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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 *and implement* an outreach program to inform the most qualified loan and grant applicants, and contractors, including, but not limited to, women, minority, disabled veteran, and LGBT business enterprises, as defined: *defined, about workshops, trainings, and funding opportunities*. 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 outreach program to include a strategy to inform ~~encourage the participation of~~ certified women, minority, disabled veteran, and LGBT business enterprises ~~about workshops, trainings, and funding opportunities, as appropriate, in the commission's relevant programs~~ 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 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, 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 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 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, grant, or loan was awarded. The bill would require *authorize* the 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, 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 (2) “Control” means exercising the power to make policy
8 decisions.

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

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

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

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

29 (7) “Renewable energy project” means a project for the
30 development and operation of an eligible renewable energy
31 resource meeting the requirements of the California Renewables
32 Portfolio Standard Program (Article 16 (commencing with Section
33 399.11) of Chapter 2.3 of Part 1 of Division 1 of the Public Utilities
34 Code).

35 (8)

36 (7) “Women business enterprise” means a business enterprise
37 that is at least 51 percent owned by a woman or women, or, in the
38 case of any publicly owned business, at least 51 percent of the
39 stock of which is owned by one or more women, and whose

1 management and daily business operations are controlled by one
2 or more of those individuals.

3 (b) (1) The commission shall develop *and implement* an
4 outreach program to inform the most qualified loan and grant
5 applicants, and contractors, including, but not limited to, women,
6 minority, disabled veteran, and LGBT business—~~enterprises~~
7 *enterprises, about workshops, trainings, and funding opportunities*.
8 The purpose of the program is to ensure that the commission
9 recognizes the demographic shifts of the California marketplace
10 and is nurturing the new and next generation of energy technology
11 leaders.

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

23 (3) The outreach program shall include a strategy to ~~inform~~
24 *encourage the participation of certified women, minority, disabled*
25 ~~veteran, and LGBT business enterprises about workshops, trainings,~~
26 ~~and funding opportunities, as appropriate, in the commission's~~
27 ~~relevant programs~~ and shall consider including them in capacity
28 building activities.

29 (e) The commission shall require that each contractor, recipient
30 ~~of a grant awarded, or loan approved by the commission on or~~
31 ~~after July 1, 2017, for an amount of one million dollars~~
32 ~~(\$1,000,000) or more, or a different threshold or criteria determined~~
33 ~~to be appropriate by the commission, including amended contracts,~~
34 ~~loans, and grant agreements that bring the total value of the~~
35 ~~contract, loan, or grant to one million dollars (\$1,000,000) or more,~~
36 ~~or the alternative threshold amount set by the commission, do all~~
37 ~~of the following as a condition for the receipt of that grant or loan:~~

38 (1) ~~Submit a report to the commission on the demographic~~
39 ~~makeup of the management of the firm or organization awarded~~
40 ~~the contract or receiving the grant or loan.~~

1 (2) Submit a detailed outreach plan to the commission for
2 increasing subcontractor opportunities with the prime contractor,
3 grantee, or borrower by certified women, minority, disabled
4 veteran, and LGBT business enterprises in California pursuant to
5 the requirements of this section.

6 (3) Implement the outreach plan submitted to the commission
7 to the best of the contractor's or recipient's financial and
8 administrative capacity.

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

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

15 (e) (1) The commission shall establish guidelines for all
16 contractors, grant recipients, and loan recipients, subject to
17 subdivision (e), to utilize in preparing, implementing, and reporting
18 on the outreach plans pursuant to this section.

19 (2) The guidelines shall include methods for contractors, grant
20 recipients, and loan recipients to use to engage certified women,
21 minority, disabled veteran, and LGBT business enterprises in
22 subcontracts in all categories that provide subcontracting
23 opportunities, including, but not limited to, renewable energy
24 projects, advanced technologies, and demonstration projects.

25 (3) The guidelines shall integrate the existing reporting
26 requirements for state contractors, as relevant, and shall not require
27 duplicate reporting of data that is otherwise required by state law.
28 The contractor or loan or grant recipient may submit reports of
29 another state entity to provide the same information.

30 (4) The commission shall adopt the guidelines at a publicly
31 noticed meeting and shall provide an opportunity for public
32 comment. The commission shall provide written public notice of
33 a meeting not less than 30 days prior to the meeting. For
34 substantive revisions of the guidelines, the commission shall
35 provide written notice of a meeting not less than 10 days prior to
36 the meeting at which the revision is to be considered or adopted.
37 The adoption or revision of guidelines pursuant to this subdivision
38 is exempt from Chapter 3.5 (commencing with Section 11340) of
39 Part 1 of Division 3 of Title 2 of the Government Code.

1 (f) (1) Each recipient of a loan or grant, or contract, subject to
2 this section, shall submit the outreach plan described in subdivision
3 (e) within 60 days of the approval of the loan, grant, or contract.

4 (2) The outreach plan shall include short- and long-term goals
5 and timetables, but not quotas, and shall include methods the
6 contractor, grant recipient, or loan recipient intends to use to
7 increase the number of certified women, minority, disabled veteran,
8 and LGBT business enterprises that participate in all categories of
9 subcontracting opportunities, including, but not limited to,
10 renewable energy projects, advanced technologies, and
11 demonstration projects.

12 (3) The outreach plan may be updated, as necessary, to reflect
13 changes in the marketplace, local conditions, changes in the
14 structure of the firm or organization, and other issues impacting
15 the effectiveness of the plan.

16 (g) Each contractor and recipient of a grant or loan subject to
17 this section shall submit data in a format to be specified by the
18 commission of the activities and outcomes of its outreach plan on
19 October 1 of the following fiscal year in which the contract, grant,
20 or loan was awarded.

21 (h) After receipt of the initial plans and reports, the commission
22 shall

23 (c) *The commission may consider establishing a Diversity Task*
24 Force to consider and make recommendations about diversity in
25 the energy industry, including diversity of corporate governing
26 boards and procurement from diverse businesses, and addressing
27 and promoting local and targeted hiring.