

12103112D

HOUSE BILL NO. 422

Offered January 11, 2012

Prefiled January 10, 2012

A BILL to amend and reenact §§ 15.2-4838.1, 58.1-300, 58.1-520, as it is currently effective and as it may become effective, 58.1-604.1, as it shall become effective, 58.1-608.3, 58.1-611.1, 58.1-614, 58.1-811, and 58.1-3221.3, as it is currently effective, of the Code of Virginia; to amend the Code of Virginia by adding sections numbered 15.2-4838.01, 58.1-603.1, 58.1-604.01, and 58.1-802.2 and by adding in Title 58.1 a chapter numbered 22.1, consisting of sections numbered 58.1-2291 through 58.1-2296; and to repeal Article 22 (§§ 58.1-540 through 58.1-549) of Chapter 3 of Title 58.1 of the Code of Virginia and the second enactment of Chapter 822 of the Acts of Assembly of 2009, relating to transportation funding and administration.

Patrons—Watts, Rust, Brink, Kory, Plum, Scott, J.M., Sickles and Surovell; Senator: Favola

Referred to Committee on Finance

Be it enacted by the General Assembly of Virginia:

1. That §§ 15.2-4838.1, 58.1-300, 58.1-520, as it is currently effective and as it may become effective, 58.1-604.1, as it shall become effective, 58.1-608.3, 58.1-611.1, 58.1-614, 58.1-811, and 58.1-3221.3, as it is currently effective, of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding sections numbered 15.2-4838.01, 58.1-603.1, 58.1-604.01, and 58.1-802.2 and by adding in Title 58.1 a chapter numbered 22.1, consisting of sections numbered 58.1-2291 through 58.1-2296, as follows:

§ 15.2-4838.01. Northern Virginia Transportation Authority Sales and Use Tax Fund established.

There is hereby created in the state treasury a special nonreverting fund to be known as the Northern Virginia Transportation Authority Sales and Use Tax Fund, hereafter referred to as "the Fund." The Fund shall be established on the books of the Comptroller. All revenues dedicated to the Fund pursuant to §§ 58.1-603.1 and 58.1-604.01 and as may be appropriated by the General Assembly shall be paid into the state treasury and credited to the Fund. Interest earned on moneys in the Fund shall remain in the Fund and be credited to it. Any moneys remaining in the Fund, including interest thereon, at the end of each fiscal year shall not revert to the general fund but shall remain in the Fund.

Moneys in the Fund shall be used by the Authority as provided in this chapter. Expenditures and disbursements from the Fund shall be made by the State Treasurer on warrants issued by the Comptroller upon written request signed by the chairman of the Authority or his designee.

§ 15.2-4838.1. Use of certain revenues by the Authority.

A. 1. All revenue received by the Authority from the taxes and fees imposed pursuant to §§ 58.1-603.1, 58.1-604.01, 58.1-604.1, and 58.1-802.2 and the proceeds of bonds issued pursuant to § 15.2-4839 supported by such revenue shall be used for transportation purposes benefiting only those counties and cities that are imposing the real property tax pursuant to § 58.1-3221.3 at a rate of \$0.125 per \$100 of assessed value. All revenue and proceeds of bonds under this subdivision shall be allocated pursuant to the provisions of subsections B and C.

2. All other moneys received by the Authority and the proceeds of bonds issued pursuant to § 15.2-4839 supported by such moneys shall be used by the Authority solely for transportation purposes benefiting those counties and cities that are embraced by the Authority. The transportation projects undertaken pursuant to this subdivision shall be as determined by the Authority and not be constrained by the provisions of subsections B and C.

B. 1. Forty percent of the revenues under subdivision A 1 shall be distributed on a pro rata basis to each locality that is imposing the real property tax pursuant to § 58.1-3221.3 at a rate of \$0.125 per \$100 of assessed value, with each such locality's share being the total of such fees and taxes assessed or imposed by the Authority and received by the Authority that are generated or attributable to the revenues collected in the locality divided by the total of such fees and taxes assessed or imposed by the Authority and received by the Authority revenues collected in all localities imposing the real property tax pursuant to § 58.1-3221.3 at a rate of \$0.125 per \$100 of assessed value. Of the revenues that may be distributed pursuant to this subsection (i) in the Cities of Alexandria, Fairfax, and Falls Church and the County of Arlington, the first 50% percent shall be used solely for urban or secondary road construction and improvements and for public transportation purposes, and (ii) in the remaining localities, the first 50% percent shall be used solely for urban or secondary road construction and improvements. The remainder, as determined solely by the applicable locality, shall be used either for additional urban or secondary road construction; for other transportation capital improvements which

INTRODUCED

HB422

59 have been approved by the most recent long range transportation plan adopted by the Authority; or for
60 public transportation purposes.

61 2. *For road construction and improvements pursuant to this subsection, the Department of*
62 *Transportation may, on a reimbursement basis, provide the locality with planning, engineering,*
63 *right-of-way, and construction services for projects funded in whole by the revenues provided to the*
64 *locality by the Authority.*

65 Solely for purposes of calculating the 40% of revenues to be distributed pursuant to this subsection,
66 the revenue generated pursuant to § 58.1-3221.3 and Article 8 (§ 15.2-2317 et seq.) of Chapter 22 of this
67 title by the counties and cities embraced by the Authority shall be considered revenue of the Authority.
68 None of the revenue distributed by this subsection may be used to repay debt issued before July 1,
69 2007. Each locality shall provide annually to the Northern Virginia Transportation Authority sufficient
70 documentation as required by the Authority showing that the funds distributed under this subsection
71 were used as required by this subsection.

