CHAPTER 5.

HIGH-OCCUPANCY VEHICLE LANES AND HIGH-OCCUPANCY TOLL LANES.

Drafting note: Relevant sections on high-occupancy vehicle lanes and high-occupancy traffic lanes are combined in a new chapter and placed in Subtitle II, Modes of Transportation.

Article 3.1.

High-Occupancy Toll Lanes.

Drafting note: This article on high-occupancy toll lanes is combined with sections on high-occupancy vehicle lanes to create one chapter in proposed Title 33.2.

§ 33.1-56.1 33.2-500. Definitions.

For purposes of this article As used in this chapter:

"Board" means the Commonwealth Transportation Board;

"High-occupancy requirement" means the number of persons required to be traveling in a vehicle for the vehicle to use HOT lanes without the payment of a toll. Emergency vehicles, law-enforcement vehicles using HOT lanes in the performance of their duties, which shall not include the use of such vehicles for commuting to and from the workplace, and mass transit vehicles and commuter buses shall meet the high-occupancy requirement for HOT lanes, regardless of the number of occupants in the vehicle.

"High-occupancy toll lanes" or "HOT lanes" means a portion of a highway containing one or more travel lanes separated from other lanes that has an electronic toll collection system, provides for free passage by vehicles that meet the high-occupancy requirement, and contains a photo-enforcement system for use in such electronic toll collection. HOT lanes shall not be a "toll facility" or "HOV lanes" for the purposes of any other provision of law or regulation.

"HOT lanes operator" means the operator of the facility containing HOT lanes, which may include the Virginia Department of Transportation or some other entity.
"High-occupancy vehicle lanes" or "HOV lanes" means a portion of a highway containing one or more travel lanes for the travel of high-occupancy vehicles or buses as designated pursuant to § 33.1-42 [33.2-xxx].

"Mass transit vehicles" and "commuter buses"—mean meanings vehicles providing a scheduled transportation service to the general public. Such vehicles shall comprise nonprofit, publicly or privately owned or operated transportation services, programs, or systems that may be funded pursuant to § 58.1-638.2.

"Owner" means the registered owner of a vehicle on record with the Department of Motor Vehicles, or with the equivalent agency in another state. "Owner" does not mean a vehicle rental or vehicle leasing company.2

"Photo-enforcement system" means a sensor installed in conjunction with a toll collection device to detect the presence of a vehicle that automatically produces one or more photographs, one or more microphotographs, a videotape, or other recorded images of each vehicle's license plate at the time it is detected by the toll collection device; and.

"Unauthorized vehicle" means a motor vehicle that is restricted from use of the HOT lanes pursuant to subdivision D 1 X of § 33.1-56.3 33.2-XXX.

Drafting note: Existing § 33.1-56.1 was amended by Chapter 195 of the 2013 Acts of Assembly and those changes are shown in the existing language here. The definition of Board is stricken and moved to the general definitions section in proposed § 33.2-100. Technical changes are made.

§ 33.1-46.2 33.2-501. Designation of high-occupancy vehicle lanes; use of such lanes; penalties.

A. In order to facilitate the rapid and orderly movement of traffic to and from urban areas during peak traffic periods, the Commonwealth Transportation Board may designate one or more lanes of any highway in the interstate Interstate System, primary state highway system, or secondary state highway system as high-occupancy vehicle lanes, hereinafter referred to in this section as HOV lanes. When lanes have been so designated and have been
appropriately marked with such signs or other markers as the Board may prescribe, they shall be
reserved during periods designated by the Board for the exclusive use of buses and high-
occupancy vehicles. Any local governing body may also, with respect to highways under its
exclusive jurisdiction, designate HOV lanes and impose and enforce restrictions on the use of
such HOV lanes. Any highway for which the local jurisdiction locality receives highway
maintenance funds pursuant to § 33.1-41.1 33.2-XXX shall be deemed to be within the
exclusive jurisdiction of the local governing body for the purposes of this section. HOV lanes
shall be reserved for high-occupancy vehicles of a specified number of occupants as determined
by the Board or, for HOV lanes designated by a local governing body, by that local governing
body. Notwithstanding the foregoing provisions of this section, no designation of any lane or
lanes of any highway as HOV lanes shall apply to the use of any such lanes by:

