

# VIRGINIA ACTS OF ASSEMBLY -- 2012 RECONVENED SESSION

## CHAPTER 817

*An Act to amend and reenact §§ 2.2-2201, 2.2-2202, 2.2-2203, 2.2-2204, 2.2-2213, 2.2-2215, 33.1-23.03:2, 33.1-23.7, 58.1-423, and 58.1-638 of the Code of Virginia and to amend the Code of Virginia by adding sections numbered 2.2-2203.1 through 2.2-2203.4, relating to the oversight of and funding for commercial space flight in the Commonwealth.*

[S 284]

Approved April 18, 2012

### **Be it enacted by the General Assembly of Virginia:**

**1. That §§ 2.2-2201, 2.2-2202, 2.2-2203, 2.2-2204, 2.2-2213, 2.2-2215, 33.1-23.03:2, 33.1-23.7, 58.1-423, and 58.1-638 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding sections numbered 2.2-2203.1 through 2.2-2203.4 as follows:**

§ 2.2-2201. Short title; definitions.

A. This article shall be known and may be cited as the "Virginia Commercial Space Flight Authority Act."

B. As used in this article, unless the context requires a different meaning:

"Authority" means the Virginia Commercial Space Flight Authority.

"Board" means the board of directors of the Authority.

"Project" means the construction, improvement, furnishing, maintenance, acquisition or operation of any facility or the provision for or funding of any activity that will further the purposes described in § 2.2-2202.

§ 2.2-2202. Declaration of public purpose; Authority created.

A. The General Assembly has determined that there exists in the Commonwealth a need to (i) disseminate knowledge pertaining to scientific and technological research and development among public and private entities; ~~including but not limited to knowledge in the area of commercial space flight;~~ (ii) *promote Science, Technology, Engineering, and Math (STEM) education;* and (iii) *promote industrial and economic development through the development and promotion of the commercial space flight industry.* In order to facilitate and coordinate scientific and technological research and development and to promote the industrial and economic development of the Commonwealth, which purposes are declared to be public purposes the advancement of these needs, there is hereby created the Virginia Commercial Space Flight Authority, with the powers and duties set forth in this article, as a public body corporate and as a political subdivision of the Commonwealth. The Authority is constituted as a public instrumentality exercising public functions, and the exercise by the Authority of the powers and duties conferred by this article shall be deemed and held to be the performance of an essential government function of the Commonwealth and a public purpose.

B. To achieve the objectives of subsection A, there is created a political subdivision of the Commonwealth to be known as the "Virginia Commercial Space Flight Authority" (the "Authority"). The Authority's exercise of powers conferred by this article shall be deemed to be the performance of an essential governmental function and matters of public necessity for which public moneys may be spent and private property acquired.

§ 2.2-2203. Board of directors; members and officers; Executive Director.

The Authority shall be governed by a board of directors consisting of ~~13~~ *nine* members, ~~four~~ *two* of whom shall be the President of the Center for Innovative Technology, the President of Old Dominion University, the Secretary of Commerce and Trade, and the Secretary of Technology, who shall serve as members of the Board for terms coincident with their terms of office *Secretary of Transportation and the Director of the Virginia Department of Aviation or their respective designees.* The remaining ~~nine~~ *seven* members shall be appointed by the Governor as follows: ~~four~~ *two* members representing the commercial space flight industry; ~~two~~ *one* member representing the telecommunications industry; ~~one~~ *one* member representing the County of Accomack; ~~one~~ *one* member representing the County of Northampton; and ~~one at-large member~~ *one member representing the business community; one member representing the financial industry; one member representing the marketing industry; one member representing the legal industry; one member representing the research and development industry; and two at-large members.* Of the members appointed by the Governor, ~~two~~ *one* shall be appointed for terms a term of one year, ~~three~~ *two* for terms of two years, and ~~three~~ *two* for terms of three years, and ~~two~~ *two* for terms of *four* years from the effective date of their appointment. Thereafter, the members of the Board shall be appointed for terms of ~~three~~ *four* years. All members of the Board appointed by the Governor shall be confirmed by each house of the General Assembly. Vacancies in the membership of the Board shall be filled by appointment for the unexpired portion of the term. Members of the Board shall be subject to removal from office in like manner as are state, county, town and district officers under the provisions

of §§ 24.2-230 through 24.2-238. Immediately after appointment, the members of the Board shall enter upon the performance of their duties. All members shall serve until their successors are appointed. Any appointment to fill a vacancy shall be for the unexpired term. No member appointed by the Governor shall be eligible to serve more than two consecutive terms; however, a member appointed to fill a vacancy may serve two additional consecutive terms. Members shall serve at the pleasure of the Governor and shall be confirmed by the General Assembly. Members of the Board shall receive reimbursement for their expenses and shall be compensated at the rate provided in § 2.2-2813 for each day spent on Board business.

