

AMENDED IN ASSEMBLY MAY 1, 2014

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 1678

Introduced by Assembly Member Gordon
(Principal coauthor: Assembly Member Dickinson)
(Coauthors: Assembly Members Fong and Ting)

February 12, 2014

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

LEGISLATIVE COUNSEL'S DIGEST

AB 1678, as amended, Gordon. Women, minority, disabled veteran, and LGBT business enterprise procurement.

(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. The commission, by its rulemaking authority, has

adopted General Order 156, applicable to certain electrical, gas, and telephone corporations, to effectuate these requirements. Existing law includes the declaration by the Legislature that each electrical, gas, water, ~~wireless telecommunications~~ *mobile telephony* service provider, and telephone corporation that is not required to submit a plan, and each cable television corporation and direct broadcast satellite provider, is encouraged to voluntarily adopt a plan for increasing women, minority, and disabled veteran business enterprise procurement in all categories. Existing law requires the commission, by rule or order, to adopt criteria for verifying and determining eligibility of women and minority business enterprises for procurement contracts. Existing law requires the commission to provide to the Legislature a specified report on the progress of activities undertaken by certain entities in the implementation of women, minority, and disabled business enterprise development programs. Existing law requires the commission to recommend a program and legislation for carrying out the policy of aiding the interests of women, minority, and disabled veteran business enterprises.

This bill would extend these provisions to LGBT business enterprises, as defined. *In adopting criteria for verifying and determining the eligibility of LGBT business enterprises for procurement contracts, the bill would require the commission to consult with LGBT Chambers of Commerce and other entities with expertise and relevant experience in the certification of LGBT businesses.*

(2) Under existing law, a violation of any provision of any rules or orders of the commission is a crime. In addition, any person or corporation who falsely represents a business as a women, minority, or disabled veteran business enterprise for the purposes of the program discussed above is subject to criminal penalties.

This bill would also subject any person or corporation who falsely represents a business as an LGBT business enterprise for the purposes of the program discussed above 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.

(3) 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, Disabled Veteran, and LGBT
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
14 prices, free entry into business, and opportunities for the expression
15 and growth of personal initiative and individual judgment be
16 ensured. The preservation and expansion of that competition are
17 basic to the economic well-being of this state and that well-being
18 cannot be realized unless the actual and potential capacity of
19 women, minority, disabled veteran, and LGBT business enterprises
20 is encouraged and developed. Therefore, it is the declared policy
21 of the state to aid the interests of women, minority, disabled
22 veteran, and LGBT business enterprises in order to preserve
23 reasonable and just prices and a free competitive enterprise, to
24 ensure that a fair proportion of the total purchases and contracts
25 or subcontracts for commodities, supplies, technology, property,
26 and services for regulated public utilities, including, but not limited
27 to, renewable energy, wireless telecommunications, broadband,
28 smart grid, and rail projects, are awarded to women, minority,
29 disabled veteran, and LGBT business enterprises, and to maintain
30 and strengthen the overall economy of the state.

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

32 (A) The opportunity for full participation in our free enterprise
33 system by women, minority, disabled veteran, and LGBT business
34 enterprises is essential if this state is to attain social and economic

1 equality for those businesses and improve the functioning of the
2 state economy.

3 (B) Public agencies and some regulated utilities that have
4 established short- and long-range women, minority, disabled
5 veteran, and LGBT business enterprise goals are awarding 30
6 percent or more of their contracts to these business enterprises.

7 (C) Women, minority, disabled veteran, and LGBT business
8 enterprises have traditionally received less than a proportionate
9 share of regulated public utility procurement contracts, especially
10 in renewable energy, wireless telecommunications, broadband,
11 smart grid, and rail projects.

12 (D) It is in the state’s interest to expeditiously improve the
13 economically disadvantaged position of women, minority, disabled
14 veteran, and LGBT business enterprises.

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

22 (F) That procurement also benefits the regulated public utilities
23 and consumers of the state by encouraging the expansion of the
24 number of suppliers for procurements, thereby encouraging
25 competition among the suppliers and promoting economic
26 efficiency in the process.

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

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

33 (A) Encourage greater economic opportunity for women,
34 minority, disabled veteran, and LGBT business enterprises.

35 (B) Promote competition among regulated public utility
36 suppliers in order to enhance economic efficiency in the
37 procurement of electrical, gas, water, wireless telecommunications
38 service provider, and telephone corporation contracts and contracts
39 of their commission-regulated subsidiaries and affiliates.

