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HOUSE BILL NO. 418**AMENDMENT IN THE NATURE OF A SUBSTITUTE**

(Proposed by the House Committee on Finance)

(Patron Prior to Substitute—Delegate Parrish)

House Amendments in [] — February 1, 1996

A BILL to amend and reenact §§ 58.1-2101, 58.1-2107, 58.1-2111, 58.1-2119, 58.1-2122 and 58.1-2128 of the Code of Virginia, relating to fuels taxes.

Be it enacted by the General Assembly of Virginia:

1. That § 58.1-2101, 58.1-2107, 58.1-2111, 58.1-2119, 58.1-2122 and 58.1-2128 of the Code of Virginia are amended and reenacted as follows:

§ 58.1-2101. Definitions.

As used in this chapter, unless the context clearly shows otherwise, the term or phrase:

"Aircraft" means any kind of vehicle designed or used for untethered navigation or flight in the air.

"Assessment" means a written determination by the Department of Motor Vehicles of the amount of taxes owed by a taxpayer. Assessments made by the Department of Motor Vehicles shall be deemed to be made when a written notice of assessment is delivered to the taxpayer by the Department of Motor Vehicles or is mailed by certified or registered mail to the taxpayer at his last known address.

"Aviation consumer" means any person who uses in excess of 100,000 gallons of aviation special fuel in any fiscal year and is licensed pursuant to § 58.1-2135.

"Aviation motor fuel" means motor fuel designed for use in the operation of aircraft, and sold or used for that purpose.

"Aviation fuel user" means any person, other than an "aviation consumer," who receives, uses, or stores aviation special fuel.

"Aviation special fuel" means fuel designed for use in the operation of turbine-powered aircraft, and sold or used for that purpose. The term shall not include aviation motor fuel.

"Blended fuel" means fuel produced by blending regular gasoline with premium gasoline to produce mid-grade gasoline; fuel produced by blending ethanol into gasoline; fuel produced by blending kerosene into dyed or undyed diesel fuel to reduce pour point; or fuel produced by blending additives into dyed or undyed diesel fuel.

"Blender" means any person that produces blended fuel.

"Blending" means the mixing of one or more petroleum products with another product, regardless of the original character of the product blended, if the product obtained by the blending is capable of use in the generation of power for the propulsion of a highway vehicle, an airplane, or a motorboat. This term does not include blending which occurs in the process of refining by the original refiner of crude petroleum or the blending of products known as lubricating oils and greases.

"Bonded aviation fuel" means aviation special fuel held in bonded storage under United States Customs Law and delivered into the fuel supply tank of aircraft operated by certificated air carriers on international flights.

"Bulk plant" means a fuel storage facility, other than a terminal, which is used primarily for redistribution of fuel.

"Bulk storage" means a storage of fuel in bulk quantities.

"Bulk user" means any person who maintains bulk storage facilities for the purpose of fueling aircraft or highway vehicles owned, leased or operated by him.

"Clean special fuels" means all products or energy sources used to propel a highway vehicle which, when compared to conventional gasoline or reformulated gasoline, will result in lower emissions of oxides of nitrogen, volatile organic compounds, carbon monoxide or particulates or any combination thereof, and includes compressed natural gas, liquified natural gas, liquified petroleum gas, hydrogen, hythane (a combination of compressed natural gas and hydrogen) and electricity.

"Commissioner" means the Commissioner of the Department of Motor Vehicles.

"Conduit" means any person licensed to sell petroleum products in another state or jurisdiction who is authorized by that state or jurisdiction to collect Virginia fuels taxes. The person may or may not be licensed to operate as a Virginia fuel tax licensee.

"Corporate or partnership officer" means an officer or director of a corporation, or partner of a partnership, or member of a limited liability company, who as such officer, director, partner or member is under a duty to perform on behalf of the corporation, partnership, or limited liability company the tax collection, accounting, or remitting obligations.

"Dealer" means and includes the following persons, required to be licensed as a dealer pursuant to § 58.1-2135:

(a) A person who imports, or causes to be imported, into the Commonwealth any motor fuel for use

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HB418E

60 by or distribution or sale and delivery to another in the Commonwealth.

61 (b) A person who imports, or causes to be imported, into the Commonwealth any motor fuel for his
62 own use in any container other than the usual tank or receptacle connected with the engine of the
63 highway vehicle which will consume such motor fuel during its operation.

