File #: 54449, **Version:** 1

Fiscal Note

No Appropriation is Required. This proposed ordinance creates an alternative remedy whereby a contractor that DCR determined has failed to meet the AA plan may agree with the City to help to fund programs to increase the number of SBE, DBE, MBE and WBE, or to increase diversity in the trades. The agreement is voluntary. In this way, the remedy seeks to solve an AA issue, not simply return funds to the City's general fund or to a TID. The amount paid to the City under an agreement is a negotiated figure, but is not to exceed the value of the shortfall in hiring under the contract. As any agreement would be voluntary by the contractor, the fiscal impact is unknown.

Title

Creating Section 39.02(9)(g)13. of the Madison General Ordinances to provide an alternative remedy of funding programs related to Affirmative Action.

Body

DRAFTER'S ANALYSIS: The City's Affirmative Action ordinance, Sec. 39.02, MGO, requires certain contractors to submit plans to set and reach utilization goals for employees of color, women and targeted business enterprises -- Small Business Enterprises (SBE), Disadvantaged Business Enterprises (DBE), Minority Business Enterprises (MBE), Section 3 Business Enterprises (S3BE) and Women's Business Enterprises (WBE). If a contractor fails to carry out its plan, the Affirmative Action Division has limited and blunt remedies: terminating the contract, assessing liquidated damages of up to $10,000, or debarring the contractor. None of these remedies increase the number of targeted businesses available to meet future AA goals. Some contractors claim it is difficult to meet those goals due to a shortage of targeted businesses. Nor do these remedies allow for the improvement of diversity in the trades, another problem faced by those trying to achieve AA goals.

This ordinance creates an alternative remedy whereby a contractor that DCR determined has failed to meet the AA plan may agree with the City to help to fund programs to increase the number of SBE, DBE, MBE and WBE, or to increase diversity in the trades. The agreement is voluntary. In this way, the remedy seeks to solve an AA issue, not simply return funds to the City's general fund or to a TID. The amount paid to the City under an agreement is a negotiated figure, but is not to exceed the value of the shortfall in hiring under the contract.

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The Common Council of the City of Madison do hereby ordain as follows:

Paragraph 13. of Subdivision (g) entitled "Enforcement" of Subsection (9) entitled "Contract Compliance Provisions" of Section 39.02 entitled "Affirmative Action Ordinance" of the Madison General Ordinances is created to read as follows:

"13. As a complete alternative to and in lieu of any other remedy provided in this ordinance, the AA Division Manager may reach a voluntary agreement with a contractor claimed to be in violation of this ordinance. The agreement shall provide for payments to the City by the contractor to support a program or programs to enhance the growth of DBE, MBE, WBE or SBE in the greater Madison area, or to enhance the diversity of membership in the apprenticeship and trades. The agreement may call for payments over time to the City. The payments will not be less than fifty thousand dollars ($50,000) nor more than one million dollars ($1,000,000). Any such agreement shall be submitted to the Common Council for approval with referral to the

Affirmative Action Commission.”