

Mileage-Based User Fee Program

Interim Report

Virginia Department of Motor Vehicles
July 2021

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Executive Summary

Chapters 1230 and 1275 of the 2020 Acts of Assembly established a highway use fee as a new source of revenue for the Commonwealth Transportation Fund and directed the Department of Motor Vehicles (DMV) to convene a working group to develop a mileage-based user fee (MBUF) program as an alternative method of collecting the highway use fee.

The DMV working group met, conducted research on similar programs in other jurisdictions, and developed a list of requirements necessary to implement a mileage-based user fee program in Virginia. The working group considered each of the following elements as directed by the enacting legislation: the protection of all personally identifiable information that may be divulged in the reporting of highway usage, methods to record and report highway usage, the administration of the program, including the collection of fees for highway usage, and other issues identified by the working group.

The working group developed a Request for Proposal (RFP) outlining the basic requirements necessary to implement a mileage-based user fee program in the Commonwealth. The RFP was issued on March 12, 2021. The RFP remained open until April 26, 2021, and procurement activities are ongoing. DMV developed program requirements, and the RFP seeks proposals from contractors to administer the program for DMV. The program will enable customers to track and report vehicle miles traveled and pay appropriate fees.

The selected contractor will be required to protect personally identifiable information by maintaining the information collected in accordance with all applicable federal and state laws and regulations, all DMV policies, and the Commonwealth of Virginia's information security policies. The working group also recommends strengthening the protection of information collected in the MBUF program by amending § 46.2-773 of the *Code of Virginia* to include specific statutory protections for this information.

As envisioned by the working group, the program will be administered with an online portal allowing eligible participants to enroll in the program, manage accounts, receive and pay invoices, and receive communications electronically.

Through its research, the DMV working group discovered there are a variety of methods available to capture and report vehicle miles traveled. An objective of the program is to offer participants mileage capture technology options to include those with the ability to capture GPS location data and those without the ability to capture GPS location data.

Other issues considered by the working group include fraud prevention and enforcement, the potential to obtain grant funding to support the program, and the possibility of achieving cost savings by working with other jurisdictions implementing similar programs.

This interim report documents the progress and recommendations of the working group to date and will be supplemented by a final report to the General Assembly in December 2021.

Introduction

Chapters 1230 and 1275 of the 2020 Acts of Assembly authorized structural changes to the Commonwealth's transportation funding system and adjusted funding sources for transportation infrastructure and other transit needs. These changes increased motor fuels taxes and linked future increases to inflation, reduced vehicle registration fees, and created a new highway use fee on alternative fuel, electric, and fuel-efficient vehicles.

The goal of the highway use fee is to ensure fairness in transportation funding by charging a fee to vehicle owners paying less in fuels taxes compared to others because their vehicles use less motor fuel while driving the same number of miles. Motor fuels tax revenue represents approximately 15 percent of Commonwealth Transportation Fund revenue. With the advent and increasing use of alternative fuel, electric, and fuel-efficient vehicles, motor fuels taxes are generating less revenue even as vehicle miles traveled are increasing. The General Assembly has concluded that a highway use fee based on vehicle miles traveled is a more equitable means for collecting contributions to the Commonwealth Transportation Fund from alternative fuel, electric, and fuel-efficient vehicles using highways in the Commonwealth.

Virginia's highway use fee, which became effective on July 1, 2020, is imposed on all alternative fuel, electric, and fuel-efficient vehicles registered in the Commonwealth. A fuel-efficient vehicle is defined as one with a combined fuel economy of 25 miles per gallon (mpg) or greater. The highway use fee for an electric vehicle is equal to 85 percent of the amount of taxes paid on gasoline (or gasohol) by a vehicle with a combined fuel economy of 23.7 mpg driven 11,600 miles per year (the average annual miles traveled by a passenger vehicle in the Commonwealth).¹ The highway use fee for other fuel-efficient vehicles is equal to 85 percent of the tax paid on gasoline (or gasohol) by a vehicle with a combined fuel economy of 23.7 mpg driven 11,600 miles per year less the tax paid on gasoline (or gasohol) by the vehicle being registered driven 11,600 miles per year.

