

14104835D

## SENATE BILL NO. 427

## FLOOR AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by Senator Hanger  
on February 6, 2014)

(Patron Prior to Substitute—Senator Hanger)

A *BILL to amend and reenact §§ 2.2-1606 and 2.2-4310 of the Code of Virginia, relating to the Department of Small Business and Supplier Diversity; employment services organizations.*

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

**1. That §§ 2.2-1606 and 2.2-4310 of the Code of Virginia are amended and reenacted as follows:**

**§ 2.2-1606. Powers of Director.**

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

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

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

3. Assure the coordinated review of all proposed state training and technical assistance activities in direct support of small, women-owned, and minority-owned business *and employment services organization* programs to ensure consistency with program goals and to avoid duplication.

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

5. Convene business leaders, educators, and other representatives of the private sector who are engaged in assisting the development of small, women-owned, and minority-owned business *and employment services organization* programs or who could contribute to their development for the purpose of proposing, evaluating, or coordinating governmental and private activities in furtherance of the objectives of this chapter.

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

7. Recommend appropriate legislative or executive actions.

8. Adopt regulations to implement certification programs for small, women-owned, and minority-owned businesses and employment services organizations, which regulations shall be exempt from the Administrative Process Act (§ 2.2-4000 et seq.) pursuant to subdivision B 2 of § 2.2-4002. Such certification programs shall allow applications for certification to be submitted by electronic means as authorized by § 59.1-496 and the applicant to affix thereto his electronic signature, as defined in § 59.1-480. Such certification programs shall deny certification to vendors from states that deny like certifications to Virginia-based small, women-owned, or minority-owned businesses and employment services organizations or that provide a preference for small, women-owned, or minority-owned businesses and employment services organizations based in that state that is not available to Virginia-based businesses. The regulations shall (i) establish minimum requirements for certification of small, women-owned, and minority-owned businesses and employment services organizations; (ii) provide a process for evaluating existing local, state, private sector, and federal certification programs that meet the 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 and of any employment services organization that has been approved by the Department for Aging and Rehabilitative Services.

9. Establish an interdepartmental board in accordance with § 2.2-1608 to supply the Director with information useful in promoting minority business activity.

**§ 2.2-4310. Discrimination prohibited; participation of small, women-owned, minority-owned, and service disabled veteran-owned businesses and employment services organizations.**

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 Small Business and Supplier Diversity, *which list shall include all companies and organizations certified by the Department.*

B. All public bodies shall establish programs consistent with this chapter to facilitate the participation of small businesses, *employment services organizations*, and businesses owned by women, minorities,

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

70 C. Whenever there exists (i) a rational basis for small business enhancement *or employment services*  
71 *organization enhancement* or (ii) a persuasive analysis that documents a statistically significant disparity  
72 between the availability and utilization of women-owned and minority-owned businesses, the Governor  
73 is authorized and encouraged to require state agencies to implement appropriate enhancement or  
74 remedial measures consistent with 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 "*Employment services organization*" means an organization that provides community-based  
81 employment services to individuals with disabilities that is an approved Commission on Accreditation of  
82 Rehabilitation Facilities (CARF) accredited vendor of the Department for Aging and Rehabilitative  
83 Services.

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

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

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

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

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

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

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

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

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

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