

AMENDED IN ASSEMBLY MAY 13, 2013

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 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.

~~(1) Under~~

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, 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.~~

This bill would make findings and declarations regarding women, minority, and disabled veteran business enterprises. This bill would state the intent of the Legislature to promote diverse lending institutions to increase the availability of access to capital for women, minority, and disabled veteran-owned businesses consistent with the original intent of the supplier diversity program and to continue these efforts in the procurement of legal services and financial services.

Vote: majority. Appropriation: no. Fiscal committee: ~~yes-no~~. State-mandated local program: ~~yes-no~~.

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

1 SECTION 1. (a) The Legislature finds and declares all of the
2 following:

3 ~~(a)~~

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

8 ~~(b)~~

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

15 ~~(c)~~

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

23 (4) *Women, minority, and disabled veteran-owned businesses*
24 *continue to be the engine of employment in emerging communities.*
25 *Their business growth depends on a variety of capital, from funding*

1 to establish new firms, to working capital and business loans to
2 expand their businesses, to private equity for acquiring and
3 merging with other firms.

4 (5) Historically, discriminatory practices existed in the banking
5 and lending industries, instituting a redlining policy that used
6 racial criteria to categorize lending risks. Inadequate access to
7 financial capital continues to be a significant constraint limiting
8 the growth of women, minority, and disabled veteran-owned
9 businesses. National and regional studies over several decades
10 indicate that racial discrimination as well as limited financial and
11 human capital are primarily responsible for the disparities in
12 women, minority, and disabled veteran-owned business
13 performances.

14 (6) Capital access remains the most important factor limiting
15 the establishment, expansion and growth of women, minority, and
16 disabled veteran-owned businesses. Given this well established
17 constraint, the current financial environment has placed a greater
18 burden on women, minority, and disabled veteran-owned
19 enterprises that are trying to keep their businesses thriving in
20 today's economy.

21 (7) Women, minority, and disabled veteran-owned firms are
22 found to have less than half the average amount of recent equity
23 investments and loans than nonminority firms. Across the nation,
24 women, minority, and disabled veteran-owned businesses face the
25 obstacles of access to capital and access to markets, both of which
26 are essential for any business to increase in size and scale.

27 ~~(d) Women represent more than 50 percent of our population,~~
28 ~~and minorities together make up more than 35 percent of our~~
29 ~~population combined. Out of a total United States population of~~
30 ~~308 million, African Americans number more than 37 million,~~
31 ~~Asian Pacific Americans number more than 13 million, and~~
32 ~~Hispanic Americans number more than 45 million. Yet, those~~
33 ~~numbers are hardly reflected in the leadership of our nation's top~~
34 ~~corporations.~~

35 ~~(e) Only one out of every five board members is a woman; only~~
36 ~~one out of every seven board members is a minority; only one out~~
37 ~~of every 28 board members is a minority woman; only one out of~~
38 ~~every 11 board members is African American; only one out of~~
39 ~~every 48 board members is Asian Pacific American; and only one~~
40 ~~out of every 28 board members is Hispanic American.~~

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

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

15 (b) *It is the intent of the Legislature to promote diverse lending*
16 *institutions to increase the availability of access to capital for*
17 *women, minority, and disabled veteran-owned businesses consistent*
18 *with the original intent of the supplier diversity program and to*
19 *continue these efforts in the procurement of legal services and*
20 *financial services.*

21 ~~SEC. 2.~~ Section 8282.1 is added to the Public Utilities Code,
22 to read:

23 8282.1. (a) The Legislature finds and declares all of the
24 following:

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

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

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

35 (e) In addition to Section 8282, a publicly owned business
36 enterprise that provides financial or legal services may also qualify
37 as a women, minority, or disabled veteran business enterprise if it
38 meets any of the following definitions:

39 (1) “Women business enterprise” means a business enterprise
40 that has a board of directors that consists of at least 51 percent

1 women and has an executive management team that consists of at
2 least 51 percent women. The membership of the board of directors
3 must consist of at least 51 percent women for at least five years
4 prior to the certification of a publicly owned business as a women
5 business enterprise.

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

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

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

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

38 ~~SEC. 3.—Section 8282.2 is added to the Public Utilities Code,~~
39 ~~to read:~~

1 ~~8282.2. (a) The commission shall require every electrical, gas,~~
2 ~~water, wireless telecommunications service provider, and telephone~~
3 ~~corporation with gross annual revenues exceeding twenty-five~~
4 ~~million dollars (\$25,000,000) and their commission-regulated~~
5 ~~subsidiaries and affiliates to separately identify procurement~~
6 ~~contracts entered into with women, minority, and disabled veteran~~
7 ~~business enterprises, as defined in Section 8282.1, in their annual~~
8 ~~plans required by subdivision (a) of Section 8283.~~

9 ~~(b) The commission shall separately identify procurement~~
10 ~~contracts entered into pursuant to Section 8282.1 in its annual~~
11 ~~report required by subdivision (e) of Section 8283.~~

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

15 ~~SEC. 4. Subdivision (c) of Section 8282.1 of the Public Utilities~~
16 ~~Code does not provide authority for the creation of any corporate~~
17 ~~structure not authorized under existing law.~~

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