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HOUSE BILL NO. 1757

House Amendments in [] — February 6, 2015

A *BILL to amend and reenact §§ 2.2-1605, 2.2-3705.6, and 18.2-213.1 of the Code of Virginia; to amend the Code of Virginia by adding a section numbered 2.2-2311.1; and to repeal § 2.2-2311 of the Code of Virginia, relating to the Virginia Small Business Financing Authority; establishment of the Small, Women-owned, and Minority-owned Business Loan Fund; repeal.*

Patron Prior to Engrossment—Delegate James

Referred to Committee on General Laws

Be it enacted by the General Assembly of Virginia:

1. That §§ 2.2-1605, 2.2-3705.6, and 18.2-213.1 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 2.2-2311.1 as follows:

§ 2.2-1605. Powers and duties of Department.

A. The Department shall have the following powers and duties:

1. Coordinate as consistent with prevailing law the plans, programs, and operations of the state government that affect or may contribute to the establishment, preservation, and strengthening of small, women-owned, and minority-owned businesses;

2. Promote the mobilization of activities and resources of state and local governments, businesses and trade associations, universities, foundations, professional organizations, and volunteer and other groups towards the growth of small businesses and businesses owned by women and minorities, and facilitate the coordination of the efforts of these groups with those of state departments and agencies;

3. Establish a center for the development, collection, summarization, and dissemination of information that will be helpful to persons and organizations throughout the nation in undertaking or promoting procurement from small, women-owned, and minority-owned businesses;

4. Consistent with prevailing law and availability of funds, and according to the Director's discretion, provide technical and management assistance to small, women-owned, and minority-owned businesses and defray all or part of the costs of pilot or demonstration projects that are designed to overcome the special problems of small, women-owned, and minority-owned businesses;

5. ~~Manage the Capital Access Fund for Disadvantaged Businesses created pursuant to § 2.2-2311 and, in cooperation with Advise the Small Business Financing Authority; determine the qualifications, terms, and conditions for the use of such Fund on the management and administration of the Small, Women-owned, and Minority-owned Business Loan Fund created pursuant to § 2.2-2311.1; and~~

6. Implement any remediation or enhancement measure for small, women-owned, or minority-owned businesses as may be authorized by the Governor pursuant to subsection C of § 2.2-4310 and develop regulations, consistent with prevailing law, for program implementation. Such regulations shall be developed in consultation with the state agencies with procurement responsibility and promulgated by those agencies in accordance with applicable law.

B. In addition, the Department shall serve as the liaison between the Commonwealth's existing businesses and state government in order to promote the development of Virginia's economy. To that end, the Department shall:

1. Encourage the training or retraining of individuals for specific employment opportunities at new or expanding business facilities in the Commonwealth;

2. Develop and implement programs to assist small businesses in the Commonwealth in order to promote their growth and the creation and retention of jobs for Virginians;

3. Establish an industry program that is the principal point of communication between basic employers in the Commonwealth and the state government that will address issues of significance to business;

4. Make available to existing businesses, in conjunction and cooperation with localities, chambers of commerce, and other public and private groups, basic information and pertinent factors of interest and concern to such businesses;

5. Develop statistical reports on job creation and the general economic conditions in the Commonwealth; and

6. Administer the Small Business Jobs Grant Fund Program and the Small Business Investment Grant Fund described in Article 2 (§ 2.2-1611 et seq.).

C. All agencies of the Commonwealth shall assist the Department upon request and furnish such information and assistance as the Department may require in the discharge of its duties.

§ 2.2-2311.1. Creation, administration, and management of the Small, Women-owned, and

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59 Minority-owned Business Loan Fund.

60 A. For the purposes of this section:

61 "Eligible small business" means any person engaged in a for-profit business enterprise in the
62 Commonwealth and such enterprise has (i) \$10 million or less in annual gross income under generally
63 accepted accounting principles for [each of up to] its last three fiscal years or lesser time period if it
64 has been in existence less than three years, (ii) fewer than 250 employees, or (iii) a net worth of [\$2
65 \$1] million or less, or such business enterprise meets such other satisfactory requirements as the Board
66 shall determine from time to time upon a finding that such business enterprise is in need of assistance.

