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SENATE BILL NO. 824

Offered January 9, 2013

Prefiled December 27, 2012

A BILL to amend and reenact §§ 33.1-269, 58.1-602, and 58.1-611.1 of the Code of Virginia and to amend the Code of Virginia by adding in Article 1.1 of Chapter 1 of Title 33.1 a section numbered 33.1-23.5:3 and by adding a section numbered 58.1-604.7, relating to an additional state sales and use tax in the Hampton Roads Planning District; referendum.

Patron—McWaters

Referred to Committee on Finance

Whereas, the Port of Virginia is a major economic asset of the Commonwealth, and most of the businesses supporting and participating in the Port and Port operations are located in the greater Hampton Roads region of the Commonwealth; and

Whereas, the Port of Virginia acts as a critical economic engine for the Commonwealth, spurring job creation and growth, expanding the tax base, and encouraging corporate investment in the Commonwealth; and

Whereas, an efficient, modern, and safe transportation infrastructure is essential to ensure the continued growth and success of the Port of Virginia in order to move cargo to and from the Port; and

Whereas, continued maintenance and improvement of the unique transportation infrastructure in the greater Hampton Roads region, including numerous bridges and tunnels, is imperative to maintaining the health, safety, and well-being of the residents of that region; now, therefore,

Be it enacted by the General Assembly of Virginia:

1. That §§ 33.1-269, 58.1-602, and 58.1-611.1 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Article 1.1 of Chapter 1 of Title 33.1 a section numbered 33.1-23.5:3 and by adding a section numbered 58.1-604.7 as follows:

§ 33.1-23.5:3. Special Transportation Fund for the Hampton Roads Planning District established.

There is hereby created in the state treasury a special nonreverting fund to be known as the Special Transportation Fund for the Hampton Roads Planning District Fund, hereafter referred to as "the Fund." The Fund shall be established on the books of the Comptroller. All revenues generated from the sales and use tax pursuant to § 58.1-604.7 shall be paid into the state treasury and credited to the Fund. Interest earned on moneys in the Fund shall remain in the Fund and be credited to it. Any moneys remaining in the Fund, including interest thereon, at the end of each fiscal year shall not revert to the general fund but shall remain in the Fund. The moneys deposited in the fund shall be held in trust for and administered on behalf of the Hampton Roads Planning District, and shall be used solely for regional transportation projects that improve mobility within the District identified by the Hampton Roads Transportation Planning Organization. No expenditures from other use of moneys in the Fund shall be considered in allocating highway maintenance and construction funds under § 33.1-23.1 or apportioning Transportation Trust Fund funds under § 58.1-638, but shall be in addition thereto.

§ 33.1-269. General powers of Board.

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

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

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

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

4. Issue revenue bonds of the Commonwealth to be known and designated as "Commonwealth of

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59 Virginia Transportation Revenue Bonds," secured (i) by revenues received from the U.S. Route 58
60 Corridor Development Fund, subject to their appropriation by the General Assembly, (ii) to the extent
61 required, from revenues legally available from the Transportation Trust Fund and (iii) to the extent
62 required, from any other legally available funds which have been appropriated by the General Assembly;

63 4a. Issue revenue bonds of the Commonwealth to be known and designated as "Commonwealth of
64 Virginia Transportation Revenue Bonds," secured, subject to their appropriation by the General
65 Assembly, first from (i) revenues received from the Northern Virginia Transportation District Fund, (ii)
66 to the extent required, funds appropriated and allocated, pursuant to the highway allocation formula as
67 provided by law, to the highway construction district in which the project or projects to be financed are
68 located or to the city or county in which the project or projects to be financed are located, (iii) to the
69 extent required, legally available revenues of the Transportation Trust Fund, and (iv) such other funds
70 which may be appropriated by the General Assembly;

