

20104122D

HOUSE BILL NO. 1438

Offered January 8, 2020

Prefiled January 8, 2020

A BILL to authorize the issuance of bonds, in an amount up to \$1.1 billion plus financing costs, pursuant to Article X, Section 9(c) of the Constitution of Virginia, for paying the costs of acquiring, constructing and equipping revenue-producing transportation initiatives in the Hampton Roads region; to authorize the Treasury Board, by and with the consent of the Governor, to fix the details of such bonds, to provide for the sale of such bonds, and to issue notes to borrow money in anticipation of the issuance of the bonds; to provide for the pledge of the net revenues of such capital project and the full faith, credit and taxing power of the Commonwealth for the payment of such bonds; and to provide that the interest income on such bonds and notes shall be exempt from all taxation by the Commonwealth and any political subdivision thereof.

Patron—Jones

Referred to Committee on Appropriations

Whereas, Article X, Section 9 (c) of the Constitution of Virginia provides that the General Assembly may authorize the creation of debt secured by a pledge of net revenues derived from rates, fees, or other charges and the full faith and credit of the Commonwealth of Virginia, provided that such debt is created for specific revenue-producing capital projects of institutions and agencies of the Commonwealth; and

Whereas, the facility described herein is part of the interstate transportation system and a portion of such facility will be operated as dynamically priced toll lanes under the authority of the Virginia Department of Transportation and the Commonwealth Transportation Board, which are institutions and agencies administered solely by the executive department of the Commonwealth; and

Whereas, in accordance with Article X, Section 9 (c) of the Constitution of Virginia, the Governor has certified in writing to the Auditor of Public Accounts his opinion that he anticipates the net revenues of the capital project identified below to be pledged to the payment of the principal of and the interest on such debt issued for such revenue-producing capital project will be sufficient to meet such payments as the same become due and to provide such reserves as may be required by law and that the revenue-producing capital project otherwise complies with the requirements of Article X, Section 9 (c) of the Constitution of Virginia; now, therefore,

Be it enacted by the General Assembly of Virginia:**1. §1. Title.**

This act shall be known and may be cited as the "Hampton Roads Express Lanes Bond Act of 2020."

§ 2. Authorization of bonds and bond anticipation notes.

The Treasury Board is hereby authorized, by and with the consent of the Governor, to sell and issue, pursuant to Article X, Section 9 (c) of the Constitution of Virginia, at one time or from time to time, bonds of the Commonwealth, to be designated "Commonwealth of Virginia Transportation Facilities Bonds, Series" in an aggregate principal amount not exceeding \$1.1 billion, plus amounts needed to fund issuance costs, reserve funds, capitalized interest, and other financing expenses. The Treasury Board is further hereby authorized, by and with the consent of the Governor, to borrow money in anticipation of the issuance of bonds by the issuance of bond anticipation notes (BANs), including BANs issued as commercial paper. The proceeds of such bonds and BANs, excluding amounts needed to fund issuance costs, reserve funds, and other financing expenses, shall be used exclusively for the purpose of providing funds, together with any other available funds to pay all or a portion of the costs of the Hampton Roads Express Lanes Project, which includes, collectively, (i) the construction of new electronic toll gantries, shelters, high-tech sensors, and other tolling infrastructure and the design, integration, implementation, and testing of a comprehensive electronic tolling solution for a high-occupancy toll network on Interstate 64 between approximately Jefferson Avenue in Newport News and approximately Bowers Hill in Chesapeake; and (ii) the expansion of the Hampton Roads Bridge Tunnel and additional roadway improvements in the corridor to facilitate the toll network (referred to in this act as "the authorized capital project" or "the facility").

§ 3. Application of proceeds.

The proceeds, including any premium, of bonds and BANs (except the proceeds of (i) bonds the issuance of which has been anticipated by BANs, (ii) refunding bonds, and (iii) refunding BANs), shall be deposited in a special capital outlay fund in the state treasury and, together with the investment income thereon, shall be disbursed by the State Treasurer for paying all or any part of the costs of the

INTRODUCED

HB1438

59 acquisition, construction, renovation, enlargement, improvement, and equipping of the authorized capital
60 project, including financing costs. The proceeds of (i) bonds the issuance of which has been anticipated
61 by BANs, (ii) refunding bonds, and (iii) refunding BANs shall be used to pay such BANs, refunded
62 bonds, and refunded BANs.

63 § 4. Details, sale of bonds and BANs.

