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HOUSE BILL NO. 729

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on Finance
on February 5, 2020)

(Patron Prior to Substitute—Delegate Watts)

A BILL to amend and reenact §§ 33.2-2509, 33.2-2510, 58.1-802.3, and 58.1-1743 of the Code of Virginia and to amend the Code of Virginia by adding in Title 46.2 a chapter numbered 7, consisting of sections numbered 46.2-770 through 46.2-774, relating to transportation funding.

Be it enacted by the General Assembly of Virginia:

1. That §§ 33.2-2509, 33.2-2510, 58.1-802.3, and 58.1-1743 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Title 46.2 a chapter numbered 7, consisting of sections numbered 46.2-770 through 46.2-774, as follows:

§ 33.2-2509. Northern Virginia Transportation Authority Fund.

There is hereby created in the state treasury a special nonreverting fund for Planning District 8 to be known as the Northern Virginia Transportation Authority 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 and 58.1-802.3, any other funds that may be appropriated by the General Assembly, and any funds that may be received for the credit of the Fund from any other source 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 amounts dedicated to the Fund pursuant to § §§ 46.2-774, 58.1-638, and 58.1-802.3 shall be deposited monthly by the Comptroller into the Fund and thereafter distributed to the Authority as soon as practicable for use in accordance with § 33.2-2510. If the Authority determines that such moneys distributed to it exceed the amount required to meet the current needs and demands to fund transportation projects pursuant to § 33.2-2510, the Authority may invest such excess moneys to the same extent 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 jurisdictions. 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.

§ 33.2-2510. Use of certain revenues by the Authority.

A. All moneys received by the Authority and the proceeds of bonds issued pursuant to § 33.2-2511 shall be used by the Authority solely for transportation purposes benefiting those counties and cities that are embraced by the Authority.

B. 1. Except as provided in subdivision 2, 30 percent of the revenues received by the Authority under subsection A shall be distributed on a pro rata basis, with each locality's share being the total of such fee fees and taxes received by the Authority that are generated or attributable to the locality divided by the total of such fee fees and taxes received by the Authority. Of the revenues distributed pursuant to this subsection, as determined solely by the applicable locality, such revenues shall be used for additional urban or secondary highway construction, for other capital improvements that reduce congestion, for other transportation capital improvements that have been approved by the most recent long-range transportation plan adopted by the Authority, or for public transportation purposes. None of the revenue distributed by this subsection may be used to repay debt issued before July 1, 2013. Each locality shall create a separate, special fund in which all revenues received pursuant to this subsection and from the tax imposed pursuant to § 58.1-3221.3 shall be deposited. Each locality shall provide annually to the Authority sufficient documentation as required by the Authority showing that the funds distributed under this subsection were used as required by this subsection.

2. If a locality has not deposited into its special fund (i) revenues from the tax collected under § 58.1-3221.3 pursuant to the maximum tax rate allowed under that section or (ii) an amount, from sources other than moneys received from the Authority, that is equivalent to the revenue that the locality would receive if it was imposing the maximum tax authorized by § 58.1-3221.3, then the amount of revenue distributed to the locality pursuant to subdivision 1 shall be reduced by the difference between the amount of revenue that the locality would receive if it was imposing the maximum tax authorized by such section and the amount of revenue deposited into its special fund pursuant to clause (i) or (ii), as applicable. The amount of any such reduction in revenue shall be redistributed according to subsection C. The provisions of this subdivision shall be ongoing and apply over annual periods as determined by

HOUSE SUBSTITUTE

HB729H1

60 the Authority.

61 C. 1. The remaining 70 percent of the revenues received by the Authority under subsection A, plus
 62 the amount of any revenue to be redistributed pursuant to subsection B, shall be used by the Authority
 63 solely to fund transportation projects selected by the Authority that are contained in the regional
 64 transportation plan in accordance with subdivision 1 of § 33.2-2500 and that have been rated in
 65 accordance with subdivision 2 of § 33.2-2500. For only those regional funds received in fiscal year
 66 2014, the requirement for rating in accordance with subdivision 2 of § 33.2-2500 shall not apply. The
 67 Authority shall give priority to selecting projects that are expected to provide the greatest congestion
 68 reduction relative to the cost of the project and shall document this information for each project selected.
 69 Such projects selected by the Authority for funding shall be located (i) only in localities embraced by
 70 the Authority or (ii) in adjacent localities but only to the extent that such extension is an insubstantial
 71 part of the project and is essential to the viability of the project within the localities embraced by the
 72 Authority.

