

AMENDED IN ASSEMBLY APRIL 10, 2012

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

**ASSEMBLY BILL**

**No. 2672**

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**Introduced by Committee on Jobs, Economic Development, and the Economy (Assembly Members V. Manuel Pérez (Chair), Beall, Block, and Hueso)**

March 5, 2012

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An act to amend Sections 7084 and 7118 of the Government Code, and to amend Section 10349 of the Public Contract Code, relating to economic development.

LEGISLATIVE COUNSEL'S DIGEST

AB 2672, as amended, Committee on Jobs, Economic Development, and the Economy. Procurement omnibus bill.

(1) Existing law requires the state to provide bidding preferences, as specified, to companies meeting specified requirements and making specified declarations related to work within an enterprise zone or a local agency military base recovery area.

This bill would require each awarding department to submit a report every January 1 to the Department of General Services on the ~~level of participation by enterprise zones and local agency military base recovery areas in certain contracts~~ *number of businesses that claim enterprise zone preferences*, as specified. *The bill would require the Department of General Services to report to the Department of Housing and Community Development on the number of businesses that claim enterprise zone preferences, as specified.*

(2) Existing law requires the Department of Personnel Administration to establish a program for training state agency contracting personnel in contract administration and contract management.

This bill would require the training program to address certain requirements, as specified, including, but not limited to, small business preferences, disabled veteran-owned business preferences, and enterprise zone preferences.

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 7084 of the Government Code is amended  
2 to read:

3 7084. (a) Whenever the state prepares a solicitation for a  
4 contract for goods in excess of one hundred thousand dollars  
5 (\$100,000), except a contract in which the worksite is fixed by the  
6 provisions of the contract, the state shall award a 5-percent  
7 preference to California-based companies that demonstrate and  
8 certify under penalty of perjury that of the total labor hours required  
9 to manufacture the goods and perform the contract, at least 50  
10 percent of the hours shall be accomplished at an identified worksite  
11 or worksites located in an enterprise zone.

12 (b) In evaluating proposals for contracts for services in excess  
13 of one hundred thousand dollars (\$100,000), except a contract in  
14 which the worksite is fixed by the provisions of the contract, the  
15 state shall award a 5-percent preference on the price submitted by  
16 California-based companies that demonstrate and certify under  
17 penalty of perjury that not less than 90 percent of the labor hours  
18 required to perform the contract shall be accomplished at an  
19 identified worksite or worksites located in an enterprise zone.

20 (c) Where a bidder complies with subdivision (a) or (b), the  
21 state shall award a 1-percent preference for bidders who certify  
22 under penalty of perjury to hire persons living within a targeted  
23 employment area or are enterprise zone eligible employees equal  
24 to 5 to 9 percent of its workforce during the period of contract  
25 performance; a 2-percent preference for bidders who shall agree  
26 to hire persons living within a targeted employment area or are  
27 enterprise zone eligible employees equal to 10 to 14 percent of its  
28 workforce during the period of contract performance; a 3-percent  
29 preference for bidders who shall agree to hire persons living within  
30 a targeted employment area or are enterprise zone eligible  
31 employees equal to 15 to 19 percent of its workforce during the

1 period of contract performance; and a 4-percent preference for  
2 bidders who shall agree to hire persons living within a targeted  
3 employment area or are enterprise zone eligible employees equal  
4 to 20 or more percent of its workforce during the period of contract  
5 performance.

6 (d) The maximum preference a bidder may be awarded pursuant  
7 to this chapter and any other ~~provision~~ of law shall be 15 percent.  
8 However, in no case shall the maximum preference cost under this  
9 section exceed fifty thousand dollars (\$50,000) for any bid, nor  
10 shall the combined cost of preferences granted pursuant to this  
11 section and any other ~~provision~~ of law exceed one hundred  
12 thousand dollars (\$100,000). In those cases where the 15-percent  
13 cumulated preference cost would exceed the one hundred thousand  
14 dollar (\$100,000) maximum preference cost limit, the one hundred  
15 thousand dollar (\$100,000) maximum preference cost limit shall  
16 apply.

