

# DEPARTMENT OF TAXATION

## 2010 Fiscal Impact Statement

**1. Patron** Onzlee Ware

**3. Committee** House Counties, Cities and Towns

**4. Title** Community Development Authorities; Transient Occupancy Tax and Food and Beverages Tax; Retail Sales and Use Tax

**2. Bill Number** HB 343

**House of Origin:**

**Introduced**

**Substitute**

**Engrossed**

**Second House:**

**In Committee**

**Substitute**

**Enrolled**

### **5. Summary/Purpose:**

This bill would allow any community development authority to annually request that the locality in which it is located levy an additional transient occupancy tax at a rate not to exceed 2 percent and an additional food and beverage tax at a rate not to exceed 2 percent. In addition, any community development authority would be permitted to request that the locality in which it is located levy an additional sales tax not to exceed 1 percent. The additional taxes would be imposed solely within the community development authority, and could only be imposed if requested by every property owner within the district. The revenues from these additional taxes would be placed in a separate account and paid to the development authority.

The effective date of this bill is not specified.

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

**7. Budget amendment necessary:** No.

### **8. Fiscal implications:**

This bill would have no impact on state revenues. The magnitude of any local revenue gain generated by this bill would depend on whether localities choose to levy the taxes. As the locality level is the smallest jurisdiction for which TAX can provide estimates, TAX has no data to segregate transactions within the boundaries of community development authorities from those elsewhere in the locality.

### **9. Specific agency or political subdivisions affected:**

All localities that have community development authorities

**10. Technical amendment necessary:** Yes.

As the scope of the intended additional tax proposed in this bill is unclear, TAX suggests the following technical amendment:

Page 2, Line 79, after collect

Add: within the community development authority's jurisdiction

**11. Other comments:**

Food and Beverage Tax

Every county is authorized to levy a tax on food and beverages sold, for human consumption, by a restaurant, at a rate not to exceed four percent of the amount charged for such food and beverages, if the tax is approved in a referendum of the voters in the locality.

The Counties of Arlington, Frederick, Montgomery, Roanoke, and Rockbridge are currently authorized to levy a tax on food and beverages sold for human consumption by a restaurant at a rate not to exceed four percent of the amount charged for such food and beverages. To impose the tax, the governing body of the locality must hold a public hearing before adopting a local food and beverage tax and the governing body must, by unanimous vote, adopt the tax by local ordinance.

Any city or town having general taxing powers is authorized to impose an excise tax on meals. The tax must not be levied on discretionary gratuities, mandatory gratuities and service charges that do not exceed 20% of the sales price, food and beverages sold through vending machines, on any tangible personal property purchased with food coupons or drafts, or on alcoholic beverages sold in factory sealed containers. In addition, no blind person operating a vending stand or other business enterprise under the jurisdiction of the Department for the Blind and Vision Impaired and located on property acquired and used by the United States for any military or naval purpose shall be required to collect and remit meals taxes.

Transient Occupancy Tax

Under current law, any county may impose a transient occupancy tax at a maximum rate of two percent, upon the adoption of an ordinance, on hotels, motels, boarding houses, travel campgrounds, and other facilities offering guest rooms. The tax, however, does not apply to rooms rented on a continuous basis by the same individual or group for 30 or more continuous days. The tax applies to rooms intended or suitable for dwelling and sleeping. Therefore, the tax does not apply to such rooms used for alternative purposes, such as banquet rooms and meeting rooms. Any city or town having general taxing powers established by charter may also impose an excise tax on transient room rentals. The excise tax on transient room rentals does not have the limitations on the stay duration that apply to the county transient occupancy taxes.

### Counties Authorized to Impose Transient Occupancy Tax at a Higher Rate

The following counties are authorized to impose a transient occupancy tax at a maximum rate of five percent: Albemarle County, Amherst County, Augusta County, Bedford County, Botetourt County, Caroline County, Carroll County, Craig County, Cumberland County, Dinwiddie County, Floyd County, Franklin County, Giles County, Gloucester County, Greene County, Halifax County, James City County, King George County, Loudoun County, Mecklenburg County, Montgomery County, Nelson County, Northampton County, Page County, Patrick County, Prince Edward County, Prince George County, Prince William County, Pulaski County, Rockbridge County, Smyth County, Spotsylvania County, Stafford County, Tazewell County, Wise County, Wythe County and York County. The revenues for the portion of the tax over two percent must be spent on promoting tourism and travel, and marketing of tourism or initiatives that attract travelers to the locality and generate tourism revenues in the locality.

### Counties Authorized to Impose Additional Transient Occupancy Taxes

Beginning January 1, 1991 and ending January 1, 2012, Arlington County is authorized to impose an additional transient occupancy tax at a maximum rate of one-fourth of one percent of the amount of the charge for the occupancy of any room or space occupied, the revenues from which must be spent on promoting tourism and business travel in the county.

