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SENATE BILL NO. 622

Offered January 22, 1996

A BILL to amend and reenact § 33.1-268 of the Code of Virginia and to amend the Code of Virginia by adding in Chapter 38 of Title 58.1 an article numbered 10, consisting of sections numbered 58.1-3851 through 58.1-3857, relating to a local tax on motor fuel.

Patron—Waddell

Referred to the Committee on Finance

Be it enacted by the General Assembly of Virginia:

1. That § 33.1-268 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding in Chapter 38 of Title 58.1 an article numbered 10, consisting of sections numbered 58.1-3851 through 58.1-3857, as follows:

§ 33.1-268. Definitions.

As used in this article, the following words and terms shall have the following meanings:

(1) The word "Board" means the Commonwealth Transportation Board, or if the Commonwealth Transportation Board is abolished, any board, commission or officer succeeding to the principal functions thereof or upon whom the powers given by this article to the Board shall be given by law.

(2) The word "project" or "projects" means any one or more of the following:

(a) York River Bridges, extending from a point within the Town of Yorktown in York County, or within York County across the York River to Gloucester Point or some point in Gloucester County.

(b) Rappahannock River Bridge, extending from Greys Point, or its vicinity, in Middlesex County, across the Rappahannock River to a point in the vicinity of White Stone, in Lancaster County, or at some other feasible point in the general vicinity of the two respective points.

(c), (d) [Reserved.]

(e) James River Bridge, from a point at or near Jamestown, in James City County, across the James River to a point in Surry County.

(f), (g) [Reserved.]

(h) James River, Chuckatuck and Nansemond River Bridges, together with necessary connecting roads, in the Cities of Newport News and Suffolk and the County of Isle of Wight.

(i) [Reserved.]

(j) Hampton Roads Bridge, Tunnel, or Bridge and Tunnel System, extending from a point or points in the Cities of Newport News and Hampton on the northwest shore of Hampton Roads across Hampton Roads to a point or points in the City of Norfolk or Suffolk on the southeast shore of Hampton Roads.

(k) The Norfolk-Virginia Beach Highway, extending from a point in the vicinity of the intersection of Interstate Route 64 and Primary Route 58 at Norfolk to some feasible point between London Bridge and Primary Route 60.

(l) The Henrico-James River Bridge, extending from a point on the eastern shore of the James River in Henrico County to a point on the western shore, between Falling Creek and Bells Road interchanges of the Richmond-Petersburg Turnpike; however, the project shall be deemed to include all property, rights, easements and franchises relating to any of the foregoing projects and deemed necessary or convenient for the operation thereof and to include approaches thereto.

(m) The limited access highway between the Patrick Henry Airport area and the Newport News downtown area which generally runs parallel to tracks of the Chesapeake and Ohio Railroad.

(n) Dulles Access Road outer roadways, extending from a point on Route 7 in Loudoun County in an easterly direction to a point east of Route 123 on the Dulles Access Road in Fairfax County. These roadways are to be two or three lanes in each direction constructed adjacent to, and parallel to or extending west from, the Dulles Access Road.

(o), (p) [Repealed.]

(q) Subject to the limitations and approvals of § 33.1-279.1, any other highway for a primary highway transportation improvement district or transportation service district which the Board has agreed to finance under a contract with any such district or any other alternative mechanism for generation of local revenues for specific funding of a project satisfactory to the Commonwealth Transportation Board, the financing for which is to be secured by Transportation Trust Fund revenues under any appropriation made by the General Assembly for that purpose and payable first from revenues received under such contract or other local funding source, second, to the extent required, from funds appropriated and allocated, pursuant to the highway allocation formula as provided by law, to the highway construction district in which the project is located or to the county or counties in which the project is located and

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60 third, to the extent required from other legally available revenues of the Trust Fund and from any other
61 available source of funds.

62 (r) U.S. 58 Corridor Development Program projects as defined in §§ 33.1-221.1:2 and 58.1-815.

63 (s) The Northern Virginia Transportation District Program as defined in § 33.1-221.1:3.

64 (t) Any program for highways or mass transit or transportation facilities, endorsed by the local
65 jurisdiction or jurisdictions affected, which agree that certain distributions of state recordation taxes *or*
66 *certain distributions of local motor fuel taxes pursuant to Article 10 (§ 58.1-3851 et seq.) of Chapter 38*
67 *of Title 58.1, or both*, will be dedicated and used for the payment of any bonds or other obligations,
68 including interest thereon, the proceeds of which were used to pay the cost of the program. Any such
69 program shall be referred to as a "Transportation Improvement Program."

70 (3) The word "undertaking" means all of the projects authorized to be acquired or constructed under
71 this article.

