

**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: SB 1872

INTRODUCER: Senator Gibson

SUBJECT: State Contracting/Small Business

DATE: January 27, 2012      REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	McKay	Roberts	GO	<b>Pre-meeting</b>
2.	_____	_____	BC	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

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**I. Summary:**

This bill requires state executive branch agencies to award 25 percent of their annual contracting to small businesses. The bill also prohibits contract bundling, provides relevant definitions, and creates reporting requirements.

This bill creates section 287.0577 of the Florida Statutes.

**II. Present Situation:**

**Existing Small Business Efforts**

Part IV of Chapter 288, F.S., specifies a number of efforts directed towards helping the success of small businesses. The Small Business Regulatory Advisory Council is created in s. 288.7001, F.S., largely to review administrative rules of state agencies in order to reduce the impact of rules on small businesses. The council is established and administratively housed within the Florida Small Business Development Center Network, which is established in s. 288.001, F.S., as the “principal business assistance organization for small businesses in the state.” The Florida Small Business Development Center Network also houses the Office of Small Business Advocate, which is physically located at the University of West Florida. A September 2010 report<sup>1</sup> by the office recommended, among other things, a 20 percent Set-aside for state contracts for FL-based small and medium enterprises (SME) located in the state for at least 3 years, and a 10 percent “FL-based SME” subcontracting clause in state contracts awarded to large vendors and suppliers.

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<sup>1</sup> Last visited on January 27 at <http://www.floridaoasba.org/docs/100110%20Small%20Business%20Issues%20and%20Recommendations.pdf>

Some of the duties of the Office of Supplier Diversity of the Department of Management Services, established in s. 287.09451, F.S., include communicating on a monthly basis with the Small and Minority Business Advisory Council to keep the council informed on issues relating to minority enterprise procurement, serving as an advocate for minority business enterprises, and coordinating with the small and minority business ombudsman, as defined in s. 288.703, F.S.

### **Performance Bond Requirements**

Section 255.05, F.S., requires that any person entering into a formal contract with the state or any county, city, or political subdivision thereof, for the construction of a public building, for the prosecution and completion of a public work, or for repairs upon a public building or public work, before commencing the work or before recommencing the work after a default or abandonment, to execute, deliver, and record in the public records of the county where the improvement is located, a payment and performance bond with a surety insurer authorized to do business in this state as surety. The statute specifies some exceptions and the form for the bond.

Section 24.111(2)(i), F.S., specifies that the Department of the Lottery must require performance bonds for the duration of contracts with its vendors.

Section 153.10, F.S., specifies that counties must require a performance bond of 2.5 percent of the amount of bids for the construction of water system improvements or sewer improvements. Sewer system improvement contracts bid pursuant to s. 153.79, F.S., also require a performance bond.

Section 337.18, F.S., requires surety bonds from successful bidders for certain Department of Transportation contracts, though the department may waive the requirement for contracts under \$250,000, if certain conditions are met.

### **III. Effect of Proposed Changes:**

The bill creates section 287.0577, F.S., which addresses small business participation in state contracting, contract bundling, set-asides for small businesses, and bonding and reporting requirements.

#### **Definitions**

The bill creates definitions for “contract bundling” and “small business,” which means a business entity organized for profit that is independently owned and operated, that is not dominant within the business entity’s industry, and that:

- Currently is, and for at least the previous 3 years has been, domiciled in the state.
- Has a workforce of 25 or fewer permanent full-time positions, whether employees, independent contractors, or other contractual personnel.
- Has had, for at least the previous 3 years, average annual gross sales that do not exceed the following:

- For a contractor licensed under chapter 489, \$3 million per year.
- For a sole proprietorship performing contractual services within the scope of the proprietor's professional license or certification, \$500,000 per year.
- For any other business entity, \$1 million per year.
- Currently has, and for at least the previous 3 years has had, together with its affiliates, a net worth that does not exceed \$5 million. For a sole proprietorship, the net worth limit of \$5 million includes both personal and business investments but does not include the proprietor's primary residence.

The term includes any such business entity organized as any legal entity.

### **Bundling**

The bill requires agencies to structure agency contracts to facilitate competition by Florida small businesses, taking steps to eliminate obstacles to their participation and avoiding the unnecessary and unjustified contract bundling that may preclude small businesses' participation as prime contractors. Before issuing a solicitation for a bundled contract, an agency must conduct market research to determine whether contract bundling is necessary and justified. If the agency determines that contract bundling is justified, the agency must include in the solicitation a written summary of the agency's market research and a written analysis of the research that explains why contract bundling is necessary and justified.

### **Set-asides**

The bill requires an agency to annually award to small businesses, either directly or indirectly as subcontractors, at least 25 percent of the total dollar amount of contracts awarded. Each contract awarded under s. 287.057, F.S., must require the vendor to use small businesses in the state as subcontractors. The percentage of funds, in terms of gross contract amount and revenues, that must be expended for subcontracting with small businesses in the state must be determined by the agency before the solicitation for the contract is issued; however, the contract may not allow a vendor to expend less than 10 percent of the gross contract amount for subcontracting with small businesses in the state. Each contract must include specific requirements for the timely payment of subcontractors by the prime contractor and specific terms and conditions applicable if a prime contractor does not pay a subcontractor within the time limits specified in the contract.

### **Bonding**

Notwithstanding any provision of law, an agency may not require a vendor to post a bid bond, performance bond, or other surety for a contract that does not exceed \$500,000. This subsection does not apply to any requirement for posting a bond pending the protest of a solicitation; the protest of a rejected bid, proposal, or reply; or the protest of a contract award.

This provision might act to override some of the performance bond requirements currently specified in Florida law.

**Reporting**

The Florida Small Business Advocate selected under s. 288.7002, F.S., must establish a system to measure and report the use of small businesses in state contracting. This system must maintain information and statistics on small business participation, awards, dollar volume of expenditures, and other appropriate types of information to analyze progress in small businesses' access to state contracts and to monitor agency compliance with this section. An agency shall report its compliance with the reporting system at least annually and at the request of the Florida Small Business Advocate. All agencies must cooperate with the Florida Small Business Advocate in establishing this reporting system. The advocate must also report agency compliance for the preceding fiscal year to the Governor and Cabinet, the President of the Senate, the Speaker of the House of Representatives, and the Small Business Regulatory Advisory Council on or before February 1 of each year.

**IV. Constitutional Issues:****A. Municipality/County Mandates Restrictions:**

None.

**B. Public Records/Open Meetings Issues:**

None.

**C. Trust Funds Restrictions:**

None.

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

None.

**B. Private Sector Impact:**

The bill could have the effect of shifting some contracting dollars towards smaller businesses.

**C. Government Sector Impact:**

Indeterminate. The agency procurement process will be affected, but perhaps not in direct costs. Agencies that have their performance bonding requirements altered by this bill may be exposed, indirectly, to increased costs related to vendor defaults.

It is unclear whether the Small Business Advocate would incur costs to create the reporting system required by the bill.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

The phrase “not appropriate for award to a small business” is used in lines 34-35, but is not defined, which could lead to uncertainty in applying the definition of “contract bundling.”

The bill doesn’t provide for a single entity to confirm whether small businesses meet the definition supplied in the bill. As a result, individual agencies will need to make the determinations of whether a small business qualifies for the required set-asides. The Legislature may wish to consider whether it would be more efficient for a single entity to determine whether a business qualifies under the provisions of the bill, in order to avoid duplication of effort by businesses and agencies.

This bill gives additional duties to the Florida Small Business Advocate in s. 288.7002, F.S. Senate Bill 2086 deletes s. 288.7002.

**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.