

- **Board of Directors**
Communications and Legislation Committee

April 11, 2006 Board Meeting

9-3

Subject

Report on AB 2397 (Calderon, D-Montebello): MWD Service Contracts

Description

Staff recommends that the Board continue to “oppose” any legislation which either seeks to restrict Metropolitan’s ability to contract out services or which seeks to impose civil services restrictions.

Summary of AB 2397 (Calderon)

This bill seeks to prohibit Metropolitan from entering into contracts for permanent or temporary services, either skilled or unskilled, if those services, in the judgment of Metropolitan, are of a kind that persons selected through its civil service system could perform adequately and competently.

Given the broad range of expertise in Metropolitan’s core workforce, if enacted, this bill would greatly restrict Metropolitan’s ability to contract out for the kind of supplemental services needed to responsibly protect water ratepayers from undue costs and maintain the supply of safe drinking water to Southern California residents and businesses.

A copy of AB 2397 is included as [Attachment 1](#).

Background of AB 2397

The text of the AB 2397 comes largely from *State Compensation Insurance Fund v. Riley* (1937) 9 Cal.2d 126 [69 P.2d 985], which states, in part:

“When civil service was adopted in 1934 by vote of the people, it was unequivocally declared to be the policy of this state that every employee and officer of the state should be included therein with certain enumerated exceptions not here involved. **All types of service were included therein -- no distinction between professional and nonprofessional, or between temporary and permanent employment was made** either in the constitutional provision or in the act . . . Attorneys are included within civil service, and **in the absence of a showing to the contrary we must assume that [legal] services could be adequately and competently performed** by one selected in accordance with the Constitution. Any other construction of the constitutional provision would have the effect of weakening, if not destroying, the purpose and effect of the provision. With the policy of such an all-embracing civil service law this court is not concerned . . .” *Id.* at pp. 135-136.

The decision in *Riley* was recently summarized as follows:

“Early appellate decisions held that the civil service mandate forbids private contracting, whether for permanent or temporary services, skilled or unskilled, if those services are of a kind that persons selected through civil service could perform ‘adequately and competently.’

Professional Engineers In California Government v. Department of Transportation (1997) 15 Cal.4th 543, 549 [63 Cal.Rptr.2d 467]. This statement has been incorporated virtually wholesale into the text of AB 2397.

Notably, however, the civil service provisions that applied in 1937 (when *Riley* was decided), no longer apply to any California public agencies. Rather, those provisions were substantially amended almost 25 years ago, as

recognized by the court in *People ex rel. Dept. of Fish & Game v. Attransco, Inc.* (1996) 50 Cal.App.4th 1926, 1934 [58 Cal.Rptr.2d 661, 1996]. That court addressed the *Riley* decision as follows:

“The civil service law today, however, is not quite so ‘all-embracing’ as it was in the Depression when it was enacted and *Riley* was decided. In the early 1980’s the Legislature loosened the reins and enacted a provision which, apropos *Riley*, not only ‘distinguishes between urgent temporary employment and permanent employment,’ but between employees and independent contractors. Specifically, in 1982, the Legislature added section 19130 to the Government Code, which provides for independent contractors to render services to the state under an enumerated set of conditions. (See Stats. 1982, ch. 1057, § 1, p. 3822.)” *Id.* at pp. 1934-1935.

Thus, AB 2397 subjects Metropolitan to antiquated contracting-out provisions designed for the socioeconomic needs of the Great Depression, rather than our present day environment.

Potential Effect of AB 2397

Given the broad range of expertise in Metropolitan’s core workforce, if enacted, this bill could greatly restrict Metropolitan’s ability to contract out for the kind of supplemental services needed to responsibly protect water ratepayers from undue costs and maintain the supply of safe drinking water to Southern California residents and businesses. Key issues related to AB 2397’s attempt to restrict contracting include:

