

Department of Legislative Services
 Maryland General Assembly
 2009 Session

FISCAL AND POLICY NOTE

House Bill 559 (Delegate Morhaim)
 Health and Government Operations

Procurement - Service Disabled Veteran Business Enterprise Participation

This bill requires each State agency to establish a goal of awarding 3% of the value of its procurement contracts to businesses owned and operated by service disabled veterans.

Fiscal Summary

State Effect: State spending on procurements may increase to the extent the bill reduces competition among bidders. Any increase cannot be reliably estimated at this time. General fund expenditures for the Department of Business and Economic Development (DBED) increase by \$55,639 in FY 2010 to implement the bill’s provisions. Future year costs reflect annualization and inflation. General fund expenditures by the Maryland Department of Veterans Affairs increase by \$75,000 in FY 2013 to conduct the mandated study. Potential minimal increase in general fund revenues and expenditures due to the bill’s penalty provisions.

(in dollars)	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014
GF Revenue	-	-	-	-	-
GF Expenditure	\$55,600	\$69,600	\$72,900	\$151,400	\$80,100
Net Effect	(\$55,600)	(\$69,600)	(\$72,900)	(\$151,400)	(\$80,100)

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

Local Effect: Potential minimal increase in revenues and expenditures due to the bill’s penalty provisions.

Small Business Effect: Potential meaningful. To the extent that service disabled veteran business enterprises are small businesses, the bill facilitates their participation in State procurements.

Analysis

Bill Summary: The bill applies to businesses certified as service disabled veteran business enterprises by the U.S. Department of Veterans Affairs (DVA). A “service disabled veteran” is an individual who has served in the armed forces of the United States and is certified by DVA as having a service-connected disability. A “service disabled veteran business enterprise” is defined as a firm that is majority owned and operated by at least one service disabled veteran or spouse of a permanently disabled veteran.

DBED must develop regulations to decertify businesses that have been decertified by DVA. DBED must also:

- establish a system to track service disabled veteran business enterprises;
- develop educational programs to help those firms to participate in State procurement activities; and
- designate an advocate to coordinate the program and assist disabled veteran business 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 service disabled veteran business enterprises;
- contacting other State or federal agencies to identify service disabled veteran business enterprises;
- publishing notices in publications for disabled veterans (if time permits);
- providing notice of an invitation for bids to service disabled veteran business enterprise contractors; and
- considering available certified service disabled veteran business enterprises for contracting.

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

The bill includes reporting requirements for each agency, the Maryland Department of Veterans Affairs (MDVA), and DBED. It also includes penalties for fraudulent claims related to certification as a disabled veteran business enterprise or participation in the

procurement process. Possible civil and criminal penalties include debarment from participation in future State contracts, fines, and imprisonment.

The bill requires DBED to use existing resources to implement the bill's provisions.

Current Law: State procurement law includes three separate preference programs, including one for veteran- and service disabled veteran-owned businesses. Chapter 695 of 2008 added a 2% price preference for veteran-owned small businesses and a 3% price preference for service disabled veteran-owned small businesses to the existing price preference for all small businesses under the State's Small Business Preference Program (SBP). SBP applies to procurement of supplies, services, and construction-related services by the Department of General Services (DGS), Maryland Department of Transportation (MDOT), Morgan State University, and Department of Public Safety and Correctional Services (for the construction of correctional facilities only).

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 woman-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 is made directly to small businesses.

MDOT certifies MBEs for the entire State, and DGS certifies small business enterprises.

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 service disabled veteran business 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: MDVA reports that, in 2007, approximately 49,000 veterans living in Maryland received disability compensation. However, neither MDVA nor the Department of Labor, Licensing, and Regulation can estimate how many of those disabled veterans own and operate their own businesses.

A 2004 executive order established a participation goal of at least 3% of federal contracting and procurements by service disabled veteran businesses.

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 value of 3% of total procurements to service disabled veteran 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 service disabled veteran business 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.

Because the bill imposes a new mandate on DBED, Legislative Services believes that one new position is warranted, despite the bill's requirement that existing resources be used. Thus, general fund expenditures in DBED increase by an estimated \$55,639 in fiscal 2010, which accounts for the bill's October 1, 2009 effective date. This estimate reflects the cost of hiring one new administrator position to develop a tracking system, coordinate the decertification of service disabled veteran business enterprises, train procurement officers in other State agencies, provide outreach and education to service disabled veteran business enterprises, and prepare the annual reports required by the bill. It includes a salary, fringe benefits, one-time start-up costs, and ongoing operating expenses.

Position	1
Salary and Fringe Benefits	\$49,346
Operating Expenses	1,958
Start-up Costs	<u>4,335</u>
Total FY 2010 State Expenditures	\$55,639

Future year expenditures reflect a full salary with 4.4% annual increases and 3% employee turnover and 1% annual increases in ongoing operating expenses.

In fiscal 2013, general fund expenditures by MDVA increase by \$75,000 to hire a consultant to conduct the mandated study of the implementation of the bill's provisions over a four-year period. State procurement units can carry out the additional monitoring and reporting requirements with existing resources. The penalty provisions of the bill may minimally increase general fund revenues and expenditures.

Additional Information

Prior Introductions: HB 747 of 2008 is listed as a prior introduction, but it was substantively different.

Cross File: SB 656 (Senator Peters, *et al.*) - Education, Health, and Environmental Affairs.

Information Source(s): Department of Business and Economic Development, Maryland Department of Transportation, University System of Maryland, U.S. Department of Veterans Affairs, Department of Legislative Services

Fiscal Note History: First Reader - February 24, 2009
mcp/rhh

Analysis by: Michael C. Rubenstein

Direct Inquiries to:
(410) 946-5510
(301) 970-5510