72 C. The remaining 60% of the revenues from such sources shall be used by the Authority solely for
73 transportation projects and purposes that benefit the counties and cities embraced by the Authority. 1.
74 *The remaining 60 percent of the revenues under this subsection under subdivision A 1 shall be used first*
75 *to pay any debt service owing on any bonds issued under subdivision A 1 pursuant to § 15.2-4839, and*
76 *then as follows: a minimum of \$75 million each fiscal year shall be used for transit projects and*
77 *services of (i) the Washington Metropolitan Area Transit Authority (WMATA) benefiting the localities*
78 *provided for under subdivision A 1, (ii) the Virginia Railway Express benefiting the localities provided*
79 *for under subdivision A 1, and (iii) local public transit providers within the localities provided for under*
80 *subdivision A 1.*

81 a. The next \$50 million each fiscal year shall be distributed to the Washington Metropolitan Area
82 Transit Authority (WMATA) and shall be used for capital improvements benefiting the area embraced
83 by the Authority for WMATA's transit service (Metro). The Authority shall first make use of that
84 portion of such annual distribution as may be necessary under the requirements of federal law for the
85 payment of federal funds to WMATA, but only if the matching federal funds are exclusive of and in
86 addition to the amount of other federal funds appropriated for such purposes and are in an amount not
87 less than the amount of such funds appropriated in the federal fiscal year ending September 30, 2007;
88 For each year after 2018 any portion of the amount distributed pursuant to this subsection may be used
89 for mass transit improvements in Prince William County; b. The next \$25 million each fiscal year shall
90 be distributed to the Virginia Railway Express for operating and capital improvements, including but not
91 limited to track lease payments, construction of parking, dedicated rail on the Fredericksburg line,
92 rolling stock, expanded service in Prince William County, and service as may be needed as a result of
93 the Base Realignment and Closure Commission's action regarding Fort Belvoir.

94 2.D. All transportation projects undertaken by the Northern Virginia Transportation Authority shall be
95 completed by private contractors accompanied by performance measurement standards, and all contracts
96 shall contain a provision granting the Authority the option to terminate the contract if contractors do not
97 meet such standards. Notwithstanding the foregoing, any locality may provide engineering services or
98 right-of-way acquisition for any project with its own forces. The Authority shall avail itself of the
99 strategies permitted under the Public-Private Transportation Act (§ 56-556 et seq.) whenever feasible and
100 advantageous. The Authority is independent of any state or local entity, including the Virginia
101 Department of Transportation (VDOT) and the Commonwealth Transportation Board (CTB), but the
102 Authority, VDOT and CTB shall consult with one another to avoid duplication of efforts and, at the
103 option of the Authority, may combine efforts to complete specific projects. Notwithstanding the
104 foregoing, at the request of the Authority, VDOT may provide the Authority with engineering services
105 or right-of-way acquisition for the project with its own forces. When determining what projects to
106 construct under this subsection, the Authority shall base its decisions on the combination that (i)
107 equitably distributes the funds throughout the localities, and (ii) constructs projects that move the most
108 people or commercial traffic in the most cost-effective manner, and on such other factors as approved by
109 the Authority.

110 3. All revenues deposited to the credit of the Authority shall be used for projects benefiting the
111 localities embraced by the Authority, with each locality's total long-term benefits being approximately
112 equal to the total of the fees and taxes received by the Authority that are generated by or attributable to
113 the locality divided by the total of such fees and taxes received by the Authority.

114 D. *For road construction and improvements pursuant to subsection B, the Department of*
115 *Transportation may, on a reimbursement basis, provide the locality with planning, engineering,*
116 *right-of-way, and construction services for projects funded in whole by the revenues provided to the*
117 *locality by the Authority.*

118 § 58.1-300. Incomes not subject to local taxation.

119 Except as provided in § 58.1-540, no No county, city, town or other political subdivision of this
120 Commonwealth shall impose any tax or levy upon incomes, incomes being hereby segregated for state

taxation only.

§ 58.1-520. (Contingent expiration - see Editor's note) Definitions.

As used in this article:

"Claimant agency" means any administrative unit of state, county, city or town government, including department, institution, commission, authority, or the office of Executive Secretary of the Supreme Court, any circuit or district court and the Internal Revenue Service. All state agencies and institutions shall participate in the setoff program.

"Debtor" means any individual having a delinquent debt or account with any claimant agency which obligation has not been satisfied by court order, set aside by court order, or discharged in bankruptcy.

"Delinquent debt" means any liquidated sum due and owing any claimant agency, or any restitution ordered paid to a clerk of the court pursuant to Title 19.2, including any amount of court costs or fines which have accrued through contract, subrogation, tort, operation of law, or any other legal theory regardless of whether there is an outstanding judgment for that sum which is legally collectible and for which a collection effort has been or is being made.

"Mailing date of notice" means the date of notice appearing thereon.

"Refund" means any individual's Virginia state ~~or local~~ income tax refund payable pursuant to §§ 58.1-309 and 58.1-546. This term also includes any refund belonging to a debtor resulting from the filing of a joint income tax return or a refund belonging to a debtor resulting from the filing of a return where husband and wife have elected to file a combined return and separately state their Virginia taxable incomes under the provisions of *subdivision B 2 of § 58.1-324 B 2*.

§ 58.1-520. (Contingent effective date - see Editor's note) Definitions.

As used in this article:

"Claimant agency" means any administrative unit of state, county, city or town government, including department, institution, commission, authority, or the office of Executive Secretary of the Supreme Court, any circuit or district court and the Internal Revenue Service. All state agencies and institutions shall participate in the setoff program.

"Debtor" means any individual having a delinquent debt or account with any claimant agency which obligation has not been satisfied by court order, set aside by court order, or discharged in bankruptcy.

"Delinquent debt" means any liquidated sum due and owing any claimant agency, or any restitution ordered paid to a clerk of the court pursuant to Title 19.2, including any amount of court costs or fines which have accrued through contract, subrogation, tort, operation of law, or any other legal theory regardless of whether there is an outstanding judgment for that sum which is legally collectible and for which a collection effort has been or is being made.