67 "Fund" means the Small, Women-owned, and Minority-owned Business Loan Fund.

68 "Minority-owned business" means a for-profit small business concern that is majority-owned by one
69 or more individuals of an ethnic or racial minority. In the case of a corporation, a majority of the stock
70 shall be owned by one or more such individuals and the management and daily business operations
71 shall be controlled by one or more of the individuals of an ethnic or racial minority who own it.

72 "Women-owned business" means a for-profit small business concern that is majority-owned by one or
73 more women. In the case of a corporation, a majority of the stock shall be owned by one or more
74 women and the management and daily business operations shall be controlled by one or more of the
75 women who own it.

76 B. There is created in the state treasury a permanent nonreverting fund to be known as the Small,
77 Women-owned, and Minority-owned Business Loan Fund. The Fund shall be established on the books of
78 the Comptroller. The Fund shall be comprised of (i) moneys appropriated to the Fund by the General
79 Assembly, (ii) all income from the investment of moneys held by the Fund, and (iii) any other moneys
80 designated for deposit to the Fund from any source, public or private. All moneys shall be paid into the
81 state treasury and credited to the Fund. Interest earned on moneys in the Fund shall remain in the
82 Fund and be credited to it. Any moneys remaining in the Fund, including interest thereon, at the end of
83 each fiscal year shall not revert to the general fund but shall remain in the Fund. Moneys in the Fund
84 shall be used to provide direct loans to eligible small, women-owned, and minority-owned businesses.
85 The Fund shall be managed and administered by the Authority with guidance from the Director of the
86 Department of Small Business and Supplier Diversity. Expenditures and disbursements from the Fund
87 shall be made by the State Treasurer on warrants issued by the Comptroller upon written request signed
88 by the Executive Director of the Authority.

89 C. The Authority, or its designated agents, shall determine the qualifications, terms, and conditions
90 for the use of the Fund and the accounts thereof.

91 § 2.2-3705.6. Exclusions to application of chapter; proprietary records and trade secrets.

92 The following records are excluded from the provisions of this chapter but may be disclosed by the
93 custodian in his discretion, except where such disclosure is prohibited by law:

94 1. Proprietary information gathered by or for the Virginia Port Authority as provided in § 62.1-132.4
95 or 62.1-134.1.

96 2. Financial statements not publicly available filed with applications for industrial development
97 financings in accordance with Chapter 49 (§ 15.2-4900 et seq.) of Title 15.2.

98 3. Confidential proprietary records, voluntarily provided by private business pursuant to a promise of
99 confidentiality from a public body, used by the public body for business, trade and tourism development
100 or retention; and memoranda, working papers or other records related to businesses that are considering
101 locating or expanding in Virginia, prepared by a public body, where competition or bargaining is
102 involved and where, if such records are made public, the financial interest of the public body would be
103 adversely affected.

104 4. Information that was filed as confidential under the Toxic Substances Information Act (§ 32.1-239
105 et seq.), as such Act existed prior to July 1, 1992.

106 5. Fisheries data that would permit identification of any person or vessel, except when required by
107 court order as specified in § 28.2-204.

108 6. Confidential financial statements, balance sheets, trade secrets, and revenue and cost projections
109 provided to the Department of Rail and Public Transportation, provided such information is exempt
110 under the federal Freedom of Information Act or the federal Interstate Commerce Act or other laws
111 administered by the Surface Transportation Board or the Federal Railroad Administration with respect to
112 data provided in confidence to the Surface Transportation Board and the Federal Railroad
113 Administration.

114 7. Confidential proprietary records related to inventory and sales, voluntarily provided by private
115 energy suppliers to the Department of Mines, Minerals and Energy, used by that Department for energy
116 contingency planning purposes or for developing consolidated statistical information on energy supplies.

117 8. Confidential proprietary information furnished to the Board of Medical Assistance Services or the
118 Medicaid Prior Authorization Advisory Committee pursuant to Article 4 (§ 32.1-331.12 et seq.) of
119 Chapter 10 of Title 32.1.

