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HOUSE BILL NO. 1170

Offered January 9, 2002

A BILL to amend and reenact §§ 29.1-101, 29.1-101.01, 58.1-603, 58.1-604, 58.1-614, 58.1-627, 58.1-628 and 58.1-638 of the Code of Virginia, relating to sales and use tax rate increase.

Patrons—Dillard, Callahan, Hull and Rust

Referred to Committee on Education

Be it enacted by the General Assembly of Virginia:**1. That §§ 29.1-101, 29.1-101.01, 58.1-603, 58.1-604, 58.1-614, 58.1-627, 58.1-628 and 58.1-638 of the Code of Virginia are amended and reenacted as follows:****§ 29.1-101. Game Protection Fund.**

The amount received by the State Treasurer from the sale of hunting, trapping and fishing licenses, revenue generated from the sales and use tax pursuant to subsection E F of § 58.1-638, and such other items as may accrue to the Board shall be set aside and shall constitute the Game Protection Fund. The income and principal of this Fund, including any unexpended balance, shall be a separate fund in the state treasury and shall only be used for the payment of the salaries, allowances, wages, and expenses incident to carrying out the provisions of the hunting, trapping and inland fish laws and for no other purpose, except as provided in §§ 29.1-101.01, 29.1-701, 58.1-345 and 58.1-1410.

§ 29.1-101.01. Capital Improvement Fund.

There is hereby created in the state treasury a special, nonreverting fund to be known as the Capital Improvement Fund, hereafter referred to as "the Fund." The Fund shall consist of those funds that may be so designated by the Board and any gifts, grants, and contributions from any person, foundation, or other legal entity. In addition, the Board may transfer to this Fund an amount equal to fifty percent or less of the revenue generated annually from the sales and use tax which has been deposited in the Game Protection Fund pursuant to subsection E F of § 58.1-638. The income and principal in the Fund shall be used only for the purchase, construction, maintenance, or repair of capital assets of the Department.

The Fund shall be established on the books of the Comptroller. All moneys received shall be paid into the state treasury and credited to the Fund. Interest earned on the moneys in the Fund shall remain in the Fund and be credited to the Fund. Any moneys remaining in the Fund, including interest thereon, at the end of each fiscal year shall not revert to the general fund but shall remain in the Fund, except as provided in subsection E of § 58.1-638.

§ 58.1-603. Imposition of sales tax.

There is hereby levied and imposed, in addition to all other taxes and fees of every kind now imposed by law, a license or privilege tax upon every person who engages in the business of selling at retail or distributing tangible personal property in this Commonwealth, or who rents or furnishes any of the things or services taxable under this chapter, or who stores for use or consumption in this Commonwealth any item or article of tangible personal property as defined in this chapter, or who leases or rents such property within this Commonwealth, in the amount of ~~three and one-half~~ four percent:

1. Of the gross sales price of each item or article of tangible personal property when sold at retail or distributed in this Commonwealth.

2. Of the gross proceeds derived from the lease or rental of tangible personal property, where the lease or rental of such property is an established business, or part of an established business, or the same is incidental or germane to such business.

3. Of the cost price of each item or article of tangible personal property stored in this Commonwealth for use or consumption in this Commonwealth.

4. Of the gross proceeds derived from the sale or charges for rooms, lodgings or accommodations furnished to transients as set out in the definition of "retail sale" in § 58.1-602.

5. Of the gross sales of any services which are expressly stated as taxable within this chapter.

§ 58.1-604. Imposition of use tax.

There is hereby levied and imposed, in addition to all other taxes and fees now imposed by law, a tax upon the use or consumption of tangible personal property in this Commonwealth, or the storage of such property outside the Commonwealth for use or consumption in this Commonwealth, in the amount of ~~three and one-half~~ four percent:

1. Of the cost price of each item or article of tangible personal property used or consumed in this Commonwealth. Tangible personal property which has been acquired for use outside this Commonwealth

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59 and subsequently becomes subject to the tax imposed hereunder shall be taxed on the basis of its cost
 60 price if such property is brought within this Commonwealth for use within six months of its acquisition;
 61 but if so brought within this Commonwealth six months or more after its acquisition, such property shall
 62 be taxed on the basis of the current market value (but not in excess of its cost price) of such property at
 63 the time of its first use within this Commonwealth. Such tax shall be based on such proportion of the
 64 cost price or current market value as the duration of time of use within this Commonwealth bears to the
 65 total useful life of such property (but it shall be presumed in all cases that such property will remain
 66 within this Commonwealth for the remainder of its useful life unless convincing evidence is provided to
 67 the contrary).

