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## SENATE BILL NO. 250

## AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on General Laws  
on March 1, 2012)

(Patron Prior to Substitute—Senator Obenshain)

A *BILL to amend and reenact § 2.2-4310 of the Code of Virginia, relating to the Virginia Public Procurement Act; required contract provisions.*

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

**1. That § 2.2-4310 of the Code of Virginia is amended and reenacted as follows:**

§ 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.

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 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 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 awarding a contract for services to a small, women-owned, or minority-owned business that is certified in accordance with § 2.2-1403, or to a business identified by a public body as a service disabled veteran-owned business, the public body shall include in every such contract of more than \$10,000 the following:*

*"During the performance of this contract, the contractor agrees that no more than 60 percent of the contracted work will be subcontracted to business that is not certified as a small, women-owned, or minority-owned business, or to a service disabled veteran-owned business, except where there is a bona fide occupational qualification reasonably necessary to the normal operation of the contractor. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this clause. Notices, advertisements, and solicitations placed in accordance with federal law, rule, or regulation shall be deemed sufficient posting."*

E. 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.~~ F. 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.

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

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

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

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

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

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

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