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SENATE BILL NO. 438

Offered January 12, 2022

Prefiled January 11, 2022

A *BILL to amend and reenact §§ 58.1-603.2, 58.1-638, and 58.1-3823 of the Code of Virginia, relating to sales tax; Historic Triangle regional tax; dedication of funds.*

Patron—Norment

Referred to Committee on Finance and Appropriations

Be it enacted by the General Assembly of Virginia:

1. That §§ 58.1-603.2, 58.1-638, and 58.1-3823 of the Code of Virginia are amended and reenacted as follows:

§ 58.1-603.2. (For contingent expiration date, see Acts 2018, c. 850) Additional state sales and use tax in certain counties and cities of historic significance; Historic Triangle Marketing Fund.

A. For purposes of this section:

"Historic Triangle" means all of the City of Williamsburg and the Counties of James City and York.

"Historic Triangle Recreational Facilities Authority" means a regional government entity created by the City of Williamsburg and the Counties of James City and York for the purpose of developing and managing recreational facilities for the benefit of such localities' residents and visitors.

B. In addition to the sales tax imposed pursuant to §§ 58.1-603 and 58.1-603.1, there is hereby levied and imposed in the Historic Triangle a retail sales tax at the rate of one percent. 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 sales tax imposed pursuant to §§ 58.1-603 and 58.1-603.1 in each 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 imposed 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 sales tax under § 58.1-603.

C. In addition to the use tax imposed pursuant to §§ 58.1-604 and 58.1-604.01, there is hereby levied and imposed in the Historic Triangle a retail use tax at the rate of one percent. 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 and 58.1-604.01 in each 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 imposed 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 as follows:

1. Fifty percent of the revenues shall be deposited into the Historic Triangle Marketing Fund created pursuant to subsection E F and used for the purposes set forth therein; and

2. Fifty percent of the revenues shall be deposited into a special fund hereby created on the books of the Comptroller under the name "Collections of Historic Triangle Sales Tax" and distributed to the locality in which the sales or use tax was collected. The revenues received by a locality pursuant to this subsection shall not be used to reduce the amount of other revenues appropriated by such locality to or for use by the Greater Williamsburg Chamber and Tourism Alliance below the amount provided in fiscal year 2018 funding dedicated by the recipient localities to regional tourism promotion and product development.

E. 1. The revenues received by a locality pursuant to subsection D shall not be used to reduce such locality's funding dedicated to regional tourism promotion and product development. In meeting the requirements of this subsection, each locality shall annually allocate the following minimum amounts, to be distributed as provided in subdivision 2:

a. The City of Williamsburg shall allocate at least \$800,000;

b. James City County shall allocate at least \$740,000; and

c. York County shall allocate at least \$438,600.

2. As determined by agreement among the City of Williamsburg and the Counties of James City and York, the amounts allocated under subdivision 1 shall be appropriated so that each of the recipients identified in this subdivision receive the following minimum amounts:

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- 59 a. *The Williamsburg Tourism Council shall receive at least \$126,600;*
60 b. *The Greater Williamsburg Chamber of Commerce shall receive at least \$402,000; and*
61 c. *The Historic Triangle Recreational Facilities Authority shall receive at least \$1,450,000.*

62 F. 1. There is hereby created in the state treasury a special nonreverting fund to be known as the
63 Historic Triangle Marketing Fund, referred to in this section as "the Fund," to be managed and
64 administered by the ~~Williamsburg Tourism Council of the Greater Williamsburg Chamber and Tourism~~
65 ~~Alliance~~. The Fund shall be established on the books of the Comptroller. All revenues generated
66 pursuant to this section shall be paid into the state treasury and credited to the Fund. Interest earned on
67 moneys in the Fund shall remain in the Fund and be credited to it. Any moneys remaining in the Fund,
68 including interest thereon, at the end of each fiscal year shall not revert to the general fund but shall
69 remain in the Fund. Moneys in the Fund shall be used solely for the purposes of marketing, advertising,
70 and promoting the Historic Triangle area as an overnight tourism destination, with the intent to attract
71 visitors from a sufficient distance so as to require an overnight stay of at least one night, as set forth in
72 this subsection. Expenditures and disbursements from the Fund shall be made by the State Treasurer on
73 warrants issued by the Comptroller upon written request signed by the Secretary of Finance.