The 2020 legislation also creates a voluntary mileage-based user fee (MБУF) program as an alternative to the flat highway use fee. By participating in the program, a vehicle owner can pay a fee based on actual miles driven instead of the 11,600 mile passenger vehicle average. The *Code of Virginia* defines eligibility for the program, the fee structure, and the Department of Motor Vehicles' (DMV) authority to establish procedures for the collection of fees. Enacting legislation requires DMV to convene a working group to assist in the development of the mileage-based user fee program.² In developing recommendations, the working group is directed to consider (i) the protection of all personally identifiable information that may be divulged in the reporting of highway usage; (ii) methods to record and report highway usage; (iii) the administration of the program, including the collection of fees for highway usage; and (iv) other issues identified by the Commissioner. The legislation requires the MБУF program to be

¹ Section 46.2-772 of the *Code of Virginia* authorizes DMV to calculate the annual highway use fee using the average number of miles traveled by a passenger vehicle in the Commonwealth in a year, as determined by the Commissioner. For Fiscal Year 2021 that figure has been determined to be 11,600 miles.

² The enacting legislation can be found in Appendix A of this report.

operational on July 1, 2022, and the DMV working group to submit an interim report no later than July 1, 2021.³

It is anticipated the MBUF program will appeal to vehicle owners using their vehicles to travel significantly less than the average number of miles traveled by passenger vehicles in the Commonwealth. While the program is expected to enroll a relatively small number of participants at its inception, the knowledge gained from implementation will be valuable if the program is later expanded to cover more vehicles.

This report is made to document the progress and recommendations of the working group, with specific emphasis on the issues identified in the enacting legislation. Additional information will be added to supplement this report in a final report to the General Assembly in December 2021.

DMV Working Group

The DMV working group began meeting in July 2020 to develop the program and make recommendations for its implementation. DMV staff involved in the planning process include members of executive leadership, communications, customer service management, data analysis and reporting, data management, IT services, law enforcement, legal services, legislative services, procurement, and vehicle services.

The working group defined program objectives to guide the project development. Those objectives include: developing and implementing a reliable, cost-effective, user-friendly MBUF collection process; providing exceptional, responsive service to customers; ensuring proper security and protection of customer and program data and information and transparency regarding its use; facilitating enforcement and compliance with MBUF statutory and contractual user agreement provisions; offering mileage-capture options and value-added services that encourage participation in the program; and promoting public understanding and acceptance of and enrollment in the MBUF program.

In addition to weekly meetings and team research, the working group consulted with project leaders in Oregon and Utah to discuss similar programs operating in those jurisdictions and heard presentations from a variety of contractors with expertise in the development or administration of road usage charge programs.

Other jurisdictions administering MBUF programs have contracted with external vendors to manage the programs.⁴ Using a contractor offers multiple advantages. An external contractor allows access to expertise on the most current technology used to track vehicle miles traveled and allows the contractor to manage the fee payment and collection process. After determining

³ Chapters 1230 (<https://lis.virginia.gov/cgi-bin/legp604.exe?201+ful+CHAP1230&201+ful+CHAP1230>) and 1275 (<https://lis.virginia.gov/cgi-bin/legp604.exe?201+ful+CHAP1275&201+ful+CHAP1275>) of the 2020 Acts of Assembly.

⁴ Some jurisdictions use the term “road usage charge” instead of “mileage-based user fee.” For purposes of this report, all programs assessing fees based upon vehicle miles traveled are referred to as mileage-based user fee (MBUF) programs.

the program should be managed by a contractor, the working group developed a list of the following key tasks:

- Issue a Request for Proposal (RFP) for a contractor to administer a program for DMV to track and report vehicle miles traveled, collect fees, and transfer revenue to the state;
- Establish appropriate audit and compliance processes and procedures; and
- Implement a communications and customer outreach plan.

The working group addressed the issues required by the enacting legislation and other important issues and developed detailed minimum program requirements.

Request for Proposal (RFP)

After the working group developed basic program requirements and determined the program should be administered by an outside contractor, DMV solicited proposals for a multi-year services contract to provide a turnkey MBUF solution.

