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SENATE BILL NO. 147

Offered January 14, 2004

Prefiled January 12, 2004

A BILL to amend and reenact §§ 4.1-128, 15.2-5814 as it is effective and as it may become effective, 55-248.5, and 58.1-3840 of the Code of Virginia; to amend the Code of Virginia by adding in Article 9 of Chapter 32 of Title 58.1 a section numbered 58.1-3322; and to repeal §§ 58.1-3817, 58.1-3818 as it is effective and as it may become effective, Article 6 (§§ 58.1-3819 through 58.1-3823), Article 7 (§§ 58.1-3830, 58.1-3831 and 58.1-3832) and Article 7.1 (§§ 58.1-3833 and 58.1-3834) of Chapter 38 of Title 58.1 and 58.1-3842, relating to local government taxing authority.

Patrons—Cuccinelli; Delegate: Albo

Referred to Committee on Finance

Be it enacted by the General Assembly of Virginia:

1. That §§ 4.1-128, 15.2-5814 as it is effective and as it may become effective, 55-248.5, and 58.1-3840 of the Code of Virginia are amended and reenacted, and that the Code of Virginia is amended by adding in Article 9 of Chapter 32 of Title 58.1 a section numbered 58.1-3322 as follows:

§ 4.1-128. Local ordinances or resolutions regulating or taxing alcoholic beverages.

A. No county, city, or town shall, except as provided in § 4.1-205 or § 4.1-129, adopt any ordinance or resolution which regulates or prohibits the manufacture, bottling, possession, sale, distribution, handling, transportation, drinking, use, advertising or dispensing of alcoholic beverages in the Commonwealth.

No provision of law, general or special, shall be construed to authorize any county, city or town to adopt any ordinance or resolution that imposes a sales or excise tax on alcoholic beverages, other than the taxes authorized by §§ 58.1-605, ~~58.1-3833~~ or § 58.1-3840. The foregoing limitation shall not affect the authority of any county, city or town to impose a license or privilege tax or fee on a business engaged in whole or in part in the sale of alcoholic beverages if the license or privilege tax or fee (i) is based on an annual or per event flat fee specifically authorized by general law or (ii) is an annual license or privilege tax specifically authorized by general law, which includes alcoholic beverages in its taxable measure and treats alcoholic beverages the same as if they were nonalcoholic beverages.

B. However, the governing body of any county, city, or town may adopt an ordinance which (i) prohibits the acts described in subsection A of § 4.1-308 subject to the provisions of subsection B of § 4.1-308, or the acts described in § 4.1-309 and may provide a penalty for violation thereof and (ii) subject to subsection C of § 4.1-308, regulates or prohibits the possession of opened alcoholic beverage containers in its local public parks, playgrounds, and public streets.

C. Except as provided in this section, all local acts, including charter provisions and ordinances of cities and towns, inconsistent with any of the provisions of this title, are repealed to the extent of such inconsistency.

§ 15.2-5814. (Contingent expiration date) Entitlement to sales tax revenues derived from a major league baseball stadium.

A. The Authority shall be entitled, subject to appropriation, to all sales tax revenues as defined in this chapter. Sales tax revenues may be applied for any purposes of the Authority. The State Comptroller shall remit such sales tax revenues to the Authority on a quarterly basis, subject to such reasonable processing delays as may be required by the Department of Taxation. The State Comptroller shall make such remittances to the Authority, as provided herein, notwithstanding any provisions to the contrary in the Virginia Retail Sales and Use Tax Act (§ 58.1-600 et seq.).

B. The local governing body of the locality in which the stadium is located may direct, by ordinance or resolution, that all local sales and use tax revenues generated by transactions taking place upon the premises of the major league stadium from taxes levied pursuant to §§ 58.1-605 and 58.1-606 shall be remitted by the Treasurer of such locality to the Authority for any purposes of the Authority. Such remittances shall be for the same period and under the same conditions as remittances to the Authority paid in accordance with subsection A, mutatis mutandis.

