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HOUSE BILL NO. 1634

Offered January 9, 2019

Prefiled November 7, 2018

A BILL to amend and reenact § 58.1-605, as it is currently effective and as it may become effective, of the Code of Virginia, and to amend the Code of Virginia by adding sections numbered 58.1-605.1 and 58.1-606.1, relating to an additional local sales and use tax for counties and cities; county appropriations to incorporated towns for educational purposes.

Patrons—Edmunds and Wright

Referred to Committee on Finance

Be it enacted by the General Assembly of Virginia:

1. That § 58.1-605, as it is currently effective and as it may become effective, of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding sections numbered 58.1-605.1 and 58.1-606.1 as follows:

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

A. No county, city or town shall impose any local general sales or use tax or any local general retail sales or use tax except as authorized by this section *or* § 58.1-605.1.

B. The council of any city and the governing body of any county may levy a general retail sales tax at the rate of one percent to provide revenue for the general fund of such city or county. Such tax shall be added to the rate of the state sales tax imposed by §§ 58.1-603 and 58.1-604 and shall be subject to all the provisions of this chapter and the rules and regulations published with respect thereto. No discount under § 58.1-622 shall be allowed on a local sales tax.

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

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

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

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

G. Such payments to counties are subject to the qualification that in any county wherein is situated any incorporated town constituting a special school district and operated as a separate school district

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59 under a town school board of three members appointed by the town council, the county treasurer shall
60 pay into the town treasury for general governmental purposes the proper proportionate amount received
61 by him in the ratio that the school age population of such town bears to the school age population of
62 the entire county. If the school age population of any town constituting a separate school district is
63 increased by the annexation of territory since the last estimate of school age population provided by the
64 Weldon Cooper Center for Public Service, such increase shall, for the purposes of this section, be added
65 to the school age population of such town as shown by the last such estimate and a proper reduction
66 made in the school age population of the county or counties from which the annexed territory was
67 acquired.

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

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

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

96 **§ 58.1-605. (Contingent effective date) To what extent and under what conditions cities and**
97 **counties may levy local sales taxes; collection thereof by Commonwealth and return of revenue to**
98 **each city or county entitled thereto.**

99 A. No county, city or town shall impose any local general sales or use tax or any local general retail
100 sales or use tax except as authorized by this section *or § 58.1-605.1.*

101 B. The council of any city and the governing body of any county may levy a general retail sales tax
102 at the rate of one percent to provide revenue for the general fund of such city or county. Such tax shall
103 be added to the rate of the state sales tax imposed by §§ 58.1-603 and 58.1-604 and shall be subject to
104 all the provisions of this chapter and the rules and regulations published with respect thereto. No
105 discount under § 58.1-622 shall be allowed on a local sales tax.

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

111 D. Prior to any change in the rate of the local sales and use tax, the Tax Commissioner shall provide
112 remote sellers and single and consolidated providers with at least 30 days' notice. Any change in the rate
113 of local sales and use tax shall only become effective on the first day of a calendar quarter. Failure to
114 provide notice pursuant to this section shall require the Commonwealth and the locality to hold the
115 remote seller or single or consolidated provider harmless for collecting the tax at the immediately
116 preceding effective rate for any period of time prior to 30 days after notification is provided.

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

119 F. All local sales tax moneys collected by the Tax Commissioner under this section shall be paid
120 into the state treasury to the credit of a special fund which is hereby created on the Comptroller's books

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

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

H. Such payments to counties are subject to the qualification that in any county wherein is situated any incorporated town constituting a special school district and operated as a separate school district under a town school board of three members appointed by the town council, the county treasurer shall pay into the town treasury for general governmental purposes the proper proportionate amount received by him in the ratio that the school age population of such town bears to the school age population of the entire county. If the school age population of any town constituting a separate school district is increased by the annexation of territory since the last estimate of school age population provided by the Weldon Cooper Center for Public Service, such increase shall, for the purposes of this section, be added to the school age population of such town as shown by the last such estimate and a proper reduction made in the school age population of the county or counties from which the annexed territory was acquired.

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

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

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

§ 58.1-605.1. Additional county and city sales tax.

182 A. In addition to the sales tax authorized under § 58.1-605, any county or city may levy a general
183 retail sales tax at a rate as determined by the governing body to provide revenue solely for capital
184 projects for the construction or improvement of schools. Such tax shall be added to the rates of the state
185 and local sales tax imposed by this chapter and shall be subject to all the provisions of this chapter and
186 the rules and regulations published with respect thereto. No discount under § 58.1-622 shall be allowed
187 on this local sales tax.

