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SB-599 Public Utilities Commission: proceedings, reports, and public utility procurement. (2021-2022)

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Senate Bill No. 599

CHAPTER 703

An act to amend Sections 910.3, 1701.3, 1701.8, 8284, 8285, and 8286 of, to amend and repeal Section 913.7 of, and to add Section 1701.9 to, the Public Utilities Code, relating to public utilities.

[Approved by Governor September 28, 2022. Filed with Secretary of State September 28, 2022.]

LEGISLATIVE COUNSEL'S DIGEST

SB 599, Hueso. Public Utilities Commission: proceedings, reports, and public utility procurement.

(1) The California Constitution establishes the Public Utilities Commission and authorizes the commission to exercise ratemaking and rulemaking authority over all public utilities, as defined, subject to control by the Legislature. The Public Utilities Act requires the commission to determine whether each proceeding is a quasi-legislative, an adjudication, a ratesetting, or a catastrophic wildfire proceeding. Existing law requires the commission to establish a "quiet period" during the 3 business days before the commission's scheduled vote on a decision in a ratesetting case, and authorizes the commission to establish a quiet period during other specified periods of a ratesetting case and during the 3 business days before the commission's scheduled vote on a decision in a catastrophic wildfire proceeding, as specified. Existing law authorizes the commission to meet in closed session during the quiet period of a ratesetting case and at any point during the pendency of the catastrophic wildfire proceeding, as specified.

This bill would revise and recast these provisions relating to quiet periods and the authority for closed session commission meetings during ratesetting cases and catastrophic wildfire proceedings.

(2) Existing law establishes the California Solar Initiative, a program providing ratepayer funded incentives for eligible solar energy systems adopted by the Public Utilities Commission, as provided. Existing law requires, on or before June 30 of each year, the commission to submit to the Legislature an assessment of the success of the program.

This bill would repeal that requirement on January 1, 2024.

(3) Existing law requires the Public Utilities Commission to require every electrical corporation, gas corporation, water corporation, wireless telecommunications service provider, electric service provider, and telephone corporation with annual gross California revenues exceeding \$25,000,000, and their regulated subsidiaries and affiliates, to annually submit a detailed and verifiable plan for increasing procurement from women, minority, disabled veteran, and LGBT business enterprises, as specified. Existing law requires the commission to require every electrical corporation, gas corporation, water corporation, wireless telecommunications service provider, electric service provider, and telephone corporation with gross annual California revenues exceeding \$15,000,000, but not more than \$25,000,000, to annually submit data in a simplified form to the commission on its procurement from women, minority, disabled veteran, and LGBT business enterprises, as specified. Existing law requires each community choice aggregator with gross annual revenues exceeding \$15,000,000 to annually submit a report to the commission regarding its procurement from women, minority, disabled veteran, and LGBT business enterprises, as specified. Existing law

requires the commission, by September 1 of each year, to report certain information relative to those activities undertaken in the implementation of those plans.

This bill would require the commission to also include in the report the progress of activities undertaken by electric service providers with gross annual California revenues exceeding \$25,000,000, by community choice aggregators with gross annual revenues exceeding \$15,000,000, and by electrical corporations, gas corporations, water corporations, wireless telecommunications service providers, electric service providers, and telephone corporations with gross annual California revenues exceeding \$15,000,000, but not more than \$25,000,000.

(4) Existing law requires 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 implement an outreach program to inform and recruit women, minority, disabled veteran, and LGBT business enterprises to apply for procurement contracts.

This bill would additionally require the commission to require every electric service provider with gross annual California revenues exceeding \$25,000,000, and their commission-regulated subsidiaries and affiliates, to implement an outreach program for that recruitment.

(5) Existing law makes it a crime for any person or corporation to falsely represent a business as a women, minority, disabled veteran, or LGBT business enterprise in the procurement, or attempted procurement, of contracts from an electrical corporation, gas corporation, water corporation, wireless telecommunications service provider, or telephone corporation with gross annual revenues exceeding \$25,000,000, or a commission-regulated subsidiary or affiliate, as provided.

This bill would additionally make it a crime for any person or corporation to falsely represent a business as a women, minority, disabled veteran, or LGBT business enterprise in the procurement, or attempted procurement, of contracts from an electric service provider with gross annual California revenues exceeding \$25,000,000, or a commission-regulated subsidiary or affiliate, or from an electrical corporation, gas corporation, water corporation, wireless telecommunications service provider, electric service provider, and telephone corporation with gross annual California revenues exceeding \$15,000,000, as provided.