"Mailing date of notice" means the date of notice appearing thereon.

"Refund" means any individual's (i) Virginia state ~~or local~~ income tax refund payable pursuant to §§ 58.1-309 and 58.1-546 or (ii) federal income tax refund payable pursuant to § 6402 of the Internal Revenue Code. This term also includes any refund belonging to a debtor resulting from the filing of a joint income tax return or a refund belonging to a debtor resulting from the filing of a return where husband and wife have elected to file a combined return and separately state their Virginia taxable incomes under the provisions of *subdivision B 2 of § 58.1-324 B 2*.

§ 58.1-603.1. *Additional state sales tax in certain counties and cities in Northern Virginia.*

In addition to the sales tax imposed pursuant to § 58.1-603, there is hereby levied and imposed in each county and city embraced by the Northern Virginia Transportation Authority established under § 15.2-4830 a retail sales tax at the rate of 0.50 percent. Such tax shall not be levied upon food purchased for human consumption as defined in § 58.1-611.1. Such tax shall be added to the rate of the state sales tax imposed in each such county and city 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 for the tax imposed under this section. Such tax 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 under § 58.1-603.

The revenue generated and collected pursuant to the tax authorized under this section, less the applicable portion of any refunds to taxpayers, shall be deposited by the Comptroller in the Northern Virginia Transportation Authority Sales and Use Tax Fund established under § 15.2-4838.01.

§ 58.1-604.01. *Additional state use tax in certain counties and cities in Northern Virginia.*

In addition to the use tax imposed pursuant to § 58.1-604, there is hereby levied and imposed in each county and city embraced by the Northern Virginia Transportation Authority established under § 15.2-4830 a retail use tax at the rate of 0.50 percent. Such tax shall not be levied upon food purchased for human consumption as defined in § 58.1-611.1. Such tax shall be added to the rate of the state use tax imposed in such county and city 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 for the tax described under this section. Such tax shall be administered and collected by the

182 *Tax Commissioner in the same manner and subject to the same penalties as provided for the state use*
183 *tax under § 58.1-604.*

184 *The revenue generated and collected pursuant to the tax authorized under this section, less the*
185 *applicable portion of any refunds to taxpayers, shall be deposited by the Comptroller in the Northern*
186 *Virginia Transportation Authority Sales and Use Tax Fund established under § 15.2-4838.01.*

187 § 58.1-604.1. (Effective July 1, 2012) Use tax on motor vehicles, machinery, tools and equipment
188 brought into Virginia for use in performing contracts.

189 In addition to the use tax levied pursuant to § 58.1-604 and notwithstanding the provisions of
190 § 58.1-611, a use tax is levied upon the storage or use of all motor vehicles, machines, machinery, tools
191 or other equipment brought, imported or caused to be brought into this Commonwealth for use in
192 constructing, building or repairing any building, highway, street, sidewalk, bridge, culvert, sewer or
193 water system, drainage or dredging system, railway system, reservoir or dam, hydraulic or power plant,
194 transmission line, tower, dock, wharf, excavation, grading, or other improvement or structure, or any
195 part thereof. The rate of tax is ~~three and one-half percent through midnight on July 31, 2004, and four~~
196 ~~percent beginning on and after August 1, 2004,~~ on all tangible personal property except motor vehicles,
197 which shall be taxed at the rate of three percent; aircraft, which shall be taxed at the rate of two
198 percent; and watercraft, which shall be taxed at the rate of two percent with a maximum tax of \$1,000.
199 *However, the total rate of the state use tax in any county or city for which the tax under § 58.1-604.01*
200 *is imposed shall be 4.5 percent on all tangible personal property except motor vehicles, which shall be*
201 *taxed at the rate of three percent; aircraft, which shall be taxed at the rate of two percent; and*
202 *watercraft, which shall be taxed at the rate of two percent with a maximum tax of \$1,000.*

203 For purposes of this section ~~the words~~ "motor vehicle" means any vehicle ~~which~~ *that* is
204 self-propelled and designed primarily for use upon the highways, any vehicle ~~which~~ *that* is propelled by
205 electric power obtained from trolley wires but not operated upon rails, and any vehicle designed to run
206 upon the highways which is pulled by a self-propelled vehicle, but shall not include any implement of
207 husbandry, farm tractor, road construction or maintenance machinery or equipment, special mobile
208 equipment or any vehicle designed primarily for use in work off the highway.

209 The tax shall be computed on the basis of such proportion of the original purchase price of such
210 property as the duration of time of use in ~~this the~~ Commonwealth bears to the total useful life thereof.
211 For purposes of this section, ~~the word~~ "use" means use, storage, consumption and "stand-by" time
212 occasioned by weather conditions, controversies or other causes. The tax shall be computed upon the
213 basis of the relative time each item of equipment is in ~~this the~~ Commonwealth rather than upon the
214 basis of actual use. In the absence of satisfactory evidence as to the period of use intended in this
215 Commonwealth, it will be presumed that such property will remain in ~~this the~~ Commonwealth for the
216 remainder of its useful life, which shall be determined in accordance with the experiences and practices
217 of the building and construction trades.

218 A transaction taxed under § 58.1-604, 58.1-605, 58.1-1402, 58.1-1502, 58.1-1736 or 58.1-2402 shall
219 not also be taxed under this section, nor shall the same transaction be taxed more than once under any
220 section.

221 § 58.1-608.3. Entitlement to certain sales tax revenues.

222 A. As used in this section, the following words and terms have the following meanings, unless some
223 other meaning is plainly intended:

224 "Bonds" means any obligations of a municipality for the payment of money.

