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HOUSE BILL NO. 2311

Offered January 12, 2011

Prefiled January 12, 2011

A BILL to amend and reenact §§ 2.2-208, 2.2-2101, as it is currently effective and as it shall become effective, 23-14, and 58.1-638 of the Code of Virginia and to amend the Code of Virginia by adding in Title 22.1 a chapter numbered 19.1, consisting of sections numbered 22.1-349.1, 22.1-349.2, and 22.1-349.3, relating to the Virginia State Virtual School.

Patron—Bell, Richard P.

Referred to Committee on Education

Be it enacted by the General Assembly of Virginia:

1. That §§ 2.2-208, 2.2-2101, as it is currently effective and as it shall become effective, 23-14, and 58.1-638 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Title 22.1 a chapter numbered 19.1, consisting of sections numbered 22.1-349.1, 22.1-349.2, and 22.1-349.3, as follows:

§ 2.2-208. Position established; agencies for which responsible; powers and duties.

The position of Secretary of Education (the "Secretary") is created. The Secretary shall be responsible to the Governor for the following agencies: Department of Education, State Council of Higher Education, Virginia Museum of Fine Arts, The Science Museum of Virginia, Frontier Culture Museum of Virginia, The Library of Virginia, Jamestown-Yorktown Foundation, Board of Regents of Gunston Hall, the Commission for the Arts, and the Board of Visitors of the Virginia School for the Deaf and the Blind, *and the Board of Visitors of the Virginia State Virtual School*. The Governor may, by executive order, assign any other state executive agency to the Secretary, or reassign any agency listed above to another Secretary.

Unless the Governor expressly reserves such a power to himself, the Secretary is empowered to resolve administrative, jurisdictional or policy conflicts between any agencies or officers for which he is responsible and to provide policy direction for programs involving more than a single agency. He is authorized to direct the preparation of alternative policies, plans and budgets for education for the Governor and, to that end, may require the assistance of the agencies for which he is responsible. He shall direct the formulation of a comprehensive program budget for cultural affairs encompassing the programs and activities of the agencies involved in cultural affairs.

§ 2.2-2101. (Effective until July 1, 2013) Prohibition against service by legislators on boards, commissions, and councils within the executive branch; exceptions.

Members of the General Assembly shall be ineligible to serve on boards, commissions, and councils within the executive branch of state government who are responsible for administering programs established by the General Assembly. Such prohibition shall not extend to boards, commissions, and councils engaged solely in policy studies or commemorative activities. If any law directs the appointment of any member of the General Assembly to a board, commission, or council in the executive branch of state government that is responsible for administering programs established by the General Assembly, such portion of such law shall be void, and the Governor shall appoint another person from the Commonwealth at large to fill such a position.

The provisions of this section shall not apply to members of the Board for Branch Pilots, who shall be appointed as provided for in § 54.1-901; to members of the Board of Trustees of the Southwest Virginia Higher Education Center, who shall be appointed as provided for in § 23-231.3; to members of the Board of Trustees of the Southern Virginia Higher Education Center, who shall be appointed as provided for in § 23-231.25; to members of the Board of Directors of the New College Institute who shall be appointed as provided for in § 23-231.31; to members of the Virginia Interagency Coordinating Council who shall be appointed as provided for in § 2.2-5204; to members of the Board of Veterans Services, who shall be appointed as provided for in § 2.2-2452; to members appointed to the Board of Trustees of the Roanoke Higher Education Authority pursuant to § 23-231.15; to members of the Commonwealth Competition Commission, who shall be appointed as provided for in § 2.2-2621; to members of the Virginia Geographic Information Network Advisory Board, who shall be appointed as provided for in § 2.2-2423; to members of the Board of Visitors of the Virginia School for the Deaf and the Blind, who shall be appointed as provided for in § 22.1-346.2; *to members of the Board of Visitors of the Virginia State Virtual School, who shall be appointed as provided for in § 22.1-349.1*; to members of the Substance Abuse Services Council, who shall be appointed as provided for in § 2.2-2696; to members of the Criminal Justice Services Board, who shall be appointed as provided in

