

AMENDED IN SENATE MAY 26, 2004

AMENDED IN SENATE APRIL 22, 2004

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AMENDED IN ASSEMBLY SEPTEMBER 10, 2003

CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

ASSEMBLY BILL

No. 1592

**Introduced by Committee on Veterans Affairs (Parra (Chair),
Cohn, Kehoe, Matthews, Mullin, Nakano, Salinas, and Wiggins)**

February 21, 2003

An act to amend Section 14845 of the Government Code, and to amend Sections 999, 999.5, 999.7, 999.9, 999.11, and 999.12 of the Military and Veterans Code, relating to veterans.

LEGISLATIVE COUNSEL'S DIGEST

AB 1592, as amended, Committee on Veterans Affairs. California Disabled Veteran Business Enterprise Program.

(1) Under existing law, state agencies and all other state entities contracting for materials, supplies, equipment, alteration, repair, or improvement are required to have at least 3% participation goals for disabled veteran business enterprises. Existing law requires the Department of Veterans Affairs and the awarding departments to appoint a Disabled Veteran Business Enterprise Program Advocate to assist in meeting the participation goals.

The bill would specify that the Department of General Services is the administering agency of the California Disabled Veteran Business Enterprise Program except in the case of contracts for professional bond

services, would specify the duties of the Department of General Services in meeting that requirement, would set standards for meeting the program’s participation goals, and would impose reporting requirements regarding contracts entered into by awarding departments that participate in the program.

(2) Existing law makes it a misdemeanor to violate specified prohibitions relating to disabled veteran business enterprises.

~~This bill would specify that the identity of any person that provides information to the awarding department or the Department of General Services, regarding another person’s violation of these prohibitions or a provision of existing law relating to fraud and obstruction of justice in certifying minority, women, or disabled veteran business enterprises, is protected from disclosure under the California Public Records Act make technical, conforming changes to that provision.~~

(3) Existing law requires the Department of General Services’ small business advocate to provide, at a minimum, specified services to small businesses.

This bill, instead, would require the department’s small business advocate to provide these services to certified small businesses and certified disabled veteran business enterprises.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 14845 of the Government Code is
- 2 amended to read:
- 3 14845. Using existing resources, the Department of General
- 4 Services’ small business advocate shall, at a minimum, provide the
- 5 following services:
- 6 (a) Assist certified small businesses and certified disabled
- 7 veteran business enterprises by providing information regarding
- 8 all of the following:
- 9 (1) Identification of potential certified small business and
- 10 certified disabled veteran business enterprise subcontractors and
- 11 potential subcontracting opportunities.
- 12 (2) Solicitation protest procedures and timelines.
- 13 (3) Prompt payment procedures.
- 14 (b) Using existing resources, develop and maintain an outreach
- 15 and education program to assist certified small businesses and



1 certified disabled veteran business enterprises to establish the
2 California multiple award schedule. The department shall actively
3 promote the availability of certified small business and certified
4 disabled veteran business enterprise suppliers to deliver or provide
5 a broad range of goods and services to governmental agencies
6 through their participation in the California multiple award
7 schedule program established pursuant to Chapter 2 (commencing
8 with Section 10290) of Part 2 of Division 2 of the Public Contract
9 Code and other types of contracts established by state agencies for
10 repetitively used and commonly needed goods and services.

11 (c) Whenever the director consolidates the needs of multiple
12 state agencies and establishes a contract for repetitively purchased
13 or commonly needed goods or services, the director shall both
14 encourage bidders to utilize certified small business and certified
15 disabled veteran business enterprise suppliers and subcontractors,
16 and utilize multiple award methods whenever practicable to
17 further ensure that a fair proportion of needed goods and services
18 are obtained from certified small businesses and certified disabled
19 veteran business enterprises.

20 (d) Using existing resources, establish a training and
21 development program for acquisition professionals, including
22 methods for structuring solicitations to enhance the participation
23 of certified small businesses and certified disabled veteran
24 business enterprises in state contracting.

25 (e) Using existing resources, the department shall establish a
26 recognition and awards program for state employees who make an
27 outstanding contribution to the state's overall effort to increase the
28 level of certified small business participation in state contracting
29 or certified disabled veteran business enterprise participation in
30 state contracting.

