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SENATE BILL NO. 170

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Joint Conference Committee
on March 9, 2002)

(Patron Prior to Substitute—Senator Colgan)

A BILL to amend and reenact §§ 58.1-602, 58.1-605, 58.1-606, 58.1-611.1, 58.1-614, 58.1-626, and 58.1-3833 of the Code of Virginia; to amend the Code of Virginia by adding sections numbered 58.1-604.4 and 58.1-628.1; and to repeal Article 22 (§§ 58.1-540 through 58.1-549) of Chapter 3 of Title 58.1 and §§ 58.1-627 and 58.1-628 of the Code of Virginia, relating to a one percent increase in sales and use taxes in all counties and cities in any planning district, established pursuant to § 15.2-4203, wherein, as of January 1, 2002, all such counties and cities have been designated as nonattainment for the one-hour ozone standard pursuant to the federal Clean Air Act Amendments of 1990, and dedicating one-half of the revenues from such taxes for regional transportation projects and programs and dedicating one-half of the revenues from such taxes for public education purposes for such counties and cities.

Be it enacted by the General Assembly of Virginia:

1. That §§ 58.1-602, 58.1-605, 58.1-606, 58.1-611.1, 58.1-614, 58.1-626, and 58.1-3833 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding sections numbered 58.1-604.4 and 58.1-628.1 as follows:

§ 58.1-602. Definitions.

As used in this chapter, unless the context clearly shows otherwise, the term or phrase:

"Advertising" means the planning, creating, or placing of advertising in newspapers, magazines, billboards, broadcasting and other media, including, without limitation, the providing of concept, writing, graphic design, mechanical art, photography and production supervision. Any person providing advertising as defined herein shall be deemed to be the user or consumer of all tangible personal property purchased for use in such advertising.

"Amplification, transmission and distribution equipment" means, but is not limited to, production, distribution, and other equipment used to provide Internet-access services, such as computer and communications equipment and software used for storing, processing and retrieving end-user subscribers' requests.

"Business" includes any activity engaged in by any person, or caused to be engaged in by him, with the object of gain, benefit or advantage, either directly or indirectly.

"Cost price" means the actual cost of an item or article of tangible personal property computed in the same manner as the sales price as defined in this section without any deductions therefrom on account of the cost of materials used, labor, or service costs, transportation charges, or any expenses whatsoever.

"Custom program" means a computer program which is specifically designed and developed only for one customer. The combining of two or more prewritten programs does not constitute a custom computer program. A prewritten program that is modified to any degree remains a prewritten program and does not become custom.

"Distribution" means the transfer or delivery of tangible personal property for use, consumption, or storage by the distributee, and the use, consumption, or storage of tangible personal property by a person who has processed, manufactured, refined, or converted such property, but does not include the transfer or delivery of tangible personal property for resale or any use, consumption, or storage otherwise exempt under this chapter.

"Gross proceeds" means the charges made or voluntary contributions received for the lease or rental of tangible personal property or for furnishing services, computed with the same deductions, where applicable, as for sales price as defined in this section over the term of the lease, rental, service, or use, but not less frequently than monthly.

"Gross sales" means the sum total of all retail sales of tangible personal property or services as defined in this chapter, without any deduction, except as provided in this chapter. "Gross sales" shall not include the federal retailers' excise tax or the federal diesel fuel excise tax imposed in § 4091 of the Internal Revenue Code if the excise tax is billed to the purchaser separately from the selling price of the article, or the Virginia retail sales or use tax, or any sales or use tax imposed by any county or city under § 58.1-605 or § 58.1-606 or any tax imposed pursuant to § 58.1-604.4.

"Import" and "imported" are words applicable to tangible personal property imported into this Commonwealth from other states as well as from foreign countries, and "export" and "exported" are words applicable to tangible personal property exported from this Commonwealth to other states as well as to foreign countries.

"In this Commonwealth" or "in the Commonwealth" means within the limits of the Commonwealth

60 of Virginia and includes all territory within these limits owned by or ceded to the United States of
61 America.

62 "Internet" means collectively, the myriad of computer and telecommunications facilities, which
63 comprise the interconnected world-wide network of computer networks.

64 "Internet service" means a service that enables users to access proprietary and other content,
65 information electronic mail, and the Internet as part of a package of services sold to end-user
66 subscribers.

67 "Lease or rental" means the leasing or renting of tangible personal property and the possession or use
68 thereof by the lessee or renter for a consideration, without transfer of the title to such property.

69 "Manufacturing, processing, refining, or conversion" includes the production line of the plant starting
70 with the handling and storage of raw materials at the plant site and continuing through the last step of
71 production where the product is finished or completed for sale and conveyed to a warehouse at the
72 production site, and also includes equipment and supplies used for production line testing and quality
73 control. The term "manufacturing" shall also include the necessary ancillary activities of newspaper and
74 magazine printing when such activities are performed by the publisher of any newspaper or magazine
75 for sale daily or regularly at average intervals not exceeding three months.

76 The determination whether any manufacturing, mining, processing, refining or conversion activity is
77 industrial in nature shall be made without regard to plant size, existence or size of finished product
78 inventory, degree of mechanization, amount of capital investment, number of employees or other factors
79 relating principally to the size of the business. Further, "industrial in nature" shall include, but not be
80 limited to, those businesses classified in codes 10 through 14 and 20 through 39 published in the
81 Standard Industrial Classification Manual for 1972 and any supplements issued thereafter.

82 "Modular building" means, but shall not be limited to, single and multifamily houses, apartment
83 units, commercial buildings, and permanent additions thereof, comprised of one or more sections that are
84 intended to become real property, primarily constructed at a location other than the permanent site, built
85 to comply with the Virginia Industrialized Building Safety Law (§ 36-70 et seq.) as regulated by the
86 Virginia Department of Housing and Community Development, and shipped with most permanent
87 components in place to the site of final assembly. For purposes of this chapter, a modular building shall
88 not include a mobile office as defined in § 58.1-2401 or any manufactured building subject to and
89 certified under the provisions of the National Manufactured Housing Construction and Safety Standards
90 Act of 1974 (42 U.S.C. § 5401 et seq.).

91 "Modular building manufacturer" means a person or corporation who owns or operates a
92 manufacturing facility and is engaged in the fabrication, construction and assembling of building
93 supplies and materials into modular buildings, as defined in this section, at a location other than at the
94 site where the modular building will be assembled on the permanent foundation and may or may not be
95 engaged in the process of affixing the modules to the foundation at the permanent site.

96 "Modular building retailer" means any person who purchases or acquires a modular building from a
97 modular building manufacturer, or from another person, for subsequent sale to a customer residing
98 within or outside of the Commonwealth, with or without installation of the modular building to the
99 foundation at the permanent site.

100 "Motor vehicle" means a "motor vehicle" as defined in § 58.1-2401, taxable under the provisions of
101 the Virginia Motor Vehicles Sales and Use Tax Act (§ 58.1-2400 et seq.) and upon the sale of which all
102 applicable motor vehicle sales and use taxes have been paid.