74 2. The ~~Williamsburg Tourism Council of the Greater Williamsburg Chamber and Tourism Alliance~~
75 (the Council) *is established as an advisory board in the legislative branch of state government. The*
76 *Council* shall consist of members as follows: one member of the James City County Board of
77 Supervisors, one member of the York County Board of Supervisors; one member of the Williamsburg
78 City Council, one representative of the Colonial Williamsburg Foundation, one representative of the
79 Jamestown-Yorktown Foundation, one representative of Busch Gardens Williamsburg, one representative
80 of Historic Jamestowne, one representative of the Williamsburg Hotel and Motel Association, and one
81 representative of the Williamsburg Area Restaurant Association. ~~The Chief Executive Officer of the~~
82 ~~Virginia Tourism Alliance Chair of the Greater Williamsburg Chamber of Commerce and the Chief~~
83 ~~Executive Officer of the Virginia Tourism Corporation shall serve as ex officio, non-voting nonvoting~~
84 ~~members of the Council.~~

85 3. The Council shall establish the Historic Triangle Office of Marketing and Promotion (the Office)
86 to administer a program of marketing, advertising, and promotion to attract visitors to the Historic
87 Triangle area, as required by this subsection. The Council shall use moneys in the Fund to fund the pay
88 for necessary expenses of the Office and to fund the activities of the Office. The Office shall be
89 overseen by a professional with extensive experience in marketing or advertising and in the tourism
90 industry. The Office shall be responsible for (i) developing and implementing, in consultation with the
91 Council, long-term and short-term strategic plans for advertising and promoting the numerous facilities,
92 venues, and attractions devoted to education, historic preservation, amusement, entertainment, and dining
93 in the Historic Triangle as a cohesive and unified travel destination for local, national, and international
94 travelers; (ii) assisting, upon request, with the coordination of cross-advertising and cross-marketing
95 efforts between various tourism venues and destinations in the Historic Triangle region; (iii) identifying
96 strategies for both increasing the number of overnight visitors to the region and increasing the average
97 length of stay of tourists in the region; and (iv) performing any other function related to the promotion
98 of the Historic Triangle region as may be identified by the Council.

99 4. The Council shall report annually on its long-term and short-term strategic plans and the
100 implementation of such plans; marketing efforts; metrics regarding tourism in the Historic Triangle
101 region; use of the funds in the Fund; and any other details relevant to the work of the Council and the
102 Office. Such report shall be delivered no later than December 1 of each year to the managers or chief
103 executive officers of the City of Williamsburg and the Counties of James City and York, and to the
104 Chairmen of the House Committees on Finance and Appropriations and the Senate Committee on
105 Finance and Appropriations.

106 **§ 58.1-638. Disposition of state sales and use tax revenue.**

107 A. The Comptroller shall designate a specific revenue code number for all the state sales and use tax
108 revenue collected under the preceding sections of this chapter.

109 The sales and use tax revenue generated by the one-half percent sales and use tax increase enacted
110 by the 1986 Special Session of the General Assembly shall be paid, in the manner hereinafter provided
111 in this section, to the Commonwealth Transportation Fund established pursuant to § 33.2-1524. The
112 Fund's share of such net revenue shall be computed as an estimate of the net revenue to be received into
113 the state treasury each month, and such estimated payment shall be adjusted for the actual net revenue
114 received in the preceding month. All payments shall be made to the Fund on the last day of each
115 month.

116 B. The sales and use tax revenue generated by a one percent sales and use tax shall be distributed
117 among the counties and cities of the Commonwealth in the manner provided in subsections C and D.

118 C. The localities' share of the net revenue distributable under this section among the counties and
119 cities shall be apportioned by the Comptroller and distributed among them by warrants of the
120 Comptroller drawn on the Treasurer of Virginia as soon as practicable after the close of each month

during which the net revenue was received into the state treasury. The distribution of the localities' share of such net revenue shall be computed with respect to the net revenue received into the state treasury during each month, and such distribution shall be made as soon as practicable after the close of each such month.

