

# FINAL BILL REPORT

## SHB 1259

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Synopsis as Enacted

**Brief Description:** Expanding public contracting opportunities for women and minority business enterprises by increasing the regulatory oversight and accountability of the office of minority and women's business enterprises.

**Sponsors:** House Committee on Appropriations (originally sponsored by Representatives Santos, Dolan, Ryu, Valdez, Fey, Ramel, Ortiz-Self, Hackney, Ramos, Kloba, Callan, Lekanoff, Macri, Gregerson, Slatter, Stonier and Harris-Talley).

**House Committee on Community & Economic Development**  
**House Committee on Appropriations**  
**Senate Committee on Business, Financial Services & Trade**  
**Senate Committee on Ways & Means**

### **Background:**

The Office of Minority and Women's Business Enterprises (OMWBE) is the state's sole authority for certifying minority- and women-owned, and socially and economically disadvantaged, business enterprises.

Among other duties, the OMWBE must identify barriers to equal participation by qualified businesses in all state agency and educational contracts. The OMWBE must also establish annual participation goals by qualified businesses for each state agency and educational institution.

Certain activities relating to certification of, and contracting with, minority- and women-owned businesses are prohibited. A person, firm, corporation, business, union, or other organization may not:

- prevent or interfere with a contractor's compliance with laws and rules pertaining to the certification of, and contracting with, minority- and women-owned businesses;
- submit false or fraudulent information;
- fraudulently obtain, retain, or attempt to obtain or retain certification;

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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 part of the legislation nor does it constitute a statement of legislative intent.*

- 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 monies to which the person is not entitled; or
- knowingly make false statements that an entity is or is not certified for purposes of obtaining a contract.

The state may impose penalties for noncompliance of provisions related to the certification of, and contracting with, minority- and women-owned businesses, including that the state may:

- withhold payment;
- debar, suspend, or terminate the contract; or
- impose civil penalties of up to 10 percent of the contract amount or up to \$5,000 per violation.

For a willful and repeated violation, a contractor may be disqualified from state contracts for a period of up to three years.

The OMWBE must adopt rules that identify criteria for the imposition of penalties. The OMWBE is required to follow the Administrative Procedure Act in determining a violation and imposing penalties.

The Office of the Attorney General (AGO) may enforce laws and rules with respect to the OMWBE programs and certification procedures. The AGO may conduct investigations and file for civil injunctive relief.

### **Summary:**

#### Audit and Review Unit.

An Audit and Review Unit (Unit) is established within the OMWBE to detect and investigate fraud and other violations relating to the certification of, and contracting with, minority- and women-owned businesses.

The Unit must respond to all complaints for investigation made by other agencies, and the Unit must develop processes to prioritize and conduct thorough investigations when an external complaint or internal concerns are received. The Unit must annually conduct a site review of a minimum of 3 percent of contractors.

#### Enforcement and Penalties.

If a person, firm, corporation, or business commits an expressly prohibited activity, the state must impose one or more of the following penalties:

- withholding payment;
- decertifying the contractor;
- debarring the contractor for a period of between one and three years;
- terminating the contract; or
- subjecting the contractor to civil penalties of between 2 and 10 percent of the amount of the contract, or between \$1,000 and \$5,000 for each violation.

All civil penalties imposed must be deposited in the Minority and Women's Business Enterprises Account.

For a violation that is not an expressly prohibited activity, the state may decertify a contractor.

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.

Debar means to prohibit a contractor, individual, or other entity from submitting a bid, having a bid considered, or entering into a state contract during a specified period of time as set forth in a debarment order.

#### Investigatory Authority of the OMWBE.

For the purpose of any investigation or proceeding, the Director of the OMWBE, or the Director's designee, may administer oaths and affirmations, subpoena witnesses, compel attendance, take evidence, and require the production of any books, papers, correspondence, memoranda, agreements, or other documents deemed relevant or material to the inquiry.

The Director may 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 to the person who is the subject of the investigation.

#### State Agency and Educational Institution Identification.

The OMWBE must annually identify the state agencies and educational institutions that are:

- in the lowest quintile of utilization of minority- and women-owned contractors as a percentage of all contracts issued by the agency;
- in the lowest quintile of dollar value awarded to minority- and women-owned contractors as a percentage of the dollar value of all contracts issued by the agency;
- and
- performing significantly below their established goals.

The OMWBE must meet with each identified agency to review the agency's plan and identify tools for increasing participation by qualified businesses. Information identified and actions taken must be included in the OMWBE annual report to the Legislature and the Governor.

**Votes on Final Passage:**

House	93	4
Senate	43	6

**Effective:** July 25, 2021