REPORT OF THE
JOINT SUBCOMMITTEE STUDYING

Flexibility in Personnel and Purchasing Practices for Teaching Hospitals

TO THE GOVERNOR AND
THE GENERAL ASSEMBLY OF VIRGINIA

HOUSE DOCUMENT NO. 53

COMMONWEALTH OF VIRGINIA
RICHMOND
1991

MEMBERS

Delegate Alan A. Diamonstein, *Chairman*
Senator John C. Buchanan, *Vice Chairman*
Delegate Robert B. Ball, Sr.
Delegate V. Earl Dickinson
Senator Elmo G. Cross, Jr.
Senator Benjamin J. Lambert III
Dr. John Andrako, Medical College of Virginia
Dr. Don E. Detmer, University of Virginia Medical Center
William C. Giermak
Steven D. Gravely
Ann Hughes
William F. Jacobs
James W. Dyke, Jr., Secretary of Education, *ex officio*
Ruby G. Martin, Secretary of Administration, *ex officio*

Staff

Legal and Research

Kathleen G. Harris, Staff Attorney
Jessica F. Bolecek, Staff Attorney
Marcia A. Melton, Executive Secretary
Division of Legislative Services

Administrative and Clerical

Office of the Clerk, Senate of Virginia
Thomas C. Gilman, Chief Committee Clerk

CONTENTS

EXECUTIVE SUMMARY

AUTHORITY AND STUDY OBJECTIVES

Adopted by the 1990 Session of the General Assembly, HJR 212 and SJR 127 established a joint subcommittee to study flexibility in personnel and purchasing practices for the Commonwealth's teaching hospitals. The Committee was directed to consider whether teaching hospitals should be authorized to develop more flexible personnel and purchasing practices and to determine a method of developing such practices and any appropriate oversight mechanisms. The study focused on recent changes in the overall health care environment and the effects of these changes on the unique missions of teaching hospitals, as well as recent legislative action and current statutory and administrative requirements governing teaching hospital business practices.

FLEXIBILITY IN PERSONNEL AND PURCHASING PRACTICES FOR THE COMMONWEALTH'S TEACHING HOSPITALS

Background

The academic medical center is generally characterized as an institution which includes a medical school, one or more teaching hospitals, and at least one additional professional program, such as a school of nursing or dentistry. These institutions, committed to a three-part mission of education, research, and patient care, play a critical and unique role in the modern health care system. Academic medical centers educate most of the nation's physicians and health care professionals, conduct the bulk of health-related research, and provide a major portion of indigent care. The Commonwealth is home for two of these institutions: the Medical College of Virginia Hospitals of Virginia Commonwealth University and the University of Virginia Medical Center.

The Changing Health Care Environment

Hospitals today face a number of challenges in the health care environment due to increased competition, changing reimbursement practices, decreased revenues, and heightened consumer expectations. Technological advances which have reduced the need for inpatient services and an increasing elderly population may create future hospitals which deliver medical services only to the seriously ill. While these challenges and pressures have affected the entire health care system, academic medical centers arguably have been especially vulnerable to these changes.

One of the most dramatic changes in the health care environment is evidenced in the rising costs of medical care. Intense price competition between hospitals has profoundly affected the delivery of medical services in an industry that traditionally paid little attention to the cost of its products. Hospitals must now compete with large corporate providers, who are often able to offer more attractive prices. In the Commonwealth, the two teaching hospitals compete not only with private hospitals, but also with a number of nearby academic medical centers in North Carolina, Maryland, and the District of Columbia.

Changing reimbursement practices and the development of cost-containment measures have also affected health care delivery. The creation of the prospective payment system has challenged hospitals to become more efficient and has resulted in abbreviated hospital stays, declining hospital admissions, and fewer office visits. Teaching hospitals, traditionally subsidizing their education and research efforts through patient revenues, are now forced to look for other sources of revenue.

The growing number of elderly and indigent patients has altered the patient mix at most hospitals, but has especially affected the academic medical center. The complex technology available at teaching hospitals often attracts severely and chronically ill patients, while the patient care mission of the academic medical center may encourage services to the indigent. The MCV and UVa hospitals provide 42 percent of the Commonwealth's uncompensated care, which is not fully reimbursed. Although general fund appropriations provide for medical care and education activities associated with patients, including the indigent, it is likely that hospital costs for indigent patients exceed these appropriations.

Developing Competitive Strategies

In responding to these changes and pressures, hospitals have emphasized efficiency and expanding their market base and services. To strengthen their ability to react to market forces, a number of hospitals have pursued corporate reorganizations, joint ventures, purchasing alliances, and diversification efforts. Developing competitive strategies for teaching hospitals, however, requires consideration of their unique three-part mission as well as the state laws, regulations, and policies governing business, personnel, and purchasing practices. Increasing internal efficiency and purchasing power raises concerns regarding procurement policies, university autonomy, and flexibility in decision-making procedures, while offering competitive compensation packages involves consideration of state personnel and benefits programs.

Statutory Constraints and Recent Legislative Initiatives

The need for increased flexibility in the development of competitive strategies has been a continuing concern for the Commonwealth and its two teaching hospitals. Teaching hospital representatives have contended that financial challenges necessitate the ability to respond to market forces in the same manner as private hospitals. Recognizing the special burdens the education and research missions place on the MCV and UVa hospitals, the Governor's Task Force on Indigent Health Care recommended increased autonomy and flexibility for these teaching hospitals in 1988. A degree of flexibility in personnel practices was granted by the 1989 and 1990 Appropriations Acts, and legislation considered by the 1990 General Assembly proposed specific changes in the Virginia Public Procurement Act, the Virginia Personnel Act, and the Virginia Retirement System (VRS). Although the legislation was carried over, the issues raised by these bills served as the basis for the Committee's study.

Although current law allows the teaching hospitals to participate in cooperative procurement arrangements, these arrangements are restricted to purchases exceeding $150,000. Significant annual and long-term savings might be realized if this minimum contract price requirement were removed. While proposed legislation would have eliminated this contract minimum and certain other purchasing requirements, the potential impact of these changes on other state agencies remains unclear. Although participation in group purchasing arrangements has resulted in cost savings, a broad exemption for the teaching hospitals might adversely affect other state agencies that rely on state volume contracts to obtain more favorable prices.

Despite efforts by the Division of Purchases and Supply (DPS) to accommodate the teaching hospitals' unique purchasing needs, the hospitals have consistently maintained that state purchasing procedures remain unnecessarily time-consuming and overly restrictive, resulting in added expense. Authorizing any additional flexibility for these two institutions, such as removal of the $150,000 minimum purchase requirement or an exemption from DPS procedures, however,

necessitates careful consideration of the Commonwealth's interest in fairness and frugality in public procurement as well as potential impact on other state agency contracts.

Also proposed were changes to VRS and the Personnel Act to allow the institutions to develop comprehensive personnel plans and alternative retirement systems. Nearly half of the 7,000 individuals employed by the MCV and UVa teaching hospitals are classified as health care professionals and are currently exempt from the provisions of the Personnel Act pursuant to the 1990 Appropriations Act. Intended to facilitate recruitment and retention of qualified personnel, this exemption also creates additional employment incentives by permitting the development of career ladders through job redesign, restructuring, and enhancement. Although a seemingly successful practice, this exemption raises concerns regarding the propriety of establishing different pay scales and classifications for hospital positions having counterparts in the university and in other state agencies. Amendments proposed by 1990 legislation would have extended this exemption to all teaching hospital employees and would also have removed access to the state grievance procedure.

Precedent for the development of alternative retirement plans for certain employees already exists in the Code, as colleges and universities may develop plans for persons engaged in teaching, administration, or research. The creation of an alternative plan and the reallocation and creative application of funds previously committed to supporting VRS could result in significant savings--perhaps as much as four million dollars per year for each teaching hospital. While participation by hospital employees in an alternative plan might not adversely affect VRS or its funding, extending this option to other agencies might prove to be problematic.

Conclusions and Recommendations

Determining the need to increase flexibility in the Commonwealth's personnel and purchasing practices to accommodate the unique missions of its two teaching hospitals required careful review of a number of issues. Consideration of the academic medical centers' commitment to education, research, and patient care and their unique position as public institutions in a fiercely competitive health care environment must be balanced with the need to ensure fairness, impartiality, and frugality in business practices. In developing its recommendations, the Committee examined specific or perceived burdens--and benefits--that compliance with state personnel and purchasing requirements may impose on the MCV and UVa hospitals and coordinated the input and expertise of various state agencies and the two teaching hospitals. Of primary concern to the Committee was the development of recommendations that would not only result in cost savings to the hospitals but also ensure the continued delivery of quality patient care at these academic medical centers.

The Committee therefore makes the following recommendations:

RECOMMENDATION 1:

That the Division of Purchases and Supply and the Commonwealth's two teaching hospitals examine the efficacy and potential impact on other state agencies of providing an exemption from DPS purchasing procedures for the teaching hospitals.

RECOMMENDATION 2:

That § 11-40 of the Code of Virginia be amended to provide the teaching hospitals an exemption from the $150,000 threshold amount for cooperative procurement arrangements.

RECOMMENDATION 3:

That health care providers, as determined by the Department of Personnel and Training, employed by the teaching hospitals be exempt from the provisions of the Personnel Act, except those provisions establishing a grievance procedure for state employees.

RECOMMENDATION 4:

That the health care providers employed by the Commonwealth's teaching hospitals be permitted to participate in alternative retirement plans approved by the board of visitors of the respective institutions, that the contribution rate for any alternative plan be established by statute, and that the hospitals report to the Committees on House Appropriations and Senate Finance prior to the implementation of any alternative plan.

REPORT OF THE JOINT SUBCOMMITTEE STUDYING FLEXIBILITY IN PERSONNEL AND PURCHASING PRACTICES FOR TEACHING HOSPITALS

I. AUTHORITY FOR STUDY

Adopted by the 1990 Session of the General Assembly, House Joint Resolution No. 212 (HJR 212) and Senate Joint Resolution No. 127 (SJR 127) established a joint subcommittee to study flexibility in personnel and purchasing practices for the Commonwealth's teaching hospitals. The Committee was comprised of twelve members: three members of the House Committee on Appropriations, appointed by the Speaker of the House; three members of the Senate Committee on Finance, appointed by the Senate Committee on Privileges and Elections; one representative each from the Virginia Commonwealth University Medical College of Virginia and the University of Virginia Medical Center; and four citizen members representing the health care industry, appointed by the Governor. Also participating in the study were the Secretary of Administration and the Secretary of Education, who served as *ex officio* members of the Committee.

II. OBJECTIVES AND STUDY DESIGN

Citing the critical roles played by the Medical College of Virginia Hospitals and the University of Virginia Medical Center in the delivery of "highly specialized patient care," as well as a major portion of indigent care, and as sites of education and clinical research, HJR 212 and SJR 127 noted that these teaching hospitals are "of extreme importance to the Commonwealth." The rapidly changing health care environment and changes in reimbursement practices, however, have necessitated a reevaluation of "the business and administrative practices of the teaching hospitals." While acknowledging that teaching hospitals, as state agencies, are accountable to the public, hospital administrators have expressed a need for "increased flexibility in the areas of personnel and purchasing in order to maintain the financial viability and excellent reputations of the teaching hospitals."

The resolutions stated that these hospitals must become "more cost effective in all phases of their operation" and directed the Committee to consider whether teaching hospitals should be authorized to develop more flexible personnel and purchasing practices and to determine a method of developing such practices and any appropriate oversight mechanisms. The Committee's study necessarily focused on recent changes in the overall health care environment as well as the impact of these changes on the unique missions of teaching hospitals. Examination of current statutes, regulations, and administrative policies governing the personnel and purchasing practices of these institutions and analysis of specific challenges, impediments, and benefits arising from present practices were also necessary to determine the efficacy and appropriateness of increasing flexibility. Finally, in responding to the charge of HJR 212 and SJR 129, the Committee also reviewed recent studies and proposed legislative changes focusing on the administrative and business practices of the Commonwealth's teaching hospitals. Specific issues raised by carry-over legislation, House Bill No. 719 (HB 719) and Senate Bill No. 368 (SB 368), received Committee focus.

III. FLEXIBILITY IN PERSONNEL AND PURCHASING PRACTICES FOR THE COMMONWEALTH'S TEACHING HOSPITALS

A. Introduction: The Academic Medical Center

Characterized as institutions which include a school of medicine, one or more teaching hospitals, and "at least one additional health professional program, such as a school of nursing, dentistry, or veterinary medicine," academic medical centers play a critical and unique role in our

modern health care system.[1] There are about 120 such institutions in the United States today, their missions reflecting a commitment to quality patient care, teaching, and research. This tripartite mission has been described as a "three-legged stool, with each leg or component supporting and drawing support from the others."[2]

While the value of academic medical centers is not easily quantified, their contributions to modern health care may well be reflected in their educational and research endeavors.[3] Combining "rigorous classroom and laboratory training with extensive clinical experience,"[4] the medical schools and professional programs affiliated with these institutions educate the majority of the nation's physicians and health care professionals. In fulfilling its education mission, the teaching hospital also provides specialized care facilities, such as burn units and neonatal intensive care units, and new, sophisticated technologies that are not always available in community hospitals. These institutions are also responsible for "the bulk of health-related research in this country; indeed, most major advances in medicine and related disciplines since World War II--organ transplantation, kidney dialysis, and artificial joints . . . can be traced to research conducted by an academic health center facility."[5]

Nowhere is the academic medical center's commitment to its patient care mission more evident than in the provision of indigent care. Statistics show that while members of the Council of Teaching Hospitals of the Association of American Medical Colleges operate less than 20 percent of hospital beds, they account for "almost half of all deductions from revenue claimed by hospitals for charity care and more than one-third of those for bad debt."[6]

B. Virginia's Teaching Hospitals

Both of the Commonwealth's academic medical centers enjoy outstanding national reputations; the University of Virginia Medical Center is rated among the nation's best in neurology, while the Medical College of Virginia is heralded for its bone marrow transplant

---

1. N. Vanselow, "Academic Health Centers: Can They Survive?" Issues in Science and Technology 55, 56 (Summer 1986) [hereinafter referred to as Vanselow]. The Association of Academic Health Centers similarly defines academic medical centers as "'the combination of a medical school or school of osteopathy, one or more affiliated hospitals, and at least one other health professional program (e.g., nursing or allied health).'" B. Turner, "Future role of academic medical centers," Health Care Management Review 73 (Spring 1989) [hereinafter referred to as Turner].

