

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Military and Veterans Affairs, Space, and Domestic Security

BILL: SB 1124

INTRODUCER: Senator Altman

SUBJECT: Veteran Preference in State Purchasing

DATE: March 12, 2013 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Ryon	Ryon	MS	Favorable
2.			GO	
3.			JU	
4.			AP	
5.				
6.				

I. Summary:

SB 1124 removes the “tiebreaker” preference for a veteran business enterprise (VBE) certified by the Office of Supplier Diversity within the Department of Management Services. The tiebreaker preference requires a state agency to award a procurement or contract to a certified VBE, when considering two or more bids, proposals, or replies that are equal with respect to all relevant considerations including price, quality, and service.

In place of the tiebreaker preference, the bill requires a state agency, when considering two or more bids, proposals, or replies to apply a 3 percent preference to the first \$500,000 of a certified VBE’s bid, proposal, or reply.

The bill substantially amends section 295.187 of the Florida Statutes.

II. Present Situation:

The Office of Supplier Diversity (OSD) within the Department of Management Services (DMS) has the mission to improve business and economic opportunities for Florida's minority, women, and veteran business enterprises. Current law requires the DMS, through the OSD, to implement a minority business enterprise (MBE) certification program and a veteran business enterprise (VBE) certification program. Minority, women, and veteran-owned businesses certified by the OSD are eligible for benefits such as: first tier referrals to state agencies for contract opportunities; business development guidance from established corporations; participation at regional workshops, seminars, and corporate roundtables; and inclusion in an exclusive listing of state-certified minority business enterprises in an online directory.

The Florida Veteran Business Enterprise Opportunity Act (Act) exists to rectify the economic disadvantage of service-disabled veterans and to recognize wartime veterans of a period of war for their sacrifices.¹

The Act creates the certification process within the DMS for VBEs. It creates a “tiebreaker” preference for VBEs by requiring a state agency, when considering two or more bids, proposals, or replies for the procurement of commodities or contractual services, at least one of which is from a certified VBE, that are equal with respect to all relevant considerations including price, quality, and service, to award such procurement or contract to the certified VBE. However, if a certified VBE and one or more VBE or businesses eligible for another statutory vendor preference, such as an MBE, submit bids or proposals that are equal with respect to all relevant considerations including price, quality, and service, the state agency must award the contract or proposal to the business having the smallest net worth.

In order to be certified as a VBE, a business enterprise must be an independently owned and operated business that:

- Employs 200 or fewer permanent full-time employees;
- Together with its affiliates has a net worth of \$5 million or less or, if a sole proprietorship, has a net worth of \$5 million or less including both personal and business investments.
- Is organized to engage in commercial transactions;
- Is domiciled in this state;
- Is at least 51 percent owned by one or more wartime veterans or service-disabled veterans;² and
- Is managed and controlled by one or more wartime veterans or service-disabled veterans or, for a service-disabled veteran with a permanent and total disability, by the spouse or permanent caregiver of the veteran.

For purposes of VBE certification, a “wartime veteran” means:

- A wartime veteran as defined in s. 1.01(14), F.S.; or
- A veteran of a period of war, as used in 38 U.S.C. s 1521, who served in the active military, naval, or air service:
 - For 90 days or more during a period of war;
 - During a period of war and was discharged or released from such service for a service-connected disability;
 - For a period of 90 consecutive days or more and such period began or ended during a period of war; or
 - For an aggregate of 90 days or more in two or more separate periods of service during more than one period of war.

¹ The Act is established in s. 295.187, F.S.

² Service-disabled veteran means a veteran who is a permanent Florida resident with a service-connected disability as determined by the United States Department of Veterans Affairs or who has been terminated from military service by reason of disability by the United States Department of Defense.

The Act establishes a certification process administered by the DMS, in coordination with the Florida Department of Veterans' Affairs (DVA). The certification process requires applicants to submit documentation demonstrating that the business meets the above-listed requirements. Certification is renewed biennially and may be revoked for one year if the VBE fails to inform the DMS within 30 days of a change in circumstances that renders the business ineligible for certification.

The Act provides rule-making authority to the DVA, and requires the DVA to:

- Assist the DMS in establishing a certification procedure, which must be reviewed biennially and updated as necessary;
- Identify eligible veteran business enterprises by any electronic means, including electronic mail, Internet website or by any other reasonable means;
- Encourage and assist eligible veteran business enterprises to apply for certification; and
- Provide information regarding services that are available from the Office of Veterans' Business Outreach of the Florida Small Business Development Center to veteran business enterprises.

The Act also provides rule-making authority to the DMS, and requires the DMS to:

- Establish a certification procedure, which must be reviewed biennially and updated as necessary.
- Grant, deny, or revoke the certification of a VBE.
- Maintain an electronic directory of certified veteran business enterprises for use by the state, political subdivisions of the state, and the public.

In addition, the Act encourages political subdivisions of the state to offer a similar consideration to certified service-disabled veterans.

There are currently 248 VBEs certified by the OSD.³

III. Effect of Proposed Changes:

Section 1 amends s. 295.187, F.S., to remove the “tiebreaker” preference which requires a state agency to award a procurement or contract to a certified VBE, when considering two or more bids, proposals, or replies that are equal with respect to all relevant considerations including price, quality, and service.

In place of the tiebreaker preference, the bill requires a state agency, when considering two or more bids, proposals, or replies to apply a 3 percent preference to the first \$500,000 of a certified VBE's bid, proposal, or reply. An eligible certified VBE must submit a veteran-owned preference form and any required documentation to be given preference.

Section 2 provides for an effective date of July 1, 2013.

³ E-mail correspondence with DMS staff. March 12, 2013.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

The veteran preference provision in the bill may potentially implicate the Equal Protection Clause of the U.S. Constitution.⁴

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill could result in more business being awarded to certified veteran business enterprises as a product of the preference being given to them.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

⁴ U.S. CONST. amend. XIV, § 1. *See also* FLA. CONST. art. I, s. 2.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
