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HOUSE BILL NO. 2455

Offered January 12, 2005

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A BILL to amend and reenact §§ 15.2-5800, 15.2-5805, 15.2-5806, 15.2-5808, 15.2-5814 and 15.2-5815 of the Code of Virginia and to amend the Code of Virginia by adding sections numbered 15.2-5820 and 15.2-5821, relating to entitlement to tax revenues derived from a major league baseball stadium.

Patron—Suit

Referred to Committee on Finance

Be it enacted by the General Assembly of Virginia:

1. That §§ 15.2-5800, 15.2-5805, 15.2-5806, 15.2-5808, 15.2-5814 and 15.2-5815 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding sections numbered 15.2-5820 and 15.2-5821 as follows:

§ 15.2-5800. Definitions; professional baseball games; consent for construction.

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

"Authority" means the Virginia Baseball Stadium 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 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. The Tax Commissioner shall calculate such revenues by multiplying the estimated tax payment of any corporation as required under Article 20 (§ 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 to gross revenues from all activities in Virginia.

"Facility" means (i) major league ~~and minor league~~ baseball stadiums, (ii) practice fields or other areas where major league ~~and minor league~~ professional baseball teams may practice or perform, (iii) offices for major league ~~and minor league~~ professional baseball teams or franchises, (iv) office, restaurant, concessions, retail and lodging facilities which are owned and operated in connection with a major league baseball stadium, and (v) any other directly related properties including, but not limited to, onsite and offsite parking lots, garages, and other properties.

"Major league baseball" means the organization which controls the administrative functions for the ownership and operation of major league baseball operations in the United States and Canada.

"Major league baseball franchise" means the contractual right granted by major league baseball to any person or persons to own or operate a major league baseball team in a specified location.

"Major league baseball stadium" means a sports facility which is designed for use primarily as a baseball stadium and which meets criteria that may be established by major league baseball.

~~"Minor league baseball stadium" means a sports facility which is designed for use primarily as a stadium for a minor league professional baseball team.~~

"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 (§ 58.1-400 et seq.) 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 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. 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 (§ 58.1-320 et seq.) of Chapter 3 of Title 58.1 based on 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. The Tax Commissioner shall calculate such revenues by multiplying wages and salaries described herein by three and nine-tenths percent with respect to wages and salaries paid to team players of a major league baseball franchise based at the facility and by three and one-half percent for

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59 *all other individuals described herein.*

60 "Sales tax revenues" means ~~taxes collected~~ *tax collections* under the Virginia Retail Sales and Use
61 Tax Act (§ 58.1-600 et seq.), as limited herein: ~~Sales tax revenues generated by transactions taking~~
62 *place upon the premises of a facility, including transactions generating revenues in connection with the*
63 *development and construction of a facility. Except to the extent directed by a local governing body*
64 *pursuant to § 15.2-5814, sales tax revenues* shall not include any local general retail sales and use tax
65 levied pursuant to §§ 58.1-605 and 58.1-606.

66 § 15.2-5805. Powers.

67 In addition to the powers set forth elsewhere in this chapter, the Authority may:

68 1. Adopt and alter an official seal;

69 2. Sue and be sued in its own name;

70 3. Adopt bylaws, rules and regulations to carry out the provisions of this chapter;

71 4. Maintain an office at such place as the Authority may designate;

72 5. Employ, either as regular employees or independent contractors, consultants, engineers, architects,
73 accountants, attorneys, financial experts, construction experts and personnel, superintendents, managers
74 and other professional personnel, personnel, and agents as may be necessary in the judgment of the
75 Authority, and fix their compensation;

76 6. Determine the locations of, develop, establish, construct, erect, acquire, own, repair, remodel, add
77 to, extend, improve, equip, operate, regulate, and maintain facilities to the extent necessary to
78 accomplish the purposes of the Authority;