(6) Existing law authorizes eligible corporations to consider certain measures to include women-owned businesses, minority-owned businesses, disabled veteran-owned businesses, and LGBT-owned businesses and small businesses in all phases of contracting in contract procurement.

This bill would instead authorize eligible corporations to consider certain measures to include women, minority, disabled veteran, and LGBT business enterprises and small businesses in all phases of contracting in contract procurement.

(7) Under existing law, a violation of the Public Utilities Act, or any order, decision, rule, direction, demand, or requirement of the commission is a crime.

Because certain of the above provisions would be codified in the act and would require action by the commission, a violation of which would be a crime, 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.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: yes

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 910.3 of the Public Utilities Code is amended to read:

910.3. (a) The commission shall provide a report to the Legislature on September 1 of each year, on the progress of activities undertaken by each electrical corporation, gas corporation, water corporation, wireless telecommunications service provider, electric service provider, and telephone corporation with gross annual California revenues exceeding twenty-five million dollars (\$25,000,000), by each community choice aggregator with gross annual revenues exceeding fifteen million dollars (\$15,000,000), and by each electrical corporation, gas corporation, water corporation, wireless telecommunications service provider, electric service provider, and telephone corporation with gross annual California revenues exceeding fifteen million dollars (\$15,000,000), but not more than twenty-five million dollars (\$25,000,000), in the implementation of women, minority, disabled veteran, and LGBT business enterprise development programs pursuant to Article 5 (commencing with Section 8281) of Chapter 7 of Division 4. The report shall include information about which procurements are made with women, minority, disabled veteran, and LGBT business enterprises with at least a majority of the enterprise's workforce in California, to the extent that information is readily accessible. The commission shall recommend a program for carrying out the policy declared in Article 5 (commencing with

Section 8281) of Chapter 7 of Division 4, together with recommendations for legislation that it deems necessary or desirable to further that policy. The commission shall make the report available on its internet website.

(b) In regard to disabled veteran business enterprises, the commission shall ensure that the programs and legislation recommended pursuant to subdivision (a) are consistent with the disabled veteran business enterprise certification eligibility requirements imposed by the Department of General Services and that the recommendations include only those disabled veteran business enterprises certified by the Department of General Services.

SEC. 2. Section 913.7 of the Public Utilities Code is amended to read:

913.7. (a) On or before June 30 of each year, the commission shall submit to the Legislature an assessment of the success of the California Solar Initiative program. That assessment shall include the number of residential and commercial sites that have installed solar thermal devices for which an award was made pursuant to subdivision (b) of Section 2851 and the dollar value of the award, the number of residential and commercial sites that have installed solar energy systems, the electrical generating capacity of the installed solar energy systems, the cost of the program, total electrical system benefits, including the effect on electrical service rates, environmental benefits, how the program affects the operation and reliability of the electrical grid, how the program has affected peak demand for electricity, the progress made toward reaching the goals of the program, whether the program is on schedule to meet the program goals, and recommendations for improving the program to meet its goals. If the commission allocates additional moneys to research, development, and demonstration that explores solar technologies and other distributed generation technologies pursuant to paragraph (1) of subdivision (c) of Section 2851, the commission shall include in the assessment submitted to the Legislature, a description of the program, a summary of each award made or project funded pursuant to the program, including the intended purposes to be achieved by the particular award or project, and the results of each award or project.

(b) This section shall remain in effect only until January 1, 2024, and as of that date is repealed.

SEC. 3. Section 1701.3 of the Public Utilities Code is amended to read:

1701.3. (a) Except as specified in subdivision (h), this section shall apply only to ratesetting cases, except, if the commissioner assigned pursuant to Section 1701.1 has determined that a ratesetting case does not require a hearing, the procedures prescribed by subdivisions (b), (d), (f), and (i) shall not apply.

(b) The assigned commissioner shall determine before the first hearing whether the commissioner or the assigned administrative law judge shall be designated as the principal hearing officer. The principal hearing officer shall be present for more than one-half of the hearing days. The decision of the principal hearing officer shall be the proposed decision.

