

AMENDED IN ASSEMBLY MAY 11, 2010

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, *and to amend Section 999.2 of the Military and Veterans Code*, relating to state government.

LEGISLATIVE COUNSEL'S DIGEST

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

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 enterprise that 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 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 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: 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 submitted
- 8 to the department pursuant to this chapter, and in the case of a
- 9 disabled veteran enterprise all information submitted to the
- 10 department pursuant to subdivision (c), is true and correct.
- 11 (b) (1) If the department determines that just cause exists, it
- 12 may require the enterprise to complete and submit to the
- 13 department a federal Form 4506-T from the Internal Revenue
- 14 Service, United States Department of the Treasury, requesting a
- 15 transcript of a tax return.
- 16 (2) *For the purposes of this subdivision, “just cause” means*
- 17 *either of the following circumstances exists:*
- 18 (A) *The department receives a complaint regarding the disabled*
- 19 *veteran business enterprise.*

1 (B) *The department determines, based on its findings during*
2 *the course of any audit of the disabled veteran business enterprise,*
3 *that the action described in paragraph (1) is necessary.*

4 (c) (1) Notwithstanding any other law, contracts awarded by
5 any state agency, department, officer, or other state governmental
6 entity, including school districts when they are expending state
7 funds for construction, professional services (except those subject
8 to Chapter 6 (commencing with Section 16850) of Part 3 of
9 Division 4), materials, supplies, equipment, alteration, repair, or
10 improvement shall have statewide participation goals of not less
11 than 3 percent for disabled veteran business enterprises. These
12 goals apply to the overall dollar amount expended each year by
13 the awarding department.

14 (2) For purposes of this subdivision:

15 (A) “Broker” or “agent” means any individual or entity, or any
16 combination thereof, that does not have title, possession, control,
17 and risk of loss of materials, supplies, services, or equipment
18 provided to an awarding department, unless one or more certified
19 disabled veterans has 51 percent ownership of the quantity and
20 value of the materials, supplies, services, and of each piece of
21 equipment provided under the contract.

22 (B) “Equipment” means any piece of equipment that is used or
23 provided for rental to any state agency, department, officer, or
24 other state governmental entity, including equipment for which
25 operators are provided.

26 (C) “Equipment broker” means any broker or agent who rents
27 equipment to an awarding department.

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

1 disabled veteran business enterprise of a disabled veteran owner
2 who fails to submit his or her tax returns shall be deemed to be an
3 equipment broker.

4 (4) A disabled veteran business enterprise that rents equipment
5 to an awarding department shall, prior to performing the contract,
6 submit to the awarding department a declaration signed by each
7 disabled veteran owner and manager of the enterprise stating that
8 the enterprise obtained the contract by representing that the
9 enterprise was a disabled veteran business enterprise meeting and
10 maintaining all of the requirements of a disabled veteran business
11 enterprise. The declaration shall include the name, address,
12 telephone number, and tax identification number of the owner of
13 each piece of equipment identified in the contract.

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

17 (6) A disabled veteran business enterprise that is a broker or
18 agent and that obtains a contract pursuant to paragraph (1) shall,
19 prior to performing the contract, disclose to the awarding
20 department that the business is a broker or agent. The disclosure
21 shall be made in a declaration signed and executed by each disabled
22 veteran owner and manager of the enterprise, declaring that the
23 enterprise is a broker or agent, and identifying the name, address,
24 and telephone number of the principal for whom the enterprise is
25 acting as a broker or agent.

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

30 (B) A disabled veteran business enterprise, and each owner
31 thereof, shall submit to the administering agency complete copies
32 of the enterprise's federal income tax returns that have a
33 postcertification due date, on or before the due date, including
34 extensions.

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

1 (D) A disabled veteran business enterprise that fails to comply
2 with any provision of this paragraph shall be prohibited from
3 participating in any state contract until the disabled veteran
4 business enterprise complies with the provisions of this paragraph.
5 Funds expended involving a disabled veteran business enterprise
6 during any period in which that enterprise is not in compliance
7 with the provisions of this paragraph shall not be credited toward
8 the awarding department’s 3-percent goal.

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

16 *SEC. 2. Section 999.2 of the Military and Veterans Code is*
17 *amended to read:*

18 999.2. (a) Notwithstanding any other provision of law,
19 contracts awarded by any state agency, department, officer, or
20 other state governmental entity, including school districts when
21 they are expending state funds for construction, professional
22 services (except those subject to Chapter 6 (commencing with
23 Section 16850) of Part 3 of Division 4 of Title 2 of the Government
24 Code), materials, supplies, equipment, alteration, repair, or
25 improvement shall have statewide participation goals of not less
26 than 3 percent for disabled veteran business enterprises. These
27 goals apply to the overall dollar amount expended each year by
28 the awarding department.

29 (b) For purposes of this section:

30 (1) “Broker” or “agent” means any individual or entity, or any
31 combination thereof, that does not have title, possession, control,
32 and risk of loss of materials, supplies, services, or equipment
33 provided to an awarding department, unless one or more certified
34 disabled veterans has 51 percent ownership of the quantity and
35 value of the materials, supplies, services, and of each piece of
36 equipment provided under the contract.

