

Regular Session, 2009

HOUSE BILL NO. 559

BY REPRESENTATIVES JANE SMITH, CORTEZ, ELLINGTON, FANNIN, HARRISON, HAZEL, LEBAS, LEGER, LIGI, MCVEA, MORRIS, PEARSON, SCHRODER, SMILEY, GARY SMITH, PATRICIA SMITH, STIAES, WHITE, AND WILLIAMS AND SENATOR GUILLORY

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

MILITARY AFFAIRS: Provides for veteran and service-connected disabled veteran-owned
entrepreneurships

1 AN ACT

2 To enact Chapter 23 of Title 39 of the Louisiana Revised Statutes of 1950, to be comprised
3 of R.S. 39:2171 through 2179, relative to veterans affairs; to create the Louisiana
4 Initiative for Veteran and Service-Connected Disabled Veteran-Owned Small
5 Entrepreneurships; to provide for state goals for procurements and public contracts
6 for veteran and service-connected disabled veteran-owned small entrepreneurships;
7 to provide for certification; to provide for responsibilities and training of the
8 commissioner of administration; to provide for initiative coordinators and reporting;
9 to provide for responsibilities of the Louisiana Department of Veterans Affairs; to
10 provide for definitions; to provide for application; and to provide for related matters.

11 Be it enacted by the Legislature of Louisiana:

12 Section 1. Chapter 23 of Title 39 of the Louisiana Revised Statutes of 1950,
13 comprised of R.S. 39:2171 through 2179, is hereby enacted to read as follows:

14 CHAPTER 23. LOUISIANA INITIATIVE FOR VETERAN AND SERVICE-
15 CONNECTED DISABLED VETERAN-OWNED SMALL ENTREPRENEURSHIPS

16 (THE VETERAN INITIATIVE)

17 §2171. Louisiana Initiative for Veteran and Service-Connected Disabled Veteran-
18 Owned Small Entrepreneurships; intent

19 A. The legislature hereby establishes the Louisiana Initiative for Veteran and
20 Service-Connected Disabled Veteran-Owned Small Entrepreneurships (the Veteran

1 Initiative), hereinafter referred to in this Chapter as the "initiative", to facilitate the
2 growth and stability of Louisiana's economy by fostering utilization by state interests
3 of the business offerings available for state procurement and public contracts from
4 Louisiana's veteran and service-connected disabled veteran-owned small
5 entrepreneurships, and providing a clearinghouse of information to these
6 entrepreneurships. Veterans of the United States Armed Forces have served the state
7 of Louisiana and the United States, often at great risk, to preserve the American
8 dream of freedom and prosperity. Given the magnitude of the state's procurement
9 and public contracting activity, state government is uniquely situated to create an
10 environment where veteran and service-connected disabled veteran-owned small
11 entrepreneurships have an opportunity to thrive and ultimately enhance the stability
12 of Louisiana's economy.

13 B. The provisions of this Chapter are intended to encourage business
14 opportunities for veteran and service-connected disabled veteran-owned small
15 entrepreneurships. The criteria for certification as a veteran and service-connected
16 disabled veteran-owned small entrepreneurship for the purposes of the initiative shall
17 be as established in R.S. 39:2006, and as may be additionally refined by
18 administrative rule.

19 §2172. Definitions

20 As used in this Chapter, the following words and phrases shall have the
21 meanings ascribed to them in this Section, unless the context clearly indicates
22 otherwise:

23 (1) "Agency" or "state agency" means any department, office, division,
24 commission, council, board, bureau, committee, institution, agency, government
25 corporation, or other establishment or official of the executive or judicial branches
26 of state government.

27 (2) "Commissioner" means the commissioner of administration.

28 (3) "Contract" or "public contract" means all types of state agreements,
29 regardless of what they may be called, for the purchase of materials, supplies,

1 services, or major repairs, or for the making of any public works. It includes awards
2 and notices of award; contracts of a fixed-price, cost, cost-plus a fixed-fee, or
3 incentive type; contracts providing for the issuance of job or task orders; leases;
4 letter contracts; and purchase orders. It also includes supplemental agreements with
5 respect to any of the foregoing.

6 (4) "Contractor" means any person having a contract with a state agency.

7 (5) "Data" means recorded information, regardless of form or characteristic.

