



# COMMONWEALTH of VIRGINIA

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September 6, 2007

Mr. Vincent M. Burgess  
Commissioner, Department of Veteran Services  
900 East Main Street  
Ground Floor, West Wing  
Richmond, Virginia 23219

Dear Mr. Burgess:

I am responding to your request for an official advisory opinion in accordance with § 2.2-505 of the *Code of Virginia*.

## Issues Presented

You inquire regarding businesses affected by the passage of Senate Bill 1145<sup>1</sup> (“SB 1145” or “2007 Amendments”), including the requirements for programs established under the 2007 Amendments. Specifically, you ask whether the new category for “service disabled veteran business” in § 2.2-4310 applies only to small businesses<sup>2</sup> or to any service disabled veteran business, regardless of size<sup>3</sup> and whether citizenship requirements apply to owners of service disabled veteran businesses.

## Response

It is my opinion that “service disabled veteran business” status may only be granted to a business that also qualifies as a small business. It further is my opinion that citizenship requirements similar to those imposed by § 2.2-4310 on minority-owned and women-owned businesses apply to service disabled veteran business owners.

## Background

You inquire concerning several matters related to the 2007 Amendments.<sup>4</sup> You advise that the intent of the 2007 Amendments is to facilitate participation of businesses owned by service disabled

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<sup>1</sup>See 2007 Va. Acts ch. 787, available at <http://leg1.state.va.us/cgi-bin/legp504.exe?071+ful+CHAP0787+pdf>; see also 2007 S.B. 1145, available at <http://leg1.state.va.us/cgi-bin/legp504.exe?071+ful+SB1145ER+pdf>.

<sup>2</sup>Section 2.2-4310(E) defines “small business” as “an independently owned and operated business which, together with affiliates, has 250 or fewer employees, or average annual gross receipts of \$10 million or less averaged over the previous three years.”

<sup>3</sup>You express concern that such treatment would allow special advantages to a “service disabled veteran business” that is not a small business or a minority- or women-owned business.

<sup>4</sup>See *supra* note 1.

veterans in state procurement transactions. Further, you note that the Department of Minority Business Enterprise (DMBE) and the Department of Veterans Services (DVS) are charged with developing or promoting programs to implement the 2007 Amendments.<sup>5</sup> The 2007 Amendments to §§ 2.2-2001 and 2.2-4310 added the status of “service disabled veteran business.”<sup>6</sup> You advise that DVS and DMBE assert that to qualify as a “service disabled veteran business,” an applicant for certification must also be a “small business” and that the 2007 Amendments apply only to small businesses. Finally, you note that the 2007 Amendments to § 2.2-4310 impose citizenship requirements on “minority individuals” and owners of “women-owned businesses,” but do not appear to mandate similar requirements for service disabled veteran business owners.

### Applicable Law and Discussion

It is a fundamental rule of statutory construction that each part or section of a statute must be construed in conjunction with every other part.<sup>7</sup> Moreover, the Supreme Court of Virginia has held that “[a] statute should be construed so as to give effect to its component parts. Its meaning should not be derived from single words isolated from the true purpose of the Act.”<sup>8</sup> “[T]he practical construction given to a statute by public officials charged with its enforcement is entitled to great weight by the courts and in doubtful cases will be regarded as decisive.”<sup>9</sup>

The status of “service disabled veteran business” is limited to small business owners under the 2007 Amendments. The addition of the words “small business owner” to § 2.2-2001(B) reveals the General Assembly’s intent to limit “service disabled veteran business” status to small businesses. As introduced, SB 1145 provided that:

*The Department shall adopt reasonable regulations in accordance with the Administrative Process Act (§ 2.2-4000 et seq.) to implement a certification program for businesses owned or operated by individuals holding special disabled veteran status.*<sup>[10]</sup>

Significantly, the General Assembly revised SB 1145 to include the phrase “small business owner” and § 2.2-2001(B) currently provides that:

The Department shall adopt reasonable regulations to implement a program to certify, upon request of the *small business owner*, that he holds a “service disabled veteran” status. [Emphasis added.]

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<sup>5</sup> See VA. CODE ANN. § 2.2-2001(B) (Supp. 2007) (directing DVS to adopt regulations to implement program); § 2.2-4310(B) (Supp. 2007) (directing DMBE to provide information regarding service disabled veteran procurement opportunities).

<sup>6</sup> See 2007 Va. Acts, *supra* note 1.

<sup>7</sup> See *Jones v. Conwell*, 227 Va. 176, 181, 314 S.E.2d 61, 64 (1984); 1986-1987 Op. Va. Att’y Gen. 152, 153.

