

HOUSE BILL REPORT

HB 2132

As Reported by House Committee On:
Community & Economic Development & Trade

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

Brief Description: Studying the office of minority and women owned business enterprises.

Sponsors: Representatives Kenney, McDonald, Rolfes, Haler, Hasegawa, Darneille, Bailey, Haigh, Conway, Dunshee, Ericks, Upthegrove, McCoy, Morrell, Chase, Appleton, Santos and Ormsby.

Brief History:

Committee Activity:

Community & Economic Development & Trade: 2/14/07, 2/21/07 [DP].

Brief Summary of Bill

- Directs the Joint Legislative Audit and Review Committee to conduct a comprehensive study of the Office of Minority and Women's Business Enterprises.

HOUSE COMMITTEE ON COMMUNITY & ECONOMIC DEVELOPMENT & TRADE

Majority Report: Do pass. Signed by 8 members: Representatives Kenney, Chair; Pettigrew, Vice Chair; McDonald, Assistant Ranking Minority Member; Chase, Darneille, Haler, Rolfes and P. Sullivan.

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

Staff: Tracey Taylor (786-7196).

Background:

The Office of Minority and Women Business Enterprises (OMWBE) was established in 1983 in response to the federal and local governments' actions to increase the participation of minority and women business enterprises in government contracts. Second Substitute Senate Bill 3230, sponsored by Senator Fleming at the request of Governor Spellman, created the

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OMWBE to provide the maximum practicable opportunity for increased participation by minority- and women-owned businesses in furnishing goods and services and participating in public works to state agencies and educational institutions. The Director of the OMWBE was appointed by the Governor and subject to confirmation by the Senate. The OMWBE was required to:

- develop and implement programs to stimulate participation by qualified minority- or women-owned business enterprises (MWBE) in supplying goods and services to state agencies and educational institutions from the private sector;
- develop a comprehensive plan to assure that qualified minority- and women-owned businesses obtain public contracts;
- identify barriers to equal participation by qualified minority- and women-owned businesses in all state agency and educational contracts;
- establish annual overall goals for MWBE participation for each state agency to be administered on a contract or class contracts basis;
- develop and maintain a central MWBE certification program for state agencies and educational institutions;
- develop and operate a system of monitoring compliance with the program; and
- submit an annual report to the Governor and the Legislature outlining the progress and the economic impact on the public and private sector of implementing this legislation.

Each state agency and educational institution was required to comply with the annual goals established for it, covering all procurement contracts and public works. If necessary to achieve the goals covered by the intent of this act, contracts had to be awarded to the next lowest bidder. If the lowest bidders did not meet the goals for the particular contract, all bids may be rejected and new bids obtained. An apparent low bidder must be in compliance with the contract provisions as a condition precedent to the granting of a notice of award. The dollar value of the total contract used to calculate the specific contract may be increased or decreased to reflect executed change orders.

Sanctions could be imposed if a person or business does not comply with any provisions of the contract as required under this act. This includes termination of the contract and subjecting the contractor to a penalty.

The Legislative Budget Committee was directed to conduct a program and fiscal review of the OMWBE by June 30, 1986, with a preliminary sunset review due June 30, 1990.

1987 Changes

In September 1986, the required initial program and fiscal review and report were completed by the Legislative Budget Committee and the Office of Financial Management. The report made several recommendations regarding statutory changes. As a result, the Legislature passed Senate Bill 5529, sponsored by Senator Fleming.

The OMWBE was required to define a small business concern consistent with the federal small business requirements. No business would be entitled to certification for the OMWBE programs if it exceeded these size standards. The requirement that the OMWBE provide

information regarding the economic impact of its programs on the public and private sectors was eliminated. The June 30, 1990, sunset requirement was repealed and reset.

The new law also specified that a business must be owned and controlled by a minority or woman to be certified by OMWBE programs. The OMWBE was established as the sole authority for certifying minority, disadvantaged and women's business enterprises for OMWBE programs. Certification applied for participation in programs with the state and with any other political subdivision with the state.

I-200 (1998)

In 1998, the Washington voters approved I-200 which provided that "the state shall not discriminate against, or grant preferential treatment to, any individual or group on the basis of race, sex, color, ethnicity, or national origin in the operation of public employment, public education, or public contracting." Although I-200 did not expressly repeal any part of the OMWBE chapter, it did require a close examination of its work. In the post-I-200 world, certification of businesses as MWBEs could continue, especially as it relates to the work on federal contracts or state contract funded by federal moneys. The Attorney General opined that it was unlikely that certification on its own would be considered "preferential treatment." In the Governor's Directive 98-01, Governor Locke directed agencies that race, sex, color, ethnicity and national origin may no longer be used in the final selection of a bidder for a public contract, unless allowed under section 4 or 6 of I-200. Adding preference points or price preferences for meeting MWBE goals, requiring the attainment of MWBE goals as a condition of responsiveness or otherwise not awarding a contract to the lowest bid but who did meet MWBE goals was to be discontinued. The Governor directed the agencies to retain MWBE purchasing and contracting goals as "laudatory goals." The OMWBE could continue its work with agencies to establish overall laudatory goals to help eliminate improper discrimination by identifying the disparities between the number of qualified contractors of a particular group able to perform a particular service and the number actually engaged in work under state contracts. In addition, the Governor directed that not only shall the outreach and recruitment efforts designed to broaden the pool of potential contractor from under-represented groups be continued, but the work should be intensified.

Supplier Diversity Initiative

In July 2006, Governor Gregoire sent a letter to state agency directors noting that state contracts with certified minority and women businesses have dropped substantially, despite the fact that they are flourishing in the state. As the state benefits from working with a diverse pool of contractors, the Governor noted that increasing the participation of these firms in the bid and contracting process is important to the state's economic prosperity. The Governor called on the state agencies to work with the OMWBE to implement a Supplier Diversity Initiative.

Summary of Bill:

The Joint Legislative Audit and Review Committee (JLARC) is directed to conduct a comprehensive study of the Office of Minority and Women's Business Enterprises (OMWBE). The study must include:

- What policies, procedures, or programs have been established by the OMWBE and other state agencies to implement I-200 and the Governor's Directive 98-01?
- How does the role of the OMWBE and its interaction with state agencies prior to the passage of I-200 compare to its role and interactions after the initiative became law?
- An analysis of trends in certification and the hiring of minority- and women-owned businesses by state and local agencies from 1997 to present.
- To what extent have the OMWBE programs contributed to the certification of minority- and women-owned business enterprises? Are there efficiencies to allowing nongovernmental organizations to oversee certification instead of the OMWBE?
- What practices do other governmental organizations use for outreach and recruitment of minority- and women-owned business enterprises?
- An evaluation of the participation of agencies in the Governor's Supplier Diversity Directive.

The study is due to the Legislature by December 1, 2007.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill contains an emergency clause and takes effect immediately.

Staff Summary of Public Testimony:

(Neutral) This a great time for a JLARC study of the OMWBE. The OMWBE has received push back regarding certification and this will help identify barriers. In addition, the OMWBE is working with over 26 agencies and the study will assist in measuring the progress in the Supplier Diversity Initiative. The OMWBE has received many inquiries from nonprofits for grant funding and this will allow an examination of outsourcing opportunities for the OMWBE.

(Opposed) None.

Persons Testifying: (Neutral) Carolyn Crowson, Office of Minority and Women's Business Enterprises.

Persons Signed In To Testify But Not Testifying: None.