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HOUSE BILL NO. 2672

Offered January 30, 2009

A *BILL to amend and reenact §§ 2.2-203, 2.2-204, 2.2-205.1, 2.2-1400, 2.2-1401, 2.2-1402, 2.2-1403, 2.2-1404, 2.2-1404.1, 2.2-2311, 2.2-3705.6, 2.2-4301, 2.2-4310, 15.2-965.1, and 18.2-340.213.1 of the Code of Virginia, relating to the Department of Minority Business Enterprise.*

Patrons—Herring, Alexander, Amundson, BaCote, Barlow, Bouchard, Brink, Caputo, Dance, Eisenberg, Englin, Hall, Howell, A.T., Hull, Johnson, Lewis, Marsden, Mathieson, McClellan, McQuinn, Melvin, Miller, P.J., Morrissey, Nichols, Plum, Poisson, Shuler, Sickles, Toscano, Tyler, Vanderhye, Ward and Watts

Unanimous consent to introduce

Referred to Committee on General Laws

Be it enacted by the General Assembly of Virginia:

1. That §§ 2.2-203, 2.2-204, 2.2-205.1, 2.2-1400, 2.2-1401, 2.2-1402, 2.2-1403, 2.2-1404, 2.2-1404.1, 2.2-2311, 2.2-3705.6, 2.2-4301, 2.2-4310, 15.2-965.1, and 18.2-340.213.1 of the Code of Virginia are amended and reenacted as follows:

§ 2.2-203. Position established; agencies for which responsible.

The position of Secretary of Administration (the Secretary) is created. The Secretary shall be responsible to the Governor for the following agencies and boards: Department of Human Resource Management, *Department of Supplier Diversity and Procurement Advocacy*, Department of General Services, Compensation Board, Secretary of the Commonwealth, Department of Employment Dispute Resolution, and Virginia Public Broadcasting Board. The Governor may, by executive order, assign any other state executive agency to the Secretary, or reassign any agency listed above to another Secretary.

§ 2.2-204. Position established; agencies for which responsible; additional duties.

The position of Secretary of Commerce and Trade (the Secretary) is created. The Secretary shall be responsible to the Governor for the following agencies: Department of Business Assistance, Virginia Economic Development Partnership Authority, Virginia Tourism Authority, Department of Labor and Industry, Department of Mines, Minerals and Energy, Virginia Employment Commission, Department of Professional and Occupational Regulation, Department of Housing and Community Development, ~~Department of Minority Business Enterprise~~, Virginia Housing Development Authority, Virginia Resources Authority, Virginia Racing Commission, Tobacco Indemnification and Community Revitalization Commission, and Board of Accountancy. The Governor, by executive order, may assign any state executive agency to the Secretary, or reassign any agency listed in this section to another Secretary.

The Secretary shall implement the provisions of the Virginia Biotechnology Research Act (§ 2.2-5500 et seq.).

§ 2.2-205.1. Economic Crisis Strike Force.

A. There is hereby established the Economic Crisis Strike Force (Strike Force) for the purpose of serving as a working group to respond as needed to economic disasters in Virginia communities by (i) immediately providing a single point of contact for citizens in affected communities to assist with accessing available government and private sector services and resources, (ii) assisting localities in developing short-term and long-term strategies for addressing the economic crisis, and (iii) identifying opportunities for workforce retraining, job creation, and new investment.

B. The Strike Force shall be chaired by the Secretary of Commerce and Trade and be deployed at the direction of the Governor. Membership shall include high level representatives designated by the Secretaries of Education and Health and Human Resources and by the respective heads of the following agencies: the Department of Agriculture and Consumer Services, the Department of Business Assistance, the Department of Education, the Department of Housing and Community Development, the Department of Labor and Industry, the Department of Medical Assistance Services, the Department of ~~Minority Business Enterprise~~ *Supplier Diversity and Procurement Advocacy*, the Department of Social Services, the Virginia Community College System, the Virginia Employment Commission, the Virginia Economic Development Partnership, and the Virginia Tourism Authority. The Strike Force shall also include representatives from such other agencies as may be designated by the Governor to meet the needs of a particular affected community. In addition, the Governor may designate such citizens as he deems appropriate to advise the Strike Force.

C. Staff support for the Strike Force shall be provided by the Office of the Governor and the

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56 Secretary of Commerce and Trade. All agencies of the Commonwealth shall assist the Strike Force upon
57 request.

58 D. On or before December 1 of each year, the Strike Force shall report to the Governor and the
59 General Assembly on its activities.

60 E. For the purposes of this section, "economic disaster" means an employment loss of at least 5%
61 during the immediately preceding six-month period, the closure or downsizing of a major regional
62 employer in an economically distressed area, a natural disaster or act of terrorism for which the
63 Governor has declared a state of emergency, or other economic crisis situations, which in the opinion of
64 the Governor adversely affect the welfare of the citizens of the Commonwealth.

65 CHAPTER 14.

66 DEPARTMENT OF ~~MINORITY BUSINESS ENTERPRISE~~ SUPPLIER DIVERSITY AND 67 PROCUREMENT ADVOCACY.

68 § 2.2-1400. Creation of Department of Supplier Diversity and Procurement Advocacy; appointment of
69 Director; offices; personnel.

70 A. There is created within the Office of the Governor a Department of ~~Minority Business Enterprise~~
71 *Supplier Diversity and Procurement Advocacy* (the "Department"), which shall be headed by a Director
72 appointed by the Governor to serve at his pleasure. The Director shall also serve as a special assistant to
73 the Governor for ~~minority enterprise small, women-owned, and minority-owned business development~~.

74 B. The Director of the Department shall, under the direction and control of the Governor, exercise
75 the powers and perform the duties conferred or imposed upon him by law and perform such other duties
76 as may be required by the Governor.

77 C. The Department shall have its main office in Richmond and may have branch offices as may be
78 necessary, as determined by the Director subject to the approval of the Secretary of ~~Commerce and~~
79 *Trade Administration*.

80 § 2.2-1401. Definitions.

