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HOUSE BILL NO. 688

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on Education
on January 16, 2002)

(Patron Prior to Substitute — Delegate Tata)

A *BILL to amend and reenact §§ 2.2-4343 and 23-76.1 of the Code of Virginia, relating to investment of endowment funds, endowment income, and gifts by the board of visitors of the University of Virginia.*

Be it enacted by the General Assembly of Virginia:

1. That §§ 2.2-4343 and 23-76.1 of the Code of Virginia are amended and reenacted as follows:

§ 2.2-4343. Exemption from operation of chapter for certain transactions.

A. The provisions of this chapter shall not apply to:

1. The Virginia Port Authority in the exercise of any of its powers in accordance with Chapter 10 (§ 62.1-128 et seq.) of Title 62.1, provided the Authority implements, by policy or regulation adopted by the Board of Commissioners and approved by the Department of General Services, procedures to ensure fairness and competitiveness in the procurement of goods and services and in the administration of its capital outlay program. This exemption shall be applicable only so long as such policies and procedures meeting the requirements remain in effect.

2. The Virginia Retirement System for selection of services related to the management, purchase or sale of authorized investments, including but not limited to actuarial services. Selection of these services shall be governed by the standard set forth in § 51.1-124.30.

3. The State Treasurer in the selection of investment management services related to the external management of funds shall be governed by the standard set forth in § 2.2-4514, and shall be subject to competitive guidelines and policies that are set by the Commonwealth Treasury Board and approved by the Department of General Services.

4. The Department of Social Services or local departments of social services for the acquisition of motor vehicles for sale or transfer to Temporary Assistance to Needy Families (TANF) recipients.

5. The University of Virginia in the selection of services related to the management and investment of its endowment funds, *endowment income, and gifts pursuant to § 23-76.1*. However, selection of these services shall be governed by the Uniform Management of Institutional Funds Act (§ 55-268.1 et seq.) as required by § 23-76.1.

6. The Board of the Virginia College Savings Plan for the selection of services related to the operation and administration of the Plan, including, but not limited to, contracts or agreements for the management, purchase, or sale of authorized investments or actuarial, record keeping, or consulting services. However, such selection shall be governed by the standard set forth in § 23-38.80.

7. Public institutions of higher education for the purchase of Items for resale at retail bookstores and similar retail outlets operated by such institutions. However, such purchase procedures shall provide for competition where practicable.

8. The purchase of goods and services by agencies of the legislative branch that may be specifically exempted therefrom by the Chairman of the Committee on Rules of either the House of Delegates or the Senate. Nor shall the contract review provisions of § 2.2-1303 apply to such procurements. The exemption shall be in writing and kept on file with the agency's disbursement records.

9. Any town with a population of less than 3,500, except as stipulated in the provisions of §§ 2.2-4305, 2.2-4308, 2.2-4315, 2.2-4311, 2.2-4330, 2.2-4333 through 2.2-4338, 2.2-4343.1, and 2.2-4367 through 2.2-4377.

10. Any county, city or town whose governing body has adopted, by ordinance or resolution, alternative policies and procedures which are (i) based on competitive principles and (ii) generally applicable to procurement of goods and services by such governing body and its agencies, except as stipulated in subdivision 12.

This exemption shall be applicable only so long as such policies and procedures, or other policies and procedures meeting the requirements of § 2.2-4300, remain in effect in such county, city or town. Such policies and standards may provide for incentive contracting which offers a contractor whose bid is accepted the opportunity to share in any cost savings realized by the locality when project costs are reduced by such contractor, without affecting project quality, during construction of the project. The fee, if any, charged by the project engineer or architect for determining such cost savings shall be paid as a separate cost and shall not be calculated as part of any cost savings.

11. Any school division whose school board has adopted, by policy or regulation, alternative policies and procedures which are (i) based on competitive principles and (ii) generally applicable to procurement of goods and services by the school board, except as stipulated in subdivision 12.

60 This exemption shall be applicable only so long as such policies and procedures, or other policies or
61 procedures meeting the requirements of § 2.2-4300, remain in effect in such school division. This
62 provision shall not exempt any school division from any centralized purchasing ordinance duly adopted
63 by a local governing body.

64 12. Notwithstanding the exemptions set forth in subdivisions 9 through 12, the provisions of
65 subsections C and D of §§ 2.2-4303, and §§ 2.2-4305, 2.2-4308, 2.2-4311, 2.2-4315, 2.2-4317 2.2-4330,
66 2.2-4333 through 2.2-4338, 2.2-4343.1, and 2.2-4367 through 2.2-4377 shall apply to all counties, cities
67 and school divisions, and to all towns having a population greater than 3,500 in the Commonwealth.

