

## VIRGINIA ACTS OF ASSEMBLY — CHAPTER

*An Act to amend and reenact §§ 58.1-602, 58.1-605, 58.1-606, 58.1-611.1, 58.1-614, 58.1-626 and 58.1-3833 of the Code of Virginia, to amend the Code of Virginia by adding sections numbered 33.1-221.1:7, 58.1-604.4 and 58.1-628.1, and to repeal §§ 58.1-627 and 58.1-628, relating to a one percent sales and use tax in any county or city (i) whose entire geographic boundaries were redesignated to attainment status for the one-hour ozone standard on or before July 28, 1997, pursuant to the federal Clean Air Act and (ii) that, as of January 1, 2002, was required to have an air quality maintenance plan in effect for ozone pursuant to the federal Clean Air Act Amendments of 1990, and in certain counties in which U.S. Route 460 was situated, as of July 1, 2002; providing that the moneys collected from the tax shall be distributed to the Hampton Roads Planning District Commission (the "Commission") to be used exclusively to pay the costs of an adequate, modern, safe, and efficient transportation system in that part of the Commonwealth that comprises the Eastern Virginia Regional Transportation Program (the "Program"); authorizing the issuance of bonds by the Commission in a principal amount not to exceed \$5,990,000,000 for funding of the Program including the projects making up the Program; providing that interest on bonds issued by the Commission shall be exempt from all taxation by the Commonwealth and any political subdivision thereof; and providing that this act shall not become effective and that the Program shall not be constructed, bonds shall not be issued hereunder, and that the one percent sales and use tax shall not be imposed unless the question of whether such tax shall be imposed is affirmed by the voters of the counties and cities described herein in a regional referendum to be held on Tuesday, November 5, 2002.*

[S 668]

Approved

Whereas, the nonattainment designation under the federal Clean Air Act for one-hour ozone indicates, among other things, that the citizens of such area are at risk for respiratory health problems and that all localities in such area are in jeopardy of losing federal highway funds; and

Whereas, the nonattainment designation for one-hour ozone is directly related to the severity of traffic congestion in an area; and

Whereas, eleven of the fifteen cities and counties comprising the Hampton Roads Planning District were at one time designated as nonattainment for the one-hour ozone standard pursuant to the federal Clean Air Act Amendments of 1990; and

Whereas, the Hampton Roads Planning District Commission has reported that the number of vehicles registered in Hampton Roads from 1992 through 1999 grew at an average annual rate that exceeded the average annual rate of growth for all vehicles registered in the Commonwealth; and

Whereas, the Hampton Roads Planning District Commission has reported that there were approximately 571 congested lane miles in Hampton Roads in 2000 and approximately 670 congested lane miles in 2001; and

Whereas, the Hampton Roads Planning District Commission has reported that in 2000 there were approximately 300 days in which capacity on the Elizabeth River downtown tunnel was exceeded, approximately 220 days in which capacity on the Hampton Roads Bridge-Tunnel was exceeded, and approximately 130 days in which capacity on the Elizabeth River midtown tunnel was exceeded; and

Whereas, the annual growth in the number of vehicles registered in Hampton Roads, the increasing number of congested lane miles in Hampton Roads, and the current demand for use of major tunnels and bridges in Hampton Roads beyond their capacity will only contribute to the traffic congestion in the region; and

Whereas, there is a serious and credible risk that many of the eleven counties and cities could once again be designated nonattainment for one-hour ozone unless current traffic congestion trends are quickly reversed; and

Whereas, the Hampton Roads Planning District and the Hampton Roads Planning District Commission were created pursuant to the Regional Cooperation Act (§ 15.2-4200 et seq.); and

Whereas, one purpose of the Regional Cooperation Act pursuant to § 15.2-4201 is to "improve public health, safety, convenience and welfare, and to provide for the social, economic and physical development of communities and metropolitan areas of the Commonwealth on a sound and orderly basis, within a governmental framework and economic environment which will foster constructive growth and efficient administration"; and

Whereas, planning district commissions, including the Hampton Roads Planning District Commission,

are charged under § 15.2-4207 "to encourage and facilitate local government cooperation in addressing on a regional basis problems of greater than local significance"; and

Whereas, under § 15.2-4206 planning district commissions have been authorized to issue bonds as one means of facilitating projects that are regional in scope, which projects may include regional transportation projects; and

Whereas, eleven counties and cities comprising the Hampton Roads Planning District are required to have in effect an air quality maintenance plan pursuant to the federal Clean Air Act Amendments of 1990; and

Whereas, the counties and cities comprising the Hampton Roads Planning District share a commonality of interest and a commonality of ability to act because the resulting serious regional transportation problem coincides with a previously determined region where the rectifying transportation projects are naturally connected; and

Whereas, the continued prosperity and quality of life of the citizens of the counties and cities comprising the Hampton Roads Planning District hinges upon the implementation of lasting solutions to the traffic congestion in the region; and

Whereas, by affirming the provisions of this act the General Assembly is reconfirming the Commonwealth's long-standing policy that safe, adequate, and efficient transportation systems cannot be achieved on a locality by locality basis, but planning and action on a regional basis is required; now, therefore,

**Be it enacted by the General Assembly of Virginia:**

**1. That §§ 58.1-602, 58.1-605, 58.1-606, 58.1-611.1, 58.1-614, 58.1-626 and 58.1-3833 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding sections numbered 33.1-221.1:7, 58.1-604.4 and 58.1-628.1 as follows:**

*§ 33.1-221.1:7. Regional Transportation District Program.*

*A. For purposes of this section, unless the context requires a different meaning:*

*"Eastern Virginia Transportation District" means the region constituted by the counties and cities described in subsections A and B of § 58.1-604.4.*

*"Planning District Commission" means the Hampton Roads Planning District Commission created pursuant to Chapter 42 (§ 15.2-4200 et seq.) of Subtitle IV of Title 15.2.*