2. Vanselow, supra note 1, at 56. See also, H. Zuckerman, T. D'Aunno, and T. Vaughan, "The Strategies and Autonomy of University Hospitals in Competitive Environments," 35 Hospital & Health Services Administration 103, 106 (Spring 1990) [hereinafter referred to as Zuckerman].

3. Id.

4. "Curing--Plus Caring," U.S. News & World Report 78 (November 2, 1987).

5. Vanselow, supra note 1, at 56.

6. Id. In Virginia, patients lacking any form of health insurance are classified as "indigent" or "self-pay." Medical services for indigent patients are typically covered through legislative appropriation, while "self-pay" patients must cover their own expenses. Cases initially characterized as self-pay are often eventually classified as "bad debt." Medical College of Virginia Hospitals, Virginia Commonwealth University, Competition and the Hospital Environment: Perspectives on a Public Teaching Hospital at 18, 19 (February 10, 1989) [hereinafter referred to as Competition].

program.[7] A "School of Anatomy and Medicine" at the University of Virginia was one of the original eight schools authorized by the Virginia General Assembly in 1819. The University of Virginia Hospital opened in 1901 as a 25-bed facility; today it staffs 843 beds.[8]

The Medical College of Virginia, chartered as the Medical College of Richmond in 1854, was transferred to Virginia Commonwealth University in 1968. The new institution was formed "for the purpose of establishing and maintaining a university consisting of colleges, schools and divisions offering undergraduate and graduate programs in the liberal arts and sciences and programs of education for the professions" and was authorized to "maintain and conduct hospitals, infirmaries, dispensaries, laboratories, research centers, power plants and such other necessary related facilities" as its board of visitors deems proper.[9]

The Code of Virginia declares both MCV and UVa to be "public bodies . . . constituted as governmental instrumentalities for the dissemination of education."[10] Under the guidance and authority of the State Council of Higher Education for Virginia (SCHEV) and the Secretary of Education, these state-supported institutions and their academic health centers provide vital services to the Commonwealth.[11] Both teaching hospitals are committed to the traditional academic health center mission, and together provide over 40 percent of the Commonwealth's indigent care, educate health care professionals, and, through research, "bring treatment advances to all citizens."[12] Like academic health centers across the country, however, these institutions have been greatly affected by a changing health care environment and forces "that are rapidly reshaping their

---

7. "The Best Hospitals, from AIDS to Urology," U.S. News & World Report 68 at 73 (April 30, 1990). The Health Sciences Center's new gamma knife, used in the treatment of brain aneurysms and lesions, is cited as "state of the art" technology.

8. University of Virginia School of Medicine, Record 1989-1990 at 19, 20. The UVa Health Sciences Center includes the Medical Center, School of Medicine, School of Nursing, and the Claude Moore Health Sciences Library. University of Virginia Health Sciences Center, Orientation for New Members of the Board of Visitors (March 29, 1990). The University Hospital provides an affiliation program with several Roanoke area hospitals to offer clinical rotations to third- and fourth-year medical students. Id. at 22. The General Assembly explored these options by establishing a study commission in 1968, continued as the Medical Facilities Commission in 1972. 1968 Acts of Assembly, ch. 547; 1972 Acts of Assembly, ch. 688.

9. Va. Code §§ 23-50.5, 23-50.7 (1985). See also, W. Sanger, Medical College of Virginia Before 1925/University College of Medicine 1893-1913 at 21, 24 (1973). Mr. Sanger states that MCV traces its origin to 1837 and the Department of Medicine at Hampden Sydney College. The Medical College came under the Commonwealth's control in the mid-1800s, realizing full state ownership in 1860 with legislative appropriations.

10. Va. Code § 23-14 (1990).

11. Va. Code §§ 2.1-51.21 (1987); 23-9.5 (1985). The Secretary of Education is responsible to the Governor for SCHEV, which is designated as a "coordinating council" for state-supported institutions of higher education--such as VCU and UVa--and their "branches, divisions or colleges." SCHEV is also designated as the planning and coordinating agency "for all post-secondary educational programs for all health professions and occupations." It is assisted in this role by the Board on Education for Health Professions and Occupations, which includes in its nine-person membership the vice president for Health Affairs at the University of Virginia and the vice president of the Health Sciences Division of Virginia Commonwealth University. Va. Code § 23-9.10:1 (1985).

12. Medical College of Virginia Hospitals of the Virginia Commonwealth University and University of Virginia Medical Center of the University of Virginia, Fact Sheet: Maintaining the Mission and Financial Viability of the MCV Hospitals and the UVa Medical Center Hospital in a Changing Health Care Environment at 4 (1990) [hereinafter referred to as Fact Sheet]. The two teaching hospitals recently financed new inpatient facilities, resulting in a $135 million debt for UVa and a $89.7 million debt for MCV. Id. at 3.

mode of operation."[13] Once regarded as "meccas of health care, education, and research," academic medical centers are now more often described as "costly organizations that have contributed heavily to the escalation of overall health expenditures."[14] Effective review and assessment of teaching hospital business practices required a thorough examination of this changing health care environment and its impact on the unique mission of academic medical centers, and, more specifically, on the MCV and UVa hospitals.

C. The Changing Health Care Environment

Citing increased competition, changing reimbursement practices, decreased revenues, and heightened consumer expectations, medical professionals and health policy consultants agree that hospitals today face "an unfamiliar and uncomfortable environment."[15] Technological advances, offering less invasive diagnosis and treatment and reducing the need for inpatient services, and an increasing elderly population may create a "hospital of the future [that] may be little more than a large intensive care unit, providing inpatient services only to the acutely and seriously ill."[16] While these challenges and pressures have affected the entire health care system, academic medical centers arguably have been especially vulnerable to these dramatic changes. In an increasingly competitive health care industry, maintaining its unique tripartite mission and complying with state and university policies and regulations may place special burdens on the teaching hospital.[17] Analysis of these environmental changes and their impact on academic medical centers, as well as an understanding of the special statutory and administrative requirements governing these institutions, is necessary to identify measures which will ensure the financial viability and survival of the Commonwealth's teaching hospitals.

- Competition and the Rising Costs of Health Care

Perhaps the most dramatic change in the health care environment is reflected in the rising costs of medical care. Between 1960 and 1985, the nation's health care expenditures more than doubled--from 5 percent to 11 percent of the gross national product.[18] The cost of one day in a hospital has increased over 1,000 percent since 1950.[19] Intense competition among hospitals, based on the price of medical services, has been deemed "the key ingredient" in the health care

---

13. Turner, supra note 1, at 77.

14. Id.

15. M. Horwitz, "Corporate reorganization: The Last Gasp or Last Clear Chance for the Tax-Exempt, Nonprofit Hospital?" 13 Am. J.L. & Med. 527 at 539, 541-542 (1988) [hereinafter referred to as Horwitz]. Dr. Horwitz states that, by 1980, the health care market had become a "buyer's market." Id. at 541 n.73.

16. Vanselow, supra note 1, at 57. The growth in outpatient services is clearly expected to continue; experts estimate that "more than 70 percent of all needed health care services will be delivered on an outpatient basis by the year 2000." T. Lawry, "Healthcare Economics and Development: Surviving the 1990s," NAHD Journal 5 at 6 (Fall 1989).

17. See Zuckerman, supra note 2, at 103, 104. Zuckerman states that academic medical centers "face environments that are becoming more threatening than supportive and more turbulent than stable." See also, Competition, supra note 6, at 10, 13, and 29.

18. Vanselow, supra note 1, at 57.

19. L. Enfield & D. Sklar, "Patient Dumping in the Hospital Emergency Department: Renewed Interest in an Old Problem," 13 Am. J.L. & Med. 561 at 563 (1988) [hereinafter referred to as Enfield].

system; this emphasis on price has profoundly affected the delivery of medical services in an industry that "traditionally paid little attention to the cost of its products."[20] In a period characterized by increased corporatization in health care delivery, hospitals now compete with health maintenance organizations (HMOs) and preferred provider organizations (PPOs) who are now gaining a market share previously served by more traditional providers. Aided by size and economies of scale, these large organizations have formed firms with regional and national influence and may offer medical services at more attractive prices.[21]

In the Commonwealth, competition in health care delivery has clearly increased over the last ten years. According to a 1988 survey conducted for MCV, there are now 138 hospitals in the Commonwealth; thirteen have more than 500 beds. The two academic medical centers must compete not only with many of these facilities, but also with a number of nearby academic medical centers, such as Johns Hopkins, Georgetown, Duke University, and the University of North Carolina. In addition, the number of HMOs in the Commonwealth increased from 6 in 1983 to 20 in 1987. Intensive marketing efforts by many of these institutions are often directed towards MCV and UVa patients as well as physicians.[22]

Interestingly, teaching hospitals, as centers of research and education, may actually assist their potential competitors. By training health care professionals and specialists, shouldering the expense of the research and development of new technology and treatments, and maintaining costly special care programs necessary for education and patient care, academic facilities may "produce the environmental conditions . . . that allow other hospitals to compete with them."[23]

• Cost Containment and Reimbursement Practices

Also affecting health care delivery are changing reimbursement practices and the development of cost-containment measures. The original 1965 Medicare and Medicaid legislation was designed to create a health care system providing citizens equitable access to medical care. Reimbursement was initially cost-based, allowing providers to collect payment for "whatever medical care was supplied."[24] Because third party insurers covered most payments, few economic incentives existed to contain escalating costs. The federal government's response to spiralling health care expenditures came in 1983 with the creation of the Medicare prospective payment system (PPS), which fixes reimbursement based on the patient's diagnosis. The hospital must now absorb patient costs exceeding the permitted reimbursement, but may profit by keeping expenditures low. The implementation of PPS has thus challenged hospitals to become more

---

20. Vanselow, supra note 1, at 57. Dr. Vanselow maintains that most competition in the healthcare industry is based on price, as buyers assume the high quality of purchases, services, and products.

21. Id. at 57, 58. Dr. Vanselow notes that a surplus of physicians "has diminished their relative influence," while the balance of power and influence in the health care industry has shifted to organizations managed by business managers rather than health professionals. See also, Competition, supra note 6, at 20.

22. Competition, supra note 6, at 20, 21. In response to this competition, MCV has created a marketing department and now works with a number of HMOs and PPOs to extend its referral base.

23. Zuckerman, supra note 2, at 109. Zuckerman notes that other hospitals benefit from the research efforts of the academic facility because they may adopt new technologies without investing the same "start-up" costs.

24. Horwitz, supra note 15, at 536. See also, Title XIX of the Social Security Act, P.L. No. 89-97, 79 Stat. 343-423 (codified as amended at 42 U.S.C.A. § 1396 et seq.) and 79 Stat. 286. The General Assembly authorized Medicaid for Virginia in 1966. Report of the Joint Subcommittee Studying Pharmaceutical Costs in the Virginia Medical Assistance Program pursuant to HJR 403, House Document No. 78 at 3 (1990).

efficient and has ultimately led to abbreviated hospital stays, declining hospital admissions, and fewer patient office visits.[25]

The effects of prospective payment on health care delivery have been widespread, as state Medicaid programs, several HMOs, and third party insurers have adopted similar fixed reimbursement systems.[26] Hospitals have responded to these cost-containment measures by reducing staff and services and through "cost-shifting"--transferring the cost of services from one group to another. Ironically, hospitals may not ultimately benefit from these efficiency measures; as average costs decrease due to increased efficiency, recomputed PPS reimbursement levels will also likely decrease.[27]

Academic health centers are not immune to the effects of these cost-containment efforts. As the inpatient population has decreased due to cost control measures, teaching hospitals, which traditionally subsidized their research and education missions through patient revenues, are now forced to look for other sources of revenue. The financial pinch is further exacerbated by the increasing reluctance of the federal government and private insurers to support the "cross-subsidization" of academic and research activities through special reimbursement rates for teaching hospitals.[28] Private insurers especially may feel that teaching and research warrant support from the public rather than the private sector, while the federal government, anticipating a surplus of physicians, is expected to decrease Medicare contributions for teaching costs.[29]

• Indigent Care and the Changing Patient Population

Another factor affecting the health care environment is the changing patient population. The number of Americans over age 85 is increasing six times faster than the rest of the population, resulting in an aging patient population which may often demand special and costly care.[30] In the South Atlantic region, the over-65 population is expected to increase 21 percent between 1990 and 2000, while the overall population is expected to increase 14 percent. In the Commonwealth, these

---

25. Id. at 536, 537, and 538. Under PPS, the Medicare patient is assigned to a "diagnosis related group" or "DRG." The hospital is reimbursed according to a formula based on the average cost of treating a patient with that diagnosis. Id. at 528 n.4. Dr. Horwitz notes that there is "some question" whether the savings under PPS outweigh the administrative costs of the program.

26. Competition, supra note 6, at 23, 24.

27. Horwitz, supra note 15, at 537, 538.

28. Vanselow, supra note 1, at 59, 60. See also, Competition, supra note 6, at 24. According to Dr. Vanselow, teaching hospitals incur direct and indirect costs for graduate medical education. Direct costs include stipends and fringe benefits for house officers, faculty payments, and overhead expenses, while the less tangible indirect costs include the inefficiencies associated with training residents, such as increased use of diagnostic tests. It has been estimated that over 80 percent of these direct and indirect costs are funded by patient revenues. Id. at 59, 60. See also, Competition, supra note 6, at 10, 11.