C. The local governing body of the locality in which the stadium is located may direct, by ordinance or resolution, that all admissions tax revenues of such locality generated by admissions to the major league stadium from taxes levied pursuant to ~~§§ 58.1-3818 and 58.1-3840~~ *under law* shall be remitted to the Authority for any purposes of the Authority. In addition to such admissions tax, the local governing body of the locality in which the stadium is located may levy, by ordinance or resolution, an admissions

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59 surcharge, not to exceed two percent of the amount charged for admission, on the sale of all tickets sold
60 at the major league baseball stadium to be paid to the Authority and shall direct that the Authority and
61 the major league baseball franchise shall reimburse the locality for actual day-of-event expenses incurred
62 by the locality in connection with the operations of the major league baseball stadium. The difference
63 between the surcharge and expenses attributable to the Authority, if any, shall be retained by the
64 Authority for any of its purposes as the Authority deems appropriate for the major league baseball
65 stadium.

66 D. The Authority shall be entitled, subject to appropriation, to all personal income tax revenues,
67 corporate income tax revenues and pass-through entity tax revenues as defined in this chapter. The
68 Authority shall also be entitled to all business, professional and occupational license taxes that are
69 generated by the development, construction or operation of a major league baseball stadium and those
70 business, professional and occupational license taxes remitted to the Authority by the locality, under the
71 provisions of this section, in which the major league baseball stadium is located, on transactions, salaries
72 and personal income and team operations, including without limitation, the wages, salaries and personal
73 income generated in connection with the construction of the major league baseball stadium. The revenue
74 derived from the provisions of this subsection shall be applied for any purposes which the Authority
75 deems appropriate for the major league baseball stadium. The State Comptroller shall remit all such state
76 tax revenues to the Authority on a quarterly basis, subject to such reasonable processing delays as may
77 be required by the Department of Taxation. The locality in which the major league baseball stadium is
78 located may direct, by ordinance or resolution, that all business, professional and occupational licensing
79 revenues generated on the premises of the major league baseball stadium may be remitted to the
80 Authority for any purposes which the Authority deems appropriate for the major league baseball
81 stadium.

82 § 15.2-5814. (Contingent effective date) Entitlement to sales tax revenues derived from a major
83 league baseball stadium.

84 A. In connection with the issuance of bonds by the Authority to finance or refinance a major league
85 baseball stadium, the Authority shall be entitled to all sales tax revenues that are generated by
86 transactions taking place upon the premises of the major league baseball stadium. Such entitlement shall
87 continue for the lifetime of such bonds, but that entitlement shall not exceed thirty years. Sales tax
88 revenues may be applied to repayment of the bonds, stadium operating expenses, master lease rental
89 payments by the Commonwealth, capital expenditures and other purposes of the Authority. The State
90 Comptroller shall remit such sales tax revenues to the Authority on a quarterly basis, subject to such
91 reasonable processing delays as may be required by the Department of Taxation to calculate the actual
92 net sales tax revenues generated by transactions taking place upon the premises of the major league
93 baseball stadium. The State Comptroller shall make such remittances to the Authority, as provided
94 herein, notwithstanding any provisions to the contrary in the Virginia Retail Sales and Use Tax Act
95 (§ 58.1-600 et seq.).

96 B. In connection with the issuance of bonds by the Authority to finance or refinance a major league
97 baseball stadium, the local governing body of the locality in which the stadium is located may direct, by
98 ordinance or resolution, that all local sales and use tax revenues generated by transactions taking place
99 upon the premises of the major league stadium from taxes levied pursuant to §§ 58.1-605 and 58.1-606
100 shall be remitted by the State Comptroller to the Authority for the repayment of bonds, stadium
101 operating expenses, master lease rental payments by the Commonwealth, capital expenditures and other
102 purposes of the Authority. Such remittances shall be for the same period and under the same conditions
103 as remittances to the Authority paid in accordance with subsection A, mutatis mutandis.

104 C. In connection with the issuance of bonds by the Authority to finance or refinance a major league
105 baseball stadium, the local governing body of the locality in which the stadium is located may direct, by
106 ordinance or resolution, that all admissions tax revenues of such locality generated by admissions to the
107 major league stadium from taxes levied pursuant to §§ 58.1-3818 and 58.1-3840 *under law* shall be
108 remitted to the Authority for the repayment of bonds, stadium operating expenses, master lease rental
109 payments by the Commonwealth, capital expenditures and other purposes of the Authority. Any levy
110 pursuant to this section may be for the lifetime of such bonds, but such levy shall not exceed ~~thirty~~ 30
111 years.

