

Date of Hearing: April 21, 2015

ASSEMBLY COMMITTEE ON JOBS, ECONOMIC DEVELOPMENT, AND THE ECONOMY

Eduardo Garcia, Chair

AB 413 (Chávez) – As Amended March 16, 2015

**SUBJECT:** California Disabled Veteran Business Enterprise Program

**SUMMARY:** Authorizes a wife or child to enter into additional state contracts during the three years currently permitted for the continued operation of a disabled veteran-owned business enterprise (DVBE) following the death or permanent disability of an owner of a certified DVBE. Existing law limits the business' activities to the completion of existing contracts.

**EXISTING LAW:**

- 1) Establishes the California Disabled Veteran Business Enterprise Program for the purpose of addressing the special needs of disabled veterans seeking rehabilitation and training through entrepreneurship, and to recognize the sacrifices California's disabled veterans made during their military service.
- 2) Designates the Department of General Services (DGS) as the administrator of the state Small Business Procurement and Contract Act (Small Business Procurement Act), including the oversight of the California Disabled Veteran Business Enterprise Program and the certification of the disabled veteran owned business enterprises (DVBEs).
- 3) Sets an annual 3% DVBE procurement participation goal for each state agency, department, and officer that enters into a contract for materials, supplies, equipment, alteration, repair, or improvement. This requirement can be waived on a specific contract with the approval of the department director or another designated person.
- 4) Extends DVBE status to the spouse of a DVBE who has died or received certification of a permanent medical disability for up to three years for the sole purpose of completing any contracts entered into prior to the death or certification.
- 5) Defines the following terms:
  - a) A DVBE contractor, subcontractor, or supplier is any person or entity that has been certified by the administering agency and that performs a commercially useful function, as defined.
  - b) A disabled veteran is a veteran of the military, naval, or air service of the U.S. who has a service-connected disability of at least 10% and who is domiciled in the state.
  - c) A DVBE is a business certified by the administering agency as meeting all of the following requirements:
    - i) The legal structure of the business is a:
      - (1) Sole proprietorship with at least 51% owned by one or more disabled veterans;
      - (2) Publicly owned business with at least 51% of its stock unconditionally owned by one or more disabled veterans;

- (3) Subsidiary that is wholly owned by a parent corporation, but only if at least 51% of the voting stock of the parent corporation is unconditionally owned by one or more disabled veterans; or
  - (4) Joint venture in which at least 51% of the joint venture's management, control, and earnings are held by one or more disabled veterans.
- ii) The management and control of the daily business operations are by one or more disabled veterans. The disabled veterans who exercise management and control are not required to be the same disabled veterans as the owners of the business.
  - iii) It has a home office located in the U.S., which is not a branch or subsidiary of a foreign corporation, foreign firm, or other foreign-based business.

**FISCAL EFFECT:** Unknown

**POLICY ISSUE FRAME:**

California is home to 1.8 million veterans, representing 8% of the total U.S. veteran population. This bill proposes to extend new contracting authority for a previously certified DVBE, which is owned by a wife or child of a qualifying disabled veteran following their death or permanent disability. Current law only allows the business to complete existing contracts during the three-year transition period. AB 413 authorizes the family to bid on and complete additional state contracts during the same three-year period.

The analysis includes background on the Small Business Procurement Act, the California Disabled Veteran Owned Business Enterprise Program, the federal veteran procurement participation program, and other spousal benefits for deceased veterans.

**COMMENTS:**

- 1) **Author's Purpose:** According to the author, "AB 413 would allow survivors to maintain the DVBE certification for three years following the death of a disabled veteran business owner. Doing so would provide the families time to continue the business after the death of a veteran without an immediate end to the business."
- 2) **Small Business Procurement Act:** The Small Business Procurement Act, administered through DGS, was implemented more than 30 years ago to establish a small business preference within the state's procurement process that would increase the number of contracts between the state and small businesses. A DVBE component was added in 1989. Today, approximately 90% of DVBEs have dual certification as a small business or a microbusiness.

The Small Business Procurement Act states that it is the policy of the State of California that the state aid the interests of small businesses in order to preserve free competitive enterprise and to ensure that a fair portion of the total purchases and contracts of the state be placed with these enterprises. The statute further states that DVBE participation is strongly encouraged to address the special needs of disabled veterans seeking rehabilitation and training through entrepreneurship, and to recognize the sacrifices of California's disabled military veterans. Statute sets an annual 3% DVBE participation goal, and a 2006 executive order sets a 25% goal for small businesses and microbusinesses.

There are 1,537 certified DVBEs in California during the 2013-14 fiscal year with 1,129 within the service sector, 530 in construction, 30 in manufacturing and 373 in a non-manufacturing sector. The

majority size of certified DVBEs are very small with 1,289 out of 1,537 total DVBEs having a second certification as a microbusiness.

In 2013-14, mandated state entities achieved an overall DVBE participation rate of 3.67%, or \$299 million of the \$8.2 billion expended in state contracts. This is the third year in a row that the state has met its DVBE goal. DGS notes, however, that the overall DVBE percentage could be higher if the top five state contracting entities had all met their individual department goals. The chart below shows current numbers.

