

AMENDED IN ASSEMBLY APRIL 28, 2010

AMENDED IN ASSEMBLY APRIL 13, 2010

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

ASSEMBLY BILL

No. 2249

Introduced by Assembly Member Ruskin

February 18, 2010

An act to add Section 14840 to the Government Code, relating to state government.

LEGISLATIVE COUNSEL'S DIGEST

AB 2249, as amended, Ruskin. State government: *small business or disabled veteran business enterprise: enterprise certification.*

~~The~~

Existing law, the Small Business Procurement and Contract Act, encourages the participation of a small business enterprise, including, but not limited to, a microbusiness, or a disabled veteran business enterprises enterprise that are is certified by the Department of General Services in state contracts. Existing law requires those business enterprises to submit certain information under penalty of perjury.

Existing law, the California Disabled Veterans Business Enterprise Program, establishes a disabled veteran business enterprise participation goal of 3% for certain state procurement contracts. Existing law requires a disabled veteran business enterprise to provide the administering agency with prescribed information, including, but not limited to, federal income tax returns and whether the enterprise is an equipment broker, as defined.

This bill would restate provisions related to the 3% participation goal for disabled veteran business enterprises, and would require a

small business or a disabled veteran business enterprise to file with submit to the department a written declaration, under penalty of perjury, that all information submitted, including the additional information for disabled veteran business enterprises, is true and correct, and would authorize the department to require, in certain cases, the enterprise to complete and submit to the department a specified federal tax form under certain circumstances requesting a transcript of a tax return. By expanding the definition of the existing crime of perjury, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

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

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

- 1 SECTION 1. Section 14840 is added to the Government Code,
- 2 to read:
- 3 14840. (a) In the process of certifying and determining the
- 4 eligibility of a disabled veteran business enterprise or a small
- 5 business enterprise, including, but not limited to, a microbusiness,
- 6 the department shall require the enterprise to submit a written
- 7 declaration, under penalty of perjury, that the information
- 8 submitted to the department pursuant to this chapter, and in the
- 9 case of a disabled veteran enterprise all information submitted to
- 10 the department pursuant to subdivision (c), is true and correct.
- 11 (b) If the department determines that just cause exists, it may
- 12 require the enterprise to complete and submit to the department
- 13 a federal Form 4506-T from the Internal Revenue Service, United
- 14 States Department of the Treasury, requesting a transcript of a
- 15 tax return.
- 16 (c) (1) Notwithstanding any other law, contracts awarded by
- 17 any state agency, department, officer, or other state governmental
- 18 entity, including school districts when they are expending state
- 19 funds for construction, professional services (except those subject
- 20 to Chapter 6 (commencing with Section 16850) of Part 3 of

1 *Division 4), materials, supplies, equipment, alteration, repair, or*
2 *improvement shall have statewide participation goals of not less*
3 *than 3 percent for disabled veteran business enterprises. These*
4 *goals apply to the overall dollar amount expended each year by*
5 *the awarding department.*

6 *(2) For purposes of this subdivision:*

7 *(A) "Broker" or "agent" means any individual or entity, or any*
8 *combination thereof, that does not have title, possession, control,*
9 *and risk of loss of materials, supplies, services, or equipment*
10 *provided to an awarding department, unless one or more certified*
11 *disabled veterans has 51 percent ownership of the quantity and*
12 *value of the materials, supplies, services, and of each piece of*
13 *equipment provided under the contract.*

14 *(B) "Equipment" means any piece of equipment that is used or*
15 *provided for rental to any state agency, department, officer, or*
16 *other state governmental entity, including equipment for which*
17 *operators are provided.*

18 *(C) "Equipment broker" means any broker or agent who rents*
19 *equipment to an awarding department.*

20 *(3) A disabled veteran business enterprise that rents equipment*
21 *to an awarding department shall be deemed to be an equipment*
22 *broker unless one or more disabled veterans has 51-percent*
23 *ownership of the quantity and the value of each piece of equipment.*
24 *If the equipment is owned by one or more disabled veterans, each*
25 *disabled veteran owner shall, prior to performance under any*
26 *contract, submit to the awarding department a declaration signed*
27 *by the disabled veteran owner stating that the owner is a disabled*
28 *veteran and providing the name, address, telephone number, and*
29 *tax identification number of the disabled veteran owner. Each*
30 *disabled veteran owner shall submit his or her federal income tax*
31 *returns to the administering agency pursuant to paragraph (7) as*
32 *if he or she were a disabled veteran business enterprise. The*
33 *disabled veteran business enterprise of a disabled veteran owner*
34 *who fails to submit his or her tax returns shall be deemed to be*
35 *an equipment broker.*

