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HOUSE BILL NO. 2192

Offered January 9, 2019

Prefiled January 8, 2019

A BILL to amend and reenact §§ 2.2-4303, 62.1-198, and 62.1-199 of the Code of Virginia and to amend the Code of Virginia by adding in Chapter 9 of Title 22.1 an article numbered 3, consisting of sections numbered 22.1-141.1 and 22.1-141.2, and by adding sections numbered 56-589.1 and 62.1-218.1, relating to the modernization of public school buildings and facilities.

Patron—Rush

Referred to Committee on General Laws

Be it enacted by the General Assembly of Virginia:

1. That §§ 2.2-4303, 62.1-198, and 62.1-199 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Chapter 9 of Title 22.1 an article numbered 3, consisting of sections numbered 22.1-141.1 and 22.1-141.2, and by adding sections numbered 56-589.1 and 62.1-218.1 as follows:

§ 2.2-4303. Methods of procurement.

A. All public contracts with nongovernmental contractors for the purchase or lease of goods, or for the purchase of services, insurance, or construction, shall be awarded after competitive sealed bidding, or competitive negotiation as provided in this section, unless otherwise authorized by law.

B. Professional services shall be procured by competitive negotiation.

C. Goods, services other than professional services, and insurance may be procured by competitive sealed bidding or competitive negotiation.

Upon a written determination made in advance by (i) the Governor or his designee in the case of a procurement by the Commonwealth or by a department, agency or institution thereof or (ii) the local governing body in the case of a procurement by a political subdivision of the Commonwealth, that competitive negotiation is either not practicable or not fiscally advantageous, insurance may be procured through a licensed agent or broker selected in the manner provided for the procurement of things other than professional services set forth in § 2.2-4302.2. The basis for this determination shall be documented in writing.

D. Construction may be procured only by competitive sealed bidding, except that competitive negotiation may be used in the following instances:

1. By any public body on a fixed price design-build basis or construction management basis as provided in Chapter 43.1 (§ 2.2-4378 et seq.); or

2. By any public body for the construction of highways and any draining, dredging, excavation, grading or similar work upon real property 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, which writing shall document the basis for this determination; or

3. By any public body for the modernization of public school buildings or facilities pursuant to Article 3 (§ 22.1-141.1 et seq.) of Chapter 9 of Title 22.1.

E. Upon a determination in writing that there is only one source practicably available for that which is to be procured, a contract may be negotiated and awarded to that source without competitive sealed bidding or competitive negotiation. The writing shall document the basis for this determination. The public body shall issue a written notice stating that only one source was determined to be practicably available, and identifying that which is being procured, the contractor selected, and the date on which the contract was or will be awarded. This notice shall be posted on the Department of General Services' central electronic procurement website or other appropriate websites, and in addition, public bodies may publish in a newspaper of general circulation on the day the public body awards or announces its decision to award the contract, whichever occurs first. Posting on the Department of General Services' central electronic procurement website shall be required of any state public body. Local public bodies are encouraged to utilize the Department of General Services' central electronic procurement website to provide the public with centralized visibility and access to the Commonwealth's procurement opportunities.

F. In case of emergency, a contract may be awarded without competitive sealed bidding or competitive negotiation; however, such procurement shall be made with such competition as is practicable under the circumstances. A written determination of the basis for the emergency and for the selection of the particular contractor shall be included in the contract file. The public body shall issue a written notice stating that the contract is being awarded on an emergency basis, and identifying that

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59 which is being procured, the contractor selected, and the date on which the contract was or will be
60 awarded. This notice shall be posted on the Department of General Services' central electronic
61 procurement website or other appropriate websites, and in addition, public bodies may publish in a
62 newspaper of general circulation on the day the public body awards or announces its decision to award
63 the contract, whichever occurs first, or as soon thereafter as is practicable. Posting on the Department of
64 General Services' central electronic procurement website shall be required of any state public body.
65 Local public bodies are encouraged to utilize the Department of General Services' central electronic
66 procurement website to provide the public with centralized visibility and access to the Commonwealth's
67 procurement opportunities.

