

091849584

## HOUSE BILL NO. 2672

## AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on General Laws  
on February 6, 2009)

(Patron Prior to Substitute—Delegate Herring)

A BILL to amend and reenact §§ 2.2-1400 through 2.2-1404.1, 2.2-3705.6, 2.2-4310, 15.2-965.1, and 18.2-213.1 of the Code of Virginia, relating to the Department of Minority Business Enterprise.

Be it enacted by the General Assembly of Virginia:

1. That §§ 2.2-1400 through 2.2-1404.1, 2.2-3705.6, 2.2-4310, 15.2-965.1, and 18.2-213.1 of the Code of Virginia are amended and reenacted as follows:

§ 2.2-1400. Creation of Department of Minority Business Enterprise; appointment of Director; offices; personnel.

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

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

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

§ 2.2-1401. Definitions.

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

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

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

"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.

"Minority-owned business" means a business concern that is at least 51% owned by one or more minority individuals 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 in the corporation, partnership, or limited liability company or other entity is owned by one or more minority individuals who are U.S. citizens or legal resident aliens, and both the management and daily business operations are controlled by one or more minority individuals.

"Small business" means a business that is at least 51% independently owned and operated business which controlled by one or more individuals who are U.S. citizens or legal resident aliens, and together with affiliates, has 250 or fewer employees, or average annual gross receipts of \$10 million or less averaged over the previous three years. One or more of the individual owners shall control both the

60 *management and daily business operations of the small business.*

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

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

69 § 2.2-1402. Additional powers and duties of Department.

70 The Department shall have the following additional powers and duties:

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

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

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

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

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

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

93 § 2.2-1403. Powers of Director.

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

95 1. With the participation of other state departments and agencies, develop comprehensive plans and  
96 specific program goals for the ~~small, women- and minority-owned business~~ *small, women-owned, and*  
97 *minority-owned business* programs; establish regular performance monitoring and reporting systems to  
98 assure that goals of state agencies and institutions are being achieved; and evaluate the impact of federal  
99 and state support in achieving objectives.

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

102 3. Assure the coordinated review of all proposed state training and technical assistance activities in  
103 direct support of the ~~small, women- and minority-owned business~~ *small, women-owned, and*  
104 *minority-owned business* programs to ensure consistency with program goals and to avoid duplication.

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

107 5. Convene business leaders, educators, and other representatives of the private sector who are  
108 engaged in assisting the development of ~~small, women- and minority-owned business~~ *small,*  
109 *women-owned, and minority-owned business* programs or who could contribute to its development, for  
110 the purpose of proposing, evaluating or coordinating governmental and private activities in furtherance  
111 of the objectives of this chapter.

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

114 7. Recommend appropriate legislative or executive actions.

115 8. Adopt regulations to implement certification programs for small, women- and minority-owned  
116 businesses, which regulations shall be exempt from the Administrative Process Act (§ 2.2-4000 et seq.)  
117 pursuant to subdivision B 2 of § 2.2-4002. Such certification programs shall deny certification to  
118 vendors from states that deny like certifications to Virginia-based small, *women-owned* or  
119 minority-owned businesses or that provide a preference for ~~small, women- or minority-owned~~ *small,*  
120 *women-owned, or minority-owned* businesses based in that state that is not available to Virginia-based  
121 businesses. The regulations shall (i) establish minimum requirements for certification of small, women-

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

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

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

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

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

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

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

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

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

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

§ 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,

183 working papers or other records related to businesses that are considering locating or expanding in  
184 Virginia, prepared by such entities, where competition or bargaining is involved and where, if such  
185 records are made public, the financial interest of the governmental unit would be adversely affected.

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

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

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

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

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

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

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

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

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

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

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

237 3. Stating the reasons why protection is necessary.

