

Department of Planning and Budget 2013 Fiscal Impact Statement

1. Bill Number: HB2319

House of Origin	<input checked="" type="checkbox"/> Introduced	<input type="checkbox"/> Substitute	<input type="checkbox"/> Engrossed
Second House	<input type="checkbox"/> In Committee	<input type="checkbox"/> Substitute	<input type="checkbox"/> Enrolled

2. Patron: Villanueva

3. Committee: House Finance

4. Title: Hampton Roads Sports and Entertainment Facility Authority.

- 5. Summary:** Renames the Hampton Roads Sports Facility Authority to the Hampton Roads Sports and Entertainment Facility Authority. Makes numerous changes intended to facilitate the attraction and operation of a National Hockey League (NHL) or National Basketball Association (NBA) franchise, or other events, among which are amendments that will: (i) entitle the Authority, subject to appropriation, to all state retail sales and use tax and all personal, pass-through entity, and corporate income tax revenues generated by the construction and operation of the facility; (ii) change the definition of "arena" by requiring a seating capacity of no less than 15,000, a physical location within the City of Virginia Beach, and expanding the purpose of the arena to include a venue for conferences and entertainment events; (iii) allow the City of Virginia Beach to dedicate all or a portion of the tax revenues from local sales and use tax and the local admissions, food and beverage, and the business professional, and occupational license (BPOL) tax resulting from the facility to the Authority; (iv) permit such locality to charge fees, ticket surcharges, or other charges for such facility and to remit all or a portion of such charges to the Authority; (v) exempt the Authority from the Virginia Public Procurement Act; (vi) require review by the State Treasurer prior to the issuance of bonds, and if the State Treasurer and the Debt Capacity Advisory Committee determine the bonds contemplated to be issued would constitute tax supported debt or have an adverse impact on the Commonwealth's debt capacity or credit ratings, the bonds would have to be authorized by the General Assembly; (vii) eliminate the requirement that state tax revenues be applied to repayment of the bonds; and (viii) require the Department of Taxation to report annually to the Chairmen of the Senate and House Finance Committees, and the Chairman of the House Appropriations Committee the amount of entitlement for the Authority.

Currently, the Authority may issue bonds, and if such bonds are issued to finance or refinance a stadium, the Authority is entitled to all sales tax revenues generated by transactions taking place upon the stadium for the lifetime of the bonds, not to exceed a maximum period of 30 years. This bill would expand the revenue to which the Authority would be entitled and removes the 30 year limitation.

Also, if an arena is to be used for the purpose of conducting games by a team that is part of the NHL or NBA, then no bonds could be issued without the approval by the NHL or NBA that a team that is part of the NHL or NBA will be located in the City of Virginia Beach.

The effective date of this bill is not specified. The provisions of the bill would expire on January 1, 2018, unless the Hampton Roads Sports Facility Authority has (i) executed a lease with a team that is a member of the NHL or the NBA or (ii) issued bonds for an arena for the purpose of holding conferences and entertainment events.

6. Budget Amendment Necessary: No.

7. Fiscal impact estimates are not available. See items 8 and 11, below.

8. Fiscal Implications: According to the Department of Taxation, this bill has the potential to decrease state revenues by an unknown, but likely significant amount. Because the bill does not specify an effective date and the locality has not secured an agreement with any NHL or NBA teams, the revenue impact of this proposal is unknown. However, given the Authority's entitlement, under the bill, to business and personal income tax revenues and sales and use tax revenues from both the construction and operation of the facility, the bill's revenue impact would likely be significant.

The provision of the bill requiring that if the State Treasurer and the Debt Capacity Advisory Committee determine that the bonds contemplated to be issued by the Authority are tax-supported debt then the bonds have to be authorized by the General Assembly ensures that any debt issued by the Authority does not inadvertently become tax-supported debt. Anticipated revenue to the Commonwealth is a factor that the Debt Capacity Advisory Committee uses in determining the Commonwealth's debt capacity. To the extent that a decrease in state revenue to the general fund occurs, the state's debt capacity may be impacted.

The Department of Taxation has not assigned any administrative costs to this bill because the changes required by a single bill such as this can be implemented as part of the annual changes to the department's systems and forms. As stand-alone legislation, the department considers implementation of this bill as "routine," and does not require additional funding. However, the department will provide specific administrative costs on any legislation that is not "routine." Additionally, the department will review all state tax legislation likely to be enacted prior to the passage by each house. If the aggregate number of routine bills likely to pass either house is unusually large, it is possible that additional resources will be required. If so, the department will identify the costs at that time.

