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SENATE BILL NO. 1100

Offered January 12, 2005

Prefiled January 12, 2005

A BILL to amend and reenact §§ 4.1-128, 15.2-204, 15.2-1200, 15.2-5814, as it is currently effective and as it may become effective, 55-248.5, and 58.1-3840 of the Code of Virginia; and to repeal §§ 58.1-3817, 58.1-3818, as it is currently effective and as it may become effective, 58.1-3819, 58.1-3822, 58.1-3823, 58.1-3830 through 58.1-3834, and 58.1-3842 of the Code of Virginia, relating to local government taxing authority; penalty.

Patrons—Whipple and Ticer; Delegates: Brink, Ebbin and Eisenberg

Referred to Committee on Finance

Be it enacted by the General Assembly of Virginia:

1. That §§ 4.1-128, 15.2-204, 15.2-1200, 15.2-5814, as it is currently effective and as it may become effective, 55-248.5, and 58.1-3840 of the Code of Virginia are amended and reenacted 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.

§ 15.2-204. Uniform charter powers.

Cities and towns shall have all powers set forth in Article 1 (§ 15.2-1100 et seq.) of Chapter 11, known as the uniform charter powers. Such powers do not need to be set out or incorporated by reference in a city or town charter.

~~Counties shall have all powers set forth in Article 1 (§ 15.2-1100 et seq.) of Chapter 11 only when such powers are specifically conferred upon the county.~~

§ 15.2-1200. General powers of counties.

A. Any county may adopt such measures as it deems expedient to secure and promote the health, safety and general welfare of its inhabitants which are not inconsistent with the general laws of the Commonwealth. Such power shall include, but shall not be limited to, the adoption of quarantine regulations affecting both persons and animals, the adoption of necessary regulations to prevent the spread of contagious diseases among persons or animals and the adoption of regulations for the prevention of the pollution of water which is dangerous to the health or lives of persons residing in the county.

B. Notwithstanding any contrary provision of law, counties shall have all the powers of taxation granted to municipalities in § 15.2-1104.

§ 15.2-5814. (Contingent expiration date /- See note) 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

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59 shall make such remittances to the Authority, as provided herein, notwithstanding any provisions to the
60 contrary in the Virginia Retail Sales and Use Tax Act (§ 58.1-600 et seq.).

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

67 C. The local governing body of the locality in which the stadium is located may direct, by ordinance
68 or resolution, that all admissions tax revenues of such locality generated by admissions to the major
69 league stadium from taxes levied pursuant to §§ 58.1-3818 and ~~58.1-3840~~ shall be remitted to the
70 Authority for any purposes of the Authority. In addition to such admissions tax, the local governing
71 body of the locality in which the stadium is located may levy, by ordinance or resolution, an admissions
72 surcharge, not to exceed two percent of the amount charged for admission, on the sale of all tickets sold
73 at the major league baseball stadium to be paid to the Authority and shall direct that the Authority and
74 the major league baseball franchise shall reimburse the locality for actual day-of-event expenses incurred
75 by the locality in connection with the operations of the major league baseball stadium. The difference
76 between the surcharge and expenses attributable to the Authority, if any, shall be retained by the
77 Authority for any of its purposes as the Authority deems appropriate for the major league baseball
78 stadium.

79 D. The Authority shall be entitled, subject to appropriation, to all personal income tax revenues,
80 corporate income tax revenues and pass-through entity tax revenues as defined in this chapter. The
81 Authority shall also be entitled to all business, professional and occupational license taxes that are
82 generated by the development, construction or operation of a major league baseball stadium and those
83 business, professional and occupational license taxes remitted to the Authority by the locality, under the
84 provisions of this section, in which the major league baseball stadium is located, on transactions, salaries
85 and personal income and team operations, including without limitation, the wages, salaries and personal
86 income generated in connection with the construction of the major league baseball stadium. The revenue
87 derived from the provisions of this subsection shall be applied for any purposes which the Authority
88 deems appropriate for the major league baseball stadium. The State Comptroller shall remit all such state
89 tax revenues to the Authority on a quarterly basis, subject to such reasonable processing delays as may
90 be required by the Department of Taxation. The locality in which the major league baseball stadium is
91 located may direct, by ordinance or resolution, that all business, professional and occupational licensing
92 revenues generated on the premises of the major league baseball stadium may be remitted to the
93 Authority for any purposes which the Authority deems appropriate for the major league baseball
94 stadium.

95 § 15.2-5814. (Contingent effective date /- See note) Entitlement to sales tax revenues derived from a
96 major league baseball stadium.

