DEPARTMENT OF TAXATION
2012 Fiscal Impact Statement

1. Patron Charles W. Carrico, Sr.

2. Bill Number SB 607

House of Origin:
X **Introduced**
_____ **Substitute**
_____ **Engrossed**

Second House:
_____ **In Committee**
_____ **Substitute**
_____ **Enrolled**

3. Committee Senate Finance

4. Title Retail Sales and Use Tax; Entitlement to Sales Tax Revenue

5. Summary/Purpose:

This bill would expand the types of qualifying public facilities for which designated municipalities may issue bonds that are eligible to be repaid from certain Retail Sales and Use Tax revenues generated by such facilities. The types of facilities would be expanded to include any development, of regional impact, that meets all of the following requirements: 1) would have a substantial impact on the health, safety, and welfare of the citizens of more than one governmental jurisdiction due to its character, magnitude or location; 2) is reasonably expected to draw at least one million visitors per year; 3) is reasonably expected to require a capital investment of at least $20 million; 4) is reasonably anticipated to generate at least $2 million in state sales and use taxes annually, and 5) the development owner enters into a public-private partnership whereby the locality contributes infrastructure or real property. Shopping centers and malls that satisfy these five requirements also would be deemed public facilities, provided they are located within a city that abuts another state that has enacted a Border Region Retail Tourism Development District Act. In addition, the bill would add the City of Bristol to the list of localities eligible to receive certain sales tax revenues generated by qualifying public facilities. The bill would also expand the costs that are entitled to sales tax revenues for repayment to include interest for up to 35 years after completion of construction or the lifetime of the bonds whichever is sooner.

Under current law, any municipality which has issued bonds during a specified time period to pay the cost of any public facility is entitled to a portion of the sales tax revenues generated by transactions taking place in the public facility. Shopping centers and malls are specifically excluded from the definition of public facilities under current law. Currently, cost includes interest before and during construction and for up to one year after completion of construction.

The effective date of this bill is not specified.

6. Budget amendment necessary: No.

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

8. Fiscal implications:

Administrative Costs

The Department would incur no administrative costs in implementing this bill.

Revenue Impact

The introduced Executive Budget allocates currently undedicated Retail Sales and Use Tax revenues from the General Fund to the Highway Maintenance and Operating Fund ("HMOF") beginning July 1, 2012. The revenue impact of this bill assumes passage of the introduced Executive Budget.

The changes proposed in this bill would result in a decrease in state revenue, the magnitude of which is unknown, but could potentially be $2 million or more annually, assuming one or more facilities meets the bill's limiting requirement that the facility be reasonably expected to generate at least $2 million in state sales and use taxes annually.

Currently, there are ten public facilities in Virginia, which collectively retained approximately $440,468 in Fiscal Year 2011. The proposed expansion of public facilities to include certain shopping centers may substantially increase the amount of sales tax revenue that is transferred back to municipalities, as well as the number of qualifying facilities, resulting in a revenue loss to the General Fund. Because the number of facilities that will qualify for this expansion and the amount of potential sales revenue a facility fitting the expanded definition will retain could not be determined, the magnitude of the revenue loss is unknown. Additionally, the inclusion of interest for the lesser of the lifetime of the bonds or 35 years after completion of construction would further decrease state revenue.

9. Specific agency or political subdivisions affected:

Department of Accounts
Department of Taxation
Cities of Bristol, Hampton, Newport News, Norfolk, Portsmouth, Richmond, Roanoke, Salem, Staunton, Suffolk, and Virginia Beach

10. Technical amendment necessary: No.

11. Other comments:

Current Law

Va. Code § 58.1-608.3 (formerly the Public Facilities Act) allows sales tax revenue attributable to sales in new or substantially and significantly renovated or expanded public facilities to be transferred back to municipalities to pay the costs of the bonds issued to finance such facilities. Qualifying public facilities include auditoriums, coliseums, convention centers, conference centers, and certain hotels and sports facilities located in the Cities of Hampton, Newport News, Norfolk, Portsmouth, Richmond, Roanoke, Salem, Staunton, Suffolk and Virginia Beach. Currently, shopping centers and malls do not qualify for the public facility designation.