D. The net revenue so distributable among the counties and cities shall be apportioned and distributed upon the basis of the latest yearly estimate of the population of cities and counties ages five to 19, provided by the Weldon Cooper Center for Public Service of the University of Virginia. Such population estimate produced by the Weldon Cooper Center for Public Service of the University of Virginia shall account for persons who are domiciled in orphanages or charitable institutions or who are dependents living on any federal military or naval reservation or other federal property within the school division in which the institutions or federal military or naval reservation or other federal property is located. Such population estimate produced by the Weldon Cooper Center for Public Service of the University of Virginia shall account for members of the military services who are under 20 years of age within the school division in which the parents or guardians of such persons legally reside. Such population estimate produced by the Weldon Cooper Center for Public Service of the University of Virginia shall account for individuals receiving services in state hospitals, state training centers, or mental health facilities, persons who are confined in state or federal correctional institutions, or persons who attend the Virginia School for the Deaf and the Blind within the school division in which the parents or guardians of such persons legally reside. Such population estimate produced by the Weldon Cooper Center for Public Service of the University of Virginia shall account for persons who attend institutions of higher education within the school division in which the student's parents or guardians legally reside. To such estimate, the Department of Education shall add the population of students with disabilities, ages two through four and 20 through 21, as provided to the Department of Education by school divisions. The revenue so apportionable and distributable is hereby appropriated to the several counties and cities for maintenance, operation, capital outlays, debt and interest payments, or other expenses incurred in the operation of the public schools, which shall be considered as funds raised from local resources. In any county, however, wherein is situated any incorporated town constituting a school division, the county treasurer shall pay into the town treasury for maintenance, operation, capital outlays, debt and interest payments, or other expenses incurred in the operation of the public schools, the proper proportionate amount received by him in the ratio that the school population of such town bears to the school population of the entire county. If the school population of any city or of any town constituting a school division is increased by the annexation of territory since the last estimate of school population provided by the Weldon Cooper Center for Public Service, such increase shall, for the purposes of this section, be added to the school population of such city or town as shown by the last such estimate and a proper reduction made in the school population of the county or counties from which the annexed territory was acquired.

E. Beginning July 1, 2000, of the remaining sales and use tax revenue, the revenue generated by a two percent sales and use tax, up to an annual amount of \$13 million, collected from the sales of hunting equipment, auxiliary hunting equipment, fishing equipment, auxiliary fishing equipment, wildlife-watching equipment, and auxiliary wildlife-watching equipment in Virginia, as estimated by the most recent U.S. Department of the Interior, Fish and Wildlife Service and U.S. Department of Commerce, Bureau of the Census National Survey of Fishing, Hunting, and Wildlife-Associated Recreation, shall be paid into the Game Protection Fund established under § 29.1-101 and shall be used, in part, to defray the cost of law enforcement. Not later than 30 days after the close of each quarter, the Comptroller shall transfer to the Game Protection Fund the appropriate amount of collections to be dedicated to such Fund. At any time that the balance in the Capital Improvement Fund, established under § 29.1-101.01, is equal to or in excess of \$35 million, any portion of sales and use tax revenues that would have been transferred to the Game Protection Fund, established under § 29.1-101, in excess of the net operating expenses of the Board, after deduction of other amounts which accrue to the Board and are set aside for the Game Protection Fund, shall remain in the general fund until such time as the balance in the Capital Improvement Fund is less than \$35 million.

F. 1. Of the net revenue generated from the one-half percent increase in the rate of the state sales and use tax effective August 1, 2004, pursuant to enactments of the 2004 Special Session I of the General Assembly, the Comptroller shall transfer from the general fund of the state treasury to the Public Education Standards of Quality/Local Real Estate Property Tax Relief Fund established under § 58.1-638.1 an amount equivalent to one-half of the net revenue generated from such one-half percent increase as provided in this subdivision. The transfers to the Public Education Standards of Quality/Local Real Estate Property Tax Relief Fund under this subdivision shall be for one-half of the net revenue generated (and collected in the succeeding month) from such one-half percent increase for the month of August 2004 and for each month thereafter.

