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HOUSE BILL NO. 1491

Offered January 11, 2023

Prefiled January 3, 2023

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.

Patron—Davis

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, or in the case of a cooperative association organized pursuant to Chapter 3 (§ 13.1-301 et seq.) of Title 13.1 as a nonstock corporation, is at least 51 percent independently controlled by one or more members, who are U.S. citizens or legal resident aliens and, together with affiliates, has 250 or fewer employees ~~or~~ and 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

59 owners or members shall control both the management and daily business operations of the small
60 business.

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

63 "SWaM" means small, women-owned, or minority-owned or related to a small, women-owned, or
64 minority-owned business.

65 "SWaM plan" means a written program, plan, or progress report submitted by a state agency to the
66 Department pursuant to § 2.2-4310.

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

72 **§ 2.2-1617. One-stop small business permitting program.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

115 b. Allow the business owner to preview and answer questions related to the operation of the
116 business;

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

120 d. Allow the business owner to submit permit applications by electronic means as authorized by

§ 59.1-496 and to affix thereto his electronic signature as defined in § 59.1-480;

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

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

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. Regulatory agencies shall, by November 30 of each year, provide the Department with information outlining any changes to the agency's policies and regulations. 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 by January 1, 2020, establish one or more processes by which data or information relevant to the Program can be collected and exchanged electronically.

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

K. Regulatory agencies shall be provided information from the comprehensive application for their

182 permitting and regulatory functions.

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

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

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

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

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

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

206 O. The Department shall develop and provide guidance to businesses with newly approved permits
207 regarding responsibilities and requirements for maintaining such business. Such guidance shall include
208 information regarding sales tax and unemployment tax requirements, workers' compensation insurance
209 requirements, and postings required by the Virginia Department of Labor and Industry and the U.S.
210 Department of Labor. Any guidance provided for in this subsection may be provided electronically.

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

213 **§ 2.2-4310. Discrimination prohibited; participation of small, women-owned, minority-owned,**
214 **and service disabled veteran-owned businesses and employment services organizations.**

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

221 B. All public bodies shall establish programs consistent with this chapter to facilitate the participation
222 of small businesses, businesses owned by women, minorities, and service disabled veterans, and
223 employment services organizations in procurement transactions. The programs established shall be in
224 writing and shall comply with the provisions of any enhancement or remedial measures authorized by
225 the Governor pursuant to subsection C or, where applicable, by the chief executive of a local governing
226 body pursuant to § 15.2-965.1, and shall include specific plans to achieve any goals established therein.
227 State agencies shall submit annual progress reports on (i) small, women-owned, and minority-owned
228 business procurement, (ii) service disabled veteran-owned business procurement, and (iii) employment
229 services organization procurement to the Department of Small Business and Supplier Diversity in a form
230 specified by the Department of Small Business and Supplier Diversity. All state agencies shall cooperate
231 with the Department of Small Business and Supplier Diversity's annual review of their programs
232 pursuant to § 2.2-1605 and shall update such programs to incorporate any feedback and suggestions for
233 improvement. Contracts and subcontracts awarded to employment services organizations and service
234 disabled veteran-owned businesses shall be credited toward the small business, women-owned, and
235 minority-owned business contracting and subcontracting goals of state agencies and contractors. The
236 Department of Small Business and Supplier Diversity shall make information on service disabled
237 veteran-owned procurement available to the Department of Veterans Services upon request.

238 C. Whenever there exists (i) a rational basis for small business or employment services organization
239 enhancement or (ii) a persuasive analysis that documents a statistically significant disparity between the
240 availability and utilization of women-owned and minority-owned businesses, the Governor is authorized
241 and encouraged to require state agencies to implement appropriate enhancement or remedial measures
242 consistent with prevailing law. Any enhancement or remedial measure authorized by the Governor
243 pursuant to this subsection for state public bodies may allow for small businesses certified by the

Department of Small Business and Supplier Diversity or a subcategory of small businesses established as a part of the enhancement program to have a price preference over noncertified businesses competing for the same contract award on designated procurements, provided that the bid of the certified small business or the business in such subcategory of small businesses established as a part of an enhancement 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, independently owned and controlled by one or more individuals, or in the case of a cooperative association organized pursuant to Chapter 3 (§ 13.1-301 et seq.) of Title 13.1 as a nonstock corporation, controlled by one or more members, who are U.S. citizens or legal resident aliens, and together with affiliates, has 250 or fewer employees; ~~or~~ *and average* annual gross receipts, *less the cost of goods sold by the business*, of \$10 million or less averaged over the previous

305 three years. One or more of the individual owners or members shall control both the management and
306 daily business operations of the small business.

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

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