

# HOUSE BILL 359

P2

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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 Wood, Benson, Bromwell, Costa, Donoghue, Elliott, Hubbard, Jenkins, Krebs, Kullen, Morhaim, Nathan-Pulliam, Oaks, Pena-Melnyk, Reznik, Tarrant, and V. Turner

Introduced and read first time: January 28, 2010

Assigned to: Health and Government Operations

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Committee Report: Favorable with amendments

House action: Adopted

Read second time: April 1, 2010

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## 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  
14 acts and certain penalties for certain violations; providing that certain  
15 provisions of law relating to protests do not apply to certain acts or omissions by  
16 certain procurement agencies under certain circumstances; ~~requiring the~~  
17 ~~Department of Business and Economic Development to use certain resources to~~  
18 ~~implement a certain program;~~ and generally relating to procurement  
19 participation by ~~service-disabled-veteran~~ veteran-owned small business  
20 enterprises.

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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.



1 BY adding to  
 2 Article – State Finance and Procurement  
 3 Section 14–601 through 14–605 to be under the new subtitle “Subtitle 6.  
 4 ~~Service Disabled Veteran~~ Veteran-Owned Small Business Enterprise  
 5 Participation”  
 6 Annotated Code of Maryland  
 7 (2009 Replacement Volume)

8 BY repealing and reenacting, with amendments,  
 9 Article – State Finance and Procurement  
 10 Section 15–202  
 11 Annotated Code of Maryland  
 12 (2009 Replacement Volume)

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

15 **Article – State Finance and Procurement**

16 **SUBTITLE 6. ~~SERVICE DISABLED VETERAN~~ VETERAN-OWNED SMALL**  
 17 **BUSINESS ENTERPRISE PARTICIPATION.**

18 **14-601.**

19 ~~(A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS~~  
 20 ~~INDICATED.~~

21 ~~(B) “CERTIFICATION” MEANS THE DETERMINATION THAT A LEGAL~~  
 22 ~~ENTITY IS A SERVICE DISABLED VETERAN BUSINESS ENTERPRISE FOR THE~~  
 23 ~~PURPOSES OF THIS SUBTITLE.~~

24 ~~(C) “CERTIFIED SERVICE DISABLED VETERAN BUSINESS ENTERPRISE”~~  
 25 ~~MEANS A BUSINESS THAT IS CERTIFIED BY THE UNITED STATES DEPARTMENT~~  
 26 ~~OF VETERANS AFFAIRS AS A SERVICE DISABLED VETERAN OWNED BUSINESS.~~

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

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

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

31 ~~(E) (1) “SERVICE DISABLED VETERAN BUSINESS ENTERPRISE” HAS~~  
 32 ~~THE MEANING STATED IN EXECUTIVE ORDER NO. 13360 ISSUED ON OCTOBER~~  
 33 ~~21, 2004, BY THE PRESIDENT OF THE UNITED STATES.~~

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

3                   (I) ~~A SOLE PROPRIETORSHIP OWNED BY~~  
4 ~~SERVICE DISABLED VETERANS;~~

5                   (H) ~~A SUBSIDIARY THAT IS WHOLLY OWNED BY A PARENT~~  
6 ~~CORPORATION IN WHICH THE MAJORITY OF EACH CLASS OF ISSUED AND,~~  
7 ~~“VETERAN-OWNED SMALL BUSINESS ENTERPRISE” MEANS A BUSINESS THAT IS~~  
8 ~~VERIFIED BY THE CENTER FOR VETERANS ENTERPRISE OF THE UNITED~~  
9 ~~STATES DEPARTMENT OF VETERANS AFFAIRS AS A VETERAN-OWNED SMALL~~  
10 ~~BUSINESS. OUTSTANDING STOCK OF THE PARENT COMPANY IS OWNED BY ONE~~  
11 ~~OR MORE SERVICE DISABLED VETERANS;~~

12                   (HH) ~~A JOINT VENTURE IN WHICH THE MAJORITY OF THE~~  
13 ~~JOINT VENTURE’S MANAGEMENT, CONTROL, AND PROFITS ARE OWNED BY ONE~~  
14 ~~OR MORE SERVICE DISABLED VETERANS;~~

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

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

20 14-602.

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

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

30                   (1) THE POTENTIAL SUBCONTRACT OPPORTUNITIES AVAILABLE  
31 IN THE PROCUREMENT CONTRACT; AND

32                   (2) THE AVAILABILITY OF ~~CERTIFIED SERVICE DISABLED~~  
33 VETERAN VETERAN-OWNED SMALL BUSINESS ENTERPRISES TO RESPOND  
34 COMPETITIVELY TO THE POTENTIAL SUBCONTRACT OPPORTUNITIES.

