

# STATE TEACHERS' RETIREMENT SYSTEM

## BILL ANALYSIS

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<b><u>Senate Bill 73</u></b>	<b>Senator Murray (As Amended 8/16/99)</b>
<b><u>Position:</u></b>	<b>Neutral</b>
<b><u>Proponents:</u></b>	<b>American Federation of State, County and Municipal Employees, East Bay Municipal Utility District, Southern California Contractors' Association</b>
<b><u>Opponents:</u></b>	<b>American Electronics Association, California Builders Exchange</b>

### SUMMARY

SB 73 requires that awarding departments establish small business enterprise participation programs to "substantially increase" the overall dollars spent for professional bond services and state contracts with small businesses. The bill also requires state departments to establish rules for implementation of their participation programs and to report to the Governor and the Legislature, commencing January 1, 2001, on the level of participation by small and disabled veteran enterprises. 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. As amended August 16<sup>th</sup>, 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 August 16<sup>th</sup> amendments:

- Delete the 30% participation goal requirement and instead require that awarding departments establish small business enterprise participation programs to "substantially increase" the overall dollar amount spent on those contracts
- Delete the definition of "goal"
- Specify that the first report to the Governor and Legislature from awarding departments on the level of participation by small businesses is due January 1, 2001
- Delete provisions specifying the information required in connection with taking bids

## **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 establishes 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 bill's provisions related to bid participation and contracts with small businesses exclude CalSTRS.