71 4b. Issue revenue bonds of the Commonwealth to be known and designated as "Commonwealth of
72 Virginia Transportation Program Revenue Bonds" secured, subject to their appropriation by the General
73 Assembly, first from (i) any revenues received from any Set-aside Fund established by the General
74 Assembly pursuant to § 58.1-816.1, (ii) to the extent required, revenues received pursuant to any
75 contract with a local jurisdiction or any alternative mechanism for generation of local revenues for
76 specific funding of a project satisfactory to the Commonwealth Transportation Board, (iii) to the extent
77 required, funds appropriated and allocated, pursuant to the highway allocation formula as provided by
78 law, to the highway construction district in which the project or projects to be financed are located or to
79 the city or county in which the project or projects to be financed are located, (iv) to the extent required,
80 legally available revenues of the Transportation Trust Fund, and (v) such other funds which may be
81 appropriated by the General Assembly. No bonds for any project or projects shall be issued under the
82 authority of this subsection unless such project or projects are specifically included in a bill or resolution
83 passed by the General Assembly;

84 4c. Issue revenue bonds of the Commonwealth to be known and designated as "Commonwealth of
85 Virginia Transportation Program Revenue Bonds" secured, subject to their appropriation by the General
86 Assembly, first from (i) any revenues received from the Commonwealth Transit Capital Fund established
87 by the General Assembly pursuant to subdivision A 4 g of § 58.1-638, (ii) to the extent required,
88 legally available revenues of the Transportation Trust Fund, and (iii) such other funds which may be
89 appropriated by the General Assembly. No bonds for any project or projects shall be issued under the
90 authority of this subsection unless such project or projects are specifically included in a bill or resolution
91 passed by the General Assembly;

92 4d. Issue revenue bonds of the Commonwealth from time to time to be known and designated as
93 "Commonwealth of Virginia Federal Highway Reimbursement Anticipation Notes" secured, subject to
94 their appropriation by the General Assembly, (i) first from any federal highway reimbursements and any
95 other federal highway assistance received from time to time by the Commonwealth, (ii) then, at the
96 discretion of the Board, to the extent required, from legally available revenues of the Transportation
97 Trust Fund, and (iii) then from such other funds, if any, which are designated by the General Assembly
98 for such purpose;

99 4e. Issue revenue bonds of the Commonwealth from time to time to be known and designated as
100 "Commonwealth of Virginia Credit Assistance Revenue Bonds," secured, subject to their appropriation
101 by the General Assembly, solely from revenues with respect to or generated by the project or projects
102 being financed thereby and any tolls or other revenues pledged by the Board as security therefor and in
103 accordance with the applicable federal credit assistance authorized with respect to such project or
104 projects by the United States Department of Transportation;

105 4f. Issue revenue bonds of the Commonwealth to be known and designated as "Commonwealth of
106 Virginia Transportation Capital Projects Revenue Bonds," secured, subject to their appropriation by the
107 General Assembly, (i) from the revenues deposited into the Priority Transportation Fund established
108 pursuant to § 33.1-23.03:8; (ii) to the extent required, from revenues legally available from the
109 Transportation Trust Fund; and (iii) to the extent required, from any other legally available funds;

110 4g. Issue grant anticipation notes of the Commonwealth from time to time to be known and
111 designated as "Commonwealth of Virginia Federal Transportation Grant Anticipation Revenue Notes"
112 secured, subject to their appropriation by the General Assembly, (i) first from the project-specific
113 reimbursements pursuant to § 33.1-23.23; (ii) then, at the discretion of the Board, to the extent required,
114 from legally available revenues of the Transportation Trust Fund; and (iii) then from such other funds, if
115 any, which are designated by the General Assembly for such purpose;

116 4h. Issue revenue bonds of the Commonwealth to be known and designated as "Commonwealth of
117 Virginia Transportation Revenue Bonds," secured, subject to their appropriation by the General
118 Assembly, first from (i) revenues received from the Special Transportation Fund for the Hampton Roads
119 Planning District, (ii) to the extent required, funds appropriated and allocated, pursuant to the highway
120 allocation formula as provided by law, to the highway construction district in which the project or

projects to be financed are located or to the city or county in which the project or projects to be financed are located, (iii) to the extent required, legally available revenues of the Transportation Trust Fund, and (iv) such other funds that may be appropriated by the General Assembly. No bonds for any project or projects shall be issued under the authority of this subsection unless such project or projects are identified by the Hampton Roads Transportation Planning Organization consistent with the provisions of § 33.1-23.5:3 and specifically included in a bill or resolution passed by the General Assembly;

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

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

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

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

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

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

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

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

11. Enter into any agreements or take such other actions as the Board shall determine in connection with applying for or obtaining any federal credit assistance, including without limitation loan guarantees and lines of credit, pursuant to authorization from the United States Department of Transportation with

respect to any project included in the Commonwealth's long-range transportation plan and the approved State Transportation Improvement Program.

