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SENATE BILL NO. 885

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on General Laws
on February 17, 2015)

(Patron Prior to Substitute—Senator Petersen)

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.

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 average annual gross receipts of \$10 million or less averaged over the previous three years meets the small business size standards established by the regulations of the United States Small Business Administration. 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 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

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60 solicitations are made, each public body shall include businesses selected from a list made available by
61 the Department of Small Business and Supplier Diversity.

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

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

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

82 E. As used in this section:

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

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

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

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

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

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

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

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

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

"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. That the provisions of this act shall not become effective unless reenacted by the 2016 Session of the General Assembly.

3. That the Secretary of Commerce and Trade shall convene a workgroup of interested stakeholders to examine the definition of small business in §§ 2.2-1604 and 2.2-4310 of the Code of Virginia and report its findings and recommendations to the Governor and General Assembly on or before December 1, 2015.