

Department of Legislative Services
 Maryland General Assembly
 2008 Session

FISCAL AND POLICY NOTE

House Bill 747 (Delegate Minnick)
 Health and Government Operations

Procurement - Service Disabled Veteran Business Enterprise Participation

This bill requires State agencies to establish a goal of awarding procurement contracts with a total value of 3% of the federal funds they receive to businesses owned and operated by disabled veterans.

Fiscal Summary

State Effect: State spending on procurements could increase to the extent the bill reduces competition among bidders. Any increase cannot be reliably estimated at this time. General fund expenditures by the Department of Business and Economic Development could increase by \$223,800 in FY 2009 to add four full-time equivalent positions to implement the bill’s provisions. Future year costs reflect annualization and inflation.

(in dollars)	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	223,800	288,000	302,100	316,900	332,600
Net Effect	(\$223,800)	(\$288,000)	(\$302,100)	(\$316,900)	(\$332,600)

Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate effect

Local Effect: The penalty provisions are not expected to materially affect local finances or operations.

Small Business Effect: Potentially meaningful. To the extent that disabled veteran business enterprises are small businesses that do not currently participate in the Small Business Reserve Program, the bill would facilitate their participation in State procurements.

Analysis

Bill Summary: The bill defines a disabled veteran as an individual who has served in the armed forces of the United States and is certified by the U.S. Department of Veterans Affairs as having a service-connected disability. A disabled veteran business enterprise is defined as a firm that is majority owned and managed by at least one disabled veteran, that has its main office in the State, and for which a disabled veteran performs, manages, or supervises daily operations and work performed under a State contract.

The Governor's Office of Business Advocacy and Small Business Assistance in the Department of Business and Economic Development and renamed the Division of Small Business, must develop regulations to certify and decertify businesses as disabled veteran enterprises and to establish programs to assist them in participating in State procurement activities. The Governor's Office must also designate an advocate to coordinate the program and assist disabled veteran enterprises.

To achieve the 3% goal, State agencies must consider the efforts of responsible bidders to meet the goal and award contracts to the lowest responsible bidder that meets or makes a good faith effort to meet the goal. Good faith efforts to meet the goal include:

- contacting the agency to obtain a list of certified disabled veteran enterprises;
- contacting other State or federal agencies to identify disabled veteran enterprises;
- publishing notices in publications for disabled veterans (if time permits);
- providing notice of an invitation for bids to disabled veteran enterprise contractors; and
- considering available certified disabled veteran enterprises for contracting.

Agencies must also develop regulations to implement the program and designate an advocate to assist and advocate on behalf of certified disabled veteran enterprises.

The bill includes reporting requirements for each agency, DVA, and the Governor's Office of Business Advocacy and Small Business Assistance. It also includes penalties for fraudulent claims related to certification as a disabled veteran enterprise or participation in the procurement process. Possible civil and criminal penalties include debarment, fines, and imprisonment.

Current Law: There is currently no preference program for disabled veteran business enterprises. State procurement law includes two separate preference programs. The minority business enterprise (MBE) program establishes a goal that at least 25% of the total dollar value of each agency's procurement contracts be awarded to MBEs, including 7% to African American-owned businesses and 10% to women-owned businesses. There

are no penalties for agencies that fail to reach these targets. Instead, agencies are required to use race-neutral strategies to encourage greater MBE participation in State procurement.

Chapter 75 of 2004 established the Small Business Reserve Program, which requires all State procurement units to structure their procurements so that at least 10% of the total dollar value of their procurements are made directly to small businesses.

The Maryland Department of Transportation certifies MBEs for the entire State, and the Department of General Services certifies small business enterprises (SBEs).

The University System of Maryland, Morgan State University, and St. Mary's College of Maryland are exempt from most provisions of State procurement law. In addition, the following agencies are exempted in whole or in part from most State procurement law, and thus would not be subject to disabled veteran enterprise preference for some or all of their procurements:

- Blind Industries and Services of Maryland;
- Maryland State Arts Council;
- Maryland Health and Higher Educational Facilities Authority;
- Department of Business and Economic Development;
- Maryland Food Center Authority;
- Maryland Public Broadcasting Commission;
- Maryland State Planning Council on Developmental Disabilities;
- Maryland Automobile Insurance Fund;
- Maryland Historical Trust;
- Rural Maryland Council;
- Maryland State Lottery Agency;
- Maryland Health Insurance Plan;
- Maryland Energy Administration;
- Maryland Developmental Disabilities Administration;
- Maryland Stadium Authority; and
- State Retirement and Pension System.

