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HOUSE BILL NO. 2084

Offered January 9, 2019

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A BILL to amend and reenact §§ 15.2-204, 33.2-319, and 58.1-3840 of the Code of Virginia, relating to powers of certain counties.

Patron—Watts

Referred to Committee on Counties, Cities and Towns

Be it enacted by the General Assembly of Virginia:

1. That §§ 15.2-204, 33.2-319, and 58.1-3840 of the Code of Virginia are amended and reenacted as follows:

§ 15.2-204. Uniform charter powers.

Cities *Counties with a population greater than 100,000 and cities* and towns shall have all powers set forth in Article 1 (§ 15.2-1100 et seq.) of Chapter 11, known as the uniform charter powers. Such powers do not need to be set out or incorporated by reference in a *county*, city, or town charter.

Counties with a population no greater than 100,000 shall have all powers set forth in Article 1 (§ 15.2-1100 et seq.) of Chapter 11 only when such powers are specifically conferred upon the county.

§ 33.2-319. Payments to cities and certain counties and towns for maintenance of certain highways.

A. The Commissioner of Highways, subject to the approval of the Board, shall make payments for maintenance, construction, or reconstruction of highways to all *counties*, cities, and towns eligible for funds under this section. Such payments, however, shall only be made if those highways functionally classified as principal and minor arterial roads are maintained to a standard satisfactory to the Department. *When any county becomes eligible to receive funds under this section for the first time, if any highway functionally classified as a principal or minor arterial road maintained by the Department is not maintained to a standard satisfactory to the Department, the Department shall continue to be responsible for maintenance of the highways in the county and the county shall not receive payments pursuant to this section until such highways are maintained to a standard satisfactory to the Department.* Whenever any *county*, city, or town qualifies under this section for allocation of funds, such qualification shall continue to apply to such *county*, city, or town regardless of any subsequent change in population and shall cease to apply only when so specifically provided by an act of the General Assembly.

Funds are allocated to urban highways in (i) all towns that have a population of more than 3,500 according to the last preceding United States census; (ii) all towns that, according to evidence satisfactory to the Board, have attained a population of more than 3,500 since the last preceding United States census; (iii) Chase City, Elkton, Grottoes, Narrows, Pearisburg, and Saltville, which, on June 30, 1985, maintained certain streets under former § 33.1-80 as then in effect; (iv) all cities regardless of their populations; (v) *counties with a population greater than 100,000*; and ~~(v)~~ (vi) the Towns of Altavista, Lebanon, and Wise.

B. No payments shall be made to any such *county*, city, or town unless the portion of the highway for which such payment is made either (i) has (a) an unrestricted right-of-way at least 50 feet wide and (b) a hard-surface width of at least 30 feet; (ii) has (a) an unrestricted right-of-way at least 80 feet wide, (b) a hard-surface width of at least 24 feet, and (c) approved engineering plans for the ultimate construction of an additional hard-surface width of at least 24 feet within the same right-of-way; (iii)(a) is a cul-de-sac, (b) has an unrestricted right-of-way at least 40 feet wide, and (c) has a turnaround that meets applicable standards set by the Department; (iv) either (a) has been paved and has constituted part of the primary or secondary state highway system prior to annexation or incorporation or (b) has constituted part of the secondary state highway system prior to annexation or incorporation and is paved to a minimum width of 16 feet subsequent to such annexation or incorporation and with the further exception of streets or portions thereof that have previously been maintained under the provisions of § 33.2-339 or 33.2-340; (v) was eligible for and receiving such payments under the laws of the Commonwealth in effect on June 30, 1985; (vi) is a street established prior to July 1, 1950, that has an unrestricted right-of-way width of not less than 30 feet and a hard-surface width of not less than 16 feet; (vii) is a street functionally classified as a local street that was constructed on or after January 1, 1996, and that at the time of approval by the *county*, city, or town met the criteria for pavement width and right-of-way of the then-current design standards for subdivision streets as set forth in regulations adopted by the Board; (viii) is a street previously eligible to receive street payments that is located in

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HB2084

59 the City of Norfolk or the City of Richmond and is closed to public travel, pursuant to legislation
60 enacted by the governing body of the locality in which it is located, for public safety reasons, within the
61 boundaries of a publicly funded housing development owned and operated by the local housing
62 authority; or (ix) is a local street, otherwise eligible, containing one or more physical protuberances
63 placed within the right-of-way for the purpose of controlling the speed of traffic.

