

M e m o r a n d u m

Date: March 6, 2008

To: The Commission
(Meeting of March 13, 2008)

From: Pamela C. Loomis, Deputy Director
Office of Governmental Affairs (OGA) — Sacramento

Subject: **AB 873 (Davis) – Public utilities: procurement: Utility Supplier Diversity Program**
As amended: January 18, 2008

LEGISLATIVE SUBCOMMITTEE RECOMMENDATION: SUPPORT

SUMMARY OF BILL:

This bill would extend the minority-, women-, and disabled veteran-owned business enterprises procurement to water corporations with gross annual revenues of more than \$25,000,000 and would encourage each electrical, gas, water, and telephone corporations that is not required to submit a plan to voluntarily adopt a plan for increasing women, minority, and disabled veteran business enterprise procurement in all categories.

SUMMARY OF SUPPORTING ARGUMENTS FOR RECOMMENDATION:

This bill will simply codify steps already voluntarily taken by the six largest California Class-A water utilities, which in 2004 entered into a memorandum of intent (MOI) with the CPUC to voluntarily implement a Utility Supplier Diversity Program (USDP) within the water industry.

SUMMARY OF SUGGESTED AMENDMENTS:

None.

DIVISION ANALYSIS (CSID):

- If the bill were enacted, it would incorporate by reference the water companies and remove any ambiguities of the MOI entered into by the water companies in April 2004.

- By incorporating the water companies, the bill would provide parity treatment of electrical, gas, and telephone corporations that are under the supervision of the Commission.
- According to DRA, cost-of-service regulated corporations, including water utilities and investor-owned gas and electric utilities, recover through rates the expenses associated with utility supplier diversity programs in compliance with General Order 156.
- Pursuant to Public Utilities Code § 8283 (d), water companies with gross annual revenues exceeding \$25,000,000 would have to furnish an annual report to the commission regarding the implementation of their utility supplier diversity programs.
- Pursuant to Public Utilities Code § 8283 (e), the CPUC would be required to report on the progress of activities under-taken by the water companies in its annual report to the Legislature on September 1 of each year.

PROGRAM BACKGROUND:

The six California Class-A water utilities – California American Water Company; California Water Service Company; San Gabriel Valley Water Company; San Jose Water Company; Southern California Water Company and Suburban Water Company (collectively referred to as the “Water Utilities”) entered into a memorandum of intent (MOI) dated April 23, 2004, whereby they agreed to voluntarily implement a Utility Supplier Diversity Program (USDP) within the water industry. This, in effect, required the water utilities to comply with G.O. 156.

LEGISLATIVE HISTORY:

- Since its inception in 1986, Article 5 of the Public Utilities Code § 8281 through 8286 – Women and Minority Business Enterprises – was amended in 1990, to include disabled veteran business enterprises (DVBE).
- Thereafter, the Commission opened R.91-02-011, which resulted in Decision 93-06-041, dated June 3, 1993, amending General Order 156 to incorporate the terms of a settlement agreement requiring utilities to have an annual goal of increasing procurement of goods and services from certified DVBE. However, the portion of the program relating to DVBE was approved without specific numeric goals, but instead with an overall goal of simply increasing procurement from DVBE on an annual basis.

FISCAL IMPACT:

Minor and absorbable, since the CPUC already receives similar plans pursuant to the Memorandum of Intent with the six affected water companies.

STATUS:

AB 873 passed the Assembly 47-27. It is now awaiting hearing in the Senate Committee on Energy, Utilities and Communications.

SUPPORT/OPPOSITION:

None on file.

STAFF CONTACTS:

Pamela Loomis
Office of Governmental Affairs

pcl@cpuc.ca.gov
(916) 327-8441

Phil Enis, Program Manager
Consumer Services & Information Division

pje@cpuc.ca.gov
(415) 703-4112

Date: March 6, 2008

BILL LANGUAGE:

BILL NUMBER: AB 873 AMENDED
BILL TEXT

AMENDED IN ASSEMBLY JANUARY 18, 2008
AMENDED IN ASSEMBLY JANUARY 7, 2008

INTRODUCED BY Assembly Member Davis

FEBRUARY 22, 2007

An act to amend Sections 8281, 8283, 8284, and 8285 of the Public Utilities Code, relating to public utilities.

LEGISLATIVE COUNSEL'S DIGEST

AB 873, as amended, Davis. Public utilities: procurement.