9. Specific Agency or Political Subdivisions Affected: City of Virginia Beach, Department of Taxation, Department of Accounts, and Department of the Treasury – Debt Capacity Advisory Committee, Hampton Roads Sports Facility Authority.

- 10. Technical Amendment Necessary:** Yes. Page 4, line 187, after “without”, strike “be” and insert “being”. Or, page 4, line 187, after “issue” strike the remainder of the line and insert “must”.

Additionally, the Department of Taxation offers the following suggestions:

Under this bill, professional athletes and other individuals would be responsible for determining the income taxable in Virginia. Because Virginia currently has no statute, regulation, or guidelines for allocating and apportioning state individual income tax within Virginia, the Department of Taxation recommends that the legislation be amended to provide for the apportionment of income tax attributable to the operations of a sports facility. Even with such an amendment, it is likely that both professional athletes and other individuals would maintain responsibility for determining the amount of Virginia income tax that resulted from activities at a sports facility.

In addition to providing guidance for the apportionment of personal income tax revenues, the Department of Taxation also recommends that this bill be amended to incorporate a gross receipts formula for purposes of determining corporate and pass-through entity income attributable to the operation of a sports facility. The Authority could be instrumental in determining the amount of revenue generated by a service company as a result of working at a sports facility. A formula using gross revenue from a sports facility divided by gross revenue from all Virginia sources could be a reasonable method for apportioning Virginia taxable income to determine the tax attributable to the operations at a sports facility.

11. Other Comments:

Background

In 1996, the General Assembly created the Hampton Roads Sports Facility Authority to facilitate the attraction and operation of a NBA or NHL franchise. To assist in the financing of this purpose, the Authority was granted entitlement to state sales tax revenues generated by transactions occurring at a NBA or NHL stadium. At this same time, localities in which a stadium is located were given an option to elect to give designated local sales and use taxes to the Authority.

In 1997, the General Assembly enacted legislation that granted the Authority entitlements to certain individual and corporate income tax revenues generated by activities that would occur at a NBA or NHL stadium. In addition, localities in which a stadium is located were given an option to elect to give designated admissions tax revenues, local food and beverage tax revenues, and BPOL tax revenues to the Authority. These legislative changes were made contingent on the Authority signing a lease with a NBA or NHL team on or before January 1, 2002.

In 2002, the General Assembly extended the applicability of the 1997 amendments by allowing the Authority until January 1, 2005, to enter into a lease with a NBA or NHL team. The 2002 legislation also clarified that tax entitlements would be effective for a temporary facility occupied by a NBA, WNBA, or NHL team. Because the Hampton Roads Sports

Facility Authority was never able to secure a lease agreement with an NBA or NHL team, certain provisions of the bill expired in 2005.

Although an Agreement has never been reached with a professional basketball or hockey team, the Hampton Roads Sports Facility Authority continues to exist under current law, and is entitled under the law to all sales tax revenues generated by transactions taking place upon any stadium for which the Authority issues bonds, for a maximum period of 30 years.

Local Admissions Tax

Under current law, cities and towns that have general taxing powers in their charters may impose an excise tax on admissions. However, only those counties that are authorized by statute may impose the admissions tax, and must do so according to the limitations set forth by statute. Each of the counties authorized to impose an admissions tax must do so by ordinance. Localities have the authority to tax each class of admissions with the same or with a different tax rate, and may elect not to levy the tax for charitable fundraising events.

The City of Virginia Beach currently levies a ten percent admissions tax on general admissions, including admissions to any place of amusement or entertainment. The City's ordinance defines a "place of amusement or entertainment" to include any sporting or athletic contest, exhibition or event.

Local Food and Beverage Tax

Every county is authorized to levy a tax on food and beverages sold for human consumption, by a restaurant at a maximum rate of four percent of the amount charged for such food and beverages. Generally, the tax must be approved in a referendum within the county; however, a number of specified counties may levy the tax without a referendum, provided the governing body holds a public hearing before unanimously voting to adopt the tax. Cities and towns may impose a tax on food and beverages under their general taxing powers.

The City of Virginia Beach currently levies the tax at a rate of 5.5 percent on the amount paid for the purchase of a meal.