The Board shall annually elect one of its members as chairman and another as vice-chairman; a secretary; and a treasurer who need not be a member of the Board. The Board may also elect other subordinate officers, who need not be members of the Board, as it deems proper and may also elect from its membership, or appoint from the Authority's staff, a secretary and a treasurer and prescribe their powers and duties. The chairman or, in his absence, the vice-chairman shall preside at all meetings of the Board. In the absence of both the chairman and vice-chairman, the Board shall appoint a chairman pro tempore, who shall preside at such meetings. ~~Seven~~ Five members shall constitute a quorum for the transaction of the Authority's business, and no vacancy in the membership shall impair the right of a quorum to exercise all the rights and perform all the duties of the Authority.

The members of the Board shall be entitled to reimbursement for their reasonable travel, meal and lodging expenses incurred in attending the meetings of the Board or while otherwise engaged in the discharge of their duties. Such expenses shall be paid out of the treasury of the Authority upon vouchers signed by the chairman of the Board or by such other person designated by the Board for this purpose.

The Board may employ an Executive Director of the Authority, who shall serve at the pleasure of the Board, to direct the day-to-day operations and activities of the Authority and carry out the powers and duties conferred upon him by the Board, including powers and duties involving the exercise of discretion. The Executive Director shall also exercise and perform such other powers and duties as may be lawfully delegated to him and such powers and duties as may be conferred or imposed upon him by law. The Executive Director's compensation from the Commonwealth shall be fixed by the Board in accordance with law. Such compensation shall be established at a level that will enable the Authority to attract and retain a capable Executive Director. The Executive Director and employees of the Authority shall be compensated in the manner provided by the Board and shall not be subject to the provisions of the Virginia Personnel Act (§ 2.2-2900 et seq.) of this title shall employ or retain such other agents or employees subordinate to the Executive Director as may be necessary to carry out the powers and duties of the Authority.

#### § 2.2-2203.1. Advisory Committee.

The Board shall form a nonvoting advisory committee to provide assistance and support to the Authority on all matters, with the exception of the annual budget and personnel issues. The Advisory Committee shall consist of six members as follows: two members representing the commercial aerospace industry; two members representing the higher education community; the county administrator from the County of Accomack; and the county executive from the County of Northampton. Advisory Committee members shall be nominated by members of the Board and approved by the Board. Each member of the Advisory Committee shall serve a term of four years, except for the county administrator from the County of Accomack (or his designee) and the county executive from the County of Northampton (or his designee), who shall be appointed for a term coincident with his term as county administrator or county executive, respectively.

#### § 2.2-2203.2. Planning.

The Board shall initiate and further plan for the development of commercial space flight in the Commonwealth and, to this end, shall keep informed as to the present requirements and likely future needs of any and all space flight facilities located within the Commonwealth or operated by the Authority. The Board shall submit a strategic plan to the Governor and the General Assembly no later than December 1, 2012, and such plan shall be updated every four years thereafter.

#### § 2.2-2203.3. Employees; employment; personnel rules.

A. Employees of the Authority shall be employed on such terms and conditions as established by the Board. The Board shall develop and adopt personnel rules, policies, and procedures to give its employees grievance rights, ensure that employment decisions shall be based upon the merit and fitness of applicants, and prohibit discrimination on the basis of race, religion, color, sex, or national origin.

B. Any employee of the Virginia Commercial Space Flight Authority who is a member of any plan providing health insurance coverage pursuant to Chapter 28 (§ 2.2-2800 et seq.) shall continue to be a member of such health insurance plan under the same terms and conditions. Notwithstanding subsection A of § 2.2-2818, the costs of providing health insurance coverage to such employees who elect to continue to be members of the state employees' health insurance plan shall be paid by the Authority. Alternatively, an employee may elect to become a member of any health insurance plan established by the Authority. The Authority is authorized to (i) establish a health insurance plan for the benefit of its employees and (ii) enter into agreements with the Department of Human Resource Management providing for the coverage of its employees under the state employees' health insurance plan, provided

that such agreements require the Authority to pay the costs of providing health insurance coverage under such plan.