§ 58.1-602. Definitions.

As used in this chapter, unless the context clearly shows otherwise, the term or phrase:

"Advertising" means the planning, creating, or placing of advertising in newspapers, magazines, billboards, broadcasting and other media, including, without limitation, the providing of concept, writing, graphic design, mechanical art, photography and production supervision. Any person providing advertising as defined herein shall be deemed to be the user or consumer of all tangible personal property purchased for use in such advertising.

"Amplification, transmission and distribution equipment" means, but is not limited to, production, distribution, and other equipment used to provide Internet-access services, such as computer and communications equipment and software used for storing, processing and retrieving end-user subscribers' requests.

"Business" includes any activity engaged in by any person, or caused to be engaged in by him, with the object of gain, benefit or advantage, either directly or indirectly.

"Cost price" means the actual cost of an item or article of tangible personal property computed in the same manner as the sales price as defined in this section without any deductions therefrom on account of the cost of materials used, labor, or service costs, transportation charges, or any expenses whatsoever.

"Custom program" means a computer program which is specifically designed and developed only for one customer. The combining of two or more prewritten programs does not constitute a custom computer program. A prewritten program that is modified to any degree remains a prewritten program and does not become custom.

"Distribution" means the transfer or delivery of tangible personal property for use, consumption, or storage by the distributee, and the use, consumption, or storage of tangible personal property by a person who has processed, manufactured, refined, or converted such property, but does not include the transfer or delivery of tangible personal property for resale or any use, consumption, or storage otherwise exempt under this chapter.

"Gross proceeds" means the charges made or voluntary contributions received for the lease or rental of tangible personal property or for furnishing services, computed with the same deductions, where applicable, as for sales price as defined in this section over the term of the lease, rental, service, or use, but not less frequently than monthly.

"Gross sales" means the sum total of all retail sales of tangible personal property or services as defined in this chapter, without any deduction, except as provided in this chapter. "Gross sales" shall not include the federal retailers' excise tax or the federal diesel fuel excise tax imposed in § 4091 of the Internal Revenue Code if the excise tax is billed to the purchaser separately from the selling price of the article, or the Virginia retail sales or use tax, or any sales or use tax imposed by any county or city under § 58.1-605 or 58.1-606, *or any sales and use tax imposed under § 58.1-604.7.*

"Import" and "imported" are words applicable to tangible personal property imported into the Commonwealth from other states as well as from foreign countries, and "export" and "exported" are words applicable to tangible personal property exported from the Commonwealth to other states as well as to foreign countries.

"In this Commonwealth" or "in the Commonwealth" means within the limits of the Commonwealth of Virginia and includes all territory within these limits owned by or ceded to the United States of America.

"Integrated process," when used in relation to semiconductor manufacturing, means a process that begins with the research or development of semiconductor products, equipment, or processes, includes the handling and storage of raw materials at a plant site, and continues to the point that the product is packaged for final sale and either shipped or conveyed to a warehouse. Without limiting the foregoing, any semiconductor equipment, fuel, power, energy, supplies, or other tangible personal property shall be deemed used as part of the integrated process if its use contributes, before, during, or after production, to higher product quality, production yields, or process efficiencies. Except as otherwise provided by law, such term shall not mean general maintenance or administration.

"Internet" means collectively, the myriad of computer and telecommunications facilities, which comprise the interconnected world-wide network of computer networks.

"Internet service" means a service that enables users to access proprietary and other content, information electronic mail, and the Internet as part of a package of services sold to end-user subscribers.

"Lease or rental" means the leasing or renting of tangible personal property and the possession or use thereof by the lessee or renter for a consideration, without transfer of the title to such property.

"Manufacturing, processing, refining, or conversion" includes the production line of the plant starting with the handling and storage of raw materials at the plant site and continuing through the last step of production where the product is finished or completed for sale and conveyed to a warehouse at the

production site, and also includes equipment and supplies used for production line testing and quality control. The term "manufacturing" shall also include the necessary ancillary activities of newspaper and magazine printing when such activities are performed by the publisher of any newspaper or magazine for sale daily or regularly at average intervals not exceeding three months.