81 As used in this chapter unless the context requires a different meaning:

82 "Certification" means the process by which a business is determined to be a small, women-owned, or
83 minority-owned business for the purpose of reporting small, women-owned, and minority-owned
84 business participation in state contracts and purchases pursuant to §§ 2.2-1404 and 2.2-1405.

85 "Disadvantaged business enterprise" means a small business concern, as defined in 49 CFR Parts 23
86 and 26, that is at least 51% owned by one or more socially and economically disadvantaged individuals,
87 or, in the case of any corporation, partnership, or limited liability company or other entity, at least 51%
88 of the equity ownership is owned by one or more socially and economically disadvantaged individuals
89 and the management and daily business operations are controlled by one or more of the socially and
90 economically disadvantaged individuals who own it.

91 "Minority individual" means an individual who is a citizen of the United States or a ~~non-citizen who~~
92 *is in full compliance with United States immigration law legal resident alien* and who satisfies one or
93 more of the following definitions:

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

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

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

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

107 "Minority-owned business" means a business ~~concern~~ that is at least 51% owned by one or more
108 minority individuals *who are U.S. citizens or legal resident aliens*, or in the case of a corporation,
109 partnership, or limited liability company or other entity, at least 51% of the equity ownership interest in
110 the corporation, partnership, or limited liability company or other entity is owned by one or more
111 minority individuals *who are U.S. citizens or legal resident aliens*, and both the management and daily
112 business operations are controlled by one or more minority individuals *who own it*.

113 "Small business" means ~~a business that is at least 51% independently owned and operated~~
114 *business which controlled U.S. citizens or legal resident aliens, and together with affiliates, has 250 or*
115 *fewer employees, or average annual gross receipts of \$10 million or less averaged over the previous*
116 *three years. One or more of the individual owners shall control both the management and daily business*
117 *operations of the small business.*

"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.

"Women-owned business" means a business ~~concern~~ that is at least 51% owned by one or more women who are U.S. citizens or legal resident aliens, or in the case of a corporation, partnership, or limited liability company or other entity, at least 51% of the equity ownership interest is owned by one or more women who are citizens of the United States or ~~non-citizens who are in full compliance with the United States immigration law~~ *legal resident aliens*, and both the management and daily business operations are controlled by one or more women who ~~are U.S. citizens or legal resident aliens~~ *own it*.

§ 2.2-1402. Additional powers and duties of Department.

The Department shall have the following additional powers and duties:

1. Coordinate as consistent with prevailing law the plans, programs and operations of the state government that affect or may contribute to the establishment, preservation, and strengthening of small, *women-owned*, and minority-owned businesses.

2. Promote the mobilization of activities and resources of state and local governments, businesses and trade associations, universities, foundations, professional organizations, and volunteer and other groups towards the growth of small businesses and businesses owned by women and minorities, and facilitate the coordination of the efforts of these groups with those of state departments and agencies.

3. Establish a center for the development, collection, summarization, and dissemination of information that will be helpful to persons and organizations throughout the nation in undertaking or promoting procurement from small, *women-owned*, and minority-owned businesses.

4. Consistent with prevailing law and availability of funds, and according to the Director's discretion, provide technical and management assistance to small, *women-owned*, and minority-owned businesses, and defray all or part of the costs of pilot or demonstration projects that are designed to overcome the special problems of small, *women-owned*, and minority-owned businesses.

5. Manage the Capital Access Fund for Disadvantaged Businesses created pursuant to § 2.2-2311, and, in cooperation with the Small Business Financing Authority, determine the qualifications, terms, and conditions for the use of such Fund.

6. Implement any remediation or enhancement measure for small, *women-owned*, or minority-owned businesses as may be authorized by the Governor pursuant to subsection C of § 2.2-4310 and develop regulations, consistent with prevailing law, for program implementation. Such regulations shall be developed in consultation with the state agencies with procurement responsibility and promulgated by those agencies in accordance with applicable law.

§ 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 ~~small, women- and minority-owned business~~ *small, women-owned, and minority-owned business* programs; establish regular performance monitoring and reporting systems to assure that goals of state agencies and institutions 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 ~~small, women- and minority-owned business~~ *small, women-owned, and minority-owned business* programs 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 ~~small, women- and minority-owned business~~ *small, women-owned, and minority-owned business* programs 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 regulations to implement certification programs for small, women- and minority-owned businesses, which regulations shall be exempt from the Administrative Process Act (§ 2.2-4000 et seq.) pursuant to subdivision B 2 of § 2.2-4002. Such certification programs shall deny certification to vendors from states that deny like certifications to Virginia-based small, *women-owned* or minority-owned businesses or that provide a preference for ~~small, women- or minority-owned~~ *small, women-owned, or minority-owned* businesses based in that state that is not available to Virginia-based businesses. The regulations shall (i) establish minimum requirements for certification of small, women-

179 and minority-owned businesses; (ii) provide a process for evaluating existing local, state, private sector,
180 and federal certification programs that meet the minimum requirements; and (iii) mandate certification,
181 without any additional paperwork or fee, of any prospective state vendor that has obtained certification
182 under any certification program that is determined to meet the minimum requirements established in the
183 regulations.

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

186 § 2.2-1404. Interdepartmental Board; cooperation with Department.

187 A. The Interdepartmental Board established by the Director shall be composed of heads of the
188 several departments and agencies of state government or their respective designees, whose functions
189 affect ~~small, women- and minority-owned~~ *small, women-owned, and minority-owned* businesses. The
190 participating departments and agencies shall be determined by the Director of the Department. The
191 Interdepartmental Board shall meet at the call of the Director and shall supply the Director with
192 information useful in promoting ~~small, women- and minority-owned business activity~~ *small,*
193 *women-owned, and minority-owned business development.*

194 B. The head of each participating state department and agency or their designees shall furnish
195 information, assistance, and reports to, and shall otherwise cooperate with, the Director in the
196 performance of his duties as needed.

197 C. The head of each participating state department or agency shall, when so requested by the
198 Director, designate an assistant or such other similar official to have primary and continuing
199 responsibility for the participation and cooperation of that department or agency in matters concerning
200 small, women- and minority-owned businesses.