31 (f) Prepare, and make available to the public, a directory of
32 certified small business and certified disabled veteran business
33 enterprise suppliers.

34 (g) In its review of state agency acquisitions, the department,
35 as applicable, shall identify areas where improvements in the level
36 of participation of certified small businesses and certified disabled
37 veteran business enterprises in state contracting can be achieved.

38 SEC. 2. Section 999 of the Military and Veterans Code is
39 amended to read:



1 999. (a) The article shall be known as, and may be cited as,
2 the California Disabled Veteran Business Enterprise Program.

3 (b) As used in this article, the following definitions apply:

4 (1) “Administering agency” means the Treasurer in the case of
5 contracts for professional bond services, and the Department of
6 General Services’ Office of Small Business and Disabled Veteran
7 Business Enterprise Services, in the case of contracts governed by
8 Section 999.2.

9 (2) “Awarding department” means any state agency,
10 department, governmental entity, or other officer or entity
11 empowered by law to issue bonds or enter into contracts on behalf
12 of the State of California.

13 (3) “Bonds” means bonds, notes, warrants, certificates of
14 participation, and other evidences of indebtedness issued by, or on
15 behalf of, the State of California.

16 (4) “Contract” includes any agreement or joint agreement to
17 provide professional bond services to the State of California or an
18 awarding department. “Contract” also includes any agreement or
19 joint development agreement to provide labor, services, materials,
20 supplies, or equipment in the performance of a contract, franchise,
21 concession, or lease granted, let, or awarded for, and on behalf of,
22 the State of California.

23 (5) (A) “Contractor” means any person or persons, regardless
24 of race, color, creed, national origin, ancestry, sex, marital status,
25 disability, religious or political affiliation, age, or any sole
26 proprietorship, firm, partnership, joint venture, corporation, or
27 combination thereof who submits a bid and enters into a contract
28 with a representative of a state agency, department, governmental
29 entity, or other officer empowered by law to enter into contracts
30 on behalf of the State of California. “Contractor” includes any
31 provider of professional bond services who enters into a contract
32 with an awarding department.

33 (B) “Disabled veteran business enterprise contractor,
34 subcontractor, or supplier” means any person or entity that has
35 been certified by the administering agency pursuant to this article
36 and that performs a “commercially useful function,” as defined
37 below, in providing services or goods that contribute to the
38 fulfillment of the contract requirements:

39 (i) A person or an entity is deemed to perform a “commercially
40 useful function” if a person or entity does all of the following:



1 (I) (aa) Is responsible for the execution of a distinct element of
2 the work of the contract.

3 (ab) Carries out the obligation by actually performing,
4 managing, or supervising the work involved.

5 (ac) Performs work that is normal for its business services and
6 functions.

7 (II) Is not further subcontracting a portion of the work that is
8 greater than that expected to be subcontracted by normal industry
9 practices.

10 (ii) A contractor, subcontractor, or supplier will not be
11 considered to perform a “commercially useful function” if the
12 contractor’s, subcontractor’s, or supplier’s role is limited to that of
13 an extra participant in a transaction, contract, or project through
14 which funds are passed in order to obtain the appearance of
15 disabled veteran business enterprise participation.

16 (6) “Disabled veteran” means a veteran of the military, naval,
17 or air service of the United States, including, but not limited to, the
18 Philippine Commonwealth Army, the Regular Scouts “Old
19 Scouts,” and the Special Philippine Scouts “New Scouts,” who
20 has at least a 10 percent service-connected disability and who is
21 domiciled in the State of California.

22 (7) (A) “Disabled veteran business enterprise” means a
23 business certified by the administering agency as meeting all of the
24 following requirements:

25 (i) It is a sole proprietorship at least 51 percent owned by one
26 or more disabled veterans or, in the case of a publicly owned
27 business, at least 51 percent of its stock is owned by one or more
28 disabled veterans; a subsidiary that is wholly owned by a parent
29 corporation, but only if at least 51 percent of the voting stock of
30 the parent corporation is owned by one or more disabled veterans;
31 or a joint venture in which at least 51 percent of the joint venture’s
32 management, control, and earnings are held by one or more
33 disabled veterans.

