

**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.)

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Prepared By: The Professional Staff of the Governmental Oversight and Accountability Committee

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BILL: CS/SB 386

INTRODUCER: Governmental Oversight and Accountability and Senator Bogdanoff

SUBJECT: Florida Business Preference

DATE: March 24, 2011      REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	McKay	Roberts	GO	Fav/CS
2.	_____	_____	CA	_____
3.	_____	_____	BC	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

**I. Summary:**

The bill modifies the existing in-state vendor preference for public printing contracts to include counties, municipalities, school districts, and other political subdivisions as entities that may grant a preference. The bill specifies that the printing preference is equal to the preference established by the state of the lowest bidder, or 5 percent when the lowest bidder's state has no in-state preference. In Ch. 287, F.S., procurements, the preference for in-state vendors is 5 percent, when the lowest bidder's state has no in-state preference.

This bill substantially amends, the following sections of the Florida Statutes: ss. 283.35 and 287.084.

**II. Present Situation:**

**Public Printing Vendor Preference**

Chapter 283 of the Florida Statutes regulates public printing. Section 283.35, F.S., provides that every agency must give preference to vendors located within the state when awarding contracts to have materials printed, whenever such printing can be done at no greater expense than the expense of awarding a contract to a vendor located outside the state and can be done at a level of quality comparable to that obtainable from a vendor located outside the state.

For purposes of Ch. 283, F.S., "agency" is defined as any official, officer, department, board, commission, division, bureau, section, district, office, authority, committee, or council, or any other unit of organization, however designated, of the executive branch of state government, and the Public Service Commission.

## State Agency Procurement Vendor Preference

Chapter 287 of the Florida Statutes regulates agency procurement of personal property and services. Section 287.084, F.S., provides that when an agency<sup>1</sup>, county, municipality, school district, or other political subdivision of the state is required to make purchases of personal property through competitive solicitation and the lowest responsible and responsive bid, proposal, or reply is by a vendor whose principal place of business is in a state or political subdivision thereof which grants a preference for the purchase of such personal property to a person whose principal place of business is in such state, then the agency, county, municipality, school district, or other political subdivision of this state may award a preference to the lowest responsible and responsive vendor having a principal place of business within this state, which preference is equal to the preference granted by the state or political subdivision thereof in which the lowest responsible and responsive vendor has its principal place of business. However, this section does not apply to transportation projects for which federal aid funds are available. If a solicitation provides for the granting of a preference as is provided in this section, any vendor whose principal place of business is outside the State of Florida must accompany any written bid, proposal, or reply documents with a written opinion of an attorney at law licensed to practice law in that foreign state, as to the preferences, if any or none, granted by the law of that state to its own business entities whose principal places of business are in that foreign state in the letting of any or all public contracts.

### III. Effect of Proposed Changes:

**Section 1** provides a short title: the “Buy Florida Act.”

**Section 2** amends s. 283.35, F.S., by expanding application of the printing preference to each county, municipality, school district, or other political subdivision of the state. The preference for in-state vendors, which applies when the printing can be performed in-state at a level of quality comparable to that obtainable from an out-of-state vendor that submits the lowest bid, must be:

- Equal to the preference granted by the state or political subdivision in which the lowest responsible and responsive vendor has its principal place of business; or
- Five percent if the lowest bid is submitted by a vendor whose principal place of business is located outside the state and that state does not grant a preference in competitive solicitation to vendors having a principal place of business in that state.

Any vendor whose principal place of business is in another state must accompany any written bid, proposal, or reply documents with a written opinion of an attorney licensed in that state, regarding any preferences granted by that state to its own business entities whose principal places of business are in that state in the letting of public contracts.

**Section 3** amends s. 287.084, F.S., to add an additional provision to the existing preference. In a competitive solicitation in which the lowest bid is submitted by a vendor whose principal place

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<sup>1</sup> As used in Ch. 287, F.S., “agency” means any of the various state officers, departments, boards, commissions, divisions, bureaus, and councils and any other unit of organization, however designated, of the executive branch of state government. “Agency” does not include the university and college boards of trustees or the state universities and colleges.

of business is located outside the state and that state does not grant a preference in competitive solicitation to vendors having a principal place of business in that state, the preference to the lowest responsible and responsive vendor having a principal place of business in this state must be 5 percent.

The bill takes effect July 1, 2011.

#### **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:

Local preference laws potentially implicate the Equal Protection Clause (14<sup>th</sup> Amendment) and the Commerce Clause (Article I, Section 8) of the U.S. Constitution. Under the Equal Protection Clause, a local preference law would need to be rationally related to a legitimate state interest: the challenged legislation must have a legitimate purpose, and it must be reasonable for the lawmakers to believe that use of the challenged classification would promote that purpose. Rational basis review is a fairly deferential standard.

The Commerce Clause is not only a positive grant of power to Congress, but also a negative constraint upon the states.<sup>2</sup> However, even if a law discriminates against interstate commerce, preference laws are generally upheld where the governmental entity is acting as “market participant,” rather than a “market regulator.” The provisions of this bill apply to the government as a “market participant.”

#### **V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Indeterminate.

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<sup>2</sup> See *Gibbons v. Ogden*, 22 U.S. (9 Wheat.) 1 (1824).

C. Government Sector Impact:

Indeterminate.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

As currently drafted, application of the printing preference to an out-of-state vendor from a state with a numberless reciprocal in-state vendor preference could lead to a situation in which application of a numerical preference would be difficult, since both states' preference would mirror each other.

**VIII. Additional Information:**

A. Committee Substitute – Statement of Substantial Changes:

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

**CS by Governmental Oversight and Accountability on March 23, 2011:**

The committee substitute removes references to how the preferences would apply to PRIDE, and clarifies how the preference will apply in printing contracts.

B. Amendments:

None.