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## SENATE BILL NO. 1038

Offered January 17, 2020

A *BILL to amend and reenact §§ 58.1-2295, as it is currently effective, and 58.1-2299.20, as it is currently effective and as it may become effective, of the Code of Virginia, and to amend the Code of Virginia by adding in Title 33.2 a chapter numbered 37, consisting of sections numbered 33.2-3700 and 33.2-3701, relating to creation of the Hampton Roads Transportation District Regional Transit Program.*

Patrons—Lucas, Lewis, Locke, Mason and Spruill

Referred to Committee on Transportation

**Be it enacted by the General Assembly of Virginia:**

1. That §§ 58.1-2295, as it is currently effective, and 58.1-2299.20, as it is currently effective and as it may become effective, of the Code of Virginia ~~is~~ *are* amended and reenacted and that the Code of Virginia is amended by adding in Title 33.2 a chapter numbered 37, consisting of sections numbered 33.2-3700 and 33.2-3701, as follows:

**CHAPTER 37.**

**HAMPTON ROADS TRANSPORTATION DISTRICT REGIONAL TRANSIT PROGRAM.**

**§ 33.2-3700. Purpose; definitions.**

A. The General Assembly declares it to be in the public interest that developing and continuing operations of reliable regional public transportation is important for a balanced and effective multimodal transportation system in the Hampton Roads region and is essential to the region's continued economic growth, vitality, and competitiveness. The General Assembly further declares that a special transportation program, to be known as the Hampton Roads Transportation District Regional Transit Program, should provide for the costs of developing, maintaining, and improving a core regional network of transit routes and related infrastructure, rolling stock, and support facilities that have the greatest positive impacts on economic development potential, employment opportunities, mobility, environmental sustainability, and quality of life. The goal of the Program is to provide a modern, safe, and efficient core network of services and projects that shall be documented in a strategic plan developed pursuant to § 33.2-286 and updated annually.

B. As used in this chapter, unless the context requires a different meaning:

"Fund" means the Hampton Roads Regional Transit Fund, created pursuant to § 33.2-3701.

"Program" means the Hampton Roads Transportation District Regional Transit Program.

**§ 33.2-3701. Hampton Roads Regional Transit Fund.**

A. There is hereby created in the state treasury a special nonreverting fund to be known as the Hampton Roads Regional Transit 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 § 58.1-2299.20, and any other funds as may be appropriated by the General Assembly or allocated by the Board on its behalf, 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. Moneys in the Fund shall be used solely for the purposes set forth in this section. The Comptroller shall disburse funds in the Fund monthly to the governing body of a transportation district created pursuant to § 33.2-1903 and described in subdivision A 3 of § 58.1-2295.

B. The governing body of a planning district described in subdivision A 3 of § 58.1-2295 shall allocate funds from the Fund to implement the Program. In allocating funds, the governing body shall seek to prioritize, when possible, investments in the most sustainable and cost-effective operations, rolling stock, and facilities to reduce or eliminate reliance upon diesel fuels. Allocations to the Program shall not diminish or supplant allocations and appropriations from other sources or diminish allocations to which a transportation district, transit system, or locality would be entitled under other provisions of law, but shall supplement such funds to accelerate and augment transportation improvements in the Hampton Roads region.

C. Any amount distributed or expended from the Fund shall not be used to calculate or reduce the share of federal, state, or local revenues otherwise available to the transportation district described in subdivision A 3 of § 58.1-2295 or its member localities. Further, such 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 are determined. Any amounts deposited pursuant to § 58.1-2299.20 shall be considered local funds when used to make a required match for state or

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59 *federal transportation grant funds.*

60 *D. Notwithstanding the provisions of subsection C, if the governing body of the transportation*  
61 *district described in subdivision A 3 of § 58.1-2299.20 determines that the moneys distributed to the*  
62 *transportation district from the Fund exceed the amount required to meet the capital and operating*  
63 *needs of the Program, the governing body may (i) disburse up to one-half of the excess funds*  
64 *proportionately to each city or county in which the funds were collected, to be used solely for*  
65 *transportation purposes, or (ii) invest such excess funds in the same manner as provided in subsection A*  
66 *of § 33.2-1525 for investment of excess funds in the Transportation Trust Fund.*

67 **§ 58.1-2295. (Contingent expiration date) Levy; payment of tax.**

68 A. 1. In addition to all other taxes now imposed by law, there is hereby imposed a tax upon every  
69 distributor who engages in the business of selling fuels at wholesale to retail dealers for retail sale in  
70 any county or city that is a member of (i) any transportation district in which a rapid heavy rail  
71 commuter mass transportation system operating on an exclusive right-of-way and a bus commuter mass  
72 transportation system are owned, operated, or controlled by an agency or commission as defined in  
73 § 33.2-1901 or (ii) any transportation district that is subject to subsection C of § 33.2-1915 and that is  
74 contiguous to the Northern Virginia Transportation District.

