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SENATE BILL NO. 1090

Offered January 12, 2011

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A *BILL to amend and reenact §§ 2.2-1111 and 2.2-4345 of the Code of Virginia, relating to the purchase of Virginia-grown food products by state agencies and institutions and local school divisions.*

Patrons—Hanger and Vogel

Referred to Committee on General Laws and Technology

Be it enacted by the General Assembly of Virginia:

1. That §§ 2.2-1111 and 2.2-4345 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~~ 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;~~

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

7. Require that on or before October 1, 2009, 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; and

8. Establish the conditions under which state public bodies may procure diesel fuel containing, at a minimum, two percent, by volume, biodiesel fuel or green diesel fuel, as defined in § 45.1-394, for use

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59 in on-road internal combustion engines. The conditions shall take into consideration the availability of
60 such fuel and the variability in cost of biodiesel fuel with respect to unblended diesel fuel; *and*

61 9. *Establish procurement procedures to facilitate the purchase of Virginia-grown food products by*
62 *state agencies and institutions and local public school divisions to the maximum extent possible.*

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

67 § 2.2-4345. Exemptions from competitive sealed bidding and competitive negotiation for certain
68 transactions; limitations.

69 A. The following public bodies may enter into contracts without competitive sealed bidding or
70 competitive negotiation:

71 1. The Director of the Department of Medical Assistance Services for special services provided for
72 eligible recipients pursuant to subsection H of § 32.1-325, provided that the Director has made a
73 determination in advance after reasonable notice to the public and set forth in writing that competitive
74 sealed bidding or competitive negotiation for such services is not fiscally advantageous to the public, or
75 would constitute an imminent threat to the health or welfare of such recipients. The writing shall
76 document the basis for this determination.

77 2. The State Health Commissioner for the compilation, storage, analysis, evaluation, and publication
78 of certain data submitted by health care providers and for the development of a methodology to measure
79 the efficiency and productivity of health care providers pursuant to Chapter 7.2 (§ 32.1-276.2 et seq.) of
80 Title 32.1, if the Commissioner has made a determination in advance, after reasonable notice to the
81 public and set forth in writing, that competitive sealed bidding or competitive negotiation for such
82 services is not fiscally advantageous to the public. The writing shall document the basis for this
83 determination. Such agreements and contracts shall be based on competitive principles.

84 3. The Virginia Code Commission when procuring the services of a publisher, pursuant to §§ 30-146
85 and 30-148, to publish the Code of Virginia or the Virginia Administrative Code.

86 4. The Department of Alcoholic Beverage Control for the purchase of alcoholic beverages.

87 5. The Department for the Aging, for the administration of elder rights programs, with (i) nonprofit
88 Virginia corporations granted tax-exempt status under § 501(c)(3) of the Internal Revenue Code with
89 statewide experience in Virginia in conducting a state long-term care ombudsman program or (ii)
90 designated area agencies on aging.

91 6. The Department of Health for (a) child restraint devices, pursuant to § 46.2-1097; (b) health care
92 services with Virginia corporations granted tax-exempt status under § 501(c)(3) of the Internal Revenue
93 Code and operating as clinics for the indigent and uninsured that are organized for the delivery of
94 primary health care services in a community (i) as federally qualified health centers designated by the
95 Health Care Financing Administration or (ii) at a reduced or sliding fee scale or without charge; or (c)
96 contracts with laboratories providing cytology and related services if competitive sealed bidding and
97 competitive negotiations are not fiscally advantageous to the public to provide quality control as
98 prescribed in writing by the Commissioner of Health.

99 7. Virginia Correctional Enterprises, when procuring materials, supplies, or services for use in and
100 support of its production facilities, provided the procurement is accomplished using procedures that
101 ensure as efficient use of funds as practicable and, at a minimum, includes obtaining telephone
102 quotations. Such procedures shall require documentation of the basis for awarding contracts under this
103 section.