8 (6) "Goal" means a numerically expressed objective relating to state
9 procurements and public works contracts that a state agency or contractor is
10 encouraged to make a good faith effort to achieve.

11 (7) "Procurement" means the buying, purchasing, renting, leasing, or
12 otherwise obtaining any materials, supplies, services, or major repairs. It also
13 includes all functions that pertain to the obtaining of any public procurement,
14 including description of requirements, selection and solicitation of sources,
15 preparation and award of contract, and all phases of contract administration.

16 (8) "Public work" means the erection, construction, alteration, improvement,
17 or repair of any public facility or immovable property owned, used, or leased by a
18 state agency.

19 (9) "Service-connected disabled veteran-owned small entrepreneurship"
20 means any corporation, partnership, individual, sole proprietorship, joint stock
21 company, joint venture, or any other legal entity which has not less than fifty-one
22 percent ownership by a veteran of the United States Armed Forces with a service-
23 connected disability, and meets the criteria for certification by the secretary of the
24 Department of Economic Development pursuant to R.S. 39:2176. Service-connected
25 disability will be ascertained with appropriate documents from the United States
26 Department of Veterans Affairs or the Louisiana Department of Veterans Affairs.

27 (10) "Veteran-owned small entrepreneurship" means any corporation,
28 partnership, individual, sole proprietorship, joint stock company, joint venture, or
29 any other legal entity which has not less than fifty-one percent ownership by a

1 veteran of the United States Armed Forces and meets the criteria for certification by
2 the secretary of the Department of Economic Development pursuant to R.S. 39:2176.

3 §2173. Application of Chapter

4 Notwithstanding any other provision of law to the contrary, the provisions of
5 this Chapter apply to procurements and public contracts which are governed by
6 Chapter 10 of Title 38, Chapters 16 and 17 of this Title, and Parts XIII and XIII-A
7 of Chapter 1 of Title 48 of the Louisiana Revised Statutes of 1950. This Chapter
8 shall not apply to agency expenditures for amortization of debt, debt service,
9 depreciation, employee benefits, per diem, relocation expenses, salaries, postage, and
10 transfers of charges. This Chapter shall not apply to contracts for sole-source items,
11 contracts with other governmental entities, and those contracts that are prohibited by
12 federal law from inclusion in this Chapter.

13 §2174. State goals for procurements and public contracts

14 The commissioner of administration shall establish annual goals for veteran
15 and service-connected disabled veteran-owned small entrepreneurship participation
16 in state procurements and public contracts. The commissioner shall determine the
17 appropriate level and number of goals for each year. The formulation of each goal
18 shall be based on historical procurement and public contracting data and any other
19 factors which the commissioner deems useful. As part of development of goals, the
20 commissioner may consider the capacity of veteran and service-connected disabled
21 veteran-owned small entrepreneurships available to participate in meeting goals,
22 which may be determined based on past experience, available veteran and service-
23 connected disabled veteran-owned small entrepreneurship certifications, and
24 recognized industry composition. The commissioner shall provide guidance to
25 agencies with respect to estimation of dollar values for anticipated procurement and
26 contract activity to be used in the development of a goal. Agencies shall report any
27 data required by the commissioner in this regard in accordance with a schedule
28 established by the commissioner.

1 §2175. Competitive source selection

2 Methods of source selection which may be utilized by an agency to satisfy
3 a state goal for contracting with veteran and service-connected disabled veteran-
4 owned small entrepreneurships shall include but not be limited to:

5 (1) Any method provided for in an executive order governing small
6 purchases.

7 (2) The purchase of goods, operating services, major repairs, personnel
8 services, professional services, consulting services, and public works directly from
9 a certified veteran and service-connected disabled veteran-owned small
10 entrepreneurship under an agency's discretionary purchasing authority.

11 (3) Direct purchase from a certified veteran and service-connected disabled
12 veteran-owned small entrepreneurship who is a distributor on a state contract.

13 (4) The inclusion of the requirement that a bidder or offeror have a good
14 faith subcontracting plan to utilize a certified veteran and service-connected disabled
15 veteran-owned small entrepreneurship as part of a competitive bid or a request for
16 proposal, pursuant to guidelines established by the commissioner of administration.

17 (5) An allowance for at least ten percent of the total evaluation points in a
18 request for proposal be awarded to an offeror demonstrating a good faith effort to use
19 veteran and service-connected disabled veteran-owned small entrepreneurships as
20 subcontractors.

