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**SENATE BILL NO. 668****AMENDMENT IN THE NATURE OF A SUBSTITUTE**(Proposed by the Senate Committee on Finance  
on February 12, 2002)

(Patron Prior to Substitute—Senator Williams)

*A BILL 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, 58.1-604.2 and 58.1-628.1; 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.*

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

60 on a regional basis problems of greater than local significance"; and

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

64 Whereas, eleven counties and cities comprising the Hampton Roads Planning District are required to  
65 have in effect an air quality maintenance plan pursuant to the federal Clean Air Act Amendments of  
66 1990; and

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

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

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

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

79 **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**  
80 **Virginia are amended and reenacted, and that the Code of Virginia is amended by adding sections**  
81 **numbered 33.1-221.1:7, 58.1-604.2 and 58.1-628.1 as follows:**

82 *§ 33.1-221.1:7. Regional Transportation District Program.*

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

84 *"Eastern Virginia Transportation District" means the region constituted by the counties and cities*  
85 *described in subsections A and B of § 58.1-604.2.*

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

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

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

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

113 *§ 58.1-602. Definitions.*

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

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

120 *"Amplification, transmission and distribution equipment" means, but is not limited to, production,*  
121 *distribution, and other equipment used to provide Internet-access services, such as computer and*

122 communications equipment and software used for storing, processing and retrieving end-user subscribers'  
123 requests.

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

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

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

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

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

142 "Gross sales" means the sum total of all retail sales of tangible personal property or services as  
143 defined in this chapter, without any deduction, except as provided in this chapter. "Gross sales" shall not  
144 include the federal retailers' excise tax or the federal diesel fuel excise tax imposed in § 4091 of the  
145 Internal Revenue Code if the excise tax is billed to the purchaser separately from the selling price of the  
146 article, or the Virginia retail sales or use tax, or any sales or use tax imposed by any county or city  
147 under § 58.1-605 or § 58.1-606 or any tax imposed pursuant to § 58.1-604.2.

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

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

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

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

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

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

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

175 "Modular building" means, but shall not be limited to, single and multifamily houses, apartment  
176 units, commercial buildings, and permanent additions thereof, comprised of one or more sections that are  
177 intended to become real property, primarily constructed at a location other than the permanent site, built  
178 to comply with the Virginia Industrialized Building Safety Law (§ 36-70 et seq.) as regulated by the  
179 Virginia Department of Housing and Community Development, and shipped with most permanent  
180 components in place to the site of final assembly. For purposes of this chapter, a modular building shall  
181 not include a mobile office as defined in § 58.1-2401 or any manufactured building subject to and  
182 certified under the provisions of the National Manufactured Housing Construction and Safety Standards

183 Act of 1974 (42 U.S.C. § 5401 et seq.).

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

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

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

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

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

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

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

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

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

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

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

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

244 "Sale" means any transfer of title or possession, or both, exchange, barter, lease or rental, conditional

245 or otherwise, in any manner or by any means whatsoever, of tangible personal property and any  
 246 rendition of a taxable service for a consideration, and includes the fabrication of tangible personal  
 247 property for consumers who furnish, either directly or indirectly, the materials used in fabrication, and  
 248 the furnishing, preparing, or serving for a consideration of any tangible personal property consumed on  
 249 the premises of the person furnishing, preparing, or serving such tangible personal property. A  
 250 transaction whereby the possession of property is transferred but the seller retains title as security for the  
 251 payment of the price shall be deemed a sale.

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

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

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

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

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

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

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

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

288 *§ 58.1-604.2. One percent sales tax in certain counties and cities.*

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

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

299 *B. 1. Beginning July 1, 2003, a tax of one percent is hereby levied and imposed on the property,*  
 300 *activities and services described in § 58.1-604 in any county or city (i) whose entire geographic*  
 301 *boundaries were at one time designated as nonattainment for the one-hour ozone standard pursuant to*  
 302 *the federal Clean Air Act Amendments of 1990, (ii) whose entire geographic boundaries were*  
 303 *redesignated to attainment status for such one-hour ozone standard on or before July 28, 1997, and (iii)*  
 304 *that as of January 1, 2002, was required to have an air quality maintenance plan in effect for ozone*  
 305 *pursuant to the federal Clean Air Act Amendments of 1990.*

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

309 C. The taxes under this section shall be subject to all the provisions of this chapter and the rules  
310 and regulations published with respect thereto. No discount under § 58.1-622 shall be allowed on any  
311 tax provided under this section.

