

SENATE JUDICIARY COMMITTEE
Senator Thomas Umberg, Chair
2021-2022 Regular Session

AB 1574 (Committee on Jobs, Economic Development, and the Economy)

Version: June 18, 2021

Hearing Date: June 29, 2021

Fiscal: Yes

Urgency: No

AWM

SUBJECT

Public contracts: small business liaisons and advocates and disabled veteran business enterprises

DIGEST

This bill, the Small Business and Disabled Veteran Business Enterprise Act of 2021, implements recommendations by the California State Auditor to improve the state's underrepresented business contracting and procurement programs.

EXECUTIVE SUMMARY

Small businesses are an essential part of California's economy. To that end, current state laws and policies encourage state entities to contract with small businesses, including disabled-veteran-owned business enterprises (DVBEs), for contracting and procurement opportunities, and sets specific targets for small business and DVBE participation. In 2018-2019 year, however, the state did not meet its small business goal and barely met its DVBE goal; it appears unlikely that the state met its goals for 2019-2020. Evidence suggests that the increase in disaster-response procurements (for emergencies such as fires and COVID-19) is a factor in the lower small business and DVBE procurement rate.

This bill, which is the product of input from stakeholders and recommendations from the 2019 State Audit of the DVBE Procurement Program, enhances the ability to prosecute fraudulent contracting activity, increases collaboration among small business and DVBE advocates, and provides more targeted support to awarding departments in achieving small business and DVBE procurement participation goals.

This bill is sponsored by the Assembly Committee on Jobs, Economic Development, and the Economy, and supported by the California Asian Pacific Chamber of Commerce, the Coalition of Small and Disabled Veteran Businesses, the Flasher Barricade Association, and the Silicon Valley Consulting Group There is no known opposition. The bill was passed out of the Senate Governmental Organization Committee with a 14-0 vote.

PROPOSED CHANGES TO THE LAW

Existing law:

- 1) Establishes the Target Area Contract Preference Act (TACPA), which encourages and facilitates job maintenance and job development in distressed and declining areas of cities and towns in the state by providing appropriate preferences to California-based companies submitting bids or proposals for state contracts in those areas, where the contract is in excess of \$100,000. (Gov. Code, tit. 1, div. 5, ch. 10.5, §§ 4531 et seq.)
- 2) Under TACPA, awards up to a 15 percent preference for qualified California-based companies that, among other things, provide work for persons with a high risk of unemployment or perform labor in a distressed area, in qualified projects, and provides precedence to small businesses bidders qualified in accordance with the Small Business Procurement and Contract Act. (Gov. Code, § 4535.2.)
- 3) Establishes, within the Governor's Office of Business and Economic Development, the Office of Small Business Advocate, which is led by the Small Business Advocate. (Gov. Code, § 12098.)
- 4) Provides that the Small Business Advocate's duties and functions include:
 - a) Serving as the principal advocate in the state on behalf of small businesses, including participating in an advisory capacity in the consideration of regulations and policies relating to small businesses.
 - b) Representing the views and interests of small businesses before other state agencies whose policies and activities may affect small businesses.
 - c) Enlisting the cooperation and assistance of public and private agencies, businesses, and other organizations in disseminating information about the programs and services provided by the state government to benefit small businesses, and information on how small businesses can make use of those programs and services.
 - d) Consulting with experts and authorities in the fields of small business investment, venture capital investment, and commercial banking and other comparable financial institutions involved in the financing of small business, and with individuals with regulatory, legal, economic, or financial expertise.
 - e) Seeking the assistance and cooperation of all state agencies and departments providing services to, or affecting, small businesses, to ensure coordination of state efforts.
 - f) Receiving and responding to complaints from small business concerning the actions of state agencies and the effects of state laws and regulations adversely affecting those businesses.
 - g) Counseling small businesses on how to resolve questions and problems concerning the relationship of small business to state government.

