

HOUSE BILL REPORT

EHB 1087

As Amended by the Senate

Title: An act relating to improving the effectiveness of the office of minority and women's business enterprises.

Brief Description: Improving the effectiveness of the office of minority and women's business enterprises.

Sponsors: Representatives Kenney, Pettigrew, Hasegawa, Darneille, Chase, Nelson, Sullivan, Dickerson, Hudgins, White and Upthegrove.

Brief History:

Committee Activity:

Community & Economic Development & Trade: 1/19/09, 1/28/09 [DP].

Floor Activity

Passed House: 2/20/09, 86-8.

Senate Amended.

Passed Senate: 4/13/09, 40-6.

Brief Summary of Engrossed Bill

- Requires the Office of Minority and Women's Business Enterprises, in consultation with the Advisory Committee on Minority and Women's Business Enterprises (Advisory Committee), to develop a strategic plan to address communications, outreach, streamlined certification, technical assistance, barriers to inclusion of firms in state procurement, and accountability measures.
- Specifies the membership composition and other requirements that apply to the Advisory Committee beginning August 1, 2009.

HOUSE COMMITTEE ON COMMUNITY & ECONOMIC DEVELOPMENT & TRADE

Majority Report: Do pass. Signed by 8 members: Representatives Kenney, Chair; Maxwell, Vice Chair; Smith, Ranking Minority Member; Chase, Lias, Orcutt, Parker and Probst.

Staff: Chris Cordes (786-7103)

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Background:

The Office of Minority and Women's Business Enterprises (OMWBE) was created in 1983 with the statutory purpose of providing minority and women-owned business enterprises (MWBE) the maximum practicable opportunity for increased participation in public works contracts and public contracts for goods and services. Among other things, the OMWBE is required to:

- develop and implement programs and a comprehensive plan to provide an opportunity for qualified MWBE to participate in public works and in supplying goods and services to state agencies and educational institutions;
- identify barriers to equal participation by qualified MWBE in state agency and educational contracts;
- establish annual overall goals for MWBE participation for each state agency and educational institution;
- develop and maintain a central MWBE certification list for state agencies and educational institutions; and
- submit an annual report to the Governor and the Legislature outlining the progress in implementing the program.

The OMWBE is the sole authority for certifying minority, women-owned, and socially and economically disadvantaged businesses for participation in public contracting programs. Only small business concerns, as defined by the OMWBE, may be certified.

Annual goals for participation in state contracts by qualified MWBE are established under an administrative rule. The rule uses a percentage of the reporting base, which includes all expenditure for public works, personal services, and the procurement of goods and services by state agencies and educational institutions.

The Director of the OMWBE may establish ad hoc advisory committees as necessary to assist in the development of policies.

Initiative 200 (I-200), adopted by the voters in 1998, prohibits discrimination or preferential treatment in public contracting on the basis of race, sex, color, ethnicity, or nationality. After I-200's passage, Governor Locke issued a directive on the implementation of programs, such as the OMWBE program, in light of I-200. Governor Locke directed that, in accordance with I-200, state agencies could not consider race, sex, color, ethnicity, or national origin in awarding contracts. Nor could agencies add preferences for meeting MWBE goals or award a contract to a bidder who did not submit the lowest bid but who met MWBE goals. He further directed the OMWBE to continue establishing laudatory, voluntary goals for state agencies and educational institutions to help eliminate improper discrimination by identifying disparities in participation by MWBE in state contracts. He directed these agencies and institutions to intensify their outreach and recruitment efforts to increase the number of available contractors within under represented groups.

In 2006 Governor Gregoire asked state agencies to work with the OMWBE to implement a Supplier Diversity Program. In her letter to the state agency directors, she noted that state contracts with certified MWBE had declined over the previous six years. For minority businesses, the decline was from 5 percent to less than 1 percent and, for women-owned

businesses, from 4 percent to 1 percent. She asked the agencies to designate agency leaders, track progress, and implement practical solutions.