The determination whether any manufacturing, mining, processing, refining or conversion activity is industrial in nature shall be made without regard to plant size, existence or size of finished product inventory, degree of mechanization, amount of capital investment, number of employees or other factors relating principally to the size of the business. Further, "industrial in nature" shall include, but not be limited to, those businesses classified in codes 10 through 14 and 20 through 39 published in the Standard Industrial Classification Manual for 1972 and any supplements issued thereafter.

"Modular building" means, but shall not be limited to, single and multifamily houses, apartment units, commercial buildings, and permanent additions thereof, comprised of one or more sections that are intended to become real property, primarily constructed at a location other than the permanent site, built to comply with the Virginia Industrialized Building Safety Law (§ 36-70 et seq.) as regulated by the Virginia Department of Housing and Community Development, and shipped with most permanent components in place to the site of final assembly. For purposes of this chapter, a modular building shall not include a mobile office as defined in § 58.1-2401 or any manufactured building subject to and certified under the provisions of the National Manufactured Housing Construction and Safety Standards Act of 1974 (42 U.S.C. § 5401 et seq.).

"Modular building manufacturer" means a person or corporation who owns or operates a manufacturing facility and is engaged in the fabrication, construction and assembling of building supplies and materials into modular buildings, as defined in this section, at a location other than at the site where the modular building will be assembled on the permanent foundation and may or may not be engaged in the process of affixing the modules to the foundation at the permanent site.

"Modular building retailer" means any person who purchases or acquires a modular building from a modular building manufacturer, or from another person, for subsequent sale to a customer residing within or outside of the Commonwealth, with or without installation of the modular building to the foundation at the permanent site.

"Motor vehicle" means a "motor vehicle" as defined in § 58.1-2401, taxable under the provisions of the Virginia Motor Vehicles Sales and Use Tax Act (§ 58.1-2400 et seq.) and upon the sale of which all applicable motor vehicle sales and use taxes have been paid.

"Occasional sale" means a sale of tangible personal property not held or used by a seller in the course of an activity for which he is required to hold a certificate of registration, including the sale or exchange of all or substantially all the assets of any business and the reorganization or liquidation of any business, provided such sale or exchange is not one of a series of sales and exchanges sufficient in number, scope and character to constitute an activity requiring the holding of a certificate of registration.

"Open video system" means an open video system authorized pursuant to 47 U.S.C. § 573 and, for purposes of this chapter only, shall also include Internet service regardless of whether the provider of such service is also a telephone common carrier.

"Person" includes any individual, firm, copartnership, cooperative, nonprofit membership corporation, joint venture, association, corporation, estate, trust, business trust, trustee in bankruptcy, receiver, auctioneer, syndicate, assignee, club, society, or other group or combination acting as a unit, body politic or political subdivision, whether public or private, or quasi-public, and the plural of such term shall mean the same as the singular.

"Prewritten program" means a computer program that is prepared, held or existing for general or repeated sale or lease, including a computer program developed for in-house use and subsequently sold or leased to unrelated third parties.

"Railroad rolling stock" means locomotives, of whatever motive power, autocars, railroad cars of every kind and description, and all other equipment determined by the Tax Commissioner to constitute railroad rolling stock.

"Retail sale" or a "sale at retail" means a sale to any person for any purpose other than for resale in the form of tangible personal property or services taxable under this chapter, and shall include any such transaction as the Tax Commissioner upon investigation finds to be in lieu of a sale. All sales for resale must be made in strict compliance with regulations applicable to this chapter. Any dealer making a sale for resale which is not in strict compliance with such regulations shall be personally liable for payment of the tax.

