

# Cooperative Procurement - Discussion Draft #2

*\*Indicates proposal offered by non-work group member*

SENATE BILL NO. \_\_\_\_\_ HOUSE BILL NO. \_\_\_\_\_

1 A BILL to amend and reenact § 2.2-4304 of the Code of Virginia, relating to the Virginia Public  
2 Procurement Act; limitations on cooperative procurement.

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

4 **1. That § 2.2-4304 of the Code of Virginia is amended and reenacted as follows:**

5 **§ 2.2-4304. Cooperative procurement.**

6 A. Any public body may participate in, sponsor, conduct, or administer a cooperative  
7 procurement agreement on behalf of or in conjunction with one or more other public bodies, or public  
8 agencies or institutions or localities of the several states, of the United States or its territories, the  
9 District of Columbia, or the U.S. General Services Administration, for the purpose of combining  
10 requirements to increase efficiency or reduce administrative expenses in any acquisition of goods and  
11 services, and insurance. (Source: VACO, VML, VAGP)

12 A public body may purchase from another public body's contract even if it did not participate in  
13 the request for proposal or invitation to bid, if the request for proposal or invitation to bid specified that  
14 the procurement was being conducted on behalf of other public bodies, except for:

15 1. Contracts for architectural or engineering services; or

16 **\*SUGGESTED OPTIONS\***

17 2. ~~Construction in excess of \$200,000 by a local public body from the contract of another local~~  
18 ~~public body that is more than a straight line distance of 75 miles from the territorial limits of the local~~  
19 ~~public body procuring the construction. The installation of artificial turf or other athletic surfaces shall~~  
20 ~~not be subject to the limitations prescribed in this subdivision. Nothing in this subdivision shall be~~  
21 ~~construed to prohibit sole source or emergency procurements awarded pursuant to subsections E and F~~  
22 ~~of § 2.2-4303. (Source: Matt Benka,\* Coalition for Procurement Reform, (HB 289); Hunter~~

23 ~~Merrill, VA Association of Roofing Professionals; Jeff Southard. VA Transportation Construction~~  
24 ~~Alliance)~~

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~~2. 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. The installation of artificial turf or other athletic surfaces shall not be subject to the limitations prescribed in this subdivision. Nothing in this subdivision shall be construed to prohibit sole source or emergency procurements awarded pursuant to subsections E and F of § 2.2-4303. (Source: Bert Jones, VCCS)~~

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~~2. 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. The installation of artificial turf or other athletic surfaces shall not be subject to the limitations prescribed in this subdivision. Nothing in this subdivision shall be construed to prohibit sole source or emergency procurements awarded pursuant to subsections E and F of § 2.2-4303; or~~

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3. New capital construction. For the purposes of this subdivision, "new capital construction means the construction of a new public building, structure or infrastructure facility. "New capital construction" does not include the demolition, alteration, addition, renovation, maintenance, repair, equipment acquisition, or improvements to a public building, structure or infrastructure facility or any ancillary new construction required to properly complete any demolition, alteration, addition, renovation, maintenance, repair, equipment acquisition, or improvements. (Source: Tray Adams, Esq.,\* The Gordian Group)

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1. Contracts for architectural or engineering services, other than those procured by the Department of General Services; or

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50 2. ~~Construction in excess of \$200,000 by a local public body from the contract of another local~~  
 51 ~~public body that is more than a straight line distance of 75 miles from the territorial limits of the local~~  
 52 ~~public body procuring the construction~~ Contracts for construction, other than those procured by the  
 53 Department of General Services. The installation of artificial turf or other athletic surfaces shall not be  
 54 subject to the limitations prescribed in this subdivision. Nothing in this subdivision shall be construed to  
 55 prohibit sole source or emergency procurements awarded pursuant to subsections E and F of § 2.2-4303.

56 (Source: Julie Whitlock, DGS)

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58 2. ~~Construction in excess of \$200,000 by a local public body from the contract of another local~~  
 59 ~~public body that is more than a straight line distance of 75 miles from the territorial limits of the local~~  
 60 ~~public body procuring the construction~~ \$1 million. The installation of artificial turf or other athletic  
 61 surfaces shall not be subject to the limitations prescribed in this subdivision. Nothing in this subdivision  
 62 shall be construed to prohibit sole source ~~or~~, emergency, or small purchase procurements awarded  
 63 pursuant to subsections ~~E and F, and G~~ of § 2.2-4303. (Source: VACO, VML, VAGP)

