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**HOUSE BILL NO. 1331**

Offered January 22, 2010

A *BILL to amend and reenact §§ 2.2-203.2:1, 2.2-1111, 2.2-2012, 2.2-2101, and 23-9.9:01 of the Code of Virginia, to amend the Code of Virginia by adding in Chapter 26 of Title 2.2 an article numbered 35, consisting of sections numbered 2.2-2699.5 through 2.2-2699.13, and to repeal Article 8 (§§ 2.2-2620 through 2.2-2625) of Chapter 26 of Title 2.2 of the Code of Virginia, relating to the creation of the Council on Efficient Government.*

Patron—Cosgrove

Referred to Committee on Rules

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

**1. That §§ 2.2-203.2:1, 2.2-1111, 2.2-2012, 2.2-2101, and 23-9.9:01 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Chapter 26 of Title 2.2, an article numbered 35, consisting of sections numbered 2.2-2699.5 through 2.2-2699.13, as follows:**

§ 2.2-203.2:1. Secretary to report state job elimination due to privatization.

On or before November 30 of each year, the Secretary shall report to the Governor and the General Assembly on the number of state jobs eliminated in the immediately preceding fiscal year due to the privatization of commercial activities to a commercial source.

As used in this section: "~~commercial~~"

"Commercial activities" means performing services or providing goods that can normally be obtained from private enterprise; and "~~commercial source~~" shall mean the same as those terms are defined in § 2.2-2620

"Commercial source" means any business or other concern that is eligible for a contract award in accordance with the Virginia Public Procurement Act ( 2.2-4300 et seq.).

§ 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;

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

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59 6. Establish conditions under which a public body shall demonstrate a good faith effort to ensure that  
60 state contracts or subcontracts for goods or services that involve the manual packaging of bulk supplies  
61 or the manual assemblage of goods where individual items weigh less than 50 pounds be offered to  
62 nonprofit sheltered workshops or other nonprofit organizations that offer transitional or supported  
63 employment services serving the handicapped; and

64 7. Require that on or before October 1, 2009, and every two years thereafter, the Director of the  
65 Department of General Services shall solicit from each state agency and public institution of higher  
66 education a list of procurements falling under the Department's authority that were competed with the  
67 private sector that ~~appear on the Commonwealth Competition Council's commercial activities list and~~  
68 were, until that time, being performed by each state agency and public institution of higher education  
69 during the previous two years, and the outcome of that competition. The Director shall make the lists  
70 available to the public on the Department of General Services' website.

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

75 § 2.2-2012. Procurement of information technology and telecommunications goods and services;  
76 computer equipment to be based on performance-based specifications.

77 A. Information technology and telecommunications goods and services of every description shall be  
78 procured by (i) VITA for its own benefit or on behalf of other state agencies and institutions or (ii) such  
79 other agencies or institutions to the extent authorized by VITA. Such procurements shall be made in  
80 accordance with the Virginia Public Procurement Act (§ 2.2-4300 et seq.), regulations that implement the  
81 electronic and information technology accessibility standards of the Rehabilitation Act of 1973 (29  
82 U.S.C. § 794d), as amended, and any regulations as may be prescribed by VITA. In no case shall such  
83 procurements exceed the requirements of the regulations that implement the electronic and information  
84 technology accessibility standards of the Rehabilitation Act of 1973, as amended.

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

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

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

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

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

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

113 § 2.2-2101. (Effective until July 1, 2013) Prohibition against service by legislators on boards,  
114 commissions, and councils within the executive branch; exceptions.

115 Members of the General Assembly shall be ineligible to serve on boards, commissions, and councils  
116 within the executive branch of state government who are responsible for administering programs  
117 established by the General Assembly. Such prohibition shall not extend to boards, commissions, and  
118 councils engaged solely in policy studies or commemorative activities. If any law directs the  
119 appointment of any member of the General Assembly to a board, commission, or council in the  
120 executive branch of state government that is responsible for administering programs established by the

General Assembly, such portion of such law shall be void, and the Governor shall appoint another person from the Commonwealth at large to fill such a position.

