HOUSE DOCKET, NO. 3245 FILED ON: 2/18/2011

HOUSE . . . . . No. 3686

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:

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

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Thomas J. Calter	*12th Plymouth*
James J. Dwyer	*30th Middlesex*
Robert L. Hedlund	☐ *[District]* ☐
Michael R. Knapik	☐ *[District]* ☐
Richard T. Moore	☐ *[District]* ☐
Benjamin Swan	*11th Hampden*
Daniel K. Webster	*6th Plymouth*

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HOUSE . . . . . No. 3686

By Mr. Calter of Kingston, a petition (accompanied by bill, House, No. 3686) of Thomas J. Calter and others for legislation to promote the participation of veteran owned businesses in state contracting. Veterans and Federal Affairs.

The Commonwealth of Massachusetts

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:

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

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

(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 veteran conscious goals to promote equality in, and to encourage the participation of veteran-owned 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;

21 (ii) preparation of drawings, plans, or specifications, including, but not limited to,
22 schematic drawings, preliminary plans and specifications, working plans and specifications or
23 other 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
27 supply the contractors and subcontractors which is beneficially owned by one or veterans
28 persons as follows:-

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

32 (ii) the veteran owners shall demonstrate that they have dominant control over
33 management;

34 (iii) the business has not been established solely for the purpose of taking advantage of a
35 special program which has been developed to assist veteran businesses; and

36 (iv) in the case of a joint venture between a veteran business meeting the requirements of
37 clauses (i) to (iii), inclusive, and a non-veteran business, the joint venture shall be found to be a
38 veteran business if the veteran business meeting the requirements of said clauses (i) to (iii),
39 inclusive, shall have more than one-half control over management of the project bid upon and
40 shall have the right to receive more than one-half of the profits deriving from that project.

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

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

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

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

64 (d) Not later than January 15 annually, the commissioner, in consultation with the
65 director of state office of veteran assistance, shall establish participation goals for veterans-
66 owned business. The participation goals established pursuant to this section shall apply to capital
67 facility projects and state assisted building projects. The participation goals shall be expressed as
68 overall annual program goals which shall be applicable to the total dollar amount of contracts
69 awarded for construction work and design services on capital facility projects and state assisted
70 building projects for the calendar year. The commissioner shall publish in the central register,
71 established under section 20A of chapter 9, the participation goals for veteran owned businesses
72 on capital facility projects and state assisted building projects. The participation goals for veteran
73 owned businesses shall remain in effect until revised participation goals are established and
74 published pursuant to this paragraph. The participation goals for veteran owned businesses,
75 developed before the effective date of this section, under any existing executive order and in
76 effect as of the January preceding the effective date of this section shall remain in effect until
77 January 15 of the following year. The participation goals for veteran owned businesses shall be
78 revised as necessary every 2 years thereafter.

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

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

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

92 (h) The commissioner shall be responsible for the overall management, monitoring, and
93 enforcement of the affirmative marketing program, as the program relates to capital facility
94 projects under the control of the division, established pursuant to this section. The commissioner
95 may appoint a program director within the office of the commissioner to assist in program
96 development, coordination and compliance. The program director shall also have responsibility
97 for monitoring contract compliance within the division, addressing potential program violations
98 and coordinating division enforcement activities with the state office of,veteran-owned business
99 assistance and the attorney general.

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

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

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

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

118 The VBA executive director shall be appointed by commissioner of veterans' services,
119 with the approval of the governor, and may, with like approval, be removed. The position of
120 VBA executive director shall be classified in accordance with section 45 of chapter 30 and the
121 VBA executive director shall devote his full time during business hours to the duties of the VBA
122 and shall give to the state treasurer a bond for the faithful performance of his duties.

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

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