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AB-2019 Small business enterprises. (2021-2022)

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Assembly Bill No. 2019

CHAPTER 730

An act to amend Sections 11148.5, 12098.4, 14836, 14838, 14838.2, 14839, 14840, and 14843 of, and to add Section 14844 to, the Government Code, relating to business development.

[Approved by Governor September 29, 2022. Filed with Secretary of State September 29, 2022.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2019, Petrie-Norris. Small business enterprises.

(1) Existing law requires each state agency that significantly regulates or impacts small business to designate at least one person to serve as a small business liaison for the agency. Existing law requires the small business liaison to be responsible for, among other things, receiving and responding to complaints received by the agency from small businesses and assisting in ensuring that the procurement and contracting processes of the entity are administered in order to meet or exceed the goal of 25% small business participation.

This bill would also require the small business liaison to develop an "economic equity first" action plan and policy for the agency to provide, among other things, direction, recommendations, and strategies as to how to ensure that small businesses, as specified, are effectively involved and benefiting from the agency's procurement process. The bill would require the action plan and policy to be adopted by January 1, 2024. The bill would require the action plan to include, as part of a general outreach effort to all small businesses, education, outreach, and stakeholder engagement with representative business organizations and business enterprises owned by women, minorities, and members of the LGBTQ community.

(2) Existing law establishes the Office of Small Business Advocate within the Governor's Office of Business and Economic Development, also known as GO-Biz, and prescribes the duties and functions of the Small Business Advocate, who is also the Director of the Office of Small Business Advocate. Existing law requires the advocate to prepare and submit a written annual report to the Governor and the Legislature that describes the activities and recommendations of the office, including an evaluation of the efforts of state agencies and, where appropriate, specific departments, that significantly regulate small businesses to assist minority and other small business enterprises, and make appropriate recommendations to assist the development of these enterprises.

This bill would require the annual report to also include details regarding the office's activities to support procurement participation by small businesses, microbusinesses, disabled veteran business enterprises, and businesses owned by women, minorities, or members of the LGBTQ community that also qualify as a small business, microbusiness, or disabled veteran business enterprise, as well as compliance and implementation of specified action plans and policies by state agency liaisons and advocates. The bill would require each state agency to provide information regarding its activities to the advocate upon request.

Existing law requires the advocate to post certain information on the GO-Biz or the advocate's internet website, including how to receive assistance in certifying as a small business and identifying and participating in state procurement opportunities.

This bill would require the above-described information, and also information in receiving assistance in certifying as a disabled veteran business enterprise, to be easily accessible from the homepage of the Go-Biz internet website.

(3) Existing law, the Small Business Procurement and Contract Act, declares that it is essential that opportunity is provided for full participation in our free enterprise system by small business enterprises.

This bill would also declare that the state economy is strengthened by the diversity and resiliency of its small businesses and that it is essential to ensure all small businesses are able to fully participate in the domestic and global markets, including businesses owned by women and other specified groups.

Existing law requires the Director of General Services and the heads of other state agencies that enter into contracts for the acquisition of goods, services, and information technology and for the construction of state facilities to establish goals for the participation of small businesses and microbusinesses in these contracts, to provide for a small business preference in the award of these contracts, to give special consideration and special assistance to small businesses, and, whenever possible, to make awards to small businesses, as specified.

This bill would instead require those directors to establish a minimum goal of 25% procurement participation for small businesses, including microbusinesses.

Existing law, requires the department to make rules and regulations for the purpose of administering these provisions.

This bill would require the department to consider appropriate remedial actions to be taken in regards to mandatory reporting agencies that failed in 3 out of 5 years to meet their small business or disabled veteran business enterprise goals. The bill would require the department to set forth the department's actions in its consolidated annual report.

This bill would require the department to contract for a statewide procurement and contracting disparity study, in order to guide outreach strategies, state government program development, and improvements to contracting policies. The bill would require the department to post the report, with prescribed content, to its internet website on or before January 1, 2025.

