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SENATE BILL NO. 119

Offered January 13, 2016

Prefiled December 28, 2015

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

Patron—Petersen

Referred to Committee on General Laws and Technology

Be it enacted by the General Assembly of Virginia:**1. That §§ 2.2-1604 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 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 §§ 2.2-1608 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 of \$10 million or less averaged over the previous three years meets the small business size standards established by the regulations of the U.S. Small Business Administration. 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" does not include any county, city, or town.

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

64 **§ 2.2-4310. Discrimination prohibited; participation of small, women-owned, minority-owned,**
65 **and service disabled veteran-owned business.**

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

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

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

87 D. In awarding a contract for services to a small, women-owned, or minority-owned business that is
88 certified in accordance with § 2.2-1606, or to a business identified by a public body as a service
89 disabled veteran-owned business where the award is being made pursuant to an enhancement or remedial
90 program as provided in subsection C, the public body shall include in every such contract of more than
91 \$10,000 the following:

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

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 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, 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 who are U.S. citizens or legal resident aliens, and together with affiliates, ~~has 250 or fewer employees, or annual gross receipts of \$10 million or less averaged over the previous three years~~ *meets the small business size standards established by the regulations of the U.S. Small Business Administration*. 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 more women who are U.S. citizens or legal resident aliens, and both the management and daily business operations are controlled by one or more women.