    The reduced impatient population also hampers that portion of medical education which requires patient contact. Shifting education to the outpatient setting, however, is not time- or cost-efficient; teaching hospitals cannot be price competitive if teaching costs are factored into outpatient charges. Vanselow, supra note 1, at 60, 61.

29. Zuckerman, supra note 2, at 108. States are also expected to reduce their support for medical schools.

30. Report of the Joint Subcommittee Studying the Supply and Demand of Nurses in the Commonwealth, House Document No. 67 at 10 (1990) [hereinafter referred to as House Document No. 67].

populations are expected to increase 17 percent and 12 percent, respectively.[31] Because reimbursement practices seem to encourage hospital care for only the sickest individuals, the inpatient population may also demand greater care due to increased severity of illness.[32] The AIDS epidemic may exacerbate this trend.[33] Teaching hospitals, which rely on a broad patient case mix for their education missions, often attract these sicker patients, whose medical care needs tend to be more complex.[34]

Further characterizing the changing patient population in academic medical centers is the disproportionate amount of indigent care.[35] Experts have noted a "trend in American medicine towards a two-tier delivery system in which private hospitals treat wealthy and adequately insured individuals, while public hospitals, which are often understaffed and underfunded, treat the medically indigent."[36] Indigent patients, who may neglect to seek initial medical attention, are often more severely ill due to complications and secondary conditions.[37]

Within the Commonwealth, it is evident that the burden of indigent care is not equitably shared among health care providers. In 1985, the cost of uncompensated care, including bad debt and charity care, exceeded $300 million; the academic medical centers at MCV and UVa accounted for 36.4 percent of this amount.[38] Today these two teaching hospitals provide 42 percent of the Commonwealth's uncompensated care, which is not fully reimbursed.[39] Although the Commonwealth provides general fund appropriations to institutions for the "care, treatment, health related services and education activities associated with patients, including indigent and medically indigent patients,"[40] it is likely that total hospital costs for indigent patients exceed these appropriations. While it is difficult to "separate the cost of indigent or uncompensated care from

---

31. Competition, supra note 6, at 13.

32. House Document No. 67, supra note 30, at 10. See also, G. Will, "The Dignity of Nursing," Newsweek 80 (May 23, 1988).

33. Competition, supra note 6, at 14.

34. Vanselow, supra note 1, at 59.

35. Id.

36. Enfield, supra note 19, at 562.

37. Competition, supra note 6, at 16. Indigent patients may also use the hospital emergency room as a substitute for a physician office visit. Clinic services may only be available during business hours, when the patient may be unable to leave work. Id. at 16, 17. See also, Report of the Governor's Task Force on Indigent Health Care, Senate Document No. 11 at 46 (1988) [hereinafter referred to as Senate Document No. 11].

38. Senate Document No. 11, supra note 37, at 9, 37. Although two-thirds of the Commonwealth's expenditures on indigent care are funded by Medicaid, "uncompensated care provided by physicians and hospitals and inpatient and outpatient care offered by State teaching institutions and public health clinics provide significant augmentation to the Medicaid Program." Id. at 9.

39. Fact Sheet, supra note 12, at 1.

40. 1990 Acts of Assembly, ch. 972 [hereinafter referred to as 1990 Appropriations Act], § 1-52, item 280; § 1-54, item 306.

those being incurred to train physicians and other professionals,"[41] MCV estimated that it would write off $9.8 million in uncompensated care in 1989.[42]

D. Developing Competitive Strategies

That the dramatic changes in the overall health care environment have severely affected the academic medical center is clear. Increased competition from community hospitals and larger corporate health care providers, government emphasis on cost control, and the burden of indigent care have resulted in the "erosion of operating margins and the advent of financial instability" for many academic medical centers.[43] The responses to these market forces and financial challenges have been multiple and varied. To remain competitive, an academic medical center might "increase revenue by expanding its market base and by enlarging its services and service area, or improve efficiency and reduce costs by reducing the number of employees and services."[44] Corporate reorganizations have been considered by a number of hospitals in an attempt to strengthen their ability to react to market forces.[45] Through joint ventures, other hospitals have integrated certain functions to create "additional productive capacity through formation of a new producing organization, development of a new product or entry into a new market."[46] Diversification offers yet another route for the struggling hospital to pursue other revenue sources.[47]

Because efficient operating and administrative practices may not be sufficient to meet the costs of medical education, research, and indigent care,[48] academic medical centers have also explored a variety of alternatives to ensure their financial viability and maintain their missions. To increase purchasing power, some university hospitals have formed alliances or coalitions which do not require any change in corporate ownership or organization. One such coalition, the University Hospital Consortium, whose membership primarily consists of public universities, sponsors

---

41. Senate Document No. 11, supra note 37, at 33.

42. Competition, supra note 6, at 19. Uncompensated care makes up a substantial portion of MCV's operating deficit. See also, Minutes, July 16, 1990, Committee meeting. The Governor's Task Force on Indigent Health Care recommended in 1988 that the Secretary of Education require state teaching hospitals to identify, "at a macro-economic level, teaching expenses separate from their indigent care costs." Senate Document No. 11, supra note 37, at 34.

43. Competition, supra note 6, at 1. See also, Horwitz, supra note 15, at 528.

44. Horwitz, supra note 15, at 542.

45. Id. at 556.

46. Note, "Hospital Joint Ventures: Charting a Safe Course Through a Sea of Antitrust Regulations," 13 Am. J.L. & Med. 621 (1988)

47. E. Paris, "Rx for red ink," Forbes 200 (October 30, 1989). In response to the prospective payment system, many non-profit hospitals formed nonprofit holding companies, which in turn may own and operate the hospital and a host of for-profit subsidiaries. These attempts to enter the business world have produced "mostly dreary results," as only a few business ventures, such as on-site and off-site outpatient surgery centers, substance abuse facilities, and outpatient diagnostic centers, have proved profitable. Id. The success of diversification depends on "the degree of relation of the diversification, the management expertise of the diversifying firm, and the nature of the products or services offered." Zuckerman, supra note 2, at 113.

48. Vanselow, supra note 1, at 62.

research projects and has launched a joint purchasing program. Both MCV and UVa hospitals are members of the Consortium.[49]

Diversification efforts have led several teaching hospitals to pursue the more drastic approach of legal separation from their parent public university. Under this approach, ownership of the teaching hospital is transferred to a nonprofit corporation; the hospital is then no longer bound by state or university requirements which may restrict hospital decisions regarding strategy and operations.[50] More prevalent among academic health centers is a less intrusive and perhaps more frugal response to increased competition and dwindling resources: marketing. Teaching hospitals have typically employed market research and advertising to attract patients and referrals and to determine health services needs.[51]

In developing any competitive strategy, the state-owned teaching hospital must not only preserve its unique mission but must also comply with state laws, regulations, and policies governing business, personnel, and purchasing practices. Efforts to improve internal operating efficiency and to increase purchasing power clearly raise concerns regarding public procurement policies, university autonomy, and flexibility in decision-making procedures. Health policy experts contend, however, that "rules and decision-making processes dictated by the hospital's relationship to the university and the state should permit speedy action and should not prohibit entry into segments of the market or approaches . . . that can foster aggressive adaptation to environmental change."[52] Compliance with state notice and bidding procedures may sometimes hamper the academic health center's ability to compete effectively. Further, because the care they render is more expensive than that of their non-teaching counterparts, academic medical centers are at a competitive disadvantage in any bidding for service contracts awarded on the basis of price.[53] Meeting the directives of HJR 212 and SJR 127 required the careful review of these concerns as well as examination of recent legislative and executive actions.

E. Statutory Constraints and Recent Legislative Initiatives

The need for increased flexibility in the development of competitive strategies has been a continuing concern for the Commonwealth and its two teaching hospitals. The Commonwealth's support for indigent care only covers about 20 percent of the MCV and UVa medical centers' operating expenses; these institutions must generate the remaining 80 percent from non-state

---

49. Zuckerman, supra note 2, at 115, 116. See also, Minutes, August 17, 1990, meeting.

50. Zuckerman, supra note 2, at 113. See also, Vanselow, supra note 1, at 62. The Universities of Florida and West Virginia have pursued this option. The University of Colorado teaching hospital became an autonomous § 501 (c) (3) Corporation in 1989. In the year following its incorporation, the hospital experienced dramatic increases in operating income and nursing employment rates. Teaching Hospital Response to Issues for Consideration by the Committee (October 10, 1990) [hereinafter referred to as Teaching Hospital Response].

51. Zuckerman, supra note 2, at 117.

52. Id. at 118, 107.

53. Vanselow, supra note 1, at 58, 59. Dr. Vanselow again notes the added expense created by the academic medical centers education and research functions. See also, Zuckerman, supra note 2, at 108.

sources. The two hospitals contend that this financial challenge necessitates the ability to "act an react in the same manner as private hospitals across the Commonwealth."[54] Recognizing the special burdens the education and research missions place on the MCV and UVa hospitals, the Governor's Task Force on Indigent Health Care recommended that these two teaching hospitals "be granted greater autonomy as well as more flexibility in personnel, procurement, and other administrative areas to enable them to respond to the opportunities and threats arising in their competitive health environments." The Task Force also considered the privatization of the two hospitals, but concluded that the Commonwealth should retain ownership and management control of these institutions.[55]

Renewed interest in the special challenges facing the Commonwealth's teaching hospitals was evidenced in the 1989 and 1990 Appropriations Acts, which allowed the Boards of Visitors of the University of Virginia and Virginia Commonwealth University to identify, with the approval of the Director of the Department of Personnel and Training (DPT), "health care professional positions in their respective teaching hospitals that require, for competitive purposes in attracting personnel, compensation programs consistent with those offered in non-state hospitals." With legislative approval of a DPT employee classification plan, these employees would then be exempt from the provisions of the Virginia Personnel Act and would therefore be eligible to receive compensation at levels outside the established compensation plan for state employees.[56]

More far-reaching legislative proposals were contained in HB 719 and SB 368, which specifically addressed the teaching hospitals' concerns regarding the flexibility necessary to "survive in a new health care environment."[57] The issues raised by this carried-over legislation provided the basis for the Committee's study. Review of the proposed changes proffered by this legislation and the current requirements governing the business and administrative practices of teaching hospitals was necessary in order to assess accurately any need for increased flexibility or alternative practices.

- Purchasing Practices

The Virginia Public Procurement Act seeks to ensure that public bodies, such as the UVa and MCV academic medical centers, obtain "high quality goods and services at reasonable cost" through established procedures reflecting impartiality and fairness.[58] Public contracts with private contractors for goods, services, insurance, or construction must be awarded through competitive

---

54. Fact Sheet, supra note 12, at 3; see also, Teaching Hospital Response, supra note 50.

55. Senate Document No. 11, supra note 37, at 37, 38. The Task Force noted the state's "sizable investments" in the two schools and the valuable public benefit" derived from their education and research activities.

56. 1989 Acts of Assembly, ch. 668 [hereinafter referred to as the 1989 Appropriations Act] § 4-6.01(n) and 1990 Acts of Assembly, ch. 972 [hereinafter referred to as the 1990 Appropriations Act] § 4-6.01(1). See also, Va. Code § 2.1-114.2 (1987). The Governor is to establish a uniform compensation plan for all state employees. The plan is to include minimum and maximum compensation rates, as well as "such intermediate rates as shall be considered necessary or equitable."

57. Va. Code § 11-35 G (1989). See also, Report of the Commission Studying Alternative Methods of Financing Certain Facilities at State-Supported Colleges and Universities, House Document No. 72 at 16, 17 (1990).

58. Va. Code § 11-41 (1989). The Act requires professional services, including work within the practice of law, medicine, architecture, pharmacy, and engineering, to be procured through competitive negotiations. Va. Code §§ 11-37, 11-41 (1989).

sealed bidding or competitive negotiations.[59] Exceptions are made for emergency cases, when a written determination indicates only one source of procurement, and when the public body has established alternative procurement procedures for purchases not exceeding $15,000.[60]

Purchases of materials, equipment, supplies, and nonprofessional services by every department, division, institution, and agency of the Commonwealth are to be made through the Division of Purchases and Supply (DPS), within the Department of General Services. These purchases are also to be made in accordance with the provisions of the Procurement Act.[61] Exceptions are provided in a number of instances. State agencies may make direct purchases by seeking DPS authorization based on the availability of "a lower price with equal quality" or DPS discretion.[62] In addition, purchasing of materials and equipment through DPS is not mandatory for materials incidental to the performance of a contract for labor, for certain purchases made by the Virginia State Library and Archives, the Commonwealth Transportation Board, and the Virginia Alcoholic Beverage Control Board.[63]

Despite these exceptions to the Virginia Public Procurement Act and DPS purchasing procedures, the teaching hospitals may nonetheless have been subjected to higher prices and unfavorable contracts for goods and services.[64] While current provisions permit the hospitals to increase their bargaining power through membership in the University Hospital Consortium, these cooperative arrangements are restricted to purchases exceeding $150,000.[65] Participation in the Consortium yields the average member about $1.6 million in annual savings; the Commonwealth's teaching hospitals together have saved about $1 million in medical surgical supply purchases through this cooperative. Testimony before the Committee indicated that the two hospitals might save an additional $76,000 per year if the minimum purchase price requirement were removed. Estimated long-term savings of $5 million might be realized if all medical surgical supplies were purchased through the Consortium.[66]

While the amendments proposed by HB 719 and SB 368 would have eliminated certain purchasing requirements as well as permitted the two hospitals to participate in cooperative

---

59. Va. Code § 11-41 D, F (1989). The Act also provides exemptions for purchases of certain computer software by institutions of higher education and certain industrial development authority projects. Va. Code §§ 11-41.3 (1989), 11-45 (1990). The Innovative Technology Authority is exempt from all state purchasing and personnel procedures. Va. Code § 9-264 (1989).

