

VIRGINIA ACTS OF ASSEMBLY -- 2020 SESSION

CHAPTER 467

An Act to amend and reenact §§ 15.2-5113, 15.2-5928, 15.2-5931, 15.2-5932, and 15.2-5933 of the Code of Virginia, relating to Virginia Beach Sports or Entertainment Project; extend expiration date of tax incentive; modify financing structure.

[H 120]

Approved March 25, 2020

Be it enacted by the General Assembly of Virginia:

1. That §§ 15.2-5113, 15.2-5928, 15.2-5931, 15.2-5932, and 15.2-5933 of the Code of Virginia are amended and reenacted as follows:

§ 15.2-5113. Members of authority board; chief administrative or executive officer.

A. 1. The powers of each authority created by the governing body of a single locality shall be exercised by an authority board of five members, or at the option of the board of supervisors of a county, a number of board members equal to the number of members of the board of supervisors. The powers of each authority created by the governing bodies of two or more localities shall be exercised by the number of authority board members specified in its articles of incorporation, which shall be not less than one member from each participating locality and not less than a total of five members. The board members of an authority shall be selected in the manner and for the terms provided by the agreement or ordinance or resolution or concurrent ordinances or resolutions creating the authority. One or more members of the governing body or one or more directors of an industrial or economic development authority of a locality may be appointed board members of the authority, the provisions of any other law to the contrary notwithstanding. No board member shall be appointed for a term of more than four years. When one or more additional political subdivisions join an existing authority, each of such joining political subdivisions shall have at least one member on the board. Board members shall hold office until their successors have been appointed and may succeed themselves. The board members of the authority shall elect one of their number chairman, and shall elect a secretary and treasurer who need not be members. The offices of secretary and treasurer may be combined.

2. *Notwithstanding the provisions of subdivision A 1, if the City of Virginia Beach forms a community development authority pursuant to the provisions of Article 6 (§ 15.2-5152 et seq.) for the purpose of developing the sports and entertainment district, as defined in § 15.2-5928, the board of such authority may consist of a number of members equal to the number of members of the governing body of the City of Virginia Beach.*

B. A majority of board members shall constitute a quorum and the vote of a majority of board members shall be necessary for any action taken by the authority. An authority may, by bylaw, provide a method to resolve tie votes or deadlocked issues.

C. No vacancy in the board membership of the authority shall impair the right of a quorum to exercise all the rights and perform all the duties of the authority. If a vacancy occurs by reason of the death, disqualification or resignation of a board member, the governing body of the political subdivision which appointed the authority board member shall appoint a successor to fill the unexpired term. Whenever a political subdivision withdraws its membership from an authority, the term of any board member appointed to the board of the authority from such political subdivision shall immediately terminate. Board members shall receive such compensation as fixed by resolution of the governing body or bodies which are members of the authority, and shall be reimbursed for any actual expenses necessarily incurred in the performance of their duties.

D. Alternate board members may also be selected. Such alternates shall be selected in the same manner and shall have the same qualifications as the board members except that an alternate for an elected board member need not be an elected official. The term of each alternate shall be the same as the term of the board member for whom each serves as an alternate; however, the alternate's term shall not expire because of the board member's death, disqualification, resignation, or termination of employment with the member's political subdivision. If a board member is not present at a meeting of the authority, the alternate for that board member shall have all the voting and other rights of a board member and shall be counted for purposes of determining a quorum.

E. The board members may appoint a chief administrative or executive officer who shall serve at the pleasure of the board members. He shall execute and enforce the orders and resolutions adopted by the board members and perform such duties as may be delegated to him by the board members.

§ 15.2-5928. Definitions.

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

"City" or "City of Virginia Beach" means the City of Virginia Beach or, the City of Virginia Beach Development Authority, or any community development authority formed by the City of Virginia Beach

pursuant to the provisions of Article 6 (§ 15.2-5152 et seq.) of Chapter 51 for the purpose of developing the sports and entertainment district.

"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 transactions taking place upon the premises of a sports or entertainment project, including transactions generating revenues in connection with the development and construction of such project that would not be generated but for the existence of such project. For purposes of this chapter, "sales and use tax revenues" does not include the revenue generated by (i) the one-half percent sales and use tax increase enacted by Chapters 11, 12, and 15 of the Acts of Assembly of 1986, Special Session I, which shall be paid into the Transportation Trust Fund as defined in § 33.2-1524; (ii) the one percent of the state sales and use tax revenue distributed among the counties and cities of the Commonwealth pursuant to subsection D of § 58.1-638 on the basis of school-age population; and (iii) the additional state sales and use tax in certain counties and cities assessed pursuant to Chapter 766 of the Acts of Assembly of 2013 and any amendments thereto.