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§ 9.1-108; to members of the Council on Virginia's Future, who shall be appointed as provided for in § 2.2-2685; to members of the State Executive Council for Comprehensive Services for At-Risk Youth and Families, who shall be appointed as provided in § 2.2-2648; to members of the Virginia Workforce Council, who shall be appointed as provided for in § 2.2-2669; to members of the Volunteer Firefighters' and Rescue Squad Workers' Service Award Fund Board, who shall be appointed as provided for in § 51.1-1201; to members of the Secure Commonwealth Panel, who shall be appointed as provided for in § 2.2-306; to members of the Forensic Science Board, who shall be appointed as provided for in § 9.1-1109; to members of the Open Education Curriculum Board, who shall be appointed as provided in § 2.2-2463; or to members of the Southwest Virginia Cultural Heritage Commission, who shall be appointed as provided in § 2.2-2533.

§ 2.2-2101. (Effective July 1, 2013) Prohibition against service by legislators on boards, commissions, and councils within the executive branch; exceptions.

Members of the General Assembly shall be ineligible to serve on boards, commissions, and councils within the executive branch of state government who are responsible for administering programs established by the General Assembly. Such prohibition shall not extend to boards, commissions, and councils engaged solely in policy studies or commemorative activities. If any law directs the appointment of any member of the General Assembly to a board, commission, or council in the executive branch of state government that is responsible for administering programs established by the General Assembly, such portion of such law shall be void, and the Governor shall appoint another person from the Commonwealth at large to fill such a position.

The provisions of this section shall not apply to members of the Board for Branch Pilots, who shall be appointed as provided for in § 54.1-901; to members of the Board of Trustees of the Southwest Virginia Higher Education Center, who shall be appointed as provided for in § 23-231.3; to members of the Board of Trustees of the Southern Virginia Higher Education Center, who shall be appointed as provided for in § 23-231.25; to members of the Board of Directors of the New College Institute who shall be appointed as provided for in § 23-231.31; to members of the Virginia Interagency Coordinating Council who shall be appointed as provided for in § 2.2-5204; to members of the Board of Veterans Services, who shall be appointed as provided for in § 2.2-2452; to members appointed to the Board of Trustees of the Roanoke Higher Education Authority pursuant to § 23-231.15; to members of the Commonwealth Competition Commission, who shall be appointed as provided for in § 2.2-2621; to members of the Virginia Geographic Information Network Advisory Board, who shall be appointed as provided for in § 2.2-2423; to members of the Board of Visitors of the Virginia School for the Deaf and the Blind, who shall be appointed as provided for in § 22.1-346.2; *to members of the Board of Visitors of the Virginia State Virtual School, who shall be appointed as provided for in § 22.1-349.1;* to members of the Substance Abuse Services Council, who shall be appointed as provided for in § 2.2-2696; to members of the Criminal Justice Services Board, who shall be appointed as provided in § 9.1-108; to members of the State Executive Council for Comprehensive Services for At-Risk Youth and Families, who shall be appointed as provided in § 2.2-2648; to members of the Virginia Workforce Council, who shall be appointed as provided for in § 2.2-2669; to members of the Volunteer Firefighters' and Rescue Squad Workers' Service Award Fund Board, who shall be appointed as provided for in § 51.1-1201; to members of the Secure Commonwealth Panel, who shall be appointed as provided for in § 2.2-306; to members of the Forensic Science Board, who shall be appointed as provided for in § 9.1-1109; to members of the Open Education Curriculum Board, who shall be appointed as provided in § 2.2-2463; or to members of the Southwest Virginia Cultural Heritage Commission, who shall be appointed as provided in § 2.2-2533.

CHAPTER 19.1.

VIRGINIA STATE VIRTUAL SCHOOL.