60. Va. Code §§ 2.1-440 (1990); 2.1-442 (1989). Purchases covered in whole or in part by state funds are subject to DPS authority. The Division is to maintain rules, regulations, and a purchasing plan and is authorized to provide specific exemptions to its regulations for particular agencies, materials, and purchases below certain amounts.

61. Va. Code § 2.1-447 (1990).

62. Va. Code § 2.1-451 (1990).

63. Medical College of Virginia Hospitals of Virginia Commonwealth University and the University of Virginia Medical Center of the University of Virginia, Summary of State Teaching Hospital Legislation (1990) [hereinafter referred to as Summary].

64. Va. Code § 11-40 B (1989). See also, Summary, supra note 64, at 1, and Fact Sheet, supra note 12, at 8.

65. Minutes, August 17, 1990, Committee meeting. The combined MCV/UVa budget for medical surgical supplies is about $38 million.

66. HB 719 and SB 368 (1990). The proposed amendments included a June 30, 1995, sunset provision.

procurement arrangements to "effect cost savings or reduce administrative expense,"[67] the potential impact of these changes on other state agencies remains unclear. That participation in Consortium purchasing arrangements has resulted in cost savings is evident; however, the two hospitals do not currently participate in Consortium contracts for pharmaceutical products due to adverse impact on other state agencies that rely on state volume contracts for these products. To accommodate the teaching hospitals' unique purchasing needs, DPS has allowed the waiver of state contracts in certain instances and authorized hospital purchasing directors to review and approve sole source procurement. University purchasing directors may also modify purchasing procedures for acquisitions under $15,000, or about 90 percent of their purchases.

The teaching hospitals have consistently maintained that, despite these efforts, state purchasing procedures remain unnecessarily time-consuming and overly restrictive, resulting in added expense. In testimony before the Committee, the hospitals cited a need for greater flexibility in state contracts in contract term, renewal, performance standards, and accommodation for technological advances.[68] The standard state contract, "designed to serve a multitude of agencies," may not be tailored to the needs of the teaching hospital.[69] Authorizing any additional flexibility for these two institutions, such as removal of the $150,000 minimum purchase requirement or an exemption from DPS procedures, necessitates careful consideration of other state agency contracts and the Commonwealth's commitment to fairness and economy in public procurement.

• Personnel Practices

The Virginia Personnel Act provides for the establishment and administration of a uniform compensation plan for all state employees.[70] The Act also establishes an employee grievance procedure through the Department of Employee Relations Counselors (ERC).[71] Exemptions from the Act are extended to certain state personnel, such as officers and employees of the Supreme Court, the Court of Appeals, and the General Assembly, and certain other employees.[72] Retirement benefits are extended to teachers, state employees, and employees of certain political subdivisions under the Virginia Retirement System (VRS).[73] Participation in the Commonwealth's retirement plan is compulsory, although an exception allows institutions of

---

67. Minutes, August 17, 1990, Committee meeting. Consortium contracts are usually approved by DPS in three to five days. Of the 20 Consortium contracts requested in 1989, DPS approved 17. The dollar value of the three rejected contracts was about $500,000; these contracts were not accepted because the vendors would not extend the same favorable price to other state agencies. A contract for pharmaceutical products, which might have saved the teaching hospitals $100,000, was not approved because costs to the Department of Mental Health would have increased $400,000 due to multiple delivery locations. See also, Teaching Hospital Response, supra note 50.

68. Fact Sheet, supra note 12, at 8, 9. MCV described difficulties in purchase negotiations for a biliary lithotripter due to state contract and insurance requirements. Competition, supra note 6, at 35, 36.

69. Va. Code § 2.1-114.2 (1987). The Governor is to establish and administer the compensation plan, with the recommendation of DPT. Va. Code § 2.1-114.5 (1990).

70. Va. Code § 2.1-114.5:1 (1990).

71. Va. Code § 2.1-116 (1990).

72. Va. Code § 51.1-100 (1990).

73. Va. Code §§ 51.1-126, 51.1-135 (1990).

higher education to establish retirement plans outside VRS and to make contributions for its employees electing such a plan.[74]

The present compensation and retirement plans, while described as "progressive," may not effectively meet the demands of academic medical centers. The state system, according to MCV and UVa, has delayed decision making when the hospitals wished to increase salaries in response to intense competition, as well as forced staff reductions when mandated salary and benefit increases could not be met through hospital reimbursements.[75] Citing the need for the flexibility to modify salary and fringe benefit plans to meet market demands, the hospitals have noted that often the "base salary itself is simply inadequate in order to compete." The creation of new personnel positions may also involve a lengthy justification and recruitment process.[76]

Together, the MCV and UVa teaching hospitals employ approximately 7,000 people. Health care professionals, comprising about half of employees at each hospital, are currently exempt from the provisions of the Personnel Act pursuant to the 1990 Appropriations Act. A memorandum of understanding between the Department of Personnel and Training and the two hospitals clarifies the terms of the exemption and specifies the 98 employment classes deemed "health care professionals." Intended to facilitate recruitment and retention of qualified personnel, this exemption also creates additional employment incentives by permitting the development of career ladders through job redesign, restructuring, and enhancement. Although a seemingly successful practice, this exemption raises concerns regarding the propriety of establishing different pay scales and classifications for hospital positions having counterparts in the university and in other state agencies. Amendments proposed by the 1990 legislation would extend this exemption to all teaching hospital employees.[77]

Providing an unqualified exemption from the provisions of the Personnel Act would also remove access to the state grievance procedure. According to ERC representatives, the teaching hospitals appear to have a disproportionately high number of workplace conflicts. About 62 percent of MCV and UVa employees contacting ERC are teaching hospital employees; 65 percent of the grievances filed from these universities come from teaching hospital employees. Protecting employee rights as well as management interests, the grievance procedure minimizes legal liability to the Commonwealth by eliminating or reducing costly litigation.[78]

---

74. Fact Sheet, supra note 12, at 6.

75. Competition, supra note 6, at 31, 32, 33. It has been noted that the state process "consumes administrative energy and only serves to further delay the hiring process, limiting the hospital's ability to compete effectively."

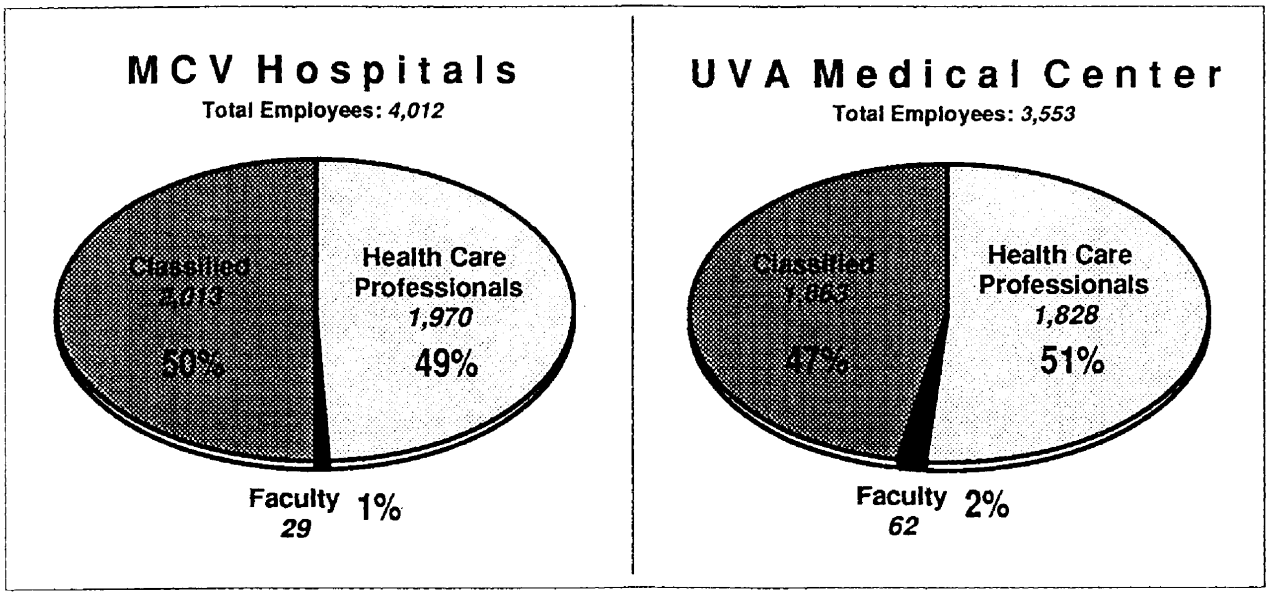
76. Minutes, August 17, 1990 meeting. Registered nurses comprise about 30 percent of health care professionals at UVa and MCV. While faculty positions are also covered by the exemption, they are also subject to the Governor's Consolidated Salary Authorization for faculty members at institutions of higher education. Personnel policies for faculty are developed by the institutions' boards of visitors. Not covered by the current exemption are classified employees, who may hold clerical, housekeeping, food service, or accounting positions and comprise about 50 percent of the hospitals workers. Personnel actions and classifications for these employees have been delegated to the hospitals, although DPT retains final authority.

77. Minutes, August 17, 1990 meeting. It was noted that shift work may contribute to these statistics.

78. Va. Code § 51.1-126 (1990).

Category of Employment

as of July 1, 1990



SOURCE: Department of Personnel and Training

Also proposed by the 1990 legislation was the flexibility to create an alternative retirement plan for all teaching hospital employees. Precedent for this option already exists in the Code, as colleges and universities may develop plans for personnel "engaged in the performance of teaching, administrative, or research duties."[79] Repeated testimony before the Committee indicated that the creation of an alternative plan and the reallocation and creative application of funds previously committed to supporting VRS could result in significant savings--perhaps as much as four million dollars per year for each teaching hospital. The availability of a defined contribution plan in which an employee's interest vests immediately is often attractive to young health care professionals. According to representatives of VRS, participation by hospital employees in an alternative plan might not adversely affect VRS or its funding; however, extending this option to other agencies might prove to be problematic.

79. Minutes, December 18, 1990, meeting. Most hospitals fund their retirement plans through defined contributions of five to eight percent. If the teaching hospitals were allowed to offer similar defined contribution plans, the difference between the VRS and alternative rates might be as much as nine percent. See also, Minutes, July 16, 1990, and December 18, 1990, meetings.

V. CONCLUSIONS AND RECOMMENDATIONS

Determining the need to increase flexibility in the Commonwealth's personnel and purchasing practices to accommodate the unique missions of its two teaching hospitals required careful review of a number of issues. The academic medical centers, committed to teaching and research as well as patient care, are part of a health care environment characterized by the increased corporatization of health care delivery, fierce price competition, and changing reimbursement practices. And yet, these teaching hospitals are also part of the Commonwealth's system of higher education and, as state agencies, must incorporate business and administrative practices which reflect fairness, impartiality, and frugality. While compliance with current state personnel and purchasing procedures may ensure accountability, these requirements may, in some cases, produce inflexibility and inefficiency which unnecessarily hamper the teaching hospitals' ability to compete effectively. In meeting the charge of HJR 212 and SJR 127, the Committee examined specific perceived burdens--and benefits--these requirements may impose on the Commonwealth's teaching hospitals and coordinated the input and expertise of the Departments of Personnel and Training and Employee Relations Counselors, the Division of Purchases and Supply, the Virginia Retirement System, and the two teaching hospitals. Of primary concern to the Committee was the development of recommendations that would not only result in cost savings to the hospitals and the Commonwealth, but also ensure the continued delivery of quality patient care at these academic medical centers. Recognizing that increasing flexibility in the personnel and purchasing practices of the Commonwealth teaching hospitals requires careful balancing the goals of fairness and fiscal prudence in state agency practices with the need to preserve the teaching hospitals' unique role in education, research, and patient care, the Committee makes the following recommendations:

RECOMMENDATION 1:

That the Division of Purchases and Supply and the Commonwealth's two teaching hospitals examine the efficacy and potential impact on other state agencies of providing an exemption from DPS purchasing procedures for the teaching hospitals.

Intense cooperation between DPS and the teaching hospitals has already yielded great savings and improved efficiency. Hospital purchasing directors already possess a degree of flexibility in smaller acquisitions. No clear data is available, however, to quantify the potential effect of more extensive teaching hospital flexibility on other state contracts. Although the carried-over legislation proposed a specific exemption from DPS procedures for the acquisition of all materials, equipment, supplies, and services needed by the UVa and MCV hospitals, further study is necessary to assess accurately the impact of such an exemption on other state agencies. An administrative study conducted by the Division and the two teaching hospitals could determine ways to provide the hospitals access to the most cost-effective contracts without increasing the overall costs to the Commonwealth or adversely affecting other state agency contracts.

RECOMMENDATION 2:

That § 11-40 of the Code of Virginia be amended to provide the teaching hospitals an exemption from the $150,000 threshold amount for cooperative procurement arrangements.

Although the potential adverse impact of a full exemption from DPS procedures for all teaching hospital purchases remains unclear, providing increased flexibility in a limited area, such as cooperative purchasing arrangements, may enhance the hospitals' purchasing power without

harming other state agency contracts. Allowing the teaching hospitals to pursue cooperative purchasing arrangements without regard to the $150,000 minimum contract price would allow these institutions to participate in more group contracts, ultimately resulting in increased savings to the Commonwealth. To protect the Commonwealth's interest in frugality and fairness in public procurement, however, these acquisitions should still be made on a competitive basis. Consistent with the amendments proposed by the 1990 legislation, this recommendation would enable the hospitals to enter into cooperative arrangements without the approval of the Director of the Division of Purchases and Supply. This move toward cost containment, supported by the teaching hospitals and DPS, would facilitate the more effective allocation of resources and services.

