AB 366 Will Gut California Supplier Diversity

By NCMSDC President Scott A. Vowels, Ph.D.

On February 14, 2013, District 41 Assemblymember Chris Holden introduced Assembly Bill 366. AB 366 proposes to change California Public Utilities Codes 8282.1 and 8282.2 by removing the requirement that publicly owned Minority-owned, Woman-owned, and Disabled Veteran-owned Business Enterprises (MWDVBEs) must be 51% owned, managed, and operated by minorities, women, and disabled veterans in order to maintain their MWDVBE status. Instead, under AB 366, publicly owned MWDVBEs are only required to have boards of directors that are 51% comprised of minorities, women, or disabled veterans as well as to place representatives of these groups in 51% of the executive leadership positions within the company. Ownership would no longer be part of the defining criteria for receiving MWDVBE designation.

Simply stated, AB 366 will ensure that if large publicly owned corporations have minorities, women, and service disabled veterans reflected in 51% of their boards of directors and executive management teams, they will qualify as MWDVBEs under GO 156 contracting goals.

AB 366's Impact on GO 156

AB 366's proposed changes to the California Public Utilities Code would have a disastrous impact on GO 156, specifically section 8.2, which establishes the long-term procurement goals for utilities contracting with MWDVBEs. When considering whether or not GO 156's contracting goals are currently relying upon a definition of MWDVBEs that is far too stringent to be feasible (i.e. that MWDVBEs must be 51% owned, managed, and operated by minorities, women, and disabled veterans), it is important to note that GO 156, as it is written, is working according to an analysis of AB 366, dated April 23, 2013:

"The results show the utilities are meeting the 5% goal for women-owned businesses and the 15% goal for minority-owned business enterprises, but are not yet meeting the 1.5% goal for DVBEs. Overall, both the dollar value of all WMDVBE contacts and percentages of contracts have increased for the past two years. The number of utilities reporting was also up in 2011 with 34 utilities reporting as compared to 31 in 2010."

The April 23rd analysis of AB 366 also includes a chart showing that the California Utilities are actually exceeding the 21% MWDVBE procurement goal by 8.95% at 29.95%. Based on this, the argument in favor of changing GO 156 is unfounded. The overwhelming historical success of GO 156 proves that there is no need to dilute the requirements for the MWDVBE designation as it currently stands. Furthermore, it should be noted that on a national scale, 18 Fortune 500 companies spend over a billion dollars with Minority and Women Business Enterprises, each of which is strictly defined as being 51% or more owned, controlled, operated, and managed by minorities or women, respectively. None of these companies need AB 366 to reach their MWDVBE goals.

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The Problem with AB 366

The problem with AB 366 is fourfold. First is the implication that it is impossible for a publicly traded company to remain 51% majority-owned because owners cannot possibly know who their stockholders are. In the bill analysis of AB 366, Assemblymember Holden states:

"The 51% stock requirement is being removed because it is technically impossible to monitor and query the gender, ethnicity, and disability status of shareholders[.]"

This is simply not true, as there are MWDVBEs that are publicly traded. In fact, many of these companies are certified by organizations like the National Minority Supplier Development Council (NMSDC) and the Women's Business Enterprise National Council (WBENC). Both NMSDC and WBENC were founded on the premise that minority-owned and women-owned businesses will hire more women and minorities and pour some of their profits back into their respective communities, thereby helping to improve those communities.

Second, all Supplier Diversity programs (e.g., CPUC, Federal & State government, or Fortune 500) were designed to level the playing field for historically underutilized businesses. If a company is in the position to be publicly traded, it could be argued that it has overcome any impediments to its growth and should instead consider creating its own Supplier Diversity initiative to engage those businesses that are trying to reach its level. For example, when Facebook went public, did anyone feel that it needed access to decision makers, technical assistance, or training to do business with Fortune 500 companies?

In the bill analysis of AB 366, this sentiment is echoed loudly by Southern California Edison (Edison), one of the companies regulated by GO 156:

"Edison, who opposes the measure, argues that publicly held companies are generally more established, larger size companies with more revenues and assets than traditional WMDVBE contractors. Edison is concerned that this bill shifts the focus of the program away from new and emerging businesses and the goals of GO 156."

If the companies governed by GO 156 do not see the need to change the requirements for MWDVBE designation, it becomes even more difficult to understand why the bill was proposed in the first place.

Third, this is a slippery slope: if we start relaxing the MWDVBE criteria for publicly traded companies, can the requirements for privately held companies be far behind? It stands to reason that if the MWDVBE criteria changes for publicly traded companies, the requirements for privately held companies may soon follow. It is often said that as California goes, so goes the nation. Therefore, it is not a stretch to say that the passage of AB 366 threatens the existence of MWDVBEs as well as their access to business opportunities not only throughout California, but potentially the entire country.

Last, in the bill analysis of AB 366, Assemblymember Holden's most compelling argument for the relaxing of MWDVBE requirements is the lack of diversity on Fortune 100 Boards of Directors:

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"According to a 2008 report by Virtcom Consulting on the leadership of Fortune 100 companies, while women comprise slightly more than half the U.S. population, they hold only 17% of the positions on corporate boards of Fortune 100 companies.... Caucasian, non-Latinos, still hold a disproportionate share of board seats by occupying 84% of the 1,031 corporate board seats of Fortune 100 companies. African Americans held 10%, Asians 2%, and Latinos 4%."

While it is true that in order for Fortune 100 companies to remain profitable, they must diversify their Boards of Directors, changing the criteria for historically underutilized businesses will not accomplish this. Again, there appears to be a logical disconnect between Assemblymember Holden's argument and his proposed solution.

Under AB 366, Multi-Billion Dollar Companies Can Qualify as MWDVBEs

In the amended version of AB 366, dated May 1, 2013, Assemblymember Holden revised the bill to cover only publicly traded businesses that provide financial and legal services. It is interesting to note that East West Bank—a bank that has over \$21 billion in assets, more than 130 branch locations around the world, and is the largest bank in Southern California—is the registered supporter of AB 366. Of even more significance is that, under AB 366, East West Bank could be considered a MWDVBE.

Are multi-billion dollar companies truly historically underutilized? Do they need the support of Supplier Diversity programs and assistance to do business with Fortune 500 companies? If your answer is "yes," then by all means support AB 366.

What You Can Do to Oppose AB 366

As of May 2, 2013, AB 366 was being re-referred to Committee. This means there is still time for you to take a stand against AB 366.

While Assemblymember Holden's excellent work for California cannot be overstated, AB 366 is a misguided attempt to fix something that does not need to be fixed. I am hereby calling upon MWDVBEs, Supplier Diversity advocates, and members of the public and diverse communities to join me in opposing AB 366 and its watering down of MWDVBE ownership. Please help protect the welfare, integrity, and ownership rights of our MWDVBEs by contacting Assembly Member Holden's office and your state senators to let them know that you strongly oppose AB 366.

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