*B. The General Assembly declares it to be in the public interest that the economic development needs, economic growth potential, and quality of life of the residents of various counties and cities in the eastern part of the Commonwealth be addressed by a special transportation program to provide for the costs of providing an adequate, modern, safe and efficient transportation network in such counties and cities, which shall be known as the Eastern Virginia Regional Transportation Program (the Program), including, without limitation, environmental and engineering studies, rights-of-way acquisition, construction, improvements to all modes of transportation, and financing costs. The Program consists of the following projects: Hampton Roads Third Crossing ((i) from I-664/I-64 Interchange (Peninsula) to Bowers Hill (I-664, I-64, I-264 Interchange), (ii) I-664 to I-564 Connector, and (iii) Craney Island to the Western Freeway (Route 164)); U.S. Route 460 (from Bowers Hill (I-664, I-64, I-264 Interchange) to Zuni); I-64 widening (from Bland Boulevard Interchange to James City/New Kent County lines); Southeastern Parkway and Greenbelt (from I-64 to I-264); Midtown Tunnel/Martin Luther King Freeway extension ((i) parallel Midtown Tunnel and (ii) Martin Luther King Freeway extension to I-264); and Passenger Rail/Magnetic Levitation Service and Support Bus Services in the Eastern Virginia Transportation District.*

*C. The Planning District Commission shall take such steps as are necessary for the projects and program to be constructed, subject to it having sufficient funds to pay the costs for the construction of a project or projects, or any part thereof, as such costs become due and payable. Funds made available by the Planning District Commission to pay such costs may include, but are not limited to, the net proceeds of Planning District Commission bonds, including any premium received on the sale thereof, and any federal, local or private funds or any other moneys that may be made available for such purpose.*

*The Planning District Commission may enter into a contract or other agreement with any state or local agency, authority, commission or other person or entity to provide for the construction of a project or projects, or any part thereof.*

*§ 58.1-602. Definitions.*

*As used in this chapter, unless the context clearly shows otherwise, the term or phrase:*

*"Advertising" means the planning, creating, or placing of advertising in newspapers, magazines, billboards, broadcasting and other media, including, without limitation, the providing of concept, writing, graphic design, mechanical art, photography and production supervision. Any person providing advertising as defined herein shall be deemed to be the user or consumer of all tangible personal property purchased for use in such advertising.*

"Amplification, transmission and distribution equipment" means, but is not limited to, production, distribution, and other equipment used to provide Internet-access services, such as computer and communications equipment and software used for storing, processing and retrieving end-user subscribers' requests.

"Business" includes any activity engaged in by any person, or caused to be engaged in by him, with the object of gain, benefit or advantage, either directly or indirectly.

"Cost price" means the actual cost of an item or article of tangible personal property computed in the same manner as the sales price as defined in this section without any deductions therefrom on account of the cost of materials used, labor, or service costs, transportation charges, or any expenses whatsoever.

"Custom program" means a computer program which is specifically designed and developed only for one customer. The combining of two or more prewritten programs does not constitute a custom computer program. A prewritten program that is modified to any degree remains a prewritten program and does not become custom.

"Distribution" means the transfer or delivery of tangible personal property for use, consumption, or storage by the distributee, and the use, consumption, or storage of tangible personal property by a person who has processed, manufactured, refined, or converted such property, but does not include the transfer or delivery of tangible personal property for resale or any use, consumption, or storage otherwise exempt under this chapter.

"Gross proceeds" means the charges made or voluntary contributions received for the lease or rental of tangible personal property or for furnishing services, computed with the same deductions, where applicable, as for sales price as defined in this section over the term of the lease, rental, service, or use, but not less frequently than monthly.

"Gross sales" means the sum total of all retail sales of tangible personal property or services as defined in this chapter, without any deduction, except as provided in this chapter. "Gross sales" shall not include the federal retailers' excise tax or the federal diesel fuel excise tax imposed in § 4091 of the Internal Revenue Code if the excise tax is billed to the purchaser separately from the selling price of the article, or the Virginia retail sales or use tax, or any sales or use tax imposed by any county or city under § 58.1-605 or § 58.1-606 *or any tax imposed pursuant to § 58.1-604.4*.

"Import" and "imported" are words applicable to tangible personal property imported into this Commonwealth from other states as well as from foreign countries, and "export" and "exported" are words applicable to tangible personal property exported from this Commonwealth to other states as well as to foreign countries.

"In this Commonwealth" or "in the Commonwealth" means within the limits of the Commonwealth of Virginia and includes all territory within these limits owned by or ceded to the United States of America.

"Internet" means collectively, the myriad of computer and telecommunications facilities, which comprise the interconnected world-wide network of computer networks.

"Internet service" means a service that enables users to access proprietary and other content, information electronic mail, and the Internet as part of a package of services sold to end-user subscribers.

"Lease or rental" means the leasing or renting of tangible personal property and the possession or use thereof by the lessee or renter for a consideration, without transfer of the title to such property.

"Manufacturing, processing, refining, or conversion" includes the production line of the plant starting with the handling and storage of raw materials at the plant site and continuing through the last step of production where the product is finished or completed for sale and conveyed to a warehouse at the production site, and also includes equipment and supplies used for production line testing and quality control. The term "manufacturing" shall also include the necessary ancillary activities of newspaper and magazine printing when such activities are performed by the publisher of any newspaper or magazine for sale daily or regularly at average intervals not exceeding three months.

The determination whether any manufacturing, mining, processing, refining or conversion activity is industrial in nature shall be made without regard to plant size, existence or size of finished product inventory, degree of mechanization, amount of capital investment, number of employees or other factors relating principally to the size of the business. Further, "industrial in nature" shall include, but not be limited to, those businesses classified in codes 10 through 14 and 20 through 39 published in the Standard Industrial Classification Manual for 1972 and any supplements issued thereafter.

"Modular building" means, but shall not be limited to, single and multifamily houses, apartment units, commercial buildings, and permanent additions thereof, comprised of one or more sections that are intended to become real property, primarily constructed at a location other than the permanent site, built to comply with the Virginia Industrialized Building Safety Law (§ 36-70 et seq.) as regulated by the Virginia Department of Housing and Community Development, and shipped with most permanent components in place to the site of final assembly. For purposes of this chapter, a modular building shall

not include a mobile office as defined in § 58.1-2401 or any manufactured building subject to and certified under the provisions of the National Manufactured Housing Construction and Safety Standards Act of 1974 (42 U.S.C. § 5401 et seq.).

"Modular building manufacturer" means a person or corporation who owns or operates a manufacturing facility and is engaged in the fabrication, construction and assembling of building supplies and materials into modular buildings, as defined in this section, at a location other than at the site where the modular building will be assembled on the permanent foundation and may or may not be engaged in the process of affixing the modules to the foundation at the permanent site.

"Modular building retailer" means any person who purchases or acquires a modular building from a modular building manufacturer, or from another person, for subsequent sale to a customer residing within or outside of the Commonwealth, with or without installation of the modular building to the foundation at the permanent site.