68 G. A public body may establish purchase procedures, if adopted in writing, not requiring competitive
69 sealed bids or competitive negotiation for single or term contracts for:

70 1. Goods and services other than professional services and non-transportation-related construction, if
71 the aggregate or the sum of all phases is not expected to exceed \$100,000; and

72 2. Transportation-related construction, if the aggregate or sum of all phases is not expected to exceed
73 \$25,000.

74 However, such small purchase procedures shall provide for competition wherever practicable.

75 Such purchase procedures may allow for single or term contracts for professional services without
76 requiring competitive negotiation, provided the aggregate or the sum of all phases is not expected to
77 exceed \$80,000.

78 Where small purchase procedures are adopted for construction, the procedures shall not waive
79 compliance with the Uniform State Building Code.

80 For state public bodies, purchases under this subsection that are expected to exceed \$30,000 shall
81 require the (a) written informal solicitation of a minimum of four bidders or offerors and (b) posting of
82 a public notice on the Department of General Services' central electronic procurement website or other
83 appropriate websites. Posting on the Department of General Services' central electronic procurement
84 website shall be required of any state public body. Local public bodies are encouraged to utilize the
85 Department of General Services' central electronic procurement website to provide the public with
86 centralized visibility and access to the Commonwealth's procurement opportunities.

87 H. Upon a determination made in advance by a public body and set forth in writing that the purchase
88 of goods, products or commodities from a public auction sale is in the best interests of the public, such
89 items may be purchased at the auction, including online public auctions. Purchase of information
90 technology and telecommunications goods and nonprofessional services from a public auction sale shall
91 be permitted by any authority, department, agency, or institution of the Commonwealth if approved by
92 the Chief Information Officer of the Commonwealth. The writing shall document the basis for this
93 determination. However, bulk purchases of commodities used in road and highway construction and
94 maintenance, and aggregates shall not be made by online public auctions.

95 I. The purchase of goods or nonprofessional services, but not construction or professional services,
96 may be made by reverse auctioning. However, bulk purchases of commodities used in road and highway
97 construction and maintenance, and aggregates shall not be made by reverse auctioning.

98 Article 3.

99 *Public School Building and Facilities Modernization.*

100 **§ 22.1-141.1. Standards for buildings and facilities.**

101 *Public school buildings and facilities shall be designed, constructed, maintained, and operated in*
102 *accordance with standards that seek to achieve a high-quality public education for all students utilizing*
103 *such buildings and facilities. Such standards shall facilitate (i) the improvement of student performance*
104 *through student-centered learning environments with collaboration space around which core academic*
105 *spaces are organized; (ii) high indoor air quality and daylighting; (iii) student safety and security with*
106 *a single-point main entrance with maximum interior transparency between spaces; (iv) the design,*
107 *construction, maintenance, and operation of facilities that generate more electricity than consumed; (v)*
108 *the design, construction, maintenance, and operation of facilities in compliance with the "Achieving Zero*
109 *Energy-Advanced Energy Design Guide for K-12 School Buildings" design guide of the American*
110 *Society of Heating, Refrigeration, and Air-Conditioning Engineers, dated February 1, 2018, and any*
111 *subsequent updates to such guide, or similar industry standards; and (vi) efficient use of public funds.*

112 **§ 22.1-141.2. Lease agreements.**

113 A. Prior to undertaking the design, construction, maintenance, and operation of a new public school
114 building or facility, a local school division shall evaluate whether entering into a lease with a private
115 developer will assist the school division in meeting the standards set forth in § 22.1-141.1. In making
116 such a determination, the local school division may utilize the public procurement process for
117 competitive negotiation authorized pursuant to § 2.2-4302.2 to seek qualified bidders.

