

Hearing Date: May 12, 2008

Bill No: AB 624

**SENATE COMMITTEE ON BUSINESS, PROFESSIONS AND
ECONOMIC DEVELOPMENT**

Senator Mark Ridley-Thomas, Chair

Bill No: AB 624 Author: Coto
As Amended: May 7, 2008 Fiscal: No

SUBJECT: Foundations: diversity.

SUMMARY: Requires private, corporate or public operating foundations with assets over \$250 million to collect race and gender related data related to their governance structure and domestic grantmaking and post this information on their websites.

Existing law:

- 1) State law regulates the administration of nonprofit corporations via the Nonprofit Public Benefit Corporation Law (Corporations Code § 5110 et seq.) and charitable solicitations, including financial disclosure requirements for charitable solicitation organizations (Business and Profession Code §17510 et al).
- 2) Federal law also regulates nonprofit corporations and private foundations, and defines "private foundation" to mean an organization which, among other things, is organized and operated exclusively for religious, charitable, scientific, literary or educational purposes (26 U.S.C. § 509).

This bill:

- 1) Requires private, corporate and public operating foundations incorporated in California to collect the following information:
 - a) By number and percentage, the race and gender composition of its board of directors.
 - b) By number and percentage, the race and gender composition of the foundation's staff.
 - c) By number and percentage, the contracts awarded to businesses owned by specified racial minorities.
 - d) If applicable, the number of grants and grant dollars awarded to organizations specifically serving specified racial and sexual orientation minority communities, disabled communities and all other under-represented communities.

- e) The number of grants and grant dollars awarded to organizations where the majority of the board members and full-time equivalent staff are ethnic minorities.
 - f) The number of grants and grant dollars awarded to predominantly low-income communities.
- 2) Requires the collected information under item #1) to be posted on each private foundation's website, if available, and included in its annual report under a section labeled "DIVERSITY."
 - 3) Specifies that these requirements only apply to foundations with assets over \$250 million and only applies to a foundation's domestic grants.

FISCAL EFFECT: This bill has been keyed non-fiscal by Legislative Counsel.

COMMENTS:

1. **Purpose.** According to the Greenlining Institute (Sponsor), AB 624, the Foundation Diversity Transparency Act, is designed to "simply shed more transparency on giving to the poor and racial/ethnic groups. This legislation does not require foundations to invest in minority communities, and it does not create racial quotas for grantmaking and employment. This legislation is a simple attempt to get foundations to disclose key data related to diversity on an annual basis."

The Author also asserts the following:

AB 624 is not the solution that will diversify foundations. But it is an important tool. Minority groups are expected to comprise fully half of the U.S. population by 2050. This demographic shift has already been realized in California which became the first large majority minority state in 2000. The failure to develop and standardize diversity best practices threatens the effectiveness and viability of foundations to achieve their missions. With a more systematic and measurable approach to diversity, foundations can better prepare themselves for the demographic changes ahead. Most importantly, foundations that embrace diversity will be able to produce a stronger impact on societal change. AB 624 will standardize how foundations in California track, gather, and disclose diversity data.

2. **Background.** This measure was introduced in response to a number of studies that, according to the Sponsor, detail the lack of diversity in foundation grantmaking and governance, including a 2006 Greenlining Institute report titled, "*Investing in a Diverse Democracy: Foundation Giving to Minority-Led Nonprofits.*" According to this report, the top 50 foundations in the United States provided only 3% of their grant dollars to minority-led

organizations. This report also noted that only 10% of foundation executive directors and board of directors are minorities.

Following the release of the Greenlining study, a joint hearing of the Latino Legislative Caucus, Legislative Black Caucus, and Asian Pacific Islander Legislative Caucus was convened on April 24, 2006, to discuss philanthropic giving to communities of color. The Author reports that legislators listened to over 20 witnesses in a two-hour period. Several leaders from minority-led nonprofit organizations discussed their experiences trying to obtain funding from foundations. The legislative caucuses also invited over 75 private foundation presidents to testify at the hearing. Two private foundation Presidents, Jim Canales of the Irvine Foundation, and Dr. Robert Ross of the California Endowment accepted, as did two other high-ranking private foundation executives. Corporate funders were also invited by the legislative caucuses to discuss their experience funding minority nonprofit organizations.