RECOMMENDATION 3:

That health care providers, as determined by the Department of Personnel and Training, employed by the teaching hospitals be exempt from the provisions of the Personnel Act, except those provisions establishing a grievance procedure for state employees.

To address difficulties in recruiting and retaining health care workers in the competitive health care environment, the Commonwealth's teaching hospitals should be granted greater flexibility in personnel practices. Providing an exemption from the Personnel Act for health care providers would assist the hospitals in job redesign to address shortages through creative application of these job classifications. The broader definition would support the health care "team" concept to provide multi-skilled workers and professionals with the same benefits package. "Health care providers" would include those employees providing direct patient care, performing technical or direct support services, such as clinical laboratory work, and supervising or managing professional employees. Dietary, custodial, computer, or other workers would not be included in this proposed classification, which nonetheless represents a slight expansion in the classification covered by the 1990 Appropriations Act and as set forth in the DPT memorandum of understanding. The proposed new definition would add about 12 to 15 job classifications or about 500 to 700 employees. The Director of DPT would retain ultimate approval of what classes of employees would be included in the definition; expansion of the list should be handled on a case-by-case basis.

Cognizant of the issues of fairness and accountability, the Committee also recommends that the state grievance procedure continue to apply to all hospital employees. Access to the grievance procedure will benefit both the employee and the Commonwealth by ensuring the effective and timely resolution of disputes.

RECOMMENDATION 4:

That the health care providers employed by the Commonwealth's teaching hospitals be permitted to participate in alternative retirement plans approved by the board of visitors of the respective institutions, that the contribution rate for any alternative plan be established by statute, and that the hospitals report to the Committees on House Appropriations and Senate Finance prior to the implementation of any alternative plan.

The availability of an alternative retirement plan would simply allow health care providers to participate in plans similar to those already available for faculty. Providing current and future employees the option to participate in VRS or an alternative plan could save each hospital about four million dollars per year. The enhanced mobility offered by a defined contribution plan may

also assist in the recruitment of younger health care professionals. The employer contribution level to any alternative plan should be set in statute to ensure effective cost containment. To provide additional governmental oversight, review by the House Appropriations Committee and the Senate Finance Committee should be required prior to the implementation of any alternative plan.

The joint subcommittee extends its appreciation to representatives of the teaching hospitals and contributing state agencies for their cooperation and assistance during the course of this study.

Respectfully submitted,

Delegate Alan A. Diamonstein, *Chairman*
Senator John C. Buchanan, *Vice Chairman*
Delegate Robert B. Ball, Sr.
Delegate V. Earl Dickinson
Senator Elmo G. Cross, Jr.
Senator Benjamin J. Lambert III
Dr. John Andrako
Dr. Don E. Detmer
William C. Giermak
Steven D. Gravely
Ann Hughes
William F. Jacobs
James W. Dyke, Jr.,
Secretary of Education, *ex officio*
Ruby G. Martin,
Secretary of Administration, *ex officio*

BIBLIOGRAPHY

Statutory Authority

Code of Virginia §§ 2.1-51.21 (1987); 2.1-110 et seq. (1987 and 1990 Supp.); 2.1-440 (1990); 2.1-442 (1989); 2.1-447, 2.1-451 (1990); 9-264 (1989); 11-35 et seq. (1989 and 1990 Supp.); 23-9.5 (1985); 23-9.10:1 (1985); 23-14 (1990); 23-50.5, 23-50.7 (1985); 51.1-100 et seq. (1990).

1968 Acts of Assembly, ch. 547.
1972 Acts of Assembly, ch. 688.
1989 Acts of Assembly, ch. 668.
1990 Acts of Assembly, ch. 972.

House Bill 719 (1990).
Senate Bill 368 (1990).

Other Authority

"The Best Hospitals, from AIDS to Urology," U.S. News and World Report 68 (April 30, 1990).

"Curing--Plus Caring," U.S. News and World Report 78 (November 2, 1987).

L. Enfield and D. Sklar, "Patient Dumping in the Hospital Emergency Department: Renewed Interest in an Old Problem," 13 American Journal of Law & Medicine 561 (1988).

M. Horwitz, "Corporate reorganization: The Last Gasp or Last Clear Chance for the Tax-Exempt, Nonprofit Hospital?" 13 American Journal of Law & Medicine 529 (1988).

T. Lawry, "Healthcare Economics and Development: Surviving the 1990s," NAHD Journal 5 (Fall 1989).

Medical College of Virginia Hospitals, Virginia Commonwealth University, Competition and the Hospital Environment: Perspectives on a Public Teaching Hospital (February 10, 1989).

Medical College of Virginia Hospitals of the Virginia Commonwealth University and University of Virginia Medical Center of the University of Virginia, Fact Sheet (1990).

Medical College of Virginia Hospitals of the Virginia Commonwealth University and University of Virginia Medical Center of the University of Virginia, Summary of Teaching Hospital Legislation (1990).

Minutes, July 16, 1990, August 17, 1990, and December 18, 1990, Committee meetings.

Note, "Hospital Joint Ventures: Charting a Safe Course through a Sea of Antitrust Regulations," 13 American Journal of Law & Medicine 621 (1988).

E. Paris, "Rx for red ink," Forbes 200 (October 30, 1989).

Report of the Commission Studying Alternative Methods of Financing Certain Facilities at State-Supported Colleges and Universities pursuant to HJR 373, House Document No. 72 (1990).

Report of the Governor's Task Force on Indigent Health Care, Senate Document No. 11 (1988).

Report of the Joint Subcommittee Studying Pharmaceutical Costs in the Virginia Medical Assistance Program pursuant to HJR 403, House Document No. 78 (1990).

Report of the Joint Subcommittee Studying the Supply and Demand of Nurses in the Commonwealth, House Document No. 67 (1990).

W. Sanger, Medical College of Virginia Before 1925 and University College of Medicine (1893-1913) (1973).

Teaching Hospital Response to Issues for Consideration by the Committee (October 10, 1990).

B. Turner, "Future role of academic medical centers," Health Care Management Review 73 (Spring 1989).

University of Virginia Health Sciences Center, Orientation for New Members of the Board of Visitors (March 28, 1990).

University of Virginia School of Medicine, Record 1989-1990.

N. Vanselow, "Academic Health Centers: Can They Survive?" Issues in Science and Technology 55 (Summer 1986).

G. Will, "The Dignity of Nursing," Newsweek 80 (May 23, 1988).

H. Zuckerman, T. D'Aunno, and T. Vaughan, "The Strategies and Autonomy of University Hospitals in Competitive Environments," 35 Hospital & Health Services Administration 103 (Spring 1990).

HOUSE JOINT RESOLUTION NO. 212

Establishing a joint subcommittee to study flexibility in personnel and purchasing practices for teaching hospitals.

Agreed to by the House of Delegates, February 13, 1990
Agreed to by the Senate, March 7, 1990

WHEREAS, the futures of the Medical College of Virginia Hospitals and the University of Virginia Medical Center are of extreme importance to the Commonwealth, as these teaching hospitals provide highly specialized patient care, provide a major portion of indigent care, serve as the clinical site for the education of doctors, nurses and other health-care personnel and conduct major clinical research; and

WHEREAS, because of a rapidly changing health-care environment and changes in reimbursement for patient care, the business and administrative practices of the teaching hospitals must be reevaluated and the teaching hospitals must become more cost competitive in all phases of their operation; and

WHEREAS, as state agencies, the teaching hospitals operate within the Commonwealth's personnel and purchasing systems; and

WHEREAS, the administrators of the teaching hospitals believe that they need increased flexibility in the areas of personnel and purchasing in order to maintain the financial viability and excellent reputations of the teaching hospitals; and

WHEREAS, the administrators of the teaching hospitals recognize that the teaching hospitals enjoy benefits as well as constraints because they are state agencies and acknowledge that they should be accountable to the public; now, therefore, be it

RESOLVED by the House of Delegates, the Senate concurring, That a joint subcommittee be established to study whether the teaching hospitals should be authorized to develop more flexible personnel and purchasing practices, how such practices should be developed, and what type of oversight mechanisms should be established.

The joint subcommittee shall be composed of twelve members as follows: three members of the House Committee on Appropriations to be appointed by the Speaker of the House; three members of the Senate Committee on Finance to be appointed by the Senate Committee on Privileges and Elections; one representative each of the Virginia Commonwealth University Medical College of Virginia and the Medical Center of the University of Virginia; and four citizens who shall be representatives of the health-care industry to be appointed by the Governor. The Secretary of Administration and the Secretary of Education shall serve ex officio.

The joint subcommittee shall complete its work in time to submit its findings and recommendations to the Governor and the 1991 Session of the General Assembly as provided in the procedures of the Division of Legislative Automated Systems for the processing of legislative documents.

The indirect costs of this study are estimated to be $10,860; the direct costs of this study shall not exceed $8,640.

SENATE JOINT RESOLUTION NO. 127

Establishing a joint subcommittee to study flexibility in personnel and purchasing practices for teaching hospitals.

Agreed to by the Senate, February 13, 1990
Agreed to by the House of Delegates, March 9, 1990

WHEREAS, the futures of the Medical College of Virginia Hospitals and the University of Virginia Medical Center are of extreme importance to the Commonwealth, as they provide highly specialized patient care, provide a major portion of indigent care, serve as the clinical site for the education of doctors, nurses, and other health-care personnel, and conduct major clinical research; and

WHEREAS, because of a rapidly changing health-care environment and changes in reimbursement for patient care, the business and administrative practices of the teaching hospitals must be reevaluated and the teaching hospitals must become more cost competitive in all phases of their operation; and

WHEREAS, as state agencies, the teaching hospitals operate within the Commonwealth's personnel and purchasing systems; and

WHEREAS, the administrators of the teaching hospitals believe that they need increased flexibility in the areas of personnel and purchasing in order to maintain the financial viability and excellent reputations of the teaching hospitals; and

WHEREAS, the administrators of the teaching hospitals recognize that the teaching hospitals enjoy benefits as well as constraints because they are state agencies and acknowledge that they should be accountable to the public; now, therefore, be it

RESOLVED by the Senate, the House of Delegates concurring, That a joint subcommittee be established to study whether the teaching hospitals should be authorized to develop more flexible personnel and purchasing practices, how such practices should be developed, and what type of oversight mechanisms should be established.

The joint subcommittee shall be composed of twelve members as follows: three members of the Senate Committee on Finance to be appointed by the Senate Committee on Privileges and Elections; three members of the House Committee on Appropriations to be appointed by the Speaker of the House; one representative each of the Virginia Commonwealth University Medical College of Virginia and the Medical Center of the University of Virginia; and four citizens who shall be representatives of the health-care industry to be appointed by the Governor. The Secretary of Administration and the Secretary of Education shall serve ex officio.

The joint subcommittee shall complete its work in time to submit its findings and recommendations to the Governor and the 1991 Session of the General Assembly as provided in the procedures of the Division of Legislative Automated Systems for the processing of legislative documents.

The indirect costs of this study are estimated to be $10,860; the direct costs of this study shall not exceed $8,640.

1990 SESSION

LD1087308

HOUSE BILL NO. 719

Offered January 23, 1990

A BILL to amend and reenact §§ 2.1-116, 2.1-451, 11-40, 51-111.27, 51-111.28, and 51-111.33 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 51-111.28:01, relating to the Virginia Personnel Act, purchases and supply, the Virginia Public Procurement Act, and retirement plans for certain teaching hospitals.

Patrons–Diamonstein, Ball and Dickinson; Senators: Andrews, Walker and Anderson

Referred to the Committee on Appropriations

Be it enacted by the General Assembly of Virginia:

1. That §§ 2.1-116, 2.1-451, 11-40, 51-111.27, 51-111.28, and 51-111.33 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 51-111.28:01 as follows:

§ 2.1-116. Certain officers and employees exempt from chapter.–A. The provisions of this chapter shall not apply to:

1. Officers and employees for whom the Constitution specifically directs the manner of selection;

2. Officers and employees of the Supreme Court and the Court of Appeals;

3. Officers appointed by the Governor, whether confirmation by the General Assembly or by either house thereof be required or not;

4. Officers elected by popular vote or by the General Assembly or either house thereof;

5. Members of boards and commissions however selected;

6. Judges, referees, receivers, arbiters, masters and commissioners in chancery, commissioners of accounts, and any other persons appointed by any court to exercise judicial functions, and jurors and notaries public;

7. Officers and employees of the General Assembly and persons employed to conduct temporary or special inquiries, investigations, or examinations on its behalf;

8. The presidents, and teaching and research staffs of state educational institutions;

9. Commissioned officers and enlisted personnel of the national guard and the naval militia;

10. Student employees in institutions of learning, and patient or inmate help in other state institutions;

11. Upon general or special authorization of the Governor, laborers, temporary employees and employees compensated on an hourly or daily basis;

12. County, city, town and district officers, deputies, assistants and employees;

13. The employees of the Department of Workers' Compensation, Industrial Commission of Virginia;

14. The following officers and employees of the Virginia Supplemental Retirement System: retirement system chief investment officer, retirement system investment officer, retirement system assistant investment officer and investment financial analyst;

15. The following officers and employees of the Virginia Museum of Fine Arts: the curatorial and conservatorial staffs as approved by the Director of the Department of Personnel and Training;

16. The following officers and employees of executive branch agencies: those who report directly to the agency head; additionally, those at the level immediately below those who report directly to the agency head and are at a salary grade of sixteen or higher. However, in agencies with fewer than fifty employees, only the immediate advisor or advisors or deputy or deputies of the agency head shall be exempt. In implementing this exemption, personnel actions shall be taken without regard to race, sex, color, national origin, religion, age, handicap or political affiliation. Recruitment and selection of individuals covered by this exemption shall be handled in a manner consistent with policies

applicable to classified positions. Notwithstanding the above, all superintendents and wardens in the Department of Corrections shall be exempt from this chapter. Additionally, all persons responsible for the internal audit and personnel and employee relations functions for each agency shall be included in this chapter. Each Governor's Secretary shall have a final authority in determining on an ongoing basis the officers and employees exempted by this subdivision and pursuant to its provisions. Such officers or employees shall thereafter serve at the pleasure and will of their appointing authority. The Department of Personnel and Training shall advise and assist each Governor's Secretary in making these determinations and shall be responsible for maintaining an ongoing and up-to-date list of the affected positions;

17. The sales and marketing employees of the State Lottery Department; ~~and~~

18. Production workers for the Virginia Industries for the Blind Sheltered Workshop programs ~~.~~ *; and*

19. Employees of the Medical College of Virginia Hospitals and the University of Virginia Medical Center who are covered by comprehensive systems of personnel administration approved, respectively, by the Board of Visitors of Virginia Commonwealth University and the Rector and Visitors of the University of Virginia. The provisions of this subdivision shall expire on June 30, 1995.

