

SENATE No. 01831

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 bill:

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

PETITION OF:

NAME:	DISTRICT/ADDRESS:
<i>Richard T. Moore</i>	<i>Worcester and Norfolk</i>
<i>Carolyn C. Dykema</i>	<i>8th Middlesex</i>
<i>Susan C. Fargo</i>	<i>Third Middlesex</i>
<i>John V. Fernandes</i>	<i>10th Worcester</i>
<i>Michael R. Knapik</i>	<i>Second Hampden and Hampshire</i>
<i>James E. Timilty</i>	<i>Bristol and Norfolk</i>

SENATE No. 01831

By Mr. Moore, petition (accompanied by bill, Senate, No. 1831) of Timilty, Knapik, 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 [Joint Committee on Veterans and Federal Affairs].

The Commonwealth of Massachusetts

In the Year Two Thousand Eleven

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:

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

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

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

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

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

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

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

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

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

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

25 (iv) construction management or scheduling.

26 “Service-Disabled Veteran-Owned Small Business,” a business certified by the federal
27 government pursuant to the Veterans Benefit Act of 2003, 15 U.S.C. 657f, the procurement
28 program for small business concerns owned and controlled by service-disabled veterans
29 (commonly referred to as the “Service-Disabled Veteran-owned Small Business (SDVOSB)

30 Procurement Program”), and determined in accordance with 13 CFR Parts 125.8 through
31 125.13.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

76 (i) \$1 million for a requirement within the NAICS codes for
77 manufacturing; or

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

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

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

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

85 (c) The commissioner, in consultation with the director of the state service-disabled
86 veteran-owned small business procurement program, may establish an affirmative marketing
87 program to ensure the fair participation of service-disabled veteran-owned small businesses on
88 capital facility projects and state assisted building projects. The affirmative marketing program
89 shall establish participation goals for a service-disabled veteran-owned small business in the
90 capital facility projects and state assisted building projects. The participation goals for service-

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

104 (d) Not later than January 15 of each year, the commissioner, in consultation with the
105 director of the state service-disabled veteran-owned small business procurement program shall
106 establish participation goals for service-disabled veteran-owned small businesses. The
107 participation goals established pursuant to this section shall apply to capital facility projects and
108 state assisted building projects. The participation goals shall be expressed as overall annual
109 program goals which shall be applicable to the total dollar amount of contracts awarded for
110 construction work and design services on capital facility projects and state assisted building
111 projects for the calendar year. The commissioner shall publish in the central register, established
112 under section 20A of chapter 9, the participation goals for service-disabled veteran-owned small
113 businesses on capital facility projects and state assisted building projects. The participation goals

114 for service-disabled veteran-owned small businesses shall remain in effect until revised
115 participation goals are established and published pursuant to this paragraph. The participation
116 goals for service-disabled veteran-owned small businesses, developed before the effective date of
117 this section and in effect as of the January preceding the effective date of this section shall
118 remain in effect until January 15 of the following year. The participation goals for service-
119 disabled veteran-owned small businesses shall be revised as necessary every 2 years thereafter.

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

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

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

134 (h) The commissioner shall be responsible for the overall management, monitoring,
135 and enforcement of the affirmative marketing program, as the program relates to capital facility

136 projects under the control of the division, established pursuant to this section. The commissioner
137 may appoint a program director within the office of the commissioner to assist in program
138 development, coordination and compliance. The program director shall also have responsibility
139 for monitoring contract compliance within the division, addressing potential program violations
140 and coordinating division enforcement activities with the state office of minority and women
141 business assistance and the attorney general.

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

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

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