- 3. Philanthropic Community Response to AB 624.** The introduction of this measure sparked many discussions over the last year between the Author and Sponsor and the state's philanthropic community, as well as concrete efforts to improve diversity in grantmaking. Shortly after the bill was introduced, the California Regional Associations of Grantmakers (comprised of the Northern California Grantmakers, Southern California Grantmakers and San Diego Grantmakers and hereafter referred to as Grantmakers, representing approximately 400 institutional foundations and giving programs, contacted the Author to express serious concerns about the legislation and to open a dialog about how to strengthen philanthropic support for communities of color.

Along with the Grantmakers, a number of large foundations, including the California Endowment, the California Wellness Foundation and the David and Lucille Packard Foundation, as well as the California Association of Nonprofits, informed the Author of their concerns about the bill and requested that it not move forward while they worked with the Author and Sponsor on alternative solutions. The measure was held in the Assembly in 2007 and became a two-year bill.

Since the measure's introduction, the Grantmakers and foundations have taken a number of steps to address the lack of diversity in foundations and to increase grantmaking to communities of color including hiring a recognized independent research institution to assess the current landscape of nonprofits led by and/or serving people of color in California. They have also created an advisory committee of community leaders to contribute input to the research initiative and provide feedback and analysis of the findings and recommendations. The committee includes noted non-profit and community leaders who work closely on issues of diversity and minority communities. The Grantmakers argue this approach is superior to the proposed bill, which they contend lacks clarity and could have negative unintended consequences for investments in communities of color as well as the growth of philanthropy generally.

In May 2007, the Grantmakers commissioned the Foundation Center, a research center on philanthropy based in New York and with a branch office in San Francisco, to conduct research on the issue of diversity in philanthropy in California. This work is being conducted in partnership with the University of Southern California's Center on Philanthropy and the University of San Francisco.

The Foundation Center's research initiative includes an analysis of grants awarded by the top 50 foundations in California; surveys of 600 foundations in order to gather additional data from a broader range of institutions and surveys of nonprofit organizations in the state. The research project will compile data on the populations served by nonprofit organizations; determine the percentage of minority-led nonprofits in the state; and determine what data (if any) foundations and nonprofits are currently collecting to evaluate progress towards diversity-related goals. The Grantmakers and foundations assert this review will provide an accurate overall picture of board and staff diversity of California foundations and the communities served by grants given by the top 50 California foundations. This project is expected to be completed by mid- 2008.

Despite the efforts of the Grantmakers to address the concerns of the Author and the Sponsor, the Greenlining Institute argues that this bill is still necessary to ensure progress is made on increasing foundation support to minority-lead organizations. The Greenlining Institute argues that had it not been for the introduction of AB 624, the Grantmakers would not be engaging in a research project to examine philanthropy and minority communities and if the Grantmakers want to avert legislation, they should disclose the top 50 foundations diversity efforts related to board and staff composition and grantmaking.

4. **Diversity Disclosure in Other Industries.** The Federal government has required other entities that receive direct tax benefits to provide diversity data on an annual basis. For example, the Home Mortgage Disclosure Act (HMDA) of 1975 requires banks to submit diversity data related to home mortgage lending. HMDA disclosures have revealed wide disparities in loan approval rates for minorities. In response to this information, many lenders have strengthened their fair lending compliance programs and expanded their outreach to underserved communities. Collecting and publicly reporting race and gender data has led to viable public and private partnerships to address disparities in homeownership rates across race lines.

At the state level, the California Public Utilities Commission (CPUC) requires regulated utilities to disclose diversity of top employee management, along with data on supplier diversity. In addition, the CPUC holds an annual hearing to discuss diversity issues with its regulated utilities.

5. **Arguments in Support.** Many organizations (see complete list on page 7) submitted letters to the Committee in support of AB 624 stating that they support efforts to encourage diversity within private foundations and that this measure is an important tool for establishing transparency and accountability in an industry that has been largely unregulated. They also assert that the

data collection and posting required within this measure will help forge new and stronger relationships between foundations and community advocates, resulting in more innovative, flexible and experimental programs to address the needs of diverse communities and will enable Grantmakers and all stakeholders to identify and correct disparities in the dissemination of very important resources.

