

## VIRGINIA ACTS OF ASSEMBLY — CHAPTER

*An Act to amend and reenact §§ 2.2-208, 2.2-2101, as it is currently effective and as it shall become effective, 22.1-212.23, 22.1-253.13:2, 23-14, and 58.1-638 of the Code of Virginia and to amend the Code of Virginia by adding in Title 22.1 a chapter numbered 19.1, consisting of sections numbered 22.1-349.1 through 22.1-349.5, relating to the creation of the Virginia Virtual School.*

[H 324]

Approved

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

**1. That §§ 2.2-208, 2.2-2101, as it is currently effective and as it shall become effective, 22.1-212.23, 22.1-253.13:2, 23-14, and 58.1-638 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Title 22.1 a chapter numbered 19.1, consisting of sections numbered 22.1-349.1 through 22.1-349.5, as follows:**

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

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

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

**§ 2.2-2101. (Effective until July 1, 2017) Prohibition against service by legislators on boards, commissions, and councils within the executive branch; exceptions.**

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

The provisions of this section shall not apply to members of the Board for Branch Pilots, who shall be appointed as provided for in § 54.1-901; to members of the Board of Trustees of the Southwest Virginia Higher Education Center, who shall be appointed as provided for in § 23-231.3; to members of the Board of Trustees of the Southern Virginia Higher Education Center, who shall be appointed as provided for in § 23-231.25; to members of the Board of Directors of the New College Institute who shall be appointed as provided for in § 23-231.31; to members of the Virginia Interagency Coordinating Council who shall be appointed as provided for in § 2.2-5204; to members of the Board of Veterans Services, who shall be appointed as provided for in § 2.2-2452; to members appointed to the Board of Trustees of the Roanoke Higher Education Authority pursuant to § 23-231.15; to members of the Virginia Geographic Information Network Advisory Board, who shall be appointed as provided for in § 2.2-2423; to members of the Standards of Learning Innovation Committee, who shall be appointed as provided for in § 22.1-253.13:10; to members of the Opportunity Educational Institution Board, who shall be appointed as provided for in § 22.1-27.1; to members of the Board of Visitors of the Virginia School for the Deaf and the Blind, who shall be appointed as provided for in § 22.1-346.2; *to members of the Board of the Virginia Virtual School, who shall be appointed as provided for in § 22.1-349.1;* to members of the Substance Abuse Services Council, who shall be appointed as provided for in § 2.2-2696; to members of the Criminal Justice Services Board, who shall be appointed as provided in § 9.1-108; to members of the Council on Virginia's Future, who shall be appointed as provided for in

§ 2.2-2685; to members of the State Executive Council for Comprehensive Services for At-Risk Youth and Families, who shall be appointed as provided in § 2.2-2648; to members of the Virginia Board of Workforce Development, who shall be appointed as provided for in § 2.2-2471; to members of the Volunteer Firefighters' and Rescue Squad Workers' Service Award Fund Board, who shall be appointed as provided for in § 51.1-1201; to members of the Secure Commonwealth Panel, who shall be appointed as provided for in § 2.2-222.3; to members of the Forensic Science Board, who shall be appointed as provided for in § 9.1-1109; or to members of the Southwest Virginia Cultural Heritage Foundation, who shall be appointed as provided in § 2.2-2735.

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**§ 22.1-212.23. Definitions.**

As used in this article:

"Multidivision online provider" means (i) a private or nonprofit organization that enters into a contract with a local school board to provide online courses or programs through that school board to students who reside in Virginia both within and outside the geographical boundaries of that school division; (ii) a private or nonprofit organization that enters into contracts with multiple local school boards to provide online courses or programs to students in grades K through 12 through those school boards; ~~or~~ (iii) a local school board that provides online courses or programs to students who reside in Virginia but outside the geographical boundaries of that school division; *or (iv) a private or nonprofit organization that enters into a contract with the Board of the Virginia Virtual School, as established in § 22.1-349.1, to provide full-time virtual school programs through the school to students who reside in Virginia.* However, "multidivision online provider" ~~shall~~ *does* not include (a) a local school board's online learning program in which fewer than 10 percent of the students enrolled reside outside the geographical boundaries of that school division; (b) multiple local school boards that establish joint online courses or programs in which fewer than 10 percent of the students enrolled reside outside the geographical boundaries of those school divisions; (c) local school boards that provide online learning courses or programs for their students through an arrangement with a public or private institution of higher education; or (d) local school boards providing online courses or programs through a private or

nonprofit organization that has been approved as a multidivision online provider.