312 D. All taxes paid to the Tax Commissioner pursuant to this section, less the applicable portion of  
313 any refunds to taxpayers, shall be deposited in a special fund titled the "Special Fund Account of the  
314 Hampton Roads Planning District Commission". The moneys deposited in the special fund shall be  
315 distributed monthly to the Hampton Roads Planning District Commission, created pursuant to Chapter  
316 42 (§ 15.2-4200 et seq.) of Subtitle IV of Title 15.2, to be used for funding of the Eastern Virginia  
317 Regional Transportation Program as described in subsection B of § 33.1-221.1:7.

318 § 58.1-605. To what extent and under what conditions cities and counties may levy local sales taxes;  
319 collection thereof by Commonwealth and return of revenue to each city or county entitled thereto.

320 A. No county, city or town shall impose any local general sales or use tax or any local general retail  
321 sales or use tax except as authorized by this section.

322 B. The council of any city and the governing body of any county may levy a general retail sales tax  
323 at the rate of one percent to provide revenue for the general fund of such city or county. Such tax shall  
324 be added to the rate of the state sales tax imposed by §§ 58.1-603 and 58.1-604 and shall be subject to  
325 all the provisions of this chapter and the rules and regulations published with respect thereto. The  
326 applicable brackets of prices shall be as prescribed in ~~§ 58.1-628~~ by the Tax Commissioner for the  
327 combined state and local tax. No discount under § 58.1-622 shall be allowed on a local sales tax.

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

333 D. Any local sales tax levied under this section shall be administered and collected by the Tax  
334 Commissioner in the same manner and subject to the same penalties as provided for the state sales tax,  
335 with the adjustments required by ~~§ 58.1-628~~ § 58.1-628.1.

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

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

360 G. Such payments to counties are subject to the qualification that in any county wherein is situated  
361 any incorporated town constituting a special school district and operated as a separate school district  
362 under a town school board of three members appointed by the town council, the county treasurer shall  
363 pay into the town treasury for general governmental purposes the proper proportionate amount received  
364 by him in the ratio that the school age population of such town bears to the school age population of  
365 the entire county. If the school age population of any town constituting a separate school district is  
366 increased by the annexation of territory since the last preceding school age population census, such  
367 increase shall, for the purposes of this section, be added to the school age population of such town as

368 shown by the last such census and a proper reduction made in the school age population of the county  
369 or counties from which the annexed territory was acquired.

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

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

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

396 § 58.1-606. To what extent and under what conditions cities and counties may levy local use tax;  
397 collection thereof by Commonwealth and return of revenues to the cities and counties.

398 A. The council of any city and the governing body of any county which has levied or may hereafter  
399 levy a city or county sales tax under § 58.1-605 may levy a city or county use tax at the rate of one  
400 percent to provide revenue for the general fund of such city or county. Such tax shall be added to the  
401 rate of the state use tax imposed by this chapter and shall be subject to all the provisions of this chapter,  
402 and all amendments thereof, and the rules and regulations published with respect thereto, except that the  
403 applicable brackets of prices shall be as prescribed in ~~§ 58.1-628~~ by the Tax Commissioner for the  
404 combined state and local tax, and except that no discount under § 58.1-622 shall be allowed on a local  
405 use tax.

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

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

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

419 C. Any local use tax levied under this section shall be administered and collected by the Tax  
420 Commissioner in the same manner and subject to the same penalties as provided for the state use tax,  
421 with the adjustments required by ~~§ 58.1-628~~ § 58.1-628.1.

422 D. The local use tax authorized by this section shall not apply to transactions to which the sales tax  
423 applies, the situs of which for state and local sales tax purposes is the city or county of location of each  
424 place of business of every dealer paying the tax to the Commonwealth without regard to the city or  
425 county of possible use by the purchasers. However, the local use tax authorized by this section shall  
426 apply to tangible personal property purchased without this Commonwealth for use or consumption  
427 within the city or county imposing the local use tax, or stored within the city or county for use or  
428 consumption, where the property would have been subject to the sales tax if it had been purchased

429 within this Commonwealth. The local use tax shall also apply to leases or rentals of tangible personal  
430 property where the place of business of the lessor is without this Commonwealth and such leases or  
431 rentals are subject to the state tax. Moreover, the local use tax shall apply in all cases in which the state  
432 use tax applies.

