SENATE DOCKET, NO. 1757 FILED ON: 1/21/2011

SENATE . . . . . No. 1831

The Commonwealth of Massachusetts

PRESENTED BY:

Richard T. Moore

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the passage of the accompanying:

An Act to establish a service-disabled veteran-owned small business procurement program for state contracts and purchasing.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Richard T. Moore	☐ *[District]* ☐
Carolyn C. Dykema	*8th Middlesex*
Susan C. Fargo	☐ *[District]* ☐
John V. Fernandes	*10th Worcester*
Michael R. Knapik	☐ *[District]* ☐
James E. Timilty	☐ *[District]* ☐

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By Mr. Moore, a petition (accompanied by bill, Senate, No. 1831) of Richard T. Moore, Carolyn C. Dykema, Susan C. Fargo, John V. Fernandes and other members of the General Court for legislation to establish a service-disabled veteran-owned small business procurement program for state contracts and purchasing. Veterans and Federal Affairs.

The Commonwealth of Massachusetts

An Act to establish a service-disabled veteran-owned small business procurement program for state contracts and purchasing.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

SECTION 1. Chapter 7 of the general laws, as appearing in the 2008 Official Edition, is hereby amended by adding after section 40N, the following new section:

Section 40 O. Service-Disabled Veteran-Owned Small Business Procurement Program.

(a) There is hereby established within the Executive Office of Administration and Finance a Service-Disabled Veteran-Owned Small Business Procurement Program to encourage full participation of service-disabled veteran-owned businesses in all areas of state contracting, including contracts for construction and design services. The procedures in this section shall apply to all state agencies.

(b) As used in this section, the following words shall, unless the context clearly requires otherwise, have the following meanings:—

"Affirmative marketing program", a program of goals to promote equality in, and to encourage the participation of, disabled veteran-owned small businesses in contracts for capital facility projects and state assisted building projects;

"Capital facility project", shall have the same meaning as found in section 39A of chapter 7 when the project is under the control of the division of capital asset management and maintenance;

"Design services", any of the following services provided by any designer, programmer, or construction manager in connection with any public building project:

(i) preparation of master plans, studies, surveys, soil tests, cost estimates or programs;

(ii) preparation of drawings, plans, or specification, including, but not limited to, schematic drawings, preliminary plans and specifications, working plans and specifications or other administration of construction documents;

(iii) supervision or administration of a construction contract;

(iv) construction management or scheduling.

"Service-Disabled Veteran-Owned Small Business," a business certified by the federal government pursuant to the Veterans Benefit Act of 2003, 15 U.S.C. 657f, the procurement program for small business concerns owned and controlled by service-disabled veterans (commonly referred to as the "Service-Disabled Veteran-owned Small Business (SDVOSB) Procurement Program"), and determined in accordance with 13 CFR Parts 125.8 through 125.13.

(c) At the time that a service-disabled veteran-owned small business concern submits its offer, it must represent to the contracting officer that it is a—

(1) Service-disabled veteran-owned small business concern certified by the federal government; and a

(2) Small business concern under the North American Industry Classification System (NAICS) code assigned to the procurement.

(d) A joint venture may be considered a service-disabled veteran owned small business concern if—

(1) At least one member of the joint venture is a service-disabled veteran-owned small business concern, and makes the representations in paragraph (b) of this section;

(2) Each other concern is small under the size standard corresponding to the NAICS code assigned to the procurement;

(3) The joint venture meets the requirements of for certification by the federal "Service-Disabled Veteran-owned Small Business (SDVOSB) Procurement Program"

(4) The joint venture meets the requirements of 13 CFR 125.15(b).

(e) Any service-disabled veteran-owned small business concern (nonmanufacturer) must meet the requirements the federal "Service-Disabled Veteran-owned Small Business (SDVOSB) Procurement Program" to receive a benefit under this state program.

51 Section 40P. Service-disabled veteran-owned small business set-aside
52 procedures.

53 (a) The contracting officer may set-aside acquisitions exceeding the micro-
54 purchase threshold for competition restricted to service-disabled veteran-owned small business
55 concerns when the requirements of paragraph (b) of this section can be satisfied. The contracting
56 officer shall consider service-disabled veteran-owned small business set-asides before
57 considering service-disabled veteran-owned small business sole source awards.

58 (b) To set aside an acquisition for competition restricted to service-disabled
59 veteran-owned small business concerns, the contracting officer must have a reasonable
60 expectation that—

61 (1) Offers will be received from two or more service-disabled
62 veteran-owned small business concerns; and

63 (2) Award will be made at a fair market price.

64 (c) If the contracting officer receives only one acceptable offer from a service-
65 disabled veteran-owned small business concern in response to a set-aside, the contracting officer
66 should make an award to that concern. If the contracting officer receives no acceptable offers
67 from service-disabled veteran-owned small business concerns, the service-disabled veteran-
68 owned set-aside shall be withdrawn and the requirement, if still valid, set aside for small
69 business concerns, as appropriate..

