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SENATE BILL NO. 541

Offered January 22, 1996

A BILL to amend and reenact §§ 11-45, 15.1-227.70, 15.1-227.75, 15.1-227.76, 15.1-227.78, 15.1-227.84 and 15.1-227.85 of the Code of Virginia and to amend the Code of Virginia by adding in Chapter 5.3 of Title 15.1 sections numbered 15.1-227.88 and 15.1-227.89, relating to the Virginia Baseball Stadium Authority.

Patrons—Saslaw, Hawkins, Howell, Potts, Quayle, Waddell and Woods

Referred to the Committee on Local Government

Be it enacted by the General Assembly of Virginia:

1. That §§ 11-45, 15.1-227.70, 15.1-227.75, 15.1-227.76, 15.1-227.78, 15.1-227.84 and 15.1-227.85 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Chapter 5.3 of Title 15.1 sections numbered 15.1-227.88 and 15.1-227.89 as follows:

§ 11-45. Exceptions to requirement for competitive procurement.

A. Any public body may enter into contracts without competition for the purchase of goods or services (i) which are performed or produced by persons, or in schools or workshops, under the supervision of the Virginia Department for the Visually Handicapped; or (ii) which are performed or produced by nonprofit sheltered workshops or other nonprofit organizations which offer transitional or supported employment services serving the handicapped.

B. Any public body may enter into contracts without competition for (i) legal services, provided that the pertinent provisions of Chapter 11 (§ 2.1-117 et seq.) of Title 2.1 remain applicable; or (ii) expert witnesses and other services associated with litigation or regulatory proceedings.

C. Any public body may extend the term of an existing contract for services to allow completion of any work undertaken but not completed during the original term of the contract.

D. An industrial development authority may enter into contracts without competition with respect to any item of cost of "authority facilities" or "facilities" as defined in § 15.1-1374 (d).

E. The Department of Alcoholic Beverage Control may procure alcoholic beverages without competitive sealed bidding or competitive negotiation.

F. Any public body administering public assistance programs as defined in § 63.1-87, the fuel assistance program, community services boards as defined in § 37.1-1, or any public body purchasing services under the Comprehensive Services Act for At-Risk Youth and Families (§ 2.1-745 et seq.) may procure goods or personal services for direct use by the recipients of such programs without competitive sealed bidding or competitive negotiations if the procurement is made for an individual recipient. Contracts for the bulk procurement of goods or services for the use of recipients shall not be exempted from the requirements of § 11-41.

G. Any public body may enter into contracts without competitive sealed bidding or competitive negotiation for insurance if purchased through an association of which it is a member if the association was formed and is maintained for the purpose of promoting the interest and welfare of and developing close relationships with similar public bodies, provided such association has procured the insurance by use of competitive principles and provided that the public body has made a determination in advance after reasonable notice to the public and set forth in writing that competitive sealed bidding and competitive negotiation are not fiscally advantageous to the public. The writing shall document the basis for this determination.

H. The Department of Health may enter into contracts with laboratories providing cytology and related services without competitive sealed bidding or competitive negotiation if competitive sealed bidding and competitive negotiations are not fiscally advantageous to the public to provide quality control as prescribed in writing by the Commissioner of Health.

I. The Director of the Department of Medical Assistance Services may enter into contracts without competitive sealed bidding or competitive negotiation for special services provided for eligible recipients pursuant to § 32.1-325 E, provided that the Director has made a determination in advance after reasonable notice to the public and set forth in writing that competitive sealed bidding or competitive negotiation for such services is not fiscally advantageous to the public, or would constitute an imminent threat to the health or welfare of such recipients. The writing shall document the basis for this determination.

J. The Virginia Code Commission may enter into contracts without competitive sealed bidding or competitive negotiation when procuring the services of a publisher, pursuant to §§ 9-77.7 and 9-77.8, to publish the Code of Virginia or the Virginia Administrative Code.

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SB541

60 K. The Executive Director of the Virginia Health Services Cost Review Council may enter into
 61 agreements or contracts without competitive sealed bidding or competitive negotiation for the
 62 compilation, storage, analysis, and evaluation of patient level data pursuant to Article 2 (§ 9-166.1 et
 63 seq.) of Chapter 26 of Title 9, if the Executive Director has made a determination in advance, after
 64 reasonable notice to the public and set forth in writing, that competitive sealed bidding or competitive
 65 negotiation for such services is not fiscally advantageous to the public. The writing shall document the
 66 basis for this determination.

