

# DEPARTMENT OF TAXATION

## 2001 Fiscal Impact Statement

1. **Patron** Blevins

3. **Committee** House Finance

4. **Title** Retail Sales and Use Tax: Provides an  
Exemption for Certain Real Property  
Construction Contractors

2. **Bill Number** HB 2338

**House of Origin:**

  X   **Introduced**

       **Substitute**

       **Engrossed**

**Second House:**

       **In Committee**

       **Substitute**

       **Enrolled**

### 5. **Summary/Purpose:**

This bill would provide a retail sales and use tax exemption for tangible personal property purchased by a contractor and used solely in the construction, installation, repair, or any other service with respect to real property and fixtures thereon, owned or leased by a local school division. To qualify for this exemption, the contractor's purchases must be made pursuant to a contract with the local school division to provide real property services.

The effective date of this bill is not specified.

6. **Fiscal Impact Estimates are:** Tentative. See Line 8.

#### **Revenue Impact:**

<i><b>Fiscal Year</b></i>	<i><b>Dollars</b></i>	<i><b>Fund</b></i>
2001-02	(\$3.1 million)	N+F
2001-02	(\$0.9 million)	Local
2002-03	(\$3.4 million)	N+F
2002-03	(\$1.0 million)	Local

7. **Budget amendment necessary:** Yes.

Page 1, Revenue Estimates

### 8. **Fiscal implications:**

This bill would have a negative impact on General Fund, Transportation Trust Fund, and local revenues. The negative revenue impact for this bill is estimated to be \$4.0 million

(state: \$3.1 million; local: \$0.9 million) in fiscal year 2002 and \$4.4 million (state: \$3.4 million; local: \$1.0 million) in fiscal year 2003.

The revenue estimate is based on data provided by the Department of Education on new school construction in Virginia. New construction values for primary, middle, high and special schools and additions/renovation project values were aggregated to get the total of construction contracts that would be affected by this bill. To estimate the tangible personal property purchases that would become exempt under this bill, 1997 Economic Census data was used. This data indicates that materials constitute approximately 30% of the total project costs in Virginia.

The department's administrative costs to implement this bill would be minimal.

**9. Specific agency or political subdivisions affected:**

Department of Taxation  
Local school divisions

**10. Technical amendment necessary:** No.

**11. Other comments:**

Tangible Personal Property Purchased by Real Property Contractors

Pursuant to Code of Virginia § 58.1-610, real property contractors are the users or consumers of all tangible personal property purchased by them in the performance of real property construction, installation, repair or renovation contracts. This general rule applies regardless that the party for whom the contract is performed may be exempt from sales and use taxation (such as a government entity). Currently, the only exceptions to this rule apply to contractor's purchases of industrial materials, church baptistries, and modular buildings incorporated into realty.

In certain instances, a contractor is permitted to purchase tangible personal property exempt of the tax when performing real property contracts for government entities (including a local school system). Tangible personal property may be purchased exempt of the tax when: (1) the contractor is officially designated the purchasing agent of the government entity; (2) the credit of a federal, state or local governmental entity is bound directly; and (3) payment is made from public funds. It is the department's understanding that the "purchasing agent designation" approach is not favored by government entities.

This bill would allow contractors to purchase tangible personal property exempt of the tax when such property is used solely in the construction, reconstruction, installation, or repair of property owned or leased by a local school system. Contractors would no longer be required to obtain "purchasing agent" status in order to make purchases of tangible personal property exempt of the tax. This bill would also create an exception to

the general rule that real property contractors are the taxable users or consumers of all tangible personal property purchased by them for incorporation into realty. As noted above, under current law the only exceptions to this rule apply to contractor's purchases of industrial materials, church baptistries, and modular buildings.

#### Tangible Personal Property Furnished to Real Property Contractors

Real property contractors are the taxable users or consumers of all tangible personal property furnished to them for incorporation into realty. Therefore, contractors are liable for the tax on all tangible personal property that is given to them and on which the tax was not paid at the time the property was purchased. This is true regardless that the purchaser itself may be exempt from sales and use taxation.

There are a few exceptions to this general rule. The exceptions include, but are not limited to, tangible personal property purchased exempt of the tax by federal, state and local government entities (including local school systems). Contractors are not liable for the tax on tangible personal property furnished to them when purchased by these exempt entities. This bill would not change these exceptions.

cc: Secretary of Finance

**Date:** 1/18/01/wbs

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