68 The method for procurement of professional services set forth in subdivision 3. a. of § 2.2-4301 in
69 the definition of competitive negotiation shall also apply to all counties, cities and school divisions, and
70 to all towns having a population greater than 3,500, where the cost of the professional service is
71 expected to exceed \$30,000 in the aggregate or for the sum of all phases of a contract or project. A
72 school board that makes purchases through its public school foundation or purchases educational
73 technology through its educational technology foundation, either as may be established pursuant to
74 § 22.1-212.2:2 shall be exempt from the provisions of this chapter, except, relative to such purchases,
75 the school board shall comply with the provisions of §§ 2.2-4311 and 2.2-4367 through 2.2-4377.

76 13. A public body which is also a utility operator may purchase services through or participate in
77 contracts awarded by one or more utility operators which are not public bodies for utility marking
78 services as required by the Underground Utility Damage Prevention Act (§ 56-265.14 et seq.). A
79 purchase of services under this subdivision may deviate from the procurement procedures set forth in
80 this chapter upon a determination made in advance by the public body and set forth in writing that
81 competitive sealed bidding is either not practicable or not fiscally advantageous to the public, and the
82 contract is awarded based on competitive principles.

83 14. Procurement of any construction or planning and design services for construction by a Virginia
84 nonprofit corporation or organization not otherwise specifically exempted when (i) the planning, design
85 or construction is funded by state appropriations of \$10,000 or less or (ii) the Virginia nonprofit
86 corporation or organization is obligated to conform to procurement procedures that are established by
87 federal statutes or regulations, whether those federal procedures are in conformance with the provisions
88 of this chapter.

89 15. The provisions of this chapter shall not apply to purchases, exchanges, gifts or sales by the
90 Citizens' Advisory Council on Furnishing and Interpreting the Executive Mansion.

91 B. Where a procurement transaction involves the expenditure of federal assistance or contract funds,
92 the receipt of which is conditioned upon compliance with mandatory requirements in federal laws or
93 regulations not in conformance with the provisions of this chapter, a public body may comply with such
94 federal requirements, notwithstanding the provisions of this chapter, only upon the written determination
95 of the Governor, in the case of state agencies, or the governing body, in the case of political
96 subdivisions, that acceptance of the grant or contract funds under the applicable conditions is in the
97 public interest. Such determination shall state the specific provision of this chapter in conflict with the
98 conditions of the grant or contract.

99 § 23-76.1. Investment of endowment funds, endowment income, and gifts; standard of care; liability;
100 exemption from the Virginia Public Procurement Act and the Investment of Public Funds Act.

101 A. The board of visitors shall invest and manage the endowment funds *and may invest and manage*
102 *endowment income and gifts* of the University in accordance with this section and the provisions of the
103 Uniform Management of Institutional Funds Act (§ 55-268.1 et seq.).

104 B. No member of the board of visitors shall be personally liable for losses suffered by an
105 endowment fund *or endowment income and gifts* arising from investments made pursuant to the
106 provisions of subsection A.

107 C. The investment and management of endowment funds *and endowment income and gifts* of the
108 University shall not be subject to the provisions of the Virginia Public Procurement Act (§ 2.2-4300 et
109 seq.) *or the Investment of Public Funds Act* (§ 2.2-4500 et seq.).

110 D. In addition to the investment practices authorized by the Uniform Management of Institutional
111 Funds Act (§ 55-268.1 et seq.), the board of visitors may also invest or reinvest the endowment funds,
112 *endowment income, and gifts* in derivatives, options, and financial securities.

113 1. In this section, "derivative" means a contract or financial instrument or a combination of contracts
114 and financial instruments, including, without limitation, any contract commonly known as a "swap,"
115 which gives the University the right or obligation to deliver or receive delivery of, or make or receive
116 payments based on, changes in the price, value, yield or other characteristic of a tangible or intangible
117 asset or group of assets, or changes in a rate, an index of prices or rates, or other market indicator for
118 an asset or a group of assets.

119 2. In this section, an "option" means an agreement or contract whereby the University may grant or
120 receive the right to purchase or sell, or pay or receive the value of, any personal property asset
121 including, without limitation, any agreement or contract which relates to any security, contract or

122 agreement.

123 3. In this section, "financial security" means any note, stock, treasury stock, bond, debenture,
124 evidence of indebtedness, certificate of interest, collateral-trust certificate, preorganization certificate or
125 subscription, transferable share, investment contract, voting-trust certificate, certificate of deposit for a
126 security, fractional undivided interest in oil, gas, or other mineral rights, any put, call, straddle, option,
127 or privilege on any security, certificate of deposit, or group or index of securities (including any interest
128 therein or based on the value thereof), or any put, call, straddle, option, or privilege entered into on a
129 national securities exchange relating to foreign currency, or, in general, any interest or instrument
130 commonly known as a "security," or any certificate of interest or participation in, temporary or interim
131 certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase, any of the
132 foregoing.