103 "Occasional sale" means a sale of tangible personal property not held or used by a seller in the
104 course of an activity for which he is required to hold a certificate of registration, including the sale or
105 exchange of all or substantially all the assets of any business and the reorganization or liquidation of
106 any business, provided such sale or exchange is not one of a series of sales and exchanges sufficient in
107 number, scope and character to constitute an activity requiring the holding of a certificate of registration.

108 "Open video system" means an open video system authorized pursuant to 47 U.S.C. § 573 and, for
109 purposes of this chapter only, shall also include Internet service regardless of whether the provider of
110 such service is also a telephone common carrier.

111 "Person" includes any individual, firm, copartnership, cooperative, nonprofit membership corporation,
112 joint venture, association, corporation, estate, trust, business trust, trustee in bankruptcy, receiver,
113 auctioneer, syndicate, assignee, club, society, or other group or combination acting as a unit, body
114 politic or political subdivision, whether public or private, or quasi-public, and the plural of such term
115 shall mean the same as the singular.

116 "Prewritten program" means a computer program that is prepared, held or existing for general or
117 repeated sale or lease, including a computer program developed for in-house use and subsequently sold
118 or leased to unrelated third parties.

119 "Retail sale" or a "sale at retail" means a sale to any person for any purpose other than for resale in
120 the form of tangible personal property or services taxable under this chapter, and shall include any such
121 transaction as the Tax Commissioner upon investigation finds to be in lieu of a sale. All sales for resale

122 must be made in strict compliance with regulations applicable to this chapter. Any dealer making a sale
123 for resale which is not in strict compliance with such regulations shall be personally liable for payment
124 of the tax.

125 The terms "retail sale" and a "sale at retail" shall specifically include the following: (i) the sale or
126 charges for any room or rooms, lodgings, or accommodations furnished to transients for less than ninety
127 continuous days by any hotel, motel, inn, tourist camp, tourist cabin, camping grounds, club, or any
128 other place in which rooms, lodging, space, or accommodations are regularly furnished to transients for
129 a consideration; and (ii) sales of tangible personal property to persons for resale when because of the
130 operation of the business, or its very nature, or the lack of a place of business in which to display a
131 certificate of registration, or the lack of a place of business in which to keep records, or the lack of
132 adequate records, or because such persons are minors or transients, or because such persons are engaged
133 in essentially service businesses, or for any other reason there is likelihood that the Commonwealth will
134 lose tax funds due to the difficulty of policing such business operations. The Tax Commissioner is
135 authorized to promulgate regulations requiring vendors of or sellers to such persons to collect the tax
136 imposed by this chapter on the cost price of such tangible personal property to such persons and may
137 refuse to issue certificates of registration to such persons.

138 The term "transient" shall not include a purchaser of camping memberships, time-shares,
139 condominiums, or other similar contracts or interests that permit the use of, or constitute an interest in,
140 real estate, however created or sold and whether registered with this Commonwealth or not. Further, a
141 purchaser of a right or license which entitles the purchaser to use the amenities and facilities of a
142 specific real estate project on an ongoing basis throughout its term shall not be deemed a transient;
143 provided, however, that the term or time period involved is for seven years or more.

144 The terms "retail sale" and "sale at retail" shall not include a transfer of title to tangible personal
145 property after its use as tools, tooling, machinery or equipment, including dies, molds, and patterns, if (i)
146 at the time of purchase, the purchaser is obligated, under the terms of a written contract, to make the
147 transfer and (ii) the transfer is made for the same or a greater consideration to the person for whom the
148 purchaser manufactures goods.

149 "Retailer" means every person engaged in the business of making sales at retail, or for distribution,
150 use, consumption, or storage to be used or consumed in this Commonwealth.

151 "Sale" means any transfer of title or possession, or both, exchange, barter, lease or rental, conditional
152 or otherwise, in any manner or by any means whatsoever, of tangible personal property and any
153 rendition of a taxable service for a consideration, and includes the fabrication of tangible personal
154 property for consumers who furnish, either directly or indirectly, the materials used in fabrication, and
155 the furnishing, preparing, or serving for a consideration of any tangible personal property consumed on
156 the premises of the person furnishing, preparing, or serving such tangible personal property. A
157 transaction whereby the possession of property is transferred but the seller retains title as security for the
158 payment of the price shall be deemed a sale.

159 "Sales price" means the total amount for which tangible personal property or services are sold,
160 including any services that are a part of the sale, valued in money, whether paid in money or otherwise,
161 and includes any amount for which credit is given to the purchaser, consumer, or lessee by the dealer,
162 without any deduction therefrom on account of the cost of the property sold, the cost of materials used,
163 labor or service costs, losses or any other expenses whatsoever. "Sales price" shall not include (i) any
164 cash discount allowed and taken (ii) finance charges, carrying charges, service charges or interest from
165 credit extended on sales of tangible personal property under conditional sale contracts or other
166 conditional contracts providing for deferred payments of the purchase price, or (iii) separately stated
167 local property taxes collected. Where used articles are taken in trade, or in a series of trades as a credit
168 or part payment on the sale of new or used articles, the tax levied by this chapter shall be paid on the
169 net difference between the sales price of the new or used articles and the credit for the used articles.

170 "Storage" means any keeping or retention of tangible personal property for use, consumption or
171 distribution in this Commonwealth, or for any purpose other than sale at retail in the regular course of
172 business.

173 "Tangible personal property" means personal property which may be seen, weighed, measured, felt,
174 or touched, or is in any other manner perceptible to the senses. The term "tangible personal property"
175 shall not include stocks, bonds, notes, insurance or other obligations or securities.

176 "Use" means the exercise of any right or power over tangible personal property incident to the
177 ownership thereof, except that it does not include the sale at retail of that property in the regular course
178 of business. The term does not include the exercise of any right or power, including use, distribution, or
179 storage, over any tangible personal property sold to a nonresident donor for delivery outside of the
180 Commonwealth to a nonresident recipient pursuant to an order placed by the donor from outside the
181 Commonwealth via mail or telephone.

182 "Use tax" refers to the tax imposed upon the use, consumption, distribution, and storage as herein

183 defined.

184 "Used directly," when used in relation to manufacturing, processing, refining, or conversion, refers to
185 those activities which are an integral part of the production of a product, including all steps of an
186 integrated manufacturing or mining process, but not including ancillary activities such as general
187 maintenance or administration. When used in relation to mining, it shall refer to the activities specified
188 above, and in addition, any reclamation activity of the land previously mined by the mining company
189 required by state or federal law.

190 "Video programmer" means a person or entity that provides video programming to end-user
191 subscribers.

192 "Video programming" means video and/or information programming provided by or generally
193 considered comparable to programming provided by a cable operator including, but not limited to,
194 Internet service.

