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SENATE BILL NO. 729

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on Rules
on March 3, 2008)

(Patron Prior to Substitute—Senator Saslaw)

A BILL to amend and reenact §§ 58.1-605 and 58.1-606 of the Code of Virginia, relating to dedication of certain local sales and use tax revenue to the Northern Virginia Transportation Authority.

Be it enacted by the General Assembly of Virginia:**1. That §§ 58.1-605 and 58.1-606 of the Code of Virginia are amended and reenacted as follows:**

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

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

B. The council of any city and the governing body of any county may levy a general retail sales tax at the rate of one percent to provide revenue for the general fund of such city or county, *except for the localities embraced by the Northern Virginia Transportation Authority established under § 15.2-4830, which localities may dedicate such revenue to the Northern Virginia Transportation Authority for transportation purposes.* Such tax shall be added to the rate of the state sales tax imposed by §§ 58.1-603 and 58.1-604 and shall be subject to all the provisions of this chapter and the rules and regulations published with respect thereto. No discount under § 58.1-622 shall be allowed on a local sales tax.

C. The council of any city and the governing body of any county desiring to impose a local sales tax under this section may do so by the adoption of an ordinance stating its purpose and referring to this section, and providing that such ordinance shall be effective on the first day of a month at least 60 days after its adoption. A certified copy of such ordinance shall be forwarded to the Tax Commissioner so that it will be received within five days after its adoption.

D. Any local sales tax levied under this section shall be administered and collected by the Tax Commissioner in the same manner and subject to the same penalties as provided for the state sales tax.

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

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

G. Such payments to counties are subject to the qualification that in any county wherein is situated any incorporated town constituting a special school district and operated as a separate school district under a town school board of three members appointed by the town council, the county treasurer shall pay into the town treasury for general governmental purposes the proper proportionate amount received by him in the ratio that the school age population of such town bears to the school age population of the entire county. If the school age population of any town constituting a separate school district is increased by the annexation of territory since the last preceding school age population census, such

60 increase shall, for the purposes of this section, be added to the school age population of such town as
61 shown by the last such census and a proper reduction made in the school age population of the county
62 or counties from which the annexed territory was acquired.

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

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

82 J. It is further provided that if any incorporated town which would otherwise be eligible to receive
83 funds from the county treasurer under subsection G or H of this section be located in a county which
84 does not levy a general retail sales tax under the provisions of this law, such town may levy a general
85 retail sales tax at the rate of one percent to provide revenue for the general fund of the town, subject to
86 all the provisions of this section generally applicable to cities and counties. Any tax levied under the
87 authority of this subsection shall in no case continue to be levied on or after the effective date of a
88 county ordinance imposing a general retail sales tax in the county within which such town is located.

89 K. 1. Notwithstanding the other provisions of this chapter, the Hampton Roads Transportation
90 Authority and the Northern Virginia Transportation Authority may impose a retail sales tax at the rate of
91 5% on (i) charges for separately stated labor or services in the repair of motor vehicles and (ii) charges
92 for the repair of a motor vehicle in cases in which the true object of the repair is a service provided
93 within a city or county embraced by the respective Authority.

94 2. The revenue generated and collected pursuant to the tax authorized under this subsection, less the
95 applicable portion of any refunds to taxpayers and after subtraction of the direct costs of administration
96 by the Department, shall be deposited and held in a special trust fund under the control of the State
97 Treasurer entitled "Special Sales and Use Tax Motor Vehicle Repair Fund." The State Treasurer on a
98 monthly basis shall distribute the amounts deposited in the special trust fund to the Hampton Roads
99 Transportation Authority or the Northern Virginia Transportation Authority as appropriate.

100 3. No discount under § 58.1-622 shall be allowed for the tax described under this subsection. Except
101 as otherwise provided herein, the tax under this subsection shall be administered and collected in the
102 same manner and subject to the same penalties as provided for the local retail sales tax.

103 § 58.1-606. To what extent and under what conditions cities and counties may levy local use tax;
104 collection thereof by Commonwealth and return of revenues to the cities and counties.