73 2. Not less than 15 days prior to any decision by the Authority for the expenditure of funds pursuant
 74 to subdivision 1 for any project to create or improve any transportation facility, the Authority shall make
 75 the following publicly available: (i) the project evaluation pursuant to subdivision 2 of § 33.2-2500, (ii)
 76 the total amount of funds from the Authority to be used for the project, (iii) the total amount of funds
 77 from sources other than the Authority to be used for the project, and (iv) any other rating or scoring of
 78 other factors to be taken into account by the Authority related to each such transportation facility.

79 3. All transportation projects undertaken by the Authority shall be completed by private contractors
 80 accompanied by performance measurement standards, and all contracts shall contain a provision granting
 81 the Authority the option to terminate the contract if contractors do not meet such standards.
 82 Notwithstanding the foregoing, any locality may provide engineering services or right-of-way acquisition
 83 for any project with its own forces. The Authority shall avail itself of the strategies permitted under the
 84 Public-Private Transportation Act (§ 33.2-1800 et seq.) whenever feasible and advantageous. The
 85 Authority is independent of any state or local entity, including the Department and the Commonwealth
 86 Transportation Board, but the Authority, the Department, and the Commonwealth Transportation Board
 87 shall consult with one another to avoid duplication of efforts and, at the option of the Authority, may
 88 combine efforts to complete specific projects. Notwithstanding the foregoing, at the request of the
 89 Authority, the Department may provide the Authority with engineering services or right-of-way
 90 acquisition for the project with its own forces.

91 4. With regard to the revenues distributed under subdivision 1, each locality's total long-term benefit
 92 shall be approximately equal to the proportion of the total of the fees and taxes received by the
 93 Authority that are generated by or attributable to the locality divided by the total of such fees and taxes
 94 received by the Authority.

95 D. For road construction and improvements pursuant to subsection B, the Department may, on a
 96 reimbursement basis, provide the locality with planning, engineering, right-of-way, and construction
 97 services for projects funded in whole by the revenues provided to the locality by the Authority.

98 CHAPTER 7.

99 HIGHWAY USE FEE AND MILEAGE-BASED USER FEE PROGRAM.

100 § 46.2-770. Definitions.

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

102 *"Alternative fuel vehicle" means a vehicle that operates on a fuel that is not subject to the tax*
 103 *imposed pursuant to § 58.1-2217 and (i) is not subject to the tax imposed pursuant to § 58.1-2249, (ii)*
 104 *is not subject to the federal excise tax levied under § 4041 of the Internal Revenue Code, (iii) is a*
 105 *moped, or (iv) is not registered under the International Registration Plan.*

106 *"Fuel-efficient vehicle" means a vehicle that has a combined miles per gallon rating, as determined*
 107 *by the U.S. Environmental Protection Agency, of 25 or greater.*

108 § 46.2-771. Purpose.

109 *The purpose of this chapter is to ensure more equitable contributions to the Commonwealth*
 110 *Transportation Fund from alternative fuel vehicles, electric vehicles, and fuel-efficient vehicles using*
 111 *highways in the Commonwealth.*

112 § 46.2-772. Highway use fee.

113 A. *Except as provided in subsection C, there is hereby imposed an annual highway use fee on any*
 114 *motor vehicle registered in the Commonwealth under § 46.2-694 or 46.2-697. The fee shall be collected*
 115 *by the Department at the time of vehicle registration. If the vehicle is registered for a period of other*
 116 *than one year as provided in § 46.2-646, the highway use fee shall be multiplied by the number of years*
 117 *or fraction thereof that the vehicle will be registered.*

