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HOUSE BILL NO. 519

Offered January 13, 2010

Prefiled January 12, 2010

A BILL to amend and reenact §§ 2.2-1402 and 2.2-4310 of the Code of Virginia, relating to the state procurement; implementation of remedial or enhancement measures for small, women-owned, and minority-owned businesses.

 Patron—Morrissey

Referred to Committee on General Laws

Be it enacted by the General Assembly of Virginia:**1. That §§ 2.2-1402 and 2.2-4310 of the Code of Virginia are amended and reenacted as follows:**

§ 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 *and enforce* 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.

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

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-owned and minority-owned business procurement and on service disabled veteran-owned business procurement to the Department of Minority Business Enterprise in a form specified by the Department of Minority Business Enterprise. The Department of Minority Business Enterprise 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, *women-owned, or minority-owned* business enhancement or (ii) a persuasive analysis that documents a statistically significant disparity between the availability and utilization of *women-owned* and minority-owned businesses, the Governor is authorized and encouraged to require state agencies to implement appropriate enhancement or remedial measures

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59 consistent with prevailing law.

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

64 E. As used in this section:

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

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

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

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

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

80 "Minority-owned business" means a business that is at least 51% owned by one or more minority
81 individuals who are U.S. citizens or legal resident aliens, or in the case of a corporation, partnership, or
82 limited liability company or other entity, at least 51% of the equity ownership interest in the
83 corporation, partnership, or limited liability company or other entity is owned by one or more minority
84 individuals who are U.S. citizens or legal resident aliens, and both the management and daily business
85 operations are controlled by one or more minority individuals.

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

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

96 "Small business" means a business, independently owned and controlled by one or more individuals
97 who are U.S. citizens or legal resident aliens, and together with affiliates, has 250 or fewer employees,
98 or annual gross receipts of \$10 million or less averaged over the previous three years. One or more of
99 the individual owners shall control both the management and daily business operations of the small
100 business.

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

103 "Women-owned business" means a business that is at least 51% owned by one or more women who
104 are U.S. citizens or legal resident aliens, or in the case of a corporation, partnership, or limited liability
105 company or other entity, at least 51% of the equity ownership interest is owned by one or more women
106 who are U.S. citizens or legal resident aliens, and both the management and daily business operations
107 are controlled by one or more women.