DMV issued an RFP on Virginia's electronic procurement system (eVa) on March 12, 2021. The RFP remained open until April 26, 2021, and procurement activities are ongoing. Detailed program requirements for design, development, and deployment of the program by the legislated effective date of July 1, 2022, are documented in the RFP.⁵ In conjunction with the procurement process, DMV will prepare to administer the program, prepare select DMV systems to interface with the contractor systems, and plan for communication and publication of the program to potential participants.

The DMV working group established criteria for an MBUF program administered by a contractor that consists of a web-based solution that interfaces with select DMV business systems. As envisioned, the program involves the contractor providing comprehensive and secure customer account management services and revenue collection and remittance to DMV. It is anticipated the contractor will perform other administrative tasks including establishing customer contractual user agreements; activating and disseminating mileage reporting devices (MRD); assessing fees and collecting payments from customers; collecting, storing, reporting, and destroying customer and MBUF program data and information with an emphasis on data privacy and security; providing invoices and other correspondence to customers; coordinating with DMV to enforce customer payment; and conducting and complying with program audit and reconciliation requirements.

⁵ The RFP for the mileage-based user fee program may be found at https://mvendor.cgieva.com/Vendor/public/VBODetails.jsp?PageTitle=SO%20Details&DOC_CD=RFP&Details_Page=VBOSODetails.jsp&DEPT_CD=A154&BID_INTRNL_NO=167031&BID_NO=RFP%20154%3A21-009&BID_VERS_NO=1

Protection of all personally identifiable information that may be divulged in the reporting of highway usage

The DMV working group explored how personally identifiable information collected in the mileage-based user fee program can be protected using existing law and contract language and considered whether existing statutory protections can be enhanced with the introduction of new legislation.

The working group anticipates including the following elements in a contract with a vendor selected to administer the MBUF program. Participant data must be maintained in accordance with all applicable federal and state laws and regulations and all DMV policies relating to the collection and maintenance of customer vehicle and personal information including §§ 46.2-208 and 46.2-209 of the *Code of Virginia*, as well as the Commonwealth of Virginia's information security policies. DMV will not permit the data provided by participants to be used for any purpose other than the one for which it was furnished. Participants will be offered enrollment options to address concerns regarding data privacy, including:

- The reporting and retention of either only chargeable miles for the duration of program enrollment, no location data captured; or
- Chargeable miles and location data for one monthly billing cycle; or
- Chargeable miles and location data for up to two years after capture or until the expiration or termination of the contract between DMV and the contractor.

Program data will be retained according to the applicable retention policies as defined by the Library of Virginia for the option for data collection chosen by the participant. DMV will receive aggregated, anonymized program data for transportation research purposes or to analyze the effectiveness of the program. However, the sale or release of program data to any party or entity other than DMV will be prohibited without the express advance written consent of DMV. Finally, a privacy policy will be developed and available to program participants explaining how data is collected, maintained, protected, used, and released.

The working group considered two statutory alternatives to protecting information generated by the MBUF program. The alternatives considered are to request the legislature to enact specific statutory protections for data collected in the MBUF program, including location data, or to rely on existing statutory protections in the *Code of Virginia*. Both approaches have been used in other jurisdictions.

The Oregon legislature enacted specific statutory provisions to protect the information obtained and used for reporting and collecting the mileage-based user fee.⁶ Oregon law prohibits the release of records by either the agency or its contractor, enumerates seven exceptions for when the data can be released, and includes provisions for when and how data can be collected and shared for purposes of traffic management and research.

⁶ ORS 319.915

Alternatively, Virginia could rely on existing statutory provisions to protect the information collected. If no specific statutory protections are enacted for MBUF data, the data will be protected under § 46.2-208 of the *Code of Virginia*. Under existing law, even if a contractor retains the MBUF records and does not share it with DMV, it is likely DMV will be considered a custodian of the records for purposes of a Freedom of Information Act request or a subpoena. Section 46.2-208 of the *Code of Virginia* governs the release of DMV records. If location data is requested, DMV would proceed with an analysis under § 46.2-208 to determine whether any or all portions of the records are protected from disclosure. GPS location data would constitute personal information and be protected as such under § 46.2-208. However, without specific statutory protection, the GPS location data will be available to entities currently entitled to personal information under § 46.2-208, such as a government agency using the data to further an official purpose. Without being able to point to specific protections in the law that address location data, customers may have privacy concerns about participating in the program.

