

SBE INC  
Form S-8  
March 24, 2006

As filed with the Securities and Exchange Commission on March 24, 2006

Registration No. 333-

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**SECURITIES AND EXCHANGE COMMISSION**  
Washington, D.C. 20549

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**FORM S-8**  
REGISTRATION STATEMENT  
UNDER  
THE SECURITIES ACT OF 1933

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**SBE, INC.**  
(Exact name of registrant as specified in its charter)

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Delaware  
(State of Incorporation)

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94-1517641  
(I.R.S. Employer Identification No.)

**4000 Executive Parkway, Suite 200**  
**San Ramon, California 94583**  
(Address of principal executive offices)

**2006 EQUITY INCENTIVE PLAN**  
(Full title of the plans)

**David W. Brunton**  
**Chief Financial Officer, Vice President, Finance**  
**and Secretary**  
**SBE, Inc.**

**4000 Executive Parkway, Suite 200**  
**San Ramon, California 94583**  
**(925) 355-2000**

(Name, address, including zip code, and telephone number, including area code, of agent for service)

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Copy to:  
**Jodie M. Bourdet**

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**Cooley Godward llp**  
**101 California Street, 5<sup>th</sup> Floor**  
**San Francisco, CA 94111**  
**(415) 693-2000**

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**CALCULATION OF REGISTRATION FEE**


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<b>Title of Securities to be Registered</b>	<b>Amount to be Registered (1)</b>	<b>Proposed Maximum Offering Price Per Share (2)</b>	<b>Proposed Maximum Aggregate Offering Price (2)</b>	<b>Amount of Registration Fee</b>
Shares of Common Stock, par value \$0.001 per share, reserved for future grant under the 2006 Equity Incentive Plan.	1,500,000	\$1.01	\$1,515,000	\$162.11

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(1) This registration statement is intended to cover the offering of up to 1,500,000 shares of the Registrant's Common Stock pursuant to its 2006 Equity Incentive Plan (the "Plan"). This registration statement shall also cover any additional shares of Common Stock that become issuable under the Plan by reason of any stock dividend, stock split, recapitalization or any other similar transaction without receipt of consideration that results in an increase in the number of shares of the Registrant's outstanding Common Stock.

(2) Estimated solely for the purpose of calculating the amount of the registration fee pursuant to Rule 457(c). The price per share and aggregate offering price are based upon the high and low sales prices of Registrant's Common Stock on March 20, 2006 as reported on the Nasdaq SmallCap Market reporting system.

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## **INCORPORATION OF CERTAIN DOCUMENTS BY REFERENCE**

The following documents filed by SBE, Inc. (the “Company”) with the Securities and Exchange Commission are incorporated by reference into this Registration Statement:

(a) The Company’s latest annual report on Form 10-K filed pursuant to Sections 13(a) or 15(d) of the Securities Exchange Act of 1934, as amended (the “Exchange Act”), or either (1) the Company’s latest prospectus filed pursuant to Rule 424(b) under the Securities Act of 1933, as amended (the “Securities Act”), that contains audited financial statements for the Company’s latest fiscal year for which such statements have been filed, or (2) the Company’s effective registration statement on Form 10 or 20-F filed under the Exchange Act containing audited financial statements for the Company’s latest fiscal year;

(b) All other reports filed pursuant to Sections 13(a) or 15(d) of the Exchange Act since the end of the fiscal year covered by the annual reports, the prospectus or the registration statement referred to in (a) above; and

(c) The description of the Company’s Common Stock which is contained in a registration statement filed under the Exchange Act, including any amendment or report filed for the purpose of updating such description.

All reports and other documents subsequently filed by the Company pursuant to Sections 13(a), 13(c), 14 and 15(d) of the Exchange Act prior to the filing of a post-effective amendment which indicates that all securities offered have been sold or which deregisters all securities then remaining unsold, shall be deemed to be incorporated by reference herein and to be a part of this registration statement from the date of the filing of such reports and documents.