68 2. Of the cost price of each item or article of tangible personal property stored outside this
 69 Commonwealth for use or consumption in this Commonwealth.

70 3. A transaction taxed under § 58.1-603 shall not also be taxed under this section, nor shall the same
 71 transaction be taxed more than once under either section.

72 4. The use tax shall not apply with respect to the use of any article of tangible personal property
 73 brought into this Commonwealth by a nonresident individual, visiting in Virginia, for his personal use,
 74 while within this Commonwealth.

75 5. The use tax shall not apply to out-of-state mail order catalog purchases totaling \$100 or less
 76 during any calendar year.

77 § 58.1-614. Vending machine sales.

78 A. Notwithstanding the provisions of §§ 58.1-603 and 58.1-604, whenever a dealer makes sales of
 79 tangible personal property through vending machines, or in any other manner making collection of the
 80 tax impractical, as determined by the Tax Commissioner, such dealer shall be required to report his
 81 wholesale purchases for sale at retail from vending machines and shall be required to remit an amount
 82 based on ~~four and one-half~~ five percent of such wholesale purchases.

83 B. Notwithstanding the provisions of §§ 58.1-605 and 58.1-606, dealers making sales of tangible
 84 personal property through vending machines shall report and remit the one percent local sales and use
 85 tax computed as provided in subsection A of this section.

86 C. The provisions of subsections A and B of this section shall not be applicable to vending machine
 87 operators all of whose machines are under contract to nonprofit organizations. Such operators shall
 88 report only the gross receipts from machines selling items for more than ten cents and shall be required
 89 to remit an amount based on a percentage of their remaining gross sales established by the Tax
 90 Commissioner to take into account the inclusion of sales tax.

91 D. Notwithstanding any other provisions in this section or § 58.1-628, when the Tax Commissioner
 92 determines that it is impractical to collect the tax in the manner provided by those sections, such dealer
 93 shall be required to remit an amount based on a percentage of gross receipts which takes into account
 94 the inclusion of the sales tax.

95 E. The provisions of this section shall not be applicable to any dealer who fails to maintain records
 96 satisfactory to the Tax Commissioner. A dealer making sales of tangible personal property through
 97 vending machines shall obtain a certificate of registration under § 58.1-613 in relevant form for each
 98 county or city in which he has machines.

99 § 58.1-627. Bracket system for tax at rate of four percent.

100 The ~~Tax Commissioner following~~ *shall develop* brackets of prices ~~that~~ shall be used for the collection
 101 of the tax imposed by this chapter ~~on sales of less than five dollars.~~

102	\$0.00	to	\$0.14	no tax
103	.15	to	.42	1» tax
104	.43	to	.71	2» tax
105	.72	to	.99	3» tax
106	1.00	to	1.28	4» tax
107	1.29	to	1.57	5» tax
108	1.58	to	1.85	6» tax
109	1.86	to	2.14	7» tax
110	2.15	to	2.42	8» tax
111	2.43	to	2.71	9» tax
112	2.72	to	2.99	10» tax
113	3.00	to	3.28	11» tax
114	3.29	to	3.57	12» tax
115	3.58	to	3.85	13» tax
116	3.86	to	4.14	14» tax
117	4.15	to	4.42	15» tax
118	4.43	to	4.71	16» tax

4.72 to 5.00 17» tax

On transactions ~~over~~ *greater than* five dollars, the tax shall be computed at ~~three and one-half~~ *four* percent, one-half cent or more being treated as one cent. If a dealer can show to the satisfaction of the Tax Commissioner that more than eighty-five percent of the total dollar volume of his gross taxable sales during the taxable month was from individual sales at prices of ten cents or less each, and that he was unable to adjust his prices in such manner as to prevent the economic incidence of the sales tax from falling on him, the Tax Commissioner shall determine the proper tax liability of the dealer based on that portion of the dealer's gross taxable sales which was from sales at prices of eleven cents or more.

