

Introduced by Senator FlorezJanuary 25, 2005

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

SB 115, as introduced, Florez. 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 specify reporting criteria 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 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
5 the 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
15 outreach and education program to assist *certified* small
16 businesses *and certified disabled veteran business enterprises* to
17 establish the California multiple award schedule. The department
18 shall actively promote the availability of *certified* small business
19 *and certified disabled veteran business enterprise* suppliers to
20 deliver or provide a broad range of goods and services to
21 governmental agencies through their participation in the
22 California multiple award schedule program established pursuant
23 to Chapter 2 (commencing with Section 10290) of Part 2 of
24 Division 2 of the Public Contract Code and other types of
25 contracts established by state agencies for repetitively used and
26 commonly needed goods and services.

27 (c) Whenever the director consolidates the needs of multiple
28 state agencies and establishes a contract for repetitively
29 purchased or commonly needed goods or services, the director

1 shall both encourage bidders to utilize *certified* small business
2 *and certified disabled veteran business enterprise* suppliers and
3 subcontractors, and utilize multiple award methods whenever
4 practicable to further ensure that a fair proportion of needed
5 goods and services are obtained from *certified* small businesses
6 *and certified disabled veteran business enterprises*.

7 (d) Using existing resources, establish a training and
8 development program for acquisition professionals, including
9 methods for structuring solicitations to enhance the participation
10 of *certified* small businesses *and certified disabled veteran*
11 *business enterprises* in state contracting.

12 (e) Using existing resources, the department shall establish a
13 recognition and awards program for state employees who make
14 an outstanding contribution to the state’s overall effort to
15 increase the level of *certified* small business *participation in state*
16 *contracting or certified disabled veteran business enterprise*
17 participation in state contracting.

18 (f) Prepare, and make available to the public, a directory of
19 certified small business *and certified disabled veteran business*
20 *enterprise* suppliers.

21 (g) In its review of state agency acquisitions, the department,
22 as applicable, shall identify areas where improvements in the
23 level of participation of *certified* small businesses *and certified*
24 *disabled veteran business enterprises* in state contracting can be
25 achieved.

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

28 999. (a) *This article shall be known as, and may be cited as,*
29 *the California Disabled Veteran Business Enterprise Program.*

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

31 ~~(a)~~

32 (1) “Administering agency” means the Treasurer in the case of
33 contracts for professional bond services, and the Department of
34 General Services’ Office of Small Business and Disabled
35 Veteran Business Enterprise Services, in the case of contracts
36 governed by Section 999.2.

37 ~~(b)~~

38 (2) “Awarding department” means any state agency,
39 department, governmental entity, or other officer or entity

1 empowered by law to issue bonds or enter into contracts on
2 behalf of the State of California.

3 ~~(e)~~

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

7 ~~(d)~~

8 (4) “Contract” includes any agreement or joint agreement to
9 provide professional bond services to the State of California or
10 an awarding department. “Contract” also includes any agreement
11 or joint development agreement to provide labor, services,
12 ~~material~~ *materials*, supplies, or equipment in the performance of
13 a contract, franchise, concession, or lease granted, let, or awarded
14 for, and on behalf of, the State of California.

15 ~~(e)(1)~~

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

26 ~~(2)~~

27 ~~(B) “Disabled-Veteran-Business-Enterprise~~ *veteran business*
28 *enterprise* contractor, subcontractor, or supplier” means any
29 person or entity that has been certified by the administering
30 agency pursuant to this article and that performs a “commercially
31 useful function,” as defined below, in providing services or
32 goods that contribute to the fulfillment of the contract
33 requirements:

34 ~~(A)~~

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

38 ~~(i)(I)~~

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

1 ~~(H)~~
2 (ab) Carries out the obligation by actually performing,
3 managing, or supervising the work involved.