112 § 55-248.5. Exemptions; exception to exemption.

113 A. Except as specifically made applicable by § 55-248.21:1, the following conditions are not
114 governed by this chapter:

- 115 1. Residence at a public or private institution, if incidental to detention or the provision of medical,
116 geriatric, educational, counseling, religious or similar services;
- 117 2. Occupancy under a contract of sale of a dwelling unit or the property of which it is a part, if the
118 occupant is the purchaser or a person who succeeds to his interest;
- 119 3. Occupancy by a member of a fraternal or social organization in the portion of a structure operated
120 for the benefit of the organization;

4. Occupancy in a hotel, motel, vacation cottage, boardinghouse or similar lodging held out for transients, unless let continuously to one occupant for more than ~~thirty~~ 30 days, ~~including occupancy in a lodging subject to taxation as provided in § 58.1-3819;~~

5. Occupancy by an employee of a landlord whose right to occupancy is conditioned upon employment in and about the premises or an ex-employee whose occupancy continues less than ~~sixty~~ 60 days;

6. Occupancy by an owner of a condominium unit or a holder of a proprietary lease in a cooperative;

7. Occupancy under a rental agreement covering premises used by the occupant primarily in connection with business, commercial or agricultural purposes;

8. Occupancy in a public housing unit or other housing unit subject to regulation by the Department of Housing and Urban Development where such regulation is inconsistent with this chapter;

9. Occupancy by a tenant who pays no rent; and

10. Occupancy in single-family residences where the owner(s) are natural persons or their estates who own in their own name no more than ten single-family residences subject to a rental agreement; or in the case of condominium units or single-family residences located in any city or in any county having either the urban county executive form or county manager plan of government, no more than four.

B. Notwithstanding the provisions of subsection A, the landlord may specifically provide for the applicability of the provisions of this chapter in the rental agreement.

§ 58.1-3322. *County tax increases after January 1, 2004; reduction in total real estate levies.*

A. As used in this section:

"Inflation factor" means the percentage increase in the consumer price index for all items for all urban consumers (CPI-U) for the 12-month period ending September 30 of the year immediately preceding the tax year in which a new tax, or an increase in an existing rate of tax, becomes effective as provided in this section. The inflation factor shall be rounded to the nearest one-hundredth of a percent. The consumer price index shall be the consumer price index as published by the Bureau of Labor Statistics.

"Increase" or "increases" means an increase in the rate of any existing tax or a change in the method of valuing property that results in an increase in total tax.

"Inflation/population adjustment" means the sum of the inflation factor plus the population factor.

"Population" means the provisional population estimates for a county as published by the Weldon Cooper Center for Public Services.

"Population factor" means the percentage increase in a county's population for the second year immediately preceding the tax year in which a county adopts a tax or increases the rate of an existing tax as provided in this section. The population factor shall be rounded to the nearest one-hundredth of a percent.

B. If a county (i) on or after January 1, 2004, adopts an excise tax on cigarettes, admissions, transient room rentals, meals or travel campgrounds and was not imposing such tax as of December 31, 2003, or (ii) increases the rate of any such excise tax above the rate in effect as of December 31, 2003, the county shall implement the changes required herein to its annual real property tax levies.

C. 1. For the first three tax years beginning with the tax year in which a county adopts or increases any of the excise taxes enumerated in subsection B, as provided in such subsection, the county shall, subject to the requirements of § 58.1-3321, set its rate of levy on real estate to produce total real property tax levies for each tax year not to exceed the lesser of:

(i) $[(1 + \text{the inflation/population adjustment}) \text{ multiplied by the county's total real property tax levies for the immediately preceding tax year}]$

minus

$[\text{12 months of the additional revenue estimated to be generated (except from a tax on real estate) from the adoption by the county of (a) any tax that the county was not imposing as of December 31, 2003, that will become effective in the county in the applicable tax year and (b) any increase in the rate of any existing tax that will become effective in the county in the applicable tax year}] \text{ plus [the amount determined under subdivision C 2]}$

or

(ii) $(1.05 \text{ multiplied by the county's total real property tax levies for the immediately preceding tax year})$.

For purposes of this computation, the inflation factor, population factor, and inflation/population adjustment shall be updated on an annual basis.

