

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 221 Business Enterprise Opportunities for Wartime Veterans

**SPONSOR(S):** Nehr and others

**TIED BILLS:** **IDEN./SIM. BILLS:** SB 152

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Government Operations Subcommittee	15 Y, 0 N	Meadows	Williamson
2) Government Operations Appropriations Subcommittee	11 Y, 0 N	Lloyd	Topp
3) State Affairs Committee			

### SUMMARY ANALYSIS

Florida law provides for a vendor preference in state contracting for service-disabled veteran business enterprises. To qualify for this preference, a veteran must certify that he or she 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 bill expands the vendor preference to include wartime veterans and veterans of a period of war. The bill provides definitions of wartime veteran and veterans of a period of war to identify eligible applicants for the Veteran Business Enterprise Opportunity program. In addition, the bill revises application and documentation requirements to qualify for the program.

The bill will have an insignificant fiscal impact on the Department of Management Services (DMS). Based on prior year reversions the costs to implement the provisions of HB 221, can be absorbed within existing resources.

The bill provides for an effective date of July 1, 2012.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### Present Situation

##### Florida Service-Disabled Veteran Business Enterprise Opportunity Act

The intent of the Florida Service-Disabled Veteran Business Enterprise Opportunity Act<sup>1</sup> (act) is to

[R]ectify the economic disadvantage of service-disabled veterans, who are statistically the least likely to be self-employed when compared to the veteran population as a whole and who have made extraordinary sacrifices on behalf of the nation, the state, and the public, by providing opportunities for service-disabled veteran business enterprises as set forth in this section.<sup>2</sup>

Current law provides that a “service-disabled veteran” is 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.<sup>3</sup>

In order for a service-disabled veteran business enterprise (SDVBE) to be certified, it 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 service-disabled veterans.
- Is managed and controlled by one or more service-disabled veterans or, for a service-disabled veteran with a permanent and total disability, by the spouse or permanent caregiver of the veteran.<sup>4</sup>

Florida law provides for a certification process that is administered by the Department of Management Services (DMS), in coordination with the Florida Department of Veterans’ Affairs.<sup>5</sup> The certification process requires applicants to submit documentation<sup>6</sup> demonstrating that the business meets the requirements found in s. 295.187(3)(c), F.S. Certification is renewed biennially and may be revoked for one year if the SDVBE fails to inform DMS within 30 days of a change in circumstances that renders the business ineligible for certification.<sup>7</sup>

Currently, there are 222 certified service-disabled veteran business enterprises in Florida.<sup>8</sup>

Service-disabled veteran-owned businesses that are certified through DMS 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

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<sup>1</sup> See s. 295.187, F.S.

<sup>2</sup> Section 295.187(2), F.S.

<sup>3</sup> Section 295.187(3)(b), F.S.

<sup>4</sup> Section 295.187(3)(c)1.-6., F.S.

<sup>5</sup> See s. 295.187(5) – (7), F.S.

<sup>6</sup> See 60A-9.005, F.A.C.

<sup>7</sup> See s. 295.187(5)(d) and (e), F.S.

<sup>8</sup> Information provided by telephone on January 19, 2012, by Mr. Thad Fortune, Certification Administrator (Senior Manager), Office of Supplier Diversity, DMS.

- Inclusion in an exclusive listing of state-certified minority business enterprises in an online directory.<sup>9</sup>

### Vendor Preference

Current law provides that a state agency, when considering two or more bids, proposals, or replies for the procurement of commodities or contractual services, and one is a certified SDVBE, the agency must award the procurement to the SDVBE if all relevant considerations<sup>10</sup> are equal.<sup>11</sup> However, if a certified SDVBE and one or more SDVBE or businesses eligible for another statutory vendor preference, such as a minority business enterprise<sup>12</sup>, submit bids or proposals that are equal with respect to all relevant considerations, the state agency must award the contract or proposal to the business having the smallest net worth.<sup>13</sup>

### **Effect of Proposed Changes**

#### Florida Veteran Business Enterprise Opportunity Act

The bill provides that the act may be cited as the “Florida Veteran Business Enterprise Opportunity Act.” It also expands the intent of the act to include the recognition of wartime veterans and veterans of a period of war for their sacrifices.

The bill expands the Florida Veteran Business Opportunity Act to include “wartime veterans.” It defines the term “wartime veteran” as:

- A wartime veteran as defined in s. 1.01(14), F.S.<sup>14</sup>; or
- A veteran of a period of war, as used in 38 U.S.C. 1521, who served in 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.

