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HOUSE BILL NO. 819

Offered January 12, 2022

Prefiled January 12, 2022

A BILL to amend and reenact §§ 2.2-1610 and 58.1-3703 of the Code of Virginia, relating to the Department of Small Business and Supplier Diversity; collecting and reporting local tax data.

Patron—Torian

Committee Referral Pending

Be it enacted by the General Assembly of Virginia:

1. That §§ 2.2-1610 and 58.1-3703 of the Code of Virginia are amended and reenacted as follows:

§ 2.2-1610. Reports and recommendations; collection of data.

The Director shall, from time to time, submit directly or through an assistant to the Governor his recommendations for legislation or other action as he deems desirable to promote the purposes of this chapter.

The Director shall report, on or before November 1 of each year, to the Governor and the General Assembly the identity of the state departments and agencies failing to submit annual progress reports on small, women-owned, and minority-owned business procurement required by § 2.2-4310 and the nature and extent of such lack of compliance. The annual report shall include recommendations on the ways to improve compliance with the provisions of § 2.2-4310 and such other related matters as the Director deems appropriate.

The Director, with the assistance of the Comptroller, shall develop and implement a systematic data collection process that will provide information for a report to the Governor and General Assembly on state expenditures to small, women-owned, and minority-owned businesses during the previous fiscal year.

The Director shall establish a pilot program for localities to use the administration of the BPOL tax to collect data from businesses on their certification status. The Department shall select 10 localities and direct them to include on all BPOL tax returns a request for information from the business filing the return. The request shall be for information on (i) whether the business is a women-owned or minority-owned business, (ii) whether the business has obtained a certification as a women-owned or minority-owned business pursuant to this chapter, (iii) the industry sector of the business, (iv) the business's revenues for the past five years, and (v) any other information deemed relevant by the Department. Any request for information from a business under this section shall include an option for the business to decline to provide any such information. The Department shall aggregate and anonymize all information collected pursuant to the provisions of this section and report annually to the Governor and the General Assembly on such information. For purposes of this section, "BPOL tax" means any tax or fee imposed under the provisions of Chapter 37 (§ 58.1-3700 et seq.) of Title 58.1.

An institution exercising authority granted under this section shall promptly make available to the Department, upon request, copies of its procurement records, receipts, and transactions in regard to procurement from small, women-owned, and minority-owned businesses in order for the Department to ensure institution compliance with its approved reporting and certification criteria.

§ 58.1-3703. Counties, cities and towns may impose local license taxes and fees; limitation of authority.

A. The governing body of any county, city or town may charge a fee for issuing a license in an amount not to exceed \$100 for any locality with a population greater than 50,000, \$50 for any locality with a population of 25,000 but no more than 50,000 and \$30 for any locality with a population smaller than 25,000. For purposes of this section, population may be based on the most current final population estimates of the Weldon Cooper Center for Public Service of the University of Virginia. Such governing body may levy and provide for the assessment and collection of county, city or town license taxes on businesses, trades, professions, occupations and callings and upon the persons, firms and corporations engaged therein within the county, city or town subject to the limitations in (i) subsection C and (ii) subsection A of § 58.1-3706, provided such tax shall not be assessed and collected on any amount of gross receipts of each business upon which a license fee is charged. Any county, city or town with a population greater than 50,000 shall reduce the fee to an amount not to exceed \$50 by January 1, 2000. The ordinance imposing such license fees and levying such license taxes shall include the provisions of § 58.1-3703.1.

B. Any county, city or town by ordinance may exempt in whole or in part from the license tax (i) the design, development or other creation of computer software for lease, sale or license and (ii) private

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59 businesses and industries entering into agreements for the establishment, installation, renovation,
60 remodeling, or construction of satellite classrooms for grades kindergarten through three on a site owned
61 by the business or industry and leased to the school board at no costs pursuant to § 22.1-26.1.

