

VIRGINIA ACTS OF ASSEMBLY -- 2020 SESSION

CHAPTER 538

An Act to amend the Code of Virginia by adding in Title 15.2 a chapter numbered 59.3, consisting of sections numbered 15.2-5935 through 15.2-5949, and to repeal Chapter 59 (§§ 15.2-5900 through 15.2-5916) of Title 15.2 of the Code of Virginia, relating to Hampton Roads Regional Arena Authority created; financing of a Hampton Roads arena and Facility.

[H 1102]

Approved March 31, 2020

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding in Title 15.2 a chapter numbered 59.3, consisting of sections numbered 15.2-5935 through 15.2-5949, as follows:

CHAPTER 59.3.

HAMPTON ROADS REGIONAL ARENA AUTHORITY.

§ 15.2-5935. Definitions.

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

"Arena" means an arena or stadium that is located in a Hampton Roads locality or Hampton Roads localities, has a seating capacity of at least 15,000, and (i) is built for the purpose of holding entertainment events, conventions, and conferences; (ii) is built for the purpose of conducting athletic events; or (iii) is built for the purposes described in clauses (i) and (ii).

"Athletic events" means events conducted by a sports team.

"Bond issuer" means the Authority and any participating locality.

"Bond" means a note of any kind, an interim certificate, a refunding bond, and any other evidence of obligation, including private bonds and other forms of private financing.

"Eligible transactions" means transactions taking place upon the premises of a Facility, including (i) transactions generating revenues in connection with the development and construction of a Facility that would not be generated but for the existence of the Facility and (ii) transactions that occur while a Facility is under construction.

"Facility" means an arena with either related facilities or related properties or both, provided that such related facilities or related properties are both appurtenant to and directly or indirectly benefited by the presence of such arena. "Facility" includes any temporary construction related to the Facility.

"Facility Site" means real estate designated, donated, purchased, or otherwise acquired for the purpose of constructing a Facility.

"Hampton Roads locality" means the City of Chesapeake, Norfolk, or Virginia Beach.

"Hampton Roads Regional Arena Authority" or "the Authority" means the authority created pursuant to § 15.2-5936.

"Participating locality" means a Hampton Roads locality that joins the Authority.

"Related facilities" means any office, restaurant, concessions, retail, and lodging facilities that are owned and operated adjacent to or in connection with a Facility. If a Facility is built for the purpose of conducting athletic events, "related facilities" includes practice facilities and related offices.

"Related properties" means onsite and offsite offices, parking lots, and garages.

"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 eligible transactions. 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.

"Sponsoring locality" means the participating locality in which the Facility is located.

"Sports team" means a sports franchise holder that is a part of the National Basketball Association, the National Basketball Association Development League, the Women's National Basketball Association, the National Hockey League, the American Hockey League, the ECHL, the Federal Prospects Hockey League, the Ligue Nord-Américaine de Hockey, or the Southern Professional Hockey League, and any other national sports league.

§ 15.2-5936. Creation of Authority.

There is hereby established a body corporate and politic known as the Hampton Roads Regional Arena Authority. The Authority is a political subdivision of the Commonwealth.

§ 15.2-5937. Members of Authority; chairman; terms.

A. The Authority shall consist of seven members as follows: four nonlegislative citizen members to be appointed by the Governor in consultation with the chief elected officer of each Hampton Roads locality or his designee, provided that at least one member shall be a resident of the City of Chesapeake, at least one member shall be a resident of the City of Norfolk, and at least one member shall be a resident of the City of Virginia Beach; and the chief elected officer of each Hampton Roads locality or his designee, who shall serve *ex officio* with voting privileges. Each member appointed by the Governor shall be subject to confirmation by the General Assembly. The members of the Authority annually shall elect a chairman and a vice-chairman from their membership; the vice-chairman shall perform the duties of the chairman in his absence. If a member of the Authority who is a chief elected officer of a locality is unable to attend a meeting of the Authority, he may designate another current elected official of such governing body to attend a meeting of the Authority. Such designation shall be for the purposes of one meeting and shall be submitted in writing or electronically to the chairman of the Authority prior to the affected meeting.

B. Members of the Authority who are elected shall serve terms coincident with their terms of office. After the initial staggering of terms, members of the Authority appointed by the Governor shall serve terms of four years.

At the end of a term, a member shall continue to serve until a successor is appointed and qualifies. A member who is appointed after a term has begun serves only for the rest of the term and until a successor is appointed and qualifies. The members of the Authority shall receive no compensation for their services, but a member may be reimbursed by the Authority for reasonable expenses actually incurred in the performance of the duties of that office.

§ 15.2-5938. Quorum; actions of Authority; meetings.

