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SENATE BILL NO. 267

Senate Amendments in [] — February 17, 2006

A BILL to amend and reenact §§ 58.1-603, 58.1-604, 58.1-614, and 58.1-638 of the Code of Virginia, relating to additional sales and use tax in the localities financially supporting the Washington Metropolitan Area Transit Authority for the financial support of such Authority.

Patron Prior to Engrossment—Senator Whipple

Referred to Committee on Finance

Be it enacted by the General Assembly of Virginia:

1. That §§ 58.1-603, 58.1-604, 58.1-614, and 58.1-638 of the Code of Virginia are amended and reenacted as follows:

§ 58.1-603. Imposition of sales tax.

A. There is hereby levied and imposed, in addition to all other taxes and fees of every kind now imposed by law, a license or privilege tax upon every person who engages in the business of selling at retail or distributing tangible personal property in this Commonwealth, or who rents or furnishes any of the things or services taxable under this chapter, or who stores for use or consumption in this Commonwealth any item or article of tangible personal property as defined in this chapter, or who leases or rents such property within this Commonwealth, in the amount of three and one-half percent through midnight on July 31, 2004, and four percent beginning on and after August 1, 2004:

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

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

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

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

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

B. An additional sales tax of 0.25% is hereby levied and imposed in Arlington County, Fairfax County, the City of Alexandria, the City of Fairfax, and the City of Falls Church. All revenues collected pursuant to this subsection shall be distributed and used as set forth in subsection G of § 58.1-638.

§ 58.1-604. Imposition of use tax.

A. There is hereby levied and imposed, in addition to all other taxes and fees now imposed by law, a tax upon the use or consumption of tangible personal property in this Commonwealth, or the storage of such property outside the Commonwealth for use or consumption in this Commonwealth, in the amount of three and one-half percent through midnight on July 31, 2004, and four percent beginning on and after August 1, 2004:

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

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

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

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

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

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59 during any calendar year.

60 *B. An additional use tax of 0.25% is hereby levied and imposed in Arlington County, Fairfax County,*
61 *the City of Alexandria, the City of Fairfax, the City of Falls Church. All revenues collected pursuant to*
62 *this subsection shall be distributed and used as set forth in subsection G of § 58.1-638.*

63 § 58.1-614. Vending machine sales.

64 A. Notwithstanding the provisions of §§ 58.1-603 and 58.1-604, whenever a dealer makes sales of
65 tangible personal property through vending machines, or in any other manner making collection of the
66 tax impractical, as determined by the Tax Commissioner, such dealer shall be required to report his
67 wholesale purchases for sale at retail from vending machines and shall be required to remit an amount
68 based on four and one-half percent through midnight on July 31, 2004, and five percent beginning on
69 and after August 1, 2004, of such wholesale purchases, *except that such wholesale purchases shall be*
70 *taxed at a rate of 5.25% in the localities set forth in subsection B of § 58.1-603 and subsection B of*
71 *§ 58.1-604 at any time that the tax set forth in subsection B of § 58.1-603 and subsection B of*
72 *§ 58.1-604 is imposed.*

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

76 C. The provisions of subsections A and B of this section shall not be applicable to vending machine
77 operators all of whose machines are under contract to nonprofit organizations. Such operators shall
78 report only the gross receipts from machines selling items for more than 10 cents and shall be required
79 to remit an amount based on a percentage of their remaining gross sales established by the Tax
80 Commissioner to take into account the inclusion of sales tax.

81 D. Notwithstanding any other provisions in this section, when the Tax Commissioner determines that
82 it is impractical to collect the tax in the manner provided by those sections, such dealer shall be required
83 to remit an amount based on a percentage of gross receipts which takes into account the inclusion of the
84 sales tax.

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

89 § 58.1-638. Disposition of state sales and use tax revenue; localities' share; Game Protection Fund.

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

92 1. The sales and use tax revenue generated by the one-half percent sales and use tax increase enacted
93 by the 1986 Special Session of the General Assembly shall be paid, in the manner hereinafter provided
94 in this section, to the Transportation Trust Fund as defined in § 33.1-23.03:1. Of the funds paid to the
95 Transportation Trust Fund, an aggregate of 4.2 percent shall be set aside as the Commonwealth Port
96 Fund as provided in this section; an aggregate of 2.4 percent shall be set aside as the Commonwealth
97 Airport Fund as provided in this section; and an aggregate of 14.5 percent in fiscal year 1998-1999 and
98 14.7 percent in fiscal year 1999-2000 and thereafter shall be set aside as the Commonwealth Mass
99 Transit Fund as provided in this section. The Fund's share of such net revenue shall be computed as an
100 estimate of the net revenue to be received into the state treasury each month, and such estimated
101 payment shall be adjusted for the actual net revenue received in the preceding month. All payments shall
102 be made to the Fund on the last day of each month.

