

**HOUSE OF REPRESENTATIVES STAFF ANALYSIS**

**BILL #:** HB 1533                      State Service Contracts

**SPONSOR(S):** Rep. Smith

**TIED BILLS:**    **IDEN./SIM. BILLS:**

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REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Judiciary</u>	_____	<u>Thomas</u>	<u>Havlicak</u>
2) <u>State Administration</u>	_____	_____	_____
3) _____	_____	_____	_____
4) _____	_____	_____	_____
5) _____	_____	_____	_____

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**SUMMARY ANALYSIS**

The bill requires that potential vendors for state service contracts greater than \$50,000 agree to use only Florida residents to provide the contracted services. The bill applies the same requirement to employees and businesses that subcontract with vendors on such contracts. The requirement may be waived if the Department of Management Services finds a compelling state interest exists that justifies the waiver of the requirement, provided such finding is approved by the Administration Commission.

The bill will likely limit the number of available vendors able to provide services to the state for service contracts greater than \$50,000. Limiting the number of available vendors could lead to less competition and elimination of vendors who could provide state services for lower costs, thus, increasing expenditures to the state for these services.

The bill does not appear to have a fiscal impact on local governments.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. DOES THE BILL:

- |                                      |                              |  |   |
|--------------------------------------|------------------------------|--|---|
| 1. Reduce government?                | Yes <input type="checkbox"/> | No <input type="checkbox"/>            | N/A <input checked="" type="checkbox"/> |
| 2. Lower taxes?                      | Yes <input type="checkbox"/> | No <input type="checkbox"/>            | N/A <input checked="" type="checkbox"/> |
| 3. Expand individual freedom?        | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> | N/A <input type="checkbox"/>            |
| 4. Increase personal responsibility? | Yes <input type="checkbox"/> | No <input type="checkbox"/>            | N/A <input checked="" type="checkbox"/> |
| 5. Empower families?                 | Yes <input type="checkbox"/> | No <input type="checkbox"/>            | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

The bill limits individual freedom by eliminating the opportunities for those who do not meet the requirement's of the bill when bidding for state services contracts greater than \$50,000.

#### B. EFFECT OF PROPOSED CHANGES:

The bill requires that potential vendors for state service contracts greater than \$50,000 agree to use only Florida residents to provide the contracted services. The bill applies the same requirement to employees and businesses that subcontract with vendors on such contracts. The requirement may be waived if the Department of Management Services (DMS) finds a compelling state interest exists that justifies the waiver of the requirement, provided such finding is approved by the Administration Commission.<sup>1</sup>

#### State Procurement of Commodities and Contractual Services

Part I of ch. 287, F.S., sets forth the competitive bidding requirements for the procurement of goods and services by state agencies. The stated legislative intent for the chapter is to create a system of uniform competitive bidding procedures so that fair and open competition is encouraged, and opportunities for favoritism and impropriety are reduced.<sup>2</sup>

A contract for commodities or contractual services by a state agency that costs in excess of \$25,000 must use one of the following procurement methods: invitation to bid (ITB), request for proposals (RFP), or invitation to negotiate (ITN).<sup>3</sup> An agency may procure commodities or contractual services from vendors currently under contract with the DMS by using a request for quote (RFQ), which is defined as a solicitation that requests pricing information from qualified or registered state contract vendors.<sup>4</sup> When procurement of goods or services with an ITB, RFP, ITN, or RFQ is not possible, ch. 287, F.S., provides two other procurement options: emergency purchases and single source purchases.<sup>5</sup>

#### Florida-Based Procurement Preferences

Each state agency, county, municipality, school district, or other political subdivision of the state is permitted to give preference in competitive bids for procurement of personal property, except for transportation projects, to a Florida-based business when the lowest responsible and responsive bidder

<sup>1</sup> The Administration Commission is comprised of the Governor and the Cabinet pursuant to s. 14.202, F.S.

<sup>2</sup> Section 287.001, F.S.

<sup>3</sup> Section 287.057, F.S.

<sup>4</sup> Section 287.056, F.S.

<sup>5</sup> Section 287.057(5), F.S.

has its principal place of business in a state or political subdivision that gives preferences in procurement to its businesses.<sup>6</sup> State agencies are required to give preference to Florida-based printing businesses when printing can be done at a comparable level of quality and at no greater price than an out-of-state printing business.<sup>7</sup> The state must give preference to the procurement of commodities manufactured, grown, or produced within this state when two or more competitive sealed bids are received and are equal with respect to price, quality, and service.<sup>8</sup>

C. SECTION DIRECTORY:

**Section 1:** Creates a new unnumbered section of law relating to state contracts for services greater than \$50,000.

**Section 2:** Provides that the bill becomes effective upon becoming a law.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The bill will likely limit the number of available vendors able to provide services to the state for service contracts greater than \$50,000. Limiting the number of available vendors could lead to less competition and elimination of vendors who could provide state services for lower costs, thus, increasing expenditures to the state for these services.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill will likely reduce the opportunities by some businesses to participate in state service contracts greater than \$50,000. However, businesses which qualify under the bill may see an increase in such business.

D. FISCAL COMMENTS:

None.

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<sup>6</sup> Section 287.084, F.S.

<sup>7</sup> Section 283.35, F.S.

<sup>8</sup> Section 287.082, F.S.

### III. COMMENTS

#### A. CONSTITUTIONAL ISSUES:

##### 1. Applicability of Municipality/County Mandates Provision:

Not applicable because this bill does not appear to require counties or cities to: spend funds or take action requiring the expenditure of funds; reduce the authority of counties or cities to raise revenues in the aggregate; or reduce the percentage of a state tax shared with counties or cities.

##### 2. Other:

The bill's provisions appear to violate the Privileges and Immunities Clause of the United States Constitution.<sup>9</sup> Two United States Supreme Court cases that are on point have held that:

although the Privileges and Immunities Clause "does not preclude disparity of treatment in the many situations where there are perfectly valid independent reasons for it, [i]t does bar discrimination against citizens of other States where there is no substantial reason for the discrimination beyond the mere fact that they are citizens of other States." A "substantial reason for the discrimination" would not exist, the Court explained, "unless there is something to indicate that non-citizens constitute a peculiar source of the evil at which the [discriminatory] statute is aimed." Moreover, even where the presence or activity of nonresidents causes or exacerbates the problem the State seeks to remedy, there must be a "reasonable relationship between the danger represented by non-citizens, as a class, and the ... discrimination practiced upon them."<sup>10</sup>

While the bill contains a waiver clause which may be invoked by the Department of Management Services upon approval of the Administration Commission, it is likely that the bill would need to be more narrowly tailored and a substantial record created to justify its application, before it could withstand constitutional scrutiny.

#### B. RULE-MAKING AUTHORITY:

The bill does not appear to require rulemaking or rulemaking authority, though, state agencies may need to alter existing rules based on the provisions of the bill. Rulemaking authority already in law would be adequate to make any necessary changes to existing rules.

#### C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

### IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

N/A

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<sup>9</sup> Art IV, s. 2, U.S. Const. This section reads in relevant part: "The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States."

<sup>10</sup> *Hicklin v. Orbeck*, 437 U.S. 518, 525-26 (1978), quoting *Toomer v. Witsell*, 334 U.S. 385 (1948).