2. Beginning July 1, 2013, of the remaining sales and use tax revenue, an amount equal to the

revenue generated by a 0.125 percent sales and use tax shall be distributed to the Public Education Standards of Quality/Local Real Estate Property Tax Relief Fund established under § 58.1-638.1, and be used for the state's share of Standards of Quality basic aid payments.

3. For the purposes of the Comptroller making the required transfers under subdivision 1 and 2, the Tax Commissioner shall make a written certification to the Comptroller no later than the twenty-fifth of each month certifying the sales and use tax revenues generated in the preceding month. Within three calendar days of receiving such certification, the Comptroller shall make the required transfers to the Public Education Standards of Quality/Local Real Estate Property Tax Relief Fund.

G. (Contingent expiration date) Beginning July 1, 2020, of the remaining sales and use tax revenue, an amount equal to 20 percent of the revenue generated by a one-half percent sales and use tax, such as that paid to the Commonwealth Transportation Fund as provided in subsection A, shall be paid to the Commonwealth Transportation Fund established pursuant to § 33.2-1524.

The Commonwealth Transportation Fund's share of the net revenue distributable under this subsection shall be computed as an estimate of the net revenue to be received into the state treasury each month, and such estimated payment shall be adjusted for the actual net revenue received in the preceding month. All payments shall be made to the Fund on the last day of each month.

H. (Contingent expiration date) 1. The additional revenue generated by increases in the state sales and use tax from Planning District 8 pursuant to §§ 58.1-603.1, 58.1-604.01, 58.1-604.1, and 58.1-614 shall be deposited by the Comptroller in the fund established under § 33.2-2509.

2. The additional revenue generated by increases in the state sales and use tax from Planning District 23 pursuant to §§ 58.1-603.1, 58.1-604.01, 58.1-604.1, and 58.1-614 shall be deposited by the Comptroller in the fund established under § 33.2-2600.

3. (For contingent expiration date, see Acts 2020, c. 1235) The additional revenue generated by increases in the state sales and use tax from Planning District 15 pursuant to §§ 58.1-603.1, 58.1-604.01, 58.1-604.1, and 58.1-614 shall be deposited by the Comptroller in the fund established under § 33.2-3701.

4. The additional revenue generated by increases in the state sales and use tax in any other Planning District pursuant to §§ 58.1-603.1, 58.1-604.01, 58.1-604.1, and 58.1-614 shall be deposited into special funds that shall be established by appropriate legislation.

5. The net revenues distributable under this subsection shall be computed as an estimate of the net revenue to be received by the state treasury each month, and such estimated payment shall be adjusted for the actual net revenue received in the preceding month. All payments shall be made to the appropriate funds on the last day of each month.

I. (For contingent expiration date, see Acts 2018, c. 850) The additional revenue generated by increases in the state sales and use tax from the Historic Triangle pursuant to § 58.1-603.2 shall be deposited by the Comptroller as follows: (i) 50 percent shall be deposited into the Historic Triangle Marketing Fund established pursuant to subsection E F of § 58.1-603.2; and (ii) 50 percent shall be deposited in the special fund created pursuant to subdivision D 2 of § 58.1-603.2 and distributed to the localities in which the revenues were collected. The net revenues distributable under this subsection shall be computed as an estimate of the net revenues to be received by the state treasury each month, and such estimated payment shall be adjusted for the actual net revenue received in the preceding month. All payments shall be made to the appropriate funds on the last day of each month.

J. Beginning July 1, 2020, the first \$40 million of sales and use taxes remitted by online retailers with a physical nexus established pursuant to subsection D of § 58.1-612 shall be deposited into the Major Headquarters Workforce Grant Fund established pursuant to § 59.1-284.31.

K. If errors are made in any distribution, or adjustments are otherwise necessary, the errors shall be corrected and adjustments made in the distribution for the next quarter or for subsequent quarters.

L. The term "net revenue," as used in this section, means the gross revenue received into the general fund or the Commonwealth Transportation Fund of the state treasury under the preceding sections of this chapter, less refunds to taxpayers.

