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SENATE BILL NO. 1298

Offered January 13, 2021

Prefiled January 11, 2021

A *BILL to amend the Code of Virginia by adding in Chapter 24 of Title 15.2 an article numbered 3, consisting of sections numbered 15.2-2413.1 through 15.2-2413.11, relating to tourism improvement districts.*

Patrons—Bell, Lewis, Boysko, Lucas, Mason and Pillion; Delegates: Heretick, Mugler, Reid and Subramanyam

Referred to Committee on Local Government

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding in Chapter 24 of Title 15.2 an article numbered 3, consisting of sections numbered 15.2-2413.1 through 15.2-2413.11, as follows:

*Article 3.**Tourism Improvement Districts.***§ 15.2-2413.1. Definitions.**

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

"Activities" means any programs or services provided for the purpose of conferring specific benefits upon the businesses that are located in the tourism improvement district and to which a fee is charged.

"Administering nonprofit" means a private nonprofit entity that is under contract with a locality to administer or implement activities specified in the tourism improvement district plan. An "administering nonprofit" may be an existing nonprofit entity or a newly formed nonprofit entity. An "administering nonprofit" shall be a private entity and shall not be considered a public entity for any purpose, nor may its board members or staff be considered public officials for any purpose.

"Benefited business" means a business located within a tourism improvement district that is determined to be benefited, directly or indirectly, by tourism improvement district activities provided by such tourism improvement district. "Benefited business" includes one or more types of businesses, one or more segments of businesses, or businesses within one or more industries, as set forth in a tourism improvement district plan.

"Benefit zone" means an apportioned area designated within a tourism improvement district in which businesses pay a fee based upon the degree of benefit derived from activities to be provided.

"Business" means a business of any kind located in a tourism improvement district.

"Business fee" means any fee charged to a benefited business pursuant to this article.

"Business owner" means any person recognized by a locality as the owner of a business subject to a business fee. A business may appoint an authorized agent to act as its representative for the purposes of this article. Such agent shall be considered the business owner for the purposes of any signature required under this article or for any other purpose authorized by the business owner. A locality shall have no obligation to obtain other information as to the ownership of businesses, and its determination of ownership shall be final and conclusive for the purposes of this article.

"Capital improvement" means an improvement to tangible personal property with an estimated useful life of five years or more.

"Fee" means a fee charged by a locality in accordance with a tourism improvement district plan.

"Lead locality" means the locality in which the tourism improvement district plan is filed for the establishment of a tourism improvement district where such district includes more than one locality.

"Locality" means any county, city, or town in the Commonwealth.

"Majority share of benefited businesses" means one or more benefited businesses within a tourism improvement district or proposed tourism improvement district that cumulatively comprise a majority, based on the weighting methodology set forth in the tourism improvement district plan.

"Tourism business" means any type of business in the tourism sector. "Tourism business" includes a tourist home, hotel, motel, trailer court, recreational vehicle park, privately owned or privately managed campground, lodging intended for short-term occupancy, restaurant, tourism attraction, and tourism activity provider.

"Tourism improvement district" means a district established by a locality under the provisions of this article.

"Tourism improvement district plan" means a proposal for a tourism improvement district under the provisions of this article.

§ 15.2-2413.2. Filing of tourism improvement district plan.

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58 Any benefited business may file a tourism improvement district plan with the clerk of a locality. The
59 tourism improvement district plan shall contain the following:

- 60 1. A map of the proposed tourism improvement district;
- 61 2. A description of the boundaries of the tourism improvement district proposed for establishment or
62 extension in a manner sufficient to identify the businesses included;
- 63 3. The activities proposed and the projected cost thereof;
- 64 4. A description of how businesses included within the tourism improvement district will benefit;
- 65 5. The total estimated annual amount proposed to be expended for all costs relating to tourism
66 improvement district operation and implementation of activities and the manner in which benefited
67 businesses will be charged a fee;
- 68 6. The proposed source or sources of financing;
- 69 7. The proposed time for implementation and completion of the tourism improvement district plan;
- 70 8. The weighting methodology for calculating a majority share of benefited businesses for the tourism
71 improvement district;
- 72 9. Any proposals for rules and regulations to be applicable to the tourism improvement district;
- 73 10. Identification of an entity, charged with promoting tourism in that locality or region, as the
74 administering nonprofit; and
- 75 11. Any other item or matter that the locality requires to be included in the tourism improvement
76 district plan.