- **Metropolitan should retain the same contracting flexibility as that enjoyed by other local entities.** Local entities must retain contracting discretion to address fluctuating workloads, efficiently manage short-term projects, obtain specialized services and contain costs. Metropolitan should not be singled out for contracting restrictions that were implemented during the Great Depression. Moreover, enactment of AB 2397 would set a bad precedent for other local entities.
- **Contracting is vital to meeting peak workload demands.** Metropolitan relies on a cost-effective strategy of using contract services to address peak operations and maintenance workload demands. For example, Metropolitan is in the midst of a 2005/06 peak in expenditures and workload for its 10-year capital improvement plan (CIP). After this peak, CIP expenditures and workload will quickly drop. Specifically, expenditures are expected to fall from a high of nearly \$550 million in 2005/06 to less than \$250 million by 2009/10 to roughly \$150 million in 2012. Through use of contracting, Metropolitan is able to avoid cycles of costly and painful layoffs.
- **Metropolitan has a proud history of maximizing utilization of its workforce.** In fiscal year 2002/03, Metropolitan staff performed more than 77 percent of Metropolitan’s total workload. Metropolitan also has an excellent record of employee retention, as reflected by employee turnover in 2003 of just 0.2 percent of Metropolitan’s workforce.
- **Metropolitan’s contracting discretion has been utilized effectively and efficiently.** Metropolitan has established effective criteria for assessing the need for service contracts. Generally, professional service contracts are used when project schedules or unique expertise is required. Other services support such functions as sludge and hazardous waste services, landscape maintenance and facility maintenance.
- **AB 2397 undermines Metropolitan’s well-recognized and successful small business outreach program and would hurt regional businesses.** Metropolitan is proud of its well-developed outreach efforts and fair bidding processes, which have resulted in increased competition for contracts and in cost savings for the agency.
- **AB 2397 could prohibit Metropolitan’s use of effective, community-based partnerships for water education and other programs.** AB 2397’s restrictions would likely bar many of Metropolitan’s effective partnerships with community-based organizations, nonprofit organizations, professional associations and public agencies throughout Southern California and the state. Through its Community Partnering Program, Metropolitan provides support for such activities as after-school water education programs, water resources business forums, community water festivals, native and drought-tolerant plant garden education programs and watershed outreach programs. The Community Partnering Program is an extremely effective and efficient

means of educating communities using the expertise and resources of organizations familiar with and respected by their local communities.

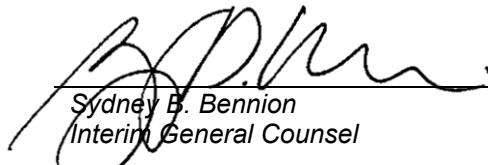
- **Contracting barriers would harm ratepayers.** AB 2397 would impose restrictions that would not only be unrealistic in light of workload demands but would be unfair to our ratepayers who would be required to support the burden of excessive and ongoing costs.

Policy


Board directed

Fiscal Impact

Currently under review


Sydney B. Bennion
Interim General Counsel

4/3/2006
Date


Jeffrey Kightlinger
General Manager

4/4/2006
Date

Attachment 1 – Assembly Bill 2397

BLA #4414

CALIFORNIA LEGISLATURE—2005—06 REGULAR SESSION

ASSEMBLY BILL

No. 2397

Introduced by Assembly Member Calderon

February 23, 2006

An act to add Section 122.2 to the Metropolitan Water District Act (Chapter 209 of the Statutes of 1969), relating to water.

LEGISLATIVE COUNSEL'S DIGEST

AB 2397, as introduced, Calderon. Metropolitan water districts: service contracts.

Existing law, the Metropolitan Water District Act, authorizes the board of a metropolitan water district to prescribe a system of civil service.

This bill, with a certain exception, would prohibit the district from entering into a contract for permanent or temporary services, skilled or unskilled, if those services, in the judgment of the district, are of a kind that persons selected through its civil service system could perform adequately and competently. By establishing these requirements on a metropolitan water district, the bill would impose a state-mandated local program.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 122.2 is added to the Metropolitan
- 2 Water District Act (Chapter 209 of the Statutes of 1969), to read:
- 3 Sec. 122.2. Except as otherwise provided in Article XXII of
- 4 the California Constitution, the district shall not enter into a
- 5 contract for permanent or temporary services, skilled or

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— 2 —

- 1 unskilled, if those services, in the judgment of the district, are of
- 2 a kind that persons selected through its civil service system could
- 3 perform adequately and competently.