

2004 RECONVENED SESSION

HOUSE SUBSTITUTE

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HOUSE BILL NO. 1124

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Governor
on April 15, 2004)

(Patron Prior to Substitute—Delegate McDonnell)

A *BILL to amend and reenact §§ 2.2-1153 and 2.2-1156 of the Code of Virginia, relating to the Department of General Services; Division of Engineering and Buildings; surplus real property.*

Be it enacted by the General Assembly of Virginia:

1. That §§ 2.2-1153 and 2.2-1156 of the Code of Virginia are amended and reenacted as follows:

§ 2.2-1153. State agencies and institutions to notify Division of property not used or required; criteria.

A. Whenever any department, agency or institution of state government possesses or has under its control state-owned property that is not being used or is not required for the programs of the department, agency or institution, it shall so notify the Division. *Each department, agency and institution shall submit to the Division a land use plan for property it possesses or has under its control showing present and planned uses of such property. Such plan shall be approved by the cognizant board or governing body of the department, agency or institution holding title to or otherwise controlling the state-owned property or the agency head in the absence of a board or governing body, with a recommendation on whether any property should be declared surplus by the department, agency or institution. Development of such land use plans shall be based on guidelines promulgated by the Division. The guidelines shall provide that each land use plan shall be updated and copies provided to the Division by September 1 of each year. The Division may exempt properties that are held and used for conservation purposes from the requirements of this section. The Division shall review the land use plans and The Division shall periodically inquire of all departments, agencies, or institutions as to the current and proposed use of all state-owned property under their control to determine whether the property or any portion thereof should be declared surplus to the needs of the Commonwealth. The Division shall then determine whether the property, including property in its possession and control, is surplus. By October 1 of each year, the Division shall provide a report to the Chairmen of the House Appropriations and Senate Finance Committees setting forth the Division's findings, the sale or marketing of properties identified pursuant to this section, and recommending any actions that may be required by the Governor and the General Assembly to identify and dispose of property not being efficiently and effectively utilized.*

Until permanent disposition of the property determined to be surplus is effected, the property shall continue to be maintained by the department, agency or institution possessing or controlling it, unless upon the recommendation of the Department, the Governor authorizes the transfer of the property to the possession or control of the Department. In this event, the department, agency or institution formerly possessing or controlling the property shall have no further interest in it.

B. The Division shall establish criteria for ascertaining whether property under the control of a department, agency or institution should be classified as "surplus" to its current or proposed needs. *Such criteria shall provide that the cognizant board or governing body, if any, of the department, agency or institution holding the title to or otherwise controlling the state-owned property, or the agency head in the absence of a board or governing body, shall approve the designation of the property as surplus.*

C. Notwithstanding the provisions of subsection A, the property known as College Woods, which includes Lake Matoaka and is possessed and controlled by a college founded in 1693, regardless of whether such property has been declared surplus pursuant to this section, shall not be transferred or disposed of without the approval of the board of visitors of such college by a two-thirds vote of all board members at a regularly scheduled board meeting. The General Assembly shall also approve the disposal or transfer.

§ 2.2-1156. Sale or lease of surplus property.

Except when a department, agency or institution notifies the Department of a need for property which has been declared surplus, and the Department finds that stated need to be valid and best satisfied by the use of the property, the Department may dispose of the property as provided in this section.

A. After it determines the property to be surplus to the needs of the Commonwealth, the Department shall request the written opinion of the Secretary of Natural Resources as to whether the property to be sold is a significant component of the Commonwealth's natural or historic resources, and if so how those resources should be protected in the sale of the property. The Secretary of Natural Resources shall provide this review within fifteen 15 business days of receipt of full information from the Department. ~~Thereafter,~~ *Within 120 days of receipt of the Secretary's review,* the Department ~~may~~ *shall*, with the prior written approval of the Governor, proceed to sell the property. The sale shall be by public auction,

HOUSE
SUBSTITUTE

HB1124H1

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60 or sealed bids, or by marketing through one or more real estate brokers licensed by the Commonwealth.
61 Notice of the date, time and place of sale, if by public auction or sealed bids shall be given by
62 advertisement in at least two newspapers published and having general circulation in the
63 Commonwealth, at least one of which shall have general circulation in the county or city in which the
64 property to be sold is located. At least thirty days shall elapse between publication of the notice and the
65 auction or the date on which sealed bids will be opened.

