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HOUSE BILL NO. 1070

Offered January 10, 2024

Prefiled January 10, 2024

A BILL to amend and reenact §§ 2.2-507, 2.2-1176, and 15.2-6019 of the Code of Virginia and to amend the Code of Virginia by adding sections numbered 15.2-6019.1, 15.2-6020.1, and 15.2-6020.2 relating to the Southwest Regional Recreation Authority; powers.

Patron—Morefield; Senator: Hackworth

Referred to Committee on Counties, Cities and Towns

Be it enacted by the General Assembly of Virginia:

1. That §§ 2.2-507, 2.2-1176, and 15.2-6019 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding sections numbered 15.2-6019.1, 15.2-6020.1, and 15.2-6020.2 as follows:

§ 2.2-507. Legal service in civil matters.

A. All legal service in civil matters for the Commonwealth, the Governor, and every state department, institution, division, commission, board, bureau, agency, entity, official, court, or judge, including the conduct of all civil litigation in which any of them are interested, shall be rendered and performed by the Attorney General, except as provided in this chapter and except for any litigation concerning a justice or judge initiated by the Judicial Inquiry and Review Commission. No regular counsel shall be employed for or by the Governor or any state department, institution, division, commission, board, bureau, agency, entity, or official. The Attorney General may represent personally or through one or more of his assistants any number of state departments, institutions, divisions, commissions, boards, bureaus, agencies, entities, officials, courts, or judges that are parties to the same transaction or that are parties in the same civil or administrative proceeding and may represent multiple interests within the same department, institution, division, commission, board, bureau, agency, or entity. The soil and water conservation district directors or districts may request legal advice from local, public, or private sources; however, upon request of the soil and water conservation district directors or districts, the Attorney General shall provide legal service in civil matters for such district directors or districts.

B. The Attorney General may represent personally or through one of his assistants any of the following persons who are made defendant in any civil action for damages arising out of any matter connected with their official duties:

1. Members, agents, or employees of the Virginia Alcoholic Beverage Control Authority;
2. Agents inspecting or investigators appointed by the State Corporation Commission;
3. Agents, investigators, or auditors employed by the Department of Taxation;
4. Members, agents, or employees of the State Board of Behavioral Health and Developmental Services, the Department of Behavioral Health and Developmental Services, the State Board of Health, the State Department of Health, the Department of General Services, the State Board of Social Services, the Department of Social Services, the State Board of Local and Regional Jails, the Department of Corrections, the State Board of Juvenile Justice, the Department of Juvenile Justice, the Virginia Parole Board, or the Department of Agriculture and Consumer Services;
5. Persons employed by the Commonwealth Transportation Board, the Department of Transportation, or the Department of Rail and Public Transportation;
6. Persons employed by the Commissioner of Motor Vehicles;
7. Persons appointed by the Commissioner of Marine Resources;
8. Police officers appointed by the Superintendent of State Police;
9. Conservation police officers appointed by the Department of Wildlife Resources;
10. Hearing officers appointed to hear a teacher's grievance pursuant to § 22.1-311;
11. Staff members or volunteers participating in a court-appointed special advocate program pursuant to Article 5 (§ 9.1-151 et seq.) of Chapter 1 of Title 9.1;
12. Any emergency medical services agency that is a licensee of the Department of Health in any civil matter and any guardian ad litem appointed by a court in a civil matter brought against him for alleged errors or omissions in the discharge of his court-appointed duties;
13. Conservation officers of the Department of Conservation and Recreation; or
14. Members, agents, or employees of the Southwest Regional Recreation Authority; or
15. A person appointed by written order of a circuit court judge to run an existing corporation or company as the judge's representative, when that person is acting in execution of a lawful order of the court and the order specifically refers to this section and appoints such person to serve as an agent of the Commonwealth.

59 Upon request of the affected individual, the Attorney General may represent personally or through one of
 60 his assistants (i) any basic or advanced emergency medical care attendant or technician possessing a valid
 61 certificate issued by authority of the State Board of Health in any civil matter in which a defense of immunity
 62 from liability is raised pursuant to § 8.01-225 or (ii) any member of the General Assembly in any civil matter
 63 alleging that such member in his official capacity violated the Virginia Freedom of Information Act (§ 2.2-
 64 3700 et seq.) pursuant to § 2.2-3713 or 2.2-3714.

