

SENATE BILL NO. _____ HOUSE BILL NO. _____

1 A BILL to amend and reenact §§ 2.2-4342 and 2.2-4343 of the Code of Virginia, relating to the
2 designation of trade secrets and proprietary information under the Virginia Public Procurement
3 Act.

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

5 **1. That §§ 2.2-4342 and 2.2-4343 of the Code of Virginia are amended and reenacted as follows:**

6 **§ 2.2-4342. Public inspection of certain records.**

7 A. Except as provided in this section, all proceedings, records, contracts and other public records
8 relating to procurement transactions shall be open to the inspection of any citizen, or any interested
9 person, firm or corporation, in accordance with the Virginia Freedom of Information Act (§ 2.2-3700 et
10 seq.).

11 B. Cost estimates relating to a proposed procurement transaction prepared by or for a public
12 body shall not be open to public inspection.

13 C. Any competitive sealed bidding bidder, upon request, shall be afforded the opportunity to
14 inspect bid records within a reasonable time after the opening of all bids but prior to award, except in the
15 event that the public body decides not to accept any of the bids and to reopen the contract. Otherwise,
16 bid records shall be open to public inspection only after award of the contract.

17 D. Any competitive negotiation offeror, upon request, shall be afforded the opportunity to
18 inspect proposal records within a reasonable time after the evaluation and negotiations of proposals are
19 completed but prior to award, except in the event that the public body decides not to accept any of the
20 proposals and to reopen the contract. Otherwise, proposal records shall be open to public inspection only
21 after award of the contract.

22 E. Any inspection of procurement transaction records under this section shall be subject to
23 reasonable restrictions to ensure the security and integrity of the records.

24 F. Trade secrets or proprietary information submitted by a bidder, offeror, or contractor in
25 connection with a procurement transaction or prequalification application submitted pursuant to

26 subsection B of § 2.2-4317 shall not be subject to the Virginia Freedom of Information Act (§ 2.2-3700
27 et seq.); however, the bidder, offeror, or contractor shall (i) invoke the protections of this section prior to
28 or upon submission of the data or other materials, (ii) identify the data or other materials to be protected,
29 and (iii) state the reasons why protection is necessary. A bidder, offeror, or contractor shall not designate
30 as trade secrets or proprietary information (a) an entire bid, proposal, or prequalification application; (b)
31 any portion of a bid, proposal, or prequalification application that does not contain trade secrets or
32 proprietary information; or (c) line item prices or total bid, proposal, or prequalification application
33 prices. If the bidder, offeror, or contractor refuses to withdraw an improperly designated bid, proposal,
34 or prequalification application, the bid shall be considered to be nonresponsive, the proposal shall be
35 rejected, or the prequalification application shall be denied. The public body shall document such action
36 in the procurement file.

37 **§ 2.2-4343. Exemption from operation of chapter for certain transactions.**

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

39 1. The Virginia Port Authority in the exercise of any of its powers in accordance with Chapter 10
40 (§ 62.1-128 et seq.) of Title 62.1, provided the Authority implements, by policy or regulation adopted by
41 the Board of Commissioners, procedures to ensure fairness and competitiveness in the procurement of
42 goods and services and in the administration of its capital outlay program. This exemption shall be
43 applicable only so long as such policies and procedures meeting the requirements remain in effect.

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

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

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

53 5. The College of William and Mary in Virginia, Virginia Commonwealth University, the
54 University of Virginia, and Virginia Polytechnic Institute and State University in the selection of
55 services related to the management and investment of their endowment funds, endowment income, gifts,
56 all other nongeneral fund reserves and balances, or local funds of or held by the respective public
57 institution of higher education pursuant to § 23.1-2210, 23.1-2306, 23.1-2604, or 23.1-2803. However,
58 selection of these services shall be governed by the Uniform Prudent Management of Institutional Funds
59 Act (§ 64.2-1100 et seq.) as required by §§ 23.1-2210, 23.1-2306, 23.1-2604, and 23.1-2803.

