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## HOUSE BILL NO. 1138

Offered January 13, 2010

Prefiled January 13, 2010

*A BILL to amend and reenact § 58.1-3833 of the Code of Virginia, relating to county food and beverage tax.*

\_\_\_\_\_  
Patron—Morgan

\_\_\_\_\_  
Referred to Committee on Finance

**Be it enacted by the General Assembly of Virginia:****1. That § 58.1-3833 of the Code of Virginia is amended and reenacted as follows:**

§ 58.1-3833. County food and beverage tax.

A. ~~Any~~ Subject to the provisions of subsection B, any county is hereby authorized to levy a tax on food and beverages sold, for human consumption, by a restaurant, as such term is defined in subdivision 9 of § 35.1-1, not to exceed four percent of the amount charged for such food and beverages. Such tax shall not be levied on food and beverages sold through vending machines or by: (i) boardinghouses that do not accommodate transients; (ii) cafeterias operated by industrial plants for employees only; (iii) restaurants to their employees as part of their compensation when no charge is made to the employee; (iv) volunteer fire departments and rescue squads; nonprofit churches or other religious bodies; educational, charitable, fraternal, or benevolent organizations, on an occasional basis, not exceeding three times per calendar year as a fundraising activity, the gross proceeds of which are to be used by such church, religious body or organization exclusively for nonprofit educational, charitable, benevolent, or religious purposes; (v) churches that serve meals for their members as a regular part of their religious observances; (vi) public or private elementary or secondary schools, colleges, and universities to their students or employees; (vii) hospitals, medical clinics, convalescent homes, nursing homes, or other extended care facilities to patients or residents thereof; (viii) day care centers; (ix) homes for the aged, infirm, handicapped, battered women, narcotic addicts, or alcoholics; or (x) age-restricted apartment complexes or residences with restaurants, not open to the public, where meals are served and fees are charged for such food and beverages and are included in rental fees. Also, the tax shall not be levied on food and beverages: (a) when used or consumed and paid for by the Commonwealth, any political subdivision of the Commonwealth, or the United States; or (b) provided by a public or private nonprofit charitable organization or establishment to elderly, infirm, blind, handicapped, or needy persons in their homes, or at central locations; or (c) provided by private establishments that contract with the appropriate agency of the Commonwealth to offer food, food products, or beverages for immediate consumption at concession prices to elderly, infirm, blind, handicapped, or needy persons in their homes or at central locations.

Grocery stores and convenience stores selling prepared foods ready for human consumption at a delicatessen counter shall be subject to the tax, for that portion of the grocery store or convenience store selling such items.

This tax shall be levied only if the tax is approved in a referendum within the county which shall be held in accordance with § 24.2-684 and initiated either by a resolution of the board of supervisors or on the filing of a petition signed by a number of registered voters of the county equal in number to 10 percent of the number of voters registered in the county, as appropriate on January 1 of the year in which the petition is filed with the court of such county. The clerk of the circuit court shall publish notice of the election in a newspaper of general circulation in the county once a week for three consecutive weeks prior to the election. If the voters affirm the levy of a local meals tax, the tax shall be effective in an amount and on such terms as the governing body may by ordinance prescribe. If such resolution of the board of supervisors or such petition states for what projects and/or purposes the revenues collected from the tax are to be used, then the question on the ballot for the referendum shall include language stating for what projects and/or purposes the revenues collected from the tax are to be used.

The term "beverage" as set forth herein shall mean alcoholic beverages as defined in § 4.1-100 and nonalcoholic beverages served as part of a meal. The tax shall be in addition to the sales tax currently imposed by the county pursuant to the authority of Chapter 6 (§ 58.1-600 et seq.) of this title. Collection of such tax shall be in a manner prescribed by the governing body.

B. Notwithstanding the provisions of subsection A of this section, Roanoke County, Rockbridge County, Frederick County, Arlington County, and Montgomery County, are hereby authorized to levy a tax on food and beverages sold for human consumption by a restaurant, as such term is defined in

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59 § 35.1-1 and as modified in subsection A above and subject to the same exemptions, not to exceed four  
60 percent of the amount charged for such food and beverages, provided that the governing body of the  
61 respective county holds a public hearing before adopting a local food and beverage tax, and the  
62 governing body by unanimous vote adopts such tax by local ordinance. The tax shall be effective in an  
63 amount and on such terms as the governing body may by ordinance prescribe. *The local governing body  
64 of every county in which the food and beverage tax is imposed for the first time or increased on or after  
65 July 1, 2010, shall use the revenues from such tax to reduce such county's real property tax rate.*

66 C. Nothing herein contained shall affect any authority heretofore granted to any county, city or town  
67 to levy a meals tax. The county tax limitations imposed pursuant to § 58.1-3711 shall apply to any tax  
68 levied under this section, mutatis mutandis. All food and beverage tax collections and all meals tax  
69 collections shall be deemed to be held in trust for the county, city or town imposing the applicable tax.  
70 The wrongful and fraudulent use of such collections other than remittance of the same as provided by  
71 law shall constitute embezzlement pursuant to § 18.2-111.

72 D. ~~No county which has heretofore adopted an ordinance pursuant to subsection A of this section~~  
73 ~~shall be required to submit an amendment to its meals tax ordinance to the voters in a referendum.~~

74 E. Notwithstanding any other provision of this section, no locality shall levy any tax under this  
75 section upon (i) that portion of the amount paid by the purchaser as a discretionary gratuity in addition  
76 to the sales price; (ii) that portion of the amount paid by the purchaser as a mandatory gratuity or  
77 service charge added by the restaurant in addition to the sales price, but only to the extent that such  
78 mandatory gratuity or service charge does not exceed ~~20%~~ 20 percent of the sales price; or (iii)  
79 alcoholic beverages sold in factory sealed containers and purchased for off-premises consumption or  
80 food purchased for human consumption as "food" is defined in the Food Stamp Act of 1977, 7 U.S.C.  
81 § 2012, as amended, and federal regulations adopted pursuant to that act, except for the following items:  
82 sandwiches, salad bar items sold from a salad bar, prepackaged single-serving salads consisting primarily  
83 of an assortment of vegetables, and nonfactory sealed beverages.