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HOUSE BILL NO. 542

Offered January 13, 2010

Prefiled January 12, 2010

A *BILL to amend and reenact §§ 2.2-1401, 2.2-1402, 2.2-1403, 2.2-1404, 2.2-1405, 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; certification of small, women-owned, or minority-owned businesses; inclusion of retired military personnel-owned businesses.*

Patron—Marshall, D.W.

Referred to Committee on General Laws

Be it enacted by the General Assembly of Virginia:

1. **That §§ 2.2-1401, 2.2-1402, 2.2-1403, 2.2-1404, 2.2-1405, 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:**

§ 2.2-1401. 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, ~~or retired military personnel-owned~~ business for the purpose of reporting small, women-owned, ~~and~~ minority-owned, ~~and retired military personnel-owned~~ business participation in state contracts and purchases pursuant to §§ 2.2-1404 and 2.2-1405.

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

1. "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 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.

"Retired military personnel-owned business" means a business that is at least 51 percent owned by one or more individuals who are retired military personnel and 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 percent of the equity ownership interest in the corporation, partnership, or limited liability company or other entity is owned by one or more retired military personnel who are U.S. citizens or legal resident aliens, and both the management and daily business operations are controlled by one or more retired military personnel.

"Small business" means a business that is at least 51% independently owned 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 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 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 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

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59 who are citizens of the United States or legal resident aliens, and both the management and daily
60 business operations are controlled by one or more women.

61 § 2.2-1402. Additional powers and duties of Department.

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

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

66 2. Promote the mobilization of activities and resources of state and local governments, businesses and
67 trade associations, universities, foundations, professional organizations, and volunteer and other groups
68 towards the growth of small businesses and businesses owned by women ~~and~~, minorities, *and retired*
69 *military personnel*, and facilitate the coordination of the efforts of these groups with those of state
70 departments and agencies.

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

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

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

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

88 § 2.2-1403. Powers of Director.

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

90 1. With the participation of other state departments and agencies, develop comprehensive plans and
91 specific program goals for the small, women-owned, ~~and~~ minority-owned, *and retired military*
92 *personnel-owned* business programs; establish regular performance monitoring and reporting systems to
93 assure that goals of state agencies and institutions are being achieved; and evaluate the impact of federal
94 and state support in achieving objectives.

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

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

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

102 5. Convene business leaders, educators, and other representatives of the private sector who are
103 engaged in assisting the development of small, women-owned, ~~and~~ minority-owned, *and retired military*
104 *personnel-owned* business programs or who could contribute to its development, for the purpose of
105 proposing, evaluating or coordinating governmental and private activities in furtherance of the objectives
106 of this chapter.

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

109 7. Recommend appropriate legislative or executive actions.

110 8. Adopt regulations to implement certification programs for small, ~~women- and~~ *women-owned*,
111 minority-owned, *and retired military personnel-owned* businesses, which regulations shall be exempt
112 from the Administrative Process Act (§ 2.2-4000 et seq.) pursuant to subdivision B 2 of § 2.2-4002.
113 Such certification programs shall deny certification to vendors from states that deny like certifications to
114 Virginia-based small, women-owned ~~or~~, minority-owned, *or retired military personnel-owned* businesses
115 or that provide a preference for small, women-owned, ~~or~~ minority-owned, *or retired military*
116 *personnel-owned* businesses based in that state that is not available to Virginia-based businesses. The
117 regulations shall (i) establish minimum requirements for certification of small, ~~women- and~~
118 *women-owned*, minority-owned, *and retired military personnel-owned* businesses; (ii) provide a process
119 for evaluating existing local, state, private sector, and federal certification programs that meet the
120 minimum requirements; and (iii) mandate certification, without any additional paperwork, 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-owned, ~~and~~ minority-owned, *and retired military personnel-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-owned, ~~and~~ minority-owned, *and retired military personnel-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-owned, ~~and~~ minority-owned, *and retired military personnel-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, *and retired military personnel-owned* businesses and to support small, women-owned, ~~and~~ minority-owned, *and retired military personnel-owned* business programs, and shall cooperate with the Director in increasing the total state effort.

§ 2.2-1405. Reports and recommendations; collection of data.

The Director shall, from time to time, submit directly or through an assistant to the Governor his recommendations for legislation or other action as he deems desirable to promote the purposes of this chapter.

The Director shall report, on or before November 1 of each year, to the Governor and the General Assembly the identity of the state departments and agencies failing to submit annual progress reports on small, ~~women- and women-owned~~, minority-owned, *and retired military personnel-owned* business procurement required by § 2.2-4310, and the nature and extent of such lack of compliance. The annual report shall include recommendations on the ways to improve compliance with the provisions of § 2.2-4310 and such other related matters as the Director deems appropriate.