"Online course" means a course or grade-level subject instruction that (i) is delivered by a multidivision online provider primarily electronically using the Internet or other computer-based methods and (ii) is taught by a teacher primarily from a remote location, with student access to the teacher given synchronously, asynchronously, or both.

"Virtual school program" means a series of online courses with instructional content that (i) is delivered by a multidivision online provider primarily electronically using the Internet or other computer-based methods; (ii) is taught by a teacher primarily from a remote location, with student access to the teacher given synchronously, asynchronously, or both; (iii) is delivered as a part-time or full-time program; and (iv) has an online component with online lessons and tools for student and data management.

An online course or virtual school program may be delivered to students at school as part of the regularly scheduled school day.

**§ 22.1-253.13:2. Standard 2. Instructional, administrative, and support personnel.**

A. The Board shall establish requirements for the licensing of teachers, principals, superintendents, and other professional personnel.

B. School boards shall employ licensed instructional personnel qualified in the relevant subject areas.

C. Each school board shall assign licensed instructional personnel in a manner that produces divisionwide ratios of students in average daily membership to full-time equivalent teaching positions, excluding special education teachers, principals, assistant principals, counselors, and librarians, that are not greater than the following ratios: (i) 24 to one in kindergarten with no class being larger than 29 students; if the average daily membership in any kindergarten class exceeds 24 pupils, a full-time teacher's aide shall be assigned to the class; (ii) 24 to one in grades one, two, and three with no class being larger than 30 students; (iii) 25 to one in grades four through six with no class being larger than 35 students; and (iv) 24 to one in English classes in grades six through 12.

Within its regulations governing special education programs, the Board shall seek to set pupil/teacher ratios for pupils with intellectual disability that do not exceed the pupil/teacher ratios for self-contained classes for pupils with specific learning disabilities.

Further, school boards shall assign instructional personnel in a manner that produces schoolwide ratios of students in average daily memberships to full-time equivalent teaching positions of 21 to one in middle schools and high schools. School divisions shall provide all middle and high school teachers with one planning period per day or the equivalent, unencumbered of any teaching or supervisory duties.

D. Each local school board shall employ with state and local basic, special education, gifted, and career and technical education funds a minimum number of licensed, full-time equivalent instructional personnel for each 1,000 students in average daily membership (ADM) as set forth in the appropriation act. Calculations of kindergarten positions shall be based on full-day kindergarten programs. Beginning with the March 31 report of average daily membership, those school divisions offering half-day kindergarten with pupil/teacher ratios that exceed 30 to one shall adjust their average daily membership for kindergarten to reflect 85 percent of the total kindergarten average daily memberships, as provided in the appropriation act.

E. In addition to the positions supported by basic aid and in support of regular school year programs of prevention, intervention, and remediation, state funding, pursuant to the appropriation act, shall be provided to fund certain full-time equivalent instructional positions for each 1,000 students in grades K through 12 who are identified as needing prevention, intervention, and remediation services. State funding for prevention, intervention, and remediation programs provided pursuant to this subsection and the appropriation act may be used to support programs for educationally at-risk students as identified by the local school boards.

To provide algebra readiness intervention services required by § 22.1-253.13:1, school divisions may employ mathematics teacher specialists to provide the required algebra readiness intervention services. School divisions using the Standards of Learning Algebra Readiness Initiative funding in this manner shall only employ instructional personnel licensed by the Board of Education.

F. In addition to the positions supported by basic aid and those in support of regular school year programs of prevention, intervention, and remediation, state funding, pursuant to the appropriation act, shall be provided to support 17 full-time equivalent instructional positions for each 1,000 students identified as having limited English proficiency.

To provide flexibility in the instruction of English language learners who have limited English proficiency and who are at risk of not meeting state accountability standards, school divisions may use state and local funds from the Standards of Quality Prevention, Intervention, and Remediation account to employ additional English language learner teachers to provide instruction to identified limited English proficiency students. Using these funds in this manner is intended to supplement the instructional services provided in this section. School divisions using the SOQ Prevention, Intervention, and

179 Remediation funds in this manner shall employ only instructional personnel licensed by the Board of  
180 Education.

181 G. In addition to the full-time equivalent positions required elsewhere in this section, each local  
182 school board shall employ the following reading specialists in elementary schools, one full-time in each  
183 elementary school at the discretion of the local school board.

184 To provide reading intervention services required by § 22.1-253.13:1, school divisions may employ  
185 reading specialists to provide the required reading intervention services. School divisions using the Early  
186 Reading Intervention Initiative funds in this manner shall employ only instructional personnel licensed  
187 by the Board of Education.