## **DESCRIPTION OF SECURITIES**

Not applicable.

## **INTERESTS OF NAMED EXPERTS AND COUNSEL**

Not applicable.

## **INDEMNIFICATION OF DIRECTORS AND OFFICERS**

As permitted by Section 145 of the Delaware General Corporation Law, the Bylaws of the Company provide that (i) the Company is required to indemnify its directors and executive officers to the fullest extent not prohibited by the Delaware General Corporation Law, (ii) the Company may, in its discretion, indemnify other officers, employees and agents as set forth in the Delaware General Corporation Law, (iii) the Company is required to advance all expenses incurred by its directors and executive officers in connection with certain legal proceedings (subject to certain exceptions), (iv) the rights conferred in the Bylaws are not exclusive, (v) the Company is authorized to enter into indemnification agreements with its directors, officers, employees and agents and (vi) the Company may not retroactively amend the Bylaws provisions relating to indemnify. The Company has entered into agreements with its directors and executive officers that require the Company to indemnify such persons against expenses, judgements, fines, settlements and other amounts that such person becomes legally obligated to pay (including expenses of a derivative action ) in connection with any proceeding, whether actual or threatened, to which any such person may be made a party by reason of the fact that such person is or was a director of or officer of the Company or any of its affiliated enterprises, provided such person acted in good faith and in a manner such person reasonably believed to be in or not opposed to the best interests of the Company. The indemnification agreements also set forth certain procedures that will apply in the event of a claim for indemnification thereunder.

**EXEMPTION FROM REGISTRATION CLAIMED**

Not applicable.

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## EXHIBITS

### Exhibit Number

- 5.1 Opinion of Cooley Godward LLP
- 23.1 Consent of BDO Seidman, LLP, Independent Registered Public Accounting Firm
- 23.2 Consent of Cooley Godward LLP is contained in Exhibit 5 to this Registration Statement
- 24 Power of Attorney is contained on the signature pages.
- 99.1 2006 Equity Incentive Plan
- 99.2 Agreements used in connection with the 2006 Equity Incentive Plan

## UNDERTAKINGS

### 1. The undersigned registrant hereby undertakes:

(a) To file, during any period in which offers or sales are being made, a post-effective amendment to this registration statement:

(i) To include any prospectus required by section 10(a)(3) of the Securities Act;

(ii) To reflect in the prospectus any facts or events arising after the effective date of the registration statement (or the most recent post-effective amendment thereof) which, individually or in the aggregate, represent a fundamental change in the information set forth in the registration statement. Notwithstanding the foregoing, any increase or decrease in volume of securities offered (if the total dollar value of securities offered would not exceed that which was registered) and any deviation from the low or high end of the estimated maximum offering range may be reflected in the form of prospectus filed with the Commission pursuant to Rule 424(b) if, in the aggregate, the changes in volume and price represent no more than a 20% change in the maximum aggregate offering price set forth in the "Calculation of Registration Fee" table in the effective registration statement.

(iii) To include any material information with respect to the plan of distribution not previously disclosed in the registration statement or any material change to such information in the registration statement;

*Provided, however,* that paragraphs (a)(i) and (a)(ii) do not apply if the information required to be included in a post-effective amendment by those paragraphs is contained in reports filed with or furnished to the Commission by the registrant pursuant to section 13 or section 15(d) of the Exchange Act that are incorporated by reference in the registration statement.

(b) That, for the purpose of determining any liability under the Securities Act, each such post-effective amendment shall be deemed to be a new registration statement relating to the securities offered herein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

(c) To remove from registration by means of a post-effective amendment any of the securities being registered which remain unsold at the termination of the offering.

