***** JEDE AMENDMENTS *****

AB 2873 (Jones-Sawyer): Amended: March 24, 2022
Submitted by: JEDE and H&CD

Summary:

1. Requires TCAC to develop guidelines for recipients of housing credit applications to use in preparing a supplier and contractor diversity plans.
2. Specifies that the reporting covers contracts, including subcontracts, directly related to the development and construction of the housing project for which a credit was allocated.
3. Requires TCAC to consider the reporting frameworks, forms, and definitions used in other supplier and contractor diversity programs in which housing sponsors may be reporting.
4. Identifies the type of data that is required to be reported, which includes:
   a. Total contracting activity per year and per project, which may include multiple years.
   b. Contracting activity by each of the targeted business-owner groups
   c. Contracting activity by geographic location of the contractor
   d. Contracting activity by category of contracts, including technology, goods, services, and construction.
5. Sets housing credit allocations on or after January 1, 2024 as the reporting and project trigger. From this point, additional triggers are based.
6. Requires women, minority, disabled veteran, and LGBT businesses be certified by a third party and authorizes TCAC to align its certification policies with those used by the CPUC.
7. Phases-in the reporting requirements of housing sponsor requirements based on total number of affordable housing projects. The trigger is 5 or more projects.
8. Delays the requirement for a housing sponsor to adopt supplier and contractor diversity goals and timelines to the second year of reporting. Delays the requirement for a housing sponsor to report on geographic location to the third year of reporting.
9. Expresses legislative intent that all housing sponsors, regardless of whether they are mandated, are encouraged to adopt a plan for increasing supplier and contractor opportunities for women, minority, disabled veteran, and LGBT businesses.
10. Standardizes the use of the term “housing sponsor” to refer to the entity responsible for reporting.
11. Requires TCAC to adopt supplier and contractor diversity goals five years after the implementation of the bill.

SECTION 1. The Legislature hereby finds and declares all of the following:

(a) The essence of the American economic system of private enterprise is free, open, and transparent competition. Only through free, open, and transparent competition can free markets, reasonable and just prices, free entry into business, and opportunities for the expression and growth of personal initiative and individual judgment be ensured.
(b) The preservation and expansion of that competition are basic to the economic well-being of this state and that well-being cannot be realized unless the actual and potential capacity of women, minority, disabled veteran, and LGBT business enterprises is encouraged and developed.
(c) It is the declared policy of the state to aid the interests of women, minority, disabled veteran, and LGBT business enterprises to do all of the following:
(1) Preserve reasonable and just prices and a free competitive enterprise.
(2) Ensure that a fair proportion of the total purchases and contracts or subcontracts for commodities, supplies, technology, property, and services **related to the development of affordable housing** ~~for regulated public utilities, including, but not limited to, renewable energy, wireless telecommunications, broadband, smart grid, and rail projects~~, are awarded to women, minority, disabled veteran, and LGBT business enterprises.
(3) Maintain and strengthen the overall economy of the state
(d) The opportunity for full participation in the affordable housing construction system by women, minority, disabled veteran, and LGBT business enterprises is essential if this state is to attain social and economic equality for those businesses and improve the functioning of the state economy.
(e) Public agencies and some regulated utilities that have established short- and long-range women, minority, disabled veteran, and LGBT business enterprise goals are awarding 30 percent or more of their contracts to these business enterprises.
(f) Women, minority, disabled veteran, and LGBT business enterprises have traditionally received less than a proportionate share of affordable housing procurement contracts.
(g) It is in the state's interest to expeditiously improve the economically disadvantaged position of women, minority, disabled veteran, and LGBT business enterprises.
(h) The position of these businesses can be substantially improved by providing long-range substantial goals for procurement by affordable housing company credit recipients of technology, equipment, supplies, services, materials, and construction work from women, minority, disabled veteran, and LGBT businesses.
(i) That procurement also benefits affordable housing credit recipients and consumers of the state by encouraging the expansion of the number of suppliers for procurements, thereby encouraging competition among the suppliers and promoting economic efficiency in the process.
(j) The long-term economic viability of this state depends substantially upon the ability of affordable housing projects to incorporate women, minority, disabled veteran, and LGBT businesses into those projects.

