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HOUSE BILL NO. 1390

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on Finance
on February 27, 2018)

(Patron Prior to Substitute—Delegate Aird)

A *BILL to amend and reenact §§ 15.2-2607 and 58.1-3833 of the Code of Virginia, relating to bond referenda; authorizing localities to make bond issuance contingent on enactment of a food and beverage tax.*

Be it enacted by the General Assembly of Virginia:

1. That §§ 15.2-2607 and 58.1-3833 of the Code of Virginia are amended and reenacted as follows:
§ 15.2-2607. Provisions which may be embodied in bond ordinances or resolution; adoption; filing copy with court.

The governing body of any locality, subject to the approval of a majority of the qualified voters of the locality voting on the issuance of such bonds if required by the Constitution of Virginia or by this chapter, is authorized to provide by ordinance or resolution for the issuance, at one time or from time to time, of bonds of the locality for the purposes set forth in and subject to the provisions of this chapter.

Any such ordinance or resolution may contain provisions which shall be a part of the contract with the owners of the bonds as to:

1. The payment of the principal of and premium, if any, and the interest on bonds from (i) ad valorem taxes to be levied without limitation as to rate or amount on all property subject to taxation or (ii) county food and beverage taxes levied pursuant to Article 7.1 (§ 58.1-3833 et seq.) of Chapter 38 of Title 58.1 and the pledging of the full faith and credit of the locality to secure the payment of bonds;

2. The pledge of specified revenues of the locality, other than taxes, ad valorem or otherwise, including, without limitation, the pledge of the revenues of any revenue-producing undertaking or undertakings, to the payment of the principal of and premium, if any, and interest on bonds;

3. The granting of a mortgage or deed of trust lien on any specific revenue-producing undertaking or undertakings to secure the payment of the principal of and premium, if any, and interest on bonds issued to finance in whole or in part the costs of the undertaking or undertakings, but only if the full faith and credit of the locality is not pledged to the payment of the bonds;

4. The securing of the payment of the principal of and premium, if any, and interest on bonds by an ordinance resolution, trust agreement, indenture or other instrument, which may (i) appoint any trust company or bank having the powers of a trust company within or outside the Commonwealth as corporate trustee, (ii) set forth the rights and remedies of the bondholders and of the trustee, (iii) restrict the individual right of action by bondholders, and (iv) contain any other provisions as the governing body of the locality deems reasonable and proper for the security of the bondholders;

5. The payment of the principal of and premium, if any, and the interest on bonds from any one or more of the sources of funds provided for in this section or any combination of them and the pledging of any one or more of the sources of funds or any combination of them to secure the payment of the principal of and premium, if any and interest on bonds;

6. The rates, rents, fees, charges, taxes and other revenues or receipts of any revenue-producing undertaking or undertakings and the amounts to be raised in each year by them, and the use and disposition of such rates, rents, fees, charges, taxes and other revenues and receipts of any undertaking or undertakings;

7. The setting aside of reserves or sinking funds and the regulation and disposition of them;

8. Limitations on the right of the locality to restrict and regulate the use of any project;

9. Limitations on the purpose to which the proceeds of sale of any bonds may be applied;

10. Limitations on issuance of additional revenue bonds;

11. The procedure, if any, by which the terms of any contract with bondholders may be amended or discharged, the amount of bonds the owners of which shall consent to the amendment or abrogation, and the manner in which the consent must be given;

12. Conferring upon the bondholders or the trustee under any ordinance, resolution, trust agreement, indenture or other instrument remedies for enforcing the rights of the bondholders and requiring the governing body to carry out any agreement with the bondholders;

13. Any other matter required by any state or federal agency as a condition precedent to the obtaining of a direct grant or grants of money for or in aid of any project or to defray or partially to defray the cost of the labor and materials employed upon any project, or to obtain a loan or loans of money for or in aid of any project from any state or federal agency; and

14. Any provisions necessary to qualify the interest on the bonds for exclusion from gross income for federal income tax purposes and to maintain that exclusion.

SENATE SUBSTITUTE

HB1390S1

Any ordinance or resolution authorizing the issuance of bonds may be finally adopted at the meeting at which it is introduced, which may be a regular or special meeting, by a majority of the members of the governing body. A certified copy of each such ordinance or resolution shall be filed in the circuit court having jurisdiction over the locality. When any town is situated partly in two or more counties, the certified copy of the ordinance or resolution may be presented to the circuit court for any of the counties. Except as expressly required by this article, the ordinance or resolution need not be published, posted or advertised.

§ 58.1-3833. County food and beverage tax.

A. 1. Any county is hereby authorized to levy a tax on food and beverages sold, for human consumption, by a restaurant, as such term is defined in subdivision 9 of § 35.1-1, not to exceed four percent of the amount charged for such food and beverages. Such tax shall not be levied on food and beverages sold through vending machines or by (i) boardinghouses that do not accommodate transients; (ii) cafeterias operated by industrial plants for employees only; (iii) restaurants to their employees as part of their compensation when no charge is made to the employee; (iv) volunteer fire departments and volunteer emergency medical services agencies; nonprofit churches or other religious bodies; or educational, charitable, fraternal, or benevolent organizations the first three times per calendar year and, beginning with the fourth time, on the first \$100,000 of gross receipts per calendar year from sales of food and beverages (excluding gross receipts from the first three times), as a fundraising activity, the gross proceeds of which are to be used by such church, religious body or organization exclusively for nonprofit educational, charitable, benevolent, or religious purposes; (v) churches that serve meals for their members as a regular part of their religious observances; (vi) public or private elementary or secondary schools or institutions of higher education to their students or employees; (vii) hospitals, medical clinics, convalescent homes, nursing homes, or other extended care facilities to patients or residents thereof; (viii) day care centers; (ix) homes for the aged, infirm, handicapped, battered women, narcotic addicts, or alcoholics; or (x) age-restricted apartment complexes or residences with restaurants, not open to the public, where meals are served and fees are charged for such food and beverages and are included in rental fees. Also, the tax shall not be levied on food and beverages: (a) when used or consumed and paid for by the Commonwealth, any political subdivision of the Commonwealth, or the United States; or (b) provided by a public or private nonprofit charitable organization or establishment to elderly, infirm, blind, handicapped, or needy persons in their homes, or at central locations; or (c) provided by private establishments that contract with the appropriate agency of the Commonwealth to offer food, food products, or beverages for immediate consumption at concession prices to elderly, infirm, blind, handicapped, or needy persons in their homes or at central locations.

