

VIRGINIA ACTS OF ASSEMBLY -- 1997 SESSION

CHAPTER 554

An Act to amend and reenact §§ 15.1-1688, 15.1-1692 through 15.1-1696, 15.1-1699, 15.1-1701, 15.1-1702 and 15.1-1703 of the Code of Virginia and to amend the Code of Virginia by adding in Chapter 44 of Title 15.1 sections numbered 15.1-1706, 15.1-1707, 15.1-1708 and 15.1-1709, relating to the Hampton Roads Sports Facility Authority.

[H 2741]

Approved March 19, 1997

Be it enacted by the General Assembly of Virginia:

1. That §§ 15.1-1688, 15.1-1692 through 15.1-1696, 15.1-1699, 15.1-1701, 15.1-1702 and 15.1-1703 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Chapter 44 of Title 15.1 sections numbered 15.1-1706, 15.1-1707, 15.1-1708 and 15.1-1709 as follows:

§ 15.1-1688. Definitions.

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

"Arena" means an arena or stadium proposed to be constructed in the City of Norfolk, one of the purposes of which shall be for the conduct of games by a team which is a part of the National Hockey League or National Basketball Association.

"Authority" means the Hampton Roads Sports Facility 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 § 58.1-455 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 ~~(i) stadium or arena for major league professional sports teams, except major league baseball~~ 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: ~~(ii)~~ (i) practice fields or other areas where sports teams may practice or perform, ~~(iii)~~ (ii) offices for sports teams or franchises, ~~(iv)~~ (iii) any office, restaurant, concessions, retail and lodging facilities which are owned and operated adjacent to or in connection with a ~~sports stadium~~ an arena or other structure, and ~~(v)~~ (iv) any other directly related properties including, but not limited to, ~~onsite~~ on-site and ~~offsite~~ off-site parking lots, garages, and other properties.

"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 as described herein by three and one-half percent.

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

"Sales tax revenues" means ~~taxes collected~~ 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 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. Except to the

extent directed by a local governing body pursuant to § 15.1-1702, sales tax revenues shall not include any local general retail sales and use tax levied pursuant to §§ 58.1-605 and 58.1-606.

"Stadium" means a stadium or arena constructed for the purpose of the conduct of games by a team which is a part of the National Basketball Association or the National Hockey League.

§ 15.1-1692. Executive Director appointment; duties.

A. The Authority shall appoint an Executive Director, who is the chief administrative officer and secretary of the Authority and serves at the pleasure of the Authority. The Executive Director shall be paid from *such funds as may be appropriated* or received by the Authority. ~~No state funds shall be used to pay the salary or the expenses of this office.~~

B. In addition to any other duties set forth in this chapter, the Executive Director shall:

1. Direct and supervise the administrative affairs and activities of the Authority in accordance with its rules, regulations, and policies;
2. Attend all meetings and keep minutes of all proceedings;
3. Approve all accounts for salaries, per diem payments, and allowable expenses of the Authority and its employees and consultants and approve all expenses incidental to the operation of the Authority;
4. Report and make recommendations to the Authority on the merits and status of any proposed facility; and
5. Perform any other duty that the Authority requires for carrying out the provisions of this chapter.

§ 15.1-1693. Powers.

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

1. Adopt and alter an official seal;
2. Sue and be sued in its own name;
3. Adopt bylaws, rules and regulations to carry out the provisions of this chapter;
4. Maintain an office at such place as the Authority may designate;
5. Employ, either as regular employees or independent contractors, *such* consultants, engineers, architects, accountants, attorneys, financial experts, construction experts and personnel, superintendents, managers and other professional personnel, personnel, and agents as may be necessary in the judgment of the Authority, and fix their compensation *in any manner deemed appropriate by the Authority*;
6. 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 the Authority;
7. Acquire, hold, lease, use, encumber, transfer, or dispose of real and personal property *including a lease of Authority property or any interest therein whatever the condition thereof, whether or not constructed or acquired, to any political subdivision of the Commonwealth. Any such political subdivision is authorized to acquire or lease such property or any interest therein*;
8. Enter into contracts of any kind, and execute all instruments necessary or convenient with respect to its carrying out the powers in this chapter to accomplish the purposes of the Authority;
9. *Operate, enter into contracts for the operation of, and* regulate the use and operation of facilities developed under the provisions of this chapter;
10. 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;
11. Borrow money from any source for any valid purpose, including working capital for its operations, reserve funds, or interest, and to mortgage, pledge, or otherwise encumber the property or funds of the Authority and to contract with or engage the services of any person in connection with any financing, including financial institutions, issuers of letters of credit, or insurers;
12. Issue bonds under this chapter;
13. Receive and accept from any source, private or public, contributions, gifts, or grants of money or property; and
14. Do all things necessary or convenient to carry out the powers granted by this chapter.

B. *The Authority shall be exempt from the Virginia Public Procurement Act 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.*

§ 15.1-1694. Public hearings; notice; reports.

