

AMENDED IN ASSEMBLY MAY 1, 2013
AMENDED IN ASSEMBLY APRIL 16, 2013
AMENDED IN ASSEMBLY APRIL 1, 2013
CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 366

Introduced by Assembly Member Holden

February 14, 2013

An act to ~~amend Section 8282 of~~ *add and repeal Sections 8282.1 and 8282.2 of the Public Utilities Code, relating to women, minority, and disabled veteran business enterprises.*

LEGISLATIVE COUNSEL'S DIGEST

AB 366, as amended, Holden. Women, minority, and disabled veteran business enterprises.

~~Under~~

(1) *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, water, wireless telecommunications service provider, 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. Existing law requires the commission, by rule or order, to adopt criteria for verifying and determining eligibility of women, minority, and disabled veteran business enterprises for procurement contracts. The commission, by its rulemaking authority, has adopted General Order 156, applicable to certain electrical, gas, and telephone corporations, to effectuate these requirements. For the purposes of these provisions, existing law defines a minority business enterprise, women business enterprise, and disabled veteran business enterprise.

~~This bill would revise and recast these definitions.~~

This bill would, until January 1, 2019, additionally authorize a publicly owned business enterprise that provides financial or legal services to qualify as a women, minority, or disabled veteran business enterprise if it meets separate specified definitions for a women, minority, or disabled veteran business enterprise, respectively. This bill would, until January 1, 2020, require the commission to require every electrical, gas, water, wireless telecommunications service provider, and telephone corporation with gross annual revenues exceeding \$25,000,000 and their commission-regulated subsidiaries and affiliates to separately identify procurement contracts entered into with women, minority, and disabled veteran business enterprises, as defined in these provisions, in their annual plans. This bill would, until January 1, 2020, require the commission to separately identify procurement contracts entered into pursuant to these provisions in a specified annual report to the Legislature. This bill would provide that these provisions do not provide authority for the creation of any corporate structure not authorized under existing law.

(2) 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 that 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.

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: ~~no~~-yes.
State-mandated local program: ~~no~~-yes.

The people of the State of California do enact as follows:

1 *SECTION 1. The Legislature finds and declares all of the*
2 *following:*

3 *(a) In 1986, the Public Utilities Commission adopted General*
4 *Order 156 to promote competition among utility suppliers and to*
5 *encourage greater economic opportunity for women, minority,*
6 *and disabled veteran-owned businesses.*

7 *(b) General Order 156 states that “each utility shall make*
8 *special efforts to increase utilization and encourage entry into the*
9 *marketplace of women, minority, and disabled veteran-owned*
10 *businesses in product or service categories where there has been*
11 *low utilization such as legal and financial services, fuel*
12 *procurement and areas that are considered technical in nature.”*

13 *(c) From 2010 to 2011, inclusive, utility procurement from*
14 *women, minority, and disabled veteran business enterprises*
15 *increased from \$5.17 billion to \$7.20 billion. However, the*
16 *percentage of total procurement from women, minority, and*
17 *disabled veteran business enterprises that provide financial or*
18 *legal services continues to lag behind procurement from other*
19 *types of women, minority, and disabled veteran business*
20 *enterprises.*

21 *(d) Women represent more than 50 percent of our population,*
22 *and minorities together make up more than 35 percent of our*
23 *population combined. Out of a total United States population of*
24 *308 million, African Americans number more than 37 million,*
25 *Asian Pacific Americans number more than 13 million, and*
26 *Hispanic Americans number more than 45 million. Yet, those*
27 *numbers are hardly reflected in the leadership of our nation’s top*
28 *corporations.*

29 *(e) Only one out of every five board members is a woman; only*
30 *one out of every seven board members is a minority; only one out*
31 *of every 28 board members is a minority woman; only one out of*
32 *every 11 board members is African American; only one out of*

1 every 48 board members is Asian Pacific American; and only one
2 out of every 28 board members is Hispanic American.

3 (f) Minorities have less representation in executive management
4 than they do on corporate boards, representing 10.44 percent of
5 executive managers, compared to the 35 percent of their actual
6 proportion in the United States population. Only one out of every
7 five executive managers is a woman; only one out of every nine
8 executive managers is minority; only one out of every 24 executive
9 managers is African American; only one out of every 30 executive
10 managers is Hispanic American; and only one out of every 35
11 executive managers is Asian Pacific American.

12 (g) It is the intent of the Legislature to promote corporate
13 diversity consistent with the original intent of the supplier diversity
14 program and to continue these efforts in the procurement of legal
15 services and financial services from women, minority, and disabled
16 veteran business enterprises.

17 SEC. 2. Section 8282.1 is added to the Public Utilities Code,
18 to read:

19 8282.1. (a) The Legislature finds and declares all of the
20 following:

21 (1) Shareowners elect the directors of a corporation pursuant
22 to Section 301 of the Corporations Code.

23 (2) Under Section 309 of the Corporations Code, a director of
24 a corporation is required to perform the duties of a director in
25 good faith and in a manner that the director believes to be in the
26 best interests of the corporation and its shareowners, and with the
27 care of an ordinarily prudent person.

28 (b) For the purposes of this section, “executive management
29 team” means controlling officers, as defined in the articles of
30 incorporation or bylaws of the publicly owned business.

