

HOUSE BILL REPORT

E2SHB 1096

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: House Committee on General Government Appropriations (originally sponsored by Representatives Hasegawa, Green, Kenney, Chase, Hudgins and Moeller).

Brief History:

Committee Activity:

Community & Economic Development & Trade: 1/21/09, 2/4/09 [DPS];

General Government Appropriations: 1/26/10, 2/5/10 [DP2S].

Floor Activity:

Passed House: 2/13/10, 84-10.

Senate Amended.

Passed Senate: 3/11/10, 42-5.

House Concurred.

Passed House: 3/11/10, 87-10.

Passed Legislature.

Brief Summary of Engrossed Second Substitute Bill

- Requires the departments of General Administration (GA), Information Services, and Transportation to develop a plan for meeting specific goals to increase the number of small businesses receiving state contracts for goods and services by 2014.
- Requires the GA to report to the Governor and Legislature each July 1, beginning in 2011, on the progress made in carrying out the plan.

HOUSE COMMITTEE ON COMMUNITY & ECONOMIC DEVELOPMENT & TRADE

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 8 members: Representatives Kenney, Chair; Maxwell, Vice Chair; Chase, Liias, Orcutt, Parker, Probst and Sullivan.

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.

Minority Report: Do not pass. Signed by 1 member: Representative Smith, Ranking Minority Member.

Staff: Chris Cordes (786-7103).

HOUSE COMMITTEE ON GENERAL GOVERNMENT APPROPRIATIONS

Majority Report: The second substitute bill be substituted therefor and the second substitute bill do pass. Signed by 10 members: Representatives Darneille, Chair; Takko, Vice Chair; Blake, Dunshee, Hudgins, Kenney, Pedersen, Sells, Van De Wege and Williams.

Minority Report: Do not pass. Signed by 3 members: Representatives McCune, Ranking Minority Member; Klippert and Short.

Staff: Steve Smith (786-7178).

Background:

The Department of General Administration (GA) 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 ones 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.

The Office of Minority and Women's Business Enterprises (OMWBE) has a 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. The OMWBE is the sole authority for certifying minority, women-owned, and socially and economically disadvantaged businesses for participation in public contracting programs. The OMWBE may only certify "small business concerns," which are defined to be consistent with the definition used by the U.S. Small Business Administration.

Summary of Engrossed Second Substitute Bill:

The departments of General Administration (GA), Information Services, and Transportation must develop a plan to increase the number of small businesses receiving state contracts for goods and services. The goal of the plan is have the number of small businesses receiving state contracts be at least 50 percent higher by 2012 and at least 100 percent higher by 2014,

compared to the number of contracts awarded to small businesses in 2009. This plan requirement expires July 1, 2015.

By July 1, 2011, and each July 1 thereafter, the GA must report on progress in carrying out the plan to the Governor and Legislature.

"Small business" is an in-state business that has either fifty or fewer employees or gross revenues of less than \$7 million or is a business certified by the Office of Minority and Women's Business Enterprises.

Appropriation: None.

Fiscal Note: Preliminary 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 & Trade):

(In support) Small business owners, especially minority and women-owned businesses, feel like they do not have access to state contracting. Small businesses are the backbone of the state's economy. If given a chance, they will help the state rebound from the recession. The challenge is the fiscal impact. The main concern is the administrative cost of the program. However, the federal contracting program shows that self-identification of small businesses is a workable administrative solution when there are consequences for lying about business size. The other fiscal concern, the higher costs of contracts, is mitigated by the fact that the money will get re-circulated in Washington. The cost may be offset by the potential multiplier effect. This type of program also increases competition as more firms can bid. The federal program also shows that firms tend to move up the ladder to larger projects as they gain experience. Some programs set aside contracts under a certain amount for small businesses. California has had a small bidder preference for many years. As a result, many small California companies have gotten experience that enables them now to bid in Washington.

(With concerns) The Departments of General Administration and Information Services share a common interest with the Committee in addressing the concerns of small businesses and understand the need to level the playing field and bring them into the system. However, implementing the bill will require a registry for small businesses and enforcement mechanisms, with rules, policies, procedures, extra staff, training of staff, etc. There would also be a contract cost if contracts go to the small business based on the effect of the 7 percent preference. This could result in a significant increase in the cost of contracting for the same goods and services.

(Opposed) None.