- h) Collaborating with the Office of Small Business and Disabled Veteran Business Enterprise Services in their activities under the Small Business Procurement and Contract Act including, but not limited to, promoting small business certification and undertaking reasonable means to assist state agencies in improving small business participation.
- 5) Requires that each agency, secretary, department director, and executive officer ensure that the state's procurement and contracting processes are administered in order to meet or exceed 25 percent small business participation, and requires the Department of General Services (DGS) to monitor the progress towards meeting that goal. (Governor's Exec. Order No. S-02-06 (Mar. 29, 2006).)
- 6) Establishes the Small Business Procurement and Contract Act (SBPCA), which states that it is the policy of the state to aid, counsel, assist, and protect, to the maximum extent possible, the interests of small business concerns, including microbusinesses, in order to preserve free competitive enterprise and ensure that a fair proportion of the total purchases and contracts or subcontracts for property and services for the state be placed with these enterprises. (Gov. Code, div. 3, pt. 5.5, ch. 6.5, §§ 14835 et seq.)
- 7) Defines the following relevant terms for the SBPCA:
 - a) "Small business" is an independently owned and operated business that is not dominant in its field of operation, the principal office of which is located in California, the officers of which are domiciled in California, and which, together with affiliates, has 100 or fewer employees, and average annual gross receipts of \$15,000,000 or less over the previous three years, or is a manufacturer with 100 or fewer employees. For the purposes of public works contracts, contracts awarded through competitive bids or otherwise for the erection, construction, alteration, repair, or improvement of any kind upon real property, the employee maximum is 200 employees and the maximum average annual gross receipts over the previous three years is \$25,000,000. (Gov. Code, § 14837(d)(1).)
 - b) "Microbusiness" is a small business which, together with affiliates, has average annual gross receipts of \$5,000,000 or less over the previous three years, or is a manufacturer with 25 or fewer employees. (Gov. Code, § 14837(d)(2).)
- 8) Authorizes a small business and microbusiness preference of 5 percent for certain types of contracts. (Gov. Code, § 14838(b).)
- 9) Designates DGS as the administrator of the SBPCA, which includes certifying and implementing targeted preference programs for certified small businesses, microbusinesses, and DVBES. (Gov. Code, § 14838.)

10) Requires state agencies to appoint a single point of contact for small businesses and designate a small business advocate as a liaison to small business suppliers. (Gov. Code, § 14846.)

11) States that it is unlawful for any person to do any of the following:

- a) Knowingly and with intent to defraud, fraudulently obtain, retain, attempt to obtain or retain, or aid another in fraudulently obtaining or retaining or attempting to obtain or retain, certification as a small business or microbusiness enterprise for purposes of the SBPCA.
- b) Willfully and knowingly make a false statement with the intent to defraud, whether by affidavit, report, or other representation, to a state official or employee for the purpose of influencing the certification or denial of a certification of any entity as a small business or microbusiness enterprise.
- c) Willfully and knowingly obstruct, impede, or attempt to obstruct or impede, any state official or employee who is investigating the qualifications of a business entity that has requested certification as a small business or microbusiness enterprise.
- d) Knowingly and with intent to defraud, fraudulently obtain, attempt to obtain, or aid another person in fraudulently obtaining or attempting to obtain, public monies, contracts, or funds expended under a contract, that are awarded by any state agency, department, officer, or other state governmental agency, to which the person is not entitled under the SBPCA.
- e) Knowingly and with intent to defraud fraudulently represent small business or microbusiness participation in order to obtain or retain a bid preference or state contract.
- f) Knowingly and with intent to defraud fraudulently represent that a commercially useful function is being performed by a certified small business or microbusiness in order to obtain or retain a bid preference or a state contract.
- g) Willfully and knowingly make or subscribe to any statement, declaration, or other document that is fraudulent or false as to any material matter, whether or not that falsity or fraud is committed with the knowledge or consent of the person authorized or required to present the declaration, statement, or document.
- h) Willfully or knowingly aid or assist in, or procure, counsel, or advise the preparation or presentation of a declaration, statement, or other document that is fraudulent or false as to any material matter, regardless of whether that falsity or fraud is committed with the knowledge or consent of the person authorized or required to present the declaration, statement, or document.
- i) Establish, or knowingly aid in the establishment of, or exercise control over, a firm found to have committed any of the above acts. (Gov. Code, § 14842.5(a).)