"Motor vehicle" means a "motor vehicle" as defined in § 58.1-2401, taxable under the provisions of the Virginia Motor Vehicles Sales and Use Tax Act (§ 58.1-2400 et seq.) and upon the sale of which all applicable motor vehicle sales and use taxes have been paid.

"Occasional sale" means a sale of tangible personal property not held or used by a seller in the course of an activity for which he is required to hold a certificate of registration, including the sale or exchange of all or substantially all the assets of any business and the reorganization or liquidation of any business, provided such sale or exchange is not one of a series of sales and exchanges sufficient in number, scope and character to constitute an activity requiring the holding of a certificate of registration.

"Open video system" means an open video system authorized pursuant to 47 U.S.C. § 573 and, for purposes of this chapter only, shall also include Internet service regardless of whether the provider of such service is also a telephone common carrier.

"Person" includes any individual, firm, copartnership, cooperative, nonprofit membership corporation, joint venture, association, corporation, estate, trust, business trust, trustee in bankruptcy, receiver, auctioneer, syndicate, assignee, club, society, or other group or combination acting as a unit, body politic or political subdivision, whether public or private, or quasi-public, and the plural of such term shall mean the same as the singular.

"Prewritten program" means a computer program that is prepared, held or existing for general or repeated sale or lease, including a computer program developed for in-house use and subsequently sold or leased to unrelated third parties.

"Retail sale" or a "sale at retail" means a sale to any person for any purpose other than for resale in the form of tangible personal property or services taxable under this chapter, and shall include any such transaction as the Tax Commissioner upon investigation finds to be in lieu of a sale. All sales for resale must be made in strict compliance with regulations applicable to this chapter. Any dealer making a sale for resale which is not in strict compliance with such regulations shall be personally liable for payment of the tax.

The terms "retail sale" and a "sale at retail" shall specifically include the following: (i) the sale or charges for any room or rooms, lodgings, or accommodations furnished to transients for less than ninety continuous days by any hotel, motel, inn, tourist camp, tourist cabin, camping grounds, club, or any other place in which rooms, lodging, space, or accommodations are regularly furnished to transients for a consideration; and (ii) sales of tangible personal property to persons for resale when because of the operation of the business, or its very nature, or the lack of a place of business in which to display a certificate of registration, or the lack of a place of business in which to keep records, or the lack of adequate records, or because such persons are minors or transients, or because such persons are engaged in essentially service businesses, or for any other reason there is likelihood that the Commonwealth will lose tax funds due to the difficulty of policing such business operations. The Tax Commissioner is authorized to promulgate regulations requiring vendors of or sellers to such persons to collect the tax imposed by this chapter on the cost price of such tangible personal property to such persons and may refuse to issue certificates of registration to such persons.

The term "transient" shall not include a purchaser of camping memberships, time-shares, condominiums, or other similar contracts or interests that permit the use of, or constitute an interest in, real estate, however created or sold and whether registered with this Commonwealth or not. Further, a purchaser of a right or license which entitles the purchaser to use the amenities and facilities of a specific real estate project on an ongoing basis throughout its term shall not be deemed a transient; provided, however, that the term or time period involved is for seven years or more.

The terms "retail sale" and "sale at retail" shall not include a transfer of title to tangible personal property after its use as tools, tooling, machinery or equipment, including dies, molds, and patterns, if (i) at the time of purchase, the purchaser is obligated, under the terms of a written contract, to make the transfer and (ii) the transfer is made for the same or a greater consideration to the person for whom the purchaser manufactures goods.

"Retailer" means every person engaged in the business of making sales at retail, or for distribution, use, consumption, or storage to be used or consumed in this Commonwealth.

"Sale" means any transfer of title or possession, or both, exchange, barter, lease or rental, conditional or otherwise, in any manner or by any means whatsoever, of tangible personal property and any rendition of a taxable service for a consideration, and includes the fabrication of tangible personal property for consumers who furnish, either directly or indirectly, the materials used in fabrication, and the furnishing, preparing, or serving for a consideration of any tangible personal property consumed on the premises of the person furnishing, preparing, or serving such tangible personal property. A transaction whereby the possession of property is transferred but the seller retains title as security for the payment of the price shall be deemed a sale.

"Sales price" means the total amount for which tangible personal property or services are sold, including any services that are a part of the sale, valued in money, whether paid in money or otherwise, and includes any amount for which credit is given to the purchaser, consumer, or lessee by the dealer, without any deduction therefrom on account of the cost of the property sold, the cost of materials used, labor or service costs, losses or any other expenses whatsoever. "Sales price" shall not include (i) any cash discount allowed and taken (ii) finance charges, carrying charges, service charges or interest from credit extended on sales of tangible personal property under conditional sale contracts or other conditional contracts providing for deferred payments of the purchase price, or (iii) separately stated local property taxes collected. Where used articles are taken in trade, or in a series of trades as a credit or part payment on the sale of new or used articles, the tax levied by this chapter shall be paid on the net difference between the sales price of the new or used articles and the credit for the used articles.

"Storage" means any keeping or retention of tangible personal property for use, consumption or distribution in this Commonwealth, or for any purpose other than sale at retail in the regular course of business.

"Tangible personal property" means personal property which may be seen, weighed, measured, felt, or touched, or is in any other manner perceptible to the senses. The term "tangible personal property" shall not include stocks, bonds, notes, insurance or other obligations or securities.

"Use" means the exercise of any right or power over tangible personal property incident to the ownership thereof, except that it does not include the sale at retail of that property in the regular course of business. The term does not include the exercise of any right or power, including use, distribution, or storage, over any tangible personal property sold to a nonresident donor for delivery outside of the Commonwealth to a nonresident recipient pursuant to an order placed by the donor from outside the Commonwealth via mail or telephone.

"Use tax" refers to the tax imposed upon the use, consumption, distribution, and storage as herein defined.

"Used directly," when used in relation to manufacturing, processing, refining, or conversion, refers to those activities which are an integral part of the production of a product, including all steps of an integrated manufacturing or mining process, but not including ancillary activities such as general maintenance or administration. When used in relation to mining, it shall refer to the activities specified above, and in addition, any reclamation activity of the land previously mined by the mining company required by state or federal law.

"Video programmer" means a person or entity that provides video programming to end-user subscribers.

"Video programming" means video and/or information programming provided by or generally considered comparable to programming provided by a cable operator including, but not limited to, Internet service.

