

HOUSE No. 3814

The Commonwealth of Massachusetts



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May 25, 2021

To the Honorable Senate and House of Representatives:

Pursuant to Section 5 of Article LXIII, as amended by Article XC, Section 4 of the amendments to the Constitution, I am today signing House Bill 3770, “An Act Financing the Reconstruction of the Soldiers’ Home in Holyoke,” and vetoing Section 5 as noted below.

As you know, it is imperative that the reconstruction of the Soldiers’ Home in Holyoke take place as soon as possible. Massachusetts veterans need and deserve a home that fully provides for their health, safety, and comfort. For that reason, my Administration sought a federal grant that would provide a reimbursement to the Commonwealth of 65% of the cost to build a new long-term care facility. We have an opportunity, right now, to provide this for those who served to protect the Commonwealth and the United States.

On February 11, 2021, I filed this legislation for your consideration to obtain funding necessary to proceed with this project on a tight timeline set by the federal government. While I greatly appreciate the Legislature’s enactment, which allows us to meet the federal application deadline, the enacted version risks the Commonwealth’s ability to deliver this vital project because it requires the use of a Project Labor Agreement (PLA). This requirement threatens the viability of this project by limiting fair competition and disproportionately reducing opportunities for minority, women, and veteran-owned businesses. It will also raise the overall costs of this project precipitously and may result in a labor shortage, putting the project and project timeline in jeopardy. While I am signing the balance of this bill, I am vetoing the section that includes this PLA requirement because of these detrimental impacts. Importantly, vetoing

this section will not prevent us from moving ahead with the work necessary to meet the federal application deadline.

Massachusetts’ public construction laws are amongst the most open and fair laws in the country with respect to construction procurement and workforce wages. These laws were implemented to create a level playing field for all contractors eligible to work on public construction projects. PLAs create barriers to entry that eliminate the equality of opportunity that is central to the Commonwealth’s public construction process. While PLAs do not technically prohibit non-union contractors from bidding on a project, PLA terms make it cost-prohibitive and impractical for any non-union member to participate. Because workers would be assigned through the signatory unions’ hiring halls, non-union contractors would need to work with entirely unfamiliar workers rather than utilize their existing workforce. Additionally, because PLAs generally require that all contractors pay into the union’s apprenticeship and benefits programs, non-union contractors would have to bear these costs in addition to any of their own apprenticeship, training, and benefit programs, and, moreover, would not stand to receive any of the long-term benefits of this additional cost. Precluding non-union signatory firms from bidding would significantly decrease the eligible bidder pool. This robs many firms and workers of meaningful public construction experience and dollars. The negative impact will be disproportionately borne by minority, women and veteran-owned firms, as they are traditionally smaller and much less likely to be union signatories, particularly in Western Massachusetts. This is not the type of public construction environment that the Commonwealth strives to achieve.

As we proceed with the version of the bill that I am signing, access and opportunity will be a top priority. I share the Legislature’s interest in increasing the diversity of the firms that participate in public building projects, such as this one, and I want to highlight for you some of the tools that we will use to increase access and opportunity on this project. For over three decades, the Division of Capital Asset Management and Maintenance (DCAMM), the agency responsible for public building construction, has maintained a strong Affirmative Marketing Program that has provided opportunities for countless minority-owned business enterprises (MBE) and women-owned business enterprises (WBE) to work on its public building projects. The Affirmative Marketing Program is extremely successful, and MBE/WBE goals have been exceeded in each of the past 4 years:

DCAMM MBE/WBE Construction and Design Payments Percentages - Fiscal Years 2017-2020

Annual Goals Exceed Each Year	% of Construction/Design Dollars Paid to MBE/WBE Firms			
	Fiscal Yr. 17	Fiscal Yr. 18	Fiscal Yr. 19	Fiscal Yr. 20
Construction Annual Goal - 10.4%	13.3%	16.0%	11.6%	13.0%
Design Annual Goal - 17.9%	26.0%	42.6%	37.2%	30.6%

Since the execution of Executive Order 565, and the certification of veteran-owned businesses by the Supplier Diversity Office, DCAMM has also established benchmarks for veteran business enterprise (VBE) participation on design and construction contracts. In fiscal year 2020, payments to VBE firms totaled \$14.5 million and represented 6.2% of total dollars paid on construction and design contracts. During FY19-20 DCAMM undertook a targeted outreach program and was successful in further expanding the pool of MBE and WBE firms that were DCAMM-certified to bid on public building projects across the Commonwealth.

DCAMM has occasionally instituted an Access, Inclusion and Diversity Committee to ensure that access and opportunity issues are addressed in a collaborative manner in substantial construction projects of regional significance. As the reconstruction of the Home certainly qualifies as such a project, DCAMM intends to form such a Committee for this project as it moves forward.

Fiscal Year 2019	Fiscal Year 2020	Net Increase
MBE Primes 13	MBE Primes 22	69%
MBE Small Primes 1	MBE Small Primes 9	800%
<u>MBE Filed Subs 10</u>	<u>MBE Filed Subs 15</u>	<u>50%</u>
Total MBEs 24	Total MBEs 46	91%
WBE Primes 39	WBE Primes 56	44%
WBE Small Primes 3	WBE Small Primes 8	167%
<u>WBE Filed Subs 36</u>	<u>WBE Filed Subs 47</u>	<u>31%</u>
Total WBEs 78	Total WBEs 111	42%

By substantially increasing project costs, PLAs threaten the Commonwealth’s ability to keep the project within the maximum \$400 million bonding authority established in this legislation. If the bids we receive for the project were to exceed that price, we would be unable to proceed with the project. In addition, PLAs threaten the Commonwealth’s ability to receive the 65% reimbursement from the Federal Government, as the total level of funding needed to deliver the project could exceed the amount that the Department of Veterans Affairs (VA) could feasibly reimburse. With the projected increase in cost, it is possible that the VA would choose to fund multiple other projects throughout the country for the same price as funding the Holyoke project. Putting this 65% federal reimbursement at risk is not a viable option if we are to succeed in delivering this vital project for our veterans.

The Holyoke Soldiers’ Home project will bring hundreds of good-paying construction jobs to Western Massachusetts. Even under ideal conditions, DCAMM will have to proactively

work to ensure the availability of local workforce, due to the lower density of construction workers in Western Massachusetts. A PLA will reduce the pool of available construction workers by limiting it only to those referred from the signatory union referral system and hiring halls. These administrative burdens, and limitations on available workers, will impact DCAMM's ability to staff this project. If the unions are not able to provide the number of workers needed throughout the course of the project to maintain the schedule, it would result in costly and disruptive project delays. Requiring a PLA on this project may restrict the available workforce to insufficient levels with no available recourse.

With the version of the bill that I sign today, the Commonwealth will be able to successfully deliver a new Soldiers' Home in Holyoke for Massachusetts veterans, ensure a public construction process that is open and fair, and support access and opportunities for minorities, women and veterans.

For the reasons stated above, I am vetoing section 5 of this bill. The remainder of this bill I approve.

Respectfully submitted,

Charles D. Baker,
Governor