75 2. In addition to all other taxes now imposed by law, there is hereby imposed a tax upon every  
76 distributor who engages in the business of selling fuels at wholesale to retail dealers for retail sale in  
77 any county or city that is located in a ~~Planning District~~ *planning district* established pursuant to Chapter  
78 42 (§ 15.2-4200 et seq.) of Title 15.2 that (i) as of January 1, 2013, has a population of not less than  
79 1.5 million but fewer than two million, as shown by the most recent United States ~~Census~~ *census*, has  
80 not less than 1.2 million but fewer than 1.7 million motor vehicles registered therein, and has a total  
81 transit ridership of not less than 15 million but fewer than 50 million riders per year across all transit  
82 systems within the ~~Planning District~~ *planning district* or (ii) as shown by the most recent United States  
83 ~~Census~~ *census* meets the population criteria set forth in clause (i) and also meets the vehicle registration  
84 and ridership criteria set forth in clause (i). In any case in which the tax is imposed pursuant to clause  
85 (ii), such tax shall be effective beginning on the July 1 immediately following the calendar year in  
86 which all of the criteria have been met.

87 3. *In addition to all other taxes now imposed by law, there is hereby imposed a tax upon every*  
88 *distributor who engages in the business of selling fuels at wholesale to retail dealers for retail sale in*  
89 *any county or city that is a member of a transportation district established pursuant § 33.2-1903 and*  
90 *that is also located in a planning district described in clause (i) of subdivision 2.*

91 B. 1. The tax shall be imposed on each gallon of fuel, other than diesel fuel, sold by a distributor to  
92 a retail dealer for retail sale in any such county or city described in ~~subsection A~~ *(i) subdivisions A 1*  
93 *and 2 at a rate of 2.1 percent of the statewide average distributor price of a gallon of unleaded regular*  
94 *gasoline as determined by the Commissioner pursuant to subdivision C 1 and (ii) subdivision A 3 at a*  
95 *rate of 1.9 percent of the statewide average distributor price of a gallon of unleaded regular gasoline as*  
96 *determined by the Commissioner pursuant to subdivision C 1.* For alternative fuels other than liquid  
97 alternative fuels, the Commissioner shall determine an equivalent tax rate based on gasoline gallon  
98 equivalency.

99 2. The tax shall be imposed on each gallon of diesel fuel sold by a distributor to a retail dealer for  
100 retail sale in any such county or city *described in (i) subdivisions A 1 and 2 at a rate of 2.1 percent of*  
101 *the statewide average distributor price of a gallon of diesel fuel as determined by the Commissioner*  
102 *pursuant to subdivision C 2 and (ii) subdivision A 3 at a rate of 0.9 percent of the statewide average*  
103 *distributor price of a gallon of diesel fuel as determined by the Commissioner pursuant to subdivision C*  
104 *2.*

105 C. 1. To determine the statewide average distributor price of a gallon of unleaded regular gasoline,  
106 the Commissioner shall use the period from June 1 to November 30, inclusive, as the base period for  
107 the determination of the rate of the tax for the immediately following applied period beginning January  
108 1 and ending June 30, inclusive. The Commissioner shall use the period from December 1 to May 31,  
109 inclusive, as the base period for the determination of the rate of the tax for the immediately following  
110 applied period beginning July 1 and ending December 31, inclusive. In no case shall the statewide  
111 average distributor price of a gallon of unleaded regular gasoline determined for the purposes of this  
112 section be less than the statewide average wholesale price of a gallon of unleaded regular gasoline on  
113 February 20, 2013, plus a distributor charge calculated by the Commissioner for that date.

114 2. To determine the statewide average distributor price of a gallon of diesel fuel, the Commissioner  
115 shall use the period from June 1 to November 30, inclusive, as the base period for the determination of  
116 the rate of the tax for the immediately following applied period beginning January 1 and ending June  
117 30, inclusive. The Commissioner shall use the period from December 1 to May 31, inclusive, as the  
118 base period for the determination of the rate of the tax for the immediately following applied period  
119 beginning July 1 and ending December 31, inclusive. In no case shall the statewide average distributor  
120 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.

