

# SENATE BILL 171

P2

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CF HB 359

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By: **Senators Peters, Astle, Colburn, Conway, DeGrange, Garagiola, Harrington, Kasemeyer, Klausmeier, Lenett, Munson, Pugh, ~~and Robey~~ Robey, and Dyson**

Introduced and read first time: January 20, 2010

Assigned to: Education, Health, and Environmental Affairs

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Committee Report: Favorable with amendments

Senate action: Adopted

Read second time: March 3, 2010

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## CHAPTER \_\_\_\_\_

1 AN ACT concerning

2 **Procurement – Service–Disabled Veteran Business Enterprise Participation**

3 FOR the purpose of establishing a certain participation goal for certain certified  
4 service–disabled veteran business enterprises for certain procurement  
5 contracts; requiring certain solicitation documents to establish the degree of  
6 participation based on certain information; providing that certain provisions of  
7 this Act do not apply in certain circumstances; requiring a unit to award certain  
8 procurement contracts to certain bidders or offerors under certain  
9 circumstances; requiring the Board of Public Works to adopt certain regulations  
10 to implement this Act; requiring the Board to establish certain tracking and  
11 reporting procedures; requiring the Board to report annually on a certain  
12 program to the Legislative Policy Committee; establishing certain prohibited  
13 acts and certain penalties for certain violations; providing that certain  
14 provisions of law relating to protests do not apply to certain acts or omissions by  
15 certain procurement agencies under certain circumstances; ~~requiring the~~  
16 ~~Department of Business and Economic Development to use certain resources to~~  
17 ~~implement a certain program;~~ and generally relating to procurement  
18 participation by service–disabled veteran business enterprises.

19 BY adding to

20 Article – State Finance and Procurement

21 Section 14–601 through 14–605 to be under the new subtitle “Subtitle 6.

22 Service–Disabled Veteran Business Enterprise Participation”

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### EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike-out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



1 Annotated Code of Maryland  
2 (2009 Replacement Volume)

3 BY repealing and reenacting, with amendments,  
4 Article – State Finance and Procurement  
5 Section 15–202  
6 Annotated Code of Maryland  
7 (2009 Replacement Volume)

8 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF  
9 MARYLAND, That the Laws of Maryland read as follows:

10 **Article – State Finance and Procurement**

11 **SUBTITLE 6. SERVICE–DISABLED VETERAN BUSINESS ENTERPRISE**  
12 **PARTICIPATION.**

13 **14–601.**

14 **(A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS**  
15 **INDICATED.**

16 **(B) “CERTIFICATION” MEANS THE DETERMINATION THAT A LEGAL**  
17 **ENTITY IS A SERVICE–DISABLED VETERAN BUSINESS ENTERPRISE FOR THE**  
18 **PURPOSES OF THIS SUBTITLE.**

19 **(C) “CERTIFIED SERVICE–DISABLED VETERAN BUSINESS ENTERPRISE”**  
20 **MEANS A BUSINESS THAT IS CERTIFIED BY THE UNITED STATES DEPARTMENT**  
21 **OF VETERANS AFFAIRS AS A SERVICE–DISABLED VETERAN–OWNED BUSINESS.**

22 **(D) “SERVICE–DISABLED VETERAN” MEANS AN INDIVIDUAL WHO:**

23 **(1) IS A VETERAN, AS DEFINED UNDER 38 U.S.C. § 101(2); AND**

24 **(2) HAS A DISABILITY THAT IS SERVICE–CONNECTED, AS DEFINED**  
25 **UNDER 38 U.S.C. § 101(16).**

26 **(E) (1) “SERVICE–DISABLED VETERAN BUSINESS ENTERPRISE” HAS**  
27 **THE MEANING STATED IN EXECUTIVE ORDER NO. 13360 ISSUED ON OCTOBER**  
28 **21, 2004, BY THE PRESIDENT OF THE UNITED STATES.**

29 **(2) TO THE EXTENT NOT INCONSISTENT WITH FEDERAL LAW,**  
30 **“SERVICE–DISABLED VETERAN BUSINESS ENTERPRISE” INCLUDES:**

31 **(I) A SOLE PROPRIETORSHIP OWNED BY**  
32 **SERVICE–DISABLED VETERANS;**

1           **(II) A SUBSIDIARY THAT IS WHOLLY OWNED BY A PARENT**  
2 **CORPORATION IN WHICH THE MAJORITY OF EACH CLASS OF ISSUED AND**  
3 **OUTSTANDING STOCK OF THE PARENT COMPANY IS OWNED BY ONE OR MORE**  
4 **SERVICE-DISABLED VETERANS;**

5           **(III) A JOINT VENTURE IN WHICH THE MAJORITY OF THE**  
6 **JOINT VENTURE'S MANAGEMENT, CONTROL, AND PROFITS ARE OWNED BY ONE**  
7 **OR MORE SERVICE-DISABLED VETERANS;**

8           **(IV) A LIMITED LIABILITY COMPANY IN WHICH MAJORITY**  
9 **INTERESTS ARE OWNED BY ONE OR MORE SERVICE-DISABLED VETERANS; AND**