The terms "retail sale" and a "sale at retail" shall specifically include the following: (i) the sale or charges for any room or rooms, lodgings, or accommodations furnished to transients for less than 90 continuous days by any hotel, motel, inn, tourist camp, tourist cabin, camping grounds, club, or any other place in which rooms, lodging, space, or accommodations are regularly furnished to transients for a consideration; (ii) sales of tangible personal property to persons for resale when because of the

operation of the business, or its very nature, or the lack of a place of business in which to display a certificate of registration, or the lack of a place of business in which to keep records, or the lack of adequate records, or because such persons are minors or transients, or because such persons are engaged in essentially service businesses, or for any other reason there is likelihood that the Commonwealth will lose tax funds due to the difficulty of policing such business operations; and (iii) the separately stated charge made for automotive refinish repair materials that are permanently applied to or affixed to a motor vehicle during its repair. The Tax Commissioner is authorized to promulgate regulations requiring vendors of or sellers to such persons to collect the tax imposed by this chapter on the cost price of such tangible personal property to such persons and may refuse to issue certificates of registration to such persons.

The term "transient" shall not include a purchaser of camping memberships, time-shares, condominiums, or other similar contracts or interests that permit the use of, or constitute an interest in, real estate, however created or sold and whether registered with the Commonwealth or not. Further, a purchaser of a right or license which entitles the purchaser to use the amenities and facilities of a specific real estate project on an ongoing basis throughout its term shall not be deemed a transient; provided, however, that the term or time period involved is for seven years or more.

The terms "retail sale" and "sale at retail" shall not include a transfer of title to tangible personal property after its use as tools, tooling, machinery or equipment, including dies, molds, and patterns, if (i) at the time of purchase, the purchaser is obligated, under the terms of a written contract, to make the transfer and (ii) the transfer is made for the same or a greater consideration to the person for whom the purchaser manufactures goods.

"Retailer" means every person engaged in the business of making sales at retail, or for distribution, use, consumption, or storage to be used or consumed in the Commonwealth.

"Sale" means any transfer of title or possession, or both, exchange, barter, lease or rental, conditional or otherwise, in any manner or by any means whatsoever, of tangible personal property and any rendition of a taxable service for a consideration, and includes the fabrication of tangible personal property for consumers who furnish, either directly or indirectly, the materials used in fabrication, and the furnishing, preparing, or serving for a consideration of any tangible personal property consumed on the premises of the person furnishing, preparing, or serving such tangible personal property. A transaction whereby the possession of property is transferred but the seller retains title as security for the payment of the price shall be deemed a sale.

"Sales price" means the total amount for which tangible personal property or services are sold, including any services that are a part of the sale, valued in money, whether paid in money or otherwise, and includes any amount for which credit is given to the purchaser, consumer, or lessee by the dealer, without any deduction therefrom on account of the cost of the property sold, the cost of materials used, labor or service costs, losses or any other expenses whatsoever. "Sales price" shall not include (i) any cash discount allowed and taken; (ii) finance charges, carrying charges, service charges or interest from credit extended on sales of tangible personal property under conditional sale contracts or other conditional contracts providing for deferred payments of the purchase price; (iii) separately stated local property taxes collected; (iv) that portion of the amount paid by the purchaser as a discretionary gratuity added to the price of a meal; or (v) that portion of the amount paid by the purchaser as a mandatory gratuity or service charge added by a restaurant to the price of a meal, but only to the extent that such mandatory gratuity or service charge does not exceed 20% of the price of the meal. Where used articles are taken in trade, or in a series of trades as a credit or part payment on the sale of new or used articles, the tax levied by this chapter shall be paid on the net difference between the sales price of the new or used articles and the credit for the used articles.

"Semiconductor cleanrooms" means the integrated systems, fixtures, piping, partitions, flooring, lighting, equipment, and all other property used to reduce contamination or to control airflow, temperature, humidity, vibration, or other environmental conditions required for the integrated process of semiconductor manufacturing.

"Semiconductor equipment" means (i) machinery or tools or repair parts or replacements thereof; (ii) the related accessories, components, pedestals, bases, or foundations used in connection with the operation of the equipment, without regard to the proximity to the equipment, the method of attachment, or whether the equipment or accessories are affixed to the realty; (iii) semiconductor wafers and other property or supplies used to install, test, calibrate or recalibrate, characterize, condition, measure, or maintain the equipment and settings thereof; and (iv) equipment and supplies used for quality control testing of product, materials, equipment, or processes; or the measurement of equipment performance or production parameters regardless of where or when the quality control, testing, or measuring activity takes place, how the activity affects the operation of equipment, or whether the equipment and supplies come into contact with the product.

"Storage" means any keeping or retention of tangible personal property for use, consumption or distribution in the Commonwealth, or for any purpose other than sale at retail in the regular course of

business.