67 *L. The Virginia Baseball Stadium Authority may enter into agreements or contracts without*
 68 *competitive sealed bidding or competitive negotiation for the operation of any facilities developed under*
 69 *the provisions of Chapter 5.3 (§ 15.1-227.70 et seq.) of Title 15.1, including contracts or agreements*
 70 *with respect to the sale of food, beverages and souvenirs at such facilities.*

71 § 15.1-227.70. Definitions.

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

73 "Authority" means the Virginia Baseball Stadium Authority.

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

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

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

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

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

89 "Sales tax revenues" means taxes collected under the Virginia Retail Sales and Use Tax Act
 90 (§ 58.1-600 et seq.), as limited herein. Sales tax revenues shall not include any local general retail sales
 91 and use tax levied pursuant to §§ 58.1-605 and 58.1-606.

92 § 15.1-227.75. Powers.

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

94 1. Adopt and alter an official seal;

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

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

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

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

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

105 7. Acquire, hold, lease, use, encumber, transfer, or dispose of real and personal property, *including a*
 106 *lease of its property or any interest therein whatever the condition thereof, whether or not constructed*
 107 *or acquired, to the Commonwealth or any political subdivision of the Commonwealth. The*
 108 *Commonwealth and any such political subdivision are authorized to acquire or lease such property or*
 109 *any interest therein;*

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

112 9. ~~Regulate~~ *Operate, enter contracts for the operation of, and regulate* the use and operation of
 113 facilities developed under the provisions of the chapter;

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

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

120 12. Issue bonds under this chapter;

121 13. Receive and accept from any source, private or public, contributions, gifts, or grants of money or

122 property; and

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

124 § 15.1-227.76. Public hearings; notice; reports.

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

128 B. Except as otherwise provided herein, at least sixty days prior to the public hearing required by
129 this section, the Authority shall notify the local governing body in which the ~~facility~~ *major league or*
130 *minor league baseball stadium* is proposed to be located and advertise the notice in a newspaper of
131 general circulation in that locality. The notice shall include: (i) a description of the site proposed to be
132 acquired, (ii) the intended use of the site, and (iii) the date, time, and location of the public hearing.
133 After receipt of the notice required by this section, the local governing body in which a ~~facility~~ *major*
134 *league or minor league baseball stadium* is proposed to be located may require that this period be
135 extended for up to sixty additional days or for such other time period as agreed upon by the local
136 governing body and the Authority.

137 C. At least thirty days before acquiring or entering into a lease involving a ~~facility~~ *site major league*
138 *or minor league baseball stadium* and before entering into a construction contract involving a ~~new~~
139 ~~facility~~ *major league or minor league baseball stadium or facility stadium* site, the Authority shall
140 submit a detailed written report and *the* findings of the Authority that justify the proposed acquisition,
141 lease, or contract to the General Assembly. The report and findings shall include a detailed plan of the
142 method of funding and the economic necessity of the proposed acquisition, lease, or contract.

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

144 § 15.1-227.78. Bond issues.

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

148 B. The bonds of any issue shall be payable solely from the property or receipts of the Authority,
149 including, but not limited to:

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

156 C. Bonds shall be authorized by resolution of the Authority and may be secured by a trust agreement
157 by and between the Authority and a corporate trustee or trustees, which may be any trust company or
158 bank having the powers of a trust company within or without the Commonwealth. The bonds shall:

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

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

- 177 1. Pledging, assigning, or directing the use, investment, or disposition of receipts of the Authority or
- 178 proceeds or benefits of any contract and conveying or otherwise securing any property rights;
- 179 2. The setting aside of loan funding deposits, debt service reserves, capitalized interest accounts, cost
- 180 of issuance accounts and sinking funds, and the regulation, investment, and disposition thereof;
- 181 3. Limitations on the purpose to which or the investments in which the proceeds of sale of any issue
- 182 of bonds may be applied and restrictions to investments of revenues or bond proceeds in government

183 obligations for which principal and interest are unconditionally guaranteed by the United States of
184 America;

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

187 5. The refunding or refinancing of outstanding bonds;

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

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

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

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

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

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

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

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

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

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

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

222 J. The franchise holder must agree that the franchise will not be relocated until any bonds issued
223 hereunder are defeased.

224 K. In the event a major league baseball facility is planned, no bonds shall be issued hereunder until
225 *the Authority has executed a long-term lease with a major league baseball franchise is secured for a*
226 *Virginia location and all approvals from the ownership of the other major league baseball franchises*
227 *have been obtained.* In the event a minor league baseball facility is planned, the same requirements,
228 mutatis mutandis, shall apply.