The working group recommends Virginia enact specific statutory protections for information obtained for the MBUF program. Legislation passed to protect this data can be tailored to address when and how the information can be shared and used and can increase customer confidence that personal information is protected. Confidence in the protection of the data generated may enhance customer willingness to participate in the program. The working group recommends modeling the information protection legislation for information collected for the MBUF program on Virginia's statutes protecting the information collected by toll facility operators. Draft legislation to protect the information collected in the MBUF program may be found in Appendix B of this report.

In addition to statutory and contractual provisions protecting the data collected by the contractor, DMV will use a secured web service for data exchange with the contractor and is engaged in planning which data elements will be exchanged and what changes are needed for DMV systems to interface with the selected contractor.

A final consideration for data privacy protection is data retention. Virginia's Public Records Act requires DMV to follow the retention schedules set by the Library of Virginia.⁷ The Library of Virginia imposes different data retention schedules for different types of data. While many schedules are already established, location data is new and needs to be defined. DMV has communicated this need to the Library of Virginia and has drafted a request for a data retention schedule.

Administration of the program, including the collection of fees for highway usage

The working group considered the administration of the MBUF program. As envisioned, a web-based platform will provide comprehensive customer account management services enabling detailed tracking of individual customer accounts, including customer demographic information, vehicle information, and customer account status and history. The web-based

⁷ Chapter 7 (§ 42.1-76 et seq.) of Title 42.1 of the Code of Virginia.
<http://law.lis.virginia.gov/vacode/title42.1/chapter7/>

platform will need to record and track miles traveled, transaction activity, payments received, payments due and overdue, fees collected and remitted to DMV, fee collection or enforcement actions, and correspondence. In addition, the customer service portal will need to verify program eligibility by interfacing with select DMV systems.

In addition, the online portal will allow participants to enroll in the MBUF program and execute an agreement outlining the terms of enrollment. If the participant elects for capture and retention of GPS location data, the participant will explicitly approve the capture and retention of this data through clear and conspicuous privacy language in the agreement.

Finally, the online portal will permit a participant to discontinue participation in the MBUF program at the end of the registration period, or at any other time if all fees are current, and to update personal or vehicle registration information.

The program administrator will collect all fees and transmit revenue to DMV, and the program will utilize a web-based self-service payment application that guides customers through the process of setting up and managing electronic payment options. The program administrator will be responsible for creating and sending statements to customers for fees, delinquent notices, and any other necessary correspondence, and will notify DMV of non-compliance and transmit delinquent customer information to DMV.

In addition to the administrative elements already discussed, the working group sought information from other jurisdictions regarding program enrollment, including:

- Past and present enrollment levels in ongoing programs;
- Enforcement and compliance issues, including odometer fraud and validation and whether more fraud is associated with any specific type of mileage reporting devices;
- Audit and compliance processes including what audits or compliance checks are performed; and
- Data analysis, including whether data is collected, what type, and what data can be shared.

The working group continues to discuss and plan for these and other administrative details in order to ensure a smooth and efficient operation when the program is implemented.

Methods to record and report highway usage

Multiple methods exist to capture vehicle miles traveled. Options include both self-reporting with an odometer capture at program milestones and different types of mileage reporting devices (MRD). There are multiple MRDs available. Administrators of existing programs and contractors supporting mileage-based user fee programs provided information about what options are currently available, what percentage of customers are using each type of MRD, the percentage of customers in other jurisdictions opting for GPS tracking, the effectiveness of each MRD option in meeting the program goals, and any problems program administrators or customers are experiencing with each MRD type.

