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**HOUSE BILL NO. 725**

Offered January 10, 2018

Prefiled January 9, 2018

*A BILL to amend and reenact §§ 2.2-1604, 2.2-1617, and 2.2-4310 of the Code of Virginia, relating to the Department of Small Business and Supplier Diversity; Virginia Public Procurement Act; definition of small business.*

Patrons—Plum, Hope, Simon and Tyler

Referred to Committee on General Laws

**Be it enacted by the General Assembly of Virginia:**

**1. That §§ 2.2-1604, 2.2-1617, 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 (i) a business is determined to be a small, women-owned, or minority-owned business or (ii) an employment services organization, for the purpose of reporting small, women-owned, and minority-owned business and employment services organization 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, *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.

59 "State agency" means any authority, board, department, instrumentality, institution, agency, or other  
60 unit of state government. "State agency" does not include any county, city, or town.

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

66 **§ 2.2-1617. One-stop small business permitting program.**

67 A. As used in this article, unless the context requires a different meaning:

68 "Business Permitting Center" or "Center" means the business registration and permitting center  
69 established by this section and located in and under the administrative control of the Department.

70 "Comprehensive application" means a document incorporating pertinent data from existing  
71 applications for permits covered under this section.

72 "Comprehensive permit" means the single document designed for public display issued by the  
73 Business Permitting Center that certifies state agency permit approval and that incorporates the  
74 endorsements for individual permits included in the comprehensive permitting program.

75 "Comprehensive permitting program" or "Program" means the mechanism by which comprehensive  
76 permits are issued and renewed, permit and regulatory information is disseminated, and account data is  
77 exchanged by state agencies.

78 "Permit" means the whole or part of any state agency permit, license, certificate, approval,  
79 registration, charter, or any form or permission required by law, to engage in activity associated with or  
80 involving the establishment of a small business in the Commonwealth.

81 "Permit information packet" means a collection of information about permitting requirements and  
82 application procedures custom assembled for each request.

83 "Regulatory" means all permitting and other governmental or statutory requirements establishing a  
84 small business or professional activities associated with establishing a small business.

85 "Regulatory agency" means any state agency, board, commission, or division that regulates one or  
86 more professions, occupations, industries, businesses, or activities.

87 "Renewal application" means a document used to collect pertinent data for renewal of permits  
88 covered under this section.

89 "Small business" means an independently owned and operated business that, together with affiliates,  
90 has 250 or fewer employees ~~or~~ and average annual gross receipts of \$10 million or less averaged over  
91 the previous three years.

92 "Veteran" means an individual who has served in the active military, naval, or air service and who  
93 was discharged or released therefrom under conditions other than dishonorable.

94 B. There is created within the Department the comprehensive permitting program (the Program). The  
95 Program is established to serve as a single access point to aid entrepreneurs in filling out the various  
96 permit applications associated with establishing a small business in Virginia. The Program in no way  
97 supersedes or supplants any regulatory authority granted to any state agency with permits covered by  
98 this section. As part of the Program, the Department shall coordinate with the regulatory agency, and the  
99 regulatory agency shall determine, consistent with applicable law, what types of permits are appropriate  
100 for inclusion in the Program as well as the rules governing the submission of and payment for those  
101 permits. The website of the Department shall provide access to information regarding the Program. The  
102 Department shall have the power and duty to:

103 1. Create a comprehensive application that will allow an entrepreneur, or an agent thereof, seeking to  
104 establish a small business, to create accounts that will allow them to acquire the appropriate permits  
105 required in the Commonwealth. The comprehensive application shall:

106 a. Allow the business owner to choose a business type and to provide common information, such as  
107 name, address, and telephone number, on the front page, eliminating the need to repeatedly provide  
108 common information on each permit application;

109 b. Allow the business owner to preview and answer questions related to the operation of the  
110 business;

111 c. Provide business owners with a customized to-do agency checklist, which checklist shall provide  
112 the permit applications pertinent to each business type and provide the rules, regulations, and general  
113 laws applicable to each business type as well as local licensing information;

114 d. Allow the business owner to submit permit applications by electronic means as authorized by  
115 § 59.1-496 and to affix thereto his electronic signature as defined in § 59.1-480;

116 e. Allow the business owner to check on the status of applications online and to receive information  
117 from the permitting agencies electronically; and

118 f. Allow a business owner to submit electronic payment of application or permitting fees for  
119 applications that have been accepted by the permitting agency.

120 2. Develop and administer a computerized system program capable of storing, retrieving, and

exchanging permit information while protecting the confidentiality of information submitted to the Department to the extent allowable by law. Information submitted to the Department shall be subject to the provisions of the Virginia Freedom of Information Act (§ 2.2-3700 et seq.) as the same would apply were the information submitted directly to the Department or to any permitting agency.

