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SENATE BILL NO. 523

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on General Laws and Technology
on January 23, 2012)

(Patron Prior to Substitute—Senator Hanger)

A BILL to amend and reenact §§ 2.2-1401 and 2.2-1403 of the Code of Virginia, relating to the Department of Minority Business Enterprise; certification of employment services organizations.

Be it enacted by the General Assembly of Virginia:

1. That §§ 2.2-1401 and 2.2-1403 of the Code of Virginia are amended and reenacted as follows:

§ 2.2-1401. 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 §§ 2.2-1404 and 2.2-1405.

"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 of 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, 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%~~ 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%~~ 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%~~ 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 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%~~ 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%~~ 51 percent of the equity ownership interest is owned by one or more women who are citizens of the United States or legal resident aliens, and both the management and daily business operations are controlled by one or more women.

§ 2.2-1403. Powers of Director.

As deemed necessary or appropriate to better fulfill the duties of the Department, the Director may:

1. With the participation of other state departments and agencies, develop comprehensive plans and specific program goals for the small, women-owned, and minority-owned business programs; establish regular performance monitoring and reporting systems to assure that goals of state agencies and institutions are being achieved; and evaluate the impact of federal and state support in achieving objectives.

2. Employ the necessary personnel and/or subcontract according to his discretion, with localities to supplement the functions of business development organizations.

SENATE SUBSTITUTE

SB523S1

- 60 3. Assure the coordinated review of all proposed state training and technical assistance activities in
61 direct support of the small, women-owned, and minority-owned business programs to ensure consistency
62 with program goals and to avoid duplication.
- 63 4. Convene, for purposes of coordination, meetings of the heads of departments and agencies, or their
64 designees, whose programs and activities may affect or contribute to the purposes of this chapter.
- 65 5. Convene business leaders, educators, and other representatives of the private sector who are
66 engaged in assisting the development of small, women-owned, and minority-owned business programs or
67 who could contribute to its development, for the purpose of proposing, evaluating or coordinating
68 governmental and private activities in furtherance of the objectives of this chapter.
- 69 6. Provide the managerial and organizational framework through which joint undertakings with state
70 departments or agencies or private organizations can be planned and implemented.
- 71 7. Recommend appropriate legislative or executive actions.
- 72 8. Adopt regulations to implement certification programs for small, *women-owned* and
73 minority-owned businesses *and employment services organizations*, which regulations shall be exempt
74 from the Administrative Process Act (§ 2.2-4000 et seq.) pursuant to subdivision B 2 of § 2.2-4002.
75 Such certification programs shall deny certification to vendors from states that deny like certifications to
76 Virginia-based small, women-owned or minority-owned businesses *and employment services*
77 *organizations* or that provide a preference for small, women-owned, or minority-owned businesses *and*
78 *employment services organizations* based in that state that is not available to Virginia-based businesses.
79 The regulations shall (i) establish minimum requirements for certification of small, *women-owned* and
80 minority-owned businesses *and employment services organizations*; (ii) provide a process for evaluating
81 existing local, state, private sector, and federal certification programs that meet the minimum
82 requirements; and (iii) mandate certification, without any additional paperwork, of any prospective state
83 vendor that has obtained certification under any certification program that is determined to meet the
84 minimum requirements established in the regulations *and to any employment services organization that*
85 *has been approved by the Department of Rehabilitative Services*.
- 86 9. Establish an interdepartmental board in accordance with § 2.2-1404 to supply the Director with
87 information useful in promoting minority business activity.