

STATE OF CALIFORNIA

Public Utilities Commission
San Francisco

M e m o r a n d u m

Date: May 18, 2010

To: The Commission
(Meeting of May 20, 2010)

From: Edward Randolph, Director
Office of Governmental Affairs (OGA) — Sacramento

Subject: **AB 2758 (Bradford) – Public utilities and cable television corporations: procurement.**
As Amended: April 27, 2010

LEGISLATIVE SUBCOMMITTEE RECOMMENDATION: SUPPORT

SUMMARY OF BILL:

This bill would require cable corporations to be included as part of the Commission's Utility Supplier Diversity Program. It also adds language to include the procurement of services for regulated public utilities, including but not limited to, renewable energy, wireless telecommunications, broadband, smart grid, and rail projects.

SUMMARY OF SUPPORTING ARGUMENTS FOR RECOMMENDATION:

The Commission supports the bill to include cable corporations as part of the Commission's Utility Supplier Diversity Program. Presently, we are asking the cable companies to voluntarily report their diversity programs. These companies also participated in the Commission's annual diversity en banc in 2009 and are once again invited to attend and participate in the 2010 en banc.

Furthermore, the Commission, in its ongoing rulemaking, has already proposed to include all electric procurement as part of the utilities annual reporting of which renewable energy is one part of.

SUMMARY OF SUGGESTED AMENDMENTS:

None.

DIVISION ANALYSIS (Business & Community Outreach Division):

By adding broadband, by definition cable service (television, high speed internet, and phone service), it would clarify existing law, policy and practice over the cable/broadband industry in the inclusion of those services in the utility supplier diversity program.

The wireless industry is already required to annually report their diversity program achievements and as an industry they continue to comply with the process. The issue is not their reporting, but the fact that they have not met the 21.5% procurement goal.

The language is unclear with regard to regulated utilities procurement of "rail projects". It is not a common practice for the regulated utilities to procure services for rail projects.

PROGRAM BACKGROUND:

In General Order 156, the Commission established voluntary procurement goals for each covered utility of 5% for woman-owned, 15% for minority-owned and 1.5% for disabled veteran-owned business enterprises. General Order 156 was created over two decades ago to encourage a fair proportion of total utility contracts and subcontracts for products and services to be awarded to women, minority, and disabled veteran business enterprises. The purposes of this statute are to:

1. Encourage greater economic opportunity for women, minority, and disabled veteran business enterprises.
2. Promote competition among regulated public utility suppliers to enhance economic efficiency in the procurement of electrical, gas, and telephone corporations' contracts; and
3. Clarify and expand the program for the utilities' procurement of products and services from diverse enterprises.

LEGISLATIVE HISTORY:

None.

FISCAL IMPACT:

None.

STATUS:

AB 2758 is scheduled to be heard in the Assembly Appropriations Committee on May 19, 2010.

SUPPORT/OPPOSITION:

Support: American GI Forum of California
Asian Business Association
Black Business Association
Black Economic Council (BEC)
CHARO Community Development Corporation
Economic Business Development, Inc. (EBD)
Greenlining Institute (Sponsor)
Hispanic Chamber of Commerce Alameda County
Latino Business Chamber of Greater Los Angeles
Mabuhay Alliance
National Association of Filipino American Associations
OurWeekly
TELACU

Opposition: California Cable & Telecommunications Association (CCTA)

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Date: May 18, 2010

BILL LANGUAGE:

BILL NUMBER: AB 2758 AMENDED
BILL TEXT

AMENDED IN ASSEMBLY APRIL 27, 2010
AMENDED IN ASSEMBLY APRIL 12, 2010

INTRODUCED BY Assembly Member Bradford

FEBRUARY 19, 2010

An act to amend the heading of Article 5 (commencing with Section 8281) of Chapter 7 of Division 4 of, and to amend Sections 8281, ~~8282,~~ 8283, 8284, 8285, and 8286 of, the Public Utilities Code, relating to Public Utilities Commission regulated corporations.

LEGISLATIVE COUNSEL'S DIGEST

AB 2758, as amended, Bradford. Public utilities and cable television corporations: ~~procurement: veterans.~~
procurement.

(1) Under existing law, the Public Utilities Commission has regulatory authority over public utilities, including electrical, gas, water, and telephone corporations, and cable television corporations, as provided. Existing law directs the commission to require every electrical, gas, water, 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, by rulemaking, adopted General Order 156, applicable to certain electrical, gas, and telephone corporations, to effectuate these requirements.