Summary of Engrossed Bill:

The OMWBE Strategic Plan.

The Office of Minority and Women's Business Enterprises (OMWBE) must develop a strategic plan to improve its effectiveness, with timelines and strategies to:

- facilitate communication with and among minority and women-owned business enterprises on contracting with the state;
- improve outreach to small businesses;
- streamline the statewide certification process;
- focus technical assistance to small businesses and certified firms;
- address barriers to inclusion of certified firms in the state procurement process; and
- develop accountability measures to use in reporting progress.

The plan must be developed in consultation with the Advisory Committee on Minority and Women's Business Enterprises (Advisory Committee), be updated annually, and be reported annually to the Governor and the Legislature beginning December 1, 2009, with a preliminary report on September 1, 2009.

Agency Data Reporting.

For the purpose of annual strategic plan reporting, state agencies and educational institutions must submit, at least annually, data to the OMWBE on the participation by qualified MWBE in their contracts. The Director of the OMWBE (Director) will determine the content, format, and reporting schedule for the data reports.

Advisory Committee.

The reference to ad hoc advisory committees is deleted. By August 1, 2009, the Director must establish the Advisory Committee to provide the Director with policy advice, as well as to assist in the development of policies. The Advisory Committee must meet at least six times per year, and members may participate by teleconferencing. The Advisory Committee may include up to 15 members who must:

- be as diverse and representative as possible of certified businesses and their organizations;
- reflect statewide geographic distribution of small businesses; and
- not represent more business organizations than businesses.

In addition to the 15 voting members, Advisory Committee membership may include nonvoting representatives of state and local government.

EFFECT OF SENATE AMENDMENT(S):

The Senate amendment:

(1) requires the Office of Financial Management (OFM) to develop, in consultation with the OMWBE, a strategic plan to improve the effectiveness of state agencies in assisting small minority and women's businesses, rather than requiring the OMWBE to develop the plan to improve its effectiveness;

(2) modifies the strategic plan requirements by adding additional to strategies address increasing the effectiveness of existing state agency outreach and providing an effective training program to contracting officers in state agencies;

(3) adds that the OFM must maintain a list of persons in state agencies who are able to make progress reports at legislative hearings;

(4) requires the OFM to submit a report to the Governor and Legislature with aggregated data from the agencies; and

(5) removes the mandatory advisory committee and restores authority to establish ad hoc advisory committees on various aspects of minority and women's business enterprises, with modified committee specifications, including removing the required number of members and providing that the diversity/representative requirement need not be met if it would reduce the number of members with relevant knowledge and experience.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) Certification of small minority and women's businesses has been an important tool for economic development since 1983. It has been a successful program, but it is important to overcome the concerns that I-200 raised about the program. Small businesses should be able to participate in state contracts on an equal footing. It will help to have a focused plan that can help make streamlined certification a reality and determine how to provide necessary technical assistance to small businesses and how to encourage their participation. There should be improved accountability to know how the program is working. The Advisory Committee should be reflective of small businesses statewide.

(With concerns) The OMWBE already has a plan in place. The current statute's authorization for ad hoc advisory committees is working. The old Advisory Committee was abolished some years ago because it was too formal and structured. It was hard to interest all the members in issues unrelated to their own businesses. Ad hoc advisory groups meet the need to address specific industry concerns. The program needs to be restructured to emphasize existing tools not being used now. The number of minority and women's businesses participating in state contracts will take care of itself if state agencies would use available tools.

(Information only) The OMWBE does not have authority to hold state agencies accountable. The data that state agencies provide to the OMWBE are often corrupted and require considerable work to make useful.

Persons Testifying: (In support) Representative Kenney, prime sponsor.

(With concerns) Jim Medina.

(Information only) Cynthia Cooper, Office of Minority and Women's Business Enterprises.

Persons Signed In To Testify But Not Testifying: None.