Under current law, the sales tax revenue can be used to pay the following costs for which bonds are issued: 1) the purchase price of the public facility; 2) expenses incident in determining the feasibility or practicability of the public facility; 3) the costs of plans, specifications, surveys and estimates of costs and revenues; 4) the cost of land, property, rights, easements, and franchises acquired; 5) the costs of improvement, property or equipment; 6) the cost of engineering, legal, and other professional services; 7) the cost of construction or reconstruction; 8) the costs of labor, materials, machinery and equipment; 9) financing charges; 10) interest before and during construction and for up to one year after completion of construction; 11) start-up costs and operating capital (12) payments by the locality of its share of the cost of any multijurisdictional public facility; 13) administrative expenses; 14) amounts deposited to reserve or replacement funds; and 15) other necessary expenses.

Under current law, a substantial and significant expansion to a public facility entails an increase in floor space of at least 50 percent over that existing in the preexisting facility or an increase in floor space of at least 10 percent over that existing in a currently qualifying public facility.

Sales tax revenues generated from all transactions taking place in the facility, including, but not limited to, concessionaires sales, vending machine sales, and merchandise sales, are transferred back to the municipality. Entitlement to these sales tax revenues continues for the lifetime of the bonds, but not beyond 35 years, and all such revenues are required to be applied to the repayment of the bonds. No remittance is made until construction of the facility is complete.

Legislative History

As originally enacted in 1992, this transfer mechanism applied only to one facility in the City of Roanoke. The 1998 General Assembly amended the population requirements to include the City of Portsmouth, and in 1999, the population requirements were again amended to include the City of Suffolk. The General Assembly in 2000 amended the population requirements to include the City of Hampton, in 2001 to include the City of Staunton, in 2004 to include the City of Newport News and the City of Salem, in 2006 to include the City of Norfolk, and in 2009 to include the City of Richmond and the City of Virginia Beach.

The definition for public facility was expanded in 1998 to include hotels which are attached to and are an integral part of the public facility, in 2006 to exclude residential condominiums, townhomes, or other residential units, in 2009 to include sports facilities designed for use primarily as a baseball stadium for a minor league professional baseball affiliated team, and in 2011 to hotels that are adjacent to convention centers owned by public entities where the hotel owners enters into a public-private partnership requiring the locality to contribute infrastructure, real property or conference space.

Border Region Retail Tourism Development District Act

This law was enacted in Tennessee in order to increase tourism and the competitiveness of Tennessee with bordering states by empowering local governments to encourage the development of retail or tourism facilities, including shopping, recreational, and other activities. The Act provides that if a municipality bordering a neighboring state "finances, constructs, leases, equips, renovates, assists, incents, or acquires an extraordinary retail or tourism facility or a project" in a certified border region retail tourism development district, a portion of the Tennessee sales and use tax revenue distributed to the municipality must be used to pay the cost of the economic development project.

Proposal

This bill would expand the types of qualifying public facilities for which designated municipalities may issue bonds that are eligible to be repaid from certain Retail Sales and Use Tax revenues generated by such facilities. The types of facilities would be expanded to include any development, of regional impact, that meets all of the following requirements: 1) would substantially impact the health, safety, and welfare of the citizens of more than one governmental jurisdiction due to its character, magnitude or location; 2) is reasonably expected to draw at least one million visitors per year; 3) is reasonably expected to require a capital investment of at least $20 million; 4) is reasonably anticipated to remit at least $2 million in state sales and use taxes annually, and 5) the development owner enters into a public-private partnership where the locality contributes infrastructure or real property. Shopping centers and malls that satisfy these five requirements would also be deemed public facilities. In addition, the bill would add the City of Bristol to the list of localities eligible to receive certain sales tax revenues generated by qualifying public facilities. The bill would also expand the costs that are entitled to sales tax revenues for repayment to include interest for up to 35 years after completion of construction or the lifetime of the bonds whichever is sooner.

The effective date of this bill is not specified.

Similar Legislation

House Bill 1116 is similar to this bill, but would not require shopping centers and malls to be located within a city that abuts another state that has enacted a Border Region Retail Tourism Development District Act in order to be designated as qualifying public facilities.

cc : Secretary of Finance

Date: 1/28/2012 KP
DLAS File Name: SB607F161