3. Issue and renew comprehensive permits in an efficient manner.

4. Identify the types of permits appropriate for inclusion in the Program. The Department shall coordinate with the regulatory agency, and the regulatory agency shall determine, consistent with applicable law, what types of permits are appropriate for inclusion in the Program.

5. Incorporate permits into the Program.

6. Do all acts necessary or convenient to carry out the purposes of this chapter.

C. The Business Permitting Center shall compile information regarding the regulatory programs associated with each of the permits obtainable under the Program. This information shall include, at a minimum, a listing of the statutes and administrative rules requiring the permits and pertaining to the regulatory programs that are directly related to the permit. The Center shall provide information governed by this section to any person requesting it. Materials used by the Center to describe the services provided by the Center shall indicate that this information is available upon request.

D. Each state agency shall cooperate and provide reasonable assistance to the Department in the implementation of this section.

E. The State Corporation Commission and the Department of Small Business and Supplier Diversity shall:

1. By December 1, 2014, implement a hyperlink from the State Corporation Commission's eFile system to the Center that will facilitate the collection by the Center of a user's information to populate any forms that will be required to be completed at a future date, to the end that the user will not be required unnecessarily to reenter data or information into the forms when the user is accessing the Center; and

2. By June 30, 2018, fully integrate processes and forms into the Center and shall process all forms within 48 business hours from the time the applicant submits the form electronically.

The State Corporation Commission and the Center shall report on progress and any barriers to completion of the provisions of subdivision 1 biannually, on each December 1 and June 1, to the Governor, the Secretary of Commerce and Trade, the Secretary of Technology, and the chairs of the Senate Committees on Finance, General Laws and Technology, and Commerce and Labor and of the House Committees on Appropriations and Commerce and Labor.

F. Any person requiring permits that have been incorporated into the Program may submit a comprehensive application to the Department requesting the issuance of the permits. The comprehensive application form shall contain in consolidated form information necessary for the issuance of the permits.

G. The applicant, if not a veteran, shall include with the application the handling fee established by the Department. An applicant who is a veteran shall be exempt from payment of the handling fee prescribed by this subsection. The amount of the handling fee assessed against the applicant shall be set by the Department at a level necessary to cover the costs of administering the comprehensive permitting program.

H. The authority for approving the issuance and renewal of any requested permit that requires investigation, inspection, testing, or other judgmental review by the regulatory agency otherwise legally authorized to issue the permit shall remain with that agency. The Center may issue those permits for which proper fee payment and a completed application form have been received and for which no approval action is required by the regulatory agency.

I. Upon receipt of the application, and proper fee payment for any permit for which issuance is subject to regulatory agency action under subsection H, the Department shall immediately notify the State Corporation Commission or the regulatory agency with authority to approve the permit issuance or renewal requested by the applicant. The State Corporation Commission or the regulatory agency shall advise the Department within a reasonable time after receiving the notice of one of the following:

1. That the State Corporation Commission or the regulatory agency approves the issuance of the requested permit and will advise the applicant of any specific conditions required for issuing the permit;

2. That the State Corporation Commission or the regulatory agency denies the issuance of the permit and gives the applicant reasons for the denial;

3. That the application is pending; or

4. That the application is incomplete and further information from or action by the applicant is necessary.

J. The Department shall issue a comprehensive permit endorsed for all the approved permits to the applicant and advise the applicant of the status of other requested permits. The applicant shall be responsible for contesting any decision regarding conditions imposed or permits denied through the

182 normal process established by statute or by the State Corporation Commission or the regulatory agency  
183 with the authority for approving the issuance of the permit.

184 K. Regulatory agencies shall be provided information from the comprehensive application for their  
185 permitting and regulatory functions.

186 L. The Department shall be responsible for directing the applicant to make all payments for  
187 applicable fees established by the regulatory agency directly to the proper agency.

188 M. There is hereby created in the state treasury a special nonreverting fund to be known as the  
189 Comprehensive Permitting Fund, hereafter referred to as "the Fund." The Fund shall be established on  
190 the books of the Comptroller. The Fund shall consist of all moneys collected from the handling fee  
191 established by the Department pursuant to subsection G and such other funds as may be appropriated by  
192 the General Assembly. Interest earned on moneys in the Fund shall remain in the Fund and be credited  
193 to it. Any moneys remaining in the Fund, including interest thereon, at the end of each fiscal year shall  
194 not revert to the general fund but shall remain in the Fund. Moneys in the Fund shall be used solely to  
195 administer the Program. Expenditures and disbursements from the Fund shall be made by the State  
196 Treasurer on warrants issued by the Comptroller upon written request signed by the Director of the  
197 Department.

