

HOUSE BILL REPORT

SHB 1259

As Passed House:

March 3, 2021

Title: An act relating to expanding public contracting opportunities for women and minority business enterprises by increasing the regulatory oversight and accountability of the office of minority and women's business enterprises.

Brief Description: Expanding public contracting opportunities for women and minority business enterprises by increasing the regulatory oversight and accountability of the office of minority and women's business enterprises.

Sponsors: House Committee on Appropriations (originally sponsored by Representatives Santos, Dolan, Ryu, Valdez, Fey, Ramel, Ortiz-Self, Hackney, Ramos, Kloba, Callan, Lekanoff, Macri, Gregerson, Slatter, Stonier and Harris-Talley).

Brief History:

Committee Activity:

Community & Economic Development: 1/26/21, 1/29/21 [DP];
Appropriations: 2/16/21, 2/17/21 [DPS].

Floor Activity:

Passed House: 3/3/21, 93-4.

Brief Summary of Substitute Bill

- Establishes an Audit and Review unit within the Office of Minority and Women's Business Enterprises (OMWBE) to detect and investigate fraud and violations pertaining to the certification of, and contracting with, minority- and women-owned businesses.
- Repeals the Office of the Attorney General's authority to investigate and enforce prohibited and unlawful acts pertaining to the certification of, and contracting with, minority- and women-owned businesses.
- Modifies the penalties for noncompliance of provisions related to the certification of, and contracting with, minority- and women-owned

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businesses.

- Requires the OMWBE to annually identify state agencies and educational institutions with low levels of participation by minority- and women-owned businesses in the execution of public contracts.

HOUSE COMMITTEE ON COMMUNITY & ECONOMIC DEVELOPMENT

Majority Report: Do pass. Signed by 8 members: Representatives Ryu, Chair; Paul, Vice Chair; Boehnke, Ranking Minority Member; Frame, Johnson, J., Lovick, Rule and Taylor.

Minority Report: Do not pass. Signed by 2 members: Representatives Jacobsen and Kraft.

Minority Report: Without recommendation. Signed by 3 members: Representatives Chase, Assistant Ranking Minority Member; Corry and Sutherland.

Staff: Kyle Raymond (786-7190).

HOUSE COMMITTEE ON APPROPRIATIONS

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 22 members: Representatives Ormsby, Chair; Bergquist, Vice Chair; Gregerson, Vice Chair; Macri, Vice Chair; Boehnke, Chopp, Cody, Dolan, Fitzgibbon, Frame, Hansen, Harris, Johnson, J., Lekanoff, Pollet, Ryu, Senn, Springer, Steele, Stonier, Sullivan and Tharinger.

Minority Report: Do not pass. Signed by 1 member: Representative Schmick.

Minority Report: Without recommendation. Signed by 9 members: Representatives Stokesbary, Ranking Minority Member; Chambers, Assistant Ranking Minority Member; Corry, Assistant Ranking Minority Member; Caldier, Chandler, Dye, Hoff, Jacobsen and Rude.

Staff: Heidi Cao (786-7157).

Background:

Office of Minority and Women's Business Enterprises.

The Office of Minority and Women's Business Enterprises (OMWBE) was created to provide minority- and women-owned and controlled businesses with the maximum practicable opportunity for increased participation in public-works contracts and public contracts for goods and services.

The OMWBE is the sole authority in Washington for certifying minority- and women-owned, and socially and economically disadvantaged, business enterprises. Among other duties, the OMWBE must identify barriers to equal participation by qualified businesses in all state agency and educational contracts. The OMWBE must also establish annual participation goals by qualified businesses for each state agency and educational institution.

Prohibited Activities. Certain activities relating to certification of, and contracting with, minority- and women-owned businesses are prohibited. A person, firm, corporation, business, union, or other organization may not:

- prevent or interfere with a contractor's compliance with laws and rules pertaining to the certification of, and contracting with, minority- and women-owned businesses;
- submit false or fraudulent information;
- fraudulently obtain, retain, or attempt to obtain or retain certification;
- knowingly make a false statement to a state official or employee for the purpose of influencing certification or denial of certification;
- knowingly obstruct, impede, or attempt to obstruct or impede any state official or employee who is investigating the qualification of a business entity applying for certification;
- fraudulently obtain, attempt to obtain, or aid another person in fraudulently obtaining or attempting to obtain public monies to which the person is not entitled; or
- knowingly make false statements that an entity is or is not certified for purposes of obtaining a contract.

Enforcement. The state may impose penalties for noncompliance of provisions related to the certification of, and contracting with, minority- and women-owned businesses, including the state may: (1) withhold payment; (2) debar, suspend, or terminate the contract; or (3) impose civil penalties of up to 10 percent of the contract amount or up to \$5,000 per violation.

For a willful and repeated violation, a contractor may be disqualified from state contracts for a period of up to three years.

The OMWBE must adopt rules that identify criteria for the imposition of penalties. The OMWBE is required to follow the Administrative Procedure Act in determining a violation and imposing penalties.

