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HOUSE BILL NO. 2771**AMENDMENT IN THE NATURE OF A SUBSTITUTE**(Proposed by the Senate Committee on Finance
on February 16, 2005)

(Patron Prior to Substitute—Delegate Callahan)

A BILL to amend and reenact §§ 2.2-1509.2, 33.1-221.1:1.1, 33.1-269, 56-566, 58.1-638, and 58.1-2425 of the Code of Virginia; to amend the Code of Virginia by adding sections numbered 33.1-221.1:8, 33.1-221.1:9, 33.1-391.3:1, and 58.1-2510.1; to amend the Code of Virginia by adding in Article 15 of Chapter 1 of Title 33.1 a section numbered 33.1-223.2:14; and to repeal the tenth enactment clauses of Chapter 1019 and Chapter 1044 of the Acts of Assembly of 2000, relating to transportation funding including dedicating revenues for such funding.

Be it enacted by the General Assembly of Virginia:

1. That §§ 2.2-1509.2, 33.1-221.1:1.1, 33.1-269, 56-566, 58.1-638, and 58.1-2425 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding sections numbered 33.1-221.1:8, 33.1-221.1:9, 33.1-391.3:1, and 58.1-2510.1 and by adding in Article 15 of Chapter 1 of Title 33.1 a section numbered 33.1-223.2:14 as follows:

§ 2.2-1509.2. Use of Transportation Trust Fund, Priority Transportation Fund, and Highway Maintenance and Operating Fund moneys.

If any money in the Highway Maintenance and Operating Fund or the Transportation Trust Fund established pursuant to § 33.1-23.03:1 is proposed to be used for any purpose other than administering, planning, constructing, improving, and maintaining the roads embraced in the systems of highways for the Commonwealth and its localities and/or furthering the interests of the Commonwealth in the areas of public transportation, railways, seaports, and/or airports, then the Governor, if such diversion is proposed by the Governor, shall include with any such proposal a plan for repayment of funds diverted within three years of such use in "The Budget Bill" submitted pursuant to § 2.2-1509.

If such diversion of funds from the Highway Maintenance and Operating Fund or the Transportation Trust Fund is proposed by the General Assembly as an amendment to the Budget Bill, such amendment shall include language setting out the plan for repayment of such funds within three years.

A. All moneys credited to the Transportation Trust Fund, the Priority Transportation Fund, the Highway Maintenance and Operating Fund, or any related subaccount or fund of any of the Funds, (the "Funds") shall be used for the purposes specified in this section.

B. 1. Such moneys credited to the Funds shall be the revenues designated for deposit into any of the Funds from (i) the revenues generated annually from the taxes, fees, or other charges imposed under Titles 33.1 and 46.2 of the Code of Virginia; (ii) the revenues generated annually pursuant to Chapters 11, 12, and 15 of the Acts of Assembly of 1986, Special Session, as the provisions of such Chapters may be amended; (iii) the revenues generated annually from Chapters 8 (§ 58.1-800 et seq.), 22 (§ 58.1-2200 et seq.), 24 (§ 58.1-2400 et seq.), 25 (§ 58.1-2500 et seq.), and 27 (§ 58.1-2700 et seq.) of Title 58.1; and (iv) such other sources as the General Assembly may dedicate or appropriate to any of the Funds. In addition, all interest, dividends, or appreciation accruing to any of the Funds shall also be part of the Funds and used for the purposes specified in this section.

2. The revenues described in subdivision 1 of this subsection shall include but are not limited to the revenues described in subdivisions A 1 and A 2 of § 33.1-23.03:8; all taxes and fees collected under Chapter 27 (§ 58.1-2700 et seq.) of Title 58.1 credited to the Highway Maintenance and Operating Fund as provided in subsection C of § 58.1-2701; all funds, tolls, revenues, interest, dividends, amounts required by contract to be paid over to the Transportation Trust Fund, and appreciation, all as designated for the Transportation Trust Fund pursuant to § 33.1-23.03:1; all moneys deposited into or appropriated to the Local Partnership Fund established under § 33.1-221.1:8; the revenues from the insurance license tax on automobile premiums designated for the Priority Transportation Fund pursuant to enactments of the 2005 Session of the General Assembly; all state recordation taxes deposited into the U.S. Route 58 Corridor Development Fund pursuant to § 58.1-815; all state recordation taxes deposited or transferred into the Northern Virginia Transportation District Fund pursuant to § 58.1-815.1 and any public rights-of-way use fees or state or local revenues deposited into the Northern Virginia Transportation District Fund pursuant to such section; all state recordation taxes deposited or transferred into the Transportation Improvement Program Set-aside Fund pursuant to § 58.1-816.1; any damages and costs collected pursuant to § 33.1-191 as designated for deposit into the Transportation Trust Fund under such section; any civil penalties, and interest thereon, and cost recoveries designated for deposit into any of the Funds as provided under law; fees for dealer's license plates designated for deposit into the Transportation Trust Fund pursuant to § 46.2-1546; any excess earnings to be deposited into the Transportation Trust Fund under a comprehensive agreement entered

60 into under the Public-Private Transportation Act of 1995 (§ 56-556 et seq.) pursuant to subsection E of
61 § 56-566; revenues from the lease, sale, or other conveyance made by the Commonwealth
62 Transportation Board that are designated for deposit into any of the Funds as provided under law; and
63 any locally generated revenues deposited into any of the Funds as provided under law.