198 N. Unless otherwise directed by the regulatory agency, the Department shall not issue or renew a  
199 comprehensive permit to any person under any of the following circumstances:

200 1. The person does not have a valid tax registration, if required;

201 2. The person is a corporation, limited liability company, business trust, limited partnership, or  
202 registered limited liability partnership that (i) is delinquent in the payment of fees or penalties collected  
203 by the State Corporation Commission pursuant to the business entity statutes it administers, (ii) does not  
204 exist, or (iii) is not authorized to transact business in the Commonwealth pursuant to one of the business  
205 entity statutes administered by the State Corporation Commission; or

206 3. The person has not submitted the sum of all fees and deposits required for the requested  
207 individual permit endorsements, any outstanding comprehensive permit delinquency fee, or other fees  
208 and penalties to be collected through the comprehensive permitting program.

209 O. The Department may adopt regulations in accordance with § 2.2-1606 as may be necessary to  
210 carry out the purposes of this section.

211 **§ 2.2-4310. Discrimination prohibited; participation of small, women-owned, minority-owned,**  
212 **and service disabled veteran-owned business and employment services organization.**

213 A. In the solicitation or awarding of contracts, no public body shall discriminate against a bidder or  
214 offeror because of race, religion, color, sex, national origin, age, disability, status as a service disabled  
215 veteran, or any other basis prohibited by state law relating to discrimination in employment. Whenever  
216 solicitations are made, each public body shall include businesses selected from a list made available by  
217 the Department of Small Business and Supplier Diversity, which list shall include all companies and  
218 organizations certified by the Department.

219 B. All public bodies shall establish programs consistent with this chapter to facilitate the participation  
220 of small businesses, businesses owned by women, minorities, and service disabled veterans, and  
221 employment services organizations in procurement transactions. The programs established shall be in  
222 writing and shall comply with the provisions of any enhancement or remedial measures authorized by  
223 the Governor pursuant to subsection C or, where applicable, by the chief executive of a local governing  
224 body pursuant to § 15.2-965.1, and shall include specific plans to achieve any goals established therein.  
225 State agencies shall submit annual progress reports on (i) small, women-owned, and minority-owned  
226 business procurement, (ii) service disabled veteran-owned business procurement, and (iii) employment  
227 services organization procurement to the Department of Small Business and Supplier Diversity in a form  
228 specified by the Department of Small Business and Supplier Diversity. Contracts and subcontracts  
229 awarded to employment services organizations shall be credited toward the small business,  
230 women-owned, and minority-owned business contracting and subcontracting goals of state agencies and  
231 contractors. The Department of Small Business and Supplier Diversity shall make information on service  
232 disabled veteran-owned procurement available to the Department of Veterans Services upon request.

233 C. Whenever there exists (i) a rational basis for small business or employment services organization  
234 enhancement or (ii) a persuasive analysis that documents a statistically significant disparity between the  
235 availability and utilization of women-owned and minority-owned businesses, the Governor is authorized  
236 and encouraged to require state agencies to implement appropriate enhancement or remedial measures  
237 consistent with prevailing law. Any enhancement or remedial measure authorized by the Governor  
238 pursuant to this subsection for state public bodies may allow for small businesses certified by the  
239 Department of Small Business and Supplier Diversity or a subcategory of small businesses established as  
240 a part of the enhancement program to have a price preference over noncertified businesses competing for  
241 the same contract award on designated procurements, provided that the bid of the certified small  
242 business or the business in such subcategory of small businesses established as a part of an enhancement  
243 program does not exceed the low bid by more than five percent.

D. In awarding a contract for services to a small, women-owned, or minority-owned business that is certified in accordance with § 2.2-1606, or to a business identified by a public body as a service disabled veteran-owned business where the award is being made pursuant to an enhancement or remedial program as provided in subsection C, the public body shall include in every such contract of more than \$10,000 the following:

"If the contractor intends to subcontract work as part of its performance under this contract, the contractor shall include in the proposal a plan to subcontract to small, women-owned, minority-owned, and service disabled veteran-owned businesses."

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

F. As used in this section:

"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, or any historically black college or university as defined in § 2.2-1604, 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.

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

"Service disabled veteran business" means a business that is at least 51 percent owned by one or more service disabled veterans 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 individuals who are service disabled veterans and both the management and daily business operations are controlled by one or more individuals who are service disabled veterans.

"Small business" means a business, *that is* 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" 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

**305** more women who are U.S. citizens or legal resident aliens, and both the management and daily business  
**306** operations are controlled by one or more women.