deed shall state therein on the front page that it is a deed of distribution. As used in this subsection, "deed of distribution" means a deed conveying property from an estate or trust (i) to the original beneficiaries of a trust from the trustees holding title under a deed in trust; (ii) the purpose of which is to comply with a devise or bequest in the decedent's will or to transfer title to one or more beneficiaries after the death of the

182 settlor in accordance with a dispositive provision in the trust instrument; (iii) that carries out the exercise
183 of a power of appointment; or (iv) is pursuant to the exercise of the power under the Uniform Trust
184 Decanting Act (§ 64.2-779.1 et seq.).

185 **§ 58.1-1743. Transportation district transient occupancy tax.**

186 A. In addition to all other fees and taxes imposed under law, there is hereby imposed an additional
187 transient occupancy tax at the rate of two percent of the amount of the charge for the occupancy of any
188 room or space occupied in any county or city located in a transportation district established pursuant to
189 Chapter 19 (§ 33.2-1900 et seq.) of Title 33.2 that as of January 1, 2018, meets the criteria established
190 in § 33.2-1936.

191 *B. In addition to all other fees and taxes imposed under law, there is hereby imposed an additional*
192 *transient occupancy tax at the rate of one percent of the amount of the charge for the occupancy of any*
193 *room or space occupied in any county or city located in the Hampton Roads Transportation District.*

194 C. The tax imposed under this section shall be imposed only for the occupancy of any room or space
195 that is suitable or intended for occupancy by transients for dwelling, lodging, or sleeping purposes.

196 D. The tax imposed under this section shall be administered by the locality in which the room or
197 space is located in the same manner as it administers the tax authorized by § 58.1-3819 or 58.1-3840,
198 mutatis mutandis, except as herein provided. The revenue generated and collected from the tax shall be
199 deposited by the local treasurer into the state treasury pursuant to § 2.2-806 and transferred by the
200 Comptroller into special funds established by law. In the case of the Northern Virginia Transportation
201 District, the revenue generated and collected therein shall be deposited into the fund established in §
202 33.2-3401. *In the case of the Hampton Roads Transportation District, the revenue generated and*
203 *collected therein shall be deposited into the fund established in § 33.2-2600.* For additional
204 transportation districts that may become subject to this section, funds shall be established by appropriate
205 legislation.

206 *Article 12.*

207 *Transportation Network Company Tax.*

208 **§ 58.1-1745. Transportation network company tax.**

209 A. There is hereby imposed a tax on the transportation of passengers for compensation by a
210 transportation network company (TNC) partner regulated pursuant to Article 15 (§ 46.2-2099.45 et seq.)
211 of Chapter 20 of Title 46.2. The tax shall be imposed at a rate of six percent of the gross proceeds
212 generated by fares of TNC partners on behalf of a TNC.

213 B. The revenue generated and collected pursuant to this section shall be allocated as follows:

214 1. From trips originating in a county or city located in the Hampton Roads Transportation District,
215 the revenue shall be deposited into the fund established in § 33.2-2600;

216 2. From trips originating in a county or city that is a member the Northern Virginia Transportation
217 Commission, the revenue shall be deposited into the fund established in § 33.2-2401; and

218 3. From trips originating anywhere in the Commonwealth other than those counties and cities
219 described in subdivisions 1 and 2, the revenue shall be deposited into the Commonwealth Mass Transit
220 Fund established in subdivision A 4 of § 58.1-638.

221 C. The tax imposed by this article shall be collected monthly by the Department in the same manner
222 as the sales and use tax imposed under Chapter 6 (§ 58.1-600 et seq.), as provided by rules and
223 regulations promulgated by the Tax Commissioner. For purposes of collection and remittance of the tax
224 imposed by this article, TNCs with TNC partners operating in the Commonwealth shall be required to
225 register as dealers pursuant to Chapter 6, and the collection and enforcement provisions of Chapter 6
226 shall apply mutatis mutandis.

227 **§ 58.1-2295. (Contingent expiration date) Levy; payment of tax.**

228 A. 1. In addition to all other taxes now imposed by law, there is hereby imposed a tax upon every
229 distributor who engages in the business of selling fuels at wholesale to retail dealers for retail sale in
230 any county or city that is a member of (i) any transportation district in which a rapid heavy rail
231 commuter mass transportation system operating on an exclusive right-of-way and a bus commuter mass
232 transportation system are owned, operated, or controlled by an agency or commission as defined in
233 § 33.2-1901 or (ii) any transportation district that is subject to subsection C of § 33.2-1915 and that is
234 contiguous to the Northern Virginia Transportation District.