34 (ii) The management and control of the daily business
35 operations are by one or more disabled veterans. The disabled
36 veterans who exercise management and control are not required to
37 be the same disabled veterans as the owners of the business.

38 (iii) It is a sole proprietorship, corporation, or partnership with
39 its home office located in the United States, which is not a branch



1 or subsidiary of a foreign corporation, foreign firm, or other
2 foreign-based business.

3 (B) Notwithstanding subparagraph (A), after the death or the
4 certification of a permanent medical disability of a disabled
5 veteran who is a majority owner of a business that qualified as a
6 disabled veteran business enterprise prior to that death or
7 certification of a permanent medical disability, and solely for
8 purposes of any contract entered into before that death or
9 certification, that business shall be deemed to be a disabled veteran
10 business enterprise for a period not to exceed three years after the
11 date of that death or certification of a permanent medical disability,
12 if the business is inherited or controlled by the spouse or child of
13 that majority owner, or by both of those persons.

14 (7) “Foreign corporation,” “foreign firm,” or “foreign-based
15 business” means a business entity that is incorporated or has its
16 principal headquarters located outside the United States of
17 America.

18 (8) “Goal” means a numerically expressed objective that
19 awarding departments and contractors are required to make efforts
20 to achieve.

21 (9) “Management and control” means effective and
22 demonstrable management of the business entity.

23 (10) “Professional bond services” include services as financial
24 advisers, bond counsel, underwriters in negotiated transactions,
25 underwriter’s counsel, financial printers, feasibility consultants,
26 and other professional services related to the issuance and sale of
27 bonds.

28 SEC. 3. Section 999.5 of the Military and Veterans Code is
29 amended to read:

30 999.5. (a) The administering agency for the California
31 Disabled Veteran Business Enterprise Program shall be the
32 Department of General Services, except in the case of contracts for
33 professional bond services. The Department of General Services
34 shall consult with the Disabled Veteran Business Enterprise
35 Program Advocate, appointed by the Department of Veterans
36 Affairs pursuant to Section 999.11, on all matters relating to the
37 California Disabled Veteran Business Enterprise Program. The
38 administering agency shall establish policies, rules, and
39 regulations that all awarding agencies shall follow in complying
40 with the California Disabled Veteran Business Enterprise



1 Program. The Department of Veterans Affairs shall establish a
2 method of monitoring adherence to the goals specified in Sections
3 999.1 and 999.2.

4 (b) The administering agency shall have the authority to
5 require awarding departments to withhold a portion of the
6 payments to contractors if the Disabled Veteran Business
7 Enterprise Program Advocate for the awarding department
8 determines that a contractor has failed to use disabled veteran
9 business enterprises to the extent specified in the contract.

10 (c) The Department of Veterans Affairs shall promote the
11 California Disabled Veteran Business Enterprise Program to the
12 fullest extent possible and shall maintain complete records of its
13 outreach efforts and set up a system to track its effectiveness. This
14 system shall include regular, periodic surveys of newly certified
15 disabled veteran business enterprises to determine how they
16 learned of the program, why they became certified, and what their
17 experience with awarding departments has been.

18 (d) An awarding department shall not credit toward the
19 department's 3 percent goal state funds expended on a contract
20 with a disabled veteran business enterprise that does not meet and
21 maintain the certification requirements.

22 (e) The administering agency shall adopt rules and regulations,
23 including standards for good faith efforts, for the purpose of
24 implementing this section. The standards shall require bidders on
25 state contracts to contact the administering agency for a list of
26 certified disabled veteran business enterprises that are maintained
27 by the Office of Small Business and Disabled Veteran Business
28 Enterprise Services. Emergency regulations consistent with this
29 section may be adopted.

30 SEC. 4. Section 999.7 of the Military and Veterans Code is
31 amended to read:

32 999.7. (a) September 1 of each year, the Disabled Veteran
33 Business Enterprise Program Advocate for each awarding
34 department, appointed in accordance with Section 999.12, shall
35 deliver to the administering agency a report on the level of
36 participation by disabled veteran business enterprises in contracts
37 identified in this article for the previous fiscal year.