Four members of the Authority shall constitute a quorum for the purpose of conducting business. Actions of the Authority shall receive the affirmative vote of a majority of the quorum to be effective. No vacancy on the Authority shall impair the right of a quorum to exercise all rights and perform all the duties of the Authority. The Authority shall determine the times and places of its regular meetings. Special meetings of the Authority shall be held when requested by two or more members of the Authority. Any such request for a special meeting shall be in writing, and the request shall specify the time and place of the meeting and the matters to be considered at the meeting. A reasonable effort shall be made to provide each member with notice of any special meeting. Only matters specified in the notice shall be considered at such special meeting unless all the members of the Authority are present.

§ 15.2-5939. 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 funds 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.

§ 15.2-5940. Participation in the Authority by a Hampton Roads locality.

Any Hampton Roads locality may, by a majority vote of its governing body, become a participating locality in the Authority.

§ 15.2-5941. Powers.

In addition to all other powers it possesses, the Authority may:

1. Determine the location of, develop, establish, construct, erect, acquire, own, repair, remodel, add to, extend, improve, equip, operate, regulate, and maintain a Facility and Facility Site to the extent necessary to accomplish the purposes of this chapter, including contracting for materials, products, and services related to such Facility or Facility Site;
2. Enter into development agreements related to the Facility or Facility Site, including leases, subleases, and any other forms of private financing;
3. Develop a model for participating localities to share costs and revenues of a Facility and Facility Site;
4. Operate, enter into contracts for the operation of, and regulate the use and operation of a Facility and Facility Site developed under the provisions of this chapter;
5. Fix and revise from time to time and charge and collect rates, rents, fees, ticket surcharges, or other charges for the use of a Facility or Facility Site or for services rendered in connection with a Facility or Facility Site;
6. Dedicate any funds that accrue to the Authority pursuant to the provisions of this chapter for the

construction, development, financing, operation, or maintenance of the Facility and Facility Site;

7. Issue bonds and similar financial instruments under this chapter;

8. Finance the construction of a Facility using loans, notes, private equity financing, or any other method of financing the Authority deems appropriate; and

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

§ 15.2-5942. Public hearings; notice; reports.

A. At least 30 days before (i) acquiring or entering into a lease involving a Facility Site and (ii) entering into a construction contract for a Facility, the Authority shall submit to the General Assembly a detailed written report and findings of the Authority on the proposed acquisition, lease, or contract. The report and findings shall include a detailed plan of the method of funding and the economic benefits of the proposal.

B. The State Treasurer shall be provided with copies of (i) all documents relating to the proposed issuance of any bonds pursuant to § 15.2-5943 and (ii) all documents relating to a proposed acquisition, lease, or contract described in subsection A. Such copies shall be provided sufficiently in advance of such bond issuance or acquisition, lease, or contract to conduct such reviews as the State Treasurer deems necessary. Such reviews shall be completed within 60 days after the date that the Treasurer is provided such documents. In the event that the Commonwealth is an obligated person determined to be material to an evaluation of the offering for which financial information will be included or referenced in the offering document in accordance with Securities and Exchange Commission Rule 15c 2-12 under the federal Securities Exchange Act of 1934, or in the event that in the opinion of the State Treasurer, with the concurrence of the Debt Capacity Advisory Committee established under Article 5 (§ 2.2-2712 et seq.) of Chapter 27 of Title 2.2, such bond issue or contractual obligation 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 or contractual obligation must be authorized by the General Assembly. Within 60 days of receiving the documents described in this subsection, the Treasurer shall deliver a written opinion to the Authority and participating localities regarding whether the bond issue or contractual obligation 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.

§ 15.2-5943. Bond issues.

A. A bond issuer 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.

B. The bonds of any issue shall be payable solely from the property or receipts of the bond issuer, or other security specifically pledged by the bond issuer 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 Authority by the State Comptroller pursuant to § 15.2-5940; and
5. Proceeds of refunding bonds.

C. Bonds shall be authorized by resolution of the bond issuer and may be secured by a trust agreement by and between the bond issuer 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 40 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 bond issuer, including private and negotiated sales.

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 bond issuer 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 bond issuer 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 bond issuer determines appropriate.

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

F. The bond issuer 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 bond issuer 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 bond issuer, 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 bond issuer need be filed or recorded in any public record other than the records of the bond issuer 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 bond issuer 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.

§ 15.2-5944. Restrictions related to sports teams.

A. If the Authority plans to use a Facility for the sole purpose of conducting athletic events involving a sports team, the Authority shall not enter into any contractual agreement with such sports team unless such contractual agreement requires that the sports team (i) not relocate until any bonds issued under this chapter are repaid or defeased and (ii) operate the Facility until any bonds issued under this chapter are repaid or defeased.

B. If the Authority plans to use a Facility for the sole purpose of conducting athletic events involving a sports team, the Authority shall not issue bonds under this chapter until it executes a long-term lease with (i) the owner of the sports team or (ii) a third party that has entered into a long-term sublease with the owner of the sports team.