1. Emergency vehicles such as fire-fighting firefighting vehicles, ambulances, and rescue
   squad vehicles;
2. Law-enforcement vehicles;
3. Motorcycles;
4. a. Transit and commuter buses designed to transport 16 or more passengers, including
   the driver;
b. Any vehicle operating under a certificate issued under § 46.2-2075, 46.2-2080, 46.2-
   2096, 46.2-2099.4, or 46.2-2099.44;
5. Vehicles of public utility companies operating in response to an emergency call;
6. Vehicles bearing clean special fuel vehicle license plates issued pursuant to § 46.2-
   749.3, provided such use is in compliance with federal law;
7. Taxicabs having two or more occupants, including the driver; or
8. (Contingent effective date) Any active duty military member in uniform who is
   utilizing Interstate Route 264 and Interstate Route 64 for the purposes of traveling to or from a
   military facility in the Hampton Roads Planning District.
In the Hampton Roads Planning District, HOV restrictions may be temporarily lifted and
HOV lanes opened to use by all vehicles when restricting use of HOV lanes becomes impossible
or undesirable and the temporary lifting of HOV limitations is indicated by signs along or above
the affected portion of highway.

The Commissioner of VDOT Highways shall implement a program of the HOV
facilities in the Hampton Roads Planning District beginning not later than May 1, 2000. This
program shall include the temporary lifting of HOV restrictions and the opening of HOV lanes
to all traffic when an incident resulting from nonrecurring causes within the general lanes occurs
such that a lane of traffic is blocked or is expected to be blocked for 10 minutes or longer. The
HOV restrictions for the facility will be reinstated when the general lane is no longer
blocked and is available for use.

The Commissioner of Highways shall maintain necessary records to evaluate the effects
of such openings on the operation of the general lanes and the HOV lanes. He shall report on the
effects of this program. This program will terminate if the Federal Highway Administration
requires repayment of any federal highway construction funds because of the program's impact
on the HOV facilities in Hampton Roads.

B. In designating any lane or lanes of any highway as HOV lanes, the Board, or local
governing body— as the case may be— shall specify the hour or hours of each day of the week
during which the lanes shall be so reserved, and the hour or hours shall be plainly posted at
whatever intervals along the lanes the Board or local governing body deems appropriate. Any
person driving a motor vehicle in a designated HOV lane in violation of this section shall be guilty of a traffic infraction, which shall not be a moving violation, and on conviction shall be
fined $100. However, violations committed within the boundaries of Planning District Eight shall be punishable as follows:

1. For a first offense, by a fine of $125;
2. For a second offense within a period of five years from a first offense, by a fine of
$250;
3. For a third offense within a period of five years from a first offense, by a fine of $500;

and

4. For a fourth or subsequent offense within a period of five years from a first offense, by a fine of $1,000.

Upon a conviction under this section, the court shall furnish to the Commissioner of the Department of Motor Vehicles in accordance with § 46.2-383 an abstract of the record of such conviction, which shall become a part of the person's driving record. Notwithstanding the provisions of § 46.2-492, no driver demerit points shall be assessed for any violation of this section except that persons convicted of second, third, fourth, or subsequent violations within five years of a first offense committed in Planning District Eight shall be assessed three demerit points for each such violation.

C. In the prosecution of an offense, committed in the presence of a law-enforcement officer, of failure to obey a road sign restricting a highway, or portion thereof, to the use of high-occupancy vehicles, proof that the vehicle described in the HOV violation summons was operated in violation of this section, together with proof that the defendant was at the time of such violation the registered owner of the vehicle, shall constitute in evidence a rebuttable presumption that such registered owner of the vehicle was the person who committed the violation. Such presumption shall be rebutted if the registered owner of the vehicle testifies in open court under oath that he was not the operator of the vehicle at the time of the violation. A summons for a violation of this section may be executed in accordance with § 19.2-76.2. Such rebuttable presumption shall not arise when the registered owner of the vehicle is a rental or leasing company.

D. Notwithstanding the provisions of § 19.2-76, whenever a summons for a violation of this section is served in any county, city, or town locality, it may be executed by mailing by first-class mail a copy thereof to the address of the owner of the vehicle as shown on the records of the Department of Motor Vehicles. If the summoned person fails to appear on the date of
return set out in the summons mailed pursuant to this section, the summons shall be executed in
the manner set out in § 19.2-76.3.

No proceedings for contempt or arrest of a person summoned by mailing shall be
instituted for his failure to appear on the return date of the summons.

E. Notwithstanding § 33.1-252.33.2-XXX, high-occupancy vehicles having three or
more occupants (HOV-3) may be permitted to use the Omer L. Hirst-Adelard L. Brault
Expressway (Dulles Toll Road) without paying a toll.

F. Notwithstanding the contrary provisions of this section, the following conditions shall
be met before the HOV-2 designation of Interstate Route 66 outside the Capital Beltway can be
changed to HOV-3 or any more restrictive designation:

1. The Department of Transportation shall publish a notice of its intent to change the
existing designation and also immediately provide similar notice of its intent to all members of
the General Assembly representing districts that touch or are directly impacted by traffic on
Interstate Route 66.

