

Department of Legislative Services
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FISCAL AND POLICY NOTE
Revised

Senate Bill 648

(Senator Peters, *et al.*)

Education, Health, and Environmental Affairs

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. Only prime contracts awarded to businesses owned and operated by disabled veterans count toward the 3% goal.

DBED is required to use only existing resources to carry out the bill's provisions.

Fiscal Summary

State Effect: General fund expenditures by the Department of Business and Economic Development would normally increase by \$108,400 in FY 2009 for two positions to implement the bill, increasing to \$161,000 in FY 2013. However, the bill requires DBED to use existing resources to implement the bill, meaning spending for existing programs would be reduced by a corresponding amount. State spending on procurements could increase to the extent the bill reduces competition among bidders. Any increase cannot be reliably estimated at this time. The Department of Veterans Affairs could implement the bill's provisions with existing resources.

Local Effect: None.

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, consistent with federal law, as a person who (1) served in the active military, naval, or air service; (2) was discharged or released under conditions other than dishonorable; and (3) incurred a disability in the line of duty during active military service. A service disabled veteran business enterprise is defined, consistent with an executive order issued by the President in 2004, as a small business concern owned and controlled by service disabled veterans. A certified service disabled veteran business enterprise is a business certified by the U.S. Department of Veterans Affairs as a service disabled veteran-owned business.

The Department of Business and Economic Development must develop regulations to decertify businesses that have been decertified by the U.S. Department of Veterans Affairs or have violated the bill's provisions. DBED must also establish programs to track and assist service disabled veteran-owned businesses in participating in State procurement activities. DBED 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. However, only prime contracts awarded to certified disabled veteran-owned businesses count toward the 3% goal. Good faith efforts to meet the goal include:

- contacting the agency to obtain a list of certified disabled veteran enterprises;
- contacting the U.S. Department of Veterans Affairs or visiting its web site 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, the Department of Veterans Affairs, and DBED. In particular, DVA must conduct a study of the bill's implementation over five years and submit its report to the Governor, DBED, and the General Assembly by September 30, 2013. 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

The federal Small Business Act requires the President to establish a goal that not less than 3% of federal contracting will go to service disabled veteran-owned businesses and allows federal agencies to set aside certain procurements to achieve that goal. In a

2004 executive order, President Bush required federal agencies to more effectively implement that provision.

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.

In the absence of the bill's requirement that DBED use only existing resources, general fund expenditures by DBED would increase by an estimated \$108,395 in fiscal 2009, which accounts for the bill's October 1, 2008 effective date. This estimate reflects the cost of two new positions to develop regulations, monitor the certification status of disabled veteran-owned businesses, oversee the decertification of ineligible businesses, 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. Future year costs would reflect annualization and inflation, reaching approximately \$161,000 in FY 2013.

For DBED to perform these tasks with existing resources, it would have to redirect staff and resources from other activities to a degree commensurate with the cost of implementing the bill's provisions. As a result, other services that DBED currently provides to small businesses could be affected.

The Department of Veterans Affairs could implement the bill's administrative and reporting requirements with existing resources.

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: HB 747 (Delegate Minnick) – Health and Government Operations.

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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