Under existing law, the Public Utilities Commission has regulatory authority over public utilities, including electrical, gas, water, and telephone corporations. Existing law authorizes the commission to establish rules for all public utilities, subject to control by the Legislature. Existing law directs the commission to require every electrical, gas, and telephone corporation with annual gross revenues exceeding \$25,000,000, and their regulated subsidiaries and affiliates, to implement a program developed by the commission to encourage, recruit, and utilize minority-, women-, and disabled veteran-owned business enterprises, as defined, in the procurement of contracts from those corporations or from their regulated subsidiaries and affiliates, and to require the reporting of certain information. The commission has, by rulemaking, adopted General Order 156, applicable to certain electrical, gas, and telephone corporations, to effectuate these requirements.

This bill would extend the minority-, women-, and disabled veteran-owned business enterprises procurement requirements to water corporations ~~with 10,000 or more service connections~~

with gross annual revenues of more than \$25,000,000

and would encourage each electrical, gas, water, and telephone corporation that is not required to submit a plan to voluntarily adopt a plan for increasing women, minority, and disabled veteran business enterprise procurement in all categories. Because a violation of certain of the requirements by an electrical, gas, or telephone corporation is a crime, this bill would impose a state-mandated local program by expanding the definition of a crime to include violations by a water corporation ~~with 10,000 or more service connections~~ *with gross annual revenues of more than \$25,000,000* .

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.

State-mandated local program: yes.

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

SECTION 1. Section 8281 of the Public Utilities Code is amended to read:

8281. (a) The Legislature hereby finds and declares that the essence of the American economic system of private enterprise is free competition. Only through full and free competition can free markets, reasonable and just prices, free entry into business, and opportunities for the expression and growth of personal initiative and individual judgment be assured. The preservation and expansion of that competition is basic to the economic well-being of this state and that well-being cannot be realized unless the actual and potential capacity of women, minority, and disabled veteran business enterprises is encouraged and developed. Therefore, it is the declared policy of the state to aid the interests of women, minority, and disabled veteran business enterprises in order to preserve reasonable and just prices and a free competitive enterprise, to ensure that a fair proportion of the total purchases and contracts or subcontracts for commodities, supplies, technology, property, and services for regulated public utilities are awarded to women, minority, and disabled veteran business enterprises, and to maintain and strengthen the overall economy of the state.

(b) (1) The Legislature finds all of the following:

(A) The opportunity for full participation in our free enterprise system by women, minority, and disabled veteran business enterprises is essential if this state is to attain social and economic equality for those businesses and improve the functioning of the state economy.

(B) Public agencies which have established short- and long-range women, minority, and disabled veteran business enterprise goals are awarding 30 percent or more of their contracts to these business enterprises.

(C) Women, minority, and disabled veteran business enterprises have traditionally received less than a proportionate share of regulated public utility procurement contracts.

(D) It is in the state's interest to expeditiously improve the economically disadvantaged position of women, minority, and disabled veteran business enterprises.

(E) The position of these businesses can be improved by providing long-range substantial goals for procurement by regulated public utilities of technology, equipment, supplies, services, materials, and construction work from women, minority, and disabled veteran businesses.

(F) That procurement also benefits the regulated public utilities and consumers of the state by encouraging the expansion of the number of suppliers for procurements, thereby encouraging competition among the suppliers and promoting economic efficiency in the process.

(2) It is the purpose of this article to do all of the following:

(A) Encourage greater economic opportunity for women, minority, and disabled veteran business enterprises.

(B) Promote competition among regulated public utility suppliers in order to enhance economic efficiency in the procurement of electrical, gas, water, and telephone corporation contracts and contracts of their commission-regulated subsidiaries and affiliates.

(C) Clarify and expand the program for the procurement by regulated public utilities of technology, equipment, supplies, services, materials, and construction work from women, minority, and disabled veteran business enterprises.

