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SENATE BILL NO. 787

Senate Amendments in [] - January 31, 2020

A *BILL 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 15.2-5942, relating to City of Norfolk; financing of an arena and facility.*

Patron Prior to Engrossment—Senator Lewis

Referred to Committee on Local Government

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 15.2-5942, as follows:

*CHAPTER 59.3.**NORFOLK ARENA AND FACILITY.***§ 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 the City of Norfolk, has a seating capacity of at least 15,000, and (i) is built for the purpose of holding entertainment events 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).

"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 purchased for the purpose of constructing a facility.

"Related facilities" means any office, restaurant, concessions, retail, and lodging facilities that are owned and operated adjacent to or in connection with a facility.

"Related properties" means onsite and offsite 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.

"Sports team" means a sports franchise holder that is a part of the National Basketball Association or the National Hockey League.

§ 15.2-5936. Powers.

In addition to all other powers it possesses, the City of Norfolk may:

1. Determine the locations of, develop, establish, construct, erect, acquire, own, repair, remodel, add to, extend, improve, equip, operate, regulate, and maintain a facility to the extent necessary to accomplish the purposes of this chapter;

2. Operate, enter into contracts for the operation of, and regulate the use and operation of a facility developed under the provisions of this chapter;

3. 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 for services rendered in connection with a sports or entertainment project;

4. Dedicate any funds that accrue to the City of Norfolk pursuant to the provisions of this chapter for the construction, development, operation, or maintenance of the facility;

5. Issue bonds under this chapter; and

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

§ 15.2-5937. Public hearings; notice; reports.

A. At least 30 days before (i) acquiring or entering into a lease involving a facility site and (ii)

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59 entering into a construction contract for a facility, the City of Norfolk shall submit to the General
60 Assembly a detailed written report and findings of the City on the proposed acquisition, lease, or
61 contract. The report and findings shall include a detailed plan of the method of funding and the
62 economic benefits of the proposal.

63 B. The State Treasurer shall be provided with copies of (i) all documents relating to the proposed
64 issuance of any bonds pursuant to § 15.2-5938 and (ii) all documents relating to a proposed acquisition,
65 lease, or contract described in subsection A. Such copies shall be provided sufficiently in advance of
66 such bond issuance or acquisition, lease, or contract to conduct such reviews as the State Treasurer
67 deems necessary. Such reviews shall be completed within [~~120~~ 60] days after the date that the
68 Treasurer is provided such documents. In the event that the Commonwealth is an obligated person
69 determined to be material to an evaluation of the offering for which financial information will be
70 included or referenced in the offering document in accordance with Securities and Exchange
71 Commission Rule 15c 2-12 under the federal Securities Exchange Act of 1934, or in the event that in
72 the opinion of the State Treasurer, with the concurrence of the Debt Capacity Advisory Committee
73 established under Article 5 (§ 2.2-2712 et seq.) of Chapter 27 of Title 2.2, such bond issue or
74 contractual obligation will be considered tax-supported debt of the Commonwealth or have an adverse
75 impact on the debt capacity or the credit ratings of the Commonwealth, such bond issue or contractual
76 obligation must be authorized by the General Assembly.

77 **§ 15.2-5938. Bond issues.**

78 A. The City of Norfolk may at any time and from time to time issue bonds for any valid purpose,
79 including the establishment of reserves and the payment of interest. As used in this chapter, "bonds"
80 includes notes of any kind, interim certificates, refunding bonds, or any other evidence of obligation.

81 B. The bonds of any issue shall be payable solely from the property or receipts of the City of
82 Norfolk, or other security specifically pledged by the City of Norfolk to the payment thereof, including,
83 but not limited to:

84 1. Taxes, fees, charges, or other revenues;

85 2. Payments by financial institutions, insurance companies, or others pursuant to letters or lines of
86 credit, policies of insurance, or purchase agreements;

87 3. Investment earnings from funds or accounts maintained pursuant to a bond resolution or trust
88 agreement;

89 4. Sales and use tax revenues remitted to the City of Norfolk by the State Comptroller pursuant to
90 § 15.2-5940; and

91 5. Proceeds of refunding bonds.

92 C. Bonds shall be authorized by resolution of the City of Norfolk and may be secured by a trust
93 agreement by and between the City of Norfolk and a corporate trustee or trustees, which may be any
94 trust company or bank having the powers of a trust company within or outside the Commonwealth. The
95 bonds shall:

96 1. Be issued at, above, or below par value, for cash or other valuable consideration, and mature at
97 a time or times, whether as serial bonds or as term bonds or both, not exceeding 40 years from their
98 respective dates of issue;

99 2. Bear interest at the fixed or variable rate or rates determined by the method provided in the
100 resolution or trust agreement;

101 3. Be payable at a time or times, in the denominations and form, and carry the registration and
102 privileges as to conversion and for the replacement of mutilated, lost, or destroyed bonds as the
103 resolution or trust agreement may provide;

104 4. Be payable in lawful money of the United States at a designated place;

105 5. Be subject to the terms of purchase, payment, redemption, refunding, or refinancing that the
106 resolution or trust agreement provides; and

107 6. Be sold in the manner and upon the terms determined by the City of Norfolk, including private
108 (negotiated) sale.

