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HOUSE BILL NO. 1403

Offered January 9, 2013

Prefiled December 17, 2012

A BILL to amend and reenact §§ 33.1-23.03:1 and 58.1-638 of the Code of Virginia, relating to sales and use tax revenue dedicated to the Transportation Trust Fund.

Patrons—Cole, Lingamfelter and Marshall, R.G.

Referred to Committee on Finance

Be it enacted by the General Assembly of Virginia:

1. That §§ 33.1-23.03:1 and 58.1-638 of the Code of Virginia are amended and reenacted as follows:

§ 33.1-23.03:1. Transportation Trust Fund.

There is hereby created in the Department of the Treasury a special nonreverting fund to be known as the Transportation Trust Fund, consisting of:

1. Funds remaining for highway construction purposes, among the several highway systems pursuant to § 33.1-23.1.

2. [Repealed.]

3. ~~The Revenues designated for this fund pursuant to § 58.1-638, and~~ additional revenues generated by enactments of Chapters 11, ~~42~~ and 15 of the Acts of Assembly, 1986 Special Session, and designated for this fund.

4. Tolls and other revenues derived from the projects financed or refinanced pursuant to this title which are payable into the state treasury and tolls and other revenues derived from other transportation projects, which may include upon the request of the applicable appointed governing body, as soon as their obligations have been satisfied, such tolls and revenue derived for transportation projects pursuant to § 33.1-253 (Chesapeake Bay Bridge and Tunnel District) and to the Richmond Metropolitan Authority, established in Chapter 70 (§ 15.2-7000 et seq.) of Title 15.2, or if the appointed governing body requests refunding or advanced refunding by the Board and such refunding or advanced refunding is approved by the General Assembly. Such funds shall be held in separate subaccounts of the Transportation Trust Fund to the extent required by law or the Board.

5. Tolls and other revenues derived from the Richmond-Petersburg Turnpike, provided that such funds shall be held in a separate subaccount of the Transportation Trust Fund and allocated as set forth in Chapter 574 of the Acts of Assembly of 1983 until expiration of that Act.

6. Such other funds as may be appropriated by the General Assembly from time to time, and designated for this fund.

7. All interest, dividends and appreciation which may accrue to the Transportation Trust Fund and the Highway Maintenance and Construction Fund, except that interest on funds becoming part of the Transportation Trust Fund under subdivision 1 and the Highway Maintenance and Construction Fund shall not become part of the Transportation Trust Fund until July 1, 1988.

8. All amounts required by contract to be paid over to the Transportation Trust Fund.

9. Concession payments paid to the Commonwealth by a private entity pursuant to the Public-Private Transportation Act of 1995 (§ 56-556 et seq.).

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

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 a. Beginning July 1, 2013, and ending September 30, 2014, 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 a 0.6 percent sales and use tax rate shall be paid, in the manner hereinafter provided in this section, to the Transportation Trust Fund as defined in § 33.1-23.03:1. Beginning October 1, 2014, and ending September 30, 2015, the sales and use tax revenue generated by a 0.7 percent sales and use tax rate shall be paid, in the manner provided in this section, to the Transportation Trust Fund. Beginning October 1, 2015, and ending September 30, 2016, the sales and use tax revenue generated by a 0.8 percent sales and use tax rate shall be paid, in the manner provided in this section, to the Transportation Trust Fund. Beginning October 1, 2016, and ending September 30, 2017, the sales and use tax revenue generated by a 0.9 percent sales and use tax rate shall be paid, in the manner provided in this section, to the Transportation Trust Fund. Beginning October 1, 2017, the sales and use tax revenue generated by a one percent sales and use tax rate shall be paid, in the manner provided in this section, to the Transportation Trust Fund.~~

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59 b. Of the funds paid to the Transportation Trust Fund, an aggregate of 4.2 percent shall be set aside
60 as the Commonwealth Port Fund as provided in this section; an aggregate of 2.4 percent shall be set
61 aside as the Commonwealth Airport Fund as provided in this section; and an aggregate of 14.7 percent
62 shall be set aside as the Commonwealth Mass Transit Fund as provided in this section. The Fund's share
63 of such net revenue shall be computed as an estimate of the net revenue to be received into the state
64 treasury each month, and such estimated payment shall be adjusted for the actual net revenue received in
65 the preceding month. All payments shall be made to the Fund on the last day of each month.

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

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

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

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

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

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

95 Of the remaining amount:

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

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

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

104 3a. There is hereby created in the Department of the Treasury a special nonreverting fund that shall
105 be a part of the Transportation Trust Fund and that shall be known as the Commonwealth Space Flight
106 Fund. The Commonwealth Space Flight Fund shall be established on the books of the Comptroller and
107 the funds remaining in such Fund at the end of a biennium shall not revert to the general fund but shall
108 remain in the Fund. Interest earned on such funds shall remain in the Fund and be credited to it.

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

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

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

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

E. Beginning July 1, 2000, of the remaining sales and use tax revenue, the revenue generated by a

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

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

2. 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. Notwithstanding the schedule for increases in the sales and use tax revenue transferred to the Transportation Trust Fund under this act, the rate increase scheduled for October 1 for any of the four consecutive years beginning October 1, 2014, shall not go into effect if the general fund revenue forecast for the then-current fiscal year according to the general appropriation act in effect is less than 0.1 percent greater than the general fund revenues collected, with transfers, for the most recently ended fiscal year as determined on or before September 1 each year by the Auditor of Public Accounts. If the percentage of sales and use tax revenue transferred remains the same for consecutive years, the percentage in the following year shall remain the same unless the comparison of general fund revenues meets the condition set forth in this enactment, in which event the percentage for the immediately following year shall be equal to the subsequent higher tax rate set forth in this act. Increases in the percentage of sales and use tax revenue transferred shall continue until the amount is equivalent to the revenue generated by a one percent sales and use tax even if, as a result of this enactment, the increases on October 1 do not correspond to the years set forth in this act.