In light of the many available options and consideration of evolving technology, DMV is seeking proposals for the use of any devices that meet the following requirements:

- The chosen MRDs facilitate participation by as many MBUF-eligible vehicles types and models as possible;
- The MRDs capture and report data necessary to fully inform the program;
- The MRDs offer alternatives to customers to address privacy concerns including at least one option that does not have ability to capture GPS location data and one option that does capture GPS location data; and
- The MRDs offer user-friendly alternatives to streamline the participant experience, ensuring ease of installation and setup, operation, troubleshooting and removal, and the MRDs provide manual capture of odometer readings for vehicles enrolled in the program.

Other issues

An issue not specifically addressed in the legislation is enforcement and fraud prevention. Law enforcement members of the working group continue to discuss these issues with other jurisdictions and develop processes to address them. Audit processes will be instituted to ensure the selected contractor and program participants meet statutory and contractual obligations.

DMV explored whether any federal grant funding is available for Virginia's MBUF program. Grant funds have been awarded to the Eastern Transportation Coalition to study the feasibility of mileage-based user fees and DMV has learned some of those funds may be available for limited use in the development or marketing of Virginia's MBUF program.

In addition, DMV staff have been contacted by a group from Washington state seeking to determine if there is interest from other jurisdictions developing mileage-based user fee programs to form a working group. The working group would explore whether jurisdictional partnerships might generate cost savings in administering these types of programs. DMV staff expressed a tentative interest in participating in a working group to discuss these matters and will include any available developments and information in its final report.

Conclusion

The DMV working group has made significant progress on the goals initially conceived as necessary to implement a fully functional MBUF program by July 1, 2022. The group developed the requirements for an RFP for a contractor to run a program for DMV to track and report vehicle miles traveled, collect fees, and transfer revenue to the state. The RFP has been issued, vendor responses to the RFP have been received, and DMV is continuing with the next steps of the procurement process. Members of the working group are also establishing appropriate audit and compliance processes and procedures, developing a communications and customer outreach plan, and preparing DMV systems to interface with the selected contractor. A final report will be submitted by December 2021.

Appendix A: Enacting Legislation

Chapter 1230 of the 2019 Acts of Assembly, Enactment Clause 7

7. That the Commissioner of the Department of Motor Vehicles (the Commissioner) shall convene a working group to assist the Department of Motor Vehicles in the development of the mileage-based user fee program authorized pursuant to § 46.2-773 of the Code of Virginia, as created by this act. In developing recommendations, the working group shall consider (i) the protection of all personally identifiable information that may be divulged in the reporting of highway usage; (ii) methods to record and report highway usage; (iii) the administration of the program, including the collection of fees for highway usage; and (iv) other issues identified by the Commissioner. The Commissioner shall issue an interim report no later than July 1, 2021, and a final report no later than December 15, 2021, on the findings of the working group. The Commissioner shall issue guidelines for the program no later than May 15, 2022. Such guidelines shall not be subject to the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia).

Chapter 1275 of the 2019 Acts of Assembly, Enactment Clause 7

7. That the Commissioner of the Department of Motor Vehicles (the Commissioner) shall convene a working group to assist the Department of Motor Vehicles in the development of the mileage-based user fee program authorized pursuant to § 46.2-773 of the Code of Virginia, as created by this act. In developing recommendations, the working group shall consider (i) the protection of all personally identifiable information that may be divulged in the reporting of highway usage; (ii) methods to record and report highway usage; (iii) the administration of the program, including the collection of fees for highway usage; and (iv) other issues identified by the Commissioner. The Commissioner shall issue an interim report no later than July 1, 2021, and a final report no later than December 15, 2021, on the findings of the working group. The Commissioner shall issue guidelines for the program no later than May 15, 2022. Such guidelines shall not be subject to the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia).

The full text of the legislation may be found at <https://lis.virginia.gov/cgi-bin/legp604.exe?201+ful+CHAP1230&201+ful+CHAP1230> and <https://lis.virginia.gov/cgi-bin/legp604.exe?201+ful+CHAP1275&201+ful+CHAP1275>

Appendix B: Proposed Draft Legislation

SUMMARY

Mileage-Based User Fee Program; data protection and privacy. Clarifies the responsibilities of the Department of Motor Vehicles (DMV) and its contractors regarding information collected as part of the administration of the mileage-based user fee program.

