

HOUSE BILL REPORT

HB 2221

As Reported by House Committee On:
Community & Economic Development & Trade

Title: An act relating to assistance for disadvantaged contractors.

Brief Description: Providing assistance for disadvantaged contractors.

Sponsors: Representatives Pettigrew, Hudgins, Kenney and Moeller.

Brief History:

Committee Activity:

Community & Economic Development & Trade: 2/21/07, 2/22/07 [DPS].

Brief Summary of Substitute Bill

- Establishes a Contractor Assistance Program and a Bond Guarantee Program in the Office of Minority and Women's Business Enterprises to assist certain construction industry and electrical contractors.
- Creates the Contractor Assistance and Bond Guarantee Program Fund (Fund) in the State Treasury, and for the 2007-09 biennium, directs into the Fund the first \$2.2 million in receipts from penalties and fines levied by the Office of the Insurance Commissioner.

HOUSE COMMITTEE ON COMMUNITY & ECONOMIC DEVELOPMENT & TRADE

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 9 members: Representatives Kenney, Chair; Pettigrew, Vice Chair; Bailey, Ranking Minority Member; McDonald, Assistant Ranking Minority Member; Chase, Darneille, Haler, Rolfes and P. Sullivan.

Staff: Meg Van Schoorl (786-7105).

Background:

The Office of Minority and Women's Business Enterprises

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.

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:

- 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 Economic 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; and
- 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.

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 Substitute 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; and
- 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.

Eligibility for the Contractor Assistance and Bond Guarantee programs includes small business contractors. These are registered construction and licensed electrical contractors that

conform to certain size limitations. Up to half of the contractors receiving technical assistance may be small business contractors, and up to half of the bond guarantees may be for surety bonds executed for small business contractors.

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 Contractor Assistance and Bond Guarantee Program Fund (Fund) is created in the State Treasury as a non-appropriated fund. Only the Director or designee may authorize expenditures from the Fund. The Fund is subject to allotments. Nothing in the bond guarantee section of the bill grants or pledges any state moneys other than the moneys in the Fund to any obligee.

For the 2007-09 biennium, \$2.2 million in receipts from fines and penalties assessed by the Office of the Insurance Commissioner under Title 48 will be deposited into the Fund. Up to \$200,000 of that amount may be spent only for the Contractor Assistance Program and up to \$2 million may be spent only for claims against the state arising against a bond of the contractor.

The Director is required to submit a report by December 1, 2008, to appropriate legislative committees on the Bond Guarantee Program, including the number and dollar amount of claims arising from the bonds guaranteed.

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

Substitute Bill Compared to Original Bill:

A Contractor Assistance and Bond Guarantee Program Fund (Fund) is created in the State Treasury as a non-appropriated fund.

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Eligibility for the Contractor Assistance Program and the Bond Guarantee Program are broadened to include "small business contractors." These are registered construction and licensed electrical contractors that meet certain size limitations. Up to half of the contractors receiving technical assistance may be small business contractors, and up to half of the bond guarantees may be for surety bonds executed for small business contractors.

The Director is required to submit a report by December 1, 2008, to appropriate legislative committees on the Bond Guarantee Program, including the number and dollar amount of claims arising from the bonds guaranteed.

Appropriation: None.

Fiscal Note: Available on original bill.

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

Staff Summary of Public Testimony:

(In support of original bill) Working as a subcontractor on construction projects, I see many requirements being imposed arbitrarily by general contractors, including bonding. However, if a general contractor needs to have participation by a disadvantaged business enterprise on a particular project, they waive the bonding requirement. The technical assistance component of this bill is key because building up the skills of companies will help their capacity to be bonded and therefore to get work. The inability to get bonding from surety companies is a common barrier faced by smaller businesses across the board, not just disadvantaged businesses; however, disadvantaged businesses face other obstacles as well. Surety companies place a heavy weight on the financial stability of companies as well as their experience. A company may have the financial capacity to make payroll and buy equipment, but may not be able to afford the costs of multiple bonds, such as requirements forcing an electrical contractor to get an electrician's bond, a union bond, a bid bond, and performance/payment bonds. If a contractor cannot get a bond, they may be required to accept a 50 percent retention of fees for the life of the project, which is financially infeasible. This bill provides another tool for expanding employment opportunities in addition to linked deposit and tax credits to economically distressed areas. Access to capital is the key issue. People of color are owning greater shares of businesses, so if they are successful, the economy of the state benefits. We like the following aspects of the bill: the state playing an active role, the target is race/gender neutral, contractors must meet surety requirements, and contractors can develop capacity through technical assistance.

(Opposed to original bill) We support the underlying concepts and goals of this bill. However, sections 6 and 7 redirect \$2.2 million from the Insurance Commissioner's Regulatory Account (Account). This is objectionable to the insurance industry because that Account is paid into entirely by insurers. There is not enough money in the Account to cover these appropriations, so an additional assessment on insurers would be needed. Under retaliatory measures undertaken between states, if the assessment goes up on a Washington-domiciled insurer, a Washington company doing business in another state will face exposure to higher assessments in that state. We would be happy to work with sponsors to find another funding source.

Persons Testifying: (In support of original bill) Representative Pettigrew, prime sponsor; Shelton Burr, Adept Mechanical Services; Tony Benjamin, Urban League of Seattle Contractors Development Competitive Center; Tanya Motta, Constructive Results; Dan Seydel, Platinum Tabor 100; Shaun Spearman, University of Washington Business School Business and Economic Development Center; James Kelly, Seattle Urban League; and Carolyn Crowson, Office of Minority and Women's Business Enterprises.

(Opposed to original bill) Mel Sorenson, Property Casualty Insurers Association of America, American Council of Life Insurers, and America's Health Insurers; and Jean Leonard, Washington Insurers and State Farm Insurance Companies.

Persons Signed In To Testify But Not Testifying: None.