37 (2) “Equipment” means any piece of equipment that is used or
38 provided for rental to any state agency, department, officer, or
39 other state governmental entity, including equipment for which
40 operators are provided.

1 (3) “Equipment broker” means any broker or agent who rents
2 equipment to an awarding department.

3 (c) A disabled veteran business enterprise that rents equipment
4 to an awarding department shall be deemed to be an equipment
5 broker unless one or more disabled veterans has 51-percent
6 ownership of the quantity and the value of each piece of equipment.
7 If the equipment is owned by one or more disabled veterans, each
8 disabled veteran owner shall, prior to performance under any
9 contract, submit to the awarding department a declaration signed
10 by the disabled veteran owner stating that the owner is a disabled
11 veteran and providing the name, address, telephone number, and
12 tax identification number of the disabled veteran owner. Each
13 disabled veteran owner shall submit his or her federal income tax
14 returns to the administering agency pursuant to subdivision (g) as
15 if he or she were a disabled veteran business enterprise. The
16 disabled veteran business enterprise of a disabled veteran owner
17 who fails to submit his or her tax returns will be deemed to be an
18 equipment broker.

19 (d) A disabled veteran business enterprise that rents equipment
20 to an awarding department shall, prior to performing the contract,
21 submit to the awarding department a declaration signed by each
22 disabled veteran owner and manager of the enterprise stating that
23 the enterprise obtained the contract by representing that the
24 enterprise was a disabled veteran business enterprise meeting and
25 maintaining all of the requirements of a disabled veteran business
26 enterprise. The declaration shall include the name, address,
27 telephone number, and tax identification number of the owner of
28 each piece of equipment identified in the contract.

29 (e) State funds expended for equipment rented from equipment
30 brokers pursuant to contracts awarded under this section shall not
31 be credited toward the 3-percent goal.

32 (f) A disabled veteran business enterprise that is a broker or
33 agent and that obtains a contract pursuant to subdivision (a) shall,
34 prior to performing the contract, disclose to the awarding
35 department that the business is a broker or agent. The disclosure
36 shall be made in a declaration signed and executed by each disabled
37 veteran owner and manager of the enterprise, declaring that the
38 enterprise is a broker or agent, and identifying the name, address,
39 and telephone number of the principal for whom the enterprise is
40 acting as a broker or agent.

1 (g) (1) A disabled veteran business enterprise, and each owner
2 thereof, shall, at the time of certification, submit to the
3 administering agency complete copies of the enterprise's federal
4 income tax returns for the three previous tax years.

5 (2) A disabled veteran business enterprise, and each owner
6 thereof, shall submit to the administering agency complete copies
7 of the enterprise's federal income tax returns that have a
8 postcertification due date, on or before the due date, including
9 extensions.

10 (3) A disabled veteran business enterprise that, and each owner
11 thereof who, has not submitted to the administering agency
12 complete copies of the enterprise's federal income tax returns for
13 the three tax years preceding certification nor for each
14 postcertification tax year for which a return was required to be
15 filed, shall have 90 days to submit those returns.

16 (4) A disabled veteran business enterprise that fails to comply
17 with any provision of this subdivision shall be prohibited from
18 participating in any state contract until the disabled veteran
19 business enterprise complies with the provisions of this subdivision.
20 Funds expended involving a disabled veteran business enterprise
21 during any period in which that enterprise is not in compliance
22 with the provisions of this subdivision shall not be credited toward
23 the awarding department's 3-percent goal.

24 (h) A disabled veteran business enterprise that fails to maintain
25 the certification requirements set forth in this article shall
26 immediately notify the awarding department and the administering
27 agency of that failure by filing a notice of failure that states with
28 particularity each requirement the disabled veteran business
29 enterprise has failed to maintain.

30 (i) *The department shall require a disabled veteran business*
31 *enterprise to file with the department a completed Form 4506-T*
32 *from the federal Internal Revenue Service, United States*
33 *Department of the Treasury, also known as a Request for*
34 *Transcript of Tax Return, if either of the following circumstances*
35 *exists:*

36 (1) *The department receives a complaint regarding the disabled*
37 *veteran business enterprise.*

38 (2) *The department determines, based on its findings during the*
39 *course of any audit of the disabled veteran business enterprise,*

1 *that it is necessary to require a Request for Transcript of Tax*
2 *Return.*

3 ~~SEC. 2.~~

4 SEC. 3. No reimbursement is required by this act pursuant to
5 Section 6 of Article XIII B of the California Constitution because
6 the only costs that may be incurred by a local agency or school
7 district will be incurred because this act creates a new crime or
8 infraction, eliminates a crime or infraction, or changes the penalty
9 for a crime or infraction, within the meaning of Section 17556 of
10 the Government Code, or changes the definition of a crime within
11 the meaning of Section 6 of Article XIII B of the California
12 Constitution.