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**HOUSE BILL NO. 1854**

Offered January 14, 2015

Prefiled January 13, 2015

*A BILL to amend and reenact §§ 2.2-1605 and 2.2-4310 of the Code of Virginia, relating to the Virginia Public Procurement Act; small, women-owned, and minority-owned businesses.*

Patrons—Adams, Garrett, Head and Ramadan

Referred to Committee on General Laws

**Be it enacted by the General Assembly of Virginia:****1. That §§ 2.2-1605 and 2.2-4310 of the Code of Virginia are amended and reenacted as follows:****§ 2.2-1605. Powers and duties of Department.**

A. The Department shall have the following powers and duties:

1. Coordinate as consistent with prevailing law the plans, programs, and operations of the state government that affect or may contribute to the establishment, preservation, and strengthening of small, women-owned, and minority-owned businesses;

2. Promote the mobilization of activities and resources of state and local governments, businesses and trade associations, universities, foundations, professional organizations, and volunteer and other groups towards the growth of small businesses and businesses owned by women and minorities, and facilitate the coordination of the efforts of these groups with those of state departments and agencies;

3. Establish a center for the development, collection, summarization, and dissemination of information that will be helpful to persons and organizations throughout the nation in undertaking or promoting procurement from small, women-owned, and minority-owned businesses;

4. Consistent with prevailing law and availability of funds, and according to the Director's discretion, provide technical and management assistance to small, women-owned, and minority-owned businesses and defray all or part of the costs of pilot or demonstration projects that are designed to overcome the special problems of small, women-owned, and minority-owned businesses;

5. Manage the Capital Access Fund for Disadvantaged Businesses created pursuant to § 2.2-2311 and, in cooperation with the Small Business Financing Authority, determine the qualifications, terms, and conditions for the use of such Fund; ~~and~~

6. Implement any remediation or enhancement measure for small, women-owned, or minority-owned businesses as may be authorized by the Governor pursuant to subsection C of § 2.2-4310 and develop regulations, consistent with prevailing law, for program implementation. Such regulations shall be developed in consultation with the state agencies with procurement responsibility and promulgated by those agencies in accordance with applicable law; *and*

7. *Receive and investigate complaints that a business certified pursuant to this chapter has subcontracted more than 60 percent of a contract awarded to a remedial or enhancement measure under subsection C of § 2.2-4310. If the Department determines that a business certified pursuant to this section has violated the contract provision required by subsection D of § 2.2-4310, the certification of such business shall be revoked for a period of one year. After the one-year period, the business may reapply for certification.*

B. In addition, the Department shall serve as the liaison between the Commonwealth's existing businesses and state government in order to promote the development of Virginia's economy. To that end, the Department shall:

1. Encourage the training or retraining of individuals for specific employment opportunities at new or expanding business facilities in the Commonwealth;

2. Develop and implement programs to assist small businesses in the Commonwealth in order to promote their growth and the creation and retention of jobs for Virginians;

3. Establish an industry program that is the principal point of communication between basic employers in the Commonwealth and the state government that will address issues of significance to business;

4. Make available to existing businesses, in conjunction and cooperation with localities, chambers of commerce, and other public and private groups, basic information and pertinent factors of interest and concern to such businesses;

5. Develop statistical reports on job creation and the general economic conditions in the Commonwealth; *and*

6. Administer the Small Business Jobs Grant Fund Program and the Small Business Investment Grant Fund described in Article 2 (§ 2.2-1611 et seq.).

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59 C. All agencies of the Commonwealth shall assist the Department upon request and furnish such  
60 information and assistance as the Department may require in the discharge of its duties.

61 **§ 2.2-4310. Discrimination prohibited; participation of small, women-owned, minority-owned,**  
62 **and service disabled veteran-owned business.**

63 A. In the solicitation or awarding of contracts, no public body shall discriminate against a bidder or  
64 offeror because of race, religion, color, sex, national origin, age, disability, status as a service disabled  
65 veteran, or any other basis prohibited by state law relating to discrimination in employment. Whenever  
66 solicitations are made, each public body shall include businesses selected from a list made available by  
67 the Department of Small Business and Supplier Diversity.

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

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

84 D. *In awarding a contract for services to a small, women-owned, or minority-owned business that is*  
85 *certified in accordance with § 2.2-1606, or to a business identified by a public body as a service*  
86 *disabled veteran-owned business, the public body shall include in every such contract of more than*  
87 *\$10,000 the following:*

88 *"During the performance of this contract, the contractor agrees that no more than 60 percent of the*  
89 *contracted work will be subcontracted to a business that is not certified as a small, women-owned, or*  
90 *minority-owned business, or a service disabled veteran-owned business, except where there is a bona*  
91 *fide occupational qualification reasonably necessary to the normal operation of the contractor. The*  
92 *contractor agrees to post in conspicuous places, available to employees and applicants for employment,*  
93 *notices setting forth the provisions of this clause. Notices, advertisements, and solicitations placed in*  
94 *accordance with federal law, rule, or regulation shall be deemed sufficient posting."*

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

99 ~~E.~~ F. As used in this section:

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

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

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

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

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

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

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

125 "Service disabled veteran business" means a business that is at least 51 percent owned by one or  
126 more service disabled veterans or, in the case of a corporation, partnership, or limited liability company  
127 or other entity, at least 51 percent of the equity ownership interest in the corporation, partnership, or  
128 limited liability company or other entity is owned by one or more individuals who are service disabled  
129 veterans and both the management and daily business operations are controlled by one or more  
130 individuals who are service disabled veterans.

131 "Small business" means a business, independently owned and controlled by one or more individuals  
132 who are U.S. citizens or legal resident aliens, and together with affiliates, has 250 or fewer employees,  
133 or annual gross receipts of \$10 million or less averaged over the previous three years. One or more of  
134 the individual owners shall control both the management and daily business operations of the small  
135 business.

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

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