38 (b) The written report shall include the following information:

39 (1) The total number of contracts and the total contract dollars
40 awarded by the department during the reporting period.



1 (2) The total number of contracts and the total contract dollars
2 awarded by the department during the reporting year for contracts
3 that were administratively exempted from certified disabled
4 veteran business enterprise participation.

5 (3) The total number of contracts and the total contract dollars
6 actually awarded by the department to certified disabled veteran
7 business enterprises either as prime contractors or subcontractors
8 during the reporting period.

9 (4) The percent of the department's total contract dollars
10 actually awarded to disabled veteran business enterprises either as
11 prime contractors or subcontractors during the reporting period.

12 (5) The number of individual certified disabled veteran
13 business enterprises receiving awarded contract dollars and the
14 average amount received during the reporting period.

15 (6) The total contract dollars awarded by the department during
16 the previous three fiscal years.

17 (7) The total contract dollars awarded by the department to
18 disabled veteran business enterprises either as prime contractors or
19 subcontractors, during the previous three fiscal years.

20 (8) The percent of total contract dollars awarded by the
21 department during the previous three fiscal years to certified
22 disabled veteran business enterprises either as prime contractors or
23 subcontractors.

24 (c) If the established 3 percent goals for disabled veteran
25 business enterprise participation in state contracts is not met by the
26 awarding department during the reporting period, the report shall
27 describe in detail all of the following:

28 (1) The reasons for the awarding department's inability to
29 achieve the 3 percent goal including the reasons given by the
30 department director or next highest ranking official for
31 administratively waiving disabled veteran business enterprise
32 participation on any contracts awarded by the department during
33 the reporting period.

34 (2) The steps the department will take during the following
35 reporting period to achieve the 3 percent goal.

36 (d) (1) On January 1 of each year, the Department of General
37 Services shall deliver to the Governor, the Legislature, and the
38 Disabled Veteran Business Enterprise Program Advocate, a report
39 that summarizes the reports specified in subdivision (a).



1 (2) The report shall be prepared in consultation with the
2 Disabled Veteran Business Enterprise Program Advocate in the
3 Department of Veterans Affairs. The report shall have three
4 sections, as follows:

5 (A) The first section shall list, by state department, the
6 awarding departments that have submitted the information
7 prescribed in subdivision (a); those state departments that have not
8 submitted the information prescribed in subdivision (a); those
9 state departments that have completed implementation of their
10 plan to improve disabled veteran business enterprise participation;
11 and those state departments that have not completed
12 implementation of their plan to improve disabled veteran business
13 enterprise participation.

14 (B) The second section shall detail each awarding department's
15 goal achievement and a statewide total of those goals. This section
16 shall be formatted to be an aggregation of all of the statistical
17 information prepared by the Disabled Veteran Business Enterprise
18 Program Advocates for all awarding departments as submitted to
19 the administering agency as described in paragraphs (1) to (8),
20 inclusive, of subdivision (a).

21 (C) The third section shall include a summary of the
22 information prescribed in paragraphs (1), (2), and (3) of
23 subdivision (a), an analysis of that information, and recommended
24 specific actions the administering agency can take to require the
25 accurate reporting of all awarding departments and to improve
26 statewide attainment of the 3 percent disabled veteran business
27 enterprise participation goal during the following reporting
28 period. These recommendations shall not be limited and may
29 include recommendations to provide for negotiated disabled
30 veteran business enterprise participation goal attainment for
31 specified awarding departments.

32 SEC. 5. Section 999.9 of the Military and Veterans Code is
33 amended to read:

34 999.9. (a) It shall be unlawful for a person to do any of the
35 following:

36 (1) Knowingly and with intent to defraud, fraudulently obtain,
37 retain, attempt to obtain or retain, or aid another in fraudulently
38 obtaining or retaining or attempting to obtain or retain,
39 certification as a disabled veteran business enterprise for the
40 purpose of this article.