201 D. Each participating state department or agency shall, within constraints of law and availability of
202 funding, continue all current efforts to foster and promote *small, women-owned, and minority-owned*
203 ~~business enterprises~~ *businesses* and to support the ~~small, women- and minority-owned~~ *small,*
204 *women-owned, and minority-owned* business programs, and shall cooperate with the Director in
205 increasing the total state effort.

206 § 2.2-1404.1. Use of vendors identified by public institutions of higher education as small, women-
207 and minority-owned businesses.

208 For purposes of compliance with § 2.2-4310, a public institution of higher education that meets the
209 conditions prescribed in subsection B of § 23-38.88 may procure goods, services, and construction from
210 vendors identified by such public institutions of higher education as ~~small, women-, and minority-owned~~
211 ~~business enterprises~~ *small, women-owned, and minority-owned businesses* that the institution has certified
212 as such based on criteria approved by the Department. An institution exercising the authority granted by
213 this section shall establish and follow internal procedures and processes designed to verify whether or
214 not a vendor qualifies to be certified as a ~~small, women-, and minority-owned business enterprise~~ *small,*
215 *women-owned, and minority-owned businesses* under the Department approved criteria and the
216 certification requirements. The institution shall notify the Department promptly of the certification, and
217 shall provide the Department with a copy of its written certification identifying the vendor as a ~~small,~~
218 ~~women-, and minority-owned business enterprise~~ *small, women-owned, and minority-owned businesses*
219 and all application materials submitted by the vendor to the institution. Such certification shall remain in
220 effect unless and until the Department notifies the institution that the vendor does not meet the
221 certification requirements.

222 An institution exercising authority granted under this section shall promptly make available to the
223 Department, upon request, copies of its procurement records, receipts, and transactions in regard to
224 procurement from ~~small, women-, and minority-owned business enterprises~~ *small, women-owned, and*
225 *minority-owned businesses* in order for the Department to ensure institution compliance with its
226 approved *reporting and certification* criteria ~~and the certification requirements.~~

227 § 2.2-2311. Creation, administration, and management of the Capital Access Fund for Disadvantaged
228 Businesses.

229 A. For the purposes of this section:

230 "Disadvantaged business" means a for-profit small business ~~concern~~ that is majority-owned by one or
231 more economically disadvantaged individuals. In the case of a corporation, a majority of the stock shall
232 be owned by one or more such individuals and the management and daily business operations shall be
233 controlled by one or more of the economically disadvantaged individuals who own it.

234 "Economically disadvantaged individual" means an individual whose ability to compete in the free
235 market has been impaired due to diminished capital and credit opportunities as compared to others in the
236 same or similar line of business and competitive market area.

237 B. There is created in the state treasury a permanent nonreverting fund to be known as the Capital
238 Access Fund for Disadvantaged Businesses (the Fund). The Fund shall be comprised of (i) moneys
239 appropriated to the Fund by the General Assembly, (ii) all income from the investment of moneys held
240 by the Fund, and (iii) any other moneys designated for deposit to the Fund from any source, public or

private. Interest earned on moneys in the Fund shall remain in the Fund and be credited to it. Any moneys remaining in the Fund, including interest thereon, at the end of each fiscal year shall not revert to the general fund but shall remain in the Fund. Moneys in the Fund shall be used to provide loan guarantees, loan loss reserves, and interest rate write downs. The Fund shall be managed by the Department of ~~Minority Business Enterprise~~ *Supplier Diversity and Procurement Advocacy* (the Department) and administered by the Virginia Small Business Financing Authority (the Authority).

C. The operation of the Fund shall be as follows:

1. The Fund may be used as a special reserve fund to cover potential future losses from the loan portfolios of participating banks and lending institutions. The Authority shall (i) establish with one or more banks and lending institutions one or more accounts or pools for the Capital Access Fund for Disadvantaged Businesses and (ii) deposit into such accounts or pools moneys from the Fund in an amount at least equal to the total of the sum of the bank or lending institutions and the individual borrower's deposits, cash equivalents or other acceptable securities, including but not limited to letters of credit, for each loan sought to be covered for future losses. Such matching sum by the Authority shall not exceed fourteen percent of the principal amount of the loan. The Authority may require up to a one hundred percent match by the individual borrowers pursuant to established guidelines.

2. The Fund may also be used to guarantee up to ninety percent of the principal amount of any loan to cover potential future losses from the loan portfolios of participating banks and lending institutions to cover specific loans on such terms and conditions as set forth in established guidelines. Such guarantees shall not exceed a term of five years.

3. The Fund may also be used to provide interest rate write downs or other payments to achieve a concessionary rate of interest that shall be limited to seven percent of the balance of the Fund that is unencumbered by any special reserves or guarantees or the income earned by the Fund from all sources including fees, interest, or other investment income. No interest rate write down or payment to achieve a concessionary rate shall extend for more than five years and such rates shall include provisions for an increase in such rates to a near market rate but not more than the prime rate.

4. Provisions may be made for a borrower to use a combination of subdivisions C. 1., C. 2., and C. 3. pursuant to established guidelines.

D. The determination of economic disadvantage shall be made by the Director of the Department of ~~Minority Business Enterprise~~ *Supplier Diversity and Procurement Advocacy* pursuant to the guidelines developed in accordance with subsections B and C.

E. The Department and the Authority, or their designated agents, shall determine the qualifications, terms, and conditions for the use of the Fund and the accounts thereof. In connection with applications for claims made against the Fund, the Department may require the production of any document, instrument, certificate, legal opinion, or any other information it deems necessary or convenient. All claims made against the Fund shall be approved by the Department and the Authority.

§ 2.2-3705.6. Exclusions to application of chapter; proprietary records and trade secrets.

The following records are excluded from the provisions of this chapter but may be disclosed by the custodian in his discretion, except where such disclosure is prohibited by law:

1. Proprietary information gathered by or for the Virginia Port Authority as provided in § 62.1-132.4 or 62.1-134.1.

2. Financial statements not publicly available filed with applications for industrial development financings in accordance with Chapter 49 (§ 15.2-4900 et seq.) of Title 15.2.

