

Date of Hearing: April 29, 2016

ASSEMBLY COMMITTEE ON JOBS, ECONOMIC DEVELOPMENT, AND THE ECONOMY

Eduardo Garcia, Chair

AB 865 Alejo – As Amended April 16, 2015

SUBJECT: State Energy Resources Conservation and Development Commission: grants and loans: diversity

SUMMARY: Requires the State Energy Resources Conservation and Development Commission (Commission) to establish guidelines for the purpose of encouraging grantees and borrowers to engage women, minority, disabled veterans, and LGBT business enterprises in subcontracts, as specified. Specifically, **this bill:**

- 1) Requires the Commission to condition the receipt of a grant or loan with a commitment by the grantee or borrower of a certain size to meet diversity planning and reporting requirements.
- 2) Requires each grant or loan recipient with revenues exceeding \$25 million to undertake the following:
 - a) Annually submit a detailed and verifiable plan for increasing procurement from women, minority, disabled veteran, and LGBT business enterprises in all categories, including, but not limited to, renewable energy, advanced technologies, and demonstration projects; and
 - b) Provide an annual report to the Commission regarding the implementation of outreach programs to inform and recruit women, minority, disabled veteran, and LGBT business enterprises to apply for procurement contracts, as specified.
- 3) Requires the Commission to establish guidelines for specified grantees and borrowers to use in creating supplier and subcontractor outreach programs.
- 4) Authorizes the Commission to set a revenue threshold other than \$25 million for those Commission grantees and borrowers mandated to comply with the planning and reporting requirements in this measure.
- 5) Requires that the annual report on outreach program implementation be a public document and posted on the Internet website of the grant or loan recipient or Commission.
- 6) Requires the Commission, following the recipient of the plans and reports, to consider establishing a Diversity Task Force to consider and make recommendations about diversity in the energy industry, including diversity of corporate governing boards and procurement from diverse businesses.
- 7) Provides that if the Commission establishes a Diversity Task Force, that the Commission consider how the Task Force can address and promote local and targeted hiring.
- 8) Defines the following terms:
 - a) “Control” means exercising the power to make policy decisions.
 - b) “Disabled veteran business enterprise” has the same meaning as defined in Section 999 of the Military and Veterans Code, which is defined under existing law.

- c) "LGBT business enterprise" means a business enterprise that is at least 51 percent owned by a lesbian, gay, bisexual, or transgender person or persons, or, in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more lesbian, gay, bisexual, or transgender persons, and whose management and daily business operations are controlled by one or more of those individuals.
- d) "Minority business enterprise" means a business enterprise that is at least 51 percent owned by a minority group or groups, or, in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more minority groups, and whose management and daily business operations are controlled by one or more of those individuals. The contracting utility shall presume that minority includes African Americans, Hispanic Americans, Native Americans, and Asian Pacific Americans.
- e) To "operate" means to be actively involved in the day-to-day management. It is not enough to merely be an officer or director.
- f) "Renewable energy project" means a project for the development and operation of an eligible renewable energy resource meeting the requirements of the California Renewables Portfolio Standard Program [Article 16 (commencing with Section 399.11) of Chapter 2.3 of Part 1 of Division 1].
- g) "Women business enterprise" means a business enterprise that is at least 51 percent owned by a woman or women, or, in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more women, and whose management and daily business operations are controlled by one or more of those individuals.

EXISTING LAW:

- 1) Establishes the Commission to serve as the state's primary energy policy and planning agency. The Energy Commission is comprised of a five-member board appointed by the Governor and approved by the California State Senate. Among other duties, the Energy Commission administers a range of grant and loan programs
- 2) Requires the Public Utilities Commission (PUC) to require each electrical, gas, water, wireless telecommunications service provider, and telephone corporation with gross annual revenues over \$25 million (including commission-regulated subsidiaries and affiliates) to submit annually a detailed and verifiable plan for increasing women- and minority-owned business and DVBE procurement in all categories.
- 3) Defines the following terms:
 - a) "Women business enterprise" means a business enterprise that is at least 51% owned by a woman or women; or, in the case of any publicly owned business, at least 51% of the stock of which is owned by one or more women; and whose management and daily business operations are controlled by one or more of those individuals.
 - b) "Minority business enterprise" means a business enterprise that is at least 51% owned by a minority group or groups; or, in the case of any publicly owned business, at least 51% of the stock of which is owned by one or more minority groups, and whose management and daily business operations are controlled by one or more of those individuals. The contracting utility is directed to presume that minority includes Black Americans, Hispanic Americans, Native Americans, and Asian Pacific Americans.

