

# HOUSE . . . . . No. 3686

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## The Commonwealth of Massachusetts

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PRESENTED BY:

*Thomas J. Calter*

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*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 adoption of the accompanying bill:

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

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PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
<i>Thomas J. Calter</i>	<i>12th Plymouth</i>	<i>1/21/2011</i>
<i>James J. Dwyer</i>	<i>30th Middlesex</i>	<i>1/31/2011</i>
<i>Robert L. Hedlund</i>		<i>2/3/2011</i>
<i>Michael R. Knapik</i>		<i>2/1/2011</i>
<i>Richard T. Moore</i>		<i>1/27/2011</i>
<i>Benjamin Swan</i>	<i>11th Hampden</i>	<i>2/3/2011</i>
<i>Daniel K. Webster</i>	<i>6th Plymouth</i>	<i>2/3/2011</i>

# HOUSE . . . . . No. 3686

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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.

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## The Commonwealth of Massachusetts

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In the Year Two Thousand Eleven  
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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  
2 following section:-

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

10 (b) As used in this section, the following words shall, unless the context clearly requires  
11 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;

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

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

(iv) construction management or scheduling.

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

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

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

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

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

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

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

(c) The commissioner, in consultation with the director of the state office of veteran business assistance, may establish an affirmative marketing program to ensure the fair participation of veteran-owned businesses on capital facility projects and state assisted building projects. The affirmative marketing program shall establish participation goals for veteran-owned business in the capital facility projects and state assisted building projects. The 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

January 15 of the following year. The participation goals for veteran owned businesses shall be revised as necessary every 2 years thereafter.

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

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

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

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

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

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

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

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

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

The VBA executive director shall be appointed by commissioner of veterans' services, 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.