

SERVICE-DISABLED VETERANS SMALL BUSINESS
 CONTINUATION ACT

MAY 18, 2018.—Committed to the Committee of the Whole House on the State of
 the Union and ordered to be printed

Mr. ROE of Tennessee, from the Committee on Veterans' Affairs,
 submitted the following

R E P O R T

[To accompany H.R. 5044]

[Including cost estimate of the Congressional Budget Office]

The Committee on Veterans' Affairs, to whom was referred the bill (H.R. 5044) to amend title 38, United States Code, to clarify the treatment of certain surviving spouses under the contracting goals and preferences of the Department of Veterans Affairs, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

CONTENTS

	Page
Purpose and Summary	2
Background and Need for Legislation	2
Hearings	3
Subcommittee Consideration	3
Committee Consideration	3
Committee Votes	3
Committee Correspondence	3
Committee Oversight Findings	3
Statement of General Performance Goals and Objectives	4
New Budget Authority, Entitlement Authority, and Tax Expenditures	4
Earmarks and Tax and Tariff Benefits	4
Committee Cost Estimate	4
Congressional Budget Office Estimate	4
Federal Mandates Statement	5
Advisory Committee Statement	5
Constitutional Authority Statement	5
Applicability to Legislative Branch	5
Statement on Duplication of Federal Programs	5
Disclosure of Directed Rulemaking	6
Section-by-Section Analysis of the Legislation	6
Changes in Existing Law Made by the Bill as Reported	6

PURPOSE AND SUMMARY

H.R. 5044, the “Service-Disabled Veterans Small Business Continuation Act,” would provide a technical and clerical amendment of section 8127 of title 38, United States Code (U.S.C.) to ensure that small businesses owned and operated by eligible surviving spouses continue to receive preference in contracting at the U.S. Department of Veterans Affairs (VA). H.R. 5044 was introduced by Representative Steve Chabot of Ohio on February 15, 2018.

BACKGROUND AND NEED FOR LEGISLATION

The “Veterans Benefits, Health Care, and Information Technology Act of 2006”¹ authorized a new sole-source preference for Veteran Owned Small Businesses (VSOB) and Service Disabled Veteran Owned Small Business (SDVOSB) at VA. Data from this program shows that this preference has created many opportunities for small businesses since its creation. In fiscal year 2007, VA awarded \$370.7 million, or 3.64 percent of their total contracting budget, to SDVOSB firms.² By fiscal year 2017, contracting dollars awarded to SDVOSBs had grown to \$5.1 billion, or 19.52 percent of all contracting dollars spent.³

While the Committee believes this growth is laudable, there has been concern that section 8127 of title 38, U.S.C., did not appropriately address concerns of what happens to awards and contracts of a VOSB and SDVOB when the veteran-owner dies. The sudden death of a veteran could bring significant upheaval for a small business, as they lose their VA contracts, which can impact not only the veteran’s family but employees as well. Public Law 109–461, which created section 8127 of title 38, U.S.C., authorized that only spouses of veterans who were rated as 100 percent disabled at the time of their death would be able to claim SDVSOB status for ten years following the veteran’s death. The Committee believed section 8127 was too limited and therefore amended it to authorize spouses of veterans who died with less than a 100 percent disability rating to maintain VOSB and SDVOSB status for up to three years following the veteran’s death.⁴ Unfortunately, the National Defense Authorization Act for Fiscal Year 2017 (FY17 NDAA), struck the amendments to section 8127 of title 38, U.S.C. The amendments made by the FY17 NDAA to section 8127 of title 38, U.S.C. are not effective until both VA and the U.S. Small Business Administration (SBA) issue regulations implementing the amendments.

This bill would amend section 8127(k) of title 38 U.S.C., to supersede the FY17 NDAA to clarify that surviving spouses of veterans who died with less than a 100 percent disability rating can maintain their SDVOSB status until one of the following instance occurs: three years after the veteran’s death; when the surviving

¹Public Law 109–461. <https://www.va.gov/ogc/docs/pl109-461.pdf>.