120 9. Proprietary, commercial or financial information, balance sheets, trade secrets, and revenue and

cost projections provided by a private transportation business to the Virginia Department of Transportation and the Department of Rail and Public Transportation for the purpose of conducting transportation studies needed to obtain grants or other financial assistance under the Transportation Equity Act for the 21st Century (P.L. 105-178) for transportation projects, provided such information is exempt under the federal Freedom of Information Act or the federal Interstate Commerce Act or other laws administered by the Surface Transportation Board or the Federal Railroad Administration with respect to data provided in confidence to the Surface Transportation Board and the Federal Railroad Administration. However, the exemption provided by this subdivision shall not apply to any wholly owned subsidiary of a public body.

10. Confidential information designated as provided in subsection F of § 2.2-4342 as trade secrets or proprietary information by any person who has submitted to a public body an application for prequalification to bid on public construction projects in accordance with subsection B of § 2.2-4317.

11. a. Memoranda, staff evaluations, or other records prepared by the responsible public entity, its staff, outside advisors, or consultants exclusively for the evaluation and negotiation of proposals filed under the Public-Private Transportation Act of 1995 (§ 33.2-1800 et seq.) or the Public Private Education Facilities and Infrastructure Act of 2002 (§ 56-575.1 et seq.), where (i) if such records were made public prior to or after the execution of an interim or a comprehensive agreement, § 33.2-1820 or 56-575.17 notwithstanding, the financial interest or bargaining position of the public entity would be adversely affected, and (ii) the basis for the determination required in clause (i) is documented in writing by the responsible public entity; and

b. Records provided by a private entity to a responsible public entity, affected jurisdiction, or affected local jurisdiction pursuant to the provisions of the Public-Private Transportation Act of 1995 or the Public-Private Education Facilities and Infrastructure Act of 2002, to the extent that such records contain (i) trade secrets of the private entity as defined in the Uniform Trade Secrets Act (§ 59.1-336 et seq.); (ii) financial records of the private entity, including balance sheets and financial statements, that are not generally available to the public through regulatory disclosure or otherwise; or (iii) other information submitted by the private entity, where, if the records were made public prior to the execution of an interim agreement or a comprehensive agreement, the financial interest or bargaining position of the public or private entity would be adversely affected. In order for the records specified in clauses (i), (ii), and (iii) to be excluded from the provisions of this chapter, the private entity shall make a written request to the responsible public entity:

1. Invoking such exclusion upon submission of the data or other materials for which protection from disclosure is sought;

2. Identifying with specificity the data or other materials for which protection is sought; and

3. Stating the reasons why protection is necessary.

The responsible public entity shall determine whether the requested exclusion from disclosure is necessary to protect the trade secrets or financial records of the private entity. To protect other records submitted by the private entity from disclosure, the responsible public entity shall determine whether public disclosure prior to the execution of an interim agreement or a comprehensive agreement would adversely affect the financial interest or bargaining position of the public or private entity. The responsible public entity shall make a written determination of the nature and scope of the protection to be afforded by the responsible public entity under this subdivision. Once a written determination is made by the responsible public entity, the records afforded protection under this subdivision shall continue to be protected from disclosure when in the possession of any affected jurisdiction or affected local jurisdiction.

Except as specifically provided in subdivision 11 a, nothing in this subdivision shall be construed to authorize the withholding of (a) procurement records as required by § 33.2-1820 or 56-575.17; (b) information concerning the terms and conditions of any interim or comprehensive agreement, service contract, lease, partnership, or any agreement of any kind entered into by the responsible public entity and the private entity; (c) information concerning the terms and conditions of any financing arrangement that involves the use of any public funds; or (d) information concerning the performance of any private entity developing or operating a qualifying transportation facility or a qualifying project.

For the purposes of this subdivision, the terms "affected jurisdiction," "affected local jurisdiction," "comprehensive agreement," "interim agreement," "qualifying project," "qualifying transportation facility," "responsible public entity," and "private entity" shall mean the same as those terms are defined in the Public-Private Transportation Act of 1995 or in the Public-Private Education Facilities and Infrastructure Act of 2002.

12. Confidential proprietary information or trade secrets, not publicly available, provided by a private person or entity to the Virginia Resources Authority or to a fund administered in connection with financial assistance rendered or to be rendered by the Virginia Resources Authority where, if such information were made public, the financial interest of the private person or entity would be adversely

182 affected, and, after June 30, 1997, where such information was provided pursuant to a promise of
183 confidentiality.