3. Confidential proprietary records, voluntarily provided by private business pursuant to a promise of confidentiality from the Department of Business Assistance, the Virginia Economic Development Partnership, the Virginia Tourism Authority, the Tobacco Indemnification and Community Revitalization Commission, a nonprofit, nonstock corporation created pursuant to § 2.2-2240.1, or local or regional industrial or economic development authorities or organizations, used by the Department, the Partnership, the Authority, or such entities for business, trade and tourism development; and memoranda, working papers or other records related to businesses that are considering locating or expanding in Virginia, prepared by such entities, where competition or bargaining is involved and where, if such records are made public, the financial interest of the governmental unit would be adversely affected.

4. Information that was filed as confidential under the Toxic Substances Information Act (§ 32.1-239 et seq.), as such Act existed prior to July 1, 1992.

5. Fisheries data that would permit identification of any person or vessel, except when required by court order as specified in § 28.2-204.

6. Confidential financial statements, balance sheets, trade secrets, and revenue and cost projections provided to the Department of Rail and Public Transportation, provided such information is exempt under the federal Freedom of Information Act or the federal Interstate Commerce Act or other laws administered by the Surface Transportation Board or the Federal Railroad Administration with respect to data provided in confidence to the Surface Transportation Board and the Federal Railroad

302 Administration.

303 7. Confidential proprietary records related to inventory and sales, voluntarily provided by private
304 energy suppliers to the Department of Mines, Minerals and Energy, used by that Department for energy
305 contingency planning purposes or for developing consolidated statistical information on energy supplies.

306 8. Confidential proprietary information furnished to the Board of Medical Assistance Services or the
307 Medicaid Prior Authorization Advisory Committee pursuant to Article 4 (§ 32.1-331.12 et seq.) of
308 Chapter 10 of Title 32.1.

309 9. Proprietary, commercial or financial information, balance sheets, trade secrets, and revenue and
310 cost projections provided by a private transportation business to the Virginia Department of
311 Transportation and the Department of Rail and Public Transportation for the purpose of conducting
312 transportation studies needed to obtain grants or other financial assistance under the Transportation
313 Equity Act for the 21st Century (P.L. 105-178) for transportation projects, provided such information is
314 exempt under the federal Freedom of Information Act or the federal Interstate Commerce Act or other
315 laws administered by the Surface Transportation Board or the Federal Railroad Administration with
316 respect to data provided in confidence to the Surface Transportation Board and the Federal Railroad
317 Administration. However, the exemption provided by this subdivision shall not apply to any wholly
318 owned subsidiary of a public body.

319 10. Confidential information designated as provided in subsection F of § 2.2-4342 as trade secrets or
320 proprietary information by any person who has submitted to a public body an application for
321 prequalification to bid on public construction projects in accordance with subsection B of § 2.2-4317.

322 11. a. Memoranda, staff evaluations, or other records prepared by the responsible public entity, its
323 staff, outside advisors, or consultants exclusively for the evaluation and negotiation of proposals filed
324 under the Public-Private Transportation Act of 1995 (§ 56-556 et seq.) or the Public Private Education
325 Facilities and Infrastructure Act of 2002 (§ 56-575.1 et seq.), where (i) if such records were made public
326 prior to or after the execution of an interim or a comprehensive agreement, § 56-573.1:1 or 56-575.17
327 notwithstanding, the financial interest or bargaining position of the public entity would be adversely
328 affected, and (ii) the basis for the determination required in clause (i) is documented in writing by the
329 responsible public entity; and

330 b. Records provided by a private entity to a responsible public entity, affected jurisdiction, or
331 affected local jurisdiction pursuant to the provisions of the Public-Private Transportation Act of 1995 or
332 the Public-Private Education Facilities and Infrastructure Act of 2002, to the extent that such records
333 contain (i) trade secrets of the private entity as defined in the Uniform Trade Secrets Act (§ 59.1-336 et
334 seq.); (ii) financial records of the private entity, including balance sheets and financial statements, that
335 are not generally available to the public through regulatory disclosure or otherwise; or (iii) other
336 information submitted by the private entity, where, if the records were made public prior to the
337 execution of an interim agreement or a comprehensive agreement, the financial interest or bargaining
338 position of the public or private entity would be adversely affected. In order for the records specified in
339 clauses (i), (ii) and (iii) to be excluded from the provisions of this chapter, the private entity shall make
340 a written request to the responsible public entity:

341 1. Invoking such exclusion upon submission of the data or other materials for which protection from
342 disclosure is sought;

343 2. Identifying with specificity the data or other materials for which protection is sought; and

344 3. Stating the reasons why protection is necessary.

345 The responsible public entity shall determine whether the requested exclusion from disclosure is
346 necessary to protect the trade secrets or financial records of the private entity. To protect other records
347 submitted by the private entity from disclosure, the responsible public entity shall determine whether
348 public disclosure prior to the execution of an interim agreement or a comprehensive agreement would
349 adversely affect the financial interest or bargaining position of the public or private entity. The
350 responsible public entity shall make a written determination of the nature and scope of the protection to
351 be afforded by the responsible public entity under this subdivision. Once a written determination is made
352 by the responsible public entity, the records afforded protection under this subdivision shall continue to
353 be protected from disclosure when in the possession of any affected jurisdiction or affected local
354 jurisdiction.

355 Except as specifically provided in subdivision 11 a, nothing in this subdivision shall be construed to
356 authorize the withholding of (a) procurement records as required by § 56-573.1:1 or 56-575.17; (b)
357 information concerning the terms and conditions of any interim or comprehensive agreement, service
358 contract, lease, partnership, or any agreement of any kind entered into by the responsible public entity
359 and the private entity; (c) information concerning the terms and conditions of any financing arrangement
360 that involves the use of any public funds; or (d) information concerning the performance of any private
361 entity developing or operating a qualifying transportation facility or a qualifying project.