2. If a county's estimate of additional revenues generated pursuant to subdivision C 1 for the applicable tax year is less than the actual additional revenues generated by more than three percent of the actual additional revenues generated, the difference between 97 percent of the actual additional revenues generated and the county's estimate shall be taken into account in determining the county's

real property tax levies for the immediately following tax year as provided in subdivision C 1.

D. For every tax year following the third tax year described in subsection C, subject to the requirements of § 58.1-3321, the county shall set its rate of levy on real estate to produce total real property tax levies not to exceed more than 105 percent of the county's total real property tax levies for the immediately preceding tax year.

E. The provisions of subsection C shall be applicable to a county only for three years in total, the first three tax years beginning with the first tax year in which a county adopts or increases any of the excise taxes enumerated in subsection B, as provided in such subsection.

§ 58.1-3840. Certain excise taxes permitted.

A. General - The provisions of Chapter 6 (§ 58.1-600 et seq.) of this title to the contrary notwithstanding, any (i) city or town having general taxing powers established by charter pursuant to or consistent with the provisions of § 15.2-1104, or (ii) county may impose excise taxes on cigarettes, admissions, transient room rentals, meals, and travel campgrounds, provided that no such taxes may be imposed on food and beverages sold through vending machines or on any tangible personal property purchased with food coupons issued by the United States Department of Agriculture under the Food Stamp Program or drafts issued through the Virginia Special Supplemental Food Program for Women, Infants, and Children. In addition, as set forth in § 51.5-98, no blind person operating a vending stand or other business enterprise under the jurisdiction of the Department for the Blind and Vision Impaired and located on property acquired and used by the United States for any military or naval purpose shall be required to collect and remit meals taxes in conformity with this section. Collection of any tax imposed under the authority granted in this section shall be in a manner prescribed by the governing body of the county, city or town imposing the tax.

B. Notwithstanding any other provision of this section, no city or town shall levy any tax under this section Meals tax. No such excise taxes may be imposed on food and beverages sold through vending machines or on any tangible personal property purchased with food coupons issued by the United States Department of Agriculture under the Food Stamp Program or drafts issued through the Virginia Special Supplemental Food Program for Women, Infants, and Children. In addition, as set forth in § 51.5-98, no blind person operating a vending stand or other business enterprise under the jurisdiction of the Department for the Blind and Vision Impaired and located on property acquired and used by the United States for any military or naval purpose shall be required to collect and remit meals taxes. Further, no such taxes shall be imposed upon alcoholic beverages sold in factory sealed containers and purchased for off-premises consumption or food purchased for human consumption as "food" is defined in the Food Stamp Act of 1977, 7 U.S.C. § 2012, as amended, and federal regulations adopted pursuant to that act, except for the following items: sandwiches, salad bar items sold from a salad bar, prepackaged single-serving salads consisting primarily of an assortment of vegetables, and nonfactory sealed beverages.

The term "beverage" as set forth in this subsection means alcoholic beverages as defined in § 4.1-100 and nonalcoholic beverages served as part of a meal.

In any case where a business is located partially within two or more local jurisdictions by reason of the boundary line between the local jurisdictions passing through such place of business, and one or more of the local jurisdictions imposes the meals tax, the tax rate shall be computed by applying the apportionment formula in § 58.1-3709 to the meals tax rate of each applicable local jurisdiction. Such apportioned rate shall be rounded to the nearest one-half percent.

C. Admissions tax - In accordance with the provisions of Article X, Section 1 of the Constitution of Virginia, events to which admission is charged shall be divided into the following classes for the purposes of taxation:

1. Admissions charged for attendance at any event, the gross receipts of which go wholly to charitable purpose or purposes.

2. Admissions charged for attendance at public and private elementary, secondary, and college school-sponsored events, including events sponsored by school-recognized student organizations.

3. Admissions charged for entry into museums, botanical or similar gardens, and zoos.

4. Admissions charged to participants in order to participate in sporting events.

5. Admissions charged for entry into major league baseball games and events at any major league baseball stadium that has seating for at least 40,000 persons.

6. All other admissions.

Any (i) city or town that is authorized to levy a tax on admissions or (ii) county may levy the tax on admissions paid for any event held at facilities that are not owned by the city or town or county at a lower rate than the rate levied on admissions paid for any event held at its city- or town-owned, town-, or county-owned civic centers, stadiums and amphitheaters.