188 H. Each local school board shall employ, at a minimum, the following full-time equivalent positions  
189 for any school that reports fall membership, according to the type of school and student enrollment:

190 1. Principals in elementary schools, one half-time to 299 students, one full-time at 300 students;  
191 principals in middle schools, one full-time, to be employed on a 12-month basis; principals in high  
192 schools, one full-time, to be employed on a 12-month basis;

193 2. Assistant principals in elementary schools, one half-time at 600 students, one full-time at 900  
194 students; assistant principals in middle schools, one full-time for each 600 students; assistant principals  
195 in high schools, one full-time for each 600 students; and school divisions that employ a sufficient  
196 number of assistant principals to meet this staffing requirement may assign assistant principals to schools  
197 within the division according to the area of greatest need, regardless of whether such schools are  
198 elementary, middle, or secondary;

199 3. Librarians in elementary schools, one part-time to 299 students, one full-time at 300 students;  
200 librarians in middle schools, one-half time to 299 students, one full-time at 300 students, two full-time  
201 at 1,000 students; librarians in high schools, one half-time to 299 students, one full-time at 300 students,  
202 two full-time at 1,000 students. Local school divisions that employ a sufficient number of librarians to  
203 meet this staffing requirement may assign librarians to schools within the division according to the area  
204 of greatest need, regardless of whether such schools are elementary, middle, or secondary; and

205 4. Guidance counselors in elementary schools, one hour per day per 100 students, one full-time at  
206 500 students, one hour per day additional time per 100 students or major fraction thereof; guidance  
207 counselors in middle schools, one period per 80 students, one full-time at 400 students, one additional  
208 period per 80 students or major fraction thereof; guidance counselors in high schools, one period per 70  
209 students, one full-time at 350 students, one additional period per 70 students or major fraction thereof.  
210 Local school divisions that employ a sufficient number of guidance counselors to meet this staffing  
211 requirement may assign guidance counselors to schools within the division according to the area of  
212 greatest need, regardless of whether such schools are elementary, middle, or secondary.

213 I. Local school boards shall employ five full-time equivalent positions per 1,000 students in grades  
214 kindergarten through five to serve as elementary resource teachers in art, music, and physical education.

215 J. Local school boards shall employ two full-time equivalent positions per 1,000 students in grades  
216 kindergarten through 12, one to provide technology support and one to serve as an instructional  
217 technology resource teacher.

218 To provide flexibility, school divisions may use the state and local funds for instructional technology  
219 resource teachers to employ a data coordinator position, an instructional technology resource teacher  
220 position, or a data coordinator/instructional resource teacher blended position. The data coordinator  
221 position is intended to serve as a resource to principals and classroom teachers in the area of data  
222 analysis and interpretation for instructional and school improvement purposes, as well as for overall data  
223 management and administration of state assessments. School divisions using these funds in this manner  
224 shall employ only instructional personnel licensed by the Board of Education.

225 K. Local school boards may employ additional positions that exceed these minimal staffing  
226 requirements. These additional positions may include, but are not limited to, those funded through the  
227 state's incentive and categorical programs as set forth in the appropriation act.

228 L. A combined school, such as kindergarten through 12, shall meet at all grade levels the staffing  
229 requirements for the highest grade level in that school; this requirement shall apply to all staff, except  
230 for guidance counselors, and shall be based on the school's total enrollment; guidance counselor staff  
231 requirements shall, however, be based on the enrollment at the various school organization levels, i.e.,  
232 elementary, middle, or high school. The Board of Education may grant waivers from these staffing  
233 levels upon request from local school boards seeking to implement experimental or innovative programs  
234 that are not consistent with these staffing levels.

235 M. School boards shall, however, annually, on or before January 1, report to the public the actual  
236 pupil/teacher ratios in elementary school classrooms by school for the current school year. Such actual  
237 ratios shall include only the teachers who teach the grade and class on a full-time basis and shall  
238 exclude resource personnel. School boards shall report pupil/teacher ratios that include resource teachers  
239 in the same annual report. Any classes funded through the voluntary kindergarten through third grade

class size reduction program shall be identified as such classes. Any classes having waivers to exceed the requirements of this subsection shall also be identified. Schools shall be identified; however, the data shall be compiled in a manner to ensure the confidentiality of all teacher and pupil identities.