362 For the purposes of this subdivision, the terms "affected jurisdiction," "affected local jurisdiction,"
363 "comprehensive agreement," "interim agreement," "qualifying project," "qualifying transportation

facility," "responsible public entity," and "private entity" shall mean the same as those terms are defined in the Public-Private Transportation Act of 1995 or in the Public-Private Education Facilities and Infrastructure Act of 2002.

12. Confidential proprietary information or trade secrets, not publicly available, provided by a private person or entity to the Virginia Resources Authority or to a fund administered in connection with financial assistance rendered or to be rendered by the Virginia Resources Authority where, if such information were made public, the financial interest of the private person or entity would be adversely affected, and, after June 30, 1997, where such information was provided pursuant to a promise of confidentiality.

13. Trade secrets, as defined in the Uniform Trade Secrets Act (§ 59.1-336 et seq.), or confidential proprietary records that are not generally available to the public through regulatory disclosure or otherwise, provided by a (a) bidder or applicant for a franchise or (b) franchisee under Chapter 21 (§ 15.2-2100 et seq.) of Title 15.2 to the applicable franchising authority pursuant to a promise of confidentiality from the franchising authority, to the extent the records relate to the bidder's, applicant's, or franchisee's financial capacity or provision of new services, adoption of new technologies or implementation of improvements, where such new services, technologies or improvements have not been implemented by the franchisee on a nonexperimental scale in the franchise area, and where, if such records were made public, the competitive advantage or financial interests of the franchisee would be adversely affected.

In order for trade secrets or confidential proprietary information to be excluded from the provisions of this chapter, the bidder, applicant, or franchisee shall (i) invoke such exclusion upon submission of the data or other materials for which protection from disclosure is sought, (ii) identify the data or other materials for which protection is sought, and (iii) state the reason why protection is necessary.

No bidder, applicant, or franchisee may invoke the exclusion provided by this subdivision if the bidder, applicant, or franchisee is owned or controlled by a public body or if any representative of the applicable franchising authority serves on the management board or as an officer of the bidder, applicant, or franchisee.

14. Documents and other information of a proprietary nature furnished by a supplier of charitable gaming supplies to the Department of Agriculture and Consumer Services pursuant to subsection E of § 18.2-340.34.

15. Records and reports related to Virginia apple producer sales provided to the Virginia State Apple Board pursuant to §§ 3.1-622 and 3.1-624.

16. Trade secrets, as defined in the Uniform Trade Secrets Act (§ 59.1-336 et seq.) of Title 59.1, submitted by CMRS providers as defined in § 56-484.12 to the Wireless Carrier E-911 Cost Recovery Subcommittee created pursuant to § 56-484.15, relating to the provision of wireless E-911 service.

17. Records submitted as a grant application, or accompanying a grant application, to the Innovative Technology Authority pursuant to Article 3 (§ 2.2-2233.1 et seq.) of Chapter 22 of Title 2.2 or to the Commonwealth Health Research Board pursuant to Chapter 22 (§ 23-277 et seq.) of Title 23 to the extent such records contain proprietary business or research-related information produced or collected by the applicant in the conduct of or as a result of study or research on medical, rehabilitative, scientific, technical, technological, or scholarly issues, when such information has not been publicly released, published, copyrighted, or patented, if the disclosure of such information would be harmful to the competitive position of the applicant.

18. Confidential proprietary records and trade secrets developed and held by a local public body (i) providing telecommunication services pursuant to § 56-265.4:4 and (ii) providing cable television services pursuant to Article 1.1 (§ 15.2-2108.2 et seq.) of Chapter 21 of Title 15.2, to the extent that disclosure of such records would be harmful to the competitive position of the locality. In order for confidential proprietary information or trade secrets to be excluded from the provisions of this chapter, the locality in writing shall (i) invoke the protections of this subdivision, (ii) identify with specificity the records or portions thereof for which protection is sought, and (iii) state the reasons why protection is necessary.

19. Confidential proprietary records and trade secrets developed by or for a local authority created in accordance with the Virginia Wireless Service Authorities Act (§ 15.2-5431.1 et seq.) to provide qualifying communications services as authorized by Article 5.1 (§ 56-484.7:1 et seq.) of Chapter 15 of Title 56, where disclosure of such information would be harmful to the competitive position of the authority, except that records required to be maintained in accordance with § 15.2-2160 shall be released.

20. Trade secrets as defined in the Uniform Trade Secrets Act (§ 59.1-336 et seq.) or financial records of a business, including balance sheets and financial statements, that are not generally available to the public through regulatory disclosure or otherwise, provided to the Department of Minority Business Enterprise Supplier Diversity and Procurement Advocacy as part of an application for (i)

425 certification as a ~~small, women- or minority-owned~~ *small, women-owned, or minority-owned* business in
426 accordance with Chapter 14 (§ 2.2-1400 et seq.) of this title or (ii) a claim made by a disadvantaged
427 business or an economically disadvantaged individual against the Capital Access Fund for Disadvantaged
428 Businesses created pursuant to § 2.2-2311. In order for such trade secrets or financial records to be
429 excluded from the provisions of this chapter, the business shall (a) invoke such exclusion upon
430 submission of the data or other materials for which protection from disclosure is sought, (b) identify the
431 data or other materials for which protection is sought, and (c) state the reasons why protection is
432 necessary.

433 21. Documents and other information of a proprietary or confidential nature disclosed by a carrier to
434 the State Health Commissioner pursuant to § 32.1-276.5:1.

435 22. Trade secrets, as defined in the Uniform Trade Secrets Act (§ 59.1-336 et seq.), including, but
436 not limited to, financial records, including balance sheets and financial statements, that are not generally
437 available to the public through regulatory disclosure or otherwise, and revenue and cost projections
438 supplied by a private or nongovernmental entity to the Inspector General of the Virginia Department of
439 Transportation for the purpose of an audit, special investigation, or any study requested by the Inspector
440 General's Office in accordance with law.

441 In order for the records specified in this subdivision to be excluded from the provisions of this
442 chapter, the private or nongovernmental entity shall make a written request to the Department:

443 1. Invoking such exclusion upon submission of the data or other materials for which protection from
444 disclosure is sought;

445 2. Identifying with specificity the data or other materials for which protection is sought; and

446 3. Stating the reasons why protection is necessary.