195 § 58.1-604.4. *Imposition of additional sales and use taxes in certain counties and cities.*

196 A. *Beginning July 1, 2003, a tax of one-half of one percent is hereby levied and imposed on the*
197 *property, activities and services described in §§ 58.1-603 and 58.1-604 in all counties and cities in any*
198 *planning district, established pursuant to § 15.2-4203, wherein, as of January 1, 2002, all such counties*
199 *and cities have been designated as nonattainment for the one-hour ozone standard pursuant to the*
200 *federal Clean Air Act Amendments of 1990. The revenues from such additional taxes shall be distributed*
201 *pursuant to subsection C.*

202 B. *Beginning July 1, 2003, a tax of one-half of one percent is hereby levied and imposed on the*
203 *property, activities and services described in §§ 58.1-603 and 58.1-604 in all counties and cities in any*
204 *planning district, established pursuant to § 15.2-4203, wherein, as of January 1, 2002, all such counties*
205 *and cities have been designated as nonattainment for the one-hour ozone standard pursuant to the*
206 *federal Clean Air Act Amendments of 1990. The revenues from such additional taxes shall be distributed*
207 *pursuant to subsection D.*

208 C. *All taxes paid to the Tax Commissioner pursuant to subsection A, less the applicable portion of*
209 *any refunds to taxpayers, shall be deposited in a special fund titled the "Special Fund Account of the*
210 *Northern Virginia Transportation Authority." The moneys deposited in the special fund shall be*
211 *distributed monthly to the Northern Virginia Transportation Authority to be used for funding of the*
212 *Northern Virginia Regional Transportation Program as created under the Northern Virginia Regional*
213 *Transportation Program Bond Act of 2002.*

214 D. *All taxes paid to the Tax Commissioner pursuant to subsection B, less the applicable portion of*
215 *any refunds to taxpayers, shall be deposited in a special fund titled the "Collections of Sales and Use*
216 *Taxes for Public Education Fund." Such moneys shall be distributed to the counties and cities described*
217 *in subsection B. In the case of sales taxes, the basis of such distribution shall be the city or county in*
218 *which the sales were made as shown by the records of the Department of Taxation and certified by it*
219 *monthly to the Comptroller, namely, the city or county of location of each place of business of every*
220 *dealer paying the tax to the Commonwealth without regard to the city or county of possible use by the*
221 *purchasers. In the case of use taxes, such distribution shall be made in the same manner as provided*
222 *for use taxes under § 58.1-606; provided, however, that any use taxes not accurately assignable to a*
223 *particular county or city shall be distributed upon the basis of all taxable retail sales in such counties*
224 *and cities, as shown by the records of the Department, and computed with respect to taxable retail sales*
225 *as reflected by the amounts of sales tax revenues distributed among such counties and cities,*
226 *respectively, in the month of distribution.*

227 *Such moneys distributed pursuant to this subsection shall be used solely for public education,*
228 *including, but not limited to, operating expenses and capital projects for public schools. The moneys*
229 *deposited in the special fund shall be distributed monthly to such counties and cities as soon as*
230 *practicable.*

231 E. *The taxes under this section shall be subject to all the provisions of this chapter and the rules*
232 *and regulations published with respect thereto. No discount under § 58.1-622 shall be allowed on any*
233 *tax provided under this section.*

234 § 58.1-605. *To what extent and under what conditions cities and counties may levy local sales taxes;*
235 *collection thereof by Commonwealth and return of revenue to each city or county entitled thereto.*

236 A. *No county, city or town shall impose any local general sales or use tax or any local general retail*
237 *sales or use tax except as authorized by this section.*

238 B. *The council of any city and the governing body of any county may levy a general retail sales tax*
239 *at the rate of one percent to provide revenue for the general fund of such city or county. Such tax shall*
240 *be added to the rate of the state sales tax imposed by §§ 58.1-603 and 58.1-604 and shall be subject to*
241 *all the provisions of this chapter and the rules and regulations published with respect thereto. The*
242 *applicable brackets of prices shall be as prescribed in ~~§ 58.1-628~~ by the Tax Commissioner for the*
243 *combined state and local tax. No discount under § 58.1-622 shall be allowed on a local sales tax.*

244 C. *The council of any city and the governing body of any county desiring to impose a local sales tax*

245 under this section may do so by the adoption of an ordinance stating its purpose and referring to this
 246 section, and providing that such ordinance shall be effective on the first day of a month at least sixty
 247 days after its adoption. A certified copy of such ordinance shall be forwarded to the Tax Commissioner
 248 so that it will be received within five days after its adoption.

249 D. Any local sales tax levied under this section shall be administered and collected by the Tax
 250 Commissioner in the same manner and subject to the same penalties as provided for the state sales tax,
 251 with the adjustments required by ~~§ 58.1-628~~ § 58.1-628.1.

252 E. All local sales tax moneys collected by the Tax Commissioner under this section shall be paid
 253 into the state treasury to the credit of a special fund which is hereby created on the Comptroller's books
 254 under the name "Collections of Local Sales Taxes." Such local sales tax moneys shall be credited to the
 255 account of each particular city or county levying a local sales tax under this section. The basis of such
 256 credit shall be the city or county in which the sales were made as shown by the records of the
 257 Department and certified by it monthly to the Comptroller, namely, the city or county of location of
 258 each place of business of every dealer paying the tax to the Commonwealth without regard to the city or
 259 county of possible use by the purchasers. If a dealer has any place of business located in more than one
 260 political subdivision by reason of the boundary line or lines passing through such place of business, the
 261 amount of sales tax paid by such a dealer with respect to such place of business shall be treated for the
 262 purposes of this section as follows: one-half shall be assignable to each political subdivision where two
 263 are involved, one-third where three are involved, and one-fourth where four are involved.

264 F. As soon as practicable after the local sales tax moneys have been paid into the state treasury in
 265 any month for the preceding month, the Comptroller shall draw his warrant on the Treasurer of Virginia
 266 in the proper amount in favor of each city or county entitled to the monthly return of its local sales tax
 267 moneys, and such payments shall be charged to the account of each such city or county under the
 268 special fund created by this section. If errors are made in any such payment, or adjustments are
 269 otherwise necessary, whether attributable to refunds to taxpayers, or to some other fact, the errors shall
 270 be corrected and adjustments made in the payments for the next six months as follows: one-sixth of the
 271 total adjustment shall be included in the payments for the next six months. In addition, the payment
 272 shall include a refund of amounts erroneously not paid to the city or county and not previously refunded
 273 during the three years preceding the discovery of the error. A correction and adjustment in payments
 274 described in this subsection due to the misallocation of funds by the dealer shall be made within three
 275 years of the date of the payment error.

276 G. Such payments to counties are subject to the qualification that in any county wherein is situated
 277 any incorporated town constituting a special school district and operated as a separate school district
 278 under a town school board of three members appointed by the town council, the county treasurer shall
 279 pay into the town treasury for general governmental purposes the proper proportionate amount received
 280 by him in the ratio that the school age population of such town bears to the school age population of
 281 the entire county. If the school age population of any town constituting a separate school district is
 282 increased by the annexation of territory since the last preceding school age population census, such
 283 increase shall, for the purposes of this section, be added to the school age population of such town as
 284 shown by the last such census and a proper reduction made in the school age population of the county
 285 or counties from which the annexed territory was acquired.