72 (4) The word "improvements" means such repairs, replacements, additions and betterments of and to
73 a project acquired by purchase or by condemnation as are deemed necessary to place it in a safe and
74 efficient condition for the use of the public, if such repairs, replacements, additions and betterments are
75 ordered prior to the sale of any bonds for the acquisition of such project.

76 (5) The term "cost of project" as applied to a project to be acquired by purchase or by
77 condemnation, includes the purchase price or the amount of the award, cost of improvements, financing
78 charges, interest during any period of disuse before completion of improvements, cost of traffic
79 estimates and of engineering and legal expenses, plans, specifications and surveys, estimates of cost and
80 of revenues, other expenses necessary or incident to determining the feasibility or practicability of the
81 enterprises, administrative expenses and such other expenses as may be necessary or incident to the
82 financing herein authorized and the acquisition of the project and the placing of the project in operation.

83 (6) The term "cost of project" as applied to a project to be constructed, embraces the cost of
84 construction, the cost of all lands, properties, rights, easements and franchises acquired which are
85 deemed necessary for such construction, the cost of acquiring by purchase or condemnation any ferry
86 which is deemed by the Board to be competitive with any bridge to be constructed, the cost of all
87 machinery and equipment, financing charges, interest prior to and during construction and for one year
88 after completion of construction, cost of traffic estimates and of engineering data, engineering and legal
89 expenses, cost of plans, specifications and surveys, estimates of cost and of revenues, other expenses
90 necessary or incident to determining the feasibility or practicability of the enterprise, administrative
91 expense and such other expenses as may be necessary or incident to the financing herein authorized, the
92 construction of the project, the placing of the project in operation and the condemnation of property
93 necessary for such construction and operation.

94 (7) The word "owner" includes all individuals, incorporated companies, copartnerships, societies or
95 associations having any title or interest in any property rights, easements or franchises authorized to be
96 acquired by this article.

97 (8) [Repealed.]

98 (9) The words "revenue" and "revenues" include tolls and any other moneys received or pledged by
99 the Board pursuant to this article, including, without limitation, legally available Trust Fund revenues.

100 (10) The terms "toll project" and "toll projects" mean projects financed in whole or in part through
101 the issuance of revenue bonds which are secured by toll revenues generated by such project or projects.

102 Article 10.

103 Local Motor Fuel Tax.

104 § 58.1-3851. Definitions.

105 As used in this article:

106 "Eligible jurisdiction" means any city, county or town within the Northern Virginia Transportation
107 Construction District of the Virginia Department of Transportation.

108 "Motor fuel" means gasoline and diesel fuel, but does not include fuels sold for aviation purposes.

109 "Transportation purposes" means the construction, administration, operation, improvement,
110 maintenance, and financing of transportation facilities.

111 "Transportation facilities" shall include all transportation-related facilities including, but not limited
112 to, all highway systems and public transportation or mass transit systems and equipment.

113 § 58.1-3852. Levy of local motor fuel tax.

114 A. If approved by a referendum as provided in § 58.1-3853, any eligible jurisdiction shall levy a tax
115 at the rate of five cents per gallon on all motor fuel sold within the eligible jurisdiction. Persons selling
116 motor fuel in eligible jurisdictions wherein a local motor fuel tax is levied shall collect and remit the
117 tax as provided by ordinance. Any person who collects the local motor fuel tax shall be liable for the
118 payment thereof to the eligible jurisdiction.

119 B. Any eligible jurisdiction levying a local motor fuel tax requiring persons selling motor fuel at
120 retail to collect, account for and remit to such locality a local motor fuel tax may allow such persons a
121 commission for such service in the form of a deduction from the tax remitted. Such commission shall be

provided for by ordinance, which shall set the rate thereof, not to exceed five percent of the amount of tax due and accounted for. No deduction shall be allowed if the amount due was delinquent.

§ 58.1-3853. Referendum.

A. The governing body of any eligible jurisdiction shall levy a local motor fuel tax as provided in this article if approved in a referendum within the eligible jurisdiction. The referendum shall be held in accordance with § 24.1-165. The referendum may be initiated either by a resolution of the governing body of the eligible jurisdiction or on the filing of a petition signed by a number of registered voters of the eligible jurisdiction equal in number to ten percent of the number of voters registered in the eligible jurisdiction on January 1 of the year in which the petition is filed with the circuit court of such eligible jurisdiction. The clerk of the circuit court shall publish notice of the election in a newspaper of general circulation in the eligible jurisdiction once a week for three consecutive weeks prior to the election. The ballot used shall identify the specific transportation facilities to be constructed, administered, operated, improved, maintained or financed with the net proceeds of such tax within the eligible jurisdiction, provided that a transportation facility shall not be included on a ballot unless it is incorporated in the Department of Transportation's six year plan encompassing the eligible jurisdiction. The ballot used shall be printed to read as follows:

"Shall the governing body of (...name of county, city or town...) levy a local motor fuel tax at a rate of five cents per gallon of motor fuel in accordance with § 58.1-3852 of the Code of Virginia, to be used for the following transportation purposes: (...list the specific transportation facilities to be constructed, administered, operated, improved, maintained or financed with the net proceeds of such tax within the county, city or town...)?