447 The Inspector General of the Virginia Department of Transportation shall determine whether the
448 requested exclusion from disclosure is necessary to protect the trade secrets or financial records of the
449 private entity. The Virginia Department of Transportation shall make a written determination of the
450 nature and scope of the protection to be afforded by it under this subdivision.

451 § 2.2-4301. Definitions.

452 As used in this chapter:

453 "Affiliate" means an individual or business that controls, is controlled by, or is under common
454 control with another individual or business. A person controls an entity if the person owns, directly or
455 indirectly, more than 10 percent of the voting securities of the entity. For the purposes of this definition
456 "voting security" means a security that (i) confers upon the holder the right to vote for the election of
457 members of the board of directors or similar governing body of the business or (ii) is convertible into,
458 or entitles the holder to receive, upon its exercise, a security that confers such a right to vote. A general
459 partnership interest shall be deemed to be a voting security.

460 "Best value," as predetermined in the solicitation, means the overall combination of quality, price,
461 and various elements of required services that in total are optimal relative to a public body's needs.

462 "Business" means any type of corporation, partnership, limited liability company, association, or sole
463 proprietorship operated for profit.

464 "Competitive negotiation" is a method of contractor selection that includes the following elements:

465 1. Issuance of a written Request for Proposal indicating in general terms that which is sought to be
466 procured, specifying the factors that will be used in evaluating the proposal and containing or
467 incorporating by reference the other applicable contractual terms and conditions, including any unique
468 capabilities or qualifications that will be required of the contractor.

469 2. Public notice of the Request for Proposal at least 10 days prior to the date set for receipt of
470 proposals by posting in a public area normally used for posting of public notices and by publication in a
471 newspaper or newspapers of general circulation in the area in which the contract is to be performed so
472 as to provide reasonable notice to the maximum number of offerors that can be reasonably anticipated to
473 submit proposals in response to the particular request. Public notice may also be published on the
474 Department of General Services' central electronic procurement website and other appropriate websites.
475 Effective July 1, 2002, publishing by state agencies, departments and institutions on the public Internet
476 procurement website designated by the Department of General Services shall be required. In addition,
477 proposals may be solicited directly from potential contractors.

478 3. a. Procurement of professional services. The public body shall engage in individual discussions
479 with two or more offerors deemed fully qualified, responsible and suitable on the basis of initial
480 responses and with emphasis on professional competence, to provide the required services. Repetitive
481 informal interviews shall be permissible. The offerors shall be encouraged to elaborate on their
482 qualifications and performance data or staff expertise pertinent to the proposed project, as well as
483 alternative concepts. The Request for Proposal shall not, however, request that offerors furnish estimates
484 of man-hours or cost for services. At the discussion stage, the public body may discuss nonbinding
485 estimates of total project costs, including, but not limited to, life-cycle costing, and where appropriate,
486 nonbinding estimates of price for services. Proprietary information from competing offerors shall not be

disclosed to the public or to competitors. At the conclusion of discussion, outlined in this subdivision, on the basis of evaluation factors published in the Request for Proposal and all information developed in the selection process to this point, the public body shall select in the order of preference two or more offerors whose professional qualifications and proposed services are deemed most meritorious. Negotiations shall then be conducted, beginning with the offeror ranked first. If a contract satisfactory and advantageous to the public body can be negotiated at a price considered fair and reasonable, the award shall be made to that offeror. Otherwise, negotiations with the offeror ranked first shall be formally terminated and negotiations conducted with the offeror ranked second, and so on until such a contract can be negotiated at a fair and reasonable price. Notwithstanding the foregoing, if the terms and conditions for multiple awards are included in the Request for Proposal, a public body may award contracts to more than one offeror.

Should the public body determine in writing and in its sole discretion that only one offeror is fully qualified, or that one offeror is clearly more highly qualified and suitable than the others under consideration, a contract may be negotiated and awarded to that offeror.

A contract for architectural or professional engineering services relating to construction projects may be negotiated by a public body, for multiple projects provided (i) the projects require similar experience and expertise, (ii) the nature of the projects is clearly identified in the Request for Proposal, and (iii) the contract term is limited to one year or when the cumulative total project fees reach the maximum cost authorized in this paragraph, whichever occurs first. For state public bodies, such contract, except those awarded for environmental, location, design and inspection work regarding highways and bridges by the Commonwealth Transportation Commissioner may be renewable for four additional one-year terms at the option of the public body. For local public bodies, such contract may be renewable for two additional one-year terms at the option of the public body. Under such contract, (a) the fair and reasonable prices, as negotiated, shall be used in determining the cost of each project performed, (b) except those awarded for environmental, location, design and inspection work regarding highways and bridges by the Commonwealth Transportation Commissioner, the sum of all projects performed in one contract term shall not exceed \$500,000 or, in the case of a state agency, as defined in § 2.2-4347, such greater amount as may be determined by the Director of the Department of General Services, not to exceed \$1 million, except that in any locality or any authority or sanitation district with a population in excess of 80,000, the sum of all such projects shall not exceed \$5 million; and (c) except those awarded for environmental, location, design and inspection work regarding highways and bridges by the Commonwealth Transportation Commissioner, the project fee of any single project shall not exceed \$100,000 or, in the case of a state agency, such greater amount as may be determined by the Director of the Department of General Services not to exceed \$200,000, except that in any locality or any authority or sanitation district with a population in excess of 80,000, such fee shall not exceed \$1 million. Any unused amounts from the first contract term shall not be carried forward to the additional term. Competitive negotiations for such contracts may result in awards to more than one offeror provided (1) the Request for Proposal so states and (2) the public body has established procedures for distributing multiple projects among the selected contractors during the contract term. For contracts for environmental location, design and inspection work regarding highways and bridges by the Commonwealth Transportation Commissioner, the sum of all projects in one contract term shall not exceed \$2 million and such contract may be renewable for two additional one-year terms at the option of the Commissioner.