1 (C) Clarify and expand the program for the procurement by
2 regulated public utilities of technology, equipment, supplies,
3 services, materials, and construction work from women, minority,
4 disabled veteran, and LGBT business enterprises.

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

7 8282. For the purposes of this article, the following definitions
8 apply:

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

15 (b) “Minority business enterprise” means a business enterprise
16 that is at least 51 percent owned by a minority group or groups;
17 or, in the case of any publicly owned business, at least 51 percent
18 of the stock of which is owned by one or more minority groups,
19 and whose management and daily business operations are
20 controlled by one or more of those individuals. The contracting
21 utility shall presume that minority includes ~~Black African~~
22 Americans, Hispanic Americans, Native Americans, and Asian
23 Pacific Americans.

24 (c) “Disabled veteran business enterprise” has the same meaning
25 as defined in Section 999 of the Military and Veterans Code.

26 (d) “LGBT business enterprise” means a business enterprise
27 that is at least 51 percent owned by a lesbian, gay, bisexual, or
28 transgender person or persons; or, in the case of any publicly owned
29 business, at least 51 percent of the stock of which is owned by one
30 or more lesbian, gay, bisexual, or transgender persons; and whose
31 management and daily business operations are controlled by one
32 ~~ore~~ or more of those individuals.

33 (e) “Control” means exercising the power to make policy
34 decisions.

35 (f) ~~“Operate”~~ *To “operate” means being to be actively involved*
36 *in the day-to-day management and management. It is not enough*
37 *to merely officers or directors. be an officer or director.*

38 SEC. 4. Section 8283 of the Public Utilities Code is amended
39 to read:

1 8283. (a) The commission shall require each 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 submit annually, a detailed and
6 verifiable plan for increasing procurement from women, minority,
7 disabled veteran, and LGBT business enterprises in all categories,
8 including, but not limited to, renewable energy, wireless
9 telecommunications, broadband, smart grid, and rail projects.

10 (b) These annual plans shall include short- and long-term goals
11 and timetables, but not quotas, and shall include methods for
12 encouraging both prime contractors and grantees to engage women,
13 minority, disabled veteran, and LGBT business enterprises in
14 subcontracts in all categories that provide subcontracting
15 opportunities, including, but not limited to, renewable energy,
16 wireless telecommunications, broadband, smart grid, and rail
17 projects.

18 (c) The commission shall establish guidelines for all electrical,
19 gas, water, wireless telecommunications service providers, and
20 telephone corporations with gross annual revenues exceeding
21 twenty-five million dollars (\$25,000,000) and their
22 commission-regulated subsidiaries and affiliates, to be utilized in
23 establishing programs pursuant to this article.

24 (d) Every electrical, gas, water, wireless telecommunications
25 service provider, and telephone corporation with gross annual
26 revenues exceeding twenty-five million dollars (\$25,000,000) shall
27 furnish an annual report to the commission regarding the
28 implementation of programs established pursuant to this article in
29 a form that the commission shall require, and at the time that the
30 commission shall annually designate.

31 (e) (1) The commission shall provide a report to the Legislature
32 on September 1 of each year, on the progress of activities
33 undertaken by each electrical, gas, water, wireless
34 telecommunications service provider, and telephone corporation
35 with gross annual revenues exceeding twenty-five million dollars
36 (\$25,000,000) pursuant to this article in the implementation of
37 women, minority, disabled veteran, and LGBT business enterprise
38 development programs. The report shall include information about
39 which procurements are made with women, minority, disabled
40 veteran, and LGBT business enterprises with at least a majority

1 of the enterprise's workforce in California, to the extent that
2 information is readily accessible. The commission shall recommend
3 a program for carrying out the policy declared in this article,
4 together with recommendations for legislation that it deems
5 necessary or desirable to further that policy. The commission shall
6 make the report available on its Internet Web site.

7 (2) In regard to disabled veteran business enterprises, the
8 commission shall ensure that the programs and legislation
9 recommended pursuant to paragraph (1) are consistent with the
10 disabled veteran business enterprise certification eligibility
11 requirements imposed by the Department of General Services and
12 that the recommendations include only those disabled veteran
13 business enterprises certified by the Department of General
14 Services.

15 (3) *The commission shall include the information about LGBT*
16 *business enterprises required by paragraph (1) not later than the*
17 *report due on September 1, 2016.*

18 (f) (1) The Legislature declares that each electrical, gas, water,
19 mobile telephony service provider, and telephone corporation that
20 is not required to submit a plan pursuant to subdivision (a) is
21 encouraged to voluntarily adopt a plan for increasing women,
22 minority, disabled veteran, and LGBT business enterprise
23 procurement in all categories.