"Sports and entertainment district" means the geographic area in the City of Virginia Beach located south of 21st Street, north of Norfolk Avenue, east of Birdneck Road, and west of ~~Atlantic Avenue~~ *the Virginia Beach Boardwalk*.

"Sports or entertainment project" means a project including sports facilities, entertainment facilities, or both, representing at least \$100 million of investment in the sports and entertainment district of the City of Virginia Beach, including any office, restaurant, concessions, retail, residential, and lodging facilities that are owned and operated adjacent to or in connection with such sports or entertainment project; film and sound studios and any other sports or entertainment-related infrastructure; and any other directly related properties, including onsite and offsite parking lots, garages, and other properties. "Sports or entertainment project" includes multiple facilities located on multiple properties, provided that such facilities share a nexus of ownership or management.

§ 15.2-5931. 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. As used in this chapter, "bonds" includes notes of any kind, interim certificates, refunding bonds, or any other evidence of obligation, *provided that such bonds are issued by the City of Virginia Beach, the City of Virginia Beach Development Authority, or a community development authority formed by the City of Virginia Beach pursuant to the provisions of Article 6 (§ 15.2-5152 et seq.) of Chapter 51 for the purpose of developing the sports and entertainment district.*

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 agreement;
4. Sales and use tax revenues remitted to the City of Virginia Beach by the State Comptroller pursuant to § 15.2-5933; and
5. Proceeds of refunding bonds.

C. Bonds shall be authorized by resolution of the City of Virginia Beach and may be secured by a trust agreement by and between the City of Virginia Beach 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 20 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; and
6. Be sold in the manner and upon the terms determined by the City of Virginia Beach, including private (negotiated) sale.

D. Any resolution or trust agreement may contain provisions that 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 City of Virginia Beach 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 that shall constitute a default in the duties of the City of Virginia Beach 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 that the City of Virginia Beach determines appropriate.

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

F. The City of Virginia Beach 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 City of Virginia Beach of its 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 City of Virginia Beach, 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 City of Virginia Beach need be filed or recorded in any public record other than the records of the City of Virginia Beach 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 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.

§ 15.2-5932. Sports or Entertainment Project Financing Fund; use.

A. The City of Virginia Beach may, in its discretion, create a Sports or Entertainment Project Financing Fund, hereafter referred to as "the Fund." The City of Virginia Beach may use the Fund as a non-lapsing revolving fund for the purposes of carrying out the provisions of this chapter and providing security for any bonds issued under 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, (iii) sales and use tax revenues remitted to the City of Virginia Beach by the State Comptroller pursuant to § 15.2-5933, and (iv) 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. *The City of Virginia Beach may use the Fund to pay for expenses or debt service associated with or incurred by a community development authority formed by the City of Virginia Beach pursuant to the provisions of Article 6 (§ 15.2-5152 et seq.) of Chapter 51 for the purpose of developing the sports and entertainment district.*

§ 15.2-5933. Entitlement to tax revenues derived from the operation of facilities.

A. 1. Upon execution of a binding development agreement for a sports or entertainment project, the City of Virginia Beach shall be entitled, subject to appropriation, to sales and use tax revenues defined in this chapter. The State Comptroller shall remit such sales and use 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. 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.).

2. Any entitlement of the City of Virginia Beach to receive sales and use tax revenues pursuant to the provisions of this chapter shall expire on July 1, ~~2039~~ *following the twentieth anniversary of the completion of construction of the sports or entertainment project.*

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 sports or entertainment project and any temporary sports or entertainment project developed under the provisions of this chapter.

C. If a sports and entertainment project qualifies for entitlement to sales and use tax revenues pursuant to the provisions of § 58.1-3851.1 or 58.1-3851.2, the City of Virginia Beach shall remain eligible to receive sales and use tax revenues pursuant to the provisions of this chapter; however, the amount received pursuant to this chapter shall be reduced by the amount received pursuant to the provisions of § 58.1-3851.1 or 58.1-3851.2.