17 (e) Notwithstanding any other provision of this section, small  
18 business bidders qualified ~~in accordance with~~ *under* Section 14838  
19 shall have precedence over non-small business bidders in that the  
20 application of any bidder preference for which non-small business  
21 bidders may be eligible, including the preference contained in this  
22 section, shall not result in the denial of the award to a small  
23 business bidder. This subdivision shall apply to those cases where  
24 the small business bidder is the lowest responsible bidder, as well  
25 as to those cases where the small business bidder is eligible for  
26 award as the result of application of the 5-percent small business  
27 bidder incentive.

28 (f) All state contracts issued to bidders who are awarded  
29 preferences under this section shall contain conditions to ensure  
30 that the contractor performs the contract at the location specified  
31 and meets any commitment to employ persons with high risk of  
32 unemployment.

33 (g) (1) A business that requests and is given the preference  
34 provided for in subdivision (a) or (b) by reason of having furnished  
35 a false certification, and that by reason of this certification has  
36 been awarded a contract to which it would not otherwise have been  
37 entitled, shall be subject to all of the following:

38 (A) Pay to the state any difference between the contract amount  
39 and what the state's cost would have been if the contract had been  
40 properly awarded.

1 (B) In addition to the amount specified in subparagraph (A), be  
 2 assessed a penalty in an amount of not more than 10 percent of  
 3 the amount of the contract involved.

4 (C) Be ineligible to directly or indirectly transact any business  
 5 with the state for a period of not less than six months and not more  
 6 than 36 months.

7 (2) ~~Prior to~~ *Before* the imposition of any sanction under this  
 8 subdivision, the business shall be entitled to a public hearing and  
 9 to five days' notice of the time and place thereof. The notice shall  
 10 state the reasons for the hearing.

11 (h) In each instance in this section an enterprise zone shall also  
 12 mean any enterprise zone or program area previously authorized  
 13 under any other ~~provision of~~ state law.

14 (i) As used in this section, "enterprise zone eligible employees"  
 15 means employees who meet any of the requirements of clause (iv)  
 16 of subparagraph (A) of paragraph (4) of subdivision (b) of Section  
 17 17053.74, or clause (iv) of subparagraph (A) of paragraph (4) of  
 18 subdivision (b) of Section 23622.5, of the Revenue and Taxation  
 19 Code.

20 (j) Commencing on January 1, 2013, and on January 1 of each  
 21 year thereafter, each awarding department shall submit a report to  
 22 the Department of General Services on the ~~level of participation~~  
 23 ~~by enterprise zones in contracts identified in this section~~ *number*  
 24 *of businesses that claim enterprise zone preferences as identified*  
 25 *in this section.*

26 (k) *Commencing on January 1, 2013, and on January 1 of each*  
 27 *year thereafter, the Department of General Services shall report*  
 28 *to the Department of Housing and Community Development on*  
 29 *the number of businesses that claim enterprise zone preferences*  
 30 *as identified in this section.*

31 SEC. 2. Section 7118 of the Government Code is amended to  
 32 read:

33 7118. (a) Whenever the state prepares a solicitation for a  
 34 contract for goods in excess of one hundred thousand dollars  
 35 (\$100,000), except a contract in which the worksite is fixed by the  
 36 provisions of the contract, the state shall award a 5-percent  
 37 preference to California-based companies who demonstrate and  
 38 certify under penalty of perjury that of the total labor hours required  
 39 to manufacture the goods and perform the contract, at least 50

1 percent of the hours shall be accomplished at an identified worksite  
2 or worksites located in a local agency military base recovery area.

3 (b) In evaluating proposals for contracts for services in excess  
4 of one hundred thousand dollars (\$100,000), except a contract in  
5 which the worksite is fixed by the provisions of the contract, the  
6 state shall award a 5-percent preference on the price submitted by  
7 California-based companies who demonstrate and certify under  
8 penalty of perjury that not less than 90 percent of the labor hours  
9 required to perform the contract shall be accomplished at an  
10 identified worksite or worksites located in a local agency military  
11 base recovery area.

12 (c) Where a bidder complies with subdivision (a) or (b), the  
13 state shall award a 1-percent preference for bidders who certify  
14 under penalty of perjury to hire persons living within a local agency  
15 military base recovery area equal to 5 to 9 percent of its workforce  
16 during the period of contract performance; a 2-percent preference  
17 for bidders who shall agree to hire persons living within a local  
18 agency military base recovery area equal to 10 to 14 percent of its  
19 workforce during the period of contract performance; a 3-percent  
20 preference for bidders who shall agree to hire persons living within  
21 a local agency military base recovery area equal to 15 to 19 percent  
22 of its workforce during the period of contract performance; and a  
23 4-percent preference for bidders who shall agree to hire persons  
24 living within a local agency military base recovery area equal to  
25 20 or more percent of its workforce during the period of contract  
26 performance.