225 "Cost," as applied to any public facility or to extensions or additions to any public facility, includes:
226 (i) the purchase price of any public facility acquired by the municipality or the cost of acquiring all of
227 the capital stock of the corporation owning the public facility and the amount to be paid to discharge
228 any obligations in order to vest title to the public facility or any part of it in the municipality; (ii)
229 expenses incident to determining the feasibility or practicability of the public facility; (iii) the cost of
230 plans and specifications, surveys and estimates of costs and of revenues; (iv) the cost of all land,
231 property, rights, easements and franchises acquired; (v) the cost of improvements, property or
232 equipment; (vi) the cost of engineering, legal and other professional services; (vii) the cost of
233 construction or reconstruction; (viii) the cost of all labor, materials, machinery and equipment; (ix)
234 financing charges; (x) interest before and during construction and for up to one year after completion of
235 construction; (xi) start-up costs and operating capital; (xii) payments by a municipality of its share of the
236 cost of any multijurisdictional public facility; (xiii) administrative expense; (xiv) any amounts to be
237 deposited to reserve or replacement funds; and (xv) other expenses as may be necessary or incident to
238 the financing of the public facility. Any obligation or expense incurred by the public facility in
239 connection with any of the foregoing items of cost may be regarded as a part of the cost.

240 "Municipality" means any county, city, town, authority, commission, or other public entity.

241 "Public facility" means (i) any auditorium, coliseum, convention center, sports facility that is
242 designed for use primarily as a baseball stadium for a minor league professional baseball affiliated team
243 or structures attached thereto, or conference center, which is owned by a Virginia county, city, town,

authority, or other public entity and where exhibits, meetings, conferences, conventions, seminars, or similar public events may be conducted; (ii) any hotel which is owned by a foundation whose sole purpose is to benefit a state-supported university and which is attached to and is an integral part of such facility, together with any lands reasonably necessary for the conduct of the operation of such events; (iii) any hotel which is attached to and is an integral part of such facility; or (iv) any hotel that is adjacent to a convention center owned by a public entity and where the hotel owner enters into a public-private partnership whereby the locality contributes infrastructure, real property, or conference space. However, such public facility must be located in the City of Hampton, City of Newport News, City of Norfolk, City of Portsmouth, City of Richmond, City of Roanoke, City of Salem, City of Staunton, City of Suffolk, or City of Virginia Beach. Any property, real, personal, or mixed, which is necessary or desirable in connection with any such auditorium, coliseum, convention center, baseball stadium or conference center, including, without limitation, facilities for food preparation and serving, parking facilities, and administration offices, is encompassed within this definition. However, structures commonly referred to as "shopping centers" or "malls" shall not constitute a public facility hereunder. A public facility shall not include residential condominiums, townhomes, or other residential units. In addition, only a new public facility, or a public facility ~~which~~ *that* will undergo a substantial and significant renovation or expansion, shall be eligible under subsection B of ~~this section~~. A new public facility is one whose construction began after December 31, 1991. A substantial and significant renovation entails a project whose cost is at least 50 percent of the original cost of the facility being renovated and shall have begun after December 31, 1991. A substantial and significant expansion entails an increase in floor space of at least 50 percent over that existing in the preexisting facility and shall have begun after December 31, 1991; or an increase in floor space of at least 10 percent over that existing in a public facility that qualified as such under this section and was constructed after December 31, 1991.

"Sales tax revenues" means such tax collections realized under the Virginia Retail Sales and Use Tax Act (§ 58.1-600 et seq.) ~~of this title~~, as limited herein. "Sales tax revenues" does not include the revenue generated by (i) the one-half percent sales and use tax increase enacted by the 1986 Special Session of the General Assembly ~~which~~ *that* shall be paid to the Transportation Trust Fund as defined in § 33.1-23.03:1, ~~nor shall it include~~ (ii) the one percent of the state sales and use tax revenue distributed among the counties and cities of the Commonwealth pursuant to subsection D of § 58.1-638 on the basis of school age population, *or* (iii) *the taxes under §§ 58.1-603.1 and 58.1-604.01*. For a public facility that is a sports facility, "sales tax revenues" shall include such revenues generated by transactions taking place upon the premises of a baseball stadium or structures attached thereto.

B. Any municipality ~~which~~ *that* has issued bonds (i) after December 31, 1991, but before January 1, 1996, (ii) on or after January 1, 1998, but before July 1, 1999, (iii) on or after January 1, 1999, but before July 1, 2001, (iv) on or after July 1, 2000, but before July 1, 2003, (v) on or after July 1, 2001, but before July 1, 2005, (vi) on or after July 1, 2004, but before July 1, 2007, (vii) on or after July 1, 2009, but before July 1, 2012, or (viii) on or after January 1, 2011, but prior to July 1, 2015, to pay the cost, or portion thereof, of any public facility shall be entitled to all sales tax revenues generated by transactions taking place in such public facility. Such entitlement shall continue for the lifetime of such bonds, which entitlement shall not exceed 35 years, and all such sales tax revenues shall be applied to repayment of the bonds. The State Comptroller shall remit such sales tax revenues to the municipality on a quarterly basis, subject to such reasonable processing delays as may be required by the Department of Taxation to calculate the actual net sales tax revenues derived from the public facility. The State Comptroller shall make such remittances to eligible municipalities, as provided herein, notwithstanding any provisions to the contrary in the Virginia Retail Sales and Use Tax Act (§ 58.1-600 et seq.). No such remittances shall be made until construction is completed and, in the case of a renovation or expansion, until the governing body of the municipality has certified that the renovation or expansion is completed.

C. Nothing in this section shall be construed as authorizing the pledging of the faith and credit of the Commonwealth of Virginia, or any of its revenues, for the payment of any bonds. Any appropriation made pursuant to this section shall be made only from sales tax revenues derived from the public facility for which bonds may have been issued to pay the cost, in whole or in part, of such public facility.