2013-14 State Contracting with DVBE Participation		
1	Department of Corrections and Rehabilitation	3.60%
2	Department of Transportation	3.79%
3	Department of Health Care Services	0.45%
4	Department of State Hospitals	2.12%
5	Department of Water Resources	2.62%
DGS Consolidated Report 11/25/2014		

- 3) **Federal Contracting:** The federal government operates the Vets First Contracting Program, overseen by the Veterans Administration (VA), which includes a veteran-owned and a disabled veteran-owned component. Upon certification, a business is eligible to benefit from special contract set asides and subcontract with VA’s large prime contractors. The business is also eligible to participate in VA’s Veteran-Owned Small Business Mentor-Protégé Program. Given that the VA is one of the largest procurement organizations in the federal government with over \$3 billion in contracts annually, there are significant procurement opportunities.

In instances where the owner of federal VA certified disabled business dies, which results in the business having less than 51% veteran ownership, the surviving spouse can retain the certification status until they remarry, relinquish ownership of the business, 10 years following the veteran's death, or until the business no longer meets the definition of a federal small business.

In comparison, AB 413 offers a more limited extension in certified contracting status than allowed under a similar federal program.

- 4) **California's Veteran Population:** California, Texas, and Florida have the highest number of veterans among the 50 states. Approximately 1.8 million veterans live in California, with an additional 30,000 being discharged into the state each year.

The veteran population in Los Angeles, Orange, Riverside, Sacramento, San Bernardino, San Diego, and Ventura Counties are among the highest in the U.S. Based on age, the VA reports that California has a greater percentage of veterans under the age of 25 than the rest of the country, as well as the largest overall number of older veterans.

The federal Small Business Administration estimates that the most common industry sector in which veterans participate is the professional, science, and technology services sector, with 20.4% of all veteran-owned businesses being within the industry sector. California veterans also tend to be entrepreneurs at higher rates than the national average, 13.2% vs. 10.9%.

- 5) **Veteran Service-related Survivorship Benefits:** Approximately 4 million California veterans receive some level of VA disability compensation, with about 500,000 of those individuals certified as 100% disabled. Given the aging population of the veterans who served in Viet Nam, and the significant nature of the medical challenges faced by the younger veteran population, the number of

DVBEs who will die or whose injuries will become more impactful while still operating their business is likely to increase in the coming decade. The Disable Veteran Business Alliance, the sponsor AB 413, provided the list below of currently available veteran-related benefits that are transferable or directly provided to veterans and their families:

- An eligible surviving spouse may continue a Service Disabled Veteran Owned Small Business certification for up to ten years according to Federal PL 109-461 *SDVOSB Survivorship rights* are contained in two different sections of federal regulation: 38 CFR Part 74, and 13 CFR Part 125.
- Military members and Veterans can transfer 48 months of GI Bill educational benefits to their family members (spouse/children).
- Tricare for Life (TFL) medical benefits available to family members of a retired service member, Medal of Honor recipient's family member and survivor of a deceased sponsor.
- Tricare Retiree Dental Program (TRDP) available to eligible family members and surviving family members of deceased sponsors and Medal of Honor recipients and their immediate family members and survivors.
- The spouse and children of a deceased service member living in government quarters are entitled to either remain in government housing for up to a year or relocate to a private quarters and receive up to a year of Basic Housing Allowance as appropriate.
- Scholarship assistance for dependent survivors of deceased members is provided by many schools.
- Surviving spouses and certain mothers of deceased members who served during war time are entitled to an additional 10 points to their earned rating on the civil service examination for federal employment.
- The Social Security Administration will pay to a surviving spouse or children \$225 lump sum death payment and other monthly benefits to the surviving member.
- Many states provide benefits for survivors of veterans such as educational assistance, land settlement preference, civil service preference, tax and license fee exemptions, loans, relief and rehabilitation, employment assistance and bonuses.
- Dependent survivors of a deceased member have access to the Uniformed Services Identification and Privilege Card to continue to have access to facilities such as commissaries, exchanges and medical facilities.
- The Survivor Benefit Plan allows retirement pay to continue to flow to spouse or children for the lifetime of the beneficiary.
- The Dependency and Indemnity Compensation is a monthly benefit paid to eligible survivors of certain deceased veterans.
- Death Gratuity (one time lump sum of \$100K) and Death Pensions available to next of kin and eligible dependents.
- The family members of veterans are eligible to collect burial and memorial benefits.

- Survivor and Dependent Assistance (DEA) program is established by Chapter 35 of Title 38 US Code providing 45 months education and training opportunities to eligible dependents of veterans that were disabled due to a service related condition or who died while on active duty.
- VA Home Loan Guarantee to surviving spouses of disabled veterans.
- No fee passports are available to immediate family members for the purpose of visiting their loved ones grave or memorialization.

**REGISTERED SUPPORT / OPPOSITION:**

**Support**

Disabled Veteran Business Alliance (sponsor)  
American Legion-Department of California  
AMVETS-Department of California  
California Association of County Veteran Service Officers  
California State Commanders Veterans Council  
Military Officers Association of America, California Council of Chapters  
VFW-Department of California  
Vietnam Veterans of America-California State Council

**Opposition**

None received

**Analysis Prepared by:** Toni Symonds / J., E.D., & E. / (916) 319-2090