- c) "DVBE" means a sole proprietorship, corporation, or partnership whose management and control of the daily business operations is by one or more disabled veterans. If the enterprise is a sole proprietorship, then at least 51% is owned by one or more disabled veterans. A publicly owned business must have at least 51% of its stock unconditionally owned by one or more disabled veterans. A subsidiary that is wholly owned by a parent corporation is a DVBE if at least 51% of the voting stock of the parent corporation is unconditionally owned by one or more disabled veterans and a joint venture is a DVBE if at least 51% of the joint venture's management, control, and earnings are held by one or more disabled veterans.

FISCAL EFFECT: Unknown

POLICY ISSUE FRAME:

Although California has enormous diversity in its population, this does not mean by default that historically underserved populations are seeing an increased prosperous role in the U.S. economy. Research demonstrates that the highest earners received most of their income from capital gains and business ownership. This strongly suggests that an often overlooked means for challenging income disparity is to increase diversity among entrepreneurs and acting on behalf of minority, women, LGBT, and disabled veteran business owners, to increase their access to self-employment and correct for historical disparities.

This measure proposes to increase the rate of successful entrepreneurship among minorities, women, LGBT-identified individuals, and disabled veterans. In doing so the bill recognizes the demographic shifts of the California marketplace and helps to nurture the new and next generation of energy technology leaders. As an additional community benefit, the bill mark progress towards mitigating social prejudice and income disparity.

The Comment section of the analyses includes additional information on a model program and its complimentary outreach activities which draw comparison to the intent of this bill, a Congressional Budget Office report's findings on income disparity as it relates to business ownership, and the contrast between current demographic shifts and the lack of diversity among corporate leadership. Comment 6 includes a list of amendments the author will be accepting that help operationalize this measure.

COMMENTS:

- 1) **Author's Purpose:** According to the author's statement, "AB865 will ensure that California's clean energy future is inclusive of diverse communities. This bill will help working families and working-class communities make economic and environmental gains with its investments. The Commission currently directs much of California's investments in clean energy research, clean transportation, and energy efficiency. This bill helps ensure California's climate change policies and investments have maximum co-benefits to reduce pollution and poverty.

This bill will require recipients of commission funding – which supports projects advancing clean transportation and energy technologies as well as cutting edge research – to report annually on their minority-, women-, LGBT- and disabled veteran-owned business procurement efforts.

It will also require that fund recipients develop a verifiable supplier diversity plan. In addition, it will create a diversity advisory committee to support the Commission's supplier diversity efforts, including creating guidelines for fund recipients to use in carrying out bill requirements.

AB865 builds upon the success of CPUC, General Order 156, which created an effective supplier diversity program that has led to \$8.5 billion in procurement contracts with diverse business enterprises out of the \$24 billion total purchased by applicable companies. The insurance industry has seen similar success under AB53, with an effective and innovative diversity task force achieving higher diversity procurement numbers in California. It is now time to see a successful supplier diversity program apply to the entire energy sector."

- 2) **Model Program:** Beginning in 1986, the Legislature enacted a series of statutes, and the PUC adopted General Order (GO) 156, for the purpose of encouraging greater participation in utility contracts by women, minorities, and disabled veteran owned business enterprises (WMDVBE). In 2014, lesbian, gay, bisexual, and transgender business enterprises were added through statute. Currently regulated entities include electrical, gas, water, wireless telecommunications service providers, and telephone corporations with gross annual revenues over \$25 million including commission-regulated subsidiaries and affiliates.