SEC. 2. Section 50199.15 of the Health and Safety Code is **amended** to read:

50199.15. (a) The committee shall annually submit to the Legislature by April 1 of each year a report specifying, with respect to its activities under this chapter during the previous calendar year, (1) the total amount of low-income housing credits allocated by the committee, (2) the total number of units assisted by the credit that are, or are to be, occupied by households whose income is 60 percent or less of area median gross income, (3) the amount of the credit allocated to each project, the other financing available to the project, and the number of units that are, or are to be, therein occupied by households whose income is 60 percent or less of area median gross income, and (4) sufficient information to identify the project.
(b) The committee shall also include in its annual report to the Legislature, an aggregation of the information which shall be submitted annually by housing sponsors for all projects which have received an allocation in previous years, specifying all of the following:
(1) Information sufficient to identify the project.

(2) The total number of units in the project.
(3) The total number of units assisted by the credit that are required to be occupied by households whose income is 60 percent or less of the area median gross income as a condition of receiving a tax credit.
(4) The total number of units assisted by the credit that are occupied by households whose income is 60 percent or less of the area median gross income.

(c) The committee shall also include in its annual report to the Legislature, any recommendations for improvement in the low-income housing tax credit.

(d) Commencing in the ~~2023~~ **2025** calendar year, the committee shall include in its annual report to the Legislature, **an aggregation of the information submitted by housing sponsors for all projects which have received an allocation on or after January 1, 2024, pursuant to requirements of** ~~a summary of the commitments made by affordable housing companies to the goals specified in~~ Section 50199.23 ~~and their progress toward meeting those goals~~.

SEC. 3. Section 50199.23 is **added** to the Health and Safety Code, to read:

50199.23. (a) For the purposes of this section, the following definitions apply:
(1) "Control" means exercising the power to make policy decisions and active involvement in the day-to-day management of a business enterprise. Being an officer or director does not alone demonstrate active involvement.
(2) "Disabled veteran business enterprise" has the same meaning as defined in Section 999 of the Military and Veterans Code.
(3) "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.
(4) "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.
(5) "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.

(b) **The committee shall develop guidelines, consistent with the requirements of this section, for housing sponsors that have received a credit allocation on or after January 1, 2024, except as provided in subdivision (d), to use in preparing detailed and verifiable supplier and contractor diversity plans required in subdivision (c).**

(1) It is the purpose of ~~this section~~ **these guidelines is** to ~~do both of the following: (1) Encourage~~ **encourage** greater economic opportunity for women, minority, disabled veteran, and LGBT business enterprises.
~~(2) Clarify and expand the program for the procurement by affordable housing companies of technology, equipment, supplies, services, materials, and construction work from women, minority, disabled veteran, and LGBT business enterprises.~~ **The committee shall post the individual reports received from the housing sponsors on the committee website.**

(2) The guidelines shall include a requirement that women, minority, disabled veteran, and LGBT business enterprises shall be certified by a third party. The committee may align its certification policies

with those used by the California Public Utilities in implementing Article 5 of Chapter 7 of Division 4 of Public Utilities Code, commencing with Section 8281.

(3) In developing the reporting guidelines the committee shall consider the reporting frameworks, forms, and definitions used in other supplier and contractor diversity programs in which housing sponsors may be reporting.

(4) By March 1, 2028, the committee shall establish supplier and contractor participation goals for women, minority, disabled veteran, and LGBT business enterprises. These goals shall be incorporated into the annual reports of housing sponsors for the 2029 report year. Housing sponsors may adopt higher goals for their own activities.

