

# DEPARTMENT OF TAXATION

## 2016 Fiscal Impact Statement

1. **Patron** Vivian E. Watts

3. **Committee** House Finance

4. **Title** Powers of Taxation; Certain Counties

2. **Bill Number** HB 546

**House of Origin:**

X **Introduced**

       **Substitute**

       **Engrossed**

**Second House:**

       **In Committee**

       **Substitute**

       **Enrolled**

**5. Summary/Purpose:**

This bill would grant counties with a population density greater than 2,000 persons per square mile all the powers of taxation that are currently granted to cities and towns pursuant to the Uniform Charter Powers Act, regardless of whether such powers are established by county charter. The bill also would authorize payments by the Commissioner of Highways to counties with a population density greater than 2,000 persons per square mile for the maintenance, construction, or reconstruction of arterial roads.

Under current law, while cities and towns are granted broad authority to tax pursuant to the Uniform Charter Powers Act in order to raise money to pay necessary expenses and debts, counties are limited in their ability to impose certain taxes and are limited in the tax rates that they may impose for other taxes. Only two counties (Arlington and Henrico) are currently responsible for secondary road maintenance and construction.

The effective date of this bill is not specified.

**6. Budget amendment necessary:** No.

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

**8. Fiscal implications:**

Passage of this bill also would allow Fairfax County and Arlington County to receive payments for the maintenance, construction, or reconstruction of roadways within their boundaries pursuant to Va. Code § 33.2-319. Any additional payments to the counties would result in a reduction in available Virginia Department of Transportation ("VDOT") maintenance funds and may impact the construction budget. Currently, Fairfax County does not maintain its secondary roads and does not receive maintenance funding. Based on the Fiscal Year 2016 maintenance payment rates, VDOT estimates that Fairfax County would receive approximately \$74 million in maintenance payments in Fiscal Year 2017 under this bill.

However, Arlington County currently maintains its own roads and receives maintenance funding from VDOT pursuant to *Va. Code* § 33.2-366. This bill could potentially result in Arlington County being eligible to receive payments under both *Va. Code* §§ 33.2-319 and 33.2-366. If Arlington County were to only receive the payments under *Va. Code* § 33.2-319 and not its current maintenance funding, VDOT estimates that the bill would result in Arlington County losing approximately 28 percent of its annual allocation.

Passage of this bill would allow counties with a population density greater than 2,000 persons per square mile to impose excise taxes on cigarettes, admissions, transient room rentals, meals, and travel campgrounds. Based on data from the Auditor of Public Accounts, only Arlington County and Fairfax County currently have a population density greater than 2,000 persons per square miles. Currently, Arlington County imposes a cigarette tax at the rate of \$0.30 per pack, a transient occupancy tax at the rate of five percent, and a meals tax at the rate of four percent. Fairfax County imposes a cigarette tax at the rate of \$0.30 per pack and a transient occupancy tax at the rate of six percent. To the extent that Arlington County and Fairfax County elect to impose new taxes or raise the rates on the taxes they currently impose, this bill would have an unknown positive impact on local revenues.

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

Arlington County  
Fairfax County

**10. Technical amendment necessary:** No.

**11. Other comments:**

Maintenance Funding

*Virginia Code* § 33.2-342 provides that the Board of Supervisors of any county that wishes to assume responsibility for any portion of the State secondary system of highways within such county's boundaries for the purposes of planning, constructing, maintaining, and operating such highways, may request that the Commissioner of Highways enter into an agreement to do so and receive maintenance payments in accordance with *Va. Code* § 33.2-366. The term "devolution" has been adopted to refer to a county's assumption of secondary road maintenance and operations responsibility. Currently, only Arlington and Henrico Counties are responsible for secondary road maintenance and construction.

*Virginia Code* § 33.2-319 sets out the provisions for payments for the maintenance and operation of roadways to (i) all towns that have a population of more than 3,500; (ii) Chase City, Elkton, Grottoes, Narrows, Pearisburg, and Saltville; (iii) all cities; and (iv) the Towns of Altavista, Lebanon, and Wise. The Commonwealth Transportation Board is responsible for allocating, from the funds made available for highway purposes, an amount it deems reasonable and necessary for the maintenance of roads, city and town street maintenance payments made pursuant to *Va. Code* § 33.2-319, and payments made to counties that have withdrawn or elect to withdraw from the secondary state highway system pursuant to *Va. Code* § 33.2-366.

## Uniform Charter Powers Act

Current law grants cities and towns the authority to raise whatever money is necessary to pay the debts and defray the expenses of the municipal corporation by annually imposing taxes and assessments on property and people. As a result, cities and towns are given broad authority to tax in order to raise necessary funds.

The differences between the taxing authority of counties and municipalities are based on historical notions that counties are primarily rural and have less need for revenue and services.

