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HOUSE BILL NO. 820

Offered January 12, 2022

Prefiled January 12, 2022

A BILL to amend and reenact §§ 2.2-1605, 2.2-1610, and 2.2-4310 of the Code of Virginia, relating to the Department of Small Business and Supplier Diversity; disparity study.

 Patron—Torian

 Referred to Committee on General Laws

Be it enacted by the General Assembly of Virginia:

1. That §§ 2.2-1605, 2.2-1610, 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, 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; and

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. Conduct regular disparity studies as provided in § 2.2-1610.

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; and

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

C. All agencies of the Commonwealth shall assist the Department upon request and furnish such

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59 information and assistance as the Department may require in the discharge of its duties.

60 **§ 2.2-1610. Reports and recommendations; collection of data.**

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

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

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

74 *The Director shall conduct, or contract with an independent entity to conduct, a disparity study every*
75 *five years. The study shall evaluate the need for enhancement and remedial measures to address the*
76 *disparity between the availability and the utilization of women-owned and minority-owned businesses.*
77 *The study shall recommend measures that consist of narrowly tailored procurement policies to address*
78 *documented statistical disparities between the availability and utilization of women-owned and*
79 *minority-owned businesses. The measures shall be consistent with rulings of the U.S. Supreme Court*
80 *regarding the available remedies that may be employed to address past discrimination and the need for*
81 *evidence to quantify past discrimination. The study shall incorporate the findings of past disparity*
82 *studies conducted by Virginia and evaluate Virginia's progress toward the recommendations of those*
83 *studies. The Director shall include the findings of each study in his annual report to the Governor and*
84 *General Assembly required by this section.*

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

89 **§ 2.2-4310. Discrimination prohibited; participation of small, women-owned, minority-owned,**
90 **and service disabled veteran-owned businesses and employment services organizations.**

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

97 B. All public bodies shall establish programs consistent with this chapter to facilitate the participation
98 of small businesses, businesses owned by women, minorities, and service disabled veterans, and
99 employment services organizations in procurement transactions. The programs established shall be in
100 writing and shall comply with the provisions of any enhancement or remedial measures authorized by
101 the Governor pursuant to subsection C or, where applicable, by the chief executive of a local governing
102 body pursuant to § 15.2-965.1, and shall include specific plans to achieve any goals established therein.
103 *Public bodies shall rely on the recommendations of disparity studies conducted pursuant to § 2.2-1610*
104 *in establishing programs under this subsection.* State agencies shall submit annual progress reports on (i)
105 small, women-owned, and minority-owned business procurement, (ii) service disabled veteran-owned
106 business procurement, and (iii) employment services organization procurement to the Department of
107 Small Business and Supplier Diversity in a form specified by the Department of Small Business and
108 Supplier Diversity. Contracts and subcontracts awarded to employment services organizations and service
109 disabled veteran-owned businesses shall be credited toward the small business, women-owned, and
110 minority-owned business contracting and subcontracting goals of state agencies and contractors. The
111 Department of Small Business and Supplier Diversity shall make information on service disabled
112 veteran-owned procurement available to the Department of Veterans Services upon request.

113 C. Whenever there exists (i) a rational basis for small business or employment services organization
114 enhancement or (ii) a persuasive analysis that documents a statistically significant disparity between the
115 availability and utilization of women-owned and minority-owned businesses, the Governor is authorized
116 and encouraged to require state agencies to implement appropriate enhancement or remedial measures
117 consistent with prevailing law. *The Governor shall rely on the recommendations of disparity studies*
118 *conducted pursuant to § 2.2-1610 in implementing requirements pursuant to this subsection.* Any
119 enhancement or remedial measure authorized by the Governor pursuant to this subsection for state public
120 bodies may allow for small businesses certified by the Department of Small Business and Supplier

Diversity or a subcategory of small businesses established as a part of the enhancement program to have a price preference over noncertified businesses competing for the same contract award on designated procurements, provided that the bid of the certified small business or the business in such subcategory of small businesses established as a part of an enhancement program does not exceed the low bid by more than five percent.

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

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

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

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

189 **2. That for the purposes of the five-year deadline for a disparity study pursuant to § 2.2-1610 of**
190 **the Code of Virginia, as amended by this act, the 2020 Commonwealth of Virginia Disparity Study**
191 **published in January 2021 shall be deemed the most recent disparity study, such that the next**
192 **disparity study shall be due on or before January 1, 2026.**