

VIRGINIA ACTS OF ASSEMBLY -- 2002 SESSION

CHAPTER 689

An Act to amend and reenact the third enactment of Chapter 554 of the Acts of Assembly of 1997 and to amend and reenact §§ 15.2-5900, 15.2-5908 and 15.2-5914 of the Code of Virginia, relating to the Hampton Roads Sports Facility Authority.

[S 580]

Approved April 6, 2002

Be it enacted by the General Assembly of Virginia:

1. That the third enactment of Chapter 554 of the Acts of Assembly of 1997 is amended and reenacted as follows:

3. That the provisions of this act shall expire on January 1, ~~2002~~ 2005, if the Hampton Roads Sports Facility Authority has not executed a lease with a team which is a member of the National Hockey League or the National Basketball Association.

2. That §§ 15.2-5900, 15.2-5908 and 15.2-5914 of the Code of Virginia are amended and reenacted as follows:

§ 15.2-5900. Definitions.

As used in this chapter the following words have the meanings indicated:

"Arena" means an arena or stadium proposed to be constructed in the City of Norfolk, one of the purposes of which shall be for the conduct of games by a team which is a part of the National Hockey League or National Basketball Association.

"Authority" means the Hampton Roads Sports Facility Authority.

"Corporate income tax revenues" means corporate income tax as estimated by the Tax Commissioner under Article 10 (§ 58.1-400 et seq.) of Chapter 3 of Title 58.1 from any team or other organization based on income generated (i) within a facility or in connection with activities conducted therein that would not be generated but for the existence of the facility, including revenues generated in connection with the development and construction of a facility, and (ii) *in connection with games or other activities of a sports franchise conducted at a temporary facility*. The Tax Commissioner shall calculate such revenues by multiplying the estimated tax ~~payment~~ payments of any corporation as required under Article 20 (§ ~~58.1-455~~ 58.1-500 et seq.) of Chapter 3 of Title 58.1 generating income as described herein by the ratio of their gross revenues from the activities as described herein by gross revenues from all activities in Virginia.

"Facility" means an arena and any one or more of the following which are both appurtenant to and directly or indirectly benefited by the presence of such arena *or sports franchise*: (i) practice ~~fields~~ facilities or other areas where sports teams may practice or perform, (ii) offices for sports teams or franchises, (iii) any office, restaurant, concessions, retail and lodging facilities which are owned and operated adjacent to or in connection with an arena or other structure, and (iv) any other directly related properties including, but not limited to, on-site and off-site parking lots, garages, and other properties.

"Pass-through entity tax revenues" means personal or corporate income tax as estimated by the Tax Commissioner from any individual or corporation under Article 2 (§ 58.1-320 et seq.) or Article 10 of Chapter 3 of Title 58.1 based on gross receipts from a sole proprietorship, partnership, electing small business corporation (S corporation), limited liability corporation and any other form of pass-through entity generated (i) within a facility or in connection with activities conducted therein that would not be generated but for the existence of the facility, including revenues generated in connection with the development and construction of a facility, and (ii) *in connection with games or other activities of a sports franchise conducted at a temporary facility*. The Tax Commissioner shall calculate the estimated revenue by multiplying the gross receipts from activities described herein by two-tenths of one percent.

"Personal income tax revenues" means personal income tax as estimated by the Tax Commissioner from individuals under Article 2 of Chapter 3 of Title 58.1 based on (i) salaries, wages and other income generated through employment or the conduct of a trade or business within a facility that would not be generated but for the existence of the facility, including without limitation, such taxes collected from team players, coaches, and office personnel; personnel employed by the operator of, or enterprises operating within, a facility; and personnel involved in the development and construction of a facility, and (ii) *salaries, wages and other income generated through employment or the conduct of a trade or business within a temporary facility that would not be generated but for the activities of a sports franchise conducted at such temporary facility, including without limitation, such taxes collected from team players, coaches and office personnel; personnel employed by the operator of, or enterprises operating within such temporary facility*. The Tax Commissioner shall calculate such revenues by multiplying wages and salaries as described herein by three and *nine-tenths percent with respect to wages and salaries paid to team players of a sports franchise based at a facility or temporary facility*

and by three and one-half percent for all other individuals as described herein.