77 **§ 15.2-2413.3. Petition for a proposed tourism improvement district.**

78 Upon the submission to the clerk of a locality of a written petition, signed by the business owners in
79 the proposed tourism improvement district who will pay more than 50 percent of the fees proposed to be
80 charged, a locality may initiate proceedings to form a tourism improvement district. The amount of the
81 fees attributable to a business owned by the same business owner who is in excess of 40 percent of the
82 amount of all fees proposed to be charged shall not be included in determining whether the petition is
83 signed by business owners who will pay more than 50 percent of the total amount of fees proposed to
84 be charged.

85 Any petition shall include a summary of the tourism improvement district plan. That summary shall
86 include a map showing the boundaries of the tourism improvement district, information specifying where
87 the complete tourism improvement district plan can be obtained, and information specifying that the
88 complete tourism improvement district plan shall be furnished by the signatories of the petition upon
89 request.

90 **§ 15.2-2413.4. Hearing on a proposed tourism improvement district.**

91 A. After the filing of the tourism improvement district plan pursuant to § 15.2-2413.2 and the
92 submission of a petition pursuant to § 15.2-2413.3, a locality may adopt a resolution containing:

- 93 1. A copy of the tourism improvement district plan;
- 94 2. A statement that the tourism improvement district plan is on file in the clerk's office for public
95 inspection;
- 96 3. The time and place the locality will meet and hold a public hearing to hear all persons interested
97 in the subject of the tourism improvement district plan;
- 98 4. A statement that any business owner who is to be charged a fee under the tourism improvement
99 district plan who objects to the plan must file an objection with the clerk within 30 days of the
100 conclusion of the hearing on forms made available by the clerk; and
- 101 5. The place, if any, other than the clerk's office, where the tourism improvement district plan may
102 be inspected in advance of the hearing if the locality determines that, in the public interest, any
103 additional place of inspection is necessary or desirable.

104 B. Any objection shall be made orally or in writing by any interested person. Every written objection
105 shall be filed with the clerk at or before the time fixed for the public hearing. The locality may waive
106 any irregularity in the form or content of any written objection. A written objection may be withdrawn
107 in writing at any time before the conclusion of the public hearing. Each written objection shall contain
108 a description of the business in which the person filing the objection is interested, sufficient to identify
109 the business, and, if a person filing is not shown on the official records of the locality as the owner of
110 the business, the objection shall contain or be accompanied by written evidence that the person
111 subscribing is the owner of the business or the authorized representative. A written objection that does
112 not comply with this section shall not be counted in determining a majority objection. If written
113 objections are received from the owners or authorized representatives of businesses in the proposed
114 tourism improvement district that will pay 50 percent or more of the fees proposed to be charged and
115 objections are not withdrawn so as to reduce the objections to less than 50 percent, no further
116 proceedings to charge the proposed fee against such businesses, as contained in the tourism
117 improvement district plan, shall be taken for a period of one year from the date of the finding by the
118 locality of such majority objection.

119 C. The locality shall cause a copy of the resolution adopted under subsection A, or a summary

thereof, to be published at least once in a newspaper in general circulation in the locality, the first publication to be not less than 10 days and not more than 30 days before the date set for the hearing. Not less than 10 days and not more than 30 days before the date set for the hearing, the locality shall mail a copy of the resolution or a summary thereof to each owner of a business that is proposed to be charged a fee within the proposed tourism improvement district at the address shown on the localities most recent list of businesses. If the locality publishes or mails a summary of the resolution, such summary shall include the address of the clerk, a statement that copies of the resolution shall be made available free of charge to the public, the activities proposed, the total estimated annual amount proposed to be expended for activities, and a statement indicating the rights of owners to object pursuant to subsection B.

D. If a tourism improvement district includes multiple localities or portions thereof, the notice and hearing process set forth in this section shall be conducted by the lead locality. A lead locality may not form a tourism improvement district within the territorial jurisdiction of another locality without that locality granting by majority vote of the governing body consent to the lead locality.