79 7. Acquire, hold, lease, use, encumber, transfer, or dispose of real and personal property, including a
80 lease of its property or any interest therein whatever the condition thereof, whether or not constructed or
81 acquired, to the Commonwealth or any political subdivision of the Commonwealth. The Commonwealth
82 and any such political subdivision are authorized to acquire or lease such property or any interest
83 therein; however, the Commonwealth shall not enter into any such lease or purchase agreement unless
84 such lease or purchase agreement has first been approved pursuant to ~~subsections~~ *subsection E and F* of
85 § 15.2-5806;

86 8. Enter into contracts of any kind, and execute all instruments necessary or convenient with respect
87 to its carrying out the powers in this chapter to accomplish the purposes of the Authority;

88 9. Operate, enter into contracts for the operation of, and regulate the use and operation of facilities
89 developed under the provisions of the chapter;

90 10. Fix and revise from time to time and charge and collect rates, rents, fees, or other charges for the
91 use of facilities or for services rendered in connection with the facilities;

92 11. Borrow money from any source for any valid purpose, including working capital for its
93 operations, reserve funds, or interest, and to mortgage, pledge, or otherwise encumber the property or
94 funds of the Authority and to contract with or engage the services of any person in connection with any
95 financing, including financial institutions, issuers of letters of credit, or insurers;

96 12. Issue bonds under this chapter;

97 13. Receive and accept from any source, private or public, contributions, gifts, or grants of money or
98 property; and

99 14. Do all things necessary or convenient to carry out the powers granted by this chapter.

100 § 15.2-5806. Public hearings; notice; reports; approvals.

101 A. At least sixty days prior to selecting a site for a major league ~~or minor league~~ baseball stadium,
102 the Authority shall hold a public hearing within thirty miles of the site proposed to be acquired for the
103 purpose of soliciting public comment.

104 B. Except as otherwise provided herein, at least sixty days prior to the public hearing required by
105 this section, the Authority shall notify the local governing body in which the major league ~~or minor~~
106 ~~league~~ baseball stadium is proposed to be located and advertise the notice in a newspaper of general
107 circulation in that locality. The notice shall include: (i) a description of the site proposed to be acquired,
108 (ii) the intended use of the site, and (iii) the date, time, and location of the public hearing. After receipt
109 of the notice required by this section, the local governing body in which a major league ~~or minor league~~
110 baseball stadium is proposed to be located may require that this period be extended for up to sixty
111 additional days or for such other time period as agreed upon by the local governing body and the
112 Authority.

113 C. At least thirty days before acquiring or entering into a lease involving a major league ~~or minor~~
114 ~~league~~ baseball stadium and before entering into a construction contract involving a major league ~~or~~
115 ~~minor league~~ baseball stadium or stadium site, the Authority shall submit a detailed written report and
116 the findings of the Authority that justify the proposed acquisition, lease, or contract to the General
117 Assembly. The report and findings shall include a detailed plan of the method of funding and the
118 economic ~~necessity~~ *benefits* of the proposed acquisition, lease, or contract.

119 D. The time periods in subsections A, B, and C of this section may not run concurrently.

120 E. The Commonwealth shall not enter into any purchase agreement, lease agreement, lease-purchase

agreement, master lease agreement or any other contractual arrangement that creates a direct or contingent financial obligation of the Commonwealth unless such agreement or arrangement has first been submitted to the State Treasurer sufficiently prior to the execution of such agreement or arrangement to allow the State Treasurer to undertake a review for the purposes of determining (i) whether the agreement or arrangement may constitute tax-supported debt of the Commonwealth and (ii) the potential impact of the agreement or arrangement on the debt capacity and credit ratings of the Commonwealth. If after such review the State Treasurer determines that the agreement or arrangement may constitute tax-supported debt of the Commonwealth, or may have an adverse impact on the debt capacity or the credit ratings of the Commonwealth, the agreement or arrangement and any associated financing shall be submitted to the Treasury Board for review and approval of terms and structures in a manner consistent with § 2.1-179. *In the event that in the opinion of the State Treasurer, with the concurrence of the Debt Capacity Advisory Committee, such agreement or arrangement will be considered tax-supported debt of the Commonwealth or have an adverse impact on the debt capacity or the credit ratings of the Commonwealth, such agreement or arrangement must be authorized by the General Assembly.*

