

DEPARTMENT OF TAXATION

2007 Fiscal Impact Statement

1. **Patron** Harry B. Blevins

3. **Committee** Senate Finance

4. **Title** Retail Sales and Use Tax; Exemption for
School Contractors

2. **Bill Number** SB 994

House of Origin:

 X **Introduced**

 Substitute

 Engrossed

Second House:

 In Committee

 Substitute

 Enrolled

5. **Summary/Purpose:**

This bill would provide an exemption from the Retail Sales and Use Tax for tangible personal property purchased by a contractor and used solely in the construction, reconstruction, installation, and repair of real estate and fixtures, owned or leased by a local school division, in fulfilling a contract with that division. The provisions of this bill would apply only to tangible personal property purchased pursuant to a contract awarded on or after July 1, 2007.

The effective date of this bill is not specified.

6. **Fiscal Impact Estimates are:** Not available. (See Line 8.)

7. **Budget amendment necessary:** No.

8. **Fiscal implications:**

Administrative Costs

TAX has not assigned any administrative costs to this bill because the changes required by a single bill such as this can be implemented as part of the annual changes to our systems and forms. As stand-alone legislation, TAX considers implementation of this bill as "routine," and does not require additional funding.

TAX will provide specific administrative costs on any legislation that is not "routine." Additionally, TAX will review all state tax legislation likely to be enacted prior to the passage by each house. If the aggregate number of routine bills likely to pass either house is unusually large, it is possible that additional resources will be required. If so, TAX will identify the costs at that time.

Revenue Impact

The sales tax exemption proposed in this bill would reduce revenues by an unknown, but substantial amount. The available data reflects only construction and selected additions

and renovations, and does not separate tangible personal property from labor. The data available indicates that the sales and use tax revenue loss could potentially exceed \$10.7 million annually.

9. Specific agency or political subdivisions affected:

TAX
Local School Divisions

10. Technical amendment necessary: No.

11. Other comments:

Current Law

Generally, when a contractor contracts to perform construction, reconstruction, installation, repair, or any other service with respect to real estate or fixtures, the contractor is deemed the user and consumer of such property and must pay the tax at the time of purchase of such property. In instances when the contractor is furnished tangible personal property for use under its contract, by the entity for whom the contract is performed and the sales and use tax has not been paid, the contractor becomes liable for the tax as the user and consumer of the property in the performance of its contract.

There is an exception to the “contractor rule” that shields a contractor from the tax when the contractor is furnished tangible personal property for use in the performance of work for certain entities that enjoy exemptions from the sales and use tax. The exception applies to tangible personal property provided by a government, i.e., the Commonwealth, any political subdivision of the Commonwealth, or the United States. Local school divisions are political subdivisions of the Commonwealth and would be entitled to make purchases of tangible personal property exempt of the sales tax and provide such property to a contractor without the contractor incurring the tax.

Proposal

This bill would allow a contractor engaged in a real property construction services contract with a local school district to make exempt purchases of tangible personal property for its use and consumption in the performance of its real property services contract with such local school division. This bill would not benefit contractors who contract with Virginia state government or other political subdivisions of Virginia, the federal government or the private sector.

The exemption provided in this bill would not override the prohibition in Virginia Code § 58.1-609.1(4) that restricts the purchase of tangible personal property by the Commonwealth or any of its political subdivisions for transfer to private businesses for their use in a facility or real property improvement for use by a private entity or for nongovernmental purposes.

Similar Legislation

House Bill 1620 would provide a Retail Sales and Use Tax exemption for contractors who contract, on or after July 1, 2006, to perform services for and provide tangible personal property for consumption or use by the Commonwealth, any political subdivision of the Commonwealth, or the United States, if the Commonwealth, political subdivision, or the United States certifies that title to such tangible personal property will pass to such governmental entity.

cc : Secretary of Finance

Date: 1/21/2007 KP
DLAS File Name: SB994F161