*§ 58.1-604.4. One percent sales tax in certain counties and cities.*

*A. 1. Beginning July 1, 2003, a tax of one percent is hereby levied and imposed on the property, activities and services described in § 58.1-603 in any county or city (i) whose entire geographic boundaries were at one time designated as nonattainment for the one-hour ozone standard pursuant to the federal Clean Air Act Amendments of 1990, (ii) whose entire geographic boundaries were redesignated to attainment status for such one-hour ozone standard on or before July 28, 1997, and (iii) that as of January 1, 2002, was required to have an air quality maintenance plan in effect for ozone pursuant to the federal Clean Air Act Amendments of 1990.*

*2. Such tax shall also be imposed beginning July 1, 2003, in any county (a) not included in subdivision 1 of this subsection and (b) in which U.S. Route 460 was situated, as of July 1, 2002, from Zuni eastward to the end of such highway.*

*B. 1. Beginning July 1, 2003, a tax of one percent is hereby levied and imposed on the property, activities and services described in § 58.1-604 in any county or city (i) whose entire geographic boundaries were at one time designated as nonattainment for the one-hour ozone standard pursuant to the federal Clean Air Act Amendments of 1990, (ii) whose entire geographic boundaries were*

redesignated to attainment status for such one-hour ozone standard on or before July 28, 1997, and (iii) that as of January 1, 2002, was required to have an air quality maintenance plan in effect for ozone pursuant to the federal Clean Air Act Amendments of 1990.

2. Such tax shall also be imposed beginning July 1, 2003, in any county (a) not included in subdivision 1 of this subsection and (b) in which U.S. Route 460 was situated, as of July 1, 2002, from Zuni eastward to the end of such highway.

C. The taxes under this section 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 any tax provided under this section.

D. All taxes paid to the Tax Commissioner pursuant to this section, less the applicable portion of any refunds to taxpayers, shall be deposited in a special fund titled the "Special Fund Account of the Hampton Roads Planning District Commission." The moneys deposited in the special fund shall be distributed monthly to the Hampton Roads Planning District Commission, created pursuant to Chapter 42 (§ 15.2-4200 et seq.) of Subtitle IV of Title 15.2, to be used for funding of the Eastern Virginia Regional Transportation Program as described in subsection B of § 33.1-221.1:7.

§ 58.1-605. 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.

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. The applicable brackets of prices shall be as prescribed in ~~§ 58.1-628~~ by the Tax Commissioner for the combined state and local tax. 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 sixty 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, with the adjustments required by ~~§ 58.1-628~~ § 58.1-628.1.

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 six months as follows: one-sixth of the total adjustment shall be included in the payments for the next six 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 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 preceding school age population census, 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 census and a proper reduction made in the school age population of the county or counties from which the annexed territory was acquired.

H. One-half of such payments to counties are subject to the further qualification, other than as set out in subsection G above, that in any county wherein is situated any incorporated town not constituting a separate special school district which 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 statewide school census. 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 preceding school age population census, 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 census and a proper reduction made in the school age population of the county or counties from which the annexed territory was acquired.

I. Notwithstanding the provisions of subsection H, 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 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.

J. It is further provided that if any incorporated town which would otherwise be eligible to receive funds from the county treasurer under subsection G or H of this section be located in a county which 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.

§ 58.1-606. To what extent and under what conditions cities and counties may levy local use tax; collection thereof by Commonwealth and return of revenues to the cities and counties.

A. The council of any city and the governing body of any county which has levied or may hereafter levy a city or county sales tax under § 58.1-605 may levy a city or county use 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 use tax imposed by this chapter and shall be subject to all the provisions of this chapter, and all amendments thereof, and the rules and regulations published with respect thereto, except that the applicable brackets of prices shall be as prescribed in ~~§ 58.1-628~~ *by the Tax Commissioner* for the combined state and local tax, and except that no discount under § 58.1-622 shall be allowed on a local use tax.

B. The council of any city and the governing body of any county desiring to impose a local use tax under this section may do so in the manner following:

1. If the city or county has previously imposed the local sales tax authorized by § 58.1-605, the local use tax may be imposed by the council or governing body by the adoption of a resolution by a majority of all the members thereof, by a recorded yea and nay vote, stating its purpose and referring to this section, and providing that the local use tax shall become effective on the first day of a month at least sixty days after the adoption of the resolution. A certified copy of such resolution shall be forwarded to the Tax Commissioner so that it will be received within five days after its adoption. The resolution authorized by this paragraph may be adopted in the manner stated notwithstanding any other provision of law, including any charter provision.

2. If the city or county has not imposed the local sales tax authorized by § 58.1-605, the local use tax may be imposed by ordinance together with the local sales tax in the manner set out in subsections B and C of § 58.1-605.

C. Any local use 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 use tax, with the adjustments required by ~~§ 58.1-628~~ § 58.1-628.1.

D. The local use tax authorized by this section shall not apply to transactions to which the sales tax applies, the situs of which for state and local sales tax purposes is 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. However, the local use tax authorized by this section shall apply to tangible personal property purchased without this Commonwealth for use or consumption within the city or county imposing the local use tax, or stored within the city or county for use or consumption, where the property would have been subject to the sales tax if it had been purchased within this Commonwealth. The local use tax shall also apply to leases or rentals of tangible personal property where the place of business of the lessor is without this Commonwealth and such leases or rentals are subject to the state tax. Moreover, the local use tax shall apply in all cases in which the state use tax applies.

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

F. Local use tax revenue shall be distributed among the cities and counties for which it is collected, respectively, as shown by the records of the Department, and the procedure shall be the same as that prescribed for distribution of local sales tax revenue under § 58.1-605. The local use tax revenue that is not accurately assignable to a particular city or county shall be distributed monthly by the appropriate state authorities among the cities and counties in this Commonwealth imposing the local use tax upon the basis of taxable retail sales in the respective cities and counties in which the local sales and use tax was in effect in the taxable month involved, as shown by the records of the Department, and computed with respect to taxable retail sales as reflected by the amounts of the local sales tax revenue distributed among such cities and counties, respectively, in the month of distribution. Notwithstanding any other provision of this section, the Tax Commissioner shall develop a uniform method to distribute local use tax. Any significant changes to the method of local use tax distribution shall be phased in over a five year period. Distribution information shall be shared with the affected localities prior to implementation of the changes.

G. All local use tax revenue shall be used, applied or disbursed by the cities and counties as provided in § 58.1-605 with respect to local sales tax revenue.

§ 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 January 1, 2000, through March 31, 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 April 1, 2001, through March 31, 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 April 1, 2002, through March 31, 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 April 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 for any twelve-month period beginning on or after April 1, 2001, shall not be reduced below the rate then in effect for the Commonwealth's current fiscal year if:

1. Actual general fund revenues for the 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 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 during the then current fiscal year.