N. Students enrolled in a public school on a less than full-time basis shall be counted in ADM in the relevant school division. Students who are either (i) enrolled in a nonpublic school or (ii) receiving home instruction pursuant to § 22.1-254.1, and who are enrolled in public school on a less than full-time basis in any mathematics, science, English, history, social science, career and technical education, fine arts, foreign language, or health education or physical education course shall be counted in the ADM in the relevant school division on a pro rata basis as provided in the appropriation act. Each such course enrollment by such students shall be counted as 0.25 in the ADM; however, no such nonpublic or home school student shall be counted as more than one-half a student for purposes of such pro rata calculation. Such calculation shall not include enrollments of such students in any other public school courses.

O. Each local school board shall provide those support services that are necessary for the efficient and cost-effective operation and maintenance of its public schools.

For the purposes of this title, unless the context otherwise requires, "support services positions" shall include the following:

1. Executive policy and leadership positions, including school board members, superintendents and assistant superintendents;

2. Fiscal and human resources positions, including fiscal and audit operations;

3. Student support positions, including (i) social workers and social work administrative positions; (ii) guidance administrative positions not included in subdivision H 4; (iii) homebound administrative positions supporting instruction; (iv) attendance support positions related to truancy and dropout prevention; and (v) health and behavioral positions, including school nurses and school psychologists;

4. Instructional personnel support, including professional development positions and library and media positions not included in subdivision H 3;

5. Technology professional positions not included in subsection J;

6. Operation and maintenance positions, including facilities; pupil transportation positions; operation and maintenance professional and service positions; and security service, trade, and laborer positions;

7. Technical and clerical positions for fiscal and human resources, student support, instructional personnel support, operation and maintenance, administration, and technology; and

8. School-based clerical personnel in elementary schools; part-time to 299 students, one full-time at 300 students; clerical personnel in middle schools; one full-time and one additional full-time for each 600 students beyond 200 students and one full-time for the library at 750 students; clerical personnel in high schools; one full-time and one additional full-time for each 600 students beyond 200 students and one full-time for the library at 750 students. Local school divisions that employ a sufficient number of school-based clerical personnel to meet this staffing requirement may assign the clerical personnel to schools within the division according to the area of greatest need, regardless of whether such schools are elementary, middle, or secondary.

Pursuant to the appropriation act, support services shall be funded from basic school aid.

School divisions may use the state and local funds for support services to provide additional instructional services.

P. Notwithstanding the provisions of this section, when determining the assignment of instructional and other licensed personnel in subsections C through J, *neither the Virginia Virtual School nor a local school board shall not be required to include full-time students of approved virtual school programs.*

#### CHAPTER 19.1.

#### VIRGINIA VIRTUAL SCHOOL.

##### § 22.1-349.1. Board of the Virginia Virtual School established.

A. *There is hereby established the Board of the Virginia Virtual School, referred to in this chapter as "the Board," as a policy agency in the executive branch of government under the name of the "Board of the Virginia Virtual School," for the purpose of governing the full-time online educational programs and services provided to students enrolled in the Virginia Virtual School, referred to in this chapter as "the School." The members of the Board of the School shall be appointed by July 1, 2016. The Board shall be charged with the operational control of the School. In exercising this operational control, the Board shall include, in any budget recommendations to the Governor for state funding for the School, funding related to educational technology or other programs appropriate for implementation within the School. The School shall not be defined as a school division for constitutional purposes.*

B. *The Board shall have a total membership of 13 members that shall consist of six legislative members, the Superintendent of Public Instruction, and six nonlegislative citizen members. Members shall be appointed as follows: four members of the House of Delegates, to be appointed by the Speaker of the House of Delegates in accordance with the principles of proportional representation contained in*

the Rules of the House of Delegates; two members of the Senate, to be appointed by the Senate Committee on Rules; the Superintendent of Public Instruction; and six nonlegislative citizen members, one of whom shall be the parent of a student enrolled in a full-time online virtual school program, one of whom shall be a current member of the Board of Education, one of whom shall be an expert in distance or online learning, and all of whom shall be appointed by the Governor, subject to confirmation by the General Assembly. Nonlegislative citizen members of the Board shall be citizens of the Commonwealth. Legislative members of the Board and the Superintendent of Public Instruction shall serve terms coincident with their terms of office. After the initial staggering of terms, all other nonlegislative members shall serve for four-year terms. Appointments to fill vacancies, other than by expiration of a term, shall be for the unexpired terms. Vacancies shall be filled in the same manner as the original appointments. All members may be reappointed. However, no House member shall serve more than four consecutive two-year terms, no Senate member shall serve more than two consecutive four-year terms, and no nonlegislative member appointed by the Governor shall serve more than two consecutive four-year terms. The remainder of any term to which a member is appointed to fill a vacancy shall not constitute a term in determining the member's eligibility for reappointment. The Board shall elect a chairman and vice-chairman from among its membership. The Board shall elect a secretary, who shall keep an accurate record of the proceedings of the Board and of the executive committee, if one is created by the Board, and such other officers as the Board deems appropriate. The meetings of the Board shall be held at the call of the chairman or whenever the majority of the members so request. A majority of the members shall constitute a quorum.

