

# HOUSE BILL REPORT

## HB 1770

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### As Passed Legislature

**Title:** An act relating to enhancing small business participation in state purchasing.

**Brief Description:** Enhancing small business participation in state purchasing.

**Sponsors:** Representatives Hasegawa, Kenney, Orcutt, Frockt and Stanford.

#### **Brief History:**

##### **Committee Activity:**

State Government & Tribal Affairs: 2/17/11 [DP];

Ways & Means: 2/24/11, 2/25/11 [DP].

##### **Floor Activity:**

Passed House: 3/5/11, 74-23.

Senate Amended.

Passed Senate: 4/7/11, 48-1.

House Concurred.

Passed House: 4/13/11, 74-22.

Passed Legislature.

#### **Brief Summary of Bill**

- Requires state purchasing agencies, including institutions of higher education, to establish and implement a plan to increase the number of in-state small businesses annually receiving state contracts for goods and services.
- Requires the Department of General Administration (DGA) to develop a model plan for state agencies to increase the number of in-state small businesses receiving state contracts for the purchase of goods and services.
- Requires all state agencies to adopt either the DGA model plan or another plan consistent with the goals set forth in the model plan.
- Requires state purchasing agencies to provide technical assistance to in-state small businesses to facilitate their participation in the state contracting process.
- Requires the DGA and other state purchasing agencies to track the outcomes of their respective plans and to meet specified reporting requirements.

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*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.*

- Requires the DGA to develop and implement a web-based information system to track the effects the technical assistance is having on contract procurement by in-state small businesses.

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## HOUSE COMMITTEE ON STATE GOVERNMENT & TRIBAL AFFAIRS

**Majority Report:** Do pass. Signed by 6 members: Representatives Hunt, Chair; Darneille, Dunshee, Hurst, McCoy and Miloscia.

**Minority Report:** Do not pass. Signed by 4 members: Representatives Taylor, Ranking Minority Member; Overstreet, Assistant Ranking Minority Member; Alexander and Condotta.

**Staff:** Thamas Osborn (786-7129).

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## HOUSE COMMITTEE ON WAYS & MEANS

**Majority Report:** Do pass. Signed by 18 members: Representatives Hunter, Chair; Darneille, Vice Chair; Hasegawa, Vice Chair; Dammeier, Assistant Ranking Minority Member; Orcutt, Assistant Ranking Minority Member; Carlyle, Cody, Dickerson, Haigh, Hudgins, Hunt, Kagi, Kenney, Ormsby, Pettigrew, Seaquist, Springer and Sullivan.

**Minority Report:** Do not pass. Signed by 9 members: Representatives Alexander, Ranking Minority Member; Bailey, Assistant Ranking Minority Member; Chandler, Haler, Hinkle, Parker, Ross, Schmick and Wilcox.

**Staff:** Andy Toulon (786-7178).

### **Background:**

#### State Procurement.

The Department of General Administration (DGA) establishes overall state policy for state purchasing, and contracts with individuals and companies outside of state government to provide goods and services to the state. Under delegated authority, other state agencies and the institutions of higher education also contract for goods and services. The state's purchasing authority is generally organized into categories based on the type of service.

Among these categories are:

- *Purchased goods and services.* These goods and services are those provided by a vendor to accomplish routine, continuing, and necessary functions.
- *Personal services.* This term refers to professional or technical expertise provided by a consultant to accomplish a specific study or project.
- *Information services.* These services include data processing, telecommunications, office automation, and computerized information systems.
- *Printing services.* This term refers to the production of the state's printed materials.

Except in specific circumstances, Washington law does not provide preferences to bidders who are in-state. The statutory exceptions include:

- *Ferries*. In Washington, the Department of Transportation's bid documents for jumbo ferries must include a requirement that the vessels be constructed within Washington, with exceptions for certain equipment and systems.
- *Washington-grown food for schools*. School districts are authorized to implement policies to maximize the purchases of Washington-grown food. Such policies may include permitting a percentage price preference for Washington-grown food.
- *In-state printing*. Printing for state agencies must be done within Washington, unless the work cannot be executed in state or the lowest in-state bid exceeds the customary charges in the private sector.

