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HOUSE BILL NO. 90

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on Finance and Appropriations
on March 1, 2022)

(Patron Prior to Substitute—Delegate McNamara)

A BILL to amend and reenact §§ 58.1-603.1, as it is currently effective and as it may become effective, 58.1-603.2, 58.1-604.01, as it is currently effective and as it may become effective, 58.1-605.1, 58.1-606.1, and 58.1-611.1 of the Code of Virginia, relating to sales tax; exemption for food purchased for human consumption and essential personal hygiene products.

Be it enacted by the General Assembly of Virginia:

1. That §§ 58.1-603.1, as it is currently effective and as it may become effective, 58.1-603.2, 58.1-604.01, as it is currently effective and as it may become effective, 58.1-605.1, 58.1-606.1, and 58.1-611.1 of the Code of Virginia are amended and reenacted as follows:

§ 58.1-604.01. (For contingent expiration dates, see Acts 2013, c. 766, and Acts 2020, c. 1235) Additional state use tax in certain counties and cities.

A. In addition to the use tax imposed pursuant to § 58.1-604, there is hereby levied and imposed in each county and city located in a Planning District established pursuant to Chapter 42 (§ 15.2-4200 et seq.) of Title 15.2 that (i) as of January 1, 2013, has a population of 1.5 million or more, as shown by the most recent United States Census, has not less than 1.2 million motor vehicles registered therein, and has a total transit ridership of not less than 15 million riders per year across all transit systems within the Planning District or (ii) as shown by the most recent United States Census meets the population criteria set forth in clause (i) and also meets the vehicle registration and ridership criteria set forth in clause (i), a retail use tax at the rate of 0.70 percent. In any case in which the tax is imposed pursuant to clause (ii) such tax shall be effective beginning on the July 1 immediately following the calendar year in which all of the criteria have been met.

B. In addition to the sales tax imposed pursuant to § 58.1-603, there is hereby levied and imposed in each county and city located in Planning District 15 established pursuant to Chapter 42 (§ 15.2-4200 et seq.) of Title 15.2 a retail use tax at the rate of 0.70 percent. In no case shall an additional use tax be imposed pursuant to both clause (ii) of subsection A and this subsection.

C. The tax imposed pursuant to subsections A and B ~~shall not be levied upon food purchased for human consumption and essential personal hygiene products, as such terms are defined in § 58.1-611.1. Such tax~~ shall be added to the rate of the state use tax imposed pursuant to § 58.1-604 in such county and city and shall be subject to all the provisions of this chapter and the rules and regulations published with respect thereto. No discount under § 58.1-622 shall be allowed for the tax described under this section. Such tax shall be administered and collected by the Tax Commissioner in the same manner and subject to the same penalties as provided for the state use tax under § 58.1-604.

D. The revenue generated and collected pursuant to the tax authorized under this section, less the applicable portion of any refunds to taxpayers, shall be deposited by the Comptroller into special funds established by law. In the case of Planning District 8, the revenue generated and collected therein shall be deposited into the fund established in § 33.2-2509. In the case of Planning District 23, the revenue generated and collected therein shall be deposited into the fund established in § 33.2-2600. In the case of Planning District 15, the revenue generated and collected therein shall be deposited into the fund established in § 33.2-3701. For any additional planning districts that may become subject to this section, funds shall be established by appropriate legislation.

§ 58.1-604.01. (For contingent effective date, see Acts 2020, c. 1235; for contingent expiration date, see Acts 2013, c. 766) Additional state use tax in certain counties and cities.

