2022 SESSION

ENROLLED

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VIRGINIA ACTS OF ASSEMBLY — CHAPTER

2 An Act to amend and reenact §§ 58.1-3851.1 and 58.1-3851.2 of the Code of Virginia and to amend the
3 Code of Virginia by adding in Article 10 of Chapter 38 of Title 58.1 a section numbered
4 58.1-3851.3, relating to sales and use tax; entitlement to revenues from tourism projects.

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Approved

[H 1308]

7 Be it enacted by the General Assembly of Virginia:

8 1. That §§ 58.1-3851.1 and 58.1-3851.2 of the Code of Virginia are amended and reenacted and
9 that the Code of Virginia is amended by adding in Article 10 of Chapter 38 of Title 58.1 a section
10 numbered 58.1-3851.3 as follows:

§ 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.

18 B. 1. If a locality has established a tourism zone pursuant to § 58.1-3851, has adopted an ordinance 19 establishing a tourism plan as determined by guidelines set forth by the Virginia Tourism Authority, and 20 has adopted an ordinance authorizing a tourism project to meet a deficiency identified in the adopted 21 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 22 23 authorized tourism project shall be entitled to an amount equal to the revenues generated by a one 24 percent state sales and use tax on transactions taking place on the premises of the authorized tourism 25 project. The entitlement shall be contingent on the locality enacting an ordinance designating certain 26 local tax revenues to the tourism project pursuant to subsection C and shall be subject to the conditions 27 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 28 29 until the gap financing is paid in full. Entitled sales and use tax revenues shall be applied solely to 30 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 *and use*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.

36 3. The state sales and use tax entitlement established in subdivision 1 shall not include any (i) sales
37 and use tax revenues dedicated pursuant to § 58.1-638 or 58.1-638.1 or (ii) revenues generated pursuant
38 to Chapter 766 of the Acts of Assembly of 2013, the additional state sales and use tax in certain
39 counties and cities assessed pursuant to subsection B of § 58.1-603.1 and subsection B of § 58.1-604.01;
40 or the additional state sales and use tax in certain counties and cities of historic significance imposed
41 under § 58.1-603.2.

42 C. If a locality has adopted the ordinances required by subdivision B 1 to entitle an authorized 43 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 44 45 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 46 equivalent amount of other local tax revenues as designated by the ordinance, generated by transactions 47 taking place on the premises of the authorized tourism project shall be applied to the payment of 48 principal and interest on the qualified gap financing. Such revenues shall be remitted in the same 49 50 manner, for the same time period, and under the same conditions as the remittances paid in accordance with subsection B, mutatis mutandis. 51

52 D. Prior to any entitlement to tax revenues for an authorized tourism project pursuant to subsections 53 B and C, the owner of such project shall have a minimum of 70 percent of funding for the project in 54 place through debt or equity, enter into a performance agreement with the economic development 55 authority or political subdivision, and enter into an agreement to pay an access fee. The access fee shall 56 be equivalent to the state sales *and use* tax revenue generated by and returned to the project pursuant to ENROLLED

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subdivision B 1 and shall be collected by the locality and remitted to the economic development 57 58 authority on a quarterly basis. The access fee and the sales and use tax entitlement shall be used solely 59 to make payments of principal and interest on the qualified gap funding financing.

60 E. In the event that the total amount of sales and use tax entitlement and the access fee exceeds any 61 annual debt service on the qualified gap financing, such excess shall be paid to the principal of the loan 62 until the qualified gap financing is paid in full.

63 F. A tourism project that is entitled to and receives revenues pursuant to this section shall not be 64 eligible to receive revenues pursuant to § 58.1-608.3 or, 58.1-3851.2, or 58.1-3851.3. 65

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

66 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. 67 68

"Gap financing" means debt financing to compensate for a shortfall in project funding between the 69 70 expected development costs of an authorized tourism project of regional significance and the debt and equity capital provided by the developer of the project. 71

"Tourism project of regional significance" means a tourism project that meets the requirements set 72 73 forth in subdivision B 1 and that additionally represents a new capital investment of at least \$100 74 million in a new tourism facility or in a substantial and significant renovation or expansion of an 75 existing tourism facility by a private entity in the Commonwealth and, as determined by the Virginia 76 Tourism Authority, that supports increased hotel occupancy, new job creation, an increase in the number 77 of out-of-state visitors to the Commonwealth, and other factors of significant fiscal and economic 78 impact. Any property, real, personal, or mixed, that is necessary or complementary, such as arenas, 79 sporting facilities, hotels, and other tourism venues, developed in connection with any such tourism 80 project of regional significance, including facilities for food preparation and serving, parking facilities, and administrative offices, is encompassed within this definition, as is theme-related retail activity by 81 vendors or the private entity owner of the project that occurs on site and directly supports the tourism mission of the project. A tourism project of regional significance does not include, for purposes of this 82 83 84 section, general retail outlets, ancillary retail structures not directly related to the tourism purpose of the 85 project or other retail establishments commonly referred to as shopping centers or malls or residential condominiums, townhomes, or other residential units. 86

