

SB 896 Motor vehicle fuels; sales tax in certain regions of the Commonwealth.

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Summary as passed: (all summaries)

Motor vehicle fuels sales tax in certain areas of the Commonwealth; price floor. Establishes a floor on the 2.1 percent sales tax imposed on motor vehicle fuels sold in Northern Virginia and Hampton Roads by requiring that the average distributor price upon which the tax is based be no less than what the statewide average distributor price would have been on February 20, 2013. The bill defines "average distributor price." This bill incorporates [SB 140](#) and is identical to [HB 768](#).

Full text:

01/19/18 Senate: Presented and ordered printed 18104315D [pdf](#) | [impact statement](#)
 02/06/18 Senate: Committee substitute printed 18106063D-S1 [pdf](#) | [impact statement](#)
 02/06/18 Senate: Substitute bill reprinted 18106063D-S1 [pdf](#) | [impact statement](#)
 02/21/18 House: Committee substitute printed 18107415D-H1 [pdf](#) | [impact statement](#)
 03/08/18 Senate: Conference substitute printed 18108108D-S2 [pdf](#) | [impact statement](#)
 03/20/18 Senate: Bill text as passed Senate and House (SB896ER) [pdf](#) | [impact statement](#)

Amendments:

[Conference amendments](#)

Status:

01/19/18 Senate: Presented and ordered printed 18104315D
 01/19/18 Senate: Referred to Committee on Finance
 02/06/18 Senate: Committee substitute printed 18106063D-S1
 02/06/18 Senate: Incorporates SB140 (Petersen)
 02/06/18 Senate: Reported from Finance with substitute (11-Y 3-N 2-A)
 02/06/18 Senate: Substitute bill reprinted 18106063D-S1
 02/07/18 Senate: Constitutional reading dispensed (39-Y 0-N)
 02/08/18 Senate: Read second time
 02/08/18 Senate: Reading of substitute waived
 02/08/18 Senate: Committee substitute agreed to 18106063D-S1
 02/08/18 Senate: Engrossed by Senate - committee substitute SB896S1
 02/09/18 Senate: Read third time and passed Senate (26-Y 12-N)
 02/09/18 Senate: Reconsideration of passage agreed to by Senate (39-Y 0-N)
 02/09/18 Senate: Passed Senate (26-Y 12-N)
 02/14/18 House: Placed on Calendar
 02/14/18 House: Read first time
 02/14/18 House: Referred to Committee on Appropriations
 02/21/18 House: Reported from Appropriations with substitute (22-Y 0-N)
 02/21/18 House: Committee substitute printed 18107415D-H1
 02/23/18 House: Read second time
 02/26/18 House: Passed by for the day
 02/27/18 House: Read third time
 02/27/18 House: Committee substitute agreed to 18107415D-H1
 02/27/18 House: Engrossed by House - committee substitute SB896H1
 02/27/18 House: Passed House with substitute (82-Y 16-N 1-A)
 02/27/18 House: VOTE: PASSAGE (82-Y 16-N 1-A)
 02/28/18 Senate: House substitute rejected by Senate (3-Y 37-N)
 02/28/18 House: House insisted on substitute
 02/28/18 House: House requested conference committee
 02/28/18 Senate: Senate acceded to request (35-Y 5-N)
 02/28/18 Senate: Conferees appointed by Senate

02/28/18 Senate: Senators: Wagner, Norment, Saslaw
02/28/18 House: Conferees appointed by House
02/28/18 House: Delegates: Jones, S.C., Habeeb, Filler-Corn
03/08/18 Conference: Amended by conference committee
03/08/18 Senate: Conference substitute printed 18108108D-S2
03/08/18 House: Conference report agreed to by House (65-Y 27-N 1-A)
03/08/18 House: [VOTE: ADOPTION \(65-Y 27-N 1-A\)](#)
03/09/18 Senate: Conference report agreed to by Senate (27-Y 12-N)
03/09/18 Senate: [Reconsideration of conference report agreed to by Senate \(39-Y 0-N\)](#)
03/09/18 Senate: [Conference report agreed to by Senate \(28-Y 11-N\)](#)
03/20/18 Senate: Enrolled
03/20/18 Senate: Bill text as passed Senate and House (SB896ER)
03/20/18 House: Signed by Speaker
03/22/18 Senate: Signed by President
03/26/18 Senate: Enrolled Bill Communicated to Governor on March 26, 2018
03/26/18 Governor: Governor's Action Deadline Midnight, April 9, 2018
04/06/18 Governor: Approved by Governor-Chapter 797 (effective 7/1/18)

VIRGINIA ACTS OF ASSEMBLY — CHAPTER

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An Act to amend and reenact §§ 58.1-2292, 58.1-2295, as it is currently effective, 58.1-2299, 58.1-2299.10, and 58.1-2299.14 of the Code of Virginia, relating to the motor vehicle fuels sales tax in certain regions of the Commonwealth; price floor.