Statute and GO 156 include rules and regulations for the utilities' compliance with the WMDVBE contracting program, and requires participating utilities to inform, recruit, and obtain at least 20% of their products and services purchased within a five-year period from women- and minority-owned businesses. The targets are 15% for minority-owned businesses, 5% for women-owned businesses, and 1.5% for DVBEs.

GO 156 further requires woman- and minority-owned business enterprises to be certified through the CPUC's Utility Diversity Supplier Program Clearinghouse, and disabled veteran-owned businesses to be certified by the Department of General Services pursuant to DVBE certification established under the California Disabled Veteran Business Enterprise Program. There are currently 7,944 verified vendors in the Clearinghouse database, of which 2,358 are minority-owned businesses, 2,661 are women-owned businesses, 1,164 are minority women-owned or woman and minority male-owned businesses, and 1,761 are DVBEs. Utilities subject to these diversity contracting requirements are assessed a charge based on intrastate revenues to support operation of the Clearinghouse.

Regulated entities are required to annually submit a detailed and verifiable plan, with goals and timetables, for increasing WMDVBE participation in all categories of procurement, including technology, equipment, supplies, services, materials, and construction. Although there is no penalty for failure of a utility to meet its goals, each utility is required to report annually on its progress. The CPUC, in turn, is required to make an annual progress report to the Legislature.

The California Constitution prohibits the state from discriminating against, or granting preferential treatment to, any individual or group on the basis of race, sex, color, ethnicity, or national origin in the operation of public employment, public education, or public contracting. According to the CPUC, nothing in GO 156 authorizes or permits a utility to use set-asides, preferences, or quotas in administration of its WMDVBE program, and utilities retain the authority to use legitimate business judgment to select a supplier for a particular contract.

- 3) **Outreach Activities:** AB 865 requires grantees and borrowers to establish outreach programs as a means to inform and recruit a broader diversity of applicants to their contracting activities. Examples of the types of outreach activities recommended in GO 156 include:
- a) Actively seek out opportunities to identify WMDVBE contractors and to expand WMDVBE source pools;
 - b) Actively support the efforts of organizations experienced in the field who promote the interests of WMDVBE contractors;
 - c) Work with WMDVBE contractors to facilitate contracting relationships by explaining utility qualification requirements, bid and contracting procedures, materials requirements, invoicing and payment schedules, and other procurement practices and procedures;
 - d) Encourage employees involved in procurement activities to break apart purchases and contracts as appropriate to accommodate the capabilities of WMDVBEs; and
 - e) At the request of any unsuccessful WMDVBE bidder, provide information concerning the relative range/ranking of the WMDVBE contractor's bid as contrasted with the successful bid.

GO 156 also provides that outreach activities should vary for each utility depending on its size, service territory, and specific lines of business.

- 4) **Using Entrepreneurship to Address Income Disparity:** In understanding how business ownership can shift the income disparity dynamic, it may be useful to consider a 2011 Congressional Budget Office (CBO) report on after-tax incomes of American households.

The CBO found that between 1979 and 2007, income for households at the higher end of the income scale rose much more rapidly than income for households in the middle and at the lower end of the income scale. Most significantly, by the end of the reporting period (2005-2007), the after-tax income received by the top 20% exceeded the after-tax income of the remaining 80%. The chart below illustrates the CBO's findings in more detail.

After-Tax Income Growth 1979 to 2007			
Income Bracket	Income Earners	Percentile	Percentage Growth
1	Top 1%	100th	275%
2	Next 20%	81 st to 99 th	65%
3	Next 60%	20 th to 80 th	40%
4	Bottom 20%	1 to 19 th	18%
Source: "Trends in the Distribution of House Income Between 1979 and 2007," Congressional Budget Office, 2011			

The two primary reasons for the increase in income disparities were (a) the uneven distribution in the sources of household income and (b) the differing economic circumstances of those sources. Households in the higher income brackets (1 & 2) received a majority of their income through capital gains and business income, which increased in value as a share of total income, while individuals in the bottom two brackets (3 & 4) received a majority of their income from labor income and capital income, which decreased in value. With the recession, this income disparity has continued to

increase, in part, because of the impact of long term unemployment on wages (a core component of labor income), and rental rates (a core component of capital income).