184 13. Trade secrets, as defined in the Uniform Trade Secrets Act (§ 59.1-336 et seq.), or confidential
185 proprietary records that are not generally available to the public through regulatory disclosure or
186 otherwise, provided by a (a) bidder or applicant for a franchise or (b) franchisee under Chapter 21
187 (§ 15.2-2100 et seq.) of Title 15.2 to the applicable franchising authority pursuant to a promise of
188 confidentiality from the franchising authority, to the extent the records relate to the bidder's, applicant's,
189 or franchisee's financial capacity or provision of new services, adoption of new technologies or
190 implementation of improvements, where such new services, technologies or improvements have not been
191 implemented by the franchisee on a nonexperimental scale in the franchise area, and where, if such
192 records were made public, the competitive advantage or financial interests of the franchisee would be
193 adversely affected.

194 In order for trade secrets or confidential proprietary information to be excluded from the provisions
195 of this chapter, the bidder, applicant, or franchisee shall (i) invoke such exclusion upon submission of
196 the data or other materials for which protection from disclosure is sought, (ii) identify the data or other
197 materials for which protection is sought, and (iii) state the reason why protection is necessary.

198 No bidder, applicant, or franchisee may invoke the exclusion provided by this subdivision if the
199 bidder, applicant, or franchisee is owned or controlled by a public body or if any representative of the
200 applicable franchising authority serves on the management board or as an officer of the bidder,
201 applicant, or franchisee.

202 14. Documents and other information of a proprietary nature furnished by a supplier of charitable
203 gaming supplies to the Department of Agriculture and Consumer Services pursuant to subsection E of
204 § 18.2-340.34.

205 15. Records and reports related to Virginia apple producer sales provided to the Virginia State Apple
206 Board pursuant to § 3.2-1215.

207 16. Trade secrets, as defined in the Uniform Trade Secrets Act (§ 59.1-336 et seq.) of Title 59.1,
208 submitted by CMRS providers as defined in § 56-484.12 to the Wireless Carrier E-911 Cost Recovery
209 Subcommittee created pursuant to § 56-484.15, relating to the provision of wireless E-911 service.

210 17. Records submitted as a grant or loan application, or accompanying a grant or loan application, to
211 the Innovation and Entrepreneurship Investment Authority pursuant to Article 3 (§ 2.2-2233.1 et seq.) of
212 Chapter 22 of Title 2.2 or to the Commonwealth Health Research Board pursuant to Chapter 22
213 (§ 23-277 et seq.) of Title 23 to the extent such records contain proprietary business or research-related
214 information produced or collected by the applicant in the conduct of or as a result of study or research
215 on medical, rehabilitative, scientific, technical, technological, or scholarly issues, when such information
216 has not been publicly released, published, copyrighted, or patented, if the disclosure of such information
217 would be harmful to the competitive position of the applicant.

218 18. Confidential proprietary records and trade secrets developed and held by a local public body (i)
219 providing telecommunication services pursuant to § 56-265.4:4 and (ii) providing cable television
220 services pursuant to Article 1.1 (§ 15.2-2108.2 et seq.) of Chapter 21 of Title 15.2, to the extent that
221 disclosure of such records would be harmful to the competitive position of the locality. In order for
222 confidential proprietary information or trade secrets to be excluded from the provisions of this chapter,
223 the locality in writing shall (a) invoke the protections of this subdivision, (b) identify with specificity the
224 records or portions thereof for which protection is sought, and (c) state the reasons why protection is
225 necessary.

226 19. Confidential proprietary records and trade secrets developed by or for a local authority created in
227 accordance with the Virginia Wireless Service Authorities Act (§ 15.2-5431.1 et seq.) to provide
228 qualifying communications services as authorized by Article 5.1 (§ 56-484.7:1 et seq.) of Chapter 15 of
229 Title 56, where disclosure of such information would be harmful to the competitive position of the
230 authority, except that records required to be maintained in accordance with § 15.2-2160 shall be
231 released.