The provisions of this section shall not apply to members of the Board for Branch Pilots, who shall be appointed as provided for in § 54.1-901; to members of the Board of Trustees of the Southwest Virginia Higher Education Center, who shall be appointed as provided for in § 23-231.3; to members of the Board of Trustees of the Southern Virginia Higher Education Center, who shall be appointed as provided for in § 23-231.25; to members of the Board of Directors of the New College Institute who shall be appointed as provided for in § 23-231.31; to members of the Virginia Interagency Coordinating Council who shall be appointed as provided for in § 2.2-5204; to members of the Board of Veterans Services, who shall be appointed as provided for in § 2.2-2452; to members appointed to the Board of Trustees of the Roanoke Higher Education Authority pursuant to § 23-231.15; to members of the Commonwealth Competition Commission, who shall be appointed as provided for in § 2.2-2621; to members of the Virginia Geographic Information Network Advisory Board, who shall be appointed as provided for in § 2.2-2423; to members of the Board of Visitors of the Virginia School for the Deaf and the Blind, who shall be appointed as provided for in § 22.1-346.2; to members of the Substance Abuse Services Council, who shall be appointed as provided for in § 2.2-2696; to members of the Criminal Justice Services Board, who shall be appointed as provided in § 9.1-108; to members of the Council on Virginia's Future, who shall be appointed as provided for in § 2.2-2685; to members of the State Executive Council for Comprehensive Services for At-Risk Youth and Families, who shall be appointed as provided in § 2.2-2648; to members of the Virginia Workforce Council, who shall be appointed as provided for in § 2.2-2669; to members of the Volunteer Firefighters' and Rescue Squad Workers' Service Award Fund Board, who shall be appointed as provided for in § 51.1-1201; to members of the Secure Commonwealth Panel, who shall be appointed as provided for in § 2.2-306; to members of the Forensic Science Board, who shall be appointed as provided for in § 9.1-1109; or to members of the Southwest Virginia Cultural Heritage Commission, who shall be appointed as provided in § 2.2-2533.

§ 2.2-2101. (Effective July 1, 2013) Prohibition against service by legislators on boards, commissions, and councils within the executive branch; exceptions.

Members of the General Assembly shall be ineligible to serve on boards, commissions, and councils within the executive branch of state government who are responsible for administering programs established by the General Assembly. Such prohibition shall not extend to boards, commissions, and councils engaged solely in policy studies or commemorative activities. If any law directs the appointment of any member of the General Assembly to a board, commission, or council in the executive branch of state government that is responsible for administering programs established by the General Assembly, such portion of such law shall be void, and the Governor shall appoint another person from the Commonwealth at large to fill such a position.

The provisions of this section shall not apply to members of the Board for Branch Pilots, who shall be appointed as provided for in § 54.1-901; to members of the Board of Trustees of the Southwest Virginia Higher Education Center, who shall be appointed as provided for in § 23-231.3; to members of the Board of Trustees of the Southern Virginia Higher Education Center, who shall be appointed as provided for in § 23-231.25; to members of the Board of Directors of the New College Institute who shall be appointed as provided for in § 23-231.31; to members of the Virginia Interagency Coordinating Council who shall be appointed as provided for in § 2.2-5204; to members of the Board of Veterans Services, who shall be appointed as provided for in § 2.2-2452; to members appointed to the Board of Trustees of the Roanoke Higher Education Authority pursuant to § 23-231.15; to members of the Commonwealth Competition Commission, who shall be appointed as provided for in § 2.2-2621; to members of the Virginia Geographic Information Network Advisory Board, who shall be appointed as provided for in § 2.2-2423; to members of the Board of Visitors of the Virginia School for the Deaf and the Blind, who shall be appointed as provided for in § 22.1-346.2; to members of the Substance Abuse Services Council, who shall be appointed as provided for in § 2.2-2696; to members of the Criminal Justice Services Board, who shall be appointed as provided in § 9.1-108; to members of the State Executive Council for Comprehensive Services for At-Risk Youth and Families, who shall be appointed as provided in § 2.2-2648; to members of the Virginia Workforce Council, who shall be appointed as provided for in § 2.2-2669; to members of the Volunteer Firefighters' and Rescue Squad Workers' Service Award Fund Board, who shall be appointed as provided for in § 51.1-1201; to members of the Secure Commonwealth Panel, who shall be appointed as provided for in § 2.2-306; to members of the Forensic Science Board, who shall be appointed as provided for in § 9.1-1109; or to members of the Southwest Virginia Cultural Heritage Commission, who shall be appointed as provided in § 2.2-2533.

#### Article 35.

#### Council on Efficient Government.

§ 2.2-2699.5. Council on Efficient Government; members; terms; vacancies.