The Office of the Attorney General (AGO) may enforce laws and rules with respect to the OMWBE programs and certification procedures. The AGO may conduct investigations and may file for civil injunctive relief.

Summary of Substitute Bill:

Office of Minority and Women's Business Enterprises Audit and Review Unit.

An Audit and Review Unit (Unit) is established within the OMWBE to detect and investigate fraud and other violations relating to the certification of, and contracting with, minority- and women-owned businesses.

The Unit must respond to all complaints for investigation made by other agencies, and the Unit must develop processes to prioritize and conduct thorough investigations when an external complaint or internal concerns are received. The Unit must annually conduct a site review of a minimum of 3 percent of contractors.

Enforcement and Penalties. If a person, firm, corporation, or business commits an expressly prohibited activity, the state must impose one or more of the following penalties:

- withholding payment;
- decertifying the contractor;
- debarring the contractor for a period of between one and three years;
- terminating the contract; or
- subjecting the contractor to civil penalties of between 2 and 10 percent of the amount of the contract, or between \$1,000 and \$5,000 for each violation.

All civil penalties imposed must be deposited in the Minority and Women's Business Enterprises Account.

For a violation that is not an expressly prohibited activity, the state may decertify a contractor.

If a contractor commits willful, repeated violations, the contractor must be debarred from state contracting for three years, in addition to any other penalties imposed. A willful violation includes a conscious or deliberate false statement, misrepresentation, omission, or concealment of a material fact, with the intent of impacting benefits that are awarded.

For the purpose of any investigation or proceeding, the Director of the OMWBE, or the Director's designee, may administer oaths and affirmations, subpoena witnesses, compel attendance, take evidence, and require the production of any books, papers, correspondence, memoranda, agreements, or other documents deemed relevant or material to the inquiry.

The Director may apply for and obtain a superior court order approving and authorizing a subpoena in advance of its issuance. A superior court may issue an approval and authorization without prior notice to the person to whom the subpoena is directed or to the person who is the subject of the investigation.

"Debar" is defined as prohibiting a contractor, individual, or other entity from submitting a bid, having a bid considered, or entering into a state contract during a specified period of time as set forth in a debarment order.

State Agency and Educational Institution Identification.

The OMWBE must annually identify the state agencies and educational institutions that are:

- in the lowest quintile of utilization of minority- and women-owned contractors as a percentage of all contracts issued by the agency;
- in the lowest quintile of dollar value awarded to minority- and women-owned contractors as a percentage of the dollar value of all contracts issued by the agency; and
- performing significantly below their established goals.

The OMWBE must meet with each identified agency to review the agency's plan and identify tools for increasing participation by qualified businesses.

The OMWBE must include the information identified and actions taken to the Legislature and the Governor in their annual report.

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 (Community & Economic Development):

(In support) The bill increases the regulatory oversight and accountability role of the OMWBE. The agency lacks the tools and authority to adequately fulfil their mission to provide the maximum practicable opportunity for increased public works participation by minority and women-owned and controlled businesses. The bill clarifies the responsibility of the OMWBE by establishing investigatory powers to detect fraud and abuse. The change from the AGO to the OMWBE is needed because the AGO does not currently investigate these issues, despite having the authority to do so.

In the past, there have been significant problems with large companies creating fictitious minority- and women-owned businesses. The bill delineates the discretionary and mandatory penalties for violations involving willful misrepresentation or deception to secure public contracts. This will allow OMWBE to aid businesses that play by the rules and discipline those who cheat. The bill directs the OMWBE to work with each state agency to provide technical assistance and improve participation by minority- and women-owned businesses.

From 2010 to 2019, overall state spending on public contracts has increased by 120 percent. However, direct spending on certified minority- and women-owned businesses increased by less than 1 percent. Further, no category of minority-owned businesses successfully secured more than 1 percent of the total available contract dollars, and black and indigenous contractors received an even smaller portion of available funding while the

number of contractors increased. The need for the technical assistance is crucial, particularly given current economic conditions.

(Opposed) None.

(Other) The OMWBE is supportive of the policy in the bill. However, this is a new body of work for the agency, and the fiscal impact created is not currently included in the Governor's budget. The bill requires the OMWBE to meet with agencies to review these plans and identify opportunities for improvement. The OMWBE currently does this work and is supportive of this requirement being codified into state law.

Staff Summary of Public Testimony (Appropriations):

(In support) None.

(Opposed) None.

(Other) This bill creates an investigative unit at the Office of Minority and Women's Business Enterprises and the agency requires and requests additional funding to implement this provision. Section 8 of the bill should be removed as it raises bid limits for public procurement. Pending report recommendations should be considered before a bid limit is increased.

Persons Testifying (Community & Economic Development): (In support)
Representative Santos, prime sponsor.

(Other) Joanna Eide, Office of Minority and Women's Business Enterprises.

Persons Testifying (Appropriations): Joanna Eide, Office of Minority & Women's Business Enterprises; and Michael Transue, Mechanical Contractors Association of Western Washington.

Persons Signed In To Testify But Not Testifying (Community & Economic Development): None.

Persons Signed In To Testify But Not Testifying (Appropriations): None.