10           **(V) A CORPORATION IN WHICH THE MAJORITY OF EACH**  
11 **CLASS OF ISSUED AND OUTSTANDING STOCK IS OWNED BY ONE OR MORE**  
12 **SERVICE-DISABLED VETERANS.**

13 **14-602.**

14           **(A) BEGINNING ~~JANUARY 1, 2011,~~ JULY 1, 2012, A UNIT SHALL**  
15 **STRUCTURE PROCUREMENT PROCEDURES, CONSISTENT WITH THE PURPOSES**  
16 **OF THIS SUBTITLE, TO TRY TO ACHIEVE AN OVERALL MINIMUM OF 0.5% OF THE**  
17 **UNIT'S TOTAL DOLLAR VALUE OF PROCUREMENT CONTRACTS TO BE MADE**  
18 **DIRECTLY OR INDIRECTLY WITH CERTIFIED SERVICE-DISABLED VETERAN**  
19 **BUSINESS ENTERPRISES.**

20           **(B) SOLICITATION DOCUMENTS SHALL ESTABLISH THE EXPECTED**  
21 **DEGREE OF SERVICE-DISABLED VETERAN BUSINESS ENTERPRISE**  
22 **PARTICIPATION BASED, IN PART, ON:**

23           **(1) THE POTENTIAL SUBCONTRACT OPPORTUNITIES AVAILABLE**  
24 **IN THE PROCUREMENT CONTRACT; AND**

25           **(2) THE AVAILABILITY OF CERTIFIED SERVICE-DISABLED**  
26 **VETERAN BUSINESS ENTERPRISES TO RESPOND COMPETITIVELY TO THE**  
27 **POTENTIAL SUBCONTRACT OPPORTUNITIES.**

28           **(C) THE PROVISIONS OF THIS SUBTITLE DO NOT APPLY TO A UNIT'S**  
29 **PROCUREMENT PROCEDURES TO THE EXTENT THAT ANY UNIT DETERMINES**  
30 **THAT THOSE PROVISIONS ARE IN CONFLICT WITH AN APPLICABLE FEDERAL**  
31 **PROGRAM.**

32 **14-603.**

1           A UNIT SHALL AWARD THE CONTRACT TO THE RESPONSIBLE BIDDER  
2 THAT SUBMITS THE LOWEST RESPONSIVE BID, OR RESPONSIBLE OFFEROR  
3 PROPOSING THE MOST ADVANTAGEOUS OFFER, THAT MEETS OR MAKES A GOOD  
4 FAITH EFFORT TO MEET ANY APPLICABLE GOAL ESTABLISHED UNDER THIS  
5 SUBTITLE.

6   **14-604.**

7           **(A) THE BOARD SHALL:**

8                   **(1) ADOPT REGULATIONS TO IMPLEMENT THIS SUBTITLE;**

9                   **(2) ESTABLISH PROCEDURES FOR TRACKING AND REPORTING**  
10 **PARTICIPATION OF SERVICE-DISABLED VETERAN BUSINESS ENTERPRISES**  
11 **UNDER THIS SUBTITLE; AND**

12                   **(3) ON OR BEFORE DECEMBER 1 OF EACH YEAR, REPORT TO THE**  
13 **LEGISLATIVE POLICY COMMITTEE ON:**

14                           **(I) THE NUMBER AND AMOUNT OF CONTRACTS AWARDED**  
15 **TO SERVICE-DISABLED VETERAN BUSINESS ENTERPRISES UNDER THIS**  
16 **SUBTITLE; AND**

17                           **(II) THE EFFECTIVENESS OF THE PROGRAM UNDER THIS**  
18 **SUBTITLE.**

19   **14-605.**

20           **(A) A PERSON MAY NOT:**

21                   **(1) KNOWINGLY AND WITH INTENT TO DEFRAUD, FRAUDULENTLY**  
22 **OBTAIN, ATTEMPT TO OBTAIN, OR AID ANOTHER PERSON IN FRAUDULENTLY**  
23 **OBTAINING OR ATTEMPTING TO OBTAIN, PUBLIC MONEY, PROCUREMENT**  
24 **CONTRACTS, OR FUNDS EXPENDED UNDER A PROCUREMENT CONTRACT TO**  
25 **WHICH THE PERSON IS NOT ENTITLED UNDER THIS ARTICLE;**

26                   **(2) KNOWINGLY AND WITH INTENT TO DEFRAUD, FRAUDULENTLY**  
27 **REPRESENT PARTICIPATION OF A SERVICE-DISABLED VETERAN BUSINESS**  
28 **ENTERPRISE IN ORDER TO OBTAIN OR RETAIN A BID PREFERENCE OR A**  
29 **PROCUREMENT CONTRACT;**

30                   **(3) WILLFULLY AND KNOWINGLY MAKE OR SUBSCRIBE TO ANY**  
31 **STATEMENT, DECLARATION, OR OTHER DOCUMENT THAT IS FRAUDULENT OR**  
32 **FALSE AS TO ANY MATERIAL MATTER, WHETHER OR NOT THAT FALSITY OR**  
33 **FRAUD IS COMMITTED WITH THE KNOWLEDGE OR CONSENT OF THE PERSON**

