

SENATE BILL REPORT

ESHB 1674

As of February 26, 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: Passed House: 3/08/13, 72-25; 2/12/14, 73-25.

Committee Activity: Trade & Economic Development: 2/20/14.

SENATE COMMITTEE ON TRADE & ECONOMIC DEVELOPMENT

Staff: Edward Redmond (786-7471)

Background: 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 Disadvantaged Business Enterprises (DBEs).

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 (MWBEs) the maximum practicable opportunity for increased participation in public works contracts and public contracts for goods and services. Among other things, OMWBE must:

- develop and implement programs and a comprehensive plan to provide an opportunity for qualified MWBEs to participate in public works and in supplying goods and services to state agencies and educational institutions;
- identify barriers to equal participation by qualified MWBEs 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
- submit an annual report to the Governor and the Legislature outlining the progress in implementing the program.

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.

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 OMWBE certifies businesses include the following:

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

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, or impose civil penalties of up to 10 percent of the contract amount or up to \$5,000. A contractor who willfully 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. OMWBE must 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.

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 non-DBE certified companies do the work for them.

Summary of Bill: 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.

The Attorney General's enforcement authority is eliminated. A unit is established within OMWBE to detect and investigate fraud and violations. Qualified personnel must be hired, 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 Procedure 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.

Appropriation: None.

Fiscal Note: Requested on February 14, 2014.

Committee/Commission/Task Force Created: No.

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

Staff Summary of Public Testimony: PRO: The bill before the committee incorporates the amendments that were adopted in this committee last session. One additional amendment was made to remove the duplicative investigative authority in the bill. The authority that had resided with the Attorney General to date really has not been effective. There are many federal transportation projects throughout the state. These projects bring in millions of federal dollars to our state. There was a Federal Highway Administration investigation into some recent transportation projects in the Puget Sound area where they found that, in fact, there were discrimination and barriers prohibiting participation of DBEs. This is of critical concern to us as a Legislature and to us as a state because it threatens the ongoing support of federal dollars into our state. There is, therefore, a strong and compelling economic development reason to ensure that our state's economy remains rich, vibrant, and moving.

OMWBE is in support of this bill. The investigative unit is something that is pivotal to OMWBE to ensure that we have a robust program in place for the small businesses that we certify. OMWBE certifies small businesses, minority-owned businesses, women-owned businesses, and any combination thereof. What you have seen through the news reports in 2012 and most recently with the Seattle tunnel project is that we need to have a mechanism in place so that we can investigate the complaints that we receive. Unfortunately, under the current statutory scheme, OMWBE is not allowed to do that. We have to go to the Attorney General's Office. For whatever reason, those investigations have not been done. This bill will allow OMWBE to do the investigations internally. OMWBE has the knowledge and the background to know where the information could be and how to potentially get that information. OMWBE will still have interaction with the Attorney General's Office to ensure it is carrying out the investigations properly.

Persons Testifying: PRO: Representative Santos, prime sponsor; Amanda Migchelbrink, OMWBE.