60 6. The Board of the Virginia College Savings Plan for the selection of services related to the
61 operation and administration of the Plan, including, but not limited to, contracts or agreements for the
62 management, purchase, or sale of authorized investments or actuarial, record keeping, or consulting
63 services. However, such selection shall be governed by the standard set forth in § 23.1-706.

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

67 8. The purchase of goods and services by agencies of the legislative branch that may be
68 specifically exempted therefrom by the Chairman of the Committee on Rules of either the House of
69 Delegates or the Senate. Nor shall the contract review provisions of § 2.2-2012 apply to such
70 procurements. The exemption shall be in writing and kept on file with the agency's disbursement
71 records.

72 9. Any town with a population of less than 3,500, except as stipulated in the provisions of §§ 2.2-
73 4305, 2.2-4311, 2.2-4315, 2.2-4330, 2.2-4333 through 2.2-4338, 2.2-4343.1, and 2.2-4367 through 2.2-
74 4377 and Chapter 43.1 (§ 2.2-4378 et seq.).

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

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

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

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

93 12. Notwithstanding the exemptions set forth in subdivisions 9 through 11, the provisions of
94 subsections C and D of § 2.2-4303, §§ 2.2-4305, 2.2-4311, 2.2-4315, 2.2-4317, 2.2-4330, 2.2-4333
95 through 2.2-4338, [2.2-4342](#), 2.2-4343.1, and 2.2-4367 through 2.2-4377, and Chapter 43.1 (§ 2.2-4378
96 et seq.) shall apply to all counties, cities and school divisions, and to all towns having a population
97 greater than 3,500 in the Commonwealth.

98 The method for procurement of professional services through competitive negotiation set forth in
99 §§ 2.2-4303.1 and 2.2-4303.2 shall also apply to all counties, cities and school divisions, and to all
100 towns having a population greater than 3,500, where the cost of the professional service is expected to
101 exceed \$60,000 in the aggregate or for the sum of all phases of a contract or project. A school board that
102 makes purchases through its public school foundation or purchases educational technology through its
103 educational technology foundation, either as may be established pursuant to § 22.1-212.2:2 shall be
104 exempt from the provisions of this chapter, except, relative to such purchases, the school board shall
105 comply with the provisions of §§ 2.2-4311 and 2.2-4367 through 2.2-4377.

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

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

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

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

125 17. The Department of Corrections in the selection of pre-release and post-incarceration services
126 and the Department of Juvenile Justice in the selection of pre-release and post-commitment services.

127 18. The University of Virginia Medical Center to the extent provided by subdivision A 3 of §
128 23.1-2213.

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

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

135 21. [Expired].

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

138 23. The Virginia Industries for the Blind when procuring components, materials, supplies, or
139 services for use in commodities and services furnished to the federal government in connection with its
140 operation as an AbilityOne Program-qualified nonprofit agency for the blind under the Javits-Wagner-
141 O'Day Act, 41 U.S.C. §§ 8501-8506, provided that the procurement is accomplished using procedures
142 that ensure that funds are used as efficiently as practicable. Such procedures shall require documentation
143 of the basis for awarding contracts. Notwithstanding the provisions of § 2.2-1117, no public body shall
144 be required to purchase such components, materials, supplies, services, or commodities.

145 B. Where a procurement transaction involves the expenditure of federal assistance or contract
146 funds, the receipt of which is conditioned upon compliance with mandatory requirements in federal laws
147 or regulations not in conformance with the provisions of this chapter, a public body may comply with
148 such federal requirements, notwithstanding the provisions of this chapter, only upon the written
149 determination of the Governor, in the case of state agencies, or the governing body, in the case of
150 political subdivisions, that acceptance of the grant or contract funds under the applicable conditions is in
151 the public interest. Such determination shall state the specific provision of this chapter in conflict with
152 the conditions of the grant or contract.

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