21 (6) An allowance for ten percent of the total evaluation points in a request
22 for proposal be awarded to an offeror who is a certified veteran and service-
23 connected disabled veteran-owned small business entrepreneurship.

24 §2176. Certification of businesses by Department of Economic Development;
25 listing of veteran and service-connected disabled veteran-owned small
26 entrepreneurships; reporting

27 A. The secretary of the Department of Economic Development, hereinafter
28 referred to in this Section as the "department", shall certify businesses as veteran and
29 service-connected disabled veteran-owned small entrepreneurships for the purposes

1 of this Chapter. "Veteran-owned small entrepreneurship" and "Service-connected
2 disabled veteran-owned small entrepreneurship" means any corporation, partnership,
3 individual, sole proprietorship, joint stock company, joint venture, or any other legal
4 entity which meets all of the following criteria:

5 (1) Independently owned and operated.

6 (2) Not dominant in its field of operations, which shall be determined by
7 consideration of the business' number of employees, volume of business, financial
8 resources, competitive status, and ownership or control of materials, processes,
9 patents, license agreements, facilities, and sales territory.

10 (3) Is owned by and has officers who are citizens or legal residents of the
11 United States, all of whom are domiciled in Louisiana, and who maintain the
12 principal business office in Louisiana.

13 (4) Together with any of its affiliate entities, has fewer than fifty full-time
14 employees with average annual gross receipts not exceeding five million dollars per
15 year for construction operations and three million dollars per year for
16 nonconstruction operations, for each of the previous three tax years.

17 B. The department shall develop an application process for entities seeking
18 certification, which process shall be established through promulgation of rules and
19 regulations pursuant to the Administrative Procedure Act. The department shall
20 notify each applicant in writing relative to the outcome of their application. The
21 department shall maintain a listing of all veteran and service-connected disabled
22 veteran-owned small entrepreneurs which shall be updated monthly. This listing
23 shall be available on the Internet and shall also be available in written form upon
24 written request.

25 C. The certification of veteran and service-connected disabled veteran-
26 owned small entrepreneurs as provided herein shall supersede all other rules and
27 regulations promulgated by any agency specifically related to certification or
28 designation of a business which is small or in some other way noteworthy for

1 purposes of procurement and public contracts; however, this preeminence shall not
2 apply to any programs or activities required by the federal government.

3 D. The department shall consult with the Louisiana Department of Veterans
4 Affairs and any other state agency as is necessary to carry out the provisions of this
5 Chapter. The department shall rely on data to be furnished by the Louisiana
6 Workforce Commission with respect to certification criteria related to numbers of
7 employees.

8 E. The department shall report annually to the commissioner of
9 administration with respect to the graduation rates for businesses which grew to
10 exceed the eligibility requirements for certification in the most recently concluded
11 fiscal year. Such report shall be made in accordance with the requirements of the
12 commissioner of administration. The department shall also provide the
13 commissioner of administration any other data he may require with respect to the
14 certification of businesses and the initiative.

15 §2177. Responsibilities of the commissioner of administration; training; reporting

16 A. The commissioner shall establish policies and procedures necessary for
17 implementing the Louisiana Initiative for Veteran and Service-Connected Disabled
18 Veteran-Owned Small Entrepreneurships and increasing the use of veteran and
19 service-connected disabled veteran-owned small entrepreneurships in state
20 procurements and public contracts. This shall include measures to ensure agency
21 adoption and compliance with the requirements of this Chapter.

22 B. The commissioner shall develop standard contract clauses to be used by
23 agencies in requests for proposals, advertisements, and solicitations for bids as are
24 necessary to carry out the purposes of this Chapter.

25 C. The commissioner shall provide periodic training for relevant state
26 employees to acquaint them with the requirements of the initiative and administrative
27 law related thereto. Each agency shall ensure that at least one employee from that
28 agency attends such training, in accordance with the training schedule to be
29 established by the commissioner. The commissioner shall include information with

1 respect to actual agency staff participation in such training as part of his annual
2 report to the legislature as provided in Subsection E of this Section.