B. The dismissal of any employee referred to in subdivision A 16 of this section pursuant to this chapter shall not affect the retirement benefits, and annual and sick leave benefits accrued to such employee at the time of his dismissal, nor shall any such employee be subject to any diminution of any other employee benefits by virtue of the provisions of this chapter.

§ 2.1-451. Cases in which purchasing through Division not mandatory.–Unless otherwise ordered by the Governor, the purchasing of materials, equipment, supplies , and nonprofessional services through the Division of Purchases and Supply is not mandatory in the following cases:

1. Such materials, equipment , and supplies as are incident to the performance of a contract for labor or for labor and materials;

2. Manuscripts, maps, audiovisual materials, books, pamphlets , and periodicals purchased for the use of the Virginia State Library and Archives or any other library in the Commonwealth supported in whole or in part by state appropriation;

3. Perishable articles, provided that no article except fresh vegetables, fresh fish, fresh eggs , and milk shall be considered perishable within the meaning of this clause, unless so classified by the Division of Purchases and Supply;

4. Materials, equipment , and supplies needed by the Commonwealth Transportation Board; however, this exception may include office stationery and supplies, office equipment, janitorial equipment and supplies, coal and fuel oil for heating purposes only when authorized in writing by the Division;

5. Materials, equipment , and supplies needed by the Virginia Alcoholic Beverage Control Board; however, this exception may include office stationery and supplies, office equipment, janitorial equipment and supplies, coal and fuel oil for heating purposes only when authorized in writing by the Division;

6. Binding and rebinding of the books and other literary materials of libraries operated by the Commonwealth or under its authority;

7. Printing of the records of the Supreme Court; ~~and~~

8. Financial services, including without limitation, underwriters, financial advisors, investment advisors and banking services *; and*

9. Materials, equipment, supplies, and services needed by the Medical College of Virginia Hospitals and the University of Virginia Medical Center. The Board of Visitors of Virginia Commonwealth University and the Rector and Visitors of the University of Virginia shall designate persons responsible for purchasing activities under the Virginia Public Procurement Act (§ 11-35 et seq.). The provisions of this subdivision shall expire on June 30, 1995 .

§ 11-40. Cooperative procurement.—A. Any public body may participate in, sponsor, conduct , or administer a cooperative procurement agreement with one or more other public bodies, or agencies of the United States, for the purpose of combining requirements to increase efficiency or reduce administrative expenses. Any public body which enters into a cooperative procurement agreement with a county, city , or town whose governing body has adopted alternative policies and procedures pursuant to § 11-35 C or § 11-35 D of this chapter shall comply with ~~said~~ *the* alternative policies and procedures ~~so~~ adopted by ~~said~~ *the* governing body of such county, city , or town.

B. Subject to the provisions of §§ 2.1-440, 2.1-442 and 2.1-447, *and except as provided in subsection C,* any department, agency , or institution of the Commonwealth may participate in, sponsor, conduct , or administer a cooperative procurement arrangement with private health or educational institutions or with public agencies or institutions of the several states, territories of the United States, or the District of Columbia, for the purpose of combining requirements to effect cost savings or reduce administrative expense in any major acquisition of equipment, instrumentation, or medical care supplies. For the purpose of this section, a "major acquisition" shall mean equipment, instrumentation, or medical care supplies for which the cost per unit, or the cost of the entire system, or the cost of all items to be acquired over a period of twelve months under the same contract is estimated to be in excess of $150,000. In such instances, deviation from the procurement procedures set forth in the Virginia Public Procurement Act (§ 11-35 et seq.) and the administrative policies and procedures established to implement ~~said~~ *the* Act will be permitted, if approved by the Director of the Division of Purchases and Supply; however, such acquisitions shall be procured competitively. Nothing herein shall prohibit the payment by direct or indirect means of any administrative fee that will allow for participation in any such arrangement.

C. The Medical College of Virginia Hospitals and the University of Virginia Medical Center may participate in, sponsor, conduct, or administer a cooperative procurement arrangement for the purpose of combining requirements to effect cost savings or reduce administrative expense. The Board of Visitors of Virginia Commonwealth University and the Rector and Visitors of the University of Virginia shall first approve written policies and procedures for cooperative procurement arrangements. Nothing herein shall prohibit the payment by direct or indirect means of any administrative fee that will allow for participation in any such arrangement. The provisions of this subsection shall expire on June 30, 1995.

§ 51-111.27. Persons composing membership; persons holding more than one position; exceptions.—(a) Except as provided in subsection (a1) of this section, membership in the retirement system shall consist of the following:

(1) All persons who become employees after March 1, 1952; and

(2) Any member as defined in § 51-111.10 (8) with twelve years or more creditable service who thereafter becomes the treasurer, commissioner of revenue, Commonwealth's attorney, clerk of a circuit court, sheriff, or constable of any county or city may have the option to become a member of a local pension system or, with the prior approval of the county or city, remain in the retirement system.

If such member elects to remain in the retirement system and such election is approved by the county or city, the county or city shall contribute to the retirement system in accordance with the retirement system's requirements, rules, and regulations, and at a rate prescribed by the retirement system's actuary; however, all additional costs related to this election shall be borne by the county or city. It is further provided that the county or city shall provide the retirement system with a resolution setting forth the approval and agreement to pay the required contributions.

(a1) Membership shall not include the following:

1. Any person who elects not to participate as provided in §§ 51-111.10:1, 51-111.10:3, 51-111.28 and 51-111.32, or who elected not to participate in the abolished system;

2. Any person who becomes an employee and who elects to remain a member of a

local pension system where such election is provided by state law; ~~and~~

3. Any member of a local system who through promotion achieves a position bringing him within the definition of a teacher as defined in §§ 51-111.10 and 51-111.10:01 if he elects within sixty days, with the concurrence of his employer, to remain a member of the local system ~~.~~ *; and*

4. Any person who does not participate pursuant to § 51-111.28:01.

(b) No person shall hold more than one membership in the retirement system at any one time with respect to any of the benefits, including group insurance coverage, provided under this title. Any person employed in more than one position resulting in membership shall elect one position on which his membership shall be based by written notification thereof to the Board.

§ 51-111.28. Certain employees of institutions of higher education.—(a) Any institution of higher education which, at the time of the establishment of the retirement system, has established, or which may thereafter establish, a retirement plan or arrangement covering in whole or in part its employees engaged in the performance of teaching, administrative , or research duties, is hereby authorized to make contributions for the benefit of its employees who elect to continue or be under such plan or arrangement and elect to participate in such plan or arrangement rather than in the retirement system established by this chapter. ~~Any~~ *Except as provided in subsection (d), any* present or future employee of such institution shall have the option of electing to participate in either the retirement system established by this chapter or the plan or arrangement provided by the institution employing him. The election herein provided shall, as to any future employee, be exercised not later than ninety days from the time of entry upon the performance of his duties.

(a1) The Virginia Cooperative Extension Service is hereby authorized to make contributions into the Federal Employees Retirement System for the benefit of its employees who hold federal governmental appointments and who elect participation into such system before December 31, 1987.

(b) No employee of an institution of higher education who is an actively participating member in a plan or arrangement established under this section with regard to teaching, administrative, or research duties shall also be an actively participating member of the retirement system established by this chapter for any other position of employment.

(b1) No employee who is an active member of the Federal Employees Retirement System established in 1986 in Public Law 99-335 shall also be an active member of the Virginia Supplemental Retirement System or any other optional retirement plan authorized by this chapter.

(c) No employer contribution from general fund revenues to any other retirement system in behalf of an employee as provided in subsection (a) shall exceed the contribution which would be required of such employer if the employee was a member of the Virginia Supplemental Retirement System.

(d) Persons who become employees of the Medical College of Virginia Hospitals or the University of Virginia Medical Center on or after July 1, 1990, may participate in a retirement plan established pursuant to this section only if specifically authorized by the employing teaching hospital.

§ 51-111.28:01. Retirement plans for employees of teaching hospitals.—Employees of the Medical College of Virginia Hospitals and the University of Virginia Medical Center shall not be required to be members of the Virginia Supplemental Retirement System. The board of visitors of each institution shall establish a retirement plan for teaching hospital employees. The retirement plan may permit part-time employees to participate. A person who is employed by the Medical College of Virginia Hospitals or the University of Virginia Medical Center on June 30, 1990, and who is a member of the Virginia Supplemental Retirement System or participates in a retirement plan established pursuant to § 51-111.28, may remain a member of the retirement plan in which he participates or, if authorized, may participate in the retirement plan established pursuant to this section. Persons who become teaching hospital employees on or after July 1, 1990, may become members of the

Virginia Supplemental Retirement System only if specifically authorized by the employing teaching hospital. Persons who become teaching hospital employees on or after July 1, 1990, may participate in a retirement plan established pursuant to the provisions of § 51-111.28 only if specifically authorized by the employing teaching hospital. Teaching hospital employees may participate in the retirement plan established by the board of visitors pursuant to this section only if specifically authorized by the employing teaching hospital. No employee who is an active member of the retirement plan established pursuant to this section shall also be an active member of the Virginia Supplemental Retirement System.

The Medical College of Virginia Hospitals and the University of Virginia Medical Center are authorized to make contributions on behalf of their employees who participate in a retirement plan established pursuant to this section. No employer contribution on behalf of an employee from general fund revenues to any retirement plan established by the board of visitors shall exceed the contribution which would be required of the employer if the employee was a member of the Virginia Supplemental Retirement System.

§ 51-111.33. Compulsory membership.–Membership in the retirement system shall be compulsory for all employees eligible as provided in § 51-111.31 and who enter service of an employer after the date the approval is given, except as provided in § *§* 51-111.28 *and 51-111.28:01* .

2. The Medical College of Virginia Hospitals and the University of Virginia Medical Center shall each submit a report on the implementation of this act to the Governor, the Senate Finance Committee, and the House Appropriations Committee on or before November 1 of each year. At a minimum, the report shall include (i) a description of the personnel system, including compensation and benefit packages; (ii) a summary of the impact of this act on the teaching hospital's procurement activities; (iii) a summary of the impact of this act on the teaching hospital's financial and competitive position; and (iv) such additional information as may be required by the Secretary of Education. The provisions of this clause shall expire on June 30, 1995.

Official Use By Clerks	
Passed By The House of Delegates	**Passed By The Senate**
without amendment ☐	without amendment ☐
with amendment ☐	with amendment ☐
substitute ☐	substitute ☐
substitute w/amdt ☐	substitute w/amdt ☐
Date: _____	Date: _____
_____	_____
Clerk of the House of Delegates	Clerk of the Senate

1990 SESSION

LD1088308

SENATE BILL NO. 368

Offered January 23, 1990

A BILL to amend and reenact §§ 2.1-116, 2.1-451, 11-40, 51-111.27, 51-111.28, and 51-111.33 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 51-111.28:01, relating to the Virginia Personnel Act, purchases and supply, the Virginia Public Procurement Act, and retirement plans for certain teaching hospitals.

Patrons—Walker, Andrews and Anderson; Delegates: Ball, Dickinson and Diamonstein

---

Referred to the Committee on Finance

Be it enacted by the General Assembly of Virginia:

1. That §§ 2.1-116, 2.1-451, 11-40, 51-111.27, 51-111.28, and 51-111.33 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 51-111.28:01 as follows:

§ 2.1-116. Certain officers and employees exempt from chapter.—A. The provisions of this chapter shall not apply to:

1. Officers and employees for whom the Constitution specifically directs the manner of selection;

2. Officers and employees of the Supreme Court and the Court of Appeals;

3. Officers appointed by the Governor, whether confirmation by the General Assembly or by either house thereof be required or not;

4. Officers elected by popular vote or by the General Assembly or either house thereof;

5. Members of boards and commissions however selected;

6. Judges, referees, receivers, arbiters, masters and commissioners in chancery, commissioners of accounts, and any other persons appointed by any court to exercise judicial functions, and jurors and notaries public;

7. Officers and employees of the General Assembly and persons employed to conduct temporary or special inquiries, investigations, or examinations on its behalf;

8. The presidents, and teaching and research staffs of state educational institutions;

9. Commissioned officers and enlisted personnel of the national guard and the naval militia;

10. Student employees in institutions of learning, and patient or inmate help in other state institutions;

11. Upon general or special authorization of the Governor, laborers, temporary employees and employees compensated on an hourly or daily basis;

12. County, city, town and district officers, deputies, assistants and employees;

13. The employees of the Department of Workers' Compensation, Industrial Commission of Virginia;

14. The following officers and employees of the Virginia Supplemental Retirement System: retirement system chief investment officer, retirement system investment officer, retirement system assistant investment officer and investment financial analyst;

15. The following officers and employees of the Virginia Museum of Fine Arts: the curatorial and conservatorial staffs as approved by the Director of the Department of Personnel and Training;

16. The following officers and employees of executive branch agencies: those who report directly to the agency head; additionally, those at the level immediately below those who report directly to the agency head and are at a salary grade of sixteen or higher. However, in agencies with fewer than fifty employees, only the immediate advisor or advisors or deputy or deputies of the agency head shall be exempt. In implementing this exemption, personnel actions shall be taken without regard to race, sex, color, national origin, religion, age, handicap or political affiliation. Recruitment and selection of individuals covered by this exemption shall be handled in a manner consistent with policies

applicable to classified positions. Notwithstanding the above, all superintendents and wardens in the Department of Corrections shall be exempt from this chapter. Additionally, all persons responsible for the internal audit and personnel and employee relations functions for each agency shall be included in this chapter. Each Governor's Secretary shall have a final authority in determining on an ongoing basis the officers and employees exempted by this subdivision and pursuant to its provisions. Such officers or employees shall thereafter serve at the pleasure and will of their appointing authority. The Department of Personnel and Training shall advise and assist each Governor's Secretary in making these determinations and shall be responsible for maintaining an ongoing and up-to-date list of the affected positions;

17. The sales and marketing employees of the State Lottery Department; ~~and~~

18. Production workers for the Virginia Industries for the Blind Sheltered Workshop programs ~~.~~ *; and*

19. Employees of the Medical College of Virginia Hospitals and the University of Virginia Medical Center who are covered by comprehensive systems of personnel administration approved, respectively, by the Board of Visitors of Virginia Commonwealth University and the Rector and Visitors of the University of Virginia. The provisions of this subdivision shall expire on June 30, 1995.