F. ~~The Commonwealth shall not enter into any purchase agreement, lease agreement, lease-purchase agreement, master lease agreement or any other contractual arrangement that creates a direct or contingent financial obligation of the Commonwealth unless such agreement or arrangement has first been reviewed and approved as required by subsection E and subsequently approved in writing by the Governor.~~ *The State Treasurer shall be provided with copies of all documents relating to the proposed issuance of any bonds pursuant to § 15.2-5808 sufficiently in advance of such bond issue to conduct such reviews as the State Treasurer deems necessary. In the event that the Commonwealth is an obligated person determined to be material to an evaluation of the offering for which financial information will be included or referenced in the offering document in accordance with the Securities and Exchange Commission Rule 15c-12 under the federal Securities Exchange Act of 1934, or in the event that in the opinion of the State Treasurer, with the concurrence of the Debt Capacity Advisory Committee, such bond issue will be considered tax-supported debt of the Commonwealth or have a material adverse impact on the debt capacity or the credit ratings of the Commonwealth, such bond issue must be authorized by the General Assembly.*

§ 15.2-5808. 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 line 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 without 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

182 with the holders of the bonds as to:

183 1. Pledging, assigning, or directing the use, investment, or disposition of receipts of the Authority or
184 proceeds or benefits of any contract and conveying or otherwise securing any property rights;

185 2. The setting aside of loan funding deposits, debt service reserves, capitalized interest accounts, cost
186 of issuance accounts and sinking funds, and the regulation, investment, and disposition thereof;

187 3. Limitations on the purpose to which or the investments in which the proceeds of sale of any issue
188 of bonds may be applied and restrictions to investments of revenues or bond proceeds in government
189 obligations for which principal and interest are unconditionally guaranteed by the United States of
190 America;

191 4. Limitations on the issuance of additional bonds and the terms upon which additional bonds may
192 be issued and secured and may rank on a parity with, or be subordinate or superior to, other bonds;

193 5. The refunding or refinancing of outstanding bonds;

194 6. The procedure, if any, by which the terms of any contract with bondholders may be altered or
195 amended and the amount of bonds the holders of which must consent thereto, and the manner in which
196 consent shall be given;

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

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

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

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

206 F. The Authority may enter into agreements with agents, banks, insurers, or others for the purpose of
207 enhancing the marketability of, or as security for, its bonds.

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

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

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

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

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

228 J. The franchise holder must agree that the franchise will not be relocated *and that the sports team*
229 *operating the sports franchise will operate within the applicable facility* until any bonds issued
230 hereunder are defeased.

231 K. In the event a major league baseball facility is planned, no bonds shall be issued hereunder until
232 the Authority has executed a long-term lease with a major league baseball franchise. ~~In the event a~~
233 ~~minor league baseball facility is planned, the same requirements, mutatis mutandis, shall apply.~~

234 § 15.2-5814. Entitlement to tax revenues derived from a major league baseball stadium.

235 A. ~~In connection with the issuance of bonds by the Authority to finance or refinance a major league~~
236 ~~baseball stadium,~~ The Authority shall be entitled, *subject to appropriation*, to all sales tax revenues that
237 are generated by transactions taking place upon the premises of the major league baseball stadium as
238 defined in this chapter. Such entitlement shall continue for the lifetime of such bonds, but that
239 entitlement shall not exceed thirty years. Sales tax revenues may be applied to repayment of the bonds,
240 stadium operating expenses, master lease rental payments by the Commonwealth, capital expenditures
241 and other Sales tax revenues may be applied for any purposes of the Authority. The State Comptroller
242 shall remit such sales tax revenues to the Authority on a quarterly basis, subject to such reasonable
243 processing delays as may be required by the Department of Taxation to calculate the actual net sales tax

revenues generated by transactions taking place upon the premises of the major league baseball stadium. 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.).