"Sales tax revenues" means tax collections under the Virginia Retail Sales and Use Tax Act (§ 58.1-600 et seq.), as limited herein, generated by (i) transactions taking place upon the premises of a facility including transactions generating revenues in connection with the development and construction of a facility that would not be generated but for the existence of the facility, and (ii) transactions taking place upon the premises of a temporary facility in connection with games or other activities of a sports franchise conducted at such temporary facility. Except to the extent directed by a local governing body pursuant to § 15.2-5914, sales tax revenues shall not include any local general retail sales and use tax levied pursuant to §§ 58.1-605 and 58.1-606.

"Sports franchise" means the contractual right granted to any person or persons to own or operate a team which is part of the National Hockey League or National Basketball Association in a specified location. For purposes of calculating corporate income tax revenues, pass-through entity tax revenues, personal income tax revenues, sales tax revenues, and those tax revenues described in subsection B of § 15.2-5914, references to a National Basketball Association sports franchise or team shall include the Women's National Basketball Association team owned by such National Basketball Association sports franchise, if any.

"Temporary facility" means a facility or arena in which a sports franchise plays its "home" schedule on a temporary basis during the development and construction of an arena.

§ 15.2-5908. Bond issues.

A. The Authority may at any time and from time to time issue bonds for any valid purpose, including the establishment of reserves and the payment of interest. In this chapter the term "bonds" includes notes of any kind, interim certificates, refunding bonds, or any other evidence of obligation.

B. The bonds of any issue shall be payable solely from the property or receipts of the Authority, or other security specifically pledged by the Authority to the payment thereof, including, but not limited to:

1. Taxes, fees, charges, or other revenues payable to the Authority;
2. Payments by financial institutions, insurance companies, or others pursuant to letters or lines of credit, policies of insurance, or purchase agreements;
3. Investment earnings from funds or accounts maintained pursuant to a bond resolution or trust agreement; and
4. Proceeds of refunding bonds.

C. Bonds shall be authorized by resolution of the Authority and may be secured by a trust agreement by and between the Authority and a corporate trustee or trustees, which may be any trust company or bank having the powers of a trust company within or outside the Commonwealth. The bonds shall:

1. Be issued at, above, or below par value, for cash or other valuable consideration, and mature at a time or times, whether as serial bonds or as term bonds or both, not exceeding forty years from their respective dates of issue;
2. Bear interest at the fixed or variable rate or rates determined by the method provided in the resolution or trust agreement;
3. Be payable at a time or times, in the denominations and form, and carry the registration and privileges as to conversion and for the replacement of mutilated, lost, or destroyed bonds as the resolution or trust agreement may provide;
4. Be payable in lawful money of the United States at a designated place;
5. Be subject to the terms of purchase, payment, redemption, refunding, or refinancing that the resolution or trust agreement provides;
6. Be executed by the manual or facsimile signatures of the officers of the Authority designated by the Authority which signatures shall be valid at delivery even for one who has ceased to hold office; and
7. Be sold in the manner and upon the terms determined by the Authority including private (negotiated) sale.

D. Any resolution or trust agreement may contain provisions which shall be a part of the contract with the holders of the bonds as to:

1. Pledging, assigning, or directing the use, investment, or disposition of receipts of the Authority or proceeds or benefits of any contract and conveying or otherwise securing any property rights;
2. The setting aside of loan funding deposits, debt service reserves, capitalized interest accounts, cost of issuance accounts and sinking funds, and the regulation, investment, and disposition thereof;
3. Limitations on the purpose to which or the investments in which the proceeds of sale of any issue of bonds may be applied and restrictions to investments of revenues or bond proceeds in government obligations for which principal and interest are unconditionally guaranteed by the United States of America;
4. Limitations on the issuance of additional bonds and the terms upon which additional bonds may be issued and secured and may rank on a parity with, or be subordinate or superior to, other bonds;
5. The refunding or refinancing of outstanding bonds;
6. The procedure, if any, by which the terms of any contract with bondholders may be altered or amended and the amount of bonds the holders of which must consent thereto, and the manner in which

consent shall be given;

7. Defining the acts or omissions which shall constitute a default in the duties of the Authority to bondholders and providing the rights or remedies of such holders in the event of a default which may include provisions restricting individual right of action by bondholders;

8. Providing for guarantees, pledges of property, letters of credit, or other security, or insurance for the benefit of bondholders; and

9. Any other matter relating to the bonds which the Authority determines appropriate.

E. No member of the Authority nor any person executing the bonds on behalf of the Authority shall be liable personally for the bonds or subject to any personal liability by reason of the issuance of the bonds.