A. At least ~~sixty~~ *thirty* days prior to selecting a facility site, the Authority shall hold a public hearing within thirty miles of the site proposed to be acquired for the purpose of soliciting public comment.

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

governing body and the Authority.

C. At least thirty 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 Authority shall submit *to the General Assembly* a detailed written report and findings of the Authority ~~that justify on the~~ proposed acquisition, lease, or contract ~~to the General Assembly~~. The report and findings shall include a detailed plan of the method of funding and the economic ~~necessity~~ *benefits* of the proposed acquisition, lease, or contract.

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

E. *The State Treasurer shall be provided with copies of all documents relating to the proposed issuance of any bonds pursuant to § 15.1-1696 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 Securities and Exchange Commission Rule 15c2-12 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 an adverse impact on the debt capacity or the credit ratings of the Commonwealth, such bond issue must be authorized by the General Assembly.*

§ 15.1-1695. Acquisition of property.

A. The Authority may acquire in its own name, by gift or purchase, any real or personal property, or interests in property, necessary or convenient to construct or operate any facility.

B. In any jurisdiction where planning, zoning, and development regulations may apply, the Authority shall comply with and is subject to those regulations to the same extent as a private commercial or industrial enterprise.

C. *Any county, city or town shall have the power to acquire by eminent domain, in the manner and in accordance with the procedure provided in Title 25 of the Code of Virginia, any real property, including fixtures and improvements, and personal property, including any interest, right, easement, or estate therein, located within such locality for public purposes. For purposes of this section, "public purpose" means the construction and operation of any facility, when determined by the governing body of such locality that such construction and operation would enhance the economic development, resources, or advantages of the locality or the region. In furtherance of this public purpose, the locality may convey any such real property, including fixtures and improvements, and personal property acquired pursuant to this section to the Authority, by sale, gift or lease, upon terms mutually agreed to by the Authority and the locality. The Authority and locality may enter into agreements regarding the initiation and prosecution of such condemnation proceedings, including payment and reimbursement of any costs, fees, expenses, or awards resulting from the proceedings. Upon the written request of the Authority, the county, city or town in which the facility site is proposed may, by majority vote, exercise its power of eminent domain as provided herein.*

§ 15.1-1696. 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 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; 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 with the holders of the bonds as to:

1. Pledging, assigning, or directing the use, investment, or disposition of receipts of the Authority 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 which shall constitute a default in the duties of the Authority 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 which the Authority determines appropriate.

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

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

G. A pledge by the Authority of 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 Authority, 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 Authority need be filed or recorded in any public record other than the records of the Authority 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 Virginia or by any applicable resolution or trust agreement.

I. The Authority 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. The *sports* franchise holder must 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, no bonds shall be issued hereunder until the Authority has executed a long-term lease with a person or persons who hold a sports franchise ~~from the National Basketball Association or the National Hockey League~~.

§ 15.1-1699. Sports Facility Authority Financing Fund; use.

A. ~~There is hereby created~~ *The Authority may, in its discretion, create* a Hampton Roads Sports Facility Authority Financing Fund ("Fund"). The Authority ~~shall~~ *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 Authority ~~shall~~ *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~~ or (iii) any other revenues under the jurisdiction of the Authority.

C. The Authority ~~shall~~ *may* pay ~~all~~ expenses and make ~~all~~ expenditures from the Fund. To the extent deemed appropriate by the Authority, the receipts of the Fund ~~shall~~ *may* be pledged to and charged with the payment of debt service on Authority bonds and all reasonable charges and expenses related to Authority borrowing and the management of Authority ~~obligation~~ *obligations*.

§ 15.1-1701. Creation of local advisory boards.

Prior to constructing *all or any portion of a facility*, the Authority shall create a local advisory board for that facility. Each local advisory board shall be composed of twelve members. Six members shall be appointed by the local governing body in which the proposed facility is to be located. Notwithstanding the provisions of § 15.1-50.4, the governing body may appoint one or more of its members to serve on the local advisory board. Six members shall be appointed by the Authority, and each of those six members shall reside in the county or city in which the facility is proposed to be located. All advisory board members shall be appointed for a term of four years. All advisory board members shall serve without pay, but a member may be reimbursed by the Authority for reasonable expenses actually incurred in the performance of advisory functions. Each advisory board shall elect a chairman and a secretary and such other officers as it deems necessary. The Authority shall give each local advisory board reasonable opportunity to provide appropriate comments and recommendations on the design and the operation of the facility in its locality.

§ 15.1-1702. Entitlement to personal income tax revenues, corporate income tax revenues, sales tax revenues and other tax revenues derived from the operation of a facility.

