

VIRGINIA ACTS OF ASSEMBLY -- 1999 RECONVENED SESSION

CHAPTER 1021

An Act to amend and reenact §§ 2.1-373, 11-45, and 57-60 of the Code of Virginia, relating to the Department for the Aging; duties; exemption from the Public Procurement Act.

[H 2632]

Approved April 7, 1999

Be it enacted by the General Assembly of Virginia:

1. That §§ 2.1-373, 11-45, and 57-60 of the Code of Virginia are amended and reenacted as follows:

§ 2.1-373. Powers and duties of Department with respect to aging persons; area agencies on aging; Commonwealth Council on Aging.

(a) A. The mission of the Department for the Aging shall be to improve the quality of life for older Virginians; in this chapter, older Virginians means persons aged sixty or older. The Department's policies and programs shall be designed to enable older persons to be as independent and self-sufficient as possible. The Department shall promote local participation in programs for the aging, evaluate and monitor the services provided for older Virginians and provide information to the general public. In furtherance of this mission, the Department's duties shall include, but not be restricted to:

(1) 1. To study the economic and physical condition of the residents in the Commonwealth whose age qualifies them for coverage under Public Law 89-73 or any law amendatory or supplemental thereto of the Congress of the United States, hereinafter referred to as the aging, and the employment, medical, educational, recreational and housing facilities available to them, with the view of determining the needs and problems of such persons;

(2) 2. To determine the services and facilities, private and governmental and state and local, provided for and available to the aging and to recommend to the appropriate person or persons such coordination of and changes in such services and facilities as will make them of greater benefit to the aging and more responsive to their needs;

(3) 3. To act as the single state agency, under Public Law 89-73 or any law amendatory or supplemental thereto of the Congress of the United States, and as the sole agency for administering or supervising the administration of such plans as may be adopted in accordance with the provisions of such law or laws. As such agency, the Department shall have authority to prepare, submit and carry out state plans and shall be the agency primarily responsible for coordinating state programs and activities related to the purposes of, or undertaken under, such plans or laws;

(4) 4. With the approval of the Governor, to apply for and expend such grants, gifts or bequests from any source as may become available in connection with its duties under this section, and is authorized to comply with such conditions and requirements as may be imposed in connection therewith;

(5) 5. To hold such hearings and conduct such investigations as are necessary to pass upon applications for approval of a project under the plans and laws set out in subdivision (3) hereof, and shall make such reports to the Secretary of the United States Department of Health and Human Services as may be required;

(6) ~~Repealed.~~

(7) 6. To designate area agencies on aging pursuant to Public Law 89-73 or any law amendatory or supplemental thereto of the Congress of the United States and to promulgate rules and regulations for the composition and operation of such area agencies on aging;

(8), (9) ~~Repealed.~~

(10) 7. To provide information to consumers and their representatives concerning the recognized features of special care units. Such information shall educate consumers and their representatives on how to choose special care and may include brochures and electronic bulletin board notices;

(11) 8. To provide staff support to the Commonwealth Council on Aging;

(12) 9. To serve as a focal point for research, policy analysis, long-range planning, and education on aging issues;

10. To contract with a not-for-profit Virginia corporation granted tax-exempt status under § 501 (c) (3) of the Internal Revenue Code with statewide experience in Virginia in conducting a state long-term care ombudsman program or designated area agencies on aging for the administration of the ombudsman program. The Department may also contract with such entity or entities for the administration of elder rights programs as authorized under Public Law 89-73, such as insurance counseling and assistance, and to create an elder information/elder rights center.

(b) B. The governing body of any county, city or town may appropriate funds for support of area agencies on aging designated pursuant to subdivision (a) (7) A 6 hereof.

(c) C. All agencies of the Commonwealth shall assist the Department in effectuating its functions in

accordance with its designation as the single state agency as required in subdivision (a) (3) A 3 above.

§ 11-45. Exceptions to requirement for competitive procurement.

A. Any public body may enter into contracts without competition for the purchase of goods or services (i) which are performed or produced by persons, or in schools or workshops, under the supervision of the Virginia Department for the Visually Handicapped; or (ii) which are performed or produced by nonprofit sheltered workshops or other nonprofit organizations which offer transitional or supported employment services serving the handicapped.

B. Any public body may enter into contracts without competition for (i) legal services, provided that the pertinent provisions of Chapter 11 (§ 2.1-117 et seq.) of Title 2.1 remain applicable; or (ii) expert witnesses and other services associated with litigation or regulatory proceedings.

C. Any public body may extend the term of an existing contract for services to allow completion of any work undertaken but not completed during the original term of the contract.

D. An industrial development authority may enter into contracts without competition with respect to any item of cost of "authority facilities" or "facilities" as defined in § 15.2-4902.