238 The responsible public entity shall determine whether the requested exclusion from disclosure is  
239 necessary to protect the trade secrets or financial records of the private entity. To protect other records  
240 submitted by the private entity from disclosure, the responsible public entity shall determine whether  
241 public disclosure prior to the execution of an interim agreement or a comprehensive agreement would  
242 adversely affect the financial interest or bargaining position of the public or private entity. The  
243 responsible public entity shall make a written determination of the nature and scope of the protection to  
244 be afforded by the responsible public entity under this subdivision. Once a written determination is made

by the responsible public entity, the records afforded protection under this subdivision shall continue to be protected from disclosure when in the possession of any affected jurisdiction or affected local jurisdiction.

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

For the purposes of this subdivision, the terms "affected jurisdiction," "affected local jurisdiction," "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

306 records or portions thereof for which protection is sought, and (iii) state the reasons why protection is  
307 necessary.

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

314 20. Trade secrets as defined in the Uniform Trade Secrets Act (§ 59.1-336 et seq.) or financial  
315 records of a business, including balance sheets and financial statements, that are not generally available  
316 to the public through regulatory disclosure or otherwise, provided to the Department of Minority  
317 Business Enterprise as part of an application for (i) certification as a ~~small, women- or minority-owned~~  
318 *small, women-owned, or minority-owned* business in accordance with Chapter 14 (§ 2.2-1400 et seq.) of  
319 this title or (ii) a claim made by a disadvantaged business or an economically disadvantaged individual  
320 against the Capital Access Fund for Disadvantaged Businesses created pursuant to § 2.2-2311. In order  
321 for such trade secrets or financial records to be excluded from the provisions of this chapter, the  
322 business shall (a) invoke such exclusion upon submission of the data or other materials for which  
323 protection from disclosure is sought, (b) identify the data or other materials for which protection is  
324 sought, and (c) state the reasons why protection is necessary.

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

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

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

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

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

338 3. Stating the reasons why protection is necessary.

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

343 § 2.2-4310. Discrimination prohibited; participation of small, women-, minority- and service disabled  
344 veteran-owned business.

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

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

361 C. Whenever there exists (i) a rational basis for small business enhancement or (ii) a persuasive  
362 analysis that documents a statistically significant disparity between the availability and utilization of  
363 women- and minority-owned businesses, the Governor is authorized and encouraged to require state  
364 agencies to implement appropriate enhancement or remedial measures consistent with prevailing law.

365 D. In the solicitation or awarding of contracts, no state agency, department or institution shall  
366 discriminate against a bidder or offeror because the bidder or offeror employs ex-offenders unless the  
367 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.

"Minority-owned business" means a business ~~concern~~ that is at least 51% owned by one or more minority individuals *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 in the corporation, partnership, or limited liability company or other entity is owned by one or more minority individuals *who are U.S. citizens or legal resident aliens*, and both the management and daily business operations are controlled by one or more minority individuals.

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

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

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

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

A. Any locality may enact an ordinance providing that 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 chief executive of the local governing entity shall be authorized and encouraged to require implementation of appropriate enhancement and remedial measures consistent with prevailing law.

B. A small, women-owned or minority-owned business that is certified by the Department of Minority Business Enterprises pursuant to § 2.2-1403 shall not be required by any locality to obtain any additional certification to participate in any program designed to enhance the participation of such

429 businesses as vendors or to remedy any documented disparity.

430 § 18.2-213.1. Obtaining certification as small, women-owned, or minority-owned business, or  
431 disadvantaged business by deception; penalty.

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

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

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

440 3. Willfully obstructs or impedes any agency official or employee who is investigating the  
441 qualifications of a business entity which has requested certification as a ~~small, women- or~~  
442 ~~minority-owned~~ *small, women-owned, or minority-owned* business, or disadvantaged business ~~enterprise~~;  
443 or

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

446 B. For the purposes of this section, "~~disadvantaged business enterprise~~," "minority-owned business,"  
447 and "small business" and "women-owned business" shall have the same meaning as those terms are  
448 defined in § 2.2-1401 *and "disadvantage business" shall mean the same as that term is defined in*  
449 *§ 2.2-2311.*