

M e m o r a n d u m

Date: July 22, 2008

To: The Commission
(Meeting of July 31, 2008)

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

Subject: **SB 1737 (Steinberg) - Changes to WMDVBE Programs to Include Persons with Developmental Disabilities As amended July 14, 2008**

LEGISLATIVE SUBCOMMITTEE RECOMMENDATION: SUPPORT

SUMMARY OF BILL:

This bill would expand the California Public Utilities Commission's Utility Supplier Diversity Program (USDP) to include developmentally disabled business enterprises.

SUMMARY OF SUPPORTING ARGUMENTS FOR RECOMMENDATION:

This bill would create more diverse procurement options for corporations regulated by the California Public Utilities Commission (CPUC) that are subject to General Order 156, while enhancing employment, job-training, and career opportunities for individuals with developmental disabilities.

SUMMARY OF SUGGESTED AMENDMENTS:

None.

DIVISION ANALYSIS (Consumer Services and Information Division):

- This bill is sponsored by PRIDE Industries, a community-based nonprofit that employs around 2,500 developmentally disabled persons. They put customer information packets together for Comcast and Surewest. Now that these utilities are voluntarily participating in the CPUC's USDP Program, PRIDE Industries is concerned that its lack of eligibility for the program will jeopardize its current business service contracts.

- This bill would create a new category of business enterprise eligible for the CPUC's USDP Program - persons with developmental disabilities – which is defined in proposed PU Code section 8282(f) as either of the following:
 1. A business enterprise that is at least 51% owned by a developmentally disabled person(s), and the operations are managed and controlled by one or more developmentally disabled persons.
 - This definition mirrors the G.O. 156 eligibility definitions for women-, minority-, and disabled veteran-owned business enterprises with one exception.
 2. A community-based nonprofit organization, accredited by the CPUC on Accreditation of Rehabilitation Facilities (CARF), that employs persons with developmental disabilities, pays prevailing wages, and is licensed or certified by either the CA Industrial Welfare Commission (IWC), the CA Department of Rehabilitation, or pursuant to § 214 of Title 29 of the US Code.
 - This second option is a practical recognition of the fact that there are many more community-based nonprofits like PRIDE Industries that provide employment opportunities for the developmentally disabled than business enterprises owned and operated by developmentally disabled persons.
- In order to implement the prevailing wage requirements of this bill, it would require:
 1. persons with developmental disabilities business enterprises to submit to the Department of Rehabilitation lists of their prevailing wages;
 2. the Department of Rehabilitation to maintain a compilation of the prevailing wage lists; and
 3. the CPUC to obtain the list from the Department of Rehabilitation annually.
- The CPUC would have the USDP's Clearinghouse coordinate with the Department of Rehabilitation for data on eligible persons with developmental disabilities business enterprises to upload to the Clearinghouse database of business enterprises eligible for the Supplier Diversity Program.

PROGRAM BACKGROUND:

- The CPUC's Utility Supplier Diversity Program (USDP), sometimes called the Women-Owned, Minority-Owned, and Disabled Veteran-Owned Business Enterprise (WMDVBE) program, recognizes that diversity benefits utilities, suppliers, ratepayers, California's economy, and society in general. CPUC-regulated natural gas, electric, and telecommunications companies with gross annual revenues exceeding \$25 million

must submit annual detailed and verifiable plans for increasing women and minority business enterprise procurement. The plans should include short and long term goals and timetables.

- General Order (GO) 156 sets forth rules and regulations for utilities' WMDVBE programs. GO 156 requires participating utilities to inform, recruit, and obtain at least 15% of their products and services from MBEs and 5% from WBEs. A subsequent CPUC decision, D. 95-12-045, established a 1.5% goal for disabled veteran business enterprises (DVBEs).
- The CPUC reports annually to the California Legislature on the results of the utilities' procurement diversity programs subject to GO 156. In the report, significant developments are highlighted and relevant trends are analyzed. Results are provided for MBE, WBE, and DVBE procurement, in both large and small utility company categories. The report includes an extensive set of tables providing detailed statistical information for comparison purposes among utilities.