64 (c) A person selling over one-half million gallons of motor fuel in any calendar year who elects to
65 be licensed as a dealer.

66 (d) A person who maintains and operates a bulk storage within the Commonwealth who receives
67 motor fuel by tank car, barge, pipeline delivery, common or contract carrier or self-owned equipment
68 from another point within the Commonwealth.

69 (e) A person who produces, refines, manufactures, blends, or compounds any motor fuel in the
70 Commonwealth for use, distribution or sale and delivery in the Commonwealth.

71 (f) A person who produces, refines, manufactures, blends, or compounds motor fuel in the
72 Commonwealth for his own use.

73 The term "dealer" shall not include a railroad company purchasing motor fuel for use in its railroad
74 business and not for use in highway vehicles. The Commissioner may designate dealers as jobbers, but
75 the designation by the Commissioner of a dealer as a jobber shall not of itself deprive the jobber of the
76 right to refunds to which they would have otherwise been entitled under the provisions of subdivision 3
77 of subsection B of § 58.1-2111.

78 "Department" means the Department of Motor Vehicles, acting directly or through its duly authorized
79 officers and agents.

80 "Destination state" means the state for which a tanker truck or barge is destined to off-load the fuel
81 it is transporting into storage facilities for purposes of resale or consumption in such state.

82 "Diesel fuel" means any liquid that is commonly or commercially known or sold as a fuel that is
83 suitable for use in a diesel-powered highway vehicle or diesel-powered boat. A liquid meets this
84 requirement if, without further processing or blending, the liquid has practical and commercial fitness for
85 use in the propulsion engine of a diesel-powered highway vehicle or boat.

86 "Dyed diesel fuel" means any diesel fuel that is required to be dyed in accordance with any rule,
87 regulation, or mandate of the United States Environmental Protection Agency or the Internal Revenue
88 Service.

89 "Exemption certificate" means a serially-numbered certificate approved and issued by the
90 Commissioner, which is to be affixed on bulk storage facilities of resellers and bulk users of diesel fuel
91 for the purpose of exempting fuel delivered therein from the fuel tax due to the nonhighway use of such
92 fuel.

93 "Export" means (i) fuel delivered out of state by or for the seller constitutes an export by the seller
94 or (ii) fuel delivered out of state by or for the purchaser constitutes an export by the purchaser.

95 "Exporter" means any person, other than a dealer or supplier, who purchases fuel in the
96 Commonwealth for the purpose of transporting or delivering such fuel to another state, district or
97 country. This definition does not apply to fuel transported outside of the Commonwealth in the fuel
98 supply tank of a highway vehicle or aircraft. Such a person is required to be licensed in Virginia as an
99 exporter pursuant to § 58.1-2135 and to submit monthly reports pursuant to § 58.1-2109.1 or
100 § 58.1-2120.3.

101 "Fuel" or "fuels" means all combustible gases and liquids used or suitable for use in an internal
102 combustion engine or motor for the generation of power to propel highway vehicles or aircraft. The
103 terms shall include motor fuel, diesel fuel, aviation motor fuel, aviation special fuel, and clean special
104 fuels.

105 "Heating oil" means any combustible liquid, including but not limited to #1 fuel oil, #2 fuel oil, and
106 kerosene, that is burned in a boiler, furnace, or stove for heating or for industrial processing purposes.

107 "Highway" means every way or place of whatever nature open to the use of the public for purposes
108 of vehicular travel in the Commonwealth, including the streets and alleys in towns and cities.

109 "Highway vehicle" means any vehicle operated, or intended to be operated, on a highway. The term
110 does not include: (i) farm machinery including machinery designed for off-road use but capable of
111 movement on roads at low speeds; (ii) a vehicle operated on rails; or (iii) machinery designed
112 principally for off-road use.

113 "Import" means (i) fuel delivered into Virginia from out of state by or for the seller constitutes an
114 import by the seller or (ii) fuel delivered into Virginia from out of state by or for the purchaser
115 constitutes an import by the purchaser.

116 "Importer" means any person who imports fuel. If the importer of record is acting as an agent, the
117 person for whom the agent is acting is the importer. If there is not an importer of record, the owner of
118 the fuel at the time it is brought into the Commonwealth is the importer. Any person who imports fuel
119 is required to be licensed as a dealer or a supplier.