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

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

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

1. Establish rules, policies, and regulations for the governance of the School subject to such criteria and conditions as the General Assembly may prescribe;

2. Establish rules, policies, and regulations for all multidivision online providers that offer full-time virtual school programs to students through the School, in consultation with the Department of Education, that shall be subject to the requirements of the Standards of Quality, including the Standards of Learning and the Standards of Accreditation;

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

4. Prepare and submit to the Governor and General Assembly, beginning December 1, 2016, an annual report detailing the curricula and other educational programs and services of the School, including receipts and disbursements pertaining to the operation of the School for each fiscal year ending on June 30.

**§ 22.1-349.2. Persons eligible; educational programs to be provided; procedures for enrollment.**

A. Any school-age person in the Commonwealth, as determined pursuant to subsection A of § 22.1-254, shall be eligible to enroll full-time in the School. Participation in the full-time virtual school program of the School shall meet all attendance requirements pursuant to § 22.1-254.

B. A student may enroll in the School if his parent (i) determines that access to the educational services at the School is in the best interest of such student and (ii) completes the enrollment procedure through an approved multidivision online provider that provides full-time virtual school programs through the School. A student who attends the School shall only enroll with one multidivision online provider at a time.

C. Except in the case of any student whose parent is on active duty in any of the armed forces of the United States, students shall enroll no later than the June 15 immediately preceding the upcoming school year.

D. No more than two percent of any local school division's enrolled students, based on the previous school year's March 31 average daily membership, shall enroll in the School.

E. The School shall provide an educational program meeting the constitutionally required Standards of Quality for children in grades kindergarten through 12. The Board may approve such additional programs as it may deem appropriate. All educational programs shall be provided through an approved multidivision online provider as defined in § 22.1-212.23.

*F. The School shall be eligible for accreditation as prescribed by the Board of Education pursuant to § 22.1-253.13:3.*

*G. The School shall not charge tuition.*

**§ 22.1-349.3. Special education for students in the Virginia Virtual School.**

*The School shall provide appropriate special education for students with disabilities participating in the School. The local school division of residence, as that term is defined in § 22.1-349.5, shall be released from the obligations under § 22.1-215 for the special education of students with disabilities. The Board shall modify special education program regulations in accordance with this section.*

**§ 22.1-349.4. Multidivision online providers for the Virginia Virtual School.**

*A. Multidivision online providers for the School must meet the criteria pursuant to subsections A and B of § 22.1-212.24 to provide full-time virtual school programs.*

*B. The School may enter into contracts, consistent with the criteria approved by the Board of Education pursuant to subsections A and B of § 22.1-212.24, with any approved multidivision online provider. Such contracts shall be exempt from the Virginia Public Procurement Act (§ 2.2-4300 et seq.). The Board of Education shall not limit the ability of an approved multidivision online provider to contract with the School.*

*C. Any multidivision online provider approved to provide full-time virtual school programs may provide full-time virtual school programs through the School. Any student may enroll with any one approved multidivision online provider, and the selection of an approved multidivision online provider shall be at the discretion of the student's parent. The Board, the Department of Education, and the Board of Education shall promote all approved multidivision online providers equally to students seeking enrollment in the School.*

**§ 22.1-349.5. Funding.**

*A. For the purposes of this section, "local school division of residence" means that school division in which a student enrolled full-time in the School resides.*

*B. Effective starting with the 2017-2018 school year, any student who enrolls full-time in the School shall have the average state share of Standards of Quality per pupil funding transferred to the School. The total per pupil funding transferred shall consist of the average per pupil amounts on the basis of March 31 average daily membership. The Department of Education shall pay the average state share of the Standards of Quality per pupil funding directly to the School semimonthly. Such state share per pupil funding shall be based on the Standards of Quality per pupil funding enacted in the current appropriation act.*

*The Department of Education shall transfer to the School all federal funds described in § 22.1-88 directly associated with any pupil served by the School, including funds for the Individualized Education Program (IEP) of any special education student in the School.*

*C. Students who enroll on a full-time basis in the School shall not be counted in the March 31 average daily membership of their local school division of residence. Such students shall not be counted in the calculation of the required local effort of the local school division of residence.*

*D. The School shall be responsible for all federal and state accountability requirements applicable to any student who enrolls full-time in the School.*