97 A. In connection with the issuance of bonds by the Authority to finance or refinance a major league
98 baseball stadium, the Authority shall be entitled to all sales tax revenues that are generated by
99 transactions taking place upon the premises of the major league baseball stadium. Such entitlement shall
100 continue for the lifetime of such bonds, but that entitlement shall not exceed ~~thirty~~ 30 years. Sales tax
101 revenues may be applied to repayment of the bonds, stadium operating expenses, master lease rental
102 payments by the Commonwealth, capital expenditures and other purposes of the Authority. The State
103 Comptroller shall remit such sales tax revenues to the Authority on a quarterly basis, subject to such
104 reasonable processing delays as may be required by the Department of Taxation to calculate the actual
105 net sales tax revenues generated by transactions taking place upon the premises of the major league
106 baseball stadium. The State Comptroller shall make such remittances to the Authority, as provided
107 herein, notwithstanding any provisions to the contrary in the Virginia Retail Sales and Use Tax Act
108 (§ 58.1-600 et seq.).

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

117 C. In connection with the issuance of bonds by the Authority to finance or refinance a major league
118 baseball stadium, the local governing body of the locality in which the stadium is located may direct, by
119 ordinance or resolution, that all admissions tax revenues of such locality generated by admissions to the
120 major league stadium from taxes levied pursuant to §§ 58.1-3818 and ~~58.1-3840~~ shall be remitted to the

Authority for the repayment of bonds, stadium operating expenses, master lease rental payments by the Commonwealth, capital expenditures and other purposes of the Authority. Any levy pursuant to this section may be for the lifetime of such bonds, but such levy shall not exceed ~~thirty~~ 30 years.

§ 55-248.5. Exemptions; exception to exemption.

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

1. Residence at a public or private institution, if incidental to detention or the provision of medical, geriatric, educational, counseling, religious or similar services;

2. Occupancy under a contract of sale of a dwelling unit or the property of which it is a part, if the occupant is the purchaser or a person who succeeds to his interest;

3. Occupancy by a member of a fraternal or social organization in the portion of a structure operated 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~~ 10 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.

§ 58.1-3840. Certain excise taxes permitted; penalty.

A. *General* - The provisions of Chapter 6 (§ 58.1-600 et seq.) of this title to the contrary notwithstanding, any county, city or town having general taxing powers established by charter pursuant to or consistent with the provisions of § 15.2-1104 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. The county tax limitations imposed pursuant to § 58.1-3711 shall apply to any tax levied under this section, mutatis mutandis.

B. Notwithstanding any other provision of this section, no city or town shall levy any tax under this section. *Meals tax* - No 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 meals 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.

All meals tax collections shall be deemed to be held in trust for the county, city or town imposing the applicable tax.

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

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

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

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

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

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

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

198 6. All other admissions.

199 D. Transient occupancy tax - Any county, city or town that requires local hotel and motel businesses,
200 or any class thereof, to collect, account for and remit to that locality a local tax imposed on the
201 consumer, may allow the businesses a commission for such service in the form of a deduction from the
202 tax remitted. The commission shall be provided for by ordinance, which shall set the rate at no less
203 than three percent and not to exceed five percent of the amount of tax due and accounted for. No
204 commission shall be allowed if the amount due was delinquent.

205 All transient occupancy tax collections shall be deemed to be held in trust for the county, city or
206 town imposing the tax.

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

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

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

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

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

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

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

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

240 c. They are not in transit and the tax has not been paid, nor have approved arrangements for
241 payment been made, provided that this subparagraph shall not apply to cigarettes in the possession of
242 distributors or public warehouses that have filed notice and appropriate proof with the taxing
243 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 that are 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 the seizure shall be given to the known holders of property interests in such property and the notice 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 and 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 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 the vending machine may be sealed by appropriate enforcement authorities to prevent continued illegal sale or removal of any cigarettes, and the vending machine may be left unmoved until other civil and criminal penalties are imposed or waived. Notice requirements shall be the same as if the machine had been seized. A seal may be removed and the machine declared eligible for operation only by authorized enforcement authorities. Nothing in this section shall prevent seizure and confiscation of a vending machine at any time after it is sealed.

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

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

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

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

2. That §§ 58.1-3817, 58.1-3818, as it is currently effective and as it may become effective, 58.1-3819, 58.1-3822, 58.1-3823, 58.1-3830 through 58.1-3834, and 58.1-3842 of the Code of

305 Virginia are repealed.