120 "Jobber" means any person who receives motor fuel by tank car, barge, pipeline, common or contract
121 carrier or in self-owned equipment from a point within Virginia who has not qualified to pay the motor

122 fuel tax directly to the Commonwealth, if such person complies with all of the applicable provisions of
123 this chapter.

124 "Licensee" means any person licensed by the Commissioner pursuant to § 58.1-2135.

125 "Liquid" means any substance which is liquid at temperatures in excess of sixty degrees Fahrenheit
126 and a pressure of 14.7 pounds per square inch absolute.

127 "Motor fuel" means all products commonly or commercially known, advertised, offered for sale, sold
128 or used as gasoline, including casinghead or natural gasoline. The term shall include all other types of
129 additives when such additives are mixed or blended into gasoline, regardless of their classifications or
130 uses.

131 "Principal" means (i) in the case of a partnership, all the partners; (ii) in the case of a corporation, all
132 its officers, directors, and controlling owners; and (iii) in the case of a limited liability company, all its
133 members.

134 "Refiner" means any person that owns, operates, or otherwise controls a refinery.

135 "Refinery" means a facility for the manufacture or reprocessing of finished or unfinished petroleum
136 products which are capable of use as fuel.

137 "Reseller" means any person, other than a "supplier," who sells or delivers diesel fuel, aviation
138 special fuel, and clean special fuels into a fuel supply tank of an aircraft or highway vehicle other than
139 an aircraft or highway vehicle owned or operated by such person and shall include any person selling
140 fuel sold by or through post exchanges, ship stores, ship service stores, commissaries, filling stations,
141 licensed traders and other similar agencies located on United States military or other reservations within
142 the boundaries of the Commonwealth, unless such fuel is for the exclusive use of the United States or
143 its departments, agencies and instrumentalities.

144 "Supplier" means any person who is an exporter of diesel fuel, aviation special fuel, or clean special
145 fuels, sells or delivers diesel fuel, aviation special fuel, or clean special fuels to a "reseller" or "bulk
146 user" for resale or use in any highway vehicle or aircraft, or assumes the responsibility and liability for
147 the payment of the tax. The term includes any person who imports diesel fuel, aviation special fuel, or
148 clean special fuels into the Commonwealth, for use in a highway vehicle or aircraft owned or operated
149 by such person, other than in the usual tank or receptacle connected with the engine of the highway
150 vehicle or aircraft in which the fuel is to be consumed.

151 "Synthetic motor fuel" means motor fuel containing at least twenty percent coal-based liquids
152 blended to meet fuel specifications.

153 "Synthetic special fuel" means fuel containing at least twenty percent coal-based liquids blended to
154 meet specifications.

155 "Taxable fuel" means motor fuel, undyed diesel fuel with the exception of kerosene, aviation special
156 fuel, clean special fuels, synthetic motor fuel, synthetic special fuel, ethanol and blends thereof and any
157 other substance blended with any of the foregoing, to include kerosene or #1 fuel oil when used in a
158 highway vehicle.

159 "Terminal" means a fuel storage and distribution facility which is supplied by pipeline, marine vessel,
160 or rail car and from which fuel may be removed at the rack. The term does not include any facility at
161 which fuel blend stocks and additives are used in the manufacture of products other than fuel and from
162 which no fuel is removed.

163 "Terminal operator" means any person that owns, operates, or otherwise controls a terminal.

164 "Use" means the actual consumption or receipt of fuel by any person into an aircraft or highway
165 vehicle.

166 "User" means any person who (i) does not maintain storage facilities for fueling aircraft or highway
167 vehicles and (ii) owns or operates any aircraft or highway vehicle having a gross weight in excess of
168 5,000 pounds which is propelled by diesel fuel, aviation special fuel, or clean special fuels and is
169 licensed under the laws of the Commonwealth.

170 § 58.1-2107. Reports; payment of tax.