²Small Business Dashboard FY2006. U.S. General Services Administration. https://smallbusiness.data.gov/explore?carryfilters=on&fromfiscal=yes&tab=By+Performance+Goal&fiscal_year=2017&tab=By+Performance+Goal&fiscal_year=2006&fromfiscal=yes&carryfilters=on&Submit=Go.

³Small Business Dashboard FY2017. U.S. General Services Administration. https://smallbusiness.data.gov/explore?carryfilters=on&fromfiscal=yes&tab=By+Performance+Goal&fiscal_year=2018&tab=By+Performance+Goal&fiscal_year=2017&fromfiscal=yes&carryfilters=on&Submit=Go.

⁴Public Law 114–315.

spouse remarries; or when the surviving spouse relinquishes ownership of the small business.

HEARINGS

On March 20, 2018, the Subcommittee on Economic Opportunity held a legislative hearing on several bills pending before the Subcommittee including H.R. 5044.

The following witnesses testified:

The Honorable Gus Bilirakis, U.S. House of Representatives, 12th District, Florida; The Honorable Brad Wenstrup, U.S. House of Representatives, 2nd District, Ohio; The Honorable Ted Poe, U.S. House of Representatives, 2nd District, Texas; The Honorable Luke Messer, U.S. House of Representatives, 6th District, Indiana; The Honorable Steve Russell, U.S. House of Representatives, 5th District, Oklahoma; MG Robert M. Worley II, USAF (Ret.), Director, Education Service, Veterans Benefit Administration, U.S. Department of Veterans Affairs accompanied by Mr. Jeffrey London, Director, Loan Guaranty Service, Veterans Benefits Administration, U.S. Department of Veterans Affairs; Mr. John J. Kamin, Assistant Director, Veterans Employment and Education Division, The American Legion; Ms. Ashlynn Haycock, Manager, Education Services, Tragedy Assistance Program for Survivors; and Mr. William Hubbard, Vice President of Government Affairs, Student Veterans of America.

Statements for the record were submitted by:

The Honorable Steve Chabot, U.S. House of Representatives, 1st District, Ohio; the U.S. Department of Labor; the National Association of State Approving Agencies; and the National Association of Veterans' Programs Administrators.

SUBCOMMITTEE CONSIDERATION

On April 11, 2018, the Subcommittee on Economic Opportunity met in open markup session, a quorum being present and favorably forwarded H.R. 5044 to the Full Committee.

COMMITTEE CONSIDERATION

On May 8, 2018, the Full Committee met in open markup session, a quorum being present, and ordered H.R. 5044 be reported favorably to the House of Representatives by voice vote.

COMMITTEE VOTES

In compliance with clause 3(b) of rule XIII of the Rules of the House of Representatives, no recorded votes were taken on amendments or in connection with ordering H.R. 5044 reported favorably to the House.

COMMITTEE OVERSIGHT FINDINGS

In compliance with clause 3(c)(1) of rule XIII and clause (2)(b)(1) of rule X of the Rules of the House of Representatives, the Committee's oversight findings and recommendations are reflected in the descriptive portions of this report.

STATEMENT OF GENERAL PERFORMANCE GOALS AND OBJECTIVES

In accordance with clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the Committee's performance goals and objectives of H.R. 5044 are to improve eligibility for the Vets First contracting program.

NEW BUDGET AUTHORITY, ENTITLEMENT AUTHORITY, AND TAX EXPENDITURES

In compliance with clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee adopts as its own the estimate of new budget authority, entitlement authority, or tax expenditures or revenues contained in the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

EARMARKS AND TAX AND TARIFF BENEFITS

H.R. 5044 does not contain any Congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9 of rule XXI of the Rules of the House of Representatives.