118 B. If a local school division awards a lease with a private developer pursuant to subsection A, such
119 lease may include the following: (i) design of the building and facilities; (ii) construction of the building
120 and facilities; (iii) financing of the project as defined in § 15.2-1815; (iv) operation of the heating,

cooling, and renewable energy systems, including interconnect agreements with the regulated electric utility, maintenance of all such systems, responding to comfort complaints, and any other operational or maintenance-related issues during the lease term; and (v) such other terms as mutually agreed upon by the local school division and the private developer. Such lease may (a) be for the real property primarily used by the local school division and owned by the private entity, (b) be a capital or operating lease, (c) be exempt from real property taxation pursuant to subdivision (a) (1) of Article X, Section 6 of the Constitution of Virginia, and (d) contain a covenant that the rent shall not be reduced from the rent stated in the lease. Such lease shall not exceed 35 years in duration. **§ 56-589.1. Net energy metering in public school buildings and facilities.**

A locality that is a non-jurisdictional customer of a utility pursuant to § 56-234 and that has a public school building or facility that participates in school modernization pursuant to Article 3 (§ 22.1-141.1 et seq.) of Chapter 9 of Title 22.1 that generates energy derived from sunlight may enter into a contract to generate such energy on terms and conditions as may be negotiated between the customer and the utility. Nothing in this section shall render any contract or arrangement between a utility and a non-jurisdictional customer subject to the jurisdiction of the State Corporation Commission.

§ 62.1-198. Legislative findings and purposes.

The General Assembly finds that there exists in the Commonwealth a critical need for additional sources of funding to finance the present and future needs of the Commonwealth for water supply; land conservation or land preservation including land for parks and other recreational purposes; oyster restoration projects, including planting and replanting with seed oysters, oyster shells, or other material that will catch, support, and grow oysters; wastewater treatment facilities; drainage facilities; solid waste treatment, disposal and management facilities; recycling facilities; resource recovery facilities; energy conservation and energy efficiency projects; professional sports facilities; certain heavy rail transportation facilities; public safety facilities; airport facilities; the remediation of brownfields and contaminated properties, including properties contaminated by defective drywall; the design and construction of roads, public parking garages and other public transportation facilities, and facilities for public transportation by commuter rail; construction of local government buildings, including administrative and operations systems and other local government equipment and infrastructure; *construction of public school buildings and facilities*; site acquisition and site development work for economic and community development projects; recovered gas energy facilities; the location or retention of federal facilities in the Commonwealth and the support of the transition of former federal facilities from use by the federal government to other uses; and renewable energy projects, including solar, wind, biomass, waste-to-energy, and geothermal. This need can be alleviated in part through the creation of a resources authority. Its purpose is to encourage the investment of both public and private funds and to make loans, grants, and credit enhancements available to local governments to finance water and sewer projects, land conservation or land preservation programs or projects, oyster restoration projects, drainage projects, solid waste treatment, disposal and management projects, recycling projects, energy conservation and energy efficiency projects, professional sports facilities, resource recovery projects, public safety facilities, airport facilities, the remediation of brownfields and contaminated properties including properties contaminated by defective drywall, the design and construction of roads, public parking garages and other public transportation facilities, and facilities for public transportation by commuter rail, site acquisition and site development work for the benefit of economic development projects, technology, construction of local government buildings, including administrative and operations systems and other local government equipment and infrastructure, *construction of public school buildings and facilities*, infrastructure for broadband services, recovered gas energy facilities, federal facilities or former federal facilities, and renewable energy projects. The General Assembly determines that the creation of an authority for this purpose is in the public interest, serves a public purpose and will promote the health, safety, welfare, convenience or prosperity of the people of the Commonwealth.

§ 62.1-199. Definitions.

As used in this chapter, unless a different meaning clearly appears from the context:

"Authority" means the Virginia Resources Authority created by this chapter.

"Board of Directors" means the Board of Directors of the Authority.

"Bonds" means any bonds, notes, debentures, interim certificates, bond, grant or revenue anticipation notes, lease and sale-leaseback transactions or any other obligations of the Authority for the payment of money.

"Capital Reserve Fund" means the reserve fund created and established by the Authority in accordance with § 62.1-215.

