

2008 SPECIAL SESSION II

INTRODUCED

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HOUSE BILL NO. 6012

Offered June 23, 2008

Prefiled June 20, 2008

A BILL to amend and reenact §§ 58.1-603, 58.1-604, and 58.1-638 of the Code of Virginia, relating to increasing the state sales and use tax for highway maintenance.

Patron—Putney

Referred to Committee on Rules

Be it enacted by the General Assembly of Virginia:

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

§ 58.1-603. Imposition of sales tax.

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, and four and one-half percent on and after February 1, 2009:

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.

§ 58.1-604. Imposition of use tax.

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, and four and one-half percent on and after February 1, 2009:

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 during any calendar year.

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

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HB6012

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

61 1. The sales and use tax revenue generated by the one-half percent sales and use tax increase enacted  
62 by the 1986 Special Session of the General Assembly shall be paid, in the manner hereinafter provided  
63 in this section, to the Transportation Trust Fund as defined in § 33.1-23.03:1. Of the funds paid to the  
64 Transportation Trust Fund, an aggregate of 4.2 percent shall be set aside as the Commonwealth Port  
65 Fund as provided in this section; an aggregate of 2.4 percent shall be set aside as the Commonwealth  
66 Airport Fund as provided in this section; and an aggregate of 14.5 percent in fiscal year 1998-1999 and  
67 14.7 percent in fiscal year 1999-2000 and thereafter shall be set aside as the Commonwealth Mass  
68 Transit Fund as provided in this section. The Fund's share of such net revenue shall be computed as an  
69 estimate of the net revenue to be received into the state treasury each month, and such estimated  
70 payment shall be adjusted for the actual net revenue received in the preceding month. All payments shall  
71 be made to the Fund on the last day of each month.

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

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

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

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

85 3. There is hereby created in the Department of the Treasury a special nonreverting fund which shall  
86 be part of the Transportation Trust Fund and which shall be known as the Commonwealth Airport Fund.  
87 The Commonwealth Airport Fund shall be established on the books of the Comptroller and any funds  
88 remaining in such Fund at the end of a biennium shall not revert to the general fund but shall remain in  
89 the Fund. Interest earned on the funds shall be credited to the Fund. The funds so allocated shall be  
90 allocated by the Commonwealth Transportation Board to the Virginia Aviation Board. The funds shall  
91 be allocated by the Virginia Aviation Board to any Virginia airport which is owned by the  
92 Commonwealth, a governmental subdivision thereof, or a private entity to which the public has access  
93 for the purposes enumerated in § 5.1-2.16, or is owned or leased by the Metropolitan Washington  
94 Airports Authority (MWAA), as follows:

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

101 Of the remaining amount:

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

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

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

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

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

118 b. The amounts allocated pursuant to this section shall be used to support the public transportation  
119 administrative costs and the costs borne by the locality for the purchase of fuels, lubricants, tires and  
120 maintenance parts and supplies for public transportation at a state share of 80 percent in 2002 and 95

121 percent in 2003 and succeeding years. These amounts may be used to support up to 95 percent of the  
122 local or nonfederal share of capital project costs for public transportation and ridesharing equipment,  
123 facilities, and associated costs. Capital costs may include debt service payments on local or agency  
124 transit bonds. The term "borne by the locality" means the local share eligible for state assistance  
125 consisting of costs in excess of the sum of fares and other operating revenues plus federal assistance  
126 received by the locality.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

200 D. The net revenue so distributable among the counties and cities shall be apportioned and  
201 distributed upon the basis as certified to the Comptroller by the Department of Education, of the number  
202 of children in each county and city according to the most recent statewide census of school population  
203 taken by the Department of Education pursuant to § 22.1-284, as adjusted in the manner hereinafter  
204 provided. No special school population census, other than a statewide census, shall be used as the basis  
205 of apportionment and distribution except that in any calendar year in which a statewide census is not  
206 reported, the Department of Education shall adjust such school population figures by the same percent of  
207 annual change in total population estimated for each locality by The Center for Public Service. The  
208 revenue so apportionable and distributable is hereby appropriated to the several counties and cities for  
209 maintenance, operation, capital outlays, debt and interest payments, or other expenses incurred in the  
210 operation of the public schools, which shall be considered as funds raised from local resources. In any  
211 county, however, wherein is situated any incorporated town constituting a school division, the county  
212 treasurer shall pay into the town treasury for maintenance, operation, capital outlays, debt and interest  
213 payments, or other expenses incurred in the operation of the public schools, the proper proportionate  
214 amount received by him in the ratio that the school population of such town bears to the school  
215 population of the entire county. If the school population of any city or of any town constituting a school  
216 division is increased by the annexation of territory since the last preceding school population census,  
217 such increase shall, for the purposes of this section, be added to the school population of such city or  
218 town as shown by the last such census and a proper reduction made in the school population of the  
219 county or counties from which the annexed territory was acquired.

