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# HOUSE BILL NO. 2118

Offered January 13, 2021
Prefiled January 12, 2021

*A BILL to amend and reenact §§ 58.1-2217, 58.1-2226, 58.1-2259, and 58.1-2289 of the Code of Virginia and to amend the Code of Virginia by adding in Article 1 of Chapter 13 of Title 10.1 a section numbered 10.1-1322.5, relating to Electric Vehicle Grant Fund and Program; creation; report.*

Patrons—Keam, Bagby, Mugler, Sullivan, Ayala, Gooditis, Helmer, Kory, Murphy and Plum; Senator: Surovell

Referred to Committee on Finance

**Be it enacted by the General Assembly of Virginia:**

**1. That §§ 58.1-2217, 58.1-2226, 58.1-2259, and 58.1-2289 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Article 1 of Chapter 13 of Title 10.1 a section numbered 10.1-1322.5 as follows:**

***§ 10.1-1322.5. Electric Vehicle Grant Fund and Program; report.***

*A. As used in this section:*

*"Department" means the Department of Environmental Quality.*

*"Electric school bus" means a school bus that is propelled to a significant extent by an electric motor that draws electricity from a battery and is capable of being recharged from an external source of electricity.*

*"Fund" means the Electric Vehicle Grant Fund established in subsection B.*

*"Program" means the Electric Vehicle Grant Program established pursuant to subsection C.*

*"School bus" has the same meaning as the term "schoolbus" as defined in 49 U.S.C. § 30125.*

*"Scrap" means to crush, shred, or otherwise disassemble or make inoperable. "Scrapping" does not include selling, leasing, exchanging, or otherwise disposing for use in another motor vehicle in any location.*

*B. There is hereby created in the state treasury a special nonreverting fund to be known as the Electric Vehicle Grant Fund. The Fund shall be established on the books of the Comptroller. All funds dedicated pursuant to subsection E of § 58.1-2289, all funds appropriated for such purpose, and any gifts, donations, grants, bequests, and other funds received on its behalf shall be paid into the state treasury and credited to the Fund. Interest earned on moneys in the Fund shall remain in the Fund and be credited to it. 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 of administering and providing grants on a competitive basis pursuant to the Electric Vehicle Grant Program established pursuant to subsection C and other programs to electrify vehicles and reduce vehicular pollution. Expenditures and disbursements from the Fund shall be made by the State Treasurer on warrants issued by the Comptroller upon written request signed by the Director.*

*C. The Department shall, beginning January 1, 2022, establish the Electric Vehicle Grant Program for the purpose of (i) awarding grants from the Fund on a competitive basis to school boards for (a) assisting with the complete replacement of existing diesel school buses with electric school buses no later than 2031 by providing grant funds to cover the cost differential between a diesel school bus and an electric school bus, (b) the implementation of recharging infrastructure or other infrastructure needed to charge or maintain such electric school buses, and (c) workforce development and training to support the maintenance, charging, and operations of such electric school buses and (ii) developing an education outreach program pursuant to subsection O.*

*D. The Department shall develop rules that give highest priority to applications from school boards that:*

*1. Serve the most students who live in the areas with the highest asthma rates and lowest measured air quality; or*

*2. Will complement the use of grant funds through other activities that will (i) enable broader deployment of electric vehicles, such as securing additional sources of funding through public-private partnerships with utilities as part of a transparent open process that allows for competition, grants from other entities, or the issuance of bonds, or (ii) achieve further reductions in emissions, such as installing solar panels to power electric school buses purchased with grant funds.*

*E. In awarding grants, the Department shall, to the greatest extent practicable, ensure a broad*

*geographic distribution of grant awards.*

*F. The Department's rules shall ensure that each grant recipient shall, in collaboration with its transportation employees:*

*1. Replace diesel school buses with electric school buses at a rate that is at least as fast as the rate at which buses would normally be replaced in order to replace the entire diesel school bus fleet no later than 2031, giving priority to buses manufactured by an entity that creates jobs in the Commonwealth;*