C. Any retired employee of the Virginia Commercial Space Flight Authority shall be eligible to receive the health insurance credit set forth in § 51.1-1400, provided the retired employee meets the eligibility criteria set forth in that section.

D. The Authority is hereby authorized to establish one or more retirement plans for the benefit of its employees (the Authority retirement plan). For purposes of such plans, the provisions of § 51.1-126.4 shall apply, *mutatis mutandis*. Any Authority employee who is a member of the Virginia Retirement System or other retirement plan as authorized by Article 4 (§ 51.1-125 et seq.) of Chapter 1 of Title 51.1 (the statutory optional retirement plan) at the time the Authority retirement plan becomes effective shall continue to be a member of the Virginia Retirement System or the statutory optional retirement plan under the same terms and conditions, unless such employee elects to become a member of the Authority retirement plan. For purposes of this subsection, the "Virginia Retirement System" shall include any hybrid retirement program established under Title 51.1.

The following rules shall apply:

1. The Authority shall collect and pay all employee and employer contributions to the Virginia Retirement System or the statutory optional retirement plan for retirement and group life insurance in accordance with the provisions of Chapter 1 (§ 51.1-124.1 et seq.) of Title 51.1 for any employee who elects to remain a member of the Virginia Retirement System or a statutory optional retirement plan.

2. Employees who elect to become members of the Authority retirement plan shall be given full credit for their creditable service as defined in § 51.1-124.3 and vesting and benefit accrual under the Authority retirement plan. For any such employee, employment with the Authority shall be treated as employment with any nonparticipating employer for purposes of the Virginia Retirement System or any statutory optional retirement plan.

3. For employees who elect to become members of the Authority retirement plan, the Virginia Retirement System or the statutory optional retirement plan, as applicable, shall transfer to the Authority retirement plan assets equal to the actuarially determined present value of the accrued basic benefits for such employees as of the transfer date. For purposes hereof, "basic benefits" means the benefits accrued under the Virginia Retirement System or under the statutory optional retirement plan based on creditable service and average final compensation as defined in § 51.1-124.3. The actuarial present value shall be determined by using the same actuarial factors and assumptions used in determining the funding needs of the Virginia Retirement System or the statutory optional retirement plan so that the transfer of assets to the Authority retirement plan will have no effect on the funded status and financial stability of the Virginia Retirement System or the statutory optional retirement plan. The Authority shall reimburse the Virginia Retirement System for the cost of actuarial services necessary to determine the present value of the accrued basic benefit of employees who transfer to an Authority retirement plan.

4. The Authority may provide that employees of the Authority who are eligible to participate in any deferred compensation plan sponsored by the Authority shall be enrolled automatically in such plan, unless such employee elects, in a manner prescribed by the Board of the Authority, not to participate. The amount of the deferral under the automatic enrollment and the group of employees to which the automatic enrollment shall apply shall be set by the Board, provided, however, that such employees are provided the opportunity to increase or decrease the amount of the deferral in accordance with the Internal Revenue Code of 1986, as amended.

E. The Authority is hereby authorized to establish a plan providing short-term disability and long-term disability benefits for its employees.

§ 2.2-2203.4. Trust for postemployment benefits authorized; administration.

A. The Authority is hereby authorized to establish and maintain a trust or equivalent arrangement for the purpose of accumulating and investing assets to fund postemployment benefits other than pensions, as defined herein. Such trust or equivalent arrangement shall be irrevocable. The assets of such trust or similar arrangement (i) shall be dedicated to providing benefits to retirees and their beneficiaries in accordance with the terms of the plan or programs providing postemployment benefits other than pensions and (ii) shall be exempt from taxation and execution, attachment, garnishment, or any other process against the Authority or a retiree or beneficiary. The funds of the trust or similar arrangement shall be deemed separate and independent trust funds, shall be segregated from all other funds of the Authority, and shall be invested and administered solely in the interests of the active or former employees (and their dependents or beneficiaries) entitled to postemployment benefits other than pensions.

