

HOUSE No. 03686

The Commonwealth of Massachusetts

PRESENTED BY:

Thomas J. Calter

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 bill:

An Act establishing veterans status when applying for states purchasing programs.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
<i>Thomas J. Calter</i>	<i>12th Plymouth</i>
<i>James J. Dwyer</i>	<i>30th Middlesex</i>
<i>Robert L. Hedlund</i>	<i>Plymouth and Norfolk</i>
<i>Michael R. Knapik</i>	<i>Second Hampden and Hampshire</i>
<i>Richard T. Moore</i>	<i>Worcester and Norfolk</i>
<i>Benjamin Swan</i>	<i>11th Hampden</i>
<i>Daniel K. Webster</i>	<i>6th Plymouth</i>

[Pin Slip]

The Commonwealth of Massachusetts

In the Year Two Thousand Eleven

An Act establishing veterans status when applying for states purchasing programs.

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

1 Chapter 7 of the General Laws is hereby amended by inserting after section 40N the following
2 section:-

3 Section 40O. (a) The general court finds that (1) discrimination against veterans currently affects
4 the use of veteran owned businesses in state contracting; (2) the commonwealth has a compelling
5 interest in promoting the use of veteran owned businesses through the use of the available and
6 qualified pool of veteran owned businesses; (3) it is the policy of the commonwealth to promote
7 equality in the market and, to that end, to encourage full participation of veteran owned
8 businesses in all areas of state contracting, including contracts for construction and design
9 services.

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

12 “Affirmative marketing program”, a program of veteran conscious goals to promote equality in,
13 and to encourage the participation of veteran-owned businesses in contracts for capital facility
14 projects and state assisted building projects.

15 “Capital facility project”, shall have the same meaning as found in section 39A of chapter 7
16 when the project is under the control of the division of capital asset management and
17 maintenance.

18 “Design services”, any of the following services provided by any designer, programmer, or
19 construction manager in connection with any public building project:-

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

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

24 (iii) supervision or administration of a construction contract; or

25 (iv) construction management or scheduling.

26 “Veterans business”, any contracting or subcontracting business, or businesses that supply the
27 contractors and subcontractors which is beneficially owned by one or veterans persons as
28 follows:-

29 (i) the business must be at least 51 per cent owned by veterans; in the case of a corporation
30 having more than one class of stockholders, the ownership requirement must be met as to each
31 class of stock;

32 (ii) the veteran owners shall demonstrate that they have dominant control over management;
33 (iii) the business has not been established solely for the purpose of taking advantage of a special
34 program which has been developed to assist veteran businesses; and
35 (iv) in the case of a joint venture between a veteran business meeting the requirements of clauses
36 (i) to (iii), inclusive, and a non-veteran business, the joint venture shall be found to be a veteran
37 business if the veteran business meeting the requirements of said clauses (i) to (iii), inclusive,
38 shall have more than one-half control over management of the project bid upon and shall have
39 the right to receive more than one-half of the profits deriving from that project.

40 “State assisted building project”, a construction project undertaken by a political subdivision of
41 the commonwealth or 2 or more subdivisions thereof for the planning, acquisition, design,
42 construction, demolition, installation, repair or maintenance of a capital facility and whose costs
43 are paid for, reimbursed, grant funded, or otherwise supported, in whole or in part, by the
44 commonwealth.

45 “State office of veterans business assistance” or “VBA”, shall have the same meaning as found
46 in section 40 of chapter 23A.

47 (c) The commissioner, in consultation with the director of the state office of veteran business
48 assistance, may establish an affirmative marketing program to ensure the fair participation of
49 veteran-owned businesses on capital facility projects and state assisted building projects. The
50 affirmative marketing program shall establish participation goals for veteran-owned business in
51 the capital facility projects and state assisted building projects. The participation goals for
52 veteran-owned business shall be based upon the broadest and most inclusive pool of available
53 veteran-owned businesses interested in and capable of performing construction work and design

54 services on the capital facility projects, state funded building projects, and state assisted building
55 projects; but, the commissioner may establish both statewide and regional participation goals
56 based upon the availability of veteran-owned businesses. The state office of veteran business
57 assistance, or its successor agency, shall create and maintain a current directory of certified
58 veteran-owned businesses which will serve as one source of information in determining the pool
59 of available veteran-owned businesses. The commissioner and the director of VBA shall meet on
60 a quarterly basis to determine the status of the implementation of the affirmative marketing
61 program and what further steps both agencies consider necessary to achieve the purpose of this
62 section.