COMMITTEE COST ESTIMATE

The Committee adopts as its own the cost estimate on H.R. 5044 prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

Pursuant to clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the following is the cost estimate for H.R. 5044 is provided by the Director of the Congressional Budget Office. Pursuant to section 402 of the Congressional Budget Act of 1974:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, May 9, 2018.

Hon. PHIL ROE, M.D.,
*Chairman, Committee on Veterans' Affairs,
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 5044, the Service-Disabled Veterans Small Business Continuation Act.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Logan Smith.

Sincerely,

KEITH HALL,
Director.

Enclosure.

H.R. 5044—Service-Disabled Veterans Small Business Continuation Act

In procuring goods and services, the Department of Veterans Affairs (VA) provides a special preference to firms owned and controlled by veterans with service-connected disabilities. Under cur-

rent law, surviving spouses of veterans whose service-connected disabilities were rated at 100 percent are eligible to retain that preferential contracting status for up to 10 years after the veteran's death. H.R. 5044 would authorize similar treatment for surviving spouses of veterans whose service-connected disabilities were rated at less than 100 percent. Those spouses would be allowed to retain priority for obtaining contracts for up to three years.

CBO expects the bill would result in minimal administrative costs to verify the new owners. On that basis, CBO estimates that implementing H.R. 5044 would cost less than \$500,000 over the 2019–2023 period; that spending would be subject to the availability of appropriated funds.

Enacting H.R. 5044 would not affect direct spending or revenues; therefore, pay-as-you-go procedures do not apply.

CBO estimates that enacting H.R. 5044 would not increase net direct spending or on-budget deficits in any of the four consecutive 10-year periods beginning in 2029.

H.R. 5044 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act.

The CBO staff contact for this estimate is Logan Smith. The estimate was reviewed by Leo Lex, Deputy Assistant Director for Budget Analysis.

FEDERAL MANDATES STATEMENT

The Committee adopts as its own the estimate of Federal mandates regarding H.R. 5044 prepared by the Director of the Congressional Budget Office. Pursuant to section 423 of the Unfunded Mandated Reform Act.

ADVISORY COMMITTEE STATEMENT

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act would be created by H.R. 5044.

CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to Article I, section 8 of the United States Constitution, H.R. 5044, as amended, is authorized by Congress' power to "provide for the common Defense and general Welfare of the United States."

APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that H.R. 5044 does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act of 1995.

STATEMENT ON DUPLICATION OF FEDERAL PROGRAMS

Pursuant to clause 3(c)(5) of rule XIII of the Rules of the House of Representatives, the Committee finds that no provision of H.R. 5044 establishes or reauthorizes a program of the Federal Government known to be duplicative of another Federal program, a program that was included in any report from the Government Accountability Office to Congress pursuant to section 21 of Public

Law 111–139, or a program related to a program identified in the most recent Catalog of Federal Domestic Assistance.

DISCLOSURE OF DIRECTED RULEMAKING

Pursuant to section 3(i) of H. Res. 5, 115th Cong. (2017), H.R. 5044 would not require the Secretary to publish new regulations for carrying out this bill.

SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

Sec. 1. Short title

This section cites that the short title of the bill is, “Service-Disabled Veterans Small Business Continuation Act.”

Sec. 2. Technical amendment regarding treatment of certain surviving spouses under contracting goals and preferences of Department of Veterans Affairs

This section would amend section 8127(k)(3) of title 38, U.S.C., to clarify that a surviving spouse of a veteran who is not rated as 100 percent disabled would be treated as eligible as part of the Vets First program as specified in section 8127 of title U.S.C. The period for which they would be eligible would begin on the date of the death of the veteran and end on the date that is three years after this death, on the date when the spouse re-marries, or the date when the surviving spouse relinquishes ownership of the small business, whichever comes first.

