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HOUSE BILL NO. 668

Offered January 10, 2018

Prefiled January 9, 2018

A BILL to amend and reenact §§ 33.2-1527, 58.1-2292, and 58.1-2295, as it is currently effective, of the Code of Virginia, relating to transportation funding in certain regions of the Commonwealth.

Patron—Kilgore

Referred to Committee on Rules

Be it enacted by the General Assembly of Virginia:

1. That §§ 33.2-1527, 58.1-2292, and 58.1-2295, as it is currently effective, of the Code of Virginia are amended and reenacted as follows:

§ 33.2-1527. Priority Transportation Fund.

A. There is hereby created in the state treasury a special nonreverting fund to be known as the Priority Transportation Fund, hereafter referred to as "the Fund." The Fund shall be established on the books of the Comptroller. Interest earned on moneys in the Fund shall remain in the Fund and be credited to it. All funds as may be designated in the appropriation act for deposit to the Fund shall be paid into the state treasury and credited to the Fund. Such funds shall include:

1. Beginning with the fiscal year ending June 30, 2000, and for fiscal years thereafter, all revenues that exceed the official forecast, pursuant to § 2.2-1503, for (i) the Highway Maintenance and Operating Fund established in § 33.2-1530 and (ii) the allocation to highway and mass transit improvement projects as set forth in § 33.2-1526, but not including any amounts that are allocated to the Commonwealth Port Fund and the Commonwealth Airport Fund under such section;

2. All revenues deposited into the Fund pursuant to § 58.1-2531;

3. All revenues deposited into the Fund pursuant to subsection E of § 58.1-2289; and

4. Any other such funds as may be transferred, allocated, or appropriated.

All moneys in the Fund shall first be used for debt service payments on bonds or obligations for which the Fund is expressly required for making debt service payments, to the extent needed. The Fund shall be considered a part of the Transportation Trust Fund. 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 enumerated in subsection B. Expenditures and disbursements from the Fund shall be made by the State Treasurer on warrants issued by the Comptroller.

B. The Board shall use the Fund to facilitate the financing of priority transportation projects throughout the Commonwealth. ~~The~~ After making all required debt service payments pursuant to subsection A, and to the extent that such funds are available, the Board shall annually allocate \$40 million from the Fund for projects located in the Salem highway construction district and \$40 million from the Fund for projects located in the Bristol highway construction district. Of the \$40 million allocated annually for the Bristol highway construction district, \$30 million shall be designated for U.S. Route 121, commonly known as the Coalfields Expressway, until such project is completed. After making such allocations, the Board may use any remaining amounts in the Fund by (i) expending amounts therein on such projects directly; (ii) payment to any authority, locality, commission, or other entity for the purpose of paying the costs thereof; or (iii) using such amounts to support, secure, or leverage financing for such projects. No expenditures from or other use of amounts in the Fund shall be considered in allocating highway maintenance and construction funds under § 33.2-358 or apportioning Transportation Trust Fund funds under § 58.1-638 but shall be in addition thereto. The Board shall use the Fund to facilitate the financing of priority transportation projects as designated by the General Assembly, provided that at the discretion of the Board funds allocated to projects within a transportation district may be allocated among projects within the same transportation district as needed to meet construction cash-flow needs.

C. Notwithstanding any other provision of this section, beginning July 1, 2007, no bonds, obligations, or other evidences of debt (the bonds) that expressly require as a source for debt service payments or for the repayment of such bonds the revenues of the Fund shall be issued or entered into, unless at the time of the issuance the revenues then in the Fund or reasonably anticipated to be deposited into the Fund pursuant to the law then in effect are by themselves sufficient to make 100 percent of the contractually required debt service payments on all such bonds, including any interest related thereto and the retirement of such bonds.

§ 58.1-2292. Definitions.

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

60 *"Alternative fuel" means the same as that term is defined in § 58.1-2201.*

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

62 "Cost price" means the same as that term is defined in § 58.1-602, and also includes all federal and
63 state excise taxes and storage tank fees paid by the distributor. "Cost price" does not include separately
64 stated federal diesel fuel excise taxes, unless the distributor fails to exclude the federal diesel excise tax
65 when collecting the tax imposed pursuant to this chapter.

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

68 "Distributor" means (i) any person engaged in the business of selling fuels in the Commonwealth
69 who brings, or causes to be brought, into the Commonwealth from outside the Commonwealth any fuels
70 for sale, or any other person engaged in the business of selling fuels in the Commonwealth; (ii) any
71 person who makes, manufactures, fabricates, processes, or stores fuels in the Commonwealth for sale in
72 the Commonwealth; or (iii) any person engaged in the business of selling fuels outside the
73 Commonwealth who ships or transports fuels to any person in the business of selling fuels in the
74 Commonwealth.

75 "Fuel" means any fuel subject to tax under Chapter 22 (§ 58.1-2200 et seq.).

76 *"Gasoline" means the same as that term is defined in § 58.1-2201.*

77 "Gross sales" means the same as that term is defined in § 58.1-602.

78 *"Liquid" means the same as that term is defined in § 58.1-2201.*

79 "Retail dealer" means any person, including a distributor, who sells fuels to a consumer or to any
80 person for any purpose other than resale.

