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SENATE BILL NO. 170**AMENDMENT IN THE NATURE OF A SUBSTITUTE**(Proposed by the Senate Committee on Finance
on February 12, 2002)

(Patron Prior to Substitute—Senator Colgan)

A BILL to amend and reenact §§ 58.1-603, 58.1-604, 58.1-604.1, 58.1-608.3, 58.1-611.1, 58.1-614, 58.1-627, 58.1-628, 58.1-638 and 58.1-3833 of the Code of Virginia, relating to a one percent sales and use tax increase in all jurisdictions in the Commonwealth with one-half of the revenues to be distributed to the state treasury for transportation purposes and one-half of the revenues to be distributed to counties and cities to be used for expenses incurred in the operation of public schools and capital projects for public schools; and providing that this act shall not become effective unless the question of whether such additional tax shall be imposed is affirmed by the qualified voters of the Commonwealth in a referendum to be held on Tuesday, November 5, 2002.

Be it enacted by the General Assembly of Virginia:

1. That §§ 58.1-603, 58.1-604, 58.1-604.1, 58.1-608.3, 58.1-611.1, 58.1-614, 58.1-627, 58.1-628, 58.1-638, and 58.1-3833 of the Code of Virginia are amended and reenacted as follows:

§ 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 percent *through midnight on June 30, 2003, and four and one-half percent beginning July 1, 2003:*

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 percent *through midnight on June 30, 2003, and four and one-half percent beginning July 1, 2003:*

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

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

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

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

5. The use tax shall not apply to out-of-state mail order catalog purchases totaling \$100 or less

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60 during any calendar year.

61 § 58.1-604.1. Use tax on motor vehicles, machinery, tools and equipment brought into Virginia for
62 use in performing contracts.

63 In addition to the use tax levied pursuant to § 58.1-604 and notwithstanding the provisions of
64 § 58.1-611, a use tax is levied upon the storage or use of all motor vehicles, machines, machinery, tools
65 or other equipment brought, imported or caused to be brought into this Commonwealth for use in
66 constructing, building or repairing any building, highway, street, sidewalk, bridge, culvert, sewer or
67 water system, drainage or dredging system, railway system, reservoir or dam, hydraulic or power plant,
68 transmission line, tower, dock, wharf, excavation, grading, or other improvement or structure, or any
69 part thereof. The rate of tax is three and one-half percent *through midnight on June 30, 2003, and four*
70 *and one-half percent beginning July 1, 2003* on all tangible personal property except motor vehicles,
71 which shall be taxed at the rate of three percent; aircraft, which shall be taxed at the rate of two
72 percent; and watercraft, which shall be taxed at the rate of two percent with a maximum tax of \$1,000.

73 For purposes of this section the words "motor vehicle" means any vehicle which is self-propelled and
74 designed primarily for use upon the highways, any vehicle which is propelled by electric power obtained
75 from trolley wires but not operated upon rails, and any vehicle designed to run upon the highways
76 which is pulled by a self-propelled vehicle, but shall not include any implement of husbandry, farm
77 tractor, road construction or maintenance machinery or equipment, special mobile equipment or any
78 vehicle designed primarily for use in work off the highway.

79 The tax shall be computed on the basis of such proportion of the original purchase price of such
80 property as the duration of time of use in this Commonwealth bears to the total useful life thereof. For
81 purposes of this section, the word "use" means use, storage, consumption and "stand-by" time
82 occasioned by weather conditions, controversies or other causes. The tax shall be computed upon the
83 basis of the relative time each item of equipment is in this Commonwealth rather than upon the basis of
84 actual use. In the absence of satisfactory evidence as to the period of use intended in this
85 Commonwealth, it will be presumed that such property will remain in this Commonwealth for the
86 remainder of its useful life, which shall be determined in accordance with the experiences and practices
87 of the building and construction trades.

