

VIRGINIA ACTS OF ASSEMBLY -- 1996 RECONVENED SESSION

CHAPTER 1038

An Act to amend and reenact §§ 11-45, 15.1-227.70, 15.1-227.74, 15.1-227.75, 15.1-227.76, 15.1-227.77, 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 sections numbered 15.1-227.88 and 15.1-227.89, relating to the Virginia Baseball Stadium Authority.

[H 1502]

Approved April 17, 1996

Be it enacted by the General Assembly of Virginia:

1. That §§ 11-45, 15.1-227.70, 15.1-227.74, 15.1-227.75, 15.1-227.76, 15.1-227.77, 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 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.

K. The Executive Director of the Virginia Health Services Cost Review Council may enter into agreements or contracts without competitive sealed bidding or competitive negotiation for the compilation, storage, analysis, and evaluation of patient level data pursuant to Article 2 (§ 9-166.1 et

seq.) of Chapter 26 of Title 9, if the Executive 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. The writing shall document the basis for this determination.

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

§ 15.1-227.70. Definitions.

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

"Authority" means the Virginia Baseball Stadium Authority.

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

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

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

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

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

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

§ 15.1-227.74. 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 *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.

§ 15.1-227.75. Powers.

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, 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;
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 its property or any interest therein whatever the condition thereof, whether or not constructed or acquired, to the Commonwealth or any political subdivision of the Commonwealth. The Commonwealth and any such political subdivision are authorized to acquire or lease such property or any interest therein; however, the Commonwealth shall not enter into any such lease or purchase agreement unless such lease or purchase agreement has first been approved pursuant to subsections E and F of § 15.1-227.76;*
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 the chapter;

10. Fix and revise from time to time and charge and collect rates, rents, fees, 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.

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

A. At least sixty days prior to selecting a ~~facility~~ site for a major league or minor league baseball stadium, 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 days prior to the public hearing required by this section, the Authority shall notify the local governing body in which the ~~facility~~ major league or minor league baseball stadium 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~~ major league or minor league baseball stadium is proposed to be located may require that this period be extended for up to sixty 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 major league or minor league baseball stadium and before entering into a construction contract involving a ~~new facility~~ major league or minor league baseball stadium or ~~facility~~ stadium site, the Authority shall submit a detailed written report and the findings of the Authority that justify 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 of the proposed acquisition, lease, or contract.

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

E. *The Commonwealth shall not enter into any purchase agreement, lease agreement, lease-purchase agreement, master lease agreement or any other contractual arrangement that creates a direct or contingent financial obligation of the Commonwealth unless such agreement or arrangement has first been submitted to the State Treasurer sufficiently prior to the execution of such agreement or arrangement to allow the State Treasurer to undertake a review for the purposes of determining (i) whether the agreement or arrangement may constitute tax-supported debt of the Commonwealth and (ii) the potential impact of the agreement or arrangement on the debt capacity and credit ratings of the Commonwealth. If after such review the State Treasurer determines that the agreement or arrangement may constitute tax-supported debt of the Commonwealth, or may have an adverse impact on the debt capacity or the credit ratings of the Commonwealth, the agreement or arrangement and any associated financing shall be submitted to the Treasury Board for review and approval of terms and structures in a manner consistent with § 2.1-179.*

F. *The Commonwealth shall not enter into any purchase agreement, lease agreement, lease-purchase agreement, master lease agreement or any other contractual arrangement that creates a direct or contingent financial obligation of the Commonwealth unless such agreement or arrangement has first been reviewed and approved as required by subsection E and subsequently approved in writing by the Governor.*

§ 15.1-227.77. 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. This section does not affect the right of the Authority to acquire an option for acquisition of the property, prior to 2000, once the approval required by this section is obtained.

D. *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, as defined in § 15.1-227.70, when determined by the governing body of such locality that the construction and operation of such a facility*

would enhance the economic development, resources, or advantages of the locality. 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 upon 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 stadium site is proposed may, by majority vote, exercise its power of eminent domain as provided herein.

§ 15.1-227.78. 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, 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 line 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 franchise holder must agree that the franchise will not be relocated until any bonds issued hereunder are defeased.

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

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

A. ~~If the Authority has issued~~ *In connection with the issuance of bonds by the Authority to finance or refinance a major league baseball stadium, the Authority shall be entitled to all sales tax revenues that are generated by transactions taking place upon the premises of the major league baseball stadium. Such entitlement shall continue for the lifetime of such bonds, but that entitlement shall not exceed thirty years. All sales tax revenues shall may be applied to repayment of the bonds, stadium operating expenses, master lease rental payments by the Commonwealth, capital expenditures and other purposes of the Authority.* 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 major league baseball stadium. 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~~ *In connection with the issuance of bonds by the Authority to finance or refinance a major league baseball stadium, the local governing body of the county or city in which the stadium 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 major league stadium from taxes levied pursuant to §§ 58.1-605 and 58.1-606 shall be remitted by the State Comptroller to the Authority for the repayment of bonds, stadium operating expenses, master lease rental payments by the Commonwealth, capital expenditures and other 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.

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

§ 15.1-227.85. 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 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. ~~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 major league baseball stadium for which bonds may have been issued to pay the cost, in whole or in part.

§ 15.1-227.88. *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.

§ 15.1-227.89. *Policy statement.*

It is hereby found, determined, and declared that the acquisition of a major league baseball franchise and a major league baseball stadium will result in substantial economic development in the Commonwealth and is in all respects for the benefit of the people of the Commonwealth and is a public purpose and that the Authority will be performing an essential government function in the exercise of the powers conferred by this chapter.