The findings in the report also suggest that policies that inhibit access to self-employment serve to reinforce income disparities and that policies which encourage entrepreneurship, especially to historically underserved populations, could begin to break the trend.

- 5) **Market Impacts of California's Demographic Shift:** As unprecedented numbers of baby boomers prepare to retire from the market place, many corporate boards will be seeking new members to help shape their businesses for the future. This demographic trend reflects not only a generational shift in the U.S., but it also marks a shift in the race and ethnicity of the nation's working age population.

The California Budget Project estimates that by 2020, nearly 60% of the working age population in California will be comprised of Latinos, African Americans, and Asian Americans. Similarly, the composition of the U.S. consumer base is changing. Minority purchasing power in the U.S. is expected to triple from \$1.3 trillion in 2000 to over \$4 trillion by 2045. This represents over a 70% growth of total U.S. purchasing power during the same time period. Latino and African American purchasing power is already so significant in the U.S. that if it were compared to national GDPs, it would be greater than all but nine economies in the world.

Companies that want to remain competitive are designing new and adapting existing products and services to meet this expanding market. Corporate leadership, however, has not kept pace with the changing demographics, and there remains a gap in the ethnic and gender diversity on corporate boards. 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. Research also suggests that companies with more diverse boards have higher performance and other financial metrics such as return on equity, return on sales, and return on investment.

However, even given this type of empirical evidence for out-performance, there has been very little progress in bringing diversity to boardrooms. The above-referenced report states that 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%, Asian Americans 2%, and Latinos 4%. Another study conducted by the Alliance for Board Diversity examined growth in diversity from 2004 to 2006, revealing that only three net seats were gained by women and minorities.

A 2012 study by Alliance for Board Diversity noted that between 2004 and 2012, among Fortune 100 companies:

- Women had gained only 38 board seats, 16.2% to 19.8% or a 2.9% increase.
- Minority men had gained only 12 seats, 11.9% to 12.4% or a 0.5% increase.
- Minority women had gained 9 seats, 3% to 3.9% or a 0.9% increase.

Among Fortune 500 companies, women held less than 20% of corporate board seats in 2014, according to a January 2015 study by Catalyst, a Canadian nonprofit organization that publishes research on women and business.

Encouraging more diverse boards is an important public policy as it lessens income and equity gaps, generates higher tax revenues, and contributes to the state's overall competitiveness. By modernizing

the state's procurement policies to reflect new cultural, racial and gender business conditions, AB 865 advances an important public policy for the post-recession economy.

- 6) **Proposed Amendments:** The Committee staff is in discussions with the author on the amendments listed below.
- a) Shift the size of business revenue trigger to a size of loan or grant trigger.
 - b) Streamline the Commission's oversight and clarify the purpose of the outreach programs.
 - c) Reduce planning and reporting to an outreach plan and a document that tracks its implementation and outcomes.
 - d) Direct the Commission to address certification of the targeted populations including the use of existing certification processes of the state and nationally recognized third-party certifications.
 - e) Require the grantee or borrower, within 60 days following a grant award or loan approval subject to this bill, to report to the Commission on whether they are a certified business, as well as the diversity composition of their suppliers and subcontractors in the current and prior year.
 - f) Require the grantee or borrower to continue to track and report on the diversity of its subcontractors for two-years following receipt of the Commission's funds or the term of the loan or grant, whichever is longer.
 - g) Require all annual reports to be on the Commission's website.
- 7) **Related Legislation:** Below is a list of bills from the current and prior sessions.
- a) **AB 873 (Davis) PUC Procurement Contracts with Water Companies:** This bill requires each water corporation with 10,000 or more service connections to submit annual plans for increasing procurement from women- and minority-owned businesses and DVBEs to encourage each electrical, gas, water, and telephone corporation that is not required to submit a plan under current law to voluntarily adopt a plan for increasing women, minority, and DVBE procurement in all categories. Status: Signed by the Governor, Chapter 316, Status of 2008.
 - b) **AB 1255 (V. Manuel Pérez) Corporate Board Registries Notification:** This bill, as it was heard in JEDE, would have enhanced access to information about the range of minority and/or women candidates qualified to serve on corporate boards by requiring that the Secretary of State provide corporations a listing of known registries of potential board candidates. Status: The bill was amended with different language in the Senate, 2012.
 - c) **AB 1678 (Gordon) LGBT Procurement Participation:** This bill extends provisions that require investor owned electrical, gas, water, wireless telecommunication service providers, and telephone corporations to encourage, recruit, and utilize minority, women, disabled veteran owned business enterprises to include Lesbian, Gay, Bisexual, and Transgender business enterprises. Status: Signed by the Governor, Chapter 633, Statutes of 2014.
 - d) **AB 1918 (Davis) PUC Procurement Wireless Telecommunications:** This bill requires the PUC to require specified wireless telecommunications service providers to annually report on their progress in increasing contracting with women- and minority-owned businesses and DVBEs. Status: Signed by the Governor, Chapter 456, Statutes of 2010.
 - e) **AB 2593 (Bradford) Diversity at the Air Resources Board:** This bill would have required businesses with gross annual revenues exceeding \$25 million that participate in programs administered by the Air Resources Board (ARB) that receive funding from the Greenhouse Gas