§ 22.1-349.1. *Board of Visitors of the Virginia State Virtual School established.*

A. *There is hereby established the Board of Visitors of the Virginia State Virtual School (the Board), as a policy agency in the executive branch of government under the name of the "Virginia State Virtual School," for the purpose of governing the online educational programs and services provided to the students enrolled in the Virginia State Virtual School (the School). The Board shall be charged with the operational control of the School. In exercising this operational control, the Board shall include, in any budget recommendations to the Governor for state funding for the School, funding related to educational technology or other programs appropriate for implementation within the School. The School shall not be defined as a school division for constitutional purposes.*

B. *The Board shall have a total membership of 11 members that shall consist of four legislative members and seven nonlegislative citizen members. Members shall be appointed as follows: two members of the House of Delegates, to be appointed by the Speaker of the House of Delegates in accordance with the principles of proportional representation contained in the Rules of the House of Delegates; two members of the Senate, to be appointed by the Senate Committee on Rules; and seven nonlegislative citizen members, of whom one shall be a parent representative from the Western region of*

the Commonwealth, one shall be a parent representative from the Eastern region of the Commonwealth, one shall be a current member of the Board of Education, and one shall be an expert in distance or online learning, to be appointed by the Governor, subject to confirmation by the General Assembly. Nonlegislative citizen members of the Board shall be citizens of the Commonwealth. Legislative members of the Board shall serve terms coincident with their terms of office. After the initial staggering of terms, nonlegislative members shall serve for four-year terms. Appointments to fill vacancies, other than by expiration of a term, shall be for the unexpired terms. Vacancies shall be filled in the same manner as the original appointments. All members may be reappointed. However, no House member shall serve more than four consecutive two-year terms, no Senate member shall serve more than two consecutive four-year terms, and no nonlegislative member appointed by the Governor shall serve more than two consecutive four-year terms. The remainder of any term to which a member is appointed to fill a vacancy shall not constitute a term in determining the member's eligibility for reappointment.

The Board shall elect a chairman and vice-chairman from among its membership. The Board shall elect a secretary, who shall keep an accurate record of the proceedings of the Board and of the executive committee, if one is created by the Board, and such other officers as the Board deems appropriate. The meetings of the Board shall be held at the call of the chairman or whenever the majority of the members so request. A majority of the members shall constitute a quorum. The Board shall meet no more than four times each year.

C. Legislative members of the Board shall receive such compensation as provided in § 30-19.12, and nonlegislative citizen members shall receive such compensation for the performance of their duties as provided in § 2.2-2813. All members shall be reimbursed for all reasonable and necessary expenses incurred in the performance of their duties as provided in §§ 2.2-2813 and 2.2-2825. Funding for the costs of expenses of the members shall be provided from such funds as may be appropriated to the Board in accordance with the appropriation act.

D. The Superintendent of Public Instruction shall designate a member of the staff of the Department of Education to serve as a consultant to the Board on matters pertaining to instruction, federal and state special education requirements, and school accreditation and to provide technical assistance to the Board in meeting specific instructional and school accreditation needs.

E. The Board shall have the following powers and duties:

1. Establish rules, policies, and regulations for the governance of the Virginia State Virtual School;
2. Prescribe the procedures governing admission to the School and the review of student placement to ensure the appropriateness of the placement and the instructional program of each student admitted to the School pursuant to § 22.1-349.2 and post such procedures to the School's website;

3. Prescribe and approve the education programs of the Virginia State Virtual School, in consultation with the Department of Education, that shall be subject to the requirements of the Standards of Quality, including the Standards of Learning and the Standards of Accreditation;

4. Negotiate and contract with a school division, the governing body of a public institution of higher education, or any third party for the use of a school building and grounds, the operation and maintenance thereof, and the provision of any service, activity, or undertaking to carry out the educational program of the School. Such contracts shall be exempt from the Virginia Public Procurement Act (§ 2.2-4300 et. seq.);

5. Receive and disburse funds from any source for the purposes of providing education at the School;

6. Appoint the superintendent, other officers, and the faculty of the School. The superintendent shall be appointed every two years and the other officers and faculty annually. However, the superintendent, with the approval of the chairman of the Board, shall be authorized to fill vacancies in positions appointed by the Board occurring between meetings of the Board. The Board may remove at any time the superintendent, other officers, faculty, and employees for cause, subject to the provisions of the Virginia Personnel Act (§ 2.2-2900 et seq.);

7. Establish the qualifications, duties, and compensation of the superintendent, other officers, faculty, and employees of the School; and

8. Prepare and submit to the Governor and General Assembly, beginning July 1, 2012, an annual report detailing the curricula and other educational programs and services of the School, including receipts and disbursements pertaining to the operation of the School for each fiscal year ending on June 30.