2. The Department of Transportation shall hold public hearings in the corridor to receive
comments from the public.

3. The Department of Transportation shall make a finding of the need for a change in
such designation, based on public hearings and its internal data, and present this finding to the
Commonwealth Transportation Board for approval.

4. The Commonwealth Transportation Board shall make written findings and a decision
based upon the following criteria:

a. Is changing the HOV-2 designation to HOV-3 in the public interest?

b. Is there quantitative and qualitative evidence that supports the argument that HOV-3
will facilitate the flow of traffic on Interstate Route 66?

c. Is changing the HOV-2 designation beneficial to comply with the federal Clean Air
Act Amendments of 1990?

G. [Repealed.]
Drafting note: Language is added in subsection A clarifying to whom the Commissioner of Highways has to report. The definition of locality in § 1-221 of the Code of Virginia as it applies Code-wide replaces "county, city, or town" in subsection D.

Technical changes are made.

§ 33.1-56.2 33.2-502. Designation of HOT lanes.

The Board may designate one or more lanes of any highway, including lanes that may previously have been designated HOV lanes under § 33.1-46.2 33.2-XXX, in the Interstate System of highways, primary state highway system of highways, or national highway system, or any portion thereof, as high-occupancy toll lanes, or HOT lanes. In making HOT lanes designations, the Board shall also specify the high-occupancy requirement and conditions for use of such HOT lanes, or may authorize the Commissioner of Highways to make such determination consistent with the terms of a comprehensive agreement executed pursuant to § 56.56 33.2-XXX. The high-occupancy requirement for a HOT lanes facility constructed or operated as a result of the Public-Private Transportation Act (§ 56.556 33.2-XXX et seq.) shall not be less than three.

Drafting note: Technical changes.

§ 33.1-56.3 33.2-503. HOT lanes enforcement.

Any person operating a motor vehicle on designated HOT lanes shall make arrangements with the HOT lanes operator for payment of the required toll prior to entering such HOT lanes. The driver of a vehicle who enters the HOT lanes in an unauthorized vehicle, in violation of the conditions for use of such HOT lanes established pursuant to § 33.1-56.2 33.2-XXX, without payment of the required toll, or without having made arrangements with the HOT lanes operator for payment of the required toll, shall have committed a violation of this section, which may be enforced in the following manner:

A. On a form prescribed by the Supreme Court, a summons for civil violation of this section may be executed by a law-enforcement officer, when such violation is observed by such
officer. The form shall contain the option for the driver of the vehicle to prepay all penalties, the unpaid toll, and all penalties, administrative fees, and costs.

B. 1. A HOT lanes operator shall install and operate, or cause to be installed or operated, a photo-enforcement system at locations where tolls are collected for the use of such HOT lanes.

2. A summons for civil violation of this section may be executed pursuant to this subsection subdivision, when such violation is evidenced by information obtained from a photo-enforcement system as defined in this article chapter. A certificate, sworn to or affirmed by a technician employed or authorized by the HOT lanes operator, or a facsimile of such a certificate, based on inspection of photographs, microphotographs, videotapes, or other recorded images produced by a photo-enforcement system, shall be prima facie evidence of the facts contained therein. Any photographs, microphotographs, videotape, or other recorded images evidencing such a violation shall be available for inspection in any proceeding to adjudicate the liability for such violation under this subsection subdivision. Any vehicle rental or vehicle leasing company, if named in a summons, shall be released as a party to the action if it provides to the HOT lanes operator a copy of the vehicle rental agreement or lease or an affidavit identifying the renter or lessee prior to the date of hearing set forth in the summons. Upon receipt of such rental agreement, lease, or affidavit, a summons shall be issued for the renter or lessee identified therein. Release of this information shall not be deemed a violation of any provision of the Government Data Collection and Dissemination Practices Act (§ 2.2-3800 et seq.) or the Insurance Information and Privacy Protection Act (§ 38.2-600 et seq.).

3. On a form prescribed by the Supreme Court, a summons issued under this subsection subdivision may be executed pursuant to § 19.2-76.2. Such form shall contain the option for the driver or registered owner to prepay all penalties, the unpaid toll, and all penalties, administrative fees, and costs. HOT lanes operator personnel or their agents mailing such summons shall be considered conservators of the peace for the sole and limited purpose of mailing such summons. Notwithstanding the provisions of § 19.2-76, a summons for a violation
of this section may be executed by mailing by first-class mail a copy thereof to the address of
the owner of the vehicle as shown on the records of the Department of Motor Vehicles or, if the
registered owner has named and provided a valid address for the operator of the vehicle at the
time of the violation in an affidavit executed pursuant to this subsection subdivision, such
named operator of the vehicle. If the summoned person fails to appear on the date of return set
out in the summons mailed pursuant to this section, the summons shall be executed in the
manner set out in § 19.2-76.3.

