

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 Governmental Oversight and Accountability Committee

BILL: SB 386

INTRODUCER: Senator Bogdanoff

SUBJECT: Florida Business Preference

DATE: March 19, 2011 REVISED: _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|---------|----------------|-----------|--------------------|
| 1. | McKay | Roberts | GO | Pre-meeting |
| 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 preference; and, specifies the preference. In Ch. 287, F.S., procurements, the preference for in-state vendors is 5 percent, when a low bid is submitted by a vendor from a state without an in-state vendor 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 agency¹, 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.

PRIDE Enterprises

The Legislature created Prison Rehabilitative Industries and Diversified Enterprises (PRIDE) in 1983 as a private, non-profit corporation to lease and manage the state prison industries program. Previously, the Department of Corrections (the department) operated the state's prison industries. Pursuant to s.

946.501(2), F.S., PRIDE's mission is to:

- Provide a joint effort between the department, the correctional work programs, and other vocational training programs to reinforce relevant education, training, and postrelease job placement and help reduce recommitment.
- Serve the security goals of the state through the reduction of idleness of inmates and the provision of an incentive for good behavior in prison.
- Reduce the cost of state government by operating enterprises primarily with inmate labor, which enterprises do not seek to unreasonably compete with private enterprise.

To help PRIDE meet its mission, the Legislature granted it certain privileges. PRIDE has sovereign immunity,² and is not subject to the authority of any state agency, except the auditing and investigatory powers of the Legislature and the Governor.³ PRIDE also has a purchasing preference, requiring state agencies to buy its products when they are of similar quality and price to those offered by outside vendors.⁴

¹ 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.

² Section 946.5026, F.S.

³ Sections 946.502(5) and 946.516, F.S.

⁴ Section 946.515, F.S.

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 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; and;
- the printing can be performed in this state done at a level of quality comparable to that obtainable from the vendor submitting the lowest bid located outside the state.

The preference does not apply to a contract for printing awarded to the corporation defined in part II of chapter 946, F.S., known as the Prison Rehabilitative Industries and Diversified Enterprises, Inc., or PRIDE Enterprises.

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 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 also exempts bids submitted by PRIDE Enterprises from the preference provisions.

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 (14th 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.⁵ 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.”

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

Indeterminate.

C. Government Sector Impact:

Indeterminate.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The Legislature may wish to clarify exactly how in-state preferences apply when PRIDE Enterprises submits a bid; it is unclear whether PRIDE may not receive a preference, or whether other in-state vendors may not receive the preference.

If the provisions of lines 45-49 are intended to apply to both preceding paragraphs, the language could be modified to make that intent clearer.

⁵ See *Gibbons v. Ogden*, 22 U.S. (9 Wheat.) 1 (1824).

VIII. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

- B. **Amendments:**

None.

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