[S 896]

Approved

Be it enacted by the General Assembly of Virginia:

1. That §§ 58.1-2292, 58.1-2295, as it is currently effective, 58.1-2299, 58.1-2299.10, and 58.1-2299.14 of the Code of Virginia are amended and reenacted as follows:

§ 58.1-2292. Definitions.

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

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

"Applied period" means the period of time in which a tax rate is imposed.

"Base period" means the period of time used to calculate the statewide average distributor price.

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

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

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

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

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

"Distributor charges" means the amount calculated by the Department to approximate the value of the items, on a per gallon basis, excluding the wholesale price of a gallon of fuel, upon which the tax imposed by § 58.1-2295 was calculated prior to July 1, 2018.

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

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

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

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

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

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

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

"Statewide average distributor price" means the statewide average wholesale price of a gallon of unleaded regular gasoline or diesel fuel, as appropriate, plus distributor charges.

"Statewide average wholesale price" means the statewide average wholesale price of a gallon of unleaded regular gasoline or diesel fuel, as appropriate, calculated pursuant to § 58.1-2217.

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

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

A. 1. In addition to all other taxes now imposed by law, there is hereby imposed a tax upon every distributor who engages in the business of selling fuels at wholesale to retail dealers for retail sale in any county or city that is a member of (i) any transportation district in which a rapid heavy rail commuter mass transportation system operating on an exclusive right-of-way and a bus commuter mass transportation system are owned, operated, or controlled by an agency or commission as defined in

57 § 33.2-1901 or (ii) any transportation district that is subject to subsection C of § 33.2-1915 and that is
58 contiguous to the Northern Virginia Transportation District.

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

70 B. 1. The tax shall be imposed on each gallon of fuel, other than diesel fuel, sold by a distributor to
71 a retail dealer for retail sale in any such county or city described in subsection A at a rate of 2.1
72 percent of the sales price charged by a distributor for fuels sold to a retail dealer for retail sale in any
73 such county or city. In any such sale to a retail dealer in which the distributor and the retail dealer are
74 the same person, the sales price charged by the distributor shall be the cost price to the distributor of the
75 fuel statewide average distributor price of a gallon of unleaded regular gasoline as determined by the
76 Commissioner pursuant to subdivision C 1. For alternative fuels other than liquid alternative fuels, the
77 Commissioner shall determine an equivalent tax rate based on gasoline gallon equivalency.

78 2. The tax shall be imposed on each gallon of diesel fuel sold by a distributor to a retail dealer for
79 retail sale in any such county or city at a rate of 2.1 percent of the statewide average distributor price
80 of a gallon of diesel fuel as determined by the Commissioner pursuant to subdivision C 2.

81 C. 1. To determine the statewide average distributor price of a gallon of unleaded regular gasoline,
82 the Commissioner shall use the period from June 1 to November 30, inclusive, as the base period for
83 the determination of the rate of the tax for the immediately following applied period beginning January
84 1 and ending June 30, inclusive. The Commissioner shall use the period from December 1 to May 31,
85 inclusive, as the base period for the determination of the rate of the tax for the immediately following
86 applied period beginning July 1 and ending December 31, inclusive. In no case shall the statewide
87 average distributor price of a gallon of unleaded regular gasoline determined for the purposes of this
88 section be less than the statewide average wholesale price of a gallon of unleaded regular gasoline on
89 February 20, 2013, plus a distributor charge calculated by the Commissioner for that date.