☐ Yes

☐ No"

B. If the voters by a majority vote approve the levying of a local motor fuel tax, the tax shall be imposed within the eligible jurisdiction by the adoption of an ordinance by the governing body of the eligible jurisdiction, which ordinance shall be adopted within 90 days following the date of the referendum. The tax may be thereafter modified as any other tax the governing body is empowered to levy subject only to the limitations herein. No ordinance levying a local motor fuel tax shall be repealed unless and until (i) all debts or other obligations of the eligible jurisdiction to which such revenues are pledged or otherwise committed have been paid or provision made for payment and (ii) a subsequent referendum, conducted in the same manner as provided in subsection A, shall be held and the voters by a majority vote disapprove the continued levying of the local motor fuel tax.

§ 58.1-3854. Exclusion from professional license tax.

The amount of the tax imposed by this article and collected by a seller of motor fuel in any taxable year shall be excluded from gross receipts for purposes of any tax imposed under Chapter 37 (§ 58.1-3700 et seq.) of this title.

§ 58.1-3855. Refund of local motor fuel tax.

Anyone who purchases fuel (i) that is taxed under the provisions of § 58.1-3852 and (ii) upon which a refund is granted for motor fuels taxes paid pursuant to the provisions of Article 2 (§ 58.1-2104 et seq.) and Article 3 (§ 58.1-2115 et seq.) of Chapter 21 of this title may file a claim for a refund of taxes paid under this article within thirty days after receipt of a refund under the above chapters.

§ 58.1-3856. Disposition of tax revenues.

A. Revenues collected by any eligible jurisdiction shall be applied and expended for transportation purposes listed on the referendum implementing the levy of the local motor fuel tax, except as provided in § 58.1-3857, or as provided in § 58.1-3857.

B. If any revenues from a local motor fuel tax are applied or expended for any transportation facilities under the control and jurisdiction of any state agency, board, commission or authority, such transportation facilities shall be constructed, operated, administered, improved and maintained in accordance with laws, rules, regulations, policies and procedures governing such state agency, board, commission or authority; however, in the event these revenues, or a portion thereof, are expended for improving or constructing highways in a county which is subject to the provisions of § 33.1-75.3, such expenditures shall be undertaken in the manner prescribed in that section.

§ 58.1-3857. Transportation Facility Set-aside Fund.

A. There is hereby created in the Department of the Treasury a special nonreverting fund which shall be a part of the Transportation Trust Fund and which shall be known as the Transportation Facility Set-aside Fund ("Set-aside Fund"), consisting of local motor fuel tax revenue collected by any eligible jurisdiction which adopts an ordinance dedicating such revenues to the Set-aside Fund. Any eligible jurisdiction making such an election shall transmit a copy of its ordinance to the State Treasurer at least ninety days before transfers to the Set-aside Fund are to take effect. Following the effective date of such an ordinance, an eligible jurisdiction shall remit the revenues to the Department of the Treasury to be deposited in the Set-aside Fund. The State Treasurer is hereby authorized to

183 commingle the funds of the various eligible jurisdictions in the Set-aside Fund, subject to the
184 establishment of an accounting system which allows for the separate tracking of each eligible
185 jurisdiction's share. The election to participate in the Set-aside Fund shall be revocable by the passage
186 of an ordinance to that effect; however, if debt has been issued or other obligations incurred on the
187 local jurisdiction's behalf, the election to participate shall be irrevocable so long as such bonds, or
188 other obligations, are outstanding. A permitted revocation shall entitle the local jurisdiction to receive
189 its remaining share, plus earnings and less the Treasurer's investment charges.

190 B. The Set-aside Fund shall also include such other funds as may be appropriated by the General
191 Assembly from time to time and designated for the Set-aside Fund and all interest, dividends and
192 appreciation which may accrue thereto. Any moneys remaining in the Set-aside Fund at the end of a
193 biennium shall not revert to the general fund, but shall remain in the Set-aside Fund.

194 C. Allocations from the Set-aside Fund may be paid to any regional transportation authority or
195 commission for the purposes of paying the costs of any Transportation Improvement Program in which
196 the eligible jurisdiction elects to participate. Revenues from a local motor fuel tax deposited in the
197 Set-aside Fund may be disbursed to a regional transportation authority or commission to pay for any
198 transportation purpose which was not listed in the referendum conducted pursuant to § 58.1-3853 if the
199 transportation project serves the exclusive transportation needs of the eligible jurisdiction in which the
200 funds were raised.