235 2. In addition to all other taxes now imposed by law, there is hereby imposed a tax upon every
236 distributor who engages in the business of selling fuels at wholesale to retail dealers for retail sale in
237 any county or city that is located in a Planning District established pursuant to Chapter 42 (§ 15.2-4200
238 et seq.) of Title 15.2 that (i) as of January 1, 2013, has a population of not less than 1.5 million but
239 fewer than two million, as shown by the most recent United States Census, has not less than 1.2 million
240 but fewer than 1.7 million motor vehicles registered therein, and has a total transit ridership of not less
241 than 15 million but fewer than 50 million riders per year across all transit systems within the Planning
242 District or (ii) as shown by the most recent United States Census meets the population criteria set forth
243 in clause (i) and also meets the vehicle registration and ridership criteria set forth in clause (i). In any

case in which the tax is imposed pursuant to clause (ii), such tax shall be effective beginning on the July 1 immediately following the calendar year in which all of the criteria have been met.

B. 1. The tax shall be imposed on each gallon of fuel, other than diesel fuel, sold by a distributor to a retail dealer for retail sale in any such county or city described in subsection A *as follows: (i) at a rate of 2.1 percent of the statewide average distributor price of a gallon of unleaded regular gasoline as determined by the Commissioner pursuant to subdivision C 1 in any locality set forth in subdivision A 1 or clause (ii) of subdivision A 2, and (ii) at a rate of 3.1 percent of the statewide average distributor price of a gallon of unleaded regular gasoline as determined by the Commission pursuant to subdivision C 1 in any locality set forth in clause (i) of subdivision A 2. Beginning July 1, 2021, the rate set forth in clause (ii) shall be adjusted annually based on the greater of (a) the change in the United States Average Consumer Price Index for all items, all urban consumers (CPI-U) as published by the Bureau of Labor Statistics for the U.S. Department of Labor for the previous year, or (b) zero.* For alternative fuels other than liquid alternative fuels, the Commissioner shall determine an equivalent tax rate based on gasoline gallon equivalency.

2. The tax shall be imposed on each gallon of diesel fuel sold by a distributor to a retail dealer for retail sale in any such county or city *as follows: (i) at a rate of 2.1 percent of the statewide average distributor price of a gallon of diesel fuel as determined by the Commissioner pursuant to subdivision C 2 in any locality set forth in subdivision A 1 or clause (ii) of subdivision A 2, and (ii) at a rate of 3.1 percent of the statewide average distributor price of a gallon of diesel fuel as determined by the Commission pursuant to subdivision C 2 in any locality set forth in clause (i) of subdivision A 2. Beginning July 1, 2021, the rate set forth in clause (ii) shall be adjusted annually based on the greater of (a) the change in the United States Average Consumer Price Index for all items, all urban consumers (CPI-U) as published by the Bureau of Labor Statistics for the U.S. Department of Labor for the previous year, or (b) zero.*

C. 1. To determine the statewide average distributor price of a gallon of unleaded regular gasoline, the Commissioner shall use the period from June 1 to November 30, inclusive, as the base period for the determination of the rate of the tax for the immediately following applied period beginning January 1 and ending June 30, inclusive. The Commissioner shall use the period from December 1 to May 31, inclusive, as the base period for the determination of the rate of the tax for the immediately following applied period beginning July 1 and ending December 31, inclusive. In no case shall the statewide average distributor price of a gallon of unleaded regular gasoline determined for the purposes of this section be less than the statewide average wholesale price of a gallon of unleaded regular gasoline on February 20, 2013, plus a distributor charge calculated by the Commissioner for that date.

2. To determine the statewide average distributor price of a gallon of diesel fuel, the Commissioner shall use the period from June 1 to November 30, inclusive, as the base period for the determination of the rate of the tax for the immediately following applied period beginning January 1 and ending June 30, inclusive. The Commissioner shall use the period from December 1 to May 31, inclusive, as the base period for the determination of the rate of the tax for the immediately following applied period beginning July 1 and ending December 31, inclusive. In no case shall the statewide average distributor price of a gallon of diesel fuel determined for the purposes of this section be less than the statewide average wholesale price of a gallon of diesel fuel on February 20, 2013, plus a distributor charge calculated by the Commissioner for that date.

D. The tax levied under this section shall be imposed at the time of sale by the distributor to the retail dealer.

E. The tax imposed by this section shall be paid by the distributor, but the distributor shall separately state the amount of the tax and add such tax to the price or charge. Thereafter, such tax shall be a debt from the retail dealer to the distributor until paid and shall be recoverable at law in the same manner as other debts. No action at law or suit in equity under this chapter shall be maintained in the Commonwealth by any distributor who is not registered under § 58.1-2299.2 or is delinquent in the payment of taxes imposed under this chapter.

F. Nothing in this section shall be construed to exempt the imposition and remittance of tax pursuant to this section in a sale to a retail dealer in which the distributor and the retail dealer are the same person.