§ 58.1-611.1. Rate of tax on sales of food purchased for human consumption.

A. The tax imposed by §§ 58.1-603 and 58.1-604 on food purchased for human consumption shall be levied and distributed as follows:

1. From January 1, 2000, through midnight on June 30, 2005, the tax rate on such food shall be three percent of the gross sales price. The revenue from the tax shall be distributed as follows: (i) the revenue from the tax at the rate of one-half percent shall be distributed as provided in subsection A of § 58.1-638, (ii) the revenue from the tax at the rate of one percent shall be distributed as provided in

subsections B, C and D of § 58.1-638, and (iii) the revenue from the tax at the rate of one and one-half percent shall be used for general fund purposes.

2. On and after July 1, 2005, the tax rate on such food shall be one and one-half percent of the gross sales price. The revenue from the tax shall be distributed as follows: (i) the revenue from the tax at the rate of one-half percent shall be distributed as provided in subsection A of § 58.1-638 and (ii) the revenue from the tax at the rate of one percent shall be distributed as provided in subsections B, C and D of § 58.1-638.

3. *On and after July 1, 2012, the tax rate on such food shall be one percent of the gross sales price. The revenue from the tax shall be distributed as provided in subsections B, C, and D of § 58.1-638.*

B. The provisions of this section shall not affect the imposition of tax on food purchased for human consumption pursuant to §§ 58.1-605 and 58.1-606.

C. As used in this section, "food purchased for human consumption" has the same meaning as "food" defined in the Food Stamp Act of 1977, 7 U.S.C. § 2012, as amended, and federal regulations adopted pursuant to that Act, except it shall not include seeds and plants which produce food for human consumption. For the purpose of this section, "food purchased for human consumption" shall not include food sold by any retail establishment where the gross receipts derived from the sale of food prepared by such retail establishment for immediate consumption on or off the premises of the retail establishment constitutes more than 80 percent of the total gross receipts of that retail establishment, including but not limited to motor fuel purchases, regardless of whether such prepared food is consumed on the premises of that retail establishment. For purposes of this section, "retail establishment" means each place of business for which any "dealer," as defined in § 58.1-612, is required to apply for and receive a certificate of registration pursuant to § 58.1-613.

§ 58.1-614. Vending machine sales.

A. Notwithstanding the provisions of §§ 58.1-603 and 58.1-604, whenever a dealer makes sales of tangible personal property through vending machines, or in any other manner making collection of the tax impractical, as determined by the Tax Commissioner, such dealer shall be required to report his wholesale purchases for sale at retail from vending machines and shall be required to remit an amount based on ~~four and one-half percent through midnight on July 31, 2004, and five percent beginning on and after August 1, 2004,~~ of such wholesale purchases. *However, any dealer located in any county or city for which the taxes under §§ 58.1-603.1 and 58.1-604.01 are imposed shall be required to remit an amount based on 5.5 percent of such wholesale purchases.*

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

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

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

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

§ 58.1-802.2. *Regional congestion relief fee.*

In addition to any other tax or fee imposed under the provisions of this chapter, a fee, delineated as the "regional congestion relief fee," is hereby imposed on each deed, instrument, or writing by which lands, tenements, or other realty located in any county or city embraced by the Northern Virginia Transportation Authority established pursuant to § 15.2-4830 is sold and is granted, assigned, transferred, or otherwise conveyed to or vested in the purchaser or any other person, by such purchaser's direction. The rate of the fee, when the consideration or value of the interest, whichever is greater, equals or exceeds \$100, shall be \$0.40 for each \$100 or fraction thereof, exclusive of the value of any lien or encumbrance remaining thereon at the time of the sale, whether such lien is assumed or the realty is sold subject to such lien or encumbrance.

The fee imposed by this section shall be paid by the grantor, or any person who signs on behalf of the grantor, of any deed, instrument, or writing subject to the fee imposed by this section.

Fees imposed by this section shall be collected by the clerk of the court and deposited into the state treasury; as soon as practicable, such fees shall then be transferred to the Northern Virginia Transportation Authority.

§ 58.1-811. Exemptions.

A. The taxes imposed by §§ 58.1-801 and 58.1-807 shall not apply to any deed conveying real estate or lease of real estate:

1. To an incorporated college or other incorporated institution of learning not conducted for profit, where such real estate is intended to be used for educational purposes and not as a source of revenue or profit;

2. To an incorporated church or religious body or to the trustee or trustees of any church or religious body, or a corporation mentioned in § 57-16.1, where such real estate is intended to be used exclusively for religious purposes, or for the residence of the minister of any such church or religious body;

3. To the United States, the Commonwealth, or to any county, city, town, district or other political subdivision of the Commonwealth;

4. To the Virginia Division of the United Daughters of the Confederacy;

5. To any nonstock corporation organized exclusively for the purpose of owning or operating a hospital or hospitals not for pecuniary profit;

6. To a corporation upon its organization by persons in control of the corporation in a transaction which qualifies for nonrecognition of gain or loss pursuant to § 351 of the Internal Revenue Code as it exists at the time of the conveyance;

7. From a corporation to its stockholders upon complete or partial liquidation of the corporation in a transaction which qualifies for income tax treatment pursuant to § 331, 332, 333 or 337 of the Internal Revenue Code as it exists at the time of liquidation;

8. To the surviving or new corporation, partnership, limited partnership, business trust, or limited liability company upon a merger or consolidation to which two or more such entities are parties, or in a reorganization within the meaning of § 368(a)(1)(C) and (F) of the Internal Revenue Code as amended;

9. To a subsidiary corporation from its parent corporation, or from a subsidiary corporation to a parent corporation, if the transaction qualifies for nonrecognition of gain or loss under the Internal Revenue Code as amended;