232 20. Trade secrets as defined in the Uniform Trade Secrets Act (§ 59.1-336 et seq.) or financial
233 records of a business, including balance sheets and financial statements, that are not generally available
234 to the public through regulatory disclosure or otherwise, provided to the Department of Small Business
235 and Supplier Diversity as part of an application for ~~(i)~~ certification as a small, women-owned, or
236 minority-owned business in accordance with Chapter 16.1 (§ 2.2-1603 et seq.) ~~or (ii) a claim made by a~~
237 ~~disadvantaged business or an economically disadvantaged individual against the Capital Access Fund for~~
238 ~~Disadvantaged Businesses created pursuant to § 2.2-2314.~~ In order for such trade secrets or financial
239 records to be excluded from the provisions of this chapter, the business shall ~~(a)~~ (i) invoke such
240 exclusion upon submission of the data or other materials for which protection from disclosure is sought,
241 ~~(b)~~ (ii) identify the data or other materials for which protection is sought, and ~~(c)~~ (iii) state the reasons
242 why protection is necessary.

243 21. Documents and other information of a proprietary or confidential nature disclosed by a carrier to

the State Health Commissioner pursuant to §§ 32.1-276.5:1 and 32.1-276.7:1.

22. Trade secrets, as defined in the Uniform Trade Secrets Act (§ 59.1-336 et seq.), including, but not limited to, financial records, including balance sheets and financial statements, that are not generally available to the public through regulatory disclosure or otherwise, and revenue and cost projections supplied by a private or nongovernmental entity to the State Inspector General for the purpose of an audit, special investigation, or any study requested by the Office of the State Inspector General in accordance with law.

In order for the records specified in this subdivision to be excluded from the provisions of this chapter, the private or nongovernmental entity shall make a written request to the State Inspector General:

1. Invoking such exclusion upon submission of the data or other materials for which protection from disclosure is sought;

2. Identifying with specificity the data or other materials for which protection is sought; and

3. Stating the reasons why protection is necessary.

The State Inspector General shall determine whether the requested exclusion from disclosure is necessary to protect the trade secrets or financial records of the private entity. The State Inspector General shall make a written determination of the nature and scope of the protection to be afforded by it under this subdivision.

23. Records submitted as a grant application, or accompanying a grant application, to the Virginia Tobacco Indemnification and Community Revitalization Commission to the extent such records contain (i) trade secrets as defined in the Uniform Trade Secrets Act (§ 59.1-336 et seq.), (ii) financial records of a grant applicant that is not a public body, including balance sheets and financial statements, that are not generally available to the public through regulatory disclosure or otherwise, or (iii) research-related information produced or collected by the applicant in the conduct of or as a result of study or research on medical, rehabilitative, scientific, technical, technological, or scholarly issues, when such information has not been publicly released, published, copyrighted, or patented, if the disclosure of such information would be harmful to the competitive position of the applicant; and memoranda, staff evaluations, or other records prepared by the Commission or its staff exclusively for the evaluation of grant applications. The exclusion provided by this subdivision shall apply to grants that are consistent with the powers of and in furtherance of the performance of the duties of the Commission pursuant to § 3.2-3103.

In order for the records specified in this subdivision to be excluded from the provisions of this chapter, the applicant shall make a written request to the Commission:

1. Invoking such exclusion upon submission of the data or other materials for which protection from disclosure is sought;

2. Identifying with specificity the data, records or other materials for which protection is sought; and

3. Stating the reasons why protection is necessary.

The Commission shall determine whether the requested exclusion from disclosure is necessary to protect the trade secrets, financial records or research-related information of the applicant. The Commission shall make a written determination of the nature and scope of the protection to be afforded by it under this subdivision.

24. a. Records of the Commercial Space Flight Authority relating to rate structures or charges for the use of projects of, the sale of products of, or services rendered by the Authority if public disclosure would adversely affect the financial interest or bargaining position of the Authority or a private entity providing records to the Authority; or

b. Records provided by a private entity to the Commercial Space Flight Authority, to the extent that such records contain (i) trade secrets of the private entity as defined in the Uniform Trade Secrets Act (§ 59.1-336 et seq.); (ii) financial records of the private entity, including balance sheets and financial statements, that are not generally available to the public through regulatory disclosure or otherwise; or (iii) other information submitted by the private entity, where, if the records were made public, the financial interest or bargaining position of the Authority or private entity would be adversely affected.