(c) An alternate decision may be issued by the assigned commissioner or the assigned administrative law judge who is not the principal hearing officer. Any alternate decision may be filed with the commission and served upon all parties to the proceeding any time before the issuance of a final decision by the commission, consistent with the requirements of Section 311.

(d) The commission shall establish a procedure for any party to request the presence of a commissioner at a hearing. The assigned commissioner shall be present at any closing arguments in the case.

(e) The principal hearing officer shall present the proposed decision to the full commission in a public meeting. The alternate decision, if any, shall also be presented to the full commission at that public meeting.

(f) The presentation to the full commission shall contain a record of the number of days of the hearing, the number of days that each commissioner was present, and whether the decision was completed on time.

(g) The commission shall provide by rule for peremptory challenges and challenges for cause of the administrative law judge. Challenges for cause shall include, but not be limited to, financial interests and prejudice. All parties shall be entitled to unlimited peremptory challenges in any case in which the administrative law judge has within the previous 12 months served in any capacity in an advocacy position at the commission, been employed by a regulated public utility, or has represented a party or has been an interested person in the case.

(h) (1) Ex parte communications in ratesetting cases and catastrophic wildfire proceedings are subject to the disclosure requirements of this article. The commission, by order or ruling, may prohibit ex parte communications in a ratesetting case or catastrophic wildfire proceeding.

(2) Oral communications may be permitted by a decisionmaker if all parties are given not less than three working days' notice. No individual ex parte meetings shall be held during the three business days before the commission's scheduled vote on the decision.

(3) (A) If an ex parte communication meeting is granted to any party, all other parties, upon request, shall also be granted individual ex parte meetings of a substantially equal period of time and shall be sent a notice of that opportunity at the time the request is granted.

(B) Subparagraph (A) shall not apply if the decisionmaker participating in the ex parte communication meeting is a member of the personal staff of a commissioner acting in a policy or legal advisory capacity and no other decisionmaker to whom subparagraph (A) applies is a participant.

(4) Written ex parte communications by any interested person may be permitted if copies of the communication are transmitted to all parties on the same day as the original communication.

(5) Written and oral ex parte communications shall not be part of the evidentiary record of the proceeding.

(i) Any party has the right to present a final oral argument of its case before the commission. Upon request to present a final oral argument before the commission, the argument shall be scheduled in a timely manner. A quorum of the commission shall be present for the final oral arguments.

(j) The commission may, in issuing its decision, adopt, modify, or set aside the proposed decision or any part of the decision based on evidence in the record. The final decision of the commission shall be issued not later than 60 days after the issuance of the proposed decision. Under extraordinary circumstances the commission may extend this date for a reasonable period. The 60-day period shall be extended for 30 days if any alternate decision is proposed pursuant to Section 311.

SEC. 4. Section 1701.8 of the Public Utilities Code is amended to read:

1701.8. (a) For purposes of this section, the following definitions apply:

(1) "Covered wildfire" means any wildfire ignited on or after July 12, 2019, for which either of the following is satisfied:

(A) The governmental agency responsible for determining causation or a court of competent jurisdiction determines the wildfire was caused by an electrical corporation.

(B) Asserted to have been caused by an electrical corporation and results in a court-approved dismissal resulting from the settlement of third-party damage claims.

(2) "Wildfire Fund" means the Wildfire Fund created pursuant to Section 3284.

(b) The following procedures and standards apply to a catastrophic wildfire proceeding:

(1) (A) An electrical corporation may file an application pursuant to Section 451 or 451.1, as applicable, at any time after it has paid, or entered into binding commitments to pay, all or, if authorized by the commission for good cause, substantially all third-party damage claims, including payments made pursuant to judgments or settlement agreements related to a covered wildfire. Except as authorized by the commission for good cause, before filing the application, the electrical corporation shall exhaust all rights to indemnification or other claims, contractual or otherwise, against any third parties, including collecting insurance proceeds, related to the covered wildfire.

(B) If an electrical corporation has received payments from the Wildfire Fund for a third-party damage claim for the covered wildfire, the electrical corporation shall file an application to recover the costs pursuant to subparagraph (A) no later than the earlier of the following:

(i) The date when it has resolved all third-party damage claims and exhausted all right to indemnification or other claims, contractual or otherwise, against any third parties, including collecting insurance proceeds, related to the covered wildfire.

(ii) The date that is 45 days after the date the administrator requests the electrical corporation to file the application.

