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**HOUSE BILL NO. 1829**

Offered January 11, 2023

Prefiled January 10, 2023

*A BILL to amend and reenact §§ 2.2-1605, 2.2-4310, and 15.2-950 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 2.2-115.2, relating to grant and procurement awards; certification for small, women-owned, or minority-owned businesses.*

Patron—Torian

Referred to Committee on General Laws

**Be it enacted by the General Assembly of Virginia:**

**1. That §§ 2.2-1605, 2.2-4310, and 15.2-950 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 2.2-115.2 as follows:**

**§ 2.2-115.2. Grants issued by the Commonwealth; recruitment for certification for procurement enhancement.**

*For any grant program administered by the Governor or a state agency, the Governor or such agency shall inquire of the grant recipient whether it is a small business, women-owned business, or minority-owned business, as such terms are defined in § 2.2-1604, and whether it has obtained certification pursuant to subsection 8 of § 2.2-1606. If such inquiry reveals that a business is eligible but not certified, the Governor or state agency shall notify the Department of Small Business and Supplier Diversity, which shall contact such business, provide it with information on the certification process and its benefits, and encourage it to apply for certification.*

**§ 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, baccalaureate institutions of higher education, 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. Advise the Small Business Financing Authority on the management and administration of the Small, Women-owned, and Minority-owned Business Loan Fund created pursuant to § 2.2-2311.1;

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;

7. Receive and coordinate, with the appropriate state agency, the investigation of complaints that a business certified pursuant to this chapter has failed to comply with its subcontracting plan under subsection D of § 2.2-4310. If the Department determines that a business certified pursuant to this chapter has failed to comply with the subcontracting plan, the business shall provide a written explanation; and

8. Facilitate relationships between established businesses and start-up women-owned and minority-owned businesses by creating and administering a mentorship program under the provisions of § 2.2-1605.1.

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

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59 expanding business facilities in the Commonwealth;

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

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

65 4. Make available to existing businesses, in conjunction and cooperation with localities, chambers of  
66 commerce, and other public and private groups, basic information and pertinent factors of interest and  
67 concern to such businesses, *including contacting, providing information on the certification process and*  
68 *its benefits to, and encouraging application for certification by businesses identified through*  
69 *§§ 2.2-115.2, 2.2-4310, and 15.2-950;*

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

72 6. Annually review and provide feedback on SWaM plans. The review shall focus on strategies state  
73 agencies can use to improve SWaM spending, increase procurement of goods and services from SWaM  
74 businesses, and meet procurement goals outlined in SWaM plans. The Department shall encourage state  
75 agencies to integrate such strategies with all current and future procurements. The Department shall  
76 suggest strategies that may be more effective or changes to strategies that have not been effective. Upon  
77 request of a state agency, the Department shall meet with the state agency one-on-one to discuss its  
78 SWaM goals and strategies and advise it on effective strategies. The Department shall research and  
79 compile information that state agencies can use to increase SWaM spending and shall develop and  
80 publish guidance on how state agencies can implement these strategies.

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

83 **§ 2.2-4310. Discrimination prohibited; participation of small, women-owned, minority-owned,**  
84 **and service disabled veteran-owned businesses and employment services organizations.**

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

91 B. All public bodies shall establish programs consistent with this chapter to facilitate the participation  
92 of small businesses, businesses owned by women, minorities, and service disabled veterans, and  
93 employment services organizations in procurement transactions. The programs established shall be in  
94 writing and shall comply with the provisions of any enhancement or remedial measures authorized by  
95 the Governor pursuant to subsection C or, where applicable, by the chief executive of a local governing  
96 body pursuant to § 15.2-965.1, and shall include specific plans to achieve any goals established therein.  
97 State agencies shall submit annual progress reports on (i) small, women-owned, and minority-owned  
98 business procurement, (ii) service disabled veteran-owned business procurement, and (iii) employment  
99 services organization procurement to the Department of Small Business and Supplier Diversity in a form  
100 specified by the Department of Small Business and Supplier Diversity. All state agencies shall cooperate  
101 with the Department of Small Business and Supplier Diversity's annual review of their programs  
102 pursuant to § 2.2-1605 and shall update such programs to incorporate any feedback and suggestions for  
103 improvement. Contracts and subcontracts awarded to employment services organizations and service  
104 disabled veteran-owned businesses shall be credited toward the small business, women-owned, and  
105 minority-owned business contracting and subcontracting goals of state agencies and contractors. The  
106 Department of Small Business and Supplier Diversity shall make information on service disabled  
107 veteran-owned procurement available to the Department of Veterans Services upon request.

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

119 D. 1. In awarding a contract for services to a small, women-owned, or minority-owned business that  
120 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."

2. Any public body that solicits or awards a contract pursuant to this chapter shall inquire of the bidder, offeror, or contractor whether it is a small business, women-owned business, or minority-owned business and whether such business has obtained certification pursuant to subsection 8 of § 2.2-1606. If such inquiry reveals that a business is eligible but not certified, the public body shall notify the Department of Small Business and Supplier Diversity, which shall contact such business, provide such business with information on the certification process and its benefits, and encourage such business to apply for certification.

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 annual gross receipts of \$10 million or less averaged over the previous three years. One or more of the individual owners or

182 members shall control both the management and daily business operations of the small business.

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

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

190 **§ 15.2-950. Appropriations.**

191 A locality may make appropriations for the purposes for which it is empowered to levy taxes and  
192 make assessments, for the support of the locality, for the performance of its functions, and the  
193 accomplishment of all other lawful purposes and objectives, subject to such limitations as may be  
194 imposed by law.

195 *For any grant program administered by a locality, the locality shall inquire of the grant recipient*  
196 *whether it is a small business, women-owned business, or minority-owned business, as such terms are*  
197 *defined in § 2.2-1604, and whether such business has obtained certification pursuant to subsection 8 of*  
198 *§ 2.2-1606. If such inquiry reveals that a business is eligible but not certified, the locality shall notify*  
199 *the Department of Small Business and Supplier Diversity, which shall contact such business, provide it*  
200 *with information on the certification process and its benefits, and encourage it to apply for certification.*