A county, city or town may, by ordinance, elect not to levy an admissions tax on admission to an event, provided that the purpose of the event is solely to raise money for charitable purposes and that the net proceeds derived from the event will be transferred to an entity or entities that are exempt from

sales and use tax pursuant to § 58.1-609.11.

D. Cigarette tax - Any county, city or town having a tax upon the sale or use of cigarettes may by ordinance provide for the administration and enforcement of any such cigarette tax. Such local ordinance may:

1. Provide for the registration of any distributor, wholesaler, vendor, retailer or other person selling, storing or possessing cigarettes within or transporting cigarettes within or into such taxing jurisdiction for sale or use. Such registration may be conditioned upon the filing of a bond with a surety company authorized to do business in Virginia as surety, which bond shall not exceed one and one-half times the average monthly liability of such taxpayer. The county, city or town may revoke registration if such bond is impaired, but for no other reason. Any such distributor, wholesaler, retailer or other person whose business and residence is outside the taxing jurisdiction, who shall sell, store or possess in the taxing jurisdiction therein any cigarettes shall, by virtue of such sale, storage or possession submit himself to its legal jurisdiction and appoint as his attorney for any service of lawful process such officer or person as may be designated in the local ordinance for that purpose. A copy of any such process served on the said officer or person shall be sent forthwith by registered mail to the distributor, wholesaler or retailer.

2. Provide for the use of a tax stamp or meter impression as evidence of payment of the tax or other method or system of reporting payment and collection of such tax.

3. Provide that tobacco products found in quantities of more than six cartons within the taxing jurisdiction shall be conclusively presumed for sale or use within the jurisdiction and may be seized and confiscated if:

a. They are in transit, and are not accompanied by a bill of lading or other document indicating the true name and address of the consignor or seller and of the consignee or purchaser, and the brands and quantity of cigarettes so transported, or are in transit and accompanied by a bill of lading or other document that is false or fraudulent, in whole or in part; or

b. They are in transit and are accompanied by a bill of lading or other document indicating:

(1) A consignee or purchaser in another state or the District of Columbia who is not authorized by the law of such other jurisdiction to receive or possess such tobacco products on which the taxes imposed by such other jurisdiction have not been paid, unless the tax of the state or District of destination has been paid and the said products bear the tax stamps of that state or District; or

(2) A consignee or purchaser in the Commonwealth of Virginia but outside the taxing jurisdiction who does not possess a Virginia sales and use tax certificate, a Virginia retail cigarette license and, where applicable, both a business license and retail cigarette license issued by the local jurisdiction of destination; or

c. They are not in transit and the tax has not been paid, nor have approved arrangements for payment been made, provided that this subparagraph shall not apply to cigarettes in the possession of distributors or public warehouses that have filed notice and appropriate proof with the taxing jurisdiction that those cigarettes are temporarily within the taxing jurisdiction and will be sent to consignees or purchasers outside the jurisdiction in the normal course of business.

4. Provide that cigarettes and other property, other than motor vehicles, used in the furtherance of any illegal evasion of the tax so seized and confiscated may be disposed of by sale or other method deemed appropriate by the local taxing authority. No credit from any sale or other disposition shall be allowed toward any tax or penalties owed.

5. Provide that persons violating any provision thereof shall be deemed guilty of a Class 1 misdemeanor, and require the payment of penalties for late payment not to exceed 10 percent per month, penalties for fraud or evasion of the tax not to exceed 50 percent, and interest not to exceed three quarters of one percent per month, upon any tax found to be overdue and unpaid. The mere possession of untaxed cigarettes in quantities of not more than six cartons shall not be a violation of any such ordinance.

6. Provide for the forfeiture and sale of any property seized; provided, however, that proper notice of such seizure shall be given to the known holders of property interests in such property and shall include procedures for administrative appeal as well as affirmative defenses, which may be asserted by such holders which procedures must be set forth in reasonable detail.