C. If the Authority plans to use a Facility for the sole purpose of conducting athletic events involving a sports team, the Authority shall not issue bonds under this chapter until the league of which the sports team is a member publicly approves a proposal for the sports team to be located in a Hampton Roads locality.

D. The provisions of this subsection shall not apply if the Authority plans to use a Facility also for the purpose of holding entertainment events and conferences.

§ 15.2-5945. Facility Financing Fund; use.

A. If the Authority issues bonds pursuant to § 15.2-5943 or enters into a contractual agreement pursuant to § 15.2-5942, it shall create a Facility Financing Fund, hereafter referred to as "the Fund." The Authority shall use the Fund as a non-lapsing revolving fund for the purposes of carrying out the provisions of this chapter.

B. 1. The following receipts of the Authority shall be placed in the Fund: (i) proceeds from the sale of bonds issued pursuant to § 15.2-5943; (ii) revenues collected or received from any Hampton Roads locality, including local tax revenues appropriated for the purpose of deposit in the Fund; (iii) sales and use tax revenue remitted to the Authority pursuant to § 15.2-5946; (iv) development fees; and (v) revenues collected or received from any source under the provisions of this chapter. The Authority may place in the Fund any other revenues under its jurisdiction.

2. Any Hampton Roads locality may appropriate funds to the Fund for the Authority to use in accomplishing the purposes identified in this chapter.

C. The Authority shall pay expenses and make expenditures from the Fund, subject to appropriation by its governing board. Money in the Fund shall be used only (i) to pay debt service on bonds issued pursuant to § 15.2-5938, (ii) to make expenditures related to contractual obligations for the construction, development, operation, and maintenance of a Facility, (iii) to pay all reasonable charges and expenses related to borrowing and management of obligations by the Authority, and (iv) to remit to each participating locality its share of revenues from the Facility.

§ 15.2-5946. Entitlement to tax revenues derived from the operation of a Facility.

A. 1. The Authority shall be entitled, subject to appropriation, to sales and use tax revenues defined in this chapter. Such entitlement shall include transactions that occur while a Facility is under construction. The State Comptroller shall remit such sales and use tax revenues to the Authority 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 Authority, as provided herein, notwithstanding any provisions to the contrary in the Virginia Retail Sales and Use Tax Act (§ 58.1-600 et seq.).

2. The revenues accruing to the Authority pursuant to the provisions of this section shall be used by the Authority only to pay debt service, to distribute to any lessee of the Facility for the purpose of paying debt service, to meet contractual obligations entered into pursuant to § 15.2-5942, or to remit to each participating locality its share of revenues from the Facility.

B. The governing body of the Authority may 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.

C. If a Facility qualifies for entitlement to sales and use tax revenues pursuant to the provisions of § 58.1-3851.1 or 58.1-3851.2, the Authority 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.

D. The Tax Commissioner, as defined in § 58.1-1, shall report to the Chairmen of the Senate Committee on Finance, the House Committee on Appropriations, and the House Committee on Finance by July 1 of each year the amount of tax revenues accruing to the Authority pursuant to the provisions of this chapter.

§ 15.2-5947. Sharing of revenue among participating localities.

The Authority shall develop and administer a plan to distribute sales and use tax revenues from the Facility to each participating locality. The Authority shall not distribute such revenues to any participating locality until it has paid off any debt incurred pursuant to the provisions of this chapter. The plan to distribute sales and use tax revenues shall reasonably account for each participating locality's contributions to the costs of financing, constructing, maintaining, and operating the Facility and Facility Site.

§ 15.2-5948. Tax revenues of the Commonwealth or any other political subdivision not pledged.

Nothing in this chapter shall be construed as authorizing the pledging of the faith and credit of the Commonwealth, or the faith and credit of any other political subdivision of the Commonwealth, for the payment of any bonds. No bonds issued pursuant to § 15.2-5943 shall pledge the full faith and credit of the Commonwealth, nor shall such bonds constitute a debt of the Commonwealth, and the bonds shall so state on their face. Bondholders shall have no recourse whatsoever against the Commonwealth for the payment of principal, interest, or redemption premium, if any, on such bonds.

§ 15.2-5949. Expiration of entitlement to certain sales tax revenues.

The provisions of this chapter shall expire on the earlier of (i) the maturity date of any bonds issued for the construction of a Facility, including any refunding or refinancing of such bonds, or (ii) July 1, 2060.

2. That the initial terms of the Governor's appointees to the Hampton Roads Regional Arena Authority shall be staggered as follows: the initial term of one of the members shall be four years; the initial term of one of the members shall be three years; the initial term of one of the members shall be two years; and the initial term of the remaining member shall be one year. The Governor shall designate the initial term to be served by each appointee.

3. That Chapter 59 (§§ 15.2-5900 through 15.2-5916) of Title 15.2 of the Code of Virginia is repealed.