
**SENATE COMMITTEE ON ENERGY, UTILITIES AND
COMMUNICATIONS**
Senator Steven Bradford, Chair
2023 - 2024 Regular

Bill No: SB 1177 **Hearing Date:** 3/19/2024
Author: Bradford
Version: 2/14/2024 Introduced
Urgency: No **Fiscal:** Yes
Consultant: Sarah Smith

SUBJECT: Public utilities: women, minority, disabled veteran, and LGBT business enterprises

DIGEST: This bill requires utilities with California gross annual revenues exceeding \$25 million to file diversity, equity and inclusion (DEI) employment plans and requires these utilities' contractors and subcontractors to report specified information regarding diverse supplier expenditures. This bill also clarifies diverse businesses' certification status pursuant supplier diversity rules in circumstances when the business is acquired by another enterprise that is not certified as a diverse business.

ANALYSIS:

Existing law:

- 1) Requires the California Public Utilities Commission (CPUC) to direct each electrical corporation, gas corporation, water corporation, wireless telecommunications service provider, electric service provider, and telephone corporation with gross annual California revenues over \$25 million to annually submit a plan to increase procurement from women, minority, disabled veteran, and LGBT businesses (WMDVLGBTBEs) across all enterprises, including, but not limited to renewable energy, energy storage system, wireless telecommunications, broadband, smart grid, vegetation management, and rail projects. Utilities with gross annual in-state revenues between \$15 million and \$25 million must submit data in a simplified format regarding their WMDVLGBTBE procurement. (Public Utilities Code §8283)
- 2) Requires the CPUC to direct each Community Choice Aggregator (CCA) with in-state gross annual revenues over \$15 million to annually submit a plan for increasing procurement from small, local and diverse businesses. Existing law

requires these CCAs to annually report to the CPUC on their procurement from WMDVLGBTBEs. (Public Utilities Code §366.2)

- 3) Establishes annual legislative reporting requirements for the CPUC, including requirements to report on utilities' progress towards meeting diverse procurement goals. Existing law requires the CPUC to make recommendations to increase procurement with WMDVLGBTBEs. Existing law also requires the CPUC to conform its supplier diversity policies and recommendations for disabled veteran business enterprises (DVBES) to the eligibility and certification requirements for DVBES established by the Department of General Services. (Public Utilities Code §910.3)

This bill:

- 1) Expands supplier diversity reporting requirements for utilities to require utilities with in-state annual gross revenues over \$25 million to annually report all of its contractors and subcontractors and the value of each contract and subcontract from the prior year.
- 2) Requires utility contractors and subcontractors to report each of the following on an annual basis:
 - a) Expenditures made on behalf of a utility and the recipients of those expenditures.
 - b) Whether the contracted work was performed in California.
 - c) Data on the diversity of the workforce of the contractor or subcontractor.
- 3) Clarifies that a business certified as a WMDVLGBTBE under General Order (GO) 156 does not immediately expire if that business is acquired by an enterprise that is not certified as a WMDVLGBTBE. This bill specifies that an already-certified diverse business acquired by a non-certified enterprise may only have its certification changed upon the expiration of its existing certification.
- 4) Requires utilities with in-state annual gross revenues over \$25 million to annually file a DEI employment plan that includes goals and timetables to promote the employment of women, minority, disabled veteran, and LGBT individuals at all levels within its organization. This bill requires these utilities to also submit a report annually to the CPUC on efforts to implement DEI plans.

- 5) Makes legislative declarations encouraging utility businesses that are not required to file DEI plans to voluntarily adopt these plans.

Background

General Order 156 and the Supplier Diversity Program. AB 3678 (Moore, Chapter 1259, Statutes of 1986) required the CPUC to direct certain utilities to submit plans for increasing diverse business procurement. In 1988, the CPUC adopted GO 156 (D. 88-04-057) to implement the legislation's requirements by establishing the Supplier Diversity Program. Under GO 156, the CPUC monitors utilities' procurement from WMDVLGBTBEs. The CPUC also administers a certification clearinghouse that identifies businesses that have 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 structural economic inequities and ensure that WMDVLGBTBEs are included in contracting opportunities.

Bill expands data reporting on utilities' diverse supplier expenditures. Since the implementation of the Supplier Diversity Program, utilities' procurements with diverse businesses have dramatically increased; however, utilities' reports on supplier diversity spending does not enough detailed information to identify the extent to which the supplier diversity program is helping grow economic opportunities for new businesses across the utilities. Additionally, reports do not indicate the extent to which diverse expenditures are supporting in-state wage growth for California workers. This bill is aimed at obtaining more annual information about the workforce diversity of contractors and subcontractors as well as gaining more standardized and complete information about in-state economic benefits of the Supplier Diversity Program.