64 C. All moneys credited to the Funds shall be used solely for purposes of:

65 1. Administering, planning, constructing, improving, or maintaining the roads embraced in the
66 systems of highways for the Commonwealth and its localities, including access roads and bikeways
67 adjacent thereto, or furthering the interests of the Commonwealth in the areas of highways, public
68 transportation, railways, seaports, or airports;

69 2. Making payments on bonds or other obligations (including bond anticipation notes and refunding
70 bonds) that have been issued or entered into to finance transportation projects that are directly related
71 to the purposes described in subdivision 1 of this subsection; or

72 3. Making loans to finance transportation projects that are directly related to the purposes described
73 in subdivision 1 of this subsection.

74 D. No moneys designated for deposit into the general fund of the state treasury shall be used for any
75 of the purposes described in subdivisions C 1, C 2, or C 3 or for any other transportation-related
76 purpose except that moneys designated for deposit into the general fund of the state treasury shall be
77 used for (i) debt service payments on the \$317 million in principal amount of Commonwealth of
78 Virginia Federal Highway Reimbursement Anticipation Notes that were issued for the projects specified
79 in Item 491 H 2 of Chapter 899 of the Acts of Assembly of 2002; (ii) making debt service payments on
80 any transportation-related bonds or other obligations issued pursuant to Article X, Section 9 (c) of the
81 Virginia Constitution in those cases where the revenues dedicated for the payment of the debt service on
82 such bonds or other obligations are insufficient to make full payment; and (iii) purposes of making the
83 \$40 million deposit under § 58.1-815 and the \$40 million deposit under § 58.1-816, including any
84 portion of such \$40 million deposit under § 58.1-816 that is actually deposited or transferred into (a)
85 the Northern Virginia Transportation District Fund established under § 58.1-815.1 or (b) the
86 Transportation Improvement Program Set-aside Fund established under § 58.1-816.1.

87 § 33.1-221.1:1.1. Rail Partnership Fund.

88 A. The General Assembly declares it to be in the public interest that railway preservation and
89 development of railway transportation facilities are an important element of a balanced transportation
90 system of the Commonwealth for freight and passengers and further declares it to be in the public
91 interest that the retention, maintenance, improvement and development of the railways are essential to
92 the Commonwealth's continued economic growth, vitality, and competitiveness in national and world
93 markets, and there is hereby created in the state treasury a special nonreverting fund to be known as the
94 ~~Railway Preservation and Development~~ Rail Partnership Fund, hereafter referred to as "the Fund."

95 B. The Fund shall be established on the books of the Comptroller, and shall consist of *dedications*
96 pursuant to § 58.1-2425 and such funds from ~~such other~~ sources as ~~shall~~ may be set forth in the
97 appropriation act and *all* shall be paid into the state treasury and credited to the Fund. Interest earned on
98 moneys in the Fund shall remain in the Fund and be credited to it. Any moneys remaining in the Fund,
99 including interest thereon, at the end of each fiscal year shall not revert to the general fund but shall
100 remain in the Fund. Moneys in the Fund shall be used solely as provided in this section. Expenditures
101 and disbursements from the Fund shall be made by the State Treasurer on warrants issued by the
102 Comptroller upon written request signed by the ~~Executive~~ Director of the Virginia Department of Rail
103 and Public Transportation or the ~~Executive~~ Director's designee.

104 C. ~~To fulfill this purpose, there shall be funding set forth each year in the budget bill and~~
105 ~~appropriated by the General Assembly in the Rail Assistance Program of the Department of Rail and~~
106 ~~Public Transportation. These funds shall be used by the Department of Rail and Public Transportation to~~
107 ~~administer a Rail Preservation and Development Program for the purposes described in subsection A.~~
108 ~~Furthermore, the Commonwealth Transportation Board shall include an annual allocation for such~~
109 ~~purpose in its allocation of transportation revenues.~~

110 D. The ~~Executive~~ Director of the Department of Rail and Public Transportation shall administer and
111 expend or commit, subject to the approval of the Commonwealth Transportation Board, the Fund for
112 acquiring, leasing, and/or improving railways or assisting other appropriate entities to acquire, lease, or
113 improve railways for freight and/or passenger rail transportation purposes whenever the Board shall have
114 determined that such acquisition, lease, and/or improvement is for the common good of a region of the
115 Commonwealth or the Commonwealth as a whole. ~~The Executive~~ Prior to recommending any allocation
116 of the Fund to the Commonwealth Transportation Board, the Director of the Department of Rail and
117 Public Transportation ~~may~~ shall consult with other agencies or their designated representatives
118 concerning projects to be undertaken under this section ~~the Rail Advisory Board established pursuant to~~
119 ~~§ 33.1-391.3:1.~~

120 E.D. Tracks and facilities constructed and property and equipment purchased under this section shall
121 be the property of the Commonwealth for the useful life of the project as determined by the Executive

Director of the Department of Rail and Public Transportation and shall be made available for use by all common carriers using the railway system to which they connect under trackage rights agreements between the parties. Projects undertaken pursuant to this section shall be limited to those capital improvements the Director of the Department of Rail and Public Transportation shall have determined in writing will result in public benefits to the Commonwealth that are equal to or greater than the allocation of funds under this section in the project. Such projects shall include a minimum of 30 percent cash or in-kind matching contribution from a private source, a regional authority, or a local government source.