286 H. One-half of such payments to counties are subject to the further qualification, other than as set
 287 out in subsection G above, that in any county wherein is situated any incorporated town not constituting
 288 a separate special school district which has complied with its charter provisions providing for the
 289 election of its council and mayor for a period of at least four years immediately prior to the adoption of
 290 the sales tax ordinance, the county treasurer shall pay into the town treasury of each such town for
 291 general governmental purposes the proper proportionate amount received by him in the ratio that the
 292 school age population of each such town bears to the school age population of the entire county, based
 293 on the latest statewide school census. The preceding requirement pertaining to the time interval between
 294 compliance with election provisions and adoption of the sales tax ordinance shall not apply to a tier-city.
 295 If the school age population of any such town not constituting a separate special school district is
 296 increased by the annexation of territory or otherwise since the last preceding school age population
 297 census, such increase shall, for the purposes of this section, be added to the school age population of
 298 such town as shown by the last such census and a proper reduction made in the school age population
 299 of the county or counties from which the annexed territory was acquired.

300 I. Notwithstanding the provisions of subsection H, the board of supervisors of a county may, in its
 301 discretion, appropriate funds to any incorporated town not constituting a separate school district within
 302 such county which has not complied with the provisions of its charter relating to the elections of its
 303 council and mayor, an amount not to exceed the amount it would have received from the tax imposed
 304 by this chapter if such election had been held.

305 J. It is further provided that if any incorporated town which would otherwise be eligible to receive

306 funds from the county treasurer under subsection G or H of this section be located in a county which
307 does not levy a general retail sales tax under the provisions of this law, such town may levy a general
308 retail sales tax at the rate of one percent to provide revenue for the general fund of the town, subject to
309 all the provisions of this section generally applicable to cities and counties. Any tax levied under the
310 authority of this subsection shall in no case continue to be levied on or after the effective date of a
311 county ordinance imposing a general retail sales tax in the county within which such town is located.

312 § 58.1-606. To what extent and under what conditions cities and counties may levy local use tax;
313 collection thereof by Commonwealth and return of revenues to the cities and counties.

314 A. The council of any city and the governing body of any county which has levied or may hereafter
315 levy a city or county sales tax under § 58.1-605 may levy a city or county use tax at the rate of one
316 percent to provide revenue for the general fund of such city or county. Such tax shall be added to the
317 rate of the state use tax imposed by this chapter and shall be subject to all the provisions of this chapter,
318 and all amendments thereof, and the rules and regulations published with respect thereto, except that the
319 applicable brackets of prices shall be as prescribed ~~in § 58.1-628~~ by the Tax Commissioner for the
320 combined state and local tax, and except that no discount under § 58.1-622 shall be allowed on a local
321 use tax.

322 B. The council of any city and the governing body of any county desiring to impose a local use tax
323 under this section may do so in the manner following:

324 1. If the city or county has previously imposed the local sales tax authorized by § 58.1-605, the local
325 use tax may be imposed by the council or governing body by the adoption of a resolution by a majority
326 of all the members thereof, by a recorded yea and nay vote, stating its purpose and referring to this
327 section, and providing that the local use tax shall become effective on the first day of a month at least
328 sixty days after the adoption of the resolution. A certified copy of such resolution shall be forwarded to
329 the Tax Commissioner so that it will be received within five days after its adoption. The resolution
330 authorized by this paragraph may be adopted in the manner stated notwithstanding any other provision
331 of law, including any charter provision.

332 2. If the city or county has not imposed the local sales tax authorized by § 58.1-605, the local use
333 tax may be imposed by ordinance together with the local sales tax in the manner set out in subsections
334 B and C of § 58.1-605.

335 C. Any local use tax levied under this section shall be administered and collected by the Tax
336 Commissioner in the same manner and subject to the same penalties as provided for the state use tax,
337 with the adjustments required by ~~§ 58.1-628~~ § 58.1-628.1.

338 D. The local use tax authorized by this section shall not apply to transactions to which the sales tax
339 applies, the situs of which for state and local sales tax purposes is the city or county of location of each
340 place of business of every dealer paying the tax to the Commonwealth without regard to the city or
341 county of possible use by the purchasers. However, the local use tax authorized by this section shall
342 apply to tangible personal property purchased without this Commonwealth for use or consumption
343 within the city or county imposing the local use tax, or stored within the city or county for use or
344 consumption, where the property would have been subject to the sales tax if it had been purchased
345 within this Commonwealth. The local use tax shall also apply to leases or rentals of tangible personal
346 property where the place of business of the lessor is without this Commonwealth and such leases or
347 rentals are subject to the state tax. Moreover, the local use tax shall apply in all cases in which the state
348 use tax applies.

349 E. Out-of-state dealers who hold certificates of registration to collect the use tax from their customers
350 for remittance to this Commonwealth shall, to the extent reasonably practicable, in filing their monthly
351 use tax returns with the Tax Commissioner, break down their shipments into this Commonwealth by
352 cities and counties so as to show the city or county of destination. If, however, the out-of-state dealer is
353 unable accurately to assign any shipment to a particular city or county, the local use tax on the tangible
354 personal property involved shall be remitted to the Commonwealth by such dealer without attempting to
355 assign the shipment to any city or county.

356 F. Local use tax revenue shall be distributed among the cities and counties for which it is collected,
357 respectively, as shown by the records of the Department, and the procedure shall be the same as that
358 prescribed for distribution of local sales tax revenue under § 58.1-605. The local use tax revenue that is
359 not accurately assignable to a particular city or county shall be distributed monthly by the appropriate
360 state authorities among the cities and counties in this Commonwealth imposing the local use tax upon
361 the basis of taxable retail sales in the respective cities and counties in which the local sales and use tax
362 was in effect in the taxable month involved, as shown by the records of the Department, and computed
363 with respect to taxable retail sales as reflected by the amounts of the local sales tax revenue distributed
364 among such cities and counties, respectively, in the month of distribution. Notwithstanding any other
365 provision of this section, the Tax Commissioner shall develop a uniform method to distribute local use
366 tax. Any significant changes to the method of local use tax distribution shall be phased in over a ~~five~~
367 *five*-year period. Distribution information shall be shared with the affected localities prior to

368 implementation of the changes.

369 G. All local use tax revenue shall be used, applied or disbursed by the cities and counties as
370 provided in § 58.1-605 with respect to local sales tax revenue.

371 § 58.1-611.1. Rate of tax on sales of food purchased for human consumption; Food Tax Reduction
372 Program.

