

006036468

SENATE BILL NO. 539

Offered January 24, 2000

A BILL to amend and reenact §11-45 of the Code of Virginia, as it is currently effective and as it may become effective, and to amend the Code of Virginia by adding in Chapter 2 of Title 32.1 an article numbered 13, consisting of sections numbered 32.1-73.5, 32.1-73.6, and 32.1-73.7, relating to the Virginia Pharmaceutical Assistance Program.

Patrons—Marye and Maxwell; Delegate: Shuler

Referred to Committee on Education and Health

Be it enacted by the General Assembly of Virginia:

1. That § 11-45 of the Code of Virginia, as it is currently effective and as it may become effective, is amended and reenacted, and that the Code of Virginia is amended by adding in Chapter 2 of Title 32.1 an article numbered 13, consisting of sections numbered 32.1-73.5, 32.1-73.6, and 32.1-73.7, 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 § 15.2-4902.

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.) or the Virginia Juvenile Community Crime Control Act (§ 16.1-309.2 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

INTRODUCED

SB539

60 competitive negotiation when procuring the services of a publisher, pursuant to §§ 9-77.7 and 9-77.8, to
61 publish the Code of Virginia or the Virginia Administrative Code.

62 K. (Effective until July 1, 2003) The State Health Commissioner may enter into agreements or
63 contracts without competitive sealed bidding or competitive negotiation for the compilation, storage,
64 analysis, evaluation, and publication of certain data submitted by health care providers and for the
65 development of a methodology to measure the efficiency and productivity of health care providers
66 pursuant to Chapter 7.2 (§ 32.1-276.2 et seq.) of Title 32.1, if the Commissioner has made a
67 determination in advance, after reasonable notice to the public and set forth in writing, that competitive
68 sealed bidding or competitive negotiation for such services is not fiscally advantageous to the public.
69 The writing shall document the basis for this determination. Such agreements and contracts shall be
70 based on competitive principles.

71 L. A community development authority formed pursuant to Article 6 (§ 15.2-5152 et seq.) of Chapter
72 51 of Title 15.2, with members selected pursuant to such article, may enter into contracts without
73 competition with respect to the exercise of any of its powers permitted by § 15.2-5158; however, this
74 exception shall not apply in cases where any public funds other than special assessments and
75 incremental real property taxes levied pursuant to § 15.2-5158 are used as payment for such contract.

76 M. Virginia Correctional Enterprises may enter into contracts without competitive sealed bidding or
77 competitive negotiation when procuring materials, supplies, or services for use in and support of its
78 production facilities, provided such procurement is accomplished using procedures which ensure the
79 efficient use of funds as practicable and, at a minimum, shall include obtaining telephone quotations.
80 Such procedures shall require documentation of the basis for awarding contracts under this section.

81 N. The Virginia Baseball Stadium Authority may enter into agreements or contracts without
82 competitive sealed bidding or competitive negotiation for the operation of any facilities developed under
83 the provisions of Chapter 58 (§ 15.2-5800 et seq.) of Title 15.2, including contracts or agreements with
84 respect to the sale of food, beverages and souvenirs at such facilities.

85 O. The Department of Health may procure child restraint devices, pursuant to § 46.2-1097, without
86 competitive sealed bidding or competitive negotiation.

87 P. With the consent of the Governor, the Jamestown-Yorktown Foundation may enter into
88 agreements or contracts with private entities without competitive sealed bidding or competitive
89 negotiation for the promotion of tourism through marketing provided a demonstrable cost savings, as
90 reviewed by the Secretary of Education, can be realized by the Foundation and such agreements or
91 contracts are based on competitive principles.

92 Q. The Virginia Racing Commission may designate an entity to administer and promote the Virginia
93 Breeders Fund created pursuant to § 59.1-372.

94 R. The Chesapeake Hospital Authority may enter into contracts without competitive sealed bidding or
95 competitive negotiation in the exercise of any power conferred under Chapter 271, as amended, of the
96 Acts of Assembly of 1966.

97 S. The Hospital Authority of Norfolk may enter into contracts without competitive sealed bidding or
98 competitive negotiation in the exercise of any power conferred under Chapter 53 (§ 15.2-5300 et seq.) of
99 Title 15.2. The Authority shall not discriminate against any person on the basis of race, color, religion,
100 national origin, sex, pregnancy, childbirth or related medical conditions, age, marital status, or disability
101 in the procurement of goods and services.