§ 58.1-628. Bracket system for combined state and local tax.

The *Tax Commissioner shall prepare following* brackets of prices *that* shall be used for the collection of the combined state and local tax *on sales less than five dollars*:

\$0.00	to	\$0.11	no tax
.12	to	.33	1» tax
.34	to	.55	2» tax
.56	to	.77	3» tax
.78	to	.99	4» tax
1.00	to	1.22	5» tax
1.23	to	1.44	6» tax
1.45	to	1.66	7» tax
1.67	to	1.88	8» tax
1.89	to	2.11	9» tax
2.12	to	2.33	10» tax
2.34	to	2.55	11» tax
2.56	to	2.77	12» tax
2.78	to	2.99	13» tax
3.00	to	3.22	14» tax
3.23	to	3.44	15» tax
3.45	to	3.66	16» tax
3.67	to	3.88	17» tax
3.89	to	4.11	18» tax
4.12	to	4.33	19» tax
4.34	to	4.55	20» tax
4.56	to	4.77	21» tax
4.78	to	5.00	22» tax

On transactions ~~over~~ *greater than* five dollars, the tax shall be computed at ~~four and one-half~~ *five* percent, one-half cent or more being treated as one cent. The ~~foregoing~~ bracket system shall not relieve the dealer from the duty and liability to remit an amount equal to ~~four and one-half~~ *five* percent of his gross taxable sales as provided in this chapter. If the dealer, however, can show to the satisfaction of the Tax Commissioner that more than eighty-five percent of the total dollar volume of his gross taxable sales during the taxable month was from individual sales at prices of ten cents or less each and that he was unable to adjust his prices in such manner as to prevent the economic incidence of the sales tax from falling on him, the Tax Commissioner shall determine the proper tax liability of the dealer based on that portion of the dealer's gross taxable sales which was from sales at prices of eleven cents or more.

§ 58.1-638. Disposition of state sales and use tax revenue; Transportation Trust Fund; localities' share; Game Protection Fund.

A. The Comptroller shall designate a specific revenue code number for all the state sales and use tax revenue collected under the preceding sections of this chapter.

1. The sales and use tax revenue generated by the one-half percent sales and use tax increase enacted by the 1986 Special Session of the General Assembly shall be paid, in the manner hereinafter provided in this section, to the Transportation Trust Fund as defined in § 33.1-23.03:1. Of the funds paid to the Transportation Trust Fund, an aggregate of 4.2 percent shall be set aside as the Commonwealth Port Fund as provided in this section; an aggregate of 2.4 percent shall be set aside as the Commonwealth Airport Fund as provided in this section; and an aggregate of 14.5 percent in fiscal year 1998-1999 and 14.7 percent in fiscal year 1999-2000 and thereafter shall be set aside as the Commonwealth Mass Transit Fund as provided in this section. The Fund's share of such net revenue shall be computed as an

178 estimate of the net revenue to be received into the state treasury each month, and such estimated
179 payment shall be adjusted for the actual net revenue received in the preceding month. All payments shall
180 be made to the Fund on the last day of each month.

181 2. There is hereby created in the Department of the Treasury a special nonreverting fund which shall
182 be a part of the Transportation Trust Fund and which shall be known as the Commonwealth Port Fund.

183 a. The Commonwealth Port Fund shall be established on the books of the Comptroller and the funds
184 remaining in such Fund at the end of a biennium shall not revert to the general fund but shall remain in
185 the Fund. Interest earned on such funds shall remain in the Fund and be credited to it. Funds may be
186 paid to any authority, locality or commission for the purposes hereinafter specified.

187 b. The amounts allocated pursuant to this section shall be allocated by the Commonwealth
188 Transportation Board to the Board of Commissioners of the Virginia Port Authority to be used to
189 support port capital needs and the preservation of existing capital needs of all ocean, river, or tributary
190 ports within the Commonwealth.