§ 15.2-2413.5. Establishment or extension of the tourism improvement district.

A. Not earlier than 30 days after the conclusion of the last day of the public hearing held pursuant to § 15.2-2413.4, the governing body of the locality that conducted the hearing process shall determine:

1. Whether the notice of hearing for all hearings required to be held was published and mailed as required by law and is otherwise sufficient;

2. Whether all the businesses charged a fee within the boundaries of the proposed tourism improvement district or extension will benefit from the establishment or extension of the tourism improvement district; and

3. Whether the establishment or extension of the tourism improvement district is in the public interest.

B. If the locality determines the question of subdivision A 3 in the negative, or if the requisite number of owners file objections as provided in subsection B of § 15.2-2413.4, the locality shall not establish or extend the tourism improvement district, as applicable. Thereafter, no plan for the establishment or extension of a tourism improvement district to include any business proposed to be included in the disapproved tourism improvement district may be submitted until the expiration of at least one year from the date of disapproval.

C. If the locality shall find that notice was incorrectly or insufficiently given or that any business charged a fee within the boundaries of the proposed tourism improvement district or extension is not benefited thereby or that certain businesses benefited thereby had not been included therein, it shall call a further hearing at a definite place and time not less than 10 days and not more than 30 days after this determination. In the resolution calling such hearing, it shall specify the necessary changes, if any, to the boundaries of the proposed tourism improvement district or extension to be made in order that all of the benefited businesses are included in the general tourism improvement district, and only those businesses deemed benefited shall be subject to fees within such tourism improvement district. Notice of the further hearing shall be published and mailed in the manner provided in § 15.2-2413.4, except that, where boundaries are to be altered, this notice shall also specify the manner in which it is proposed to alter the boundaries of the proposed tourism improvement district or extension. The further hearing shall be conducted in the same manner as the original hearing.

D. If a locality determines in the affirmative all questions in subsection A, it may by ordinance establish a tourism improvement district and any ordinances provided for in § 15.2-2413.6.

§ 15.2-2413.6. Local ordinances related to tourism improvement districts.

A. Any locality establishing a tourism improvement district may enact ordinances on any of the following subjects that provide for:

1. Activities and other additional services required for tourism promotion or events or for enhancement of the tourism improvement district;

2. Activities in the tourism improvement district that will fund the promotion of tourism activities in the tourism improvement district, including acquiring, constructing, installing, or maintaining capital improvements;

3. Operating and maintaining any tourism improvement district activity;

4. The charging of fees on all benefited businesses within a tourism improvement district, which shall be charged on the basis of the estimated benefit to such businesses within the tourism improvement district;

5. The classifying of businesses for purposes of determining the benefit to the businesses of the activities provided pursuant to this article;

6. A process for the collection of revenues from fees from benefited businesses; and

7. Forming a tourism improvement district in cooperation with, and that includes, other localities.

B. After establishing a tourism improvement district, a locality shall not decrease the level of

181 publicly funded tourism promotion services in a tourism improvement district existing prior to the
182 creation of such tourism improvement district.

183 **§ 15.2-2413.7. Amendment to the tourism improvement district plan.**

184 A. At any time after the establishment or extension of a tourism improvement district pursuant to the
185 provisions of this article, the tourism improvement district plan upon which the establishment or
186 extension was based, may, upon the recommendation of the administering nonprofit, be amended by the
187 locality after compliance with the procedures set forth in this section.

188 B. Amendments to the tourism improvement district plan that provide for changes to the boundaries
189 of the tourism improvement district or any change in the method of determining fees upon which the
190 business fee is based may be adopted by ordinance, provided that the locality shall, after a public
191 hearing, determine that it is in the public interest to authorize the changes to the boundaries of the
192 tourism improvement district or the changes to the method of determining fees. The locality shall give
193 notice of the hearing by publication of a notice on the locality's website or in at least one newspaper
194 having general circulation in the tourism improvement district specifying the time when and the place
195 where the hearing will be held and stating any changes to the boundaries of the tourism improvement
196 district, or any change in the method of determining fees upon which the business fee is based. The
197 notice shall be published at least 10 days prior to the date specified for the hearing.