10. To a partnership or limited liability company, when the grantors are entitled to receive not less than 50 percent of the profits and surplus of such partnership or limited liability company; provided that the transfer to a limited liability company is not a precursor to a transfer of control of the assets of the company to avoid recordation taxes;

11. From a partnership or limited liability company, when the grantees are entitled to receive not less than 50 percent of the profits and surplus of such partnership or limited liability company; provided that the transfer from a limited liability company is not subsequent to a transfer of control of the assets of the company to avoid recordation taxes;

12. To trustees of a revocable inter vivos trust, when the grantors in the deed and the beneficiaries of the trust are the same persons, regardless of whether other beneficiaries may also be named in the trust instrument, when no consideration has passed between the grantor and the beneficiaries; and to the original beneficiaries of a trust from the trustees holding title under a deed in trust;

13. When the grantor is the personal representative of a decedent's estate or trustee under a will or inter vivos trust of which the decedent was the settlor, other than a security trust defined in § 55-58.1, and the sole purpose of such transfer is to comply with a devise or bequest in the decedent's will or to transfer title to one or more beneficiaries after the death of the settlor in accordance with a dispositive provision in the trust instrument; or

14. When the grantor is an organization exempt from taxation under § 501(c)(3) of the Internal Revenue Code that is organized and operated primarily to acquire land and purchase materials to erect or rehabilitate low-cost homes on such land, which homes are sold at cost to persons who otherwise would be unable to afford to buy a home through conventional means.

B. The taxes imposed by §§ 58.1-803 and 58.1-804 shall not apply to any deed of trust or mortgage:

1. Given by an incorporated college or other incorporated institution of learning not conducted for profit;

2. Given by the trustee or trustees of a church or religious body or given by an incorporated church or religious body, or given by a corporation mentioned in § 57-16.1;

3. Given by any nonstock corporation organized exclusively for the purpose of owning and/or operating a hospital or hospitals not for pecuniary profit;

4. Given by any local governmental entity or political subdivision of the Commonwealth to secure a debt payable to any other local governmental entity or political subdivision; or

5. Securing a loan made by an organization described in subdivision 14 of subsection A of this section.

C. The tax imposed by § 58.1-802 and the fee imposed by § 58.1-802.2 shall not apply to any:

1. Transaction described in subdivisions 6 through 13 of subsection A of this section;

2. Instrument or writing given to secure a debt;

3. Deed conveying real estate from an incorporated college or other incorporated institution of learning not conducted for profit;

4. Deed conveying real estate from the United States, the Commonwealth or any county, city, town, district or other political subdivision thereof;

5. Conveyance of real estate to the Commonwealth or any county, city, town, district or other political subdivision thereof, if such political unit is required by law to reimburse the parties taxable pursuant to § 58.1-802 or subject to the fee under § 58.1-802.2; or

6. Deed conveying real estate from the trustee or trustees of a church or religious body or from an incorporated church or religious body, or from a corporation mentioned in § 57-16.1.

D. No recordation tax shall be required for the recordation of any deed of gift between a grantor or grantors and a grantee or grantees when no consideration has passed between the parties. Such deed shall state therein that it is a deed of gift.

E. The tax imposed by § 58.1-807 shall not apply to any lease to the United States, the Commonwealth, or any county, city, town, district or other political subdivision of the Commonwealth.

F. The taxes and fees imposed by §§ 58.1-801, 58.1-802, 58.1-802.2, 58.1-807, 58.1-808 and 58.1-814 shall not apply to (i) any deed of gift conveying real estate or any interest therein to The Nature Conservancy or (ii) any lease of real property or any interest therein to The Nature Conservancy, where such deed of gift or lease of real estate is intended to be used exclusively for the purpose of preserving wilderness, natural or open space areas.

G. The words "trustee" or "trustees," as used in subdivision 2 of subsection A, subdivision 2 of subsection B, and subdivision 6 of subsection C, include the trustees mentioned in § 57-8 and the ecclesiastical officers mentioned in § 57-16.

H. No recordation tax levied pursuant to this chapter shall be levied on the release of a contractual right, if the release is contained within a single deed that performs more than one function, and at least one of the other functions performed by the deed is subject to the recordation tax.

I. No recordation tax levied pursuant to this chapter shall be levied on a deed, lease, easement, release, or other document recorded in connection with a concession pursuant to the Public-Private Transportation Act of 1995 (§ 56-556 et seq.) or similar federal law.

CHAPTER 22.1.

TRANSPORTATION INFRASTRUCTURE USER FEE.

§ 58.1-2291. Definitions.

As used in this chapter, unless the context requires a different meaning:

"Distributor" means (i) any person engaged in the business of selling fuels in the Commonwealth who brings or causes to be brought into the Commonwealth from outside the Commonwealth any fuels for sale or any other person engaged in the business of selling fuels in the Commonwealth; (ii) any person who makes, manufactures, fabricates, processes, or stores fuels in the Commonwealth for sale in the Commonwealth; or (iii) any person engaged in the business of selling fuels outside the Commonwealth who ships or transports fuels to any person in the business of selling fuels in the Commonwealth.

"Fuel" means any fuel subject to tax under Chapter 22 (§ 58.1-2200 et seq.).

"Person" means any individual, corporation, partnership, association, company, business, trust, joint venture, or other legal entity.

"Retail dealer" means any person who sells fuels to a consumer or to any person for any purpose other than resale.

§ 58.1-2292. Rules and regulations.

The Tax Commissioner shall promulgate rules and regulations for the registration of distributors and dealers and the procedures for filing returns for the payment of the fee imposed pursuant to this chapter.

§ 58.1-2293. Fee on fuels sold in the Commonwealth.

A. In addition to all other taxes and fees now imposed by law, there is hereby imposed a transportation infrastructure user fee upon every distributor who engages in the business of selling fuels at wholesale to retail dealers for retail sale in the Commonwealth.

