

# HOUSE BILL REPORT

## HB 1044

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### As Reported by House Committee On: Technology & Economic Development

**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:** Representatives Santos, Morris, Smith, Gregerson, Jinkins, Bergquist, Hudgins and Pollet.

#### **Brief History:**

##### **Committee Activity:**

Technology & Economic Development: 1/13/15, 1/15/15 [DP].

#### **Brief Summary of 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 investigative unit within the OMWBE.
- Adds accountability provisions for the OMWBE.

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### HOUSE COMMITTEE ON TECHNOLOGY & ECONOMIC DEVELOPMENT

**Majority Report:** Do pass. Signed by 12 members: Representatives Morris, Chair; Tarleton, Vice Chair; Smith, Ranking Minority Member; DeBolt, Assistant Ranking Minority Member; Fey, Harmsworth, Hudgins, Magendanz, Ryu, Santos, Wylie and Young.

**Minority Report:** Without recommendation. Signed by 1 member: Representative Nealey.

**Staff:** Kirsten Lee (786-7133).

#### **Background:**

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*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.*

## 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 and controlled businesses (businesses) with the maximum practicable opportunity for increased participation in public works contracts and public contracts for goods and services.

Among other duties, the OMWBE must identify barriers to equal participation by qualified businesses in all state agency and educational contracts, and to establish annual overall goals for participation by qualified businesses 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 business enterprises. Certified business enterprises are listed in the OMWBE database, which is used by cities, counties, state agencies, and transportation and educational institutions to source small and diverse firms for potential contracting opportunities.

### Prohibited Activities.

Certain activities with respect to the 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 the OMWBE-related laws and rules;
- 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 the OMWBE-related laws and rules, including for acts of misrepresentation and fraud used to obtain or retain certification, as well as violations of contract requirements. For any violation, the state may withhold payment, debar the contractor, suspend or terminate the contract, and impose civil penalties of up to 10 percent of the contract amount or up to \$5,000.

For a willful and repeated violation, a contractor may be disqualified from state contracts for a period of up to three years. The OWMBE must adopt rules for imposing sanctions or fines.

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

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## **Summary of Bill:**

### Enforcement.

The penalties for violations of the OMWBE-related laws and rules are modified. If a person, firm, corporation, business, union, or other organization engages in activity that is expressly prohibited, the state must impose one or more of the following penalties: withholding payment, decertifying the contractor, debarring the contractor for a period between one and three years, suspending or terminating the contract, or subjecting the contractor to civil penalties between 2 and 10 percent of the amount of the contract or between \$1,000 and \$5,000 dollars for each violation. If the activity involves noncompliance with other provisions or with a contract requirement, the state maintains discretion as to whether to impose similar penalties. If the state decides to impose penalties for noncompliance with other provisions or contract requirements, there is no requirement to debar contractors for any specified time period and no minimum amount for civil 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.

The Attorney General's enforcement authority is eliminated.

Civil penalties are deposited in the OMWBE's account in the custody of the State Treasurer.

### Investigation Unit.

A unit is established within the OMWBE to detect and investigate fraud and other violations. Qualified personnel are to be employed, and the Director of the OMWBE (Director) and unit personnel may 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 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.

Accountability.

The 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. 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 and educational institution reviews and the investigation unit's reviews into their currently required annual reports.

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**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:**

(In support) Establishing an investigative unit within the OMWBE would allow the OMWBE to perfect their certification and decertification processes, providing the OMWBE another means to ensure that the list of certified businesses posted by the OMWBE is accurate.

(Opposed) None.

**Persons Testifying:** Amanda Migchelbrink, Office of Minority and Women's Business Enterprises.

**Persons Signed In To Testify But Not Testifying:** None.