

VIRGINIA ACTS OF ASSEMBLY -- 2006 SESSION

CHAPTER 656

An Act to amend and reenact § 2.2-4343 of the Code of Virginia and to amend the Code of Virginia by adding in Chapter 5 of Title 37.2 a section numbered 37.2-512 and in Chapter 6 of Title 37.2 a section numbered 37.2-615, relating to joint agreements between community services boards and behavioral health authorities.

[H 774]

Approved April 5, 2006

Be it enacted by the General Assembly of Virginia:

1. That § 2.2-4343 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding in Chapter 5 of Title 37.2 a section numbered 37.2-512 and in Chapter 6 of Title 37.2 a section numbered 37.2-615 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, or 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 § 2.2-2011 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, 2.2-4311, 2.2-4315, 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 that 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 that 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.

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

12. Notwithstanding the exemptions set forth in subdivisions 9 through 11, the provisions of 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, 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 and school divisions, and to all towns having a population greater than 3,500 in the Commonwealth.

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

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

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

15. Purchases, exchanges, gifts or sales by the Citizens' Advisory Council on Furnishing and Interpreting the Executive Mansion.

16. The Eastern Virginia Medical School in the selection of services related to the management and investment of its endowment and other institutional funds. The selection of these services shall, however, be governed by the Uniform Management of Institutional Funds Act (§ 55-268.1 et seq.).

17. The Department of Corrections in the selection of pre-release and post-incarceration services.

18. The Board of the Chippokes Plantation Farm Foundation in entering into agreements with persons for the construction, operation, and maintenance of projects consistent with the Chippokes Plantation State Park Master Plan approved by the Director of the Department of Conservation and Recreation pursuant to the requirements of § 10.1-200.1 and designed to further an appreciation for rural living and the contributions of the agricultural, forestry, and natural resource based industries of the Commonwealth, provided such projects are supported solely by private or nonstate funding.

19. The University of Virginia Medical Center to the extent provided by subdivision B 3 of § 23-77.4.

20. The purchase of goods and services by a local governing body or any authority, board, department, instrumentality, institution, agency or other unit of state government when such purchases are made under a remedial plan established by the Governor pursuant to subsection C of § 2.2-4310 or by a chief administrative officer of a county, city or town pursuant to § 15.2-965.1.

21. *The contract by community services boards or behavioral health authorities with an administrator or management body pursuant to a joint agreement authorized by § 37.2-512 or 37.2-615.*

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

§ 37.2-512. Authority to enter into joint agreements.

A. A community services board may enter into joint agreements, pursuant to subdivision A 4 of § 37.2-504 with one or more community services boards or behavioral health authorities, to provide treatment, habilitation, or support services for consumers with specialized and complex service needs and associated managerial, operational, and administrative services and support and to promote

clinical, programmatic, or administrative effectiveness and efficiency. Services may be provided under a joint agreement by one or more community services boards or behavioral health authorities or by an administrator or management body established or contracted through a joint agreement.

B. Participation in a joint agreement shall be voluntary and at the discretion of the community services board. No community services board shall be required to enter into a joint agreement pursuant to this section as a condition for the receipt of funds.

C. No joint agreement shall relieve a community services board of any obligation or responsibility imposed upon it by law, but performance under the terms of a joint agreement may be offered in satisfaction of the obligation or responsibility of the community services board.

D. The community services board's participation in a joint agreement shall be described in the performance contract negotiated by the community services board and the Department pursuant to § 37.2-508. The community services board shall provide a copy of a joint agreement to the governing body of each city or county that established the board for its review and comment at least 30 days before executing the agreement.