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

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

381 2. From April 1, 2001, through March 31, 2002, the tax rate on such food shall be two and one-half
382 percent of the gross sales price. The revenue from the tax shall be distributed as follows: (i) the revenue
383 from the tax at the rate of one-half percent shall be distributed as provided in subsection A of
384 § 58.1-638, (ii) the revenue from the tax at the rate of one percent shall be distributed as provided in
385 subsections B, C and D of § 58.1-638, and (iii) the revenue from the tax at the rate of one percent shall
386 be used for general fund purposes.

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

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

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

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

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

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

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

413 E. If the tax rate on food purchased for human consumption remains the same for the period January
414 1, 2000, through March 31, 2001, and the subsequent twelve-month period beginning on April 1, 2001,
415 or with respect to any consecutive twelve-month periods beginning on and after April 1, 2001, the tax
416 rate on such food shall remain the same unless none of the conditions described in subsection D have
417 occurred, in which event the tax rate on food purchased for human consumption for the immediately
418 following twelve-month period shall be equal to the next lowest tax rate listed in subsection A.

419 F. There is hereby created on the books of the Comptroller a nonreverting fund entitled the Food
420 Tax Reserve Fund which shall be used solely for the statutory purposes of the Food Tax Reduction
421 Program as established by this section, and as may be provided for in the general appropriation act. For
422 the purpose of the Comptroller's preliminary and final annual reports required by § 2.1-207, all balances
423 remaining in the Fund on June 30 of each year shall be considered a portion of the fund balance of the
424 general fund of the state treasury.

425 G. *The taxes imposed pursuant to § 58.1-604.4 shall not apply to food purchased for human*
426 *consumption.*

427 § 58.1-614. Vending machine sales.

428 A. ~~Notwithstanding the provisions of §§ 58.1-603 and 58.1-604, whenever~~ *For all taxes pursuant to*

429 *this chapter, whenever a dealer makes sales of tangible personal property through vending machines, or*
 430 *in any other manner making collection of the tax impractical, as determined by the Tax Commissioner,*
 431 *such dealer shall be required to report his wholesale purchases for sale at retail from vending machines*
 432 *and shall be required to remit an amount based on four and one-half percent of such wholesale*
 433 *purchases equal to such wholesale purchases multiplied by the sales and use tax rate applicable*
 434 *pursuant to this chapter.*

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

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

443 ~~DC. Notwithstanding any other provisions in this section or § 58.1-628, when~~ *When the Tax*
 444 *Commissioner determines that it is impractical to collect the tax in the manner provided by these*
 445 *sections subsection A or subsection B, such dealer shall be required to remit an amount based on a*
 446 *percentage of gross receipts which takes into account the inclusion of the sales tax.*

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

451 § 58.1-626. Absorption of tax prohibited.

452 No person shall advertise or hold out to the public, directly or indirectly, that he will absorb all or
 453 any part of the sales or use tax, or that he will relieve the purchaser, consumer, or lessee of the payment
 454 of all or any part of such tax, except as may be authorized under ~~§ 58.1-627 or § 58.1-628~~ § 58.1-628.1.
 455 Any person who violates this section shall be guilty of a Class 2 misdemeanor.

456 § 58.1-628.1. *Adjustment to the rate of tax imposed under this chapter.*

457 *If a dealer can show to the satisfaction of the Tax Commissioner that more than eighty-five percent*
 458 *of the total dollar volume of his gross taxable sales during the taxable month was from individual sales*
 459 *at prices of ten cents or less each and that he was unable to adjust his prices in such manner as to*
 460 *prevent the economic incidence of the sales tax from falling on him, the Tax Commissioner shall*
 461 *determine the proper tax liability of the dealer based on that portion of the dealer's gross taxable sales*
 462 *that was from sales at prices of eleven cents or more.*

463 § 58.1-3833. County food and beverage tax.

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

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

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

488 B. Notwithstanding the provisions of subsection A of this section, any county with a population of at
 489 least 70,000 but no more than 100,000, any county with a population of at least 17,910 but no more
 490 than 18,000, any county with a population of at least 34,000 but no more than 34,400, and any county

491 having a county manager plan of government are hereby authorized to levy a tax on food and beverages
 492 sold for human consumption by a restaurant, as such term is defined in § 35.1-1 and as modified in
 493 subsection A above and subject to the same exemptions, not to exceed four percent of the amount
 494 charged for such food and beverages, provided that the governing body of the respective county holds a
 495 public hearing before adopting a local food and beverage tax, and the governing body by unanimous
 496 vote adopts such tax by local ordinance. The tax shall be effective in an amount and on such terms as
 497 the governing body may by ordinance prescribe.

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

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

504 E. Notwithstanding any other provision of this section, no locality shall levy any tax under this
 505 section upon alcoholic beverages sold in factory sealed containers and purchased for off-premises
 506 consumption or food purchased for human consumption as "food" is defined in the Food Stamp Act of
 507 1977, 7 U.S.C. § 2012, as amended, and federal regulations adopted pursuant to that act, except for the
 508 following items: sandwiches, salad bar items sold from a salad bar, prepackaged single-serving salads
 509 consisting primarily of an assortment of vegetables, and nonfactory sealed beverages.

510 **2. That the following is the Northern Virginia Regional Transportation Program Bond Act of**
 511 **2002.**

512 § 1. *Title. This act shall be known and may be cited as the "Northern Virginia Regional*
 513 *Transportation Program Bond Act of 2002."*

514 § 2. *For purposes of this act, the following definitions shall apply:*

515 *"Authority" means the Northern Virginia Transportation Authority as created under the Code of*
 516 *Virginia.*

517 *"Program" means the Northern Virginia Regional Transportation Program.*

518 *"Project" or "Projects" means a transportation project or projects included in the Program.*

519 § 3. *The Program shall consist of the following Projects: Dulles Corridor Transit (locality share),*
 520 *I-66 Improvements and Rail Extension, I-95/I-395 Improvements and Transit Improvements, Route 1*
 521 *Improvements, Route 28 Improvements, I-495 Improvements and Transit Improvements, Fairfax County*
 522 *Parkway, Tri-County/Loudoun Parkway, VRE New Railcar Purchase, Route 234 Bypass/Route 659*
 523 *Relocated, Metrorail Infrastructure Replacement Program, Secondary System Improvements (including*
 524 *unpaved roads), Urban System Improvements, Route 7 Improvements Fairfax, Route 7 Improvements*
 525 *Loudoun, Regional Transit Capital, Route 50/Columbia Pike Improvements, Columbia Pike/Route 7*
 526 *Transit Improvements, and Rail Safety Improvements.*

527 § 4. *The Authority is hereby authorized to issue at one time or from time to time bonds in an*
 528 *aggregate principal amount not exceeding \$2,435,000,000 to finance the costs of the Projects plus an*
 529 *amount for the issuance costs, capitalized interest, reserve funds, and other financing expenses (the*
 530 *"Bonds"). The proceeds of the Bonds shall be used exclusively for the purpose of providing funds, with*
 531 *any other available funds, for paying the costs incurred or to be incurred for construction or funding of*
 532 *the Projects that comprise the Program, consisting of environmental and engineering studies,*
 533 *rights-of-way acquisition, improvements to all modes of transportation, acquisition, construction and*
 534 *related improvements. Such costs may include the payment of interest on the Bonds for a period during*
 535 *construction and not exceeding one year after completion of construction of the Projects.*