191 c. Commonwealth Port Fund revenue shall be allocated by the Board of Commissioners to the
192 Virginia Port Authority in order to foster and stimulate the flow of maritime commerce through the
193 ports of Virginia, including but not limited to the ports of Richmond, Hopewell and Alexandria.

194 3. There is hereby created in the Department of the Treasury a special nonreverting fund which shall
195 be part of the Transportation Trust Fund and which shall be known as the Commonwealth Airport Fund.
196 The Commonwealth Airport Fund shall be established on the books of the Comptroller and any funds
197 remaining in such Fund at the end of a biennium shall not revert to the general fund but shall remain in
198 the Fund. Interest earned on the funds shall be credited to the Fund. The funds so allocated shall be
199 allocated by the Commonwealth Transportation Board to the Virginia Aviation Board. The funds shall
200 be allocated by the Virginia Aviation Board to any Virginia airport which is owned by the
201 Commonwealth, a governmental subdivision thereof, or a private entity to which the public has access
202 for the purposes enumerated in § 5.1-2.16, or is owned or leased by the Metropolitan Washington
203 Airports Authority (MWAA), as follows:

204 Any new funds in excess of \$12.1 million which are available for allocation by the Virginia Aviation
205 Board from the Commonwealth Transportation Fund, shall be allocated as follows: sixty percent to
206 MWAA, up to a maximum annual amount of two million dollars, and forty percent to air carrier airports
207 as provided in subdivision A 3 a. Except for adjustments due to changes in enplaned passengers, no air
208 carrier airport sponsor, excluding MWAA, shall receive less funds identified under subdivision A 3 a
209 than it received in fiscal year 1994-1995.

210 Of the remaining amount:

211 a. Forty percent of the funds shall be allocated to air carrier airports, except airports owned or leased
212 by MWAA, based upon the percentage of enplanements for each airport to total enplanements at all air
213 carrier airports, except airports owned or leased by MWAA. No air carrier airport sponsor, however,
214 shall receive less than \$50,000 nor more than \$2 million per year from this provision.

215 b. Forty percent of the funds shall be allocated by the Aviation Board for air carrier and reliever
216 airports on a discretionary basis, except airports owned or leased by MWAA.

217 c. Twenty percent of the funds shall be allocated by the Aviation Board for general aviation airports
218 on a discretionary basis.

219 4. There is hereby created in the Department of the Treasury a special nonreverting fund which shall
220 be a part of the Transportation Trust Fund and which shall be known as the Commonwealth Mass
221 Transit Fund.

222 a. The Commonwealth Mass Transit Fund shall be established on the books of the Comptroller and
223 any funds remaining in such Fund at the end of the biennium shall not revert to the general fund but
224 shall remain in the Fund. Interest earned on such funds shall be credited to the Fund. Funds may be
225 paid to any local governing body, transportation district commission, or public service corporation for
226 the purposes hereinafter specified.

227 b. The amounts allocated pursuant to this section shall be used to support the public transportation
228 administrative costs and the costs borne by the locality for the purchase of fuels, lubricants, tires and
229 maintenance parts and supplies for public transportation at a state share of eighty percent in 2002 and
230 ninety-five percent in 2003 and succeeding years. These amounts may be used to support up to
231 ninety-five percent of the local or nonfederal share of capital project costs for public transportation and
232 ridesharing equipment, facilities, and associated costs. Capital costs may include debt service payments
233 on local or agency transit bonds. The term "borne by the locality" means the local share eligible for
234 state assistance consisting of costs in excess of the sum of fares and other operating revenues plus
235 federal assistance received by the locality.

236 c. Commonwealth Mass Transit Fund revenue shall be allocated by the Commonwealth
237 Transportation Board as follows:

238 (1) Funds for special programs, which shall include ridesharing, experimental transit, and technical
239 assistance, shall not exceed 1.5 percent of the Fund.

(2) The Board may allocate these funds to any locality or planning district commission to finance up to eighty percent of the local share of all costs associated with the development, implementation, and continuation of ridesharing programs.