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

2
3 **That § 46.2-773 of the Code of Virginia relating to the mileage-based user fee**
4 **program is amended and reenacted as follows:**

5
6 **§ 46.2-773. Mileage-based user fee program.**

7 A. There is hereby established a mileage-based user fee program. The program shall be a
8 voluntary program that allows owners of vehicles subject to the highway use fee pursuant to
9 § 46.2-772 to pay a mileage-based fee in lieu of the highway use fee. No owner of a motor
10 vehicle registered in the Commonwealth shall be required to participate in the program
11 established pursuant to this section.

12 B. In any year that an owner pays the fee set forth in this section, such owner shall not be
13 subject to the fee set forth in § 46.2-772 for the same vehicle. In no case shall the fees paid
14 pursuant to this section during a 12-month period exceed the annual highway use fee that would
15 have otherwise been paid.

16 C. The fee schedule for the mileage-based user fee program shall be calculated by
17 dividing the amount of the highway use fee as determined pursuant to subsection B of § 46.2-
18 772 by the average number of miles traveled by a passenger vehicle in the Commonwealth to
19 determine a fee per mile driven.

20 D. The Department shall establish procedures for the collection of the fees set forth in
21 this section. Such procedures may limit the total number of participants during the first four
22 years of the program.

23 E. Information collected by the Department and any entity pursuant to this Chapter shall
24 be limited exclusively to that information that is necessary for the collection of the mileage-
25 based user fee. Notwithstanding any other provision of law, all information collected pursuant to
26 this Chapter shall be used exclusively for the collection of the mileage-based user fee and shall

27 not (i) be open to the public; (ii) be sold for sales, solicitation, or marketing purposes; (iii) be
28 disclosed to any other entity except as may be necessary for the collection of an unpaid mileage-
29 based user fee or to a vehicle owner as part of a challenge to the imposition of a mileage-based
30 user fee; and (iv) shall not be subject to disclosure through a court order or through a third-party
31 request submitted pursuant to the Virginia Freedom of Information Act (§ 2.2-3700 et seq.).

32 F. The Department and an entity collecting information pursuant to this Chapter may
33 retain, aggregate and use the information collected pursuant to this section for purposes of traffic
34 management and research and to analyze the effectiveness of the program in such a manner that
35 individuals cannot be identified.

36

Appendix C: DMV Steering Committee

Richard Holcomb	Commissioner
Scott Cummings	Assistant Commissioner for Finance
Linda Ford	Assistant Commissioner Governmental Affairs
Millicent Ford	Assistant Commissioner Driver, Vehicle and Data Management
Pamela Goheen	Assistant Commissioner for Communications
Joseph Hill	Assistant Commissioner Enforcement and Compliance
Carla Jackson	Assistant Commissioner for Legal Affairs
David Mitchell	Deputy Commissioner Chief Administrative and Finance Officer
Lana Shelley	Deputy Commissioner Chief Information Officer

Appendix D: DMV Working Group

Barbara Arkwright	Law Enforcement
Michelle Bailey	Procurement
Feizel Bobert	IT - Financial
Jessica Cowardin	Communications
Scott Cummings	Executive Project Sponsor
Nick Danforth	IT - Architecture
Sam Davenport	Vehicle Services - Process Owner
Stepanie Davis	IT - Financial
Bob Dunkum	IT - Vehicle
David Eaton	Project Advisor
Kathleen Furr	Customer Service Management
Betsy Grace	Procurement
Leslie Grott	Project Coordinator
Mike Hammonds	IT Security
Beau Hurley	IT Security
Sandy Jack	Data Management
Rose Lawhorne	Data Analysis and Reporting
Melanie Lester	Vehicle Services - Process Owner Lead
Nanette Marais	IT - Financial
Andrew Owens	Legal Services
Angela Schneider	Legislative Services
Jess Seier	Communications
Charles Sheldon	IT Oversight
Angie Turner	Project Advisor
Melissa Velazquez	Legislative Services
Rhonda Verra	IT - Vehicle
Tully Welborn	Project Advisor
Brian White	Customer Service Management