§ 22.1-349.2. Persons eligible; funding and fees; educational programs to be provided; procedures for local school division access to the Virginia State Virtual School; admissions procedures.

A. Any school-age person in the Commonwealth shall be eligible for educational services provided by the School. Participation in the full-time educational program of the School shall meet all attendance requirements pursuant to § 22.1-254. Notwithstanding any other provision of law, the Department of Education shall transfer to the Board the following funds in support of those students for which the

182 relevant local school division, pursuant to subsection B, accesses educational programming for the
183 School:

184 1. All state funds as defined in § 22.1-88 directly associated with any pupil served by the School and
185 appropriated for public school purposes to the relevant local school division, and

186 2. All federal funds as defined in § 22.1-88 directly associated with any pupil served by the School
187 and apportioned to the relevant local school division.

188 B. The following procedure shall be followed for a local school division to access the provision of
189 educational services by the School:

190 1. Upon request from the parent or guardian of any pupil, an application to receive educational
191 services from the School shall be considered by the division superintendent of the relevant local school
192 division.

193 2. The division superintendent shall approve or deny the request within 30 days of its receipt. If the
194 superintendent denies the request, such denial shall be based upon the educational interest of the pupil,
195 and the superintendent shall inform the parent or guardian in writing and specify the reason or reasons
196 that the provision of educational services to the student by the School would not be in the educational
197 interest of the pupil.

198 3. If the division superintendent denies the request, within 30 days of the denial, the parent or
199 guardian may appeal the decision to the local school board. The local school board shall act upon the
200 appeal within 45 days.

201 4. The determination by the parent or guardian of the pupil that the best educational interest of the
202 pupil would be served by accessing the programming of the School creates a rebuttable presumption
203 that such provision of educational service is in the best educational interest of the child. This
204 presumption shall be rebutted by specific credible evidence if the superintendent is to deny the request
205 and the school board is to sustain the denial. If the superintendent or local school board fails to act
206 within the required time frames, the application shall be deemed approved. An application need not be
207 made for subsequent school years once a student is being served by the educational programming of the
208 School.

209 5. Once a student's application has been approved by a local school division to attend the School
210 and such student has been admitted to the School pursuant to subsection D, the local school board shall
211 transfer the relevant local share of funding for such student to the School, including any relevant
212 special education funds.

213 C. The Virginia State Virtual School shall provide an educational program meeting the
214 constitutionally required Standards of Quality for children in grades K-12. The Board, from time to
215 time, may approve additional programs as may be appropriate.

216 D. The Board shall prescribe procedures and criteria for determining admission to the School and
217 shall post such procedures to its website.

218 E. The School shall not charge tuition.

219 § 22.1-349.3. Terms of employment of teachers.

220 For the purpose of retirement and other statutory benefits, teachers employed as full-time
221 instructional personnel by the Board shall be deemed to be full-time state personnel and shall receive
222 the same benefits as are accorded all other full-time state personnel. The Board shall require the
223 teachers at the School to comply with the provisions of §§ 22.1-296.1, 22.1-296.2, 22.1-298.1, 22.1-299,
224 and 22.1-303. Contracts for the employment of teachers shall be in the form prescribed by any local
225 school board in the Commonwealth. In cases of nonrenewal of contracts of probationary teachers, the
226 decisions shall be appealable to the Board. For all other purposes, the Virginia Personnel Act
227 (§ 2.2-2900et seq.) shall apply to the teachers of the Virginia State Virtual School.

228 The Board shall establish salary schedules for all professional personnel that are competitive with
229 those in effect for local school divisions in the Commonwealth.

230 § 23-14. Certain educational institutions declared governmental instrumentalities; powers vested in
231 majority of members of board.

