

AMENDED IN SENATE JULY 15, 2010

AMENDED IN SENATE JUNE 24, 2010

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 Sections 999 and 999.2 *Section 999* 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, during the process of certifying and determining the eligibility of a small business or a disabled veteran business enterprise, require an applicant or certified firm 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 owner of the enterprise or small business, the applicant, or the certified firm 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.

Existing law defines “disabled veteran business enterprise” for purposes of the California Disabled Veterans Business Enterprise Program to mean a business certified by the administering agency as meeting specified requirements, including, among other things, in the case of a publicly owned business, that at least 51% of its stock be owned by one or more disabled veterans, or in the case of a subsidiary that is wholly owned by a parent corporation, that at least 51% of the voting stock of the parent corporation be owned by one or more disabled veterans.

This bill would instead specify that at least 51% of the stock or voting stock be unconditionally owned by disabled veterans.

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:

1 14840. (a) ~~(1)~~—In the process of certifying and determining
2 the eligibility of a disabled veteran business enterprise or a small
3 business enterprise, including a microbusiness, the department
4 shall require the applicant or certified firm to submit a written
5 declaration, under penalty of perjury, that the information submitted
6 to the department pursuant to this chapter, and in the case of a
7 disabled veteran enterprise all information submitted to the
8 department pursuant to ~~subdivision (e)~~ *Section 999.2 of the Military*
9 *and Veterans Code*, is true and correct.

10 ~~(2) (A)~~—

11 (b) (1) If the department determines that just cause exists, it
12 may require the owner of the disabled veteran business enterprise,
13 *microbusiness*, or small business, the applicant, or the certified
14 firm to complete and submit to the department a federal Form
15 4506-T from the Internal Revenue Service, United States
16 Department of the Treasury, requesting a transcript of a tax return.

17 ~~(B)~~

18 (2) For the purposes of this ~~paragraph~~ *subdivision*, “just cause”
19 means either of the following circumstances exists:

20 (i)

21 (A) The department receives a complaint regarding the certified
22 firm.

23 (ii)

24 (B) The department determines, based on its findings during
25 the course of any certification eligibility review of the applicant
26 or certified firm, that the action described in ~~subparagraph (A)~~
27 *paragraph (1)* is necessary.

28 ~~(b) (1) Notwithstanding any other law, contracts awarded by~~
29 ~~any state agency, department, officer, or other state governmental~~
30 ~~entity, including school districts when they are expending state~~
31 ~~funds for construction, professional services (except those subject~~
32 ~~to Chapter 6 (commencing with Section 16850) of Part 3 of~~
33 ~~Division 4), materials, supplies, equipment, alteration, repair, or~~
34 ~~improvement shall have statewide participation goals of not less~~
35 ~~than 3 percent for disabled veteran business enterprises. These~~
36 ~~goals apply to the overall dollar amount expended each year by~~
37 ~~the awarding department.~~

38 (2) For purposes of this subdivision:

39 (A) “Broker” or “agent” means any individual or entity, or any
40 combination thereof, that does not have title, possession, control,

1 and risk of loss of materials, supplies, services, or equipment
2 provided to an awarding department, unless one or more certified
3 disabled veterans has 51-percent ownership of the quantity and
4 value of the materials, supplies, services, and of each piece of
5 equipment provided under the contract.

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

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

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

28 (4) A disabled veteran business enterprise that rents equipment
29 to an awarding department shall, prior to performing the contract,
30 submit to the awarding department a declaration signed by each
31 disabled veteran owner and manager of the enterprise stating that
32 the enterprise obtained the contract by representing that the
33 enterprise was a disabled veteran business enterprise meeting and
34 maintaining all of the requirements of a disabled veteran business
35 enterprise. The declaration shall include the name, address,
36 telephone number, and tax identification number of the owner of
37 each piece of equipment identified in the contract.

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

1 ~~(6) A disabled veteran business enterprise that is a broker or~~
2 ~~agent and that obtains a contract pursuant to paragraph (1) shall,~~
3 ~~prior to performing the contract, disclose to the awarding~~
4 ~~department that the business is a broker or agent. The disclosure~~
5 ~~shall be made in a declaration signed and executed by each disabled~~
6 ~~veteran owner and manager of the enterprise, declaring that the~~
7 ~~enterprise is a broker or agent, and identifying the name, address,~~
8 ~~and telephone number of the principal for whom the enterprise is~~
9 ~~acting as a broker or agent.~~

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

14 ~~(B) A disabled veteran business enterprise, and each owner~~
15 ~~thereof, shall submit to the administering agency complete copies~~
16 ~~of the enterprise's federal income tax returns that have a~~
17 ~~postcertification due date, on or before the due date, including~~
18 ~~extensions.~~

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

25 ~~(D) A disabled veteran business enterprise that fails to comply~~
26 ~~with any provision of this paragraph shall be prohibited from~~
27 ~~participating in any state contract until the disabled veteran~~
28 ~~business enterprise complies with the provisions of this paragraph.~~
29 ~~Funds expended involving a disabled veteran business enterprise~~
30 ~~during any period in which that enterprise is not in compliance~~
31 ~~with the provisions of this paragraph shall not be credited toward~~
32 ~~the awarding department's 3-percent goal.~~

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

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

3 999. (a) This article shall be known as, and may be cited as,
4 the California Disabled Veteran Business Enterprise Program. The
5 California Disabled Veteran Business Enterprise Program is
6 established to address the special needs of disabled veterans
7 seeking rehabilitation and training through entrepreneurship and
8 to recognize the sacrifices of Californians disabled during military
9 service. It is the intent of the Legislature that every state
10 procurement authority honor California's disabled veterans by
11 taking all practical actions necessary to meet or exceed the disabled
12 veteran business enterprise participation goal of a minimum of 3
13 percent of total contract value.

