

HOUSE BILL REPORT

HB 1255

As Reported by House Committee On:
Technology & Economic Development

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

Brief Description: Concerning the office of minority and women's business enterprises account.

Sponsors: Representatives Tarleton, Ryu, Kirby, Sawyer, Riccelli, Santos and Gregerson; by request of Office of Minority and Women's Business Enterprises.

Brief History:

Committee Activity:

Technology & Economic Development: 1/28/15, 2/10/15 [DPS].

Brief Summary of Substitute Bill

- Requires fees collected by the state for non-compliance with the Office of Minority and Women's Business Enterprises (OMWBE) provisions or contract requirements to be deposited in the OMWBE Account.
- Limits the amount of funds deposited to the OMWBE Account from fees collected for non-compliance with OMWBE provisions or contract requirements to no more than the amount necessary to cover administrative and processing costs.

HOUSE COMMITTEE ON TECHNOLOGY & ECONOMIC DEVELOPMENT

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 12 members: Representatives Morris, Chair; Tarleton, Vice Chair; Smith, Ranking Minority Member; DeBolt, Assistant Ranking Minority Member; Fey, Harmsworth, Hudgins, Magendanz, Ryu, Santos, Wylie and Young.

Staff: Kirsten Lee (786-7133).

Background:

The Office of Minority and Women's Business Enterprises (OMWBE), created in 1983, is the sole authority in Washington for certifying minority, women-owned, and socially- and

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economically-disadvantaged businesses. Certified businesses are listed in the OMWBE database, which is used by cities, counties, state agencies, and transportation and educational institutions to source small and diverse firms for potential contracting opportunities.

Prohibited Activities.

Certain activities with respect to the OMWBE and its certification process are expressly prohibited in the OMWBE statute. A person, firm, corporation, business, union, or other organization may not:

- prevent or interfere with a contractor's or subcontractor's compliance with the OMWBE-related laws and rules;
- submit false or fraudulent information;
- fraudulently obtain, retain, 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 moneys to which the person is not entitled; or
- knowingly make false statements that any entity is or is not certified for purposes of obtaining a contract.

Enforcement.

The state may impose penalties for violations of the OMWBE-related laws and rules, including for acts of misrepresentation and fraud used to obtain or retain certification, as well as violations of contract requirements. For any violation, the state may withhold payment, debar the contractor, suspend or terminate the contract, and impose civil penalties of up to 10 percent of the contract amount or up to \$5,000.

For a wilful and repeated violation, a contractor may be disqualified from state contracts for a period of up to 3 years. The OMWBE must adopt rules for imposing sanctions or fines. The Attorney General has the authority to enforce laws and rules with respect to the OMWBE programs and certification procedures. The Attorney General may conduct investigations by compelling the production of documents, oral testimony, and answers to interrogatories and may file for civil injunctive relief.

The Office of Minority and Women's Business Enterprises Account.

The OMWBE Account, in the custody of the state treasurer, is funded with fees applied to businesses, political subdivision certification, and state agencies and educational institutions. This account is used for administration costs involved with operating the OMWBE.

Summary of Substitute Bill:

The Office of Minority and Women's Business Enterprises (OMWBE) Account receives the receipts collected by the state from persons, firms, or corporations for non-compliance with OMWBE provisions or contract requirements. The receipts collected are limited to no more

than necessary to cover administrative and processing costs. Excess funds from receipts received from penalties are to be remitted to the State General Fund.

The OMWBE is required to report biennially to the Legislature, beginning June 30, 2016. Reports must include:

- the total amount of receipts received from penalties imposed;
- the total amount of expenditures from receipts received for penalties imposed; and
- an itemized list of expenditures from receipts received for penalties imposed.

Substitute Bill Compared to Original Bill:

The substitute bill:

- limits the amount of funds deposited to the OMWBE Account from fees collected for non-compliance with OMWBE provisions or contract requirements to no more than the amount necessary to cover administrative and processing costs;
- requires any excess funds from receipts received from penalties to be remitted to the State General Fund; and
- requires the OMWBE to report biennially to the Legislature regarding the total amount received from penalties, expenditures used from receipts received for penalties, and how the penalties received were allocated.

Appropriation: None.

Fiscal Note: Available.

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

Staff Summary of Public Testimony:

(In support) The Office of Minority and Women's Business Enterprises (OMWBE) currently has the ability to assess penalties for OMWBE violations regarding the certification process and have recently started doing so. There are approximately \$93,000 in pending fees to be paid by businesses found to be in violation. The fees are pending because the businesses are afforded due process. The hearing involves the business's attorney representation and OMWBE representation by the Office of the Attorney General. The hearing is held before the Office of Administrative Hearings. The process results in great costs to the OMWBE. The OMWBE would like the fees collected to be deposited into the OMWBE specific account along with other fees already permitted to allow for recoupment of costs associated with the hearings. The OMWBE has no issue with providing a cap for the penalty funds deposited into the OMWBE Account.

(Opposed) None.

Persons Testifying: Representative Tarleton, prime sponsor; and Amanda, Migchelbrink, Office of Minority and Women's Business Enterprises.

Persons Signed In To Testify But Not Testifying: None.