(4) Existing law establishes the Office of Small Business and Disabled Veteran Business Enterprise Services within the department and charges it with specified duties, including making recommendations to the department and other state agencies for simplification of specifications and terms in order to increase the opportunities for small business, microbusiness, and disabled veteran business enterprise participation.

This bill would include, with those recommendations, simplification of specifications and terms in order to increase opportunities for minority-owned business, women-owned business, and LGBTQ-owned business. The bill would add duties for the office of marketing the benefits and availability of state small business certification to businesses that currently hold a federal certification as a disadvantaged business enterprise and making available the option for an applicant or certified firm to voluntarily identify that the business is at least 51% owned by, and whose management and daily operations are controlled by, individuals who identify as one of specified categories.

This bill would require the department to make available the option for an applicant or certified firm to voluntarily identify that the business is at least 51% owned by, and whose management and daily operations are controlled by, individuals who identify as one of specified categories. By expanding the crime of perjury, the bill would create a state-mandated local program.

This bill would state that its provisions are severable.

(5) 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 Local Program: yes

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. (a) The Legislature finds and declares all of the following:

(1) The positive fiscal impact of small businesses and minority-owned businesses to the overall economic health and stability of California, the fifth largest economy in the world, cannot be underestimated or overlooked – where in fact the entire California economy is predicated on the continual success and growth of all small businesses.

(2) Given that the size of the California budget is the largest of all states in the entire country, the California budget contributes one-seventh of the country's gross domestic product (GDP), and that, pre-COVID, small businesses totaled 3.9 million, or 99.8 percent of all California businesses, and 1.6 million were minority owned.

(3) Small businesses not only contribute significantly to the tax base of the State of California but also account for approximately 7 million employees, or 48.8 percent of all employment in the state.

(4) It is therefore incumbent upon the State of California to ensure that a fair share of procurement spending be directed and dedicated to small and minority-owned businesses.

(5) The State of California must carefully consider and provide guidance to all state departments, agencies, bureaus, and other state entities as to reflect small and minority-owned businesses as a priority when determining procurement decisions.

(6) As the economy pivots to recover and rebound post the COVID economic collapse, it is imperative for the state to acknowledge and address the lack of diversity among contractors participating in state contracts and to seek innovative ways to identify diverse business owners and encourage them to become certified small businesses. The existing network of California women-owned, minority-owned, and LGBTQ-owned businesses could play a crucial role in diversifying the state's pool of certified small businesses.

(7) A means of economic recovery for the financial base of California would include codifying the previously expressed intent of the executive and legislative branches, respectively, of the state achieving a goal of procurement spending of 25 percent to SBs and DBEs.

(b) It is the intent of the Legislature that California SBs and DBEs are prioritized and uplifted by means of economic equity as it pertains to a percentage of state procurement dollars going to these entities.

SEC. 2. Section 11148.5 of the Government Code is amended to read:

11148.5. (a) A state agency that significantly regulates small business or that significantly impacts small business shall designate at least one person who shall serve as a small business liaison. The agency shall utilize existing personnel and resources to perform the duties of small business liaison.

(b) A state agency that significantly regulates small business or that significantly impacts small business shall widely publicize the position of small business liaison in appropriate agency publications and by prominently displaying the name and contact information of the small business liaison on the agency's website if the agency has a website.

(c) The small business liaison shall be responsible for all of the following:

(1) Receiving and responding to complaints received by the agency from small businesses.

(2) Providing technical advice and assisting small businesses in resolving problems and questions regarding compliance with the agency's regulations and relevant statutes.

(3) Reporting small business concerns and, if appropriate, reporting recommendations to the agency secretary or to the agency head, as defined in Section 11405.40.

(4) Reviewing and updating, on a semiannual basis, content on the agency website that is accessible through the small business link provided on the State of California Internet portal pursuant to Section 11541.5.