In addition to these in-state preferences, the DGA is required to identify other states that provide in-state preferences to their own bidders. If a bidder from one of those states submits a bid for a state contract in Washington, the GA may add a percentage increase to that bidder's proposal. This increase is used only to evaluate the bid and is not paid to any supplier whose bid is accepted.

#### Legal Challenges to In-State Preference Laws.

State procurement laws that give preference to domestic goods or prohibit purchasing foreign goods have been challenged on one or more grounds. These include arguments that such laws are: (1) invalid exercises of state power under the federal Commerce Clause; (2) preempted by federal statute or in violation of international agreements on government procurement; or (3) in violation of Equal Protection/Privileges and Immunities clauses of the United States Constitution.

#### **Summary of Bill:**

All state purchasing agencies, including institutions of higher education, must establish and implement a plan to increase the number of small businesses annually receiving state contracts for goods and services.

The Department of General Administration (DGA) must develop a model plan for state agencies to increase:

- the number of small businesses registering in the state's common vendor registration and bid notification system;
- the number of such registered small businesses annually receiving state contracts for goods and services purchased by the state; and
- the percentage of total state dollars spent for goods and services purchased from such registered small businesses.

All state agencies are authorized to adopt the model plan developed by the DGA.

Any state purchasing agency not adopting the DGA model plan must establish and implement a plan consistent with the goals required under the DGA model.

State purchasing agencies must give technical assistance to small businesses including:

- providing opportunities for the agency to answer vendor questions about the bid solicitation requirements in advance of the bid due date; and
- holding a debriefing after the contract award to assist vendors in understanding how to improve his or her responses for future procurements.

State purchasing agencies must maintain records of contracts awarded to registered small businesses to track outcomes regarding the effects of the technical assistance on the number of small businesses annually receiving state contracts for goods and services purchased by the state. All other state agencies are encouraged to maintain such records of contracts awarded to registered small businesses.

Subject to appropriated funds in 2012, by November 15, 2013, and November 15 every two years thereafter, state purchasing agencies must submit a report to the Legislature regarding the effects the technical assistance is having on the number of small businesses annually receiving state contracts for goods and services purchased by the state.

Subject to appropriated funds in 2012, the DGA, in consultation with the Department of Information Services, the Department of Transportation, and the Department of Commerce, must develop and implement a web-based information system in order to track the effects the technical assistance is having on the number of small businesses annually receiving state contracts for goods and services purchased by the state. Once the web-based information system is funded and developed, the DGA must make the information system available to all state purchasing agencies by December 31, 2013.

The act amends the minimum threshold dollar amounts for informal procurements which must be placed on the state's online bid notification system.

Defines "state purchasing agencies," "in-state business," and "small business."

**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** (State Government & Tribal Affairs):

(In support) This a good bill that would assist local, small businesses in obtaining state contracts. This bill passed the House of Representatives last year, but did not get out of the Senate.

(With concerns) Providing in-state small businesses with preferential treatment in the bidding process presents problems with respect to implementation and unintended negative effects. It will burden state agencies with considerable costs, including the costs of revamping the bidding system and creating an administrative apparatus. The onerous penalty provisions of the bill may have the effect of impairing the ability of state agencies to recruit small businesses for contracts. Such preferential treatment will create problems for Washington

vendors when they bid on contracts in other states that impose reciprocal preferential treatment. Also, the DGA does not have the accounting systems necessary to meet the bill's reporting requirements.

(Opposed) None.

**Staff Summary of Public Testimony (Ways & Means):**

(In support) Other states currently apply bidding preferences but the Department of General Administration has consistently said they do not have the resources to apply retaliation to these states, so in effect our small businesses are suffering. California is the main one applying a 5 percent preference. This bill is important to the small business community. This bill was passed last year on an 84-10 vote and was vetoed by the Governor as a result of the changes made in the Senate. The fiscal note has changed considerably from last year and where that comes from I do not know. This will be self-policing, relying on small businesses looking for opportunities to catch people who are cheating.

(Opposed) None.

**Persons Testifying (State Government & Tribal Affairs):** (In support) Representative Hasegawa, prime sponsor.

(With concerns) Servando Patlan, Washington State Department of General Administration.

**Persons Testifying (Ways & Means):** Representative Hasegawa, prime sponsor.

**Persons Signed In To Testify But Not Testifying (State Government & Tribal Affairs):** None.

**Persons Signed In To Testify But Not Testifying (Ways & Means):** None.