109 D. Any resolution or trust agreement may contain provisions that shall be a part of the contract with
110 the holders of the bonds as to:

111 1. Pledging, assigning, or directing the use, investment, or disposition of receipts of the City of
112 Norfolk or proceeds or benefits of any contract and conveying or otherwise securing any property
113 rights;

114 2. The setting aside of loan funding deposits, debt service reserves, capitalized interest accounts, cost
115 of issuance accounts, and sinking funds, and the regulation, investment, and disposition thereof;

116 3. Limitations on the purpose to which or the investments in which the proceeds of sale of any issue
117 of bonds may be applied and restrictions to investments of revenues or bond proceeds in government
118 obligations for which principal and interest are unconditionally guaranteed by the United States of
119 America;

120 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 Norfolk 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 Norfolk determines appropriate.

E. No member of the governing body of the City of Norfolk nor any person executing the bonds on behalf of the City of Norfolk 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 Norfolk 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 Norfolk 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 Norfolk, 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 Norfolk need be filed or recorded in any public record other than the records of the City of Norfolk 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 Norfolk 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. 1. If the City of Norfolk plans to use a facility [exclusively] for the purpose of conducting athletic events involving a sports team, the City of Norfolk 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.

2. If the City of Norfolk plans to use a facility [exclusively] for the purpose of conducting athletic events involving a sports team, the City of Norfolk 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.

3. The provisions of this subsection shall not apply if the City of Norfolk plans to use a facility solely for the purpose of holding entertainment events and conferences.

§ 15.2-5939. Facility Financing Fund; use.

A. If the City of Norfolk issues bonds pursuant to § 15.2-5938 or enters into a contractual agreement pursuant to § 15.2-5937, it shall create a Facility Financing Fund, hereafter referred to as "the Fund." The City of Norfolk shall use the Fund as a non-lapsing revolving fund for the purposes of carrying out the provisions of this chapter.

B. The following receipts of the City of Norfolk shall be placed in the Fund: (i) proceeds from the sale of bonds issued pursuant to § 15.2-5938 and (ii) revenues collected or received from any source under the provisions of this chapter. The City of Norfolk may place in the Fund any other revenues under its jurisdiction.

C. The City of Norfolk shall pay expenses and make expenditures from the Fund, subject to appropriation by the City Council. 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 [financing,] , operation, and maintenance of a facility, and (iii) to pay

182 all reasonable charges and expenses related to borrowing and management of obligations by the City of
183 Norfolk.

184 **§ 15.2-5940. Entitlement to tax revenues derived from the operation of a facility.**

185 A. 1. The City of Norfolk shall be entitled, subject to appropriation, to sales and use tax revenues
186 defined in this chapter. The State Comptroller shall remit such sales and use tax revenues to the City of
187 Norfolk on a quarterly basis, subject to such reasonable processing delays as may be required by the
188 Department of Taxation. The State Comptroller shall make such remittances to the City of Norfolk, as
189 provided herein, notwithstanding any provisions to the contrary in the Virginia Retail Sales and Use Tax
190 Act (§ 58.1-600 et seq.).

191 2. The revenues accruing to the City of Norfolk pursuant to the provisions of this section shall be
192 used by the City of Norfolk only for the payment of debt service or to meet contractual obligations
193 entered into pursuant to § 15.2-5937.

194 B. The local governing body of the City of Norfolk may, by ordinance or resolution, fix and revise
195 from time to time and charge and collect rates, rents, fees, ticket surcharges, or other charges for a
196 facility developed under the provisions of this chapter.

197 C. If a facility qualifies for entitlement to sales and use tax revenues pursuant to the provisions of
198 § 58.1-3851.1 or 58.1-3851.2, the City of Norfolk shall remain eligible to receive sales and use tax
199 revenues pursuant to the provisions of this chapter; however, the amount received pursuant to this
200 chapter shall be reduced by the amount received pursuant to the provisions of § 58.1-3851.1 or
201 58.1-3851.2.

202 **§ 15.2-5941. Tax revenues of the Commonwealth or any other political subdivision not pledged.**

203 Nothing in this chapter shall be construed as authorizing the pledging of the faith and credit of the
204 Commonwealth, or the faith and credit of any other political subdivision of the Commonwealth, for the
205 payment of any bonds. No bonds issued pursuant to § 15.2-5938 shall pledge the full faith and credit of
206 the Commonwealth, nor shall such bonds constitute a debt of the Commonwealth, and the bonds shall so
207 state on their face. Bondholders shall have no recourse whatsoever against the Commonwealth for the
208 payment of principal, interest, or redemption premium, if any, on such bonds.

209 **§ 15.2-5942. Expiration of entitlement to certain sales tax revenues.**

210 A. If the City of Norfolk has not, prior to January 1, [~~2024~~ 2030], either issued bonds under
211 § 58.1-3938 for the construction of a facility or entered into a contract for the construction,
212 development, operation, and maintenance of a facility, then the provisions of this article shall expire on
213 January 1, [~~2024~~ 2030].

214 B. If, prior to January 1, [~~2024~~ 2030], the City of Norfolk either issues bonds under § 58.1-3938
215 for the construction of a facility or enters into a contract for the construction, development, operation,
216 and maintenance of a facility, then the provisions of this article shall expire on the earliest date of the
217 following:

218 1. The maturity date of any bonds issued pursuant to § 58.1-3938, excluding any refunding or
219 refinancing of such bonds and excluding any bond anticipation notes issued related to such bonds;

220 2. The expiration date of the City of Norfolk's contractual obligations for the construction,
221 development, operation, or maintenance of the facility; or

222 3. July 1, [~~2055~~ 2060].