~~SEC. 2. Section 8283 of the Public Utilities Code is amended to read:~~

~~8283. (a) The commission shall require each electrical, gas, and telephone corporation with gross annual revenues exceeding twenty five million dollars (\$25,000,000), each water corporation with 10,000 or more service connections, and their commission regulated subsidiaries and affiliates, to submit annually, a detailed and verifiable plan for increasing women, minority, and disabled veteran business enterprise procurement in all categories.~~

~~(b) These annual plans shall include short and long term goals and timetables, but not quotas, and shall include methods for encouraging both prime contractors and grantees to engage women, minority, and disabled veteran business enterprises in subcontracts in all categories which provide subcontracting opportunities.~~

~~(c) The commission shall establish guidelines for all electrical, gas, and telephone corporations with gross annual revenues exceeding twenty five million dollars (\$25,000,000), all water corporations with 10,000 or more service connections, and their commission regulated subsidiaries and affiliates, to be utilized in establishing programs pursuant to this article.~~

~~(d) Each electrical, gas, and telephone corporation with gross annual revenues exceeding twenty five million dollars (\$25,000,000) and each water corporation with 10,000 or more service connections shall furnish an annual report to the commission regarding the implementation of programs established pursuant to this article in a form that the commission shall require, and at the time that the commission shall annually designate.~~

~~(e) The commission shall provide a report to the Legislature on September 1 of each year, on the progress of activities undertaken by each electrical, gas, and telephone corporation with gross annual revenues exceeding twenty five million dollars (\$25,000,000), and all water corporations with 10,000 or more service connections, pursuant to this article in the implementation of women, minority, and disabled veterans business enterprise development programs. The commission shall recommend a program for carrying out the policy declared in this article, together with recommendations for legislation that it deems necessary or desirable to further that policy.~~

~~(f) The Legislature declares that each electrical, gas, water, and telephone corporation that is not required to submit a plan pursuant to subdivision (a) is encouraged to voluntarily adopt a plan for increasing women, minority, and disabled veteran business enterprise procurement in all categories.~~

~~SEC. 3. Section 8284 of the Public Utilities Code is amended to read:~~

~~8284. (a) The commission shall, by rule or order, adopt criteria for verifying and determining the eligibility of women, minority, and disabled veteran business enterprises for procurement contracts.~~

~~(b) The commission shall develop, and require each electrical, gas, and telephone corporation with gross annual revenues exceeding twenty five million dollars (\$25,000,000), each water corporations with 10,000 or more service connections, and their commission regulated subsidiaries and affiliates to implement, an~~

~~outreach program to inform and recruit women, minority, and disabled veteran business enterprises to apply for procurement contracts under this article.~~

~~SEC. 4. Section 8285 of the Public Utilities Code is amended to read:~~

~~8285. Any person or corporation, through its directors, officers, or agents, which falsely represents a business as a women, minority, or disabled veteran business enterprise in the procurement of, or attempt to procure, contracts from an electrical, gas, or telephone corporation with gross annual revenues exceeding twenty five million dollars (\$25,000,000), a water corporation with 10,000 or more service connections, or a commission regulated subsidiary or affiliate subject to this article, shall be punished by a fine of not more than five thousand dollars (\$5,000), by imprisonment in a county jail for not more than one year or in the state prison, or by both that fine and imprisonment. In the case of a corporation, the fine or imprisonment, or both, shall be imposed on each director, officer, or agent responsible for the false statements.~~

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(b) These annual plans shall include short- and long-term goals and timetables, but not quotas, and shall include methods for encouraging both prime contractors and grantees to engage women, minority, and disabled veteran business enterprises in subcontracts in all categories which provide subcontracting opportunities.

(c) The commission shall establish guidelines for all electrical, gas, water, and telephone corporations with gross annual revenues exceeding twenty-five million dollars (\$25,000,000) and their commission-regulated subsidiaries and affiliates, to be utilized in establishing programs pursuant to this article.

(d) Every electrical, gas, water, and telephone corporation with gross annual revenues exceeding twenty-five million dollars (\$25,000,000) shall furnish an annual report to the commission regarding the implementation of programs established pursuant to this article in a form that the commission shall require, and at the time that the commission shall annually designate.

(e) The commission shall provide a report to the Legislature on September 1 of each year, on the progress of activities undertaken by each electrical, gas, water, and telephone corporation with gross annual revenues exceeding twenty-five million dollars (\$25,000,000) pursuant to this article in the implementation of women, minority, and disabled veterans business enterprise development programs. The commission shall recommend a program for carrying out the policy declared in this article, together with recommendations for legislation that it deems necessary or desirable to further that policy.

(f) *The Legislature declares that each electrical, gas, water, and telephone corporation that is not required to submit a plan pursuant to subdivision (a) is encouraged to voluntarily adopt a plan for increasing women, minority, and disabled veteran business enterprise procurement in all categories.*

SEC. 3. Section 8284 of the Public Utilities Code is amended to read:

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SEC. 4. Section 8285 of the Public Utilities Code is amended to read:

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SEC. 5. 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.