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HOUSE BILL NO. 1135

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on General Laws on February 11, 2016)

(Patron Prior to Substitute—Delegate Kory)

A BILL to amend and reenact §§ 2.2-1111 and 2.2-4343 of the Code of Virginia, relating to the purchase of Virginia-grown food products by state agencies and institutions and local school divisions.

Be it enacted by the General Assembly of Virginia:

1. That §§ 2.2-1111 and 2.2-4343 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 employment services organizations as defined in § 2.2-4301 that offer transitional or supported employment services serving individuals with disabilities; and

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.

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

HOUSE SUBSTITUTE

HB1135H1

**60 § 2.2-4343. Exemption from operation of chapter for certain transactions.**

**61** A. The provisions of this chapter shall not apply to:

**62** 1. The Virginia Port Authority in the exercise of any of its powers in accordance with Chapter 10  
**63** (§ 62.1-128 et seq.) of Title 62.1, provided the Authority implements, by policy or regulation adopted by  
**64** the Board of Commissioners, procedures to ensure fairness and competitiveness in the procurement of  
**65** goods and services and in the administration of its capital outlay program. This exemption shall be  
**66** applicable only so long as such policies and procedures meeting the requirements remain in effect.

**67** 2. The Virginia Retirement System for selection of services related to the management, purchase or  
**68** sale of authorized investments, actuarial services, and disability determination services. Selection of these  
**69** services shall be governed by the standard set forth in § 51.1-124.30.

**70** 3. The State Treasurer in the selection of investment management services related to the external  
**71** management of funds shall be governed by the standard set forth in § 2.2-4514, and shall be subject to  
**72** competitive guidelines and policies that are set by the Commonwealth Treasury Board and approved by  
**73** the Department of General Services.

**74** 4. The Department of Social Services or local departments of social services for the acquisition of  
**75** motor vehicles for sale or transfer to Temporary Assistance to Needy Families (TANF) recipients.

**76** 5. The College of William and Mary in Virginia, Virginia Commonwealth University, the University  
**77** of Virginia, and Virginia Polytechnic Institute and State University in the selection of services related to  
**78** the management and investment of their endowment funds, endowment income, gifts, all other  
**79** nongeneral fund reserves and balances, or local funds of or held by the College or Universities pursuant  
**80** to § 23-44.1, 23-50.10:01, 23-76.1, or 23-122.1. However, selection of these services shall be governed  
**81** by the Uniform Prudent Management of Institutional Funds Act (§ 64.2-1100 et seq.) as required by  
**82** §§ 23-44.1, 23-50.10:01, 23-76.1, and 23-122.1.

**83** 6. The Board of the Virginia College Savings Plan for the selection of services related to the  
**84** operation and administration of the Plan, including, but not limited to, contracts or agreements for the  
**85** management, purchase, or sale of authorized investments or actuarial, record keeping, or consulting  
**86** services. However, such selection shall be governed by the standard set forth in § 23-38.80.

**87** 7. Public institutions of higher education for the purchase of items for resale at retail bookstores and  
**88** similar retail outlets operated by such institutions. However, such purchase procedures shall provide for  
**89** competition where practicable.

**90** 8. The purchase of goods and services by agencies of the legislative branch that may be specifically  
**91** exempted therefrom by the Chairman of the Committee on Rules of either the House of Delegates or the  
**92** Senate. Nor shall the contract review provisions of § 2.2-2011 apply to such procurements. The  
**93** exemption shall be in writing and kept on file with the agency's disbursement records.

**94** 9. Any town with a population of less than 3,500, except as stipulated in the provisions of  
**95** §§ 2.2-4305, 2.2-4308, 2.2-4311, 2.2-4315, 2.2-4330, 2.2-4333 through 2.2-4338, 2.2-4343.1, and  
**96** 2.2-4367 through 2.2-4377.

**97** 10. Any county, city or town whose governing body has adopted, by ordinance or resolution,  
**98** alternative policies and procedures which are (i) based on competitive principles and (ii) generally  
**99** applicable to procurement of goods and services by such governing body and its agencies, except as  
**100** stipulated in subdivision 12.

**101** This exemption shall be applicable only so long as such policies and procedures, or other policies  
**102** and procedures meeting the requirements of § 2.2-4300, remain in effect in such county, city or town.  
**103** Such policies and standards may provide for incentive contracting that offers a contractor whose bid is  
**104** accepted the opportunity to share in any cost savings realized by the locality when project costs are  
**105** reduced by such contractor, without affecting project quality, during construction of the project. The fee,  
**106** if any, charged by the project engineer or architect for determining such cost savings shall be paid as a  
**107** separate cost and shall not be calculated as part of any cost savings.