118 B. *For an electric motor vehicle as defined in § 58.1-2201, the highway use fee shall be 85 percent*
 119 *of the amount of tax paid under subsection A of § 58.1-2217 on fuel used by a vehicle with a combined*
 120 *fuel economy of 23.7 miles per gallon for the average number of miles traveled by a passenger vehicle*
 121 *in the Commonwealth. For all other motor vehicles, the highway use fee shall be 85 percent of the*

122 difference between the tax paid under Chapter 22 (§ 58.1-2200 et seq.) of Title 58.1 on the fuel used by
123 a vehicle with a combined fuel economy equivalent to 23.7 miles per gallon for the average number of
124 miles traveled by a passenger vehicle in the Commonwealth in a year and the tax paid under Chapter
125 22 (§ 58.1-2200 et seq.) of Title 58.1 on the fuel used by the vehicle being registered for the average
126 number of miles traveled by a passenger vehicle in the Commonwealth in a year.

127 In calculating the fuel used by the vehicle being registered, the Commissioner shall use combined
128 fuel economy as determined by the manufacturer of the vehicle. If the Commissioner is unable to obtain
129 the manufacturer's fuel economy for a vehicle, then the Commissioner shall calculate fuel use based
130 upon the average fuel economy, as determined by the U.S. Environmental Protection Agency, of (i) all
131 trucks having the same model year as the vehicle being registered, if the vehicle has a gross weight
132 between 6,000 pounds and 10,000 pounds, or (ii) all cars having the same model year as the vehicle. If
133 data is not available for the model year of the vehicle being registered, then the Commissioner shall use
134 data for the most recent model year for which data is available.

135 The Commissioner shall update the fees calculated under this section July 1 of each year.

136 C. This section shall not apply to:

- 137 1. An auticycle, moped, or motorcycle;
- 138 2. A vehicle with a gross weight over 10,000 pounds;
- 139 3. A vehicle that is otherwise exempt from paying the tax imposed pursuant to § 58.1-2217; or
- 140 4. A vehicle that is registered under the International Registration Plan.

141 A vehicle shall not be subject to the fee set forth in this section in any year in which such vehicle is
142 registered to participate in the mileage-based user fee program established pursuant to § 46.2-773.

143 **§ 46.2-773. Mileage-based user fee program.**

144 A. There is hereby established a mileage-based user fee program. The program shall be a voluntary
145 program that allows owners of vehicles subject to the highway use fee pursuant to § 46.2-772 to pay a
146 mileage-based fee in lieu of the highway use fee. No owner of a motor vehicle registered in the
147 Commonwealth shall be required to participate in the program established pursuant to this section.

148 B. In any year in which an owner pays the fee set forth in this section, such owner shall not be
149 subject to the fee set forth in § 46.2-772 for the same vehicle. In no case shall the fees paid pursuant to
150 this section during a 12-month period exceed the annual highway use fee that would have otherwise
151 been paid.

152 C. The fee schedule for the mileage-based user fee program shall be calculated by dividing the
153 amount of the highway use fee as determined pursuant to subsection B of § 46.2-772 by the average
154 number of miles traveled by a passenger vehicle in the Commonwealth to determine a fee per mile
155 driven.

156 D. The Department shall establish procedures for the collection of the fees set forth in this section.
157 Such procedures may limit the total number of participants during the first four years of the program.

158 **§ 46.2-774. Distribution of revenues.**

159 All revenues collected pursuant to this chapter shall be deposited into the Commonwealth
160 Transportation Fund established pursuant to § 33.2-1524. Notwithstanding the foregoing, any revenues
161 collected pursuant to this chapter that are generated in the jurisdictions encompassed by the Northern
162 Virginia Transportation Authority established pursuant to Chapter 2 (§ 33.2-2500 et seq.) of Title 33.2
163 shall be deposited in the Northern Virginia Transportation Authority Fund established pursuant to
164 § 33.2-2509.