The fee shall be imposed on the sales price charged by a distributor for fuels sold to a retail dealer for retail sale in the Commonwealth at a rate of one percent, beginning the first day of the month following four consecutive quarters of a seasonally adjusted decrease in the unemployment rate in the Commonwealth on and after July 1, 2011. Such fee shall increase by one percent on each of the four consecutive anniversaries of the beginning date, and shall be indexed every year thereafter on the anniversary date by an amount equal to the percentage change in the U.S. Department of Labor's Producer Price Index for Highway and Street Construction. Such fee shall be imposed at the time of the sale by the distributor to the retail dealer. The fee imposed by this chapter shall be paid by the distributor, but the distributor shall separately state the amount of the fee and add such fee to the sales price or charge. Thereafter, such fee shall be a debt from the retail dealer until paid and shall be

recoverable at law in the same manner as other debts.

B. Every distributor collecting the fee imposed under this chapter shall file a monthly return no later than the twentieth of each month, on a form prescribed by the Department, covering the sale of fuels by such distributor during the preceding month for which a fee is imposed pursuant to subsection A.

For purposes of compensating a distributor for accounting for and remitting the fee imposed by this chapter, such distributor shall be allowed to deduct two percent of the fee otherwise due in submitting his return and paying the amount due by him if the amount is not delinquent at the time of payment.

§ 58.1-2294. Exclusion from professional license tax.

The amount of the fee imposed by this chapter and collected by a distributor in any taxable year shall be excluded from gross receipts for purposes of any tax imposed under Chapter 37 (§ 58.1-3700 et seq.).

§ 58.1-2295. Disposition of fees.

All fees paid to the Commissioner pursuant to this chapter, after subtraction of the direct costs of administration by the Department, shall be allocated among special subfunds of the Highway Maintenance and Operating Fund entitled "Special Fund Account of the Highway Construction District of" according to the highway construction district in which the fuel is sold by the distributor to the retail dealer. The amounts deposited in the special funds shall be used solely for highway and road maintenance in the applicable highway construction district.

§ 58.1-2296. Disclosure of information; penalties.

For purposes of administering the fee levied under this chapter, the Commissioner, upon written request, is authorized to provide to the finance officer of any city or county who is charged with administering the fee such information as may be necessary for the performance of official duties. Any person to whom information is provided pursuant to this section shall be subject to the prohibitions and penalties prescribed in § 58.1-3.

§ 58.1-3221.3. Classification of certain commercial and industrial real property and taxation of such property by certain localities.

A. Beginning January 1, 2008, and solely for the purposes of imposing the tax authorized pursuant to this section, in the counties and cities that are wholly embraced by the Northern Virginia Transportation Authority and the Hampton Roads metropolitan planning area as of January 1, 2008, pursuant to § 134 of Title 23 of the United States Code, all real property used for or zoned to permit commercial or industrial uses is hereby declared to be a separate class of real property for local taxation. Such classification of real property shall exclude all residential uses and all multifamily residential uses, including but not limited to single family residential units, cooperatives, condominiums, townhouses, apartments, or homes in a subdivision when leased on a unit by unit basis even though these units may be part of a larger building or parcel of real estate containing more than four residential units.

B. In addition to all other taxes and fees permitted by law, (i) the governing body of any locality embraced by the Northern Virginia Transportation Authority may, by ordinance, annually impose on all real property in the locality specially classified in subsection A: an amount of real property tax, in addition to such amount otherwise authorized by law, at a rate not to exceed \$0.125 per \$100 of assessed value as the governing body may, by ordinance, impose upon the annual assessed value of all real property used for or zoned to permit commercial or industrial uses; and (ii) the governing body of any locality wholly embraced by the Hampton Roads metropolitan planning area as of January 1, 2008, pursuant to § 134 of Title 23 of the United States Code may, by ordinance, annually impose on all real property in the locality specially classified in subsection A: an amount of real property tax, in addition to such amount otherwise authorized by law, at a rate not to exceed ~~\$0.10~~ \$0.125 per \$100 of assessed value as the governing body may, by ordinance, impose upon the annual assessed value of all real property used for or zoned to permit commercial or industrial uses. The authority granted in this subsection shall be subject to the following conditions:

(1) Upon appropriation, all revenues generated from the additional real property tax imposed shall be used to benefit the locality imposing the tax solely for (i) new road construction and associated planning, design, and right-of-way acquisition, including new additions to, expansions, or extensions of existing roads that add new capacity, service, or access, (ii) new public transit construction and associated planning, design, and right-of-way acquisition, including new additions to, expansions, or extensions of existing public transit projects that add new capacity, service, or access, (iii) other capital costs related to new transportation projects that add new capacity, service, or access and the operating costs directly related to the foregoing, or (iv) the issuance costs and debt service on bonds that may be issued to support the capital costs permitted in subdivisions (i), (ii), or (iii); and

(2) The additional real property tax imposed shall be levied, administered, enforced, and collected in the same manner as set forth in Subtitle III of Title 58.1 for the levy, administration, enforcement, and collection of local taxes. In addition, the local assessor shall separately assess and set forth upon the locality's land book the fair market value of that portion of property that is defined as a separate class of

551 real property for local taxation in accordance with the provisions of this section.

552 C. Beginning January 1, 2008, in lieu of the authority set forth in subsections A and B above and
553 solely for the purposes of imposing the tax authorized pursuant to this section, in the counties and cities
554 wholly embraced by the Northern Virginia Transportation Authority and the Hampton Roads
555 metropolitan planning area as of January 1, 2008, pursuant to § 134 of Title 23 of the United States
556 Code, all real property used for or zoned to permit commercial or industrial uses is hereby declared to
557 be a separate class of real property for local taxation. Such classification of real property shall exclude
558 all residential uses and all multifamily residential uses, including but not limited to single family
559 residential units, cooperatives, condominiums, townhouses, apartments, or homes in a subdivision when
560 leased on a unit by unit basis even though these units may be part of a larger building or parcel of real
561 estate containing more than four residential units.