E. If the tax rate on food purchased for human consumption remains the same for the period January 1, 2000, through March 31, 2001, and the subsequent twelve-month period beginning on April 1, 2001, or with respect to any consecutive twelve-month periods beginning on and after April 1, 2001, 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 twelve-month period shall be equal to the next lowest tax rate listed in subsection A.

F. There is hereby created on the books of the Comptroller a nonreverting fund entitled the Food Tax Reserve Fund which shall be used solely for the statutory purposes of the Food Tax Reduction Program as established by this section, and as may be provided for in the general appropriation act. For the purpose of the Comptroller's preliminary and final annual reports required by § 2.2-813, all balances remaining in the Fund on June 30 of each year shall be considered a portion of the fund balance of the general fund of the state treasury.

G. *The taxes imposed pursuant to § 58.1-604.4 shall not apply to food purchased for human consumption.*

§ 58.1-614. Vending machine sales.

A. ~~Notwithstanding the provisions of §§ 58.1-603 and 58.1-604, For all taxes pursuant to this chapter, whenever a dealer makes sales of tangible personal property through vending machines, or in any other manner making collection of the tax impractical, as determined by the Tax Commissioner, such dealer shall be required to report his wholesale purchases for sale at retail from vending machines and shall be required to remit an amount based on four and one-half percent of such wholesale purchases equal to such wholesale purchases multiplied by the sales and use tax rate applicable pursuant to this chapter.~~

B. ~~Notwithstanding the provisions of §§ 58.1-605 and 58.1-606, dealers making sales of tangible personal property through vending machines shall report and remit the one percent local sales and use tax computed as provided in subsection A of this section.~~

C. ~~The provisions of subsections A and B of this section~~ subsection A shall not be applicable to vending machine operators all of whose machines are under contract to nonprofit organizations. Such operators shall report only the gross receipts from machines selling items for more than ten cents and shall be required to remit an amount based on a percentage of their remaining gross sales established by the Tax Commissioner to take into account the inclusion of sales tax.

D. ~~Notwithstanding any other provisions in this section or § 58.1-628, When the Tax Commissioner determines that it is impractical to collect the tax in the manner provided by these sections~~ subsection A or subsection B, such dealer shall be required to remit an amount based on a percentage of gross receipts which takes into account the inclusion of the sales tax.

E. ~~D.~~ The provisions of this section shall not be applicable to any dealer who fails to maintain records satisfactory to the Tax Commissioner. A dealer making sales of tangible personal property through vending machines shall obtain a certificate of registration under § 58.1-613 in relevant form for each county or city in which he has machines.

§ 58.1-626. Absorption of tax prohibited.

No person shall advertise or hold out to the public, directly or indirectly, that he will absorb all or any part of the sales or use tax, or that he will relieve the purchaser, consumer, or lessee of the payment of all or any part of such tax, except as may be authorized under ~~§ 58.1-627 or § 58.1-628~~ § 58.1-628.1. Any person who violates this section shall be guilty of a Class 2 misdemeanor.

§ 58.1-628.1. *Adjustment to the rate of tax imposed under this chapter.*

*If a dealer can show to the satisfaction of the Tax Commissioner that more than eighty-five percent of the total dollar volume of his gross taxable sales during the taxable month was from individual sales at prices of ten cents or less each and that he was unable to adjust his prices in such manner as to prevent the economic incidence of the sales tax from falling on him, the Tax Commissioner shall determine the proper tax liability of the dealer based on that portion of the dealer's gross taxable sales that was from sales at prices of eleven cents or more.*

§ 58.1-3833. County food and beverage tax.

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

This tax shall be levied only if the tax is approved in a referendum within the county which shall be held in accordance with § 24.2-684 and initiated either by a resolution of the board of supervisors or on the filing of a petition signed by a number of registered voters of the county equal in number to ten percent of the number of voters registered in the county, as appropriate on January 1 of the year in which the petition is filed with the court of such county. The clerk of the circuit court shall publish notice of the election in a newspaper of general circulation in the county once a week for three consecutive weeks prior to the election. If the voters affirm the levy of a local meals tax, the tax shall be effective in an amount and on such terms as the governing body may by ordinance prescribe. If such resolution of the board of supervisors or such petition states for what projects and/or purposes the revenues collected from the tax are to be used, then the question on the ballot for the referendum shall include language stating for what projects and/or purposes the revenues collected from the tax are to be used.

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

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

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

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

E. Notwithstanding any other provision of this section, no locality 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.

## **2. That the following is the Eastern Virginia Regional Transportation Program Bond Act of 2002.**

§ 1. Title. *This act shall be known and may be cited as the "Eastern Virginia Regional Transportation Program Bond Act of 2002."*

§ 2. For purposes of this act, the following definitions shall apply:

"Costs to construct" and "construction" mean the total costs to complete a Project including, but not limited to, environmental and engineering studies, rights-of-way acquisition, improvements to all modes of transportation, construction and related improvements.

"Eastern Virginia Transportation District" means the same as that term is defined in § 33.1-221.1:7 of the Code of Virginia.

"Planning District Commission" means the Hampton Roads Planning District Commission created pursuant to Chapter 42 (§ 15.2-4200 et seq.) of Subtitle IV of Title 15.2 of the Code of Virginia.

"Program" means the Eastern Virginia Regional Transportation Program established pursuant to § 33.1-221.1:7 of the Code of Virginia.

"Project" or "Projects" means a transportation project or projects included in the program.

§ 3. The Program shall consist of the following Projects: Hampton Roads Third Crossing ((i) from I-664/I-64 Interchange (Peninsula) to Bowers Hill (I-664, I-64, I-264 Interchange), (ii) I-664 to I-564 Connector, and (iii) Craney Island to the Western Freeway (Route 164)); U.S. Route 460 (from Bowers Hill (I-664, I-64, I-264 Interchange) to Zuni); I-64 widening (from Bland Boulevard Interchange to James City/New Kent County lines); Southeastern Parkway and Greenbelt (from I-64 to I-264); Midtown Tunnel/Martin Luther King Freeway extension ((i) parallel Midtown Tunnel and (ii) Martin Luther King Freeway extension to I-264); and Passenger Rail/Magnetic Levitation Service and Support Bus Services in the Eastern Virginia Transportation District.