165 **§ 58.1-802.3. Regional transportation improvement fee.**

166 A. In addition to any other tax or fee imposed under the provisions of this chapter, a fee, delineated
167 as the "regional WMATA capital and local transportation fee," is hereby imposed on each deed,
168 instrument, or writing by which lands, tenements, or other realty located in any county or city that is a
169 member of the Northern Virginia Transportation Authority in a planning district described in this
170 section is sold and is granted, assigned, transferred, or otherwise conveyed to or vested in the purchaser
171 or any other person, by such purchaser's direction. The rate of the fee, when the consideration or value
172 of the interest, whichever is greater, equals or exceeds \$100, shall be \$0.15 for each \$100 or fraction
173 thereof, exclusive of the value of any lien or encumbrance remaining thereon at the time of the sale,
174 whether such lien is assumed or the realty is sold subject to such lien or encumbrance shall be imposed
175 in a planning district established pursuant to Chapter 42 (§ 15.2-4200 et seq.) of Title 15.2 that (i) as of
176 January 1, 2013, has a population of two million or more, as shown by the most recent United States
177 Census, has not less than 1.7 million motor vehicles registered therein, and has a total transit ridership
178 of not less than 50 million riders per year across all transit systems within the planning district or (ii)
179 as shown by the most recent United States Census, meets the population criteria set forth in clause (i)
180 and also meets the vehicle registration and ridership criteria set forth in clause (i).

181 B. 1. For any county or city that meets the requirements in subsection A and is located in a
182 transportation district established pursuant to Chapter 19 (§ 33.2-1900 et seq.) of Title 33.2 that as of

183 January 1, 2018, meets the criteria established in § 33.2-1936, the rate of the fee, when the
184 consideration or value of the interest, whichever is greater, equals or exceeds \$100, shall be \$0.20 for
185 each \$100 or fraction thereof, exclusive of the value of any lien or encumbrance remaining thereon at
186 the time of the sale, whether such lien is assumed or the realty is sold subject to such lien or
187 encumbrance.

188 2. Fees imposed by this subsection and subsection A shall be collected by the clerk of the court and
189 deposited into the state treasury as soon as practicable. Such fees shall then be deposited as follows: an
190 amount equal to 50 percent of such fees shall be deposited into the fund established in § 33.2-2509, and
191 an amount equal to 50 percent of such fees shall be deposited into the fund established pursuant to
192 § 33.2-3401.

193 C. 1. For any county or city that meets the requirements of subsection A other than such county or
194 city described in subsection B, the rate of the fee, when the consideration or value of the interest,
195 whichever is greater, equals or exceeds \$100, shall be \$0.15 for each \$100 or fraction thereof, exclusive
196 of the value of any lien or encumbrance remaining thereon at the time of the sale, whether such lien is
197 assumed or the realty is sold subject to such lien or encumbrance. In any case in which the fee is
198 imposed pursuant to clause (ii) of subsection A, such fee shall be effective beginning on the July 1
199 immediately following the calendar year in which all of the criteria under such clause have been met.

200 2. Fees imposed by this subsection and subsection A shall be collected by the clerk of the court.
201 One-third of such fees shall be retained by the county or city in which they were collected and shall be
202 used solely for transportation purposes. An amount equal to two-thirds of the fees shall be deposited
203 into the state treasury as soon as practicable and shall then be deposited into the fund established
204 pursuant to § 33.2-2509.

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

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

210 Fees imposed by this section shall be collected by the clerk of the court. For fees collected in a
211 county or city located in a transportation district established pursuant to Chapter 19 (§ 33.2-1900 et seq.)
212 of Title 33.2 that as of January 1, 2018, meets the criteria established in § 33.2-1936 shall be transferred
213 to the state treasury as soon as practicable and deposited into the fund established in § 33.2-3401. The
214 fees collected in any other county or city in which the fee is imposed shall be retained by the county or
215 city, and shall be used solely for transportation purposes.

216 **§ 58.1-1743. Transportation district transient occupancy tax.**

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

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

224 The tax imposed under this section shall be administered by the locality in which the room or space
225 is located in the same manner as it administers the tax authorized by § 58.1-3819 or 58.1-3840, mutatis
226 mutandis, except as herein provided. The revenue generated and collected from the tax shall be
227 deposited by the local treasurer into the state treasury pursuant to § 2.2-806 and transferred by the
228 Comptroller into special funds established by law. In the case of the Northern Virginia Transportation
229 District, the revenue generated and collected therein shall be deposited into the fund established in
230 § 33.2-3401. For additional transportation districts that may become subject to this section, funds shall
231 be established by appropriate legislation.