66 In instances where the appraised value of property proposed to be sold is determined to be a nominal
67 amount or an amount insufficient to warrant statewide advertisement, but in no event in excess of
68 \$50,000, the notice of sale may be placed in only one newspaper having general circulation in the
69 county or city in which the property to be sold is located.

70 B. The Department shall have the right to reject any and all bids or offers when, in the opinion of
71 the Department, the price is inadequate in relation to the value of the property or if a need has been
72 found for the property. If the Department deems the bid or offer fair and adequate in relation to the
73 value of the property, and if no other need for the property has been found, the Department shall
74 recommend acceptance of the bid or offer to the Governor for approval. In lieu of the sale of any such
75 property, the Department may, with the approval of the Governor, lease it to any responsible person,
76 firm or corporation on such terms as are fair and adequate in relation to the value of the property. The
77 provisions of this section requiring disposition of property through the medium of sealed bids, public
78 auction, or marketing through licensed real estate brokers shall not apply to any lease thereof, although
79 such procedures may be followed in the discretion of the Department. The deed or lease to the property
80 shall be executed in the name of the Commonwealth and shall be in a form approved by the Attorney
81 General. Notwithstanding any law to the contrary and notwithstanding how title to the property was
82 acquired, the deed or lease may be executed on behalf of the Commonwealth by the Director of the
83 Department or his designee, and such action shall not create a cloud on the title to the property. The
84 terms of the sale or lease shall be subject to the written approval of the Governor.

85 C. An exception to sale by sealed bids, public auction, or listing the property with a licensed real
86 estate broker may be granted by the Governor if the property is landlocked and inaccessible from a
87 public road or highway. In such cases, the Department shall notify all adjacent landowners of the
88 Commonwealth's desire to dispose of the property. After the notice has been given, the Department may
89 begin negotiations for the sale of the property with each interested adjacent landowner. The Department,
90 with the approval of the Governor, may accept any offer which it deems to be fair and adequate
91 consideration for the property. In all cases, the offer shall be the best offer made by any adjacent
92 landowner. The terms of all negotiations shall be public information.

93 D. Fifty percent of the proceeds from all sales or leases, or from the conveyance of any interest in
94 property under the provisions of this article, above the costs of the transaction, which costs shall include
95 fees or commissions, if any, negotiated with and paid to auctioneers or real estate brokers, shall be paid,
96 subject to any contrary provisions of law, into the Conservation Resources Fund, so long as the sales or
97 leases pertain to general fund agencies or the property involved was originally acquired through the
98 general fund, except as provided in Chapter 180 of the Acts of Assembly of 1966. The remaining fifty
99 percent of proceeds involving general fund sales or leases, less a pro rata share of any costs of the
100 transactions, shall be deposited in the general fund of the state treasury. The Department of Planning
101 and Budget shall develop guidelines which allow, with the approval of the Governor, any portion of the
102 deposit in the general fund to be credited to the agency, department or institution having control of the
103 property at the time it was determined surplus to the Commonwealth's needs. Any amounts so credited
104 to an agency, department or institution may be used, upon appropriation, to supplement maintenance
105 reserve funds or capital project appropriations, or for the acquisition, construction or improvement of
106 real property or facilities. Net proceeds from sales or leases of special fund agency properties or
107 property acquired through a gift for a specific purpose shall be retained by the agency or used in
108 accordance with the original terms of the gift.

109 E. When the Department deems it to be in the best interests of the Commonwealth, it may, with the
110 approval of the Governor, authorize the department, institution or agency in possession or control of the
111 property to dispose of surplus property in accordance with the procedures set forth in this section.

112 **2. That the Division of Engineering and Buildings of the Department of General Services, in**
113 **developing the guidelines required by the provisions of the first enactment of this act, shall seek**
114 **input from state institutions of higher education enumerated in § 23-14 of the Code of Virginia,**
115 **and other departments, agencies, and institutions that own real property or that have real**
116 **property under their control.**