A. The Council on Efficient Government (the Council) is established as an advisory council, within

182 the meaning of § 2.2-2100, in the executive branch of state government. The Council shall consist of  
183 seven members as follows:

184 1. The chief executive or administrative officer of a state agency, appointed by the Governor, who  
185 shall serve ex officio with voting privileges;

186 2. Two nonlegislative members who are engaged in private enterprise, appointed by the Governor;

187 3. Two nonlegislative members who are engaged in private enterprise, appointed by the Senate  
188 Committee on Rules; and

189 4. Two nonlegislative members who are engaged in private enterprise, appointed by the Speaker of  
190 the House of Delegates.

191 B. The terms of appointment to the Council are for two years. The ex officio member shall serve a  
192 term coincident with his term of office or until his successors shall qualify. Appointments to fill  
193 vacancies, other than by expiration of a term, shall be for the unexpired terms. All members may be  
194 reappointed. However, no citizen member shall serve more than two consecutive two-year terms. The  
195 remainder of any term to which a member is appointed to fill a vacancy shall not constitute a term in  
196 determining the member's eligibility for reappointment. Vacancies shall be filled in the same manner as  
197 the original appointments.

198 C. The Council shall elect a chairman and vice-chairman from among its membership. A majority of  
199 the members shall constitute a quorum. The Council shall meet at least four times each year. The  
200 meetings of the Council shall be held at the call of the chairman or whenever the majority of the  
201 members so request.

202 D. Members shall not receive compensation, but shall be reimbursed for reasonable and necessary  
203 expenses incurred in the performance of their duties as provided in §§ 2.2-2813 and 2.2-2825. Funding  
204 for the costs of such expenses of the members shall be provided by the Office of the Secretary of  
205 Administration.

206 E. A member of the Council may not participate in a Council review of a business case to outsource  
207 if the state agency is conducting the outsourcing or, in the case of a member engaged in private  
208 enterprise, if the member has a business relationship with an entity that is involved or potentially could  
209 be involved in the proposed outsourcing.

210 § 2.2-2699.6. Powers and duties of the Council; annual report.

211 A. The Council shall:

212 1. Review whether or not a good or service provided by a state agency could be privatized to  
213 provide the same type and quality of good or service that would result in cost savings or best value.  
214 The Council may hold public hearings as part of its evaluation process and shall report its  
215 recommendations to the Governor, the President of the Senate, and the Speaker of the House of  
216 Delegates;

217 2. Review privatization of a good or service at the request of a state agency or a private enterprise;

218 3. Review issues concerning agency competition with one or more private enterprises to determine  
219 ways to eliminate any unfair competition with a private enterprise;

220 4. Recommend privatization to a state agency if a proposed privatization is demonstrated to provide  
221 a more cost efficient or more effective manner of providing a good or service;

222 5. Employ a standard process for reviewing business cases to outsource;

223 6. Review and evaluate business cases to outsource as requested by the Governor or the state agency  
224 head whose agency is proposing to outsource;

225 7. No later than 30 days before a state agency's issuance of a solicitation of \$10 million or more,  
226 provide to the state agency conducting the procurement, the Governor, the President of the Senate and  
227 the Speaker of the House of Delegates, an advisory report for each business case reviewed and  
228 evaluated by the Council. The report shall contain all versions of the business case, an evaluation of the  
229 business case, any relevant recommendations and sufficient information to assist the state agency  
230 proposing to outsource in determining whether the business case to outsource should be included with  
231 the legislative budget request;

232 8. Recommend and implement standard processes for state agency and Council review and evaluate  
233 state agency business cases to outsource, including templates for use by state agencies in submitting  
234 business cases to the Council;

235 9. Recommend standards, processes and guidelines for use by state agencies in developing business  
236 cases to outsource;

237 10. Incorporate any lessons learned from outsourcing services and activities into Council standards,  
238 procedures and guidelines, as appropriate, and identify and disseminate to agencies information  
239 regarding best practices in outsourcing efforts;

240 11. Develop guidelines for assisting state employees whose jobs are eliminated as a result of  
241 outsourcing;

242 12. Receive complaints of violations of this article;

243 13. Transmit complaints received under this article to the state agency alleged to be in violation;

14. Hold public hearings on complaints and determine whether the agency is in violation of this article;

15. Issue a written report of its findings to the complainant within 90 days after receiving the state agency's response;

16. Transmit to the Governor, the President of the Senate and the Speaker of the House of Delegates a complete report of each meeting, including recommendations to correct violations of prohibitions on competition with private enterprise and findings on necessary exceptions to the prohibitions; and

17. Solicit petitions of interest from private sector service providers as the Council considers appropriate. The Council may evaluate and review the petitions and may hold public hearings as part of the evaluation process. The Council may recommend some or all of the petitions to the Governor's office for further review pursuant to state statute. A person shall not have a cause of action based on the failure of the Council to consider a petition of interest or make a recommendation.