Background: DVA reports that in 2006, 62,534 veterans and survivors living in Maryland received disability compensation. However, neither DVA nor the Department of Labor, Licensing, and Regulation can estimate how many of those disabled veterans own and operate their own businesses.

Exhibit 1 provides the federal fund appropriations for each principal Executive Branch agency in the Governor's proposed fiscal 2009 budget (including the Maryland State Department of Education headquarters).

Exhibit 1
Federal Funds in Principal Executive Branch Agencies

	<u>Federal Funds</u> <u>FY 2009 Allowance</u>	<u>% of</u> <u>Total Funds</u>	<u>3% of</u> <u>Federal Funds</u>
Aging	\$27,797,724	53.6%	\$833,931
Agriculture	16,834,693	14.5	505,040
Budget and Management	0	0.0	0
Business and Economic Development	4,693,102	3.2	\$140,793
Disabilities	1,481,346	31.4	44,440
Education – Headquarters	153,196,190	51.7	4,595,885
Environment	65,351,157	23.7	1,960,534
General Services	971,921	1.6	29,157
Health and Mental Hygiene	3,547,793,204	44.2	106,433,796
Housing and Community Development	226,860,258	74.7	6,805,807
Human Resources	1,115,430,077	62.2	33,462,902
Juvenile Services	11,689,318	4.2	350,679
Labor, Licensing, and Regulation	118,989,548	72.2	3,569,686
Natural Resources	28,080,252	10.1	842,407
Planning	1,074,364	2.9	32,230
Public Safety and Corrections	13,346,607	1.0	400,398
State Police	2,668,434	0.8	80,053
Transportation	685,416,483	16.9	20,562,494
Veterans Affairs	10,660,955	52.0	319,828
Total	\$6,032,335,633	34.0%	\$180,970,068

Source: Governor's Proposed Fiscal 2009 Budget

State Fiscal Effect: Total procurement spending could increase slightly to the extent that the bill reduces the competitiveness of State procurements. The bill requires that agencies set a goal of awarding procurement contracts with a total value of 3% of their federal funds to disabled veteran-owned business enterprises, so there is no direct increase in procurement spending. However, to the extent that the bill imposes additional burdens on bidders and offerors to make good faith efforts to include disabled veteran enterprises as subcontractors, it could diminish the competitiveness of State procurements by reducing the number of firms willing to bid on State contracts. The effect of reduced competition on procurement spending cannot be estimated reliably.

General fund expenditures by DBED could increase by an estimated \$223,836 in fiscal 2009, which accounts for the bill's October 1, 2008 effective date. This estimate reflects the cost of hiring four new positions to develop regulations, administer the certification of

disabled veteran business enterprises, train procurement officers in other State agencies, and prepare the annual reports required by the bill. It includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses.

Positions	4
Salaries and Fringe Benefits	\$207,741
Operating Expenses	4,455
One-time Costs	<u>11,640</u>
Total FY 2009 State Expenditures	\$223,836

Future year expenditures reflect • full salaries with 4.4% annual increases and 3% employee turnover; and • 2% annual increases in ongoing operating expenses. DLS notes that administrative costs related to this program could be reduced somewhat if either MDOT or DGS, which already certify MBEs and SBEs, respectively, were responsible for certifying disabled veterans business enterprises.

The penalty provisions of the bill are not expected to materially affect State finances or operations.

Additional Information

Prior Introductions: HB 742, a similar bill, received an unfavorable report from the House Health and Government Operations Committee.

Cross File: SB 648 (Senator Peters, *et al.*) – Education, Health, and Environmental Affairs.

Information Source(s): Department of General Services, Board of Public Works, Governor’s Office, Department of Business and Economic Development, Department of Veterans Affairs, University System of Maryland, Maryland Department of Transportation, Department of Legislative Services

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