

AMENDED IN SENATE JULY 6, 2015

AMENDED IN ASSEMBLY MAY 6, 2015

AMENDED IN ASSEMBLY APRIL 16, 2015

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 865

**Introduced by Assembly Member Alejo
(Coauthor: Assembly Member Jones-Sawyer)**

February 26, 2015

An act to add Section 25230 to the Public Resources Code, relating to the State Energy Resources Conservation and Development Commission.

LEGISLATIVE COUNSEL'S DIGEST

AB 865, as amended, Alejo. State Energy Resources Conservation and Development Commission: contracts, grants, and loans: diversity.

The Warren-Alquist State Energy Resources Conservation and Development Act establishes the State Energy Resources Conservation and Development Commission. Existing law requires the State Energy Resources Conservation and Development Commission to administer various grant and loan programs.

This bill would require the State Energy Resources Conservation and Development Commission to develop an outreach program to inform and recruit the most qualified loan and grant applicants, and contractors, including, but not limited to, women, minority, disabled veteran, and LGBT business enterprises, as defined. The bill would require that one component of the outreach program be a process for tracking the diversity of contractors, loan recipients, and grant recipients. The bill would require the commission to include certified *the outreach program*

to include a strategy to inform certified women, minority, disabled veteran, and LGBT business enterprises in announcements about workshops, trainings, and funding opportunities, as appropriate, and consider including them in capacity building activities. The bill would require the commission to require that each contractor, recipient of a grant awarded, or loan approved by the commission on or after October 1, 2016, July 1, 2017, for an amount of \$1,000,000 or more, including amended contracts, loans, and grant agreements that bring the total value of the loan or grant to \$1,000,000 or more (1) report more, or a different threshold or criteria determined to be appropriate by the commission, to (1) submit a report to the commission on the demographic makeup of the management of the firm or organization, (2) submit a detailed and verifiable outreach plan to the commission for increasing subcontractor opportunities by certified women, minority, disabled veteran, and LGBT business enterprises, (3) implement the outreach plan to the best of the contractor's or recipient's financial and administrative capacity, and (4) furnish a report to the commission regarding the activities and outcomes achieved in implementing the outreach plan. The bill would require the commission to establish guidelines for all contractors, grant recipients, and loan recipients to utilize in preparing, implementing, and reporting on the outreach plans. The bill would require each contractor and recipient of a grant or loan that is subject to the bill's requirements to submit data on a form provided in a format to be specified by the commission of the activities and outcomes of its outreach plan on October 1 of the following fiscal year in which the contract was awarded, the loan was approved, or the grant was received. contract, grant, or loan was awarded. The bill would require the State Energy Resources Conservation and Development Commission commission 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. businesses, and addressing and promoting local and targeted hiring.

Vote: majority. Appropriation: no. Fiscal committee: yes.

State-mandated local program: no.

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

1 SECTION 1. Section 25230 is added to the Public Resources
2 Code, to read:

1 25230. (a) For purposes of this section, the following terms
2 have the following meanings:

3 (1) “Certified” means a business enterprise that is certified by
4 the Public Utilities Commission, the Department of General
5 Services, or other nonprofit organizations that verify or certify
6 women, minority, disabled veteran, and LGBT business enterprises.

7 (1)

8 (2) “Control” means exercising the power to make policy
9 decisions.

10 (2)

11 (3) “Disabled veteran business enterprise” has the same meaning
12 as defined in Section 999 of the Military and Veterans Code.

13 (3)

14 (4) “LGBT business enterprise” means a business enterprise
15 that is at least 51 percent owned by a lesbian, gay, bisexual, or
16 transgender person or persons, or, in the case of any publicly owned
17 business, at least 51 percent of the stock of which is owned by one
18 or more lesbian, gay, bisexual, or transgender persons, and whose
19 management and daily business operations are controlled by one
20 or more of those individuals.

21 (4)

22 (5) “Minority business enterprise” means a business enterprise
23 that is at least 51 percent owned by a minority group or groups,
24 or, in the case of any publicly owned business, at least 51 percent
25 of the stock of which is owned by one or more minority groups,
26 and whose management and daily business operations are
27 controlled by one or more of those individuals. The contracting
28 utility shall presume that minority includes African Americans,
29 Hispanic Americans, Native Americans, and Asian Pacific
30 Americans.

31 (5)

32 (6) To “operate” means to be actively involved in the day-to-day
33 management. It is not enough to merely be an officer or director.

34 (6)

35 (7) “Renewable energy project” means a project for the
36 development and operation of an eligible renewable energy
37 resource meeting the requirements of the California Renewables
38 Portfolio Standard Program (Article 16 (commencing with Section
39 399.11) of Chapter 2.3 of Part 1 of Division 1 of the Public
40 Utilities Code).

1 (7)

2 (8) “Women business enterprise” means a business enterprise
3 that is at least 51 percent owned by a woman or women, or, in the
4 case of any publicly owned business, at least 51 percent of the
5 stock of which is owned by one or more women, and whose
6 management and daily business operations are controlled by one
7 or more of those individuals.

8 (b) (1) The commission shall develop an outreach program to
9 inform and recruit the most qualified loan and grant applicants,
10 and contractors, including, but not limited to, women, minority,
11 disabled veteran, and LGBT business enterprises. The purpose of
12 the program is to ensure that the commission recognizes the
13 demographic shifts of the California marketplace and is nurturing
14 the new and next generation of energy technology leaders.