B. The Authority may make appropriations to any such trust or equivalent arrangement, and the Authority may require active and former employees covered by a postemployment benefit program to contribute to the trust or equivalent arrangement through payments or deductions from their wages, salaries, or pensions.

C. Nothing in this section shall be construed to inhibit the Authority's right to revise or discontinue its plans or programs providing such postemployment benefits other than pensions for its active and former officers and employees as it may deem necessary. If all plans or programs providing such

*postemployment benefits other than pensions for which the trust or equivalent arrangement is established are repealed or terminated by the Authority, then there shall be no continuing responsibility of the Authority to continue to make appropriations to such trust or equivalent arrangement, and the assets of such trust or equivalent arrangement shall be used to provide any benefits continuing to be due to active or former employees (and their dependents or beneficiaries) under such plans or programs. If there are no active or former employees (or dependents or beneficiaries) due a benefit under any plan or program providing such postemployment benefits other than pensions for which the trust or equivalent arrangement was established, then any remaining assets may revert to the Authority.*

*D. Postemployment benefits other than pensions shall be defined by the Authority pursuant to applicable accounting standards and law. Such benefits may include, but are not limited to, medical, prescription drug, dental, vision, hearing, life, or accident insurance (not provided through a pension plan), long-term care benefits, and long-term disability benefits (not covered under a pension plan) provided to individuals who have terminated their service and to the dependents of such individuals, and may be provided by purchasing insurance, by a program of self-insurance, or by a combination of both. However, postemployment benefits other than pensions shall not include defined benefit pension plans for retirees and eligible dependents of retirees, termination benefits, or other pension benefits. Such postemployment benefits other than pensions may be provided to the officers and employees or to their dependents, estates, or designated beneficiaries. Any benefits arising from any postemployment benefits other than pension programs shall be clearly defined and strictly construed.*

*E. Notwithstanding any other provision of law, the moneys and other property comprising the trust or equivalent arrangement established hereunder shall be invested, reinvested, and managed by the Authority or the trust company or bank having powers of a trust company within or without the Commonwealth that is selected by the Board to act as a trustee for the trust or equivalent arrangement with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of like character and with the same aims. Such investments shall be diversified so as to minimize the risk of large losses unless under the circumstances it is clearly prudent not to do so. Such investments shall not be limited by Chapter 45 (§ 2.2-4500 et seq.).*

#### *§ 2.2-2204. Powers of the Authority.*

The Authority is granted all powers necessary or convenient for the carrying out of its statutory purposes, including, but not limited to, the power to:

1. Sue and be sued, implead and be impleaded, complain and defend in all courts;
2. Adopt, use, and alter at will a common seal;
3. Acquire any project and property, real, personal or mixed, tangible or intangible, or any interest therein, by purchase, gift or devise and to sell, lease (whether as lessor or lessee), transfer, convey or dispose of any project or property, real, personal or mixed, tangible or intangible or any interest therein, at any time acquired or held by the Authority on such terms and conditions as may be determined by the Board;
4. Plan, develop, undertake, carry out, construct, equip, improve, rehabilitate, repair, furnish, maintain and operate projects;
5. ~~Adopt bylaws for the management and regulation of its affairs an annual budget for the Authority's capital improvements and operations;~~
6. ~~Adopt, alter, and repeal bylaws, rules, and regulations governing the manner in which its business shall be transacted and the manner in which the power of the Authority shall be exercised and its duties performed. Such bylaws, rules, and regulations may provide for such committees and their functions as the Authority may deem necessary and expedient. Such bylaws, rules, and regulations shall be exempt from the Administrative Process Act (§ 2.2-4000 et seq.);~~

~~6 7. Fix, alter, charge, and collect rates, rentals, fees, and other charges for the use of projects of, the sale of products of, or services rendered by the Authority at rates to be determined by it for the purpose of providing for the payment of the expenses of the Authority; the planning, development, construction, improvement, rehabilitation, repair, furnishing, maintenance, and operation of its projects and properties; the payment of the costs accomplishing its purposes set forth in § 2.2-2202; the payment of the principal of and interest on its obligations; and the creation of reserves for such purposes, for other purposes of the Authority and to pay the cost of maintaining, repairing and operating any project and fulfilling the terms and provisions of any agreements made with the purchasers or holders of any such obligations and any other purposes as set forth in this article;~~