(5) Assisting the agency secretary, department director, or executive officer, as applicable, in ensuring that the procurement and contracting processes of the applicable entity are administered in order to meet or exceed the 25 percent small business participation goal, and developing and sharing innovative procurement and contracting practices from the public and private sectors to increase opportunities for small businesses.

(6) Developing an "economic equity first" action plan and policy for the agency, which will provide, among other things, direction, recommendations, and strategies as to how best ensure that small businesses pursuant to Section 14837, including women-owned, minority-owned, and LGBTQ-owned businesses, are effectively involved in, and benefiting from, the procurement process of the agency. The action plan and policy shall be adopted by January 1, 2024. The action plan shall include, as part of a general outreach effort to all small businesses, education, outreach, and stakeholder engagement with representative business organizations and business enterprises owned by women, minorities, and members of the LGBTQ community.

(d) The small business liaison shall not advocate for or against the adoption, amendment, or repeal of any regulation or intervene in any pending investigation or enforcement action.

(e) A state agency that significantly regulates small business or that significantly impacts small business shall notify the Office of Small Business Advocate within the Governor's Office of Business and Economic Development and the Department of General Services of each of the following:

(1) The name and contact information of the person or persons who have been designated as the agency's small business liaison, on or before March 1, 2018.

(2) An occurrence of a vacancy in the position of small business liaison, within 15 working days of the occurrence of the vacancy. The state agency shall designate a small business liaison within three months after providing notice of the vacancy.

(f) For purposes of this section, "small business" has the same meaning as set forth in Section 11342.610.

SEC. 3. Section 12098.4 of the Government Code is amended to read:

12098.4. (a) Each agency of the state shall furnish to the advocate the reports, documents, and information that are public records and that the advocate deems necessary to carry out the advocate's functions under this chapter.

(b) (1) The advocate shall prepare and submit a written annual report to the Governor and to the Legislature that describes the activities and recommendations of the office, including an evaluation of the efforts of state agencies and, where appropriate, specific departments, that significantly regulate small businesses to assist minority and other small business enterprises, and making recommendations that may be appropriate to assist the development and strengthening of minority and other small business enterprises.

(2) The annual report prepared by the advocate shall also include details regarding the office's activities to support procurement participation by small businesses, microbusinesses, disabled veteran business enterprises, and businesses owned by women, minorities, or members of the LGBTQ community that also qualify as a small business, microbusiness, or disabled veteran business enterprise. The report shall also include information on state agency compliance and implementation of "economic equity first" action plans and policies, developed pursuant to Section 11148.5, by state agency liaisons and advocates. Each state agency shall provide information regarding its activities to the advocate upon request.

(c) (1) The advocate may establish a centralized interactive telephone referral system and internet website to assist small and minority businesses in their operations, including governmental requirements, such as taxation, accounting, and pollution control, and to provide information concerning the agency from which more specialized assistance may be obtained.

(2) The advocate shall post on the GO-Biz internet website or the advocate's internet website:

(A) Information on how to receive assistance in identifying and understanding the state's regulatory requirements. This information shall include:

(i) The name, telephone number, internet website, and email of the small business liaison designated pursuant to Section 11148.5 to assist small businesses with understanding and adhering to the regulatory requirements of the state entities in which they serve.

(ii) The internet website developed and maintained by GO-Biz to identify licensing, permitting, and registration requirements of state agencies, pursuant to the requirements of Section 12097.1.

(B) Information on how to receive assistance in certifying as a small business or disabled veteran business enterprise, and identifying and participating in state procurement opportunities shall be easily accessible from the homepage of the GO-Biz internet website. This information shall include:

(i) The name, telephone number, internet website, and email of the small business advocate designated pursuant to Section 14846 to assist small businesses in contracting with the state entities in which they serve.

(ii) Contact information for the Office of Small Business and Disabled Veteran Business Enterprise Services established pursuant to Section 14839.

(C) Information about emergency preparedness, responses to emergencies, and recovery strategies for small businesses. This information shall be developed and updated in consultation with relevant state agencies and emergency responders.