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

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

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

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

116 3. There is hereby created in the Department of the Treasury a special nonreverting fund which shall
117 be part of the Transportation Trust Fund and which shall be known as the Commonwealth Airport Fund.
118 The Commonwealth Airport Fund shall be established on the books of the Comptroller and any funds
119 remaining in such Fund at the end of a biennium shall not revert to the general fund but shall remain in
120 the Fund. Interest earned on the funds shall be credited to the Fund. The funds so allocated shall be

allocated by the Commonwealth Transportation Board to the Virginia Aviation Board. The funds shall be allocated by the Virginia Aviation Board to any Virginia airport which is owned by the Commonwealth, a governmental subdivision thereof, or a private entity to which the public has access for the purposes enumerated in § 5.1-2.16, or is owned or leased by the Metropolitan Washington Airports Authority (MWAA), as follows:

Any new funds in excess of \$12.1 million which are available for allocation by the Virginia Aviation Board from the Commonwealth Transportation Fund, shall be allocated as follows: 60 percent to MWAA, up to a maximum annual amount of \$2 million, and 40 percent to air carrier airports as provided in subdivision A 3 a. Except for adjustments due to changes in enplaned passengers, no air carrier airport sponsor, excluding MWAA, shall receive less funds identified under subdivision A 3 a than it received in fiscal year 1994-1995.

Of the remaining amount:

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

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

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

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

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

b. The amounts allocated pursuant to this section shall be used to support the public transportation administrative costs and the costs borne by the locality for the purchase of fuels, lubricants, tires and maintenance parts and supplies for public transportation at a state share of 80 percent in 2002 and 95 percent in 2003 and succeeding years. These amounts may be used to support up to 95 percent of the local or nonfederal share of capital project costs for public transportation and ridesharing equipment, facilities, and associated costs. Capital costs may include debt service payments on local or agency transit bonds. The term "borne by the locality" means the local share eligible for state assistance consisting of costs in excess of the sum of fares and other operating revenues plus federal assistance received by the locality.

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

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

(2) The Board may allocate these funds to any locality or planning district commission to finance up to 80 percent of the local share of all costs associated with the development, implementation, and continuation of ridesharing programs.

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

(a) To finance up to 95 percent of the capital costs related to the development, implementation and promotion of experimental public transportation and ridesharing projects approved by the Board.

(b) To finance up to 95 percent of the operating costs of experimental mass transportation and ridesharing projects approved by the Board for a period of time not to exceed 12 months.

(c) To finance up to 95 percent of the cost of the development and implementation of any other project designated by the Board where the purpose of such project is to enhance the provision and use of public transportation services.

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

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

(2) To finance up to 50 percent of the local share of public transportation operations planning and technical study projects approved by the Board.

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

f. The remaining 25 percent shall be distributed for capital purposes on the basis of 95 percent of the nonfederal share for federal projects and 95 percent of the total costs for nonfederal projects. In the event that total capital funds available under this subdivision are insufficient to fund the complete list of eligible projects, the funds shall be distributed to each transit property in the same proportion that such capital expenditure bears to the statewide total of capital projects.

g. There is hereby created in the Department of the Treasury a special nonreverting fund known as the Commonwealth Transit Capital Fund. The Commonwealth Transit Capital Fund shall be part of the Commonwealth Mass Transit Fund. The Commonwealth Transit Capital Fund subaccount shall be established on the books of the Comptroller and consist of such moneys as are appropriated to it by the General Assembly and of all donations, gifts, bequests, grants, endowments, and other moneys given, bequeathed, granted, or otherwise made available to the Commonwealth Transit Capital Fund. Any funds remaining in the Commonwealth Transit Capital Fund at the end of the biennium shall not revert to the general fund, but shall remain in the Commonwealth Transit Capital Fund. Interest earned on funds within the Commonwealth Transit Capital Fund shall remain in and be credited to the Commonwealth Transit Capital Fund. Proceeds of the Commonwealth Transit Capital Fund may be paid to any political subdivision, another public entity created by an act of the General Assembly, or a private entity as defined in § 56-557 and for purposes as enumerated in subdivision 4c of § 33.1-269 or expended by the Department of Rail and Public Transportation for the purposes specified in this subdivision. Revenues of the Commonwealth Transit Capital Fund shall be used to support capital expenditures involving the establishment, improvement, or expansion of public transportation services through specific projects approved by the Commonwealth Transportation Board. Projects financed by the Commonwealth Transit Capital Fund shall receive local, regional or private funding for at least 20 percent of the nonfederal share of the total project cost.

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

a. Local obligations for debt service for WMATA rail transit bonds apportioned to each locality using WMATA's capital formula shall be paid first by NVTC. NVTC shall use 95 percent state aid for these payments.

b. The remaining funds shall be apportioned to reflect WMATA's allocation formulas by using the related WMATA-allocated subsidies and relative shares of local transit subsidies. Capital costs shall include 20 percent of annual local bus capital expenses. Hold harmless protections and obligations for NVTC's jurisdictions agreed to by NVTC on November 5, 1998, shall remain in effect.