(c) (1) A housing **sponsor** ~~credit applicant~~ **who receives an allocation on or after January 1, 2024**, ~~and any of their subsidiaries and affiliates,~~ shall annually submit a report to the committee, in a form that the committee shall require, and at the time that the committee shall annually designate. **The reporting period shall cover contract activities directly related to the development and construction of a housing project from the first day following receipt of the credit allocation with an option for the housing sponsor to include prior contracting activities under the per project reporting requirements. The final report shall cover the year that the project is placed in service.** The report shall include all of the following:

(A) A detailed and verifiable plan for increasing ~~as a~~ procurement **opportunities** from women, minority, disabled veteran, and LGBT business enterprises **used in the development and construction of the housing projects** in all categories**, including technology, goods, services, and construction.**

(B) Short- and long-term diversity goals and timetables, but not quotas, related to contractor race and ethnicity, contractor gender, and contractor census-tract income distribution. **This subparagraph applies to the second year of reporting by the housing sponsor. In the third year of reporting, the housing sponsor shall also include aggregate level data for contractors headquartered or having a primary location in low-income census tracts in California.**

(C) Proposed methods **and strategies** for increasing **the diversity of suppliers and subcontractors engaged by** both **housing sponsors and** prime contractors **including** and ~~awardees~~ ~~to engage~~ women, minority, disabled veteran, and LGBT business enterprises. ~~in subcontracts in all categories that provide subcontracting opportunities~~.

~~(D) The current status of, and, if any, strategies for, increasing procurement from women, minority, disabled, veteran, and LGBT business enterprises in all categories~~.

(E) Procurement data for the year and the aggregate data for each project funded in whole or in part with moneys raised by a credit allocated on or after January 1, ~~2023~~ **2024**. **The reporting shall include all of the following:**

(i) The number and dollar amount of all contracts in all categories and by each category of contract that was issued during the report year. The categories of contracts shall include technology, goods, services, and construction.

(ii) The number and dollar amount of all contracts in all categories and by each category of contract that was issued during the year to each business-owner group, including women business enterprises, minority business enterprises, disabled veteran business enterprises, and LGBT business enterprises.

(iii) The total number and dollar amount of contracts issued to subcontractors shall be reported for each business-owner group specified in (ii) by each category of contract.

(iv) The number and dollar amount of all contracts, including subcontracts, and by each category of contract issued during the year with businesses headquartered or having a primary location in a low-income census tracks in California.

(iv) The number and dollar amount of all contracts in all categories and by each category of contract that were issued for a project funded in whole or in part through moneys raised by a credit allocated on or after January 1, 2024. This may include information on contracts related to the project that were issued prior to the tax credit allocation.

(v) The number and dollar amount of all contracts in all categories and in each category of contract that were issued for a project specified in (iv) to each business-owner group, including women business enterprises, minority business enterprises, disabled veteran business enterprises, and LGBT business enterprises.

(vi) The total number and dollar amount of contracts issued to subcontractors shall also be reported for each of business owner group specified in (v) by each category of contract.

(vii) The number and dollar amount of all contracts, including subcontracts, for a project specified in (iv) with businesses headquartered or having a primary location in low-income census tracks in California.

(d) (1) The requirement to develop a plan pursuant to subdivision (c) applies to all housing sponsors that have completed five or more housing projects. For housing sponsors who have not completed five or more housing projects on January 1, 2023, the plan and reporting requirements shall begin in the year following the commencement of construction on their fifth housing project for which they have received public money. *[The author may come back to H&CD and JEDE to propose and discuss an alternate reporting trigger for emerging housing sponsors.]*
(2) Expresses the Legislature's intent that housing sponsors who are not required to adopt a supplier and contractor diversity plan, pursuant to this section, are encouraged to voluntarily adopt a plan and report on the outcomes of those plans for increasing women, minority, disabled veteran, and LGBT business enterprise procurement in all categories of contracts, including technology, goods, services, and construction.

(e) ~~(2)~~ The committee shall **annually** consider the ~~**findings**~~ **information and data** from the reports submitted pursuant to this subdivision **and may make modification to the committee's** ~~**to establish**~~ guidelines **adopted pursuant to subdivision (b)** ~~**for all affordable housing applicants and their subsidiaries and affiliates**~~.

~~(d) The committee shall establish a procedure to review the reports submitted pursuant to subdivision (c) for the purpose of verifying the claims made by a housing credit applicant on the report.~~

(f) ~~(e)~~ The provisions of this section are severable. If any provision of this section or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

SEC. 4. 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.