§ 4. The Planning District Commission is hereby authorized to issue at one time or from time to time bonds in an aggregate principal amount not exceeding \$5,990,000,000 to finance the costs of the Projects (exclusive of any obligations that may be issued to refund such notes) plus an amount for financing expenses (including without limitation, any original issue discount) (the "Bonds"). The net proceeds of the Bonds shall be used by the Planning District Commission, together with any other available funds, exclusively to pay the total costs to construct the Projects that comprise the program, consisting of environmental and engineering studies, rights-of-way acquisition, improvements to all modes of transportation, construction and related improvements. The Planning District Commission may also use the net proceeds of the Bonds for payment of interest on the Bonds for a period during construction and not exceeding one year after completion of construction of the Projects.

§ 5. The Projects, and the amount of bonds authorized to be issued for each such Project, are as follows and constitute the Eastern Virginia Regional Transportation Program:

Projects	Bond amount
Hampton Roads Crossing (Third Crossing)	
1. (From I-664/I-64 Interchange	
(Peninsula) to Bowers Hill (I-664, I-64,	
I-264 Interchange))	
2. I-664 to I-564 Connector	
3. Craney Island to the Western	
Freeway (Route 164)	\$2,975,000,000
U.S. Route 460 (From Bowers Hill (I-664, I-64,	
I-264 Interchange) to Zuni	705,000,000
I-64 Widening (From Bland Boulevard Interchange	
to James City/New Kent County Lines)	760,000,000
Southeastern Parkway and Greenbelt (From I-64	
to I-264)	710,000,000
Midtown Tunnel/Martin Luther King Freeway Extension	
1. Parallel Midtown Tunnel	
2. Martin Luther King Freeway Extension to I-264	640,000,000
Passenger Rail/Magnetic Levitation Service	
and Support Bus Services in the Eastern	

664	Virginia Transportation District	200,000,000
665		
666	Total	\$5,990,000,000

667  
 668 *The Planning District Commission shall take such steps as are necessary for the Projects and*  
 669 *program to be constructed, subject to it having sufficient funds to pay the costs for the construction of a*  
 670 *Project or Projects, or any part thereof, as such costs become due and payable. Funds made available*  
 671 *by the Planning District Commission to pay such costs may include, but are not limited to, the net*  
 672 *proceeds of Planning District Commission bonds, including any premium received on the sale thereof,*  
 673 *and any federal, local or private funds or any other moneys that may be made available for such*  
 674 *purpose.*

675 *The Planning District Commission may enter into a contract or other agreement with any state or*  
 676 *local agency, authority, commission or other person or entity to provide for the construction of a*  
 677 *Project or Projects, or any part thereof.*

678 *To the extent that the cost of any Project listed above is less than the amount allocated to such*  
 679 *Project, the Planning District Commission may increase the amount allocated to any other Project listed*  
 680 *above. No such allocation to a Project may be increased, however, until it has been demonstrated to the*  
 681 *satisfaction of the Planning District Commission that the cost of the Project has been reduced to the*  
 682 *extent reasonable. No increase in the amount allocated to any Project shall constitute an authorization*  
 683 *for the issuance of bonds in an amount in excess of the aggregate amount authorized hereunder.*

684 *After all Bonds as are necessary to pay for the construction of all Projects have been issued, to the*  
 685 *extent that the moneys distributed to the Planning District Commission pursuant to subsection D of*  
 686 *§ 58.1-604.4 of the Code of Virginia exceed the amount needed to pay annual debt service on Bonds*  
 687 *issued to support the Program Projects in any particular fiscal year, plus the amount needed in the*  
 688 *fiscal year to pay all other costs to administer all debts or obligations issued pursuant to this act, the*  
 689 *Planning District Commission shall cause such excess moneys to be applied to the retirement of the*  
 690 *Bonds and such other debts and obligations.*

691 *§ 6. The Planning District Commission is hereby authorized to borrow money at such rate or rates*  
 692 *through the execution and issuance of notes for the same (hereinafter "anticipation notes" or "BANs"),*  
 693 *but only in the following circumstances and under the following conditions:*

694 *a. In anticipation of the sale of the Bonds, the issuance of which shall have been authorized and*  
 695 *approved by the Planning District Commission, if the Planning District Commission shall deem it*  
 696 *advisable to postpone the issuance of such Bonds; or*

697 *b. For the renewal of any anticipation notes (BANs) herein authorized.*

698 *§ 7. Application of proceeds. Proceeds (including any premium) of the Bonds and any BANs (except*  
 699 *the proceeds of (i) Bonds the issuance of which has been anticipated by BANs, (ii) refunding bonds and*  
 700 *(iii) refunding BANs) shall be deposited in a special capital outlay fund of the Planning District*  
 701 *Commission and shall be disbursed only for the purpose for which the Bonds or any BANs have been*  
 702 *issued. The proceeds of (a) Bonds the issuance of which has been anticipated by BANs, (b) refunding*  
 703 *bonds and (c) refunding BANs and any funds provided by the General Assembly, or available from any*  
 704 *other source, for the purpose, shall be used to pay such BANs, refunded bonds and refunded BANs.*

705 *§ 8. The Planning District Commission is hereby authorized to receive any other funds that may be*  
 706 *made available to pay costs of the projects and to make available the same to the payment of the*  
 707 *principal or purchase price of, and redemption premium, if any, and interest on, the Bonds authorized*  
 708 *hereby.*

709 *§ 9. The terms and structure of each issue of the Bonds shall be determined by the Planning District*  
 710 *Commission. The Bonds of each issue shall be dated, shall be issued in a principal amount (subject to*  
 711 *the limitation as to the aggregate principal amount set forth in § 4), shall bear interest at such rate or*  
 712 *rates, which may be fixed, adjustable, variable or a combination thereof, and may be determined by a*  
 713 *formula or other method, shall mature at such time or times not exceeding thirty-five years after the*  
 714 *issuance thereof, and may be made subject to purchase or redemption before their maturity or*  
 715 *maturities, at such price or prices and under such terms and conditions, all as may be determined by*  
 716 *the Planning District Commission. The Planning District Commission shall determine the form of the*  
 717 *Bonds, whether the Bonds are certificated or uncertificated, and fix the authorized denomination or*  
 718 *denominations of the Bonds and the place or places of payment of principal or purchase price of, and*  
 719 *redemption premium, if any, and interest on, the Bonds, which may be at the office of the Planning*  
 720 *District Commission or any bank or trust company within or without the Commonwealth. The principal*  
 721 *or purchase price of, and redemption premium, if any, and interest on, the Bonds shall be made payable*  
 722 *in lawful money of the United States of America. Each issue of the Bonds may be issued under a system*  
 723 *of book entry for recording the ownership and transfer of ownership of rights to receive payments of*  
 724 *principal or purchase price of and redemption premium, if any, and interest on such Bonds. All the*

Bonds shall have and are hereby declared to have, as between successive holders, all the qualities and incidents of negotiable instruments under the negotiable instruments law of the Commonwealth.