~~7 8. Borrow money, make and issue bonds including bonds as the Authority may determine to issue for the purpose of accomplishing the purposes set forth in § 2.2-2202 or for refunding bonds previously issued by the Authority, whether such outstanding bonds have matured or are then subject to redemption, or any combination of such purposes; secure the payment of all bonds, or any part thereof, by pledge, assignment or deed of trust of all or any of its revenues, rentals, and receipts or of any project or property, real, personal or mixed, tangible or intangible, or any rights and interest therein; make such agreements with the purchasers or holders of such bonds or with others in connection with any such bonds, whether issued or to be issued, as the Authority shall deem advisable; and in general to~~

provide for the security for said bonds and the rights of holders thereof. *However, the total principal amount of bonds, including refunding bonds, outstanding at any time shall not exceed \$50 million, excluding from such limit any revenue bonds. The Authority shall not issue any bonds, other than revenue bonds, that are not specifically authorized by a bill or resolution passed by a majority vote of those elected to each house of the General Assembly;*

8 9. Make and enter into all contracts and agreements necessary or incidental to the performance of its duties, the furtherance of its purposes, and the execution of its powers under this article, including interstate compacts *that have been authorized by the General Assembly and where necessary consented to by the United States Congress* and agreements with any person or federal agency;

9 10. Employ, in its discretion, consultants, attorneys, architects, engineers, accountants, financial experts, investment bankers, superintendents, managers and such other employees and agents as may be necessary, and to fix their compensation to be payable from funds made available to the Authority;

10 11. Receive and accept from any federal or private agency, foundation, corporation, association or person grants, donations of money, real or personal property for the benefit of the Authority, and to receive and accept from the Commonwealth or any state, and any municipality, county or other political subdivision thereof and from any other source, aid or contributions of either money, property, or other things of value, to be held, used and applied for the purposes for which such grants and contributions may be made;

11 12. Render advice and assistance, and to provide services, to institutions of higher education ~~including, but not limited to, Old Dominion University,~~ and to other persons providing services or facilities for scientific and technological research or graduate education, provided that credit toward a degree, certificate or diploma shall be granted only if such education is provided in conjunction with an institution of higher education authorized to operate in Virginia;

12 13. Develop, undertake and provide programs, alone or in conjunction with any person or federal agency, for scientific and technological research, technology management, continuing education and in-service training; however, credit towards a degree, certificate or diploma shall be granted only if such education is provided in conjunction with an institution of higher education authorized to operate in Virginia; foster the utilization of scientific and technological research, information discoveries and data and obtain patents, copyrights and trademarks thereon; coordinate the scientific and technological research efforts of public institutions and private industry and collect and maintain data on the development and utilization of scientific and technological research capabilities;

13 14. Pledge or otherwise encumber all or any of the revenues or receipts of the Authority as security for all or any of the obligations of the Authority; *and*

14. ~~Appoint an industry advisory board to advise the Authority on issues related to the performance of its duties, the furtherance of its purposes and the execution of its powers under this article. The Authority shall have full discretion in determining the number and qualifications of members it appoints to the industry advisory board, and whether such members shall be compensated from the funds made available to the Authority; and~~

15. Do all acts and things necessary or convenient to carry out the powers granted to it by law.

§ 2.2-2213. Forms of accounts and records; audit; annual report.

The accounts and records of the Authority showing the receipt and disbursement of funds from whatever source derived, shall be in a form prescribed by ~~the Auditor of Public Accounts. The Auditor of Public Accounts or his legally authorized representatives, shall annually examine the accounts and books of the Authority governmental generally accepted accounting standards.~~ Such accounts shall correspond as nearly as possible to the accounts and records for such matters maintained by corporate enterprises.

*The accounts of the Authority shall be audited annually by a certified public accounting firm selected by the Auditor of Public Accounts with the assistance of the Authority through a process of competitive negotiation. The cost of such audit and review shall be borne by the Authority.*

The Authority shall submit an annual report to the Governor and General Assembly on or before November 1 of each year. Such report shall contain the audited annual financial statements of the Authority for the year ending the preceding June 30.

§ 2.2-2215. Powers not restrictive; exemptions from Public Procurement Act and the Virginia Personnel Act.