12) Provides that any person who is found by DGS to have committed any of the violations listed above is subject to a civil penalty of not less than \$10,000 and not

more than \$30,000 for the first violation, and a civil penalty of not less than \$30,000 and not more than \$50,000 for the second violation. Any person who commits such a violation shall pay all costs incurred by the awarding department and DGS for any investigations that led to the finding of the violation, including costs and attorney fees of the awarding state agency. DGS must also revoke the small business or microbusiness certification, and the disabled veteran enterprise certification if the business has one, and prohibit the violating business from entering into additional state contracts, as specified. (Gov. Code, § 14842.5(b)-(d).)

- 13) Establishes the California Disabled Veteran Business Enterprise Program (DVBE Program) to address the special needs of disabled veterans seeking rehabilitation and training through entrepreneurship and to recognize the Californians disabled during military service. The DVBE Program is administered by DGS, which is required to consult with the California Disabled Veteran Business Enterprise Program Advocate. (Mil. & Vet. Code, §§ 999, 999.5., 999.11)
- 14) Provides that, under the DVBE Program, each awarding department shall have annual statewide participation goals of entering into not less than 3 percent of contracts with DVBEs. (Mil. & Vet. Code, §§ 999.1-999.2.)
- 15) Authorizes an awarding department to provide a DVBE incentive of between 1 and 5 percent for qualified DVBE applicants. (Cal. Code Regs., tit. 2, §§ 1896.99.100-1896.99.120.)
- 16) Requires each state awarding department to appoint an agency Disabled Veteran Business Enterprise Program Advocate, who must be the same as the small business advocate liaison under the SBPCA, and whose tasks include assisting certified CVBEs in participating in that agency's contracting process and assisting contract officers in seeking DVBEs to participate in the agency's contracting and procurement processes. (Mil. & Vet. Code, § 999.12.)
- 17) Provides that a person or entity that knowingly provides false information regarding eligibility for the DVBE Program is subject to a civil penalty for each violation, the amount of which ranges from \$2,500 to \$25,000. Such an action for a civil penalty may be brought by any public prosecutor in the name of the people of the State of California and the penalty imposed shall be enforceable as a civil judgment. (Mil. & Vet. Code, § 999.5(f).)
- 18) States that it is unlawful for a person to do any of the following:
 - a) Knowingly and with intent to defraud, fraudulently obtain, retain, attempt to obtain or retain, or aid another in fraudulently obtaining or retaining or attempting to obtain or retain, certification as a disabled veteran business enterprise.
 - b) Willfully and knowingly make a false statement with the intent to defraud, whether by affidavit, report, or other representation, to a state official or

- employee for the purpose of influencing the certification or denial of certification of any entity as a disabled veteran business enterprise.
- c) Willfully and knowingly obstruct, impede, or attempt to obstruct or impede, any state official or employee who is investigating the qualifications of a business entity that has requested certification as a disabled veteran business enterprise.
 - d) Knowingly and with intent to defraud, fraudulently obtain, attempt to obtain, or aid another person in fraudulently obtaining or attempting to obtain, public moneys, contracts, or funds expended under a contract, that are awarded by any state agency, department, officer, or other state governmental agency, to which the person is not entitled.
 - e) Knowingly and with intent to defraud, fraudulently represent participation of a DVBE in order to obtain or retain a bid preference or a state contract.
 - f) Knowingly and with intent to defraud, fraudulently represent that a commercially useful function is being performed by a disabled veteran business enterprise in order to obtain or retain a bid preference or a state contract.
 - g) Willfully and knowingly make or subscribe to any statement, declaration, or other document that is fraudulent or false as to any material matter, whether or not that falsity or fraud is committed with the knowledge or consent of the person authorized or required to present the declaration, statement, or document.
 - h) Willfully and knowingly aid or assist in, or procure, counsel, or advise, the preparation or presentation of a declaration, statement, or other document that is fraudulent or false as to any material matter, regardless of whether that falsity or fraud is committed with the knowledge or consent of the person authorized or required to present the declaration, statement, or document.
 - i) Willfully and knowingly fail to file any declaration or notice required by an agency awarding a contract.
 - j) Establish, or knowingly aid in the establishment of, or exercise control over, a firm found to have violated any of the above provisions. (Mil. & Vet. Code, § 999.9(a).)
- 19) Provides that a person who violates any of the provisions of 18) is guilty of a misdemeanor punishable by imprisonment in the county jail not exceeding six months, or a fine not exceeding \$1,000, or both. In addition, the person shall be liable for a civil penalty of not less than \$10,000 nor more than \$30,000 for the first violation, and a civil penalty of not less than \$30,000 nor more than \$50,000 for each additional or subsequent violation. A defendant who violates any of the provisions of 12) must pay all costs and attorney fees incurred by the plaintiff in a civil action brought pursuant to this section, including costs incurred by the awarding department or DGS. (Mil. & Vet. Code, § 999.9(b).)