63 (d) Not later than January 15 annually, the commissioner, in consultation with the director of
64 state office of veteran assistance, shall establish participation goals for veterans-owned business.
65 The participation goals established pursuant to this section shall apply to capital facility projects
66 and state assisted building projects. The participation goals shall be expressed as overall annual
67 program goals which shall be applicable to the total dollar amount of contracts awarded for
68 construction work and design services on capital facility projects and state assisted building
69 projects for the calendar year. The commissioner shall publish in the central register, established
70 under section 20A of chapter 9, the participation goals for veteran owned businesses on capital
71 facility projects and state assisted building projects. The participation goals for veteran owned
72 businesses shall remain in effect until revised participation goals are established and published
73 pursuant to this paragraph. The participation goals for veteran owned businesses, developed
74 before the effective date of this section, under any existing executive order and in effect as of the
75 January preceding the effective date of this section shall remain in effect until January 15 of the

76 following year. The participation goals for veteran owned businesses shall be revised as
77 necessary every 2 years thereafter.

78 (e) The commissioner, in consultation with the director of the state office of veteran-owned
79 business assistance, shall develop a written procedure by which a public agency may, for an
80 individual capital facility project, adjust the participation goals for veteran owned businesses
81 based upon the actual availability of veteran owned businesses, the geographic location of the
82 project, the scope of work of the capital facility project, or other relevant factors.

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

87 (g) In connection with the affirmative marketing program, the state office of veteran-owned
88 business assistance shall regularly review and, where necessary, modify its certification process
89 to ensure that it operates effectively, and shall report annually to the secretary of the executive
90 office of administration and finance regarding these matters.

91 (h) The commissioner shall be responsible for the overall management, monitoring, and
92 enforcement of the affirmative marketing program, as the program relates to capital facility
93 projects under the control of the division, established pursuant to this section. The commissioner
94 may appoint a program director within the office of the commissioner to assist in program
95 development, coordination and compliance. The program director shall also have responsibility
96 for monitoring contract compliance within the division, addressing potential program violations

97 and coordinating division enforcement activities with the state office of, veteran-owned business
98 assistance and the attorney general.

99 (i) The commissioner shall annually by March 15 submit to the joint committee on state
100 administration, the senate committee on ways and means, the house committee on ways and
101 means, the clerk of the house, and the clerk of the senate a report on the performance of the
102 division's affirmative marketing program for the preceding year. The report shall, at a minimum,
103 show the name and address of each such veteran-owned business, its designation as a veteran-
104 owned business, the contract or subcontract price, a description of the work performed on the
105 contract by class of work, and project type, and shall show separately the total number of
106 contracts awarded to veteran-owned businesses as a percentage of the total number of contracts
107 awarded and as a percentage of the total contract price.

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

109 SECTION 2. Chapter 23A of the General Laws is hereby amended by inserting after section
110 39D the following section:-

111 Section 39F. There shall be within the department of veterans' service an office of veterans
112 business assistance hereinafter referred to as the VBA which shall be under the supervision and
113 control of an executive director, hereinafter referred to as the VBA executive director. The
114 powers and duties given to the VBA executive director in this chapter and in any other general or
115 special law shall be exercised and discharged subject to the direction, control and supervision of
116 the commissioner of veterans' services

117 The VBA executive director shall be appointed by commissioner of veterans' services, with the
118 approval of the governor, and may, with like approval, be removed. The position of VBA

119 executive director shall be classified in accordance with section 45 of chapter 30 and the VBA
120 executive director shall devote his full time during business hours to the duties of the VBA and
121 shall give to the state treasurer a bond for the faithful performance of his duties.

122 The VBA executive director shall be the executive and administrative head of the VBA and shall
123 be responsible for administering and enforcing the provisions of law relative to the VBA and to
124 each administrative unit thereof. Powers and duties given to any administrative unit of the VBA
125 by any general or special law shall be exercised and discharged subject to the direction, control
126 and supervision of the VBA executive director.

127 The VBA executive director may, subject to approval by the director of economic development,
128 adopt, amend, alter or repeal and shall enforce, all such reasonable rules, regulations and orders
129 as may be necessary or suitable for the administration and performance of the duties of the VBA
130 as set forth in sections 39 to 49, inclusive.