§ 33.1-221.1:8. Local Partnership Fund.

A. There is hereby created in the Department of the Treasury a special subaccount of the highway share of the Transportation Trust Fund that shall be known as the Local Partnership Fund (the Fund).

B. The Fund shall be established on the books of the Comptroller. The Fund shall consist of such moneys appropriated by the General Assembly and any funds available from the federal government, donations, grants, and in-kind contributions made to the Fund. Interest earned on moneys in the Fund shall remain in the Fund and be credited to it. Any moneys remaining in the Fund, including interest thereon, at the end of each fiscal year shall not revert to the general fund but shall remain in the Fund.

C. The Fund shall be a subaccount of the highway share of the Transportation Trust Fund. Provisions of this title and Title 58.1 relating to allocations or disbursements of proceeds of the Commonwealth Transportation Fund, the Transportation Trust Fund, or the Highway Maintenance and Operating Fund shall not apply to the Fund.

D. Moneys in the Fund shall be expended as determined by the Department of Transportation to encourage local government management of construction and improvement projects in the state primary, urban, and secondary highway systems:

1. The first priority for moneys in the Fund shall be for primary, urban, or secondary construction projects that are identified by a locality for local construction management and are partially funded from federal funds allocated through the secondary, urban, or primary allocation formula. Moneys from the Fund may be used by the Department to replace federal funds allocated to the project. The replaced federal funds shall be used to advance another qualifying transportation project in the same locality.

2. The second priority for moneys in the Fund shall be for start-up, staffing, technical assistance, and any unanticipated costs related to the individual projects. Up to five percent of the annual appropriation to the Fund may be provided to local governments for start-up, staffing, and technical assistance costs. Up to an additional five percent may be reserved to support unanticipated costs related to individual construction projects.

3. The third priority for moneys in the Fund shall be for additional construction projects that are managed by a locality. Such additional projects may receive up to \$750,000 in matching funds to construct, reconstruct, or maintain primary, urban, or secondary highways. Notwithstanding any other provision of law, such moneys from the Fund may be used to take certain streets into the secondary system as provided in § 33.1-72.1.

4. Allocations from the Fund shall be in addition to, and may not supplant, any allocation to which an individual locality is entitled or which an individual locality has received to improve primary, urban, or secondary highways.

§ 33.1-221.1:9. Private Partnership Fund.

A. There is hereby created in the Department of the Treasury a special nonreverting fund that shall be known as the Private Partnership Fund (the Fund).

B. The Fund shall be established on the books of the Comptroller. The Fund shall consist of such moneys appropriated by the General Assembly and any funds available from the federal government, donations, grants, and in-kind contributions made to the Fund. Interest earned on moneys in the Fund shall remain in the Fund and be credited to it. Any moneys remaining in the Fund, including interest thereon, at the end of each fiscal year shall not revert to the general fund but shall remain in the Fund.

C. The Fund shall be a component of the Commonwealth Transportation Fund but not a component or subcomponent of the Transportation Trust Fund or the Highway Maintenance and Operating Fund. Provisions of this title and Title 58.1 relating to allocations or disbursements of proceeds of the Commonwealth Transportation Fund, the Transportation Trust Fund, or the Highway Maintenance and Operating Fund shall not apply to the Fund.

D. Moneys in the Fund shall be used by agencies of the Commonwealth that are responsible public entities pursuant to the Public-Private Transportation Act of 1995 (§ 56-556 et seq.) to make noninterest-bearing loans whose repayment shall accrue to the Fund in not more than seven years. No single loan made from the Fund shall exceed \$30 million. Loans from the Fund shall be made to eligible projects and for purposes to be determined by agencies of the Commonwealth that are responsible public entities pursuant to the Public-Private Transportation Act of 1995 and the terms of any such loan shall be specified in a comprehensive agreement or a development agreement entered into

183 pursuant to the Public-Private Transportation Act of 1995.

184 § 33.1-223.2:14. Full allocation of funds for construction project within 12 months of completion
185 required.

186 The Commonwealth Transportation Board and the Commonwealth Transportation Commissioner
187 shall ensure that total funds allocated to any highway construction project are equal to total
188 expenditures within 12 months following completion of the project. The requirements of this section shall
189 not apply to debt service apportionments pursuant to § 33.1-23.3 or § 33.1-23.4.

190 § 33.1-269. General powers of Board.

191 The Commonwealth Transportation Board may, subject to the provisions of this article:

192 1. Acquire by purchase or by condemnation, construct, improve, operate and maintain any one or
193 more of the projects mentioned and included in the undertaking defined in this article;

194 2. Issue revenue bonds of the Commonwealth, to be known and designated as "Commonwealth of
195 Virginia Toll Revenue Bonds," payable from earnings and from any other available sources of funds, to
196 pay the cost of such projects;

197 3. Subject to the limitations and approvals of § 33.1-279.1, issue revenue bonds of the
198 Commonwealth to be known and designated as "Commonwealth of Virginia Transportation Contract
199 Revenue Bonds," secured by Transportation Trust Fund revenues under a payment agreement between
200 the Board and the Treasury Board, subject to their appropriation by the General Assembly and payable
201 first from revenues received pursuant to contracts with a primary highway transportation improvement
202 district or transportation service district or other local revenue sources for which specific funding of any
203 such bonds may be authorized by law; second, to the extent required, from funds appropriated and
204 allocated, pursuant to the highway allocation formula as provided by law, to the highway construction
205 district in which the project or projects to be financed are located or to the county or counties in which
206 the project or projects to be financed are located; and third, to the extent required, from other legally
207 available revenues of the Trust Fund and from any other available source of funds;