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65 2. Construction in excess of \$200,000 by a local public body from the contract of another local  
 66 public body that is more than a straight line distance of 75 miles from the territorial limits of the local  
 67 public body procuring the construction. The installation of artificial turf or other athletic surfaces shall  
 68 not be subject to the limitations prescribed in this subdivision. Nothing in this subdivision shall be  
 69 construed to prohibit sole source or emergency procurements awarded pursuant to subsections E and F  
 70 of § 2.2-4303 or job order contracts awarded pursuant to § 2.2-4303.1. (Source: Rich Sliwoski, DGS)

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72 A- With the exception of (i) architectural services, (ii) engineering services, and (iii) construction  
 73 services, a public body may purchase from another public body's contract even if it did not participate in  
 74 the request for proposal or invitation to bid, if the request for proposal or invitation to bid specified that  
 75 the procurement was being conducted on behalf of other public bodies, except for:

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76 1. ~~Contracts for architectural or engineering services; or~~  
77 2. ~~Construction in excess of \$200,000 by a local public body from the contract of another local~~  
78 ~~public body that is more than a straight line distance of 75 miles from the territorial limits of the local~~  
79 ~~public body procuring the construction. The installation of artificial turf or other athletic surfaces shall~~  
80 ~~not be subject to the limitations prescribed in this subdivision. Nothing in this subdivision shall be~~  
81 ~~construed to prohibit sole source or emergency procurements awarded pursuant to subsections E and F~~  
82 ~~of § 2.2-4303. (Source: Herschel Keller, Esq.\*)~~

83 In instances where any authority, department, agency, or institution of the Commonwealth  
84 desires to purchase information technology and telecommunications goods and services from another  
85 public body's contract and the procurement was conducted on behalf of other public bodies, such  
86 purchase shall be permitted if approved by the Chief Information Officer of the Commonwealth. Any  
87 public body that enters into a cooperative procurement agreement with a county, city, or town whose  
88 governing body has adopted alternative policies and procedures pursuant to subdivisions A 9 and A 10  
89 of § 2.2-4343 shall comply with the alternative policies and procedures adopted by the governing body  
90 of such county, city, or town.

91 B. Subject to the provisions of §§ 2.2-1110, 2.2-1111, 2.2-1120 and 2.2-2012, any authority,  
92 department, agency, or institution of the Commonwealth may participate in, sponsor, conduct, or  
93 administer a cooperative procurement arrangement on behalf of or in conjunction with public bodies,  
94 private health or educational institutions or with public agencies or institutions of the several states,  
95 territories of the United States, or the District of Columbia, for the purpose of combining requirements  
96 to effect cost savings or reduce administrative expense in any acquisition of goods and services, other  
97 than professional services. A public body may purchase from any authority, department, agency or  
98 institution of the Commonwealth's contract even if it did not participate in the request for proposal or  
99 invitation to bid, if the request for proposal or invitation to bid specified that the procurement was being  
100 conducted on behalf of other public bodies. In such instances, deviation from the procurement  
101 procedures set forth in this chapter and the administrative policies and procedures established to

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102 implement this chapter shall be permitted, if approved by the Director of the Division of Purchases and  
103 Supply.

104 Pursuant to § 2.2-2012, such approval is not required if the procurement arrangement is for  
105 telecommunications and information technology goods and services of every description. In instances  
106 where the procurement arrangement is for telecommunications and information technology goods and  
107 services, such arrangement shall be permitted if approved by the Chief Information Officer of the  
108 Commonwealth. However, such acquisitions shall be procured competitively.

109 Nothing herein shall prohibit the payment by direct or indirect means of any administrative fee  
110 that will allow for participation in any such arrangement.

111 C. As authorized by the United States Congress and consistent with applicable federal  
112 regulations, and provided the terms of the contract permit such purchases:

113 1. Any authority, department, agency, or institution of the Commonwealth may purchase goods  
114 and nonprofessional services, other than telecommunications and information technology, from a U.S.  
115 General Services Administration contract or a contract awarded by any other agency of the U.S.  
116 government, upon approval of the director of the Division of Purchases and Supply of the Department of  
117 General Services;

118 2. Any authority, department, agency, or institution of the Commonwealth may purchase  
119 telecommunications and information technology goods and nonprofessional services from a U.S.  
120 General Services Administration contract or a contract awarded by any other agency of the U.S.  
121 government, upon approval of the Chief Information Officer of the Commonwealth; and

122 3. Any county, city, town, or school board may purchase goods and nonprofessional services  
123 from a U.S. General Services Administration contract or a contract awarded by any other agency of the  
124 U.S. government.

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