*2. No later than one year after using grant funds to purchase an electric school bus, scrap the diesel engine of the school bus being replaced, unless the Department grants a waiver in accordance with 49 U.S.C. § 5323(j)(2); and*

*3. Provide current employees with training to effectively operate, maintain, or otherwise adapt to new technologies relating to electric school buses.*

*G. No grant recipient shall, as a result of receiving a grant, lay off, transfer, demote, reduce the salary or benefits of, or worsen the working conditions of any current employee.*

*H. Any grant recipient may retain any funds or benefits received from scrapping a diesel engine, transferring or repurposing a diesel school bus as authorized by a waiver granted by the Department in accordance with 49 U.S.C. § 5323(j)(2), or reselling or reusing other parts of a diesel school bus that is replaced using grant funds.*

*I. The Department shall develop guidance requiring that each electric school bus purchased with grant funds be operated as part of the school bus fleet for at least five years; be maintained, operated, and charged according to manufacturer recommendations and any applicable statutory and regulatory requirements; and comply with the requirements described in 49 U.S.C. § 5323(j).*

*J. No electric school bus purchased with grant funds shall contain a power unit or other technology that creates air pollution within the school bus, such as an unvented diesel passenger heater.*

*K. Any electric school bus purchased with grant funds may utilize a vehicle-to-grid battery system, provided that:*

*1. The school board or appropriate school board employee develops and implements a plan for bus parking locations and maximum battery drainage; and*

*2. The school board oversees any vehicle-to-grid usage so long as the primary purpose of the bus is to move children and that earnings from such sale of electricity benefits the school transportation electrification program.*

*L. The Department may grant a waiver in accordance with 49 U.S.C. § 5323(j)(2)(C) for an electric school bus purchased with grant funds for which the cost of components and subcomponents produced in the United States (i) for each fiscal year 2021 through 2025 is more than 60 percent of the cost of all components of such school bus and (ii) for fiscal year 2026 and each fiscal year thereafter is more than 70 percent of the cost of all components of such school bus.*

*M. The Department shall make available to the public on its website information about applying to the Program and the success of the Program.*

*N. No later than January 31 of each year, the Department shall submit to the General Assembly and make available to the public on its website a report that includes (i) a description of the grant applications received under the Program, including a summary of the elements of successful grant applications; (ii) a description of the grants awarded under the Program, including a summary of the information described in subsection M; (iii) a description of the effect of the receipt of grants on students, schools, local communities, local industry, local workforce, local air pollution, and greenhouse gas emissions; and (iv) any other information that the Department deems necessary to assist the General Assembly in understanding the implementation, outcomes, and effectiveness of the Program.*

*O. The Department shall, in conjunction with national school bus transportation associations, educators, school bus drivers, and any other stakeholder that it deems appropriate, develop education outreach that promotes and explains the Program and the benefits of participating in the Program and any other information needed to inform school boards of the process for applying for grants.*

*P. The Department may receive funds for the direct administration of the Program.*

**§ 58.1-2217. Taxes levied; rate.**

A. (For contingent expiration date, see Acts 2020, cc. 1230 and 1275) There is hereby levied an excise tax on gasoline and gasohol as follows:

1. On and after July 1, 2020, but before July 1, 2021, the rate shall be 21.2 cents per gallon;

2. On and after July 1, 2021, but before July 1, 2022, the rate shall be 26.2 cents per gallon; and

3. On and after July 1, 2022, the 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.

A. (For contingent effective date, see Acts 2020, cc. 1230 and 1275) There is hereby levied an excise tax on gasoline and gasohol at a rate of 16.2 cents per gallon.

B. (For contingent expiration date, see Acts 2020, cc. 1230 and 1275) There is hereby levied an

excise tax on diesel fuel as follows:

1. On and after July 1, 2020, but before July 1, 2021, the rate shall be 20.2 cents per gallon;

2. On and after July 1, 2021, but before July 1, 2022, the rate shall be 27 cents per gallon; and

3. On and after July 1, 2022, the 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.

B. (For contingent effective date, see Acts 2020, cc. 1230 and 1275) There is hereby levied an excise tax on diesel fuel at a rate of 20.2 cents per gallon.

