

SENATE BILL 171

P2

(0lr0783)

ENROLLED BILL

— *Education, Health, and Environmental Affairs/Health and Government Operations* —

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

Read and Examined by Proofreaders:

Proofreader.

Proofreader.

Sealed with the Great Seal and presented to the Governor, for his approval this _____ day of _____ at _____ o'clock, _____ M.

President.

CHAPTER _____

1 AN ACT concerning

2 **Procurement – ~~Service-Disabled Veteran~~ Veteran-Owned Small Business**
3 **Enterprise Participation**

4 FOR the purpose of establishing a certain participation goal for certain ~~certified~~
5 ~~service-disabled veteran~~ veteran-owned small business enterprises for certain
6 procurement contracts; requiring certain solicitation documents to establish the
7 degree of participation based on certain information; providing that certain
8 provisions of this Act do not apply in certain circumstances; requiring a unit to
9 award certain procurement contracts to certain bidders or offerors under certain
10 circumstances; requiring the Board of Public Works to adopt certain regulations
11 to implement this Act; requiring the Board to establish certain tracking and
12 reporting procedures; requiring the Board to report annually on a certain
13 program to the Legislative Policy Committee; establishing certain prohibited

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.

Italics indicate opposite chamber/conference committee amendments.



1 acts and certain penalties for certain violations; providing that certain
 2 provisions of law relating to protests do not apply to certain acts or omissions by
 3 certain procurement agencies under certain circumstances; ~~requiring the~~
 4 ~~Department of Business and Economic Development to use certain resources to~~
 5 ~~implement a certain program;~~ and generally relating to procurement
 6 participation by ~~service-disabled-veteran~~ veteran-owned small business
 7 enterprises.

8 BY adding to

9 Article – State Finance and Procurement

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

11 ~~Service-Disabled-Veteran~~ Veteran-Owned Small Business Enterprise
 12 Participation”

13 Annotated Code of Maryland

14 (2009 Replacement Volume)

15 BY repealing and reenacting, with amendments,

16 Article – State Finance and Procurement

17 Section 15–202

18 Annotated Code of Maryland

19 (2009 Replacement Volume)

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

22 **Article – State Finance and Procurement**

23 **SUBTITLE 6. ~~SERVICE-DISABLED-VETERAN~~ VETERAN-OWNED SMALL**
 24 **BUSINESS ENTERPRISE PARTICIPATION.**

25 **14-601.**

26 ~~(A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS~~
 27 ~~INDICATED.~~

28 ~~(B) “CERTIFICATION” MEANS THE DETERMINATION THAT A LEGAL~~
 29 ~~ENTITY IS A SERVICE-DISABLED VETERAN BUSINESS ENTERPRISE FOR THE~~
 30 ~~PURPOSES OF THIS SUBTITLE.~~

31 ~~(C) “CERTIFIED SERVICE-DISABLED VETERAN BUSINESS ENTERPRISE”~~
 32 ~~MEANS A BUSINESS THAT IS CERTIFIED BY THE UNITED STATES DEPARTMENT~~
 33 ~~OF VETERANS AFFAIRS AS A SERVICE-DISABLED VETERAN OWNED BUSINESS.~~

34 ~~(D) “SERVICE-DISABLED VETERAN” MEANS AN INDIVIDUAL WHO:~~

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

1 ~~(2) HAS A DISABILITY THAT IS SERVICE CONNECTED, AS DEFINED~~
2 ~~UNDER 38 U.S.C. § 101(16).~~

3 ~~(E) (1) "SERVICE DISABLED VETERAN BUSINESS ENTERPRISE" HAS~~
4 ~~THE MEANING STATED IN EXECUTIVE ORDER NO. 13360 ISSUED ON OCTOBER~~
5 ~~21, 2004, BY THE PRESIDENT OF THE UNITED STATES.~~

6 ~~(2) TO THE EXTENT NOT INCONSISTENT WITH FEDERAL LAW,~~
7 ~~"SERVICE DISABLED VETERAN BUSINESS ENTERPRISE" INCLUDES:~~