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

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

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

D. The net revenue so distributable among the counties and cities shall be apportioned and distributed upon the basis as certified to the Comptroller by the Department of Education, of the number of children in each county and city according to the most recent statewide census of school population taken by the Department of Education pursuant to § 22.1-284, as adjusted in the manner hereinafter provided. No special school population census, other than a statewide census, shall be used as the basis of apportionment and distribution except that in any calendar year in which a statewide census is not reported, the Department of Education shall adjust such school population figures by the same percent of annual change in total population estimated for each locality by The Center for Public Service. The revenue so apportionable and distributable is hereby appropriated to the several counties and cities for maintenance, operation, capital outlays, debt and interest payments, or other expenses incurred in the operation of the public schools, which shall be considered as funds raised from local resources. In any county, however, wherein is situated any incorporated town constituting a school division, the county treasurer shall pay into the town treasury for maintenance, operation, capital outlays, debt and interest

payments, or other expenses incurred in the operation of the public schools, the proper proportionate amount received by him in the ratio that the school population of such town bears to the school population of the entire county. If the school population of any city or of any town constituting a school division is increased by the annexation of territory since the last preceding school population census, such increase shall, for the purposes of this section, be added to the school population of such city or town as shown by the last such census and a proper reduction made in the school population of the county or counties from which the annexed territory was acquired.

E. Beginning July 1, 2000, of the remaining sales and use tax revenue, the revenue generated by a two percent sales and use tax, up to an annual amount of \$13 million, collected from the sales of hunting equipment, auxiliary hunting equipment, fishing equipment, auxiliary fishing equipment, wildlife-watching equipment, and auxiliary wildlife-watching equipment in Virginia, as estimated by the most recent U.S. Department of the Interior, Fish and Wildlife Service and U.S. Department of Commerce, Bureau of the Census National Survey of Fishing, Hunting, and Wildlife-Associated Recreation, shall be paid into the Game Protection Fund established under § 29.1-101 and shall be used, in part, to defray the cost of law enforcement. Not later than 30 days after the close of each quarter, the Comptroller shall transfer to the Game Protection Fund the appropriate amount of collections to be dedicated to such Fund. At any time that the balance in the Capital Improvement Fund, established under § 29.1-101.1, is equal to or in excess of \$35 million, any portion of sales and use tax revenues that would have been transferred to the Game Protection Fund, established under § 29.1-101, in excess of the net operating expenses of the Board, after deduction of other amounts which accrue to the Board and are set aside for the Game Protection Fund, shall remain in the general fund until such time as the balance in the Capital Improvement Fund is less than \$35 million.

F. 1. Of the net revenue generated from the one-half percent increase in the rate of the state sales and use tax effective August 1, 2004, pursuant to enactments of the 2004 Special Session I of the General Assembly, the Comptroller shall transfer from the general fund of the state treasury to the Public Education Standards of Quality/Local Real Estate Property Tax Relief Fund established under § 58.1-638.1 an amount equivalent to one-half of the net revenue generated from such one-half percent increase as provided in this subdivision. The transfers to the Public Education Standards of Quality/Local Real Estate Property Tax Relief Fund under this subdivision shall be for one-half of the net revenue generated (and collected in the succeeding month) from such one-half percent increase for the month of August 2004 and for each month thereafter.

2. For the purposes of the Comptroller making the required transfers under subdivision 1, the Tax Commissioner shall make a written certification to the Comptroller no later than the twenty-fifth of each month certifying the sales and use tax revenues generated in the preceding month. Within three calendar days of receiving such certification, the Comptroller shall make the required transfers to the Public Education Standards of Quality/Local Real Estate Property Tax Relief Fund.

G. The gross sales and use tax revenue generated and collected pursuant to subsection B of § 58.1-603 and subsection B of § 58.1-604, less the applicable portion of any refunds to taxpayers, shall be deposited into the state treasury into a special fund entitled "Special Sales and Use Tax Fund Account of the Northern Virginia Transportation Commission," with the amount attributable to each locality set forth in subsection B of § 58.1-603 and subsection B of § 58.1-604 accounted for by point-of-sale collections. The amounts deposited in the special fund shall be distributed monthly to the Northern Virginia Transportation Commission to be applied by the Commission to each locality's obligations to the operating deficit, capital, and debt service of the Washington Metropolitan Area Transit Authority. -

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

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

2. That the additional state sales and use tax provided under this act in subsection B of § 58.1-603 and subsection B of § 58.1-604 shall be levied and imposed only if approved by ordinance by the governing bodies of those localities set forth in subsection B of § 58.1-603 whose population comprise at least 90% of the population in all of such localities. The tax provided under this act in subsection B of § 58.1-603 and subsection B of § 58.1-604 shall be levied and imposed on the first day of the next month following 60 days from the date that the provision in the first sentence of this enactment is satisfied.

3. That the Department of Taxation shall promulgate all necessary and reasonable regulations to govern the administration of the taxes created by this act.

4. That the revenues dedicated to transportation purposes pursuant to subsection G of § 58.1-638 shall not be used to calculate or reduce the share of local, federal, and state revenues otherwise

305 available to participating jurisdictions, or to the Northern Virginia Transportation District.
306 Further, such revenues and moneys shall not be included in any computation of, or formula for, a
307 locality's ability to pay for public education, upon which appropriations of state revenues to local
308 governments for public education are determined.

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

314 [6. That this measure shall only be effective in the event that matching federal funds are
315 appropriated and distributed to the Washington Metropolitan Area Transit Authority.]