64 Bonds and BANs shall be dated and may be made redeemable before their maturity or maturities at
65 such price or prices or within such price parameters, all as may be determined by the Treasury Board,
66 by and with the consent of the Governor. Bonds and BANs shall be in such form, shall bear interest at
67 such rate or rates, either at fixed rates or at rates established by formula or other method, and may
68 contain such other provisions, all as determined by the Treasury Board or, when authorized by the
69 Treasury Board, the State Treasurer. The principal of and premium, if any, and the interest on bonds
70 and BANs shall be payable in lawful money of the United States of America. Bonds and BANs may be
71 certificated or uncertificated as determined by the Treasury Board. The Treasury Board may contract
72 for services of such registrars, transfer agents, or other authenticating agents as it deems appropriate to
73 maintain a record of the persons entitled to the bonds and BANs. Bonds and BANs issued in certificated
74 form may be issued under a system of book entry for recording the ownership and transfer of ownership
75 of rights to receive payments on the bonds and BANs. The Treasury Board shall fix the authorized
76 denomination or denominations of the bonds and the place or places of payment of certificated bonds
77 and BANs, which may be at the Office of the State Treasurer or at any bank or trust company within or
78 without the Commonwealth. Bonds shall mature at such time or times not exceeding 39 years from their
79 date or dates, and BANs shall mature at such time or times not exceeding five years from their date or
80 dates.

81 The Treasury Board may sell bonds and BANs in such manner, by competitive bidding, negotiated
82 sale, or private placement with private lenders or governmental agencies, and for such price or within
83 such price parameters as it may determine, by and with the consent of the Governor, to be in the best
84 interest of the Commonwealth.

85 In the discretion of the Treasury Board, bonds and BANs may be issued at one time or from time to
86 time and may be sold and issued at the same time with other general obligation bonds and BANs,
87 respectively, of the Commonwealth authorized pursuant to Article X, Section 9 (a) (3), (b), and (c) of
88 the Constitution of Virginia, as separate issues or as a combined issue, designated "Commonwealth of
89 Virginia General Obligation Bonds/Bond Anticipation Notes, Series"

90 § 5. Execution of bonds and BANs.

91 Certificated bonds and BANs shall be signed on behalf of the Commonwealth by the Governor and
92 by the State Treasurer, or shall bear their facsimile signatures, and shall bear the lesser seal of the
93 Commonwealth or a facsimile thereof. If the bonds or BANs bear the facsimile signature of the State
94 Treasurer, they shall be signed by such administrative assistant as the State Treasurer shall determine
95 or by such registrar or paying agent as may be designated to sign them by the Treasury Board. If any
96 officer whose signature or facsimile signature appears on any bonds or BANs ceases to be such officer
97 before delivery, such signature or facsimile signature shall nevertheless be valid and sufficient for all
98 purposes the same as if such officer had remained in office until such delivery, and any bond or BAN
99 may bear the facsimile signature of, or may be signed by, such persons as at the actual time of
100 execution are the proper officers to sign such bond or BAN, although at the date of such bond or BAN,
101 such persons may not have been such officers.

102 § 6. Sources for payment of expenses.

103 All expenses incurred under this act shall be paid from the proceeds of bonds or BANs, from
104 payments made by the institution or agency for which the authorized capital project was authorized in
105 § 2, or from any other available funds as the Treasury Board shall determine.

106 § 7. Revenues.

107 The Commonwealth Transportation Board is hereby authorized (i) to fix, revise, charge, and collect
108 tolls, rates, fees, and charges for or in connection with the use, occupancy, and services of the toll
109 facility in amounts sufficient to provide for the operating costs of the facility and to provide for the
110 payment of the principal and the premium, if any, and interest on the bonds and the debt service and
111 sinking funds and reserves established as provided in this act and to provide for the payment of the
112 capital and operating costs associated with the tolling of the additional transportation improvements
113 described in § 15 and (ii) to pledge to the bonds or a portion of the bonds or BANs issued for the
114 facility the net revenues resulting from such tolls, rates, fees, and charges and remaining after payment
115 of the expenses of operating the facility. The Treasury Board and the Commonwealth Transportation
116 Board are further authorized to create debt service and sinking funds for the payments of the principal
117 of, premium, if any, and interest on the bonds and other reserves required by any of the purchasers.

118 § 8. Investments and contracts.

119 A. Pending the application of the proceeds of the bonds or BANs (including refunding bonds and
120 BANs) to the purpose for which they have been authorized and the application of funds set aside for the

purpose to the payment of bonds or BANs, they may be invested by the State Treasurer in securities that are legal investments under the laws of the Commonwealth for public funds and sinking funds, as the case may be. Whenever the State Treasurer receives interest from the investment of the proceeds of bonds or any BANs, such interest shall become a part of the principal of the bonds or any BANs and shall be used in the same manner as required for principal of the bonds or BANs.

B. The Commonwealth may enter into any contract or other arrangement that is determined to be necessary or appropriate to place the obligation or investment of the Commonwealth, as represented by bonds, BANs, or investments, in whole or in part, on the interest rate, cash flow, or other basis desired by the Commonwealth. Such contract or other arrangement may include contracts commonly known as interest rate swap agreements and futures or contracts providing for payments based on levels of, or changes in, interest rates. These contracts or arrangements may be entered into by the Commonwealth in connection with, or incidental to, entering into, or maintaining any (i) agreement which secures bonds or BANs or (ii) investment, or contract providing for investment, otherwise authorized by law. These contracts and arrangements may contain such payment, security, default, remedy, and other terms and conditions as determined by the Commonwealth, after giving due consideration to the creditworthiness of the counterparty or other obligated party, including any rating by any nationally recognized rating agency, and any other criteria as may be appropriate. The determinations referred to in this paragraph may be made by the Treasury Board or any public funds manager with professional investment capabilities duly authorized by the Treasury Board to make such determinations.