8 ~~(I) A SOLE PROPRIETORSHIP OWNED BY~~
9 ~~SERVICE DISABLED VETERANS; "VETERAN-OWNED SMALL BUSINESS~~
10 ~~ENTERPRISE" MEANS A BUSINESS THAT IS VERIFIED BY THE CENTER FOR~~
11 ~~VETERANS ENTERPRISE OF THE UNITED STATES DEPARTMENT OF VETERANS~~
12 ~~AFFAIRS AS A VETERAN-OWNED SMALL BUSINESS.~~

13 ~~(II) A SUBSIDIARY THAT IS WHOLLY OWNED BY A PARENT~~
14 ~~CORPORATION IN WHICH THE MAJORITY OF EACH CLASS OF ISSUED AND~~
15 ~~OUTSTANDING STOCK OF THE PARENT COMPANY IS OWNED BY ONE OR MORE~~
16 ~~SERVICE DISABLED VETERANS;~~

17 ~~(III) A JOINT VENTURE IN WHICH THE MAJORITY OF THE~~
18 ~~JOINT VENTURE'S MANAGEMENT, CONTROL, AND PROFITS ARE OWNED BY ONE~~
19 ~~OR MORE SERVICE DISABLED VETERANS;~~

20 ~~(IV) A LIMITED LIABILITY COMPANY IN WHICH MAJORITY~~
21 ~~INTERESTS ARE OWNED BY ONE OR MORE SERVICE DISABLED VETERANS; AND~~

22 ~~(V) A CORPORATION IN WHICH THE MAJORITY OF EACH~~
23 ~~CLASS OF ISSUED AND OUTSTANDING STOCK IS OWNED BY ONE OR MORE~~
24 ~~SERVICE DISABLED VETERANS.~~

25 14-602.

26 (A) BEGINNING ~~JANUARY 1, 2011,~~ JULY 1, 2012, A UNIT SHALL
27 STRUCTURE PROCUREMENT PROCEDURES, CONSISTENT WITH THE PURPOSES
28 OF THIS SUBTITLE, TO TRY TO ACHIEVE AN OVERALL MINIMUM OF 0.5% OF THE
29 UNIT'S TOTAL DOLLAR VALUE OF PROCUREMENT CONTRACTS TO BE MADE
30 DIRECTLY OR INDIRECTLY WITH ~~CERTIFIED SERVICE DISABLED VETERAN~~
31 VETERAN-OWNED SMALL BUSINESS ENTERPRISES.

1 (B) SOLICITATION DOCUMENTS SHALL ESTABLISH THE EXPECTED
2 DEGREE OF ~~SERVICE-DISABLED VETERAN~~ VETERAN-OWNED SMALL BUSINESS
3 ENTERPRISE PARTICIPATION BASED, IN PART, ON:

4 (1) THE POTENTIAL SUBCONTRACT OPPORTUNITIES AVAILABLE
5 IN THE PROCUREMENT CONTRACT; AND

6 (2) THE AVAILABILITY OF ~~CERTIFIED SERVICE-DISABLED~~
7 ~~VETERAN~~ VETERAN-OWNED SMALL BUSINESS ENTERPRISES TO RESPOND
8 COMPETITIVELY TO THE POTENTIAL SUBCONTRACT OPPORTUNITIES.

9 (C) THE PROVISIONS OF THIS SUBTITLE DO NOT APPLY TO A UNIT'S
10 PROCUREMENT PROCEDURES TO THE EXTENT THAT ANY UNIT DETERMINES
11 THAT THOSE PROVISIONS ARE IN CONFLICT WITH AN APPLICABLE FEDERAL
12 PROGRAM.

13 14-603.

14 A UNIT SHALL AWARD THE CONTRACT TO THE RESPONSIBLE BIDDER
15 THAT SUBMITS THE LOWEST RESPONSIVE BID, OR RESPONSIBLE OFFEROR
16 PROPOSING THE MOST ADVANTAGEOUS OFFER, THAT MEETS OR MAKES A GOOD
17 FAITH EFFORT TO MEET ANY APPLICABLE GOAL ESTABLISHED UNDER THIS
18 SUBTITLE.

19 14-604.