232 The College of William and Mary in Virginia, at Williamsburg; Richard Bland College of the
233 College of William and Mary at Dinwiddie and Prince George; the rector and visitors of Christopher
234 Newport University, at Newport News; Longwood University, at Farmville; the University of Mary
235 Washington, at Fredericksburg; George Mason University, at Fairfax; the James Madison University, at
236 Harrisonburg; Old Dominion University, at Norfolk; the State Board for Community Colleges, at
237 Richmond; the Virginia Commonwealth University, at Richmond; the Radford University, at Radford;
238 the Roanoke Higher Education Authority and Center; the rector and visitors of the University of
239 Virginia, at Charlottesville; the University of Virginia's College at Wise; the Virginia Military Institute,
240 at Lexington; the Virginia Polytechnic Institute and State University, at Blacksburg; the Virginia Schools
241 for the Deaf and the Blind; the Virginia State Virtual School; the Virginia State University, at
242 Petersburg; Norfolk State University, at Norfolk; the Woodrow Wilson Rehabilitation Center, at
243 Fishersville; the Eastern Virginia Medical School; the Southern Virginia Higher Education Center; the

Southwest Virginia Higher Education Center; the Institute for Advanced Learning and Research; and the New College Institute are hereby classified as educational institutions and are declared to be public bodies and constituted as governmental instrumentalities for the dissemination of education. The powers of every such institution derived directly or indirectly from this chapter shall be vested in and exercised by a majority of the members of its board, and a majority of such board shall be a quorum for the transaction of any business authorized by this chapter. Wherever the word "board" is used in this chapter, it shall be deemed to include the members of a governing body designated by another title.

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

Of the remaining amount:

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

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

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

4. 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 Mass

305 Transit Fund.

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

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

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

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

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

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

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

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

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

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

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

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

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

349 f. The remaining 25 percent shall be distributed for capital purposes on the basis of 95 percent of the
350 nonfederal share for federal projects and 95 percent of the total costs for nonfederal projects. In the
351 event that total capital funds available under this subdivision are insufficient to fund the complete list of
352 eligible projects, the funds shall be distributed to each transit property in the same proportion that such
353 capital expenditure bears to the statewide total of capital projects. Prior to the annual adoption of the
354 Six-Year Improvement Program, the Commonwealth Transportation Board may allocate up to 20 percent
355 of the funds in the Commonwealth Mass Transit Fund designated for capital purposes to transit
356 operating assistance if operating funds for the next fiscal year are estimated to be less than the current
357 fiscal year's allocation, to attempt to maintain transit operations at approximately the same level as the
358 previous fiscal year.

359 g. There is hereby created in the Department of the Treasury a special nonreverting fund known as
360 the Commonwealth Transit Capital Fund. The Commonwealth Transit Capital Fund shall be part of the
361 Commonwealth Mass Transit Fund. The Commonwealth Transit Capital Fund subaccount shall be
362 established on the books of the Comptroller and consist of such moneys as are appropriated to it by the
363 General Assembly and of all donations, gifts, bequests, grants, endowments, and other moneys given,
364 bequeathed, granted, or otherwise made available to the Commonwealth Transit Capital Fund. Any funds
365 remaining in the Commonwealth Transit Capital Fund at the end of the biennium shall not revert to the
366 general fund, but shall remain in the Commonwealth Transit Capital Fund. Interest earned on funds

within the Commonwealth Transit Capital Fund shall remain in and be credited to the Commonwealth Transit Capital Fund. Proceeds of the Commonwealth Transit Capital 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 Fund shall be used to support capital expenditures involving the establishment, improvement, or expansion of public transportation services through specific projects approved by the Commonwealth Transportation Board. Projects financed by the Commonwealth Transit Capital Fund shall receive local, regional or private funding for at least 20 percent of the nonfederal share of the total project 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 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 persons who are confined in state hospitals, state training schools or state training centers for the mentally retarded, mental institutions, or state or federal correctional institutions or who attend the Virginia School for the Deaf and the Blind or the Virginia State Virtual School 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 § 29.1-101.1, 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.

2. That the initial appointments of nonlegislative citizen members shall be staggered as follows: three nonlegislative citizen members for terms of four years, two nonlegislative citizen members for terms of three years, and two nonlegislative citizen members for terms of two years, to be appointed by the Governor, subject to confirmation by the General Assembly. Thereafter, appointments shall be for terms of four years.