This bill would make cable television corporations with annual gross revenues exceeding \$25,000,000 subject to these requirements ~~and would require the corporations subject to these requirements to expand the above programs to include veteran business enterprises, as defined~~ . The bill would also require the corporations subject to these requirements to provide information to the commission about which procurements are made with women, minority, ~~veteran,~~ and disabled veteran business enterprises with at least a majority of the enterprise's workforce in California.

Under existing law, a violation of any provision of the Public Utilities Act or any rules or orders of the commission is a crime. In addition, any person or corporation who falsely represents a business as a woman, minority, or disabled veteran business enterprise for the purposes of the programs discussed above is

subject to criminal penalties.

Because a violation of the requirements of the bill would be a crime under those provisions, this bill would impose a state-mandated local program.

(2) 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. The heading of Article 5 (commencing with Section 8281) of Chapter 7 of Division 4 of the Public Utilities Code is amended to read:

Article 5. Women, Minority, ~~Veteran,~~ and
Disabled Veteran Business Enterprises

SEC. 2. 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, open, and transparent competition. Only through free, open, and transparent 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, ~~veteran,~~ 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, ~~veteran,~~ 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, including, but not limited to, renewable energy, wireless telecommunications, broadband, smart grid, and rail projects, are awarded to women, minority, ~~veteran,~~ 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, ~~veteran,~~ 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 and some regulated utilities 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, ~~veteran,~~ and disabled veteran business enterprises have traditionally received less than a proportionate share of regulated public utility procurement contracts, especially in renewable energy, wireless telecommunications, broadband, smart grid, and rail projects.

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

(E) The position of these businesses can be substantially improved by providing long-range substantial goals for procurement by regulated public utilities of technology, equipment, supplies, services, materials, and construction work, especially in renewable energy, wireless telecommunications, broadband, smart grid, and rail projects, from women, minority, ~~veteran,~~ 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.

(G) That the long-term economic viability of this state depends substantially upon the ability of renewable energy, wireless telecommunications, broadband, smart grid, and rail projects to incorporate women, minority, ~~veteran,~~ and disabled veteran businesses into those projects.

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

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

~~SEC. 3. Section 8282 of the Public Utilities Code is amended to read:~~

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

~~(a) "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.~~

~~(b) "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 Black Americans, Hispanic Americans, Native Americans, and Asian Pacific Americans.~~

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

~~—(d) "Control" means exercising the power to make policy decisions.~~

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

~~—(f) "Veteran business enterprise" means a business enterprise that meets the requirements of a "disabled veteran business enterprise" except that the requirement that the veterans qualifying the business under this article need not be disabled.~~

~~SEC. 4.~~ SEC. 3. Section 8283 of the Public Utilities Code is amended to read:

8283. (a) The commission shall require each electrical, gas, water, cable television, 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 procurement from women, minority, ~~veteran,~~ and disabled veteran business enterprises in all categories, including, but not limited to, renewable energy, wireless telecommunications, broadband, smart grid, and rail projects.

(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, ~~veteran,~~ and disabled veteran business enterprises in subcontracts in all categories which provide subcontracting opportunities, including, but not limited to, renewable energy, wireless telecommunications, broadband, smart grid, and rail projects.

(c) The commission shall establish guidelines for all electrical, gas, water, cable television, 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, cable television, 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. These corporations shall also provide information to the commission about which procurements are made with women, minority, ~~veteran,~~ and disabled veteran business enterprises with at least a majority of the enterprise's workforce in California.

(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, cable television, 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, ~~veteran~~ and disabled veterans business enterprise development programs. The report shall include information about which procurements are made with women, minority, ~~veteran,~~ and disabled veteran business enterprises with at least a majority of the enterprise's workforce in

California. 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, cable television, 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, ~~veteran,~~ and disabled veteran business enterprise procurement in all categories.

~~SEC. 5.~~ 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, ~~veteran,~~ and disabled veteran business enterprises for procurement contracts.

(b) The commission shall develop, and require every electrical, gas, water, cable television, 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, ~~veteran,~~ and disabled veteran business enterprises to apply for procurement contracts under this article.

~~SEC. 6.~~ 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, ~~veteran,~~ or disabled veteran business enterprise in the procurement of, or attempt to procure, contracts from an electrical, gas, water, cable television, 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. 7.~~ SEC. 6. Section 8286 of the Public Utilities Code is amended to read:

8286. In order to facilitate the participation of women-owned businesses, minority-owned businesses, ~~veteran-owned businesses,~~ disabled veteran-owned 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) Timely or progressive payments to those businesses.

(b) An amendment of the performance bond requirements so that bond requirements of electrical, gas, cable television, and telephone corporations do not prohibitively burden those businesses from procuring the corporation's business.

(c) 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.

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