81 "Sale" means the same as that term is defined in § 58.1-602 and also includes the distribution of
82 fuel by a distributor to itself as a retail dealer.

83 "Sales price" means the same as that term is defined in § 58.1-602 and also includes all
84 transportation and delivery charges, regardless of whether the charges are separately stated on the
85 invoice. Sales price does not include separately stated federal diesel fuel excise taxes, unless the
86 distributor fails to exclude the federal diesel excise tax when collecting the tax imposed pursuant to this
87 chapter.

88 *"Wholesale price" means the same as that term is defined in § 58.1-2201.*

89 **§ 58.1-2295. (Contingent expiration date) Levy; payment of tax.**

90 A. 1. In addition to all other taxes now imposed by law, there is hereby imposed a tax upon every
91 distributor who engages in the business of selling fuels at wholesale to retail dealers for retail sale in
92 any county or city that is a member of (i) any transportation district in which a rapid heavy rail
93 commuter mass transportation system operating on an exclusive right-of-way and a bus commuter mass
94 transportation system are owned, operated, or controlled by an agency or commission as defined in
95 § 33.2-1901 or (ii) any transportation district that is subject to subsection C of § 33.2-1915 and that is
96 contiguous to the Northern Virginia Transportation District.

97 2. In addition to all other taxes now imposed by law, there is hereby imposed a tax upon every
98 distributor who engages in the business of selling fuels at wholesale to retail dealers for retail sale in
99 any county or city that is located in a Planning District established pursuant to Chapter 42 (§ 15.2-4200
100 et seq.) of Title 15.2 that (i) as of January 1, 2013, has a population of not less than 1.5 million but
101 fewer than two million, as shown by the most recent United States Census, has not less than 1.2 million
102 but fewer than 1.7 million motor vehicles registered therein, and has a total transit ridership of not less
103 than 15 million but fewer than 50 million riders per year across all transit systems within the Planning
104 District or (ii) as shown by the most recent United States Census meets the population criteria set forth
105 in clause (i) and also meets the vehicle registration and ridership criteria set forth in clause (i). In any
106 case in which the tax is imposed pursuant to clause (ii) such tax shall be effective beginning on the July
107 1 immediately following the calendar year in which all of the criteria have been met.

108 B. ~~The 1. Beginning July 1, 2018, the tax shall be imposed on each gallon of fuel, except for diesel~~
109 ~~fuel, sold by a distributor to a retail dealer for retail sale in any such county or city described in~~
110 ~~subsection A at a rate of 2.1 percent of the sales price charged by a distributor for fuels sold to a retail~~
111 ~~dealer for retail sale in any such county or city. In any such sale to a retail dealer in which the~~
112 ~~distributor and the retail dealer are the same person, the sales price charged by the distributor shall be~~
113 ~~the cost price to the distributor of the fuel statewide average wholesale price of a gallon of unleaded~~
114 ~~regular gasoline as determined by the Commissioner pursuant to subdivision 2 a. Beginning July 1,~~
115 ~~2018, the tax shall be imposed on each gallon of diesel fuel sold by a distributor to a retail dealer for~~
116 ~~retail sale in any such county or city at a rate of 2.1 percent of the statewide average wholesale price~~
117 ~~of a gallon of diesel fuel as determined by the Commissioner pursuant to subdivision 2 b. For~~
118 ~~alternative fuels other than liquid alternative fuels, the Commissioner shall determine an equivalent tax~~
119 ~~rate based upon gasoline gallon equivalency.~~

120 2. a. In computing the average wholesale price of a gallon of unleaded regular gasoline, the

Commissioner shall use the period from December 1 through May 31 as the base period for such determination for the immediately following period beginning July 1 and ending December 31, inclusive. The period from June 1 to November 30 shall be the next base period for the immediately following period beginning January 1 and ending June 30, inclusive. If the average wholesale price of a gallon of unleaded regular gasoline computed from a base period to be used for the immediately following applied period is less than the average wholesale price used for the preceding applied period, the average wholesale price for such immediately following period shall remain at the preceding applied period's average wholesale price and shall be used for comparison with the next computed average wholesale price, until such time as the average wholesale price computed is equal to or greater than the statewide average wholesale price of a gallon of unleaded regular gasoline on February 20, 2013. After such time, the statewide average wholesale price of a gallon of unleaded regular gasoline shall be computed pursuant to subsection A of § 58.1-2217.

b. In computing the average wholesale price of a gallon of diesel fuel, the Commissioner shall use the period from December 1 through May 31 as the base period for such determination for the immediately following period beginning July 1 and ending December 31, inclusive. The period from June 1 to November 30 shall be the next base period for the immediately following period beginning January 1 and ending June 30, inclusive. If the average wholesale price of a gallon of diesel fuel computed from a base period to be used for the immediately following applied period is less than the average wholesale price used for the preceding applied period, the average wholesale price for such immediately following period shall remain at the preceding applied period's average wholesale price and shall be used for comparison with the next computed average wholesale price, until such time as the average wholesale price computed is equal to or greater than the statewide average wholesale price of a gallon of diesel fuel on February 20, 2013. After such time, the statewide average wholesale price of a gallon of diesel fuel shall be computed pursuant to subsection B of § 58.1-2217.

C. The tax levied under this section shall be imposed at the time of sale by the distributor to the retail dealer.

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 sales 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.