<sup>8</sup> *Commonwealth v. Jones*, 194 Va. 727, 731, 74 S.E.2d 817, 820 (1953).

<sup>9</sup> *S. Spring Bed Co. v. State Corp. Comm’n*, 205 Va. 272, 275, 136 S.E.2d 900, 902 (1964); *Commonwealth v. Appalachian Electric Power Co.*, 193 Va. 37, 45, 68 S.E.2d 122, 127 (1951).

<sup>10</sup> 2007 S.B. 1145 (as introduced Jan. 10, 2007) (emphasis added), available at <http://leg1.state.va.us/cgi-bin/legp504.exe?071+ful+SB1145+pdf> (quoting § 2.2-2001(B)).

“When the wording of a statute is clear and unambiguous, its plain meaning is to be accepted without resort to rules of interpretation.”<sup>11</sup> Additionally, “[i]t is [the court’s] duty to take the words which the legislature has seen fit to employ and give to them their usual and ordinary signification, and having thus ascertained the legislative intent, to give effect to it.”<sup>12</sup> Consequently, the intent manifested by the General Assembly’s revision of the original language of SB 1145<sup>13</sup> to add the phrase “small business owner” to § 2.2-2001(B) confirms that “service disabled veteran” status is limited to businesses that otherwise qualify as a “small business.”

Furthermore, § 2.2-4310(B) provides, in part, that:

All public bodies shall establish programs consistent with [the Virginia Public Procurement Act] to facilitate the participation of small businesses and businesses owned by women, minorities, and service disabled veterans in procurement transactions. The programs established shall be in writing and shall comply with the provisions of any enhancement or remedial measures authorized by the Governor *pursuant to subsection C or*, where applicable, by the chief executive of a local governing body *pursuant to § 15.2-965.1*, and shall include specific plans to achieve any goals established therein. [Emphasis added.]

Therefore, pursuant to § 2.2-4310(B), any program established must comply with § 2.2-4310(C) or § 15.2-965.1, depending on which public body establishes the program. Section 2.2-4310(C) creates two categories under which a program is authorized to provide “enhancement or remedial measures”:

Whenever there exists (i) a rational basis for *small business enhancement* or (ii) a persuasive analysis that documents a statistically significant disparity between the availability and utilization of *women- and minority-owned businesses*[.]

Section 15.2-965.1(A) is virtually identical to § 2.2-4310(C).<sup>14</sup> The General Assembly did not include “service disabled veteran business” language in § 2.2-4310(C) as it did in other sections amended by SB 1145.<sup>15</sup> Notably, the General Assembly did not amend § 15.2-965.1, which does not include language relating to a “service disabled veteran business.” Section 15.2-965.1(B) provides that:

*A small, women- or minority-owned business* that is certified by the Department of Minority Business Enterprises pursuant to § 2.2-1403 shall not be required by any locality to obtain any additional certification to participate in any program designed to

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<sup>11</sup>Kossman v. Commonwealth, 24 Va. App. 762, 766, 485 S.E.2d 643, 645 (1997) (quoting Commonwealth v. May Bros., 11 Va. App. 115, 118, 396 S.E.2d 695, 696 (1990)).

<sup>12</sup>Commonwealth v. Sanderson, 170 Va. 33, 38-39, 195 S.E. 516, 519 (1938) (quoting Saville v. Va. Ry. & Power Co., 114 Va. 444, 453, 76 S.E. 954, 957 (1913)).

<sup>13</sup>See *supra* note 10 and accompanying text.

<sup>14</sup>Section 15.2-965.1(A) provides for “enhancement *and* remedial measures” “whenever there exists (i) a rational basis for small business enhancement, or (ii) a persuasive analysis that documents a statistically significant disparity between the availability and utilization of women- and minority-owned businesses.” (Emphasis added.)

<sup>15</sup>See, e.g., § 2.2-4310(B).

enhance the participation of such businesses as vendors or to remedy any documented disparity. [Emphasis added.]