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

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

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

455 § 58.1-611.1. Rate of tax on sales of food purchased for human consumption; Food Tax Reduction  
456 Program.

457 A. Subject to the conditions of subsections D and E, the tax imposed by §§ 58.1-603 and 58.1-604  
458 on food purchased for human consumption shall be levied and distributed as follows:

459 1. From January 1, 2000, through March 31, 2001, the tax rate on such food shall be three percent  
460 of the gross sales price. The revenue from the tax shall be distributed as follows: (i) the revenue from  
461 the tax at the rate of one-half percent shall be distributed as provided in subsection A of § 58.1-638, (ii)  
462 the revenue from the tax at the rate of one percent shall be distributed as provided in subsections B, C  
463 and D of § 58.1-638, and (iii) the revenue from the tax at the rate of one and one-half percent shall be  
464 used for general fund purposes.

465 2. From April 1, 2001, through March 31, 2002, the tax rate on such food shall be two and one-half  
466 percent of the gross sales price. The revenue from the tax shall be distributed as follows: (i) the revenue  
467 from the tax at the rate of one-half percent shall be distributed as provided in subsection A of  
468 § 58.1-638, (ii) the revenue from the tax at the rate of one percent shall be distributed as provided in  
469 subsections B, C and D of § 58.1-638, and (iii) the revenue from the tax at the rate of one percent shall  
470 be used for general fund purposes.

471 3. From April 1, 2002, through March 31, 2003, the tax rate on such food shall be two percent of  
472 the gross sales price. The revenue from the tax shall be distributed as follows: (i) the revenue from the  
473 tax at the rate of one-half percent shall be distributed as provided in subsection A of § 58.1-638, (ii) the  
474 revenue from the tax at the rate of one percent shall be distributed as provided in subsections B, C and  
475 D of § 58.1-638, and (iii) the revenue from the tax at the rate of one-half percent shall be used for  
476 general fund purposes.

477 4. On and after April 1, 2003, the tax rate on such food shall be one and one-half percent of the  
478 gross sales price. The revenue from the tax shall be distributed as follows: (i) the revenue from the tax  
479 at the rate of one-half percent shall be distributed as provided in subsection A of § 58.1-638 and (ii) the  
480 revenue from the tax at the rate of one percent shall be distributed as provided in subsections B, C and  
481 D of § 58.1-638.

482 B. The provisions of this section shall not affect the imposition of tax on food purchased for human  
483 consumption pursuant to §§ 58.1-605 and 58.1-606.

484 C. As used in this section, "food purchased for human consumption" has the same meaning as "food"  
485 defined in the Food Stamp Act of 1977, 7 U.S.C. § 2012, as amended, and federal regulations adopted  
486 pursuant to that Act, except it shall not include seeds and plants which produce food for human  
487 consumption.

488 D. Notwithstanding the tax rates set forth in subsection A, the rate of tax on sales of food purchased  
489 for human consumption for any twelve-month period beginning on or after April 1, 2001, shall not be  
490 reduced below the rate then in effect for the Commonwealth's current fiscal year if:

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

495 2. Any of the events listed in subsection C of § 58.1-3524 or subsection B of § 58.1-3536 have  
 496 occurred during the then current fiscal year.

497 E. If the tax rate on food purchased for human consumption remains the same for the period January  
 498 1, 2000, through March 31, 2001, and the subsequent twelve-month period beginning on April 1, 2001,  
 499 or with respect to any consecutive twelve-month periods beginning on and after April 1, 2001, the tax  
 500 rate on such food shall remain the same unless none of the conditions described in subsection D have  
 501 occurred, in which event the tax rate on food purchased for human consumption for the immediately  
 502 following twelve-month period shall be equal to the next lowest tax rate listed in subsection A.

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

509 G. *The taxes imposed pursuant to § 58.1-604.2 shall not apply to food purchased for human*  
 510 *consumption.*

511 § 58.1-614. Vending machine sales.

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

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

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

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

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

535 § 58.1-626. Absorption of tax prohibited.

536 No person shall advertise or hold out to the public, directly or indirectly, that he will absorb all or  
 537 any part of the sales or use tax, or that he will relieve the purchaser, consumer, or lessee of the payment  
 538 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.  
 539 Any person who violates this section shall be guilty of a Class 2 misdemeanor.

540 § 58.1-628.1. *Adjustment to the rate of tax imposed under this chapter.*

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

547 § 58.1-3833. County food and beverage tax.