"Cost," as applied to any project financed under the provisions of this chapter, means the total of all costs incurred by the local government as reasonable and necessary for carrying out all works and undertakings necessary or incident to the accomplishment of any project. It includes, without limitation, all necessary developmental, planning and feasibility studies, surveys, plans and specifications,

182 architectural, engineering, financial, legal or other special services, the cost of acquisition of land and
183 any buildings and improvements thereon, including the discharge of any obligations of the sellers of
184 such land, buildings or improvements, real estate appraisals, site preparation and development, including
185 demolition or removal of existing structures, construction and reconstruction, labor, materials, machinery
186 and equipment, the reasonable costs of financing incurred by the local government in the course of the
187 development of the project, including the cost of any credit enhancements, carrying charges incurred
188 before placing the project in service, interest on local obligations issued to finance the project to a date
189 subsequent to the estimated date the project is to be placed in service, necessary expenses incurred in
190 connection with placing the project in service, the funding of accounts and reserves which the Authority
191 may require and the cost of other items which the Authority determines to be reasonable and necessary.
192 It also includes the amount of any contribution, grant or aid which a local government may make or
193 give to any adjoining state, the District of Columbia or any department, agency or instrumentality
194 thereof to pay the costs incident and necessary to the accomplishment of any project, including, without
195 limitation, the items set forth above. The term also includes interest and principal payments pursuant to
196 any installment purchase agreement.

197 "Credit enhancements" means surety bonds, insurance policies, letters of credit, guarantees and other
198 forms of collateral or security.

199 "Defective drywall" means the same as that term is defined in § 36-156.1.

200 "Federal facility" means any building or infrastructure used or to be used by the federal government,
201 including any building or infrastructure located on lands owned by the federal government.

202 "Federal government" means the United States of America, or any department, agency or
203 instrumentality, corporate or otherwise, of the United States of America.

204 "Former federal facility" means any federal facility formerly used by the federal government or in
205 transition from use by the federal government to a facility all or part of which is to serve any local
206 government.

207 "Local government" means any county, city, town, municipal corporation, authority, district,
208 commission or political subdivision created by the General Assembly or pursuant to the Constitution and
209 laws of the Commonwealth or any combination of any two or more of the foregoing.

210 "Local obligations" means any bonds, notes, debentures, interim certificates, bond, grant or revenue
211 anticipation notes, leases, credit enhancements, or any other obligations of a local government for the
212 payment of money.

213 "Minimum capital reserve fund requirement" means, as of any particular date of computation, the
214 amount of money designated as the minimum capital reserve fund requirement which may be established
215 in the resolution of the Authority authorizing the issuance of, or the trust indenture securing, any
216 outstanding issue of bonds or credit enhancement.

217 "Project" means (i) any water supply or wastewater treatment facility, including a facility for
218 receiving and stabilizing septage or a soil drainage management facility, and any solid waste treatment,
219 disposal, or management facility, recycling facility, federal facility or former federal facility, or resource
220 recovery facility located or to be located in the Commonwealth, the District of Columbia, or any
221 adjoining state, all or part of which facility serves or is to serve any local government, and (ii) any
222 federal facility located or to be located in the Commonwealth, provided that both the Board of Directors
223 of the Authority and the governing body of the local government receiving the benefit of the loan, grant,
224 or credit enhancement from the Authority make a determination or finding to be embodied in a
225 resolution or ordinance that the undertaking and financing of such facility is necessary for the location
226 or retention of such facility and the related use by the federal government in the Commonwealth. The
227 term includes, without limitation, water supply and intake facilities; water treatment and filtration
228 facilities; water storage facilities; water distribution facilities; sewage and wastewater (including surface
229 and ground water) collection, treatment, and disposal facilities; drainage facilities and projects; solid
230 waste treatment, disposal, or management facilities; recycling facilities; resource recovery facilities;
231 related office, administrative, storage, maintenance, and laboratory facilities; and interests in land related
232 thereto. The term also includes energy conservation measures and facility technology infrastructure as
233 defined in § 11-34.2 and other energy objectives as defined in § 67-101. The term also means any heavy
234 rail transportation facilities operated by a transportation district created under the Transportation District
235 Act of 1964 (§ 33.2-1900 et seq.) that operates heavy rail freight service, including rolling stock, barge
236 loading facilities, and any related marine or rail equipment. The term also means, without limitation, the
237 design and construction of roads, the construction of local government buildings, including
238 administrative and operations systems and other local government equipment and infrastructure, public
239 parking garages and other public transportation facilities, and facilities for public transportation by
240 commuter rail. In addition, the term means any project as defined in § 5.1-30.1 and any professional
241 sports facility, including a major league baseball stadium as defined in § 15.2-5800, provided that the
242 specific professional sports facility projects have been designated by the General Assembly as eligible
243 for assistance from the Authority. The term also means any equipment, facilities, and technology