C. Blended fuel that contains gasoline shall be taxed at the rate levied on gasoline. Blended fuel that contains diesel fuel shall be taxed at the rate levied on diesel fuel.

D. There is hereby levied a tax at the rate of five cents per gallon on aviation gasoline. Any person, whether or not licensed under this chapter, who uses, acquires for use, sells or delivers for use in highway vehicles any aviation gasoline shall be liable for the tax at the rate levied on gasoline and gasohol, along with any penalties and interest that may accrue.

E. There is hereby levied a tax at the rate of five cents per gallon on aviation jet fuel purchased or acquired for use by a user of aviation fuel other than an aviation consumer. There is hereby levied a tax at the rate of five cents per gallon upon the first 100,000 gallons of aviation jet fuel, excluding bonded aviation jet fuel, purchased or acquired for use by any aviation consumer in any fiscal year. There is hereby levied a tax at the rate of one-half cent per gallon on all aviation jet fuel, excluding bonded aviation jet fuel, purchased or acquired for use by an aviation consumer in excess of 100,000 gallons in any fiscal year. Any person, whether or not licensed under this chapter, who uses, acquires for use, sells or delivers for use in highway vehicles any aviation jet fuel taxable under this chapter shall be liable for the tax imposed at the rate levied on diesel fuel, along with any penalties and interest that may accrue.

F. In accordance with § 62.1-44.34:13, a storage tank fee is imposed on each gallon of gasoline, aviation gasoline, diesel fuel (including dyed diesel fuel), blended fuel, and heating oil sold and delivered or used in the Commonwealth.

*G. Notwithstanding any other provision of law to the contrary, there is hereby levied a tax at the rate of five cents per gallon on dyed diesel fuel. The tax levied pursuant to this subsection shall not be eligible for a refund except as provided in subsection F of § 58.1-2259.*

**§ 58.1-2226. Exemptions from tax.**

No tax shall be levied or collected pursuant to this chapter on:

1. Motor fuel sold and delivered to a governmental entity for the exclusive use by the governmental entity. This exemption shall not apply with respect to fuel sold or delivered to any person operating under contract with the governmental entity;

2. Motor fuel sold and delivered to a nonprofit charitable organization that is exempt from taxation under § 501(c)(3) of the Internal Revenue Code and which is organized and operated exclusively for the purpose of providing charitable, long-distance, advanced life-support, air transportation services using emergency medical services vehicles for low-income medical patients in the Commonwealth, for the exclusive use of such organization in the operation of an aircraft;

3. Bonded aviation jet fuel;

4. Dyed diesel fuel, except as provided in *subsection G of § 58.1-2217 and* subdivision A 1 of § 58.1-2225;

5. Motor fuel removed, by transport truck or another means of transfer outside the terminal transfer system, from a terminal for export, if the supplier of the motor fuel collects tax on the fuel at the rate of the motor fuel's destination state; or

6. Heating oil, as defined in § 58.1-2201.

**§ 58.1-2259. Fuel uses eligible for refund of taxes paid for motor fuels.**

A. A refund of the tax paid for the purchase of fuel in quantities of five gallons or more at any time shall be granted in accordance with the provisions of § 58.1-2261 to any person who establishes to the satisfaction of the Commissioner that such person has paid the tax levied pursuant to this chapter upon any fuel:

1. Sold and delivered to a governmental entity for its exclusive use;

2. Used by a governmental entity, provided persons operating under contract with a governmental entity shall not be eligible for such refund;

3. Sold and delivered to an organization described in subdivision 2 of § 58.1-2226 or subdivision 2 of § 58.1-2250 for its exclusive use in the operation of an aircraft;

4. Used by an organization described in subdivision 2 of § 58.1-2226 or subdivision 2 of § 58.1-2250 for its exclusive use in the operation of an aircraft, provided persons operating under contract with such an organization shall not be eligible for such refund;

