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HOUSE BILL NO. 2164

Offered January 9, 2019

Prefiled January 8, 2019

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; definitions; small business.

Patrons—Davis and Lopez

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, together with affiliates, has 250 or fewer employees or average annual gross receipts, less the cost of goods sold by the business, 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

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59 unit of state government. "State agency" does not include any county, city, or town.

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

65 **§ 2.2-1617. One-stop small business permitting program.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

119 2. Develop and administer a computerized system program capable of storing, retrieving, and  
120 exchanging permit information while protecting the confidentiality of information submitted to the

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

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

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

128 5. Incorporate permits into the Program.

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

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

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

138 E. The State Corporation Commission and the Department of Small Business and Supplier Diversity  
139 shall by January 1, 2020, establish one or more processes by which data or information relevant to the  
140 Program can be collected and exchanged electronically.

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

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

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

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

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

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

164 3. That the application is pending; or

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

167 J. The Department shall issue a comprehensive permit endorsed for all the approved permits to the  
168 applicant and advise the applicant of the status of other requested permits. The applicant shall be  
169 responsible for contesting any decision regarding conditions imposed or permits denied through the  
170 normal process established by statute or by the State Corporation Commission or the regulatory agency  
171 with the authority for approving the issuance of the permit.

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

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

176 M. There is hereby created in the state treasury a special nonreverting fund to be known as the  
177 Comprehensive Permitting Fund, hereafter referred to as "the Fund." The Fund shall be established on  
178 the books of the Comptroller. The Fund shall consist of all moneys collected from the handling fee  
179 established by the Department pursuant to subsection G and such other funds as may be appropriated by  
180 the General Assembly. Interest earned on moneys in the Fund shall remain in the Fund and be credited  
181 to it. Any moneys remaining in the Fund, including interest thereon, at the end of each fiscal year shall

182 not revert to the general fund but shall remain in the Fund. Moneys in the Fund shall be used solely to  
183 administer the Program. Expenditures and disbursements from the Fund shall be made by the State  
184 Treasurer on warrants issued by the Comptroller upon written request signed by the Director of the  
185 Department.

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

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

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

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

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

199 **§ 2.2-4310. Discrimination prohibited; participation of small, women-owned, minority-owned,  
200 and service disabled veteran-owned businesses and employment services organizations.**

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

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

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

233 D. In awarding a contract for services to a small, women-owned, or minority-owned business that is  
234 certified in accordance with § 2.2-1606, or to a business identified by a public body as a service  
235 disabled veteran-owned business where the award is being made pursuant to an enhancement or remedial  
236 program as provided in subsection C, the public body shall include in every such contract of more than  
237 \$10,000 the following:

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

241 E. In the solicitation or awarding of contracts, no state agency, department or institution shall  
242 discriminate against a bidder or offeror because the bidder or offeror employs ex-offenders unless the  
243 state agency, department or institution has made a written determination that employing ex-offenders on

244 the specific contract is not in its best interest.

245 F. As used in this section:

246 "Employment services organization" means an organization that provides community-based  
247 employment services to individuals with disabilities that is an approved Commission on Accreditation of  
248 Rehabilitation Facilities (CARF) accredited vendor of the Department for Aging and Rehabilitative  
249 Services.

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

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

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

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

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

265 "Minority-owned business" means a business that is at least 51 percent owned by one or more  
266 minority individuals who are U.S. citizens or legal resident aliens, or in the case of a corporation,  
267 partnership, or limited liability company or other entity, at least 51 percent of the equity ownership  
268 interest in the corporation, partnership, or limited liability company or other entity is owned by one or  
269 more minority individuals who are U.S. citizens or legal resident aliens, and both the management and  
270 daily business operations are controlled by one or more minority individuals, or any historically black  
271 college or university as defined in § 2.2-1604, regardless of the percentage ownership by minority  
272 individuals or, in the case of a corporation, partnership, or limited liability company or other entity, the  
273 equity ownership interest in the corporation, partnership, or limited liability company or other entity.

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

278 "Service disabled veteran business" means a business that is at least 51 percent owned by one or  
279 more service disabled veterans or, in the case of a corporation, partnership, or limited liability company  
280 or other entity, at least 51 percent of the equity ownership interest in the corporation, partnership, or  
281 limited liability company or other entity is owned by one or more individuals who are service disabled  
282 veterans and both the management and daily business operations are controlled by one or more  
283 individuals who are service disabled veterans.

284 "Small business" means a business, independently owned and controlled by one or more individuals  
285 who are U.S. citizens or legal resident aliens, and together with affiliates, has 250 or fewer employees,  
286 ~~or~~ and average annual gross receipts, less the cost of goods sold by the business, of \$10 million or less  
287 averaged over the previous three years. One or more of the individual owners shall control both the  
288 management and daily business operations of the small business.

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

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