7. Provide that any coin-operated vending machine, in which any cigarettes are found, stored or possessed bearing a counterfeit or bogus cigarette tax stamp or impression or any unstamped tobacco products, or any cigarettes upon which the tax has not been paid, may be declared contraband property and shall be subject to confiscation and sale as provided in subdivision 6. When any such vending machine is found containing such cigarettes it shall be presumed that such cigarettes were intended for distribution, sale or use therefrom. In lieu of immediate seizure and confiscation of any vending machines used in an illegal evasion of the tax it may be sealed by appropriate enforcement authorities to prevent continued illegal sale or removal of any cigarettes, and may be left unmoved until other civil

305 and criminal penalties are imposed or waived. Notice requirements shall be the same as if the machine
306 had been seized. Such seal may be removed and the machine declared eligible for operation only by
307 authorized enforcement authorities. Nothing in this section shall prevent seizure and confiscation of a
308 vending machine at any time after it is sealed.

309 8. Provide that any counterfeit stamps or counterfeit impression devices may also be seized and
310 confiscated.

311 9. Provide for the delegation of its administrative and enforcement authority under its cigarette tax
312 ordinance to one agency or authority pursuant to the provisions of § 15.2-1300. Such agency or
313 authority may promulgate rules and regulations governing the display of cigarette stamps in vending
314 machines, tax liens against property of taxpayers hereunder, extend varying discount rates and establish
315 different classes of taxpayers or those required to collect and remit the tax, requirements concerning
316 keeping and production of records, administrative and jeopardy assessment of tax where reasonably
317 justified, required notice to authorities of sale of taxpayer's business, audit requirements and authority,
318 and criteria for authority of distributors and others to possess untaxed cigarettes and any other
319 provisions consistent with the powers granted by this section or necessarily implied therefrom. Such
320 ordinance may further provide that such agency or authority created may issue a common revenue
321 stamp, employ legal counsel, bring appropriate court action, in its own name where necessary to
322 enforce payment of the cigarette taxes or penalties owed any member jurisdiction and provide cigarette
323 tax agents, and the necessary enforcement supplies and equipment needed to effectively enforce the
324 cigarette tax ordinance promulgated by each such county, city or town. Any cigarette tax agents shall
325 meet such requirements of training or experience as may be promulgated from time to time by the
326 enforcement authority when performing their duties and shall be required to carry proper identification
327 and may be armed for their own protection and for the enforcement of such ordinance. Any such agent
328 shall have the power of arrest upon reasonable and probable cause that a violation of any tobacco tax
329 ordinance has been committed.

330 10. Authorize, if the county, city or town imposing such tax permits the use of meter impressions or
331 stamps to evidence its payment, an officer of the county, city or town or joint enforcement authority to
332 enter into an arrangement with the Department of Taxation under which a tobacco wholesaler who so
333 desires may use a dual die or stamp to evidence the payment of both the county, city or town tax, and
334 the state tax, and the Department is hereby authorized to enter into such an arrangement. The
335 procedure under such an arrangement shall be such as may be agreed upon by and between the
336 authorized county, city, town or joint enforcement authority officer and the Department.

337 E. The county tax limitations imposed pursuant to § 58.1-3711 shall apply to any tax levied under
338 the authority granted in this section, with the exception of an admissions tax levied pursuant to
339 subsection C; provided that, any county that, as of December 31, 2003, was imposing a tax on
340 cigarettes, admissions, transient room rentals, meals, or travel campgrounds within the limits of any
341 town located in such county shall not be prohibited under this subsection from imposing such tax, as
342 authorized under subsection A, within the limits of such town.

343 F. All taxes collected pursuant to this section shall be deemed to be held in trust for the county, city
344 or town imposing the applicable tax. The wrongful and fraudulent use of such tax collections other than
345 remittance of the same as provided by law shall constitute embezzlement pursuant to § 18.2-111.

346 2. That §§ 58.1-3817, 58.1-3818 as it is effective and as it may become effective, Article 6
347 (§§ 58.1-3819 through 58.1-3823), Article 7 (§§ 58.1-3830, 58.1-3831 and 58.1-3832) and Article 7.1
348 (§§ 58.1-3833 and 58.1-3834) of Chapter 38 of Title 58.1 and 58.1-3842 of the Code of Virginia are
349 repealed effective January 1, 2005.

350 3. That § 58.1-3322 of this act shall be effective July 1, 2004, and all other provisions of this act
351 shall be effective January 1, 2005.