1 (2) Willfully and knowingly make a false statement with the
2 intent to defraud, whether by affidavit, report, or other
3 representation, to a state official or employee for the purpose of
4 influencing the certification or denial of certification of any entity
5 as a disabled veteran business enterprise.

6 (3) Willfully and knowingly obstruct, impede, or attempt to
7 obstruct or impede, any state official or employee who is
8 investigating the qualifications of a business entity that has
9 requested certification as a disabled veteran business enterprise.

10 (4) Knowingly and with intent to defraud, fraudulently obtain,
11 attempt to obtain, or aid another person in fraudulently obtaining
12 or attempting to obtain, public moneys, contracts, or funds
13 expended under a contract, that are awarded by any state agency,
14 department, officer, or other state governmental agency, to which
15 the person is not entitled under this article.

16 (5) Knowingly and with intent to defraud, fraudulently
17 represent participation of a disabled veteran business enterprise in
18 order to obtain or retain a bid preference or a state contract.

19 (6) Willfully and knowingly make or subscribe to any
20 statement, declaration, or other document that is fraudulent or
21 false as to any material matter, whether or not that falsity or fraud
22 is committed with the knowledge or consent of the person
23 authorized or required to present the declaration, statement, or
24 document.

25 (7) Willfully and knowingly aid or assist in, or procure,
26 counsel, or advise, the preparation or presentation of a declaration,
27 statement, or other document that is fraudulent or false as to any
28 material matter, regardless of whether that falsity or fraud is
29 committed with the knowledge or consent of the person authorized
30 or required to present the declaration, statement, or document.

31 (8) Willfully and knowingly fail to file any declaration or
32 notice with the awarding agency that is required by Section 999.2.

33 (9) Establish, or knowingly aid in the establishment of, or
34 exercise control over, a firm found to have violated any of
35 paragraphs (1) to (8), inclusive.

36 (b) Any person who violates any of the provisions of
37 subdivision (a) shall be guilty of a misdemeanor punishable by
38 imprisonment in the county jail not exceeding six months or by a
39 fine not exceeding one thousand dollars (\$1,000), or by both. In
40 addition, the person shall be liable for a civil penalty of not less



1 than ten thousand dollars (\$10,000) nor more than thirty thousand
2 dollars (\$30,000) for the first violation, and a civil penalty of not
3 less than thirty thousand dollars (\$30,000) nor more than fifty
4 thousand dollars (\$50,000) for each additional or subsequent
5 violation. A defendant who violates any of the provisions of
6 subdivision (a) shall pay all costs and attorney's fees incurred by
7 the plaintiff in a civil action brought pursuant to this section.

8 (c) (1) The Department of General Services shall suspend any
9 person who violates subdivision (a) from bidding on, or
10 participating as either a contractor, subcontractor, or supplier in,
11 any state contract or project for a period of not less than three years,
12 and if certified as a disabled veteran business enterprise, the
13 department shall revoke the business' certification for a period of
14 not less than three years. An additional or subsequent violation
15 shall extend the periods of suspension and revocation for a period
16 of not less than five years. The suspension and revocation shall
17 apply to the principals of the business and any subsequent business
18 formed or financed by, or affiliated with, those principals.

19 (2) The Department of General Services shall prohibit any
20 business or person who fails to satisfy the penalties, costs, and
21 attorney's fees imposed pursuant to subdivision (b) from further
22 contracting with the state until the penalties are satisfied.

23 ~~(d) The identity of any person that provides information to the~~
24 ~~awarding department or the Department of General Services~~
25 ~~regarding another person's violation of this section, or Section~~
26 ~~10115.10 of the Public Contract Code with respect to disabled~~
27 ~~veteran business enterprise certification or participation, shall be~~
28 ~~protected from disclosure under the California Public Records Act~~
29 ~~(Chapter 3.5 (commencing with Section 6250) of Division 7 of the~~
30 ~~Government Code).~~

31 ~~(e)–~~

32 (d) The awarding department shall report all alleged violations
33 of this section to the Department of General Services. The
34 Department of General Services shall subsequently report all
35 alleged violations to the Attorney General who shall determine
36 whether to bring a civil action against any person or firm for
37 violation of this section.