(D) A link to the Energy Upgrade California internet website to assist small business owners in accessing information on the availability of various programs promoting the efficient use of energy.

(E) Information on programs administered through the statewide network of small business financial development corporations. Programs covered shall include loan guarantees, direct lending, surety bond guarantees, and disaster loans. Information shall be presented in a manner appropriate to address the needs of both small businesses and existing and potential financial institutions and financial companies.

(F) Information on how to identify and access services provided through the statewide network of small business technical assistance centers, including, but not limited to, small business development centers, women business centers, veteran

business outreach centers, procurement technical assistance centers, and the Manufacturing Extension Partnership.

SEC. 4. Section 14836 of the Government Code is amended to read:

14836. (a) The Legislature hereby declares that it serves a public purpose, and it is of benefit to the state, to promote and facilitate the fullest possible participation by all citizens in the affairs of the State of California in every possible way. It is also essential that opportunity is provided for full participation in our free enterprise system by small business enterprises.

(b) Further, it is the declared policy of the Legislature that the state should 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 to ensure that a fair proportion of the total purchases and contracts or subcontracts for property and services for the state.

(c) In supporting the success of California small businesses, the state economy is strengthened by the diversity and resiliency of its small businesses and it is essential to ensure all small businesses are able to fully participate in the domestic and global markets, including, but not limited to, businesses owned by women, disabled individuals, people who identify as LGBTQ, immigrants, and socially and economically disadvantaged individuals.

SEC. 5. Section 14838 of the Government Code is amended to read:

14838. In order to facilitate the participation of small business, including microbusiness, in the provision of goods, information technology, and services to the state, and in the construction, including alteration, demolition, repair, or improvement, of state facilities, the directors of the department and other state agencies that enter those contracts, each within their respective areas of responsibility, shall do all of the following:

(a) Establish a minimum goal of 25 percent procurement participation for small businesses, including microbusinesses, in the provision of goods, information technology, and services to the state, and in the construction of state facilities.

(b) Provide for small business preference, or nonsmall business preference for bidders that provide for small business and microbusiness subcontractor participation, in the award of contracts for goods, information technology, services, and construction, as follows:

(1) In solicitations where an award is to be made to the lowest responsible bidder meeting specifications, the preference to small business and microbusiness shall be 5 percent of the lowest responsible bidder meeting specifications. The preference to nonsmall business bidders that provide for small business or microbusiness subcontractor participation shall be, up to a maximum of 5 percent of the lowest responsible bidder meeting specifications, determined according to rules and regulations established by the Department of General Services.

(2) In solicitations where an award is to be made to the highest scored bidder based on evaluation factors in addition to price, the preference to small business or microbusiness shall be 5 percent of the highest responsible bidder's total score. The preference to nonsmall business bidders that provide for small business or microbusiness subcontractor participation shall be up to a maximum 5 percent of the highest responsible bidder's total score, determined according to rules and regulations established by the Department of General Services.

(3) The preferences under paragraphs (1) and (2) shall not be awarded to a noncompliant bidder and shall not be used to achieve any applicable minimum requirements.

(4) The preference under paragraph (1) shall not exceed fifty thousand dollars (\$50,000) for any bid, and the combined cost of preferences granted pursuant to paragraph (1) and any other provision of law shall not exceed one hundred thousand dollars (\$100,000). In bids in which the state has reserved the right to make multiple awards, this fifty-thousand-dollar (\$50,000) maximum preference cost shall be applied, to the extent possible, so as to maximize the dollar participation of small businesses, including microbusinesses, in the contract award.

(c) Give special consideration to small businesses and microbusinesses, by both:

(1) Reducing the experience required.

(2) Reducing the level of inventory normally required.

(d) Give special assistance to small businesses and microbusinesses in the preparation and submission of the information requested in Section 14310.

(e) Under the authorization granted in Section 10163 of the Public Contract Code, make awards, whenever feasible, to small business and microbusiness bidders for each project bid upon within their prequalification rating. This may be accomplished by

dividing major projects into subprojects so as to allow a small business or microbusiness contractor to qualify to bid on these subprojects.