Multiphase professional services contracts satisfactory and advantageous to the Department of Transportation for environmental, location, design and inspection work regarding highways and bridges may be negotiated and awarded based on a fair and reasonable price for the first phase only, when completion of the earlier phases is necessary to provide information critical to the negotiation of a fair and reasonable price for succeeding phases.

Multiphase professional services contracts satisfactory and advantageous to a local public body for environmental, location, design and inspection work regarding construction of infrastructure projects may be negotiated and awarded based on qualifications at a fair and reasonable price for the first phase only, when completion of the earlier phases is necessary to provide information critical to the negotiation of a fair and reasonable price for succeeding phases. Prior to the procurement of any such contract, the local public body shall state the anticipated intended total scope of the project and determine in writing that the nature of the work is such that the best interests of such public body require awarding the contract.

b. Procurement of other than professional services. Selection shall be made of two or more offerors deemed to be fully qualified and best suited among those submitting proposals, on the basis of the factors involved in the Request for Proposal, including price if so stated in the Request for Proposal. Negotiations shall then be conducted with each of the offerors so selected. Price shall be considered, but need not be the sole determining factor. After negotiations have been conducted with each offeror so selected, the public body shall select the offeror which, in its opinion, has made the best proposal, and

shall award the contract to that offeror. When the terms and conditions of multiple awards are so provided in the Request for Proposal, awards may be made to more than one offeror. Should the public body determine in writing and in its sole discretion that only one offeror is fully qualified, or that one offeror is clearly more highly qualified than the others under consideration, a contract may be negotiated and awarded to that offeror.

"Competitive sealed bidding" is a method of contractor selection, other than for professional services, which includes the following elements:

1. Issuance of a written Invitation to Bid containing or incorporating by reference the specifications and contractual terms and conditions applicable to the procurement. Unless the public body has provided for prequalification of bidders, the Invitation to Bid shall include a statement of any requisite qualifications of potential contractors. When it is impractical to prepare initially a purchase description to support an award based on prices, an Invitation to Bid may be issued requesting the submission of unpriced offers to be followed by an Invitation to Bid limited to those bidders whose offers have been qualified under the criteria set forth in the first solicitation.

2. Public notice of the Invitation to Bid at least 10 days prior to the date set for receipt of bids by posting in a designated public area, or publication in a newspaper of general circulation, or both. Public notice may also be published on the Department of General Services' central electronic procurement website and other appropriate websites. Effective July 1, 2002, posting by state agencies, departments and institutions on the public Internet procurement website designated by the Department of General Services shall be required. In addition, bids may be solicited directly from potential contractors. Any additional solicitations shall include businesses selected from a list made available by the Department of ~~Minority Business Enterprise~~ *Supplier Diversity and Procurement Advocacy*.

3. Public opening and announcement of all bids received.

4. Evaluation of bids based upon the requirements set forth in the invitation, which may include special qualifications of potential contractors, life-cycle costing, value analysis, and any other criteria such as inspection, testing, quality, workmanship, delivery, and suitability for a particular purpose, which are helpful in determining acceptability.

5. Award to the lowest responsive and responsible bidder. When the terms and conditions of multiple awards are so provided in the Invitation to Bid, awards may be made to more than one bidder.

"Construction" means building, altering, repairing, improving or demolishing any structure, building or highway, and any draining, dredging, excavation, grading or similar work upon real property.

"Construction management contract" means a contract in which a party is retained by the owner to coordinate and administer contracts for construction services for the benefit of the owner, and may also include, if provided in the contract, the furnishing of construction services to the owner.

"Design-build contract" means a contract between a public body and another party in which the party contracting with the public body agrees to both design and build the structure, roadway or other item specified in the contract.

"Goods" means all material, equipment, supplies, printing, and automated data processing hardware and software.

"Informality" means a minor defect or variation of a bid or proposal from the exact requirements of the Invitation to Bid, or the Request for Proposal, which does not affect the price, quality, quantity or delivery schedule for the goods, services or construction being procured.

"Multiphase professional services contract" means a contract for the providing of professional services where the total scope of work of the second or subsequent phase of the contract cannot be specified without the results of the first or prior phase of the contract.

"Nonprofessional services" means any services not specifically identified as professional services in the definition of professional services.

"Potential bidder or offeror" for the purposes of §§ 2.2-4360 and 2.2-4364 means a person who, at the time a public body negotiates and awards or proposes to award a contract, is engaged in the sale or lease of goods, or the sale of services, insurance or construction, of the type to be procured under the contract, and who at such time is eligible and qualified in all respects to perform that contract, and who would have been eligible and qualified to submit a bid or proposal had the contract been procured through competitive sealed bidding or competitive negotiation.

"Professional services" means work performed by an independent contractor within the scope of the practice of accounting, actuarial services, architecture, land surveying, landscape architecture, law, dentistry, medicine, optometry, pharmacy or professional engineering. "Professional services" shall also include the services of an economist procured by the State Corporation Commission.

"Public body" means any legislative, executive or judicial body, agency, office, department, authority, post, commission, committee, institution, board or political subdivision created by law to exercise some sovereign power or to perform some governmental duty, and empowered by law to undertake the activities described in this chapter.

"Public contract" means an agreement between a public body and a nongovernmental source that is

enforceable in a court of law.

"Responsible bidder" or "offeror" means a person who has the capability, in all respects, to perform fully the contract requirements and the moral and business integrity and reliability that will assure good faith performance, and who has been prequalified, if required.

"Responsive bidder" means a person who has submitted a bid that conforms in all material respects to the Invitation to Bid.

"Reverse auctioning" means a procurement method wherein bidders are invited to bid on specified goods or nonprofessional services through real-time electronic bidding, with the award being made to the lowest responsive and responsible bidder. During the bidding process, bidders' prices are revealed and bidders shall have the opportunity to modify their bid prices for the duration of the time period established for bid opening.

"Services" means any work performed by an independent contractor wherein the service rendered does not consist primarily of acquisition of equipment or materials, or the rental of equipment, materials and supplies.

"Sheltered workshop" means a work-oriented rehabilitative facility with a controlled working environment and individual goals that utilizes work experience and related services for assisting the handicapped person to progress toward normal living and a productive vocational status.