5. Purchased by a licensed exporter and subsequently transported and delivered by such licensed

exporter to another state for sales or use outside the boundaries of the Commonwealth if the tax applicable in the destination state has been paid, provided a refund shall not be granted pursuant to this section on any fuel which is transported and delivered outside of the Commonwealth in the fuel supply tank of a highway vehicle or an aircraft;

6. Used by any person performing transportation under contract or lease with any transportation district for use in a highway vehicle controlled by a transportation district created under the Transportation District Act of 1964 (§ 33.2-1900 et seq.) and used in providing transit service by the transportation district by contract or lease, provided the refund shall be paid to the person performing such transportation;

7. Used by any private, nonprofit agency on aging, designated by the Department for Aging and Rehabilitative Services, providing transportation services to citizens in highway vehicles owned, operated or under contract with such agency;

8. Used in operating or propelling highway vehicles owned by a nonprofit organization that provides specialized transportation to various locations for elderly or disabled individuals to secure essential services and to participate in community life according to the individual's interest and abilities;

9. Used in operating or propelling buses owned and operated by a county or the school board thereof while being used to transport children to and from public school or from school to and from educational or athletic activities;

10. Used by buses owned or solely used by a private, nonprofit, nonreligious school while being used to transport children to and from such school or from such school to and from educational or athletic activities;

11. Used by any county or city school board or any private, nonprofit, nonreligious school contracting with a private carrier to transport children to and from public schools or any private, nonprofit, nonreligious school, provided the tax shall be refunded to the private carrier performing such transportation;

12. Used in operating or propelling the equipment of volunteer firefighting companies and of volunteer emergency medical services agencies within the Commonwealth used actually and necessarily for firefighting and emergency medical services purposes;

13. Used in operating or propelling motor equipment belonging to counties, cities and towns, if actually used in public activities;

14. Used for a purpose other than in operating or propelling highway vehicles, watercraft or aircraft;

15. Used off-highway in self-propelled equipment manufactured for a specific off-road purpose, which is used on a job site and the movement of which on any highway is incidental to the purpose for which it was designed and manufactured;

16. Proven to be lost by accident, including the accidental mixing of (i) dyed diesel fuel with tax-paid motor fuel, (ii) gasoline with diesel fuel, or (iii) undyed diesel fuel with dyed kerosene, but excluding fuel lost through personal negligence or theft;

17. Used in operating or propelling vehicles used solely for racing other vehicles on a racetrack;

18. Used in operating or propelling unlicensed highway vehicles and other unlicensed equipment used exclusively for agricultural or horticultural purposes on lands owned or leased by the owner or lessee of such vehicles and not operated on or over any highway for any purpose other than to move it in the manner and for the purpose mentioned. The amount of refund shall be equal to the amount of the taxes paid less one-half cent per gallon on such fuel so used which shall be paid by the Commissioner into the state treasury to the credit of the Virginia Agricultural Foundation Fund;

19. Used in operating or propelling commercial watercraft. The amount of refund shall be equal to the amount of the taxes paid less one and one-half cents per gallon on such fuel so used which shall be paid by the Commissioner into the state treasury to be credited as provided in subsection D of § 58.1-2289. If any applicant so requests, the Commissioner shall pay into the state treasury, to the credit of the Game Protection Fund, the entire tax paid by such applicant for the purposes specified in subsection D of § 58.1-2289. If any applicant who is an operator of commercial watercraft so requests, the Commissioner shall pay into the state treasury, to the credit of the Marine Fishing Improvement Fund, the entire tax paid by such applicant for the purposes specified in § 28.2-208;

20. Used in operating stationary engines, or pumping or mixing equipment on a highway vehicle if the fuel used to operate such equipment is stored in an auxiliary tank separate from the fuel tank used to propel the highway vehicle, and the highway vehicle is mechanically incapable of self-propulsion while fuel is being used from the auxiliary tank;

21. Used in operating or propelling recreational and pleasure watercraft; or

22. Used in operating or propelling highway vehicles owned by any entity that is exempt from taxation under § 501(c)(3) of the Internal Revenue Code, as amended or renumbered, and organized with a principal purpose of providing hunger relief services or food to the needy, if such vehicle is used solely for the purpose of providing hunger relief services or food to the needy.