Reduction Fund to report to ARB on efforts to increase procurement from women, minority, and disabled veteran business enterprises. Status: Vetoed by the Governor, 2014. The Governor's veto message stated, "This bill would require a business enterprise with gross annual revenue exceeding \$25 million, participating in a program administered by the Air Resources Board that is funded from the Greenhouse Gas Reduction Fund, to report annually to the Air Board regarding supplier diversity procurement. Without question, I support the general goal, but this bill establishes a burdensome and expensive requirement for businesses with no clear way to ensure that supplier diversity would actually increase. Furthermore, State agencies are already taking action to report on diversity procurement and currently report to both the State and Federal governments on supplier diversity procurement contracts."

- f) **AB 2758 (Bradford) PUC Minority and Women Procurement Goal Reporting:** This bill requires the PUC to include in their required report to the Legislature, the renewable energy, wireless telecommunications, broadband, smart grid and rail projects as categories for which utilities should increase procurement from women, minority, and disabled veteran-owned enterprises, specified. Status: Signed by the Governor. Chapter 475, Statutes of 2010.
 - g) **AB 3678 (Moore) PUC Procurement Goals:** This bill codified the broader parameters of GO 156, and requires electrical, gas, and telephone corporations (with gross annual revenues exceeding \$25 million) to annually submit a detailed and verifiable plan for increasing women- and minority-owned business procurement in all categories that includes short- and long-term goals and timetables, and furnish an annual report. It also required the PUC to establish guidelines for the plans. Status: Signed by the Governor, Chapter 1259, Statutes of 1986.
 - h) **SB 2398 (Dills) PUC DVBE Procurement Goal:** This bill included DVBEs in the classes of entities eligible under women- and minority-owned business programs. A subsequent PUC decision includes disabled veteran-owned business enterprises (D. 95-12-045) and establishes a 1.5-percent goal for disabled veteran-owned businesses. Status: Signed by the Governor, Chapter 516, Statutes of 1990.
- 8) **Double Referral:** The Assembly Rules Committee has referred this measure to the Assembly Committee on Utilities and Commerce (U&C) and the Assembly Committee on Jobs, Economic Development and the Economy. This measure passed U&C on a 10 to 3 vote.

REGISTERED SUPPORT / OPPOSITION:

Support

Asian Business Association
 Asian Business Association, Inland Empire
 Asian Pacific Environmental Network
 California Black Chamber of Commerce
 Coalition for Clean Air
 Environment California
 Environmental Defense Fund
 Equality California
 Green Technical Education and Employment
 Greenlining Institute (Sponsor)
 Natural Resource Defense Council
 sustainableSMARTS
 West Angeles Community Development Corporation

Opposition

None received

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