E. The Department of Alcoholic Beverage Control may procure alcoholic beverages without competitive sealed bidding or competitive negotiation.

F. Any public body administering public assistance programs as defined in § 63.1-87, the fuel assistance program, community services boards as defined in § 37.1-1, or any public body purchasing services under the Comprehensive Services Act for At-Risk Youth and Families (§ 2.1-745 et seq.) may procure goods or personal services for direct use by the recipients of such programs without competitive sealed bidding or competitive negotiations if the procurement is made for an individual recipient. Contracts for the bulk procurement of goods or services for the use of recipients shall not be exempted from the requirements of § 11-41.

G. Any public body may enter into contracts without competitive sealed bidding or competitive negotiation for insurance if purchased through an association of which it is a member if the association was formed and is maintained for the purpose of promoting the interest and welfare of and developing close relationships with similar public bodies, provided such association has procured the insurance by use of competitive principles and provided that the public body has made a determination in advance after reasonable notice to the public and set forth in writing that competitive sealed bidding and competitive negotiation are not fiscally advantageous to the public. The writing shall document the basis for this determination.

H. The Department of Health may enter into contracts with laboratories providing cytology and related services without competitive sealed bidding or competitive negotiation if competitive sealed bidding and competitive negotiations are not fiscally advantageous to the public to provide quality control as prescribed in writing by the Commissioner of Health.

I. The Director of the Department of Medical Assistance Services may enter into contracts without competitive sealed bidding or competitive negotiation for special services provided for eligible recipients pursuant to § 32.1-325 E, provided that the Director has made a determination in advance after reasonable notice to the public and set forth in writing that competitive sealed bidding or competitive negotiation for such services is not fiscally advantageous to the public, or would constitute an imminent threat to the health or welfare of such recipients. The writing shall document the basis for this determination.

J. The Virginia Code Commission may enter into contracts without competitive sealed bidding or competitive negotiation when procuring the services of a publisher, pursuant to §§ 9-77.7 and 9-77.8, to publish the Code of Virginia or the Virginia Administrative Code.

K. (Effective until July 1, 1999) The State Health Commissioner may enter into agreements or contracts without competitive sealed bidding or competitive negotiation for the compilation, storage, analysis, evaluation, and publication of certain data submitted by health care providers and for the development of a methodology to measure the efficiency and productivity of health care providers pursuant to Chapter 7.2 (§ 32.1-276.2 et seq.) of Title 32.1, if the Commissioner has made a determination in advance, after reasonable notice to the public and set forth in writing, that competitive sealed bidding or competitive negotiation for such services is not fiscally advantageous to the public. The writing shall document the basis for this determination. Such agreements and contracts shall be based on competitive principles.

L. A community development authority formed pursuant to Article 6 (§ 15.2-5152 et seq.) of Chapter 51 of Title 15.2, with members selected pursuant to such article, may enter into contracts without competition with respect to the exercise of any of its powers permitted by § 15.2-5158; however, this exception shall not apply in cases where any public funds other than special assessments and incremental real property taxes levied pursuant to § 15.2-5158 are used as payment for such contract.

M. Virginia Correctional Enterprises may enter into contracts without competitive sealed bidding or competitive negotiation when procuring materials, supplies, or services for use in and support of its production facilities, provided such procurement is accomplished using procedures which ensure the efficient use of funds as practicable and, at a minimum, shall include obtaining telephone quotations. Such procedures shall require documentation of the basis for awarding contracts under this section.

N. The Virginia Baseball Stadium Authority may enter into agreements or contracts without competitive sealed bidding or competitive negotiation for the operation of any facilities developed under the provisions of Chapter 58 (§ 15.2-5800 et seq.) of Title 15.2, including contracts or agreements with respect to the sale of food, beverages and souvenirs at such facilities.

O. The Department of Health may procure child restraint devices, pursuant to § 46.2-1097, without competitive sealed bidding or competitive negotiation.

P. With the consent of the Governor, the Jamestown-Yorktown Foundation may enter into agreements or contracts with private entities without competitive sealed bidding or competitive negotiation for the promotion of tourism through marketing provided a demonstrable cost savings, as reviewed by the Secretary of Education, can be realized by the Foundation and such agreements or contracts are based on competitive principles.

Q. The Virginia Racing Commission may designate an entity to administer and promote the Virginia Breeders Fund created pursuant to § 59.1-372.

R. The Chesapeake Hospital Authority may enter into contracts without competitive sealed bidding or competitive negotiation in the exercise of any power conferred under Chapter 271, as amended, of the Acts of Assembly of 1966.