188 B. This tax may be levied only if the tax is approved in a referendum within the county or city held
189 in accordance with § 24.2-684 and initiated by a resolution of the local governing body. The clerk of
190 the circuit court shall publish notice of the referendum in a newspaper of general circulation in the
191 county or city once a week for three consecutive weeks prior to the election. If such resolution of the
192 local governing body states for what projects or purposes the revenues collected from the tax are to be
193 used, then the question on the ballot for the referendum shall include language stating for what projects
194 or purposes the revenues collected from the tax are to be used.

195 C. The governing body of any county or city desiring to impose a local sales tax under this section
196 after approval at a referendum as provided in subsection B shall do so by the adoption of an ordinance
197 stating its purpose and referring to this section and providing that such ordinance shall be effective on
198 the first day of a month at least 60 days after its adoption. A certified copy of such ordinance shall be
199 forwarded to the Tax Commissioner so that it will be received within five days after its adoption.

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

202 E. All local sales tax moneys collected by the Tax Commissioner under this section shall be paid into
203 the state treasury to the credit of a special fund which is hereby created on the Comptroller's books
204 under the name "Collections of Additional Local Sales Taxes." The fund shall be administered as
205 provided in § 58.1-605.

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

218 G. The revenues from this tax shall be used solely for capital projects for the construction or
219 improvement of schools.

220 **§ 58.1-606.1. Additional county or city use tax.**

221 A. The governing body of any county or city that has levied or may hereafter levy a county or city
222 sales tax under § 58.1-605.1 may levy a county or city use tax at the rate of such county or city sales
223 tax under § 58.1-605.1 to provide revenue for capital projects for the construction or improvement of
224 schools of such county or city. Such tax shall be added to the rates of the state and local use tax
225 imposed by this chapter and shall be subject to all the provisions of this chapter, and all amendments
226 thereof, and the rules and regulations published with respect thereto, except that no discount under
227 § 58.1-622 shall be allowed on a local use tax.

228 B. The governing body of any county or city desiring to impose a local use tax under this section
229 may do so only if the county or city has previously imposed the local sales tax authorized by
230 § 58.1-605.1, by a resolution by a majority of all the members thereof, by a recorded yea and nay vote,
231 stating its purpose and referring to this section, and providing that the local use tax shall become
232 effective on the first day of a month at least 60 days after the adoption of the resolution. A certified
233 copy of such resolution shall be forwarded to the Tax Commissioner so that it will be received within
234 five days after its adoption. The resolution authorized by this subsection may be adopted in the manner
235 stated notwithstanding any other provision of law, including any charter provision.

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

238 D. The local use tax authorized by this section shall not apply to transactions to which the sales tax
239 applies, the situs of which for state and local sales tax purposes is the county or city of location of each
240 place of business of every dealer paying the tax to the Commonwealth without regard to the county or
241 city of possible use by the purchasers. However, the local use tax authorized by this section shall apply
242 to tangible personal property purchased outside the Commonwealth for use or consumption within the
243 county or city imposing the local use tax, or stored within the county or city for use or consumption,

244 where the property would have been subject to the sales tax if it had been purchased within the
245 Commonwealth. The local use tax shall also apply to leases or rentals of tangible personal property
246 where the place of business of the lessor is outside the Commonwealth and such leases or rentals are
247 subject to the state tax. Moreover, the local use tax shall apply in all cases in which the state use tax
248 applies.

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

256 F. Local use tax revenue shall be deposited in the special fund established pursuant to subsection E
257 of § 58.1-605.1. The Comptroller shall distribute the revenue among the counties and cities for which it
258 is collected, as shown by the records of the Department. The local use tax revenue that is not accurately
259 assignable to a particular county or city shall be distributed monthly by the appropriate state authorities
260 among the counties and cities in the Commonwealth imposing the local use tax upon the basis of
261 taxable retail sales in the respective counties and cities in which the local sales and use tax was in
262 effect in the taxable month involved, as shown by the records of the Department, and computed with
263 respect to taxable retail sales as reflected by the amounts of the local sales tax revenue distributed
264 among such counties and cities in the month of distribution. Notwithstanding any other provision of this
265 section, the Tax Commissioner shall develop a uniform method to distribute local use tax. Any
266 significant changes to the method of local use tax distribution shall be phased in over a five-year
267 period. Distribution information shall be shared with the affected counties and cities prior to
268 implementation of the changes.

269 G. All revenue from this local use tax revenue shall be used solely for capital projects for the
270 construction or improvement of schools.