3 D. The commissioner shall conduct a training program at least semiannually
4 to acquaint veteran and service-connected disabled veteran-owned small
5 entrepreneurships with state procurement and public contract proposal and bidding
6 practices. This shall include all state procurements which are governed by Chapter
7 10 of Title 38, Chapters 16 and 17 of this Title, and Parts XIII and XIII-A of Chapter
8 1 of Title 48 of the Louisiana Revised Statutes of 1950. The commissioner shall also
9 secure the assistance of staff from the Louisiana Department of Veterans Affairs for
10 veteran-specific information and data, and either the Department of Transportation
11 and Development, Department of Natural Resources, or Department of
12 Environmental Quality who are knowledgeable about state procurements undertaken
13 pursuant to Chapter 10 of Title 38 and Parts XIII and XIII-A of Chapter 1 of Title
14 48 of the Louisiana Revised Statutes of 1950, for the purpose of providing practical
15 advice to veteran and service-connected disabled veteran-owned small
16 entrepreneurships relative to procurements and public contracts governed by such
17 law.

18 E. The commissioner shall annually prepare a report on the progress of the
19 initiative in the most recently ended fiscal year, which shall be made available on the
20 Internet and shall be delivered to the House Committee on Appropriations and the
21 Senate Committee on Finance by the fifteenth day of January each year. The
22 commissioner shall establish the reporting requirements for agencies which
23 undertake procurements and public contracts independent of the division of
24 administration, so that data from such agencies will be available to the commissioner
25 for inclusion in this report. The commissioner's report shall include information
26 which he deems useful to the legislature and the citizens of Louisiana with respect
27 to analysis of the progress of the initiative, but at a minimum, it shall contain the
28 following elements:

1 (1) The total number and dollar value of all agency contracts awarded to
2 veteran and service-connected disabled veteran-owned small entrepreneurship in
3 that fiscal year.

4 (2) The number of contracts that included a good faith veteran and service-
5 connected disabled veteran-owned small entrepreneurship subcontracting plan.

6 (3) Information related to the graduation rates for veteran and service-
7 connected disabled veteran-owned small entrepreneurship which in that year grew
8 to exceed the size standards for certification eligibility. This information shall be
9 developed from data provided to the commissioner by the Department of Economic
10 Development.

11 F. The commissioner may adopt and promulgate rules and regulations he
12 deems necessary for implementation and administration of the provisions of this
13 Chapter, pursuant to the Administrative Procedure Act.

14 §2178. State agency initiative coordinators and reporting

15 A. Each agency of the state shall participate in the Louisiana Initiative for
16 Veteran and Service-Connected Disabled Veteran-Owned Small Entrepreneurships
17 by complying with all provisions of this Chapter, administrative law related thereto,
18 and any other requirements of the commissioner.

19 B. Each agency shall maintain current data relating to its procurement and
20 public contract activities with respect to the requirements of this Chapter. The
21 agency shall be prepared to provide to the commissioner of administration, upon
22 request, the total number and dollar value of all contracts awarded to veteran and
23 service-connected disabled veteran-owned small entrepreneurship in that fiscal year,
24 as well as contracts which provided a good faith veteran and service-connected
25 disabled veteran-owned small entrepreneurship subcontracting plan.

26 C. The initiative coordinator shall be the person serving in the position of
27 undersecretary for a state department or business manager for a state agency. The
28 coordinator shall undertake any duties the agency head deems necessary to ensure
29 that the agency achieves its maximum potential with respect to usage of veteran and

1 service-connected disabled veteran-owned small entrepreneurships in its
2 procurements and public contracts. Specifically, the coordinator shall be responsible
3 for all of the following activities:

4 (1) Collection and reporting of agency data to the commissioner.

5 (2) Coordination of forums to be held at the agency at which veteran and
6 service-connected disabled veteran-owned small entrepreneurships and contractors
7 making a good faith effort to subcontract with veteran and service-connected
8 disabled veteran-owned small entrepreneurships shall be invited to deliver technical
9 and business presentations demonstrating their capability to do business with the
10 agency. Agency participants in such forums shall be those senior managers and
11 procurement personnel who administer procurements and public contracts relevant
12 to the veteran and service-connected disabled veteran-owned small entrepreneurship.
13 The forums shall be conducted at least annually.

14 §2179. Responsibilities of the Louisiana Department of Veterans Affairs

15 A. The secretary of the Louisiana Department of Veterans Affairs,
16 hereinafter referred to in this Section as "Veterans Affairs", shall assist Louisiana's
17 veterans and service-connected disabled veterans in procuring state and federal
18 contracts.