"Tangible personal property" means personal property which may be seen, weighed, measured, felt, or touched, or is in any other manner perceptible to the senses. The term "tangible personal property" shall not include stocks, bonds, notes, insurance or other obligations or securities. The term "tangible personal property" shall include (i) telephone calling cards upon their initial sale, which shall be exempt from all other state and local utility taxes, and (ii) manufactured signs.

"Use" means the exercise of any right or power over tangible personal property incident to the ownership thereof, except that it does not include the sale at retail of that property in the regular course of business. The term does not include the exercise of any right or power, including use, distribution, or storage, over any tangible personal property sold to a nonresident donor for delivery outside of the Commonwealth to a nonresident recipient pursuant to an order placed by the donor from outside the Commonwealth via mail or telephone. The term does not include any sale determined to be a gift transaction, subject to tax under § 58.1-604.6.

"Use tax" refers to the tax imposed upon the use, consumption, distribution, and storage as herein defined.

"Used directly," when used in relation to manufacturing, processing, refining, or conversion, refers to those activities which are an integral part of the production of a product, including all steps of an integrated manufacturing or mining process, but not including ancillary activities such as general maintenance or administration. When used in relation to mining, it shall refer to the activities specified above, and in addition, any reclamation activity of the land previously mined by the mining company required by state or federal law.

"Video programmer" means a person or entity that provides video programming to end-user subscribers.

"Video programming" means video and/or information programming provided by or generally considered comparable to programming provided by a cable operator including, but not limited to, Internet service.

§ 58.1-604.7. One percent sales and use tax in certain counties and cities.

A. Beginning January 1, 2014, a tax of one percent is hereby levied and imposed on the property, activities, and services described in § 58.1-603 in any county or city located in the Hampton Roads Planning District on January 1, 2013.

B. Beginning January 1, 2014, a tax of one percent is hereby levied and imposed on the property, activities, and services described in § 58.1-604 in any county or city located in the Hampton Roads Planning District on January 1, 2013.

C. The taxes under this section shall be subject to all the provisions of this chapter and the rules and regulations published with respect thereto. No discount under § 58.1-622 shall be allowed on any tax provided under this section.

D. Notwithstanding the provisions of § 58.1-638, all taxes paid to the Tax Commissioner pursuant to this section, less the applicable portion of any refunds to the taxpayers, shall be deposited in a special fund titled the "Special Transportation Fund for the Hampton Roads Planning District" established pursuant to § 33.1-23.5:3, and used solely for the purposes set forth therein.

§ 58.1-611.1. Rate of tax on sales of food purchased for human consumption.

A. The tax imposed by §§ 58.1-603 and 58.1-604 on food purchased for human consumption shall be levied and distributed as follows:

1. From January 1, 2000, through midnight on June 30, 2005, the tax rate on such food shall be three percent of the gross sales price. The revenue from the tax shall be distributed as follows: (i) the revenue from the tax at the rate of one-half percent shall be distributed as provided in subsection A of § 58.1-638, (ii) the revenue from the tax at the rate of one percent shall be distributed as provided in subsections B, C and D of § 58.1-638, and (iii) the revenue from the tax at the rate of one and one-half percent shall be used for general fund purposes.

2. On and after July 1, 2005, the tax rate on such food shall be one and one-half percent of the gross sales price. The revenue from the tax shall be distributed as follows: (i) the revenue from the tax at the rate of one-half percent shall be distributed as provided in subsection A of § 58.1-638 and (ii) the revenue from the tax at the rate of one percent shall be distributed as provided in subsections B, C and D of § 58.1-638.

B. The provisions of this section shall not affect the imposition of tax on food purchased for human consumption pursuant to §§ 58.1-605 and 58.1-606.

C. As used in this section, "food purchased for human consumption" has the same meaning as "food" defined in the Food Stamp Act of 1977, 7 U.S.C. § 2012, as amended, and federal regulations adopted pursuant to that Act, except it shall not include seeds and plants which produce food for human consumption. For the purpose of this section, "food purchased for human consumption" shall not include food sold by any retail establishment where the gross receipts derived from the sale of food prepared by

such retail establishment for immediate consumption on or off the premises of the retail establishment constitutes more than 80 percent of the total gross receipts of that retail establishment, including but not limited to motor fuel purchases, regardless of whether such prepared food is consumed on the premises of that retail establishment. For purposes of this section, "retail establishment" means each place of business for which any "dealer," as defined in § 58.1-612, is required to apply for and receive a certificate of registration pursuant to § 58.1-613.