4. d. The registered owner of such vehicle shall be given reasonable notice by way of a
summons as provided in this subsection subdivision that his vehicle had been used in violation
of this section, and such owner shall be given notice of the time and place of the hearing and
notice of the civil penalty and costs for such offense.

Upon the filing of an affidavit with the court at least 14 days prior to the hearing date by
the registered owner of the vehicle stating that he was not the driver of the vehicle on the date of
the violation and providing the legal name and address of the driver of the vehicle at the time of
the violation, a summons will also be issued to the alleged driver of the vehicle at the time of the
offense. The affidavit shall constitute prima facie evidence that the person named in the affidavit
was driving the vehicle at all the relevant times relating to the matter named in the affidavit.

If the registered owner of the vehicle produces a certified copy of a police report
showing that the vehicle had been reported to the police as stolen prior to the time of the alleged
offense and remained stolen at the time of the alleged offense, then the court shall dismiss the
summons issued to the registered owner of the vehicle.

C. 1. 3. a. The HOT lanes operator may impose and collect an administrative fee in
addition to the unpaid toll so as to recover the expenses of collecting the unpaid toll, which
administrative fee shall be reasonably related to the actual cost of collecting the unpaid toll and
not exceed $100 per violation. The operator of the vehicle shall pay the unpaid tolls and any
administrative fee detailed in a notice or invoice issued by a HOT lanes operator. If paid within
30 days of notification, the administrative fee shall not exceed $25.
2-b. Upon a finding by a court of competent jurisdiction that the driver of the vehicle observed by a law-enforcement officer under subsection A, subdivision 1 or the vehicle described in the summons for civil violation issued pursuant to evidence obtained by a photo-enforcement system under subsection B subdivision 2 was in violation of this section, the court shall impose a civil penalty upon the driver of such vehicle issued a summons under subsection A subdivision 1, or upon the driver or registered owner of such vehicle issued a summons under subsection B subdivision 2, payable to the HOT lanes operator as follows: for a first offense, $50; for a second offense, $250; for a third offense within a period of two years of the second offense, $500; and for a fourth and subsequent offense within a period of three years of the second offense, $1,000, together with, in each case, the unpaid toll, all accrued administrative fees imposed by the HOT lanes operator as authorized by this section, and applicable court costs. The court shall remand penalties, the unpaid toll, and administrative fees assessed for violation of this section to the treasurer or director of finance of the county or city in which the violation occurred for payment to the HOT lanes operator for expenses associated with operation of the HOT lanes and payments against any bonds or other liens issued as a result of the construction of the HOT lanes. No person shall be subject to prosecution under both subsections A and B subdivisions 1 and 2 for actions arising out of the same transaction or occurrence.

3-c. Upon a finding by a court that a person has violated this section, in the event such person fails to pay the required penalties, fees, and costs, the court shall notify the Commissioner of the Department of Motor Vehicles, who shall suspend all of the registration certificates and license plates issued for any motor vehicles registered solely in the name of such person and shall not issue any registration certificate or license plate for any other vehicle that such person seeks to register solely in his name until the court has notified the Commissioner of the Department of Motor Vehicles that such penalties, fees, and costs have been paid. The HOT lanes operator and the Commissioner of the Department of Motor Vehicles may enter into an agreement whereby the HOT lanes operator may reimburse the Department of Motor Vehicles
for their reasonable costs to develop, implement, and maintain this enforcement mechanism, and that specifies that the Commissioner of the Department of Motor Vehicles shall have an obligation to suspend such registration certificates so long as the HOT lanes operator makes the required reimbursements in a timely manner in accordance with the agreement.

4. d. Except as provided in subsections D and E subdivisions 4 and 5, imposition of a civil penalty pursuant to this section shall not be deemed a conviction as an operator of a motor vehicle under Title 46.2 and shall not be made part of the driving record of the person upon whom such civil penalty is imposed, nor shall it be used for insurance purposes in the provision of motor vehicle insurance coverage.

D. 1. a. The HOT lanes operator may restrict the usage of the HOT lanes to designated vehicle classifications pursuant to an interim or final comprehensive agreement executed pursuant to § 56-566 or 56-566.1 33.2-XXX. Notice of any such vehicle classification restrictions shall be provided through the placement of signs or other markers prior to and at all HOT lanes entrances.