This section would become effective on the date specified by section 1832(e) of the National Defense Authorization Act for Fiscal Year 2017.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (new matter is printed in italic, and existing law in which no change is proposed is shown in roman):

TITLE 38, UNITED STATES CODE

* * * * *

PART VI—ACQUISITION AND DISPOSITION OF PROPERTY

* * * * *

CHAPTER 81—ACQUISITION AND OPERATION OF HOSPITAL AND DOMICILIARY FACILITIES; PROCUREMENT AND SUPPLY; ENHANCED-USE LEASES OF REAL PROPERTY

* * * * *

SUBCHAPTER II—PROCUREMENT AND SUPPLY

* * * * *

§ 8127. Small business concerns owned and controlled by veterans: contracting goals and preferences

(a) **CONTRACTING GOALS.**—(1) In order to increase contracting opportunities for small business concerns owned and controlled by veterans and small business concerns owned and controlled by veterans with service-connected disabilities, the Secretary shall—

(A) establish a goal for each fiscal year for participation in Department contracts (including subcontracts) by small business concerns owned and controlled by veterans who are not veterans with service-connected disabilities in accordance with paragraph (2); and

(B) establish a goal for each fiscal year for participation in Department contracts (including subcontracts) by small business concerns owned and controlled by veterans with service-connected disabilities in accordance with paragraph (3).

(2) The goal for a fiscal year for participation under paragraph (1)(A) shall be determined by the Secretary.

(3) The goal for a fiscal year for participation under paragraph (1)(B) shall be not less than the Government-wide goal for that fiscal year for participation by small business concerns owned and controlled by veterans with service-connected disabilities under section 15(g)(1) of the Small Business Act (15 U.S.C. 644(g)(1)).

(4) The Secretary shall establish a review mechanism to ensure that, in the case of a subcontract of a Department contract that is counted for purposes of meeting a goal established pursuant to this section, the subcontract was actually awarded to a business concern that may be counted for purposes of meeting that goal.

(b) **USE OF NONCOMPETITIVE PROCEDURES FOR CERTAIN SMALL CONTRACTS.**—For purposes of meeting the goals under subsection (a), and in accordance with this section, in entering into a contract with a small business concern owned and controlled by veterans for an amount less than the simplified acquisition threshold (as defined in section 134 of title 41), a contracting officer of the Department may use procedures other than competitive procedures.

(c) **SOLE SOURCE CONTRACTS FOR CONTRACTS ABOVE SIMPLIFIED ACQUISITION THRESHOLD.**—For purposes of meeting the goals under subsection (a), and in accordance with this section, a contracting officer of the Department may award a contract to a small business concern owned and controlled by veterans using procedures other than competitive procedures if—

(1) such concern is determined to be a responsible source with respect to performance of such contract opportunity;

(2) the anticipated award price of the contract (including options) will exceed the simplified acquisition threshold (as de-

fined in section 134 of title 41) but will not exceed \$5,000,000; and

(3) in the estimation of the contracting officer, the contract award can be made at a fair and reasonable price that offers best value to the United States.

(d) USE OF RESTRICTED COMPETITION.—Except as provided in subsections (b) and (c), for purposes of meeting the goals under subsection (a), and in accordance with this section, a contracting officer of the Department shall award contracts on the basis of competition restricted to small business concerns owned and controlled by veterans if the contracting officer has a reasonable expectation that two or more small business concerns owned and controlled by veterans will submit offers and that the award can be made at a fair and reasonable price that offers best value to the United States.

(e) ELIGIBILITY OF SMALL BUSINESS CONCERNS.—A small business concern may be awarded a contract under this section only if the small business concern and the veteran owner of the small business concern are listed in the database of veteran-owned businesses maintained by the Secretary under subsection (f).

(f) DATABASE OF VETERAN-OWNED BUSINESSES.—(1) Subject to paragraphs (2) through (6), the Secretary shall maintain a database of small business concerns owned and controlled by veterans and the veteran owners of such business concerns.