In addition to the use tax imposed pursuant to § 58.1-604, there is hereby levied and imposed in each county and city located in a Planning District established pursuant to Chapter 42 (§ 15.2-4200 et seq.) of Title 15.2 that (i) as of January 1, 2013, has a population of 1.5 million or more, as shown by the most recent United States Census, has not less than 1.2 million motor vehicles registered therein, and has a total transit ridership of not less than 15 million riders per year across all transit systems within the Planning District or (ii) as shown by the most recent United States Census meets the population criteria set forth in clause (i) and also meets the vehicle registration and ridership criteria set forth in clause (i), a retail use tax at the rate of 0.70 percent. In any case in which the tax is imposed pursuant to clause (ii) such tax shall be effective beginning on the July 1 immediately following the calendar year in which all of the criteria have been met. ~~Such tax shall not be levied upon food purchased for human consumption and essential personal hygiene products, as such terms are defined in § 58.1-611.1. Such~~ tax shall be added to the rate of the state use tax imposed pursuant to § 58.1-604 in such county and city and shall be subject to all the provisions of this chapter and the rules and regulations published with

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60 respect thereto. No discount under § 58.1-622 shall be allowed for the tax described under this section.
61 Such tax shall be administered and collected by the Tax Commissioner in the same manner and subject
62 to the same penalties as provided for the state use tax under § 58.1-604.

63 The revenue generated and collected pursuant to the tax authorized under this section, less the
64 applicable portion of any refunds to taxpayers, shall be deposited by the Comptroller into special funds
65 established by law. In the case of Planning District 8, the revenue generated and collected therein shall
66 be deposited into the fund established in § 33.2-2509. In the case of Planning District 23, the revenue
67 generated and collected therein shall be deposited into the fund established in § 33.2-2600. For any
68 additional Planning Districts that may become subject to this section, funds shall be established by
69 appropriate legislation.

70 **§ 58.1-605.1. Additional local sales tax in certain localities; use of revenues for construction or**
71 **renovation of schools.**

72 A. 1. In addition to the sales tax authorized under § 58.1-605, a qualifying locality may levy a
73 general retail sales tax at a rate not to exceed one percent as determined by its governing body to
74 provide revenue solely for capital projects for the construction or renovation of schools in each such
75 locality. Such tax shall be added to the rates of the state and local sales tax imposed by this chapter and
76 shall be subject to all the provisions of this chapter and the rules and regulations published with respect
77 thereto. No discount under § 58.1-622 shall be allowed on this local sales tax.

78 2. Any tax imposed pursuant to this section shall expire (i) if the capital projects for the construction
79 or renovation of schools are to be financed by bonds or loans, on the date by which such bonds or loans
80 shall be repaid or (ii) if the capital projects for the construction or renovation of schools are not to be
81 financed by bonds or loans, on a date chosen by the governing body and specified in any resolution
82 passed pursuant to the provisions of subdivision B 1. Such expiration date shall not be more than 20
83 years after the date of the resolution passed pursuant to the provisions of subdivision B 1.

84 B. 1. This tax may be levied only if the tax is approved in a referendum within the qualifying
85 locality held in accordance with § 24.2-684 and initiated by a resolution of the local governing body.
86 Such resolution shall state (i) if the capital projects for the construction or renovation of schools are to
87 be financed by bonds or loans, the date by which such bonds or loans shall be repaid or (ii) if the
88 capital projects for the construction or renovation of schools are not to be financed by bonds or loans, a
89 specified date on which the sales tax shall expire.

90 2. The clerk of the circuit court shall publish notice of the referendum in a newspaper of general
91 circulation in the qualifying locality once a week for three consecutive weeks prior to the election. The
92 question on the ballot for the referendum shall include language stating (i) that the revenues from the
93 sales tax shall be used solely for capital projects for the construction or renovation of schools and (ii)
94 the date on which the sales tax shall expire.

95 C. The governing body of the qualifying locality, if it elects to impose a local sales tax under this
96 section after approval at a referendum as provided in subsection B shall do so by the adoption of an
97 ordinance stating its purpose and referring to this section and providing that such ordinance shall be
98 effective on the first day of a month at least 120 days after its adoption. Such ordinance shall state the
99 date on which the sales tax shall expire. A certified copy of such ordinance shall be forwarded to the
100 Tax Commissioner so that it will be received within five days after its adoption.