B. The dismissal of any employee referred to in subdivision A 16 of this section pursuant to this chapter shall not affect the retirement benefits, and annual and sick leave benefits accrued to such employee at the time of his dismissal, nor shall any such employee be subject to any diminution of any other employee benefits by virtue of the provisions of this chapter.

§ 2.1-451. Cases in which purchasing through Division not mandatory.–Unless otherwise ordered by the Governor, the purchasing of materials, equipment, supplies , and nonprofessional services through the Division of Purchases and Supply is not mandatory in the following cases:

1. Such materials, equipment , and supplies as are incident to the performance of a contract for labor or for labor and materials;

2. Manuscripts, maps, audiovisual materials, books, pamphlets , and periodicals purchased for the use of the Virginia State Library and Archives or any other library in the Commonwealth supported in whole or in part by state appropriation;

3. Perishable articles, provided that no article except fresh vegetables, fresh fish, fresh eggs , and milk shall be considered perishable within the meaning of this clause, unless so classified by the Division of Purchases and Supply;

4. Materials, equipment , and supplies needed by the Commonwealth Transportation Board; however, this exception may include office stationery and supplies, office equipment, janitorial equipment and supplies, coal and fuel oil for heating purposes only when authorized in writing by the Division;

5. Materials, equipment , and supplies needed by the Virginia Alcoholic Beverage Control Board; however, this exception may include office stationery and supplies, office equipment, janitorial equipment and supplies, coal and fuel oil for heating purposes only when authorized in writing by the Division;

6. Binding and rebinding of the books and other literary materials of libraries operated by the Commonwealth or under its authority;

7. Printing of the records of the Supreme Court; ~~and~~

8. Financial services, including without limitation, underwriters, financial advisors, investment advisors and banking services *; and*

9. Materials, equipment, supplies, and services needed by the Medical College of Virginia Hospitals and the University of Virginia Medical Center. The Board of Visitors of Virginia Commonwealth University and the Rector and Visitors of the University of Virginia shall designate persons responsible for purchasing activities under the Virginia Public Procurement Act (§ 11-35 et seq.). The provisions of this subdivision shall expire on June 30, 1995 .

§ 11-40. Cooperative procurement.--A. Any public body may participate in, sponsor, conduct , or administer a cooperative procurement agreement with one or more other public bodies, or agencies of the United States, for the purpose of combining requirements to increase efficiency or reduce administrative expenses. Any public body which enters into a cooperative procurement agreement with a county, city , or town whose governing body has adopted alternative policies and procedures pursuant to § 11-35 C or § 11-35 D of this chapter shall comply with ~~said~~ *the* alternative policies and procedures ~~so~~ adopted by ~~said~~ *the* governing body of such county, city , or town.

B. Subject to the provisions of §§ 2.1-440, 2.1-442 and 2.1-447, *and except as provided in subsection C,* any department, agency , or institution of the Commonwealth may participate in, sponsor, conduct , or administer a cooperative procurement arrangement with private health or educational institutions or with public agencies or institutions of the several states, territories of the United States, or the District of Columbia, for the purpose of combining requirements to effect cost savings or reduce administrative expense in any major acquisition of equipment, instrumentation, or medical care supplies. For the purpose of this section, a "major acquisition" shall mean equipment, instrumentation, or medical care supplies for which the cost per unit, or the cost of the entire system, or the cost of all items to be acquired over a period of twelve months under the same contract is estimated to be in excess of $150,000. In such instances, deviation from the procurement procedures set forth in the Virginia Public Procurement Act (§ 11-35 et seq.) and the administrative policies and procedures established to implement ~~said~~ *the* Act will be permitted, if approved by the Director of the Division of Purchases and Supply; however, such acquisitions shall be procured competitively. Nothing herein shall prohibit the payment by direct or indirect means of any administrative fee that will allow for participation in any such arrangement.

C. The Medical College of Virginia Hospitals and the University of Virginia Medical Center may participate in, sponsor, conduct, or administer a cooperative procurement arrangement for the purpose of combining requirements to effect cost savings or reduce administrative expense. The Board of Visitors of Virginia Commonwealth University and the Rector and Visitors of the University of Virginia shall first approve written policies and procedures for cooperative procurement arrangements. Nothing herein shall prohibit the payment by direct or indirect means of any administrative fee that will allow for participation in any such arrangement. The provisions of this subsection shall expire on June 30, 1995.

§ 51-111.27. Persons composing membership; persons holding more than one position; exceptions.--(a) Except as provided in subsection (a1) of this section, membership in the retirement system shall consist of the following:

(1) All persons who become employees after March 1, 1952; and

(2) Any member as defined in § 51-111.10 (8) with twelve years or more creditable service who thereafter becomes the treasurer, commissioner of revenue, Commonwealth's attorney, clerk of a circuit court, sheriff, or constable of any county or city may have the option to become a member of a local pension system or, with the prior approval of the county or city, remain in the retirement system.

If such member elects to remain in the retirement system and such election is approved by the county or city, the county or city shall contribute to the retirement system in accordance with the retirement system's requirements, rules, and regulations, and at a rate prescribed by the retirement system's actuary; however, all additional costs related to this election shall be borne by the county or city. It is further provided that the county or city shall provide the retirement system with a resolution setting forth the approval and agreement to pay the required contributions.

(a1) Membership shall not include the following:

1. Any person who elects not to participate as provided in §§ 51-111.10:1, 51-111.10:3, 51-111.28 and 51-111.32, or who elected not to participate in the abolished system;

2. Any person who becomes an employee and who elects to remain a member of a

local pension system where such election is provided by state law; ~~and~~

3. Any member of a local system who through promotion achieves a position bringing him within the definition of a teacher as defined in §§ 51-111.10 and 51-111.10:01 if he elects within sixty days, with the concurrence of his employer, to remain a member of the local system ~~.~~ ; *and*

4. Any person who does not participate pursuant to § 51-111.28:01.

(b) No person shall hold more than one membership in the retirement system at any one time with respect to any of the benefits, including group insurance coverage, provided under this title. Any person employed in more than one position resulting in membership shall elect one position on which his membership shall be based by written notification thereof to the Board.

§ 51-111.28. Certain employees of institutions of higher education.—(a) Any institution of higher education which, at the time of the establishment of the retirement system, has established, or which may thereafter establish, a retirement plan or arrangement covering in whole or in part its employees engaged in the performance of teaching, administrative , or research duties, is hereby authorized to make contributions for the benefit of its employees who elect to continue or be under such plan or arrangement and elect to participate in such plan or arrangement rather than in the retirement system established by this chapter. ~~Any~~ *Except as provided in subsection (d), any* present or future employee of such institution shall have the option of electing to participate in either the retirement system established by this chapter or the plan or arrangement provided by the institution employing him. The election herein provided shall, as to any future employee, be exercised not later than ninety days from the time of entry upon the performance of his duties.

(a1) The Virginia Cooperative Extension Service is hereby authorized to make contributions into the Federal Employees Retirement System for the benefit of its employees who hold federal governmental appointments and who elect participation into such system before December 31, 1987.

(b) No employee of an institution of higher education who is an actively participating member in a plan or arrangement established under this section with regard to teaching, administrative, or research duties shall also be an actively participating member of the retirement system established by this chapter for any other position of employment.

(b1) No employee who is an active member of the Federal Employees Retirement System established in 1986 in Public Law 99-335 shall also be an active member of the Virginia Supplemental Retirement System or any other optional retirement plan authorized by this chapter.

(c) No employer contribution from general fund revenues to any other retirement system in behalf of an employee as provided in subsection (a) shall exceed the contribution which would be required of such employer if the employee was a member of the Virginia Supplemental Retirement System.

(d) Persons who become employees of the Medical College of Virginia Hospitals or the University of Virginia Medical Center on or after July 1, 1990, may participate in a retirement plan established pursuant to this section only if specifically authorized by the employing teaching hospital.

§ 51-111.28:01. Retirement plans for employees of teaching hospitals.—Employees of the Medical College of Virginia Hospitals and the University of Virginia Medical Center shall not be required to be members of the Virginia Supplemental Retirement System. The board of visitors of each institution shall establish a retirement plan for teaching hospital employees. The retirement plan may permit part-time employees to participate. A person who is employed by the Medical College of Virginia Hospitals or the University of Virginia Medical Center on June 30, 1990, and who is a member of the Virginia Supplemental Retirement System or participates in a retirement plan established pursuant to § 51.111-28, may remain a member of the retirement plan in which he participates or, if authorized, may participate in the retirement plan established pursuant to this section. Persons who become teaching hospital employees on or after July 1, 1990, may become members of the

Virginia Supplemental Retirement System only if specifically authorized by the employing teaching hospital. Persons who become teaching hospital employees on or after July 1, 1990, may participate in a retirement plan established pursuant to the provisions of § 51-111.28 only if specifically authorized by the employing teaching hospital. Teaching hospital employees may participate in the retirement plan established by the board of visitors pursuant to this section only if specifically authorized by the employing teaching hospital. No employee who is an active member of the retirement plan established pursuant to this section shall also be an active member of the Virginia Supplemental Retirement System.

The Medical College of Virginia Hospitals and the University of Virginia Medical Center are authorized to make contributions on behalf of their employees who participate in a retirement plan established pursuant to this section. No employer contribution on behalf of an employee from general fund revenues to any retirement plan established by the board of visitors shall exceed the contribution which would be required of the employer if the employee was a member of the Virginia Supplemental Retirement System.

§ 51-111.33. Compulsory membership.–Membership in the retirement system shall be compulsory for all employees eligible as provided in § 51-111.31 and who enter service of an employer after the date the approval is given, except as provided in § *§* 51-111.28 *and 51-111.28:01* .

2. The Medical College of Virginia Hospitals and the University of Virginia Medical Center shall each submit a report on the implementation of this act to the Governor, the Senate Finance Committee, and the House Appropriations Committee on or before November 1 of each year. At a minimum, the report shall include (i) a description of the personnel system, including compensation and benefit packages; (ii) a summary of the impact of this act on the teaching hospital's procurement activities; (iii) a summary of the impact of this act on the teaching hospital's financial and competitive position; and (iv) such additional information as may be required by the Secretary of Education. The provisions of this clause shall expire on June 30, 1995.

Official Use By Clerks

Passed By The Senate		**Passed By The House of Delegates**	
without amendment	☐	without amendment	☐
with amendment	☐	with amendment	☐
substitute	☐	substitute	☐
substitute w/amdt	☐	substitute w/amdt	☐
Date: _____		Date: _____	
Clerk of the Senate		Clerk of the House of Delegates	

JOINT SUBCOMMITTEE STUDYING FLEXIBILITY IN PERSONNEL AND PURCHASING PRACTICES FOR TEACHING HOSPITALS
pursuant to HJR 212 and SJR 127

PROPOSED BUDGET AMENDMENT

PROPOSED LANGUAGE TO REPLACE § 4-6.01 (l) (1990 Appropriations Act):

The Boards of Visitors of the University of Virginia and Virginia Commonwealth University may develop for health care provider positions, as determined by the Department of Personnel and Training, in their respective teaching hospitals that require, for competitive purposes in attracting personnel, compensation and retirement programs consistent with those offered in non-state hospitals. The DPT determinations of such provider positions shall be reviewed by the House Appropriations and Senate Finance Committees. Employees filling these positions shall be exempt from the provisions of the Personnel Act (§ 2.1-110 *et seq.*) except that such employees shall remain subject to the provisions of § 2.1-114.5:1. These employees shall also be permitted participate in alternative retirement plans developed pursuant to § 51.1-126.

D 1/5/91 Harris C 1/9/91 ljl

HOUSE BILL NO. .....

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House/Senate Committee on/for .....

on .....)

(Patron Prior to Substitute--.....)

A BILL to amend and reenact §§ 2.1-116, 11-40, and 51.1-126 of the Code of Virginia, relating to the Virginia Personnel Act, the Virginia Public Procurement Act, and retirement plans for certain teaching hospitals.

