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SENATE BILL NO. 258

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on General Laws and Technology
on January 23, 2012)

(Patron Prior to Substitute—Senator Ebbin)

A *BILL to amend and reenact §§ 2.2-1401 and 2.2-4310 of the Code of Virginia, relating to the Department of Minority Business Enterprises; definition of small business.*

Be it enacted by the General Assembly of Virginia:

1. That §§ 2.2-1401 and 2.2-4310 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 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.

"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%~~ *51 percent* 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%~~ *51 percent* 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 *located in Virginia* that is at least ~~51%~~ *51 percent* 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 that meets the size standards established by the Administrator of the U.S. Small Business Administration pursuant to the federal Small Business Act (15 U.S.C. § 631 et seq.), as amended, and relevant regulations promulgated thereto.~~ One or more of the individual owners shall control both the management and daily business operations of the small business. *A small business is located in Virginia if the business has been organized pursuant to Virginia law or maintains a principle place of business within Virginia.*

"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%~~ *51 percent* 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%~~ *51 percent* of the equity ownership interest is owned by one or more women who are citizens of the United States or legal resident aliens, and both the management and daily business operations are controlled by one or more women.

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

60 of small businesses and businesses owned by women, minorities, and service disabled veterans in
61 procurement transactions. The programs established shall be in writing and shall comply with the
62 provisions of any enhancement or remedial measures authorized by the Governor pursuant to subsection
63 C or, where applicable, by the chief executive of a local governing body pursuant to § 15.2-965.1, and
64 shall include specific plans to achieve any goals established therein. State agencies shall submit annual
65 progress reports on small, ~~women-~~ women-owned, and minority-owned business procurement and on
66 service disabled veteran-owned business procurement to the Department of Minority Business Enterprise
67 in a form specified by the Department of Minority Business Enterprise. The Department of Minority
68 Business Enterprise shall make information on service disabled veteran-owned procurement available to
69 the Department of Veterans Services upon request.

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

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

79 E. As used in this section:

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

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

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

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

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

95 "Minority-owned business" means a business that is at least ~~51%~~ 51 percent owned by one or more
96 minority individuals who are U.S. citizens or legal resident aliens, or in the case of a corporation,
97 partnership, or limited liability company or other entity, at least ~~51%~~ 51 percent of the equity ownership
98 interest in the corporation, partnership, or limited liability company or other entity is owned by one or
99 more minority individuals who are U.S. citizens or legal resident aliens, and both the management and
100 daily business operations are controlled by one or more minority individuals.

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

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

111 "Small business" means a business *located in Virginia that is at least 51 percent independently*
112 *owned and controlled by one or more individuals who are U.S. citizens or legal resident aliens; and*
113 *together with affiliates, has 250 or fewer employees; or annual gross receipts of \$10 million or less*
114 *averaged over the previous three years that meets the size standards established by the Administrator of*
115 *the U.S. Small Business Administration pursuant to the federal Small Business Act (15 U.S.C. § 631 et*
116 *seq.), as amended, and relevant regulations promulgated thereto. One or more of the individual owners*
117 *shall control both the management and daily business operations of the small business. A small business*
118 *is located in Virginia if the business has been organized pursuant to Virginia law or maintains a*
119 *principal place of business within Virginia.*

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

122 "Women-owned business" means a business that is at least ~~51%~~ *51 percent* owned by one or more
123 women who are U.S. citizens or legal resident aliens, or in the case of a corporation, partnership, or
124 limited liability company or other entity, at least ~~51%~~ *51 percent* of the equity ownership interest is
125 owned by one or more women who are U.S. citizens or legal resident aliens, and both the management
126 and daily business operations are controlled by one or more women.