

DEPARTMENT OF TAXATION

2008 Fiscal Impact Statement

1. **Patron** John A. Cosgrove

3. **Committee** House Finance

4. **Title** Retail Sales and Use Tax; Exemption for
School Contractors

2. **Bill Number** HB 230

House of Origin:

 X **Introduced**

 Substitute

 Engrossed

Second House:

 In Committee

 Substitute

 Enrolled

5. Summary/Purpose:

This bill would provide an exemption from the Retail Sales and Use Tax for tangible personal property purchased by a contractor and used solely in the construction, reconstruction, installation, repair, or other service to a public elementary or secondary school that is owned by a county, city, or town, or a local school board.

The effective date of this bill is not specified.

6. Fiscal Impact Estimates are: Not available. (See Line 8.)

7. Budget amendment necessary: Yes.

Page 1, Revenue Estimates

8. Fiscal implications:

Administrative Costs

TAX has not assigned any administrative costs to this bill because the changes required by a single bill such as this can be implemented as part of the annual changes to our systems and forms. As stand-alone legislation, TAX considers implementation of this bill as "routine," and does not require additional funding.

TAX will provide specific administrative costs on any legislation that is not "routine." Additionally, TAX will review all state tax legislation likely to be enacted prior to the passage by each house. If the aggregate number of routine bills likely to pass either house is unusually large, it is possible that additional resources will be required. If so, TAX will identify the costs at that time.

Revenue Impact

The sales tax exemption proposed in this bill would reduce revenues by an unknown, but substantial amount. The available data reflects only construction and selected additions and renovations, and does not separate tangible personal property from labor. Based on the data available and assumptions about the proportion of expenses that represent tangible personal property, the sales and use tax revenue loss could potentially exceed \$11.3 million annually. To implement this exemption would necessitate a reduction of an equal amount of general fund support from other areas in the introduced budget. Given the magnitude of funding involved, funding would need to be transferred from areas with significant general fund support.

9. Specific agency or political subdivisions affected:

TAX

Public elementary or secondary schools owned by counties, cities, towns, or local school boards

10. Technical amendment necessary: No.

11. Other comments:

Current Law

Generally, when a contractor contracts to perform construction, reconstruction, installation, repair, or any other service with respect to real estate or fixtures, the contractor is deemed the user and consumer of such property and must pay the tax at the time of purchase of such property. In instances when the contractor is furnished tangible personal property for use under its contract by the entity for whom the contract is performed, and the sales and use tax has not been paid, the contractor becomes liable for the tax as the user and consumer of the property in the performance of its contract.

There is an exception to the “contractor rule” that shields a contractor from the tax when the contractor is furnished tangible personal property for use in the performance of work for certain entities that enjoy exemptions from the sales and use tax. The exception applies to tangible personal property provided by a government, i.e., the Commonwealth, any political subdivision of the Commonwealth, or the United States. Local school divisions are political subdivisions of the Commonwealth and would be entitled to make purchases of tangible personal property exempt of the sales tax and provide such property to a contractor without the contractor incurring the tax.

Proposal

This bill would allow a contractor engaged in a construction, reconstruction, installation, repair, or any other service contract with a public elementary or secondary school that is owned by a county, city, or town, or a local school board to make exempt purchases of tangible personal property for its use and consumption in the performance of that contract.

This bill would not benefit contractors who contract with Virginia state government or other political subdivisions of Virginia, the federal government or the private sector.

The exemption provided in this bill would not override the prohibition in *Va. Code* § 58.1-609.1(4) that restricts the purchase of tangible personal property by the Commonwealth or any of its political subdivisions for transfer to private businesses for their use in a facility or real property improvement for use by a private entity or for nongovernmental purposes.

The effective date of this bill is not specified.

cc : Secretary of Finance

Date: 1/14/2008 KP
DLAS File Name: HB230F161