The bill requires wartime veteran applicants to provide documentation of wartime service from the United States Department of Veterans Affairs or the United States Department of Defense during the veteran business enterprise certification process. The Department of Veterans’ Affairs is tasked with assisting DMS in the expansion of the certification process.

### Vendor Preference

The bill expands the vendor preference for service-disabled veterans to include wartime veterans and veterans of a period of war whose businesses are certified as a veteran business enterprise by DMS.

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<sup>9</sup> See Office of Supplier Diversity Annual Report for Fiscal Year 2009-10. Available at: [http://www.dms.myflorida.com/other\\_programs/office\\_of\\_supplier\\_diversity\\_osd/publications/annual\\_reports](http://www.dms.myflorida.com/other_programs/office_of_supplier_diversity_osd/publications/annual_reports) (last visited January 19, 2012).

<sup>10</sup> Relevant considerations include price, quality, and service. See s. 295.187(4)(a), F.S.

<sup>11</sup> Section 295.187(4)(a), F.S.

<sup>12</sup> Section 288.703, F.S., defines the term “minority business enterprise” to mean any small business which is organized to engage in commercial transactions, which is domiciled in Florida, and which is at least 51 percent owned by minority persons who are members of an insular group that is of a particular racial, ethnic, or gender makeup or national origin, which has been subjected historically to disparate treatment due to identification in and with that group.

<sup>13</sup> Section 295.187(4)(b), F.S.

<sup>14</sup> As defined in s. 1.01(14), F.S., the term “wartime veteran” means a veteran who has served in a campaign or expedition for which a campaign badge has been authorized or a veteran who has served during one of the following periods of wartime service: Spanish-American War, Mexican Border period, World War I, World War II, Korean Conflict, Vietnam Era, Persian Gulf War, Operation Enduring Freedom, or Operation Iraqi Freedom.

**B. SECTION DIRECTORY:**

Section 1 amends s. 295.187, F.S., to revise the legislative intent; to expand vendor preferences to include wartime veterans and veterans of a period of war.

Section 2 provides an effective date of July 1, 2012.

**II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

**A. FISCAL IMPACT ON STATE GOVERNMENT:**

1. Revenues:

None.

2. Expenditures:

The cost to implement HB 221 is expected to be insignificant. The DMS estimates the cost of implementing HB 221, to be approximately \$10,000 related to programming system updates and \$30,000 to hire temporary staff (Other Personal Services) to process the certification applications of wartime veterans.<sup>15</sup>

Based on prior year spending by the DMS, the cost to implement the provisions of HB 221 can be covered within existing resources. In FY 2010-11, DMS reverted over \$79,000 in Other Personal Services budget authority. A review of the first six months of FY 2011-12, indicates the department is estimated to revert in excess of \$60,000.

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

None.

2. Expenditures:

None.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

This bill may assist wartime veterans in competing for state contracts by expanding the Service-Disable Veteran Business Enterprise certification program to include wartime veterans and veterans of a period of war. This bill may have a negative impact on the service-disable veteran enterprises as the bill may diminish their ability to secure contracts under the preference as it expands the pool of vendors by allowing wartime veterans and veterans of a period of war to be certified as a Veteran Business Enterprise.

**D. FISCAL COMMENTS:**

None.

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<sup>15</sup> Department of Management Services' Bill Analysis, September 15, 2011, on file with the House Government Operations Appropriations Subcommittee.

### III. COMMENTS

#### A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to affect county or municipal governments.

2. Other:

None.

#### B. RULE-MAKING AUTHORITY:

Section 295.187(9), F.S., currently authorizes the Department of Veterans' Affairs and the Department of Management Services to adopt rules, as necessary, to administer the Florida Service-Disabled Veteran Business Enterprise program. The departments may need to adopt additional rules to account for the expansion of the Florida Veteran Business Enterprise Opportunity program.

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

The Department of Management Services provided the following comments:

At present time there are 1,650,876 veterans living in Florida - 1,229,096 are considered "war-time" veterans (around 74 percent). Also, there are 3256 Florida veteran owned businesses registered on the US Federal Contractor Registration – only registered contractors are allowed to contract with the federal government.<sup>16</sup>

The Office of Supplier Diversity of the Department of Management Services projects that including wartime veterans and veterans of a period of war in the Veteran Business Enterprise Program would result in the registration and certification of 1,500-2,000 veteran businesses.<sup>17</sup>

### IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

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<sup>16</sup> *Id.* at 1.

<sup>17</sup> Information provided by telephone on January 19, 2012, by Mr. Thad Fortune, Certification Administrator (Senior Manager), Office of Supplier Diversity, DMS.