D. The taxes imposed pursuant to § 58.1-604.7 shall not apply to food purchased for human consumption.

2. § 1. It shall be the duty of the officers of the counties and cities described in subsections A and B of § 58.1-604.7 of the Code of Virginia conducting the election directed by law to be held on the Tuesday after the first Monday in November 2013, at the places appointed for holding the same, to open a poll and take the sense of the qualified voters upon the ratification or rejection of the one percent sales and use tax pursuant to § 58.1-604.7.

§ 2. The ballot shall contain the following question:

"Question: Shall an additional one percent sales and use tax be imposed in the Hampton Roads Planning District, consisting of the Counties of Gloucester, Isle of Wight, James City, Southampton, Surry, and York, and the Cities of Chesapeake, Franklin, Hampton, Newport News, Norfolk, Poquoson, Portsmouth, Suffolk, Virginia Beach, and Williamsburg, with the revenues to be used solely for regional transportation improvements projects?"

The ballots shall be prepared, distributed, and voted, and the results of the election shall be ascertained and certified, in the manner prescribed by § 24.2-684 of the Code of Virginia. The State Board of Elections shall comply with § 30-19.9 of the Code of Virginia and shall cause to be sent to the electoral boards of each county and city described in subsections A and B of § 58.1-604.7 of the Code of Virginia sufficient copies of the full text of this act and question contained herein for the officers of election to post in each polling place on election day.

The electoral board of each county and city described in subsections A and B of § 58.1-604.7 of the Code of Virginia shall make out, certify, and forward an abstract of the votes cast for and against such proposed question in the manner now prescribed by law in relation to votes cast in general elections.

The State Board of Elections shall open and canvass such abstracts and examine and report the whole number of votes cast at the election for and against such questions in the manner now prescribed by law in relation to votes cast in general elections. The State Board of Elections shall record a certified copy of such report in its office, and without delay make out and transmit to the Governor an official copy of such report, certified by it. The Governor shall, without delay, make proclamation of the result, stating therein the aggregate vote for and against the question.

If a majority of those voting vote in favor of the question, it shall become effective on January 1, 2014.

The expenses incurred in conducting this election shall be defrayed as in the case of election of members of the General Assembly.

3. That any revenues distributed to the Commonwealth Transportation Board to administer projects in the Hampton Roads Planning District from a one percent sales and use tax pursuant to § 58.1-604.7 of this act shall not be used to calculate or reduce the share of federal, state, or local revenues or funds otherwise available to the localities in the counties and cities described in subsections A and B of § 58.1-604.7, nor shall they be used to calculate or reduce any allocation of revenues or funds made pursuant to Title 33.1 of the Code of Virginia. Such share or allocation of revenues or funds that shall not be reduced includes, but is not limited to, state basic aid payments.

4. That no county or city described in subsections A and B of § 58.1-604.7 of this act may reduce its local appropriation for transportation purposes below the amount that it appropriated for transportation purposes in its fiscal year that began July 1, 2012.

5. That the Department of Taxation shall promulgate all necessary and reasonable regulations to govern the administration of sales and use taxes pursuant to the provisions of this act.

6. That the Commonwealth Transportation Board shall report annually to the General Assembly on the allocation and expenditure of all moneys deposited to the Special Transportation Fund of the Hampton Roads Planning District pursuant to subsection D of § 58.1-604.7 of this act.

7. That the second enactment of this act shall be effective on July 1, 2013. The provisions of this act relating to a one percent sales and use tax pursuant to subsections A and B of § 58.1-604.7 of this act, including the third, fourth, fifth, and sixth enactments of this act, shall be effective on January 1, 2014, and only if a majority of those voting at the election and upon the question described in the second enactment of this act vote in the affirmative upon such question. For purposes of this enactment, "a majority of those voting at the election" means a majority of those voting in the entire region constituted by the counties and cities described in the second enactment of this act and does not require a majority of those voting in any individual locality.