Going the distance: maintaining diverse supplier relationships while growing the pool of diverse suppliers remains a challenge. Under existing law, the CPUC annually reports on the performance of the supplier diversity program, including achievements and challenges identified in the prior year. In its 2022 annual report on the Supplier Diversity Program, the CPUC noted that growing the number of new contractors with project experience while retaining relationships with longstanding diverse suppliers remains substantial challenge for the Supplier Diversity Program. Specifically, the CPUC cited the loss of established diverse suppliers due to acquisitions as a barrier to further development of diverse supplier relationships. This bill would clarify that in circumstances where a certified diverse business is acquired by a company that is not certified, the diverse business

does not immediately lose its certification. Instead, this bill specifies that the business's certification may continue until its existing expiration date. While this bill may temporarily enable a business that would otherwise not meet supplier diversity certification requirements remain certified, this bill may also provide a bridge between certification periods to help retain experienced diverse suppliers. As currently written, this bill may require the CPUC to modify how DVBEs are certified. Existing law requires the CPUC to align its supplier diversity recommendations and policy for DVBE's to the eligibility rules adopted by DGS for DVBEs. It is not clear whether DVBEs acquired by businesses that are not certified as DVBEs can remain on DGS's list of certified business enterprises.

One size does not fit all. While the scope of business ownerships certified by the Supplier Diversity Program encompasses many different demographics, not all these demographics have similar opportunities to contract with utilities. Proposition 209 limits the extent to which government-funded utilities, including the CCAs, can use public resources to specifically address gaps related to race, sex, color, and ethnicity in supplier diversity opportunities. Native American-owned businesses have indicated that their lack of union membership and the geographic distance between worksites and tribal lands make utility contracting challenging. Lesbian, gay, bisexual, and transgender business enterprises (LGBTBEs), DVBEs, and persons with disabilities business enterprises (PDBEs) have historically obtained fewer contracting opportunities than other diverse supplier categories. In its 2022 Supplier Diversity Program annual report, the CPUC noted that it intended to focus on finding solutions to address the ongoing contracting barriers faced by LGBTBEs, DVBEs, and PDBEs. Further improvements to diverse contracting may also rely on policy solutions addressing barriers faced by specific demographic groups. To the extent that this bill provides greater transparency about contracting with specific diverse supplier groups or enhances information about the workforce for those supplier groups in California, this bill may support better policymaking to address specific barriers to growing a diverse supplier workforce and contracting opportunities.

Beyond Procurement: bill expands diversity efforts to DEI plans. In addition to expanding data reporting requirements for the Supplier Diversity Program, this bill also expands efforts to diversify utility workforces by requiring certain utilities with in-state revenues over \$25 million to file a DEI employment plan with the CPUC on an annual basis. Under this bill, these plans must include short and long-term goals and timetables to promote the employment of WMDVLGBT individuals at all levels of employment within the utility. A number of public and investor-owned utilities have already voluntarily adopted DEI plans and/or programs. However, these plans' content and specificity may vary widely. Filing

specific plans with the CPUC may help standardize data across utilities to help more clearly measure utilities' progress on their DEI goals.

Need for Amendments. As currently written, this bill would require contractors and subcontractors to report specified information, including data on workforce diversity, to the CPUC on an annual basis. This reporting requirement does not align with the annual utility reporting process established by under GO 156 and may be too onerous for certain small businesses to complete on an annual basis. Additionally, it is not clear that businesses can compel certain demographic information from their workers. As currently written, this bill also requires utilities to list specific contract information that may result in the public disclosure of sensitive information from contracts negotiated with vendors. *As a result, the author and committee may wish to amend this bill to do the following:*

- *Clarify that the reporting requirements added by this bill are performed by the utilities as part of their existing GO 156 reports.*
- *Clarify the reporting requirements to prevent the public disclosure of specific contract information and ensure consistent reporting of data across utilities.*

Prior/Related Legislation

SB 255 (Bradford, Chapter 407, Statutes of 2019) expanded the Supplier Diversity Program by establishing reporting requirement for companies with annual gross revenues between \$15 million and \$25 million, adding electric service providers to the program, and requiring CCAs to report certain supplier information.

AB 1678 (Gordon, Chapter 633, Statutes of 2014) added LGBT business enterprises to the Supplier Diversity Program and required the CPUC to adopt LGBT status qualifiers created by the National Gay and Lesbian Chamber of Commerce with initially adopting eligibility criteria for LGBTBEs.

AB 1386 (Bradford, Chapter 443, Statutes of 2011) encouraged cable television corporations and direct broadcast satellite providers to voluntarily adopt plans to increase diverse spending.

FISCAL EFFECT: Appropriation: No Fiscal Com.: Yes Local: Yes

SUPPORT:

California Black Chamber of Commerce

OPPOSITION:

None received

ARGUMENTS IN SUPPORT: According to the Author:

In 1986, Assembly Member Gwen Moore authored the State's first utility supplier diversity statute. At the time, utilities regulated by the California Public Utilities Commission spent less than \$500,000 per year with diverse businesses. In 2022, utilities' aggregate direct diverse spending exceeded \$14 billion, with an additional \$2.8 billion spent with diverse subcontractors.

California's utility supplier diversity law remains one of the larger engines of socioeconomic mobility for historically-disadvantaged people in the State. However, some gaps exist in the data collected by the program.

Although spending on diverse contracts continues to rise, the bundling of this information hides whether utilities are procuring from the same, few businesses every year and it is unknown how much work being procured is done in California or is being performed out of state.

SB 1177 adds additional transparency by requiring utilities to include a list of their contractors and the value of each contract or subcontract.

Finally, under current law, certified diverse businesses immediately lose their certification upon acquisition by a non-diverse business. This discourages long-term contracts and causes utilities to fear losing spend capture in cases of a liquidity event. SB 1177 addresses this issue by allowing diverse businesses to keep their certification until its regular expiration date.

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