

HOUSE BILL REPORT

ESHB 1674

As Passed House:
February 12, 2014

Title: An act relating to increasing the regulatory oversight and accountability of the office of minority and women's business enterprises.

Brief Description: Increasing the regulatory oversight and accountability of the office of minority and women's business enterprises.

Sponsors: House Committee on Technology & Economic Development (originally sponsored by Representatives Santos, Morris and Maxwell).

Brief History:

Committee Activity:

Technology & Economic Development: 2/13/13, 2/20/13 [DPS];
Appropriations Subcommittee on General Government & Information Technology:
2/23/13 [DPS(TED)].

Floor Activity:

Passed House: 3/8/13, 72-25.

Floor Activity:

Passed House: 2/12/14, 73-25.

Brief Summary of Engrossed Substitute Bill

- Requires the Office of Minority and Women's Business Enterprises (OMWBE) to impose a penalty if a person, firm, corporation, or business commits a statutorily prohibited activity.
- Establishes an investigation unit within the OMWBE.
- Adds accountability provisions for the OMWBE.

HOUSE COMMITTEE ON TECHNOLOGY & ECONOMIC DEVELOPMENT

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 16 members: Representatives Morris, Chair; Habib, Vice Chair; Smith, Ranking Minority Member; Dahlquist, Hudgins, Kochmar, Magendanz, Morrell, Stonier, Tarleton, Vick, Walsh, Wylie, Zeiger, Crouse and Maxwell.

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.

Staff: Kelly Leonard (786-7147).

HOUSE COMMITTEE ON APPROPRIATIONS SUBCOMMITTEE ON GENERAL GOVERNMENT & INFORMATION TECHNOLOGY

Majority Report: The substitute bill by Committee on Technology & Economic Development be substituted therefor and the substitute bill do pass. Signed by 8 members: Representatives Hudgins, Chair; Parker, Ranking Minority Member; Buys, Chandler, Dunshee, S. Hunt, Pedersen and Springer.

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

Staff: Derek Rutter (786-7157).

Background:

Office of Minority and Women's Business Enterprises and Certification Process.

The Office of Minority and Women's Business Enterprises (OMWBE) was created in 1983 with the 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.

Among other duties, the OMWBE is required to identify barriers to equal participation by qualified MWBE in state agency and educational contracts, and to establish annual overall goals for MWBE participation for each state agency and educational institution.

The OMWBE is the sole authority in Washington for certifying minority, women-owned, and socially and economically disadvantaged businesses. Certification creates visibility for businesses, and improves marketability for state, federal, and private sector opportunities that have diversity requirements. Certified businesses are listed in an OMWBE database, which is used by cities, counties, state agencies, transportation, and educational institutions to source small and diverse firms for potential contracting opportunities.

Prohibited Activities.

Certain activities with respect to 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 OMWBE-related laws and regulations;
- 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 OMWBE-related laws and regulations, including for acts of misrepresentation and fraud used to obtain or retain certification. In the case of any violation, the state may withhold payment, debar the contractor, suspend or terminate the contract, impose civil penalties of up to 10% of the contract amount or up to \$5,000. A contractor who wilfully and repeatedly violates a contract or any provision of this chapter may be disqualified from state contracts for a period of up to three years. The OWMBE is required to adopt rules for imposing sanctions or fines.

The Attorney General has the authority to enforce laws and regulations with respect to OMWBE programs and certification procedures. The Attorney General may conduct investigations by compelling the production of documents, oral testimony and answers to interrogations, and may file for civil injunctive relief.

Summary of Engrossed Substitute Bill:

The OMWBE is required to annually identify the state agencies and educational institutions utilizing the lowest percentage of minority and women-owned contractors, awarding the lowest percentage dollar value of contracts to minority and women-owned contractors, and performing significantly below their established goals. The OMWBE must meet with each identified agency to review its plan and identify tools and actions for increasing participation. The OMWBE must incorporate information identified during its state agency reviews and the investigation unit's reviews into their currently required annual reports.

The penalties for violations of OMWBE-related laws and regulations are modified. If a person, firm, corporation, business, union, or other organization engages in activity that is expressly prohibited in the OMWBE statute, the state must impose one or more of the following penalties: withholding payment, decertifying the contractor, debarring the contractor, terminating the contract, or subjecting the contractor to civil penalties. If the activity involves noncompliance with other provisions or with a contract requirement, the state maintains discretion as to whether to impose the same penalties.

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.

Funds collected by imposing civil penalties are deposited in the OMWBE's account in the custody of the State Treasurer.

A unit is established within the OMWBE to detect and investigate fraud and violations. Qualified personnel are to be employed, and the director and unit personnel are authorized to receive criminal record information associated with investigations. The director or his or her designee may subpoena witnesses, and are granted enforcement authority under the Administrative Procedures Act. A process is created for the director or his or her designee to

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 the person who is the subject of the investigation.

The investigation unit must annually conduct a site review of a minimum of 3 percent of contractors, and prioritize and conduct thorough investigations of businesses when identified by an external complaint or internal concerns and determined to be the highest priority for the agency.

The Attorney General's enforcement authority is eliminated.

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 (Technology & Economic Development):

(In support) Without clearly established consequences, the ability for the OMWBE to investigate fraud means nothing. Last year during a committee presentation, members were appalled at the agency's lack of accountability. Steady effort has been made under the OMWBE's new director, and this bill creates additional tools and mandates. Many DBE firms and other small businesses are struggling. They have been left at a disadvantage by fraudulent DBEs. There are supposed to be checks in the field. There are fraudulent firms laughing all the way to the bank. Tax paying businesses are going under, and millions of our dollars are leaving the state. People need to be held accountable. The DBEs have been bringing this forward for years, but it has been falling on deaf ears. It is a shame to have to bring up the need to prosecute fraud, but this legislation is needed. The OMWBE desperately needs the power and authority to remove firms. This will be a great service to the community.

There has also been a lack of effort made by some state agencies. While this bill addresses fraud, another big concern is the limited dollars state agencies are contracting to minorities. The numbers show the underrepresentation. As many of the participating businesses are small, they are subcontractors. They should be reflected in the bill language.

(Opposed) None.

Staff Summary of Public Testimony (Appropriations Subcommittee on General Government & Information Technology):

(In support) There was major public outcry for more investigations into fraud. The previous scandal brought shame to the OMWBE. The additional enforcement language is needed to prosecute fraud. When one company defrauds the system, it hurts all certified contractors. The agency needs authority to prosecute fraud.

(Opposed) None.

Persons Testifying (Technology & Economic Development): Representative Santos, prime sponsor; Frank Lemos; Charles Peterson; Jim Medina; Elton Mason, Washington State Trucking; Dan Seydel; Grover Johnson, National Association of Minority Contractors; and Eddie Rye Jr, Community Coalition for Contracts and Jobs.

Persons Testifying (Appropriations Subcommittee on General Government & Information Technology): Frank Lemos, Tabor 100; Jim Medina, Grover Johnson, and Elijah Mason, National Society of Minority Contractors; and Elton Mason, Washington State Trucking.

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

Persons Signed In To Testify But Not Testifying (Appropriations Subcommittee on General Government & Information Technology): None.