B. 1. Any person purchasing fuel for consumption in a solid waste compacting or ready-mix concrete

highway vehicle, or a bulk feed delivery truck, where the vehicle's equipment is mechanically or hydraulically driven by an internal combustion engine that propels the vehicle, is entitled to a refund in an amount equal to 35 percent of the tax paid on such fuel. For purposes of this section, a "bulk feed delivery truck" means bulk animal feed delivery trucks utilizing power take-off (PTO) driven auger or air feed discharge systems for off-road deliveries of animal feed.

2. Any person purchasing fuel for consumption in a vehicle designed or permanently adapted solely and exclusively for bulk spreading or spraying of agricultural liming materials, chemicals, or fertilizer, where the vehicle's equipment is mechanically or hydraulically driven by an internal combustion engine that propels the vehicle, is entitled to a refund in an amount equal to 55 percent of the tax paid on such fuel.

C. Any person purchasing any fuel on which tax imposed pursuant to this chapter has been paid may apply for a refund of the tax if such fuel was consumed by a highway vehicle used in operating an urban or suburban bus line or a taxicab service. This refund also applies to a common carrier of passengers which has been issued a certificate pursuant to § 46.2-2075 or 46.2-2099.4 providing regular route service over the highways of the Commonwealth. No refund shall be granted unless the majority of the passengers using such bus line, taxicab service or common carrier of passengers do so for travel of a distance of not more than 40 miles, one way, in a single day between their place of abode and their place of employment, shopping areas or schools.

If the applicant for a refund is a taxicab service, he shall hold a valid permit from the Department to engage in the business of a taxicab service. No applicant shall be denied a refund by reason of the fee arrangement between the holder of the permit and the driver or drivers, if all other conditions of this section have been met.

Under no circumstances shall a refund be granted more than once for the same fuel. The amount of refund under this subsection shall be equal to the amount of the taxes paid, except refunds granted on the tax paid on fuel used by a taxicab service shall be in an amount equal to the tax paid less $0.01 per gallon on the fuel used.

Any refunds made under this subsection shall be deducted from the urban highway funds allocated to the highway construction district, pursuant to Article 5 (§ 33.2-351 et seq.) of Chapter 3 of Title 33.2, in which the recipient has its principal place of business.

Except as otherwise provided in this chapter, all provisions of law applicable to the refund of fuel taxes by the Commissioner generally shall apply to the refunds authorized by this subsection. Any county having withdrawn its roads from the secondary system of state highways under provisions of § 11 of Chapter 415 of the Acts of 1932 shall receive its proportionate share of such special funds as is now provided by law with respect to other fuel tax receipts.

D. Any person purchasing fuel for consumption in a vehicle designed or permanently adapted solely and exclusively for bulk spreading or spraying of agricultural liming materials, chemicals, or fertilizer, where the vehicle's equipment is mechanically or hydraulically driven by an internal combustion engine that propels the vehicle, is entitled to a refund in an amount equal to 55 percent of the tax paid on such fuel.

E. Any person purchasing diesel fuel used in operating or propelling a passenger car, a pickup or panel truck, or a truck having a gross vehicle weight rating of 10,000 pounds or less is entitled to a refund of a portion of the taxes paid in an amount equal to the difference between the rate of tax on diesel fuel and the rate of tax on gasoline and gasohol pursuant to § 58.1-2217. For purposes of this subsection, "passenger car," "pickup or panel truck," and "truck" shall have the meaning given in § 46.2-100. Notwithstanding any other provision of law, diesel fuel used in a vehicle upon which the fuels tax has been refunded pursuant to this subsection shall be exempt from the tax imposed under Chapter 6 (§ 58.1-600 et seq.).

F. *Any person with proof of a valid U.S. Department of Agriculture identification number that purchases dyed diesel fuel used in operating unlicensed highway vehicles and other unlicensed equipment used exclusively for agricultural or horticultural purposes is entitled to a refund of the taxes paid pursuant to subsection G of § 58.1-2217.*

*G.* Refunds resulting from any fuel shipments diverted from Virginia shall be based on the amount of tax paid for the fuel less discounts allowed by § 58.1-2233.