The counties of Chesterfield, Hanover, and Henrico may impose an additional transient occupancy tax not to exceed four percent. The revenues from the additional four percent must be used to promote tourism and travel in the Richmond Metropolitan area. These localities may also impose an additional transient occupancy tax not to exceed two percent, the revenues from which must be used for the expansion of the Richmond Centre. These localities are also authorized to impose an additional transient occupancy tax not to exceed one percent. The revenues from the additional one percent tax must be used for the development and improvement of the Virginia Performing Arts Foundation's facilities in Richmond, for promoting the use of the Richmond Centre, and for promoting tourism and travel in the Richmond metropolitan area.

The counties of James City and York are authorized to impose an additional transient occupancy tax not to exceed \$2 per room per night. The revenues from this additional tax will be used to promote tourism in the Historic Triangle area.

Fairfax County may impose an additional two percent tax on the occupancy of any room. The revenues from this additional tax will be used to promote tourism in the county and to fund a Visitor's and Convention Bureau.

Rockbridge County and the Cities of Lexington and Buena Vista may impose an additional transient occupancy tax at a rate not to exceed two percent. The revenues from this tax will be used to fund the Virginia Horse Center Foundation and the Virginia Equine Center Foundation.

Franklin County may impose a transient occupancy tax on certain rentals, such as condominiums, apartments, and townhouses, at a rate not to exceed two percent.

Nelson County may impose a transient occupancy tax on certain rentals, such as condominiums, apartments, and townhouses, at a rate not to exceed five percent. The revenues for the portion of the tax over two percent must be designated for promoting tourism, travel, or business that generates tourism or travel in the locality.

Bath County may impose an additional transient occupancy tax at a rate not to exceed two percent. One-half of the revenue from the tax must be designated and spent solely for tourism and travel. The remaining half must be designated and spent solely for the design, operation, construction, improvement, acquisition and debt of tourism facilities, historic sites, beautification projects, promotion of the arts, regional tourism marketing efforts, capital costs related to travel and transportation, public parks and recreation, and information centers.

In addition, any county with the county manager plan of government is authorized to impose an additional transient occupancy tax at a maximum rate of two percent, provided the county's governing body approves the construction of a county conference center. The revenues collected from this additional tax must be spent for the design, construction, debt payment, and operation of the conference center.

### Sales Tax

Virginia imposes a retail sales tax on the retail sale of tangible personal property in Virginia. The state retail sales tax does not apply to the sale and use of aircraft, motor vehicles, and watercraft, each of which are subject to independent sales and use taxes. Exemptions include personal and professional services, nonprofit and charitable organizations, educational organizations, industrial machinery, and products for resale. Food purchased for home consumption is subject to tax at a reduced combined rate of 2 ½ percent. "Food purchased for home consumption" has the same definition as under the Food Stamp Act of 1977, 7 U.S.C. § 2012. The definition includes most staple grocery food items and cold prepared foods packaged for home consumption. Specifically excluded from the definition are alcoholic beverages, tobacco, and prepared hot foods sold for immediate consumption on and off the premises.

### Community Development Authorities

A community development authority is a form of political subdivision that may be created by counties, cities or towns in response to a petition of the owners of at least 51% of the land area or assessed value of land in a contiguous area and may issue revenue bonds secured by sources of repayment generated from within the district.

### Proposal

This bill would allow any community development authority to annually request that the locality in which it is located levy an additional transient occupancy tax at a rate not to exceed 2 percent, and an additional food and beverage tax at a rate not to exceed 2 percent. In addition, any community development authority would be permitted to request

that the locality in which it is located levy an additional sales tax not to exceed 1 percent. The additional taxes would be imposed solely within the community development authority, and could only be imposed if requested by every property owner within the district. The revenues from these additional taxes would be placed in a separate account and paid to the development authority.

The effective date of this bill is not specified.

#### Similar Legislation

**House Bill 359** is substantively identical to this bill.

**House Bill 370** would add Alleghany County to the list of localities that are currently authorized to impose a transient occupancy tax at a maximum rate of five percent.

**House Bill 972 and Senate Bill 218** (identical) would provide that any additional transient occupancy tax or any increase in the rate of an existing transient occupancy tax in Fairfax County does not apply within the limits of any town located in Fairfax County, unless the governing body of the town consents.

**Senate Bill 342** would authorize any county, by ordinance, to levy a transient occupancy tax on single-family residences rented out for continuous occupancy for fewer than 30 consecutive days.

**House Bill 830** would add Fairfax County to the list of counties that may impose a food and beverage tax without a referendum, provided the governing body votes unanimously to impose the tax.

**House Bill 1138** would allow all counties to impose the local food and beverage tax without a referendum, provided the revenues from the tax are used to reduce the county's real property tax rate.

**Senate Bill 280** would remove the current cap of four percent for the county food and beverage tax and would allow counties to adopt or increase a food and beverage tax by a majority vote of the elected members of the governing body.

**House Bill 1150** would authorizes any county or city to levy an additional local sales and use tax at a rate of one-half percent with all revenue generated from such tax to be used for education purposes.

cc : Secretary of Finance

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