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SENATE BILL NO. 332

Offered January 8, 2020

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A BILL to amend and reenact § 58.1-638 of the Code of Virginia, relating to allocation of remote sales tax collections; Transportation Trust Fund.

Patron—Stuart

Referred to Committee on Finance and Appropriations

Be it enacted by the General Assembly of Virginia:**1. That § 58.1-638 of the Code of Virginia is amended and reenacted as follows:****§ 58.1-638. Disposition of state sales and use tax revenue.**

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. Expenditures for such capital needs are restricted to those capital projects specified in subsection B of § 62.1-132.1.

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

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

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

Of the remaining amount:

a. Forty percent of the funds shall be allocated to air carrier airports, except airports owned or leased by MWAA, based upon the percentage of enplanements for each airport to total enplanements at all air carrier airports, except airports owned or leased by MWAA. No air carrier airport sponsor, however,

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59 shall receive less than \$50,000 nor more than \$2 million per year from this provision.

60 b. Sixty percent of the funds shall be allocated as follows:

61 (1) For the first six months of each fiscal year, the funds shall be allocated as follows:

62 (a) Forty percent of the funds shall be allocated by the Aviation Board for air carrier and reliever
63 airports on a discretionary basis, except airports owned or leased by MWAA; and

64 (b) Twenty percent of the funds shall be allocated by the Aviation Board for general aviation airports
65 on a discretionary basis; and

66 (2) For the second six months of each fiscal year, all remaining funds shall be allocated by the
67 Aviation Board for all eligible airports on a discretionary basis, except airports owned or leased by
68 MWAA.

69 3a. There is hereby created in the Department of the Treasury a special nonreverting fund that shall
70 be a part of the Transportation Trust Fund and that shall be known as the Commonwealth Space Flight
71 Fund. The Commonwealth Space Flight Fund shall be established on the books of the Comptroller and
72 the funds remaining in such Fund at the end of a biennium shall not revert to the general fund but shall
73 remain in the Fund. Interest earned on such funds shall remain in the Fund and be credited to it.

74 a. The amounts allocated to the Commonwealth Space Flight Fund pursuant to § 33.2-1526 shall be
75 allocated by the Commonwealth Transportation Board to the Board of Directors of the Virginia
76 Commercial Space Flight Authority to be used to support the capital needs, maintenance, and operating
77 costs of any and all facilities owned and operated by the Virginia Commercial Space Flight Authority.

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

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

84 a. The Commonwealth Mass Transit Fund shall be established on the books of the Comptroller and
85 any funds remaining in such Fund at the end of the biennium shall not revert to the general fund but
86 shall remain in the Fund. Interest earned on such funds shall be credited to the Fund.

87 b. The amounts allocated pursuant to § 33.2-1526.1 shall be used to support the operating, capital,
88 and administrative costs of public transportation at a state share determined by the Commonwealth
89 Transportation Board, and these amounts may be used to support the capital project costs of public
90 transportation and ridesharing equipment, facilities, and associated costs at a state share determined by
91 the Commonwealth Transportation Board. Capital costs may include debt service payments on local or
92 agency transit bonds.

93 c. There is hereby created in the Department of the Treasury a special nonreverting fund known as
94 the Commonwealth Transit Capital Fund. The Commonwealth Transit Capital Fund shall be part of the
95 Commonwealth Mass Transit Fund. The Commonwealth Transit Capital Fund subaccount shall be
96 established on the books of the Comptroller and consist of such moneys as are appropriated to it by the
97 General Assembly and of all donations, gifts, bequests, grants, endowments, and other moneys given,
98 bequeathed, granted, or otherwise made available to the Commonwealth Transit Capital Fund. Any funds
99 remaining in the Commonwealth Transit Capital Fund at the end of the biennium shall not revert to the
100 general fund, but shall remain in the Commonwealth Transit Capital Fund. Interest earned on funds
101 within the Commonwealth Transit Capital Fund shall remain in and be credited to the Commonwealth
102 Transit Capital Fund. Proceeds of the Commonwealth Transit Capital Fund may be paid to any political
103 subdivision, another public entity created by an act of the General Assembly, or a private entity as
104 defined in § 33.2-1800 and for purposes as enumerated in subdivision 7 of § 33.2-1701 or expended by
105 the Department of Rail and Public Transportation for the purposes specified in this subdivision.
106 Revenues of the Commonwealth Transit Capital Fund shall be used to support capital expenditures
107 involving the establishment, improvement, or expansion of public transportation services through specific
108 projects approved by the Commonwealth Transportation Board. The Commonwealth Transit Capital
109 Fund shall not be allocated without requiring a local match from the recipient.

