

Eddy Lau Remarks – as of 2/23/15

Chair Stone and Members of the Committee, my name is Eddy Lau.

I am a licensed civil engineer and geotechnical engineer in the State of California. I used to own a consulting engineering firm specializing in geotechnical engineering.

Prior to Proposition 209, my firm employed up to 15 people. My clients included Caltrans, City and County of San Francisco, City of Oakland, and BART, to name a few.

After Proposition 209, my firm shrunk to five people. I no longer had the same opportunities to obtain work from public contracts. When I retired in 2012, my firm was down to one person -- me.

I have been active in a group called Asian American Architects and Engineers and a group called the Council of Asian American Business Associations, an umbrella organization that includes contractors, attorneys, CPAs, architects and engineering firms.

I am a member of the Caltrans Small Business Council, and also the California High-Speed Rail Authority Business Advisory Council, representing Asian American Architects and Engineers.

I was asked to share my thoughts on ways that we can improve diversity for Minority Business Enterprises (MBE) given the restrictions imposed by Proposition 209.

Before I speak to that, I'd like to add my reflections on how Proposition 209 has affected Asian American small businesses.

Next year will be the 20th anniversary of Prop. 209. I was involved in the movement against Prop. 209 and I regret that our fears about Prop. 209 two decades ago have become reality.

Only one-third of certified Minority Business Enterprises (MBE) in California's transportation construction industry is still in business today compared to 20 years ago.

Minority firms have experienced a 50 percent reduction in total awards and contracts from Caltrans.

The harm to minority businesses often hits Asian Americans the hardest. Public contracting is the one area that puts Asian Americans in the center of the affirmative action debate. Asian Americans are usually perceived as high-achieving professionals, and left on the sidelines in any discussion of which firms are doing business with government.

What Prop. 209 did was allow a return to the old practices that existed before affirmative action. Prop. 209 helped the “old boy’s network” shut the door on many MBEs, including businesses like mine.

We now have an environment where our government – the keepers of our taxpayer dollars – cannot make sure that minority businesses get a fair share of public contracts. Closed-door negotiations and bid meetings have been the norm since Prop. 209 passed.

After 1996, Caltrans eliminated a race-conscious program and changed to a race-neutral program, for the state funded or locally funded projects. San Francisco similarly eliminated its minority and women business enterprises (M/WBE) public contracting policy, and changed to a race neutral local business enterprises (LBE) program. The similar policy changes were enacted by other government agencies, such as City of Oakland, Alameda County, and BART.

However, for federally funded projects from US Department of Transportation, Caltrans continues maintain a Disadvantaged Business Enterprises (DBE) program, where the WBEs and MBEs are considered as DBEs. Caltrans DBE program was administered for a period of time as an aspiration program rather than a race conscious program because of the arrears in the preparation of the Disparity and Availability Studies as mandated by the Court, and challenged by the AGC/Pacific Legal Foundation.

Statistics on the DBE program, kept by Caltrans, indicated that in a period from federal Fiscal Year 2007 through 2013, contracting dollars awarded to DBEs range from a low of 3.38% in 2009 to 10.65% in 2013. For the same period, the Asian-Pacific shares ranged from a low of 0.17% in 2009 to a high of 1.62% in 2012.

In its earliest years, the Asian American community was built on a small business economy. A major part of our success was due to elected officials who believed that affirmative action kept doors open and gave us a fair shot at contracts and projects.

Bottom line is that Asian American firms as a whole are worse off now than 20 years ago when Prop. 209 passed. Prop. 209 have hurt Asian American small businesses. [pause]

With that said, we must deal with the reality of Prop. 209. So I have a few suggestions on how we can improve diversity within 209's limitations.

First, we need to do more of what is happening today. We need more high level discussions like this among decision-makers like you about whether Prop. 209 have made California better. Or worse.

If in fact, M/WBEs have lost today's equivalent of one billion dollars a year – as was shared the gentleman with the Equal Justice Society report – then we cannot ignore Prop. 209. If any other law was proven to be hurting people, to be hurting businesses, there would be more of an effort to fix it.

Second, we need the Legislature's help to instruct state agencies about what can and cannot be done within the confines of Prop. 209. I suspect that state agencies may not be doing all they can to give MBEs a fair shot because they don't fully understand the regulations.

The utilization data for various ethnic groups were seldom published by either the state or local agencies although it was mandated that such data be maintained. My third suggestion would be for the Legislature to demand the publishing such utilization so we can better evaluate the consequence of the Proposition 209.

My most important suggestion is related to the State's 25 percent small business participation goal, which was established by Executive Order S-02-06 under Governor Schwarzenegger in 2006.

Since it was set only as a goal by executive order, agencies are not compelled to meet the 25 percent SBE participation level. If they fall short, there are no consequences. It's only an aspiration.

I recommend the Legislature enact by statute the 25 percent SBE participation in public contracting. Because a large number of women and minority businesses also fall under

the SBE category, the 25 percent inclusion law would open doors once again to these businesses without running afoul of Prop. 209.

I realize that we can't snap our fingers and make such a law. I know it's more complicated than that. But based on my decades of experience with public contracting, and my experience firsthand with the negative impact of Prop. 209, I believe the 25 percent SBE requirement can be part of a specific solution given the current environment. This is just the first step to rectify the painful experience.

Thank you again for having me here today. I welcome any questions from the Members.