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HOUSE BILL NO. 2320

Offered January 18, 2013

A *BILL to amend the Code of Virginia by adding in Title 15.2 a chapter numbered 59.1, consisting of sections numbered 15.2-5921 through 15.2-5927, relating to the City of Virginia Beach; sports or entertainment arena.*

Patron—Villanueva

Referred to Committee on Counties, Cities and Towns

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding in Title 15.2 a chapter numbered 59.1, consisting of sections numbered 15.2-5921 through 15.2-5927, as follows:

CHAPTER 59.1.**VIRGINIA BEACH ARENA.****§ 15.2-5921. Definitions.**

As used in this chapter, unless the context requires a different meaning:

"Arena" means an arena or stadium with a seating capacity of at least 15,000 proposed to be constructed in the City of Virginia Beach, the purpose of which shall be (i) the conduct of games by a team that is a part of the National Hockey League or National Basketball Association or (ii) the holding of conferences and entertainment events.

"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 payments 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 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 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 that 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, onsite and offsite parking lots, garages, and other properties.

"National Basketball Association team" or "Team" that is a part of the National Basketball Association means a team that is part of the National Basketball Association, the National Basketball Association Development League, or the Women's National Basketball Association.

"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 (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 (§ 58.1-320 et seq.) 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 and personnel employed by the

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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 five 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 and use 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.

"Sports franchise" means the contractual right granted to any person or persons to own or operate a team that is a part of the National Hockey League or National Basketball Association in a specified location.

"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.

§ 15.2-5922. Powers.

A. In addition to all other powers it possesses, the City of Virginia Beach may:

1. Determine the locations of, develop, establish, construct, erect, acquire, own, repair, remodel, add to, extend, improve, equip, operate, regulate, and maintain facilities to the extent necessary to accomplish the purposes of this chapter;

2. Operate, enter into contracts for the operation of, and regulate the use and operation of facilities developed under the provisions of this chapter;

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

4. Issue bonds under this chapter; and

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

B. For purposes of this chapter, the City of Virginia Beach shall be exempt from the Virginia Public Procurement Act (§ 2.2-4300 et seq.) and may exercise all of its powers and enter into all agreements or contracts authorized in this chapter without competitive sealed bidding or competitive negotiation, including, without limitation, those agreements or contracts entered into for the purchase or lease of goods or for the purchase of services or construction with respect to the acquisition, construction, or operation of any facility.

§ 15.2-5923. Public hearings; notice; reports.

A. At least 30 days before acquiring or entering into a lease involving a facility site and before entering into a construction contract involving a new facility or facility site, the City of Virginia Beach shall submit to the General Assembly a detailed written report and findings of the City on the proposed acquisition, lease, or contract. The report and findings shall include a detailed plan of the method of funding and the economic benefits of the proposed acquisition, lease, or contract.

B. The State Treasurer shall be provided with copies of all documents relating to the proposed issuance of any bonds pursuant to § 15.2-5924 sufficiently in advance of such bond issue to conduct such reviews as the State Treasurer deems necessary. Such reviews shall be completed within 120 days after the date that the Treasurer is provided such documents. 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 Securities and Exchange Commission Rule 15c 2-12 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 established under Article 5 (§ 2.2-2712 et seq.) of Chapter 27 of Title 2.2, such bond issue 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 bond issue must be authorized by the General Assembly.

§ 15.2-5924. Bond issues.

A. The City of Virginia Beach 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 City of Virginia Beach, or other security specifically pledged by the City of Virginia Beach to the payment thereof, including, but not limited to:

1. Taxes, fees, charges, or other revenues;

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

121 agreement;

122 4. Tax revenues appropriated pursuant to § 15.2-5926; and

123 5. Proceeds of refunding bonds.

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

128 1. Be issued at, above, or below par value, for cash or other valuable consideration, and mature at
129 a time or times, whether as serial bonds or as term bonds or both, not exceeding 40 years from their
130 respective dates of issue;

131 2. Bear interest at the fixed or variable rate or rates determined by the method provided in the
132 resolution or trust agreement;

133 3. Be payable at a time or times, in the denominations and form, and carry the registration and
134 privileges as to conversion and for the replacement of mutilated, lost, or destroyed bonds as the
135 resolution or trust agreement may provide;

136 4. Be payable in lawful money of the United States at a designated place;

137 5. Be subject to the terms of purchase, payment, redemption, refunding, or refinancing that the
138 resolution or trust agreement provides; and

139 6. Be sold in the manner and upon the terms determined by the City, including private (negotiated)
140 sale.