C. Any money set aside and pledged to secure payments of bonds, BANs, or any of the contracts entered into pursuant to this section may be invested in accordance with paragraph A and may be pledged to and used to service any of the contracts or other arrangements entered into pursuant to paragraph B.

§ 9. Security for bonds and BANs.

The net revenues of the capital projects set forth above and the full faith and credit of the Commonwealth are hereby irrevocably pledged for the payment of the principal of and the interest on bonds and BANs (unless the Treasury Board, by and with the consent of the Governor, shall provide otherwise) issued under this act. The proceeds of (i) bonds the issuance of which has been anticipated by BANs, (ii) refunding bonds, and (iii) refunding BANs are hereby irrevocably pledged for the payment of principal of and interest and any premium on the BANs or bonds to be paid or redeemed thereby. In the event the net revenues pledged to the payment of the bonds or BANs are insufficient in any fiscal year for the timely payment of the principal of, premium, if any, and interest on the bonds or BANs, where the full faith and credit of the Commonwealth have been pledged, the General Assembly shall appropriate a sum sufficient therefor or the Governor shall direct payment therefor from the general fund revenues of the Commonwealth.

§ 10. Exemption of interest from tax.

The bonds and BANs issued under the provisions of this act, their transfer and the income therefrom, including any profit made on the sale thereof, shall at all times be free and exempt from taxation by the Commonwealth and by any county, city, or town, or other political subdivision thereof. The Treasury Board is authorized to take or refrain from taking any and all actions and to covenant to such effect, and to require the Virginia Department of Transportation and the Commonwealth Transportation Board to do and to covenant likewise, to the extent that, in the judgment of the Treasury Board, it is appropriate in order that interest on the bonds and BANs may be exempt from federal income tax. Alternatively, interest on bonds and BANs may be made subject to inclusion in gross income of the holders thereof for federal income tax purposes.

§ 11. Refunding bonds and BANs.

The Treasury Board is authorized, by and with the consent of the Governor, to sell and issue, at one time or from time to time, refunding bonds and BANs of the Commonwealth and to refund any or all of the bonds and BANs, respectively, issued under this act or otherwise authorized pursuant to Article X, Section 9 (c) of the Constitution of Virginia. Refunding bonds and BANs may be issued in a principal amount up to the amount necessary to pay at maturity or redeem the bonds and BANs to be refunded and pay all issuance costs and other financing expenses of the refunding. Such refunding bonds and BANs may be issued whether or not the obligations to be refunded are then subject to redemption.

§ 12. Defeasance.

Any bond or BAN for which cash or direct obligations of the United States of America shall have been set aside in escrow with the State Treasurer or a bank or trust company, within or without the Commonwealth, shall be deemed no longer outstanding under the applicable authorizing instrument, this act, and Article X, Section 9 (c) of the Constitution of Virginia.

§ 13. Legal investments.

All obligations issued under the provisions of this act are hereby made securities in which all public officers and bodies of the Commonwealth and political subdivisions thereof, insurance companies and

182 associations, savings banks and savings institutions, including savings and loan associations, trust
183 companies, beneficial and benevolent associations, administrators, guardians, executors, trustees, and
184 other fiduciaries in the Commonwealth may properly and legally invest funds under their control.

185 § 14. Severability.

186 The provisions of this act or the application thereof to any person or circumstance that are held
187 invalid shall not affect the validity of other provisions or applications of this act which can be given
188 effect without the invalid provisions or applications.

189 § 15. Additional net revenues.

190 Notwithstanding any other provisions of this act, the Commonwealth Transportation Board may fix,
191 revise, charge, and collect the tolls, rates, fees, and charges described in § 7 to produce sufficient
192 additional net revenues to provide for additional transportation improvements, beyond those
193 improvements described in § 1, prior to provision being made for the retirement of all bonds and BANs
194 issued under the provisions of this act.

195 § 16. Appropriation.

196 The proceeds of the bonds are hereby appropriated for disbursement from the state treasury pursuant
197 to Article X, Section 7 of the Constitution of Virginia and § 2.2-1819 of the Code of Virginia. The
198 general conditions and general provisions of the general appropriation act enacted pursuant to Chapter
199 15 (§ 2.2-1500 et seq.) of Title 2.2 of the Code of Virginia, as such general appropriation act may be
200 amended from time to time, and all of the terms and conditions contained therein shall apply to the
201 authorized capital project described in this act.