171 A. On or before the last day of each calendar month, each dealer and jobber in motor fuel shall
172 render to the Commissioner a statement, on forms prepared and furnished by the Commissioner, which
173 shall show:

174 1. The quantity of motor fuel on hand on the first and last days of the preceding calendar month;

175 2. The quantity of motor fuel received, produced, manufactured, refined or compounded during the
176 preceding calendar month;

177 3. The quantities of motor fuel sold and delivered or used within the Commonwealth during the
178 preceding calendar month; and

179 4. If applicable, the quantity of aviation motor fuel on hand the first and last days of the preceding
180 calendar month; the quantity of aviation motor fuel received, produced, refined or compounded during
181 the month; and the quantity sold, delivered or used during the month. All such information pertaining to
182 aviation motor fuel shall be separately stated and attached to the monthly report.

183 B. At the time of rendering such report the dealer shall pay to the Commissioner the tax herein
184 levied on all motor fuel sold and delivered or used within the Commonwealth during the preceding
185 calendar month except that which is sold to a limited dealer or another duly licensed motor fuel dealer.
186 No dealer shall pay the tax on motor fuel received by him from a point within the Commonwealth from
187 another duly licensed dealer who has paid or assumed the payment of such tax.

188 C. *The Commissioner shall grant a tax deferral to a Virginia licensee for Virginia fuels taxes paid to*
189 *a conduit when he is satisfied that the tax has been paid to the conduit authorized in and licensed by*
190 *the jurisdiction in which the fuel purchase was made.*

191 § 58.1-2111. Refund of tax on motor fuel.

192 A. A refund shall be granted in accordance with the provisions of § 58.1-2112 to any person who
193 establishes to the satisfaction of the Commissioner that he has paid the tax levied pursuant to this
194 chapter and such tax was paid upon the single purchase of five or more gallons of any motor fuel
195 utilized for any of the following purposes:

196 1. Operating or propelling commercial boats and ships, stationary gas engines, or pumping or mixing
197 equipment on highway vehicles if the motor fuel used to operate such equipment is stored in an
198 auxiliary tank separate from the motor fuel tank used to propel the highway vehicle, and the highway
199 vehicle is mechanically incapable of self-propulsion while motor fuel is being used from the auxiliary
200 tank;

201 2. Operating or propelling tractors used for agricultural purposes;

202 3. Operating or propelling buses owned and operated by a county or the school board thereof while
203 being used to transport children to and from public schools;

204 4. Operating or propelling buses owned or solely used by a private nonprofit nonsectarian school
205 while being used to transport children to and from such school or from such school to and from
206 educational or athletic activities. The total refunds allowed to any applicant under this subdivision with
207 respect to all motor fuel which is subject to the tax under this chapter shall not, in any fiscal year,
208 exceed the sum of \$2,000;

209 5. Operating or propelling the equipment of volunteer fire-fighting companies and of volunteer rescue
210 squads within the Commonwealth actually and necessarily used for fire-fighting or rescue purposes;

211 6. Operating or propelling motor equipment belonging to counties, cities and towns if actually and
212 exclusively used in public activities;

213 7. Operating or propelling licensed or unlicensed highway vehicles and other equipment used
214 exclusively for agricultural or horticultural purposes on lands owned or leased by the owner or lessee of
215 such vehicle and not operated on or over any public highway for any purpose other than for the purpose
216 of moving it in the manner and for the purposes hereinbefore authorized. If such highway vehicle has
217 been licensed under the provisions of Chapter 6 (§ 46.2-600 et seq.) of Title 46.2, no refund shall be
218 granted until the license tags furnished for the vehicle have been delivered to the clerk of the circuit
219 court in which the owner or lessee of such vehicle resides or to the nearest office issuing such licenses.
220 The clerk or agent of such office shall issue a receipt for the tags and shall be entitled to a fee of
221 twenty-five cents. The owner or lessee of such highway vehicle shall be entitled to a fuel tax refund as
222 above provided on fuel used in the operation of such vehicle for such time as the tags are left with the
223 clerk or agent. The owner or lessee may surrender the receipt to the clerk or agent at any time, who
224 shall forthwith return the tags and notify the Commissioner;

225 8. Spraying purposes or for cleaning, dyeing or other commercial use, except in highway vehicles;

226 9. Operating and propelling highway vehicles used solely for racing other highway vehicles on a race
227 track;

228 10. Operation of a farm by a resident of the Commonwealth, such farm being located on any island
229 outside the Commonwealth but within one mile of its boundaries;

230 11. Any private, nonprofit area agency on aging, designated by the Department for the Aging,
231 providing transportation services to citizens in highway vehicles owned, leased, operated or under
232 contract by such area agency; and

233 12. Operating or propelling highway vehicles owned by a nonprofit organization which provides
234 specialized transportation to various locations for elderly or handicapped individuals to secure essential
235 services and to participate in community life according to the individual's respective interests and
236 abilities.