90 2. To determine the statewide average distributor price of a gallon of diesel fuel, the Commissioner
91 shall use the period from June 1 to November 30, inclusive, as the base period for the determination of
92 the rate of the tax for the immediately following applied period beginning January 1 and ending June
93 30, inclusive. The Commissioner shall use the period from December 1 to May 31, inclusive, as the base
94 period for the determination of the rate of the tax for the immediately following applied period
95 beginning July 1 and ending December 31, inclusive. In no case shall the statewide average distributor
96 price of a gallon of diesel fuel determined for the purposes of this section be less than the statewide
97 average wholesale price of a gallon of diesel fuel on February 20, 2013, plus a distributor charge
98 calculated by the Commissioner for that date.

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

101 E. The tax imposed by this section shall be paid by the distributor, but the distributor shall
102 separately state the amount of the tax and add such tax to the sales price or charge. Thereafter, such tax
103 shall be a debt from the retail dealer to the distributor until paid and shall be recoverable at law in the
104 same manner as other debts. No action at law or suit in equity under this chapter shall be maintained in
105 the Commonwealth by any distributor who is not registered under § 58.1-2299.2 or is delinquent in the
106 payment of taxes imposed under this chapter.

107 F. Nothing in this section shall be construed to exempt the imposition and remittance of tax pursuant
108 to this section in a sale to a retail dealer in which the distributor and the retail dealer are the same
109 person.

110 **§ 58.1-2299. Bad debts.**

111 A. In any return filed under the provisions of this chapter, a distributor may credit, against the tax
112 shown to be due on the return, the amount of tax previously returned and paid on accounts which are
113 owed to the distributor and which have been found to be worthless within the period covered by the
114 return. The credit, however, shall not exceed the amount of the uncollected sales price determined by
115 treating prior payments on each debt as consisting of the same proportion of the sales price, tax levied
116 under this chapter, and other nontaxable charges as the total debt originally owed to the distributor tax
117 due pursuant to § 58.1-2295 for the relevant applied period for the fuel delivered to the worthless

118 *accounts*. The amount of accounts for which a credit has been taken that are thereafter in whole or in
119 part paid to the dealer shall be included in the first return filed after such collection.

120 B. Notwithstanding any other provision of this section, a distributor whose volume and character of
121 uncollectible accounts, including checks returned for insufficient funds, renders it impractical to
122 substantiate the credit on an account-by-account basis may, subject to the approval of the Department,
123 utilize an alternative method of substantiating the credit.

124 **§ 58.1-2299.10. Willful commission of prohibited acts; criminal penalties.**

125 Any person who willfully commits any of the following acts with the intent to (i) evade or
126 circumvent the taxes imposed under this chapter or (ii) assist any other person in efforts to evade or
127 circumvent such taxes is guilty of a Class 6 felony, if he:

128 1. Does not pay the taxes imposed under this chapter and diverts the proceeds from such taxes for
129 other purposes;

130 2. Is a distributor required to be registered under the provisions of this chapter, or the agent or
131 representative of such a distributor, and converts or attempts to convert proceeds from taxes imposed
132 under this chapter for the use of the distributor or the distributor's agent or representative, with the intent
133 to defraud the Commonwealth;

134 3. Illegally collects taxes imposed under this chapter when not authorized or licensed by the
135 Commissioner to do so;

136 4. Conspires with any other person or persons to engage in an act, plan, or scheme to defraud the
137 Commonwealth of proceeds from taxes levied under this chapter;

138 5. Fails to remit to the Commissioner any tax levied pursuant to this chapter, if he (i) has added, or
139 represented that he has added, the tax to the sales price for the fuel and (ii) has collected the amount of
140 the tax; or

141 6. Applies for or collects from the Department a tax credit when the person knows or has reason to
142 know that fuel for which the credit is claimed has been or will be used for a taxable purpose; however,
143 if the amount of fuel involved is not more than 20 gallons, such person is guilty of a Class 1
144 misdemeanor.

145 **§ 58.1-2299.14. Recordkeeping requirements; inspection of records; civil penalties.**

146 A. Every distributor required to make a return and pay or collect any tax under this chapter shall
147 keep and preserve suitable records of the sales taxable under this chapter, and such other books of
148 account as may be necessary to determine the amount of tax due hereunder, and such other pertinent
149 information as may be required by the Commissioner. Such records shall be kept and maintained for a
150 period to include the Department's current fiscal year and the previous three fiscal years.

151 B. The Commissioner or any agent authorized by him may examine during the usual business hours
152 all records, books, papers, or other documents of any distributor required to be registered under this
153 chapter relating to the sales price amount of any fuel subject to taxation under this chapter to verify the
154 truth and accuracy of any statement or any other information as to a particular sale.

