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**HOUSE BILL NO. 1196**

Offered January 10, 2018

Prefiled January 10, 2018

*A BILL to amend and reenact §§ 2.2-1111 and 2.2-1501.1 of the Code of Virginia, relating to the procurement of nonprofessional services by certain state agencies; commercial activities.*

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Referred to Committee on General Laws

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

**1. That §§ 2.2-1111 and 2.2-1501.1 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).

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;

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 employment services organizations as defined in § 2.2-4301 that offer transitional or supported employment services serving individuals with disabilities;

7. 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 § 59.1-284.25 as such section was in effect on June 30, 2015, for use in on-road internal combustion engines. The conditions shall take into consideration the availability of such fuel and the variability in cost of biodiesel fuel with respect to unblended diesel fuel; and

8. Shall include a link to the Virginia Department of Agriculture and Consumer Services Virginia Grown website on the Department of General Services' central electronic procurement system to facilitate purchases of Virginia-grown food products; and

9. Require all state agencies, except as provided in this subdivision, to procure nonprofessional services from the private sector if the services are listed as a commercial activity on the commercial

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59 activities list developed by the Department of Planning and Budget pursuant to § 2.2-1501.1. The  
60 provisions of this subdivision shall not apply to the hiring of law-enforcement personnel of any state  
61 agency or institution. Upon a written determination made in advance by a state agency that the  
62 procurement of services from a commercial source is neither practicable nor fiscally advantageous, such  
63 service may continue to be performed by the state agency. For the purposes of this subdivision,  
64 "nonprofessional services" means work performed by persons not within the scope of the practice of  
65 accounting, actuarial services, architecture, land surveying, landscape architecture, law, dentistry,  
66 medicine, optometry, pharmacy, or professional engineering.

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

71 **§ 2.2-1501.1. Additional duties of Department; commercial activities list.**

72 A. As used in this section, unless the context requires a different meaning:

73 "Commercial activity" means performing services or providing goods that can normally be obtained  
74 from private enterprise.

75 "Commercial activities list" means the list of all commercial activities performed by employees of the  
76 Commonwealth.

77 "Privatization" means a variety of techniques and activities that promote more involvement of the  
78 private sector in providing services that have traditionally been provided by government. It also includes  
79 methods of providing a portion or all of select government-provided or government-produced programs  
80 and services through the private sector.

81 B. From such funds as are appropriated for this purpose, the Department shall:

82 1. Examine and promote methods of providing a portion or all of select government-provided or  
83 government-produced programs and services through the private sector by a competitive contracting  
84 program, and advise the Governor, the General Assembly, and executive branch agencies of the  
85 Department's findings and recommendations.

86 2. Determine the privatization potential of a program or activity, perform cost/benefit analyses, and  
87 conduct public and private performance analyses. The Secretary of Finance shall independently certify  
88 the results of the comparison.

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

91 C. The commercial activities list developed by the Department in accordance with this section shall  
92 be updated ~~every two years~~ *annually* and posted on the Internet. In addition, the Department shall solicit  
93 at least annually in the Virginia Register public comments on the commercial activities list and invite  
94 recommendations from the public regarding activities being performed by state agencies that might  
95 better be performed by the private sector. All comments received shall be considered, and reasonable  
96 accommodation shall be made to permit representatives of any private entity, upon their request, to meet  
97 with the Department and the appropriate state agency to discuss their comments.