102 T. The Department of Health may enter into contracts without competitive sealed bidding or
103 competitive negotiation for health care services with Virginia corporations granted tax-exempt status
104 under § 501 (c) (3) of the Internal Revenue Code and operating as clinics for the indigent and uninsured
105 that are organized for the delivery of primary health care services in a community (i) as federally
106 qualified health centers designated by the Health Care Financing Administration or (ii) at a reduced or
107 sliding fee scale or without charge.

108 U. The Department for the Aging may enter into contracts with not-for-profit Virginia corporations
109 granted tax-exempt status under § 501 (c) (3) of the Internal Revenue Code with statewide experience in
110 Virginia in conducting a state long-term care ombudsman program or designated area agencies on aging
111 without competitive sealed bidding or competitive negotiation for the administration of elder rights
112 programs.

113 V. *The State Health Commissioner may enter into agreements or contracts without competitive sealed*
114 *bidding or competitive negotiation for the procurement of prescription drugs pursuant to the Virginia*
115 *Pharmaceutical Assistance Program established in Article 13 (§ 32.1-73.5 et seq.) of Chapter 2 of Title*
116 *32.1 if the Commissioner has made a determination in advance, after reasonable notice to the public*
117 *and set forth in writing, that competitive sealed bidding or competitive negotiation for such services is*
118 *not fiscally advantageous to the public. The writing shall document the basis for this determination.*
119 *Such agreements and contracts shall be based on competitive principles.*

120 § 11-45. (Delayed contingent effective date) Exceptions to requirement for competitive procurement.

121 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 § 15.2-4902.

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.) or the Virginia Juvenile Community Crime Control Act (§ 16.1-309.2 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 H, 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. (Effective until July 1, 2003) The State Health Commissioner may enter into agreements or contracts without competitive sealed bidding or competitive negotiation for the compilation, storage, analysis, evaluation, and publication of certain data submitted by health care providers and for the development of a methodology to measure the efficiency and productivity of health care providers pursuant to Chapter 7.2 (§ 32.1-276.2 et seq.) of Title 32.1, if the Commissioner 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. Such agreements and contracts shall be based on competitive principles.

L. A community development authority formed pursuant to Article 6 (§ 15.2-5152 et seq.) of Chapter 51 of Title 15.2, with members selected pursuant to such article, may enter into contracts without competition with respect to the exercise of any of its powers permitted by § 15.2-5158; however, this exception shall not apply in cases where any public funds other than special assessments and incremental real property taxes levied pursuant to § 15.2-5158 are used as payment for such contract.

M. Virginia Correctional Enterprises may enter into contracts without competitive sealed bidding or competitive negotiation when procuring materials, supplies, or services for use in and support of its production facilities, provided such procurement is accomplished using procedures which ensure the efficient use of funds as practicable and, at a minimum, shall include obtaining telephone quotations.

183 Such procedures shall require documentation of the basis for awarding contracts under this section.

184 N. The Virginia Baseball Stadium Authority may enter into agreements or contracts without
185 competitive sealed bidding or competitive negotiation for the operation of any facilities developed under
186 the provisions of Chapter 58 (§ 15.2-5800 et seq.) of Title 15.2, including contracts or agreements with
187 respect to the sale of food, beverages and souvenirs at such facilities.

188 O. The Department of Health may procure child restraint devices, pursuant to § 46.2-1097, without
189 competitive sealed bidding or competitive negotiation.

190 P. With the consent of the Governor, the Jamestown-Yorktown Foundation may enter into
191 agreements or contracts with private entities without competitive sealed bidding or competitive
192 negotiation for the promotion of tourism through marketing provided a demonstrable cost savings, as
193 reviewed by the Secretary of Education, can be realized by the Foundation and such agreements or
194 contracts are based on competitive principles.

195 Q. The Virginia Racing Commission may designate an entity to administer and promote the Virginia
196 Breeders Fund created pursuant to § 59.1-372.

197 R. The Chesapeake Hospital Authority may enter into contracts without competitive sealed bidding or
198 competitive negotiation in the exercise of any power conferred under Chapter 271, as amended, of the
199 Acts of Assembly of 1966.

200 S. The Hospital Authority of Norfolk may enter into contracts without competitive sealed bidding or
201 competitive negotiation in the exercise of any power conferred under Chapter 53 (§ 15.2-5300 et seq.) of
202 Title 15.2. The Authority shall not discriminate against any person on the basis of race, color, religion,
203 national origin, sex, pregnancy, childbirth or related medical conditions, age, marital status, or disability
204 in the procurement of goods and services.

205 T. The Department of Health may enter into contracts without competitive sealed bidding or
206 competitive negotiation for health care services with Virginia corporations granted tax-exempt status
207 under § 501 (c) (3) of the Internal Revenue Code and operating as clinics for the indigent and uninsured
208 that are organized for the delivery of primary health care services in a community (i) as federally
209 qualified health centers designated by the Health Care Financing Administration or (ii) at a reduced or
210 sliding fee scale or without charge.