155 C. Any person who fails to keep or retain records as required by this section shall be subject to a
156 civil penalty. The amount of the civil penalty assessed against a person for his first violation shall be
157 \$1,000. The amount of the civil penalty assessed against a person for each subsequent violation shall be
158 \$1,000 more than the amount of the civil penalty for the preceding violation.

159 D. Any person who refuses to allow an inspection authorized under this section shall be subject to a
160 civil penalty of \$5,000 for each refusal.

161 **2. That the Department of Motor Vehicles (the Department) shall develop guidelines, with the**
162 **input of relevant stakeholders, to determine the distributor charges, as defined by § 58.1-2292 of**
163 **the Code of Virginia, as amended by this act, to be added to the wholesale price of a gallon of fuel**
164 **in order to establish the statewide average distributor price of a gallon of fuel pursuant to**
165 **§ 58.1-2295 of the Code of Virginia, as amended by this act. Such guidelines shall include a**
166 **procedure for a review of the items included in the distributor charge and an adjustment of the**
167 **charge, if necessary, at the same time that the Department computes the tax for an applicable base**
168 **period pursuant to § 58.1-2217 of the Code of Virginia. The guidelines required by this enactment**
169 **shall not be subject to the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia).**

Department of Planning and Budget 2018 Fiscal Impact Statement

1. **Bill Number:** SB896

House of Origin Introduced Substitute Engrossed
 Second House In Committee Substitute Enrolled

2. **Patron:** Wagner

3. **Committee:** Passed Both Houses

4. **Title:** Motor vehicle fuels sales tax in certain areas of the Commonwealth; price floor

5. **Summary:** This bill establishes a floor on the 2.1 percent sales tax imposed on motor vehicle fuels sold in Northern Virginia and Hampton Roads by requiring that the average distributor price upon which the tax is based be no less than the statewide average wholesale price on February 20, 2013, plus distributor charges.

6. **Budget Amendment Necessary:** Yes. Item 453, service area 60707 for Hampton Roads.

7. **Fiscal Impact Estimates:** Final. See Item #8.

Expenditure and Revenue Impact:

<i>Fiscal Year</i>	<i>Dollars</i>	<i>Fund</i>	<i>Dollars</i>	<i>Fund</i>
2019	\$45,200,000	NVTC & PRTC*	\$21,900,000	Hampton Roads
2020	\$45,100,000	NVTC & PRTC	\$22,000,000	Hampton Roads
2021	\$42,700,000	NVTC & PRTC	\$20,900,000	Hampton Roads
2022	\$40,600,000	NVTC & PRTC	\$19,800,000	Hampton Roads
2023	\$38,300,000	NVTC & PRTC	\$18,700,000	Hampton Roads
2024	\$37,900,000	NVTC & PRTC	\$18,500,000	Hampton Roads

* Northern Virginia Transportation Commission and Potomac and Rappahannock Transportation Commission

8. **Fiscal Implications:** The revenue impact for FY 2019, estimated by the Department of Taxation, reflects 11 months of revenue. Taxpayers are required to pay the tax on the 20th day of the second month following the month in which the activity occurred, but must file and pay both April and May taxes in June. The additional funding would be remitted to the transportation commissions using the existing processes.

The forecast is based on a statewide average distributor charge of \$3.72/gallon, comprised of a statewide average wholesale charge of \$3.22 and a distributor charge of \$0.50. The \$3.22 is a weighted average of the statewide average wholesale price for gasoline (\$3.16/gallon) and diesel (\$3.36/gallon), based on consumption levels of each fuel in the state.

The distributor price of gasoline is expected to rise over time. Therefore, the bill will create less extra revenue as the distributor price comes closer to the floor price. Pursuant to Virginia Code § 58.1-2299.20, the Department of Motor Vehicles will recover the direct

costs of administration of the Motor Vehicle Fuels Sales Tax from the transportation commissions.

9. Specific Agency or Political Subdivisions Affected: Department of Motor Vehicles, Virginia Department of Transportation, Northern Virginia Transportation Commission, Potomac and Rappahannock Transportation Commission, Hampton Roads Transportation Accountability Commission.

10. Technical Amendment Necessary: No.

11. Other Comments: This bill is a companion to HB 768.

Date: 3/20/2018

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cc: Secretary of Transportation