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SENATE BILL NO. 128

Offered January 12, 2022

Prefiled January 7, 2022

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; definitions; small business.*

Patron—Obenshain

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 (i) a business is determined to be a small, women-owned, or minority-owned business or (ii) an employment services organization, for the purpose of reporting small, women-owned, and minority-owned business and employment services organization 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, 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, is at least 51 percent independently 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 average annual gross receipts of \$10 million or less averaged over the previous three years. One or more of the individual owners or members shall control both the management and daily business operations of the small business.

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59 "State agency" means any authority, board, department, instrumentality, institution, agency, or other
60 unit of state government. "State agency" does not include any county, city, or town.

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

66 **§ 2.2-4310. Discrimination prohibited; participation of small, women-owned, minority-owned,**
67 **and service disabled veteran-owned businesses and employment services organizations.**

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

74 B. All public bodies shall establish programs consistent with this chapter to facilitate the participation
75 of small businesses, businesses owned by women, minorities, and service disabled veterans, and
76 employment services organizations in procurement transactions. The programs established shall be in
77 writing and shall comply with the provisions of any enhancement or remedial measures authorized by
78 the Governor pursuant to subsection C or, where applicable, by the chief executive of a local governing
79 body pursuant to § 15.2-965.1, and shall include specific plans to achieve any goals established therein.
80 State agencies shall submit annual progress reports on (i) small, women-owned, and minority-owned
81 business procurement, (ii) service disabled veteran-owned business procurement, and (iii) employment
82 services organization procurement to the Department of Small Business and Supplier Diversity in a form
83 specified by the Department of Small Business and Supplier Diversity. Contracts and subcontracts
84 awarded to employment services organizations and service disabled veteran-owned businesses shall be
85 credited toward the small business, women-owned, and minority-owned business contracting and
86 subcontracting goals of state agencies and contractors. The Department of Small Business and Supplier
87 Diversity shall make information on service disabled veteran-owned procurement available to the
88 Department of Veterans Services upon request.

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

100 D. In awarding a contract for services to a small, women-owned, or minority-owned business that is
101 certified in accordance with § 2.2-1606, or to a business identified by a public body as a service
102 disabled veteran-owned business where the award is being made pursuant to an enhancement or remedial
103 program as provided in subsection C, the public body shall include in every such contract of more than
104 \$10,000 the following:

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

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

112 F. As used in this section:

113 "Employment services organization" means an organization that provides community-based
114 employment services to individuals with disabilities that is an approved Commission on Accreditation of
115 Rehabilitation Facilities (CARF) accredited vendor of the Department for Aging and Rehabilitative
116 Services.

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

119 1. "African American" means a person having origins in any of the original peoples of Africa and
120 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 members 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.