B. The Council may evaluate and review all state agency exemptions and exemptions to the restrictions on competition with private enterprise in this article and may determine that any function or functions of a state agency are in violation of this article. The Council shall report its findings and recommendations to the Governor, the President of the Senate and the Speaker of the House of Delegates.

C. The Council shall prepare an annual report on:

1. Recommendations on innovative methods of delivering government services that would improve the efficiency, effectiveness or competition in the delivery of government services, including enterprise-wide proposals.

2. Outsourcing efforts of each state agency, including the number of outsourcing business cases and solicitations, the number and dollar value of outsourcing contracts, descriptions of performance results as applicable, any contract violations or project slippages and the status of extensions, renewals and amendments of outsourcing contracts.

3. Information about the Council's activities.

4. The status of the inventory created under § 2.2-2699.8.

D. The Council shall submit the annual report prescribed by subsection C to the Governor, the President of the Senate and the Speaker of the House of Delegates no later than January 15 immediately following the calendar year for which the report is made.

E. Each state agency shall submit to the Council all information, documents and other materials requested by the Council pursuant to this article.

F. At the request of the Council and on approval of the Governor, the Secretary of Finance or his designee shall provide a performance audit and other required information relating to state agency budgets and functions. The Director of the Department of Planning and Budget may assist in the development and review of the agency inventory of commercial activities prescribed in § 2.2-2699.8.

G. The Council may appoint advisory groups to conduct studies, research or analyses and make reports and recommendations with respect to a matter within the jurisdiction of the Council. At least one member of the Council shall serve on each advisory group.

H. Subject to subsection B of § 2.2-2699.8, nothing in this article shall preclude a state agency from privatizing the provision of a good or service independent of the Council.

§ 2.2-2699.7. Applicability.

This article shall not apply to contracts in support of the planning, development, implementation, operation or maintenance of the road, bridge and public transportation construction program of the Virginia Department of Transportation.

§ 2.2-2699.8. Commercial activities inventory and review.

A. On or before July 1, 2011, the Council shall create an inventory of activities of state agencies to classify whether each activity or elements of the activity are:

1. A commercial activity that can be obtained in whole or in part from a private enterprise.

2. An inherently governmental activity.

B. The Council shall update the inventory created under this section at least every two years.

C. The Council shall make the inventory available to the public through electronic means.

D. State agencies shall cooperate with inventory requests made by the Council.

§ 2.2-2699.9. Business cases to outsource; review and analysis; requirements.

A. A proposal to outsource having a projected cost of more than \$10 million in any fiscal year shall require:

1. An initial business case analysis conducted by the state agency and submitted to the Council, the Governor, the President of the Senate and the Speaker of the House of Delegates at least 60 days before a solicitation is issued. The Council shall evaluate the business case analysis and submit an advisory report to the state agency, the Governor, the President of the Senate and the Speaker of the House of Delegates when the advisory report is completed, but at least 30 days before the agency issues the

305 solicitation.

306 2. A final business case analysis conducted by the state agency and submitted after the conclusion of  
307 any negotiations, at least 30 days before execution of a contract, to the Council, the Governor, the  
308 President of the Senate and the Speaker of the House of Delegates.

309 B. A proposal to outsource having a projected cost of at least \$1 million but no more than \$10  
310 million in any fiscal year shall require:

311 1. An initial business case analysis conducted by the state agency and submission of the business  
312 case, at least 30 days before issuing a solicitation, to the Council, the Governor, the President of the  
313 Senate and the Speaker of the House of Delegates.

314 2. A final business case analysis conducted by the state agency and submitted after the conclusion of  
315 any negotiations, at least 30 days before execution of a contract, to the Council, the Governor, the  
316 President of the Senate and the Speaker of the House of Delegates.

317 C. A business case to outsource having a projected cost of less than \$1 million in any fiscal year  
318 shall require a final business case analysis conducted by the state agency after the conclusion of any  
319 negotiations and provided to the Council at least 30 days before execution of a contract. The Council  
320 shall provide the business cases in its annual report to the President of the Senate and the Speaker of  
321 the House of Delegates.