**§ 58.1-2299.20. (Contingent expiration dates) Disposition of tax revenues.**

A. All taxes, interest, and civil penalties paid to the Commissioner pursuant to this chapter for the sale of fuels at wholesale to retail dealers for retail sale in any county or city set forth in clause (i) of subdivision A 1 of § 58.1-2295, after subtraction of the direct costs of administration by the Department, shall be deposited each month as follows:

1. One-twelfth of an amount determined by multiplying \$15 million by a fraction, the numerator of which shall be such transportation district's share of funding for the commuter rail service jointly operated by the two transportation districts and the denominator of which shall be the total funding share for such commuter rail service, shall be deposited in the Commuter Rail Operating and Capital Fund established pursuant to § 33.2-3500;

2. a. Until June 30, 2019, an amount equal to the increase in taxes, interest, and civil penalties paid to the Commissioner each month, compared with the same month for fiscal year 2018, minus any amounts deposited pursuant to subdivision 1, shall be deposited into the Washington Metropolitan Area Transit Capital Fund established pursuant to § 33.2-3401; and

b. Beginning on July 1, 2019, an amount equal to one-twelfth of the increase in taxes, interest, and civil penalties paid to the Commissioner in fiscal year 2019 compared to fiscal year 2018, minus any amounts deposited pursuant to subdivision A 1, shall be deposited in the Washington Metropolitan Area Transit Authority Capital Fund established pursuant to § 33.2-3401; and

3. All remaining funds shall be deposited in a special fund entitled the "Special Fund Account of the Transportation District of \_\_\_\_\_. The amounts deposited in the special fund shall be distributed monthly to the applicable transportation district commission of which the county or city is a member to be applied to the operating deficit, capital, and debt service of the mass transit system of such district or, in the case of a transportation district subject to the provisions of subsection C of § 33.2-1915, to be applied to and expended for any transportation purpose of such district. In the case of a jurisdiction which, after July 1, 1989, joins a transportation district which was established on or before January 1, 1986, and is also subject to subsection C of § 33.2-1915, the funds collected from that jurisdiction shall be applied to and expended for any transportation purpose of such jurisdiction.

B. All taxes, interest, and civil penalties paid to the Commissioner pursuant to this chapter for the sale of fuels at wholesale to retail dealers for retail sale in any county or city set forth in clause (ii) of subdivision A 1 of § 58.1-2295, after subtraction of the direct costs of administration by the Department, shall be deposited each month as follows:

1. One-twelfth of an amount determined by multiplying \$15 million by a fraction, the numerator of which shall be such transportation district's share of funding for the commuter rail service jointly operated by the two transportation districts and the denominator of which shall be the total funding share for such commuter rail service, shall be deposited in the Commuter Rail Operating and Capital Fund established pursuant to § 33.2-3500; and

2. All remaining funds shall be deposited in a special fund entitled the "Special Fund Account of the Transportation District of \_\_\_\_\_. The amounts deposited in the special fund shall be distributed monthly to the applicable transportation district commission of which the county or city is a member to be applied to the operating deficit, capital, and debt service of the mass transit system of such district or, in the case of a transportation district subject to the provisions of subsection C of § 33.2-1915, to be applied to and expended for any transportation purpose of such district. In the case of a jurisdiction which, after July 1, 1989, joins a transportation district that was established on or before January 1, 1986, and is also subject to subsection C of § 33.2-1915, the funds collected from that jurisdiction shall be applied to and expended for any transportation purpose of such jurisdiction.

C. All taxes, interest, and civil penalties paid to the Commissioner pursuant to this chapter for the sale of fuels at wholesale to retail dealers for retail sale in any county or city set forth in subdivision A 2 of § 58.1-2295, after subtraction of the direct costs of administration by the Department, shall be

182 deposited into special funds established by law. In the case of Planning District 23, the revenue  
183 generated and collected therein shall be deposited into the fund established in § 33.2-2600. For  
184 additional Planning Districts that may become subject to this section, funds shall be established by  
185 appropriate legislation.

186 *D. All taxes, interest, and civil penalties paid to the Commissioner pursuant to this chapter for the*  
187 *sale of fuels at wholesale to retail dealers for retail sale in any county or city set forth in subdivision A*  
188 *3 of § 58.1-2295, after subtraction of the direct costs of administration by the Department, shall be*  
189 *deposited into the fund established in § 33.2-3701.*

190 *E. All taxes, interest, and civil penalties paid to the Commissioner pursuant to this chapter for the*  
191 *sale of fuels at wholesale to retail dealers for retail sale in any county or city set forth in § 58.1-2295.1,*  
192 *after subtraction of the direct costs of administration by the Department, shall be deposited into the*  
193 *Interstate 81 Corridor Improvement Fund established pursuant to Chapter 36 (§ 33.2-3600) of Title 33.2.*

194 *E. F. The direct cost of administration of this section shall be credited to the funds appropriated to*  
195 *the Department.*

196 **§ 58.1-2299.20. (For contingent effective date, see Acts 2019, cc. 837 and 846) Disposition of tax**  
197 **revenues.**