E. A joint agreement shall state or describe:

- 1. The term or duration of the joint agreement, which shall be for at least one year but may be extended annually pursuant to provisions in the joint agreement;*
- 2. The purpose or purposes of the joint agreement;*
- 3. The community services boards or behavioral health authorities participating in the joint agreement;*
- 4. The treatment, habilitation, or support services and associated managerial and administrative services and support to be provided through the joint agreement;*
- 5. The manner in which the joint agreement will be administered and any necessary actions by the participants will be coordinated;*
- 6. The manner in which the joint agreement will be financed, including the proportional share to be provided by each participating community services board or behavioral health authority, and the budget, which shall be incorporated as part of the joint agreement, will be established and administered;*
- 7. The manner by which state general funds, fee revenues, and other funds for the operation of the joint agreement will be received and disbursed by the participating boards or behavioral health authorities;*
- 8. The manner by which activities conducted under the joint agreement will be monitored, managed, reported, and evaluated;*
- 9. The permissible method or methods to be employed in accomplishing the partial or complete termination of the joint agreement and for disposing of any property acquired under the joint agreement upon such partial or complete termination; and*
- 10. Any other matters that are necessary and proper for the effective operation of the joint agreement.*

F. The joint agreement, in addition to the items enumerated in subsection E, may contain the following items.

- 1. The joint agreement may provide for an administrator or management body that shall be responsible for administering activities conducted under the joint agreement. The organization, term, powers, and duties of any administrator or management body shall be specified in the joint agreement. This administrator or management body may be given authority through the joint agreement to employ staff and obtain services provided under the joint agreement through contracts on behalf of the community services boards or behavioral health authorities that have entered into the joint agreement. This administrator or management body shall defend or compromise, as appropriate, all claims, suits, actions, or proceedings arising from its performance under this joint agreement and shall obtain and maintain insurance sufficient for this purpose.*
- 2. The joint agreement may specify the manner of acquiring, holding, and disposing of real and personal property required for or used in activities conducted under the joint agreement.*
- 3. The joint agreement may describe how issues of liability will be handled and the types, amounts, and limits of any liability insurance coverage, including whether such coverage will be obtained through the Department of Treasury's Division of Risk Management program pursuant to § 2.2-1839 or otherwise.*

G. Any community services board entering into a joint agreement pursuant to this section may provide funds or property, personnel, or services to the administrator or management body responsible for administering activities conducted under this joint agreement that may be within its legal powers to sell, lease, give, or otherwise supply.

H. The community services boards or behavioral health authorities entering into a joint agreement pursuant to this section may create an administrator or management body to provide treatment, habilitation or support services on behalf of the participating community services boards or behavioral health authorities subject to the following conditions.

- 1. The administrator or management body created pursuant to this subsection shall operate under contract with the participating community services boards or behavioral health authorities, and this*

contract shall be exempt from the requirements of the Virginia Public Procurement Act, (§ 2.2-4300 et seq.).

2. The administrator or management body created pursuant to this subsection shall be subject to all statutory and regulatory requirements that apply to community services boards, including procurement, employment, Virginia Freedom of Information Act, disclosure and confidentiality of consumer and administrative records, data collection and reporting, and all other aspects of their business and services.

3. The administrator or management body created pursuant to this subsection shall have the authority to receive funds from participating community services boards or behavioral health authorities; public and private sources such as foundations, gifts and grants; and public and private reimbursement from private insurers and the Department of Medical Assistance Services; but the administrator or management body shall not be authorized to receive funds directly from the Department.

4. The administrator or management body created pursuant to this subsection shall defend or compromise, as appropriate, all claims, suits, actions, or proceedings arising from its performance under this joint agreement and shall obtain and maintain insurance sufficient for this purpose.

§ 37.2-615. Authority to enter into joint agreements.

A. A behavioral health authority may enter into joint agreements, pursuant to subsection 4 of § 37.2-605, with one or more behavioral health authorities or community services boards to provide needed treatment, habilitation, or support services for consumers with specialized and complex service needs and associated managerial, operational, and administrative services and support and to promote clinical, programmatic, or administrative effectiveness and efficiency. Services may be provided under a joint agreement by one or more behavioral health authorities or community services boards or an administrator or management body established or contracted through a joint agreement.

B. Participation in a joint agreement shall be voluntary and at the discretion of the behavioral health authority. No behavioral health authority shall be required to enter into a joint agreement pursuant to this section as a condition for the receipt of funds.