2. b. Any person driving an unauthorized vehicle on the designated HOT lanes shall be guilty of a traffic infraction, which shall not be a moving violation, and shall be punishable as follows: for a first offense, by a fine of $125; for a second offense within a period of five years from a first offense, by a fine of $250; for a third offense within a period of five years from a first offense, by a fine of $500; and for a fourth and subsequent offense within a period of five years from a first offense, by a fine of $1,000.

Upon a conviction under this subsection subdivision, the court shall furnish to the Commissioner of the Department of Motor Vehicles, in accordance with § 46.2-383, an abstract of the record of such conviction that shall become a part of the person's driving record. Notwithstanding the provisions of § 46.2-492, no driver demerit points shall be assessed for any violation of this subsection subdivision, except that persons convicted of a second, third, fourth, or subsequent violation within five years of a first offense shall be assessed three demerit points for each such violation.
E. 5. The driver of a vehicle who enters the HOT lanes by crossing through any barrier, buffer, or other area separating the HOT lanes from other lanes of travel shall have committed is guilty of a violation of § 46.2-852, unless the vehicle is a state or local law-enforcement vehicle, firefighting truck, ambulance, or rescue squad vehicle used in the performance of its official duties. No person shall be subject to both prosecution both under this subsection subdivision and under subsection A, B, or D subdivision 1, 2, or 4 for actions arising out of the same transaction or occurrence.

Upon a conviction under this subsection subdivision, the court shall furnish to the Commissioner of the Department of Motor Vehicles in accordance with § 46.2-383 an abstract of the record of such conviction, which shall become a part of the convicted person's driving record.

F. 6. No person shall be subject to prosecution both under both this section and under § 33.1-46.2 33.2-XXX, 46.2-819, or 46.2-819.1 for actions arising out of the same transaction or occurrence.

G. 7. Any action under this section shall be brought in the general district court of the county or city in which the violation occurred.

Drafting note: Existing § 33.1-56.3 was amended by Chapters 85 and 101 of the Acts of Assembly of 2013 and those changes are reflected in the existing language here. Technical changes are made.

§ 33.1-56.4 33.2-504. Release of personal information to or by HOT lanes operators; penalty.

A. The HOT lanes operator may enter into an agreement with the Department of Motor Vehicles, in accordance with the provisions of subdivision B of subsection B of § 46.2-208, to obtain vehicle owner information regarding the registered owners of vehicles that use HOT lanes; and with the Department of Transportation to obtain any information that is necessary to conduct electronic toll collection and otherwise operate HOT lanes. No HOT lanes operator shall disclose or release any personal information received from the Department of Motor
Vehicles or the Department of Transportation to any third party, except in the issuance of a summons and institution of court proceedings in accordance with § 33.1-56.3 33.2-XXX.

Information in the possession of a HOT lanes operator under this section shall be exempt from disclosure under the Virginia Freedom of Information Act (§ 2.2-3700 et seq.).

B. Information collected by a photo-enforcement system shall be limited exclusively to that information that is necessary for the collection of unpaid tolls. Notwithstanding any other provision of law, all photographs, microphotographs, electronic images, or other data collected by a photo-enforcement system shall be used exclusively for the collection of unpaid tolls and shall not be (i) open to the public; (ii) sold and/or used for sales, solicitation, or marketing purposes; (iii) disclosed to any other entity except as may be necessary for the collection of unpaid tolls or to a vehicle owner or operator as part of a challenge to the imposition of a toll; and (iv) be used in a court in a pending action or proceeding unless the action or proceeding relates to a violation of § 33.1-56.3 33.2-XXX or upon order from a court of competent jurisdiction. Information collected under this section shall be purged and not retained later than 30 days after the collection and reconciliation of any unpaid tolls, administrative fees, and/or civil penalties. Any entity operating a photo-enforcement system shall annually certify compliance with this section and make all records pertaining to such system available for inspection and audit by the Commissioner of Highways or the Commissioner of the Department of Motor Vehicles or their designee. Any violation of this subsection shall constitute a Class 1 misdemeanor. In addition to any fines or other penalties provided for by law, any money or other thing of value obtained as a result of a violation of this section shall be forfeited to the Commonwealth.

Drafting note: Technical changes.

§ 33.1-56.5 33.2-505. Exclusion of HOT lanes from certain other laws.

Notwithstanding any other provision of law, the provisions of §§ 22.1-187, 33.1-46.2, 33.1-252 33.2-XXX, 33.2-XXX, 46.2-819, and 46.2-819.1 shall not apply to HOT lanes.

Drafting note: Technical changes.