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SENATE BILL NO. 132

Offered January 13, 2010

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A BILL to amend and reenact §§ 58.1-602 and 58.1-638 of the Code of Virginia, relating to increasing the distribution of retail sales and use tax revenues to the Transportation Trust Fund.

 Patron—Obenshain

 Referred to Committee on Finance

Be it enacted by the General Assembly of Virginia:**1. That §§ 58.1-602 and 58.1-638 of the Code of Virginia are amended and reenacted as follows:****§ 58.1-602. Definitions.**

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

"Actual dollar increase in general fund revenues" means the amount of the dollar increase, if any, between (i) the total general fund revenues collected in the immediately preceding fiscal year, and (ii) the total general fund revenues collected in the fiscal year immediately prior to such immediately preceding fiscal year.

"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.

"Growth in general fund revenues" means the percentage by which (i) the total general fund revenues collected in the immediately preceding fiscal year exceed (ii) the total general fund revenues collected in the fiscal year immediately prior to such immediately preceding fiscal year.

"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

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59 of Virginia and includes all territory within these limits owned by or ceded to the United States of
60 America.

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

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

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

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

76 "Manufacturing, processing, refining, or conversion" includes the production line of the plant starting
77 with the handling and storage of raw materials at the plant site and continuing through the last step of
78 production where the product is finished or completed for sale and conveyed to a warehouse at the
79 production site, and also includes equipment and supplies used for production line testing and quality
80 control. The term "manufacturing" shall also include the necessary ancillary activities of newspaper and
81 magazine printing when such activities are performed by the publisher of any newspaper or magazine
82 for sale daily or regularly at average intervals not exceeding three months.

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

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

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

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

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

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

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

118 "Person" includes any individual, firm, copartnership, cooperative, nonprofit membership corporation,
119 joint venture, association, corporation, estate, trust, business trust, trustee in bankruptcy, receiver,
120 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

182 mandatory gratuity or service charge does not exceed 20% of the price of the meal. Where used articles
183 are taken in trade, or in a series of trades as a credit or part payment on the sale of new or used
184 articles, the tax levied by this chapter shall be paid on the net difference between the sales price of the
185 new or used articles and the credit for the used articles.

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

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

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

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

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

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

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

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

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

228 § 58.1-638. Disposition of state sales and use tax revenue; localities' share; Game Protection Fund.

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

231 1. The sales and use tax revenue generated by the one-half percent sales and use tax increase enacted
232 by the 1986 Special Session of the General Assembly shall be paid, in the manner hereinafter provided
233 in this section, to the Transportation Trust Fund as defined in § 33.1-23.03:1. Of the funds paid to the
234 Transportation Trust Fund, an aggregate of 4.2 percent shall be set aside as the Commonwealth Port
235 Fund as provided in this section; an aggregate of 2.4 percent shall be set aside as the Commonwealth
236 Airport Fund as provided in this section; and an aggregate of 14.5 percent in fiscal year 1998-1999 and
237 14.7 percent in fiscal year 1999-2000 and thereafter shall be set aside as the Commonwealth Mass
238 Transit Fund as provided in this section. *If at the beginning of any fiscal year the Comptroller*
239 *determines that (i) the growth in general fund revenues is at least three percent, and (ii) the actual*
240 *dollar increase in general fund revenues is at least equal to the sales and use tax revenue generated by*
241 *a one-half percent sales and use tax in the immediately preceding fiscal year, then the sales and use tax*
242 *revenue generated by a one percent sales and use tax (in lieu of a one-half percent sales and use tax)*
243 *shall thereafter be paid to the Transportation Trust Fund on an ongoing basis beginning with the*

proportional distribution for the month of August of the current fiscal year. Once the sales and use tax revenue generated by a one percent sales and use tax is paid to the Transportation Trust Fund, such percentage shall remain in effect unless and until changed by the General Assembly. The Comptroller shall be required to make a written determination in each fiscal year by no later than August fifteenth, until such time as the conditions in clauses (i) and (ii) have been met. The Comptroller shall as soon as practicable provide a copy of the written determination to the General Assembly.

The Fund's share of such net revenue shall be computed as an estimate of the net revenue to be received into the state treasury each month, and such estimated payment shall be adjusted for the actual net revenue received in the preceding month. All payments shall be made to the Fund on the last day of each month.

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

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

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

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

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

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

Of the remaining amount:

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

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

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

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

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

b. The amounts allocated pursuant to this section shall be used to support the public transportation administrative costs and the costs borne by the locality for the purchase of fuels, lubricants, tires and maintenance parts and supplies for public transportation at a state share of 80 percent in 2002 and 95 percent in 2003 and succeeding years. These amounts may be used to support up to 95 percent of the local or nonfederal share of capital project costs for public transportation and ridesharing equipment,

305 facilities, and associated costs. Capital costs may include debt service payments on local or agency
306 transit bonds. The term "borne by the locality" means the local share eligible for state assistance
307 consisting of costs in excess of the sum of fares and other operating revenues plus federal assistance
308 received by the locality.