208 4. Issue revenue bonds of the Commonwealth to be known and designated as "Commonwealth of
209 Virginia Transportation Revenue Bonds," secured (i) by revenues received from the U.S. Route 58
210 Corridor Development Fund, subject to their appropriation by the General Assembly, (ii) to the extent
211 required, from revenues legally available from the Transportation Trust Fund and (iii) to the extent
212 required, from any other legally available funds which have been appropriated by the General Assembly;

213 4a. Issue revenue bonds of the Commonwealth to be known and designated as "Commonwealth of
214 Virginia Transportation Revenue Bonds," secured, subject to their appropriation by the General
215 Assembly, first from (i) revenues received from the Northern Virginia Transportation District Fund, (ii)
216 to the extent required, funds appropriated and allocated, pursuant to the highway allocation formula as
217 provided by law, to the highway construction district in which the project or projects to be financed are
218 located or to the city or county in which the project or projects to be financed are located, (iii) to the
219 extent required, legally available revenues of the Transportation Trust Fund, and (iv) such other funds
220 which may be appropriated by the General Assembly;

221 4b. Issue revenue bonds of the Commonwealth to be known and designated as "Commonwealth of
222 Virginia Transportation Program Revenue Bonds" secured, subject to their appropriation by the General
223 Assembly, first from (i) any revenues received from any Set-aside Fund established by the General
224 Assembly pursuant to § 58.1-816.1, (ii) to the extent required, revenues received pursuant to any
225 contract with a local jurisdiction or any alternative mechanism for generation of local revenues for
226 specific funding of a project satisfactory to the Commonwealth Transportation Board, (iii) to the extent
227 required, funds appropriated and allocated, pursuant to the highway allocation formula as provided by
228 law, to the highway construction district in which the project or projects to be financed are located or to
229 the city or county in which the project or projects to be financed are located, (iv) to the extent required,
230 legally available revenues of the Transportation Trust Fund, and (v) such other funds which may be
231 appropriated by the General Assembly. No bonds for any project or projects shall be issued under the
232 authority of this subsection unless such project or projects are specifically included in a bill or resolution
233 passed by the General Assembly;

234 4c. Issue revenue bonds of the Commonwealth to be known and designated as "Commonwealth of
235 Virginia Transportation Program Revenue Bonds" secured, subject to their appropriation by the General
236 Assembly, first from (i) any revenues received from the Commonwealth Transit Capital Partnership
237 Fund established by the General Assembly pursuant to subdivision A 4 g of § 58.1-638, (ii) to the extent
238 required, legally available revenues of the Transportation Trust Fund, and (iii) such other funds which
239 may be appropriated by the General Assembly. No bonds for any project or projects shall be issued
240 under the authority of this subsection unless such project or projects are specifically included in a bill or
241 resolution passed by the General Assembly;

242 4d. Issue revenue bonds of the Commonwealth from time to time to be known and designated as
243 "Commonwealth of Virginia Federal Highway Reimbursement Anticipation Notes" secured, subject to
244 their appropriation by the General Assembly, (i) first from any federal highway reimbursements and any

other federal highway assistance received from time to time by the Commonwealth, (ii) then, at the discretion of the Board, to the extent required, from legally available revenues of the Transportation Trust Fund, and (iii) then from such other funds, if any, which are designated by the General Assembly for such purpose;

4e. Issue revenue bonds of the Commonwealth from time to time to be known and designated as "Commonwealth of Virginia Credit Assistance Revenue Bonds," secured, subject to their appropriation by the General Assembly, solely from revenues with respect to or generated by the project or projects being financed thereby and any tolls or other revenues pledged by the Board as security therefor and in accordance with the applicable federal credit assistance authorized with respect to such project or projects by the United States Department of Transportation;

5. Fix and collect tolls and other charges for the use of such projects or to refinance the cost of such projects;

6. Construct grade separations at intersections of any projects with public highways, streets or other public ways or places and change and adjust the lines and grades thereof so as to accommodate the same to the design of such grade separations, the cost of such grade separations and any damage incurred in changing and adjusting the lines and grades of such highways, streets, ways and places to be ascertained and paid by the Board as a part of the cost of the project;

7. Vacate or change the location of any portion of any public highway, street or other public way or place and reconstruct the same at such new location as the Board deems most favorable for the project and of substantially the same type and in as good condition as the original highway, streets, way or place, the cost of such reconstruction and any damage incurred in vacating or changing the location thereof to be ascertained and paid by the Board as a part of the cost of the project. Any public highway, street or other public way or place vacated or relocated by the Board shall be vacated or relocated in the manner provided by law for the vacation or relocation of public roads and any damages awarded on account thereof may be paid by the Board as a part of the cost of the project;

8. Make reasonable regulations for the installation, construction, maintenance, repair, renewal and relocation of pipes, mains, sewers, conduits, cables, wires, towers, poles and other equipment and appliances herein called "public utility facilities," of the Commonwealth and of any municipality, county, or other political subdivision, public utility or public service corporation owning or operating the same in, on, along, over or under the project. Whenever the Board determines that it is necessary that any such public utility facilities should be relocated or removed, the Commonwealth or such municipality, county, political subdivision, public utility or public service corporation shall relocate or remove the same in accordance with the order of the Board. The cost and expense of such relocation or removal, including the cost of installing such public utility facilities in a new location or locations, and the cost of any lands or any rights or interests in lands, and any other rights acquired to accomplish such relocation or removal shall be ascertained by the Board.

