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HOUSE BILL NO. 1409

Offered January 14, 2015

Prefiled December 18, 2014

A BILL to amend and reenact §§ 2.2-4201, 2.2-4311, and 2.2-4343.1 of the Code of Virginia, relating to public contracts; nondiscrimination; required provisions.

Patrons—Marshall, R.G., Berg and Cole

Referred to Committee on General Laws

Be it enacted by the General Assembly of Virginia:

1. That §§ 2.2-4201, 2.2-4311, and 2.2-4343.1 of the Code of Virginia are amended and reenacted as follows:

§ 2.2-4201. Required contract provisions.

All contracting agencies shall include in every government contract of over \$10,000 the following provisions:

During the performance of this contract, the contractor agrees as follows:

1. The contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, or national origin, except where religion, sex, or national origin 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 nondiscrimination clause, including the names of all contracting agencies with which the contractor has contracts of over \$10,000.

2. The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that such contractor is an equal opportunity employer. However, notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting the requirements of this chapter.

The contractor shall include the provisions of the subdivisions 1 and 2 in every subcontract or purchase order of over \$10,000, so that such provisions shall be binding upon each subcontractor or vendor.

Nothing contained in this chapter shall be deemed to empower any agency to require any contractor to grant preferential treatment to, or discriminate against, any individual or any group because of race, color, religion, sex or national origin on account of an imbalance that may exist with respect to the total number or percentage of persons of any race, color, religion, sex or national origin employed by such contractor in comparison with the total number or percentage of persons of such race, color, religion, sex or national origin in any community or in the Commonwealth. *Nothing contained in this chapter shall be deemed to empower any agency to require any contractor to agree to additional nondiscrimination provisions that are not otherwise required by this section.*

§ 2.2-4311. Employment discrimination by contractor prohibited; required contract provisions.

All public bodies shall include in every contract of more than \$10,000 the following provisions:

1. During the performance of this contract, the contractor agrees as follows:

a. The contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, or other basis prohibited by state law relating to discrimination in employment, 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 nondiscrimination clause.

b. The contractor, in all solicitations or advertisements for employees placed by or on behalf of the contractor, will state that such contractor is an equal opportunity employer.

c. Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting the requirements of this section.

2. The contractor will include the provisions of the foregoing paragraphs a, b and c in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

Nothing contained in this chapter shall be deemed to empower any public body to require any contractor to agree to additional nondiscrimination provisions that are not otherwise required by this section.

§ 2.2-4343.1. Permitted contracts with certain religious organizations; purpose; limitations.

A. It is the intent of the General Assembly, in accordance with the Personal Responsibility and Work

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59 Opportunity Reconciliation Act of 1996, P.L. 104-193, to authorize public bodies to enter into contracts
60 with faith-based organizations for the purposes described in this section on the same basis as any other
61 nongovernmental source without impairing the religious character of such organization, and without
62 diminishing the religious freedom of the beneficiaries of assistance provided under this section.

63 B. For the purposes of this section, "faith-based organization" means a religious organization that is
64 or applies to be a contractor to provide goods or services for programs funded by the block grant
65 provided pursuant to the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, P.L.
66 104-193.

67 C. Public bodies, in procuring goods or services, or in making disbursements pursuant to this section,
68 shall not (i) discriminate against a faith-based organization on the basis of the organization's religious
69 character or (ii) impose conditions that (a) restrict the religious character of the faith-based organization,
70 except as provided in subsection F, or (b) impair, diminish, or discourage the exercise of religious
71 freedom by the recipients of such goods, services, or disbursements.

72 D. Public bodies shall ensure that all invitations to bid, requests for proposals, contracts, and
73 purchase orders prominently display a nondiscrimination statement indicating that the public body does
74 not discriminate against faith-based organizations.

75 E. A faith-based organization contracting with a public body (i) shall not discriminate against any
76 recipient of goods, services, or disbursements made pursuant to a contract authorized by this section on
77 the basis of the recipient's religion, religious belief, refusal to participate in a religious practice, or on
78 the basis of race, age, color, gender or national origin and (ii) shall be subject to the same rules as other
79 organizations that contract with public bodies to account for the use of the funds provided; however, if
80 the faith-based organization segregates public funds into separate accounts, only the accounts and
81 programs funded with public funds shall be subject to audit by the public body. Nothing in clause (ii)
82 shall be construed to supersede or otherwise override any other applicable state law. *No public body*
83 *shall require a faith-based organization to agree to additional nondiscrimination provisions that are not*
84 *otherwise required by this subsection.*

85 F. Consistent with the Personal Responsibility and Work Opportunity Reconciliation Act of 1996,
86 P.L. 104-193, funds provided for expenditure pursuant to contracts with public bodies shall not be spent
87 for religious worship, instruction, or proselytizing; however, this prohibition shall not apply to
88 expenditures pursuant to contracts, if any, for the services of chaplains.

89 G. Nothing in this section shall be construed as barring or prohibiting a faith-based organization from
90 any opportunity to make a bid or proposal or contract on the grounds that the faith-based organization
91 has exercised the right, as expressed in 42 U.S.C. (§ 2000 e-1 et seq.), to employ persons of a particular
92 religion.

93 H. If an individual, who applies for or receives goods, services, or disbursements provided pursuant
94 to a contract between a public body and a faith-based organization, objects to the religious character of
95 the faith-based organization from which the individual receives or would receive the goods, services, or
96 disbursements, the public body shall offer the individual, within a reasonable period of time after the
97 date of his objection, access to equivalent goods, services, or disbursements from an alternative provider.

98 The public body shall provide to each individual who applies for or receives goods, services, or
99 disbursements provided pursuant to a contract between a public body and a faith-based organization a
100 notice in bold face type that states: "Neither the public body's selection of a charitable or faith-based
101 provider of services nor the expenditure of funds under this contract is an endorsement of the provider's
102 charitable or religious character, practices, or expression. No provider of services may discriminate
103 against you on the basis of religion, a religious belief, or your refusal to actively participate in a
104 religious practice. If you object to a particular provider because of its religious character, you may
105 request assignment to a different provider. If you believe that your rights have been violated, please
106 discuss the complaint with your provider or notify the appropriate person as indicated in this form."