62 C. No county, city, or town shall impose a license fee or levy any license tax:

63 1. On any public service corporation or any motor carrier, common carrier, or other carrier of
64 passengers or property formerly certified by the Interstate Commerce Commission or presently registered
65 for insurance purposes with the Surface Transportation Board of the United States Department of
66 Transportation, Federal Highway Administration, except as provided in § 58.1-3731 or as permitted by
67 other provisions of law;

68 2. For selling farm or domestic products or nursery products, ornamental or otherwise, or for the
69 planting of nursery products, as an incident to the sale thereof, outside of the regular market houses and
70 sheds of such county, city or town, provided such products are grown or produced by the person
71 offering them for sale;

72 3. Upon the privilege or right of printing or publishing any newspaper, magazine, newsletter or other
73 publication issued daily or regularly at average intervals not exceeding three months, provided the
74 publication's subscription sales are exempt from state sales tax, or for the privilege or right of operating
75 or conducting any radio or television broadcasting station or service;

76 4. On a manufacturer for the privilege of manufacturing and selling goods, wares and merchandise at
77 wholesale at the place of manufacture. For purposes of this subdivision, this shall include a manufacturer
78 that is also a defense production business selling manufacturing, rebuilding, repair, and maintenance
79 services at the place of manufacture (i) to the United States or (ii) for which consent of the United
80 States is required;

81 5. On a person engaged in the business of severing minerals from the earth for the privilege of
82 selling the severed mineral at wholesale at the place of severance, except as provided in §§ 58.1-3712
83 and 58.1-3713;

84 6. Upon a wholesaler for the privilege of selling goods, wares and merchandise to other persons for
85 resale unless such wholesaler has a definite place of business or store in such county, city or town. This
86 subdivision shall not be construed as prohibiting any county, city or town from imposing a local license
87 tax on a peddler at wholesale pursuant to § 58.1-3718;

88 7. Upon any person, firm or corporation for engaging in the business of renting, as the owner of
89 such property, real property other than hotels, motels, motor lodges, auto courts, tourist courts, travel
90 trailer parks, campgrounds, bed and breakfast establishments, lodging houses, rooming houses, and
91 boardinghouses; however, any county, city or town imposing such a license tax on January 1, 1974,
92 shall not be precluded from the levy of such tax by the provisions of this subdivision;

93 8. [Repealed.]

94 9. On or measured by receipts for management, accounting, or administrative services provided on a
95 group basis under a nonprofit cost-sharing agreement by a corporation which is an agricultural
96 cooperative association under the provisions of Article 2 (§ 13.1-312 et seq.) of Chapter 3 of Title 13.1,
97 or a member or subsidiary or affiliated association thereof, to other members of the same group. This
98 exemption shall not exempt any such corporation from such license or other tax measured by receipts
99 from outside the group;

100 10. On or measured by receipts or purchases by an entity which is a member of an affiliated group
101 of entities from other members of the same affiliated group. This exclusion shall not exempt affiliated
102 entities from such license or other tax measured by receipts or purchases from outside the affiliated
103 group. This exclusion also shall not preclude a locality from levying a wholesale merchant's license tax
104 on an affiliated entity on those sales by the affiliated entity to a nonaffiliated entity, notwithstanding the
105 fact that the wholesale merchant's license tax would be based upon purchases from an affiliated entity.
106 Such tax shall be based on the purchase price of the goods sold to the nonaffiliated entity. As used in
107 this subdivision, the term "sales by the affiliated entity to a nonaffiliated entity" means sales by the
108 affiliated entity to a nonaffiliated entity where goods sold by the affiliated entity or its agent are
109 manufactured or stored in the Commonwealth prior to their delivery to the nonaffiliated entity;

110 11. On any insurance company subject to taxation under Chapter 25 (§ 58.1-2500 et seq.) of this title
111 or on any agent of such company;

112 12. On any bank or trust company subject to taxation in Chapter 12 (§ 58.1-1200 et seq.) of this
113 title;

114 13. Upon a taxicab driver, if the locality has imposed a license tax upon the taxicab company for
115 which the taxicab driver operates;

116 14. On any blind person operating a vending stand or other business enterprise under the jurisdiction
117 of the Department for the Blind and Vision Impaired, or a nominee of the Department, as set forth in
118 § 51.5-98;

119 15. [Expired.]