(3) Funds allocated for experimental transit projects may be paid to any local governing body, transportation district commission, or public corporation or may be used directly by the Department of Rail and Public Transportation for the following purposes:

(a) To finance up to ninety-five percent of the capital costs related to the development, implementation and promotion of experimental public transportation and ridesharing projects approved by the Board.

(b) To finance up to ninety-five percent of the operating costs of experimental mass transportation and ridesharing projects approved by the Board for a period of time not to exceed twelve months.

(c) To finance up to ninety-five percent of the cost of the development and implementation of any other project designated by the Board where the purpose of such project is to enhance the provision and use of public transportation services.

d. Funds allocated for public transportation promotion and operation studies may be paid to any local governing body, planning district commission, transportation district commission, or public transit corporation, or may be used directly by the Department of Rail and Public Transportation for the following purposes and aid of public transportation services:

(1) At the approval of the Board to finance a program administered by the Department of Rail and Public Transportation designed to promote the use of public transportation and ridesharing throughout Virginia.

(2) To finance up to fifty percent of the local share of public transportation operations planning and technical study projects approved by the Board.

e. At least 73.5 percent of the Fund shall be distributed to each transit property in the same proportion as its operating expenses bear to the total statewide operating expenses and shall be spent for the purposes specified in subdivision 4 b.

f. The remaining twenty-five percent shall be distributed for capital purposes on the basis of ninety-five percent of the nonfederal share for federal projects and ninety-five percent of the total costs for nonfederal projects. In the event that total capital funds available under this subdivision are insufficient to fund the complete list of eligible projects, the funds shall be distributed to each transit property in the same proportion that such capital expenditure bears to the statewide total of capital projects.

g. There is hereby created in the Department of the Treasury a special nonreverting fund known as the Commonwealth Transit Capital Fund. The Commonwealth Transit Capital Fund shall be part of the Commonwealth Mass Transit Fund. The Commonwealth Transit Capital Fund subaccount shall be established on the books of the Comptroller and consist of such moneys as are appropriated to it by the General Assembly and of all donations, gifts, bequests, grants, endowments, and other moneys given, bequeathed, granted, or otherwise made available to the Commonwealth Transit Capital Fund. Any funds remaining in the Commonwealth Transit Capital Fund at the end of the biennium shall not revert to the general fund, but shall remain in the Commonwealth Transit Capital Fund. Interest earned on funds within the Commonwealth Transit Capital Fund shall remain in and be credited to the Commonwealth Transit Capital Fund. Proceeds of the Commonwealth Transit Capital Fund may be paid to any political subdivision, another public entity created by an act of the General Assembly, or a private entity as defined in § 56-557 and for purposes as enumerated in subdivision 4c of § 33.1-269 or expended by the Department of Rail and Public Transportation for the purposes specified in this subdivision. Revenues of the Commonwealth Transit Capital Fund shall be used to support capital expenditures involving the establishment, improvement, or expansion of public transportation services through specific projects approved by the Commonwealth Transportation Board. Projects financed by the Commonwealth Transit Capital Fund shall receive local, regional or private funding for at least twenty percent of the nonfederal share of the total project cost.

5. Funds for Metro shall be paid by the Northern Virginia Transportation Commission (NVTC) to the Washington Metropolitan Area Transit Authority (WMATA) and be a credit to the Counties of Arlington and Fairfax and the Cities of Alexandria, Falls Church and Fairfax in the following manner:

a. Local obligations for debt service for WMATA rail transit bonds apportioned to each locality using WMATA's capital formula shall be paid first by NVTC. NVTC shall use ninety-five percent state aid for these payments.

b. The remaining funds shall be apportioned to reflect WMATA's allocation formulas by using the related WMATA-allocated subsidies and relative shares of local transit subsidies. Capital costs shall include twenty percent of annual local bus capital expenses. Hold harmless protections and obligations for NVTC's jurisdictions agreed to by NVTC on November 5, 1998, shall remain in effect.

Appropriations from the Commonwealth Mass Transit Fund are intended to provide a stable and

301 reliable source of revenue as defined by Public Law 96-184.

302 B. The sales and use tax revenue generated by a one percent sales and use tax shall be distributed
303 among the counties and cities of this Commonwealth in the manner provided in subsections C and D.