101 D. Any local sales tax levied under this section shall be administered and collected by the Tax
102 Commissioner in the same manner and subject to the same exemptions and penalties as provided for the
103 state sales tax; ~~however, the local sales tax levied under this section shall not be levied on food~~
104 ~~purchased for human consumption or essential personal hygiene products, as such terms are defined in~~
105 ~~§ 58.1-611.1.~~

106 E. All local sales tax moneys collected by the Tax Commissioner under this section shall be paid
107 into the state treasury to the credit of a special fund that is hereby created on the Comptroller's books
108 for each qualifying locality under the name "Collections of Additional Local Sales Taxes in ____
109 (INSERT NAME OF THE QUALIFYING LOCALITY)." Each fund shall be administered as provided
110 in § 58.1-605. A separate fund shall be created for each qualifying locality. Only local sales tax moneys
111 collected in that qualifying locality shall be deposited in that locality's fund.

112 F. As soon as practicable after the local sales tax moneys have been paid into the state treasury in
113 any month for the preceding month, the Comptroller shall draw his warrant on the State Treasurer in the
114 proper amount in favor of each qualifying locality, and such payments shall be charged to the account
115 of the qualifying locality under its special fund created by this section. If errors are made in any such
116 payment, or adjustments are otherwise necessary, whether attributable to refunds to taxpayers or to some
117 other fact, the errors shall be corrected and adjustments made in the payments for the next two months
118 as follows: one-half of the total adjustment shall be included in the payment for each of the next two
119 months. In addition, the payment shall include a refund of amounts erroneously not paid to each
120 qualifying locality and not previously refunded during the three years preceding the discovery of the
121 error. A correction and adjustment in payments described in this subsection due to the misallocation of

funds by the dealer shall be made within three years of the date of the payment error.

G. The revenues from this tax shall be used solely for capital projects for new construction or major renovation of schools in the qualifying locality, including bond and loan financing costs related to such construction or renovation.

§ 58.1-606.1. Additional local use tax in certain localities; use of revenues for construction or renovation of schools.

A. 1. The governing body of a qualifying locality may levy a use tax at the rate of such sales tax under § 58.1-605.1 to provide revenue for capital projects for the construction or renovation of schools in such locality. Such tax shall be added to the rates of the state and local use tax imposed by this chapter and shall be subject to all the provisions of this chapter, and all amendments thereof, and the rules and regulations published with respect thereto, except that no discount under § 58.1-622 shall be allowed on a local use tax.

2. Any tax imposed pursuant to this section shall expire (i) if the capital projects for the construction or renovation of schools are to be financed by bonds or loans, on the date by which such bonds or loans shall be repaid or (ii) if the capital projects for the construction or renovation of schools are not to be financed by bonds or loans, on a date chosen by the governing body and specified in any resolution passed pursuant to the provisions of subsection B. Such expiration date shall not be more than 20 years after the date of the resolution passed pursuant to the provisions of subsection B.

B. The governing body of the qualifying locality, if it elects to impose a local use tax under this section may do so only if it has previously imposed the local sales tax authorized by § 58.1-605.1, by the adoption of an ordinance stating its purpose and referring to this section and providing that the local use tax shall become effective on the first day of a month at least 120 days after its adoption. Such ordinance shall state the date on which the use tax shall expire. A certified copy of such ordinance shall be forwarded to the Tax Commissioner so that it will be received within five days after its adoption.

C. Any local use tax levied under this section shall be administered and collected by the Tax Commissioner in the same manner and subject to the same exemptions and penalties as provided for the state use tax; ~~however, the local use tax levied under this section shall not be levied on food purchased for human consumption or essential personal hygiene products, as such terms are defined in § 58.1-611.1.~~

D. The local use tax authorized by this section shall not apply to transactions to which the sales tax applies, the situs of which for state and local sales tax purposes is the locality of location of each place of business of every dealer paying the tax to the Commonwealth without regard to the locality of possible use by the purchasers. However, the local use tax authorized by this section shall apply to tangible personal property purchased outside the Commonwealth for use or consumption within the locality imposing the local use tax, or stored within the locality for use or consumption, where the property would have been subject to the sales tax if it had been purchased within the Commonwealth. The local use tax shall also apply to leases or rentals of tangible personal property where the place of business of the lessor is outside the Commonwealth and such leases or rentals are subject to the state tax. Moreover, the local use tax shall apply in all cases in which the state use tax applies.

