

AMENDED IN ASSEMBLY APRIL 27, 2010

AMENDED IN ASSEMBLY APRIL 12, 2010

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

ASSEMBLY BILL

No. 2758

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:

1 SECTION 1. The heading of Article 5 (commencing with
2 Section 8281) of Chapter 7 of Division 4 of the Public Utilities
3 Code is amended to read:

4
5 Article 5. Women, Minority, ~~Veteran~~, and Disabled Veteran
6 Business Enterprises

7
8 SEC. 2. Section 8281 of the Public Utilities Code is amended
9 to read:

10 8281. (a) The Legislature hereby finds and declares that the
11 essence of the American economic system of private enterprise is
12 free, open, and transparent competition. Only through free, open,
13 and transparent competition can free markets, reasonable and just

1 prices, free entry into business, and opportunities for the expression
2 and growth of personal initiative and individual judgment be
3 assured. The preservation and expansion of that competition is
4 basic to the economic well-being of this state and that well-being
5 cannot be realized unless the actual and potential capacity of
6 women, minority, ~~veteran~~, and disabled veteran business enterprises
7 is encouraged and developed. Therefore, it is the declared policy
8 of the state to aid the interests of women, minority, ~~veteran~~, and
9 disabled veteran business enterprises in order to preserve
10 reasonable and just prices and a free competitive enterprise, to
11 ensure that a fair proportion of the total purchases and contracts
12 or subcontracts for commodities, supplies, technology, property,
13 and services for regulated public utilities, including, but not limited
14 to, renewable energy, wireless telecommunications, broadband,
15 smart grid, and rail projects, are awarded to women, minority,
16 ~~veteran~~, and disabled veteran business enterprises, and to maintain
17 and strengthen the overall economy of the state.

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

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

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

28 (C) Women, minority, ~~veteran~~, and disabled veteran business
29 enterprises have traditionally received less than a proportionate
30 share of regulated public utility procurement contracts, especially
31 in renewable energy, wireless telecommunications, broadband,
32 smart grid, and rail projects.

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

36 (E) The position of these businesses can be substantially
37 improved by providing long-range substantial goals for
38 procurement by regulated public utilities of technology, equipment,
39 supplies, services, materials, and construction work, especially in
40 renewable energy, wireless telecommunications, broadband, smart

1 grid, and rail projects, from women, minority, ~~veteran~~, and disabled
2 veteran businesses.

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

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

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

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

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

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

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

27 ~~8282. For the purposes of this article, the following definitions~~
28 ~~apply:~~

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

35 ~~(b) "Minority business enterprise" means a business enterprise~~
36 ~~that is at least 51 percent owned by a minority group or groups;~~
37 ~~or, in the case of any publicly owned business, at least 51 percent~~
38 ~~of the stock of which is owned by one or more minority groups,~~
39 ~~and whose management and daily business operations are~~
40 ~~controlled by one or more of those individuals. The contracting~~

1 utility shall presume that minority includes Black Americans,
2 Hispanic Americans, Native Americans, and Asian Pacific
3 Americans.

4 (e) “Disabled veteran business enterprise” has the same meaning
5 as defined in Section 999 of the Military and Veterans Code.

6 (d) “Control” means exercising the power to make policy
7 decisions.

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

10 (f) “Veteran business enterprise” means a business enterprise
11 that meets the requirements of a “disabled veteran business
12 enterprise” except that the requirement that the veterans qualifying
13 the business under this article need not be disabled.

14 ~~SEC. 4.~~

15 *SEC. 3.* Section 8283 of the Public Utilities Code is amended
16 to read:

17 8283. (a) The commission shall require each electrical, gas,
18 water, cable television, and telephone corporation with gross annual
19 revenues exceeding twenty-five million dollars (\$25,000,000) and
20 their commission-regulated subsidiaries and affiliates, to submit
21 annually, a detailed and verifiable plan for increasing procurement
22 from women, minority, ~~veteran~~, and disabled veteran business
23 enterprises in all categories, including, but not limited to, renewable
24 energy, wireless telecommunications, broadband, smart grid, and
25 rail projects.

26 (b) These annual plans shall include short- and long-term goals
27 and timetables, but not quotas, and shall include methods for
28 encouraging both prime contractors and grantees to engage women,
29 minority, ~~veteran~~, and disabled veteran business enterprises in
30 subcontracts in all categories which provide subcontracting
31 opportunities, including, but not limited to, renewable energy,
32 wireless telecommunications, broadband, smart grid, and rail
33 projects.

