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Bill Analysis

Version: As Introduced

Primary Sponsor: Sen. Hoagland

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SUMMARY

- Establishes a veteran-owned business enterprise certification program under the Department of Development.
- Expands the eligibility criteria for set-aside programs currently available to certified minority business enterprises to include certified women-owned business enterprises and certified veteran-owned business enterprises, which are collectively defined under the bill as “disadvantaged business enterprises.”

DETAILED ANALYSIS

Veteran-owned businesses

The bill requires the Director of Development to adopt rules to establish a veteran-owned business enterprise certification program, similar to the existing minority business enterprise certification program¹ and women-owned business enterprise certification program (see “**Similar programs**” below).² Like these existing certification programs under the Department of Development, the bill requires the Director of Development to establish rules regarding the following:

- The certification application and disqualification processes;
- A mediation process for complaints and appeals regarding certification;
- A system to assist state agencies in identifying and contracting with certified veteran-owned business enterprises;

¹ R.C. 122.92,1 not in the bill.

² R.C. 122.924, not in the bill.

- A system through which veteran-owned business enterprises may self-report qualifications and submit to an onsite inspection for certification.

The bill specifies that business and personal information, as well as trade secrets, that are submitted to the Director of Development under the veteran-owned business enterprise certification program are not to be considered public records unless the information is presented by the Director at a public hearing or public proceeding regarding the applicant's eligibility to participate in the program.

The bill defines "veteran-owned business enterprise" as a sole proprietorship, association, partnership, corporation, limited liability company, or joint venture of any kind that is *owned and controlled* by a veteran who is a U.S. citizen and resident of Ohio. "Owned and controlled" is also defined in the bill, and means that at least 51% of the business enterprise, including corporate stock if it is a corporation, is owned by a veteran and that such an owner has control over the day-to-day operations of the business and an interest in the capital, assets, and profits and losses of the business proportionate to the veteran's percentage of ownership.

A veteran-owned business enterprise must have been owned by a veteran for at least one year before certification as a veteran-owned business enterprise under the Department of Development.³

"Veteran" shares the meaning used for the existing veteran-friendly business procurement program. There, "veteran" means any person who has completed service in the U.S. armed forces, or a reserve component thereof, and who has been discharged honorably, under honorable conditions, or has been transferred to the reserve with evidence of satisfactory service.⁴

Similar programs

For context, it may be worth noting that the bill models the veteran-owned business enterprise certification program closely upon the existing certification programs for minority businesses, women-owned businesses, and veteran-friendly businesses. Specifically, these certification programs similarly define ownership and control to mean that more than 51% of the business enterprise belongs to the "disadvantaged business enterprise" in question.

The bill defines a "disadvantaged business enterprise" as a minority business enterprise, women-owned business enterprise, or veteran-owned business enterprise. Veteran-friendly business enterprises, a classification that exists under current law, are not included in the definition of disadvantaged business enterprises under the bill.⁵

³ R.C. 122.926.

⁴ R.C. 122.925.

⁵ R.C. 122.925. Current law requires the Director of Development and the Director of Transportation to establish criteria, based on the percentage of a business enterprise's employees who are veterans, to determine which business enterprises qualify as veteran-friendly.

Set-aside contracts

The bill makes duly certified women-owned and veteran-owned business enterprises eligible for contract purchases set aside by the Department of Administrative Services and other state agencies. Under current law, only certified minority business enterprises are eligible for these contracts.

Under current law, the Department of Administrative Services and various other state agencies are required to set aside approximately 15% of the estimated total value of purchases per fiscal year for competition only by minority business enterprises.⁶ The bill does not alter the percentage of contract purchases to be set aside by state agencies.

HISTORY

Action	Date
Introduced	02-08-22

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⁶ R.C. 125.081. The legislative and judicial branches, boards of elections, and the Adjutant General are excepted from this requirement. Also, there is no set-aside requirement for state-awarded construction contracts. Prior law, which included such set-asides, was struck down by a federal district court as a violation of the Equal Protection Clause of the 14th Amendment of the U.S. Constitution, *Associated Gen. Contrs. of Ohio, Inc. v. Drabik*, 214 F.3d 730 (6th Cir. 2000). The Supreme Court has held that the Equal Protection Clause prohibits set-asides based on race unless the state or local government demonstrates the set-aside is necessary to remedy the effects of past discrimination in that specific jurisdiction, *Richmond v. J. A. Croson Co.*, 488 U.S. 469 (1989).