1           **(C) THE PROVISIONS OF THIS SUBTITLE DO NOT APPLY TO A UNIT'S**  
2 **PROCUREMENT PROCEDURES TO THE EXTENT THAT ANY UNIT DETERMINES**  
3 **THAT THOSE PROVISIONS ARE IN CONFLICT WITH AN APPLICABLE FEDERAL**  
4 **PROGRAM.**

5 **14-603.**

6           **A UNIT SHALL AWARD THE CONTRACT TO THE RESPONSIBLE BIDDER**  
7 **THAT SUBMITS THE LOWEST RESPONSIVE BID, OR RESPONSIBLE OFFEROR**  
8 **PROPOSING THE MOST ADVANTAGEOUS OFFER, THAT MEETS OR MAKES A GOOD**  
9 **FAITH EFFORT TO MEET ANY APPLICABLE GOAL ESTABLISHED UNDER THIS**  
10 **SUBTITLE.**

11 **14-604.**

12           **(A) THE BOARD SHALL:**

13                   **(1) ADOPT REGULATIONS TO IMPLEMENT THIS SUBTITLE;**

14                   **(2) ESTABLISH PROCEDURES FOR TRACKING AND REPORTING**  
15 **PARTICIPATION OF ~~SERVICE-DISABLED VETERAN~~ VETERAN-OWNED SMALL**  
16 **BUSINESS ENTERPRISES UNDER THIS SUBTITLE; AND**

17                   **(3) ON OR BEFORE DECEMBER 1 OF EACH YEAR, REPORT TO THE**  
18 **LEGISLATIVE POLICY COMMITTEE ON:**

19                           **(I) THE NUMBER AND AMOUNT OF CONTRACTS AWARDED**  
20 **TO ~~SERVICE-DISABLED VETERAN~~ VETERAN-OWNED SMALL BUSINESS**  
21 **ENTERPRISES UNDER THIS SUBTITLE; AND**

22                           **(II) THE EFFECTIVENESS OF THE PROGRAM UNDER THIS**  
23 **SUBTITLE.**

24 **14-605.**

25           **(A) A PERSON MAY NOT:**

26                   **(1) KNOWINGLY AND WITH INTENT TO DEFRAUD, FRAUDULENTLY**  
27 **OBTAIN, ATTEMPT TO OBTAIN, OR AID ANOTHER PERSON IN FRAUDULENTLY**  
28 **OBTAINING OR ATTEMPTING TO OBTAIN, PUBLIC MONEY, PROCUREMENT**  
29 **CONTRACTS, OR FUNDS EXPENDED UNDER A PROCUREMENT CONTRACT TO**  
30 **WHICH THE PERSON IS NOT ENTITLED UNDER THIS ARTICLE;**

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

5           (3) WILLFULLY AND KNOWINGLY MAKE OR SUBSCRIBE TO ANY  
6 STATEMENT, DECLARATION, OR OTHER DOCUMENT THAT IS FRAUDULENT OR  
7 FALSE AS TO ANY MATERIAL MATTER, WHETHER OR NOT THAT FALSITY OR  
8 FRAUD IS COMMITTED WITH THE KNOWLEDGE OR CONSENT OF THE PERSON  
9 AUTHORIZED OR REQUIRED TO PRESENT THE DECLARATION, STATEMENT, OR  
10 DOCUMENT;

11           (4) WILLFULLY AND KNOWINGLY AID, ASSIST IN, PROCURE,  
12 COUNSEL, OR ADVISE THE PREPARATION OR PRESENTATION OF A  
13 DECLARATION, STATEMENT, OR OTHER DOCUMENT THAT IS FRAUDULENT OR  
14 FALSE AS TO ANY MATERIAL MATTER, REGARDLESS OF WHETHER THAT FALSITY  
15 OR FRAUD IS COMMITTED WITH THE KNOWLEDGE OR CONSENT OF THE PERSON  
16 AUTHORIZED OR REQUIRED TO PRESENT THE DECLARATION, STATEMENT, OR  
17 DOCUMENT;

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

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

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

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

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

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

34           (3) A PERSON WHO VIOLATES ANY OF THE PROVISIONS OF  
35 SUBSECTION (A) OF THIS SECTION SHALL PAY ALL COSTS AND ATTORNEY'S FEES

1 INCURRED BY THE PLAINTIFF IN A CIVIL ACTION BROUGHT UNDER THIS  
2 SUBTITLE.

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

7 (D) (1) A UNIT SHALL REPORT ALL ALLEGED VIOLATIONS OF THIS  
8 SECTION TO THE BOARD.

9 (2) THE BOARD SUBSEQUENTLY SHALL REPORT ALL ALLEGED  
10 VIOLATIONS OF THIS SECTION TO THE OFFICE OF THE ATTORNEY GENERAL,  
11 WHICH SHALL DETERMINE WHETHER TO BRING A CIVIL ACTION AGAINST A  
12 PERSON OR BUSINESS FOR A VIOLATION OF THIS SECTION.

13 15-202.

14 This subtitle does not apply to a protest concerning:

15 (1) the formation of a procurement contract for architectural services  
16 or engineering services; OR

17 (2) EXCEPT TO THE EXTENT AUTHORIZED BY REGULATION BY  
18 THE BOARD, ANY ACT OR OMISSION BY A PROCUREMENT AGENCY UNDER TITLE  
19 14, SUBTITLE 6 OF THIS ARTICLE.

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

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