(2)(A) To be eligible for inclusion in the database, such a veteran shall submit to the Secretary such information as the Secretary may require with respect to the small business concern or the veteran. Application for inclusion in the database shall constitute permission under section 552a of title 5 (commonly referred to as the Privacy Act) for the Secretary to access such personal information maintained by the Secretary as may be necessary to verify the information contained in the application.

(B) If the Secretary receives an application for inclusion in the database from an individual whose status as a veteran cannot be verified because the Secretary does not maintain information with respect to the veteran status of the individual, the Secretary may not include the small business concern owned and controlled by the individual in the database maintained by the Secretary until the Secretary receives such information as may be necessary to verify that the individual is a veteran.

(3) Information maintained in the database shall be submitted on a voluntary basis by such veterans.

(4) No small business concern may be listed in the database until the Secretary has verified that—

(A) the small business concern is owned and controlled by veterans; and

(B) in the case of a small business concern for which the person who owns and controls the concern indicates that the person is a veteran with a service-connected disability, that the person is a veteran with a service-connected disability.

(5) The Secretary shall make the database available to all Federal departments and agencies and shall notify each such department and agency of the availability of the database.

(6) If the Secretary determines that the public dissemination of certain types of information maintained in the database is inappro-

ropriate, the Secretary shall take such steps as are necessary to maintain such types of information in a secure and confidential manner.

(8)(A) If a small business concern is not included in the database because the Secretary does not verify the status of the concern as a small business concern or the ownership or control of the concern, the concern may appeal the denial of verification to the Office of Hearings and Appeals of the Small Business Administration (as established under section 5(i) of the Small Business Act). The decision of the Office of Hearings and Appeals shall be considered a final agency action.

(B)(i) If an interested party challenges the inclusion in the database of a small business concern owned and controlled by veterans or a small business concern owned and controlled by veterans with service-connected disabilities based on the status of the concern as a small business concern or the ownership or control of the concern, the challenge shall be heard by the Office of Hearings and Appeals of the Small Business Administration as described in subparagraph (A). The decision of the Office of Hearings and Appeals shall be considered final agency action.

(ii) In this subparagraph, the term “interested party” means—

(I) the Secretary; or

(II) in the case of a small business concern that is awarded a contract, the contracting officer of the Department or another small business concern that submitted an offer for the contract that was awarded to the small business concern that is the subject of a challenge made under clause (i).

(C) For each fiscal year, the Secretary shall reimburse the Administrator of the Small Business Administration in an amount necessary to cover any cost incurred by the Office of Hearings and Appeals of the Small Business Administration for actions taken by the Office under this paragraph. The Administrator is authorized to accept such reimbursement. The amount of any such reimbursement shall be determined jointly by the Secretary and the Administrator and shall be provided from fees collected by the Secretary under multiple-award schedule contracts. Any disagreement about the amount shall be resolved by the Director of the Office of Management and Budget.

(g) ENFORCEMENT PENALTIES FOR MISREPRESENTATION.—(1) Any business concern that is determined by the Secretary to have willfully and intentionally misrepresented the status of that concern as a small business concern owned and controlled by veterans or as a small business concern owned and controlled by service-disabled veterans for purposes of this subsection shall be debarred from contracting with the Department for a period of not less than five years.

(2) In the case of a debarment under paragraph (1), the Secretary shall commence debarment action against the business concern by not later than 30 days after determining that the concern willfully and intentionally misrepresented the status of the concern as described in paragraph (1) and shall complete debarment actions against such concern by not later than 90 days after such determination.

(3) The debarment of a business concern under paragraph (1) includes the debarment of all principals in the business concern for a period of not less than five years.

(h) TREATMENT OF BUSINESSES AFTER DEATH OF VETERAN-OWNER.—(1) Subject to paragraph (3), if the death of a veteran causes a small business concern to be less than 51 percent owned by one or more veterans, the surviving spouse of such veteran who acquires ownership rights in such small business concern shall, for the period described in paragraph (2), be treated as if the surviving spouse were that veteran for the purpose of maintaining the status of the small business concern as a small business concern owned and controlled by veterans.

