

# HOUSE BILL 359

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CF SB 171

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By: **Delegates James, Riley, Ali, Barkley, Boteler, Burns, DeBoy, Elmore, Hixson, Kach, Kipke, Lafferty, Love, McDonough, Minnick, Mizeur, Montgomery, Robinson, Rudolph, Shewell, Sophocleus, Sossi, Stocksdale, Stukes, F. Turner, and Wood**

Introduced and read first time: January 28, 2010

Assigned to: Health and Government Operations

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## A BILL ENTITLED

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”

23 Annotated Code of Maryland

24 (2009 Replacement Volume)

25 BY repealing and reenacting, with amendments,

26 Article – State Finance and Procurement

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 Section 15–202  
2 Annotated Code of Maryland  
3 (2009 Replacement Volume)

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

6 **Article – State Finance and Procurement**

7 **SUBTITLE 6. SERVICE–DISABLED VETERAN BUSINESS ENTERPRISE**  
8 **PARTICIPATION.**

9 **14–601.**

10 (A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS  
11 INDICATED.

12 (B) “CERTIFICATION” MEANS THE DETERMINATION THAT A LEGAL  
13 ENTITY IS A SERVICE–DISABLED VETERAN BUSINESS ENTERPRISE FOR THE  
14 PURPOSES OF THIS SUBTITLE.

15 (C) “CERTIFIED SERVICE–DISABLED VETERAN BUSINESS ENTERPRISE”  
16 MEANS A BUSINESS THAT IS CERTIFIED BY THE UNITED STATES DEPARTMENT  
17 OF VETERANS AFFAIRS AS A SERVICE–DISABLED VETERAN–OWNED BUSINESS.

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

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

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

22 (E) (1) “SERVICE–DISABLED VETERAN BUSINESS ENTERPRISE” HAS  
23 THE MEANING STATED IN EXECUTIVE ORDER NO. 13360 ISSUED ON OCTOBER  
24 21, 2004, BY THE PRESIDENT OF THE UNITED STATES.

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

27 (I) A SOLE PROPRIETORSHIP OWNED BY  
28 SERVICE–DISABLED VETERANS;

29 (II) A SUBSIDIARY THAT IS WHOLLY OWNED BY A PARENT  
30 CORPORATION IN WHICH THE MAJORITY OF EACH CLASS OF ISSUED AND

1 OUTSTANDING STOCK OF THE PARENT COMPANY IS OWNED BY ONE OR MORE  
2 SERVICE-DISABLED VETERANS;

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

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

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

11 14-602.

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

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

21 (1) THE POTENTIAL SUBCONTRACT OPPORTUNITIES AVAILABLE  
22 IN THE PROCUREMENT CONTRACT; AND

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

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

30 14-603.

31 A UNIT SHALL AWARD THE CONTRACT TO THE RESPONSIBLE BIDDER  
32 THAT SUBMITS THE LOWEST RESPONSIVE BID, OR RESPONSIBLE OFFEROR  
33 PROPOSING THE MOST ADVANTAGEOUS OFFER, THAT MEETS OR MAKES A GOOD

1 FAITH EFFORT TO MEET ANY APPLICABLE GOAL ESTABLISHED UNDER THIS  
2 SUBTITLE.

3 **14-604.**

4 (A) THE BOARD SHALL:

5 (1) ADOPT REGULATIONS TO IMPLEMENT THIS SUBTITLE;

6 (2) ESTABLISH PROCEDURES FOR TRACKING AND REPORTING  
7 PARTICIPATION OF SERVICE-DISABLED VETERAN BUSINESS ENTERPRISES  
8 UNDER THIS SUBTITLE; AND

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

11 (I) THE NUMBER AND AMOUNT OF CONTRACTS AWARDED  
12 TO SERVICE-DISABLED VETERAN BUSINESS ENTERPRISES UNDER THIS  
13 SUBTITLE; AND

14 (II) THE EFFECTIVENESS OF THE PROGRAM UNDER THIS  
15 SUBTITLE.

16 **14-605.**

17 (A) A PERSON MAY NOT:

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

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

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

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

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

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

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

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

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

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

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

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

32           **(D) (1) A UNIT SHALL REPORT ALL ALLEGED VIOLATIONS OF THIS**  
33 **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 3. AND BE IT FURTHER ENACTED, That this Act shall take effect  
18 October 1, 2010.