Be it enacted by the General Assembly of Virginia:

1. That §§ 2.1-116, 11-40, and 51.1-126 of the Code of Virginia are amended and reenacted as follows:

§ 2.1-116. Certain officers and employees exempt from chapter.--A. The provisions of this chapter shall not apply to:

1. Officers and employees for whom the Constitution specifically directs the manner of selection;

2. Officers and employees of the Supreme Court and the Court of Appeals;

3. Officers appointed by the Governor, whether confirmation by the General Assembly or by either house thereof be required or not;

4. Officers elected by popular vote or by the General Assembly or either house thereof;

5. Members of boards and commissions however selected;

6. Judges, referees, receivers, arbiters, masters and

commissioners in chancery, commissioners of accounts, and any other persons appointed by any court to exercise judicial functions, and jurors and notaries public;

7. Officers and employees of the General Assembly and persons employed to conduct temporary or special inquiries, investigations, or examinations on its behalf;

8. The presidents, and teaching and research staffs of state educational institutions;

9. Commissioned officers and enlisted personnel of the national guard and the naval militia;

10. Student employees in institutions of learning, and patient or inmate help in other state institutions;

11. Upon general or special authorization of the Governor, laborers, temporary employees and employees compensated on an hourly or daily basis;

12. County, city, town and district officers, deputies, assistants and employees;

13. The employees of the Department of Workers' Compensation, Industrial Commission of Virginia;

14. The following officers and employees of the Virginia Supplemental Retirement System: retirement system chief investment officer, retirement system investment officer, retirement system assistant investment officer and investment financial analyst;

15. The following officers and employees of the Virginia Museum of Fine Arts: the curatorial and conservatorial staffs as approved by the Director of the Department of Personnel and Training;

16. The following officers and employees of executive branch agencies: those who report directly to the agency head; additionally,

those at the level immediately below those who report directly to the agency head and are at a salary grade of sixteen or higher. However, in agencies with fewer than fifty employees, only the immediate advisor or advisors or deputy or deputies of the agency head shall be exempt. In implementing this exemption, personnel actions shall be taken without regard to race, sex, color, national origin, religion, age, handicap or political affiliation. Recruitment and selection of individuals covered by this exemption shall be handled in a manner consistent with policies applicable to classified positions. Notwithstanding the above, all superintendents and wardens in the Department of Corrections shall be exempt from this chapter. Additionally, all persons responsible for the internal audit and personnel and employee relations functions for each agency shall be included in this chapter. Each Governor's Secretary shall have a final authority in determining on an ongoing basis the officers and employees exempted by this subdivision and pursuant to its provisions. Such officers or employees shall thereafter serve at the pleasure and will of their appointing authority. The Department of Personnel and Training shall advise and assist each Governor's Secretary in making these determinations and shall be responsible for maintaining an ongoing and up-to-date list of the affected positions;

17. The sales and marketing employees of the State Lottery Department; ~~and~~-

18. Production workers for the Virginia Industries for the Blind Sheltered Workshop programs ~~.~~--; and

19. Employees of the Medical College of Virginia Hospitals and the University of Virginia Medical Center who are determined by the Department of Personnel and Training to be health care providers.

Such employees shall remain subject to the provisions of § 2.1-114.5:1.

B. The dismissal of any employee referred to in subdivision A 16 of this section pursuant to this chapter shall not affect the retirement benefits, and annual and sick leave benefits accrued to such employee at the time of his dismissal, nor shall any such employee be subject to any diminution of any other employee benefits by virtue of the provisions of this chapter.

§ 11-40. Cooperative procurement.--A. Any public body may participate in, sponsor, conduct , or administer a cooperative procurement agreement with one or more other public bodies, or agencies of the United States, for the purpose of combining requirements to increase efficiency or reduce administrative expenses. Any public body which enters into a cooperative procurement agreement with a county, city , or town whose governing body has adopted alternative policies and procedures pursuant to § 11-35 C or § 11-35 D of this chapter shall comply with ~~said~~ the alternative policies and procedures ~~so~~-adopted by ~~said~~ the governing body of such county, city , or town.

B. Subject to the provisions of §§ 2.1-440, 2.1-442 and 2.1-447, and except as provided in subsection C, any department, agency , or institution of the Commonwealth may participate in, sponsor, conduct , or administer a cooperative procurement arrangement with private health or educational institutions or with public agencies or institutions of the several states, territories of the United States, or the District of Columbia, for the purpose of combining requirements to effect cost savings or reduce administrative expense in any major acquisition of equipment, instrumentation, or medical care supplies.

For the purpose of this section, a "major acquisition" shall mean equipment, instrumentation, or medical care supplies for which the cost per unit, or the cost of the entire system, or the cost of all items to be acquired over a period of twelve months under the same contract is estimated to be in excess of $150,000. In such instances, deviation from the procurement procedures set forth in the Virginia Public Procurement Act (§ 11-35 et seq.) and the administrative policies and procedures established to implement ~~said~~ the Act will be permitted, if approved by the Director of the Division of Purchases and Supply; however, such acquisitions shall be procured competitively. Nothing herein shall prohibit the payment by direct or indirect means of any administrative fee that will allow for participation in any such arrangement.

C. The Medical College of Virginia Hospitals and the University of Virginia Medical Center may participate in, sponsor, conduct, or administer a cooperative procurement arrangement for the purpose of combining requirements to effect cost savings or reduce administrative expense for any acquisition of equipment, instrumentation, or medical supplies. Such acquisitions shall be procured competitively. Nothing herein shall prohibit the payment by direct or indirect means of any administrative fee that will allow for participation in any such arrangement.

§ 51.1-126. Certain employees of institutions of higher education.--A. Any institution of higher education which has established, or establishes, a retirement plan covering in whole or in part its employees (i) who are engaged in the performance of teaching, administrative, or research duties or (ii) who are health care providers, as determined by the Department of Personnel and Training

pursuant to § 2.1-116, is hereby authorized to make contributions for the benefit of its employees who elect to participate in such plan rather than in the retirement system established by this chapter. Any present or future employee of such institution may elect to participate in either the retirement system established by this chapter or the plan provided by the institution employing him. The election herein provided shall, as to any future employee, be exercised not later than ninety days from the time of entry upon the performance of his duties.

B. No employee of an institution of higher education who is an active member in a plan established under this section shall also be an active member of the retirement system or beneficiary other than a contingent annuitant.

C. No employer contribution from general fund revenues to any other retirement plan on behalf of an employee as provided in subsection A shall exceed the contribution which would be required of such employer if the employee was a member of the retirement system. Employer contributions made on behalf of health care providers participating in a plan developed pursuant to this section shall not exceed eight percent of the employee's annual base salary.

2. Prior to the implementation of any retirement plan established for health care professionals pursuant to 51.1-126, the Medical College of Virginia Hospitals and the University of Virginia Medical Center shall each submit a report to the Senate Finance Committee and the House Appropriations Committee.

3. The Department of Personnel and Training shall report its determinations of employee classifications designated as health care providers to the Senate Finance Committee and the House Appropriations Committee.

D 1/10/91 Harris T 1/10/91 ljl

SENATE BILL NO. .....

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House/Senate Committee on/for .....
on .....)

(Patron Prior to Substitute--.....)

A BILL to amend and reenact §§ 2.1-116, 11-40, and 51.1-126 of the Code of Virginia, relating to the Virginia Personnel Act, the Virginia Public Procurement Act, and retirement plans for certain teaching hospitals.

Be it enacted by the General Assembly of Virginia:

1. That §§ 2.1-116, 11-40, and 51.1-126 of the Code of Virginia are amended and reenacted as follows:

§ 2.1-116. Certain officers and employees exempt from chapter.--A. The provisions of this chapter shall not apply to:

1. Officers and employees for whom the Constitution specifically directs the manner of selection;

2. Officers and employees of the Supreme Court and the Court of Appeals;

3. Officers appointed by the Governor, whether confirmation by the General Assembly or by either house thereof be required or not;

4. Officers elected by popular vote or by the General Assembly or either house thereof;

5. Members of boards and commissions however selected;

6. Judges, referees, receivers, arbiters, masters and

commissioners in chancery, commissioners of accounts, and any other persons appointed by any court to exercise judicial functions, and jurors and notaries public;

7. Officers and employees of the General Assembly and persons employed to conduct temporary or special inquiries, investigations, or examinations on its behalf;

8. The presidents, and teaching and research staffs of state educational institutions;

9. Commissioned officers and enlisted personnel of the national guard and the naval militia;

10. Student employees in institutions of learning, and patient or inmate help in other state institutions;

11. Upon general or special authorization of the Governor, laborers, temporary employees and employees compensated on an hourly or daily basis;

12. County, city, town and district officers, deputies, assistants and employees;

13. The employees of the Department of Workers' Compensation, Industrial Commission of Virginia;

14. The following officers and employees of the Virginia Supplemental Retirement System: retirement system chief investment officer, retirement system investment officer, retirement system assistant investment officer and investment financial analyst;

15. The following officers and employees of the Virginia Museum of Fine Arts: the curatorial and conservatorial staffs as approved by the Director of the Department of Personnel and Training;

16. The following officers and employees of executive branch agencies: those who report directly to the agency head; additionally,

those at the level immediately below those who report directly to the agency head and are at a salary grade of sixteen or higher. However, in agencies with fewer than fifty employees, only the immediate advisor or advisors or deputy or deputies of the agency head shall be exempt. In implementing this exemption, personnel actions shall be taken without regard to race, sex, color, national origin, religion, age, handicap or political affiliation. Recruitment and selection of individuals covered by this exemption shall be handled in a manner consistent with policies applicable to classified positions. Notwithstanding the above, all superintendents and wardens in the Department of Corrections shall be exempt from this chapter. Additionally, all persons responsible for the internal audit and personnel and employee relations functions for each agency shall be included in this chapter. Each Governor's Secretary shall have a fir authority in determining on an ongoing basis the officers and employees exempted by this subdivision and pursuant to its provisions. Such officers or employees shall thereafter serve at the pleasure and will of their appointing authority. The Department of Personnel and Training shall advise and assist each Governor's Secretary in making these determinations and shall be responsible for maintaining an ongoing and up-to-date list of the affected positions;

17. The sales and marketing employees of the State Lottery Department; ~~and~~-

18. Production workers for the Virginia Industries for the Blind Sheltered Workshop programs ~~.~~--; and

19. Employees of the Medical College of Virginia Hospitals and the University of Virginia Medical Center who are determined by the Department of Personnel and Training to be health care providers.

Such employees shall remain subject to the provisions of § 2.1-114.5:1.

B. The dismissal of any employee referred to in subdivision A 16 of this section pursuant to this chapter shall not affect the retirement benefits, and annual and sick leave benefits accrued to such employee at the time of his dismissal, nor shall any such employee be subject to any diminution of any other employee benefits by virtue of the provisions of this chapter.

§ 11-40. Cooperative procurement.--A. Any public body may participate in, sponsor, conduct , or administer a cooperative procurement agreement with one or more other public bodies, or agencies of the United States, for the purpose of combining requirements to increase efficiency or reduce administrative expenses. Any public body which enters into a cooperative procurement agreement with a county, city , or town whose governing body has adopted alternative policies and procedures pursuant to § 11-35 C or § 11-35 D of this chapter shall comply with ~~said~~ the alternative policies and procedures ~~so~~ adopted by ~~said~~ the governing body of such county, city , or town.

B. Subject to the provisions of §§ 2.1-440, 2.1-442 and 2.1-447, and except as provided in subsection C, any department, agency , or institution of the Commonwealth may participate in, sponsor, conduct , or administer a cooperative procurement arrangement with private health or educational institutions or with public agencies or institutions of the several states, territories of the United States, or the District of Columbia, for the purpose of combining requirements to effect cost savings or reduce administrative expense in any major acquisition of equipment, instrumentation, or medical care supplies.

For the purpose of this section, a "major acquisition" shall mean equipment, instrumentation, or medical care supplies for which the cost per unit, or the cost of the entire system, or the cost of all items to be acquired over a period of twelve months under the same contract is estimated to be in excess of $150,000. In such instances, deviation from the procurement procedures set forth in the Virginia Public Procurement Act (§ 11-35 et seq.) and the administrative policies and procedures established to implement ~~said~~ the Act will be permitted, if approved by the Director of the Division of Purchases and Supply; however, such acquisitions shall be procured competitively. Nothing herein shall prohibit the payment by direct or indirect means of any administrative fee that will allow for participation in any such arrangement.

C. The Medical College of Virginia Hospitals and the University of Virginia Medical Center may participate in, sponsor, conduct, or administer a cooperative procurement arrangement for the purpose of combining requirements to effect cost savings or reduce administrative expense for any acquisition of equipment, instrumentation, or medical supplies. Such acquisitions shall be procured competitively. Nothing herein shall prohibit the payment by direct or indirect means of any administrative fee that will allow for participation in any such arrangement.

§ 51.1-126. Certain employees of institutions of higher education.--A. Any institution of higher education which has established, or establishes, a retirement plan covering in whole or in part its employees (i) who are engaged in the performance of teaching, administrative, or research duties or (ii) who are health care providers, as determined by the Department of Personnel and Training

pursuant to § 2.1-116, is hereby authorized to make contributions for the benefit of its employees who elect to participate in such plan rather than in the retirement system established by this chapter. Any present or future employee of such institution may elect to participate in either the retirement system established by this chapter or the plan provided by the institution employing him. The election herein provided shall, as to any future employee, be exercised not later than ninety days from the time of entry upon the performance of his duties.

B. No employee of an institution of higher education who is an active member in a plan established under this section shall also be an active member of the retirement system or beneficiary other than a contingent annuitant.

C. No employer contribution from general fund revenues to any other retirement plan on behalf of an employee as provided in subsection A shall exceed the contribution which would be required of such employer if the employee was a member of the retirement system. Employer contributions made on behalf of health care providers participating in a plan developed pursuant to this section shall not exceed eight percent of the employee's annual base salary.

2. Prior to the implementation of any retirement plan established for health care professionals pursuant to 51.1-126, the Medical College of Virginia Hospitals and the University of Virginia Medical Center shall each submit a report to the Senate Finance Committee and the House Appropriations Committee.

3. The Department of Personnel and Training shall report its determinations of employee classifications designated as health care providers to the Senate Finance Committee and the House Appropriations Committee.