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

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

313 (2) The Board may allocate these funds to any locality or planning district commission to finance up
314 to 80 percent of the local share of all costs associated with the development, implementation, and
315 continuation of ridesharing programs.

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

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

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

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

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

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

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

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

338 f. The remaining 25 percent shall be distributed for capital purposes on the basis of 95 percent of the
339 nonfederal share for federal projects and 95 percent of the total costs for nonfederal projects. In the
340 event that total capital funds available under this subdivision are insufficient to fund the complete list of
341 eligible projects, the funds shall be distributed to each transit property in the same proportion that such
342 capital expenditure bears to the statewide total of capital projects.

343 g. There is hereby created in the Department of the Treasury a special nonreverting fund known as
344 the Commonwealth Transit Capital Fund. The Commonwealth Transit Capital Fund shall be part of the
345 Commonwealth Mass Transit Fund. The Commonwealth Transit Capital Fund subaccount shall be
346 established on the books of the Comptroller and consist of such moneys as are appropriated to it by the
347 General Assembly and of all donations, gifts, bequests, grants, endowments, and other moneys given,
348 bequeathed, granted, or otherwise made available to the Commonwealth Transit Capital Fund. Any funds
349 remaining in the Commonwealth Transit Capital Fund at the end of the biennium shall not revert to the
350 general fund, but shall remain in the Commonwealth Transit Capital Fund. Interest earned on funds
351 within the Commonwealth Transit Capital Fund shall remain in and be credited to the Commonwealth
352 Transit Capital Fund. Proceeds of the Commonwealth Transit Capital Fund may be paid to any political
353 subdivision, another public entity created by an act of the General Assembly, or a private entity as
354 defined in § 56-557 and for purposes as enumerated in subdivision 4c of § 33.1-269 or expended by the
355 Department of Rail and Public Transportation for the purposes specified in this subdivision. Revenues of
356 the Commonwealth Transit Capital Fund shall be used to support capital expenditures involving the
357 establishment, improvement, or expansion of public transportation services through specific projects
358 approved by the Commonwealth Transportation Board. Projects financed by the Commonwealth Transit
359 Capital Fund shall receive local, regional or private funding for at least 20 percent of the nonfederal
360 share of the total project cost.

361 5. Funds for Metro shall be paid by the Northern Virginia Transportation Commission (NVTC) to the
362 Washington Metropolitan Area Transit Authority (WMATA) and be a credit to the Counties of
363 Arlington and Fairfax and the Cities of Alexandria, Falls Church and Fairfax in the following manner:

364 a. Local obligations for debt service for WMATA rail transit bonds apportioned to each locality
365 using WMATA's capital formula shall be paid first by NVTC. NVTC shall use 95 percent state aid for
366 these payments.

b. The remaining funds shall be apportioned to reflect WMATA's allocation formulas by using the related WMATA-allocated subsidies and relative shares of local transit subsidies. Capital costs shall include 20 percent of annual local bus capital expenses. Hold harmless protections and obligations for NVTC's jurisdictions agreed to by NVTC on November 5, 1998, shall remain in effect.

Appropriations from the Commonwealth Mass Transit Fund are intended to provide a stable and reliable source of revenue as defined by Public Law 96-184.

B. The sales and use tax revenue generated by a one percent sales and use tax shall be distributed among the counties and cities of this 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 as certified to the Comptroller by the Department of Education, of the number of children in each county and city according to the most recent statewide census of school population taken by the Department of Education pursuant to § 22.1-284, as adjusted in the manner hereinafter provided. No special school population census, other than a statewide census, shall be used as the basis of apportionment and distribution except that in any calendar year in which a statewide census is not reported, the Department of Education shall adjust such school population figures by the same percent of annual change in total population estimated for each locality by The Center for Public Service. 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 preceding school population census, 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 census 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 § 29.1-101.1, is equal to or in excess of \$35 million, any portion of sales and use tax revenues that would have been transferred to the Game Protection Fund, established under § 29.1-101, in excess of the net operating expenses of the Board, after deduction of other amounts which accrue to the Board and are set aside for the Game Protection Fund, shall remain in the general fund until such time as the balance in the Capital Improvement Fund is less than \$35 million.

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

2. For the purposes of the Comptroller making the required transfers under subdivision 1, the Tax Commissioner shall make a written certification to the Comptroller no later than the twenty-fifth of each

month certifying the sales and use tax revenues generated in the preceding month. Within three calendar days of receiving such certification, the Comptroller shall make the required transfers to the Public Education Standards of Quality/Local Real Estate Property Tax Relief Fund.

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

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