B. In connection with the issuance of bonds by the Authority to finance or refinance a major league baseball stadium, The local governing body of the county or city in which the stadium is located may direct, by ordinance or resolution, that all local sales and use tax revenues generated by transactions taking place upon the premises of the major league stadium from taxes levied pursuant to §§ 58.1-605 and 58.1-606 shall be remitted by the State Comptroller the Treasurer of such city, county or town to the Authority for the repayment of bonds, stadium operating expenses, master lease rental payments by the Commonwealth, capital expenditures and other 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.

C. In connection with the issuance of bonds by the Authority to finance or refinance a major league baseball stadium, The local governing body of the county, city or town in which the stadium is located may direct, by ordinance or resolution, that all admissions tax revenues of such county or city generated by admissions to the major league stadium from taxes levied pursuant to §§ 58.1-3818 and 58.1-3840 shall be remitted to the Authority for the repayment of bonds, stadium operating expenses, master lease rental payments by the Commonwealth, capital expenditures and other any purposes of the Authority. Any levy pursuant to this section may be for the lifetime of such bonds, but such levy shall not exceed thirty years. In addition to such admissions tax, the local governing body of the county, city or town in which the stadium is located may levy, by ordinance or resolution, an admissions surcharge, not to exceed two percent of the amount charged for admission, on the sale of all tickets sold at the major league baseball stadium to be paid to the Authority and shall direct that the Authority and the major league baseball franchise shall reimburse the locality for actual day-of-event expenses incurred by the locality in connection with the operations of the major league baseball stadium. The difference between the surcharge and expenses attributable to the Authority, if any, shall be retained by the Authority for any of its purposes as the Authority deems appropriate for the major league baseball stadium.

D. The Authority shall be entitled, subject to appropriation, to all personal income tax revenues, corporate income tax revenues and pass-through entity tax revenues as defined in this chapter. The Authority shall also be entitled to all business, professional and occupational license taxes that are generated by the development, construction or operation of a major league baseball stadium and those business, professional and occupational license taxes remitted to the Authority by the locality, under the provisions of this section, in which the major league baseball stadium is located, on transactions, salaries and personal income and team operations, including without limitation, the wages, salaries and personal income generated in connection with the construction of the major league baseball stadium. The revenue derived from the provisions of this subsection shall be applied for any purposes which the Authority deems appropriate for the major league baseball stadium. The State Comptroller shall remit all such state tax revenues to the Authority on a quarterly basis, subject to such reasonable processing delays as may be required by the Department of Taxation. The locality in which the major league baseball stadium is located may direct, by ordinance or resolution, that all business, professional and occupational licensing revenues generated on the premises of the major league baseball stadium may be remitted to the Authority for any purposes which the Authority deems appropriate for the major league baseball stadium.

§ 15.2-5815. Tax revenues of the Commonwealth or any other political subdivision not pledged.

Nothing in this chapter shall be construed as authorizing the pledging of the faith and credit of the Commonwealth of Virginia, or any of its revenues, or the faith and credit of any other political subdivision of the Commonwealth, or any of its revenues, for the payment of any bonds.

No bonds issued pursuant to § 15.2-5808 shall pledge the full faith and credit of the Commonwealth nor shall such bonds constitute a debt of the Commonwealth, and shall so state on their face. Bondholders shall have no recourse whatsoever against the Commonwealth for the payment of principal, interest, or redemption premium, if any, on such bonds.

§ 15.2-5820. Audits and reports.

A. The Auditor of Public Accounts of the Commonwealth, and his legally authorized representatives, are hereby authorized and empowered from time to time to examine the accounts and books of the Authority, including its receipts, disbursements, contracts, leases, investments and any other matters relating to its finances, operation and affairs.

B. The Tax Commissioner shall report to the Chairman of the Senate Finance Committee, Chairman of the House Finance Committee, and the Chairman of the House Appropriations Committee, before July 1 of each year, the amount of the entitlement pursuant to § 15.2-5814.

§ 15.2-5821. Prohibited use of funds.

No funds of the Authority derived from state tax revenues may be used to pay fees or expenses of

305 *lobbyists required to register under § 2.2-422.*