24 (2) The Legislature declares that each cable television
25 corporation and direct broadcast satellite provider is encouraged
26 to voluntarily adopt a plan for increasing women, minority,
27 disabled veteran, and LGBT business enterprise procurement and
28 to voluntarily report activity in this area to the Legislature on an
29 annual basis.

30 SEC. 5. Section 8284 of the Public Utilities Code is amended
31 to read:

32 8284. (a) (1) The commission shall, by rule or order, adopt
33 criteria for verifying and determining the eligibility of women,
34 minority, and LGBT business enterprises for procurement
35 contracts.

36 (2) The commission shall adopt the Department of General
37 Services' disabled veteran business enterprise certification
38 eligibility requirements for verifying and determining the eligibility
39 of disabled veteran business enterprises for procurement contracts,
40 and shall not deem eligible those disabled veteran business

1 enterprises that are not certified by the Department of General
2 Services.

3 *(3) In adopting criteria for verifying and determining the*
4 *eligibility of LGBT business enterprises for procurement contracts*
5 *pursuant to paragraph (1), the commission shall consult with*
6 *LGBT Chambers of Commerce and other entities with expertise*
7 *and relevant experience in the certification of LGBT businesses.*

8 (b) The commission shall develop, and require every electrical,
9 gas, water, wireless telecommunications service provider, and
10 telephone corporation with gross annual revenues exceeding
11 twenty-five million dollars (\$25,000,000) and their
12 commission-regulated subsidiaries and affiliates to implement, an
13 outreach program to inform and recruit women, minority, disabled
14 veteran, and LGBT business enterprises to apply for procurement
15 contracts under this article.

16 SEC. 6. Section 8285 of the Public Utilities Code is amended
17 to read:

18 8285. (a) Any person or corporation, through its directors,
19 officers, or agents, which falsely represents a business as a women,
20 minority, or LGBT business enterprise in the procurement of, or
21 the attempt to procure, contracts from an electrical, gas, water,
22 wireless telecommunications service provider, or telephone
23 corporation with gross annual revenues exceeding twenty-five
24 million dollars (\$25,000,000), or a commission-regulated
25 subsidiary or affiliate subject to this article, shall be punished by
26 a fine of not more than five thousand dollars (\$5,000), by
27 imprisonment in a county jail for not more than one year or in the
28 state prison, or by both that fine and imprisonment. In the case of
29 a corporation, the fine or imprisonment, or both, shall be imposed
30 on every director, officer, or agent responsible for the false
31 statements.

32 (b) Any person or corporation, through its directors, officers,
33 or agents, which falsely represents a business as a disabled veteran
34 business enterprise in the procurement of, or the attempt to procure,
35 contracts from an electrical, gas, water, wireless
36 telecommunications service provider, or telephone corporation
37 with gross annual revenues exceeding twenty-five million dollars
38 (\$25,000,000), or a commission-regulated subsidiary or affiliate
39 subject to this article, shall be punished according to the penalties
40 established pursuant to subdivision (b) of Section 999.9 of the

1 Military and Veterans Code. In the case of a corporation, the fine
2 or imprisonment, or both, shall be imposed on every director,
3 officer, or agent responsible for the false statements.

4 SEC. 7. Section 8286 of the Public Utilities Code is amended
5 to read:

6 8286. (a) In order to facilitate the participation of
7 women-owned businesses, minority-owned businesses, disabled
8 veteran-owned businesses, and LGBT-owned businesses and small
9 businesses in contract procurement, any corporation subject to this
10 article may consider the following measures to include those
11 businesses in all phases of their contracting:

12 (1) Timely or progressive payments to those businesses.

13 (2) An amendment of the performance bond requirements so
14 that bond requirements of electrical, gas, and telephone
15 corporations do not prohibitively burden those businesses from
16 procuring the corporation's business.

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

20 (b) This section does not restrict a corporation's ability to require
21 a bond.

22 SEC. 8. No reimbursement is required by this act pursuant to
23 Section 6 of Article XIII B of the California Constitution because
24 the only costs that may be incurred by a local agency or school
25 district will be incurred because this act creates a new crime or
26 infraction, eliminates a crime or infraction, or changes the penalty
27 for a crime or infraction, within the meaning of Section 17556 of
28 the Government Code, or changes the definition of a crime within
29 the meaning of Section 6 of Article XIII B of the California
30 Constitution.