Local Business Professional and Occupational (BPOL) Tax

The Business, Professional and Occupational License (BPOL) tax is a tax on businesses for the privilege of engaging in business at a definite place of business within a Virginia locality. The measure or basis of the BPOL tax generally is the gross receipts of the business.

In the City of Virginia Beach, a BPOL tax of \$40 applies for all gross receipts between \$0 and \$25,000. A \$50 tax applies for gross receipts that range from \$25,001 to \$100,000. Anything over \$100,000 is charged according to the applicable category rate.

Overview

This bill would reinstate several provisions relating to the Hampton Roads Sports Facility Authority that expired on January 1, 2005. Under the terms of this bill, the Authority would 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 generated as a result of the facility or any temporary facility. For purposes of the legislation, the term “facility” would include arenas, as well as practice facilities, sports team and franchise offices, restaurants, concessions, and certain retail and lodging facilities, offsite parking lots, garages, and any other directly related properties, provided that these facilities are appurtenant to and directly or indirectly benefited by the presence of the arena or sports franchise. The term “arena” would be defined as an arena or stadium with a seating capacity of at least 15,000 proposed to be constructed in the City of Virginia Beach for the purposes of either i) conducting games by a team that is part of the National Hockey League or National Basketball Association or ii) holding conferences and entertainment events. The bill would also change the name of the Authority to the Hampton Roads Sports and Entertainment Facility Authority.

Entitlement for Business Income Tax Revenue

This bill would entitle the Authority to pass-through entity and corporate income tax revenues generated by the operation of a facility. For purposes of this bill, “corporate income tax revenues” would be defined as corporate income tax as estimated by the Tax Commissioner 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 or 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 would calculate such revenues by multiplying the estimated tax payments of any corporation generating such income by the ratio of their gross revenues from such activities by gross revenues from all activities in Virginia.

“Pass-through entity tax revenues” would be defined as personal or corporate income tax as estimated by the Tax Commissioner from any individual or corporation 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 would calculate the estimated revenue by multiplying the gross receipts from such activities by 0.2 percent.

Under current law, income that a multistate business cannot allocate to its home office must be apportioned to Virginia using a three-factor formula. This formula is a percentage equal to the sum of total sales, payroll, and property in Virginia, with a double-weighted sales factor, divided by four. The apportionment percentage is then multiplied by taxable income to determine income taxable in Virginia.

The three-factor formula would be difficult to administer in connection with a sports facility. Businesses, especially contractors, have personnel and equipment that are utilized both at a

sports facility and in other locations. A formula including payroll and property would require many businesses to apportion wages and equipment costs in order to apportion income. Therefore, the Department of Taxation recommends a gross receipts formula for determining income attributable to the operation of a sports facility. The Authority could be instrumental in determining the amount of revenue generated by a service company as a result of working at a sports facility. A formula for using gross revenue from a sports facility divided by gross revenue from all Virginia sources could be a reasonable method for apportioning Virginia taxable income to determine the tax attributable to the operations at a sports facility.

In addition to the issue of how to determine the amount of income attributable to operations of a sports facility, this bill does not address the issue of net operating losses. When a business has net operating losses for income tax purposes, such losses may be carried forward and claimed in future years or may be carried back to a prior taxable year. This bill does not address how net operating losses would be treated for purposes of the income tax entitlement. For example, a business may generate income tax revenues attributable to a sports facility in one year, but may generate net operating losses in the next year that subsequently eliminate the tax liability for the prior year. This bill does not address whether the Authority would be entitled to receive and keep tax revenues that were initially generated but later eliminated as a result of such net operating losses.

Entitlement for Personal Income Tax Revenue

This bill would also entitle the Authority to personal income tax revenues generated by the operation of a facility. "Personal income tax revenues" would be defined as personal income tax as estimated by the Tax Commissioner from individuals 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, office personnel, and personnel employed by the operator of, or enterprises operating within such temporary facility. The Tax Commissioner would calculate such revenues by multiplying wages and salaries by five percent.

Both resident and nonresident professional athletes may be subject to Virginia income taxation. The entire income of an athlete who is a Virginia resident is subject to taxation in Virginia, regardless of whether it came from sources within or outside of Virginia. However, Virginia residents may claim a credit for taxes paid on income earned in other states.