88 A transaction taxed under §§ 58.1-604, 58.1-605, 58.1-1402, 58.1-1502, or § 58.1-2402 shall not also
89 be taxed under this section, nor shall the same transaction be taxed more than once under any section.

90 § 58.1-608.3. Entitlement to certain sales tax revenues.

91 A. As used in this section, the following words and terms have the following meanings, unless some
92 other meaning is plainly intended:

93 "Bonds" means any obligations of a municipality for the payment of money.

94 "Cost," as applied to any public facility or to extensions or additions to any public facility, includes:
95 (i) the purchase price of any public facility acquired by the municipality or the cost of acquiring all of
96 the capital stock of the corporation owning the public facility and the amount to be paid to discharge
97 any obligations in order to vest title to the public facility or any part of it in the municipality; (ii)
98 expenses incident to determining the feasibility or practicability of the public facility; (iii) the cost of
99 plans and specifications, surveys and estimates of costs and of revenues; (iv) the cost of all land,
100 property, rights, easements and franchises acquired; (v) the cost of improvements, property or
101 equipment; (vi) the cost of engineering, legal and other professional services; (vii) the cost of
102 construction or reconstruction; (viii) the cost of all labor, materials, machinery and equipment; (ix)
103 financing charges; (x) interest before and during construction and for up to one year after completion of
104 construction; (xi) start-up costs and operating capital; (xii) payments by a municipality of its share of the
105 cost of any multi-jurisdictional public facility; (xiii) administrative expense; (xiv) any amounts to be
106 deposited to reserve or replacement funds; and (xv) other expenses as may be necessary or incident to
107 the financing of the public facility. Any obligation or expense incurred by the public facility in
108 connection with any of the foregoing items of cost may be regarded as a part of the cost.

109 "Municipality" means any county, city, town, authority, commission, or other public entity.

110 "Public facility" means (i) any auditorium, coliseum, convention center, or conference center, which
111 is owned by a Virginia county, city, town, authority, or other public entity and where exhibits, meetings,
112 conferences, conventions, seminars, or similar public events may be conducted; (ii) any hotel which is
113 owned by a foundation whose sole purpose is to benefit a state-supported university and which is
114 attached to and is an integral part of such facility, together with any lands reasonably necessary for the
115 conduct of the operation of such events; or (iii) any hotel which is attached to and is an integral part of
116 such facility. However, such public facility must be located in a city with a population of at least 24,200
117 but no more than 24,500 as determined by the 1990 United States Census, at least 50,000 but no more
118 than 52,500, at least 95,000 but no more than 105,000, or at least 130,000 but no more than 135,000.
119 Any property, real, personal, or mixed, which is necessary or desirable in connection with any such
120 auditorium, coliseum, convention center, or conference center, including, without limitation, facilities for
121 food preparation and serving, parking facilities, and administration offices, is encompassed within this

definition. However, structures commonly referred to as "shopping centers" or "malls" shall not constitute a public facility hereunder. In addition, only a new public facility, or a public facility which will undergo a substantial and significant renovation or expansion, shall be eligible under subsection B of this section. A new public facility is one whose construction began after December 31, 1991. A substantial and significant renovation entails a project whose cost is at least fifty percent of the original cost of the facility being renovated and shall have begun after December 31, 1991. A substantial and significant expansion entails an increase in floor space of at least fifty percent over that existing in the preexisting facility and shall have begun after December 31, 1991.