E. Out-of-state dealers who hold certificates of registration to collect the use tax from their customers for remittance to the Commonwealth shall, to the extent reasonably practicable, in filing their monthly use tax returns with the Tax Commissioner, break down their shipments into the Commonwealth by counties and cities so as to show the county or city of destination. If, however, the out-of-state dealer is unable accurately to assign any shipment to a particular county or city, the local use tax on the tangible personal property involved shall be remitted to the Commonwealth by such dealer without attempting to assign the shipment to any county or city.

F. Local use tax revenue shall be deposited in the special fund established pursuant to subsection E of § 58.1-605.1. The Comptroller shall distribute the revenue to the qualifying locality.

G. All revenue from this local use tax revenue shall be used solely for capital projects for new construction or major renovation of schools in the qualifying locality, including bond and loan financing costs related to such construction or renovation.

§ 58.1-611.1. Exemption for food purchased for human consumption and essential personal hygiene products.

A. ~~The~~ *Before January 1, 2023, the* tax imposed by §§ 58.1-603 and 58.1-604 on food purchased for human consumption and essential personal hygiene products shall be one and one-half percent of the gross sales price. The revenue from the tax shall be distributed as follows: (i) the revenue from the tax at the rate of one-half percent shall be distributed as provided in subsection A of § 58.1-638 and (ii) the revenue from the tax at the rate of one percent shall be distributed as provided in subsections B, C, and D of § 58.1-638.

B. ~~The provisions of this section shall not affect the imposition of tax on food purchased for human consumption and essential personal hygiene products pursuant to §§ 58.1-605 and 58.1-606.~~

183 ~~C. On and after January 1, 2023, and except for taxes imposed pursuant to §§ 58.1-605 and~~
184 ~~58.1-606, no tax shall be imposed under this chapter, or pursuant to any authority granted under this~~
185 ~~chapter, on food purchased for human consumption or essential personal hygiene products.~~

186 ~~C. Beginning February 1, 2023, an amount equal to the revenue that would have been distributed~~
187 ~~pursuant to clause (ii) of subsection A shall be distributed as provided in subsections B, C, and D of~~
188 ~~§ 58.1-638 based on the estimates of the population of cities and counties ages five to 19.~~

189 ~~D. 1. As used in this section, "food purchased for human consumption" has the same meaning as~~
190 ~~"food" defined in the Food Stamp Act of 1977, 7 U.S.C. § 2012, as amended, and federal regulations~~
191 ~~adopted pursuant to that Act, except it shall not include seeds and plants which produce food for human~~
192 ~~consumption. For the purpose of this section, "food purchased for human consumption" shall not include~~
193 ~~food sold by any retail establishment where the gross receipts derived from the sale of food prepared by~~
194 ~~such retail establishment for immediate consumption on or off the premises of the retail establishment~~
195 ~~constitutes more than 80 percent of the total gross receipts of that retail establishment, including but not~~
196 ~~limited to motor fuel purchases, regardless of whether such prepared food is consumed on the premises~~
197 ~~of that retail establishment. For purposes of this section, "retail establishment" means each place of~~
198 ~~business for which any "dealer," as defined in § 58.1-612, is required to apply for and receive a~~
199 ~~certificate of registration pursuant to § 58.1-613.~~

200 ~~2. As used in this section, "essential personal hygiene products" means (i) nondurable incontinence~~
201 ~~products such as diapers, disposable undergarments, pads, and bed sheets and (ii) menstrual cups and~~
202 ~~pads, pantyliners, sanitary napkins, tampons, and other products used to absorb or contain menstrual~~
203 ~~flow. "Essential personal hygiene products" does not include any item that is otherwise exempt pursuant~~
204 ~~to this chapter.~~

205 **2. That the provisions of this act shall become effective on January 1, 2023.**