

070894392

**HOUSE BILL NO. 2137****AMENDMENT IN THE NATURE OF A SUBSTITUTE**

(Proposed by the House Committee on General Laws)

(Patron Prior to Substitute—Delegate Cline)

House Amendments in [ ] — January 23, 2007

*A BILL to amend and reenact §§ 2.2-1111, 2.2-2012, 2.2-2622, 2.2-5513 and 23-9.9:01 of the Code of Virginia, relating to the procurement of services by certain state agencies; commercial activities.*

**Be it enacted by the General Assembly of Virginia:**

**1. That §§ 2.2-1111, 2.2-2012, 2.2-2622, 2.2-5513 and 23-9.9:01 of the Code of Virginia are amended and reenacted as follows:**

§ 2.2-1111. Purchases to be made in accordance with the Virginia Public Procurement Act (§ 2.2-4300 et seq.) and regulations of Division; exempt purchases.

A. All purchases made by any department, division, officer or agency of the Commonwealth shall be made in accordance with the Virginia Public Procurement Act (§ 2.2-4300 et seq.) and such regulations as the Division may prescribe.

B. The regulations adopted by the Division shall:

1. Include a purchasing plan that shall be on file at the Division and shall be available to the public upon request;

2. Require that before any public body procures any computer system, equipment or software, it shall consider whether the proposed system, equipment or software is capable of producing products that facilitate the rights of the public to access official records under the Freedom of Information Act (§ 2.2-3700 et seq.) or other applicable law;

3. Require state public bodies to procure only shielded outdoor light fixtures and provide for waivers of this requirement when the Division determines that a bona fide operational, temporary, safety or specific aesthetic need is indicated or that such fixtures are not cost effective over the life cycle of the fixtures. For the purposes of this subdivision, "shielded outdoor light fixture" means an outdoor light fixture that is (i) fully shielded so that no light rays are emitted by the installed fixture above the horizontal plane or (ii) constructed so that no more than two percent of the total luminaire lumens in the zone of 90 to 180 degrees vertical angle is permitted, if the related output of the luminaire is greater than 3200 lumens. In adopting regulations under this subdivision, the Division shall consider national standards for outdoor lighting as adopted by the Illuminating Engineering Society of North America (IESNA).

For any project initiated on or after July 1, 2003, the Virginia Department of Transportation shall design all lighting systems in accordance with current IESNA standards and recommended practices. The lighting system shall utilize fixtures that minimize glare, light trespass, and skyglow, all as defined by the IESNA, while still providing a comfortable, visually effective, safe, and secure outdoor environment in a cost-effective manner over the life cycle of the lighting system.

4. Establish the conditions under which a public body may use, as a basis for the procurement of goods and nonprofessional services, a particular vendor's contract-pricing that has been negotiated and accepted by the U.S. General Services Administration; ~~and~~

5. Establish procurement preferences for products containing recycled oil (including reprocessed and rerefined oil products) and recycled antifreeze no later than December 31, 2002; *and*

6. *Require that on or before October 1, 2007, and every two years thereafter, the Director of the Department of General Services shall solicit from each state agency and public institution of higher education a list of procurements falling under the Department's authority that were competed with the private sector that appear on the Commonwealth Competition Council's commercial activities list and were, until that time, being performed by each state agency and public institution of higher education during the previous two years, and the outcome of that competition. The Director shall make the lists available to the public on the Department of General Services' website.*

C. The Division may make, alter, amend or repeal regulations relating to the purchase of materials, supplies, equipment, nonprofessional services, and printing, and may specifically exempt purchases below a stated amount or particular agencies or specified materials, equipment, nonprofessional services, supplies and printing.

§ 2.2-2012. Procurement of information technology and telecommunications goods and services; computer equipment to be based on performance-based specifications.

A. Information technology and telecommunications goods and services of every description shall be procured by (i) VITA for its own benefit or on behalf of other state agencies and institutions or (ii) such other agencies or institutions to the extent authorized by VITA. Such procurements shall be made in accordance with the Virginia Public Procurement Act (§ 2.2-4300 et seq.), regulations that implement the

ENGROSSED

HB2137EH1

60 electronic and information technology accessibility standards of the Rehabilitation Act of 1973 (29  
61 U.S.C. § 794d), as amended, and any regulations as may be prescribed by VITA. In no case shall such  
62 procurements exceed the requirements of the regulations that implement the electronic and information  
63 technology accessibility standards of the Rehabilitation Act of 1973, as amended.

64 The CIO shall disapprove any procurement that does not conform to the statewide information  
65 technology plan or to the individual plans of state agencies or public institutions of higher education.

66 B. All statewide contracts and agreements made and entered into by VITA for the purchase of  
67 communications services, telecommunications facilities, and information technology goods and services  
68 shall provide for the inclusion of counties, cities, and towns in such contracts and agreements.  
69 Notwithstanding the provisions of § 2.2-4301, VITA may enter into multiple vendor contracts for the  
70 referenced services, facilities, and goods and services.

71 B1. The Department may establish contracts for the purchase of personal computers and related  
72 devices by licensed teachers employed in a full-time teaching capacity in Virginia public schools or in  
73 state educational facilities for use outside the classroom. The computers and related devices shall not be  
74 purchased with public funds, but shall be paid for and owned by teachers individually provided that no  
75 more than one such computer and related device per year shall be so purchased.