### Admissions Taxes

Virginia law currently classifies events to which admissions are charged into five groups: 1) events where the gross receipts are distributed entirely to charitable purposes; 2) events sponsored by public and private educational institutions; 3) entry into museums, botanical or similar gardens and zoos; 4) sporting events, and 5) entry into major league baseball games; and 6) all other events. Localities that are authorized to impose the tax may do so at different rates according to the different classifications.

Cities and towns may impose admissions taxes without limitation under their general taxing powers. Only those counties that are authorized by statute may impose the tax, and must do so according to the limitations set forth by statute. Under *Va. Code* § 58.1-3818, the counties of Fairfax, Arlington, Dinwiddie, Prince George, Brunswick, Culpeper, and New Kent may impose an admissions tax on admission for any event at a maximum rate of ten percent. Charlotte County, Clarke County, Madison County, Nelson County and Sussex County may levy the tax at a maximum rate of ten percent only on admissions charged for spectator events.

### 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.

Arlington County is authorized to levy transient occupancy tax at a maximum rate of five percent, provided the county's local license tax on facilities offering guest rooms rented out for continuous occupancy for fewer than 30 consecutive days does not exceed one percent of the gross receipts from these facilities. Arlington County's authorization to impose an additional transient occupancy tax at a maximum rate of one-fourth of one percent of the amount of the charge for accommodations expired on January 1, 2012.

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. Any additional tax imposed in Fairfax County

does not apply within the limits of any town located in Fairfax County unless the governing body of the town consents.

In addition to the local transient occupancy taxes, legislation enacted in 2013 imposes a new two percent regional transient occupancy tax in the Northern Virginia region. The Northern Virginia region consists of the Counties of Arlington, Fairfax, Loudoun and Prince William and the Cities of Alexandria, Fairfax, Falls Church, Manassas, and Manassas Park. Although the regional transient occupancy tax is a state tax, it is administered and collected by the locality in which the room or space is located in the same manner as its current local transient occupancy tax.

Cities and towns are granted authority to impose a transient occupancy tax without any rate limitation under their general taxing powers.

### Local Cigarette Taxes

All cities and towns with general taxing powers are already currently authorized to impose a cigarette tax with no rate limitations. According to *Virginia Local Tax Rates, 2014*, published by the Weldon Cooper Center for Public Service, 29 cities and 52 towns currently report imposing a cigarette tax. Only two counties, Arlington and Fairfax, are authorized to impose a local cigarette tax, which is limited to the amount of the state cigarette tax rate, currently 30 cents per pack of 20 cigarettes. Both Arlington County and Fairfax County impose the local cigarette tax pursuant to *Va. Code* § 58.1-3831 at the maximum allowed rate of 30 cents per pack of 20 cigarettes.

### Meals Tax

Every county is authorized to levy a tax on food and beverages sold for human consumption, by a restaurant at a maximum rate of four percent of the amount charged for such food and beverages. The tax must not be levied on food and beverages sold: i) through vending machines; or by: ii) boardinghouses that do not accommodate transients; iii) cafeterias operated by industrial plants for employees; iv) nonprofit cafeterias in public schools; v) hospitals, nursing homes, medical clinics, convalescent homes; vi) day care centers; vii) home for the aged, infirm, handicapped, battered women, narcotic addicts, or alcoholics; and viii) age-restricted apartment complexes. The tax also may not be levied on i) discretionary gratuities; ii) mandatory gratuities and service charges that do not exceed 20% of the sales price; and iii) alcoholic beverages sold in factory sealed containers. The tax does apply to prepared foods ready for human consumption sold at grocery stores and convenience stores.

In order for a locality to impose the tax, it must be approved in a referendum within the county. The Counties of Arlington, Frederick, Montgomery, Roanoke, and Rockbridge may levy a food and beverages tax without approval in a referendum, if their governing bodies hold a public hearing before adopting the tax, and by unanimous vote, adopt the tax by local ordinance.

Any city or town having general taxing powers as established by charter may impose a local meals tax through the adoption of an ordinance by the local governing body.

## Proposal

This bill would grant counties with a population density greater than 2,000 persons per square mile all the powers of taxation that are currently granted to cities and towns pursuant to the Uniform Charter Powers Act, regardless of whether such powers are established by county charter.

The effective date of this bill is not specified.

## Similar Legislation

**House Bill 1198** would increase the rate that the Counties of Arlington and Fairfax are authorized to impose the local cigarette tax from the amount levied under state law or five cents per pack, whichever is greater, to double the amount levied under state law or five cents per pack, whichever is greater. The portion of the revenues derived from the imposition of the tax that is greater than 30 cents per pack would be required to be annually dedicated to elementary or secondary education.

cc : Secretary of Finance

Date: 1/30/2016 AM  
DLAS File Name: HB546F161