This bill:

- 1) Establishes the Leveraging State Procurement for an Inclusive Economy Recovery Act of 2021.
- 2) Makes findings and declarations as follows relating to California's history of using state contracting to support business development within targeted populations and the importance of supporting small businesses and DVBES.
- 3) Modifies TACPA as follows:
 - a) Adds to the definition of "person of a high risk of unemployment" to include persons who are a member of a group identified in Unemployment Insurance Code section 14005(j), which covers "individuals with employment barriers" and includes displaced homemakers, older individuals, homeless individuals, and others.
 - b) Limits the combined workplace and workforce preferences to a total of \$100,000 in contracts for goods and services.
 - c) Clarifies that the maximum preference and incentive cost for a single preference shall not exceed \$50,000.
- 4) Adds to the duties and functions of the Small Business Advocate, to include:
 - a) When seeking the assistance and cooperation of all state agencies and departments providing services to, or affecting, small business, maintaining, publicizing, and distributing an annual list of persons serving as small business liaisons throughout the state.
 - b) Collaborating with the California Disabled Veteran Enterprise Program Advocate regarding the implementation of the DVBE Program including, but not limited to, promoting disabled veteran business enterprise certification to veteran entrepreneurs and veteran-owned small businesses and undertaking reasonable means to assist state agencies in improving small business and disabled business enterprise procurement participation; the Small Business Advocate shall fulfill this duty by, among other activities, publicizing the annual list of persons serving as a Disabled Veteran Business Enterprise Program Advocate, designated pursuant to Section 999.12 of the Military and Veterans Code, throughout the state.
- 5) Adds definitions under the SBPCA:
 - a) "Limited contracting small business enterprise" is a certified small business that has received fewer than five public contracts from the contracting department in the previous two years or has received public contracts from the contracting department totaling less than \$250,000 in the previous two years.
 - b) "New small business enterprise" is a certified small business that has not received a public contract from the contracting department in the previous two years.

- 6) Requires a department awarding a contract under the SBPCA to report all alleged violations to DGS; after any review and investigation it deems necessary, DGS must report all allegations with sufficient grounds to the Attorney General, who shall determine whether to bring an action for a violation of the SBPCA. DGS may bring an administrative action for a violation of the SPBCA regardless of whether the Attorney General chooses to bring a civil action.
- 7) Authorizes, for allegations that a person violated the SBPCA or DVBE Program by knowingly and with intent to defraud, fraudulently represented that a commercially useful function is being performed by a certified small business or microbusiness in order to obtain or retain a bid preference or a state contract, any city attorney, county attorney or county counsel, district attorney, or the Attorney General in the name of the people of the State of California, to bring an action against the violator as follows:
 - a) The prosecuting agency may seek the same penalties in court that may be assessed administratively by DGS, including costs and attorney fees incurred by the prosecuting agency and the investigation costs incurred by the awarding department and DGS.
 - b) If DGS has already concluded an administrative action against the alleged violator, a city attorney, county attorney or county counsel, district attorney may not commence a civil action for monetary penalties.
 - c) In no event shall a monetary penalty be imposed through both an administrative and a civil action for the same violation; however, DGS may impose any other penalty authorized by the SBPCA or DVBE Program (i.e., nonmonetary penalties) even if a civil penalty has already been awarded in a civil action.
 - d) A prosecuting agency must notify DGS before commencing a civil action for the alleged violation.
- 8) Expands the requirement for DVBE bids under the DVBE Program to include the DVBE's certification number and a certification, signed under penalty of perjury, serves a commercially useful function as defined under the Program.
- 9) Revises the duties of the Disabled Veteran Business Enterprise Program Advocate to consist of:
 - a) Supporting and facilitating the activities of administering agencies and existing and potential DVBEs to achieve the goals of the program, including (1) assisting awarding departments in identifying certified DVBEs can offer their services for contracts that contract procurement staff have difficulty identifying, and (2) assisting DVBEs in effectively utilizing certification documents and the state electronic procurement system in identifying which products and services businesses have on offer.
 - b) Coordinating with the Program advocates appointed in each awarding department.
 - c) Establishing a method of monitoring adherence to the goals of the Program.