65 C. If, in the opinion of the Attorney General, it is impracticable or uneconomical for such legal service to
 66 be rendered by him or one of his assistants, he may employ special counsel for this purpose, whose
 67 compensation shall be fixed by the Attorney General. The compensation for such special counsel shall be
 68 paid out of the funds appropriated for the administration of the board, commission, division, or department
 69 being represented or whose members, officers, inspectors, investigators, or other employees are being
 70 represented pursuant to this section. Notwithstanding any provision of this section to the contrary, the
 71 Supreme Court may employ its own counsel in any matter arising out of its official duties in which it, or any
 72 justice, is a party.

73 D. Nothing herein shall limit the powers granted in § 16.1-88.03.

74 **§ 2.2-1176. Approval of purchase, lease, or contract rental of motor vehicle.**

75 A. No motor vehicle shall be purchased, leased, or subject to a contract rental with public funds by the
 76 Commonwealth or by any officer or employee on behalf of the Commonwealth without the prior written
 77 approval of the Director. No lease or contract rental shall be approved by the Director except upon
 78 demonstration that the cost of such lease or contract rental plus operating costs of the vehicle shall be less
 79 than comparable costs for a vehicle owned by the Commonwealth.

80 Notwithstanding the provisions of this subsection, the Virginia Department of Transportation shall be
 81 exempted from the approval of purchase, lease, or contract rental of motor vehicles used directly in carrying
 82 out its maintenance, operations, and construction programs.

83 B. Notwithstanding other provisions of law, on or before January 1, 2012, the Director, in conjunction
 84 with the Secretary of Administration and the Secretary of Natural and Historic Resources, shall establish a
 85 plan providing for the replacement of state-owned or operated vehicles with vehicles that operate using
 86 natural gas, electricity, or other alternative fuels, to the greatest extent practicable, considering available
 87 infrastructure, the location and use of vehicles, capital and operating costs, and potential for fuel savings. The
 88 plan shall be submitted to the Governor for his review and approval. Once the plan is approved by the
 89 Governor, the Director shall implement the plan for the centralized fleet. All state agencies and institutions
 90 shall cooperate with the Director in developing and implementing the plan.

91 C. *Notwithstanding any other provision of law, the Director may lease motor vehicles and construction*
 92 *and forestry equipment to the Southwest Regional Recreation Authority created pursuant to Chapter 60.1 (§*
 93 *15.2-6016 et seq.) of Title 15.2.*

94 **§ 15.2-6019. Meetings; decisions of board; compensation.**

95 A. The board shall meet quarterly, unless a special meeting is called by its chairman. A majority of the
 96 ~~Authority~~ board shall constitute a quorum. Decisions of the Authority shall require a quorum *of the board*
 97 and shall be in accordance with voting procedures established by the ~~Authority~~ board.

98 B. The board shall prescribe, amend, and repeal bylaws and rules governing the manner in which the
 99 business of the Authority is conducted and shall review and approve an annual budget. ~~The board shall~~
 100 ~~appoint an executive director to act as its chief executive officer, to serve at the will and pleasure of the~~
 101 ~~board. The board, acting through its executive director, may employ any other personnel considered~~
 102 ~~necessary and may appoint counsel and legal staff for the Authority and retain such temporary engineering,~~
 103 ~~financial, and other consultants or technicians as may be required for any special study or survey consistent~~
 104 ~~with the provisions of this chapter. The executive director shall carry out plans to implement the provisions of~~
 105 ~~this chapter and to exercise those powers enumerated in the bylaws. The executive director shall prepare~~
 106 ~~annually a budget to be submitted to the board for its review and approval.~~

107 C. All costs incidental to the administration of the Authority, including office expenses, personal services
 108 expense, and current expense, shall be paid in accordance with guidelines issued by the board from funds
 109 accruing to the Authority.

110 D. All expenses incurred in carrying out the provisions of this chapter shall be payable solely from funds
 111 provided under this chapter, and no liability or obligation may be incurred by the Authority under this chapter
 112 beyond the extent to which moneys have been provided under the authority of this chapter.

113 **§ 15.2-6019.1. Appointment of chief executive officer; powers.**

114 A. *The board shall appoint an executive director to act as its chief executive officer, to serve at the will*
 115 *and pleasure of the board. The board, acting through its executive director, may employ any other personnel*
 116 *considered necessary and retain such temporary engineering, financial, and other consultants or technicians*
 117 *as may be required for any special study or survey consistent with the provisions of this chapter. The*
 118 *provisions of the Virginia Personnel Act (§ 2.2-2900 et seq.) and the policies of the Department of Human*
 119 *Resource Management shall apply to employees of the Authority.*

120 B. *The executive director shall carry out plans to implement the provisions of this chapter and to exercise*

121 those powers enumerated in the bylaws. The executive director shall prepare annually a budget to be
 122 submitted to the board for its review and approval.