S. The Hospital Authority of Norfolk may enter into contracts without competitive sealed bidding or competitive negotiation in the exercise of any power conferred under Chapter 53 (§ 15.2-5300 et seq.) of Title 15.2. The Authority shall not discriminate against any person on the basis of race, color, religion, national origin, sex, pregnancy, childbirth or related medical conditions, age, marital status, or disability in the procurement of goods and services.

T. The Department for the Aging may enter into contracts with not-for-profit Virginia corporations granted tax-exempt status under § 501 (c) (3) of the Internal Revenue Code with statewide experience in Virginia in conducting a state long-term care ombudsman program or designated area agencies on aging without competitive sealed bidding or competitive negotiation for the administration of elder rights programs.

§ 57-60. Exemptions.

A. The following persons shall be exempt from the registration requirements of § 57-49 and the requirements of § 57-53, but shall otherwise be subject to the provisions of this chapter:

1. Educational institutions that are accredited by the Board of Education, by a regional accrediting association or by an organization affiliated with the National Commission on Accrediting, the Association Montessori Internationale, the American Montessori Society, the Virginia Independent Schools Association, or the Virginia Association of Independent Schools, any foundation having an established identity with any of the aforementioned educational institutions, and any other educational institution confining its solicitation of contributions to its student body, alumni, faculty and trustees, and their families.

2. Persons requesting contributions for the relief of any individual specified by name at the time of the solicitation when all of the contributions collected without any deductions whatsoever are turned over to the named beneficiary for his use.

3. Charitable organizations which do not intend to solicit and receive, during a calendar year, and have not actually raised or received, during any of the three next preceding calendar years, contributions from the public in excess of \$5,000, if all of their functions, including fund-raising activities, are carried on by persons who are unpaid for their services and if no part of their assets or income inures to the benefit of or is paid to any officer or member. Nevertheless, if the contributions raised from the public, whether all of such are or are not received by any charitable organization during any calendar year, shall be in excess of \$5,000, it shall, within thirty days after the date it has received total contributions in excess of \$5,000, register with and report to the Commissioner as required by this chapter.

4. Organizations which solicit only within the membership of the organization by the members thereof.

5. Organizations which have no office within the Commonwealth, which solicit in the Commonwealth from without the Commonwealth solely by means of telephone or telegraph, direct mail or advertising in national media, and which have a chapter, branch, or affiliate within the Commonwealth which has registered with the Commissioner.

6. Health care institutions defined herein as any facility which has been (i) granted tax-exempt status under § 501 (c) (3) of the Internal Revenue Code, (ii) designated by the Health Care Financing Administration (HCFA) as a federally qualified health center, or (iii) certified by the HCFA as a rural health clinic, and any supporting organization which exists solely to support any such health care institutions.

7. Civic organizations as defined herein.

8. Nonprofit debt counseling agencies licensed pursuant to § 6.1-363.1.

9. Agencies designated by the Virginia Department for the Aging pursuant to subdivision ~~(a)~~ ~~(7)~~ A 6 of § 2.1-373 as area agencies on aging.

10. Labor unions, labor associations and labor organizations that have been granted tax-exempt status under § 501 (c) (5) of the Internal Revenue Code.

11. Trade associations that have been granted tax-exempt status under § 501 (c) (6) of the Internal Revenue Code.

B. A charitable organization shall be subject to the provisions of §§ 57-57 and 57-59, but shall otherwise be exempt from the provisions of this chapter for any year in which it confines its solicitations in the Commonwealth to five or fewer contiguous cities and counties, and in which it has registered under the charitable solicitations ordinance, if any, of each such city and county. No organization shall be exempt under this subsection if, during its next preceding fiscal year, more than ten percent of its gross receipts were paid to any person or combination of persons, located outside the boundaries of such cities and counties, other than for the purchase of real property, or tangible personal property or personal services to be used within such localities. An organization which is otherwise qualified for exemption under this subsection which solicits by means of a local publication, or radio or television station, shall not be disqualified solely because the circulation or range of such medium extends beyond the boundaries of such cities or counties.

C. No charitable or civic organization shall be exempt under this section unless it submits to the Commissioner, who in his discretion may extend such filing deadline prospectively or retrospectively for good cause shown, on forms to be prescribed by him, the name, address and purpose of the organization and a statement setting forth the reason for the claim for exemption. Parent organizations may file consolidated applications for exemptions for any chapters, branches, or affiliates which they believe to be exempt from the registration provisions of this chapter. If the organization is exempted, the Commissioner shall issue a letter of exemption which may be exhibited to the public. A registration fee of ten dollars shall be required of every organization requesting an exemption after June 30, 1984. The letter of exemption shall remain in effect as long as the organization continues to solicit in accordance with its claim for exemption.

D. Nothing in this chapter shall be construed as being applicable to the American Red Cross or any of its local chapters.