19 B. The secretary of Veterans Affairs shall establish policies and procedures
20 necessary for implementing and publicizing an Internet-based information
21 clearinghouse for the Louisiana Initiative for Veterans and Service-Connected
22 Disabled Veteran-Owned Small Entrepreneurships to Louisiana's veteran population.

23 C. Veterans Affairs shall consult and collaborate with local, state, federal,
24 and nongovernmental agencies and organizations as necessary to carry out the
25 provisions of this Chapter. Veterans Affairs shall rely on data furnished by the
26 United States Department of Veterans Affairs with respect to the number of veterans
27 and service-connected disabled veterans in the state of Louisiana.

28 D. Veterans Affairs shall gather veteran-specific demographic, employment,
29 and entrepreneurial data for the commissioner's consideration in developing annual

1 goals of the initiative and as additional sources of information for the commissioner's
 2 annual report.

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

Jane Smith

HB No. 559

Abstract: Establishes the La. Initiative for Veteran and Service-Connected Disabled Veteran-Owned Small Entrepreneurships (The Veteran Initiative).

Proposed law establishes the La. Initiative for Veteran and Service-Connected Disabled Veteran-Owned Small Entrepreneurships (The Veteran Initiative) and provides for legislative intent and definitions.

Proposed law provides for certification of certain veteran and service-connected disabled veteran-owned small entrepreneurships by the secretary of the Dept. of Economic Development (DED) as "veteran and service-connected disabled veteran-owned small entrepreneurships". Establishes criteria for certification (R.S. 39:2176(A)(1)-(4)).

Proposed law authorizes DED to develop the application process for entities seeking certification through APA. DED shall maintain an Internet listing of all veteran and service-connected disabled veteran-owned small entrepreneurships, to be updated monthly and report annually to the commissioner of administration with respect to the graduation rates for businesses which grew to exceed the eligibility requirements for certification in the last year.

Proposed law requires that DED shall consult with the La. Dept. of Veterans Affairs and any other state agency as necessary to carry out the provisions of proposed law.

Proposed law requires the commissioner of administration to set annual goals for the use of veteran and service-connected disabled veteran-owned small entrepreneurships in state procurements and public contracting. The level and number of goals shall be at the discretion of the commissioner.

Proposed law (R.S. 39:2173) provides for methods of source selection which may be utilized by state agencies for contracting with veteran and service-connected disabled veteran-owned small entrepreneurships.

Proposed law (R.S. 39:2177(A)-(C)) requires the commissioner to establish policies for and assist agencies with implementation of the initiative, including standard contract clauses for use by agencies in requests for proposals, advertisements, and solicitations for bids. Requires that the commissioner shall also provide periodic training for state employees to acquaint them with the requirements of the initiative.

Proposed law (R.S. 39:2177(D)) requires the commissioner to conduct a training program to acquaint veteran and service-connected disabled veteran-owned small entrepreneurships with state procurement and public contract proposal and bidding practices. The commissioner shall secure the assistance of staff from La. Dept. of Veterans Affairs for veteran-specific information and data and either DOTD, DNR, or DEQ for the purpose of providing practical advice to small veteran and service-connected disabled veteran-owned entrepreneurships relative to procurements and public contracts governed by such law.

Proposed law (R.S. 39:2177(E)) requires the commissioner to annually prepare a report on the progress of the initiative in the most recently ended fiscal year, to be made available to the legislature. The commissioner's report shall include information on contract volume and dollar values and on graduation rates of veteran and service-connected disabled veteran-owned small entrepreneurships.

Proposed law requires that the undersecretary or business manager of each agency serve as its initiative coordinator, who shall be responsible for carrying out the requirements of the agency with respect to the initiative.

Proposed law provides that the secretary of the La. Dept. of Veterans Affairs shall assist Louisiana's veterans and service-connected disabled veterans in procuring the state and federal contracts and shall establish policies and procedures necessary for implementing and publicizing information regarding the Veterans Initiative.

Proposed law provides that the La. Dept. of Veterans Affairs shall collaborate with local, state, federal, and nongovernmental agencies and organizations necessary to implement and carry out the program.

(Adds R.S. 39:2171-2179)