

964664753

## HOUSE BILL NO. 1223

Offered January 22, 1996

*A BILL to amend and reenact §§ 2.1-116, 11-35, as it is currently effective and as it shall become effective, 62.1-132.6 and 62.1-132.7 of the Code of Virginia, relating to powers of the Virginia Port Authority.*

Patrons—Heilig, Croshaw, Diamonstein, Drake, Jones, J.C., Moore, Moss and Robinson; Senators: Lucas, Schrock, Stolle and Walker

Referred to Committee on Corporations, Insurance and Banking

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

**1. That §§ 2.1-116, 11-35, as it is currently effective and as it shall become effective, 62.1-132.6 and 62.1-132.7 of the Code of Virginia are amended and reenacted as follows:**

§ 2.1-116. Certain officers and employees exempt from chapter.

The provisions of this chapter shall not apply to:

1. Officers and employees for whom the Constitution specifically directs the manner of selection;
  2. Officers and employees of the Supreme Court and the Court of Appeals;
  3. Officers appointed by the Governor, whether confirmation by the General Assembly or by either house thereof is required or not;
  4. Officers elected by popular vote or by the General Assembly or either house thereof;
  5. Members of boards and commissions however selected;
  6. Judges, referees, receivers, arbiters, masters and commissioners in chancery, commissioners of accounts, and any other persons appointed by any court to exercise judicial functions, and jurors and notaries public;
  7. Officers and employees of the General Assembly and persons employed to conduct temporary or special inquiries, investigations, or examinations on its behalf;
  8. The presidents, and teaching and research staffs of state educational institutions;
  9. Commissioned officers and enlisted personnel of the national guard and the naval militia;
  10. Student employees in institutions of learning, and patient or inmate help in other state institutions;
  11. Upon general or special authorization of the Governor, laborers, temporary employees and employees compensated on an hourly or daily basis;
  12. County, city, town and district officers, deputies, assistants and employees;
  13. The employees of the Virginia Workers' Compensation Commission;
  14. The following officers and employees of the Virginia Retirement System: retirement system chief investment officer, retirement system investment officer, retirement system assistant investment officer and investment financial analyst;
  15. Employees whose positions are identified by the State Council of Higher Education and the boards of the Virginia Museum of Fine Arts, the Science Museum of Virginia, the Jamestown-Yorktown Foundation, the Frontier Culture Museum of Virginia, the Virginia Museum of Natural History and The Library of Virginia, and approved by the Director of the Department of Personnel and Training as requiring specialized and professional training;
  16. Employees of the State Lottery Department;
  17. Production workers for the Virginia Industries for the Blind Sheltered Workshop programs; ~~and~~
  18. Employees of the Medical College of Virginia Hospitals and the University of Virginia Medical Center who are determined by the Department of Personnel and Training to be health care providers; however, any changes in compensation plans for such employees shall be subject to the review and approval of the Secretary of Education. Such employees shall remain subject to the provisions of Chapter 10.01 (§ 2.1-116.01 et seq.) of Title 2.1; ~~and~~
  19. In executive branch agencies the employee who has accepted serving in the capacity of chief deputy, or equivalent, and the employee who has accepted serving in the capacity of a confidential assistant for policy or administration. An employee serving in either one of these two positions, shall be deemed to serve on an employment at will basis. An agency may not exceed two employees who serve in this exempt capacity; ~~and~~
  20. *Employees of the Virginia Port Authority in the exercise of any power conferred upon them under Chapter 10 (§ 62.1-128 et seq.) of Title 62.1.*
- § 11-35. Title; purpose; applicability.
- A. This chapter may be cited as the Virginia Public Procurement Act.

INTRODUCED

HB1223

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

62 C. The provisions of this chapter, however, shall not apply, except as stipulated in the provisions of  
63 §§ 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  
64 population of less than 3,500 as determined by the last official United States census.

65 D. Except to the extent adopted by such governing body, the provisions of this chapter also shall not  
66 apply, except as stipulated in subsection E, to any county, city or town whose governing body adopts by  
67 ordinance or resolution alternative policies and procedures which are based on competitive principles and  
68 which are generally applicable to procurement of goods and services by such governing body and the  
69 agencies thereof. This exemption shall be applicable only so long as such policies and procedures, or  
70 other policies and procedures meeting the requirements of this section, remain in effect in such county,  
71 city or town. Such policies and procedures may provide for incentive contracting which offers a  
72 contractor whose bid is accepted the opportunity to share in any cost savings realized by the locality  
73 when project costs are reduced by such contractor, without affecting project quality, during construction  
74 of the project. The fee, if any, charged by the project engineer or architect for determining such cost  
75 savings shall be paid as a separate cost and shall not be calculated as part of any cost savings.