*E. Any costs or fees associated with the administration of the School, and approved by the Board, shall be borne proportionally by each of the School's approved multidivision online providers.*

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

*The College of William and Mary in Virginia, at Williamsburg; Richard Bland College of the College of William and Mary at Dinwiddie and Prince George; the rector and visitors of Christopher Newport University, at Newport News; Longwood University, at Farmville; the University of Mary Washington, at Fredericksburg; George Mason University, at Fairfax; the James Madison University, at Harrisonburg; Old Dominion University, at Norfolk; the State Board for Community Colleges, at Richmond; the Virginia Commonwealth University, at Richmond; the Radford University, at Radford; the Roanoke Higher Education Authority and Center; the rector and visitors of the University of Virginia, at Charlottesville; the University of Virginia's College at Wise; the Virginia Military Institute, at Lexington; the Virginia Polytechnic Institute and State University, at Blacksburg; the Virginia Schools for the Deaf and the Blind; the Virginia Virtual School; the Virginia State University, at Petersburg; Norfolk State University, at Norfolk; the Woodrow Wilson Rehabilitation Center, at Fishersville; the Eastern Virginia Medical School; the Southern Virginia Higher Education Center; the Southwest Virginia Higher Education Center; the Institute for Advanced Learning and Research; the New College Institute; and the Opportunity Educational Institution are hereby classified as educational institutions and are declared to be public bodies and constituted as governmental instrumentalities for the dissemination of education. The powers of every such institution derived directly or indirectly from this chapter shall be vested in and exercised by a majority of the members of its board, and a majority of such board shall be*

a quorum for the transaction of any business authorized by this chapter. Wherever the word "board" is used in this chapter, it shall be deemed to include the members of a governing body designated by another title.

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

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

1. The sales and use tax revenue generated by the one-half percent sales and use tax increase enacted by the 1986 Special Session of the General Assembly shall be paid, in the manner hereinafter provided in this section, to the Transportation Trust Fund as defined in § 33.2-1524. 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 14.7 percent 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 a 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 § 33.2-1526 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 operating, capital, and administrative costs of public transportation at a state share determined by the Commonwealth Transportation Board, and these amounts may be used to support the capital project costs of public transportation and ridesharing equipment, facilities, and associated costs at a state share determined by the Commonwealth Transportation Board. Capital costs may include debt service payments on local or agency transit bonds. In making these determinations, the Commonwealth Transportation Board shall confer with the Director of the Department of Rail and Public Transportation. In development of the Director's recommendation and subsequent allocation of funds by the Commonwealth Transportation Board, the Director of the Department of Rail and Public Transportation and the Commonwealth Transportation Board shall adhere to the following:

(1) For the distribution of revenues from the Commonwealth Mass Transit Fund, of those revenues generated in 2014 and thereafter, the first \$160 million in revenues or the maximum available revenues if less than \$160 million shall be distributed by the Commonwealth Transportation Board as follows:

(a) Funds for special programs, which shall include ridesharing, transportation demand management programs, experimental transit, public transportation promotion, operation studies, and technical assistance, shall not exceed 3 percent of the funds pursuant to this section and may be allocated 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:

(i) 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.

(ii) To finance up to 80 percent of the cost of the development and implementation of projects where the purpose of such project is to enhance the provision and use of public transportation services.

(b) At least 72 percent of the funds 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.

(c) Twenty-five percent of the funds shall be allocated and distributed utilizing a tiered approach evaluated by the Transit Service Delivery Advisory Committee along with the Director of the Department of Rail and Public Transportation and established by the Commonwealth Transportation Board for capital purposes based on asset need and anticipated state participation level and revenues. The tier distribution measures may be evaluated by the Transit Service Delivery Advisory Committee along with the Director of the Department of Rail and Public Transportation every three years and, if redefined by the Board, shall be published at least one year in advance of being applied. Funds allocated for debt service payments will be included in the tier that applies to the capital asset that is leveraged.

(d) Transfer of funds from funding categories in subdivisions 4 b (1)(a) and 4 b (1)(c) to 4 b (1)(b) shall be considered by the Commonwealth Transportation Board in times of statewide economic distress or statewide special need.

(2) The Commonwealth Transportation Board shall allocate the remaining revenues after the application of the provisions set forth in subdivision 4 b (1) generated for the Commonwealth Mass Transit Fund for 2014 and succeeding years as follows:

(a) Funds pursuant to this section shall be distributed among operating, capital, and special projects in order to respond to the needs of the transit community.