87 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 88 89 has adopted an ordinance authorizing a tourism project of regional significance to meet a deficiency 90 identified in the adopted tourism plan approved by the Virginia Tourism Authority, and if the tourism 91 project of regional significance has been certified by the State Comptroller as qualifying for the 92 entitlement to tax revenues authorized by this section, the authorized tourism project of regional significance shall be entitled to an amount equal to the revenues generated by a 1.5 percent state sales 93 94 and use tax on transactions taking place on the premises of the authorized tourism project of regional significance. The entitlement shall be contingent on the locality's enacting an ordinance designating 95 96 certain local revenues to the project pursuant to subsection C and shall be subject to the conditions set 97 forth in subsection D. The purpose of such entitlement shall be to assist the developer with obtaining 98 gap financing and making payments of principal and interest thereon.

99 2. On a quarterly basis, the Tax Commissioner shall certify the amount of the entitled sales and use 100 tax revenues to the Comptroller, who shall remit such revenues to the county or city in which the authorized tourism project of regional significance is located. The county or city shall remit the revenues 101 102 to the economic development authority. No payments herein shall be made until an agreement exists 103 between the developer of the authorized tourism project of regional significance and the economic 104 development authority. The entitlement shall continue until the gap financing is paid in full or for the 105 length of time specified in the agreement between the developer and the economic development 106 authority, but in no event shall the entitlement extend beyond 20 years from the date of the initial 107 entitlement. Entitled sales and use tax revenues shall be applied solely to payments of principal and 108 interest on the qualified gap financing.

109 3. The state sales and use tax entitlement established in subdivision 1 shall not include any (i) sales 110 and use tax revenues dedicated pursuant to § 58.1-638 or 58.1-638.1 or (ii) revenues generated pursuant 111 to Chapter 766 of the Acts of Assembly of 2013, the additional state sales and use tax in certain 112 counties and cities assessed pursuant to subsection B of § 58.1-603.1 and subsection B of § 58.1-604.01; 113 or the additional state sales and use tax in certain counties and cities of historic significance imposed 114 under § 58.1-603.2.

115 C. If a locality has adopted the ordinances required by subdivision B 1 to entitle an authorized 116 tourism project of regional significance to an amount equal to the revenues generated by a 1.5 percent 117 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 118 119 project of regional significance is located shall also direct by ordinance that an amount of local 120 revenues, from any authorized source of revenues available to the locality, equal to the revenues 121 generated by at least a 1.5 percent state sales and use tax generated by transactions taking place on the 122 premises of the authorized tourism project of regional significance shall be applied to the payment of 123 principal and interest on the qualified gap financing. Such revenues shall be remitted in the same 124 manner, for the same time period, and under the same conditions as the remittances paid in accordance 125 with subsection B, mutatis mutandis.

126 D. Prior to any entitlement to tax revenues for an authorized tourism project of regional significance 127 pursuant to subsections B and C, the owner of such project shall have a minimum of 80 percent of 128 funding for the project in place through debt or equity, enter into a performance agreement with the 129 economic development authority or political subdivision, and enter into an agreement to pay an access 130 fee. The access fee shall be equivalent to the state sales and use 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 131 economic development authority on a quarterly basis. The access fee and the state and local 132 133 contributions pursuant to this section shall be used solely to make payments of principal and interest on 134 the qualified gap funding financing.

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.

i. 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.

144 G. An authorized tourism project of regional significance that is entitled to and receives revenues **145** pursuant to this section shall not be eligible to receive revenues pursuant to § 58.1-608.3 or, **146** 58.1-3851.1, or 58.1-3851.3.

§ 58.1-3851.3. Entitlement to tax revenues from a major tourism project.

148 *A. For purposes of this section:*

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149 "Economic development authority" means a local industrial development authority or a local or
 150 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 a major tourism project and the debt and equity capital provided by the
developer of the project and any refinancing of a gap financing. "Gap financing" includes a developer's
primary debt financing, as well as any refinancing thereof, if the entitlements to tax revenues provided
under this section are pledged as collateral for such primary debt financing.