104 8. The Virginia Baseball Stadium Authority for the operation of any facilities developed under the
105 provisions of Chapter 58 (§ 15.2-5800 et seq.) of Title 15.2, including contracts or agreements with
106 respect to the sale of food, beverages and souvenirs at such facilities.

107 9. With the consent of the Governor, the Jamestown-Yorktown Foundation for the promotion of
108 tourism through marketing with private entities provided a demonstrable cost savings, as reviewed by
109 the Secretary of Education, can be realized by the Foundation and such agreements or contracts are
110 based on competitive principles.

111 10. The Chesapeake Hospital Authority in the exercise of any power conferred under Chapter 271, as
112 amended, of the Acts of Assembly of 1966; provided that it does not discriminate against any person on
113 the basis of race, color, religion, national origin, sex, pregnancy, childbirth or related medical conditions,
114 age, marital status, or disability in the procurement of goods and services.

115 11. Richmond Eye and Ear Hospital Authority, any authorities created under Chapter 53 (§ 15.2-5300
116 et seq.) of Title 15.2 and any hospital or health center commission created under Chapter 52
117 (§ 15.2-5200 et seq.) of Title 15.2 in the exercise of any power conferred under their respective
118 authorizing legislation; provided that these entities shall not discriminate against any person on the basis
119 of race, color, religion, national origin, sex, pregnancy, childbirth or related medical conditions, age,
120 marital status, or disability in the procurement of goods and services.

121 12. The Patrick Hospital Authority sealed in the exercise of any power conferred under the Acts of
122 Assembly of 2000; provided that it does not discriminate against any person on the basis of race, color,
123 religion, national origin, sex, pregnancy, childbirth or related medical conditions, age, marital status, or
124 disability in the procurement of goods and services.

125 13. Public bodies for insurance or electric utility services if purchased through an association of
126 which it is a member if the association was formed and is maintained for the purpose of promoting the
127 interest and welfare of and developing close relationships with similar public bodies, provided such
128 association has procured the insurance or electric utility services by use of competitive principles and
129 provided that the public body has made a determination in advance after reasonable notice to the public
130 and set forth in writing that competitive sealed bidding and competitive negotiation are not fiscally
131 advantageous to the public. The writing shall document the basis for this determination.

132 14. Public bodies administering public assistance and social services programs as defined in
133 § 63.2-100, community services boards as defined in § 37.2-100, or any public body purchasing services
134 under the Comprehensive Services Act for At-Risk Youth and Families (§ 2.2-5200 et seq.) or the
135 Virginia Juvenile Community Crime Control Act (§ 16.1-309.2 et seq.) for goods or personal services
136 for direct use by the recipients of such programs if the procurement is made for an individual recipient.
137 Contracts for the bulk procurement of goods or services for the use of recipients shall not be exempted
138 from the requirements of § 2.2-4303.

139 15. The Eastern Virginia Medical School in the exercise of any power conferred pursuant to Chapter
140 471, as amended, of the Acts of Assembly of 1964.

141 16. *Local school divisions, when procuring Virginia-grown food products for student consumption,*
142 *provided (i) the quality of available Virginia-grown food products is substantially equivalent or better*
143 *than the quality of food products that are not locally grown, (ii) the vendor is able to supply*
144 *Virginia-grown food products in sufficient quantity, and (iii) the price for the Virginia-grown food*
145 *products is reasonable and able to be paid from the school division's existing budget without*
146 *supplemental appropriation.*

147 B. No contract for the construction of any building or for an addition to or improvement of an
148 existing building by any local government or subdivision of local government for which state funds of
149 not more than \$30,000 in the aggregate or for the sum of all phases of a contract or project either by
150 appropriation, grant-in-aid or loan, are used or are to be used for all or part of the cost of construction
151 shall be let except after competitive sealed bidding or after competitive negotiation as provided under of
152 subsection D of § 2.2-4303. The procedure for the advertising for bids or for proposals and for letting of
153 the contract shall conform, mutatis mutandis, to this chapter.
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