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AB-2873 California Tax Credit Allocation Committee: low-income housing credit: women, minority, disabled veteran, and LGBT business enterprises. (2021-2022)

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Assembly Bill No. 2873

CHAPTER 316

An act to amend Section 50199.15 of, and to add Section 50199.23 to, the Health and Safety Code, relating to housing.

[Approved by Governor September 13, 2022. Filed with Secretary of State September 13, 2022.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2873, Jones-Sawyer. California Tax Credit Allocation Committee: low-income housing credit: women, minority, disabled veteran, and LGBT business enterprises.

(1) Under existing law, the California Tax Credit Allocation Committee administers the federal and state low-income housing tax credit programs. Existing law requires the committee to allocate the housing credit on a specified regular basis, and to only allocate credits to a project if the housing sponsor enters into a specified regulatory agreement. Existing law authorizes the committee to make any allocation or reservation of the state's housing credit ceiling to a housing credit applicant subject to specified terms and conditions.

This bill would require a housing sponsor that receives a credit allocation on or after January 1, 2024, and that has completed 5 or more housing projects by January 1, 2023, or that has received an annual low-income housing tax credit allocation of \$1,000,000 or more, to annually submit a report to the committee, in a form and at the time designated by the committee, that includes, among other things, a detailed and verifiable supplier and contractor plan for increasing procurement from women, minority, disabled veteran, and LGBT business enterprises, as defined, and short- and long-term diversity goals and timetables. The bill would require a housing sponsor that has not completed 5 or more housing projects by January 1 2023, or has not received an annual low-income housing tax credit allocation of \$1,000,000 or more to comply with the plan and reporting requirements in the year following the commencement of construction on their 5th housing project for which the housing sponsor has received public money or in the year following the receipt of an annual low-income housing tax credit allocation of \$1,000,000 or more. The bill would not limit or otherwise affect eligibility for, or the requirements for compliance with specified provisions governing, the state low-income housing tax credit.

This bill would require the committee to develop guidelines for housing sponsors to use in preparing the detailed and verifiable supplier and contractor diversity plans, including a requirement that women, minority, disabled veteran, and LGBT business enterprises are certified by a third party. By requiring business enterprises to be certified, thereby expanding the crime of perjury, the bill would impose a state-mandated local program. The bill would require the committee to annually consider the information and data from the housing sponsor reports and would authorize the committee to modify the guidelines. The bill would additionally, by March 1, 2028, require the committee to establish supplier and contractor participation goals for women, minority, disabled veteran, and LGBT business enterprises. The bill would provide that its provisions are severable.

(2) Existing law also requires the committee to annually submit to the Legislature a report on its activities during the previous calendar year, related to the allocation of low-income housing credits and the projects and units that benefit from the credits, as

specified.

Commencing in the 2025 calendar year, this bill would require the committee to also include in its annual report an aggregation of the information submitted by housing sponsors, as described above, for all projects that have received an allocation on or after January 1, 2024.

(3) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: yes

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

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 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 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 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 that have received an allocation on or after January 1, 2024, pursuant to the requirements of Section 50199.23.

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) (1) Subject to subdivision (c), a housing sponsor that receives an allocation on or after January 1, 2024, 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.

(2) The reporting period shall cover all 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. The final report shall cover the year that the project is placed in service.

(3) The report shall include all of the following:

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

(B) In the second year of reporting, 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.

(C) In the third year of reporting, aggregate level data for contractors headquartered or having a primary location in low-income census tracts in the state.

(D) Proposed methods and strategies for increasing the diversity of suppliers and subcontractors engaged by housing sponsors and prime contractors, such as women, minority, disabled veteran, and LGBT business enterprises.

(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, 2024. The data 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 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 for each business-owner group, including women business enterprises, minority business enterprises, disabled veteran business enterprises, and LGBT business enterprises, 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, for businesses headquartered or having a primary location in a low-income census tracts in the state.

(v) 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 notice of allocation of a credit on or after January 1, 2024. This may include information on contracts related to the project that were issued prior to the credit allocation.

(vi) 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 clause (v) to each business-owner group, including women business enterprises, minority business enterprises, disabled veteran business enterprises, and LGBT business enterprises.

(vii) The total number and dollar amount of contracts issued to subcontractors for each business-owner group specified in clause (vi) by each category of contract.

(viii) The number and dollar amount of all contracts, including subcontracts, for a project specified in clause (iv) for businesses headquartered or having a primary location in low-income census tracts in the state.

(4) Commencing with 2029, the goals established by the committee pursuant to paragraph (3) of subdivision (d) shall be incorporated into the annual reports. Housing sponsors may adopt higher goals for their own activities.

(c) (1) The requirement to develop a plan and submit a report pursuant to subdivision (b) applies to all housing sponsors that have completed five or more housing projects by January 1, 2023, or that have received an annual low-income housing tax credit allocation of one million dollars (\$1,000,000) or more. For housing sponsors that have not completed five or more housing projects by January 1, 2023, or have not received an annual low-income housing tax credit allocation of one million dollars (\$1,000,000) or more, 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 or in the year following the receipt of an annual low-income housing tax credit allocation of one million dollars (\$1,000,000) or more, as applicable.

(2) It is the Legislature's intent that housing sponsors that 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.

(d) (1) 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 (c), to use in preparing detailed and verifiable supplier and contractor diversity plans required in subdivision (b).

(A) The guidelines shall include a requirement that women, minority, disabled veteran, and LGBT business enterprises be certified by a third party. The committee may align its certification policies with those used by the Public Utilities Commission in implementing Article 5 (commencing with Section 8281) of Chapter 7 of Division 4 the Public Utilities Code.

(B) When 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.

(C) The purpose of the guidelines is to encourage greater economic opportunity for women, minority, disabled veteran, and LGBT business enterprises.

(2) The committee shall annually consider the information and data from the reports submitted pursuant to this section and may modify the guidelines adopted pursuant to this subdivision.

(3) By March 1, 2028, the committee shall establish supplier and contractor participation goals for women, minority, disabled veteran, and LGBT business enterprises.

(4) The committee shall post the individual reports received from the housing sponsors, as required pursuant to subdivision (b), on the committee internet website.

(e) This section shall not limit or otherwise affect eligibility for any credit under, or the requirements for compliance with, Section 12206, 17058, or 23610.5 of the Revenue and Taxation Code.

(f) 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.