64 However, the Commissioner of Highways may waive the requirements as to hard-surface pavement
65 or right-of-way width for highways where the width modification is at the request of the governing body
66 of the locality and is to protect the quality of the affected locality's drinking water supply or, for
67 highways constructed on or after July 1, 1994, to accommodate some other special circumstance where
68 such action would not compromise the health, safety, or welfare of the public. The modification is
69 subject to such conditions as the Commissioner of Highways may prescribe.

70 C. For the purpose of calculating allocations and making payments under this section, the
71 Department shall divide affected highways into two categories, which shall be distinct from but based on
72 functional classifications established by the Federal Highway Administration: (i) principal and minor
73 arterial roads and (ii) collector roads and local streets. Payments made to affected localities shall be
74 based on the number of moving-lane-miles of highways or portions thereof available to peak-hour traffic
75 in that locality.

76 D. Any *county* or city converting an existing moving-lane that qualifies for payments under this
77 section to a transit-only lane after July 1, 2014, shall remain eligible for such payments but shall not
78 receive additional funds as a result of such conversion. Any *county*, city, or town converting an existing
79 moving-lane that qualifies for payments under this section to a bicycle-only lane after July 1, 2014, shall
80 remain eligible for such payments, provided that (i) the number of moving-lane-miles converted is not
81 more than 50 moving-lane-miles or three percent of the *county's*, city's, or town's total number of
82 moving-lane-miles on July 1, 2014, whichever is less, and (ii) prior to any such conversion, the *county*,
83 city, or town certifies that the conversion design has been assessed by a professional engineer licensed
84 in the Commonwealth pursuant to Chapter 4 (§ 54.1-400 et seq.) of Title 54.1 and that the assessment
85 has demonstrated that (a) the level of service of the street to be converted will not be reduced or if it
86 will be reduced that the associated roadway network will retain adequate capacity to meet current and
87 future mobility needs of all users and (b) the conversion has been designed in accordance with the
88 National Association of City Transportation Officials' Urban Bikeway Design Guide. Any such *county*,
89 city, or town shall not receive additional funds as a result of such conversion to a bicycle-only lane and
90 shall annually expend funds on road and street maintenance and operations that are at least equal to
91 funds spent on road and street maintenance and operations in the year prior to such conversion. For
92 purposes of this subsection, "level of service" has the meaning provided in the Transportation Research
93 Board's Highway Capacity Manual.

94 E. The Department shall recommend to the Board an annual rate per category to be computed using
95 the base rate of growth planned for the Department's Highway Maintenance and Operations program.
96 The Board shall establish the annual rates of such payments as part of its allocation for such purpose,
97 and the Department shall use those rates to calculate and put into effect annual changes in each
98 qualifying *county's*, city's, or town's payment under this section.

99 The payments by the Department shall be paid in equal sums in each quarter of the fiscal year, and
100 payments shall not exceed the allocation of the Board.

101 F. The chief administrative officer of the *county*, city, or town receiving these funds shall make
102 annual categorical reports of expenditures to the Department, in such form as the Board shall prescribe,
103 accounting for all expenditures, certifying that none of the money received has been expended for other
104 than maintenance, construction, or reconstruction of the streets, and reporting on their performance as
105 specified in subsection B of § 33.2-352. Such reports shall be included in the scope of the annual audit
106 of each ~~municipality~~ *locality* conducted by independent certified public accountants.