F. The Authority may enter into agreements with agents, banks, insurers, *any political subdivision of the Commonwealth* or others for the purpose of enhancing the marketability of, or as security for, its bonds.

G. A pledge by the Authority of revenues as security for an issue of bonds shall be valid and binding from the time the pledge is made.

The revenues pledged shall immediately be subject to the lien of the pledge without any physical delivery or further act, and the lien of any pledge shall be valid and binding against any person having any claim of any kind in tort, contract or otherwise against the Authority, irrespective of whether the person has notice.

No resolution, trust agreement or financing statement, continuation statement, or other instrument adopted or entered into by the Authority need be filed or recorded in any public record other than the records of the Authority in order to perfect the lien against third persons, regardless of any contrary provision of public general or public local law.

H. Except to the extent restricted by an applicable resolution or trust agreement, any holder of bonds issued under this chapter or a trustee acting under a trust agreement entered into under this chapter, may, by any suitable form of legal proceedings, protect and enforce any rights granted under the laws of Virginia or by any applicable resolution or trust agreement.

I. The Authority may issue bonds to refund any of its bonds then outstanding, including the payment of any redemption premium and any interest accrued or to accrue to the earliest or any subsequent date of redemption, purchase or maturity of the bonds. Refunding bonds may be issued for the public purposes of realizing savings in the effective costs of debt service, directly or through a debt restructuring, for alleviating impending or actual default and may be issued in one or more series in an amount in excess of that of the bonds to be refunded.

J. The sports franchise holder shall agree that the sports franchise will not be relocated and that the sports team operating the sports franchise will operate within the applicable facility until any bonds issued hereunder are repaid or defeased.

K. In the event a facility is planned, no bonds shall be issued hereunder until the Authority has executed a long-term lease with a person or persons who hold a sports franchise.

§ 15.2-5914. Entitlement to certain tax revenues derived from a facility.

A. The Authority shall be entitled, subject to appropriation, to all personal income tax revenues, corporate income tax revenues, pass-through entity tax revenues and sales tax revenues, as defined in this chapter. The State Comptroller shall remit such tax revenues to the Authority on a quarterly basis, subject to such reasonable processing delays as may be required by the Department of Taxation. With respect to the sales tax revenues, the State Comptroller shall make such remittances to the Authority, as provided herein, notwithstanding any provisions to the contrary in the Virginia Retail Sales and Use Tax Act (§ 58.1-600 et seq.). *In connection with the calculation of all personal income tax revenues, corporate income tax revenues, pass-through entity tax revenues, and sales tax revenues, the Department of Taxation will work cooperatively with the Authority in identifying all such revenues to which the Authority shall be entitled hereunder; such cooperation to include the review and fair consideration by the Department of Taxation of all relevant financial information that may from time to time be provided to it by the Authority.*

B. The local governing body of the locality in which the facility *or any temporary facility* is located may direct, by ordinance or resolution, that all or a portion of the following tax revenues shall be remitted by the treasurer of such city or county, as the case may be, to the Authority for any of its purposes:

1. Local sales and use tax revenues of such city or county generated from taxes levied pursuant to §§ 58.1-605 and 58.1-606 on transactions taking place upon the premises of the facility *and any temporary facility*;

2. Local admissions tax revenues of such county or city generated from taxes levied pursuant to §§ ~~58.1-3818~~ 58.1-3817 and 58.1-3840 on admissions to the facility *and any temporary facility*;

3. Local food and beverage tax revenues of such county or city generated on transactions taking place upon the premises of the facility *and any temporary facility* from taxes levied pursuant to §§ 58.1-3833 and 58.1-3840;

4. Local business, professional, and occupational license tax revenues of such city or county

generated from taxes levied pursuant to § 58.1-3703 on any team or other organization operating within the facility *and any temporary facility*.

In addition, the local governing body of the county or city in which the facility *and any temporary facility* is *are* located may, by ordinance or resolution, fix and revise from time to time and charge and collect rates, rents, fees, ticket surcharges, or other charges for a facility *and any temporary facility* developed under the provisions of this chapter and, by ordinance or resolution, remit to the Authority all or any portion of such rates, rents, fees, ticket surcharges, or other charges for any purposes of the Authority.

Such remittances shall be for the same period and under the same conditions as remittances to the Authority paid in accordance with subsection A, *mutatis mutandis*.

3. That no bonds shall be issued hereunder prior to approval by the National Hockey League or National Basketball Association that a team which is a part of the National Hockey League or National Basketball Association will be located in the City of Norfolk.