



# COMMONWEALTH of VIRGINIA

DEPARTMENT OF TRANSPORTATION  
1401 EAST BROAD STREET  
RICHMOND VIRGINIA 23219 2000

**Charles A. Kilpatrick, P.E.**  
Commissioner

December 12, 2017

The Honorable Charles W. Carrico, Sr.  
Chair, Senate Committee on Transportation  
Virginia General Assembly  
P.O. Box 1100  
Galax, VA 24333

The Honorable William R. DeSteph, Jr.  
Senator, Virginia General Assembly  
588 Central Drive  
Virginia Beach, VA 23454

Dear Chairman Carrico and Senator DeSteph:

Pursuant to the letter provided by the Clerk of the Senate, dated March 9, 2017, referring the subject matter contained in Senate Bill 954 to the Virginia Department of Transportation (VDOT) for study (see Attachment A), I am providing you with the attached written report, prepared by VDOT, in consultation with the Virginia Toll Facilities Working Group. The report, in accord with additional instructions provided during the Senate Transportation Committee meeting on September 15, 2017, consists of non-substantive recommendations for any continued effort to consolidate sections 46.2-819.1 and 46.2-819.3:1 of the *Code of Virginia*.

Thank you for the opportunity to address the subject matter of Senate Bill 954 in this manner. Should you have any questions, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "C. A. Kilpatrick".

Charles A. Kilpatrick, P.E.  
Commissioner of Highways

cc: Susan Clarke Schaar, Clerk of the Senate

## **Report: Recommendations of the Virginia Department of Transportation (VDOT) in Consultation with the Virginia Toll Facilities Group (VTFG) Regarding SB 954**

Upon review of SB 954 (2017) and at the direction of the Chair of the Senate Transportation Committee, to provide recommendations to address the non-substantive purposes of the legislation<sup>1</sup>, namely consolidation of sections 46.2-819.1 and 46.2-819.3:1 of the *Code of Virginia*, VDOT, in consultation with the VTFG, would offer the following recommendations in the event that consolidation of these sections is pursued<sup>2</sup>:

1. Incorporate the consolidated language in revised section 46.2-819.3:1 and repeal section 46.2-819.1 (which provides for a more logical progression of sections in the tolling article, Article 1.1 of Chapter 8).
2. Establish new terminology and definitions for the combined section that would articulate and differentiate the different methods and purposes of electronic toll collection and/or enforcement as well as the potential types of toll collection facilities. Examples of new terms and definitions are provided below for illustrative purposes only:
  - a. *“All-electronic toll facility” means a toll facility in which an image-based toll collection system is used in conjunction with an automatic vehicle identification system and for which no manual toll collection process is offered.*
  - b. *“Image-based toll collection system” means a vehicle sensor installed to work either in conjunction with a separate toll collection device, or in the absence of a separate toll collection device, and that automatically produces one or more photographs, one or more microphotographs, a videotape, or other recorded images of each vehicle at, or in conjunction with, the time a vehicle passes through a toll facility, and which is used in the collection of the toll.*
  - c. *“Image-based toll enforcement system” means a vehicle sensor installed to work in conjunction with a toll collection device that automatically produces one or more photographs, one or more microphotographs, a videotape, or other recorded images of each vehicle at, or in conjunction*

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<sup>1</sup> The recommendations contained herein are intended to address only issues relating to consolidation of the two Code sections and are not intended to address substantive amendments introduced by SB954. Industry members of the VTFG have noted that concerns were raised regarding substantive changes introduced by SB954 relating to judicial discretion in tolling matters and those concerns persist.

<sup>2</sup> It is also noted that discussions regarding the non-substantive nature of SB 954 have also included discussions relating to an entire recodification of Article 1.1 of Chapter 8, Title 46.2, and that there may be benefits and merits associated with entire recodification of the article as opposed to mere consolidation of the two code sections encompassed by SB 954. As the concept extends beyond the subject matter of SB954, and would entail significantly more complex issues and require consultation with and input from a number of entities, no recommendations regarding recodification are offered at this time.