LEGISLATIVE HISTORY:

- AB 873 (Davis) would expand the USDP to include the large water utilities. The CPUC is officially in support of this bill, which is currently awaiting hearing in the Senate Appropriations Committee.

FISCAL IMPACT:

- The fiscal impact to the CPUC will be minor and absorbable.

STATUS:

- This bill is currently awaiting hearing in the Assembly Appropriations Committee.

SUPPORT/OPPOSITION:

Support: Pride Industries, Inc. (sponsor)

Opposition: None on file.

STAFF CONTACT:

Pam Loomis, Director
Office of Governmental Affairs

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

BILL LANGUAGE:

BILL NUMBER: SB 1737 AMENDED
BILL TEXT

AMENDED IN ASSEMBLY JULY 14, 2008
AMENDED IN ASSEMBLY JULY 2, 2008
AMENDED IN ASSEMBLY JUNE 23, 2008
AMENDED IN ASSEMBLY JUNE 11, 2008
AMENDED IN SENATE MARCH 27, 2008

INTRODUCED BY Senator Steinberg
(Principal coauthor: Assembly Member Huffman)

FEBRUARY 22, 2008

An act to amend Sections 8281, 8282, 8283, 8284, 8285, and 8286 of
, and to add Section 8287 to, the Public Utilities Code,
relating to public utilities.

LEGISLATIVE COUNSEL'S DIGEST

SB 1737, as amended, Steinberg. Public utilities: procurement:
persons with developmental disabilities business enterprises.

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 persons with developmental disabilities business enterprises, as defined , and would authorize additional criteria to be considered with respect to persons with developmental disabilities business enterprises, in order to facilitate their participation in contract procurement . The bill would make it a crime to falsely represent a business as a persons with developmental disabilities business enterprise, thereby imposing a state-mandated local program by creating a new crime.

The bill would require the Department of Rehabilitation to compile a list of prevailing wages submitted by persons with developmental disabilities business enterprises wishing to be considered for contract procurement, and would require the commission to obtain the compilation annually from the department.

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, disabled veteran, and persons with developmental disabilities business enterprises is encouraged and developed. Therefore, it is the declared policy of the state to aid the interests of women, minority, disabled veteran, and persons with developmental disabilities 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 utilities are awarded to women, minority, disabled veteran, and persons with developmental disabilities 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, disabled veteran, and persons with developmental disabilities 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, disabled veteran, and persons with developmental disabilities 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, disabled veteran, and persons with developmental disabilities 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, disabled veteran, and persons with developmental disabilities ~~businesses~~

business enterprises .

(F) That procurement also benefits the 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, disabled veteran, and persons with developmental disabilities business enterprises.

(B) Promote competition among regulated public utility suppliers in order to enhance economic efficiency in the procurement of electrical, gas, 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 8282 of the Public Utilities Code is amended to read:

8282. For the purposes of this article, the following definitions apply:

(a) "Control" means exercising the power to make policy decisions.

(b) "Developmental disability" means a "developmental disability" as defined in subdivision (a) of Section 4512 of the Welfare and Institutions Code, that renders the affected person eligible to participate in rehabilitation, education, or social services programs conducted by or on behalf of a public agency.

(c) "Disabled veteran business enterprise" has the same meaning as defined in subdivision (g) of Section 999 of the Military and Veterans Code.

(d) "Minority business enterprise" means a business enterprise that is at least 51 percent owned by a minority group or groups; or, in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more minority groups, and whose management and daily business operations are controlled by one or more of those individuals. The contracting utility shall presume that minority includes African Americans, Hispanic Americans, Native Americans, and Asian Pacific Americans.

(e) "Operate" means being actively involved in the day-to-day management and not merely officers or directors.