"Sales tax revenues" means such tax collections realized under the Virginia Retail Sales and Use Tax Act (§ 58.1-600 et seq.) of Title 58.1, as limited herein. "Sales tax revenues" does not include the revenue generated by the one-half percent sales and use tax increase enacted by the 1986 Special Session of the General Assembly which shall be paid to the Transportation Trust Fund as defined in § 33.1-23.03:1, ~~nor shall it include~~ the one percent of the state sales and use tax revenue distributed among the counties and cities of the Commonwealth pursuant to § 58.1-638 D on the basis of school age population, *nor shall it include the revenue generated by the one percent sales and use tax increase effective July 1, 2003.*

B. Any municipality which has issued bonds (i) after December 31, 1991, but before January 1, 1996, (ii) on or after January 1, 1998, but before July 1, 1999, (iii) on or after January 1, 1999, but before July 1, 2001, (iv) on or after July 1, 2000, but before July 1, 2003, or (v) on or after July 1, 2001, but before July 1, 2004, to pay the cost, or portion thereof, of any public facility shall be entitled to all sales tax revenues generated by transactions taking place in such public facility. Such entitlement shall continue for the lifetime of such bonds, which entitlement shall not exceed thirty years, and all such sales tax revenues shall be applied to repayment of the bonds. The State Comptroller shall remit such sales tax revenues to the municipality on a quarterly basis, subject to such reasonable processing delays as may be required by the Department of Taxation to calculate the actual net sales tax revenues derived from the public facility. The State Comptroller shall make such remittances to eligible municipalities, as provided herein, notwithstanding any provisions to the contrary in the Virginia Retail Sales and Use Tax Act (§ 58.1-600 et seq.). No such remittances shall be made until construction is completed and, in the case of a renovation or expansion, until the governing body of the municipality has certified that the renovation or expansion is completed.

C. Nothing in this section shall be construed as authorizing the pledging of the faith and credit of the Commonwealth of Virginia, or any of its revenues, for the payment of any bonds. Any appropriation made pursuant to this section shall be made only from sales tax revenues derived from the public facility for which bonds may have been issued to pay the cost, in whole or in part, of such public facility.

§ 58.1-611.1. Rate of tax on sales of food purchased for human consumption; Food Tax Reduction Program.

A. Subject to the conditions of subsections D and E, the tax imposed by §§ 58.1-603 and 58.1-604 on food purchased for human consumption shall be levied and distributed as follows:

1. From January 1, 2000, through March 31, 2001, the tax rate on such food shall be three percent of the gross sales price. The revenue from the tax shall be distributed as follows: (i) the revenue from the tax at the rate of one-half percent shall be distributed as provided in subsection A of § 58.1-638, (ii) the revenue from the tax at the rate of one percent shall be distributed as provided in subsections B, C and D of § 58.1-638, and (iii) the revenue from the tax at the rate of one and one-half percent shall be used for general fund purposes.

2. From April 1, 2001, through March 31, 2002, the tax rate on such food shall be two and one-half percent of the gross sales price. The revenue from the tax shall be distributed as follows: (i) the revenue from the tax at the rate of one-half percent shall be distributed as provided in subsection A of § 58.1-638, (ii) the revenue from the tax at the rate of one percent shall be distributed as provided in subsections B, C and D of § 58.1-638, and (iii) the revenue from the tax at the rate of one percent shall be used for general fund purposes.

3. From April 1, 2002, through March 31, 2003, the tax rate on such food shall be two percent of the gross sales price. The revenue from the tax shall be distributed as follows: (i) the revenue from the tax at the rate of one-half percent shall be distributed as provided in subsection A of § 58.1-638, (ii) the revenue from the tax at the rate of one percent shall be distributed as provided in subsections B, C and D of § 58.1-638, and (iii) the revenue from the tax at the rate of one-half percent shall be used for general fund purposes.

4. On and after April 1, 2003, the tax rate on such food shall be one and one-half percent of the gross sales price. The revenue from the tax shall be distributed as follows: (i) the revenue from the tax at the rate of one-half percent shall be distributed as provided in subsection A of § 58.1-638 and (ii) the revenue from the tax at the rate of one percent shall be distributed as provided in subsections B, C and

183 D of § 58.1-638.

184 B. The provisions of this section shall not affect the imposition of tax on food purchased for human
185 consumption pursuant to §§ 58.1-605 and 58.1-606.