A. ~~If the Authority has issued bonds to finance or refinance a stadium, The Authority shall be entitled, subject to appropriation, to all personal income tax revenues, corporate income tax revenues, pass-through entity tax revenues and sales tax revenues that are generated by transactions taking place upon the premises of the stadium, as defined in this chapter. Such entitlement shall continue for the lifetime of such bonds, but that entitlement shall not exceed thirty years. All sales tax revenues shall be applied to repayment of the bonds. The State Comptroller shall remit such sales tax revenues to the Authority on a quarterly basis, subject to such reasonable 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 stadium. With respect to the sales tax revenues, 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. ~~If the Authority has issued bonds to finance or refinance a stadium, The local governing body of the county or city in which the stadium facility 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 stadium from taxes levied pursuant to §§ 58.1-605 and 58.1-606 or a portion of the following tax revenues shall be remitted by the State Comptroller treasurer of such city or county, as the case may be, to the Authority for the repayment of bonds any of its purposes:~~

1. *Local sales and use tax revenues of such city or county generated from taxes levied pursuant to §§ 58.1-605 and 58.1-606 on transactions taking place upon the premises of the facility;*

2. *Local admissions tax revenues of such county or city generated from taxes levied pursuant to §§ 58.1-3818 and 58.1-3840 on admissions to the facility;*

3. *Local food and beverage tax revenues of such county or city generated on transactions taking place upon the premises of the facility from taxes levied pursuant to §§ 58.1-3833 and 58.1-3840;*

4. *Local business, professional, and occupational license tax revenues of such city or county generated from taxes levied pursuant to § 58.1-3703 on any team or other organization operating within the facility.*

In addition, the local governing body of the county or city in which the facility is located 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 developed under the provisions of this chapter and, by ordinance or resolution, remit to the Authority all or any portion of such rates, rents, fees, ticket surcharges, or other charges for 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.

§ 15.1-1703. Tax revenues of the Commonwealth or any other political subdivision not pledged; political subdivision authorized.

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 § 15.1-1696 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. Any appropriation made pursuant to this chapter shall be made only from sales tax revenues generated from transactions taking place upon the premises of the stadium for which bonds may have been issued to pay the cost, in whole or in part. A political*

subdivision is hereby authorized and empowered to:

1. Transfer jurisdiction over, lease, lend, grant or convey to the Authority at its request, with or without consideration, such real or personal property as may be necessary or desirable to carry out the purposes of the Authority, upon such terms and conditions as the governing body of such political subdivision shall determine to be in its best interests;

2. Make appropriations and provide funds for any purpose of the Authority, including the acquisition, construction, improvement and operation of any facility and payment of any principal and interest on its indebtedness;

3. Enter into contracts agreeing to carry out any of the provisions set forth in subdivisions 1 and 2 providing for the operation and maintenance of all or any part of a facility or otherwise facilitating the construction, development, operation or financing of all or any part of a facility; and

4. Enter into leases with the Authority pursuant to which a facility or any part thereof is leased to such political subdivision. Such lease may be for a term ending not later than the end of the then current fiscal year of such political subdivision but may be renewable for additional terms of one fiscal year each or may be agreed upon by the parties provided that the total of the original term and any renewals shall not exceed fifty years. Each renewal shall be at the option of such political subdivision, and the lease may provide that it is renewed for an additional term if the political subdivision fails to cancel the lease in writing on or prior to sixty days before the end of the then current term. Rentals under such lease may be computed at fixed amounts or by a formula based on any factors provided therein, and the rentals payable may include provision for all or any part or a share of the amounts necessary to (i) pay or provide for the expenses of operation and maintenance of a facility; (ii) provide for the payment of principal and interest on any bonds of the Authority; and (iii) maintain such reserves or sinking funds as may be required by the terms of any contract of the Authority or as may be deemed necessary or desirable by the Authority. Such payments shall be payable only from revenues of the political subdivision available during the fiscal year during which the lease is in effect. Notwithstanding any other provision of this chapter, the Authority or the political subdivision leasing the facility may contract with a person, association, joint venture or corporation as sublessee or operator of the facility at a compensation to be agreed upon by the parties.

§ 15.1-1706. Tort claims.

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

§ 15.1-1707. Auditor of Public Accounts may examine accounts and books of Authority.

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.

§ 15.1-1708. Limitation on Authority's funds.

No funds of the Authority may be used to pay fees or expenses of lobbyists required to register under § 2.1-782.

§ 15.1-1709. Policy statement.

It is hereby found, determined, and declared that the acquisition of a sports franchise and the development of any related facility will result in substantial economic development in the Commonwealth and is in all respects for the benefit of the people of the Commonwealth, for the increase of their commerce, and for the promotion of their safety, health, welfare, convenience, and prosperity, and is a public purpose and use, and that the Authority and any other political subdivision of the Commonwealth will be performing an essential governmental function in the exercise of the powers conferred by this chapter.

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 § 15.1-1702.

3. That the provisions of this act shall expire on January 1, 2002, if the Hampton Roads Sports Facility Authority has not executed a lease with a team which is a member of the National Hockey League or the National Basketball Association.