- d) Establishing and promoting a system to track the effectiveness of promotional activities undertaken by state agencies.
- 10) Requires the department-level DVBE Program advocates to meet regularly with the contract and procurement of their departments to disseminate information about the DVBE Program, learn of future contracting opportunities, and identify the types of goods, services, and information technology contracts for which the contract and procurement staff is having or anticipates having difficulty in identifying potential certified DVBE contractors or subcontractors.
- 11) Makes other technical and conforming changes.

COMMENTS

1. Author's comment

According to the author:

Small businesses play an essential role within the California economy, contributing the most net new jobs, offering an alternative to un- and underemployment, and helping to disburse the financial advantages of the state's globally connected economy. State procurement opportunities, \$10.5 billion in 2018-19, represent an important economic tool to support small business development and an inclusive economic recovery.

AB 1574 is authored by the Assembly Committee on Jobs, Economic Development, and the Economy for the purpose addressing a series of issues that have inhibited the ability of the state to fully realize the economic opportunities represented by state procurement.

In 2018-19, the state failed to meet its 25 percent small business procurement participation goal, and the use of emergency contracting authority during the pandemic is expected to further drive down targeted procurement participation. AB 1574 proposes to counter this trend by enhancing the ability of the state to prosecute fraudulent contracting activity, increasing collaboration among small business and DVBE advocates, and providing more targeted support to awarding departments in achieving small business and DVBE procurement participation goals.

The specific provisions in the bill were developed and selected through stakeholder engagements, discussions with state contracting staff, and recommendations from the 2019 State Audit of the DVBE Procurement Program.

2. California's small business and disabled-veteran-owned business contracting programs are intended to diversify the state's business relationships and promote entrepreneurship

As this bill declares, California is dedicated to encouraging small businesses and DVBEs with a range of state policies including, among other things, setting procurement participation goals for departments and agencies, set at 25 percent small business procurement participation and 3 percent DVBE procurement participation.¹ In practice, however, implementation of these policies has been a mixed bag.

In 2019, the State Auditor found that DGS and the Department of Veterans Affairs had failed to adequately oversee the Program and that the Program benefitted only a small percentage of DVBE firms located in the state (8 percent, or 133 of the 1,671 certified DVBE firms, received contracts during fiscal year 2017-2018).² The report further found that there was inadequate data to fully measure the Program's success.³ The DGE reported that the state did not meet its small business participation goal in 2017-2018,⁴ and, according to the authoring Committee, initial data suggest that the state will not meet its small business and DVBE procurement goals for fiscal years 2018-2019 or 2019-2020. DGE suggests the primary cause of the failure to meet the small business goal was the large number of emergency contracts arising from the record fire season;⁵ the authoring Committee suggests that the high volume of emergency procurements – arising from fires and COVID-19 – will likely be responsible for the failure to meet the 2018-2020 goals.

Additionally, there is evidence that the small business and DVBE bidding process is being abused by companies fraudulently claiming to be certified small businesses and/or DVBEs. Some of the bill's supporters claim that problems with the small business and DVBE contracting programs are worse than they appear at first glance, because large companies are circumventing the small business and DVBE preferences by finding a small business or DVBE to serve as a "pass through" for the larger company to obtain the contract, in exchange for a kickback to the certified company. This bill is bolstered by the State Auditor's survey of 24 DVBE firms listed as subcontractors on winning bids, which found that a full 50 percent of those firms were never used by the prime contractor who listed them on the bid.⁶

¹ Governor's Exec. Order No. S-02-06 (Mar. 29, 2006); Mil. & Vet. Code, §§ 999.1-999.2.

² Auditor of the State of California, *Disabled Veteran Business Enterprise Program: The Departments of General Services and Veterans Affairs Have Failed to Maximize Participation and to Accurately Measure Program Success*, Report No. 2018-114 (Feb. 2019), at pp. 1-2 (*State Auditor's Report*).