105 A. The council of any city and the governing body of any county which has levied or may hereafter
106 levy a city or county sales tax under § 58.1-605 may levy a city or county use tax at the rate of one
107 percent to provide revenue for the general fund of such city or county, *except for the localities*
108 *embraced by the Northern Virginia Transportation Authority established under § 15.2-4830, which*
109 *localities may dedicate such revenue to the Northern Virginia Transportation Authority for*
110 *transportation purposes.* Such tax shall be added to the rate of the state use tax imposed by this chapter
111 and shall be subject to all the provisions of this chapter, and all amendments thereof, and the rules and
112 regulations published with respect thereto, except that no discount under § 58.1-622 shall be allowed on
113 a local use tax.

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

116 1. If the city or county has previously imposed the local sales tax authorized by § 58.1-605, the local
117 use tax may be imposed by the council or governing body by the adoption of a resolution by a majority
118 of all the members thereof, by a recorded ye and nay vote, stating its purpose and referring to this
119 section, and providing that the local use tax shall become effective on the first day of a month at least
120 60 days after the adoption of the resolution. A certified copy of such resolution shall be forwarded to
121 the Tax Commissioner so that it will be received within five days after its adoption. The resolution

122 authorized by this paragraph may be adopted in the manner stated notwithstanding any other provision
123 of law, including any charter provision.

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

127 C. Any local use tax levied under this section shall be administered and collected by the Tax
128 Commissioner in the same manner and subject to the same penalties as provided for the state use tax.

129 D. The local use tax authorized by this section shall not apply to transactions to which the sales tax
130 applies, the situs of which for state and local sales tax purposes is the city or county of location of each
131 place of business of every dealer paying the tax to the Commonwealth without regard to the city or
132 county of possible use by the purchasers. However, the local use tax authorized by this section shall
133 apply to tangible personal property purchased without this Commonwealth for use or consumption
134 within the city or county imposing the local use tax, or stored within the city or county for use or
135 consumption, where the property would have been subject to the sales tax if it had been purchased
136 within this Commonwealth. The local use tax shall also apply to leases or rentals of tangible personal
137 property where the place of business of the lessor is without this Commonwealth and such leases or
138 rentals are subject to the state tax. Moreover, the local use tax shall apply in all cases in which the state
139 use tax applies.

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

147 F. Local use tax revenue shall be distributed among the cities and counties for which it is collected,
148 respectively, as shown by the records of the Department, and the procedure shall be the same as that
149 prescribed for distribution of local sales tax revenue under § 58.1-605. The local use tax revenue that is
150 not accurately assignable to a particular city or county shall be distributed monthly by the appropriate
151 state authorities among the cities and counties in this Commonwealth imposing the local use tax upon
152 the basis of taxable retail sales in the respective cities and counties in which the local sales and use tax
153 was in effect in the taxable month involved, as shown by the records of the Department, and computed
154 with respect to taxable retail sales as reflected by the amounts of the local sales tax revenue distributed
155 among such cities and counties, respectively, in the month of distribution. Notwithstanding any other
156 provision of this section, the Tax Commissioner shall develop a uniform method to distribute local use
157 tax. Any significant changes to the method of local use tax distribution shall be phased in over a
158 five-year period. Distribution information shall be shared with the affected localities prior to
159 implementation of the changes.

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

162 H. 1. Notwithstanding the other provisions of this chapter, the Hampton Roads Transportation
163 Authority and the Northern Virginia Transportation Authority may impose a retail use tax at the rate of
164 5% on (i) charges for separately stated labor or services for the repair of motor vehicles and (ii) charges
165 for the repair of a motor vehicle in cases in which the true object of the repair is a service provided
166 within a city or county embraced by the respective Authority.

167 2. The revenue generated and collected pursuant to the tax authorized under this subsection, less the
168 applicable portion of any refunds to taxpayers and after subtraction of the direct costs of administration
169 by the Department, shall be deposited and held in a special trust fund under the control of the State
170 Treasurer entitled "Special Sales and Use Tax Motor Vehicle Repair Fund." The State Treasurer on a
171 monthly basis shall distribute the amounts deposited in the special trust fund to the Hampton Roads
172 Transportation Authority or the Northern Virginia Transportation Authority as appropriate.

173 3. No discount under § 58.1-622 shall be allowed for the tax described under this subsection. Except
174 as otherwise provided herein, the tax under this subsection shall be administered and collected in the
175 same manner and subject to the same penalties as provided for the local retail use tax.