548 A. Any county is hereby authorized to levy a tax on food and beverages sold, for human  
 549 consumption, by a restaurant, as such term is defined in subdivision 9 of § 35.1-1, not to exceed ~~four~~  
 550 ~~percent eight and one-half percent, when added to the state and local general sales and use tax,~~ of the  
 551 amount charged for such food and beverages. Such tax shall not be levied on food and beverages sold

552 through vending machines or by any person described in subdivisions 1, 2, 3, and 5 of § 35.1-25, as  
 553 well as nonprofit cafeterias in public schools, nursing homes, and hospitals. Grocery stores and  
 554 convenience stores selling prepared foods ready for human consumption at a delicatessen counter shall  
 555 be subject to the tax, for that portion of the grocery store or convenience store selling such items.

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

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

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

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

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

588 E. Notwithstanding any other provision of this section, no locality shall levy any tax under this  
 589 section upon alcoholic beverages sold in factory sealed containers and purchased for off-premises  
 590 consumption or food purchased for human consumption as "food" is defined in the Food Stamp Act of  
 591 1977, 7 U.S.C. § 2012, as amended, and federal regulations adopted pursuant to that act, except for the  
 592 following items: sandwiches, salad bar items sold from a salad bar, prepackaged single-serving salads  
 593 consisting primarily of an assortment of vegetables, and nonfactory sealed beverages.

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

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

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

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

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

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

605 "Program" means the Eastern Virginia Regional Transportation Program established pursuant to  
 606 § 33.1-221.1:7 of the Code of Virginia.

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

608 § 3. The Program shall consist of the following Projects: Hampton Roads Third Crossing ((i) from  
 609 I-664/I-64 Interchange (Peninsula) to Bowers Hill (I-664, I-64, I-264 Interchange), (ii) I-664 to I-564  
 610 Connector, and (iii) Craney Island to the Western Freeway (Route 164)); U.S. Route 460 (from Bowers  
 611 Hill (I-664, I-64, I-264 Interchange) to Zuni); I-64 widening (from Bland Boulevard Interchange to  
 612 James City/New Kent County lines); Southeastern Parkway and Greenbelt (from I-64 to I-264); Midtown  
 613 Tunnel/Martin Luther King Freeway extension ((i) parallel Midtown Tunnel and (ii) Martin Luther King

614 Freeway extension to I-264); and Passenger Rail/Magnetic Levitation Service and Support Bus Services  
 615 in the Eastern Virginia Transportation District.

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

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

628 Projects	629 Bond amount
630 Hampton Roads Crossing (Third Crossing)	
631	
632 1. (From I-664/I-64 Interchange	
633 (Peninsula) to Bowers Hill (I-664, I-64,	
634 I-264 Interchange))	
635	
636	
637	
638 2. I-664 to I-564 Connector	
639	
640 3. Craney Island to the Western	
641 Freeway (Route 164)	642 \$2,975,000,000
643	
644 U.S. Route 460 (From Bowers Hill (I-664, I-64,	
645 I-264 Interchange) to Zuni	646 705,000,000
647	
648 I-64 Widening (From Bland Boulevard Interchange	
649 to James City/New Kent County Lines)	650 760,000,000
651	
652 Southeastern Parkway and Greenbelt (From I-64	
653 to I-264)	654 710,000,000
655	
656 Midtown Tunnel/Martin Luther King Freeway	657 -
658	
659 Extension	
660	
661 1. Parallel Midtown Tunnel	
662	
663 2. Martin Luther King Freeway Extension to	
664 I-264	665 640,000,000
666	
667 Passenger Rail/Magnetic Levitation Service	
668	
669 and Support Bus Services in the Eastern	
670	

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671		200,000,000
672	Virginia Transportation District	
673	Total	\$5,990,000,000

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

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

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

691 *After all Bonds as are necessary to pay for the construction of all Projects have been issued, to the*  
 692 *extent that the moneys distributed to the Planning District Commission pursuant to subsection D of*  
 693 *§ 58.1-604.2 of the Code of Virginia exceed the amount needed to pay annual debt service on Bonds*  
 694 *issued to support the Program Projects in any particular fiscal year, plus the amount needed in the*  
 695 *fiscal year to pay all other costs to administer all debts or obligations issued pursuant to this act, the*  
 696 *Planning District Commission shall cause such excess moneys to be applied to the retirement of the*  
 697 *Bonds and such other debts and obligations.*