322 D. For any proposed outsourcing, the state agency shall develop a business case that justifies the  
323 proposal to outsource. The business case shall not be subject to challenge or protest. The business case  
324 shall include:

325 1. A detailed description of the service or activity for which the outsourcing is proposed;

326 2. A description and analysis of the state agency's current performance based on existing  
327 performance measures if the state agency is currently performing the service or activity;

328 3. The goals desired to be achieved through the proposed outsourcing and the rationale for the  
329 goals;

330 4. A citation to the existing or proposed legal authority for outsourcing the service or activity;

331 5. A description of available options for achieving the goals. If state employees are currently  
332 performing the service or activity, at least one option involving maintaining state provision of the  
333 service or activity shall be included;

334 6. An analysis of the advantages and disadvantages of each option, including, at a minimum,  
335 potential performance improvements and risks;

336 7. A description of the current market for the contractual services that are under consideration for  
337 outsourcing.

338 8. A cost benefit analysis documenting the direct and indirect specific baseline costs, savings and  
339 qualitative and quantitative benefits involved in or resulting from the implementation of the  
340 recommended option or options. The analysis shall specify the schedule that, at a minimum, shall be  
341 adhered to in order to achieve the estimated savings. All elements of cost shall be clearly identified in  
342 the cost benefit analysis, described in the business case and supported by applicable records and  
343 reports. The state agency head shall attest that based on the data and information underlying the  
344 business case, and to the best of the state agency head's knowledge, all projected costs, savings and  
345 benefits are valid and achievable.

346 For the purposes of this section:

347 "Cost" means the reasonable, relevant and verifiable cost, which may include elements such as  
348 personnel, materials and supplies, services, equipment, capital depreciation, rent, maintenance and  
349 repairs, utilities, insurance, personnel travel, overhead and interim and final payments. The appropriate  
350 elements shall depend on the nature of the specific initiative.

351 "Savings" means the difference between the direct and indirect actual annual baseline costs  
352 compared to the projected annual cost for the contracted functions or responsibilities in any succeeding  
353 state fiscal year during the term of the contract;

354 9. A description of differences among current state agency policies and processes and, as  
355 appropriate, a discussion of options for or a plan to standardize, consolidate or revise current policies  
356 and processes, if any, to reduce the customization of any proposed solution that would otherwise be  
357 required;

358 10. A description of the specific performance standards that shall, at a minimum, be met to ensure  
359 adequate performance;

360 11. The projected time frame for key events from the beginning of the procurement process through  
361 the expiration of a contract;

362 12. A plan to ensure compliance with the Freedom of Information Act (§ 2.2-3700 et seq.);

363 13. A specific and feasible contingency plan addressing contractor nonperformance and a description  
364 of the tasks involved in and costs required for its implementation;

365 14. A state agency's transition plan for addressing changes in the number of agency personnel,  
366 affected business processes, employee transition issues and communication with affected stakeholders,

such as agency clients and the public. The transition plan shall contain a reemployment and retraining assistance plan for employees who are not retained by the state agency or employed by the contractor;

15. A plan for ensuring access by persons with disabilities in compliance with applicable state and federal law; and

16. A description of legislative and budgetary actions necessary to accomplish the proposed outsourcing.

E. Each contract for a proposed outsourcing pursuant to this section shall include the following:

1. A scope-of-work provision that clearly specifies each service or deliverable to be provided, including a description of each deliverable or activity that is quantifiable, measurable and verifiable. This provision shall include a clause stating that if a particular service or deliverable is inadvertently omitted or not clearly specified but determined to be operationally necessary and verified to have been performed by the agency within the 12 months before the execution of the contract, the service or deliverable will be provided by the contractor through the identified contract amendment process.

2. A service level agreement provision describing all services to be provided under the terms of the agreement, the state agency's service requirements and performance objectives, specific responsibilities of the stage agency and the contractor and the process for amending any portion of the service level agreement. Each service level agreement shall contain an exclusivity clause that allows the state agency to retain the right to perform the service or activity, directly or with another contractor, if service levels are not being achieved.

3. A provision that identifies all associated costs, specific payment terms and payment schedules, including provisions governing incentives and financial disincentives and criteria governing payment.

4. A provision that identifies a clear and specific transition plan that will be implemented in order to complete all required activities needed to transfer the service or activity from the state agency to the contractor and operate the service or activity successfully.

5. A performance standards provision that identifies all required performance standards, which shall include at a minimum:

a. Detailed and measurable acceptance criteria for each deliverable and service to be provided to the state agency under the terms of the contract that document the required performance level;

b. A method for monitoring and reporting progress in achieving specified performance standards and levels; and

c. The sanctions or disincentives that will be imposed for nonperformance by the contractor or state agency.