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

15 (1) "Administering agency" means the Treasurer in the case of
16 contracts for professional bond services, and the Department of
17 General Services' Office of Small Business and Disabled Veteran
18 Business Enterprise Services, in the case of contracts governed by
19 Section 999.2.

20 (2) "Awarding department" means a state agency, department,
21 governmental entity, or other officer or entity empowered by law
22 to issue bonds or enter into contracts on behalf of the state.

23 (3) "Bonds" means bonds, notes, warrants, certificates of
24 participation, and other evidences of indebtedness issued by, or
25 on behalf of, the state.

26 (4) "Contract" includes any agreement or joint agreement to
27 provide professional bond services to the State of California or an
28 awarding department. "Contract" also includes any agreement or
29 joint development agreement to provide labor, services, materials,
30 supplies, or equipment in the performance of a contract, franchise,
31 concession, or lease granted, let, or awarded for, and on behalf of,
32 the state.

33 (5) (A) "Contractor" means any person or persons, regardless
34 of race, color, creed, national origin, ancestry, sex, marital status,
35 disability, religious or political affiliation, age, or any sole
36 proprietorship, firm, partnership, joint venture, corporation, or
37 combination thereof that submits a bid and enters into a contract
38 with a representative of a state agency, department, governmental
39 entity, or other officer empowered by law to enter into contracts
40 on behalf of the state. "Contractor" includes any provider of

1 professional bond services who enters into a contract with an
2 awarding department.

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

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

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

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

15 (ac) Performs work that is normal for its business services and
16 functions.

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

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

26 (6) “Disabled veteran” means a veteran of the military, naval,
27 or air service of the United States, including, but not limited to,
28 the Philippine Commonwealth Army, the Regular Scouts, “Old
29 Scouts,” and the Special Philippine Scouts, “New Scouts,” who
30 has at least a 10-percent service-connected disability and who is
31 domiciled in the state.

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

35 (i) It is a sole proprietorship at least 51 percent owned by one
36 or more disabled veterans or, in the case of a publicly owned
37 business, at least 51 percent of its stock is unconditionally owned
38 by one or more disabled veterans; a subsidiary that is wholly owned
39 by a parent corporation, but only if at least 51 percent of the voting
40 stock of the parent corporation is unconditionally owned by one

1 or more disabled veterans; or a joint venture in which at least 51
2 percent of the joint venture’s management, control, and earnings
3 are held by one or more disabled veterans.

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

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

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

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

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

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

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

37 ~~SEC. 3. Section 999.2 of the Military and Veterans Code is~~
38 ~~amended to read:~~

39 ~~999.2. (a) Notwithstanding any other provision of law,~~
40 ~~contracts awarded by any state agency, department, officer, or~~

1 other state governmental entity, including school districts when
2 they are expending state funds for construction, professional
3 services (except those subject to Chapter 6 (commencing with
4 Section 16850) of Part 3 of Division 4 of Title 2 of the Government
5 Code), materials, supplies, equipment, alteration, repair, or
6 improvement shall have statewide participation goals of not less
7 than 3 percent for disabled veteran business enterprises. These
8 goals apply to the overall dollar amount expended each year by
9 the awarding department.

10 (b) For purposes of this section:

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

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

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

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

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

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

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

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

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

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

38 ~~(4) A disabled veteran business enterprise that fails to comply~~
39 ~~with any provision of this subdivision shall be prohibited from~~
40 ~~participating in any state contract until the disabled veteran~~

1 ~~business enterprise complies with the provisions of this subdivision.~~
 2 ~~Funds expended involving a disabled veteran business enterprise~~
 3 ~~during any period in which that enterprise is not in compliance~~
 4 ~~with the provisions of this subdivision shall not be credited toward~~
 5 ~~the awarding department's 3-percent goal.~~

6 ~~(h) A disabled veteran business enterprise that fails to maintain~~
 7 ~~the certification requirements set forth in this article shall~~
 8 ~~immediately notify the awarding department and the administering~~
 9 ~~agency of that failure by filing a notice of failure that states with~~
 10 ~~particularity each requirement the disabled veteran business~~
 11 ~~enterprise has failed to maintain.~~

12 ~~(i) The department shall require a disabled veteran business~~
 13 ~~enterprise to file with the department a completed Form 4506-T~~
 14 ~~from the federal Internal Revenue Service, United States~~
 15 ~~Department of the Treasury, also known as a Request for Transcript~~
 16 ~~of Tax Return, if either of the following circumstances exists:~~

17 ~~(1) The department receives a complaint regarding the disabled~~
 18 ~~veteran business enterprise.~~

19 ~~(2) The department determines, based on its findings during the~~
 20 ~~course of any audit of the disabled veteran business enterprise,~~
 21 ~~that it is necessary to require a Request for Transcript of Tax~~
 22 ~~Return.~~

23 ~~SEC. 4.~~

24 *SEC. 3.* No reimbursement is required by this act pursuant to
 25 Section 6 of Article XIII B of the California Constitution because
 26 the only costs that may be incurred by a local agency or school
 27 district will be incurred because this act creates a new crime or
 28 infraction, eliminates a crime or infraction, or changes the penalty
 29 for a crime or infraction, within the meaning of Section 17556 of
 30 the Government Code, or changes the definition of a crime within
 31 the meaning of Section 6 of Article XIII B of the California
 32 Constitution.