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HOUSE BILL NO. 122

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on General Laws
on January 26, 2006)

(Patron Prior to Substitute—Delegate Marshall, R.G.)

A *BILL to amend and reenact § 2.2-4310 of the Code of Virginia, relating to the Virginia Public Procurement Act; participation by small, women- and minority-owned businesses.*

Be it enacted by the General Assembly of Virginia:

1. That § 2.2-4310 of the Code of Virginia is amended and reenacted as follows:

§ 2.2-4310. Discrimination prohibited; participation of small, women- and minority-owned business.

A. In the solicitation or awarding of contracts, no public body shall discriminate against a bidder or offeror because of race, religion, color, sex, national origin, age, disability, or any other basis prohibited by state law relating to discrimination in employment. Whenever solicitations are made, each public body shall include businesses selected from a list made available by the Department of Minority Business Enterprise.

B. All public bodies shall establish *written* programs consistent with this chapter to facilitate the participation of small businesses and businesses owned by women and minorities in procurement transactions. ~~The programs established shall be in writing and shall include cooperation with the~~ *In addition, such programs by state public bodies shall include a goal that each year 30% of the public body's discretionary spending as reflected in the Governor's current budget and approved by the General Assembly in the appropriation act be for procurement transactions with small, woman-owned, or minority-owned businesses as follows:*

1. *A procurement transaction with a small, woman-owned, or minority-owned business shall count toward the goal established in a program only if the small, woman-owned, or minority-owned business is certified by the Department of Minority Business Enterprise, the United States Small Business Administration, and other public or private agencies, as a small, woman-owned, or minority-owned business vendor, which criteria for certification shall be consistent with this section;*

2. *The Department of Minority Business Enterprise and the Department of Business Assistance shall provide technical assistance to public bodies, upon request, in preparing and implementing the goal established in the public body's program; and*

3. *State agencies* ~~Each state agency shall submit a detailed annual progress reports on minority procurement business report to the Department of Minority Business Enterprise on its efforts to meet its 30% small, woman-owned or minority-owned business procurement goal.~~

C. Whenever there exists (i) a rational basis for small business enhancement or (ii) a persuasive analysis that documents a statistically significant disparity between the availability and utilization of women- and minority-owned businesses, the Governor is authorized and encouraged to require state agencies to implement appropriate enhancement or remedial measures consistent with prevailing law. ~~For the purposes of this subsection, "state agency" means any authority, board, department, instrumentality, institution, agency or other unit of state government. "State agency" shall not include any county, city or town.~~

D. In the solicitation or awarding of contracts, no state agency, department or institution shall discriminate against a bidder or offeror because the bidder or offeror employs ex-offenders unless the state agency, department or institution has made a written determination that employing ex-offenders on the specific contract is not in its best interest.

E. *As used in this section:*

"Minority individual" means an individual who is a citizen of the United States or a legal resident alien and who satisfies one or more of the following definitions:

1. "Asian American" means a person having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent, or the Pacific Islands, including but not limited to Japan, China, Vietnam, Samoa, Laos, Cambodia, Taiwan, Northern Marianas, the Philippines, a U.S. territory of the Pacific, India, Pakistan, Bangladesh, or Sri Lanka and who is regarded as such by the community of which this person claims to be a part.

2. "African American" means a person having origins in any of the original peoples of Africa and who is regarded as such by the community of which this person claims to be a part.

3. "Hispanic American" means a person having origins in any of the Spanish-speaking peoples of Mexico, South or Central America, or the Caribbean Islands or other Spanish or Portuguese cultures and who is regarded as such by the community of which this person claims to be a part.

4. "Native American" means a person having origins in any of the original peoples of North America and who is regarded as such by the community of which this person claims to be a part or who is

60 *recognized by a tribal organization.*

61 5. *"Eskimo or Aleut" means a person having origins in any of the peoples of Northern Canada,*
62 *Greenland, Alaska, or Eastern Siberia and who is regarded as such in the community of which this*
63 *person claims to be a part.*

64 *"Minority-owned business" means a business concern that is at least 51% owned by one or more*
65 *minority individuals or in the case of a corporation, partnership, or limited liability company or other*
66 *entity, at least 51% of the equity ownership interest in the corporation, partnership, or limited liability*
67 *company or other entity is owned by one or more minority individuals and both the management and*
68 *daily business operations are controlled by one or more minority individuals.*

69 *"Small business" means an independently owned and operated business which, together with*
70 *affiliates, has 250 or fewer employees, or average annual gross receipts of \$10 million or less averaged*
71 *over the previous three years.*

72 *"State agency" means any authority, board, department, instrumentality, institution, agency, or other*
73 *unit of state government. "State agency" shall not include any county, city, or town.*

74 *"Woman-owned business" means a business concern that is at least 51% owned by one or more*
75 *women who are U.S. citizens or legal resident aliens, or in the case of a corporation, partnership, or*
76 *limited liability company or other entity, at least 51% of the equity ownership interest is owned by one*
77 *or more women who are U.S. citizens or legal resident aliens, and both the management and daily*
78 *business operations are controlled by one or more women who are U.S. citizens or legal resident aliens.*