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**Community & Economic  
Development & Trade Committee**

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**HB 2221**

**Brief Description:** Providing assistance for disadvantaged contractors.

**Sponsors:** Representatives Pettigrew, Hudgins, Kenney and Moeller.

**Brief Summary of Bill**

- Establishes Contractor Assistance and Bond Guarantee programs in the Office of Minority and Women's Business Enterprises to assist disadvantaged construction industry and electrical contractors.
- Creates the Disadvantaged Contractor Bonding Program Fund in the State Treasury for claims against the state arising against a contractor bond.

**Hearing Date:** 2/21/07

**Staff:** Meg Van Schoorl (786-7105).

**Background:**

The Office of Minority and Women's Business Enterprises

The Office of Minority and Women's Business Enterprises (OMWBE) was established in 1983 to provide the maximum practicable opportunity for increased participation by minority and women-owned and controlled businesses (MWBE) in public works and in furnishing goods and services to state agencies and educational institutions. The Director of the OMWBE (Director) is appointed by the Governor, and subject to confirmation by the Senate.

The OMWBE is, by statute, the sole authority to certify minority business enterprises, socially and economically disadvantaged business enterprises, and women's business enterprises throughout the state. The OMWBE is required to:

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- develop and implement programs to provide an opportunity for participation by qualified MWBE in public works and in supplying goods and services to state agencies and educational institutions from the private sector;
- develop a comprehensive plan to assure that qualified MWBE are provided an opportunity to participate in public contracts;
- identify barriers to equal participation by qualified MWBE in all state agency and educational contracts;
- establish annual overall goals for MWBE participation for each state agency to be administered on a contract or class contracts basis;
- develop and maintain a central MWBE certification list for state agencies and educational institutions;
- develop and operate a system of monitoring compliance with the program, and investigate complaints of violations with the help of the involved agency or educational institution;
- adopt rules that: establish agency goals; develop and maintain a central MWBE certification program; provide procedures for monitoring and enforcing compliance with goals, regulations, contract provisions and this chapter; require agencies' use of standard clauses in proposal and bid processes; and determine agency or educational institution's goal attainment; and,
- submit an annual report to the Governor and the Legislature outlining the progress in implementing this chapter.

#### Social and Economical Disadvantage

The state's certification program defines "social and economic disadvantage" the same way as the U.S. Department of Transportation does under its Disadvantaged Business Enterprises Program.

Socially disadvantaged individuals are those who have been subjected to racial or ethnic prejudice or cultural bias within American society because of their identities as members of groups, without regard to their individual qualities and from circumstances beyond their control.

Economically disadvantaged individuals are socially disadvantaged individuals whose ability to compete in the free enterprise system has been impaired due to diminished capital and credit opportunities as compared to others in the same or similar line of business.

Persons whose racial/ethnic origins are Native American, Asian Pacific American, African American and Hispanic are presumed to be socially and economically disadvantaged. Other persons must submit evidence of individual social disadvantage including:

- at least one objective distinguishing feature that has contributed to social disadvantage, such as race, ethnic origin, gender, disability, long-term residence in an environment isolated from the American mainstream, or other similar causes;
- personal experiences of substantial and chronic social disadvantage in American society;
- negative impact on entry into or advancement in the business world because of the disadvantage.

To be designated as socially or economically disadvantaged, the individual's personal net worth must not exceed \$750,000 excluding equity in a primary residence and excluding the value of the person's interest in the business applying for certification. The OMWBE has a questionnaire and personal net worth statement online that must be completed in order to be considered for designation as socially or economically disadvantaged.

## Insurance Commissioner's Regulatory Account

The Insurance Commissioner's Regulatory Account in the State Treasury is administered by the Office of the Insurance Commissioner. Revenues in the account are derived from insurance licenses and fees, charges for service, federal grants and miscellaneous revenues.

## Bonds Issued by Surety Companies

A bid bond is a type of bond required in public construction projects which must be filed at the time of the bid and which protects the public agency in the event that the bidder refuses to enter into a contract after the award or withdraws the bid before the award.

A payment or performance bond is a type of contract bond which protects against loss due to the inability or refusal of a contractor to perform the contract.

## **Summary of Bill:**

### Disadvantaged Contractors - Eligibility

The Director must adopt rules establishing criteria and procedures to determine whether a business registered as a construction contractor (chapter 18.27 RCW) or licensed as an electrical contractor (chapter 19.28 RCW) is a disadvantaged contractor.

A business owner or owners must show both social and economic disadvantage based on:

- relative financial resources of the business and the personal wealth of the owner(s);
- social disadvantage based on any of the following:
  - color, ethnic origin, gender, or physical disability;
  - location in an area of high unemployment or a qualified census tract; or
  - other factors not common to other small businesses.
- economic disadvantage based on business size and eligibility criteria developed in rule that are meant to stimulate economic development through contract awards to businesses located in qualified census tracts.

### Contractor Assistance Program

For 2007-09, the Director must enter into contracts with two nonprofit organizations to provide technical assistance to disadvantaged contractors, one for contractors east and one for contractors west of the Cascade Mountains. The assistance will be designed to help disadvantaged contractors develop or improve business skills and thus become more competitive.

### Contractor Bond Guarantee Program

The Director may guarantee bonds executed by sureties for qualified disadvantaged contractors who are principals on contracts of \$500,000 or less. These contracts can be with the state, a political subdivision, or any person. The Director is required to adopt rules setting out procedures for submission, review and approval of bond guarantee applications. The Director may guarantee up to 90 percent of the loss incurred and paid by sureties. The penal sum amounts of all outstanding guarantees may not exceed three times the amount of moneys in the Disadvantaged Contractor Bonding Program Fund in the State Treasury. A surety bond company can request and have approved by the Director one application per fiscal year to support one fiscal year of the

company's activity related to guarantees under this section. The surety bond company can also apply for individual bond guarantees.

A Disadvantaged Contractor Bond Fund is created. Expenditures from the Fund are subject to allotments but an appropriation is not required. Expenditures may only be used to pay claims against the state arising against a bond of the contractor. No other state moneys, besides those in this Fund, are granted or pledged to any person.

The Disadvantaged Contractor Assistance Program and the Disadvantaged Contractor Bond Guarantee Program each expire on July 1, 2009.

**Appropriation:** For the 2007-09 biennium:

- the sum of \$200,000 from the Insurance Commissioner's Regulatory Account to the Office of Minority and Women's Business Enterprises for the OMWBE Contractor Assistance Program.
- the sum of \$2 million from the Insurance Commissioner's Regulatory Account to the Office of Minority and Women's Business Enterprises for the OMWBE Bond Guarantee Program.

**Fiscal Note:** Available.

**Effective Date:** The bill takes effect 90 days after adjournment of session in which bill is passed.