562 D. In addition to all other taxes and fees permitted by law, (i) the governing body of any locality
563 embraced by the Northern Virginia Transportation Authority may, by ordinance, create within its
564 boundaries, one or more special regional transportation tax districts and, thereafter, may, by ordinance,
565 impose upon the real property located in special regional transportation tax districts specially classified
566 in subsection C within such special regional transportation tax districts: an amount of real property tax,
567 in addition to such amounts otherwise authorized by law, at a rate not to exceed \$0.125 per \$100 of
568 assessed value as the governing body may, by ordinance, impose upon the annual assessed value of all
569 real property used for or zoned to permit commercial or industrial uses; and, (ii) the governing body of
570 any locality wholly embraced by the Hampton Roads metropolitan planning area as of January 1, 2008,
571 pursuant to § 134 of Title 23 of the United States Code may, by ordinance, create within its boundaries,
572 one or more special regional transportation tax districts and, thereafter, may, by ordinance, impose upon
573 the real property specially classified in subsection C within such special regional transportation tax
574 districts: an amount of real property tax, in addition to such amounts otherwise authorized by law, at a
575 rate not to exceed ~~\$0.10~~ \$0.125 per \$100 of assessed value as the governing body may, by ordinance,
576 impose upon the annual assessed value of all real property used for or zoned to permit commercial or
577 industrial uses. The authority granted in this subsection shall be subject to the following conditions:

578 (1) Notwithstanding any other provisions of law to the contrary, upon appropriation, all revenues
579 generated from the additional real property taxes imposed in accordance with subsection C and this
580 subsection shall be used for transportation purposes that benefit the special regional transportation tax
581 district to which such revenue is attributable and solely for (i) new road construction and associated
582 planning, design, and right-of-way acquisition, including new additions to, expansions, or extensions of
583 existing roads that add new capacity, service, or access, (ii) new public transit construction and
584 associated planning, design, and right-of-way acquisition, including new additions to, expansions, or
585 extensions of existing public transit projects that add new capacity, service, or access, (iii) other capital
586 costs related to new transportation projects that add new capacity, service, or access and the operating
587 costs directly related to the foregoing, or (iv) the issuance costs and debt service on bonds that may be
588 issued to support the capital costs permitted in subdivisions (i), (ii), or (iii);

589 (2) Any local ordinance adopted in accordance with the provisions of subsection C and this
590 subsection shall include the requirement that the additional real property taxes so authorized are to be
591 imposed annually in accordance with applicable law;

592 (3) Any locality that imposes the additional real property taxes set forth in subsections A and B shall
593 not be permitted to also impose the additional real property taxes set forth in subsection C and this
594 subsection. In addition, any locality electing to impose the additional real property taxes on all real
595 property located in such locality that is specially classified in subsections A and B must do so in the
596 manner prescribed in subsections A and B and not by creation of a special transportation tax district as
597 set forth in subsection C and this subsection. The creation of such special regional transportation tax
598 districts shall not, however, affect the authority of a locality to establish tax districts pursuant to other
599 provisions of law;

600 (4) The total revenues generated from the additional real property taxes imposed in accordance with
601 subsection C and this subsection shall not be less than 85% of the revenues estimated to be generated
602 when imposing the additional real property taxes in accordance with subsections A and B at the rate of
603 \$0.125 per \$100 of assessed value in any locality embraced by the Northern Virginia Transportation
604 Authority and at the rate of ~~\$0.10~~ \$0.125 per \$100 of assessed value in any locality wholly embraced by
605 the Hampton Roads metropolitan planning area as of January 1, 2008, pursuant to § 134 of Title 23 of
606 the United States Code; and

607 (5) The additional real property taxes imposed pursuant to subsection C and this subsection shall be
608 levied, administered, enforced, and collected, in the same manner as set forth in Subtitle III of Title 58.1
609 for the levy, administration, enforcement, and collection of all local taxes. In addition, the local assessor
610 shall separately assess and set forth upon the locality's land book the fair market value of that portion of
611 property that is defined as separate class of real property for local taxation in accordance with the
612 provisions of this section.

- 613 2. That Article 22 (§§ 58.1-540 through 58.1-549) of Chapter 3 of Title 58.1 of the Code of
614 Virginia and the second enactment of Chapter 822 of the Acts of Assembly of 2009 are repealed.
- 615 3. That the Northern Virginia Transportation Authority and the counties and cities embraced by
616 the Authority shall work cooperatively with towns with a population greater than 3,500 located
617 within such counties for purposes of implementing the provisions of this act.
- 618 4. That the Virginia Department of Transportation (VDOT) shall comply with the Federal
619 Highway Administration reporting requirements for toll credits in order to gain approval for their
620 use. VDOT should implement a policy to aggressively use toll credits to meet state match
621 requirements in order to free up capital project revenue bonds and other state funds for possible
622 use with state-only projects.
- 623 5. That all additional net revenues collected by virtue of the provisions in § 58.1-2293 of the Code
624 of Virginia in the first enactment shall be used solely for highway maintenance.
- 625 6. That the revenues generated by the provisions of this act shall not be used to calculate or
626 reduce the share of local, federal, or state revenues otherwise available to participating
627 jurisdictions. Further, such revenues and moneys shall not be included in any computation of, or
628 formula for, a locality's ability to pay for public education, upon which appropriations of state
629 revenues to local governments for public education are determined.
- 630 7. That this act shall be known as the "Comprehensive Transportation and Job Creation Act of
631 2012."
- 632 8. That should any portion of this act be held unconstitutional by a court of competent
633 jurisdiction, the remaining portions of this act shall remain in effect.
- 634