123 **§ 15.2-6020.1. Exemption from procurement procedures; adoption of procurement policies.**

124 A. The Virginia Public Procurement Act (§ 2.2-4300 et seq.) shall not apply to the Authority in the
 125 exercise of any power conferred under this chapter.

126 B. The board shall adopt policies for the procurement of goods and services. Such policies shall:

127 1. Seek competition to the maximum practical degree;

128 2. Require competitive negotiation for professional services, which includes the requirements of §§ 2.2-
 129 4302.2 and 2.2-4303.1, unless there is only one source practically available and the Authority has complied
 130 with the requirements of subsection C;

131 3. Prohibit discrimination against a bidder or offeror based on race, religion, color, sex, sexual
 132 orientation, gender identity, national origin, age, disability, status as a service disabled veteran, or any other
 133 basis prohibited by federal or state law relating to discrimination in employment; and

134 4. Incorporate the prompt payment principles of § 2.2-4350 and the payment clauses of § 2.2-4354. The
 135 Authority shall include provisions for the inspection of public records as provided in § 2.2-4342.

136 C. For purchases of (i) goods or nonprofessional services under \$200,000 or (ii) professional services or
 137 non-transportation-related construction under \$80,000, the Authority shall not be required to comply with
 138 subdivisions B 1 and 2. For purchases of (a) goods or nonprofessional services for \$200,000 or more or (b)
 139 professional services or non-transportation-related construction of \$80,000 or more, the Authority shall not
 140 be required to comply with subdivisions B 1 and 2 if the Authority determines in writing that such purchase
 141 contributes to the public purpose and mission of the Authority as described in § 15.2-6016. The Authority
 142 shall state in such writing (1) an explanation of such determination, (2) that which is being purchased, (3) the
 143 contractor selected for such purchase, (4) the date of the award of such contract, and (5) the relationship of
 144 such purchase to the public purpose and mission of the Authority. Such notice shall be posted on the
 145 Department of General Services' central electronic procurement website or the Authority's website on the day
 146 the Authority awards or announces its decision to award such contract, whichever occurs first. The Authority
 147 shall incorporate the procedures effectuating the provisions of this subsection in the policies required by
 148 subsection B.

149 D. In case of emergency, the Authority shall not be required to comply with subdivisions B 1 and 2 if the
 150 Authority determines in writing that an emergency exists and makes the purchase needed with such
 151 competition as is practicable under the circumstances. The Authority shall state in such writing (i) that the
 152 contract is being awarded on an emergency basis, (ii) that which is being purchased, (iii) the contractor
 153 selected, (iv) the date of the award of such contract, and (v) the relationship between the selection of such
 154 contract to the circumstances constituting an emergency. Such notice shall be posted on the Department of
 155 General Services' central electronic procurement website or the Authority's website on the day the Authority
 156 awards or announces its decision to award such contract, whichever occurs first. The Authority shall
 157 incorporate the procedures effectuating the provisions of this subsection in the policies required by
 158 subsection B.

159 E. Upon a determination in writing that there is only one source practicably available for that which is to
 160 be procured, a contract may be negotiated and awarded to that source without competitive negotiation. The
 161 writing shall document the basis for this determination. The Authority shall issue a written notice stating that
 162 only one source was determined to be practicably available and identifying that which is being procured, the
 163 contractor selected, and the date on which the contract was or will be awarded. This notice shall be posted
 164 on the Department of General Services' central electronic procurement website or the Authority's website and
 165 may be published in a newspaper of general circulation on the day the public body awards or announces its
 166 decision to award the contract, whichever occurs first.

167 **§ 15.2-6020.2. Authorization to lease vehicles and construction and forestry equipment.**

168 A. The Authority may lease vehicles and construction and forestry equipment from vehicles and equipment
 169 controlled by the Commissioner of Highways or the Director of the Department of General Services.

170 B. As used in this section:

171 "Construction and forestry equipment" means any vehicle that is designed primarily for highway
 172 construction, earth moving, timber harvesting, or other construction or forestry work and that is not designed
 173 for the transportation of persons or property on a public highway.

174 "Vehicle" means every device in, on, or by which any person or property is or may be transported or
 175 drawn on a highway.