110 B. The sales and use tax revenue generated by a one percent sales and use tax shall be distributed
111 among the counties and cities of the Commonwealth in the manner provided in subsections C and D.

112 C. The localities' share of the net revenue distributable under this section among the counties and
113 cities shall be apportioned by the Comptroller and distributed among them by warrants of the
114 Comptroller drawn on the Treasurer of Virginia as soon as practicable after the close of each month
115 during which the net revenue was received into the state treasury. The distribution of the localities' share
116 of such net revenue shall be computed with respect to the net revenue received into the state treasury
117 during each month, and such distribution shall be made as soon as practicable after the close of each
118 such month.

119 D. The net revenue so distributable among the counties and cities shall be apportioned and
120 distributed upon the basis of the latest yearly estimate of the population of cities and counties ages five

to 19, provided by the Weldon Cooper Center for Public Service of the University of Virginia. Such population estimate produced by the Weldon Cooper Center for Public Service of the University of Virginia shall account for persons who are domiciled in orphanages or charitable institutions or who are dependents living on any federal military or naval reservation or other federal property within the school division in which the institutions or federal military or naval reservation or other federal property is located. Such population estimate produced by the Weldon Cooper Center for Public Service of the University of Virginia shall account for members of the military services who are under 20 years of age within the school division in which the parents or guardians of such persons legally reside. Such population estimate produced by the Weldon Cooper Center for Public Service of the University of Virginia shall account for individuals receiving services in state hospitals, state training centers, or mental health facilities, persons who are confined in state or federal correctional institutions, or persons who attend the Virginia School for the Deaf and the Blind within the school division in which the parents or guardians of such persons legally reside. Such population estimate produced by the Weldon Cooper Center for Public Service of the University of Virginia shall account for persons who attend institutions of higher education within the school division in which the student's parents or guardians legally reside. To such estimate, the Department of Education shall add the population of students with disabilities, ages two through four and 20 through 21, as provided to the Department of Education by school divisions. The revenue so apportionable and distributable is hereby appropriated to the several counties and cities for maintenance, operation, capital outlays, debt and interest payments, or other expenses incurred in the operation of the public schools, which shall be considered as funds raised from local resources. In any county, however, wherein is situated any incorporated town constituting a school division, the county treasurer shall pay into the town treasury for maintenance, operation, capital outlays, debt and interest payments, or other expenses incurred in the operation of the public schools, the proper proportionate amount received by him in the ratio that the school population of such town bears to the school population of the entire county. If the school population of any city or of any town constituting a school division is increased by the annexation of territory since the last estimate of school population provided by the Weldon Cooper Center for Public Service, such increase shall, for the purposes of this section, be added to the school population of such city or town as shown by the last such estimate and a proper reduction made in the school population of the county or counties from which the annexed territory was acquired.

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

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

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

I. (For contingent expiration date, see Acts 2018, c. 850) The additional revenue generated by increases in the state sales and use tax from the Historic Triangle pursuant to § 58.1-603.2 shall be deposited by the Comptroller as follows: (i) 50 percent shall be deposited into the Historic Triangle Marketing Fund established pursuant to subsection E of § 58.1-603.2; and (ii) 50 percent shall be deposited in the special fund created pursuant to subdivision D 2 of § 58.1-603.2 and distributed to the localities in which the revenues were collected. The net revenues distributable under this subsection shall be computed as an estimate of the net revenues to be received by 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 appropriate funds on the last day of each month.

J. Beginning July 1, 2020, the first \$40 million of sales and use taxes remitted by online retailers with a physical nexus established pursuant to subsection D of § 58.1-612 shall be deposited into the Major Headquarters Workforce Grant Fund established pursuant to § 59.1-284.31.

K. *Beginning July 1, 2020, the sales and use tax remitted by remote sellers pursuant to Chapters 815 and 816 of the Acts of Assembly of 2019 shall be deposited into the Transportation Trust Fund to be used solely for maintenance and repair of existing highways. The net revenues distributable under this subsection shall be computed as an estimate of the net revenues to be received by 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 Transportation Trust Fund on the last day of each month.*

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

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