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

143 1. Pledging, assigning, or directing the use, investment, or disposition of receipts of the City of
144 Virginia Beach or proceeds or benefits of any contract and conveying or otherwise securing any
145 property rights;

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

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

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

154 5. The refunding or refinancing of outstanding bonds;

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

158 7. Defining the acts or omissions that shall constitute a default in the duties of the City of Virginia
159 Beach to bondholders and providing the rights or remedies of such holders in the event of a default,
160 which may include provisions restricting individual right of action by bondholders;

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

163 9. Any other matter relating to the bonds that the City of Virginia Beach determines appropriate.

164 E. No member of the governing body of the City of Virginia Beach nor any person executing the
165 bonds on behalf of the City of Virginia Beach shall be liable personally for the bonds or subject to any
166 personal liability by reason of the issuance of the bonds.

167 F. The City of Virginia Beach may enter into agreements with agents, banks, insurers, any political
168 subdivision of the Commonwealth, or others for the purpose of enhancing the marketability of, or as
169 security for, its bonds.

170 G. A pledge by the City of Virginia Beach of its revenues as security for an issue of bonds shall be
171 valid and binding from the time the pledge is made.

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

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

180 H. Except to the extent restricted by an applicable resolution or trust agreement, any holder of
181 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 the Commonwealth or by any applicable resolution or trust agreement.

I. The City of Virginia Beach 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. If an arena is to be used for the purpose of conducting games by a team that is a part of the National Hockey League or National Basketball Association, 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 for the purpose of conducting games by a team that is a part of the National Hockey League or National Basketball Association, no bonds shall be issued hereunder until the City of Virginia Beach has executed a long-term lease with a person or persons who hold a sports franchise, or has executed a long-term lease with a third party which has entered into a long-term sublease with a person or persons who hold a sports franchise. The provisions of this subsection shall not apply if a facility is planned for holding conferences and entertainment events.

§ 15.2-5925. Financing Fund; use.

A. The City of Virginia Beach may, in its discretion, create an Arena Financing Fund, hereafter referred to as "the Fund." The City of Virginia Beach may use the Fund as a nonlapsing revolving fund for carrying out the provisions of this chapter.

B. All of the following receipts of the City of Virginia Beach may be placed in the Fund: (i) proceeds from the sale of bonds, (ii) revenues collected or received from any source under the provisions of this chapter, and (iii) any other revenues under the jurisdiction of the City of Virginia Beach.

C. The City of Virginia Beach may pay expenses and make expenditures from the Fund. To the extent deemed appropriate by the City of Virginia Beach, the receipts of the Fund may be pledged to and charged with the payment of debt service on City of Virginia Beach bonds and all reasonable charges and expenses related to the City borrowing and the management of the City's obligations.

§ 15.2-5926. Entitlement to tax revenues derived from the operation of a facility.

A. The City of Virginia Beach shall be entitled, subject to appropriation, to all personal income tax revenues, corporate income tax revenues, pass-through entity tax revenues, and sales and use tax revenues defined in this chapter. The State Comptroller shall remit such tax revenues to the City of Virginia Beach on a quarterly basis, subject to such reasonable processing delays as may be required by the Department of Taxation. With respect to sales and use tax revenues, the State Comptroller shall make such remittances to the City of Virginia Beach, 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 and use tax revenues, the Department of Taxation will work cooperatively with the City of Virginia Beach in identifying all such revenues to which the City shall be entitled hereunder; such cooperation shall 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 City.

B. The local governing body of the City of Virginia Beach 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.

§ 15.2-5927. 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, or the faith and credit of any other political subdivision of the Commonwealth, for the payment of any bonds. No bonds issued pursuant to § 15.2-5924 shall pledge the full faith and credit of the Commonwealth nor shall such bonds constitute a debt of the Commonwealth, and the bonds 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.

2. That the Tax Commissioner shall report to the Chairman of the Senate Finance Committee, Chairman of the House Finance Committee, and Chairman of the House Appropriations Committee, annually prior to July 1, the amount of the entitlement pursuant to § 15.2-5926 of the Code of Virginia.

3. If an arena is to be used for the purpose of conducting games by a team that is a part of the National Hockey League or National Basketball Association, then no bonds shall be issued pursuant to this act prior to approval by the National Hockey League or National Basketball Association that a team that is a part of the National Hockey League or National Basketball Association will be located in the City of Virginia Beach. The provisions of this enactment shall

244 not apply if an arena is to be used for the purpose of holding conferences and entertainment
245 events.
246 4. That no bonds shall be issued pursuant to this act if any bonds have been issued by the
247 Hampton Roads Sports Facility Authority pursuant to Chapter 59 (§ 15.2-5900 et seq.) of Title
248 15.2 of the Code of Virginia.
249 5. That the provisions of this act shall expire on January 1, 2018, if the City of Virginia Beach
250 has not (i) executed a lease with a team that is a member of the National Hockey League or the
251 National Basketball Association or (ii) issued bonds for an arena for the purpose of holding
252 conferences and entertainment events.

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