"Major tourism project" means a tourism project that meets the requirements set forth in subdivision 156 157 B 1 and that additionally represents a new capital investment of at least \$500 million in a new tourism 158 facility or in a substantial and significant renovation or expansion of an existing tourism facility by a 159 private entity in the Commonwealth, that will result in the creation of at least 500 net new jobs, and, as 160 determined by the Virginia Tourism Authority, that supports increased hotel occupancy, an increase in 161 the number of out-of-state visitors to the Commonwealth, and other factors of significant fiscal and 162 economic impact. Any property, real, personal, or mixed, that is necessary or complementary, such as arenas, sporting facilities, hotels, and other tourism venues, developed in connection with any such 163 164 major tourism project, including facilities for food preparation and serving, parking facilities, and administrative offices, is encompassed within this definition, as is theme-related retail activity that 165 occurs on site and directly supports the tourism mission of the project. "Major tourism project" does not 166 167 include, for purposes of this section, (i) general retail outlets, ancillary retail structures not directly 168 related to the tourism purpose of the project, or other retail establishments commonly referred to as 169 shopping centers or malls or (ii) residential condominiums, townhomes, or other residential units.

170 B. 1. If a locality has established a tourism zone pursuant to § 58.1-3851, has adopted an ordinance 171 establishing a tourism plan as determined by guidelines set forth by the Virginia Tourism Authority, and 172 has adopted an ordinance authorizing a major tourism project to meet a deficiency identified in the 173 adopted tourism plan approved by the Virginia Tourism Authority, and if the major tourism project has 174 been certified by the State Comptroller as qualifying for the entitlement to tax revenues authorized by 175 this section, the major tourism project shall be entitled to an amount equal to the revenues generated 176 by a two percent state sales and use tax on transactions taking place on the premises of the authorized 177 major tourism project. The entitlement shall be contingent on the locality's enacting an ordinance 178 designating certain local revenues to the project pursuant to subsection C and shall be subject to the

179 conditions set forth in subsection D. The entitlement shall also be subject to review and approval by the
180 MEI Project Approval Commission pursuant to § 30-310. The purpose of such entitlement shall be to
181 assist the developer with obtaining gap financing and making payments of principal and interest
182 thereon.

183 2. On a quarterly basis, the Tax Commissioner shall certify the amount of the entitled sales and use 184 tax revenues to the Comptroller, who shall remit such revenues to the county or city in which the 185 authorized major tourism project is located. The county or city shall remit the revenues to the economic 186 development authority or such other entity as the economic development authority shall designate. No 187 payments herein shall be made until an agreement exists between the developer of the authorized major 188 tourism project and the economic development authority. The entitlement shall continue until the gap 189 financing is paid in full or for the length of time specified in the agreement between the developer and 190 the economic development authority, but in no event shall the entitlement extend beyond 20 years from 191 the date of the accrual of the initial entitlement. Entitled sales and use tax revenues shall be applied 192 solely to payments of principal and interest on the qualified gap financing.

193 3. The state sales and use tax entitlement established in subdivision 1 shall not include any (i) sales 194 and use tax and revenues dedicated pursuant to § 58.1-638 or 58.1-638.1 or (ii) revenues generated 195 pursuant to Chapter 766 of the Acts of Assembly of 2013, the additional state sales and use tax in 196 certain counties and cities assessed pursuant to subsection B of § 58.1-603.1 and subsection B of 197 § 58.1-604.01; or the additional state sales and use tax in certain counties and cities of historic 198 significance imposed under § 58.1-603.2.

199 \hat{C} . If a locality has adopted the ordinances required by subdivision B 1 to entitle an authorized 200 major tourism project to an amount equal to the revenues generated by a two percent state sales and 201 use tax on transactions taking place on the premises of the authorized major tourism project, or 202 subsequently acquired premises for the major tourism project, the local governing body of the county or 203 city in which the authorized major tourism project is located shall also direct by ordinance that an 204 amount of local revenues, from any authorized source of revenues available to the locality, equal to the 205 revenues generated by at least a two percent state sales and use tax generated by transactions taking 206 place on the premises of the authorized major tourism project, or subsequently acquired premises for the authorized major tourism project, shall be applied to the payment of principal and interest on the 207 208 qualified gap financing. Such revenues shall be remitted in the same manner, for the same time period, 209 and under the same conditions as the remittances paid in accordance with subsection B, mutatis 210 mutandis.

211 D. Prior to any entitlement to tax revenues for a major tourism project pursuant to subsections B 212 and C, the owner of such project shall have a minimum of 70 percent of funding for the project in place 213 through debt or equity, enter into a performance agreement with the economic development authority or 214 political subdivision, and enter into an agreement to pay an access fee. The access fee shall be 215 equivalent to the state sales and use tax revenue generated by and returned to the project pursuant to 216 subdivision B 1 and shall be collected by the locality and remitted to the economic development 217 authority or such other entity as the economic development authority shall designate on a quarterly 218 basis. The access fee and the state and local contributions pursuant to this section shall be used solely 219 to make payments of principal and interest on the qualified gap financing.

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 major tourism project.

229 *G.* A major tourism project that is entitled to and receives revenues pursuant to this section shall not be eligible to receive revenues pursuant to § 58.1-608.3, 58.1-3851.1, or 58.1-3851.2.