The Council of Asian American Business Associations also writes in support of this bill stating that “while there are some differences of opinion as to the amount of discrepancy in giving to minority communities, there is no difference of opinion when it comes to the fact that foundations are not doing enough for this growing segment of the population.

The Mexican American Community Services Agency, Inc. also supports the measure because they believe ethnically led organizations are more effective in their services in the area of cultural competency, their ability to speak multiple languages and have a natural ability to engage in and advocate for their specific ethnic focus. They further state that foundations play a critical role for nonprofit organizations as they fund critical start-up programs, capital projects, innovative programming and other indirect costs that support nonprofits’ infrastructures. They assert that as the population moves toward a majority of ethnicities, ethnically led organizations should be empowered and have the capacity to grow, lead and serve their communities.

The Orange County Community Housing Corporation writes in support of the bill as they have worked for thirty years to establish a minority-led nonprofit and as a result, believes it has a more complete understanding of its shareholders and their needs. They believe this legislation will force foundations to recruit leaders that will better reflect the communities they are supposed to serve.

6. **Arguments in Opposition.** Many charitable organizations and nonprofits (see complete list on page 8) submitted letters in opposition to this measure stating charitable organizations provide much needed social safety net services and are under growing financial pressure to supply additional programs and activities that are being jeopardized because of the State’s budget crisis. They argue that the data collection requirements imposed by this bill are unnecessary and will create significant new costs which will ultimately detract from organizations’ charitable purposes. Under this bill, they believe service funds would be diverted to reporting expenses and to support their regulatory administrative infrastructures. They believe this measure will not improve foundation governance or grantmaking and is economically and socially irresponsible. They also believe this measure will negatively impact philanthropy generally as it would restrict a donor’s confidence and ability to direct their donations to organizations of their choice.

Many of California’s large foundations like the California Endowment, California Wellness Center, and the James Irvine Foundation, write in opposition to this measure as they have a strong commitment to diversity that

is reflecting in their respective foundations' missions, grantmaking activities and board and staff composition. Additionally, the Foundation Coalition (representing the aforementioned organizations as well as the Ahmanson Foundation, Annenberg Foundation, Ralph M. Pearsons Foundation, William and Flora Hewlett Foundation, Unihealth Foundation and the Weingart Foundation) asserts that this measure will do nothing to help foundations empower communities of color or low-income communities because it fails to address underlying systemic issues which include the lack of capacity for many minority-led organizations and other grassroots community-based organizations to compete for funding from large foundations, the need for additional investment in capacity building and leadership development targeted organizations and leaders of color and the nonprofits' access issues to larger foundations.

The California Regional Associations of Grantmakers, Independent Sector, a national nonpartisan charitable organization representing over 600 public charities, and the Philanthropy Roundtable, an association of over 550 national grantmakers, oppose this bill stating that while well intentioned, the legislation would have the following three unintended negative consequences on the philanthropic community: They cite the bill will serve as an impediment to philanthropy as the necessary regulatory framework for foundations should be flexible and innovative to allow the grants to stay consistent with donor intent and foundation missions. They also argue this measure would violate the privacy rights of their clients and places onerous reporting requirements on small and medium sized organizations that operate with limited staff and resources.

The California Broadcasters Foundation also opposes the measure because they believe it will jeopardize charitable funds for statewide educational and vocational training programs for high school and college students. Similarly, the Deterding Arts Resource Team, ICEF Charter School in Los Angeles and the Pacific Charter School Development oppose this measure for the same reason as they believe it could jeopardize funding for school programs designed to improve the academic and creative development in children.

Community Advocates, Inc. states in opposition to this bill that the universe of the underserved is not defined by race, ethnicity disability or sexual orientation and that the poor and disadvantaged cross all societal classifications. They believe the ultimate goal of AB 624 is to direct where charitable grants are given by private foundations and that focusing on selected groups looks more like special pleading and identity politics than true concern for the disadvantaged.