304 C. The localities' share of the net revenue distributable under this section among the counties and
305 cities shall be apportioned by the Comptroller and distributed among them by warrants of the
306 Comptroller drawn on the Treasurer of Virginia as soon as practicable after the close of each month
307 during which the net revenue was received into the state treasury. The distribution of the localities' share
308 of such net revenue shall be computed with respect to the net revenue received into the state treasury
309 during each month, and such distribution shall be made as soon as practicable after the close of each
310 such month.

311 D. The net revenue so distributable among the counties and cities shall be apportioned and
312 distributed upon the basis as certified to the Comptroller by the Department of Education, of the number
313 of children in each county and city according to the most recent statewide census of school population
314 taken by the Department of Education pursuant to § 22.1-284, as adjusted in the manner hereinafter
315 provided. No special school population census, other than a statewide census, shall be used as the basis
316 of apportionment and distribution except that in any calendar year in which a statewide census is not
317 reported, the Department of Education shall adjust such school population figures by the same percent of
318 annual change in total population estimated for each locality by The Center for Public Service. The
319 revenue so apportionable and distributable is hereby appropriated to the several counties and cities for
320 maintenance, operation, capital outlays, debt and interest payments, or other expenses incurred in the
321 operation of the public schools, which shall be considered as funds raised from local resources. In any
322 county, however, wherein is situated any incorporated town constituting a school division, the county
323 treasurer shall pay into the town treasury for maintenance, operation, capital outlays, debt and interest
324 payments, or other expenses incurred in the operation of the public schools, the proper proportionate
325 amount received by him in the ratio that the school population of such town bears to the school
326 population of the entire county. If the school population of any city or of any town constituting a school
327 division is increased by the annexation of territory since the last preceding school population census,
328 such increase shall, for the purposes of this section, be added to the school population of such city or
329 town as shown by the last such census and a proper reduction made in the school population of the
330 county or counties from which the annexed territory was acquired.

331 E. *The sales and use tax revenue generated by the one-half percent sales and use tax increase*
332 *enacted by the 2002 Session of the General Assembly shall be distributed among the counties and cities*
333 *of this Commonwealth pursuant to the same methodology as provided in subsections C and D, and used*
334 *solely for capital projects for public school construction and public school infrastructure improvements*
335 *including, but not limited to, technology infrastructure; additions, renovations, and retrofitting of*
336 *existing school buildings; new school construction; and site acquisition.*

337 EF. Beginning July 1, 2000, of the remaining sales and use tax revenue, the revenue generated by a
338 two percent sales and use tax, up to an annual amount of \$13 million, collected from the sales of
339 hunting equipment, auxiliary hunting equipment, fishing equipment, auxiliary fishing equipment,
340 wildlife-watching equipment, and auxiliary wildlife-watching equipment in Virginia, as estimated by the
341 most recent U.S. Department of the Interior, Fish and Wildlife Service and U.S. Department of
342 Commerce, Bureau of the Census National Survey of Fishing, Hunting, and Wildlife-Associated
343 Recreation, shall be paid into the Game Protection Fund established under § 29.1-101 and shall be used,
344 in part, to defray the cost of law enforcement. Not later than thirty days after the close of each quarter,
345 the Comptroller shall transfer to the Game Protection Fund the appropriate amount of collections to be
346 dedicated to such Fund. At any time that the balance in the Capital Improvement Fund, established
347 under § 29.1-101.1, is equal to or in excess of \$35 million, any portion of sales and use tax revenues
348 that would have been transferred to the Game Protection Fund, established under § 29.1-101, in excess
349 of the net operating expenses of the Board, after deduction of other amounts which accrue to the Board
350 and are set aside for the Game Protection Fund, shall remain in the general fund until such time as the
351 balance in the Capital Improvement Fund is less than \$35 million.

352 FG. If errors are made in any distribution, or adjustments are otherwise necessary, the errors shall be
353 corrected and adjustments made in the distribution for the next quarter or for subsequent quarters.

354 GH. The term "net revenue," as used in this section, means the gross revenue received into the
355 general fund or the Transportation Trust Fund of the state treasury under the preceding sections of this
356 chapter, less refunds to taxpayers.