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**(d)** That, for the purpose of determining liability of the registrant under the Securities Act to any purchaser in the initial distribution of the securities, the undersigned registrant undertakes that in a primary offering of securities of the undersigned registrant pursuant to this registration statement, regardless of the underwriting method used to sell the securities to the purchaser, if the securities are offered or sold to such purchaser by means of any of the following communications, the undersigned registrant will be a seller to the purchaser and will be considered to offer or sell such securities to such purchaser:

**(i)** Any preliminary prospectus or prospectus of the undersigned registrant relating to the offering required to be filed pursuant to Rule 424;

**(ii)** Any free writing prospectus relating to the offering prepared by or on behalf of the undersigned registrant or used or referred to by the undersigned registrant;

**(iii)** The portion of any other free writing prospectus relating to the offering containing material information about the undersigned registrant or its securities provided by or on behalf of the undersigned registrant; and

**(iv)** Any other communication that is an offer in the offering made by the undersigned registrant to the purchaser.

**2.** The undersigned registrant hereby undertakes that, for purposes of determining any liability under the Securities Act, each filing of the registrant's annual report pursuant to Section 13(a) or Section 15(d) of the Exchange Act (and, where applicable, each filing of an employee benefit plan's annual report pursuant to section 15(d) of the Exchange Act) that is incorporated by reference in the Registration Statement shall be deemed to be a new registration statement relating to the securities offered herein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

**3.** Insofar as indemnification for liabilities arising under the Securities Act may be permitted to directors, officers and controlling persons of the registrant pursuant to the foregoing provisions, or otherwise, the registrant has been advised that in the opinion of the Securities and Exchange Commission such indemnification is against public policy as expressed in the Securities Act and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the registrant of expenses incurred or paid by a director, officer or controlling person of the registrant in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, the registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Securities Act and will be governed by the final adjudication of such issue.

**SIGNATURES**

Pursuant to the requirements of the Securities Act of 1933, as amended, the Registrant certifies that it has reasonable grounds to believe that it meets all of the requirements for filing on Form S-8 and has duly caused this Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of San Ramon, State of California, on March 24, 2006.

**SBE, INC.**

By: /s/ David W. Brunton  
David Brunton  
Chief Financial Officer, VP, Finance and Secretary

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**POWER OF ATTORNEY**

**KNOW ALL PERSONS BY THESE PRESENTS**, that each person whose signature appears below constitutes and appoints Kenneth G. Yamamoto and David W. Brunton, and each or any one of them, his true and lawful attorney-in-fact and agent, with full power of substitution and resubstitution, for him and in his name, place and stead, in any and all capacities, to sign any and all amendments (including post-effective amendments) to this Registration Statement, and to file the same, with all exhibits thereto, and other documents in connection therewith, with the Securities and Exchange Commission, granting unto said attorneys-in-fact and agents, and each of them, full power and authority to do and perform each and every act and thing requisite and necessary to be done in connection therewith, as fully to all intents and purposes as he might or could do in person, hereby ratifying and confirming all that said attorneys-in-fact and agents, or any of them, or their or his substitutes or substitute, may lawfully do or cause to be done by virtue hereof.

Pursuant to the requirements of the Securities Act of 1933, this Registration Statement has been signed by the following persons in the capacities and on the dates indicated.

<b>Signature</b>	<b>Title</b>	<b>Date</b>
/s/ Kenneth G. Yamamoto (Kenneth G. Yamamoto)	Chief Executive Officer, President and Director (principal executive officer)	March 24, 2006
/s/ <u>David W. Brunton</u> (David W. Brunton)	Chief Financial Officer, Vice President, Finance and Secretary (principal financial and accounting officer)	March 24, 2006
/s/ <u>John Reardon</u> (John Reardon)	Director	March 24, 2006
/s/ <u>Ronald J. Ritchie</u> (Ronald J. Ritchie)	Director	March 24, 2006
/s/ <u>M.M. Stuckey</u> (M.M. (Mel) Stuckey)	Director	March 24, 2006
/s/ <u>William B. Heye, Jr.</u> William B. Heye, Jr.	Director	March 24, 2006

**EXHIBIT INDEX**

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