186 C. As used in this section, "food purchased for human consumption" has the same meaning as "food"
187 defined in the Food Stamp Act of 1977, 7 U.S.C. § 2012, as amended, and federal regulations adopted
188 pursuant to that Act, except it shall not include seeds and plants which produce food for human
189 consumption.

190 D. Notwithstanding the tax rates set forth in subsection A, the rate of tax on sales of food purchased
191 for human consumption for any twelve-month period beginning on or after April 1, 2001, shall not be
192 reduced below the rate then in effect for the Commonwealth's current fiscal year if:

193 1. Actual general fund revenues for the fiscal year preceding a fiscal year in which a rate reduction
194 is contemplated in subsection A do not exceed the official general fund revenue estimates for such
195 preceding fiscal year, as estimated in the most recently enacted and approved general appropriation act,
196 by at least one percent; or

197 2. Any of the events listed in subsection C of § 58.1-3524 or subsection B of § 58.1-3536 have
198 occurred during the then current fiscal year.

199 E. If the tax rate on food purchased for human consumption remains the same for the period January
200 1, 2000, through March 31, 2001, and the subsequent twelve-month period beginning on April 1, 2001,
201 or with respect to any consecutive twelve-month periods beginning on and after April 1, 2001, the tax
202 rate on such food shall remain the same unless none of the conditions described in subsection D have
203 occurred, in which event the tax rate on food purchased for human consumption for the immediately
204 following twelve-month period shall be equal to the next lowest tax rate listed in subsection A.

205 F. There is hereby created on the books of the Comptroller a nonreverting fund entitled the Food
206 Tax Reserve Fund which shall be used solely for the statutory purposes of the Food Tax Reduction
207 Program as established by this section, and as may be provided for in the general appropriation act. For
208 the purpose of the Comptroller's preliminary and final annual reports required by § 2.2-813, all balances
209 remaining in the Fund on June 30 of each year shall be considered a portion of the fund balance of the
210 general fund of the state treasury.

211 G. *The additional one percent increase in the taxes imposed pursuant to §§ 58.1-603 and 58.1-604*
212 *effective July 1, 2003, shall not apply to food purchased for human consumption.*

213 § 58.1-614. Vending machine sales.

214 A. Notwithstanding the provisions of §§ 58.1-603 and 58.1-604, whenever a dealer makes sales of
215 tangible personal property through vending machines, or in any other manner making collection of the
216 tax impractical, as determined by the Tax Commissioner, such dealer shall be required to report his
217 wholesale purchases for sale at retail from vending machines and shall be required to remit an amount
218 based on four and one-half percent of such wholesale purchases *through midnight on June 30, 2003, and*
219 *five and one-half percent of such wholesale purchases beginning July 1, 2003.*

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

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

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

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

236 § 58.1-627. Bracket system for tax at rate of four percent.

237 The following Tax Commissioner shall develop brackets of prices that shall be used for the collection
238 of the tax imposed by this chapter on sales of less than five dollars:

239	\$0.00	to	\$0.14	no tax
240	.15	to	.42	1» tax
241	.43	to	.71	2» tax
242	.72	to	.99	3» tax
243	1.00	to	1.28	4» tax

244	1.29	to	1.57	5» tax
245	1.58	to	1.85	6» tax
246	1.86	to	2.14	7» tax
247	2.15	to	2.42	8» tax
248	2.43	to	2.71	9» tax
249	2.72	to	2.99	10» tax
250	3.00	to	3.28	11» tax
251	3.29	to	3.57	12» tax
252	3.58	to	3.85	13» tax
253	3.86	to	4.14	14» tax
254	4.15	to	4.42	15» tax
255	4.43	to	4.71	16» tax
256	4.72	to	5.00	17» tax

On transactions ~~over~~ *greater than* five dollars, the tax shall be computed at three and one-half percent ~~through midnight on June 30, 2003, and four and one-half percent beginning July 1, 2003,~~ 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 ~~following~~ *Tax Commissioner shall prepare* brackets of prices *that* shall be used for the collection of the combined state and local tax *on sales less than five dollars*:

