

**Special Joint General Laws Subcommittee
Studying the Virginia Public Procurement Act**

Referred Legislation

I. Legislation referred from the 2014 Legislative Session

H.B. 223

Patron: Dance

Virginia Public Procurement Act; establishment of historically underutilized business zones (HUB zones). Requires the Department of General Services and the Virginia Information Technologies Agency to develop procurement regulations for the utilization of small businesses located in historically underutilized business zones (HUB zones). The bill also authorizes public bodies to establish programs to facilitate the participation of small businesses in HUB zones. Such programs must be in writing and comply with any enhancement or remedial measures authorized by the Governor in the case of state agencies or the chief executive of a local governing body in the case of local agencies.

H.B. 289

Patron: Albo

Virginia Public Procurement Act; cooperative procurement. Eliminates the limitation for cooperative procurement for construction in excess of \$200,000 by a local public body from the contract of another local public body that is more than a straight line distance of 75 miles from the territorial limits of the local public body procuring the construction.

H.B. 290

Patron: Albo

Virginia Public Procurement Act; competitive negotiation; job order contracting. Makes technical changes to the provisions of the Virginia Public Procurement Act related to job order contracting.

H.B. 421

Patron: Minchew

Virginia Public Procurement Act; competitive negotiation; term contracts for certain architectural and engineering services. Increases the term contract limits for architectural and engineering services from \$1 million to \$2.5 million per project for state agencies and from \$5 million to \$10 million per term.

H.B. 549

Patron: Filler-Corn

Virginia Public Procurement Act; transportation construction services.

Provides that for the award of transportation construction projects, certain specified factors other than price may be considered.

H.B. 769

Patron: Hugo

Virginia Public Procurement Act; project labor agreements by certain state agencies.

Provides, under certain conditions, that when engaged in procuring products or services or letting contracts for construction, manufacture, maintenance, or operation of any project paid for in whole or in part by state funds, or when overseeing or administering such procurement, neither the Commonwealth Transportation Board nor any state transportation agency nor any construction manager acting on behalf of such entities shall, in their bid specifications, project agreements, or other controlling documents, provide an incentive in the scoring of such bids that favors entities entering into project labor agreements. The bill sets out exceptions to this requirement.

H.B. 797

Patron: Lopez

Department of Small Business and Supplier Diversity; definition of small business.

Changes the definition of small business to require the business to have 250 or fewer employees and average annual gross receipts of \$10 million or less averaged over the previous three years. Currently, a small business is required to meet one or the other of these conditions.

H.B. 1159

Patron: Rasoul

Political contributions; prohibitions during procurement process.

Includes the mayor or chief executive officer of a locality, school superintendent, and any member of a local governing body, planning commission, or school board in the current prohibition against knowingly soliciting or accepting a contribution, gift, or other item with a value greater than \$50 from any bidder, offeror, or private entity who has submitted a bid or proposal pursuant to the Virginia Public Procurement Act, the Public-Private Transportation Act, or the Public-Private Education Facilities and Infrastructure Act during the bidding period. The restrictions only apply if the stated or expected value of the contract is \$5 million or more and do not apply to contracts awarded as the result of competitive sealed bidding. Furthermore, no bidder, offeror, or private entity who has submitted a bid or proposal under such acts shall offer or promise to make such a gift to the mayor or chief executive officer of a locality, school superintendent, or any member of a local governing body, planning commission, or school board. Any violation shall be subject to a civil penalty of \$500 or up to two times the amount of the contribution or gift, whichever is greater.

H.B. 1194

Patron: James

Department of Small Business and Supplier Diversity; establishment of minority-owned and women-owned state purchasing program. Provides for the Department of Small Business and Supplier Diversity, in conjunction with the Department of General Services, the Virginia Information Technologies Agency, and the Department of Transportation, to develop a program establishing a requirement that at least 15 percent of all state purchases be made from minority-owned or women-owned businesses that are also certified as small businesses.