38 ~~(f)–~~

39 (e) The Department of General Services shall monitor the
40 status of all reported violations and shall maintain and make



1 available to all state departments a central listing of all firms and
2 persons who have been determined to have committed violations
3 resulting in suspension.

4 ~~(g)~~

5 (f) No awarding department shall enter into any contract with
6 any person suspended for violating this section during the period
7 of the person’s suspension. No awarding department shall award
8 a contract to any contractor utilizing the services of any person as
9 a subcontractor suspended for violating this section during the
10 period of the person’s suspension.

11 ~~(h)~~

12 (g) The awarding department shall check the central listing
13 provided by the Department of General Services to verify that the
14 person or contractor to whom the contract is being awarded, or any
15 person being utilized as a subcontractor or supplier by that person
16 or contractor, is not under suspension for violating this section.

17 SEC. 6. Section 999.11 of the Military and Veterans Code is
18 amended to read:

19 999.11. The Secretary of the Department of Veterans Affairs
20 shall appoint the State Disabled Veteran Business Enterprise
21 Program Advocate. The State Disabled Veteran Business
22 Enterprise Program Advocate shall report directly to the secretary
23 and shall do all of the following:

24 (a) Oversee, promote, and coordinate efforts to facilitate
25 implementation of this article.

26 (b) Disseminate information on this article.

27 (c) Coordinate reports pursuant to Section 999.7.

28 (d) Coordinate with administering agencies and existing and
29 potential disabled veteran business enterprises to achieve the goals
30 specified in Sections 999.1 and 999.2.

31 (e) Coordinate with the Disabled Veteran Business Enterprise
32 Program Advocate appointed in all awarding departments
33 pursuant to Section 999.12.

34 SEC. 7. Section 999.12 of the Military and Veterans Code is
35 amended to read:

36 999.12. Each awarding department shall appoint an agency
37 Disabled Veteran Business Enterprise Program Advocate.

38 This person shall be the same individual appointed pursuant to
39 Section 14846 of the Government Code. The agency Disabled



1 Veteran Business Enterprise Program Advocate shall do all of the
2 following:

3 (a) Assist certified disabled veteran business enterprises in
4 participating in that agency's contracting process.

5 (b) Assist contract officers in seeking disabled veteran business
6 enterprises to participate in the agency's contract and procurement
7 activities by performing good faith efforts to recruit disabled
8 veteran business enterprises to offer their services as either a prime
9 contractor or subcontractor on any contract proposed by the
10 awarding department which requires disabled veteran business
11 enterprise participation, and by other feasible means.

12 (c) Meet regularly with the Disabled Veteran Business
13 Enterprise Program Advocate and contract and procurement staffs
14 of their departments to disseminate information about the
15 California Disabled Veteran Business Enterprise Program.

16 (d) Serve as an advocate for the disabled veteran business
17 enterprises that are utilized or are proposed to be utilized as the
18 agency's contractors or subcontractors by verifying all California
19 Disabled Veteran Business Enterprise Program information
20 submitted to the awarding department pertaining to bidders'
21 fulfillment of contract requirements for disabled veteran business
22 enterprise participation prior to the award of such contracts, by
23 participating in the department's decisionmaking on the award of
24 contracts which require disabled veteran business enterprise
25 participation, and by monitoring contractors' use of disabled
26 veteran business enterprise subcontractors on awarded contracts
27 and recommending to the awarding department's director or next
28 highest ranking official, the Office of Small Business and Disabled
29 Veteran Business Enterprise Services in the administering agency,
30 and the State Disabled Veteran Business Enterprise Program
31 Advocate in the Department of Veterans Affairs that payments to
32 contractors be withheld when they fail to use disabled veteran
33 business enterprises to the extent specified in their contracts.

34 (e) Report to the Office of Small Business and Disabled
35 Veteran Business Enterprise Services regarding any violation of
36 this article.

37 (f) Coordinate and meet, on a regular basis, with the State
38 Disabled Veteran Business Enterprise Program Advocate at the



- 1 Department of Veterans Affairs in an effort to meet the statewide
- 2 3-percent goal provided for in Section 999.2.

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