70 Section 40Q. Sole source awards to service-disabled veteran-owned small
71 business concerns.

72 (a) A contracting officer may award contracts to a federally-certified service-
73 disabled veteran-owned small business concerns on a sole source basis provided—

74 (1) Only one service-disabled veteran-owned small business concern
75 can satisfy the requirement;

76 (2) The anticipated award price of the contract (including options)
77 will not exceed—

78 (i) $1 million for a requirement within the NAICS codes for
79 manufacturing; or

80 (ii) $500,000 for a requirement within any other NAICS
81 code;

82 (3) The service-disabled veteran-owned small business concern has
83 been determined to be a responsible contractor with respect to performance; and

84 (4) Award can be made at a fair and reasonable price.

85 (b) The contracting officer shall insert a “Notice of Total Service-Disabled
86 Veteran-Owned Small Business Set-Aside,” in solicitations and contracts for acquisitions under
87 this section..

88 (c) The commissioner, in consultation with the director of the state service-
89 disabled veteran-owned small business procurement program, may establish an affirmative
90 marketing program to ensure the fair participation of service-disabled veteran-owned small
91 businesses on capital facility projects and state assisted building projects. The affirmative
92 marketing program shall establish participation goals for a service-disabled veteran-owned small
93 business in the capital facility projects and state assisted building projects. The participation
94 goals for service-disabled veteran-owned small business shall be based upon the broadest and
95 most inclusive pool of available service-disabled veteran-owned small businesses interested in
96 and capable of performing construction work and design services on the capital facility projects,
97 state funded building projects, and state assisted building projects; but, the commissioner may
98 establish both statewide and regional participation goals based upon the availability of sevice-
99 disabled veteran-owned small businesses. The state service-disabled veteran-owned small
100 business procurement program,, or its successor agency, shall create and maintain a current
101 directory of certified service-disabled veteran-owned small businesses which will serve as one
102 source of information in determining the pool of available service-disabled veteran-owned small
103 businesses. The commissioner and the director of the state service-disabled veteran-owned small
104 business procurement program shall meet on a quarterly basis to determine the status of the
105 implementation of the affirmative marketing program and what further steps both agencies
106 consider necessary to achieve the purpose of this section.

107 (d) Not later than January 15 of each year, the commissioner, in consultation
108 with the director of the state service-disabled veteran-owned small business procurement
109 program shall establish participation goals for service-disabled veteran-owned small businesses.
110 The participation goals established pursuant to this section shall apply to capital facility projects
111 and state assisted building projects. The participation goals shall be expressed as overall annual
112 program goals which shall be applicable to the total dollar amount of contracts awarded for
113 construction work and design services on capital facility projects and state assisted building
114 projects for the calendar year. The commissioner shall publish in the central register, established
115 under section 20A of chapter 9, the participation goals for service-disabled veteran-owned small
116 businesses on capital facility projects and state assisted building projects. The participation goals
117 for service-disabled veteran-owned small businesses shall remain in effect until revised
118 participation goals are established and published pursuant to this paragraph. The participation
119 goals for service-disabled veteran-owned small businesses, developed before the effective date of
120 this section and in effect as of the January preceding the effective date of this section shall
121 remain in effect until January 15 of the following year. The participation goals for service-
122 disabled veteran-owned small businesses shall be revised as necessary every 2 years thereafter.

123 (e) The commissioner, in consultation with the director of the state office of
124 minority and women business assistance, shall develop a written procedure by which a public
125 agency may, for an individual capital facility project, adjust the participation goals for minority-
126 owned business and women-owned business based upon the actual availability of minority-
127 owned businesses and women-owned businesses, the geographic location of the project, the
128 scope of work of the capital facility project, or other relevant factors.

129 (f) The commissioner shall develop a written, good faith efforts waiver
130 procedure by which public agencies may determine, at any time before the award of a contract,
131 that compliance with the goals is not feasible and by which public agencies may reduce or waive
132 the goals for an individual contract.

133 (g) In connection with the affirmative marketing program, the state office of
134 minority and women business assistance shall regularly review and, where necessary, modify its
135 certification process to ensure that it operates effectively, and shall report annually to the
136 secretary of the executive office of administration and finance regarding these matters.

137 (h) The commissioner shall be responsible for the overall management,
138 monitoring, and enforcement of the affirmative marketing program, as the program relates to
139 capital facility projects under the control of the division, established pursuant to this section. The
140 commissioner may appoint a program director within the office of the commissioner to assist in
141 program development, coordination and compliance. The program director shall also have
142 responsibility for monitoring contract compliance within the division, addressing potential
143 program violations and coordinating division enforcement activities with the state office of
144 minority and women business assistance and the attorney general.

145 (i) The commissioner shall by March 15 of each year submit to the joint
146 committee on state administration, the senate committee on ways and means, the house
147 committee on ways and means, the clerk of the house, and the clerk of the senate a report on the
148 performance of the division's affirmative marketing program for the preceding year. The report
149 shall, at a minimum, show the name and address of each such service-disabled veteran-owned
150 small business, its designation as a service-disabled veteran-owned small business, the contract
151 or subcontract price, a description of the work performed on the contract by class of work, and
152 project type, and shall show separately the total number of contracts awarded to minority-owned
153 and women-owned businesses as a percentage of the total number of contracts awarded and as a
154 percentage of the total contract price.

155 (j) The commissioner shall promulgate regulations necessary to implement this
156 section.

157 SECTION 2. This act shall take effect upon passage.