³ *Id.*, at p. 35.

⁴ Office of Small Business and Disabled Veteran Enterprise Services, Department of General Services, *California Consolidated Annual Report, FY 2018-19*, at p. 5.

⁵ *Id.* at pp. 5-6.

⁶ *State Auditor's Report, supra*, fn. 2, at p. 27.

This bill is the product of input from stakeholders and recommendations from the State Auditor's 2019 report, and makes a wide range of changes to various small business and DVBE state contracting statutes to try and strengthen the programs. The Senate Governmental Organizations Committee has analyzed the provisions relating to the changes to the activities of the Small Business Advocate and other governmental programs, and that analysis is incorporated by reference here. Particularly relevant to this Committee's jurisdiction is the bill's addition of a cause of action against persons who knowingly procure SBPCA or DVBE Program contracts through fraudulent means.

3. This bill permits civil prosecution of persons who fraudulently procured of small business and DVBE contracts

In addition to the structural reforms to the small business and DVBE contracting programs, a central feature of this bill is the addition of enhanced enforcement mechanisms for violations of the programs, and in particular, fraud in obtaining small business or DVBE contracts. As discussed above, it appears that there is a non-trivial level of fraud in the small business and DVBE programs, and this bill provides a streamlined process through which state agencies, the DGE, and, if necessary, a prosecuting body can review and address complaints of fraud.

First, the bill provides that an awarding department shall report all alleged violations of the SBPCA to DSG; DSG shall then conduct any review or investigation it deems necessary, and report all sufficiently supported allegations to the Attorney General, at which point the Attorney General may decide whether or not to bring a civil action against the alleged violator. DGS may still pursue administrative recourse against a violator regardless of whether the Attorney General chooses to bring a civil action. This provision already exists for violations of the DVBE Program,⁷ so this addition will bring the procedures for passing on potential violations of the SPBCA into conformity with the DVBE Program.

Second, for both the SBPCA and the DVBE Program, the bill provides that, for alleged violations wherein the person or entity knowingly and with intent to defraud fraudulently represented that a commercially useful function was being performed by a small business or DVBE in order to obtain or retain a bid preference or a state contract, a civil action may be brought by any city attorney, county attorney or county counsel, district attorney, or the Attorney General in the name of the people of the State of California against that person or entity. The prosecuting entity may seek the same civil penalties as DGE could seek in an administrative action, and if the defendant is found liable, the defendant is also liable for the costs and attorney fees incurred by the prosecutor and costs incurred by the awarding department and DSG.

The bill expressly prohibits double recovery of monetary penalties in an administrative and civil action for the same violation. The bill further specifies that a city attorney,

⁷ Mil. & Vet. Code, § 999.9(e.)

county attorney or county counsel, or district attorney may not bring an action *at all* if DGS has already concluded an action against a violator; this leaves open the possibility that the Attorney General could seek civil penalties in an action against a violator where DGS has already imposed nonmonetary administrative penalties, such as suspending the violator's ability to bid for public contracts. Finally, in order to avoid a situation where an agency and a prosecuting entity are unknowingly seeking penalties for the same violation in parallel actions, the bill requires any prosecuting agency to inform DGS before commencing a suit under these provisions.

Together, these provisions should improve the state's ability to learn about, investigate, and seek recovery from violators of the SBPCA and DVBE programs. Allowing public prosecutors, including the Attorney General, to seek civil penalties in the superior court that could otherwise be recovered as administrative penalties is consistent with other statutory regimes. By allowing the prosecuting entity to recover attorney costs and fees in cases of alleged fraud, the bill should encourage public attorneys to bring such cases; and by allowing the awarding department and DSG to recover their costs, the bill should encourage robust investigations in the first instance.

4. Arguments in support

According to bill supporter California Asian Pacific Chamber of Commerce:

As the measure states, "The State of California has had an admirable, 30-year history using state contracting to support business development in the micro, small, and disabled veteran business communities." Indeed, by way of state law that has provided a 3 percent [DVBE] procurement participation goal and a 2006 executive order establishing a 25 percent goal for both small and microbusinesses, literally thousands of businesses have started, grown, and flourished.

