

Date of Hearing: April 12, 2023

ASSEMBLY COMMITTEE ON UTILITIES AND ENERGY

Eduardo Garcia, Chair

AB 1198 (Grayson) – As Introduced February 16, 2023

SUBJECT: GO-Biz: Equity in energy task force

SUMMARY: Establishes the Equity in Energy Task Force within the Governor’s Office of Business and Economic Development (Go-Biz), and tasks them with identifying energy resources across state programs, identifying participation levels of specified businesses within existing state programs, and provide recommendations on addressing barriers to access the energy industry and establish participation targets, among other duties as described. Specifies the task force shall consist of 14 members, as specified; that they shall submit a report to the Legislature on their findings by December 31, 2024; and that the task force shall meet monthly for their first year, then annually thereafter. Repeals the task force on December 31, 2030.

EXISTING LAW:

- 1) Establishes a supplier diversity program by requiring the California Public Utilities Commission (CPUC) to direct each electrical corporation, gas corporation, water corporation, telephone corporation, and wireless telecommunications service provider with gross annual revenues exceeding \$15 million, to annually submit a plan for increasing procurement with women, minority, disabled veteran, and lesbian, gay, bisexual, and transgender (LGBT) business enterprises (WMDVLGBTBEs). (Public Utilities Code § 8283(a))
- 2) Supplier diversity program plans must include short-term and long-term goals and timetables and must include methods for encouraging contractors to engage WMDVLGBTBEs in all subcontracting categories, including, but not limited to renewable energy, wireless telecommunications, broadband, smart grid, and rail projects. The CPUC must develop guidelines for programs implemented pursuant to the plans and each participating company must submit an annual report on the implementation of programs established under a supplier diversity plan. (Public Utilities Code § 8283(b-d))
- 3) Each electrical, gas, water, mobile telephone service provider, telephone corporation, cable television corporation, and direct broadcast satellite provider that is not otherwise required to submit a plan is encouraged to voluntarily adopt a plan for increasing WMDVLGBTBEs procurement and to voluntarily report activity in this area to the Legislature on an annual basis. (Public Utilities Code § 8283(e))
- 4) Requires the CPUC to adopt eligibility criteria for women, minority, and LGBT business enterprises for procurement contracts and requires participating utilities to develop outreach plans to recruit WMDVLGBTBEs to apply for procurement contracts. (Public Utilities Code § 8284)
- 5) Establishes the Energy Unit within Go-Biz, and tasks the Unit with interagency and multi-stakeholder collaboration to identify barriers to clean energy development, and to accelerate the planning, financing, and execution of critical energy infrastructure. (Government Code § 12100.110)

FISCAL EFFECT: Unknown. This bill is keyed fiscal and will be referred to the Assembly Committee on Appropriations for its review.

BACKGROUND:

CPUC Supplier Diversity Program and General Order (GO) 156 – In 1988, the CPUC adopted GO 156 (D. 88-04-057) to implement AB 3678 (Moore, Chapter 1259, Statutes of 1986), which required the CPUC to direct certain utilities to submit plans for increasing diverse business procurement. Under GO 156, the CPUC monitors utilities’ procurement from WMDVLGBTBEs. The CPUC also administers a certification clearinghouse, which is a database that identifies firms that have voluntarily obtained certification as a WMDVLGBTBEs. The Supplier Diversity Program is a tool through which the state can leverage the economic power of the utility sector to address historic structural inequities for economic opportunity and ensure that WMDVLGBTBEs are included in contracting opportunities, including renewable energy contracts.

In March 2022, 30 utilities and 15 community choice aggregators (CCAs) submitted their WMDVLGBTBE 2021 procurement reports and 2022 plans. The intent of the supplier diversity reports is to provide the CPUC with information on the utilities’ and CCAs’ diverse procurement performances, progress in meeting their supplier diversity targets, and future supplier diversity program enhancement plans. In September 2022, the CPUC completed its report to the Legislature on utilities’ 2021 participation in the Supplier Diversity Program.¹ The CPUC’s report noted that the program encourages utilities to purchase at least 21.5% of their procurement from WMDVLGBTBEs (15% from minority business enterprises, 5% from women business enterprises, and 1.5% from disabled veteran business enterprises). According to the report, the participating utilities exceeded these goals and spent over \$12.3 billion through WMDVLGBTBEs in 2021. Forty percent of the utilities’ minority business enterprise spend was with Hispanic American suppliers, 31.6% with Asian Pacific American suppliers, 21.6% with African American suppliers, and 6.4% with Native American suppliers. The report also noted that the CCAs, which are not directly subject to GO 165 but do report on their supplier diversity procurement, collectively procured 1.4% or \$3.5 million of total procurement from WMDVLGBTBEs in 2021.

COMMENTS:

- 1) *Author’s Statement.* According to the author, “It is essential that minority enterprises actively participate in delivering solutions that help California achieve its aggressive climate goals. However, the state needs to support disadvantaged businesses by providing effective pathways and resources to create community wealth-building opportunities. AB 1198 establishes the Equity in Energy Task Force to take a comprehensive look at all the

¹ CPUC, *Year 2021 Utilities Procurement of Goods, Services, and Fuel from Women, Minority, Disabled Veteran, and LGBT Business Enterprises*, September 2022; <https://www.cpuc.ca.gov/-/media/cpuc-website/divisions/office-of-governmental-affairs-division/reports/2022/2022-go-156-leg-report-final-with-attachments.pdf>

energy related mandates and policies within California and identify gaps that may exist for minority owned businesses and their employees.”