(b) Of the funds pursuant to this section, at least 72 percent shall be allocated to support operating costs of transit providers and distributed by the Commonwealth Transportation Board based on service delivery factors, based on effectiveness and efficiency, as established by the Commonwealth Transportation Board. These measures and their relative weight shall be evaluated every three years and, if redefined by the Commonwealth Transportation Board, shall be published and made available for

public comment at least one year in advance of being applied. In developing the service delivery factors, the Commonwealth Transportation Board shall create for the Department of Rail and Public Transportation a Transit Service Delivery Advisory Committee, consisting of two members appointed by the Virginia Transit Association, one member appointed by the Community Transportation Association of Virginia, one member appointed by the Virginia Municipal League, one member appointed by the Virginia Association of Counties, and three members appointed by the Director of the Department of Rail and Public Transportation, to advise the Department of Rail and Public Transportation in the development of a distribution process for the funds allocated pursuant to this subdivision 4 b (2)(b) and how transit systems can incorporate these metrics in their transit development plans. The Transit Service Delivery Advisory Committee shall elect a Chair. The Department of Rail and Public Transportation shall provide administrative support to the committee. Effective July 1, 2013, the Transit Service Delivery Advisory Committee shall meet at least annually and consult with interested stakeholders and hold at least one public hearing and report its findings to the Director of the Department of Rail and Public Transportation. Prior to the Commonwealth Transportation Board approving the service delivery factors, the Director of the Department of Rail and Public Transportation along with the Chair of the Transit Service Delivery Advisory Committee shall brief the Senate Committee on Finance, the House Appropriations Committee, and the Senate and House Committees on Transportation on the findings of the Transit Service Delivery Advisory Committee and the Department's recommendation. Before redefining any component of the service delivery factors, the Commonwealth Transportation Board shall consult with the Director of the Department of Rail and Public Transportation, Transit Service Delivery Advisory Committee, and interested stakeholders and provide for a 45-day public comment period. Prior to approval of any amendment to the service delivery measures, the Board shall notify the aforementioned committees of the pending amendment to the service delivery factors and its content.

(c) Funds for special programs, which shall include ridesharing, transportation demand management programs, experimental transit, public transportation promotion, operation studies, and technical assistance, shall not exceed 3 percent of the funds pursuant to this section and may be allocated 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:

(i) 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.

(ii) To finance up to 80 percent of the cost of the development and implementation of projects where the purpose of such project is to enhance the provision and use of public transportation services.

(d) Of the funds pursuant to this section, 25 percent shall be allocated and distributed utilizing a tiered approach evaluated by the Transit Service Delivery Advisory Committee along with the Director of Rail and Public Transportation and established by the Commonwealth Transportation Board for capital purposes based on asset need and anticipated state participation level and revenues. The tier distribution measures may be evaluated by the Transit Service Delivery Advisory Committee along with the Director of Rail and Public Transportation every three years and, if redefined by the Board, shall be published at least one year in advance of being applied. Funds allocated for debt service payments shall be included in the tier that applies to the capital asset that is leveraged.

(e) Transfer of funds from funding categories in subdivisions 4 b (2)(c) and 4 b (2)(d) to 4 b (2)(b) shall be considered by the Commonwealth Transportation Board in times of statewide economic distress or statewide special need.

(f) The Department of Rail and Public Transportation may reserve a balance of up to five percent of the Commonwealth Mass Transit Fund revenues under this subsection in order to assure better stability in providing operating and capital funding to transit entities from year to year.

(3) The Commonwealth Mass Transit Fund shall not be allocated without requiring a local match from the recipient.

c. 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 § 33.2-1800 and for purposes as enumerated in subdivision 7 of § 33.2-1701 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. The Commonwealth Transit Capital Fund shall not be allocated without requiring a local match from the recipient.

d. The Commonwealth Transportation Board may allocate up to three and one-half percent of the funds set aside for the Commonwealth Mass Transit Fund to support costs of project development, project administration, and project compliance incurred by the Department of Rail and Public Transportation in implementing rail, public transportation, and congestion management grants and programs.

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.

6. Notwithstanding any other provision of law, funds allocated to Metro may be disbursed by the Department of Rail and Public Transportation directly to Metro or to any other transportation entity that has an agreement to provide funding to Metro.