The California Chamber of Commerce also writes in opposition to this measure on the grounds that organizations are traditionally evaluated by foundations for support based on their missions, effectiveness and positive impact in the community and how those elements align with the mission of the foundation. They believe this legislation will result in an environment where

race and gender will govern foundation funding decisions and become more important than the overarching philanthropic itself and as a result, this bill will adversely impact the ability of foundations to make grants and the ability of worthy organizations to receive them.

The Capitol Resource Family Impact opposes the measure because they believe it establishes a double standard by forcing private philanthropic organizations, “the groups that should be caring for minorities and the poor and not the government, to discriminate where the government is prohibited from doing so.”

The Charles and Helen Schwab Foundation and the David and Lucile Packard Foundation also oppose this measure as it may slow or reverse the growth of philanthropy in California, may inadvertently channel resources toward nonprofit organizations even if they are not the most effective at serving the needs of their constituents and exclude support to needy communities that do not fall within the bill’s parameters. Further, the Packard Foundation states that the measure does not take into full account the number of diversity programs it supports because it excludes reporting requirements for its international work, which account for one third of its grantmaking fund.

The California Association of Nonprofits and the State Bar Nonprofit & Unincorporated Organizations Committee and California Family Council oppose this measure as it will not improve corporate governance of foundations, may intrude on an individual’s right to privacy, places huge administrative and cost burdens on foundations and grant recipients and may affect the ability of nonprofits to obtain grants from foundations.

7. **Unaddressed Policy Issue.** AB 624 requires foundations with assets over \$250 million to comply with specified data collection and reporting requirements but does not state which government agency or department will be responsible for policing the foundations’ websites to ensure compliance with this law nor does it impose any penalties on foundations who do not comply with the requirements of this law. The Author should consider amendments that clarify this policy issue.

Note: Double referral to Judiciary Committee (second). If this bill is passed by the BP&ED Committee, it will be referred to the Senate Judiciary Committee.

SUPPORT AND OPPOSITION:

Support:

Greenlining Institute (Sponsor)
American Federation of State, County and Municipal Employees
Antioch Baptist Church

Black Business Association
Black Economic Council
California State Conference of National Association for the Advancement of
Colored People
Cento Center for Training and Career, Inc.
Centro Legal de la Raza
Chicana/Latina Foundation
Community Resource Project, Inc.
Council of Asian American Business Associations
Cultural Odyssey
El Concilio Del Condado de Ventura
Hmong American Political Association
Kearny Street Workshop
Latino Issues Forum
Mexican American Community Services Agency, Inc
National Federation of Filipino American Associations
Orange County Community Housing Corporation
San Francisco African American Chamber of Commerce
Southeast Asian Community Center
Search to Involve Pilipino Americans
Two individuals

Opposition:

Association of Independent California Colleges and Universities
Ahmanson Foundation
California Association of Nonprofits
California Broadcasters Association
California Chamber of Commerce
California Coalition for Youth
California Consumers United
California Endowment
California Regional Association of Grantmakers
California Wellness Foundation
Capitol Resource Family Impact
Carrie Estelle Doheny Foundation
Catholic Healthcare West
Charles and Helen Schwab Foundation
Claremont McKenna College
Community Advocates, Inc.
Council on Foundations
David and Lucille Packard Foundation
Deterding Arts Resource Team
Evelyn and Walter Haas, Jr. Fund
Foundation Coaliton
ICEF Public Schools
Independent Sector
James Irvine Foundation

Jewish Public Affairs Committee of California
Koret Foundation
Law Enforcement Chaplaincy - Sacramento
Lucille Packard Children's Hospital
Mills College
Mimi and Peter Haas Fund
Mount St. Mary's College
Nonprofit and Unincorporated Organizations Committee of the State Bar
Northern California Citizens Against Lawsuit Abuse
Otis College of Art and Design
Pacific Charter School Development
Pacific Justice Institute
Pacific Union College
Parents Protecting California
Philanthropy Roundtable
QueensCare
Ralph M. Parsons Foundation
Richard and Rhoda Goldman Fund
San Luis Obispo County Community Foundation
Southern California Grantmakers
Thomas and Stacey Siebel Foundation
Unihealth Foundation
University of La Verne
University of San Diego
Valley Industry and Commerce Association
Weingart Foundation
William and Flora Hewlett Foundation
Several individuals

Consultant: Sieglinde Johnson