237 B. A refund shall be granted in accordance with § 58.1-2112 of any tax paid pursuant to this chapter
238 upon motor fuel:

239 1. Purchased by a person, firm or corporation and subsequently transported and delivered by such
240 person, firm or corporation to another state, district or country for sale or use without the
241 Commonwealth;

242 2. Sold by a dealer in the Commonwealth to any corporation, partnership or other entity performing
243 transportation under contract or lease with any transportation district created under the Transportation
244 District Act of 1964 (§ 15.1-1342 et seq.) for use in a highway vehicle which is controlled by a

245 transportation district and used in providing transit service by the transportation district by contract or
 246 lease. The refund provided for in this paragraph shall be paid to the corporation, partnership or other
 247 entity performing such transportation;

248 3. Transferred to a duly licensed dealer for bulk storage in the Commonwealth by tank car, barge,
 249 pipeline or transport truck from a point within the Commonwealth by another duly licensed dealer who
 250 has paid or assumed the payment of the tax. No dealer who is reporting the tax on a sales basis with
 251 stock loss shown as a nontaxable item shall be eligible for such a refund, nor shall any refund be paid
 252 on any fuel which is subsequently sold tax exempt or exported from the Commonwealth as subject to
 253 export refund under subdivision B 1 of this section; or

254 4. Proven to be lost by accident, except through personal negligence or theft.

255 C. Any county or city school board or any private, nonprofit, nonsectarian school contracting with a
 256 private carrier to transport children to and from public schools or any private, nonprofit, nonsectarian
 257 school shall be refunded the tax imposed by this chapter on such carrier on fuel so used. Such refund
 258 shall be paid pursuant to § 58.1-2112.

259 D. On any island in this Commonwealth on which no highway vehicle is operated, the refund
 260 provided for by this section may be made, pursuant to § 58.1-2112, to the merchant selling such motor
 261 fuel to the consumer.

262 *E. Refunds shall be issued by the Commissioner when he determines that a Virginia licensee's*
 263 *tax-paid purchases from a conduit exceeds their taxable distribution in Virginia. No refund shall be*
 264 *granted by the Commissioner unless the Department has deposited the licensee's tax payment for the tax*
 265 *period that immediately precedes the request for a refund and that payment has cleared bank*
 266 *processing. Refunds shall be reduced or denied by the Commissioner if the licensee has outstanding*
 267 *taxes, penalties or interest due the Department.*

268 § 58.1-2119. Reports; payment of tax.

269 A. On or before the last day of each calendar month, each supplier of liquid fuel and each aviation
 270 consumer shall render to the Commissioner a statement, on forms prepared and furnished by the
 271 Commissioner, which shall show: (i) the quantity of diesel fuel on hand on the first and last days of the
 272 preceding calendar month; (ii) the quantity received during the month; and (iii) the quantity used or sold
 273 to resellers or bulk users.

274 Each supplier and aviation consumer of diesel fuels which are not liquid shall render to the
 275 Commissioner a statement on forms prepared and furnished by the Commissioner, which shall show
 276 reports of inventories as the Commissioner shall by regulation require, and shall also show the quantity
 277 of diesel fuel used or sold for highway or aviation use during the preceding calendar month. The gallons
 278 of diesel fuel used or gallons sold which are not liquid shall be the actual measured gallons. However,
 279 diesel fuel used in vehicles which are equipped with a bulk tank for delivery of fuel and which have no
 280 separate fuel tank for the propulsion of the vehicle, may be reported on the basis of mileage operated
 281 converted to gallons by using a ratio of miles to gallons which shall be furnished by the Commissioner.

282 B. At the time of rendering such report the supplier and aviation consumer shall pay to the
 283 Commissioner the tax herein levied during the preceding calendar month.

284 *C. The Commissioner shall grant a tax deferral to a Virginia licensee for Virginia fuels taxes paid to*
 285 *a conduit when he is satisfied that the tax has been paid to the conduit authorized in and licensed by*
 286 *the jurisdiction in which the fuel purchase was made.*

287 § 58.1-2122. Refund of tax on fuels.

