

WSR 22-24-009
PROPOSED RULES
OFFICE OF MINORITY AND
WOMEN'S BUSINESS ENTERPRISES
[Filed November 28, 2022, 3:47 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 22-19-004.

Title of Rule and Other Identifying Information: Political subdivision fees.

Hearing Location(s): On January 10, 2023, at 1:30 p.m., virtual <https://attendee.gotowebinar.com/register/9117176133591146767>.

Date of Intended Adoption: May 17, 2023.

Submit Written Comments to: Julie Bracken, 1110 Capitol Way South, Suite 150, Olympia, WA, email rules@omwbe.wa.gov, fax 360-586-7070, by January 6, 2023.

Assistance for Persons with Disabilities: Contact Julie Bracken, phone 360-819-3666, fax 360-586-7070, TTY 800-833-6384, email rules@omwbe.wa.gov, by January 6, 2023.

Reasons Supporting Proposal: Under current rules, the formula for determining each political subdivision's fees contain gaps that create ambiguity. The fees also do not increase smoothly as expenditures rise under the current formula. Finally, the cap on fees has not been updated since 2004, despite the growth in expenditures. As a result, political subdivisions with greater expenditures pay a lower proportion in fees compared to political subdivisions with less expenditures. The new formula will make fees more predictable, less ambiguous, and more proportionate to expenditures. The resulting increase in collections will offset increases in the staff cost for the office of minority and women's business enterprises (OMWBE) to certify more businesses.

Statutory Authority for Adoption: RCW 39.19.030.

Statute Being Implemented: RCW 39.19.220.

Rule is not necessitated by federal law, federal or state court decision.

Name of Agency Personnel Responsible for Drafting: Julie Bracken, 1110 Capitol Way South, Suite 150, Olympia, 360-819-3666; Implementation and Enforcement: Shanika Allen, 1110 Capitol Way South, Suite 150, Olympia, 360-561-7261.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. OMWBE is not an agency listed under RCW 34.05.328 (5)(a)(i) and the rules do not subject parties to a penalty or sanction. They do not involve licensing or permits or make significant amendments to a policy or regulatory program.

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(3) as the rules relate only to internal governmental operations that are not subject to violation by a nongovernment party.

Is exempt under RCW 19.85.025(4).

Explanation of exemptions: The proposal modifies fees charged by OMWBE to political subdivisions. It does not impact nongovernmental entities.

Scope of exemption for rule proposal:

Is fully exempt.

November 28, 2022

Julie Bracken
Public Records Officer
Rules Coordinator
Records Manager

OTS-4082.1

AMENDATORY SECTION (Amending WSR 11-11-030, filed 5/11/11, effective 6/11/11)

WAC 326-02-034 Political subdivision fees. (1) It is the intent of the state legislature that political subdivisions within the state of Washington contribute to the costs of the state's certification program for minority and women's business enterprises. For the purpose of this section, political subdivisions means any city, town, county, special purpose district, public corporation created by the state, municipal corporation, or quasi-municipal corporation within the state of Washington that administers a policy or program, or funds from whatever source, which requires or encourages the use of certified minority, women, or disadvantaged business enterprises.

(2) Effective July 1, 1993, the office shall allocate a portion of its biennial operational costs to political subdivisions. Each political subdivision shall pay a proportionate share of this allocation based on the formula set forth in subsection (4) of this section.

(3) (a) The fee charged to each political subdivision for the ~~((period, July 1, 2003 -- June 30, 2005))~~ biennium beginning July 1, 2023, and subsequent biennia unless revised by rule, shall be based on the annual average of expenditures for capital projects, supplies and other services for ~~((fiscal years 1999-2001 as reflected in the state auditor's online BARS report, when available. Data on the annual average of capital expenditures by the transit districts during the relevant period will be taken from a report produced by the Washington state department of transportation entitled, 2001 Summary of Public Transportation Systems in Washington State))~~ the most recent available biennium as reported by the state auditor's office. Data on the annual average of expenditures by school districts and educational service districts will be obtained from the office of the superintendent of public instruction. The basis for the fee to be charged to the Housing Authorities is the number of low-income units owned or managed during the last fiscal year as reported to the U.S. Department of Housing and Urban Development. The maximum amount charged to any political subdivision ~~((shall))~~ must not exceed ~~(((\$40,000.00 in a single biennium))~~ \$60,000 in the biennium beginning July 1, 2023. In subsequent biennia, the maximum amount charged must be adjusted for inflation as measured in the implicit price deflator index.

(b) ~~((For the biennium beginning July 1, 2005, and subsequent biennia, similar data reflecting expenditures during the previous biennium or in the case of Housing Authorities, the average number of low-income units owned or managed during the previous biennium will be used to calculate the fee charged to each political subdivision.~~

~~((e))~~ When insufficient data is available to calculate the average expenditures from the sources listed in (a) of this subsection, the office may either use other sources for the data or estimate the

amount of relevant expenditures. In either event, the office shall allow the affected political subdivisions to offer alternative data on which to base its calculation. New political subdivisions will be charged based on the office's estimate of the annual average of relevant expenditures by the entity for the current biennium.

~~((d))~~ (c) After paying the fee, the political subdivisions may challenge the office about the accuracy of the data used to calculate the fee under ~~((b))~~ (a) of this subsection. Upon verification by the state auditor, the fee may be revised and refund issued or additional fee assessed.

~~((e))~~ (d) Following the initial billing in each biennium, which will include the total amount due for the biennium beginning July 1, 2003, the office will mail invoices on a quarterly basis one month before the start of each quarter for the outstanding balance at that time. Payments shall be due within ~~((thirty))~~ 30 calendar days after receipt of the invoice.

(4) (a) The following formula will be used to calculate the fees: ~~((For the annual average of expenditures ranging from \$1m — \$50.99m, a sliding scale as follows: (\$1m — \$10m = \$100; \$11m — \$20m = \$150; \$21m — \$30m = \$200; \$31m — \$40m = \$250; \$41m — \$50m = \$300). For \$51m — \$99.99m, the formula will be the annual average of expenditures multiplied by .0001. At \$100m, a sliding scale resumes; beginning at \$10k and increasing in increments of \$5k for each additional \$100m in the annual average of expenditures; e.g., \$200m — \$299m = \$15k; \$300m — \$399m = \$20,000; etc. Fees will not be charged to any political subdivision with an average annual expenditure totaling less than \$1m during the period under review.))~~ The political subdivision's average annual expenditures multiplied by 0.00006.

(b) The fee to Housing Authorities will be ~~((1))~~ one dollar per low-income unit owned or managed during the last fiscal year.

(5) The office shall develop a policy and procedure for collection of any invoice that is not paid within ~~((thirty))~~ 30 calendar days. The office shall distribute the collection policy and procedure to all political subdivisions along with the initial and quarterly billings.

[Statutory Authority: RCW 39.19.030. WSR 11-11-030, § 326-02-034, filed 5/11/11, effective 6/11/11. Statutory Authority: RCW 39.19.220. WSR 04-13-032, § 326-02-034, filed 6/9/04, effective 7/10/04. Statutory Authority: RCW 39.19.030(17). WSR 98-13-075, § 326-02-034, filed 6/15/98, effective 7/16/98. Statutory Authority: RCW 39.19.030(7). WSR 97-17-045, § 326-02-034, filed 8/14/97, effective 9/15/97. Statutory Authority: RCW 39.19.220. WSR 94-11-113, § 326-02-034, filed 5/18/94, effective 6/18/94.]