The Planning District Commission may sell the Bonds from time to time at public or private sale, by competitive bidding, negotiated sale or private placement, for such price or prices as it may determine to be in the best interests of the Planning District Commission.

§ 10. The Bonds and BANs shall be signed on behalf of the Planning District Commission by the chairman or vice-chairman of the Planning District Commission, or shall bear the facsimile signature of such officer. In the event that the Bonds or BANs shall bear the facsimile signature of the chairman or vice-chairman of the Planning District Commission, they shall be signed by such administrative assistant as the chairman of the Planning District Commission shall determine or any registrar/paying agent that may be designated by the Planning District Commission. In case any officer whose signature or a facsimile of whose signature appears on any Bonds or BANs shall cease to be such officer before the delivery of such Bonds or BANs, such signature or facsimile signature nevertheless shall be valid and sufficient for all purposes, the same as if such officer had remained in office until such delivery.

§ 11. Refunding. The Planning District Commission is hereby authorized to sell and issue, at one time or from time to time, refunding bonds and BANs, to refund any or all of the Bonds and BANs, respectively, issued under this act. Refunding bonds or BANs may be issued in a principal amount up to the amount necessary to pay at maturity or redeem the Bonds and BANs to be refunded and pay all issuance costs and other financing expenses of the refunding. Such refunding bonds and BANs may be issued whether or not the Bonds or BANs to be refunded are then subject to redemption.

§ 12. Authorized investments. Pending the application of the proceeds of the Bonds or BANs (including refunding bonds and BANs) to the purpose for which they have been authorized and the application of funds set aside for the purpose to the payment of Bonds or BANs, they may be invested by the Planning District Commission in legal investments under the laws of the Commonwealth for public funds and sinking funds, as the case may be. Whenever the Planning District Commission receives interest from the investment of the proceeds of Bonds or any BANs, such interest shall become a part of the principal of the Bonds or any BANs and shall be used in the same manner as required or permitted for principal of the Bonds or BANs.

§ 13. The Bonds authorized under § 4 may be issued without obtaining the consent of any commission, office, department, board, council, bureau, agency or other persons or entities of the Commonwealth or of any political subdivision of the Commonwealth, and without any proceedings or the happening of conditions or things other than those proceedings, conditions or things that are specifically required under this act. The Planning District Commission may issue such types of Bonds as it may determine consistent with the provisions of §§ 4 and 5 of this act and subject to § 16 of this act, including, without limitation, Bonds payable as to principal and interest from any one or more of the following sources: (i) its revenues generally, including all amounts deposited into the Special Fund Account of the Hampton Roads Planning District Commission pursuant to § 58.1-604.4 of the Code of Virginia; (ii) proceeds from the sale of Bonds; (iii) payments under letters of credit, policies of bond insurance, guarantees or other credit enhancements; (iv) any reserve or sinking funds created to secure such payment; or (v) other available funds of the Planning District Commission.

§ 14. Security for Bonds and BANs. The proceeds of (i) Bonds, the issuance of which has been anticipated by BANs, (ii) refunding bonds and (iii) refunding BANs are hereby irrevocably pledged for the payment of principal of and interest and any premium on such BANs or Bonds or BANs to be refunded thereby.

Any Bond authorized under this act may be issued pursuant to or secured by a trust indenture or by a trust or other agreement with a corporate trustee, which may be any trust company or bank having the powers of a trust company within or without the Commonwealth, or other agent for bondholders, or any combination thereof. Any such trust indenture or other agreement may pledge or assign revenues, fees, rents and other charges to be received and may contain provisions for protecting and enforcing the rights and remedies of the bondholders as may be reasonable and proper and not in violation of law. Such provisions may include covenants: (i) providing for the application of revenues and sale by the Planning District Commission, or any trustees under any trust indenture or agreement, of any property upon default, provided that in no case may any Project be subject to such sale; (ii) setting forth duties of the Planning District Commission in relation to the acquisition, construction, maintenance, operation and insurance of any property of the Planning District Commission and the amounts of fees, rents and other charges to be charged, but such covenants may not provide fees, rents and other charges for use of any Project; (iii) providing for the collection of revenues, fees, rents and other charges, and the custody, safeguarding and application of all moneys of the Planning District Commission; (iv) providing for the creation of sinking funds and the creation and maintenance of reserves; and (v) setting forth conditions or limitations with respect to the incurrence of indebtedness or the granting of liens. Such trust indenture, trust or other agreement may set forth the rights and remedies of the bondholders and

of the trustee or other agent for bondholders and may restrict the individual right of action by bondholders.

In addition, the Planning District Commission may grant security interests and other liens on its property, including its accounts receivable, to secure Bonds. All pledges of revenues of the Planning District Commission for payment of bonds shall be valid and binding from the time when the pledge is made, and the revenues pledged and thereafter received by the Planning District Commission shall be subject immediately to the lien of such pledge without any physical delivery thereof or further act, and the lien of any such pledge shall be valid and binding as against all parties having claims of any kind in tort, contract or otherwise against the Planning District Commission, irrespective of whether such parties have notice thereof. The Planning District Commission may also provide for the filing of any security interest or other lien, or any financing statement or other instrument, necessary or desirable to create, perfect or evidence any lien created pursuant to this act.

It shall be lawful for any bank or trust company within or without the Commonwealth to serve as depository of the proceeds of Bonds or of other revenues of the Planning District Commission and to furnish indemnifying bonds or to pledge such securities as may be required by the Planning District Commission.

§ 15. Except to the extent that the rights herein given may be restricted by such trust indenture or trust or other agreement, any holder of Bonds or coupons authorized under this act and the trustee or other agent for bondholders under any trust indenture or trust or other agreement may, either at law or in equity, by suit, action, injunction, mandamus or other proceedings, protect and enforce any and all rights under the laws of the Commonwealth or granted under this act or under such trust indenture, trust or other agreement, and may enforce and compel the performance of all duties required under this act or by such trust indenture, trust or other agreement, with respect to such Bonds or coupons, to be performed by the Planning District Commission or by any officer or agent thereof, including the fixing, charging and collecting of revenues, fees, rents and other charges.