The Department of Taxation has a long-standing policy regarding nonresident professional athletes who participate in events in Virginia. Generally, a nonresident athlete must pay Virginia individual income taxes based on his Virginia source income, which is determined by apportioning income based on factors that most equitably determine the athlete's portion

of total income that is attributable to services performed in Virginia. A nonresident athlete generally computes the ratio of work days spent within Virginia to his total number of work days. However, if Virginia source income can be separately identified by event (such as race winnings or golf tournament winnings), apportioning wages to determine income from Virginia sources is not necessary. For purposes of apportioning income, services performed in Virginia include actual games played in Virginia, as well as team meetings and practices held in Virginia.

Under this bill, professional athletes would be responsible for determining the income taxable in Virginia. To the extent that income is generated by operation of the Hampton Roads Sports Facility and also from other sources within Virginia, the professional athletes would also have to determine where the Virginia source income was earned. Because Virginia currently has no statute, regulation, or guidelines for allocating and apportioning state individual income tax within Virginia, the Department of Taxation recommends that the legislation be amended to provide for the apportionment of income tax attributable to the operations of a sports facility. Even with such an amendment, it is likely that the athlete would maintain responsibility for determining the portion of income taxable in Virginia and then determining the amount of Virginia income tax that resulted from activities at a sports facility.

Other individuals, including construction workers and concession personnel, who earn salaries or wages from a sports facility and other sources would also be required to determine where income was earned. Employers are required to report state income tax withheld on federal Form W-2. If an individual earns income in more than one state, then the employer either issues a W-2 for each state or reports all individual income tax withheld on one Form W-2. In these cases, an individual may be able to identify where income was earned. However, an individual would be required to apportion income to determine the amount of pay that is attributable to Virginia sources. Even if this bill is amended to provide rules regarding the apportionment of income, it is likely that each individual resident, including minimum wage workers, would be responsible for determining the portion of income tax that resulted from activities at a sports facility.

Entitlement for Sales and Use Tax Revenues

Under the bill, “sales and use tax revenues” would include all tax revenues collected from the sales and use tax generated by transactions that take place on the premises of the arena or facility authorized under this bill. The sales tax revenue entitlements would include revenue generated in connection with the development and construction of the facility or arena. Therefore, sales and use tax revenues generated from the purchase or use of materials and equipment utilized in the construction of the qualifying facility would be included in the entitlement. Sales and use tax revenues would also include any transactions that occur on the premises of a temporary facility in connection with games or other activities of a sports franchise conducted at the temporary facility. Sales and use tax revenues would not include revenue from the one percent local sales and use tax, unless directed by the local governing body.

Entitlement for Local Tax Revenues

The locality in which the facility is located would be authorized to direct that all or a portion of the tax revenues generated from transactions taking place in the facility or temporary facility and derived from the one percent local sales and use tax, the local admissions tax, and the local food and beverage tax be remitted to the Authority. Additionally, localities would be permitted to direct that revenue from the local BPOL tax generated from taxes levied on the teams or other organizations operating within the facility or temporary facility be remitted to the Authority.

Transfer of Revenue

Under the terms of the bill, the State Comptroller would be required to remit the applicable tax revenues to the City of Virginia Beach on a quarterly basis. In order to ensure that the proper amount of tax revenue is remitted, the Department of Taxation would be required to work with the City of Virginia Beach, including reviewing relevant financial information, to properly identify the revenues to which the City is entitled.

Report to the General Assembly

The Tax Commissioner would be required to report annually to the Chairmen of the Senate and House Finance Committees and the Chairman of the House Appropriations Committee the amount of the entitlement.

The effective date of this bill is not specified. The provisions of this bill would expire on January 1, 2018 unless the Hampton Roads Sports Facility Authority has executed a lease with a team that is a member of the National Hockey League or the National Basketball Association or ii) issued bonds for an arena in order to hold conferences and entertainment events.

Similar Legislation

House Bill 2320 is similar to this bill but does not involve the Hampton Roads Sports Facility Authority. Instead, the bill entitles the City of Virginia Beach to all revenues from corporate income tax, personal income tax, pass-through entity income tax, and sales and use tax generated from the operation of an arena in the City of Virginia Beach. The bill does not authorize the City of Virginia Beach to any sales and use, food and beverage, admissions, or BPOL taxes to help fund the arena.

Date: 1/26/13

Document: G:/tmw/2013 Session/Legislation/HB2319.docx