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 *or the Virginia Virtual School* within the school division in which the parents or guardians of such persons legally reside. Such population estimate produced by the Weldon Cooper Center for Public Service of the University of Virginia shall account for persons who attend institutions of higher education within the school division in which the student's parents or guardians legally reside. To such estimate, the Department of Education shall add the population of students with disabilities, ages two through four and 20 through 21, as provided to the Department of Education by school divisions. The revenue so apportionable and distributable is hereby appropriated to the several counties and cities for maintenance, operation, capital outlays, debt and interest payments, or other expenses incurred in the operation of the public schools, which shall be considered as funds raised from local resources. In any county, however, wherein is situated any incorporated town constituting a school division, the county treasurer shall pay into the town treasury for maintenance, operation, capital outlays, debt and interest payments, or other expenses incurred in the operation of the public schools, the proper proportionate amount received by him in the ratio that the school population of such town bears to the school population of the entire county. If the school

population of any city or of any town constituting a school division is increased by the annexation of territory since the last estimate of school population provided by the Weldon Cooper Center for Public Service, such increase shall, for the purposes of this section, be added to the school population of such city or town as shown by the last such estimate and a proper reduction made in the school population of the county or counties from which the annexed territory was acquired.

E. Beginning July 1, 2000, of the remaining sales and use tax revenue, the revenue generated by a two percent sales and use tax, up to an annual amount of \$13 million, collected from the sales of hunting equipment, auxiliary hunting equipment, fishing equipment, auxiliary fishing equipment, wildlife-watching equipment, and auxiliary wildlife-watching equipment in Virginia, as estimated by the most recent U.S. Department of the Interior, Fish and Wildlife Service and U.S. Department of Commerce, Bureau of the Census National Survey of Fishing, Hunting, and Wildlife-Associated Recreation, shall be paid into the Game Protection Fund established under § 29.1-101 and shall be used, in part, to defray the cost of law enforcement. Not later than 30 days after the close of each quarter, the Comptroller shall transfer to the Game Protection Fund the appropriate amount of collections to be dedicated to such Fund. At any time that the balance in the Capital Improvement Fund, established under § 29.1-101.01, 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. Beginning July 1, 2013, of the remaining sales and use tax revenue, an amount equal to the revenue generated by a 0.125 percent sales and use tax shall be distributed to the Public Education Standards of Quality/Local Real Estate Property Tax Relief Fund established under § 58.1-638.1, and be used for the state's share of Standards of Quality basic aid payments.

3. For the purposes of the Comptroller making the required transfers under subdivision 1 and 2, 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. (Contingent expiration date - see note) Beginning July 1, 2013, of the remaining sales and use tax revenue, an amount equal to the following percentages of the revenue generated by a one-half percent sales and use tax, such as that paid to the Transportation Trust Fund as provided in subdivision A 1, shall be paid to the Highway Maintenance and Operating Fund established pursuant to § 33.2-1530:

1. For fiscal year 2014, an amount equal to 10 percent;
2. For fiscal year 2015, an amount equal to 20 percent;
3. For fiscal year 2016, an amount equal to 30 percent; and
4. For fiscal year 2017 and thereafter, an amount equal to 35 percent.

The Highway Maintenance and Operating Fund's share of the net revenue distributable under this subsection 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.

H. (Contingent expiration date - see note) 1. The additional revenue generated by increases in the state sales and use tax from Planning District 8 pursuant to §§ 58.1-603.1, 58.1-604.01, 58.1-604.1, and 58.1-614 shall be deposited by the Comptroller in the fund established under § 33.2-2509.

2. The additional revenue generated by increases in the state sales and use tax from Planning District 23 pursuant to §§ 58.1-603.1, 58.1-604.01, 58.1-604.1, and 58.1-614 shall be deposited by the Comptroller in the fund established under § 33.2-2600.

3. The additional revenue generated by increases in the state sales and use tax in any other Planning District pursuant to §§ 58.1-603.1, 58.1-604.01, 58.1-604.1, and 58.1-614 shall be deposited into special funds that shall be established by appropriate legislation.

4. The net revenues distributable under this subsection shall be computed as an estimate of the net revenue to be received by the state treasury each month, and such estimated payment shall be adjusted

728 for the actual net revenue received in the preceding month. All payments shall be made to the  
729 appropriate funds on the last day of each month.

730 I. If errors are made in any distribution, or adjustments are otherwise necessary, the errors shall be  
731 corrected and adjustments made in the distribution for the next quarter or for subsequent quarters.

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

735 **2. That the initial appointments of nonlegislative citizen members shall be staggered as follows:**  
736 **three nonlegislative citizen members for terms of four years, two nonlegislative citizen members**  
737 **for terms of three years, and one nonlegislative citizen member for a term of two years, to be**  
738 **appointed by the Governor, subject to confirmation by the General Assembly. Thereafter,**  
739 **appointments shall be for terms of four years.**

740 **3. That the provisions of this act shall become effective on July 1, 2016 and only if reenacted by**  
741 **the 2016 Session of the General Assembly.**