On any toll project, the Board shall pay the cost and expense of relocation or removal as a part of the cost of the project for those public utility facilities owned or operated by the Commonwealth or such municipality, county, political subdivision, public utility or public service corporation. On all other projects, under this article, the Board shall pay the cost and expense of relocation or removal as a part of the cost of the project for those public utility facilities owned or operated by the Commonwealth or such municipality, county, or political subdivision. The Commonwealth or such municipality, county, political subdivision, public utility or public service corporation may maintain and operate such public utility facilities with the necessary appurtenances, in the new location or locations, for as long a period and upon the same terms and conditions as it had the right to maintain and operate such public utility facilities in their former location or locations;

9. Acquire by the exercise of the power of eminent domain any lands, property, rights, rights-of-way, franchises, easements and other property, including public lands, parks, playgrounds, reservations, highways or parkways, or parts thereof or rights therein, of any municipality, county or other political subdivision, deemed necessary or convenient for the construction or the efficient operation of the project or necessary in the restoration, replacement or relocation of public or private property damaged or destroyed.

The cost of such projects shall be paid solely from the proceeds of Commonwealth of Virginia Toll or Transportation Contract Revenue Bonds or a combination thereof or from such proceeds and from any grant or contribution which may be made thereto pursuant to the provisions of this article;

10. Notwithstanding any provision of this article to the contrary, the Board shall be authorized to exercise the powers conferred herein, in addition to its general powers to acquire rights-of-way and to construct, operate and maintain state highways, with respect to any project which the General Assembly has authorized or may hereafter authorize to be financed in whole or in part through the issuance of bonds of the Commonwealth pursuant to the provisions of Section 9 (c) of Article X of the Constitution of Virginia; and

11. Enter into any agreements or take such other actions as the Board shall determine in connection with applying for or obtaining any federal credit assistance, including without limitation loan guarantees and lines of credit, pursuant to authorization from the United States Department of Transportation with respect to any project included in the Commonwealth's long-range transportation plan and the approved State Transportation Improvement Program.

§ 33.1-391.3:1. Rail Advisory Board.

There is hereby established the Rail Advisory Board to consist of nine members appointed by the Governor for terms of four years. Vacancies shall be filled for the unexpired term in the same manner as the original appointment. One of such appointees shall be an at-large member of the Commonwealth Transportation Board and shall serve as Chairman of the Rail Advisory Board. The Board may, by majority vote, choose one of its members to serve as vice-chairman. The Board shall, in consultation with the Director, develop recommendations to be presented to the Commonwealth Transportation Board regarding allocations of funds from the Rail Partnership Fund. The Board shall also advise the Director and the Department on other matters at the request of the Director or the Department. The Board shall meet at the call of the Chairman. A majority of the members shall constitute a quorum for the conduct of all Board business.

Members of the Board shall receive no compensation, but shall be reimbursed the actual and necessary expenses incurred in connection with their official duties.

§ 56-566. Comprehensive agreement.

A. Prior to acquiring, constructing, improving, maintaining, and/or operating the qualifying transportation facility, the operator shall enter into a comprehensive agreement with the responsible public entity. The comprehensive agreement shall provide for:

1. Delivery of performance and payment bonds in connection with the construction of or improvements to the qualifying transportation facility, in the forms and amounts satisfactory to the responsible public entity;

2. Review of plans and specifications for the qualifying transportation facility by the responsible public entity and approval by the responsible public entity if the plans and specifications conform to standard conditions of the responsible public entity;

3. Inspection of construction of or improvements to the qualifying transportation facility by the responsible public entity to ensure that they conform to the engineering standards acceptable to the responsible public entity;

4. Maintenance of a policy or policies of public liability insurance (copies of which shall be filed with the responsible public entity accompanied by proofs of coverage), self-insurance, in form and amount satisfactory to the responsible public entity and reasonably sufficient to insure coverage of tort liability to the public and employees and to enable the continued operation of the qualifying transportation facility;

5. Monitoring of the maintenance practices of the operator by the responsible public entity and the taking of such actions as the responsible public entity finds appropriate to ensure that the qualifying transportation facility is properly maintained;

6. Reimbursement to be paid to the responsible public entity for services provided by the responsible public entity;

7. Filing of appropriate financial statements on a periodic basis;

8. A reasonable maximum rate of return on investment for the operator; and

9. The date of termination of the operator's authority and duties under this chapter and dedication to the appropriate public entity.

B. The comprehensive agreement shall provide for such user fees as may be established from time to time by agreement of the parties. Any user fees shall be set at a level that, taking into account any service payments, allows the operator the rate of return on investment specified in the comprehensive agreement. A copy of any service contract shall be filed with the responsible public entity. A schedule of the current user fees shall be made available by the operator to any member of the public on request. In negotiating user fees under this section, the parties shall establish fees that are the same for persons using the facility under like conditions and that will not materially discourage use of the qualifying transportation facility. The execution of the comprehensive agreement or any amendment thereto shall constitute conclusive evidence that the user fees provided for therein comply with this chapter. User fees established in the comprehensive agreement as a source of revenues may be in addition to, or in lieu of, service payments.