~~G.~~ *H.* Any person who is required to be licensed under this chapter and is applying for a refund shall not be eligible for such refund if the applicant was not licensed at the time the refundable transaction was conducted.

**§ 58.1-2289. Disposition of tax revenue generally.**

A. Unless otherwise provided in this section, all taxes and fees, including civil penalties, collected by the Commissioner pursuant to this chapter, less a reasonable amount to be allocated for refunds, shall be promptly paid into the state treasury and shall constitute special funds within the Commonwealth Transportation Fund. Any balances remaining in these funds at the end of the year shall be available for

use in subsequent years for the purposes set forth in this chapter, and any interest income on such funds shall accrue to these funds.

The Governor is hereby authorized to transfer out of such fund an amount necessary for the inspection of gasoline and motor grease measuring and distributing equipment, and for the inspection and analysis of gasoline for purity.

B. The tax collected on each gallon of aviation fuel sold and delivered or used in this Commonwealth, less refunds, shall be paid into a special fund of the state treasury. Proceeds of this special fund within the Commonwealth Transportation Fund shall be disbursed upon order of the Department of Aviation, on warrants of the Comptroller, to defray the cost of the administration of the laws of this Commonwealth relating to aviation, for the construction, maintenance and improvement of airports and landing fields to which the public now has or which it is proposed shall have access, and for the promotion of aviation in the interest of operators and the public generally.

C. One-half cent of the tax collected on each gallon of fuel on which a refund has been paid for gasoline, gasohol, diesel fuel, blended fuel, or alternative fuel, for fuel consumed in tractors and unlicensed equipment used for agricultural purposes shall be paid into a special fund of the state treasury, known as the Virginia Agricultural Foundation Fund, to be disbursed to make certain refunds and defray the costs of the research and educational phases of the agricultural program, including supplemental salary payments to certain employees at Virginia Polytechnic Institute and State University, the Department of Agriculture and Consumer Services and the Virginia Truck and Ornamentals Research Station, including reasonable expenses of the Virginia Agricultural Council.

D. One and one-half cents of the tax collected on each gallon of fuel used to propel a commercial watercraft upon which a refund has been paid shall be paid to the credit of the Game Protection Fund of the state treasury to be made available to the Board of Wildlife Resources until expended for the purposes provided generally in subsection C of § 29.1-701, including acquisition, construction, improvement and maintenance of public boating access areas on the public waters of this Commonwealth and for other activities and purposes of direct benefit and interest to the boating public and for no other purpose. However, one and one-half cents per gallon on fuel used by commercial fishing, oystering, clamming, and crabbing boats shall be paid to the Department of Transportation to be used for the construction, repair, improvement and maintenance of the public docks of this Commonwealth used by said commercial watercraft. Any expenditures for the acquisition, construction, improvement and maintenance of the public docks shall be made according to a plan developed by the Virginia Marine Resources Commission.

From the tax collected pursuant to the provisions of this chapter from the sales of gasoline used for the propelling of watercraft, after deduction for lawful refunds, there shall be paid into the state treasury for use by the Marine Resources Commission, the Virginia Soil and Water Conservation Board, the State Water Control Board, and the Commonwealth Transportation Board to (i) improve the public docks as specified in this section, (ii) improve commercial and sports fisheries in Virginia's tidal waters, (iii) make environmental improvements including, without limitation, fisheries management and habitat enhancement in the Chesapeake and its tributaries, and (iv) further the purposes set forth in § 33.2-1510, a sum as established by the General Assembly.

E. *The tax collected pursuant to subsection G of § 58.1-2217, less refunds, shall be paid into the state treasury and credited to the Electric Vehicle Grant Fund established pursuant to § 10.1-1322.5.*

*F.* All remaining revenue shall be deposited into the Commonwealth Transportation Fund established pursuant to § 33.2-1524.

**2. That the provisions of this act shall expire on July 1, 2031.**