31 (c) In addition to Section 8282, a publicly owned business
32 enterprise that provides financial or legal services may also qualify
33 as a women, minority, or disabled veteran business enterprise if
34 it meets any of the following definitions:

35 (1) “Women business enterprise” means a business enterprise
36 that has a board of directors that consists of at least 51 percent
37 women and has an executive management team that consists of at
38 least 51 percent women. The membership of the board of directors
39 must consist of at least 51 percent women for at least five years

1 *prior to the certification of a publicly owned business as a women*
2 *business enterprise.*

3 (2) *“Minority business enterprise” means a business enterprise*
4 *that has a board of directors that consists of at least 51 percent*
5 *minority individuals and has an executive management team that*
6 *consists of at least 51 percent minority individuals. The*
7 *membership of the board of directors shall consist of at least 51*
8 *percent minority individuals for at least five years prior to the*
9 *certification of a publicly owned business as a minority business*
10 *enterprise. The contracting utility shall presume that minority*
11 *includes Asian Pacific Americans, African Americans, Hispanic*
12 *Americans, and Native Americans.*

13 (3) *“Disabled veteran business enterprise” means a business*
14 *enterprise that has a board of directors that consists of at least 51*
15 *percent disabled veterans and has an executive management team*
16 *that consists of at least 51 percent disabled veterans. The*
17 *membership of the board of directors must consist of at least 51*
18 *percent disabled veterans for at least five years prior to the*
19 *certification of a publicly owned business as a disabled veteran*
20 *business enterprise.*

21 (d) *The commission shall establish guidelines for calculating*
22 *how the requirement that the board of directors and executive*
23 *management team consist of at least 51 percent women, minority*
24 *individuals, or disabled veterans can be met, including how to*
25 *calculate the percentage when an individual fits within two or*
26 *more of the categories described in the definitions in subdivision*
27 *(c) or when the board of directors or executive management team*
28 *consists of a combination of women, minority individuals, or*
29 *disabled veterans.*

30 (e) *This section shall become inoperative on January 1, 2019,*
31 *and, as of January 1, 2020, is repealed, unless a later enacted*
32 *statute, that becomes operative on or before January 1, 2020,*
33 *deletes or extends the dates on which it becomes inoperative and*
34 *is repealed.*

35 SEC. 3. *Section 8282.2 is added to the Public Utilities Code,*
36 *to read:*

37 8282.2. (a) *The commission shall require every electrical, gas,*
38 *water, wireless telecommunications service provider, and telephone*
39 *corporation with gross annual revenues exceeding twenty-five*
40 *million dollars (\$25,000,000) and their commission-regulated*

1 subsidiaries and affiliates to separately identify procurement
 2 contracts entered into with women, minority, and disabled veteran
 3 business enterprises, as defined in Section 8282.1, in their annual
 4 plans required by subdivision (a) of Section 8283.

5 (b) The commission shall separately identify procurement
 6 contracts entered into pursuant to Section 8282.1 in its annual
 7 report required by subdivision (e) of Section 8283.

8 (c) This section shall remain in effect only until January 1, 2020,
 9 and as of that date is repealed, unless a later enacted statute, that
 10 is enacted before January 1, 2020, deletes or extends that date.

11 SEC. 4. Subdivision (c) of Section 8282.1 of the Public Utilities
 12 Code does not provide authority for the creation of any corporate
 13 structure not authorized under existing law.

14 SEC. 5. No reimbursement is required by this act pursuant to
 15 Section 6 of Article XIII B of the California Constitution because
 16 the only costs that may be incurred by a local agency or school
 17 district will be incurred because this act creates a new crime or
 18 infraction, eliminates a crime or infraction, or changes the penalty
 19 for a crime or infraction, within the meaning of Section 17556 of
 20 the Government Code, or changes the definition of a crime within
 21 the meaning of Section 6 of Article XIII B of the California
 22 Constitution.

23 SECTION 1. ~~Section 8282 of the Public Utilities Code is~~
 24 ~~amended to read:~~

25 ~~8282. For purposes of this article, the following definitions~~
 26 ~~apply:~~

27 (a) ~~“Women business enterprise” means a business enterprise~~
 28 ~~whose management and daily business operations are controlled~~
 29 ~~by one or more women and is either at least 51 percent owned by~~
 30 ~~a woman or women; or, in the case of any publicly owned business,~~
 31 ~~has an executive management team that consists of at least 51~~
 32 ~~percent women, and has a board of directors whose membership~~
 33 ~~includes at least 51 percent women, and did so for at least five~~
 34 ~~years prior to the certification of the publicly owned business as~~
 35 ~~a women business enterprise.~~

36 (b) ~~“Minority business enterprise” means a business enterprise~~
 37 ~~whose management and daily business operations are controlled~~
 38 ~~by one or more members of a minority group and is either at least~~
 39 ~~51 percent owned by a minority group or groups; or, in the case~~
 40 ~~of any publicly owned business, has an executive management~~

1 team that consists of at least 51 percent minority, and has a board
2 of directors whose membership includes at least 51 percent of one
3 or more minority groups and did so for at least five years prior to
4 the certification of the publicly owned business as a minority
5 business enterprise. The contracting utility shall presume that
6 minority includes Asian Pacific Americans, African Americans,
7 Hispanic Americans, and Native Americans.

8 (e) “Disabled veteran business enterprise” has the same meaning
9 as defined in paragraph (7) of subdivision (b) of Section 999 of
10 the Military and Veterans Code, except that in the case of any
11 publicly owned business the board of directors membership shall
12 include at least 51 percent disabled veterans, and the executive
13 management and daily business operations shall be controlled by
14 one or more disabled veterans. The membership of the board of
15 directors must consist of at least 51 percent disabled veterans for
16 at least five years prior to the certification of a publicly owned
17 business as a disabled veteran business enterprise.

18 (d) “Control” means exercising the power to make policy
19 decisions.

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

22 (f) “Executive management team” means controlling officers,
23 as defined in the articles of incorporation or bylaws of the publicly
24 owned businesses.