§ 2.2-4310. Discrimination prohibited; participation of small, women-, minority- and service disabled veteran-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, status as a service disabled veteran, 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~~ *Supplier Diversity and Procurement Advocacy*.

B. All public bodies shall establish programs consistent with this chapter to facilitate the participation of small businesses and businesses owned by women, minorities, and service disabled veterans in procurement transactions. The programs established shall be in writing and shall comply with the provisions of any enhancement or remedial measures authorized by the Governor pursuant to subsection C or, where applicable, by the chief executive of a local governing body pursuant to § 15.2-965.1, and shall include specific plans to achieve any goals established therein. State agencies shall submit annual progress reports on small, women- and minority-owned business procurement and on service disabled veteran-owned business procurement to the Department of ~~Minority Business Enterprise~~ *Supplier Diversity and Procurement Advocacy* in a form specified by the Department of ~~Minority Business Enterprise~~ *Supplier Diversity and Procurement Advocacy*. The Department of ~~Minority Business Enterprise~~ *Supplier Diversity and Procurement Advocacy* shall make information on service disabled veteran-owned procurement available to the Department of Veterans Services upon request.

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.

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 ~~non-citizen who is in full compliance with United States immigration law~~ *legal resident alien* and who satisfies one or more of the following definitions:

1. "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.

2. "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 Mariana, 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.

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 recognized by a tribal organization.

671 "Minority-owned business" means a business ~~concern~~ that is at least 51% owned by one or more
672 minority individuals *who are U.S. citizens or legal resident aliens*, or in the case of a corporation,
673 partnership, or limited liability company or other entity, at least 51% of the equity ownership interest in
674 the corporation, partnership, or limited liability company or other entity is owned by one or more
675 minority individuals *who are U.S. citizens or legal resident aliens*, and both the management and daily
676 business operations are controlled by one or more minority individuals *who own it*.

677 "Service disabled veteran" means a veteran who (i) served on active duty in the United States
678 military ground, naval, or air service, (ii) was discharged or released under conditions other than
679 dishonorable, and (iii) has a service-connected disability rating fixed by the United States Department of
680 Veterans Affairs.

681 "Service disabled veteran business" means a business ~~concern~~ that is at least 51% owned by one or
682 more service disabled veterans or, in the case of a corporation, partnership, or limited liability company
683 or other entity, at least 51% of the equity ownership interest in the corporation, partnership, or limited
684 liability company or other entity is owned by one or more individuals who are service disabled veterans
685 and both the management and daily business operations are controlled by one or more individuals who
686 are service disabled veterans.

687 "Small business" means a business, independently owned ~~or operated by one or more persons who~~
688 ~~are citizens of the United States or non-citizens who are in full compliance with United States~~
689 ~~immigration law, which, together with affiliates, has 250 or fewer employees, or average annual gross~~
690 ~~receipts of \$10 million or less averaged over the previous three years and controlled by U.S. citizens or~~
691 ~~legal resident aliens, and together with affiliates, has 250 or fewer employees, or annual gross receipts~~
692 ~~of \$10 million or less averaged over the previous three years. One or more of the individual owners~~
693 ~~shall control both the management and daily business operations of the small business.~~

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

696 "Women-owned business" means a business ~~concern~~ that is at least 51% owned by one or more
697 women who are *U.S. citizens of the United States or non-citizens who are in full compliance with*
698 *United States immigration law legal resident aliens*, or in the case of a corporation, partnership, or
699 limited liability company or other entity, at least 51% of the equity ownership interest is owned by one
700 or more women who are *U.S. citizens of the United States or non-citizens who are in full compliance*
701 *with United States immigration law or legal resident aliens*, and both the management and daily
702 business operations are controlled by one or more women ~~who are citizens of the United States or~~
703 ~~non-citizens who are in full compliance with United States immigration law who own it.~~

704 § 15.2-965.1. Participation of small, women-, and minority-owned businesses.

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

710 B. A small, women-owned or minority-owned business that is certified by the Department of
711 ~~Minority Business Enterprises Supplier Diversity and Procurement Advocacy~~ pursuant to § 2.2-1403
712 shall not be required by any locality to obtain any additional certification to participate in any program
713 designed to enhance the participation of such businesses as vendors or to remedy any documented
714 disparity.

715 § 18.2-213.1. Obtaining certification as small, women-owned, or minority-owned business, or
716 disadvantaged business by deception; penalty.

717 A. Except as otherwise provided by § 18.2-498.3, a person shall be guilty of a Class 1 misdemeanor
718 if, in the course of business, he:

719 1. Fraudulently obtains or retains certification as a ~~small, women- or minority-owned small,~~
720 ~~women-owned, or minority-owned business or disadvantaged business enterprise;~~

721 2. Willfully makes a false statement knowing it to be untrue, whether by affidavit, report or other
722 representation, to an official or employee of a public body for the purpose of influencing the
723 certification or denial of certification of any business entity as a ~~small, women- or minority-owned~~
724 ~~small, women-owned, or minority-owned business~~ business, or disadvantaged business enterprise;

725 3. Willfully obstructs or impedes any agency official or employee who is investigating the
726 qualifications of a business entity which has requested certification as a ~~small, women- or~~
727 ~~minority-owned small, women-owned, or minority-owned business~~ business, or disadvantaged business enterprise;
728 or

729 4. Fraudulently obtains public moneys reserved for or allocated or available to small, women-, or
730 minority-owned businesses or disadvantaged business enterprises.

731 B. For the purposes of this section, ~~"disadvantaged business enterprise,"~~ "minority-owned business,"
732 and "small business" and "women-owned business" shall have the same meaning as those terms are

733 defined in § 2.2-1401 and *"disadvantage business"* shall mean the same as that term is defined in
734 § 2.2-2311.
735 **2. That all rules and regulations adopted pursuant to § 2.2-1403 of the Code of Virginia, which**
736 **were in effect on July 1, 2009, and which pertain to the subject of this act, shall remain in full**
737 **force and effect until altered, amended, or rescinded by the Department of Supplier Diversity and**
738 **Procurement Advocacy.**

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