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

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

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

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

27 ~~(g)(1)~~
28 (7) (A) “Disabled veteran business enterprise” means a
29 business certified by the administering agency as meeting all of
30 the following requirements:

31 ~~(A)~~
32 (i) It is a sole proprietorship at least 51 percent owned by one
33 or more disabled veterans or, in the case of a publicly owned
34 business, at least 51 percent of its stock is owned by one or more
35 disabled veterans; a subsidiary ~~which~~ that is wholly owned by a
36 parent corporation, but only if at least 51 percent of the voting
37 stock of the parent corporation is owned by one or more disabled
38 veterans; or a joint venture in which at least 51 percent of the
39 joint venture’s management ~~and~~, control, and earnings are held
40 by one or more disabled veterans.

1 ~~(B)~~

2 (ii) The management and control of the daily business
3 operations are by one or more disabled veterans. The disabled
4 veterans who exercise management and control are not required
5 to be the same disabled veterans as the owners of the business.

6 ~~(C)~~

7 (iii) It is a sole proprietorship, corporation, or partnership with
8 its home office located in the United States, which is not a branch
9 or subsidiary of a foreign corporation, foreign firm, or other
10 foreign-based business.

11 ~~(2)~~

12 (B) Notwithstanding ~~paragraph (1)~~ *subparagraph (A)*, after the
13 death or the certification of a permanent medical disability of a
14 disabled veteran who is a majority owner of a business that
15 qualified as a disabled veteran business enterprise prior to that
16 death or certification of a permanent medical disability, and
17 solely for purposes of any contract entered into before that death
18 or certification, that business shall be deemed to be a disabled
19 veteran business enterprise for a period not to exceed three years
20 after the date of that death or certification of a permanent medical
21 disability, if the business is inherited or controlled by the spouse
22 or child of that majority owner, or by both of those persons.

23 ~~(h)~~

24 (8) “Foreign corporation,” “foreign firm,” ~~and or~~
25 “foreign-based business” means a business entity that is
26 incorporated or has its principal headquarters located outside the
27 United States of America.

28 ~~(i)~~

29 (9) “Goal” means a numerically expressed objective that
30 awarding departments and contractors are required to make
31 efforts to achieve.

32 ~~(j)~~

33 (10) “Management and control” means effective and
34 demonstrable management of the business entity.

35 ~~(k)~~

36 (11) “Professional bond services” include services as financial
37 advisers, bond counsel, underwriters in negotiated transactions,
38 underwriter’s counsel, financial printers, feasibility consultants,
39 and other professional services related to the issuance and sale of
40 bonds.

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

3 999.5. (a) ~~The administering agency shall establish a method~~
4 ~~of monitoring adherence to the goal specified in Section 999.1,~~
5 ~~including requiring a followup report from all contractors upon~~
6 ~~the completion of any sale of bonds.~~

7 ~~(b) The awarding department for the California Disabled~~
8 ~~Veteran Business Enterprise Program shall be the Department of~~
9 ~~General Services, except in the case of contracts for professional~~
10 ~~bond services. The Department of General Services shall consult~~
11 ~~with the State Disabled Veteran Business Enterprise Program~~
12 ~~Advocate, appointed by the Department of Veterans Affairs~~
13 ~~pursuant to Section 999.11, on all matters relating to the~~
14 ~~California Disabled Veteran Business Enterprise Program. The~~
15 ~~Department of Veterans Affairs shall establish a method of~~
16 ~~monitoring adherence to the goals specified in Section~~ Sections
17 ~~999.1 and 999.2.~~

18 ~~(b) The Department of Veterans Affairs shall promote the~~
19 ~~California Disabled Veteran Business Enterprise Program to the~~
20 ~~fullest extent possible and shall maintain complete records of its~~
21 ~~outreach efforts and set up a system to track its effectiveness.~~
22 ~~This system shall include regular, periodic surveys of newly~~
23 ~~certified disabled veteran business enterprises to determine how~~
24 ~~they learned of the program, why they became certified, and~~
25 ~~what their experience with awarding departments has been.~~

26 (c) An awarding department shall not credit toward the
27 department's ~~3 percent~~ 3-percent goal state funds expended on a
28 contract with a disabled veteran business enterprise that does not
29 meet and maintain the certification requirements.