536 § 5. *The Projects, and the amount of bonds authorized to be issued for each such Project, are as*
 537 *follows and constitute the Northern Virginia Regional Transportation Program:*

538 Projects	Bond amount
539	
540 Dulles Corridor Transit (locality share)	\$300,000,000
541	
542 I-66 Improvements and Rail Extension	\$300,000,000
543	
544 I-95/I-395 Improvements and Transit	
545 Improvements	\$300,000,000
546	
547	
548 Route 1 Improvements	\$150,000,000
549	
550 Route 28 Improvements (Prince William Co.)	\$50,000,000

551		
552	I-495 Improvements and Transit Improvements	\$200,000,000
553		
554	Fairfax County Parkway	\$150,000,000
555		
556	Tri-County/Loudoun Parkway	\$100,000,000
557		
558	VRE New Railcar Purchase	\$50,000,000
559		
560	Route 234 Bypass/Route 659 Relocated	\$50,000,000
561		
562	Metrorail Infrastructure Replacement Program	\$200,000,000
563		
564	Secondary System Improvements (including	
565		
566	unpaved roads)	\$150,000,000
567		
568	Urban System Improvements	\$90,000,000
569		
570	Route 7 Improvements Fairfax	\$75,000,000
571		
572	Route 7 Improvements Loudoun	\$75,000,000
573		
574	Regional Transit Capital	\$75,000,000
575		
576	Route 50/Columbia Pike Improvements	\$25,000,000
577		
578	Columbia Pike/Route 7 Transit Improvements	\$75,000,000
579		
580	Rail Safety Improvements	\$20,000,000
581		
582	Total	\$2,435,000,000

583
584 *The Authority shall take such steps as are necessary for the Projects and Program to be constructed,*
585 *subject to it having sufficient funds to pay the costs for the construction of a Project or Projects, or any*
586 *part thereof, as such costs become due and payable. The Authority shall have the power to construct or*
587 *provide by contract for the construction of any Project or Projects and the Program, including the*
588 *power to purchase real and personal property for purposes of constructing and implementing the*
589 *Program.*

590 *Bond proceeds for Secondary System Improvements (including unpaved roads) shall be allocated to*
591 *those localities described in § 15.2-4819 of the Code of Virginia that receive allocations of funds (i)*
592 *pursuant to § 33.1-23.03:5 of the Code of Virginia or (ii) for secondary system highways pursuant to*
593 *§ 33.1-23.4 of the Code of Virginia, and such bond proceeds shall be allocated pursuant to § 33.1-23.4*
594 *of the Code of Virginia. Bond proceeds allocated for Urban System Improvements shall be allocated*
595 *pursuant to § 33.1-23.3 of the Code of Virginia to those localities described in § 15.2-4819 of the Code*
596 *of Virginia, and the towns therein, that receive allocations of funds pursuant to § 33.1-23.3 of the Code*
597 *of Virginia.*

598 *To the extent that the moneys deposited to the Special Fund Account of the Northern Virginia*
599 *Transportation Authority pursuant to subsection C of § 58.1-604.4 of the Code of Virginia exceed the*
600 *amount needed to pay annual debt service on bonds issued to support the Program Projects in any*
601 *particular fiscal year, plus the amount needed in the fiscal year to pay all other costs to administer all*
602 *debts or obligations issued pursuant to this act, the Authority shall allocate such funds subject to the*
603 *following conditions: (i) first, up to fifteen percent of such funds shall be allocated to transit operational*
604 *costs; (ii) then, any remaining funds shall be allocated to Program Projects provided that the Authority*
605 *determines such allocations will materially advance the construction of such Program Projects; and (iii)*
606 *finally, any remaining portion of such funds shall be allocated to fund other transit, primary, urban, or*
607 *secondary projects in the counties and cities described in subsection A of § 58.1-604.4.*

608 *§ 6. The Authority is hereby authorized to borrow money at such rate or rates through the execution*
609 *and issuance of notes for the same (hereinafter "anticipation notes" or "BANs"), but only in the*

610 following circumstances and under the following conditions:

611 a. In anticipation of the sale of the Bonds the issuance of which shall have been authorized and
612 approved by the Authority, if the Authority shall deem it advisable to postpone the issuance of such
613 Bonds; or

614 b. For the renewal of any anticipation notes (BANs) herein authorized.

615 § 7. Application of Proceeds. Proceeds (including any premium) of the Bonds and any BANs (except
616 the proceeds of (i) Bonds the issuance of which has been anticipated by BANs, (ii) refunding bonds and
617 (iii) refunding BANs) shall be deposited in a special capital outlay fund of the Authority and shall be
618 disbursed only for the purpose for which the Bonds or any BANs have been issued. The proceeds of (a)
619 Bonds the issuance of which has been anticipated by BANs, (b) refunding bonds and (c) refunding BANs
620 and any funds provided by the General Assembly, or available from any other source, for the purpose,
621 shall be used to pay such BANs, refunded bonds and refunded BANs.

622 § 8. The Authority is hereby authorized to receive any other funds that may be made available to pay
623 costs of the projects and to make available the same to the payment of the principal or purchase price
624 of, and redemption premium, if any, and interest on, the Bonds authorized hereby.

625 § 9. The terms and structure of each issue of the Bonds shall be determined by the Authority. The
626 Bonds of each issue shall be dated, shall be issued in a principal amount (subject to the limitation as to
627 the aggregate principal amount set forth in § 4), shall bear interest at such rate or rates, which may be
628 fixed, adjustable, variable or a combination thereof, and may be determined by a formula or other
629 method, shall mature at such time or times not exceeding thirty-five years after the issuance thereof, and
630 may be made subject to purchase or redemption before their maturity or maturities, at such price or
631 prices and under such terms and conditions, all as may be determined by the Authority. The Authority
632 shall determine the form of the Bonds, whether the Bonds are certificated or uncertificated, and fix the
633 authorized denomination or denominations of the Bonds and the place or places of payment of principal
634 or purchase price of, and redemption premium, if any, and interest on, the Bonds, which may be at the
635 office of the Authority or any bank or trust company within or without the Commonwealth. The
636 principal or purchase price of, and redemption premium, if any, and interest on, the Bonds shall be
637 made payable in lawful money of the United States of America. Each issue of the Bonds may be issued
638 under a system of book entry for recording the ownership and transfer of ownership of rights to receive
639 payments of principal or purchase price of and redemption premium, if any, and interest on such Bonds.
640 All the Bonds shall have and are hereby declared to have, as between successive holders, all the
641 qualities and incidents of negotiable instruments under the negotiable instruments law of the
642 Commonwealth.