6. A provision that requires the contractor and its subcontractors to maintain adequate accounting records that comply with all applicable federal and state laws and generally accepted accounting principles.

7. A provision that authorizes the state agency to have access to and audit all records related to the contract and subcontracts, or any responsibilities or functions under the contract and subcontracts, for purposes of legislative oversight and a requirement for audits by a service organization pursuant to professional auditing standards, if appropriate.

8. A provision that requires the contractor to interview and consider for employment with the contractor each displaced state employee who is interested in such employment.

9. A contingency plan provision that describes the mechanism for continuing the operation of the service or activity, including transferring the service or activity back to the state agency or successor contractor, if the contractor fails to perform and comply with the performance standards and levels of the contract and the contract is terminated.

10. A provision that requires the contractor and its subcontractors to comply with the Freedom of Information Act (§ 2.2-3700 et seq.), specifically to:

a. Keep and maintain the public records that ordinarily and necessarily would be required by the state agency in order to perform the service or activity;

b. Provide the public with access to the public records on the same terms and conditions that the state agency would provide the records;

c. Ensure that records that are exempt or records that are confidential and exempt are not disclosed except as authorized or required by law; and

d. Meet all requirements for retaining records and transfer to the state agency, at no cost, all public records in possession of the contractor on termination of the contract and destroy any duplicate public records that are exempt or confidential. All records stored electronically shall be provided to the state agency in a format that is compatible with the information technology systems of the state agency.

11. A provision that addresses ownership of intellectual property. This subdivision shall not provide the specific authority needed by a state agency to obtain a copyright or trademark.

12. If applicable, a provision that allows the state agency to purchase from the contractor, at its depreciated value, assets used by the contractor in the performance of the contract. If assets have not

428 *depreciated, the state agency shall retain the right to negotiate to purchase at an agreed cost.*

429 *§ 2.2-2699.10. Council accounting method.*

430 *The Council, by rule, shall establish an accounting method that:*

431 *1. Is similar to generally accepted accounting principles used by a private enterprise.*

432 *2. Allows an agency to identify the total actual cost of engaging in a commercial activity in a*  
433 *manner similar to how a private enterprise identifies the total actual cost to the private enterprise,*  
434 *including the following:*

435 *a. Labor expenses, such as compensation and benefits, costs of training, costs of paying overtime,*  
436 *costs of supervising labor or other personnel expenses;*

437 *b. Operating costs, such as vehicle maintenance and repair, marketing, advertising or other sales*  
438 *expenses, office expenses, costs of an accounting operation such as billing, insurance expenses, real*  
439 *estate or equipment costs, debt service costs or a proportionate amount of other overhead or capital*  
440 *expenses, such as vehicle depreciation and depreciation of other fixed assets;*

441 *c. Contract management costs; and*

442 *d. Other costs particular to a person supplying the goods or service.*

443 *3. Provides a process to estimate the taxes a state agency would pay related to engaging in a*  
444 *commercial activity if the state agency were required to pay federal, state and local taxes to the same*  
445 *extent as a private enterprise engaging in the commercial activity.*

446 *§ 2.2-2699.11. Governor; required review of commercial activities.*

447 *Beginning July 1, 2011, the Governor, at least once every two fiscal years, shall select at least three*  
448 *commercial activities that are being performed by a state agency to be examined by the Department of*  
449 *Planning and Budget.*

450 *§ 2.2-2699.12. Duties of the Department of Planning and Budget.*

451 *A. The Department of Planning and Budget shall:*

452 *1. Determine the amount of an appropriation that is no longer needed by an executive branch*  
453 *agency because all or a portion of the agency's provision of a good or service is privatized.*

454 *2. Adjust the Governor's budget recommendations to reflect the amount that is determined under*  
455 *subdivision 1.*

456 *3. Report its findings to the President of the Senate and the Speaker of the House of Delegates.*

457 *B. This section shall not prevent the Governor from making a budget recommendation regarding the*  
458 *restoration of a portion of the appropriation to a state agency that is reduced under this section.*

459 *§ 2.2-2699.13. Sunset.*

460 *The provisions of this article shall expire on July 1, 2015.*

461 *§ 23-9.9:01. Reports of expenditures of state funds.*

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

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

474 **2. That Article 8 (§§ 2.2-2620 through 2.2-2625) of Chapter 26 of Title 2.2 of the Code of Virginia**  
475 **is repealed.**