

DEPARTMENT OF TAXATION

2012 Fiscal Impact Statement

1. **Patron** William M. Stanley, Jr.

3. **Committee** Senate Finance

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

2. **Bill Number** SB 70

House of Origin:

 X **Introduced**

 Substitute

 Engrossed

Second House:

 In Committee

 Substitute

 Enrolled

5. **Summary/Purpose:**

This bill would establish a two-year period during which licensed contractors could purchase materials and supplies used in residential or commercial construction exempt of the Retail Sales and Use Tax. The exemption period would begin on July 1, 2012 and end on June 30, 2014. The bill would also require the Department to develop guidelines describing the items that qualify for the exemption by July 1, 2012.

Under current law, real property contractors who contract to perform construction, reconstruction, installation, repair, or other services on real property, are deemed the users and consumers of all tangible personal property furnished pursuant to the contract. As such, these businesses must pay tax on their purchases of tangible personal property, but are not required to collect sales tax from their customers.

The effective date of this bill is not specified.

6. **Budget amendment necessary:** Yes.

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

8. **Fiscal implications:**

Administrative Costs

The Department considers implementation of this bill as "routine" and does not require additional funding.

Revenue Impact

The magnitude of the revenue loss associated with this bill is unknown, but is expected to be substantial. Based on data in the 2007 Economic Census, the exemption has the potential to result in an annual revenue loss as large as \$310 million; however, the actual

revenue loss from the provisions of this bill may be lower, given that construction in Virginia has decreased substantially since 2007.

This bill would charge the Department with developing guidelines describing the items that qualify for the exemption. Without knowing which items would qualify and having a forecast of purchases by contractors, it is not possible to estimate the magnitude of the loss in sales and use tax revenue.

9. Specific agency or political subdivisions affected:

Department of Taxation

10. Technical amendment necessary: No.

11. Other comments:

Generally

Virginia law generally treats sellers and installers of tangible personal property that becomes real property after installation as contractors. As such, purchases of tangible personal property made by such contractors are deemed purchases for the ultimate consumer. The dealer making sales to the contractor, must collect the tax from him. These purchases are subject to tax even if the other party to the contract is a governmental agency, public service corporation, nonprofit school, or nonprofit hospital.

The law makes an exception for contractors who sell and install certain specified items, including fences, venetian blinds, window shades, awnings, storm windows and doors, floor coverings, cabinets, countertops, kitchen equipment, window air conditioning units, or other like or comparable items. Provided these individuals maintain a retail or wholesale place of business and an inventory of the items set forth above, and provided they perform installation as part of or incidental to the sale of the items set forth above, they are deemed retailers, and are authorized to collect Retail Sales and Use Tax from their customers on the sale of these items. Separately stated installation charges are exempt from the tax. If a person does not meet all three requirements of a retailer, as set forth above, he will be deemed a contractor and must pay the sales tax on such items at the time of purchase or accrue use tax, even if he is making sales of fences, venetian blinds, or any of the items separately identified above. This policy applies whether the seller and installer is also a fabricator of the tangible personal property items listed above.

Proposal

This bill would establish a two-year period during which licensed contractors could purchase materials and supplies used in residential or commercial construction exempt of the Retail Sales and Use Tax. The exemption period would begin on July 1, 2012 and end on June 30, 2014. The bill would also require the Department to develop guidelines describing the items that qualify for the exemption by July 1, 2012.

The effective date of this bill is not specified.

cc : Secretary of Finance

Date: 1/23/2012 KP
DLAS File Name: SB70F161