C. In the comprehensive agreement, the responsible public entity may agree to make grants or loans to the operator from time to time from amounts received from the federal government or any agency or instrumentality thereof.

D. The comprehensive agreement shall incorporate the duties of the operator under this chapter and may contain such other terms and conditions that the responsible public entity determines serve the public purpose of this chapter. Without limitation, the comprehensive agreement may contain provisions

under which the responsible public entity agrees to provide notice of default and cure rights for the benefit of the operator and the persons specified therein as providing financing for the qualifying transportation facility. The comprehensive agreement may contain such other lawful terms and conditions to which the operator and the responsible public entity mutually agree, including, without limitation, provisions regarding unavoidable delays or provisions providing for a loan of public funds to the operator to acquire, construct, improve, maintain and/or operate one or more qualifying transportation facilities.

E. The comprehensive agreement shall provide for the distribution of any earnings in excess of the maximum rate of return as negotiated in the comprehensive agreement. Without limitation, excess earnings may be distributed to the Commonwealth's transportation trust fund, to the responsible public entity, or to the operator for debt reduction or they may be shared with affected local jurisdictions.

F. Any changes in the terms of the comprehensive agreement, as may be agreed upon by the parties from time to time, shall be added to the comprehensive agreement by written amendment.

G. Notwithstanding the foregoing provisions of this section, the operator and the responsible public entity may enter into development agreements under the terms of which the operator would perform work and receive compensation therefor without committing either party to completing the entire course of improvements otherwise contained in a comprehensive agreement.

§ 58.1-638. Disposition of state sales and use tax revenue; localities' share; Game Protection Fund; Transit Partnership Fund.

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

1. The sales and use tax revenue generated by the one-half percent sales and use tax increase enacted by the 1986 Special Session of the General Assembly shall be paid, in the manner hereinafter provided in this section, to the Transportation Trust Fund as defined in § 33.1-23.03:1. Of the funds paid to the Transportation Trust Fund, an aggregate of 4.2 percent shall be set aside as the Commonwealth Port Fund as provided in this section; an aggregate of 2.4 percent shall be set aside as the Commonwealth Airport Fund as provided in this section; and an aggregate of 14.5 percent in fiscal year 1998-1999 and 14.7 percent in fiscal year 1999-2000 and thereafter shall be set aside as the Commonwealth Mass Transit Fund as provided in this section. The Fund's share of such net revenue 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.

2. There is hereby created in the Department of the Treasury a special nonreverting fund which shall be a part of the Transportation Trust Fund and which shall be known as the Commonwealth Port Fund.

a. The Commonwealth Port Fund shall be established on the books of the Comptroller and the funds remaining in such Fund at the end of a biennium shall not revert to the general fund but shall remain in the Fund. Interest earned on such funds shall remain in the Fund and be credited to it. Funds may be paid to any authority, locality or commission for the purposes hereinafter specified.

b. The amounts allocated pursuant to this section shall be allocated by the Commonwealth Transportation Board to the Board of Commissioners of the Virginia Port Authority to be used to support port capital needs and the preservation of existing capital needs of all ocean, river, or tributary ports within the Commonwealth.

c. Commonwealth Port Fund revenue shall be allocated by the Board of Commissioners to the Virginia Port Authority in order to foster and stimulate the flow of maritime commerce through the ports of Virginia, including but not limited to the ports of Richmond, Hopewell and Alexandria.

3. There is hereby created in the Department of the Treasury a special nonreverting fund which shall be part of the Transportation Trust Fund and which shall be known as the Commonwealth Airport Fund. The Commonwealth Airport Fund shall be established on the books of the Comptroller and any funds remaining in such Fund at the end of a biennium shall not revert to the general fund but shall remain in the Fund. Interest earned on the funds shall be credited to the Fund. The funds so allocated shall be allocated by the Commonwealth Transportation Board to the Virginia Aviation Board. The funds shall be allocated by the Virginia Aviation Board to any Virginia airport which is owned by the Commonwealth, a governmental subdivision thereof, or a private entity to which the public has access for the purposes enumerated in § 5.1-2.16, or is owned or leased by the Metropolitan Washington Airports Authority (MWAA), as follows:

Any new funds in excess of \$12.1 million which are available for allocation by the Virginia Aviation Board from the Commonwealth Transportation Fund, shall be allocated as follows: 60 percent to MWAA, up to a maximum annual amount of \$2 million, and 40 percent to air carrier airports as provided in subdivision A 3 a. Except for adjustments due to changes in enplaned passengers, no air carrier airport sponsor, excluding MWAA, shall receive less funds identified under subdivision A 3 a than it received in fiscal year 1994-1995.

429 Of the remaining amount:

430 a. Forty percent of the funds shall be allocated to air carrier airports, except airports owned or leased
431 by MWAA, based upon the percentage of enplanements for each airport to total enplanements at all air
432 carrier airports, except airports owned or leased by MWAA. No air carrier airport sponsor, however,
433 shall receive less than \$50,000 nor more than \$2 million per year from this provision.

434 b. Forty percent of the funds shall be allocated by the Aviation Board for air carrier and reliever
435 airports on a discretionary basis, except airports owned or leased by MWAA.