Yet, despite these incentives that have helped so many micro, small, and disabled veteran businesses, our members have struggled to deal with the effects of COVID on their employees and business over this past year...

The problem, we believe, is far worse than people imagine because while there are existing laws by way of Government Code section 14842.5, [DGS] simply does not have the staff nor the capacity with their current infrastructure to actively enforce the existing statutes.

But, hope springs eternal that AB 1574 will pass and serve as the first major step forward to address these problems.

SUPPORT

Coalition of Small and Disabled Veteran Businesses
Flasher Barricade Association
Silicon Valley Consulting Group

OPPOSITION

None known

RELATED LEGISLATION

Pending Legislation:

SB 430 (Borgeas, 2021) establishes the California Small Business Regulatory Fairness Act of 2021, which, among other things, would require state agencies to establish policies to provide for the reduction or waiver of civil penalties for violations of regulatory or statutory requirements by a small business under certain circumstances and notify the Office of Small Business Advocate of specified matters related to those policies. SB 430 is being held on the Senate Appropriations Committee suspense file.

AB 1244 (Mathis, 2021) expands the definition of “disabled veteran” for qualification as a DVBE to include qualified persons doing business in the state within the meaning of Revenue and Taxation Code section 23101. AB 1244 is pending before the Assembly Committee on Jobs, Economic Development, and the Economy

AB 1072 (Reyes, 2021) relocates the California Small Business Technical Assistance Expansion Program to the Office of Small Business Advocate and requires the DGS’s small business advocate, in collaboration with the California Disabled Veteran Business Enterprise Program Advocate and the Small Business Advocate, in improving small business and disabled business enterprise procurement participation, as specified, including outreach and providing technical assistance to small businesses seeking certification to be eligible for additional small business assistance related to these provisions. AB 1072 is pending before the Senate Rules Committee.

AB 915 (Chiu, 2021) would add a preference for disadvantaged business enterprises, as defined, under the SBPCA, and authorize DGS to consider remedial action against departments that failed to meet the small business and DVBE goals in three of the last five years. AB 915 is pending before the Senate Rules Committee.

Prior Legislation:

AB 1809 (Cervantes, 2020) would have authorized the Attorney General or public prosecutor to bring a civil action to prosecute certain violations involving fraudulent representations to obtain small business or DVBE contracts and modified existing monitoring and accountability requirements. AB 1809 died in the Senate Appropriations Committee.

AB 1365 (Assembly Committee on Veterans Affairs, Ch. 689, Stats. 2019) required an awarding department to maintain all records of the information provided by the prime contractor pursuant to DVBE participation and to retain the records for a minimum of six years after collection, and directed the awarding department to establish appropriate review procedures for those records to ensure the accuracy and completeness of the award amounts and paid amounts reported.

AB 230 (Brough, Ch. 676, Stats. 2019) made a number of changes to the DVBE procurement program, including, requiring a prime contractor to provide proof of DVBE payments, requiring the awarding agency to review DVBE procurement documents for completeness and accuracy, and requiring DVBE procurement participation commitments be identified in each state contract.

AB 1635 (Quirk-Silva, 2017) would have codified the 25 percent goal for state small business contracting and procurement targets and required the DGA to take specified measures relating to the SBPCA. AB 1635 died in the Assembly Appropriations Committee.

AB 961 (Quirk-Silva, 2017) would have implemented recommendations from a 2014 State Auditor Report by tightening the existing monitoring and accountability requirements for state procurement activities related to the disabled veteran business enterprise targeted procurement program. AB 961 was vetoed by Governor Edmund G. Brown, Jr., who stated in his veto message that the bill was unnecessary in light of the Department of Veteran Affairs' existing authority and would have added another layer of bureaucratic monitoring.

SB 159 (Nielsen, 2015) would have clarified the metrics used when calculating the three percent procurement participation goal for DVBEs. SB 159 died on third reading in the Assembly.

PRIOR VOTES:

Senate Governmental Organization Committee (Ayes 14, Noes 0)

Assembly Floor (Ayes 75, Noes 0)

Assembly Appropriations Committee (Ayes 16, Noes 0)

Assembly Judiciary Committee (Ayes 10, Noes 0)

Assembly Jobs, Economic Development, and the Economy Committee (Ayes 7, Noes 0)