*with, the time a vehicle passes through a toll facility, and which is used in the enforcement of a toll violation that results from an unpaid toll.*

d. *“Manual toll collection” shall mean a process for collecting tolls using cash, credit card, or debit card to provide payment directly to the operator of the toll facility or his agents at the time a vehicle passes through the toll facility.*

3. Ensure that statutory authority for the various types of facilities and methods of toll collection/enforcement are provided in the consolidated section (examples of clearly articulated statutory authority for certain methodologies can be found in subsection B of §§ 46.2-819.1 and 819.3:1)
4. Articulate the various stages in the process of toll collection or enforcement in a logical order, taking into consideration the types of facilities that exist:
  - a. All-electronic toll facilities (in which collection and eventually enforcement are accomplished by electronic/image-based methods),<sup>3</sup>
  - b. “Other” facilities (in which manual methods of toll collection are available, and enforcement is accomplished by electronic/imaged based methods).
  - c. Stages that will need to be articulated:
    - i. Non-payment of toll at time of facility use
    - ii. Detection/identification of vehicle
    - iii. Electronic notification to VA E-ZPass holders
    - iv. Notice/Invoice for toll (for collection or enforcement)
    - v. Opportunity for contesting/submission of affidavit by vehicle owner/leasing company
    - vi. Failure to pay/contest
    - vii. Grace Period/Collections Requirements
    - viii. Enforcement Processes/Methods to enforce if collections unsuccessful
      1. Administrative Process
      2. Court Process
    - ix. Means by which enforcement can be lifted/satisfied
5. Associate administrative fees and penalties with appropriate stages
  - a. Further, codify the administrative fee and penalty cap set out in the 2017 Appropriations Act for the administrative vehicle registration hold process by incorporating it into the consolidated section.
6. Ensure appropriate modification of cross references in all relevant titles.

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<sup>3</sup> Similar treatment of the HOT Lanes enforcement statute may also be warranted, provided however that distinction and separation of the HOT Lanes statute(s) from other tolling statutes continues to be maintained.

7. Other “technical amendments”:
  - a. Clarify the definition of “owner” as it relates to vehicle leasing/rental companies. The current definition, which provides in part, that "Owner" does not include a vehicle rental or vehicle leasing company, is in effect a conflict (at least as to intent) with the following language in current law which reads: “Any vehicle rental or vehicle leasing company, if it receives an invoice or is named in a summons, shall be released as a party to the action if it provides the operator of the toll facility a copy of the vehicle rental agreement or lease or an affidavit identifying the renter or lessee within 30 days of receipt of the invoice or at least 14 days prior to the date of hearing set forth in the summons”. (see subsection K of §46.2-819.1 and subsection M of §46.2-819.3:1) The only entities that may be pursued as “parties” for unpaid tolls/administrative fees/civil penalties are vehicle “owners” or “operators” and as a result, vehicle rental or leasing companies may avoid requirements of the foregoing operative provision altogether by virtue of their exclusion from the definition of owner.

# COMMONWEALTH OF VIRGINIA

SUSAN CLARKE SCHAAR  
CLERK OF THE SENATE  
POST OFFICE BOX 396  
RICHMOND, VIRGINIA 23218



SENATE

March 9, 2017

Charles A. Kilpatrick  
Commissioner, Virginia Department of Transportation  
1401 East Broad Street  
Richmond, VA 23219

Dear Commissioner Kilpatrick:

This is to inform you that, pursuant to Rule 20 (o) of the Rules of the Senate of Virginia, the Senate Committee on Transportation has referred the subject matter contained in Senate Bill 954 to the Virginia Department of Transportation for study. It is requested that the appropriate committee chair and bill patron receive a written report, with a copy to this office, by November 1, 2017.

With kind regards. I am

Sincerely yours,

A handwritten signature in blue ink, appearing to read "Susan Clarke Schaar".

Susan Clarke Schaar

SCS:dhl

cc: Sen. Charles W. Carrico, Sr., Chair, Senate Committee on Transportation  
Sen. William R. DeSteph, Jr., Patron of SB 954  
Mark Vucci, Director, Division of Legislative Services