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## SENATE BILL NO. 662

## AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on General Laws and Technology  
on January 25, 2006)

(Patron Prior to Substitute—Senator Miller)

*A BILL to amend and reenact §§ 2.2-1403, 2.2-4310, and 15.2-965.1 of the Code of Virginia, relating to the Department of Minority Business Enterprise; certification of small, women- or minority-owned businesses.*

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

**1. That §§ 2.2-1403, 2.2-4310, and 15.2-965.1 of the Code of Virginia are amended and reenacted as follows:**

§ 2.2-1403. Powers of Director.

As deemed necessary or appropriate to better fulfill the duties of the Department, the Director may:

1. With the participation of other state departments and agencies, develop comprehensive plans and specific program goals for the minority enterprise program; establish regular performance monitoring and reporting systems to assure that goals are being achieved; and evaluate the impact of federal and state support in achieving objectives.

2. Employ the necessary personnel and/or subcontract according to his discretion, with localities to supplement the functions of business development organizations.

3. Assure the coordinated review of all proposed state training and technical assistance activities in direct support of the minority enterprise program to ensure consistency with program goals and to avoid duplication.

4. Convene, for purposes of coordination, meetings of the heads of departments and agencies, or their designees, whose programs and activities may affect or contribute to the purposes of this chapter.

5. Convene business leaders, educators, and other representatives of the private sector who are engaged in assisting the development of minority business enterprise or who could contribute to its development, for the purpose of proposing, evaluating or coordinating governmental and private activities in furtherance of the objectives of this chapter.

6. Provide the managerial and organizational framework through which joint undertakings with state departments or agencies or private organizations can be planned and implemented.

7. Recommend appropriate legislative or executive actions.

8. Adopt reasonable regulations in accordance with the Administrative Process Act (§ 2.2-4000 et seq.) to implement a certification ~~program~~ *programs* for *small, women, and* minority business enterprises. Such certification process shall include consideration of other states' laws that may deny like certifications to Virginia-based *small, women, or* minority business enterprises and that may provide a preference for *small, women, or* minority business enterprises based in that state.

9. Establish an interdepartmental board in accordance with § 2.2-1404 to supply the Director with information useful in promoting minority business activity.

§ 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 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 Department of Minority Business Enterprise, the United States Small Business Administration, and other public or private agencies. State agencies shall submit annual progress reports on *small, women, and* minority business procurement to the Department of Minority Business Enterprise.

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

60 state agency, department or institution has made a written determination that employing ex-offenders on  
61 the specific contract is not in its best interest.

62 § 15.2-965.1. Participation of small, women- and minority-owned businesses.

63 A. Any locality may enact an ordinance providing that whenever there exists (i) a rational basis for  
64 small business enhancement, or (ii) a persuasive analysis that documents a statistically significant  
65 disparity between the availability and utilization of women- and minority-owned businesses, the chief  
66 executive of the local governing entity shall be authorized and encouraged to require implementation of  
67 appropriate enhancement and remedial measures consistent with prevailing law.

68 B. *A small, women- or minority-owned business that is certified by the Department of Minority*  
69 *Business Enterprises pursuant to § 2.2-1403 shall not be required by any locality to obtain any*  
70 *additional certification to participate in any program designed to enhance the participation of such*  
71 *businesses as vendors or to remedy any documented disparity.*