(2) The period referred to in paragraph (1) is the period beginning on the date on which the veteran dies and ending on the earliest of the following dates:

(A) The date on which the surviving spouse remarries.

(B) The date on which the surviving spouse relinquishes an ownership interest in the small business concern.

(C) The date that—

(i) in the case of a surviving spouse of a veteran with a service-connected disability rated as 100 percent disabling or who dies as a result of a service-connected disability, is 10 years after the date of the veteran's death; or

(ii) in the case of a surviving spouse of a veteran with a service-connected disability rated as less than 100 percent disabling who does not die as a result of a service-connected disability, is 3 years after the date of the veteran's death.

(3) Paragraph (1) only applies to a surviving spouse of a veteran with a service-connected disability.

(i) PRIORITY FOR CONTRACTING PREFERENCES.—Preferences for awarding contracts to small business concerns shall be applied in the following order of priority:

(1) Contracts awarded pursuant to subsection (b), (c), or (d) to small business concerns owned and controlled by veterans with service-connected disabilities.

(2) Contracts awarded pursuant to subsection (b), (c), or (d) to small business concerns owned and controlled by veterans that are not covered by paragraph (1).

(3) Contracts awarded pursuant to—

(A) section 8(a) of the Small Business Act (15 U.S.C. 637(a)); or

(B) section 31 of such Act (15 U.S.C. 657a).

(4) Contracts awarded pursuant to any other small business contracting preference.

(j) APPLICABILITY OF REQUIREMENTS TO CONTRACTS.—(1) If after December 31, 2008, the Secretary enters into a contract, memorandum of understanding, agreement, or other arrangement with any governmental entity to acquire goods or services, the Secretary shall include in such contract, memorandum, agreement, or other arrangement a requirement that the entity will comply, to the maximum extent feasible, with the provisions of this section in acquiring such goods or services.

(2) Nothing in this subsection shall be construed to supersede or otherwise affect the authorities provided under the Small Business Act (15 U.S.C. 631 et seq.).

(k) ANNUAL REPORTS.—Not later than December 31 each year, the Secretary shall submit to Congress a report on small business contracting during the fiscal year ending in such year. Each report shall include, for the fiscal year covered by such report, the following:

(1) The percentage of the total amount of all contracts awarded by the Department during that fiscal year that were awarded to small business concerns owned and controlled by veterans.

(2) The percentage of the total amount of all such contracts awarded to small business concerns owned and controlled by veterans with service-connected disabilities.

(3) The percentage of the total amount of all contracts awarded by each Administration of the Department during that fiscal year that were awarded to small business concerns owned and controlled by veterans. *A surviving spouse of such a veteran who is not covered by subparagraph (C)(i) of such section by reason of the disability rating of the veteran being less than 100 percent shall be treated as being so covered during the period beginning on the date of the death of the veteran and ending on the date that is three years after such death, the date on which the surviving spouse remarries, or the date on which the surviving spouse relinquishes an ownership interest in the small business concern, whichever occurs first.*

(4) The percentage of the total amount of all contracts awarded by each such Administration during that fiscal year that were awarded to small business concerns owned and controlled by veterans with service-connected disabilities.

(l) DEFINITIONS.—In this section:

(1) The term “small business concern” has the meaning given that term under section 3 of the Small Business Act (15 U.S.C. 632).

(2) The term “small business concern owned and controlled by veterans” means a small business concern—

(A)(i) not less than 51 percent of which is owned by one or more veterans or, in the case of a publicly owned business, not less than 51 percent of the stock of which is owned by one or more veterans; and

(ii) the management and daily business operations of which are controlled by one or more veterans; or

(B) not less than 51 percent of which is owned by one or more veterans with service-connected disabilities that are permanent and total who are unable to manage the daily business operations of such concern or, in the case of a publicly owned business, not less than 51 percent of the stock of which is owned by one or more such veterans.

* * * * *