15 (2) One component of the outreach program shall be a process
16 for tracking the diversity of contractors, loan recipients, and grant
17 recipients. ~~Among other activities, the commission shall identify~~
18 *The commission may rely on* existing sources for locating
19 information on certified women, minority, disabled veteran, and
20 LGBT business, which may include, but is not limited to, the
21 clearinghouse database maintained by the Public Utilities
22 Commission, the list of Disabled Veteran Business Enterprises
23 certified by the Procurement Division of the Department of General
24 Services, as well as information on other nonprofit organizations
25 that verify or certify women, minority, and LGBT business
26 enterprises.

27 (3) ~~The commission shall include outreach program shall~~
28 *include a strategy to inform* certified women, minority, disabled
29 veteran, and LGBT business enterprises ~~in announcements~~ about
30 workshops, trainings, and funding opportunities, as appropriate,
31 and shall consider including them in capacity building activities.

32 (c) The commission shall require that each contractor, recipient
33 of a grant awarded, or loan approved by the commission on or
34 after ~~October 1, 2016, July 1, 2017~~, for an amount of one million
35 dollars (\$1,000,000) or more, *or a different threshold or criteria*
36 *determined to be appropriate by the commission*, including
37 amended contracts, loans, and grant agreements that bring the total
38 value of the contract, loan, or grant to one million dollars
39 (\$1,000,000) or more, *or the alternative threshold amount set by*

1 *the commission*, do all of the following as a condition for the
2 receipt of that grant or loan:

3 (1) ~~Report~~ *Submit a report to the commission* on the
4 demographic makeup of the management of the firm or
5 organization awarded the contract or receiving the grant or loan.

6 (2) Submit a detailed ~~and verifiable~~ outreach plan *to the*
7 *commission* for increasing subcontractor opportunities with the
8 prime contractor, grantee, or borrower by certified women,
9 minority, disabled veteran, and LGBT business enterprises *in*
10 *California* pursuant to the requirements of this section.

11 (3) Implement the outreach plan submitted to the commission
12 to the best of the contractor's or recipient's financial and
13 administrative capacity.

14 (4) Furnish a report to the commission regarding the activities
15 and outcomes achieved in implementing the outreach plan, pursuant
16 to the requirements of this section.

17 (d) Each report required by this section shall be a public
18 document and shall be made readily available on an Internet Web
19 site maintained by the commission.

20 (e) (1) The commission shall establish guidelines for all
21 contractors, grant recipients, and loan recipients, subject to
22 subdivision (c), to utilize in preparing, implementing, and reporting
23 on the outreach plans pursuant to this section.

24 (2) The guidelines shall include methods for ~~encouraging~~
25 contractors, grant recipients, and loan recipients *to use* to engage
26 certified women, minority, disabled veteran, and LGBT business
27 enterprises in subcontracts in all categories that provide
28 subcontracting opportunities, including, but not limited to,
29 renewable energy projects, advanced technologies, and
30 demonstration projects.

31 (3) ~~The commission shall consider specifying consequences for~~
32 ~~not meeting the requirements of subdivision (e)~~.

33 (4)
34 (3) The guidelines shall integrate the existing reporting
35 requirements for state contractors, as relevant, and shall not require
36 duplicate reporting of data that is otherwise required by state law.
37 The contractor or loan or grant recipient may submit reports of
38 another state entity to provide the same information.

39 (4) *The commission shall adopt the guidelines at a publicly*
40 *noticed meeting and shall provide an opportunity for public*

1 comment. The commission shall provide written public notice of
2 a meeting not less than 30 days prior to the meeting. For
3 substantive revisions of the guidelines, the commission shall
4 provide written notice of a meeting not less than 10 days prior to
5 the meeting at which the revision is to be considered or adopted.
6 The adoption or revision of guidelines pursuant to this subdivision
7 is exempt from Chapter 3.5 (commencing with Section 11340) of
8 Part 1 of Division 3 of Title 2 of the Government Code.

9 (f) (1) Each recipient of a loan or grant, or contract, subject to
10 this section, shall submit the outreach plan described in subdivision
11 (c) within 60 days of the ~~award or~~ approval of the loan, grant, or
12 contract.

13 (2) The outreach plan shall include short- and long-term goals
14 and timetables, but not quotas, and shall include methods the
15 contractor, grant recipient, or loan recipient intends to use to
16 increase the number of certified women, minority, disabled veteran,
17 and LGBT business enterprises that participate in all categories of
18 subcontracting opportunities, including, but not limited to,
19 renewable energy projects, advanced technologies, and
20 demonstration projects.

21 (3) The outreach plan may be updated, as necessary, to reflect
22 changes in the marketplace, local conditions, changes in the
23 structure of the firm or organization, and other issues impacting
24 the effectiveness of the plan.

25 (g) Each contractor and recipient of a grant or loan subject to
26 this section shall submit data ~~on a form provided in a format to be~~ specified by the commission of the activities and outcomes of its
27 outreach plan on October 1 of the following fiscal year in which
28 the ~~contract was awarded, the loan was approved, or the grant was~~
29 ~~received.~~ contract, grant, or loan was awarded.

31 (h) After receipt of the initial plans and reports, the commission
32 shall consider establishing a Diversity Task Force to consider and
33 make recommendations about diversity in the energy industry,
34 including diversity of corporate governing boards and procurement
35 from diverse businesses. If the commission establishes a Diversity
36 Task Force, the commission shall consider how it can address and
37 promote local and targeted hiring. businesses, and addressing and
38 promoting local and targeted hiring.