(f) Make continuous efforts to expand the pool of small businesses and microbusinesses that participate in the department's and other state agencies' contracts by regularly seeking out and identifying small businesses and microbusinesses that have not previously done business with the department or other state agency or that are not regularly used by the department or other state agency, and including those small businesses and microbusinesses in the agency's solicitations.

(g) Small business and microbusiness bidders qualified in accordance with this chapter shall have precedence over nonsmall business bidders in that the application of a bidder preference for which nonsmall business bidders may be eligible under this section or any other provision of law shall not result in the denial of the award to a small business or microbusiness bidder. In the event of a precise tie between the low responsible bid of a bidder meeting specifications of a small business or microbusiness, and the low responsible bid of a bidder meeting the specifications of a disabled veteran-owned small business or microbusiness, the contract shall be awarded to the disabled veteran-owned small business or microbusiness. This provision applies if the small business or microbusiness bidder is the lowest responsible bidder, as well as if the small business or microbusiness bidder is eligible for award as the result of application of the small business and microbusiness bidder preference granted by subdivision (b).

(h) If the directors of the department and other state agencies that enter into those contracts are unable to reach the goals established under subdivision (a) in the year in which the changes made by the act that added this subdivision become operative, the directors of the department and other state agencies may count towards that goal, contracts with firms that would be considered a small business or microbusiness under the amendments made to Section 14837 by the act adding this subdivision. This subdivision shall become operative on January 1, 2019.

SEC. 6. Section 14838.2 of the Government Code is amended to read:

14838.2. The Legislature finds and declares all of the following:

(a) Market demand is a driving factor in determining profitability of California companies and the ability of those companies to invest in business growth.

(b) The onset of COVID-19 and the subsequent economic downturn and recession has laid bare considerable social and economic inequities, and, overall, nearly one-half of all small businesses face permanent closure, with women-owned, minority-owned, and LGBTQ-owned businesses facing even higher foreclosure thresholds.

(c) The current economic recession caused by COVID-19 is hitting our minority and disadvantaged communities the hardest.

(d) California companies are often at a competitive disadvantage when responding to public contract proposals from government agencies because of factors associated with higher taxes, wages, rents, labor benefits, and insurance rates.

(e) The competitiveness of California companies is also impacted as a result of in-state business preference policies that exist in other states.

SEC. 7. Section 14839 of the Government Code is amended to read:

14839. (a) There is hereby established within the department the Office of Small Business and Disabled Veteran Business Enterprise Services. The duties of the office shall include:

(1) Compiling and maintaining a comprehensive bidders list of qualified small businesses and disabled veteran business enterprises, and noting which small businesses also qualify as microbusinesses.

(2) Coordinating with the Federal Small Business Administration, the Minority Business Development Agency, the California Disabled Veteran Business Enterprise Program Advocate, appointed by the Secretary of the Department of Veterans Affairs pursuant to Section 999.11 of the Military and Veterans Code, and the Small Business Advocate, appointed by the Governor pursuant to Section 12098.3.

(3) Providing technical and managerial aids to small businesses, microbusinesses, and disabled veteran business enterprises, by conducting workshops on matters in connection with government procurement and contracting.

(4) Assisting small businesses, microbusinesses, and disabled veteran business enterprises, in complying with the procedures for bidding on state contracts.

(5) Working with appropriate state, federal, local, and private organizations and business enterprises in disseminating information on bidding procedures and opportunities available to small businesses, microbusinesses, and disabled veteran

business enterprises.

(6) Making recommendations to the department and other state agencies for simplification of specifications and terms in order to increase the opportunities for small business, microbusiness, minority-owned business, women-owned business, LGBTQ-owned business, and disabled veteran business enterprise participation.