211 U. The Department for the Aging may enter into contracts with not-for-profit Virginia corporations
212 granted tax-exempt status under § 501 (c) (3) of the Internal Revenue Code with statewide experience in
213 Virginia in conducting a state long-term care ombudsman program or designated area agencies on aging
214 without competitive sealed bidding or competitive negotiation for the administration of elder rights
215 programs.

216 V. *The State Health Commissioner may enter into agreements or contracts without competitive sealed*
217 *bidding or competitive negotiation for the procurement of prescription drugs pursuant to the Virginia*
218 *Pharmaceutical Assistance Program established in Article 13 (§ 32.1-73.5 et seq.) of Chapter 2 of Title*
219 *32.1 if the Commissioner has made a determination in advance, after reasonable notice to the public*
220 *and set forth in writing, that competitive sealed bidding or competitive negotiation for such services is*
221 *not fiscally advantageous to the public. The writing shall document the basis for this determination.*
222 *Such agreements and contracts shall be based on competitive principles.*

223 *Article 13.*

224 *Virginia Pharmaceutical Assistance Program.*

225 *§ 32.1-73.5. Definitions.*

226 *As used in this article, unless the context requires a different meaning:*

227 *"Advisory committee" means the Virginia Pharmaceutical Assistance Advisory Committee.*

228 *"Board" means the Board of Health.*

229 *"Department" means the Department of Health.*

230 *"Eligible participant" means a resident of the Commonwealth who (i) is not eligible for medical*
231 *assistance services, (ii) is at least sixty-five years old, and (iii) has an annual income that does not*
232 *exceed 200 percent of the federal poverty level.*

233 *§ 32.1-73.6. Virginia Pharmaceutical Assistance Program.*

234 A. *With such funds as are appropriated for this purpose, the Department of Health shall develop,*
235 *implement, and administer, in accordance with the regulations of the Board, the Virginia*
236 *Pharmaceutical Assistance Program for the purpose of assuring that individuals who are sixty-five years*
237 *old or older and whose incomes do not exceed 200 percent of the federal poverty level have access to*
238 *medically necessary prescription drugs.*

239 B. *The Board of Health shall promulgate such regulations as may be necessary to:*

240 1. *Establish income eligibility at a level at or below 200 percent of the federal poverty level, as*
241 *calculated using the same methodology as is currently used by the Department of Medical Assistance*
242 *Services for determining income and resources for recipients of medical assistance services, including,*
243 *but not limited to, countable resources and assets to be disregarded. Any revisions to this methodology*
244 *shall be adopted by the Board of Health for eligibility determinations for the Virginia Pharmaceutical*

Assistance Program.

2. Establish a methodology to allow the participation of individuals who meet all eligibility requirements and whose prescription drug costs are covered, in part, by a health benefits plan or health insurance. Individuals who meet all eligibility requirements and whose prescription drug costs are not covered by any health benefits plan or health insurance shall be given priority for participation in this program.

3. Prepare and submit budget requests for the purpose of providing pharmaceutical assistance to eligible participants.

4. Establish this program to be administered in the same or similar manner as other existing pharmaceutical programs that are administered by the Department.

5. Establish a formulary of prescription drugs that are to be covered by the program.

6. Establish the membership of the Virginia Pharmaceutical Assistance Advisory Committee, which shall consist of no more than twenty citizens with expertise in prescription drug formularies or who have experience with the issues related to prescription drug coverage and senior citizens.

7. Establish a sliding fee scale of copayments for the drugs covered by the program, as appropriate according to the program funding, the number of eligible recipients, and the incomes of such recipients.

8. Establish supply limits.

9. Establish the criteria for contracting for the procurement of the drugs listed on the program formulary.

10. Prohibit any system of rebates or reimbursement to the participants for prescription drug expenses.

§ 32.1-73.7. Construction of article.

This article shall not be construed as creating any legally enforceable right or entitlement to prescription drug coverage on the part of any eligible participant or any right or entitlement to participation. The program created in this article shall only be available to the extent that funds are appropriated therefor.

2. That the Board of Health shall promulgate regulations to implement the provisions of this act within 280 days of its enactment.

3. That the Board of Health may, upon the appropriations of funds for such purpose in the 2000-2002 biennial budget, develop, implement, and administer the Virginia Pharmaceutical Assistance Program as a pilot program to serve a predetermined number of clients on a first-come, first-served basis in the 2000-2002 biennium.