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

83 E. Notwithstanding the exemptions set forth in subsection D, the provisions of §§ 11-41 C, 11-41.1,  
84 11-46 B, 11-49, 11-51, 11-54, 11-56 through 11-61 and 11-72 through 11-80 shall apply to all counties,  
85 cities and school divisions, and to all towns having a population greater than 3,500 in the  
86 Commonwealth. The method for procurement of professional services set forth in subdivision 3 a of  
87 § 11-37 in the definition of competitive negotiation shall also apply to all counties, cities and school  
88 divisions, and to all towns having a population greater than 3,500, where the cost of the professional  
89 service is expected to exceed \$20,000.

90 F. The provisions of this chapter shall not apply to those contracts entered into prior to January 1,  
91 1983, which shall continue to be governed by the laws in effect at the time those contracts were  
92 executed.

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

102 H. Notwithstanding the foregoing provisions of this section, the selection of services by the Virginia  
103 Retirement System related to the management, purchase or sale of authorized investments, including but  
104 not limited to actuarial services, shall be governed by the standards set forth in § 51.1-124.30 and shall  
105 not be subject to the provisions of this chapter.

106 I. The provisions of this chapter shall apply to procurement of any construction or planning and  
107 design services for construction by a Virginia not-for-profit corporation or organization not otherwise  
108 specifically exempted when the planning, design or construction is funded by state appropriations greater  
109 than \$10,000 unless the Virginia not-for-profit corporation or organization is obligated to conform to  
110 procurement procedures which are established by federal statutes or regulations, whether or not those  
111 federal procedures are in conformance with the provisions of this chapter.

112 J. *The provisions of this chapter shall not apply to the Virginia Port Authority in the exercise of any*  
113 *power conferred thereon pursuant to Chapter 10 (§ 62.1-128 et seq.) of Title 62.1.*

114 § 11-35. (Effective July 1, 1996) Title; purpose; applicability.

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

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

118 C. The provisions of this chapter, however, shall not apply, except as stipulated in the provisions of  
119 §§ 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  
120 population of less than 3,500 as determined by the last official United States census.

121 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. Such policies and standards may provide for incentive contracting which offers a contractor whose bid is accepted the opportunity to share in any cost savings realized by the locality when project costs are reduced by such contractor, without affecting project quality, during construction of the project. The fee, if any, charged by the project engineer or architect for determining such cost savings shall be paid as a separate cost and shall not be calculated as part of any cost savings.

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, 11-46 B, 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 and the Board of the Virginia Higher Education Tuition Trust Fund 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 §§ 51.1-124.30 and 23-38.80, respectively, 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 design services for construction by a Virginia not-for-profit corporation or organization not otherwise specifically exempted when the planning, design or construction is funded by state appropriations greater than \$10,000 unless the Virginia not-for-profit corporation or organization is obligated to conform to procurement procedures which are established by federal statutes or regulations, whether or not those federal procedures are in conformance with the provisions of this chapter.

*J. The provisions of this chapter shall not apply to the Virginia Port Authority in the exercise of any power conferred thereon pursuant to Chapter 10 (§ 62.1-128 et seq.) of Title 62.1.*

§ 62.1-132.6. Powers not restrictive; exemptions from Virginia Personnel Act and Virginia Public Procurement Act.

The Authority shall have the power to perform any act or carry out any function not inconsistent with state law, whether included in the provisions of this chapter, which may be, or tend to be, useful in carrying out the provisions of this chapter. *The provisions of Chapter 10 (§ 2.1-110 et seq.) of Title 2.1 and Chapter 7 (§ 11-35 et seq.) of Title 11 shall not apply to the Authority in the exercise of any power conferred upon the Authority under this chapter.*

§ 62.1-132.7. Employment of personnel and legal counsel.

~~A. Subject to the provisions of Chapter 10 (§ 2.1-110 et seq.) of Title 2.1, the~~ The Authority may appoint, employ, dismiss, fix and pay compensation of employees, officers, agents, advisers, and consultants, including, without limitation, financial advisers, engineers, and other technical advisers and public accountants, within and without the Commonwealth and the United States without regard to

183 whether such employees are citizens of the United States. *The provisions of any other law to the*  
184 *contrary notwithstanding, the Authority shall determine the duties and compensation of its employees,*  
185 *officers, agents, advisers, and consultants, without the approval of any other agency or instrumentality.*  
186 B. The authority may retain legal counsel, subject to the approval of the Attorney General, to  
187 represent the Authority in rate cases and all other hearings, controversies, or matters involving the  
188 interests of the Authority.