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HOUSE BILL NO. 797

Offered January 8, 2014

Prefiled January 7, 2014

A BILL to amend and reenact §§ 2.2-1604 and 2.2-4310, as it shall become effective, of the Code of Virginia, relating to the Department of Small Business and Supplier Diversity; definition of small business.

 Patron—Lopez

Referred to Committee on General Laws

Be it enacted by the General Assembly of Virginia:**1. That §§ 2.2-1604 and 2.2-4310 of the Code of Virginia are amended and reenacted as follows:****§ 2.2-1604. 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 §§ 2.2-1608 and 2.2-1610.

"Department" means the Department of Small Business and Supplier Diversity or any division of the Department to which the Director has delegated or assigned duties and responsibilities.

"Employment services organization" means an organization that provides community-based employment services to individuals with disabilities that is an approved Commission on Accreditation of Rehabilitation Facilities (CARF) accredited vendor of the Department for Aging and Rehabilitative Services.

"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 Islands, 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 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 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 that is at least 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~~ and 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" does not include any county, city, or town.

"Women-owned business" means a business that is at least 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 percent 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.

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

INTRODUCED

HB797

59 A. In the solicitation or awarding of contracts, no public body shall discriminate against a bidder or
60 offeror because of race, religion, color, sex, national origin, age, disability, status as a service disabled
61 veteran, or any other basis prohibited by state law relating to discrimination in employment. Whenever
62 solicitations are made, each public body shall include businesses selected from a list made available by
63 the Department of Small Business and Supplier Diversity.

64 B. All public bodies shall establish programs consistent with this chapter to facilitate the participation
65 of small businesses and businesses owned by women, minorities, and service disabled veterans in
66 procurement transactions. The programs established shall be in writing and shall comply with the
67 provisions of any enhancement or remedial measures authorized by the Governor pursuant to subsection
68 C or, where applicable, by the chief executive of a local governing body pursuant to § 15.2-965.1, and
69 shall include specific plans to achieve any goals established therein. State agencies shall submit annual
70 progress reports on small, women-owned, and minority-owned business procurement and on service
71 disabled veteran-owned business procurement to the Department of Small Business and Supplier
72 Diversity in a form specified by the Department of Small Business and Supplier Diversity. The
73 Department of Small Business and Supplier Diversity shall make information on service disabled
74 veteran-owned procurement available to the Department of Veterans Services upon request.

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

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

84 E. As used in this section:

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

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

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

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

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

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

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

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

116 "Small business" means a business, *that is* independently owned and controlled by one or more
117 individuals who are U.S. citizens or legal resident aliens; and, together with affiliates, has 250 or fewer
118 employees; ~~or~~ and annual gross receipts of \$10 million or less averaged over the previous three years.
119 One or more of the individual owners shall control both the management and daily business operations
120 of the small business.

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

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

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HB797