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HOUSE BILL NO. 2154

Offered January 16, 1997

A BILL to amend and reenact §§ 2.1-399.1, 2.1-483.1, 11-35, and 62.1-132.6 of the Code of Virginia, relating to the Virginia Port Authority; capital projects; exemption from Public Procurement Act.

Patrons—Heilig, Diamonstein, Drake, Forbes, Jones, J.C., Katzen, McDonnell, Parrish, Robinson, Sherwood, Tata, Wagner and Wardrup; Senators: Earley, Lucas, Martin, Potts, Quayle, Stolle, Waddell, Williams and Woods

Referred to Committee on General Laws

Be it enacted by the General Assembly of Virginia:

1. That §§ 2.1-399.1, 2.1-483.1, 11-35, and 62.1-132.6 of the Code of Virginia are amended and reenacted as follows:

§ 2.1-399.1. Capital projects.

A. On or before December 20 of the year immediately prior to the beginning of each regular session held in an even-numbered year of the General Assembly, the Governor shall submit to the presiding officer of each house of the General Assembly copies of any tentative bill or bills involving proposed capital appropriations for each year in the ensuing biennial appropriation period. Such bill or bills shall include each capital project to be financed through revenue bonds or other debt issuance, the amount of each such project, and identify the entity which will issue such debt. Notwithstanding any other provision of law, the Governor may recommend, and the General Assembly may make, an appropriation of special fund revenues derived from (i) the operations of the medical centers of Virginia Commonwealth University and the University of Virginia that may be used, as directed by such universities, in connection with the ownership and operation of their medical centers and related health care and educational activities, including operating expenses and debt service; and (ii) the operations of the terminals of the Virginia Port Authority that may be used as directed by the Virginia Port Authority in connection with the ownership and operation of their terminals and related activities, including operating expenses and debt service..

B. On or before December 20 of the year immediately prior to the beginning of each regular session held in an odd-numbered year of the General Assembly, the Governor shall submit to the presiding officer of each house printed copies of all gubernatorial amendments proposed to capital appropriations acts adopted in the immediately preceding even-numbered year session.

C. The Governor shall ensure that a summary of budget highlights be sent to a newspaper of general circulation in the following geographical areas of the Commonwealth: Northern Virginia, Hampton Roads, Richmond/Petersburg, Central Virginia, Shenandoah Valley, Roanoke Valley, Southside, and Southwest Virginia prior to the convening of such session of the General Assembly.

D. The standing committees of the House of Delegates and of the Senate in charge of appropriation measures shall hold four regional public hearings on the budget bill submitted by the Governor. The four public hearings shall be held prior to the convening of such session of the General Assembly, at hearing sites and times as selected by the chairmen of the two committees.

§ 2.1-483.1. Administration of capital outlay construction.

The Department of General Services through its Division of Engineering and Buildings shall provide assistance in the administration of capital outlay construction projects set forth in the Appropriations Act, other than highway construction undertaken by the Department of Transportation and port construction undertaken by the Virginia Port Authority, to include the review and approval of plans and specifications, and acceptance of completed projects.

The Department of General Services may also establish standards, as needed, for construction by the Commonwealth and may, with the advice of the Attorney General, establish standard contract provisions and procedures for the procurement and administration of construction and for the procurement and administration of architectural and engineering services relating to construction, which shall be used by all departments, agencies and institutions of the Commonwealth. Such 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 Commonwealth 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.

The term "construction" as used in this section shall include new construction, reconstruction, renovation, restoration, major repair, demolition and all similar work upon buildings and ancillary

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60 facilities owned or to be acquired by the Commonwealth. It does not include buildings or other facilities
61 ancillary to the use of state highways which are located within the right-of-way of any state highway, *or*
62 *buildings or structures for use by the Virginia Port Authority within the boundaries of property owned*
63 *or leased by the Virginia Port Authority.*

64 § 11-35. Title; purpose; applicability.

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

66 B. The purpose of this chapter is to enunciate the public policies pertaining to governmental
67 procurement from nongovernmental sources, to include governmental procurement which may or may
68 not result in monetary consideration for either party. This chapter shall apply whether the consideration
69 is monetary or nonmonetary and regardless of whether the public body, the contractor, or some third
70 party is providing the consideration.

71 C. The provisions of this chapter, however, shall not apply, except as stipulated in the provisions of
72 §§ 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
73 population of less than 3,500 as determined by the last official United States census.

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

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

92 E. Notwithstanding the exemptions set forth in subsection D, the provisions of §§ 11-41 C, 11-41.1,
93 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,
94 cities and school divisions, and to all towns having a population greater than 3,500 in the
95 Commonwealth. The method for procurement of professional services set forth in subdivision 3 a of
96 § 11-37 in the definition of competitive negotiation shall also apply to all counties, cities and school
97 divisions, and to all towns having a population greater than 3,500, where the cost of the professional
98 service is expected to exceed \$20,000.

99 F. The provisions of this chapter shall not apply to those contracts entered into prior to January 1,
100 1983, which shall continue to be governed by the laws in effect at the time those contracts were
101 executed.

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

111 H. Notwithstanding the foregoing provisions of this section, the selection of services by the Virginia
112 Retirement System and the Board of the Virginia Higher Education Tuition Trust Fund related to the
113 management, purchase or sale of authorized investments, including but not limited to actuarial services,
114 shall be governed by the standards set forth in §§ 51.1-124.30 and 23-38.80, respectively, and shall not
115 be subject to the provisions of this chapter.

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

J. The provisions of this chapter shall not apply to items purchased by public institutions of higher education for resale at retail bookstores and similar retail outlets operated by such institution. However, such purchase procedures shall provide for competition where practicable.

K. The provisions of this chapter shall not apply to the Virginia Port Authority in the exercise of any of its powers in accordance with Chapter 10 (§ 62.1-128 et seq.) of Title 62.1.

§ 62.1-132.6. Powers not restrictive; exemption from 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 the Virginia Public Procurement Act (§ 11-35 et seq.) shall not apply to the Authority in the exercise of any of its powers in accordance with this chapter.*