120 16. [Repealed.]

121 17. On an accredited religious practitioner in the practice of the religious tenets of any church or
122 religious denomination. "Accredited religious practitioner" shall be defined as one who is engaged solely
123 in praying for others upon accreditation by such church or religious denomination;

124 18. a. On or measured by receipts of a nonprofit organization described in Internal Revenue Code
125 § 501(c)(3) or 501(c)(19) except to the extent the organization has receipts from an unrelated trade or
126 business the income of which is taxable under Internal Revenue Code § 511 et seq. For the purpose of
127 this subdivision, "nonprofit organization" means an organization that is described in Internal Revenue
128 Code § 501(c)(3) or 501(c)(19), and to which contributions are deductible by the contributor under
129 Internal Revenue Code § 170, except that educational institutions exempt from federal income tax under
130 Internal Revenue Code § 501(c)(3) shall be limited to schools, colleges, and other similar institutions of
131 learning.

132 b. On or measured by gifts, contributions, and membership dues of a nonprofit organization.
133 Activities conducted for consideration that are similar to activities conducted for consideration by
134 for-profit businesses shall be presumed to be activities that are part of a business subject to licensure.
135 For the purpose of this subdivision, "nonprofit organization" means an organization exempt from federal
136 income tax under Internal Revenue Code § 501 other than the nonprofit organizations described in
137 subdivision a;

138 19. On any venture capital fund or other investment fund, except commissions and fees of such
139 funds. Gross receipts from the sale and rental of real estate and buildings remain taxable by the locality
140 in which the real estate is located provided the locality is otherwise authorized to tax such businesses
141 and rental of real estate;

142 20. On total assessments paid by condominium unit owners for common expenses. "Common
143 expenses" and "unit owner" have the same meanings as in § 55.1-1900; or

144 21. On or measured by receipts of a qualifying transportation facility directly or indirectly owned or
145 title to which is held by the Commonwealth or any political subdivision thereof or by the United States
146 as described in § 58.1-3606.1 and developed and/or operated pursuant to a concession under the
147 Public-Private Transportation Act of 1995 (§ 33.2-1800 et seq.) or similar federal law.

148 D. Any county, city or town may establish by ordinance a business license incentive program for
149 "qualifying businesses." For purposes of this subsection, a "qualifying business" is a business that locates
150 for the first time in the locality adopting such ordinance. A business shall not be deemed to locate in
151 such locality for the first time based on merger, acquisition, similar business combination, name change,
152 or a change in business form. Any incentive established pursuant to this subsection may extend for a
153 period not to exceed two years from the date the business locates in such locality. The business license
154 incentive program may include (i) an exemption, in whole or in part, of license taxes for any qualifying
155 business; (ii) a refund or rebate, in whole or in part, of license taxes paid by a qualifying business; or
156 (iii) other relief from license taxes for a qualifying business not prohibited by state or federal law.

157 E. For taxable years beginning on or after January 1, 2012, any locality may exempt, by ordinance,
158 license fees or license taxes on any business that does not have an after-tax profit for the taxable year
159 and offers the income tax return of the business as proof to the local commissioner of the revenue.
160 Eligibility for this exemption shall be determined annually and it shall be the obligation of the business
161 owner to submit the applicable income tax return to the local commissioner of the revenue.

162 F. Any locality that imposes a tax or fee under the provisions of this chapter shall, upon request
163 from the Department of Small Business and Supplier Diversity, cooperate with all requests from the
164 Department and participate in the data collection pilot program established under § 2.2-1610.