643 The Authority may sell the Bonds from time to time at public or private sale, by competitive bidding,
644 negotiated sale or private placement, for such price or prices as it may determine to be in the best
645 interests of the Authority.

646 § 10. The Bonds and BANs shall be signed on behalf of the Authority by the chairman or
647 vice-chairman of the Authority, or shall bear the facsimile signature of such officer. In the event that the
648 Bonds or BANs shall bear the facsimile signature of the chairman or vice-chairman of the Authority,
649 they shall be signed by such administrative assistant as the chairman of the Authority shall determine or
650 any registrar/paying agent that may be designated by the Authority. In case any officer whose signature
651 or a facsimile of whose signature appears on any Bonds or BANs shall cease to be such officer before
652 the delivery of such Bonds or BANs, such signature or facsimile signature nevertheless shall be valid
653 and sufficient for all purposes, the same as if such officer had remained in office until such delivery.

654 § 11. Refunding. The Authority is hereby authorized to sell and issue, at one time or from time to
655 time, refunding bonds and BANs, to refund any or all of the Bonds and BANs, respectively, issued under
656 this act. Refunding bonds or BANs may be issued in a principal amount up to the amount necessary to
657 pay at maturity or redeem the Bonds and BANs to be refunded and pay all issuance costs and other
658 financing expenses of the refunding. Such refunding bonds and BANs may be issued whether or not the
659 Bonds or BANs to be refunded are then subject to redemption.

660 § 12. Authorized Investments. Pending the application of the proceeds of the Bonds or BANs
661 (including refunding bonds and BANs) to the purpose for which they have been authorized and the
662 application of funds set aside for the purpose to the payment of Bonds or BANs, they may be invested
663 by the Authority in legal investments under the laws of the Commonwealth for public funds and sinking
664 funds, as the case may be. Whenever the Authority receives interest from the investment of the proceeds
665 of Bonds or any BANs, such interest shall become a part of the principal of the Bonds or any BANs and
666 shall be used in the same manner as required or permitted for principal of the Bonds or BANs.

667 § 13. The Bonds authorized under § 4 may be issued without obtaining the consent of any
668 commission, office, department, board, council, bureau, agency or other persons or entities of the
669 Commonwealth or of any political subdivision of the Commonwealth, and without any proceedings or
670 the happening of conditions or things other than those proceedings, conditions or things that are

671 specifically required under this act. The Authority may issue such types of Bonds as it may determine
672 consistent with the provisions of §§ 4 and 5 of this act and subject to § 16 of this act, including, without
673 limitation, Bonds payable as to principal and interest from any one or more of the following sources: (i)
674 its revenues generally, including all amounts deposited into the Special Fund Account of the Northern
675 Virginia Transportation Authority pursuant to subsection C of § 58.1-604.4 of the Code of Virginia; (ii)
676 proceeds from the sale of Bonds; (iii) payments under letters of credit, policies of bond insurance,
677 guarantees or other credit enhancements; (iv) any reserve or sinking funds created to secure such
678 payment; or (v) other available funds of the Authority.

679 § 14. Security for Bonds and BANs. The proceeds of (i) Bonds the issuance of which has been
680 anticipated by BANs, (ii) refunding bonds and (iii) refunding BANs are hereby irrevocably pledged for
681 the payment of principal of and interest and any premium on such BANs or Bonds or BANs to be
682 refunded thereby.

683 Any Bond authorized under this act may be issued pursuant to or secured by a trust indenture or by
684 a trust or other agreement with a corporate trustee, which may be any trust company or bank having
685 the powers of a trust company within or without the Commonwealth, or other agent for bondholders, or
686 any combination thereof. Any such trust indenture or other agreement may pledge or assign revenues,
687 fees, rents and other charges to be received and may contain provisions for protecting and enforcing the
688 rights and remedies of the bondholders as may be reasonable and proper and not in violation of law.
689 Such provisions may include covenants: (i) providing for the application of revenues and sale by the
690 Authority, or any trustees under any trust indenture or agreement, of any property upon default,
691 provided that in no case may any Project be subject to such sale; (ii) setting forth duties of the
692 Authority in relation to the acquisition, construction, maintenance, operation and insurance of any
693 property of the Authority and the amounts of fees, rents and other charges to be charged, but such
694 covenants may not provide fees, rents and other charges for use of any Project; (iii) providing for the
695 collection of revenues, fees, rents and other charges, and the custody, safeguarding and application of
696 all moneys of the Authority; (iv) providing for the creation of sinking funds and the creation and
697 maintenance of reserves; and (v) setting forth conditions or limitations with respect to the incurrence of
698 indebtedness or the granting of liens. Such trust indenture, trust or other agreement may set forth the
699 rights and remedies of the bondholders and of the trustee or other agent for bondholders and may
700 restrict the individual right of action by bondholders.

701 In addition, the Authority may grant security interests and other liens on its property, including its
702 accounts receivable, to secure Bonds. All pledges of revenues of the Authority for payment of bonds
703 shall be valid and binding from the time when the pledge is made, and the revenues pledged and
704 thereafter received by the Authority shall be subject immediately to the lien of such pledge without any
705 physical delivery thereof or further act, and the lien of any such pledge shall be valid and binding as
706 against all parties having claims of any kind in tort, contract or otherwise against the Authority,
707 irrespective of whether such parties have notice thereof. The Authority may also provide for the filing of
708 any security interest or other lien, or any financing statement or other instrument, necessary or
709 desirable to create, perfect or evidence any lien created pursuant to this act.

710 It shall be lawful for any bank or trust company within or without the Commonwealth to serve as
711 depository of the proceeds of Bonds or of other revenues of the Authority and to furnish indemnifying
712 bonds or to pledge such securities as may be required by the Authority.

713 § 15. Except to the extent that the rights herein given may be restricted by such trust indenture or
714 trust or other agreement, any holder of Bonds or coupons authorized under this act and the trustee or
715 other agent for bondholders under any trust indenture or trust or other agreement may, either at law or
716 in equity, by suit, action, injunction, mandamus or other proceedings, protect and enforce any and all
717 rights under the laws of the Commonwealth or granted under this act or under such trust indenture,
718 trust or other agreement, and may enforce and compel the performance of all duties required under this
719 act or by such trust indenture, trust or other agreement, with respect to such Bonds or coupons, to be
720 performed by the Authority or by any officer or agent thereof, including the fixing, charging and
721 collecting of revenues, fees, rents and other charges.

722 § 16. No member, officer, employee or agent of the Authority or any person executing Bonds of the
723 Authority authorized under this act shall be liable personally on the Bonds by reason of their issuance
724 or execution. Bonds of the Authority authorized under this act shall not be a debt or pledge of the full
725 faith and credit of the Commonwealth or any political subdivision thereof other than the Authority and
726 shall so state on their face. Neither the Commonwealth nor any political subdivision thereof other than
727 the Authority shall be obligated to pledge taxing power or appropriate or otherwise be liable for
728 payment of such Bonds of the Authority, nor shall such Bonds be payable out of any funds or properties
729 of the Commonwealth or any political subdivision thereof other than those of the Authority. Bonds of the
730 Authority authorized under this act are declared to be issued for an essential public and governmental
731 purpose.