~~The provisions of the Virginia Personnel Act (§ 2.2-2900 et seq.) and the Virginia Public Procurement Act (§ 2.2-4300 et seq.) of this title shall not apply to the Authority in the exercise of any power conferred under this article.~~

*The Authority shall have the power to perform any act or carry out any function not inconsistent with state law, whether or not included in the provisions of this article, which may be, or may tend to be, useful in carrying out the provisions of this article. The provisions of the Virginia Public Procurement Act (§ 2.2-4300 et seq.) shall not apply to the Authority in the exercise of any of its powers provided that the Board adopt procedures to ensure fairness and competitiveness in the procurement of goods and services and the administration of its capital outlay plan. The provisions of the Virginia Personnel Act (§ 2.2-2900 et seq.) shall not apply to the Authority in the exercise of any of its powers.*

*The Authority shall be exempt from the provisions of §§ 2.2-1124, 2.2-1131.1, 2.2-1136, 2.2-1149, 2.2-1153, 2.2-1154, and 2.2-1156, provided that (i) the Authority adopts and the Board approves regulations governing the acquisition, lease, or sale of surplus and real property consistent with the provisions of the above-referenced sections and (ii) any acquisition, lease, or sale of real property valued in excess of \$20 million shall be approved by the Governor.*

§ 33.1-23.03:2. Commonwealth Space Flight Fund, Commonwealth Port Fund, Commonwealth Airport Fund and Commonwealth Mass Transit Fund.

Of the funds becoming part of the Transportation Trust Fund pursuant to subdivision 3 of § 33.1-23.03:1, an aggregate of 4.2 percent shall be set aside as the Commonwealth Port Fund; an aggregate of 2.4 percent shall be set aside as the Commonwealth Airport Fund; 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. *Beginning with the Commonwealth's 2012-2013 fiscal year through the Commonwealth's 2016-2017 fiscal year, each fiscal year from the funds becoming part of the Transportation Trust Fund pursuant to subdivision 3 of § 33.1-23.03:1 the Comptroller shall transfer \$9.5 million to the Commonwealth Space Flight Fund.* The remaining ~~78.9 percent of the funds deposited into or held in the Transportation Trust Fund in fiscal year 1998-1999, and 78.7 percent of the funds deposited into or held in the Transportation Trust Fund in fiscal year 1999-2000 and thereafter,~~ pursuant to subdivision 3 of § 33.1-23.03:1, together with funds deposited pursuant to subdivisions 1 and 6 of § 33.1-23.03:1, shall be expended for capital improvements including construction, reconstruction, maintenance, and improvements of highways according to the provisions of § 33.1-23.1 B or to secure bonds issued for such purposes, as provided by the Board and the General Assembly.

§ 33.1-23.7. Definitions.

As used in this article, whether in capitalized or uncapitalized form, each of the following terms has the meaning given it in this section, unless the context requires a different meaning to be consistent with the manifest intention of the General Assembly:

"Bank" means the Virginia Transportation Infrastructure Bank created in § 33.1-23.8.

"Board" means the Commonwealth Transportation Board.

"Cost," as applied to any project financed under the provisions of this article, means the total of all costs including, but not limited to, the costs of planning, design, right-of-way acquisition, engineering, and construction incurred by an Eligible Borrower or other Project Sponsor as reasonable and necessary for carrying out all works and undertakings necessary or incident to the accomplishment of any project. The term also includes capitalized interest, reasonably required reserve funds, and financing, credit enhancement, and issuance costs.

"Credit enhancements" means surety bonds, insurance policies, letters of credit, guarantees, and other forms of collateral or security.

"Creditworthiness" means attributes such as revenue stability, debt service coverage, reserves, and other factors commonly considered in assessing the strength of the security for indebtedness.

"Eligible Borrower" means any (i) Private Entity; (ii) Governmental Entity; (iii) instrumentality, corporation, or entity established by any of the foregoing pursuant to § 33.1-23.11; or (iv) combination of two or more of the foregoing.

"Finance" and any variation of the term, when used in connection with a cost or a project, includes both the initial financing and any refinancing of the cost or project and any variation of such terms.