269	\$0.00	to	\$0.11	no tax
270	.12	to	.33	1» tax
271	.34	to	.55	2» tax
272	.56	to	.77	3» tax
273	.78	to	.99	4» tax
274	1.00	to	1.22	5» tax
275	1.23	to	1.44	6» tax
276	1.45	to	1.66	7» tax
277	1.67	to	1.88	8» tax
278	1.89	to	2.11	9» tax
279	2.12	to	2.33	10» tax
280	2.34	to	2.55	11» tax
281	2.56	to	2.77	12» tax
282	2.78	to	2.99	13» tax
283	3.00	to	3.22	14» tax
284	3.23	to	3.44	15» tax
285	3.45	to	3.66	16» tax
286	3.67	to	3.88	17» tax
287	3.89	to	4.11	18» tax
288	4.12	to	4.33	19» tax
289	4.34	to	4.55	20» tax
290	4.56	to	4.77	21» tax
291	4.78	to	5.00	22» tax

On transactions ~~over~~ *greater than* five dollars, the tax shall be computed at four and one-half percent *through midnight on June 30, 2003, and five and one-half percent beginning July 1, 2003,* 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 percent of his gross taxable sales *through midnight on June 30, 2003, and five and one-half percent of his gross taxable sales beginning July 1, 2003,* 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 estimate of the net revenue to be received into the state treasury each month, and such estimated payment shall be adjusted for the actual net revenue received in the preceding month. All payments shall be made to the Fund on the last day of each month.

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

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

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

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

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

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

Of the remaining amount:

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

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

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

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

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

the purposes hereinafter specified.

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

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

(1) Funds for special programs, which shall include ridesharing, experimental transit, and technical 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

425 approved by the Commonwealth Transportation Board. Projects financed by the Commonwealth Transit
426 Capital Fund shall receive local, regional or private funding for at least twenty percent of the nonfederal
427 share of the total project cost.

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

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

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

438 Appropriations from the Commonwealth Mass Transit Fund are intended to provide a stable and
439 reliable source of revenue as defined by Public Law 96-184.

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

442 C. The localities' share of the net revenue distributable under this section among the counties and
443 cities shall be apportioned by the Comptroller and distributed among them by warrants of the
444 Comptroller drawn on the Treasurer of Virginia as soon as practicable after the close of each month
445 during which the net revenue was received into the state treasury. The distribution of the localities' share
446 of such net revenue shall be computed with respect to the net revenue received into the state treasury
447 during each month, and such distribution shall be made as soon as practicable after the close of each
448 such month.

449 D. The net revenue so distributable among the counties and cities shall be apportioned and
450 distributed upon the basis as certified to the Comptroller by the Department of Education, of the number
451 of children in each county and city according to the most recent statewide census of school population
452 taken by the Department of Education pursuant to § 22.1-284, as adjusted in the manner hereinafter
453 provided. No special school population census, other than a statewide census, shall be used as the basis
454 of apportionment and distribution except that in any calendar year in which a statewide census is not
455 reported, the Department of Education shall adjust such school population figures by the same percent of
456 annual change in total population estimated for each locality by The Center for Public Service. The
457 revenue so apportionable and distributable is hereby appropriated to the several counties and cities for
458 maintenance, operation, capital outlays, debt and interest payments, or other expenses incurred in the
459 operation of the public schools, which shall be considered as funds raised from local resources. In any
460 county, however, wherein is situated any incorporated town constituting a school division, the county
461 treasurer shall pay into the town treasury for maintenance, operation, capital outlays, debt and interest
462 payments, or other expenses incurred in the operation of the public schools, the proper proportionate
463 amount received by him in the ratio that the school population of such town bears to the school
464 population of the entire county. If the school population of any city or of any town constituting a school
465 division is increased by the annexation of territory since the last preceding school population census,
466 such increase shall, for the purposes of this section, be added to the school population of such city or
467 town as shown by the last such census and a proper reduction made in the school population of the
468 county or counties from which the annexed territory was acquired.