30 (d) The administering agency shall adopt rules and
31 regulations, including standards for good faith efforts, for the
32 purpose of implementing this section. Emergency regulations
33 consistent with this section may be adopted.

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

36 999.7. (a) ~~(1) On January~~ *In addition to the reporting*
37 *requirements set forth in subdivision (b) of Section 999.5, on*
38 *September 1 of each year, the Disabled Veteran Business*
39 *Enterprise Program Advocate for each awarding department*
40 ~~shall report to the Governor, the Legislature, the Department of~~

1 ~~General Services, and the Department of Veterans Affairs,~~
 2 ~~appointed in accordance with Section 999.12, shall deliver to the~~
 3 ~~administering agency a report on the level of participation by~~
 4 ~~disabled veteran business enterprises in contracts identified in~~
 5 ~~this article for the previous fiscal year.~~

6 ~~(2)–~~

7 ~~(b) The written report may include the following information:~~

8 ~~(1) The total number of state contracts let by the department~~
 9 ~~during the reporting year.~~

10 ~~(2) The total number of those contracts that included a~~
 11 ~~disabled veteran business enterprise.~~

12 ~~(3) The total number of different disabled veteran business~~
 13 ~~enterprises that work on those contracts.~~

14 ~~(4) The amount of the average contract payment to those~~
 15 ~~disabled veteran business enterprises.~~

16 ~~(5) The total amount awarded to disabled veteran business~~
 17 ~~enterprises by the department for each of the previous three~~
 18 ~~years.~~

19 ~~(c) If the awarding department has not met the established~~
 20 ~~goals for that year, the awarding department shall report to the~~
 21 ~~Legislature, the Department of General Services, and the~~
 22 ~~Department of Veterans Affairs report shall state the reasons for~~
 23 ~~the awarding department's inability to achieve the goals and shall~~
 24 ~~identify steps it the awarding department shall take in an effort to~~
 25 ~~achieve the goals.~~

26 ~~(b)–~~

27 ~~(d) (1) On April January 1 of each year, the Department of~~
 28 ~~General Services shall prepare for deliver to the Governor, the~~
 29 ~~Legislature, and the State Disabled Veteran Business Enterprise~~
 30 ~~Program Advocate, a report that summarizes the reports~~
 31 ~~specified in subdivision (a).~~

32 ~~(2) The report shall be prepared in consultation with the~~
 33 ~~Disabled Veteran Business Enterprise Program Advocate in the~~
 34 ~~Department of Veterans Affairs a statewide statistical summary~~
 35 ~~detailing each awarding department's goal achievement and a~~
 36 ~~statewide total of those goals.~~

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

39 999.9. (a) It shall be unlawful for a person to: to do any of the
 40 following:

1 (1) Knowingly and with intent to defraud, fraudulently obtain,
2 retain, attempt to obtain or retain, or aid another in fraudulently
3 obtaining or retaining or attempting to obtain or retain,
4 certification as a disabled veteran business enterprise for the
5 purpose of this article.

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

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

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

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

24 (6) Willfully and knowingly make or subscribe to any
25 statement, declaration, or other document that is fraudulent or
26 false as to any material matter, whether or not that falsity or fraud
27 is committed with the knowledge or consent of the person
28 authorized or required to present the declaration, statement, or
29 document.

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

37 (8) Willfully and knowingly fail to file any declaration or
38 notice with the awarding agency that is required by Section
39 999.2.