In order for the records specified in clauses (i), (ii), and (iii) of subdivision 24 b to be excluded from the provisions of this chapter, the private entity shall make a written request to the Authority:

1. Invoking such exclusion upon submission of the data or other materials for which protection from disclosure is sought;

2. Identifying with specificity the data or other materials for which protection is sought; and

3. Stating the reasons why protection is necessary.

The Authority shall determine whether the requested exclusion from disclosure is necessary to protect the trade secrets or financial records of the private entity. To protect other records submitted by the private entity from disclosure, the Authority shall determine whether public disclosure would adversely affect the financial interest or bargaining position of the Authority or private entity. The Authority shall

305 make a written determination of the nature and scope of the protection to be afforded by it under this
306 subdivision.

307 25. Documents and other information of a proprietary nature furnished by an agricultural landowner
308 or operator to the Department of Conservation and Recreation, the Department of Environmental
309 Quality, the Department of Agriculture and Consumer Services or any political subdivision, agency, or
310 board of the Commonwealth pursuant to §§ 10.1-104.7, 10.1-104.8, and 10.1-104.9, other than when
311 required as part of a state or federal regulatory enforcement action.

312 26. Trade secrets, as defined in the Uniform Trade Secrets Act (§ 59.1-336 et seq.), provided to the
313 Department of Environmental Quality pursuant to the provisions of § 10.1-1458. In order for such trade
314 secrets to be excluded from the provisions of this chapter, the submitting party shall (i) invoke this
315 exclusion upon submission of the data or materials for which protection from disclosure is sought, (ii)
316 identify the data or materials for which protection is sought, and (iii) state the reasons why protection is
317 necessary.

318 27. Documents and other information of a proprietary nature furnished by a licensed public-use
319 airport to the Department of Aviation for funding from programs administered by the Department of
320 Aviation or the Virginia Aviation Board, where if the records were made public, the financial interest of
321 the public-use airport would be adversely affected.

322 In order for the records specified in this subdivision to be excluded from the provisions of this
323 chapter, the public-use airport shall make a written request to the Department of Aviation:

324 1. Invoking such exclusion upon submission of the data or other materials for which protection from
325 disclosure is sought;

326 2. Identifying with specificity the data or other materials for which protection is sought; and

327 3. Stating the reasons why protection is necessary.

328 **§ 18.2-213.1. Obtaining certification as small, women-owned, or minority-owned business by**
329 **deception; penalty.**

330 A. Except as otherwise provided by § 18.2-498.3, a person shall be guilty of a Class 1 misdemeanor
331 if, in the course of business, he:

332 1. Fraudulently obtains or retains certification as a small, women-owned, or minority-owned business
333 ~~or disadvantaged business;~~

334 2. Willfully makes a false statement knowing it to be untrue, whether by affidavit, report or other
335 representation, to an official or employee of a public body for the purpose of influencing the
336 certification or denial of certification of any business entity as a small, women-owned, or
337 minority-owned business; ~~or disadvantaged business;~~

338 3. Willfully obstructs or impedes any agency official or employee who is investigating the
339 qualifications of a business entity which has requested certification as a small, women-owned, or
340 minority-owned business; ~~or disadvantaged business;~~ or

341 4. Fraudulently obtains public moneys reserved for or allocated or available to small, women-owned,
342 or minority-owned businesses ~~or disadvantaged business.~~

343 B. For the purposes of this section, "minority-owned business," and "small business" and
344 "women-owned business" shall have the same meaning as those terms are defined in § 2.2-1604 and
345 ~~"disadvantaged business" shall mean the same as that term is defined in § 2.2-2311.~~

346 **2. That § 2.2-2311 of the Code of Virginia is repealed.**

347 **[3. That the Small Business Financing Authority and the Department of Small Business and**
348 **Supplier Diversity shall transfer cash balances in the Capital Access Fund for Disadvantaged**
349 **Businesses eliminated by this act to the Small, Women-owned and Minority-owned Business Loan**
350 **Fund established in this act.]**