C. No joint agreement shall relieve a behavioral health authority of any obligation or responsibility imposed upon it by law, but performance under the terms of a joint agreement may be offered in satisfaction of the obligation or responsibility of the authority.

D. The behavioral health authority's participation in a joint agreement shall be described in the performance contract negotiated by the authority and the Department pursuant to § 37.2-608. The behavioral health authority shall provide a copy of a joint agreement to the governing body of the city or county that established the authority for its review and comment at least 30 days before executing the agreement.

E. A joint agreement shall state or describe:

1. The term or duration of the joint agreement, which shall be for at least one year but may be extended annually pursuant to provisions in the joint agreement;

2. The purpose or purposes of the joint agreement;

3. The behavioral health authorities or community services boards participating in the joint agreement;

4. The treatment, habilitation, or support services and associated managerial and administrative services and support to be provided through the joint agreement;

5. The manner in which the joint agreement will be administered and any necessary actions by the participants will be coordinated;

6. The manner in which the joint agreement will be financed, including the proportional share to be provided by each participating behavioral health authority or community services board, and the budget, which shall be incorporated as part of the joint agreement, will be established and administered;

7. The manner by which state general funds, fee revenues, and other funds for the operation of the joint agreement will be received and disbursed by the participating behavioral health authorities or community services boards;

8. The manner by which activities conducted under the joint agreement will be monitored, managed, reported, and evaluated;

9. The permissible method or methods to be employed in accomplishing the partial or complete termination of the joint agreement and for disposing of any property acquired under the joint agreement upon such partial or complete termination; and

10. Any other matters that are necessary and proper for the effective operation of the joint agreement.

F. The joint agreement, in addition to the items enumerated in subsection E, may contain the following items.

1. The joint agreement may provide for an administrator or management body that shall be responsible for administering activities conducted under the joint agreement. The organization, term, powers and duties of any administrator or management body shall be specified in the joint agreement. This administrator or management body may be given authority through the joint agreement to employ

staff and obtain services provided under the joint agreement through contracts on behalf of the behavioral health authorities or community services boards that have entered into the joint agreement. This administrator or management body shall defend or compromise, as appropriate, all claims, suits, actions, or proceedings arising from its performance under this joint agreement and shall obtain and maintain insurance sufficient for this purpose.

2. The joint agreement may specify the manner of acquiring, holding, and disposing of real and personal property required for or used in activities conducted under the joint agreement.

3. The joint agreement may describe how issues of liability will be handled and the types, amounts, and limits of any liability insurance, including whether such coverage will be obtained through the Department of Treasury's Division of Risk Management program pursuant to § 2.2-1839 or otherwise.

G. Any behavioral health authority entering into a joint agreement pursuant to this section may provide funds or property, personnel, or services to the administrator or management body responsible for administering activities conducted under this joint agreement that may be within its legal powers to sell, lease, give, or otherwise supply.

H. The behavioral health authorities or community services boards entering into a joint agreement pursuant to this section may create an administrator or management body to provide treatment, habilitation or support services on behalf of the participating community services boards or behavioral health authorities subject to the following conditions.

1. The administrator or management body created pursuant to this subsection shall operate under contract with the participating community services boards or behavioral health authorities, and this contract shall be exempt from the requirements of the Virginia Public Procurement Act, (§ 2.2-4300 et seq.).

2. The administrator or management body created pursuant to this subsection shall be subject to all statutory and regulatory requirements that apply to behavioral health authorities, including procurement, employment, Virginia Freedom of Information Act, disclosure and confidentiality of consumer and administrative records, data collection and reporting, and all other aspects of their business and services.

3. The administrator or management body created pursuant to this subsection shall have the authority to receive funds from the participating community services boards or behavioral health authorities; public and private sources such as foundations, gifts and grants; and public and private reimbursement from private insurers and the Department of Medical Assistance Services; but the administrator or management body shall not be authorized to receive funds directly from the Department.

4. The administrator or management body created pursuant to this subsection shall defend or compromise, as appropriate, all claims, suits, actions, or proceedings arising from its performance under this joint agreement and shall obtain and maintain insurance sufficient for this purpose.