2. Grocery stores and convenience stores selling prepared foods ready for human consumption at a delicatessen counter shall be subject to the tax, for that portion of the grocery store or convenience store selling such items.

3. This tax shall be levied only if the tax is approved in a referendum within the county which shall be held in accordance with § 24.2-684 and initiated either by a resolution of the board of supervisors or on the filing of a petition signed by a number of registered voters of the county equal in number to 10 percent of the number of voters registered in the county, as appropriate on January 1 of the year in which the petition is filed with the court of such county. However, no referendum initiated by a resolution of the board of supervisors shall be authorized in a county in the three calendar years subsequent to the electoral defeat of any referendum held pursuant to this section in such county. The clerk of the circuit court shall publish notice of the election in a newspaper of general circulation in the county once a week for three consecutive weeks prior to the election. If the voters affirm the levy of a local meals tax, the tax shall be effective in an amount and on such terms as the governing body may by ordinance prescribe. If such resolution of the board of supervisors or such petition states for what projects and/or purposes the revenues collected from the tax are to be used, then the question on the ballot for the referendum shall include language stating for what projects and/or purposes the revenues collected from the tax are to be used.

4. Any referendum held for the purpose of approving a county food and beverage tax pursuant to this section shall, in the language of the ballot question presented to voters, contain the following text in a paragraph unto itself: "If this food and beverage tax is adopted and a maximum tax rate of four percent is imposed, then the total tax imposed on all prepared food and beverage shall be..." followed by the total, expressed as a percentage, of all existing ad valorem taxes applicable to the transaction added to the four percent county food and beverage tax to be approved by the referendum.

5. *Notwithstanding any other provision of this section, if a county that has not imposed a county food and beverage tax adopts an ordinance or resolution pursuant to subdivision 1 of § 15.2-2607 providing for the payment of the principal and premium, if any, and interest on bonds issued in accordance with the Public Finance Act (§ 15.2-2600 et seq.) from revenue collected from a county food and beverage tax, then the ballot may provide, as a single question:*

a. The purpose or purposes of the bonds to be issued;

b. The estimated maximum amount of such bonds proposed in the notice required in subsection A of § 15.2-2606;

c. The request for approval by the voters of a county food and beverage tax authorized and levied in accordance with subdivision 3;

d. The language required to be included in the ballot question as set forth in subdivision 4; and

e. An explanation that the bonds shall be issued only if the county food and beverage tax is approved in the referendum.

Any referendum placed on the ballot pursuant to this subdivision 5 shall be submitted according to the procedures specified in § 24.2-684.

The term "beverage" as set forth herein shall mean alcoholic beverages as defined in § 4.1-100 and nonalcoholic beverages served as part of a meal. The tax shall be in addition to the sales tax currently imposed by the county pursuant to the authority of Chapter 6 (§ 58.1-600 et seq.). Collection of such tax shall be in a manner prescribed by the governing body.

B. Notwithstanding the provisions of subsection A, Roanoke County, Rockbridge County, Frederick County, Arlington County, and Montgomery County, are hereby authorized to levy a tax on food and beverages sold for human consumption by a restaurant, as such term is defined in § 35.1-1 and as modified in subsection A above and subject to the same exemptions, not to exceed four percent of the amount charged for such food and beverages, provided that the governing body of the respective county holds a public hearing before adopting a local food and beverage tax, and the governing body by unanimous vote adopts such tax by local ordinance. The tax shall be effective in an amount and on such terms as the governing body may by ordinance prescribe.

C. Nothing herein contained shall affect any authority heretofore granted to any county, city or town to levy a meals tax. The county tax limitations imposed pursuant to § 58.1-3711 shall apply to any tax levied under this section, mutatis mutandis. All food and beverage tax collections and all meals tax collections shall be deemed to be held in trust for the county, city or town imposing the applicable tax. The wrongful and fraudulent use of such collections other than remittance of the same as provided by law shall constitute embezzlement pursuant to § 18.2-111.

D. No county which has heretofore adopted an ordinance pursuant to subsection A shall be required to submit an amendment to its meals tax ordinance to the voters in a referendum.

E. Notwithstanding any other provision of this section, no locality shall levy any tax under this section upon (i) that portion of the amount paid by the purchaser as a discretionary gratuity in addition to the sales price; (ii) that portion of the amount paid by the purchaser as a mandatory gratuity or service charge added by the restaurant in addition to the sales price, but only to the extent that such mandatory gratuity or service charge does not exceed 20 percent of the sales price; or (iii) alcoholic beverages sold in factory sealed containers and purchased for off-premises consumption or food purchased for human consumption as "food" is defined in the Food Stamp Act of 1977, 7 U.S.C. § 2012, as amended, and federal regulations adopted pursuant to that act, except for the following items: sandwiches, salad bar items sold from a salad bar, prepackaged single-serving salads consisting primarily of an assortment of vegetables, and nonfactory sealed beverages.