(7) Developing, by regulation, other programs and practices that are reasonably necessary to aid and protect the interest of small businesses, microbusinesses, and disabled veteran business enterprises in contracting with the state, including, but not limited to, those specified in Article 6 (commencing with Section 999) of Chapter 6 of Division 4 of the Military and Veterans Code.

(8) Making efforts to develop, in cooperation with associations representing counties, cities, and special districts, a core statewide small business certification application that may be adopted by all participating entities, with any supplemental provisions to be added as necessary by the respective entities.

(9) Marketing the benefits and availability of state small business certification to businesses that currently hold a federal certification as a disadvantaged business enterprise.

(10) Making available the option for an applicant or certified firm to voluntarily identify that the business is at least 51 percent owned by, and whose management and daily operations are controlled by, one or more individuals who identify as any of the following:

(A) Black (a person having origins in any of the Black racial groups of Africa); Hispanic (a person of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish or Portuguese culture or origin regardless of race); Native American (an American Indian, Eskimo, Aleut, or Native Hawaiian); Pacific-Asian (a person whose origins are from Japan, China, Taiwan, Korea, Vietnam, Laos, Cambodia, the Philippines, Samoa, Guam, or the United States Trust Territories of the Pacific including North Marianas); Asian-Indian (a person whose origins are from India, Pakistan, or Bangladesh).

(B) A woman.

(C) LGBTQ.

(b) Notwithstanding any other law, including Title 1.8 (commencing with Section 1798) of Part 4 of Division 3 of the Civil Code, the department may publicly display the information specified in paragraph (10) of subdivision (a) within the certification profile of the firm using the state's certification system.

(c) The information furnished by each contractor requesting a small business or microbusiness preference shall be under penalty of perjury.

SEC. 8. Section 14840 of the Government Code is amended to read:

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

(2) The department shall make available the option for an applicant or certified firm to voluntarily identify that the business is at least 51 percent owned by, and whose management and daily operations are controlled by, one or more individuals who identifies as any of the following:

(A) Black (a person having origins in any of the Black racial groups of Africa); Hispanic (a person of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish or Portuguese culture or origin regardless of race); Native American (an American Indian, Eskimo, Aleut, or Native Hawaiian); Pacific-Asian (a person whose origins are from Japan, China, Taiwan, Korea, Vietnam, Laos, Cambodia, the Philippines, Samoa, Guam, or the United States Trust Territories of the Pacific including North Marianas); Asian-Indian (a person whose origins are from India, Pakistan, or Bangladesh).

(B) A woman.

(C) LGBTQ.

(3) Notwithstanding any other law, including Title 1.8 (commencing with Section 1798) of Part 4 of Division 3 of the Civil Code, the department may publicly display this information within the certification profile of the firm using the state's certification system.

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

(2) For the purposes of this subdivision, "just cause" means either of the following circumstances exist:

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

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

SEC. 9. Section 14843 of the Government Code is amended to read:

14843. (a) The department may make all rules and regulations consistent with the law for the purpose of carrying into effect this chapter. Rules and regulations shall be adopted, amended, or repealed in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1.

(b) The department shall consider appropriate remedial actions to be taken in regards to mandatory reporting agencies that failed in three out of five years to meet their small business or disabled veteran business enterprise goals, including, but not limited to, the removal of the department's delegated contract authority or the placement of additional restrictions on contracting activity. The department shall set forth its actions related to this subdivision within the department's consolidated annual report.

SEC. 10. Section 14844 is added to the Government Code, to read:

14844. (a) The department shall contract for a statewide procurement and contracting disparity study, in order to guide outreach strategies, state government program development, and improvements to contracting policies.

(b) On or before January 1, 2025, the department shall post a report to its internet website setting forth the results of the study and implementation actions taken in response to it.

SEC. 11. The provisions of this bill shall be deemed severable and the invalidity or unenforceability of any provision shall not affect the validity or enforceability of the other provisions hereof. If any provision of this bill is invalid or unenforceable, the remainder of this bill shall not be affected by that invalidity or unenforceability.

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