436 c. Twenty percent of the funds shall be allocated by the Aviation Board for general aviation airports
437 on a discretionary basis.

438 4. There is hereby created in the Department of the Treasury a special nonreverting fund which shall
439 be a part of the Transportation Trust Fund and which shall be known as the Commonwealth Mass
440 Transit Fund.

441 a. The Commonwealth Mass Transit Fund shall be established on the books of the Comptroller and
442 any funds remaining in such Fund at the end of the biennium shall not revert to the general fund but
443 shall remain in the Fund. Interest earned on such funds shall be credited to the Fund. Funds may be
444 paid to any local governing body, transportation district commission, or public service corporation for
445 the purposes hereinafter specified.

446 b. The amounts allocated pursuant to this section shall be used to support the public transportation
447 administrative costs and the costs borne by the locality for the purchase of fuels, lubricants, tires and
448 maintenance parts and supplies for public transportation at a state share of 80 percent in 2002 and 95
449 percent in 2003 and succeeding years. These amounts may be used to support up to 95 percent of the
450 local or nonfederal share of capital project costs for public transportation and ridesharing equipment,
451 facilities, and associated costs. Capital costs may include debt service payments on local or agency
452 transit bonds. The term "borne by the locality" means the local share eligible for state assistance
453 consisting of costs in excess of the sum of fares and other operating revenues plus federal assistance
454 received by the locality.

455 c. Commonwealth Mass Transit Fund revenue shall be allocated by the Commonwealth
456 Transportation Board as follows:

457 (1) Funds for special programs, which shall include ridesharing, experimental transit, and technical
458 assistance, shall not exceed 1.5 percent of the Fund.

459 (2) The Board may allocate these funds to any locality or planning district commission to finance up
460 to 80 percent of the local share of all costs associated with the development, implementation, and
461 continuation of ridesharing programs.

462 (3) Funds allocated for experimental transit projects may be paid to any local governing body,
463 transportation district commission, or public corporation or may be used directly by the Department of
464 Rail and Public Transportation for the following purposes:

465 (a) To finance up to 95 percent of the capital costs related to the development, implementation and
466 promotion of experimental public transportation and ridesharing projects approved by the Board.

467 (b) To finance up to 95 percent of the operating costs of experimental mass transportation and
468 ridesharing projects approved by the Board for a period of time not to exceed 12 months.

469 (c) To finance up to 95 percent of the cost of the development and implementation of any other
470 project designated by the Board where the purpose of such project is to enhance the provision and use
471 of public transportation services.

472 d. Funds allocated for public transportation promotion and operation studies may be paid to any local
473 governing body, planning district commission, transportation district commission, or public transit
474 corporation, or may be used directly by the Department of Rail and Public Transportation for the
475 following purposes and aid of public transportation services:

476 (1) At the approval of the Board to finance a program administered by the Department of Rail and
477 Public Transportation designed to promote the use of public transportation and ridesharing throughout
478 Virginia.

479 (2) To finance up to 50 percent of the local share of public transportation operations planning and
480 technical study projects approved by the Board.

481 e. At least 73.5 percent of the Fund shall be distributed to each transit property in the same
482 proportion as its operating expenses bear to the total statewide operating expenses and shall be spent for
483 the purposes specified in subdivision 4 b.

484 f. The remaining 25 percent shall be distributed for capital purposes on the basis of 95 percent of the
485 nonfederal share for federal projects and 95 percent of the total costs for nonfederal projects. In the
486 event that total capital funds available under this subdivision are insufficient to fund the complete list of
487 eligible projects, the funds shall be distributed to each transit property in the same proportion that such
488 capital expenditure bears to the statewide total of capital projects.

489 g. There is hereby created in the Department of the Treasury a special nonreverting fund known as
490 the ~~Commonwealth Transit Capital~~ *Transit Partnership* Fund. The ~~Commonwealth Transit Capital~~

Transit Partnership Fund shall be part of the Commonwealth Mass Transit Fund. The Commonwealth Transit Capital Transit Partnership Fund subaccount shall be established on the books of the Comptroller and consist of such moneys as are appropriated to it by the General Assembly and of all donations, gifts, bequests, grants, endowments, and other moneys given, bequeathed, granted, or otherwise made available to the Commonwealth Transit Capital Transit Partnership Fund. Any funds remaining in the Commonwealth Transit Capital Transit Partnership Fund at the end of the biennium shall not revert to the general fund, but shall remain in the Commonwealth Transit Capital Transit Partnership Fund. Interest earned on funds within the Commonwealth Transit Capital Transit Partnership Fund shall remain in and be credited to the Commonwealth Transit Capital Transit Partnership Fund. Proceeds of the Commonwealth Transit Capital Transit Partnership Fund may be paid to any political subdivision, another public entity created by an act of the General Assembly, or a private entity as defined in § 56-557 and for purposes as enumerated in subdivision 4c of § 33.1-269 or expended by the Department of Rail and Public Transportation for the purposes specified in this subdivision. Revenues of the Commonwealth Transit Capital Transit Partnership Fund shall be used to support capital expenditures involving the establishment, improvement, or expansion of public transportation services through specific projects and capital improvements approved by the Commonwealth Transportation Board. Projects and capital programs financed by the Commonwealth Transit Capital Transit Partnership Fund shall receive local, regional or private funding for at least 20 percent of the nonfederal share of the total project or capital program cost.

