

15100878D

SENATE BILL NO. 885

Offered January 14, 2015

Prefiled January 7, 2015

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

Patrons—Petersen; Delegates: Simon and Surovell

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.

"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, that 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.

A. In the solicitation or awarding of contracts, no public body shall discriminate against a bidder or

INTRODUCED

SB885

59 offeror because of race, religion, color, sex, national origin, age, disability, status as a service disabled  
60 veteran, or any other basis prohibited by state law relating to discrimination in employment. Whenever  
61 solicitations are made, each public body shall include businesses selected from a list made available by  
62 the Department of Small Business and Supplier Diversity.

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

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

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

83 E. As used in this section:

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

**INTRODUCED**

SB885