- 2) *What is included in the “energy industry?”* This bill mandates the task force examine various energy programs and resources across the state agencies, as well as assess participation levels of specified diverse businesses across the energy industry. It is unclear what is intended to be included in the “energy industry,” especially as the CPUC already has a robust reporting and compliance program for diverse contracting for their jurisdictional energy utilities. The energy industry could include a variety of subsectors, from electricity and natural gas to oil and gasoline, or even emerging technologies like hydrogen production and fueling stations or electric vehicle charging. Many of these industries—except for oil and gasoline—are captured in the CPUC GO 165 program, as detailed above. So it is unclear the intended focus of this legislation, unless the author is seeking participation from the publicly owned utilities which do not participate in the CPUC’s GO 165 program. (The author has not indicated whether that is his desire.)

The author and sponsors note their desire to have diverse businesses participating in the market transition to a low carbon future, and to have these businesses actively participating in California’s efforts to achieve its aggressive climate goals. It is reasonable to seek support for diverse businesses, especially under-resourced small businesses, to enable them to harness state funding for these efforts. The author should be mindful, however, of California’s Proposition 209 which 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. The proposition limits the degree to which any governmental entity within California—including CCAs, publicly owned utilities, or the state itself—can compel information about certain protected classes to support contract decision-making. However, the Proposition does not prohibit after-the-fact reporting on outcomes from contracting. Go-Biz will need to be mindful of how to appropriately gather information, and focus their efforts on subsectors or participants within the energy industry distinct from the CPUC’s GO 165 efforts, in order to complement, rather than duplicate that work. The author may consider clarifying their intended focus by identifying the specific sectors and outcomes subject to this bill.

- 3) *Is a task force the correct structure?* This bill establishes a 14 member body, made up of a variety of business and labor stakeholders, agency representatives, and legislative appointees. It provides no per diem for membership, but asks members to meet at least monthly for the first year of the task force’s formation. It is unclear in creating this task force whether any institutional staff at Go-Biz will even be responsible for coordinating the bare minimum of administrative functions for the task force, such as scheduling meetings, publicly noticing meetings, gathering information for the task force to evaluate, taking meeting notes, publishing meeting notes and summaries online, and producing the final report to the Legislature as mandated. This may be too large of a responsibility for a

volunteer board, especially when a dedicated Energy Unit already exists within Go-Biz and whose mission could align nicely with the objectives of this bill.

The Go-Biz Energy Unit was established through budget action in 2021,² in order to provide a venue for energy project developers, utilities, and state agencies to ensure energy infrastructure projects move through the process (permitting, approval, construction) as swiftly as possible. The Energy Unit acts as the translator between business interests and state agency efforts to ensure timely completion of energy projects. The Energy Unit could be a reasonable home for many of the duties currently assigned to the task force under this bill, as the Energy Unit already has dedicated staff and funding for their efforts, and the Unit has extensive contacts across the various energy sectors. *Therefore the author and committee may wish to amend this bill to strike the current contents, and rather expand the duties of the Go-Biz Energy Unit to include the diversity work identified under this measure.*

4) *Related Legislation.*

AB 1182 (Petrie-Norris, 2023) requires Go-Biz to take specified actions to align state incentives with federal funds awarded in the Inflation Reduction Act and the Infrastructure Investment and Jobs Act, including that Go-Biz identify opportunities to co-fund grants that meet the state's climate goals, post federal IRA and IJA grants, tax incentives, or other opportunities on their internet website, and collaborate with state agencies to maximize awards to projects in the state. Status: *pending hearing* in the Assembly Committee on Jobs, Economic Development, and the Economy.

5) *Prior Legislation.*

AB 137 (Committee on Budget) created the Energy Unit within Go-Biz, and tasked the Unit with interagency and multi-stakeholder collaboration to identify barriers to clean energy development, and to accelerate the planning, financing, and execution of critical energy infrastructure. Status: Chapter 77, Statutes of 2021.

SB 255 (Bradford) expands the CPUC supplier diversity program by lowering the annual revenue threshold for participation from \$25 million to \$15 million, including electric service providers in the program, and requiring CCAs to report specified information. This bill also encourages distributed energy resource companies, energy storage companies, and certain wholesale electric generators to participate in the program. Status: Chapter 407, Statutes of 2019.

AB 1678 (Gordon) added LGBT business enterprises to the supplier diversity program and required the CPUC to adopt LGBT status qualifiers created by the National Gay and

² AB 137 (Committee on Budget, Chapter 77, Statutes of 2021)

Lesbian Chamber of commerce with initially adopting eligibility criteria for LGBT business enterprises. Status: Chapter 633, Statutes of 2014.

AB 3678 (Moore) established the supplier diversity program by requiring each electrical, gas, and telephone corporation with gross annual revenues exceeding \$25 million to annually submit a detailed, verifiable plan for increasing diverse business procurement in all categories. Status: Chapter 1259, Statutes of 1986.

- 6) *Double Referral*. This bill is double-referred; upon passage in this Committee, this bill will be referred to the Assembly Committee on Jobs, Economic Development, and the Economy.

REGISTERED SUPPORT / OPPOSITION:

Support

California African American Chamber of Commerce – *co-sponsor*
California Asian Pacific Chamber of Commerce – *co-sponsor*
California Hispanic Chambers of Commerce – *co-sponsor*
Cameo - California Association for Micro Enterprise Opportunity
Fresno Metro Black Chamber of Commerce
Sacramento Black Chamber of Commerce
Sacramento Metropolitan Chamber of Commerce
San Francisco Filipino American Chamber of Commerce

Opposition

None on file.

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