"Governmental Entity" means any (i) Locality; (ii) local, regional, state, or federal entity; transportation authority, planning district, commission, or political subdivision created by the General Assembly or pursuant to the Constitution and laws of the Commonwealth; or public transportation entity owned, operated, or controlled by one or more local entities; (iii) entity established by interstate compact; (iv) instrumentality, corporation, or entity established by any of the foregoing pursuant to § 33.1-23.11; or (v) any combination of two or more of the foregoing.

"Grant" means a transfer of moneys or property that does not impose any obligation or condition on the grantee to repay any amount to the transferor other than in connection with assuring that the transferred moneys or property will be spent or used in accordance with the governmental purpose of the transfer. Such term includes, without limitation, direct cash payments made to pay or reimburse all or a portion of interest payments made by a grantee on a debt obligation. As provided in §§ 33.1-23.8 and 33.1-23.9, only Governmental Entities may receive grants of moneys or property held in or for the credit of the Bank.

"Loan" means an obligation subject to repayment that is provided by the Bank to an Eligible Borrower to finance all or a part of the eligible cost of a project incurred by the Eligible Borrower or other Project Sponsor. A loan may be disbursed (i) in anticipation of reimbursement (including an advance or draw under a credit enhancement instrument), (ii) as direct payment of eligible costs, or (iii) to redeem or defease a prior obligation incurred by the Eligible Borrower or other Project Sponsor to finance the eligible costs of a project.

"Locality" means any county, city, or town in the Commonwealth.

"Management agreement" means the memorandum of understanding or interagency agreement among the Manager, the Secretary of Finance and the Board as authorized under subsection B of § 33.1-23.8.

"Manager" means the Virginia Resources Authority serving as the manager, administrator and trustee of funds disbursed from the Bank in accordance with the provisions of this article and the management agreement.

"Other financial assistance" means, but is not limited to, grants, capital or debt reserves for bonds or debt instrument financing, provision of letters of credit and other forms of credit enhancement, and other lawful forms of financing and methods of leveraging funds that are approved by the Manager.

"Private Entity" means any private or nongovernmental entity that has executed an interim or comprehensive agreement to develop and construct a transportation infrastructure project pursuant to the Public-Private Transportation Act of 1995 (§ 56-556 et seq.).

"Project" means (i) the construction, reconstruction, rehabilitation, or replacement of any interstate, state highway, toll road, tunnel, local road, or bridge; or (ii) the construction, reconstruction, rehabilitation, or replacement of any (a) mass transit, (b) commuter, passenger, or freight rail, (c) port, or (d) airport, or (e) commercial space flight facility; or the acquisition of any rolling stock, vehicle, or equipment to be used therewith.

"Project obligation" means any bond, note, debenture, interim certificate, grant or revenue anticipation note, lease or lease-purchase or installment sales agreement, or credit enhancements issued, incurred, or entered into by an Eligible Borrower to evidence a loan, or any financing agreements, reimbursement agreements, guarantees, or other evidences of an obligation of an Eligible Borrower or other Project Sponsor to pay or guarantee a loan.

"Project Sponsor" means any Private Entity or Governmental Entity that is involved in the planning, design, right-of-way acquisition, engineering, construction, maintenance or financing of a project.

"Reliable repayment source" means any means by which an Eligible Borrower or other Project Sponsor generates funds that are dedicated to the purpose of retiring a project obligation.

"Substantial project completion" means the opening of a project for vehicular or passenger traffic or the handling of cargo and freight.

§ 58.1-423. Income tax paid by commercial spaceflight entities.

A. Beginning July 1, 2011, and for fiscal years 2012, 2013, 2014, and 2015, the portion of the Virginia income tax net revenue generated by qualified corporations or limited liability companies that is attributable to the sale of commercial human spaceflights or commercial spaceflight training (*regardless of point of sale, or where space flight takes place*), or is incidental to the sale of commercial human spaceflights, shall be transferred to the Virginia Commercial Space Flight Authority, established pursuant to Article 2 (§ 2.2-2201 et seq.) of Chapter 22 of Title 2.2. The Tax Commissioner shall make a written certification to the Comptroller within 15 days of the close of each calendar quarter providing an estimate of the portion of the Virginia income tax net revenue generated during the calendar quarter by the qualified corporations or limited liability companies that is attributable to the sale of commercial human spaceflights or commercial spaceflight training or is incidental to the sale of commercial human spaceflights. Not later than 30 days after the close of each quarter, the Comptroller shall transfer to the Virginia Commercial Space Flight Authority an amount from the general fund that is equal to the estimate provided by the Tax Commissioner.