288 Any person other than a person to whom § 58.1-2124 applies, who pays the tax at the rate of sixteen
 289 cents per gallon on the purchase of any fuel in quantities of five gallons or more at any one time shall
 290 be entitled to a refund in the amount of the tax paid if:

291 1. Such fuel is used (i) for purposes other than to propel highway vehicles, (ii) by buses owned or
 292 solely used by a private, nonprofit, nonsectarian school while being used to transport children to and
 293 from such school or from such school to and from educational or athletic activities, or (iii) by any
 294 private, nonprofit area agency on aging, designated by the Department for the Aging, providing
 295 transportation services to citizens in vehicles owned, leased, operated or under contract by such area
 296 agency;

297 2. Such fuel has been lost by accident, except through personal negligence or theft;

298 3. Such fuel was used by any county or city school board or any private, nonprofit nonsectarian
 299 school contracting with a private carrier to transport children to and from public schools or any private
 300 schools or any private nonsectarian school; or

301 4. Such fuel was (i) sold to any corporation, partnership or other entity performing transportation
 302 under contract or lease with any transportation district and (ii) used in a highway vehicle controlled by a
 303 transportation district created under the Transportation District Act of 1964, which highway vehicle is
 304 used in providing transit service by the transportation district by contract or lease. The refund provided
 305 for in this paragraph shall be paid to the corporation, partnership or other entity performing such

306 transportation.

307 The total refunds allowed to any one applicant in all cases pursuant to clause (ii) of subdivision 1 of
308 this section with respect to fuel which is subject to the tax imposed by this chapter shall not exceed the
309 sum of \$2,000 in any fiscal year.

310 Application for refund shall show the purpose for which the fuel was used, and shall be accompanied
311 by the invoice covering the sale of the fuel to such person. In the event an assessment is rendered for
312 failure to report and pay any tax imposed by § 58.1-2116 and such fuel has been used for nonhighway
313 purposes by the consumer, application for refund may be filed with the Commissioner by the consumer
314 within twelve months from the date such assessment is paid and shall be accompanied by invoices
315 covering the sale of the fuel and the billing of the tax to such person.

316 *[5. The Commissioner shall grant a tax deferral to a Virginia licensee for Virginia fuels taxes paid*
317 *to a conduit when he is satisfied that the tax has been paid to the conduit authorized in and licensed by*
318 *the jurisdiction in which the fuel purchase was made.]*

319 *[6. 5.] Refunds shall be issued by the Commissioner when he determines that a Virginia licensee's*
320 *tax-paid purchases from a conduit exceeds their taxable distribution in Virginia. No refund shall be*
321 *granted by the Commissioner unless the Department has deposited the licensee's tax payment for the tax*
322 *period that immediately precedes the request for a refund and that payment has cleared bank*
323 *processing. Refunds shall be reduced or denied by the Commissioner if the licensee has outstanding*
324 *taxes, penalties or interest due the Department.*

325 § 58.1-2128. Time for filing and payment.

326 Any report and payment of the fuel tax shall be deemed timely filed if received by the
327 Commissioner by midnight of the fifth day of the second month succeeding the month for which the
328 report and payment are due. Should the fifth day fall on a Saturday, Sunday, or legal holiday, the report
329 or payment shall be deemed timely filed if received by midnight of the next day the Department is open
330 for business. Any report or payment received in an envelope bearing a postmark showing that it was
331 mailed on or before midnight of the last day of the month succeeding the month for which the tax is
332 due shall be deemed timely filed.

333 However, the report or payment of the tax for May shall not be deemed timely filed unless it is
334 received by the Commissioner by the last business day the Department is open for business in June or
335 received by mail in an envelope bearing a postmark showing that it was mailed on or before midnight
336 of June 25.

337 A postmark shall mean the official cancellation mark of the United States Postal Service or other
338 postal or delivery service.

339 *Conduits licensed in Virginia who collect Virginia fuels taxes outside of this state must remit the tax*
340 *as specified in this section and are liable for the payment thereof to the Department of Motor Vehicles.*
341 *Any late payments of collected Virginia fuels taxes will be subject to penalties and interest pursuant to*
342 *§ 58.1-2144.*

343 **2. That an emergency exists and this act is in force from its passage.**