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

484 F. If errors are made in any distribution, or adjustments are otherwise necessary, the errors shall be
485 corrected and adjustments made in the distribution for the next quarter or for subsequent quarters.

486 G. The revenue generated and collected from the one percent increase in the state sales and use tax,

beginning July 1, 2003, pursuant to §§ 58.1-603 and 58.1-604, shall be distributed as follows:

1. One-half of the revenue generated and collected pursuant to such increase, less the applicable portion of any refunds to taxpayers, shall be distributed in the manner as provided in subsection A.

2. The remaining one-half of such revenue generated and collected shall be paid into the state treasury to the credit of a special fund that is hereby created on the Comptroller's books under the name "Collections of Additional Sales and Use Taxes." Such revenue shall be distributed by warrant of the Comptroller drawn on the Treasurer of Virginia as soon as practicable after the close of each month during which it was received into the state treasury. The revenue otherwise to be distributed pursuant to this subdivision shall be reduced by the applicable portion of any refunds to taxpayers. All revenue distributed under this subdivision shall be used for the purposes described in subsection D.

Such revenue shall be distributed as follows:

a. First, each county and city of the Commonwealth shall receive a distribution equal to one-quarter of the revenue generated and collected within its geographic boundaries from the one percent increase in the state sales and use tax beginning July 1, 2003. Such amount shall be distributed to the respective county or city in accordance with the same procedures for the collection of sales tax moneys pursuant to subsection E of § 58.1-605 and the same procedures for the collection of use tax moneys pursuant to subsections E and F of § 58.1-606. In any county wherein is situated any incorporated town constituting a school division, the county treasurer shall pay into the town treasury the proper proportionate amount received by him in the ratio that the school population of such town bears to the school population of the entire county.

b. The remaining one-quarter of the revenue generated and collected from the one percent increase in the state sales and use tax beginning July 1, 2003, shall be distributed to the counties and cities of the Commonwealth in accordance with subsections C and D.

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

§ 58.1-3833. County food and beverage tax.

A. Any county is hereby authorized to levy a tax on food and beverages sold, for human consumption, by a restaurant, as such term is defined in subdivision 9 of § 35.1-1, not to exceed ~~eight and one-half~~ four percent, ~~when added to the state and local general sales and use tax,~~ of the amount charged for such food and beverages. Such tax shall not be levied on food and beverages sold through vending machines or by any person described in subdivisions 1, 2, 3, and 5 of § 35.1-25, as well as nonprofit cafeterias in public schools, nursing homes, and hospitals. Grocery stores and convenience stores selling prepared foods ready for human consumption at a delicatessen counter shall be subject to the tax, for that portion of the grocery store or convenience store selling such items.

This tax shall be levied only if the tax is approved in a referendum within the county which shall be held in accordance with § 24.2-684 and initiated either by a resolution of the board of supervisors or on the filing of a petition signed by a number of registered voters of the county equal in number to ten percent of the number of voters registered in the county, as appropriate on January 1 of the year in which the petition is filed with the court of such county. The clerk of the circuit court shall publish notice of the election in a newspaper of general circulation in the county once a week for three consecutive weeks prior to the election. If the voters affirm the levy of a local meals tax, the tax shall be effective in an amount and on such terms as the governing body may by ordinance prescribe. If such resolution of the board of supervisors or such petition states for what projects and/or purposes the revenues collected from the tax are to be used, then the question on the ballot for the referendum shall include language stating for what projects and/or purposes the revenues collected from the tax are to be used.

The term "beverage" as set forth herein shall mean alcoholic beverages as defined in § 4.1-100 and nonalcoholic beverages served as part of a meal. The tax shall be in addition to the sales tax currently imposed by the county pursuant to the authority of Chapter 6 (§ 58.1-600 et seq.) of this title. Collection of such tax shall be in a manner prescribed by the governing body.