34 (c) The commission shall establish guidelines for all electrical,
35 gas, water, cable television, and telephone corporations with gross
36 annual revenues exceeding twenty-five million dollars
37 (\$25,000,000) and their commission-regulated subsidiaries and
38 affiliates, to be utilized in establishing programs pursuant to this
39 article.

1 (d) Every electrical, gas, water, cable television, and telephone
 2 corporation with gross annual revenues exceeding twenty-five
 3 million dollars (\$25,000,000) shall furnish an annual report to the
 4 commission regarding the implementation of programs established
 5 pursuant to this article in a form that the commission shall require,
 6 and at the time that the commission shall annually designate. These
 7 corporations shall also provide information to the commission
 8 about which procurements are made with women, minority,
 9 ~~veteran~~, and disabled veteran business enterprises with at least a
 10 majority of the enterprise’s workforce in California.

11 (e) The commission shall provide a report to the Legislature on
 12 September 1 of each year, on the progress of activities undertaken
 13 by each electrical, gas, water, cable television, and telephone
 14 corporation with gross annual revenues exceeding twenty-five
 15 million dollars (\$25,000,000) pursuant to this article in the
 16 implementation of women, minority, ~~veteran~~ and disabled veterans
 17 business enterprise development programs. The report shall include
 18 information about which procurements are made with women,
 19 minority, ~~veteran~~, and disabled veteran business enterprises with
 20 at least a majority of the enterprise’s workforce in California. The
 21 commission shall recommend a program for carrying out the policy
 22 declared in this article, together with recommendations for
 23 legislation that it deems necessary or desirable to further that
 24 policy.

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

31 ~~SEC. 5.~~

32 *SEC. 4.* Section 8284 of the Public Utilities Code is amended
 33 to read:

34 8284. (a) The commission shall, by rule or order, adopt criteria
 35 for verifying and determining the eligibility of women, minority,
 36 ~~veteran~~, and disabled veteran business enterprises for procurement
 37 contracts.

38 (b) The commission shall develop, and require every electrical,
 39 gas, water, cable television, and telephone corporation with gross
 40 annual revenues exceeding twenty-five million dollars

1 (\$25,000,000) and their commission-regulated subsidiaries and
2 affiliates to implement, an outreach program to inform and recruit
3 women, minority, ~~veteran~~, and disabled veteran business enterprises
4 to apply for procurement contracts under this article.

5 ~~SEC. 6.~~

6 *SEC. 5.* Section 8285 of the Public Utilities Code is amended
7 to read:

8 8285. Any person or corporation, through its directors, officers,
9 or agents, which falsely represents a business as a women,
10 minority, ~~veteran~~, or disabled veteran business enterprise in the
11 procurement of, or attempt to procure, contracts from an electrical,
12 gas, water, cable television, or telephone corporation with gross
13 annual revenues exceeding twenty-five million dollars
14 (\$25,000,000), or a commission-regulated subsidiary or affiliate
15 subject to this article, shall be punished by a fine of not more than
16 five thousand dollars (\$5,000), by imprisonment in a county jail
17 for not more than one year or in the state prison, or by both that
18 fine and imprisonment. In the case of a corporation, the fine or
19 imprisonment, or both, shall be imposed on every director, officer,
20 or agent responsible for the false statements.

21 ~~SEC. 7.~~

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

24 8286. In order to facilitate the participation of women-owned
25 businesses, minority-owned businesses, ~~veteran-owned businesses~~,
26 disabled veteran-owned businesses, and small businesses in
27 contract procurement, any corporation subject to this article may
28 consider the following measures to include those businesses in all
29 phases of their contracting:

30 (a) Timely or progressive payments to those businesses.

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

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

38 ~~SEC. 8.~~

39 *SEC. 7.* No reimbursement is required by this act pursuant to
40 Section 6 of Article XIII B of the California Constitution because

1 the only costs that may be incurred by a local agency or school
2 district will be incurred because this act creates a new crime or
3 infraction, eliminates a crime or infraction, or changes the penalty
4 for a crime or infraction, within the meaning of Section 17556 of
5 the Government Code, or changes the definition of a crime within
6 the meaning of Section 6 of Article XIII B of the California
7 Constitution.

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