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

4 (b) Any person who violates any of the provisions of
5 subdivision (a) shall be guilty of a misdemeanor punishable by
6 imprisonment in the county jail not exceeding six months or by a
7 fine not exceeding one thousand dollars (\$1,000), or by both. In
8 addition, the person shall be liable for a civil penalty of not less
9 than ten thousand dollars (\$10,000) nor more than thirty
10 thousand dollars (\$30,000) for the first violation, and a civil
11 penalty of not less than thirty thousand dollars (\$30,000) nor
12 more than fifty thousand dollars (\$50,000) for each additional or
13 subsequent violation. A defendant who violates any of the
14 provisions of subdivision (a) shall pay all costs and attorney's
15 fees incurred by the plaintiff in a civil action brought pursuant to
16 this section.

17 (c) (1) The Department of General Services shall suspend any
18 person who violates subdivision (a) from bidding on, or
19 participating as either a contractor, subcontractor, or supplier in,
20 any state contract or project for a period of not less than three
21 years, and if certified as a disabled veteran business enterprise,
22 the department shall revoke the business' certification for a
23 period of not less than three years. An additional or subsequent
24 violation shall extend the periods of suspension and revocation
25 for a period of not less than five years. The suspension and
26 revocation shall apply to the principals of the business and any
27 subsequent business formed or financed by, or affiliated with,
28 those principals.

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

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

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

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

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

18 999.11. The *Secretary of the Department of Veterans Affairs*
19 shall appoint ~~an advocate to the State Disabled Veteran Business~~
20 *Enterprise Program Advocate. The State Disabled Veteran*
21 *Business Enterprise Program Advocate shall report directly to*
22 *the secretary and shall do all of the following:*

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

25 (b) Disseminate information on this article.

26 (c) Coordinate reports pursuant to Section 999.7.

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

30 (e) Coordinate with the ~~disabled veteran business enterprise~~
31 ~~advocates~~ *Disabled Veteran Business Enterprise Program*
32 *Advocate* appointed in all awarding departments pursuant to
33 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 advocate~~ *Disabled Veteran*
38 *Business Enterprise Program Advocate*. This person shall be the
39 same individual appointed pursuant to Section 14846 of the
40 Government Code. The ~~disabled veteran business enterprise~~

- 1 ~~advocate~~ agency *Disabled Veteran Business Enterprise Program*
 2 *Advocate* shall do all of the 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
 6 business enterprises to participate in the agency's contract and
 7 procurement activities *by performing good faith efforts to recruit*
 8 *disabled veteran business enterprises to offer their services as*
 9 *either a prime contractor or subcontractor on any contract*
 10 *proposed by the awarding department that requires disabled*
 11 *veteran business enterprise participation, and by other feasible*
 12 *means.*
- 13 ~~(c) Disseminate information to the agency's~~ *Meet regularly*
 14 *with the State Disabled Veteran Business Enterprise Program*
 15 *Advocate and contract and procurement-staff staffs of their*
 16 *departments to disseminate information about the California*
 17 *Disabled Veteran Business Enterprise Program.*
- 18 (d) Serve as an advocate for the disabled veteran business
 19 enterprises that are utilized *or are proposed to be utilized* as the
 20 agency's contractors or subcontractors *by verifying all California*
 21 *Disabled Veteran Business Enterprise Program information*
 22 *submitted to the awarding department pertaining to bidders'*
 23 *fulfillment of contract requirements for disabled veteran business*
 24 *enterprise participation prior to the award of such contracts, by*
 25 *participating in the department's decisionmaking on the award*
 26 *of contracts which require disabled veteran business enterprise*
 27 *participation, and work with contract managers who are*
 28 *responsible for monitoring contractors' use of disabled veteran*
 29 *business enterprise subcontractors on awarded contracts.*
- 30 (e) Report to the Office of Small Business ~~Certification and~~
 31 ~~Resources~~ *and Disabled Veteran Business Enterprise Services*
 32 regarding any violation of this article.
- 33 (f) ~~Coordinate with the state disabled veteran business~~
 34 ~~enterprise advocate and meet, on a regular basis, with the State~~
 35 *Disabled Veteran Business Enterprise Program Advocate* at the
 36 Department of Veterans Affairs in an effort to meet the statewide
 37 3-percent goal provided for in Section 999.2.