**108** 11. Any school division whose school board has adopted, by policy or regulation, alternative policies  
**109** and procedures that are (i) based on competitive principles and (ii) generally applicable to procurement  
**110** of goods and services by the school board, except as stipulated in subdivision 12.

**111** This exemption shall be applicable only so long as such policies and procedures, or other policies or  
**112** procedures meeting the requirements of § 2.2-4300, remain in effect in such school division. This  
**113** provision shall not exempt any school division from any centralized purchasing ordinance duly adopted  
**114** by a local governing body.

**115** 12. Notwithstanding the exemptions set forth in subdivisions 9 through 11, the provisions of  
**116** subsections C and D of § 2.2-4303, and §§ 2.2-4305, 2.2-4308, 2.2-4311, 2.2-4315, 2.2-4317, 2.2-4330,  
**117** 2.2-4333 through 2.2-4338, 2.2-4343.1, and 2.2-4367 through 2.2-4377 shall apply to all counties, cities  
**118** and school divisions, and to all towns having a population greater than 3,500 in the Commonwealth.

**119** The method for procurement of professional services through competitive negotiation set forth in  
**120** §§ 2.2-4303.1 and 2.2-4303.2 shall also apply to all counties, cities and school divisions, and to all  
**121** towns having a population greater than 3,500, where the cost of the professional service is expected to

122 exceed \$60,000 in the aggregate or for the sum of all phases of a contract or project. A school board  
123 that makes purchases through its public school foundation or purchases educational technology through  
124 its educational technology foundation, either as may be established pursuant to § 22.1-212.2:2 shall be  
125 exempt from the provisions of this chapter, except, relative to such purchases, the school board shall  
126 comply with the provisions of §§ 2.2-4311 and 2.2-4367 through 2.2-4377.

127 13. A public body that is also a utility operator may purchase services through or participate in  
128 contracts awarded by one or more utility operators that are not public bodies for utility marking services  
129 as required by the Underground Utility Damage Prevention Act (§ 56-265.14 et seq.). A purchase of  
130 services under this subdivision may deviate from the procurement procedures set forth in this chapter  
131 upon a determination made in advance by the public body and set forth in writing that competitive  
132 sealed bidding is either not practicable or not fiscally advantageous to the public, and the contract is  
133 awarded based on competitive principles.

134 14. Procurement of any construction or planning and design services for construction by a Virginia  
135 nonprofit corporation or organization not otherwise specifically exempted when (i) the planning, design  
136 or construction is funded by state appropriations of \$10,000 or less or (ii) the Virginia nonprofit  
137 corporation or organization is obligated to conform to procurement procedures that are established by  
138 federal statutes or regulations, whether those federal procedures are in conformance with the provisions  
139 of this chapter.

140 15. Purchases, exchanges, gifts or sales by the Citizens' Advisory Council on Furnishing and  
141 Interpreting the Executive Mansion.

142 16. The Eastern Virginia Medical School in the selection of services related to the management and  
143 investment of its endowment and other institutional funds. The selection of these services shall, however,  
144 be governed by the Uniform Prudent Management of Institutional Funds Act (§ 64.2-1100 et seq.).

145 17. The Department of Corrections in the selection of pre-release and post-incarceration services.

146 18. The University of Virginia Medical Center to the extent provided by subdivision B 3 of  
147 § 23-77.4.

148 19. The purchase of goods and services by a local governing body or any authority, board,  
149 department, instrumentality, institution, agency or other unit of state government when such purchases  
150 are made under a remedial plan established by the Governor pursuant to subsection C of § 2.2-4310 or  
151 by a chief administrative officer of a county, city or town pursuant to § 15.2-965.1.

152 20. The contract by community services boards or behavioral health authorities with an administrator  
153 or management body pursuant to a joint agreement authorized by § 37.2-512 or 37.2-615.

154 21. [Expired].

155 22. *The purchase of Virginia-grown food products for use by a public body where the annual cost of*  
156 *the product is not expected to exceed \$100,000.*

157 B. Where a procurement transaction involves the expenditure of federal assistance or contract funds,  
158 the receipt of which is conditioned upon compliance with mandatory requirements in federal laws or  
159 regulations not in conformance with the provisions of this chapter, a public body may comply with such  
160 federal requirements, notwithstanding the provisions of this chapter, only upon the written determination  
161 of the Governor, in the case of state agencies, or the governing body, in the case of political  
162 subdivisions, that acceptance of the grant or contract funds under the applicable conditions is in the  
163 public interest. Such determination shall state the specific provision of this chapter in conflict with the  
164 conditions of the grant or contract.