

SENATE BILL REPORT

SHB 1674

As Reported by Senate Committee On:
Trade & Economic Development, April 3, 2013

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: Passed House: 3/08/13, 72-25.

Committee Activity: Trade & Economic Development: 3/19/13, 4/03/13 [DPA-WM].

SENATE COMMITTEE ON TRADE & ECONOMIC DEVELOPMENT

Majority Report: Do pass as amended and be referred to Committee on Ways & Means.

Signed by Senators Braun, Chair; Smith, Vice Chair; Chase, Ranking Member; Schlicher and Shin.

Staff: Edward Redmond (786-7471)

Background: The Office of Minority and Women's Business Enterprises (OMWBE) was created in 1983 with the 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. Among other things, the OMWBE must:

- develop and implement programs and a comprehensive plan to provide an opportunity for qualified MWBE to participate in public works and in supplying goods and services to state agencies and educational institutions;
- identify barriers to equal participation by qualified MWBE in state agency and educational contracts;
- establish annual overall goals for MWBE participation for each state agency and educational institution;
- develop and maintain a central MWBE certification list for state agencies and educational institutions; and

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- submit an annual report to the Governor and the Legislature outlining the progress in implementing the program.

OMWBE is the sole authority for certifying minority, women-owned, and socially and economically disadvantaged businesses throughout the state of Washington. The programs for which the OMWBE certifies businesses including the following:

- Washington State Minority and Women's Business Enterprise Program;
- Department of Transportation (DOT) Disadvantaged Business Enterprise (DBE) program; and
- Federal Aviation Administration Airport Concessionaire DBE program.

Under federal law, any state public works project funded by federal aid must include a certain percentage of small minority and women-owned contractors who are certified as DBEs. Between April and November of 2012, KING 5 News issued a series of media reports pertaining to the OMWBE certifications for participation in the DOT DBE program. The reports indicated that some DBEs were manipulating the system by using their minority status to gain contracts, then having larger companies do the work for them.

Summary of Bill (Recommended Amendments): OMWBE must 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.

OMWBE must meet with each identified agency to review its plan and identify tools and actions for increasing participation.

The language permitting OMWBE to impose a penalty if a person, firm, corporation, or business does not comply with any of OMWBE's statutory provisions or contract requirements is modified so that:

- if the lack of compliance pertains to anything other than a statutorily prohibited activity, OMWBE retains authority to determine if it will impose a penalty;
- if a prohibited activity is committed, OMWBE 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; and
- if there are 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.

A unit is established within OMWBE to detect and investigate fraud and violations. Qualified personnel must be employed, and the director and unit personnel are authorized to receive criminal record information associated with investigations. The director or director's designee may subpoena witnesses in accordance with constitutional and statutory law, and is granted enforcement authority under the Administrative Procedures Act. Funds collected by imposing civil penalties are deposited in OMWBE's account in the custody of the state Treasurer.

The investigation unit must annually conduct a site review of a minimum of 3 percent of contractors, 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.

OMWBE must incorporate information identified during its state agency reviews and the investigation unit's reviews into their currently required annual reports.

EFFECT OF CHANGES MADE BY TRADE & ECONOMIC DEVELOPMENT COMMITTEE (Recommended Amendments): Authorizes and specifies the process for the director of OMWBE or the director's designee to apply for and obtain a superior court order approving and authorizing a subpoena in advance of its issuance.

Appropriation: None.

Fiscal Note: Available.

Committee/Commission/Task Force Created: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony on Substitute House Bill: PRO: This bill is designed to improve accountability, combat fraud, and to build the economic capacity of many of the disadvantaged business enterprises that exist in our state. The state is responsible for administering millions of federal dollars mostly in construction contracts through DOT. The role of OMWBE, in relation to those federal dollars, is to certify DBEs as minority or women owned. The state has a clear responsibility and agreement with the federal government to ensure the legitimacy of those business enterprises that we are required under federal law to award. By creating an investigation and fraud unit in OMWBE, it is believed the state can get ahead of potential cheaters in the system. The important thing is that we have many hungry businesses. Small businesses are really the drivers of the economy throughout this state, and in the U.S. the fastest growing sector is women-owned businesses. OMWBE, in helping to certify these businesses, will not only help the state grow jobs, but will also make sure that the state does not waste its own resources when we do find fraud. Currently, the state expends a large amount of money to close out those contracts and rebid them. This bill will help to improve the efficiency of state government.

Persons Testifying: PRO: Representative Santos, prime sponsor; Jim Medina, National Assn. of Minority Contractors; Chris Liu, Amanda Migchelbrink, OMWBE; Frank Lemos, Land Design Consultants, Inc.; Elton Mason, WA State Trucking; Eli Mason, Kiawa Trucking.