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

235 F. 1. Of the net revenue generated from the one-half percent increase in the rate of the state sales  
236 and use tax effective August 1, 2004, pursuant to enactments of the 2004 Special Session I of the  
237 General Assembly, the Comptroller shall transfer from the general fund of the state treasury to the  
238 Public Education Standards of Quality/Local Real Estate Property Tax Relief Fund established under  
239 § 58.1-638.1 an amount equivalent to one-half of the net revenue generated from such one-half percent  
240 increase as provided in this subdivision. The transfers to the Public Education Standards of  
241 Quality/Local Real Estate Property Tax Relief Fund under this subdivision shall be for one-half of the  
242 net revenue generated (and collected in the succeeding month) from such one-half percent increase for  
243 the month of August 2004 and for each month thereafter.

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

249 *G. 1. The net revenue generated from the one-half percent increase in the rate of the state sales and*  
 250 *use tax effective February 1, 2009, pursuant to enactments of the 2008 Special Session II of the General*  
 251 *Assembly, shall be transferred by the Comptroller from the general fund of the state treasury to a*  
 252 *special separate account to be created within the Transportation Trust Fund and the funds in such*  
 253 *account plus any interest that accrues shall be allocated by the Commonwealth Transportation Board*  
 254 *solely for the maintenance of highways within the Interstate Highway System and the primary,*  
 255 *secondary, and urban systems of state highways throughout the Commonwealth.*

256 2. For the purposes of the Comptroller making the required transfers under subdivision 1, the Tax  
 257 Commissioner shall make a written certification to the Comptroller no later than the twenty-fifth of each  
 258 month certifying the sales and use tax revenues generated in the preceding month. Within three calendar  
 259 days of receiving such certification, the Comptroller shall make the required transfers to the separate  
 260 account described in subdivision 1.

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

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

266 **2. That the provisions of the first enactment of this Act shall not become effective unless the voters**  
 267 **pass it at the referendum described in the third and fourth enactments.**

268 **3. Referendum.**

269 **The question of the effectiveness of this Act and the imposition of an additional one-half of one**  
 270 **percent sales and use tax beginning February 1, 2009, shall be submitted to the qualified voters of**  
 271 **the Commonwealth in a referendum at the election to be held on Tuesday, November 4, 2008. The**  
 272 **referendum shall be supervised and held, notice thereof given, ballots prepared, returns made and**  
 273 **certified, votes canvassed, results ascertained and made known, and costs paid as provided by law.**  
 274 **The ballots to be used at the referendum shall pose the question in substantially the following**  
 275 **form:**

276 **QUESTION: Shall Chapter \_\_\_\_, Acts of the General Assembly of the 2008 Special Session II, that**  
 277 **authorizes the imposition of an additional one-half of one percent sales and use tax and provides**  
 278 **for the proceeds of the additional tax to be made part of the Highway Maintenance and Operating**  
 279 **Fund, take effect as law?**

280 **If a majority of those voting thereon shall vote "yes" on this question, this Act shall take effect. If**  
 281 **a majority of those voting thereon shall vote "no" on this question, this Act shall not take effect.**

282 **4. That the neutral explanation of the ballot question provided for by § 30-19.10 of the Code of**  
 283 **Virginis is as follows: If this ballot question passes, then the state sales and use tax will increase**  
 284 **from four percent to four and one-half percent statewide beginning February 1, 2009, and the**  
 285 **additional revenue collected as a result of such increase will be used for the sole purpose of**  
 286 **maintaining the roads in the Commonwealth, statewide.**

287 **5. That an amount not to exceed \$250,000 is hereby appropriated from the unappropriated**  
 288 **balance derived by subtracting the general fund appropriations in Chapter 879 of the Acts of**  
 289 **Assembly of 2008 from the projected general fund revenues in Chapter 879 of the Acts of**  
 290 **Assembly of 2008 to provide for the cost of the State Board of Elections to carry out the**  
 291 **referendum required by the second enactment.**