B. Notwithstanding the provisions of subsection A of this section, any county with a population of at least 70,000 but no more than 100,000, any county with a population of at least 17,910 but no more than 18,000, any county with a population of at least 34,000 but no more than 34,400, and any county having a county manager plan of government are hereby authorized to levy a tax on food and beverages sold for human consumption by a restaurant, as such term is defined in § 35.1-1 and as modified in subsection A above and subject to the same exemptions, not to exceed four percent of the amount charged for such food and beverages, provided that the governing body of the respective county holds a public hearing before adopting a local food and beverage tax, and the governing body by unanimous vote adopts such tax by local ordinance. The tax shall be effective in an amount and on such terms as the governing body may by ordinance prescribe.

548 C. Nothing herein contained shall affect any authority heretofore granted to any county, city or town
549 to levy a meals tax. The county tax limitations imposed pursuant to § 58.1-3711 shall apply to any tax
550 levied under this section, mutatis mutandis. All food and beverage tax collections and all meals tax
551 collections shall be deemed to be held in trust for the county, city or town imposing the applicable tax.

552 D. No county which has heretofore adopted an ordinance pursuant to subsection A of this section
553 shall be required to submit an amendment to its meals tax ordinance to the voters in a referendum.

554 E. Notwithstanding any other provision of this section, no locality shall levy any tax under this
555 section upon alcoholic beverages sold in factory sealed containers and purchased for off-premises
556 consumption or food purchased for human consumption as "food" is defined in the Food Stamp Act of
557 1977, 7 U.S.C. § 2012, as amended, and federal regulations adopted pursuant to that act, except for the
558 following items: sandwiches, salad bar items sold from a salad bar, prepackaged single-serving salads
559 consisting primarily of an assortment of vegetables, and nonfactory sealed beverages.

560 **2. That the regular election officers of this Commonwealth conducting the election directed by law**
561 **to be held on Tuesday, November 5, 2002, at the places appointed for holding the same, shall open**
562 **a poll on such day and take the sense of the qualified voters of the Commonwealth upon the**
563 **ratification or rejection of a one percent increase in the sales and use tax under §§ 58.1-603 and**
564 **58.1-604. Notice of the referendum shall be given, the ballots shall be prepared, distributed and**
565 **voted, and the results thereof ascertained and certified, in accordance with Title 24.2 of the Code**
566 **of Virginia, relating to special elections. The State Board of Elections shall comply with § 30-19.10**
567 **of the Code of Virginia and shall cause to be sent to the electoral boards of each county and city**
568 **sufficient copies of the question contained herein for the officers of election to post in each polling**
569 **place on election day.**

570 The ballot shall contain the following question:

571 "QUESTION: Shall an additional sales and use tax of one percent be imposed in all jurisdictions
572 of the Commonwealth with one-half of the revenues to be distributed to the state treasury for
573 transportation purposes and one-half of the revenues to be distributed to counties and cities to be
574 used for expenses incurred in the operation of public schools and capital projects for public
575 schools pursuant to Chapter (. . .) of the Acts of Assembly of 2002?"

576 The State Board of Elections shall without delay make out and transmit to the Governor an
577 official copy of the report of the whole number of votes cast at the election for and against the act,
578 certified by it. The expenses incurred in conducting this election shall be defrayed as in the case of
579 election of members of the General Assembly.

580 3. That revenues distributed to counties and cities pursuant to this act shall not be used to
581 calculate or reduce the share of federal, state, or local revenues or other funds otherwise available
582 to such counties and cities, including, but not limited to state basic aid payments.

583 4. That, except for the second enactment of this act, which shall be effective July 1, 2002, the
584 provisions of this act shall be effective on July 1, 2003, and only if a majority of those voting at
585 the election and upon the question described in the second enactment of this act vote in the
586 affirmative upon such question.