§ 16. No member, officer, employee or agent of the Planning District Commission or any person executing Bonds of the Planning District Commission authorized under this act shall be liable personally on the Bonds by reason of their issuance or execution. Bonds of the Planning District Commission authorized under this act shall not be a debt or pledge of the full faith and credit of the Commonwealth or any political subdivision thereof other than the Planning District Commission and shall so state on their face. Neither the Commonwealth nor any political subdivision thereof other than the Planning District Commission shall be obligated to pledge taxing power or appropriate or otherwise be liable for payment of such Bonds of the Planning District Commission, nor shall such Bonds be payable out of any funds or properties of the Commonwealth or any political subdivision thereof other than those of the Planning District Commission. Bonds of the Planning District Commission authorized under this act are declared to be issued for an essential public and governmental purpose.

§ 17. Expenses. All expenses incurred under this act in connection with issuance of the Bonds shall be paid from the proceeds of such Bonds, or any refunding bonds or BANs, or from any other available funds as the Planning District Commission may determine.

§ 18. Bonds issued by the Planning District Commission under the provisions of this act are hereby made securities in which all public officers and public bodies of the Commonwealth and its political subdivisions, all insurance companies and associations, all national banks and trust companies, and savings institutions, including savings and loan associations, in the Commonwealth, and all executors, administrators, trustees and other fiduciaries, both individual or corporate, may properly and legally invest funds within their control. Such Bonds are hereby made securities that may properly and legally be deposited with and received by any state or municipal officer or any agency or political subdivision of the Commonwealth for any purpose for which the deposit of Bonds or obligations is now or may hereafter be authorized by law.

§ 19. Exemption of interest from tax. The Bonds and BANs issued under the provisions of this act, their transfer, and the income therefrom, including any profit made on the sale thereof, shall at all times be exempt from taxation by the Commonwealth and by any political subdivision thereof.

§ 20. If any part of this act or the application thereof to any person or circumstance is held invalid by a court of competent jurisdiction, such holding shall not affect the validity of the remainder of the provisions or applications of the act, which can be given effect without the invalid provision or application, and to this end the provisions of this act are severable.

**3. That it shall be the duty of the regular election officers of the counties and cities described in subsections A and B of § 58.1-604.4 conducting the election directed by law to be held on Tuesday, November 5, 2002, at the places appointed for holding the same, to open a poll on such day and take the sense of the qualified voters of such counties and cities upon the ratification or rejection of a one percent sales and use tax pursuant to subsections A and B of § 58.1-604.4. Notice of the referendum shall be given, the ballots shall be prepared, distributed and voted, and the results**

thereof ascertained and certified, in accordance with Title 24.2 of the Code of Virginia, relating to special elections.

The ballot shall contain the following question:

"QUESTION: Shall an additional sales and use tax of one percent be imposed in Isle of Wight County, James City County, York County, the City of Chesapeake, the City of Hampton, the City of Newport News, the City of Norfolk, the City of Poquoson, the City of Portsmouth, the City of Suffolk, the City of Virginia Beach, and the City of Williamsburg, with the revenues to be used solely for regional transportation projects and programs as specified in Chapter (. . .) of the Acts of Assembly of 2002?"

The State Board of Elections shall cause to be sent to the electoral boards of such counties and cities sufficient copies of the full text of this act and the question contained herein for the officers of election to post in each polling place on election day. The State Board of Elections shall without delay make out and transmit to the Governor an official copy of the report of the whole number of votes cast at the election for and against the referendum question, certified by it. The expenses incurred in conducting this election shall be defrayed as in the case of election of members of the General Assembly.

4. That the sales and use tax, pursuant to subsections A and B of § 58.1-604.4, shall end upon final payment of the principal and interest on all bonds and other indebtedness issued pursuant to the second enactment of this act. The Hampton Roads Planning District Commission shall notify the Tax Commissioner no later than nine months prior to the projected date that such bonds and other indebtedness shall be paid in full. Upon such notification, the Tax Commissioner shall take such procedures as are necessary to ensure that such tax shall not be collected by dealers after midnight of the projected payout date. Such procedures shall include notifying dealers of the last day that such tax shall be collected.

5. That the Department of Taxation shall promulgate all necessary and reasonable regulations to govern the administration of sales and use taxes pursuant to the provisions of this act, including, but not limited to, a bracket system for the collection of taxes in the Commonwealth on transactions of five dollars or less.

6. That any moneys distributed to the Hampton Roads Planning District Commission from a one percent sales and use tax pursuant to subsections A and B of § 58.1-604.4 shall not be used to calculate or reduce the share of federal, state, or local revenues or funds otherwise available to the localities in the counties and cities described in subsections A and B of § 58.1-604.4, nor shall they be used to calculate or reduce any allocation of revenues or funds made pursuant to Title 33.1 of the Code of Virginia. Such share or allocation of revenues or funds that shall not be reduced includes, but is not limited to, state basic aid payments.

7. That no city or county described in subsections A and B of § 58.1-604.4 may reduce its local appropriation for transportation purposes below the amount it appropriated for transportation purposes in its operating year that began in calendar year 2001.

8. That the provisions of this act shall not require any county governing body that has heretofore adopted an ordinance providing for a local food and beverage tax pursuant to § 58.1-3833 or § 58.1-3842 to (i) submit an amendment to its meals tax ordinance to the voters in a referendum, (ii) unanimously adopt an amendment to its meals tax ordinance, or (iii) hold a public hearing to reflect in its local meals tax ordinance the provisions of this act.

9. That the third enactment of this act shall be effective on July 1, 2002. The provisions of this act relating to a one percent sales and use tax pursuant to subsections A and B of § 58.1-604.4, including, but not limited to the second, fourth, sixth and seventh enactments of this act, shall be effective on July 1, 2003, and only if a majority of those voting at the election and upon the question described in the third enactment of this act vote in the affirmative upon such question. For purposes of this enactment, "a majority of those voting at the election" means a majority of those voting in the entire region constituted by the counties and cities described in the third enactment of this act, and does not require a majority of those voting in any individual locality.

10. That §§ 58.1-627 and 58.1-628 are repealed effective July 1, 2003, provided that the question described in the third enactment of this act is affirmed in accordance with the ninth enactment of this act.

11. That if any clause, sentence, paragraph, section, or part of this act or the application thereof to any person, entity, or circumstance is adjudged invalid by any court of competent jurisdiction such judgment shall not affect the validity of the remainder hereof but shall be confined to the clause, sentence, paragraph, section, or part hereof directly involved in the controversy in which such judgment shall have been rendered, and to this end the provisions of this act are severable.