

STATE TEACHERS' RETIREMENT SYSTEM

BILL ANALYSIS

<u>Senate Bill 73</u>	Senator Murray (As Amended 6/24/99)
<u>Position:</u>	Neutral
<u>Proponents:</u>	American Federation of State, County and Municipal Employees, East Bay Municipal Utility District, Southern California Contractors' Association
<u>Opponents:</u>	American Electronics Association, California Builders Exchange

SUMMARY

SB 73 establishes a statewide participation goal that not less than 30% of the dollars spent for professional bond services and state contracts be provided to small businesses, and requires state departments to establish rules for implementation of their participation goals and to report on the level of participation by small and disabled veteran enterprises, as specified. Under the bill, small business enterprise has the same meaning as the federal definition of a small business concern. The bill authorizes a local agency to establish incentive programs to encourage participation in the contracting process by small business enterprises. The bill specifically exempts public retirement systems such as CalSTRS or CalPERS.

HISTORY

AB 1664 (Murray, 1998), vetoed by Governor Wilson, was identical to this bill. The veto message for AB 1664 noted that another "mandatory goal program would be counterproductive and a flawed substitute for real reform in state contracting."

Chapter 821, Statutes of 1998 (AB 2505--Olberg) specified that a "small business", for purposes of determining eligibility for a 5% bid preference, has 100 or fewer employees, and average annual gross receipts of \$10 million or less over the previous three years or is a manufacturer, meeting specified criteria, with 100 or fewer employees.

Other similar measures which failed passage include AB 3307 (Brewer, 1996), SB 937 (Polanco, 1997), SB 1132 (Polanco, 1997), and SB 2041 (Kopp, 1998).

SUMMARY OF LATEST AMENDMENTS

The June 24th amendments provide that the bill will not apply to any public pension or retirement system governed by a retirement board in which Section 17 of Article XVI of the California Constitution vests plenary authority and fiduciary responsibility for the investment of moneys and administration of the system. This exempts CalSTRS and CalPERS from the bill's provisions.

CURRENT PRACTICE

Current law provides that the Director of DGS and other agencies that engage in procurement and/or contract for construction or the delivery of services are required to establish goals consistent with those established by the Office of Small Business Certification and Resources (OSBCR). Current state policy guidelines establish a 25% participation goal for small business participation in state contracts. The DGS controls state procurement activities, including the acquisition of services, materials, and supplies. The State Contract Act requires state and local agencies awarding contracts to award state contracts to the lowest responsible bidder. Also, existing state law requires that in awarding a contract to the lowest responsible bidder, that the bidder meets or makes good faith efforts to comply with participation goals for designated business enterprises. State agencies are also required to give small businesses based in California a 5% bid preference for construction, goods procurement, or the delivery of service contracts.

DISCUSSION

Following the passage of Proposition 209 in November 1996, which prohibits the state from discriminatory practices or the granting of preferential treatment to any group or individual on the basis of race, sex, color, ethnicity, or national origin in public employment, public education, or public contracting, Governor Wilson issued Executive Order W-172-98. That order directed all state agencies to immediately cease implementation or enforcement of the minority-owned and women-owned business enterprise (MBE/WBE) program. The order did not affect contracting preferences for disabled veterans and contracts for projects that include federal funding. SB 73 provides some of the same requirements mandated of bidders under the previous participation statutes, and the disabled veteran owned business enterprise (DVBE) statute. In addition, state agency reporting requirements would be increased by requiring awarding departments to report annually on SBE and DVBE participation levels; (2) to submit specific reasons for not meeting the goals; and (3) to identify steps that will taken to achieve the goals.

Presently, CalSTRS has policies and procedures in place that establish a 25% participation goal for small business. Under current law, CalSTRS is required to report small business contracting activity within its support appropriation to the Office of Small Business Certification and Resources. The OSBCR's 1998 and 1999 Quarterly Contracting Report (March 9, 1999) states that the reported statewide small business participation increased from the previous quarter, from 7.8% to 9.9%. The State and Consumer Services Agency (SCSA), of which CalSTRS is a part, reported a total of just over \$68 million, or 14.6% of total contract activity was spent on small

business contracts. Of the five departments reporting under the SCSA, CalSTRS ranked second in the percentage of small business participation. For CalSTRS, the March 9 quarterly report (covering the period July-December, 1998) identified \$1,822,201 in contracts, of which \$418,927 (23%) went to small business. This percentage is just 2% shy of the small business participation goal of 25% established by CalSTRS consistent with state guidelines. CalSTRS reported level of small business participation does not, however, include investment-related contracts. This reporting exclusion was agreed to by CalSTRS and the OSBCR because of the unique nature of investment contracts and because investment contracts are not funded out of CalSTRS' main support appropriation.

FISCAL IMPACT

Benefit Program- None.

Administration- None

POSITION - Neutral

The Board is neutral on SB 73 because the amendments contained in the June 24th version of the bill exclude CalSTRS from the bill's provisions.