B. For purposes of this section, a qualified corporation or limited liability company is a corporation or limited liability company that engages in commercial human spaceflights or commercial spaceflight training.

§ 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.

*3a. There is hereby created in the Department of the Treasury a special nonreverting fund that shall be a part of the Transportation Trust Fund and that shall be known as the Commonwealth Space Flight Fund. The Commonwealth Space Flight 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.*

*a. The amounts allocated to the Commonwealth Space Flight Fund pursuant to § 33.1-23.03:2 shall be allocated by the Commonwealth Transportation Board to the Board of Directors of the Virginia Commercial Space Flight Authority to be used to support the capital needs, maintenance, and operating costs of any and all facilities owned and operated by the Virginia Commercial Space Flight Authority.*

*b. Commonwealth Space Flight Fund revenue shall be allocated by the Board of Directors to the Virginia Commercial Space Flight Authority in order to foster and stimulate the growth of the commercial space flight industry in Virginia.*

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 Transit Fund.

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

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

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

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

(2) The Board may allocate these funds to any locality or planning district commission to finance up



to 80 percent of the local share of all costs associated with the development, implementation, and continuation of ridesharing programs.

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

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

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

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

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

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

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

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

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

g. There is hereby created in the Department of the Treasury a special nonreverting fund known as the Commonwealth Transit Capital Fund. The Commonwealth Transit Capital Fund shall be part of the Commonwealth Mass Transit Fund. The Commonwealth Transit Capital 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 Fund. Any funds remaining in the Commonwealth Transit Capital Fund at the end of the biennium shall not revert to the 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~~ *the* 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 within the school division in which the parents or guardians of such persons legally reside. Such population estimate produced by the Weldon Cooper Center for Public Service of the University of Virginia shall account for persons who attend institutions of higher education within the school division in which the student's parents or guardians legally reside. To such estimate, the Department of Education shall add the population of students with disabilities, ages two through four and 20 through 21, as provided to the Department of Education by school divisions. The revenue so apportionable and distributable is hereby appropriated to the several counties and cities for maintenance, operation, capital outlays, debt and interest payments, or other expenses incurred in the operation of the public schools, which shall be considered as funds raised from local resources. In any county, however, wherein is situated any incorporated town constituting a school division, the county treasurer shall pay into the town treasury for maintenance, operation, capital outlays, debt and interest payments, or other expenses incurred in the operation of the public schools, the proper proportionate amount received by him in the ratio that the school population of such town bears to the school population of the entire county. If the school population of any city or of any town constituting a school division is increased by the annexation of territory since the last estimate of school population provided by the Weldon Cooper Center for Public Service, such increase shall, for the purposes of this section, be added to the school population of such city or town as shown by the last such estimate and a proper reduction made in the school population of the county or counties from which the annexed territory was acquired.

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

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

net revenue generated (and collected in the succeeding month) from such one-half percent increase for the month of August 2004 and for each month thereafter.

2. 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 all appointments to the Board of the Virginia Commercial Space Flight Authority shall expire on July 1, 2012. New appointments shall be made to the Board pursuant to the provisions of § 2.2-2203 of the Code of Virginia.**

**3. That the Virginia Commercial Space Flight Authority created under § 2.2-2202 of the Code of Virginia shall issue a written notice to its employees regarding the Authority's status. The date upon which such written notice is issued shall be referred to herein as the "option date." Each employee may, by written request made within the 180 days immediately following the option date, elect not to become employed by the Authority. Any employee of the Virginia Commercial Space Flight Authority who (i) elects not to become employed by the Authority and who is not reemployed by any other department, institution, board, commission, or agency of the Commonwealth; (ii) is not offered the opportunity to remain employed by the Authority; or (iii) is not offered a position with the Authority for which the employee is qualified or is offered a position that requires relocation or a reduction in salary, shall be eligible for the severance benefits conferred by the provisions of the Workforce Transition Act (§ 2.2-3200 et seq.) of the Code of Virginia. Any employee who accepts employment with the Authority shall not be considered to be involuntarily separated from state employment and shall not be eligible for the severance benefits conferred by the Workforce Transition Act.**