76 C. If VITA, or any agency or institution authorized by VITA, elects to procure personal computers  
77 and related peripheral equipment pursuant to any type of blanket purchasing arrangement under which  
78 public bodies, as defined in § 2.2-4301, may purchase such goods from any vendor following  
79 competitive procurement but without the conduct of an individual procurement by or for the using  
80 agency or institution, it shall establish performance-based specifications for the selection of equipment.  
81 Establishment of such contracts shall emphasize performance criteria including price, quality, and  
82 delivery without regard to "brand name." All vendors meeting the Commonwealth's performance  
83 requirements shall be afforded the opportunity to compete for such contracts.

84 D. This section shall not be construed or applied so as to infringe upon, in any manner, the  
85 responsibilities for accounting systems assigned to the Comptroller under § 2.2-803.

86 E. *The CIO of VITA shall, on or before October 1, 2009, and every two years thereafter, solicit from*  
87 *each state agency and public institution of higher education a list of procurements that were competed*  
88 *with the private sector that appear on the Commonwealth Competition Council's commercial activities*  
89 *list and were, until that time, being performed by each state agency and public institution of higher*  
90 *education during the previous two years, and the outcome of that competition. The CIO shall make the*  
91 *lists available to the public on VITA's website.*

92 § 2.2-2622. Duties of Council; acceptance of gifts and grants; annual report.

93 A. The Council shall:

94 1. Examine and promote methods of providing a portion or all of select government-provided or  
95 government-produced programs and services through the private sector by a competitive contracting  
96 program, and advise the Governor, the General Assembly, and executive branch agencies of the  
97 Council's findings and recommendations.

98 2. Develop an institutional framework for a statewide competitive program to encourage innovation  
99 and competition within state government.

100 3. Establish a system to encourage the use of feasibility studies and innovation to determine where  
101 competition could reduce government costs without harming the public.

102 4. Monitor the products and services of state agencies to bring an element of competition and to  
103 ensure a spirit of innovation and entrepreneurship to compete with the private sector.

104 5. Advocate, develop and accelerate implementation of a competitive program for state entities to  
105 ensure competition for the provision or production of government services, or both, from both public  
106 and private sector entities.

107 6. Establish approval, planning, and reporting processes required to carry out the functions of the  
108 Council.

109 7. Determine the privatization potential of a program or activity; perform cost/benefit analyses; and  
110 conduct public and private performance analyses. The Secretary of Finance shall independently certify  
111 the results of the comparison.

112 8. Devise, in consultation with the Secretary of Finance, evaluation criteria to be used in conducting  
113 performance reviews of any program or activity that is subject to a privatization recommendation.

114 9. To the extent practicable and to the extent that resources are available, make its services available  
115 for a fair compensation to any political subdivision of the Commonwealth.

116 10. Review the practices of government agencies and nonprofit organizations that may constitute  
117 inappropriate competition with private enterprise. The Council shall develop proposals for (i) preserving  
118 the traditional role of private enterprise; (ii) encouraging the expansion of existing, and the creation of  
119 new, private enterprise; and (iii) monitoring inappropriate competition by nonprofit organizations.

120 B. *The commercial activities list developed by the Council in accordance with this section shall be*  
121 *updated every two years.*

C. The Council may apply for, accept, and expend gifts, grants, or donations from public or private sources to enable it to better carry out its objectives. No entity that provides a gift, donation or grant shall be eligible for a contract award that results from action of a Council recommendation.

~~C. D.~~ The Council shall not impose unreasonable burdens or costs in connection with requests of agencies.

~~D. E.~~ The Council shall annually by December 1 report its findings and recommendations to the Governor, the General Assembly and the Small Business Commission created pursuant to § 30-182. The Council may make interim reports to the Governor, the General Assembly and the Small Business Commission as it deems advisable.

§ 2.2-5513. Responsibilities of Governor to ensure efficiency in government.

A. The Governor shall cause to be conducted an examination of the commercial activities that are being performed by state employees at state agencies and institutions to ensure such activities are being accomplished in the most cost-efficient and effective manner.

B. The examination required by subsection A shall be completed at least once in every two-year period and may be conducted entirely by a commercial source through a solicitation process as provided in the Virginia Public Procurement Act (§ 2.2-4300 et seq.) or the Public-Private Education Facilities and Infrastructure Act of 2002 (§ 56-575.1 et seq.).

C. The examination required by subsection A shall consider at least three commercial activities as the Governor or the commercial source may identify.

D. Upon determination that outsourcing a commercial activity may result in reduced costs or otherwise provide a measurable benefit to the Commonwealth and to assure such activities are being accomplished in the most cost efficient and effective manner, the Governor shall cause that commercial activity to be competed in accordance with the Virginia Public Procurement Act or by using the processes described in the Public-Private Education Facilities and Infrastructure Act of 2002 (§ 56-575.1 et seq.). *[ However, upon a written determination made in advance by a state agency that the procurement of services from a commercial source is neither practicable nor fiscally advantageous, such service may continue to be performed by the state agency. ]*

§ 23-9.9:01. Reports of expenditures of state funds.

A. The governing body of each public institution of higher education shall provide the State Council of Higher Education annual data indicating the apportionment and amounts of expenditures that the relevant institution expends by category, including academic costs, administration, research, and public service, as defined by the Council. The Council shall compile and submit a report of such data annually to the Governor and the General Assembly.

*B. The Director of the State Council of Higher Education shall, on or before October 1, 2009, and every two years thereafter, solicit from each public institution of higher education that has received restructured financial and operational authority a list of procurements that were competed with the private sector that appear on the Commonwealth Competition Council's commercial activities list and were, until that time, being performed by each public institution of higher education during the previous two years, and the outcome of that competition. The Director shall make the lists available to the public on the State Council of Higher Education's website.*

ENGROSSED

HB2137EH1