5. Funds for Metro shall be paid by the Northern Virginia Transportation Commission (NVTC) to the Washington Metropolitan Area Transit Authority (WMATA) and be a credit to the Counties of Arlington and Fairfax and the Cities of Alexandria, Falls Church and Fairfax in the following manner:

a. Local obligations for debt service for WMATA rail transit bonds apportioned to each locality using WMATA's capital formula shall be paid first by NVTC. NVTC shall use 95 percent state aid for these payments.

b. The remaining funds shall be apportioned to reflect WMATA's allocation formulas by using the related WMATA-allocated subsidies and relative shares of local transit subsidies. Capital costs shall include 20 percent of annual local bus capital expenses. Hold harmless protections and obligations for NVTC's jurisdictions agreed to by NVTC on November 5, 1998, shall remain in effect.

Appropriations from the Commonwealth Mass Transit Fund are intended to provide a stable and reliable source of revenue as defined by Public Law 96-184.

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

C. The localities' share of the net revenue distributable under this section among the counties and cities shall be apportioned by the Comptroller and distributed among them by warrants of the 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 as certified to the Comptroller by the Department of Education, of the number of children in each county and city according to the most recent statewide census of school population taken by the Department of Education pursuant to § 22.1-284, as adjusted in the manner hereinafter provided. No special school population census, other than a statewide census, shall be used as the basis of apportionment and distribution except that in any calendar year in which a statewide census is not reported, the Department of Education shall adjust such school population figures by the same percent of annual change in total population estimated for each locality by The Center for Public Service. 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 preceding school population census, 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 census 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 § 29.1-101.1, 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. For the purposes of the Comptroller making the required transfers under subdivision 1, 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. 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.

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

§ 58.1-2425. Disposition of revenues.

A. All funds collected hereunder by the Commissioner shall be forthwith paid into the state treasury. Except as otherwise provided in this section, these funds shall constitute special funds within the Commonwealth Transportation Fund. Any balances remaining in these funds at the end of the year shall be available for use in subsequent years for the purposes set forth in this chapter, and any interest income on such funds shall accrue to these funds. The revenue so derived, after refunds have been deducted, is hereby allocated for the construction, reconstruction and maintenance of highways and the regulation of traffic thereon and for no other purpose. However, (i) all funds collected pursuant to the provisions of this chapter from manufactured homes, as defined in § 46.2-100, shall be distributed to the city, town, or county wherein such manufactured home is to be situated as a dwelling; (ii) all funds collected from the additional tax imposed by subdivision A 4 of § 58.1-2402 on the rental of daily rental vehicles shall be distributed quarterly to the city, town, or county wherein such vehicle was delivered to the rentee; (iii) effective January 1, 1987, an amount equivalent to the net additional revenues generated by enactments of the 1986 Special Session of the Virginia General Assembly which amended §§ 46.2-694, 46.2-697, 58.1-2401, 58.1-2402 and this section shall be distributed to and paid into the Transportation Trust Fund, a special fund within the Commonwealth Transportation Fund, and are hereby appropriated to the Commonwealth Transportation Board for transportation needs; (iv) except as otherwise provided in clause (iii) of this sentence, all moneys collected from the tax on the gross proceeds from the rental in Virginia of any motor vehicle pursuant to subdivision A 3 of § 58.1-2402 at the tax rate in effect on December 31, 1986, shall be paid by the Commissioner into the state treasury and shall be set aside in a special fund within the Commonwealth Transportation Fund to be used to meet the expenses of the Department of Motor Vehicles Rail Partnership Fund established pursuant to § 33.1-221.1:1.1; and (v) all additional revenues resulting from the fee imposed under subdivision A 5 of § 58.1-2402 as enacted by the 2004 Session of the General Assembly shall be used to pay the debt service on the bonds issued by the Virginia Public Building Authority for the Statewide Agencies Radio System (STARS) for the Department of State Police pursuant to the authority granted by the 2004 Session of the General Assembly.

B. As provided in subsection A of § 58.1-638, of the funds becoming part of the Transportation Trust Fund pursuant to clause (iii) of subsection A of this section, an aggregate of 4.2 percent shall be

614 set aside as the Commonwealth Port Fund; an aggregate of 2.4 percent shall be set aside as the
615 Commonwealth Airport Fund; and an aggregate of 14.5 percent in fiscal year 1998-1999 and 14.7
616 percent in fiscal year 1999-2000 and thereafter shall be set aside as the Commonwealth Mass Transit
617 Fund.

618 § 58.1-2510.1. *Distribution of certain revenue.*

619 *Beginning with the Commonwealth's 2006-2007 fiscal year and for each fiscal year thereafter, all*
620 *revenues collected by the Commission from the tax imposed under this article beginning July 1 shall be*
621 *deposited into the Priority Transportation Fund established under § 33.1-23.08:1 until the amount*
622 *deposited into the Fund pursuant to this section is equivalent to the revenues collected in the*
623 *immediately preceding calendar year from the tax imposed under this article on the direct gross*
624 *premium income and subscriber fee income that are attributable to any type of insurance as defined in*
625 *§ 38.2-124 and those combination policies as defined in § 38.2-1921 that contain insurance as defined*
626 *in § 38.2-124.*

627 **2. That the tenth enactment clauses of Chapter 1019 and Chapter 1044 of the Acts of Assembly of**
628 **2000 are repealed.**