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SENATE BILL NO. 1333

Offered January 15, 2015

A *BILL to amend and reenact §§ 2.2-1604 and 2.2-4310 of the Code of Virginia, relating to the Virginia Public Procurement Act; small, women-owned, and minority-owned businesses.*

Patron—Alexander

Referred to Committee on General Laws and Technology

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.

"Historically black colleges and university" includes any college or university that was established prior to 1964; whose principal mission was, and is, the education of black Americans; and that is accredited by a nationally recognized accrediting agency or association determined by the Secretary of Education.

"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, *or any historically black college or university, regardless of the percentage ownership by minority individuals or, in the case of a corporation, partnership, or limited liability company or other entity, the equity ownership interest in the corporation, partnership, or limited liability company or other entity.*

"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 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

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59 liability company or other entity, at least 51 percent of the equity ownership interest is owned by one or
60 more women who are U.S. citizens or legal resident aliens, and both the management and daily business
61 operations are controlled by one or more women.

62 **§ 2.2-4310. Discrimination prohibited; participation of small, women-owned, minority-owned,**
63 **and service disabled veteran-owned business.**

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

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

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

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

89 E. As used in this section:

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

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

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

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

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

105 "Minority-owned business" means a business that is at least 51 percent owned by one or more
106 minority individuals who are U.S. citizens or legal resident aliens, or in the case of a corporation,
107 partnership, or limited liability company or other entity, at least 51 percent of the equity ownership
108 interest in the corporation, partnership, or limited liability company or other entity is owned by one or
109 more minority individuals who are U.S. citizens or legal resident aliens, and both the management and
110 daily business operations are controlled by one or more minority individuals, *or any historically black*
111 *college or university as defined in § 2.2-1604, regardless of the percentage ownership by minority*
112 *individuals or, in the case of a corporation, partnership, or limited liability company or other entity, the*
113 *equity ownership interest in the corporation, partnership, or limited liability company or other entity.*

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

118 "Service disabled veteran business" means a business that is at least 51 percent owned by one or
119 more service disabled veterans or, in the case of a corporation, partnership, or limited liability company
120 or other entity, at least 51 percent of the equity ownership interest in the corporation, partnership, or

121 limited liability company or other entity is owned by one or more individuals who are service disabled
122 veterans and both the management and daily business operations are controlled by one or more
123 individuals who are service disabled veterans.

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

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

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