Staff Summary of Public Testimony (General Government Appropriations):

(In support) As the bill came out of the Community, Economic Development and Trade Committee, the fiscal note (FN) concerned the Community, Economic Development, and Trade Committee, and it was the intent to narrow the bill down to a pilot program for the GA to see how it could be implemented. Small businesses know who they are and participation in the GA's contracts would be largely a self-policing system before considering the penalties in the bill that would further prevent fraud on the part of businesses. The GA portion of the FN has State General Fund costs of \$29,000, which are relatively low given the multiplier effect in savings generated by the employment from these contracts. Ninety-eight percent of the businesses in the state are small businesses, and favoring contracts with small Washington businesses helps foster the Washington economy. The program is well worth it, and the program will help increase local hiring and keep money in the community. By contrast, sending jobs outside the state does not have these multiplier effects and does not contribute to the state. Other states have similar bidding preferences for in-state bidders, such as Alaska, Hawaii, Louisiana, Montana, New Mexico, New York, South Carolina, and Wyoming, while Arizona and California have small business preferences. The bill has bipartisan support and it only had one vote against in the policy committee. In a survey Tabor 100 conducted, it was determined that these kinds of bills need to be champions. There are barriers to small business in state contracts and not enough will to remove them. Small businesses comprise over 90 percent of all businesses in the state and we need to support them. Large businesses have the advantages of economies of scale and are better able to participate in state bidding pressure which ends up undercutting small businesses. There are discrepancies between state agencies in the way that contracts are awarded. There are many impediments to small businesses in terms of needed certifications, relationships with certain product lines or the transfer of risk from government to small businesses. This bill supports small businesses in Washington. Small businesses are the backbone of the Washington economy, and this bill helps to remedy the imbalance of procurement to small, in-state businesses, but also helps larger in-state businesses as well. In this time of economic dislocation, this bill helps keep jobs in Washington. This bill protects small businesses, which are becoming an endangered species. State contracts are becoming more difficult to obtain, and by not helping small businesses out, the state becomes more vulnerable to the "big box" mentality. The bill is in the best interest of the state economically in the long term. In the long term, small businesses become the state's large businesses. Small business is also part of large business and helps add diversity to the mix and sustain the economy in difficult times. Low bids, which often come from larger options, are also not always the best option for value reasons, and the added value that comes from small businesses should be acknowledged. Also, minority-owned businesses are usually small businesses, and the state has a bad record of facilitating relationships with minority-owned businesses: a problem the state should strive to remedy. Similar communities assist their small businesses and Washington should follow their examples. Small businesses have the hurdles of bureaucracy, paperwork, and the cost of responding, and these impediments really accumulate. The Federal Reserve of Atlanta looked at the sources of unemployment in this economic cycle that have come from firms with 50 or fewer people. In the 2001 economic cycle, that number was 9 percent, and this is important because coming out of recessions, these same businesses represent about 33 percent of the job growth. Proposed second substitute house bill 1096 is a calling card for all of the prospects from other states. This is an opportunity for us to address how best to help small businesses. There are costs such as the cost to bid and the costs of training, and any incentives to compete on a level playing field would help. California has a small business certification and eligibility process and

incorporates a 5 percent preference for small businesses. A significant number of small businesses that fall under an even smaller threshold: for example, 93 percent of businesses in Washington meet the definition of a small business and employ fewer than 20 employees, are operated by the owner, and earn less than \$3 million in gross annual revenue. Businesses affiliated with the Office of Minority and Women's Business Enterprises are also having a hard time with state contracts. Twenty five years ago, the Legislature found that in-state preference clauses in other states had a discriminatory effect on Washington vendors, and the Legislature should take measures to address this. Three statutes have empowered the GA to counteract these practices to help local, in-state businesses to be able to bid competitively.

(With concerns) The GA develops about 300 master contracts that agencies use on a regular basis. The GA is a strong supporter of small businesses, and supported P2SHB 1095 and SSB 5723 (Chapter 486, Laws of 2009), and the GA is striving to improve. The GA's two concerns with this bill are: (1) the bill could increase costs as much as 7 percent, and state agencies, then, could elect under the best buy provision, not to use the GA contracts. Similarly, cities and colleges could also elect not to use these contracts; and (2) self-certification and protests are an issue because if a vendor's eligibility of a vendor is questioned, it is unclear how the GA could support the administrative defense of these accusations. There would also be a burden of policing small agencies. The GA would request that the definition of small business align with the definition in chapter 486, Laws of 2009, and also they point out that the bill does not address construction services.

(Opposed) None.

Persons Testifying (Community & Economic Development & Trade): (In support) Representative Hasegawa, prime sponsor; and Erin Nielsen.

(With concerns) Howard Cox and Sharon Case, Department of General Administration; Tamara Jones, Department of Information Services; and Dan Swisher, Office of the Public Printer.

Persons Testifying (General Government Appropriations): (In support) Representative Hasegawa, prime sponsor; Richard Mitchell, Tabor 100; Edward Jones, Best CCLS, Inc; Ali Raad, Raad Properties Co.; Robert E. Smith, Womer and Associates; Glenn Gregory, Coalition for Investing in Washington Jobs; Silas Potter; and Ralph Ibarra, Diverse America Network.

(With concerns) Steve Krueger, Department of General Administration.

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

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