229 § 15.1-227.84. Entitlement to sales tax revenues derived from a major league baseball stadium.

230 A. If the Authority has issued *In connection with the issuance of bonds by the Authority to finance*
231 *or refinance a major league baseball stadium, the Authority shall be entitled to all sales tax revenues*
232 *that are generated by transactions taking place upon the premises of the major league baseball stadium.*
233 *Such entitlement shall continue for the lifetime of such bonds, but that entitlement shall not exceed*
234 *thirty years. All sales Sales tax revenues shall may be applied to repayment of the bonds, stadium*
235 *operating expenses, master lease rental payments by the Commonwealth, capital expenditures and other*
236 *purposes of the Authority.* The State Comptroller shall remit such sales tax revenues to the Authority on
237 a quarterly basis, subject to such reasonable processing delays as may be required by the Department of
238 Taxation to calculate the actual net sales tax revenues generated by transactions taking place upon the
239 premises of the major league baseball stadium. The State Comptroller shall make such remittances to the
240 Authority, as provided herein, notwithstanding any provisions to the contrary in the Virginia Retail Sales
241 and Use Tax Act (§ 58.1-600 et seq.).

242 B. If the Authority has issued *In connection with the issuance of bonds by the Authority to finance or*
243 *refinance a major league baseball stadium, the local governing body of the county or city in which the*
244 *stadium is located may direct, by ordinance or resolution, that all local sales and use tax revenues*

245 generated by transactions taking place upon the premises of the major league stadium from taxes levied
 246 pursuant to §§ 58.1-605 and 58.1-606 shall be remitted by the State Comptroller to the Authority for the
 247 repayment of bonds, *stadium operating expenses, master lease rental payments by the Commonwealth,*
 248 *capital expenditures and other purposes of the Authority.* Such remittances shall be for the same period
 249 and under the same conditions as remittances to the Authority paid in accordance with subsection A,
 250 *mutatis mutandis.*

251 *C. In connection with the issuance of bonds by the Authority to finance or refinance a major league*
 252 *baseball stadium, the local governing body of the county or city in which the stadium is located may*
 253 *direct, by ordinance or resolution, that all admissions tax revenues of such county or city generated by*
 254 *admissions to the major league stadium from taxes levied pursuant to §§ 58.1-3818 and 58.1-3840 shall*
 255 *be remitted to the Authority for the repayment of bonds, stadium operating expenses, master lease rental*
 256 *payments by the Commonwealth, capital expenditures and other purposes of the Authority. Any levy*
 257 *pursuant to this section may be for the lifetime of such bonds, but such levy shall not exceed thirty*
 258 *years.*

259 § 15.1-227.85. Tax revenues of the Commonwealth or any other political subdivision not pledged.
 260 Nothing in this chapter shall be construed as authorizing the pledging of the faith and credit of the
 261 Commonwealth of Virginia, or any of its revenues, or the faith and credit of any other political
 262 subdivision of the Commonwealth, or any of its revenues, for the payment of any bonds. ~~Any~~
 263 ~~appropriation made pursuant to this chapter shall be made only from sales tax revenues generated from~~
 264 ~~transactions taking place upon the premises of the major league baseball stadium for which bonds may~~
 265 ~~have been issued to pay the cost, in whole or in part.~~

266 § 15.1-227.88. *Tort claims.*

267 *For purposes of Article 18.1 (§ 8.01-195.1 et seq.) of Chapter 3 of Title 8.01, the Authority is an*
 268 *"agency" within the meaning of § 8.01-195.2, and each of its members and agents is an "employee"*
 269 *within the meaning of such section.*

270 § 15.1-227.89. *Tax exemption.*

271 *It is hereby found, determined, and declared that the acquisition of a major league baseball*
 272 *franchise and a major league baseball stadium will result in substantial economic development in the*
 273 *Commonwealth and is in all respects for the benefit of the people of the Commonwealth and is a public*
 274 *purpose and that the Authority will be performing an essential government function in the exercise of*
 275 *the powers conferred by this chapter. Accordingly, no tax or assessment upon any property or project of*
 276 *the Authority or any interest therein shall be assessed to the Authority or any other party. This*
 277 *exemption shall include, without limitation, all local property taxes, taxes upon leasehold interests and*
 278 *taxation pursuant to § 58.1-3603.*