198 A. All taxes, interest, and civil penalties paid to the Commissioner pursuant to this chapter for the  
199 sale of fuels at wholesale to retail dealers for retail sale in any county or city set forth in clause (i) of  
200 subdivision A 1 of § 58.1-2295, after subtraction of the direct costs of administration by the Department,  
201 shall be deposited each month as follows:

202 1. One-twelfth of an amount determined by multiplying \$15 million by a fraction, the numerator of  
203 which shall be such transportation district's share of funding for the commuter rail service jointly  
204 operated by the two transportation districts and the denominator of which shall be the total funding  
205 share for such commuter rail service, shall be deposited in the Commuter Rail Operating and Capital  
206 Fund established pursuant to § 33.2-3500;

207 2. a. Until June 30, 2019, an amount equal to the increase in taxes, interest, and civil penalties paid  
208 to the Commissioner each month, compared with the same month for fiscal year 2018, minus any  
209 amounts deposited pursuant to subdivision 1, shall be deposited into the Washington Metropolitan Area  
210 Transit Capital Fund established pursuant to § 33.2-3401; and

211 b. Beginning on July 1, 2019, an amount equal to one-twelfth of the increase in taxes, interest, and  
212 civil penalties paid to the Commissioner in fiscal year 2019 compared to fiscal year 2018, minus any  
213 amounts deposited pursuant to subdivision A 1, shall be deposited in the Washington Metropolitan Area  
214 Transit Authority Capital Fund established pursuant to § 33.2-3401; and

215 3. All remaining funds shall be deposited in a special fund entitled the "Special Fund Account of the  
216 Transportation District of \_\_\_\_\_. The amounts deposited in the special fund shall be distributed  
217 monthly to the applicable transportation district commission of which the county or city is a member to  
218 be applied to the operating deficit, capital, and debt service of the mass transit system of such district  
219 or, in the case of a transportation district subject to the provisions of subsection C of § 33.2-1915, to be  
220 applied to and expended for any transportation purpose of such district. In the case of a jurisdiction  
221 which, after July 1, 1989, joins a transportation district which was established on or before January 1,  
222 1986, and is also subject to subsection C of § 33.2-1915, the funds collected from that jurisdiction shall  
223 be applied to and expended for any transportation purpose of such jurisdiction.

224 B. All taxes, interest, and civil penalties paid to the Commissioner pursuant to this chapter for the  
225 sale of fuels at wholesale to retail dealers for retail sale in any county or city set forth in clause (ii) of  
226 subdivision A 1 of § 58.1-2295, after subtraction of the direct costs of administration by the Department,  
227 shall be deposited each month as follows:

228 1. One-twelfth of an amount determined by multiplying \$15 million by a fraction, the numerator of  
229 which shall be such transportation district's share of funding for the commuter rail service jointly  
230 operated by the two transportation districts and the denominator of which shall be the total funding  
231 share for such commuter rail service, shall be deposited in the Commuter Rail Operating and Capital  
232 Fund established pursuant to § 33.2-3500; and

233 2. All remaining funds shall be deposited in a special fund entitled the "Special Fund Account of the  
234 Transportation District of \_\_\_\_\_. The amounts deposited in the special fund shall be distributed  
235 monthly to the applicable transportation district commission of which the county or city is a member to  
236 be applied to the operating deficit, capital, and debt service of the mass transit system of such district  
237 or, in the case of a transportation district subject to the provisions of subsection C of § 33.2-1915, to be  
238 applied to and expended for any transportation purpose of such district. In the case of a jurisdiction  
239 which, after July 1, 1989, joins a transportation district that was established on or before January 1,  
240 1986, and is also subject to subsection C of § 33.2-1915, the funds collected from that jurisdiction shall  
241 be applied to and expended for any transportation purpose of such jurisdiction.

242 C. All taxes, interest, and civil penalties paid to the Commissioner pursuant to this chapter for the  
243 sale of fuels at wholesale to retail dealers for retail sale in any county or city set forth in subdivision A

244 2 of § 58.1-2295, after subtraction of the direct costs of administration by the Department, shall be  
245 deposited into special funds established by law. In the case of Planning District 23, the revenue  
246 generated and collected therein shall be deposited into the fund established in § 33.2-2600. For  
247 additional Planning Districts that may become subject to this section, funds shall be established by  
248 appropriate legislation.

249 *D. All taxes, interest, and civil penalties paid to the Commissioner pursuant to this chapter for the*  
250 *sale of fuels at wholesale to retail dealers for retail sale in any county or city set forth in subdivision A*  
251 *3 of § 58.1-2295, after subtraction of the direct costs of administration by the Department, shall be*  
252 *deposited into the fund established in § 33.2-3701.*

253 *E. The direct cost of administration of this section shall be credited to the funds appropriated to the*  
254 *Department.*