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SENATE BILL NO. 1401

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on Finance
on February 4, 2015)

(Patrons Prior to Substitute—Senators Norment and Ruff [SB975])

A *BILL to amend and reenact § 58.1-3851.1 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 30-310.1 and by adding in Article 10 of Chapter 38 of Title 58.1 a section numbered 58.1-3851.2, relating to entitlement to tax revenues; tourism projects of regional significance.*

Be it enacted by the General Assembly of Virginia:

1. That § 58.1-3851.1 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding a section numbered 30-310.1 and by adding in Article 10 of Chapter 38 of Title 58.1 a section numbered 58.1-3851.2 as follows:

§ 30-310.1. Endorsement of gap financing.

Prior to any proposed tourism project of regional significance being entitled to receive tax revenues for gap financing pursuant to § 58.1-3851.2, the Commission shall review the proposed tourism project of regional significance to determine that it meets the minimum investment criteria set forth in § 58.1-3851.2, will support increased hotel occupancy, job creation, and an increase in the number of out-of-state visitors to the Commonwealth, and will otherwise have a significant fiscal and economic development impact in the Commonwealth. If the Commission finds that the proposed tourism project of regional significance meets these criteria, the project shall be entitled to the enhanced 1.5 percent entitlement set forth in § 58.1-3851.2, subject to such requirements as set forth therein. An affirmative vote of three of the five members from the House of Delegates and two of the three members from the Senate shall be required to endorse a proposed tourism project of regional significance.

§ 58.1-3851.1. Entitlement to tax revenues from tourism project.

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

"Economic development authority" means a local industrial development authority or a local or regional political subdivision, the public purpose of which is to assist in economic development.

"Gap financing" means debt financing to compensate for a shortfall in project funding between the expected development costs of an authorized tourism project and the debt and equity capital provided by the developer of the project.

B. 1. If a locality has established a tourism zone pursuant to § 58.1-3851, has adopted an ordinance establishing a tourism plan as determined by guidelines set forth by the Virginia Tourism Authority, and has adopted an ordinance authorizing a tourism project to meet a deficiency identified in the adopted tourism plan approved by the Virginia Tourism Authority, and the tourism project has been certified by the State Comptroller as qualifying for the entitlement to tax revenues authorized by this section, the authorized tourism project shall be entitled to an amount equal to the revenues generated by a one percent state sales and use tax on transactions taking place on the premises of the authorized tourism project. The entitlement shall be contingent on the locality enacting an ordinance designating certain local tax revenues to the tourism project pursuant to subsection C and shall be subject to the conditions set forth in subsection D. The purpose of such entitlement shall be to assist the developer with obtaining gap financing and making payments of principal and interest thereon. The entitlement shall continue until the gap financing is paid in full. Entitled sales tax revenues shall be applied solely to payments of principal and interest on the qualified gap financing.

2. On a quarterly basis, the Tax Commissioner shall certify the amount of the entitled sales tax revenues to the Comptroller, who shall remit such revenues to the county or city in which the authorized tourism project is located. The county or city shall remit the revenues to the economic development authority. No payments herein shall be made until an agreement exists between the developer of the authorized tourism project and the economic development authority.

3. The state sales tax entitlement established in subdivision 1 shall not include any sales tax revenues dedicated pursuant to § 58.1-638 or 58.1-638.1.

C. If a locality has adopted the ordinances required by subdivision B 1 to entitle an authorized tourism project to an amount equal to the revenues generated by a one percent state sales and use tax on transactions taking place on the premises of the authorized tourism project, the local governing body of the county or city in which the authorized tourism project is located shall also direct by ordinance that an amount equal to the revenues generated by at least a one percent local sales and use tax, or an equivalent amount of other local tax revenues as designated by the ordinance, generated by transactions taking place on the premises of the authorized tourism project shall be applied to the payment of principal and interest on the qualified gap financing. Such revenues shall be remitted in the same

60 manner, for the same time period, and under the same conditions as the remittances paid in accordance
61 with subsection B, mutatis mutandis.

62 D. Prior to any entitlement to tax revenues for an authorized tourism project pursuant to subsections
63 B and C, the owner of such project shall have a minimum of 80 70 percent of funding for the project in
64 place through debt or equity, enter into a performance agreement with the economic development
65 authority or political subdivision, and enter into an agreement to pay an access fee. The access fee shall
66 be equivalent to the state sales tax revenue generated by and returned to the project pursuant to
67 subdivision B 1 and shall be collected by the locality and remitted to the economic development
68 authority on a quarterly basis. The access fee and the sales tax entitlement shall be used solely to make
69 payments of principal and interest on the qualified gap funding.

70 E. In the event that the total amount of sales tax entitlement and the access fee exceeds any annual
71 debt service on the qualified gap financing, such excess shall be paid to the principal of the loan until
72 the qualified gap financing is paid in full.

73 F. A tourism project that is entitled to and receives revenues pursuant to this section shall not be
74 eligible to receive revenues pursuant to § 58.1-608.3 or 58.1-3851.2.

75 **§ 58.1-3851.2. Entitlement to tax revenues from tourism project of regional significance.**

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

77 "Economic development authority" means a local industrial development authority or a local or
78 regional political subdivision, the public purpose of which is to assist in economic development.

79 "Gap financing" means debt financing to compensate for a shortfall in project funding between the
80 expected development costs of an authorized tourism project of regional significance and the debt and
81 equity capital provided by the developer of the project.