(2) The president of the commission, upon the initiation of a catastrophic wildfire proceeding by the filing of an application pursuant to paragraph (1), shall assign a commissioner to act as the presiding officer in the proceeding and an administrative law judge to assist in conducting the proceeding.

(3) Within 15 days of the filing date of the application, the commission shall notice a prehearing conference, which shall be held within 25 days of the filing date.

(4) (A) Within 30 days of the filing date of the application, the assigned commissioner shall prepare and issue, by order or ruling, a scoping memorandum that states that the scope of the proceeding shall be whether the electrical corporation's costs and expenses for the covered wildfire are just and reasonable pursuant to Section 451 or 451.1, as applicable.

(B) The scoping memorandum shall establish a schedule for the proceeding, including the date of issuance of a proposed decision that is no later than 12 months after the filing date of the application.

(C) The assigned commissioner may extend the time established in the scoping memorandum for the date of issuance of a proposed decision by up to six months upon a showing of good cause.

SEC. 5. Section 1701.9 is added to the Public Utilities Code, to read:

1701.9. The following provisions apply during the pendency of a commission proceeding, except these provisions do not apply during an adjudicatory or quasi-legislative proceeding:

(a) The commission may meet in closed session to deliberate on a proposed decision, order, or resolution after providing three-day advance notice to the public.

(b) The commission shall establish a quiet period during the three business days before the commission's scheduled vote on a decision, during which oral and written ex parte communications shall not be permitted.

(c) The requirement specified in subparagraph (F) of paragraph (1) of subdivision (b) of Section 11123 of the Government Code shall not apply to a meeting of the commission during a quiet period that is held by teleconference.

SEC. 6. Section 8284 of the Public Utilities Code is amended to read:

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

(2) The commission shall adopt the Department of General Services' disabled veteran business enterprise certification eligibility requirements for verifying and determining the eligibility of disabled veteran business enterprises for procurement contracts, and shall not deem eligible those disabled veteran business enterprises that are not certified by the Department of General Services.

(3) In initially adopting criteria for verifying and determining the eligibility of LGBT business enterprises for procurement contracts pursuant to paragraph (1), the commission shall adopt the LGBT status qualifiers created by the National Gay and Lesbian Chamber of Commerce. The commission may update these LGBT status qualifiers as appropriate.

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

SEC. 7. Section 8285 of the Public Utilities Code is amended to read:

8285. (a) Any person or corporation, through its directors, officers, or agents, that falsely represents a business as a women, minority, or LGBT business enterprise in the procurement of, or the attempt to procure, contracts from an electrical corporation, gas corporation, water corporation, wireless telecommunications service provider, electric service provider, or telephone corporation with gross annual California revenues exceeding twenty-five million dollars (\$25,000,000), or a commission-regulated subsidiary or affiliate subject to this article, or from an electrical corporation, gas corporation, water corporation, wireless telecommunications service provider, electric service provider, and telephone corporation with gross annual California revenues exceeding fifteen million dollars (\$15,000,000), but not more than twenty-five million dollars (\$25,000,000), shall be punished by a fine of not more than five thousand dollars (\$5,000), by imprisonment in a county jail for not more than one year or in the state prison, or by both that fine and imprisonment. In the case of a corporation, the fine or imprisonment, or both, shall be imposed on every director, officer, or agent responsible for the false statements.

(b) Any person or corporation, through its directors, officers, or agents, that falsely represents a business as a disabled veteran business enterprise in the procurement of, or the attempt to procure, contracts from an electrical corporation, gas corporation, water corporation, wireless telecommunications service provider, electric service provider, or telephone corporation with gross annual California revenues exceeding twenty-five million dollars (\$25,000,000), or a commission-regulated subsidiary or affiliate subject to this article, or from an electrical corporation, gas corporation, water corporation, wireless telecommunications service provider, electric service provider, and telephone corporation with gross annual California revenues exceeding fifteen million dollars (\$15,000,000), but not more than twenty-five million dollars (\$25,000,000), shall be punished according to the penalties established pursuant to subdivision (b) of Section 999.9 of the Military and Veterans Code. In the case of a corporation, the fine or imprisonment, or both, shall be imposed on every director, officer, or agent responsible for the false statements.

SEC. 8. Section 8286 of the Public Utilities Code is amended to read:

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

(1) Timely or progressive payments to those businesses.

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

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

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

SEC. 9. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.