§ 58.1-3823. Additional transient occupancy tax for certain counties.

A. Hanover County, Chesterfield County and Henrico County may impose:

1. An additional transient occupancy tax not to exceed four percent of the total price paid by the customer for the use or possession of any room or space occupied in a retail sale. The tax imposed hereunder shall not apply to rooms or spaces rented and continuously occupied by the same individual or same group of individuals for 30 or more days. The revenues collected from the additional tax shall be designated and spent for promoting tourism, travel or business that generates tourism or travel in the Richmond metropolitan area; and

2. An additional transient occupancy tax not to exceed two percent of the total price paid by the customer for the use or possession of any room or space occupied in a retail sale. The tax imposed hereunder shall not apply to rooms or spaces rented and continuously occupied by the same individual or same group of individuals for 30 or more days. The revenues collected from the additional tax shall

be designated and spent for expanding the Richmond Centre, a convention and exhibition facility in the City of Richmond.

3. An additional transient occupancy tax not to exceed one percent of the total price paid by the customer for the use or possession of any room or space occupied in a retail sale. The tax imposed hereunder shall not apply to rooms or spaces rented and continuously occupied by the same individual or group of individuals for 30 or more days. The revenues collected from the additional tax shall be designated and spent for the development and improvement of the Virginia Performing Arts Foundation's facilities in Richmond, for promoting the use of the Richmond Centre and for promoting tourism, travel or business that generates tourism and travel in the Richmond metropolitan area.

B. Any county with the county manager plan of government may impose an additional transient occupancy tax not to exceed two percent of the total price paid by the customer for the use or possession of any room or space occupied in a retail sale, provided that the county's governing body approves the construction of a county conference center. The tax imposed hereunder shall not apply to rooms or spaces rented and continuously occupied by the same individual or same group of individuals for 30 or more days. The revenues collected from the additional tax shall be designated and spent for the design, construction, debt payment, and operation of such conference center.

C. (For expiration date, see Acts 2018, c. 850) The Counties of James City and York may impose an additional transient occupancy tax for the use or possession of any overnight guest room in an amount not to exceed \$2 per room per night. The tax imposed by this subsection shall not apply to travel campground sites or to rooms or spaces rented and continuously occupied by the same individual or same group of individuals for 30 or more days. Of the revenues generated by the tax authorized by this subsection, one-half of the revenues generated from each night of occupancy of an overnight guest room shall be deposited into the Historic Triangle Marketing Fund, created pursuant to ~~subdivision E 4~~ *subsection F* of § 58.1-603.2, and one-half of the revenues shall be retained by the locality in which the tax is imposed.

C. (For effective date, see Acts 2018, c. 850) 1. The Counties of James City and York may impose an additional transient occupancy tax for the use or possession of any overnight guest room in an amount not to exceed \$2 per room per night. The revenues collected from the additional tax shall be designated and expended solely for advertising the Historic Triangle area, which includes all of the City of Williamsburg and the Counties of James City and York, as an overnight tourism destination by the members of the Williamsburg Area Destination Marketing Committee of the Greater Williamsburg Chamber and Tourism Alliance of Commerce. The tax imposed by this subsection shall not apply to travel campground sites or to rooms or spaces rented and continuously occupied by the same individual or same group of individuals for 30 or more days.

2. The Williamsburg Area Destination Marketing Committee shall consist of the members as provided herein. The governing bodies of the City of Williamsburg, the County of James City, and the County of York shall each designate one of their members to serve as members of the Williamsburg Area Destination Marketing Committee. These three members of the Committee shall have two votes apiece. In no case shall a person who is a member of the Committee by virtue of the designation of a local governing body be eligible to be selected a member of the Committee pursuant to subdivision a.

