

SENATE BILL NO. 451

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on Finance and Appropriations

on February 10, 2022)

(Patrons Prior to Substitute--Senators Boysko, McDougle [SB 380], Newman [SB 571], and DeSteph

[SB 609])

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.

27 B. In addition to the sales tax imposed pursuant to § 58.1-603, there is hereby levied and
28 imposed in each county and city located in Planning District 15 established pursuant to Chapter 42 (§
29 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
30 use tax be imposed pursuant to both clause (ii) of subsection A and this subsection.

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

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

46 **§ 58.1-604.01. (For contingent effective date, see Acts 2020, c. 1235; for contingent**
47 **expiration date, see Acts 2013, c. 766) Additional state use tax in certain counties and cities.**

48 In addition to the use tax imposed pursuant to § 58.1-604, there is hereby levied and imposed in
49 each county and city located in a Planning District established pursuant to Chapter 42 (§ 15.2-4200 et
50 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
51 most recent United States Census, has not less than 1.2 million motor vehicles registered therein, and
52 has a total transit ridership of not less than 15 million riders per year across all transit systems within the
53 Planning District or (ii) as shown by the most recent United States Census meets the population criteria

54 set forth in clause (i) and also meets the vehicle registration and ridership criteria set forth in clause (i), a
55 retail use tax at the rate of 0.70 percent. In any case in which the tax is imposed pursuant to clause (ii)
56 such tax shall be effective beginning on the July 1 immediately following the calendar year in which all
57 of the criteria have been met. ~~Such tax shall not be levied upon food purchased for human consumption~~
58 ~~and essential personal hygiene products, as such terms are defined in § 58.1-611.1.~~ Such tax shall be
59 added to the rate of the state use tax imposed pursuant to § 58.1-604 in such county and city and shall be
60 subject to all the provisions of this chapter and the rules and regulations published with respect thereto.
61 No discount under § 58.1-622 shall be allowed for the tax described under this section. Such tax shall be
62 administered and collected by the Tax Commissioner in the same manner and subject to the same
63 penalties as provided for the state use tax under § 58.1-604.

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

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

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

79 2. Any tax imposed pursuant to this section shall expire (i) if the capital projects for the
80 construction or renovation of schools are to be financed by bonds or loans, on the date by which such

81 bonds or loans shall be repaid or (ii) if the capital projects for the construction or renovation of schools
82 are not to be financed by bonds or loans, on a date chosen by the governing body and specified in any
83 resolution passed pursuant to the provisions of subdivision B 1. Such expiration date shall not be more
84 than 20 years after the date of the resolution passed pursuant to the provisions of subdivision B 1.

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

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

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

102 D. Any local sales tax levied under this section shall be administered and collected by the Tax
103 Commissioner in the same manner and subject to the same exemptions and penalties as provided for the
104 state sales tax; ~~however, the local sales tax levied under this section shall not be levied on food~~
105 ~~purchased for human consumption or essential personal hygiene products, as such terms are defined in §~~
106 ~~58.1-611.1.~~

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

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

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

127 **§ 58.1-606.1. Additional local use tax in certain localities; use of revenues for construction**
128 **or renovation of schools.**

129 A. 1. The governing body of a qualifying locality may levy a use tax at the rate of such sales tax
130 under § 58.1-605.1 to provide revenue for capital projects for the construction or renovation of schools
131 in such locality. Such tax shall be added to the rates of the state and local use tax imposed by this
132 chapter and shall be subject to all the provisions of this chapter, and all amendments thereof, and the

133 rules and regulations published with respect thereto, except that no discount under § 58.1-622 shall be
134 allowed on a local use tax.

135 2. Any tax imposed pursuant to this section shall expire (i) if the capital projects for the
136 construction or renovation of schools are to be financed by bonds or loans, on the date by which such
137 bonds or loans shall be repaid or (ii) if the capital projects for the construction or renovation of schools
138 are not to be financed by bonds or loans, on a date chosen by the governing body and specified in any
139 resolution passed pursuant to the provisions of subsection B. Such expiration date shall not be more than
140 20 years after the date of the resolution passed pursuant to the provisions of subsection B.

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

147 C. Any local use tax levied under this section shall be administered and collected by the Tax
148 Commissioner in the same manner and subject to the same exemptions and penalties as provided for the
149 state use tax; ~~however, the local use tax levied under this section shall not be levied on food purchased
150 for human consumption or essential personal hygiene products, as such terms are defined in § 58.1-
151 611.1.~~

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

160 business of the lessor is outside the Commonwealth and such leases or rentals are subject to the state tax.
161 Moreover, the local use tax shall apply in all cases in which the state use tax applies.

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

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

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

174 **§ 58.1-611.1. Exemption for food purchased for human consumption and essential personal**
175 **hygiene products.**

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

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

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

187 C. Beginning February 1, 2023, an amount equal to the revenue that would have been distributed
188 pursuant to clause (ii) of subsection A shall be distributed as provided in subsections B, C, and D of §
189 58.1-638 based on the estimates of the population of cities and counties ages five to 19.

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

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

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

207 #