27 (d) The maximum preference a bidder may be awarded pursuant  
28 to this chapter and any other ~~provision of~~ law shall be 15 percent.  
29 However, in no case shall the maximum preference cost under this  
30 section exceed fifty thousand dollars (\$50,000) for any bid, nor  
31 shall the combined cost of preferences granted pursuant to this  
32 section and any other ~~provision of~~ law exceed one hundred  
33 thousand dollars (\$100,000). In those cases where the 15-percent  
34 cumulated preference cost would exceed the one hundred thousand  
35 dollar (\$100,000) maximum preference cost limit, the one hundred  
36 thousand dollar (\$100,000) maximum preference cost limit shall  
37 apply.

38 (e) Notwithstanding any other provision of this section, small  
39 business bidders qualified ~~in accordance with~~ *under* Section 14838  
40 shall have precedence over non-small business bidders in that the

1 application of any bidder preference for which nonsmall business  
 2 bidders may be eligible, including the preference contained in this  
 3 section, shall not result in the denial of the award to a small  
 4 business bidder. This subdivision shall apply to those cases where  
 5 the small business bidder is the lowest responsible bidder, as well  
 6 as to those cases where the small business bidder is eligible for  
 7 award as the result of application of the 5-percent small business  
 8 bidder preference.

9 (f) All state contracts issued to bidders who are awarded  
 10 preferences under this section shall contain conditions to ensure  
 11 that the contractor performs the contract at the location specified  
 12 and meets any commitment to employ persons with high risk of  
 13 unemployment.

14 (g) (1) A business that requests and is given the preference  
 15 provided for in subdivision (a) or (b) by reason of having furnished  
 16 a false certification, and that by reason of this certification has  
 17 been awarded a contract to which it would not otherwise have been  
 18 entitled, shall be subject to all of the following:

19 (A) Pay to the state any difference between the contract amount  
 20 and what the state’s cost would have been if the contract had been  
 21 properly awarded.

22 (B) In addition to the amount specified in subparagraph (A), be  
 23 assessed a penalty in an amount of not more than 10 percent of  
 24 the amount of the contract involved.

25 (C) Be ineligible to directly or indirectly transact any business  
 26 with the state for a period of not less than six months and not more  
 27 than 36 months.

28 (2) ~~Prior to~~ *Before* the imposition of any sanction under this  
 29 subdivision, the business shall be entitled to a public hearing and  
 30 to five days’ notice of the time and place thereof. The notice shall  
 31 state the reasons for the hearing.

32 (h) In each instance in this section, a local agency military base  
 33 recovery area shall also mean any local agency military base  
 34 recovery area previously authorized under any other ~~provision of~~  
 35 state law.

36 (i) Commencing on January 1, 2013, and on January 1 of each  
 37 year thereafter, each awarding department shall submit a report to  
 38 the Department of General Services on the ~~level of participation~~  
 39 ~~by local agency military base recovery areas in contracts identified~~

1 ~~in this section~~ number of businesses that claim enterprise zone  
2 preferences as identified in this section.

3 (j) Commencing on January 1, 2013, and on January 1 of each  
4 year thereafter, the Department of General Services shall report  
5 to the Department of Housing and Community Development on  
6 the number of businesses that claim enterprise zone preferences  
7 as identified in this section.

8 SEC. 3. Section 10349 of the Public Contract Code is amended  
9 to read:

10 10349. (a) The Department of Personnel Administration shall  
11 establish a program for training state agency contracting personnel  
12 in contract administration and contract management. The cost of  
13 training state agency contracting personnel shall be paid by state  
14 agencies out of their appropriations for personnel training. The  
15 Department of Personnel Administration shall, ~~prior to~~ before  
16 establishing the training program required by this section, consult  
17 with the department concerning the training curriculum and the  
18 development of a training manual on contract administration.

19 (b) The training program shall address the requirements in  
20 existing law relating to state contract administration and  
21 management, including, but not limited to, small business  
22 preferences, disabled veteran-owned business preferences, and  
23 enterprise zone preferences.