a. Further, one member of the Committee shall be selected by the Board of Directors of the Williamsburg Hotel and Motel Association; one member of the Committee shall be from The Colonial Williamsburg Foundation and shall be selected by the Foundation; one member of the Committee shall be an employee of Busch Gardens Europe/Water Country USA and shall be selected by Busch Gardens Europe/Water Country USA; one member of the Committee shall be from the Jamestown-Yorktown Foundation and shall be selected by the Foundation; one member of the Committee shall be selected by the Executive Committee of the Greater Williamsburg Chamber and Tourism Alliance of Commerce; and one member of the Committee shall be the President and Chief Executive Officer of the Virginia Tourism Authority who shall serve ex officio. Each of these six members of the Committee shall have one vote apiece. The President of the Greater Williamsburg Chamber and Tourism Alliance of Commerce shall serve ex officio with nonvoting privileges unless chosen by the Executive Committee of the Greater Williamsburg Chamber and Tourism Alliance of Commerce to serve as its voting representative. The Executive Director of the Williamsburg Hotel and Motel Association shall serve ex officio with nonvoting privileges unless chosen by the Board of Directors of the Williamsburg Hotel and Motel Association to serve as its voting representative.

In no case shall more than one person of the same local government, including the governing body of the locality, serve as a member of the Committee at the same time.

If at any time a person who has been selected to the Committee by other than a local governing body becomes or is (a) a member of the local governing body of the City of Williamsburg, the County of James City, or the County of York, or (b) an employee of one of such local governments, the person shall be ineligible to serve as a member of the Committee while a member of the local governing body

305 or an employee of one of such local governments. In such case, the body that selected the person to
306 serve as a member of the Commission shall promptly select another person to serve as a member of the
307 Committee.

308 3. The Williamsburg Area Destination Marketing Committee shall maintain all authorities granted by
309 this section. The Greater Williamsburg Chamber ~~and Tourism Alliance of Commerce~~ shall serve as the
310 fiscal agent for the Williamsburg Area Destination Marketing Committee with specific responsibilities to
311 be defined in a contract between such two entities. The contract shall include provisions to reimburse
312 the Greater Williamsburg Chamber ~~and Tourism Alliance of Commerce~~ for annual audits and any other
313 agreed-upon expenditures. The Williamsburg Area Destination Marketing Committee shall also contract
314 with the Greater Williamsburg Chamber ~~and Tourism Alliance of Commerce~~ to provide administrative
315 support services as the entities shall mutually agree.

316 4. The provisions in subdivision 2 relating to the composition and voting powers of the Williamsburg
317 Area Destination Marketing Committee shall be a condition of the authority to impose the tax provided
318 herein.

319 For purposes of this subsection, "advertising the Historic Triangle area" as an overnight tourism
320 destination means advertising that is intended to attract visitors from a sufficient distance so as to
321 require an overnight stay of at least one night.

322 D. Bedford County may impose an additional transient occupancy tax not to exceed two percent of
323 the total price paid by the customer for the use or possession of any room or space occupied in a retail
324 sale. The tax imposed hereunder shall not apply to rooms or spaces rented and continuously occupied by
325 the same individual or same group of individuals for 30 or more days.

326 The revenues collected from the additional tax shall be designated and spent solely for tourism and
327 travel; marketing of tourism; or initiatives that, as determined after consultation with local tourism
328 industry organizations, including representatives of lodging properties located in the county, attract
329 travelers to the locality, increase occupancy at lodging properties, and generate tourism revenues in the
330 locality.

331 E. Botetourt County may impose an additional transient occupancy tax not to exceed two percent of
332 the total price paid by the customer for the use or possession of any room or space occupied in a retail
333 sale. The tax imposed hereunder shall not apply to rooms or spaces rented and continuously occupied by
334 the same individual or same group of individuals for 30 or more days.

335 The revenue generated and collected from the two percent tax rate increase shall be designated and
336 expended solely for advertising the Roanoke metropolitan area as an overnight tourist destination by
337 members of the Roanoke Valley Convention and Visitors Bureau. For purposes of this subsection,
338 "advertising the Roanoke metropolitan area as an overnight tourism destination" means advertising that
339 is intended to attract visitors from a sufficient distance so as to require an overnight stay.

340 F. The county tax limitations imposed pursuant to § 58.1-3711 shall apply to any tax levied under
341 this section, mutatis mutandis.

342 G. The authority to impose a tax pursuant to this section shall be in addition to the authority
343 provided by the provisions of § 58.1-3819.