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HOUSE BILL NO. 1601

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on Finance
on February 4, 1999)

(Patron Prior to Substitute—Delegate Callahan)

A BILL to amend and reenact § 58.1-3833 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 58.1-611.1, relating to rate tax on food purchased for human consumption; Food Tax Reduction Program.

Be it enacted by the General Assembly of Virginia:

1. That § 58.1-3833 of the Code of Virginia is amended and reenacted and the Code of Virginia is amended by adding a section numbered 58.1-611.1 as follows:

§ 58.1-611.1. Rate of tax on sales of food purchased for human consumption; Food Tax Reduction Program.

A. Subject to the conditions of subsections D and E, 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 July 1, 2000, through June 30, 2001, 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. From July 1, 2001, through June 30, 2002, the tax rate on such food shall be two 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, (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 percent shall be used for general fund purposes.

3. From July 1, 2002, through June 30, 2003, the tax rate on such food shall be two 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-half percent shall be used for general fund purposes.

4. On and after July 1, 2003, 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.

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.

D. Notwithstanding the tax rates set forth in subsection A, the rate of tax on sales of food purchased for human consumption shall not be reduced below the rate in effect for the Commonwealth's preceding fiscal year if:

1. Actual general fund revenues for the second fiscal year preceding a fiscal year in which a rate reduction is contemplated in subsection A do not exceed the official general fund revenue estimates for such second preceding fiscal year, as estimated in the most recently enacted and approved general appropriation act, by at least one percent; or

2. Any of the events listed in subsection C of § 58.1-3524 or subsection B of § 58.1-3536 have occurred.

E. If the tax rate on food purchased for human consumption remains the same for consecutive fiscal years, the tax rate on such food shall remain the same unless none of the conditions described in subsection D have occurred, in which event the tax rate on food purchased for human consumption for the immediately following fiscal year shall be equal to the next lowest tax rate listed in subsection A.

F. For purposes of any of the computations required under the Personal Property Tax Relief Act of 1998, Chapter 35.1 (§ 58.1-3523 et seq.) of Title 58.1, the decrease in net revenue attributable to the

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60 provisions of this section shall be considered as receipts or amounts actually collected. The decrease in
61 net revenue attributable to this section for any fiscal year shall be calculated by multiplying the taxable
62 sales of food for human consumption as reported by dealers on their sales and use tax returns filed with
63 the Department of Taxation during that fiscal year by the difference between (i) the tax rate imposed
64 under § 58.1-603 and (ii) the state retail sales and use tax rate imposed during the fiscal year on food
65 purchased for human consumption.

66 G. There is hereby created on the books of the Comptroller a nonreverting fund entitled the Food
67 Tax Reserve Fund which shall be used solely for the statutory purposes of the Food Tax Reduction
68 Program as established by this section, and as may be provided for in the general appropriation act.
69 For the purpose of the Comptroller's preliminary and final annual reports required by § 2.1-207, all
70 balances remaining in the Fund on June 30 of each year shall be considered a portion of the fund
71 balance of the general fund of the state treasury.

72 § 58.1-3833. County food and beverage tax.

73 A. Any county is hereby authorized to levy a tax on food and beverages sold, for human
74 consumption, by a restaurant, as such term is defined in subdivision 9 of § 35.1-1, not to exceed eight
75 and one-half percent, when added to the state and local general sales and use tax, of the amount charged
76 for such food and beverages. Such tax shall not be levied on food and beverages sold through vending
77 machines or by any person described in subdivisions 1, 2, 3, and 5 of § 35.1-25, as well as nonprofit
78 cafeterias in public schools, nursing homes, and hospitals. Grocery stores and convenience stores selling
79 prepared foods ready for human consumption at a delicatessen counter shall be subject to the tax, for
80 that portion of the grocery store or convenience store selling such items. The food and beverage tax
81 levied on meals sold by grocery store delicatessens and convenience stores shall be limited to prepared
82 sandwiches and single-meal platters.

83 This tax shall be levied only if the tax is approved in a referendum within the county which shall be
84 held in accordance with § 24.2-684 and initiated either by a resolution of the board of supervisors or on
85 the filing of a petition signed by a number of registered voters of the county equal in number to ten
86 percent of the number of voters registered in the county, as appropriate on January 1 of the year in
87 which the petition is filed with the court of such county. The clerk of the circuit court shall publish
88 notice of the election in a newspaper of general circulation in the county once a week for three
89 consecutive weeks prior to the election. If the voters affirm the levy of a local meals tax, the tax shall
90 be effective in an amount and on such terms as the governing body may by ordinance prescribe.

91 The term "beverage" as set forth herein shall mean alcoholic beverages as defined in § 4.1-100 and
92 nonalcoholic beverages served as part of a meal. The tax shall be in addition to the sales tax currently
93 imposed by the county pursuant to the authority of Chapter 6 (§ 58.1-600 et seq.) of this title. Collection
94 of such tax shall be in a manner prescribed by the governing body.

95 B. Notwithstanding the provisions of subsection A of this section, any county with a population of at
96 least 70,000 but no more than 100,000, any county with a population of at least 17,910 but no more
97 than 18,000, any county with a population of at least 34,000 but no more than 34,400, and any county
98 having a county manager plan of government are hereby authorized to levy a tax on food and beverages
99 sold for human consumption by a restaurant, as such term is defined in § 35.1-1 and as modified in
100 subsection A above and subject to the same exemptions, not to exceed four percent of the amount
101 charged for such food and beverages, provided that the governing body of the respective county holds a
102 public hearing before adopting a local food and beverage tax, and the governing body by unanimous
103 vote adopts such tax by local ordinance. The tax shall be effective in an amount and on such terms as
104 the governing body may by ordinance prescribe.

105 C. Nothing herein contained shall affect any authority heretofore granted to any county, city or town
106 to levy a meals tax. The county tax limitations imposed pursuant to § 58.1-3711 shall apply to any tax
107 levied under this section, mutatis mutandis. All food and beverage tax collections and all meals tax
108 collections shall be deemed to be held in trust for the county, city or town imposing the applicable tax.

109 D. No county which has heretofore adopted an ordinance pursuant to subsection A of this section
110 shall be required to submit an amendment to its meals tax ordinance to the voters in a referendum.

111 E. Notwithstanding any other provision of this section, no locality shall levy any tax under this
112 section upon food purchased for human consumption as food is defined in the Food Stamp Act of 1977,
113 7 U.S.C. § 2012, as amended, and federal regulations adopted pursuant to that act.

114 2. That the provisions of this act amending § 58.1-3833 shall become effective on July 1, 2000.