20 (A) THE BOARD SHALL:

21 (1) ADOPT REGULATIONS TO IMPLEMENT THIS SUBTITLE;

22 (2) ESTABLISH PROCEDURES FOR TRACKING AND REPORTING
23 PARTICIPATION OF ~~SERVICE-DISABLED VETERAN~~ VETERAN-OWNED SMALL
24 BUSINESS ENTERPRISES UNDER THIS SUBTITLE; AND

25 (3) ON OR BEFORE DECEMBER 1 OF EACH YEAR, REPORT TO THE
26 LEGISLATIVE POLICY COMMITTEE ON:

27 (I) THE NUMBER AND AMOUNT OF CONTRACTS AWARDED
28 TO ~~SERVICE-DISABLED VETERAN~~ VETERAN-OWNED SMALL BUSINESS
29 ENTERPRISES UNDER THIS SUBTITLE; AND

30 (II) THE EFFECTIVENESS OF THE PROGRAM UNDER THIS
31 SUBTITLE.

1 14-605.

2 (A) A PERSON MAY NOT:

3 (1) KNOWINGLY AND WITH INTENT TO DEFRAUD, FRAUDULENTLY
4 OBTAIN, ATTEMPT TO OBTAIN, OR AID ANOTHER PERSON IN FRAUDULENTLY
5 OBTAINING OR ATTEMPTING TO OBTAIN, PUBLIC MONEY, PROCUREMENT
6 CONTRACTS, OR FUNDS EXPENDED UNDER A PROCUREMENT CONTRACT TO
7 WHICH THE PERSON IS NOT ENTITLED UNDER THIS ARTICLE;

8 (2) KNOWINGLY AND WITH INTENT TO DEFRAUD, FRAUDULENTLY
9 REPRESENT PARTICIPATION OF A ~~SERVICE-DISABLED—VETERAN~~
10 VETERAN-OWNED SMALL BUSINESS ENTERPRISE IN ORDER TO OBTAIN OR
11 RETAIN A BID PREFERENCE OR A PROCUREMENT CONTRACT;

12 (3) WILLFULLY AND KNOWINGLY MAKE OR SUBSCRIBE TO ANY
13 STATEMENT, DECLARATION, OR OTHER DOCUMENT THAT IS FRAUDULENT OR
14 FALSE AS TO ANY MATERIAL MATTER, WHETHER OR NOT THAT FALSITY OR
15 FRAUD IS COMMITTED WITH THE KNOWLEDGE OR CONSENT OF THE PERSON
16 AUTHORIZED OR REQUIRED TO PRESENT THE DECLARATION, STATEMENT, OR
17 DOCUMENT;

18 (4) WILLFULLY AND KNOWINGLY AID, ASSIST IN, PROCURE,
19 COUNSEL, OR ADVISE THE PREPARATION OR PRESENTATION OF A
20 DECLARATION, STATEMENT, OR OTHER DOCUMENT THAT IS FRAUDULENT OR
21 FALSE AS TO ANY MATERIAL MATTER, REGARDLESS OF WHETHER THAT FALSITY
22 OR FRAUD IS COMMITTED WITH THE KNOWLEDGE OR CONSENT OF THE PERSON
23 AUTHORIZED OR REQUIRED TO PRESENT THE DECLARATION, STATEMENT, OR
24 DOCUMENT;

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

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

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

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

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

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

8 **(3) A PERSON WHO VIOLATES ANY OF THE PROVISIONS OF**
 9 **SUBSECTION (A) OF THIS SECTION SHALL PAY ALL COSTS AND ATTORNEY'S FEES**
 10 **INCURRED BY THE PLAINTIFF IN A CIVIL ACTION BROUGHT UNDER THIS**
 11 **SUBTITLE.**

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

16 **(D) (1) A UNIT SHALL REPORT ALL ALLEGED VIOLATIONS OF THIS**
 17 **SECTION TO THE BOARD.**

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

22 15-202.

23 This subtitle does not apply to a protest concerning:

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

26 **(2) EXCEPT TO THE EXTENT AUTHORIZED BY REGULATION BY**
 27 **THE BOARD, ANY ACT OR OMISSION BY A PROCUREMENT AGENCY UNDER TITLE**
 28 **14, SUBTITLE 6 OF THIS ARTICLE.**

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

1 SECTION ~~3~~ 2. AND BE IT FURTHER ENACTED, That this Act shall take
2 effect October 1, 2010.

Approved:

Governor.

President of the Senate.

Speaker of the House of Delegates.