36 *(4) A disabled veteran business enterprise that rents equipment*
37 *to an awarding department shall, prior to performing the contract,*
38 *submit to the awarding department a declaration signed by each*
39 *disabled veteran owner and manager of the enterprise stating that*
40 *the enterprise obtained the contract by representing that the*

1 *enterprise was a disabled veteran business enterprise meeting and*
2 *maintaining all of the requirements of a disabled veteran business*
3 *enterprise. The declaration shall include the name, address,*
4 *telephone number, and tax identification number of the owner of*
5 *each piece of equipment identified in the contract.*

6 *(5) State funds expended for equipment rented from equipment*
7 *brokers pursuant to contracts awarded under this subdivision shall*
8 *not be credited toward the 3-percent goal.*

9 *(6) A disabled veteran business enterprise that is a broker or*
10 *agent and that obtains a contract pursuant to paragraph (1) shall,*
11 *prior to performing the contract, disclose to the awarding*
12 *department that the business is a broker or agent. The disclosure*
13 *shall be made in a declaration signed and executed by each*
14 *disabled veteran owner and manager of the enterprise, declaring*
15 *that the enterprise is a broker or agent, and identifying the name,*
16 *address, and telephone number of the principal for whom the*
17 *enterprise is acting as a broker or agent.*

18 *(7) (A) A disabled veteran business enterprise, and each owner*
19 *thereof, shall, at the time of certification, submit to the*
20 *administering agency complete copies of the enterprise's federal*
21 *income tax returns for the three previous tax years.*

22 *(B) A disabled veteran business enterprise, and each owner*
23 *thereof, shall submit to the administering agency complete copies*
24 *of the enterprise's federal income tax returns that have a*
25 *postcertification due date, on or before the due date, including*
26 *extensions.*

27 *(C) A disabled veteran business enterprise that, and each owner*
28 *thereof who, has not submitted to the administering agency*
29 *complete copies of the enterprise's federal income tax returns for*
30 *the three tax years preceding certification nor for each*
31 *postcertification tax year for which a return was required to be*
32 *filed, shall have 90 days to submit those returns.*

33 *(D) A disabled veteran business enterprise that fails to comply*
34 *with any provision of this paragraph shall be prohibited from*
35 *participating in any state contract until the disabled veteran*
36 *business enterprise complies with the provisions of this paragraph.*
37 *Funds expended involving a disabled veteran business enterprise*
38 *during any period in which that enterprise is not in compliance*
39 *with the provisions of this paragraph shall not be credited toward*
40 *the awarding department's 3-percent goal.*

1 (8) A disabled veteran business enterprise that fails to maintain
2 the certification requirements set forth in Article 6 (commencing
3 with Section 999) of Chapter 6 of Division 4 of the Military and
4 Veterans Code, shall immediately notify the awarding department
5 and the administering agency of that failure by filing a notice of
6 failure that states with particularity each requirement the disabled
7 veteran business enterprise has failed to maintain.

8 SEC. 2. No reimbursement is required by this act pursuant to
9 Section 6 of Article XIII B of the California Constitution because
10 the only costs that may be incurred by a local agency or school
11 district will be incurred because this act creates a new crime or
12 infraction, eliminates a crime or infraction, or changes the penalty
13 for a crime or infraction, within the meaning of Section 17556 of
14 the Government Code, or changes the definition of a crime within
15 the meaning of Section 6 of Article XIII B of the California
16 Constitution.

17 SECTION 1. Section 14840 is added to the Government Code,
18 to read:

19 14840. The department shall require a disabled veteran business
20 enterprise to file with the department a completed Form 4506-T
21 from the federal Department of the Treasury, Internal Revenue
22 Service, also known as a Request for Transcript of Tax Return, in
23 both of the following circumstances:

24 (a) The department receives a complaint regarding the disabled
25 veteran business enterprise.

26 (b) During any audit of the disabled veteran business enterprise.