H.B. 1208

Patron: Albo

Virginia Public Procurement Act; consideration of early payment discounts. Prohibits the consideration of discounts for early payment of invoices offered by any bidder in the determination of the lowest priced bid on any contract awarded using competitive sealed bidding. The bill also provides that no bidder shall be required to offer discounts for early payment of invoices as a condition of any Invitation to Bid, and no bidder shall be declared nonresponsive for failure to offer a discount for early payment of invoices. With respect to competitive negotiation, the bill provides that any offer submitted in response to a Request for Proposal may contain offers for discounts for the early payment of invoices by public bodies; but that, if offered, such discounts shall not be considered in the selection of qualified offerors or in the evaluation of prices submitted by any such offeror. Finally, the bill provides that discounts for prompt payment shall not be considered in the evaluation or made a condition of offers or bids by any state agency or local public body. However, any offered discount may form a part of the award and shall be taken if payment is made within the discount period indicated in the offer or bid by the offeror or bidder. As an alternative to offering a prompt payment discount in conjunction with the offer or bid, offerors or bidders who are awarded contracts may include prompt payment discounts on individual invoices. In connection with any discount offered for prompt payment, time shall be computed from the date of the submission of the invoice by the contractor or supplier.

H.B. 1223

Patron: Yancey

Virginia Public Procurement Act; small, women-owned, and minority-owned businesses. Defines "historically Black colleges and universities" and provides that the term "minority-owned business" includes historically Black colleges and universities, regardless of the percentage ownership by minority individuals or, in the case of a corporation, partnership, or limited liability company or other entity, the equity ownership interest in the corporation, partnership, or limited liability company or other entity. The bill also requires that programs to facilitate the participation of small businesses and all businesses owned by women, minorities, or service disabled veterans in

procurement transactions include a provision for fair and equitable evaluations and opportunities for small businesses and all businesses owned by women, minorities, or service disabled veterans.

H.B. 1238

Patron: Gilbert

Virginia Public Procurement Act; disclosure of cost estimates in solicitations prohibited. Provides that no Invitation to Bid or Request for Proposal shall contain the public body's cost estimate for that which is sought to be procured.

S.B. 174

Patron: Black

Virginia Public Procurement Act; competitive negotiation; term contracts for certain architectural and engineering services. Increases the term contract limits for architectural and engineering services to \$2.5 million per project for state agencies and \$10 million per term. Currently, these limits are \$1 million and \$5 million, respectively.

S.B. 616

Patron: Alexander

Department of Small Business and Supplier Diversity; creation of Department of Minority Business Enterprise and the Department of Business Assistance. Eliminates the Department of Small Business and Supplier Diversity and re-creates the Department of Minority Business Enterprise and the Department of Business Assistance as those two departments existed prior to January 1, 2014. As such, the bill reassigns the former powers and duties of the Department of Small Business and Supplier Diversity to the Department of Minority Business Enterprise and the Department of Business Assistance. The bill contains numerous technical amendments.

S.B. 632

Patron: Lucas

Department of Small Business and Supplier Diversity; establishment of minority-owned and women-owned state purchasing program. Provides for the Department of Small Business and Supplier Diversity, in conjunction with the Department of General Services, the Virginia Information Technologies Agency, and the Department of Transportation, to develop a program establishing a requirement that at least 15 percent of all state purchases be made from minority-owned or women-owned businesses that are also certified as small businesses.

S.B. 645

Patron: McEachin

Virginia Public Procurement Act; transportation construction services.

Provides that for the award of transportation construction projects, certain specified factors other than price may be considered. The bill also provides that construction may be procured using either competitive sealed bidding or competitive negotiation and requires the public body to set forth in writing that the method selected is practicable or fiscally advantageous to the public. In addition, the bill establishes instances where the determination of the public body is presumed to be appropriate. Under current law, construction may only be procured by competitive bidding except under certain circumstances.

II. Legislation referred from the 2013 Legislative Session

H.B. 2078

Patron: Peace

Public procurement; design-build; construction management; protests; private investment. Increases public notice of requests for proposals from 10 to 30 days. The bill also (i) limits the use of competitive negotiation for construction projects, including certain public institutions of higher education, for which the aggregate or sum of all phases is not expected to exceed \$10 million, the nature of the project is such that it is unusually complex or extraordinary conditions exist, and the Director of the Department of General Services and the Secretary of Administration certify such conditions exist; (ii) requires posting on eVa and other appropriate websites for state and local public bodies using certain methods of procurement; (iii) changes the process for procurement of design-build or construction management projects; and (iv) allows a bidder or offeror to protest a public body's use of competitive negotiation. The bill contains technical amendments.