107 **§ 58.1-3840. Certain excise taxes permitted.**

108 A. The provisions of Chapter 6 (§ 58.1-600 et seq.) to the contrary notwithstanding, any *county with*
109 *a population greater than 100,000 and any city or town having general taxing powers established by*
110 *charter pursuant to or consistent with the provisions of § 15.2-1104* may impose excise taxes on
111 cigarettes, admissions, transient room rentals, meals, and travel campgrounds. No such taxes on meals
112 may be imposed on (i) that portion of the amount paid by the purchaser as a discretionary gratuity in
113 addition to the sales price of the meal; (ii) that portion of the amount paid by the purchaser as a
114 mandatory gratuity or service charge added by the restaurant in addition to the sales price of the meal,
115 but only to the extent that such mandatory gratuity or service charge does not exceed 20 percent of the
116 sales price; or (iii) food and beverages sold through vending machines or on any tangible personal
117 property purchased with food coupons issued by the United States Department of Agriculture under the
118 Food Stamp Program or drafts issued through the Virginia Special Supplemental Food Program for
119 Women, Infants, and Children. No such taxes on meals may be imposed when sold or provided by (a)
120 restaurants, as such term is defined in § 35.1-1, to their employees as part of their compensation when

no charge is made to the employee; (b) volunteer fire departments and volunteer emergency medical services agencies; nonprofit churches or other religious bodies; or educational, charitable, fraternal, or benevolent organizations, the first three times per calendar year and, beginning with the fourth time, on the first \$100,000 of gross receipts per calendar year from sales of meals (excluding gross receipts from the first three times), as a fundraising activity, the gross proceeds of which are to be used by such church, religious body or organization exclusively for nonprofit educational, charitable, benevolent, or religious purposes; (c) churches that serve meals for their members as a regular part of their religious observances; (d) public or private elementary or secondary schools or institutions of higher education to their students or employees; (e) hospitals, medical clinics, convalescent homes, nursing homes, or other extended care facilities to patients or residents thereof; (f) day care centers; (g) homes for the aged, infirm, handicapped, battered women, narcotic addicts, or alcoholics; or (h) age-restricted apartment complexes or residences with restaurants, not open to the public, where meals are served and fees are charged for such food and beverages and are included in rental fees.

Also, the tax shall not be levied on meals: (1) when used or consumed and paid for by the Commonwealth, any political subdivision of the Commonwealth, or the United States; (2) provided by a public or private nonprofit charitable organization or establishment to elderly, infirm, blind, handicapped, or needy persons in their homes, or at central locations; or (3) provided by private establishments that contract with the appropriate agency of the Commonwealth to offer food, food products, or beverages for immediate consumption at concession prices to elderly, infirm, blind, handicapped, or needy persons in their homes or at central locations.

In addition, as set forth in § 51.5-98, no blind person operating a vending stand or other business enterprise under the jurisdiction of the Department for the Blind and Vision Impaired and located on property acquired and used by the United States for any military or naval purpose shall be required to collect and remit meals taxes.

B. Notwithstanding any other provision of this section, no *county*, city, or town shall levy any tax under this section upon alcoholic beverages sold in factory sealed containers and purchased for off-premises consumption or food purchased for human consumption as "food" is defined in the Food Stamp Act of 1977, 7 U.S.C. § 2012, as amended, and federal regulations adopted pursuant to that act, except for the following items: sandwiches, salad bar items sold from a salad bar, prepackaged single-serving salads consisting primarily of an assortment of vegetables, and nonfactory sealed beverages.

C. Any *county*, city, or town that is authorized to levy a tax on admissions may levy the tax on admissions paid for any event held at facilities that are not owned by the *county*, city, or town at a lower rate than the rate levied on admissions paid for any event held at its ~~city~~ *county-owned*, *city-owned*, or town-owned civic centers, stadiums, and amphitheatres.

D. ~~Expired.~~