

20107603D

SENATE BILL NO. 452

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on Finance and Appropriations
on February 4, 2020)

(Patrons Prior to Substitute—Senators Edwards and Hanger [SB 596])

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 repeal § 58.1-2295.1 of the Code of Virginia, relating to motor vehicle fuels sales tax in certain counties and cities.*

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 are amended and reenacted as follows:

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

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

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

3. *In addition to all other taxes now imposed by law, there is hereby imposed a tax upon every distributor who engages in the business of selling fuels at wholesale to retail dealers for retail sale in any county or city that is located in a planning district established pursuant to Chapter 42 (§ 15.2-4200 et seq.) of Title 15.2 through which an interstate passes that (i) is more than 300 miles in length in the Commonwealth and (ii) as of January 1, 2019, carried more than 40 percent of interstate vehicle miles traveled for vehicles classified as Class 6 or higher.*

4. *In addition to all other taxes now imposed by law, there is hereby imposed a tax upon every distributor who engages in the business of selling fuels at wholesale to retail dealers for retail sale in any county or city in which a tax is not imposed pursuant to the provisions of subdivision 1, 2, or 3.*

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 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 ~~± 7.6 cents per gallon on gasoline and gasohol. Beginning July 1, 2021, the tax rate shall be adjusted annually based on the greater of (i) 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 (ii) 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 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~~ ~~± 7.7 cents per gallon on diesel fuel. Beginning July 1, 2021, the tax rate shall be adjusted annually based on the greater of (i) 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 (ii) 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. D. 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. E. 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 deposited into special funds established by law. In the case of Planning District 23, the revenue generated and collected therein shall be deposited into the fund established in § 33.2-2600. For additional Planning Districts that may become subject to this section, funds shall be established by appropriate legislation.

D. 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 ~~§ 58.1-2295.1 subdivision A 3 of § 58.1-2295~~, after subtraction of the direct costs of administration by the Department, shall be deposited into the Interstate 81 Corridor Improvement Fund established pursuant to Chapter 36 (§ 33.2-3600) of Title 33.2.

E. All taxes, interest, and civil penalties paid to the Commonwealth 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 4 of § 58.1-2295, after subtraction of the direct costs of administration by the Department, shall be deposited in a special fund titled the "Special Fund Account for the Highway Construction District Grant Program" to be allocated by the Commonwealth Transportation Board as highway construction district grants pursuant to § 33.2-371 to the construction districts in which the taxes, interest, and civil penalties were generated.

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

§ 58.1-2299.20. (For contingent effective date, see Acts 2019, cc. 837 and 846) 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,

183 shall be deposited each month as follows:

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

189 2. All remaining funds shall be deposited in a special fund entitled the "Special Fund Account of the
190 Transportation District of _____." The amounts deposited in the special fund shall be distributed
191 monthly to the applicable transportation district commission of which the county or city is a member to
192 be applied to the operating deficit, capital, and debt service of the mass transit system of such district
193 or, in the case of a transportation district subject to the provisions of subsection C of § 33.2-1915, to be
194 applied to and expended for any transportation purpose of such district. In the case of a jurisdiction
195 which, after July 1, 1989, joins a transportation district that was established on or before January 1,
196 1986, and is also subject to subsection C of § 33.2-1915, the funds collected from that jurisdiction shall
197 be applied to and expended for any transportation purpose of such jurisdiction.

198 C. 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 subdivision A
200 2 of § 58.1-2295, after subtraction of the direct costs of administration by the Department, shall be
201 deposited into special funds established by law. In the case of Planning District 23, the revenue
202 generated and collected therein shall be deposited into the fund established in § 33.2-2600. For
203 additional Planning Districts that may become subject to this section, funds shall be established by
204 appropriate legislation.

205 D. *All taxes, interest, and civil penalties paid to the Commonwealth pursuant to this chapter for the*
206 *sale of fuels at wholesale to retail dealers for retail sale in any county or city set forth in subdivision A*
207 *4 of § 58.1-2295, after subtraction of the direct costs of administration by the Department, shall be*
208 *deposited in a special fund titled the "Special Fund Account for the Highway Construction District*
209 *Grant Program" to be allocated by the Commonwealth Transportation Board as highway construction*
210 *district grants pursuant to § 33.2-371 to the construction districts in which the taxes, interest, and civil*
211 *penalties were generated.*

212 E. The direct cost of administration of this section shall be credited to the funds appropriated to the
213 Department.

214 **§ 58.1-2299.20. (Contingent effective date) Disposition of tax revenues.**

215 A. Except as provided in subsection B, all taxes, interest, and civil penalties paid to the
216 Commissioner pursuant to this chapter, after subtraction of the direct costs of administration by the
217 Department, shall be deposited in a special fund entitled the "Special Fund Account of the
218 Transportation District of _____." The amounts deposited in the special fund shall be distributed
219 monthly to the applicable transportation district commission of which the county or city is a member to
220 be applied to the operating deficit, capital, and debt service of the mass transit system of such district
221 or, in the case of a transportation district subject to the provisions of subsection C of § 33.2-1915, to be
222 applied to and expended for any transportation purpose of such district. In the case of a jurisdiction
223 which, after July 1, 1989, joins a transportation district which was established on or before January 1,
224 1986, and is also subject to subsection C of § 33.2-1915, the funds collected from that jurisdiction shall
225 be applied to and expended for any transportation purpose of such jurisdiction. The direct costs of
226 administration shall be credited to the funds appropriated to the Department.

227 B. All taxes, interest, and civil penalties paid to the Commissioner pursuant to this chapter for the
228 sale of fuels at wholesale to retail dealers for retail sale in any county or city set forth in ~~§ 58.1-2295.4~~
229 *subdivision A 3 of § 58.1-2295*, after subtraction of the direct costs of administration by the Department,
230 shall be deposited into the Interstate 81 Corridor Improvement Fund established pursuant to Chapter 36
231 (§ 33.2-3600) of Title 33.2.

232 C. *All taxes, interest, and civil penalties paid to the Commonwealth pursuant to this chapter for the*
233 *sale of fuels at wholesale to retail dealers for retail sale in any county or city set forth in subdivision A*
234 *4 of § 58.1-2295, after subtraction of the direct costs of administration by the Department, shall be*
235 *deposited in a special fund titled the "Special Fund Account for the Highway Construction District*
236 *Grant Program" to be allocated by the Commonwealth Transportation Board as highway construction*
237 *district grants pursuant to § 33.2-371 to the construction districts in which the taxes, interest, and civil*
238 *penalties were generated.*

239 2. That § 58.1-2295.1 of the Code of Virginia is repealed.

240 3. That the provisions of this act that generate additional revenues for transportation shall expire
241 on December 31 of any year in which the General Assembly appropriates or transfers any of such
242 additional revenue for any non-transportation-related purpose.

243 4. That the provisions of this act may result in a net increase in periods of imprisonment or
244 commitment. Pursuant to § 30-19.1:4 of the Code of Virginia, the estimated amount of the

245 necessary appropriation cannot be determined for periods of imprisonment in state adult
246 correctional facilities; therefore, Chapter 854 of the Acts of Assembly of 2019 requires the Virginia
247 Criminal Sentencing Commission to assign a minimum fiscal impact of \$50,000. Pursuant to
248 § 30-19.1:4 of the Code of Virginia, the estimated amount of the necessary appropriation is \$0 for
249 periods of commitment to the custody of the Department of Juvenile Justice.