Therefore, any program certified by DMBE for the benefit of a “service disabled veteran business” and established by a locality pursuant to § 15.2-965.1 can only apply when such business is also a small businesses because § 15.2-965.1 does not include a “service disabled veteran business” category. Therefore, any program established to benefit a “service disabled veteran business” under the 2007 Amendments must exist to provide “for small business enhancement.”<sup>16</sup>

Further, the 2007 Amendments do not permit a “service disabled veteran business” that does not otherwise qualify as a small, minority-owned, or women-owned business to receive any additional advantages or benefits.<sup>17</sup> “[W]hen analyzing a statute, [courts] must assume that ‘the legislature chose, with care, the words it used when it enacted the relevant statute, and we are bound by those words as we interpret the statute.’”<sup>18</sup> “‘Courts are not permitted to rewrite statutes. This is a legislative function. The manifest intention of the legislature, clearly disclosed by its language, must be applied.’”<sup>19</sup> “[Courts] may not add to a statute language which the legislature has chosen not to include.”<sup>20</sup> The General Assembly has included language in the 2007 Amendments that limits the scope of “service disabled veteran business” status<sup>21</sup> while simultaneously declining to add language that would expand the scope of the status beyond that of a small business.<sup>22</sup>

Finally, you inquire concerning the citizenship requirements placed upon owners of minority-owned businesses and women-owned businesses and whether similar requirements apply to owners of “service disabled veteran businesses.” Section 2.2-4310 specifically imposes citizenship requirements on minority individuals and minority- and women-owned businesses:

“Minority individual” means an individual who is a citizen of the United States or a *non-citizen who is in full compliance with United States immigration law*

....

“Minority-owned business” means a business concern that is at least 51% owned by one or more *minority individuals*

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<sup>16</sup>Section 2.2-4310(C); VA. CODE ANN. § 15.2-965.1(A) (Supp. 2007).

<sup>17</sup>Section 2.2-4310 confers advantages and benefits to all qualifying businesses.

<sup>18</sup>*City of Va. Beach v. ESG Enters.*, 243 Va. 149, 153, 413 S.E.2d 642, 644 (1992) (quoting *Barr v. Town & Country Props., Inc.*, 240 Va. 292, 295, 396 S.E.2d 672, 674 (1990)).

<sup>19</sup>*Barr*, 240 Va. at 295, 396 S.E.2d at 674 (quoting *Anderson v. Commonwealth*, 182 Va. 560, 566, 29 S.E.2d 838, 841 (1944)).

<sup>20</sup>*County of Amherst v. Brockman*, 224 Va. 391, 397, 297 S.E.2d 805, 808 (1992).

<sup>21</sup>*See* 2007 Va. Acts, *supra* note 1 (amending § 2.2-2001 to add subsection B directing DVS to adopt regulations to implement program upon request of “small business owner, that he holds a ‘service disabled veteran’ status”).

<sup>22</sup>For example, the General Assembly did not amend §§ 2.2-4310(C) and 15.2-965.1 to add “service disabled veteran business” language.

“Women-owned business” means a business concern that is at least 51% owned by one or more women who are citizens of the United States or *non-citizens who are in full compliance with United States immigration law*, or in the case of a corporation, partnership, or limited liability company or other entity, at least 51% of the equity ownership interest is owned by one or more women who are citizens of the United States or *non-citizens who are in full compliance with United States immigration law*, and both the management and daily business operations are controlled by one or more women who are citizens of the United States or *non-citizens who are in full compliance with United States immigration law*. [Emphasis added.]

The 2007 Amendments to § 2.2-4310 do not include citizenship requirements or restrictions in the definitions for “service disabled veteran business” and “service disabled veteran.” However, a person joining any branch of the military “must be a U.S. citizen or resident alien.”<sup>23</sup> Further, federal law limits the ability of those not legally present in the United States to receive state or local public benefits.<sup>24</sup> Therefore, anyone who *lawfully* served in active duty in the United States military must have complied with United States immigration law; thus, a person must be a citizen or resident alien to be a service disabled veteran.

### Conclusion

Accordingly, it is my opinion that “service disabled veteran business” status may only be granted to a business that also qualifies as a small business. It further is my opinion that citizenship requirements similar to those imposed by § 2.2-4310 on minority-owned and women-owned businesses apply to service disabled veteran business owners.

Thank you for letting me be of service to you.

Sincerely,



Robert F. McDonnell

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<sup>23</sup> See Military.com, “Eligibility Basics,” at [http://www.military.com/Recruiting/Content/0,13898.rec\\_step02\\_eligibility,,00.html](http://www.military.com/Recruiting/Content/0,13898.rec_step02_eligibility,,00.html) (stating basic requirements for joining military) (last visited Aug. 3, 2007).

<sup>24</sup> See 8 U.S.C.S. § 1621(a) (LexisNexis 1997). However, under § 1621, benefits are available for certain emergency medical conditions or disaster relief, immunizations, and certain programs if agreed to by the Attorney General of the United States. See *id.* § 1621(b) (LexisNexis 1997). The benefits provided in § 2.2-4310 would not qualify. Further, an applicant who is not legally present in the United States is not eligible to receive a business license in the Commonwealth. See 2006 Op. Va. Att’y Gen. 32.