732 § 17. Expenses. All expenses incurred under this act in connection with issuance of the Bonds shall

733 *be paid from the proceeds of such Bonds, or any refunding bonds or BANs, or from any other available*
734 *funds as the Authority may determine.*

735 *§ 18. Bonds issued by the Authority under the provisions of this act are hereby made securities in*
736 *which all public officers and public bodies of the Commonwealth and its political subdivisions, all*
737 *insurance companies and associations, all national banks and trust companies, and savings institutions,*
738 *including savings and loan associations, in the Commonwealth, and all executors, administrators,*
739 *trustees and other fiduciaries, both individual or corporate, may properly and legally invest funds within*
740 *their control. Such Bonds are hereby made securities that may properly and legally be deposited with*
741 *and received by any state or municipal officer or any agency or political subdivision of the*
742 *Commonwealth for any purpose for which the deposit of Bonds or obligations is now or may hereafter*
743 *be authorized by law.*

744 *§ 19. Exemption of interest from tax. The Bonds and BANs issued under the provisions of this act,*
745 *their transfer, and the income therefrom, including any profit made on the sale thereof, shall at all times*
746 *be exempt from taxation by the Commonwealth and by any political subdivision thereof.*

747 *§ 20. If any part of this act or the application thereof to any person or circumstance is held invalid*
748 *by a court of competent jurisdiction, such holding shall not affect the validity of the remainder of the*
749 *provisions or applications of the act, which can be given effect without the invalid provision or*
750 *application, and to this end the provisions of this act are severable.*

751 **3. That it shall be the duty of the regular election officers of the counties and cities described in**
752 **subsections A and B of § 58.1-604.4 conducting the election directed by law to be held on Tuesday,**
753 **November 5, 2002, at the places appointed for holding the same, to open a poll on such day and**
754 **take the sense of the qualified voters of such counties and cities upon the ratification or rejection**
755 **of a one percent state sales and use tax pursuant to subsections A and B of § 58.1-604.4. Notice of**
756 **the referendum shall be given, the ballots shall be prepared, distributed and voted, and the results**
757 **thereof ascertained and certified, in accordance with Title 24.2 of the Code of Virginia, relating to**
758 **special elections.**

759 **The ballot shall contain the following question:**

760 **"QUESTION: Shall an additional state sales and use tax of one percent be imposed in Arlington**
761 **County, Fairfax County, Loudoun County, Prince William County, the City of Alexandria, the**
762 **City of Fairfax, the City of Falls Church, the City of Manassas, and the City of Manassas Park**
763 **beginning July 1, 2003, pursuant to subsections A and B of § 58.1-604.4 of the Code of Virginia,**
764 **with one-half of the revenues to be used solely for regional transportation projects and programs**
765 **and one-half of the revenues to be used solely for public education purposes as specified in**
766 **Chapter (. . .) of the Acts of Assembly of 2002?"**

767 **The State Board of Elections shall cause to be sent to the electoral boards of such counties and**
768 **cities sufficient copies of the full text of this act and the question contained herein for the officers**
769 **of election to post in each polling place on election day. The State Board of Elections shall without**
770 **delay make out and transmit to the Governor an official copy of the report of the whole number**
771 **of votes cast at the election for and against the referendum question, certified by it. The expenses**
772 **incurred in conducting this election shall be defrayed as in the case of election of members of the**
773 **General Assembly.**

774 **4. That the Department of Taxation shall promulgate all necessary and reasonable regulations to**
775 **govern the administration of sales and use taxes pursuant to the provisions of this act, including,**
776 **but not limited to, a bracket system for the collection of taxes in the Commonwealth on**
777 **transactions of five dollars or less.**

778 **5. That, except to the extent provided herein, any moneys distributed from sales and use taxes**
779 **pursuant to subsections A and B of § 58.1-604.4 shall not be used to calculate or reduce the share**
780 **of federal, state, or local revenues or funds otherwise available to the localities in the counties and**
781 **cities described in subsections A and B of § 58.1-604.4, nor shall they be used to calculate or**
782 **reduce any allocation of revenues or funds made pursuant to Title 33.1 of the Code of Virginia.**
783 **The state portion of the state basic aid payment otherwise payable to any such county's or city's**
784 **school division shall be reduced by an amount equivalent to twenty percent of the total amount of**
785 **the additional tax revenues so distributed to such county or city pursuant to subsection D of**
786 **§ 58.1-604.4.**

787 **6. That the total amount of the reduction in state basic aid payments as described in the fifth**
788 **enactment shall be distributed, under the conditions of this enactment, to all cities and counties in**
789 **the Commonwealth having a composite index of local ability-to-pay equal to or less than .3400,**
790 **and shall be distributed on a set per pupil amount, based on the latest actual adjusted average**
791 **daily membership, and adjusted by the locality's composite index of ability to pay as set forth in**
792 **the general appropriation act. Such distribution to any such city or county is contingent upon the**
793 **city or county: (i) matching its share of the distribution based on its composite index of local**

794 ability-to-pay, and (ii) appropriating all such funds solely for educational purposes and not using
795 such funds to reduce total local operating expenditures for public education below the amount
796 expended by the locality for such purposes in the year upon which the 2002-2004 biennial
797 Standards of Quality expenditure data were based; provided however, that no locality shall be
798 required to maintain a per pupil expenditure that is greater than the per pupil amount expended
799 by the locality for such purposes in the year upon which the 2002-2004 biennial Standards of
800 Quality expenditure data were based.

801 7. That no city or county described in subsections A and B of § 58.1-604.4 may reduce its local
802 contribution to Metrorail capital improvements below the amount it contributed for such
803 improvements in its operating year that began in calendar year 2001.

804 8. That the third and eleventh enactment of this act shall be effective on July 1, 2002. All other
805 provisions and enactments of this act shall be effective on July 1, 2003, and only if a majority of
806 those voting at the election and upon the question described in the third enactment of this act vote
807 in the affirmative upon such question. For purposes of this enactment, "a majority of those voting
808 at the election" means a majority of those voting in the entire region constituted by the counties
809 and cities described in the third enactment of this act, and does not require a majority of those
810 voting in any individual locality.

811 9. That Article 22 (§§ 58.1-540 through 58.1-549) of Chapter 3 of Title 58.1 of the Code of Virginia
812 is repealed.

813 10. That §§ 58.1-627 and 58.1-628 of the Code of Virginia are repealed.

814 11. That if any clause, sentence, paragraph, section, or part of this act or the application thereof
815 to any person, entity, or circumstance is adjudged invalid by any court of competent jurisdiction
816 such judgment shall not affect the validity of the remainder hereof but shall be confined to the
817 clause, sentence, paragraph, section, or part hereof directly involved in the controversy in which
818 such judgment shall have been rendered, and to this end the provisions of this act are severable.