infrastructure designed to provide broadband service. The term also means facilities supporting, related to, or otherwise used for public safety, including but not limited to law-enforcement training facilities and emergency response, fire, rescue, and police stations. The term also means the remediation, redevelopment, and rehabilitation of property contaminated by the release of hazardous substances, hazardous wastes, solid wastes, or petroleum, where such remediation has not clearly been mandated by the United States Environmental Protection Agency, the Department of Environmental Quality, or a court pursuant to the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. § 9601 et seq.), the Resource Conservation and Recovery Act (42 U.S.C. § 6901 et seq.), the Virginia Waste Management Act (§ 10.1-1400 et seq.), the State Water Control Law (§ 62.1-44.2 et seq.), or other applicable statutory or common law or where jurisdiction of those statutes has been waived. The term also means any program or project for land conservation, parks, park facilities, land for recreational purposes, or land preservation, including but not limited to any program or project involving the acquisition of rights or interests in land for the conservation or preservation of such land. The term also means any dredging program or dredging project undertaken to benefit the economic and community development goals of a local government but does not include any dredging program or dredging project undertaken for or by the Virginia Port Authority. The term also means any oyster restoration project, including planting and replanting with seed oysters, oyster shells, or other material that will catch, support, and grow oysters. The term also means any program or project to perform site acquisition or site development work for the benefit of economic and community development projects for any local government. The term also means any undertaking by a local government to build or facilitate the building of a recovered gas energy facility; and any local government renewable energy project, including solar, wind, biomass, waste-to-energy, and geothermal projects. The term also means any undertaking by a local government to facilitate the remediation of residential properties contaminated by the presence of defective drywall.

"Public school buildings and facilities" means buildings or facilities for public elementary and secondary schools, including ancillary recreational facilities, regardless of whether such facilities are owned and operated by a public or private entity, established and maintained as provided in Title 22.1 and administered by the Board of Education, the Superintendent of Public Instruction, division superintendents, and local school boards.

"Recovered gas energy facility" means a facility, located at or adjacent to (i) a solid waste management facility permitted by the Department of Environmental Quality or (ii) a sewerage system or sewage treatment work described in § 62.1-44.18 that is constructed and operated for the purpose of treating sewage and wastewater for discharge to state waters, which facility or work is constructed and operated for the purpose of (a) reclaiming or collecting methane or other combustible gas from the biodegradation or decomposition of solid waste, as defined in § 10.1-1400, that has been deposited in the solid waste management facility or sewerage system or sewage treatment work and (b) either using such gas to generate electric energy or upgrading the gas to pipeline quality and transmitting it off premises for sale or delivery to commercial or industrial purchasers or to a public utility or locality.

§ 62.1-218.1. Funding of school modernization.

A. The Authority is hereby authorized to establish a program to provide partial funding of projects that modernize public school buildings and facilities pursuant to Article 3 (§ 22.1-141.1 et seq.) of Chapter 9 of Title 22.1. The Authority may establish such guidance documents as it deems appropriate to assist in the administration of this program, including criteria for making awards of partial funding to address the educational disparity and funding abilities of local school divisions throughout the Commonwealth.

B. Any local school division may apply to the Authority for partial funding pursuant to the program pursuant to subsection A and shall be eligible for partial funding if the Authority determines that (i) awarding such partial funding would be an efficient use of public funds; (ii) the public school buildings and facilities will be constructed, operated, and maintained in accordance with the standards set out in Article 3 (§ 22.1-141.1 et seq.) of Chapter 9 of Title 22.1; and (iii) such project meets any criteria for funding set forth by the Authority.

2. That the provisions of this act amending §§ 62.1-198 and 62.1-199 of the Code of Virginia and the provisions of § 62.1-218.1 of the Code of Virginia, as created by this act, shall become effective on January 1, 2020.