198 D. Amendments to the tourism improvement district plan that provide for the tourism improvement
199 district to incur indebtedness in order to provide for additional activities, that provide for an increase
200 only in the amount to be expended annually for activities, or that provide for an increase in the total
201 maximum amount to be expended for activities in the tourism improvement district may be adopted by
202 ordinance. Prior to the adoption of an ordinance making one or more of the amendments as described
203 in this subsection, the governing body shall, after a public hearing, determine that it is in the public
204 interest to authorize the tourism improvement district to incur indebtedness to provide for additional
205 activities, to increase the amount to be expended annually, or to increase the total maximum amount to
206 be expended for activities in the tourism improvement district, or any applicable combination of the
207 foregoing. Notice of the hearing shall be published and mailed in the manner provided in § 15.2-2413.4.

208 **§ 15.2-2413.8. Establishment of separate benefit zones within tourism improvement district;**
209 **categories of businesses.**

210 The locality may establish one or more separate benefit zones within the tourism improvement
211 district based upon the degree of benefit derived from the activities to be provided within the benefit
212 zone and may impose a different fee within each benefit zone. The locality may also define categories of
213 businesses based upon the degree of benefit that each will derive from the activities to be provided
214 within the tourism improvement district and may impose a different fee or rate of fee on each category
215 of business, or on each category of business within each zone.

216 **§ 15.2-2413.9. Expenses of the tourism improvement district.**

217 A. A locality may appropriate funds to pay expenses associated with the tourism improvement
218 district. A locality may appropriate funds to the administering nonprofit.

219 B. A locality may issue bonds and other obligations subject to the provisions of the Public Finance
220 Act of 1991 (§ 15.2-2600 et seq.) for the purpose of funding the costs of the tourism improvement
221 district plan. Principal and interest payments on such bonds may be paid from the proceeds of any fees
222 imposed under this article.

223 C. No funds raised pursuant to this article shall be used by the locality for any purposes other than
224 funding the expenses of the tourism improvement district.

225 **§ 15.2-2413.10. Administering nonprofit.**

226 A. Any locality establishing a tourism improvement district may contract with an administering
227 nonprofit for the purpose of carrying out such activities as may be prescribed in the tourism
228 improvement district plan.

229 B. The administering nonprofit may make recommendations to the locality with respect to any matter
230 involving or relating to the tourism improvement district.

231 **§ 15.2-2413.11. Dissolution.**

232 A. Any tourism improvement district established or extended pursuant to the provisions of this
233 article, where there is no indebtedness, outstanding and unpaid, incurred to accomplish any of the
234 purposes of the tourism improvement district, may be dissolved by majority vote of the local governing
235 body. The tourism improvement district may be dissolved if the locality determines there has been
236 misappropriation of funds, malfeasance, or a violation of law in connection with the management of the
237 tourism improvement district. In the event of dissolution of a tourism improvement district, any
238 remaining revenues, after all outstanding debts are paid, derived from the charge of fees, or derived
239 from the sale of assets acquired with the revenues, or from bond reserve or construction funds, shall be
240 appropriated for the purposes of the tourism improvement district plan or shall be refunded to the
241 businesses that are charged a fee by applying the same method and basis that was used to determine
242 the tourism improvement district fees that were charged.

B. During the operation of the tourism improvement district, there shall be a 30-day period each year in which owners of benefited businesses may request dissolution of the tourism improvement district. The first such period shall begin one year after the date of establishment of the tourism improvement district and shall continue for 30 days. The next such 30-day period shall begin two years after the date of the establishment of the tourism improvement district. Each successive year of operation of the tourism improvement district shall have such a 30-day period. Upon the written petition of the owners or authorized representatives of businesses in the tourism improvement district who pay 50 percent or more of the fees charged, the locality may by majority vote of the local governing body dissolve the tourism improvement district.

C. The locality shall hold a hearing on any proposed dissolution.

2. That if any provision of this act or the application thereof to any person or circumstance shall be adjudged invalid by any court of competent jurisdiction, such order or judgment shall be confined in its operation to the controversy in which it was rendered and shall not affect or invalidate the remainder of any of the provisions of this act or the application of any part thereof to any other person or circumstance and to this end the provisions of each section of this act are hereby declared to be severable.