(f) "Persons with developmental disabilities business enterprise" means either of the following:

(1) A business enterprise that is at least 51 percent owned by one or more persons with a developmental disability or, in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more persons with a developmental disability, and the management and daily operations of the business are controlled by one or more persons with a developmental disability.

(2) (A) A community-based nonprofit organization that employs persons with a developmental disability that ~~is either~~ *complies with subparagraph (B)* and is any of the following:

~~(A)~~

(i) An organization with a special license issued to it under Section 1191.5 of the Labor Code.

(ii) *An organization that operates under a special certificate issued pursuant to Section 214 of Title 29 of the United States Code.*

~~—(B)~~

(iii) An organization that meets the criteria for providing habilitation services pursuant to Chapter 13 (commencing with Section 4850) of Division 4.5 of the Welfare and Institutions Code.

(B) (i) *The community-based nonprofit organization pays its employees prevailing wages, with no employee receiving less than minimum wage.*

(ii) *The community-based nonprofit organization is accredited by the Commission on Accreditation of Rehabilitation Facilities (CARF).*

(g) "Women business enterprise" means a business enterprise that is at least 51 percent owned by a woman or women; or, in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more women; and whose management and daily business operations are controlled by one or more of those individuals.

SEC. 3. 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) and their commission-regulated subsidiaries and affiliates, to submit annually, a detailed and verifiable plan for increasing women, minority, disabled veteran, and persons with developmental disabilities 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, disabled veteran, and persons with developmental disabilities 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) and their commission-regulated subsidiaries and affiliates, to be utilized in establishing programs pursuant to this article.

(d) Every electrical, gas, 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, 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, disabled veterans, and persons with developmental disabilities 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.

SEC. 4. 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, disabled veteran, and persons with developmental disabilities business enterprises for procurement contracts.

(b) The commission shall develop, and require every electrical, gas, and telephone corporation with gross annual revenues exceeding twenty-five million dollars (\$25,000,000) and their commission-regulated subsidiaries and affiliates to implement, an outreach program to inform and recruit women, minority, disabled veteran, and persons with developmental disabilities business enterprises to apply for procurement contracts under this article.

SEC. 5. 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, disabled veteran, or persons with developmental disabilities 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), 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 every director, officer, or agent responsible for the false statements.

SEC. 6. Section 8286 of the Public Utilities Code is amended to read:

8286. (a) In order to facilitate the participation of women-owned businesses, minority-owned businesses, persons with developmental disabilities businesses, and small businesses in contract procurement, any corporation subject to this article may consider the following measures to include those businesses in all phases of their contracting:

~~—(a)~~

(1) Timely or progressive payments to those businesses.

~~—(b)~~

(2) An amendment of the performance bond requirements when past performance within a specified area of business justifies that consideration.

~~—(c)~~

(3) The provision of assistance to those businesses by securing contract payments to those businesses with letters of credit, negotiable securities, or other financing arrangements or measures.

(b) In order to facilitate the participation of persons with developmental disabilities business enterprises in contract procurement, any corporation subject to this article, in addition to the measures in subdivision (a), may also consider allowing for payment of prevailing wages to the employees of the persons with developmental disabilities business enterprises, with no employee receiving less than minimum wage, on work performed on contracts made pursuant to this article.

SEC. 7. Section 8287 is added to the Public Utilities Code , to read:

8287. (a) *To be eligible to be awarded contracts made pursuant to this article, a persons with developmental disabilities business enterprise shall submit a list of the prevailing wages it pays to its employees to the Department of Rehabilitation.*

(b) *The Department of Rehabilitation shall maintain a compilation of the prevailing wage lists submitted pursuant to subdivision (a).*

(c) *The commission shall obtain annually from the Department of Rehabilitation the compilation maintained pursuant to subdivision (b).*

~~SEC. 7.~~ SEC. 8. 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.