

SENATE BILL REPORT

SHB 1259

As Reported by Senate Committee On:
Business, Financial Services & Trade, March 25, 2021
Ways & Means, April 2, 2021

Title: An act relating to 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.

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).

Brief History: Passed House: 3/3/21, 93-4.

Committee Activity: Business, Financial Services & Trade: 3/18/21, 3/25/21 [DP-WM].
Ways & Means: 3/31/21, 4/02/21 [DP, w/oRec].

Brief Summary of Bill

- Establishes an Audit and Review unit within the Office of Minority and Women's Business Enterprises (OMWBE) to detect and investigate fraud and violations pertaining to the certification of, and contracting with, minority- and women-owned businesses.
- Repeals the Office of the Attorney General's authority to investigate and enforce prohibited and unlawful acts pertaining to the certification of, and contracting with, minority- and women-owned businesses.
- Modifies the penalties for noncompliance of provisions related to the certification of, and contracting with, minority- and women-owned businesses.

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.

- Requires OMWBE to annually identify state agencies and educational institutions with low levels of participation by minority- and women-owned businesses in the execution of public contracts.

SENATE COMMITTEE ON BUSINESS, FINANCIAL SERVICES & TRADE

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

Signed by Senators Mullet, Chair; Hasegawa, Vice Chair; Dozier, Ranking Member; Brown, Frockt, Hobbs and Wilson, L.

Staff: Kellee Gunn (786-7429)

SENATE COMMITTEE ON WAYS & MEANS

Majority Report: Do pass.

Signed by Senators Rolfes, Chair; Frockt, Vice Chair, Capital; Robinson, Vice Chair, Operating & Revenue; Wilson, L., Ranking Member; Brown, Assistant Ranking Member, Operating; Schoesler, Assistant Ranking Member, Capital; Braun, Carlyle, Conway, Darneille, Dhingra, Gildon, Hasegawa, Hunt, Keiser, Lias, Mullet, Muzzall, Pedersen, Rivers, Van De Wege, Wagoner, Warnick and Wellman.

Minority Report: That it be referred without recommendation.

Signed by Senator Honeyford, Assistant Ranking Member, Capital.

Staff: Trevor Press (786-7446)

Background: Office of Minority and Women's Business Enterprises. The Office of Minority and Women's Business Enterprises (OMWBE) was created in 1983 to mitigate discrimination and provide the greatest opportunity for increased participation by minority- and women-owned businesses in public works and the procurement process by state agencies and private sector educational institutions. In addition to certifying qualifying business enterprises and associated duties such as goal setting, OMWBE supports and facilitates the Governor's Subcabinet on Business Diversity and oversees the Linked Deposit Loan Program. OMWBE is led by a Governor-appointed director.

Penalties and Enforcement by the Attorney General's Office on Behalf of the Office of Minority and Women's Business Enterprises. Any entity that knowingly makes or submits false statements to OMWBE or obtains public funds they are not entitled to are subject to the following, as enforced by the Attorney General's Office (AGO):

- payment withholding;
- contractor debarment;
- suspension or termination of contract; and

- civil penalties up to 10 percent of the contract amount up to \$5,000 for each violation.

Other procedures and sanctions may be pursued as required. The AGO may recover costs for fees and the investigation.

Debarment. The Department of Enterprise Services (DES) is authorized to fine or debar contractors under state law.

Debarment is a process by which a contractor, individual, or other entity is prohibited from submitting a bid, having a bid considered, or entering a state contract during a period specified in a debarment order.

Summary of Bill: OMWBE is provided with additional duties and enforcement responsibilities including identifying certain agencies with low utilization and awards, auditing and reviewing for fraud and other violations, and imposing penalties. Under these new responsibilities, information identified and actions taken must be reported to the Governor and Legislature.

Identifying Certain Agencies. Annually, OMWBE is required to identify those agencies in the lowest quintile of utilization and the lowest quintile of the dollar value awarded of minority and women-owned contractors. They must also identify agencies performing significantly below their established goals.

For the agencies identified, OMWBE must meet with each one, review its plan, and provide available tools and actions for increased participation.

The Office of Minority and Women's Business Enterprises Audit and Review Unit. An Audit and Review Unit (unit) is established within OMWBE for detecting and investigating fraud and violations. Inquiries by the unit may require oaths and affirmations, subpoenas, taking evidence, or other documents or materials relevant to the inquiry. The OMWBE director or designee may apply for and obtain a superior court order for a subpoena in the county where the person or evidence is located. Certain information must be included in the application.

Annually, the unit must conduct site reviews of no less than 3 percent of contracts awarded, submit responses for all complaints, and develop and implement certain processes for prioritizing and conducting investigations identified externally and internally to be the highest priority for the agency.

Penalties and Enforcement. If an entity does not comply with the laws and contract requirements under OMWBE, the state may impose certain penalties already established under law. Penalties must be imposed if any of the following prohibited activities occur:

- preventing or interfering with a contractor's compliance;
- submitting false or fraudulent information;

- fraudulently obtaining or retaining certification;
- knowingly making a false statement for the purpose of influencing certification;
- knowingly or attempting to obstruct or impede an official investigating an entity's qualification to certify;
- fraudulently obtaining or attempting to obtain funds an entity is not qualified for; or
- knowingly making false statements for obtaining a contract as a minority or women's business enterprise.

Penalties imposed include those established under current law as well as the following:

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

Willfully repeated violations will result in a three-year disqualification from further participation in state contracts. Penalties shall be implemented by rule and include the DES debarment process.

Statutes providing the AGO authority to enforce penalties, investigate, and provide injunctive relief for OMWBE are repealed.

Appropriation: None.

Fiscal Note: Available.

Creates Committee/Commission/Task Force that includes Legislative members: No.

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

Staff Summary of Public Testimony (Business, Financial Services & Trade): PRO: This bill has been in concept since 2013. Though our public contracting dollars is now three times more than it was 23 years ago, contracting with minority and women businesses is less than half of what it was. If we are going to recover as a state equitably, then we need to make an effort to ensure our state agencies improve outreach efforts and contract bids for increased participation by OMWBE certified businesses. Transferring investigative and audit authority from the AGO to OMWBE will ensure fraud and abuse is weeded out for an economic recovery that is available to everyone.

OTHER: OMWBE strives for increased participation. The bill would require OMWBE to identify certain agencies and meet with agencies to improve their participation. OMWBE currently does this. The business management portion of this bill will allow for better data collection on procurement and certification. The creation of the investigation unit is supported if certain recommendations in the 2019 disparity report are supported, and the data system technology needed to support this work is funded.

Persons Testifying (Business, Financial Services & Trade): PRO: Representative Sharon Tomiko Santos, Prime Sponsor.

OTHER: Lisa Van Der Lugt, Office of Minority and Women's Business Enterprises.

Persons Signed In To Testify But Not Testifying (Business, Financial Services & Trade): No one.

Staff Summary of Public Testimony (Ways & Means): None.

Persons Testifying (Ways & Means): No one.

Persons Signed In To Testify But Not Testifying (Ways & Means): No one.