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

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

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

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

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

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

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

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

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

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

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

760 § 13. The Bonds authorized under § 4 may be issued without obtaining the consent of any  
761 commission, office, department, board, council, bureau, agency or other persons or entities of the  
762 Commonwealth or of any political subdivision of the Commonwealth, and without any proceedings or  
763 the happening of conditions or things other than those proceedings, conditions or things that are  
764 specifically required under this act. The Planning District Commission may issue such types of Bonds as  
765 it may determine consistent with the provisions of §§ 4 and 5 of this act and subject to § 16 of this act,  
766 including, without limitation, Bonds payable as to principal and interest from any one or more of the  
767 following sources: (i) its revenues generally, including all amounts deposited into the Special Fund  
768 Account of the Hampton Roads Planning District Commission pursuant to § 58.1-604.2 of the Code of  
769 Virginia; (ii) proceeds from the sale of Bonds; (iii) payments under letters of credit, policies of bond  
770 insurance, guarantees or other credit enhancements; (iv) any reserve or sinking funds created to secure  
771 such payment; or (v) other available funds of the Planning District Commission.

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

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

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

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

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

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

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

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

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

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

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

848 **3. That it shall be the duty of the regular election officers of the counties and cities described in**  
849 **subsections A and B of § 58.1-604.2 conducting the election directed by law to be held on Tuesday,**  
850 **November 5, 2002, at the places appointed for holding the same, to open a poll on such day and**  
851 **take the sense of the qualified voters of such counties and cities upon the ratification or rejection**  
852 **of a one percent sales and use tax pursuant to subsections A and B of § 58.1-604.2. Notice of the**  
853 **referendum shall be given, the ballots shall be prepared, distributed and voted, and the results**  
854 **thereof ascertained and certified, in accordance with Title 24.2 of the Code of Virginia, relating to**

855 special elections.

856 The ballot shall contain the following question:

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

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

870 4. That the sales and use tax, pursuant to subsections A and B of § 58.1-604.2, shall end upon final  
871 payment of the principal and interest on all bonds and other indebtedness issued pursuant to the  
872 second enactment of this act. The Hampton Roads Planning District Commission shall notify the  
873 Tax Commissioner no later than nine months prior to the projected date that such bonds and  
874 other indebtedness shall be paid in full. Upon such notification, the Tax Commissioner shall take  
875 such procedures as are necessary to ensure that such tax shall not be collected by dealers after  
876 midnight of the projected payout date. Such procedures shall include notifying dealers of the last  
877 day that such tax shall be collected.

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

882 6. That any moneys distributed to the Hampton Roads Planning District Commission from a one  
883 percent sales and use tax pursuant to subsections A and B of § 58.1-604.2 shall not be used to  
884 calculate or reduce the share of federal, state, or local revenues or funds otherwise available to the  
885 localities in the counties and cities described in subsections A and B of § 58.1-604.2, nor shall they  
886 be used to calculate or reduce any allocation of revenues or funds made pursuant to Title 33.1 of  
887 the Code of Virginia. Such share or allocation of revenues or funds that shall not be reduced  
888 includes, but is not limited to, state basic aid payments.

889 7. That no city or county described in subsections A and B of § 58.1-604.2 may reduce its local  
890 appropriation for transportation purposes below the amount it appropriated for transportation  
891 purposes in its operating year that began in calendar year 2001.

892 8. That the provisions of this act shall not require any county governing body that has heretofore  
893 adopted an ordinance providing for a local food and beverage tax pursuant to § 58.1-3833 or  
894 § 58.1-3842 to (i) submit an amendment to its meals tax ordinance to the voters in a referendum,  
895 (ii) unanimously adopt an amendment to its meals tax ordinance, or (iii) hold a public hearing to  
896 reflect in its local meals tax ordinance the provisions of this act.

897 9. That the third enactment of this act shall be effective on July 1, 2002. The provisions of this act  
898 relating to a one percent sales and use tax pursuant to subsections A and B of § 58.1-604.2,  
899 including, but not limited to the second, fourth, sixth and seventh enactments of this act, shall be  
900 effective on July 1, 2003, and only if a majority of those voting at the election and upon the  
901 question described in the third enactment of this act vote in the affirmative upon such question.  
902 For purposes of this enactment, "a majority of those voting at the election" means a majority of  
903 those voting in the entire region constituted by the counties and cities described in the third  
904 enactment of this act, and does not require a majority of those voting in any individual locality.

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

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

SENATE SUBSTITUTE

SB668S1