82 "Tourism project of regional significance" means a tourism project that meets the requirements set
83 forth in subdivision B 1 and that additionally represents a new capital investment of at least \$100
84 million in a new tourism facility or in a substantial and significant renovation or expansion of an
85 existing tourism facility by a private entity in the Commonwealth and, as determined by the Virginia
86 Tourism Authority, that supports increased hotel occupancy, new job creation, an increase in the
87 number of out-of-state visitors to the Commonwealth, and other factors of significant fiscal and
88 economic impact. Any property, real, personal, or mixed, that is necessary or complementary, such as
89 arenas, sporting facilities, and other tourism venues, developed in connection with any such tourism
90 project of regional significance, including facilities for food preparation and serving, parking facilities,
91 and administrative offices, is encompassed within this definition, as is theme-related retail activity by
92 vendors or the private entity owner of the project that occurs on site and directly supports the tourism
93 mission of the project. A tourism project of regional significance does not include, for purposes of this
94 section, general retail outlets, ancillary retail structures not directly related to the tourism purpose of
95 the project or other retail establishments commonly referred to as shopping centers or malls or
96 residential condominiums, townhomes, or other residential units. Hotels that are developed following the
97 designation of the tourism project of regional significance that are attached or adjacent to such project
98 and are an integral part of the tourism plan required pursuant to subdivision B 1 may be considered a
99 part of a tourism project of regional significance. No tourism project of regional significance shall be
100 authorized to receive gap financing pursuant to this section unless endorsed by the MEI Project
101 Approval Commission pursuant to Chapter 47 (§ 30-309 et seq.) of Title 30.

102 B. 1. If a locality has established a tourism zone pursuant to § 58.1-3851, has adopted an ordinance
103 establishing a tourism plan as determined by guidelines set forth by the Virginia Tourism Authority, and
104 has adopted an ordinance authorizing a tourism project of regional significance to meet a deficiency
105 identified in the adopted tourism plan approved by the Virginia Tourism Authority, and if the tourism
106 project of regional significance has been endorsed by the MEI Project Approval Commission and
107 certified by the State Comptroller as qualifying for the entitlement to tax revenues authorized by this
108 section, the authorized tourism project of regional significance shall be entitled to an amount equal to
109 the revenues generated by a 1.5 percent state sales and use tax on transactions taking place on the
110 premises of the authorized tourism project of regional significance. The entitlement shall be contingent
111 on the locality enacting an ordinance designating certain local revenues to the project pursuant to
112 subsection C and shall be subject to the conditions set forth in subsection D. The purpose of such
113 entitlement shall be to assist the developer with obtaining gap financing and making payments of
114 principal and interest thereon.

115 2. On a quarterly basis, the Tax Commissioner shall certify the amount of the entitled sales tax
116 revenues to the Comptroller, who shall remit such revenues to the county or city in which the authorized
117 tourism project of regional significance is located. The county or city shall remit the revenues to the
118 economic development authority. No payments herein shall be made until an agreement exists between
119 the developer of the authorized tourism project of regional significance and the economic development
120 authority. The entitlement shall continue until the gap financing is paid in full or for the length of time
121 specified in the agreement between the developer and the economic development authority, but in no

event shall the entitlement extend beyond 20 years. Entitled sales tax revenues shall be applied solely to payments of principal and interest on the qualified gap financing.

3. The state sales tax entitlement established in subdivision 1 shall not include any sales tax revenues dedicated pursuant to § 58.1-638 or 58.1-638.1.

C. If a locality has adopted the ordinances required by subdivision B 1 to entitle an authorized tourism project of regional significance to an amount equal to the revenues generated by a 1.5 percent state sales and use tax on transactions taking place on the premises of the authorized tourism project of regional significance, the local governing body of the county or city in which the authorized tourism project of regional significance is located shall also direct by ordinance that an amount of local revenues, from any authorized source of revenues available to the locality, equal to the revenues generated by at least a 1.5 percent state sales and use tax generated by transactions taking place on the premises of the authorized tourism project of regional significance shall be applied to the payment of principal and interest on the qualified gap financing. Such revenues shall be remitted in the same manner, for the same time period, and under the same conditions as the remittances paid in accordance with subsection B, *mutatis mutandis*.

D. Prior to any entitlement to tax revenues for an authorized tourism project of regional significance pursuant to subsections B and C, the owner of such project shall have a minimum of 80 percent of funding for the project in place through debt or equity, enter into a performance agreement with the economic development authority or political subdivision, and enter into an agreement to pay an access fee. The access fee shall be equivalent to the state sales tax revenue generated by and returned to the project pursuant to subdivision B 1 and shall be collected by the locality and remitted to the economic development authority on a quarterly basis. The access fee and the state and local contributions pursuant to this section shall be used solely to make payments of principal and interest on the qualified gap funding.

E. In the event that the total amount of state and local contributions pursuant to this section and the access fee exceeds any annual debt service on the qualified gap financing, such excess shall be paid to the principal of the loan until the qualified gap financing is paid in full.

F. Neither the Commonwealth nor any political subdivision of the Commonwealth shall incur any debt under this section. Nothing in this section shall be construed as authorizing the pledging of the faith and credit of the Commonwealth, or any of its revenues, or the faith and credit of any other political subdivision of the Commonwealth, or any of its revenues, for the payment of any debt or debt financing, or meeting any contractual obligation incurred by the owner or developer of any authorized tourism project of regional significance.

G. A tourism project of regional significance that is entitled to and receives revenues pursuant to this section shall not be eligible to receive revenues pursuant to § 58.1-608.3 or 58.1-3851.1.