1 AUTHORIZED OR REQUIRED TO PRESENT THE DECLARATION, STATEMENT, OR  
2 DOCUMENT;

3 (4) WILLFULLY AND KNOWINGLY AID, ASSIST IN, PROCURE,  
4 COUNSEL, OR ADVISE THE PREPARATION OR PRESENTATION OF A  
5 DECLARATION, STATEMENT, OR OTHER DOCUMENT THAT IS FRAUDULENT OR  
6 FALSE AS TO ANY MATERIAL MATTER, REGARDLESS OF WHETHER THAT FALSITY  
7 OR FRAUD IS COMMITTED WITH THE KNOWLEDGE OR CONSENT OF THE PERSON  
8 AUTHORIZED OR REQUIRED TO PRESENT THE DECLARATION, STATEMENT, OR  
9 DOCUMENT;

10 (5) WILLFULLY AND KNOWINGLY FAIL TO FILE ANY DECLARATION  
11 OR NOTICE WITH THE UNIT THAT IS REQUIRED BY THIS SUBTITLE; OR

12 (6) ESTABLISH, KNOWINGLY AID IN THE ESTABLISHMENT OF, OR  
13 EXERCISE CONTROL OVER A BUSINESS FOUND TO HAVE VIOLATED A PROVISION  
14 OF ITEMS (1) THROUGH (5) OF THIS SUBSECTION.

15 (B) (1) A PERSON WHO VIOLATES ANY OF THE PROVISIONS OF  
16 SUBSECTION (A) OF THIS SECTION SHALL BE GUILTY OF A MISDEMEANOR AND  
17 ON CONVICTION IS SUBJECT TO A FINE NOT EXCEEDING \$1,000 OR  
18 IMPRISONMENT NOT EXCEEDING 6 MONTHS OR BOTH.

19 (2) IN ADDITION TO THE PENALTIES UNDER PARAGRAPH (1) OF  
20 THIS SUBSECTION, A PERSON WHO VIOLATES ANY OF THE PROVISIONS OF  
21 SUBSECTION (A) OF THIS SECTION SHALL BE:

22 (I) FOR THE FIRST OFFENSE, LIABLE FOR A CIVIL PENALTY  
23 OF NOT LESS THAN \$10,000 AND NOT EXCEEDING \$30,000; AND

24 (II) FOR A SUBSEQUENT OFFENSE, LIABLE FOR A CIVIL  
25 PENALTY OF NOT LESS THAN \$30,000 AND NOT EXCEEDING \$50,000.

26 (3) A PERSON WHO VIOLATES ANY OF THE PROVISIONS OF  
27 SUBSECTION (A) OF THIS SECTION SHALL PAY ALL COSTS AND ATTORNEY'S FEES  
28 INCURRED BY THE PLAINTIFF IN A CIVIL ACTION BROUGHT UNDER THIS  
29 SUBTITLE.

30 (C) THE BOARD SHALL PROHIBIT A BUSINESS OR PERSON WHO FAILS  
31 TO SATISFY THE PENALTIES, COSTS, AND ATTORNEY'S FEES IMPOSED UNDER  
32 SUBSECTION (B) OF THIS SECTION FROM FURTHER CONTRACTING WITH THE  
33 STATE UNTIL THE PENALTIES ARE SATISFIED.

34 (D) (1) A UNIT SHALL REPORT ALL ALLEGED VIOLATIONS OF THIS  
35 SECTION TO THE BOARD.

1           **(2) THE BOARD SUBSEQUENTLY SHALL REPORT ALL ALLEGED**  
 2 **VIOLATIONS OF THIS SECTION TO THE OFFICE OF THE ATTORNEY GENERAL,**  
 3 **WHICH SHALL DETERMINE WHETHER TO BRING A CIVIL ACTION AGAINST A**  
 4 **PERSON OR BUSINESS FOR A VIOLATION OF THIS SECTION.**

5 15-202.

6 This subtitle does not apply to a protest concerning:

7           **(1) the formation of a procurement contract for architectural services**  
 8 **or engineering services; OR**

9           **(2) EXCEPT TO THE EXTENT AUTHORIZED BY REGULATION BY**  
 10 **THE BOARD, ANY ACT OR OMISSION BY A PROCUREMENT AGENCY UNDER TITLE**  
 11 **14, SUBTITLE 6 OF THIS ARTICLE.**

12           ~~SECTION 2. AND BE IT FURTHER ENACTED, That the Department of~~  
 13 ~~Business and Economic Development shall use existing resources to implement the~~  
 14 ~~Service Disabled Veteran Business Enterprise Participation program goals~~  
 15 ~~established under Title 14, Subtitle 6 of the State Finance and Procurement Article, as~~  
 16 ~~enacted by Section 1 of this Act.~~

17           SECTION ~~2~~ 2. AND BE IT FURTHER ENACTED, That this Act shall take  
 18 effect October 1, 2010.

Approved:

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Governor.

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President of the Senate.

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Speaker of the House of Delegates.