

LD0785152

## HOUSE BILL NO. 525

Offered January 24, 1994

*A BILL to amend and reenact § 11-35 of the Code of Virginia, to amend the Code of Virginia by adding a section numbered 23-76.1, and to repeal Article 3 (§§ 23-81 through 23-85) of Chapter 9 of Title 23 of the Code of Virginia, relating to the investment authority of the Board of Visitors of the University of Virginia.*

Patrons—Clement and Diamonstein; Senator: Holland, R.J.

Referred to Committee on Appropriations

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

**1. That § 11-35 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding a section numbered 23-76.1 as follows:**

§ 11-35. Title; purpose; applicability.

A. This chapter may be cited as the Virginia Public Procurement Act.

B. The purpose of this chapter is to enunciate the public policies pertaining to governmental procurement from nongovernmental sources.

C. The provisions of this chapter, however, shall not apply, except as stipulated in the provisions of §§ 11-41.1, 11-49, 11-51, 11-54, 11-56 through 11-61 and 11-72 through 11-80, to any town with a population of less than 3,500 as determined by the last official United States census.

D. Except to the extent adopted by such governing body, the provisions of this chapter also shall not apply, except as stipulated in subsection E, to any county, city or town whose governing body adopts by ordinance or resolution alternative policies and procedures which are based on competitive principles and which are generally applicable to procurement of goods and services by such governing body and the agencies thereof. This exemption shall be applicable only so long as such policies and procedures, or other policies and procedures meeting the requirements of this section, remain in effect in such county, city or town.

Except to the extent adopted by such school board, the provisions of this chapter shall not apply, except as stipulated in subsection E, to any school division whose school board adopts by policy or regulation alternative policies and procedures which are based on competitive principles and which are generally applicable to procurement of goods and services by such school board. This exemption shall be applicable only so long as such policies and procedures, or other policies or procedures meeting the requirements of this section, remain in effect in such school division. This provision shall not exempt any school division from any centralized purchasing ordinance duly adopted by a local governing body.

E. Notwithstanding the exemptions set forth in subsection D, the provisions of §§ 11-41 C, 11-41.1, 11-49, 11-51, 11-54, 11-56 through 11-61 and 11-72 through 11-80 shall apply to all counties, cities and school divisions, and to all towns having a population greater than 3,500 in the Commonwealth. The method for procurement of professional services set forth in subdivision 3 a of § 11-37 in the definition of competitive negotiation shall also apply to all counties, cities and school divisions, and to all towns having a population greater than 3,500, where the cost of the professional service is expected to exceed \$20,000.

F. The provisions of this chapter shall not apply to those contracts entered into prior to January 1, 1983, which shall continue to be governed by the laws in effect at the time those contracts were executed.

G. To the end that public bodies in the Commonwealth obtain high quality goods and services at reasonable cost, that all procurement procedures be conducted in a fair and impartial manner with avoidance of any impropriety or appearance of impropriety, that all qualified vendors have access to public business and that no offeror be arbitrarily or capriciously excluded, it is the intent of the General Assembly that competition be sought to the maximum feasible degree, that individual public bodies enjoy broad flexibility in fashioning details of such competition, that the rules governing contract awards be made clear in advance of the competition, that specifications reflect the procurement needs of the purchasing body rather than being drawn to favor a particular vendor, and that purchaser and vendor freely exchange information concerning what is sought to be procured and what is offered.

H. Notwithstanding the foregoing provisions of this section, the selection of services by the Virginia Retirement System related to the management, purchase or sale of authorized investments, including but not limited to actuarial services, shall be governed by the standards set forth in § 51.1-116 and shall not be subject to the provisions of this chapter.

I. The provisions of this chapter shall apply to procurement of any construction or planning and

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60 design services for construction by a Virginia not-for-profit corporation or organization not otherwise  
61 specifically exempted when the planning, design or construction is funded by state appropriations greater  
62 than \$10,000 unless the Virginia not-for-profit corporation or organization is obligated to conform to  
63 procurement procedures which are established by federal statutes or regulations, whether or not those  
64 federal procedures are in conformance with the provisions of this chapter.

65 *J. Notwithstanding the foregoing provisions of this section, the selection of services by the board of*  
66 *visitors of the University of Virginia related to the management, purchase or sale of authorized*  
67 *investments shall be governed by the standards set forth in § 23-76.1 and shall not be subject to the*  
68 *provisions of this chapter.*

69 *§ 23-76.1. Board as trustee of certain funds; standard of care; exemption from Procurement Act.*

70 *A. The board shall serve as trustee of the University's endowment funds and other University local*  
71 *funds available for investment and shall have full power to invest and reinvest these funds pursuant to*  
72 *this section. For the purposes of this article, "University local funds" means funds not on deposit with*  
73 *the State Treasurer, including, but not limited to, endowment income and appreciation, auxiliary funds,*  
74 *revenues from sales and services, and private donations and gifts. In acquiring, investing, reinvesting,*  
75 *exchanging, retaining, selling, and managing these funds for the benefit of the University, the board*  
76 *shall exercise the care, skill, prudence, and diligence under the circumstances then prevailing that a*  
77 *prudent person acting in a like capacity and familiar with such matters would use in the conduct of an*  
78 *enterprise of like character and like aims. No member of the board shall be personally liable for losses*  
79 *suffered by these funds or investments made pursuant to this chapter.*

80 *B. The selection of services related to the management, purchase, or sale of authorized investments*  
81 *shall be governed by the standard described in subsection A of this section and shall not be subject to*  
82 *the provisions of the Virginia Public Procurement Act (§ 11-35 et seq.).*

83 **2. That Article 3 (§ 23-81 through 23-85) of Chapter 9 of Title 23 of the Code of Virginia is**  
84 **repealed.**