The Director, with the assistance of the Comptroller, shall develop and implement a systematic data collection process that will provide information for a report to the Governor and General Assembly on state expenditures to small, ~~women- and women-owned~~, minority-owned, *and retired military personnel-owned* businesses during the previous fiscal year.

§ 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 a public body, used by the public body for business, trade and tourism development or retention; and memoranda, working papers or other records related to businesses that are considering locating or expanding in Virginia, prepared by a public body, where competition or bargaining is involved and where, if such records are made public, the financial interest of the public body 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 Administration.

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

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

9. Proprietary, commercial or financial information, balance sheets, trade secrets, and revenue and cost projections provided by a private transportation business to the Virginia Department of Transportation and the Department of Rail and Public Transportation for the purpose of conducting transportation studies needed to obtain grants or other financial assistance under the Transportation Equity Act for the 21st Century (P.L. 105-178) for transportation projects, 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 Administration. However, the exemption provided by this subdivision shall not apply to any wholly owned subsidiary of a public body.

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

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

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

1- (1) Invoking such exclusion upon submission of the data or other materials for which protection from disclosure is sought;

2- (2) Identifying with specificity the data or other materials for which protection is sought; and

3- (3) Stating the reasons why protection is necessary.

The responsible public entity shall determine whether the requested exclusion from disclosure is necessary to protect the trade secrets or financial records of the private entity. To protect other records submitted by the private entity from disclosure, the responsible public entity shall determine whether public disclosure prior to the execution of an interim agreement or a comprehensive agreement would adversely affect the financial interest or bargaining position of the public or private entity. The responsible public entity shall make a written determination of the nature and scope of the protection to 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 § 3.2-1215.

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 or loan application, or accompanying a grant or loan application, to the Innovation and Entrepreneurship Investment 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 as part of an application for (i) certification as a small, women-owned, or minority-owned, or retired military personnel-owned business in accordance with Chapter 14 (§ 2.2-1400

et seq.) of this title or (ii) a claim made by a disadvantaged business or an economically disadvantaged individual against the Capital Access Fund for Disadvantaged Businesses created pursuant to § 2.2-2311. In order for such trade secrets or financial records to be excluded from the provisions of this chapter, the business shall (a) invoke such exclusion upon submission of the data or other materials for which protection from disclosure is sought, (b) identify the data or other materials for which protection is sought, and (c) state the reasons why protection is necessary.

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

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

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

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

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

3c. Stating the reasons why protection is necessary.

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

§ 2.2-4310. Discrimination prohibited; participation of small, women-owned, minority-owned service disabled veteran-owned, and retired military personnel-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, ~~and retired military personnel~~ 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 women-owned~~, minority-owned, ~~and retired military personnel-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 ~~and retired military personnel-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 women-owned~~, minority-owned, ~~or retired military personnel-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 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 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.

"Retired military personnel-owned business" means a business that is at least 51 percent owned by one or more individuals who are retired military personnel and 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 percent of the equity ownership interest in the corporation, partnership, or limited liability company or other entity is owned by one or more retired military personnel who are U.S. citizens or legal resident aliens, and both the management and daily business operations are controlled by one or more retired military personnel.

"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 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 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 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 U.S. citizens or legal resident aliens, and both the management and daily business operations are controlled by one or more women.

§ 15.2-965.1. Participation of small, women-owned, minority-owned, and retired military personnel-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 owned~~, minority-owned, *and retired military personnel-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, *or retired military personnel-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 businesses as vendors or to remedy any documented disparity.

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

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

1. Fraudulently obtains or retains certification as a small, women-owned, ~~or~~ minority-owned, *or retired military personnel-owned* business or disadvantaged business;

2. Willfully makes a false statement knowing it to be untrue, whether by affidavit, report or other representation, to an official or employee of a public body for the purpose of influencing the

428 certification or denial of certification of any business entity as a small, women-owned, ~~or~~
429 minority-owned, *or retired military personnel-owned* business, or disadvantaged business;

430 3. Willfully obstructs or impedes any agency official or employee who is investigating the
431 qualifications of a business entity which has requested certification as a small, women-owned, ~~or~~
432 minority-owned, *or retired military personnel-owned* business, or disadvantaged business; or

433 4. Fraudulently obtains public moneys reserved for or allocated or available to small, women-owned,
434 ~~or~~ minority-owned, *or retired military personnel-owned* businesses or disadvantaged business.

435 B. For the purposes of this section, "minority-owned business," and "small business" and
436 "women-owned business" *and "retired military personnel-owned business"* shall have the same meaning
437 as those terms are defined in § 2.2-1401 and "disadvantaged business" shall mean the same as that term
438 is defined in § 2.2-2311.