

# House Amendment 1311

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1 1 Amend House File 783 as follows:  
1 2 ~~#1.~~ By striking everything after the enacting  
1 3 clause and inserting the following:  
1 4 <Section 1. Section 314.13, Code 2009, is amended  
1 5 to read as follows:  
1 6 314.13 DEFINITIONS.  
1 7 As used in this chapter, unless the context  
1 8 otherwise requires:  
1 9 1. "Agency" means any governmental body which  
1 10 exercises jurisdiction over any road as provided by  
1 11 law.  
1 12 2. "Committee" means the integrated roadside  
1 13 vegetation management technical advisory committee  
1 14 created in section 314.22.  
1 15 3. "Coordinator" means the integrated roadside  
1 16 vegetation management coordinator.  
1 17 4. "Department" means the state department of  
1 18 transportation.  
1 19 5. "Disadvantaged business enterprise" means a  
1 20 small business which meets both of the following:  
1 21 a. The business is at least fifty-one percent  
1 22 owned by one or more socially and economically  
1 23 disadvantaged individuals.  
1 24 b. The management and daily business operations of  
1 25 the business are controlled by one or more of the  
1 26 socially and economically disadvantaged individuals  
1 27 who own the business.  
1 28 ~~5-~~ 6. "Highway" or "street" means the entire  
1 29 width between property lines of every way or place of  
1 30 whatever nature when any part thereof is open to the  
1 31 use of the public, as a matter of right, for purposes  
1 32 of vehicular traffic.  
1 33 7. "Prequalified" means that a small business has  
1 34 been approved by the department as a small business,  
1 35 is a recognized contractor engaged in the class of  
1 36 work provided for in the plans and specifications,  
1 37 possesses sufficient resources to complete the work,  
1 38 and is able to furnish a performance bond for one  
1 39 hundred percent of the contract.  
1 40 8. "Small business" means any enterprise, which is  
1 41 operated for profit and under a single management, and  
1 42 which has either fewer than twenty employees or an  
1 43 annual gross income of less than four million dollars  
1 44 computed as the average of the three preceding fiscal  
1 45 years. This definition does not apply to any program  
1 46 or activity for which a definition for small business  
1 47 is provided for the program or activity by federal law  
1 48 or regulation or other state law.  
1 49 9. "Socially and economically disadvantaged  
1 50 individual" means an individual who is a citizen of  
2 1 the United States or who is a lawfully admitted  
2 2 permanent resident of the United States and who is a  
2 3 woman, Black American, Hispanic American, Native  
2 4 American, Asian-Pacific American, Asian-Indian  
2 5 American, or any other minority person or individual  
2 6 found to be disadvantaged by the United States small  
2 7 business administration. However, the department may  
2 8 also determine, on a case-by-case basis, that an  
2 9 individual who is not a member of one of the  
2 10 enumerated groups is a socially and economically  
2 11 disadvantaged individual. A rebuttable presumption  
2 12 exists that individuals in the following groups are  
2 13 socially and economically disadvantaged:  
2 14 a. "Asian-Indian Americans", which includes  
2 15 persons whose origins are from India, Pakistan,  
2 16 Bangladesh, Bhutan, the Maldives Islands, Nepal, or  
2 17 Sri Lanka.  
2 18 b. "Asian-Pacific Americans", which includes  
2 19 persons whose origins are from Japan, China, Taiwan,  
2 20 Korea, Burma (Myanmar), Vietnam, Laos, Cambodia,  
2 21 Thailand, Malaysia, Indonesia, the Philippines,  
2 22 Brunei, Samoa, Guam, the United States trust  
2 23 territories of the Pacific Islands, and the Northern  
2 24 Marianas, Macao, Fiji, Tonga, Kiribati, Juvalu, Nauru.

2 25 Micronesia, or Hong Kong.  
2 26 c. "Black Americans", which includes persons  
2 27 having origins in any of the black racial groups of  
2 28 Africa.  
2 29 d. "Hispanic Americans", which includes persons of  
2 30 Mexican, Puerto Rican, Cuban, Central or South  
2 31 American, or other Spanish or Portuguese culture or  
2 32 origin, regardless of race.  
2 33 e. "Native Americans", which includes persons who  
2 34 are American Indians, Eskimos, Aleuts, or Native  
2 35 Hawaiians.

2 36 Sec. 2. NEW SECTION. 314.13A CONTRACT ASSESSMENT  
2 37 == SOCIALLY AND ECONOMICALLY DISADVANTAGED  
2 38 INDIVIDUALS.

2 39 1. The department, prior to awarding a federal or  
2 40 nonfederal highway contract, shall assess the impact  
2 41 of the contract on socially and economically  
2 42 disadvantaged individuals, including women and persons  
2 43 with a disability as defined in section 15.102, in the  
2 44 state.

2 45 2. The assessment shall include the following:

2 46 a. Any disproportionate or unique impact the  
2 47 contract may have on socially and economically  
2 48 disadvantaged individuals in the state.

2 49 b. A rationale for the contract having an impact  
2 50 on socially and economically disadvantaged individuals  
3 1 in the state.

3 2 c. Consultation with representatives of socially  
3 3 and economically disadvantaged individuals in cases  
3 4 where the contract has an identifiable impact on  
3 5 socially and economically disadvantaged individuals in  
3 6 the state.

3 7 3. This section shall be carried out to the extent  
3 8 consistent with federal law.

3 9 4. The assessment shall be used for informational  
3 10 purposes.

3 11 Sec. 3. Section 314.14, Code 2009, is amended to  
3 12 read as follows:

3 13 314.14 CONTRACTS SET ASIDE FOR DISADVANTAGED  
~~3 14 BUSINESS ENTERPRISES SMALL BUSINESSES.~~

~~3 15 1. Definitions. As used in this section:~~

~~3 16 a. "Disadvantaged business enterprise" means a~~  
~~3 17 small business concern which meets either of the~~  
~~3 18 following:~~

~~3 19 (1) Is at least fifty-one percent owned by one or~~  
~~3 20 more socially and economically disadvantaged~~  
~~3 21 individuals.~~

~~3 22 (2) Whose management and daily business operations~~  
~~3 23 are controlled by one or more of the socially and~~  
~~3 24 economically disadvantaged individuals who own it.~~

~~3 25 b. "Small business concern" means a business which~~  
~~3 26 is independently owned and operated and which is not~~  
~~3 27 dominant in its field of operation.~~

~~3 28 c. "Socially and economically disadvantaged~~  
~~3 29 individuals" means those individuals who are citizens~~  
~~3 30 of the United States or who are lawfully admitted~~

~~3 31 permanent residents and who are Black Americans,~~  
~~3 32 Hispanic Americans, Native Americans, Asian-Pacific~~  
~~3 33 Americans, Asian-Indian Americans, or any other~~

~~3 34 minority or individuals found to be disadvantaged by~~  
~~3 35 the United States small business administration.~~

~~3 36 However, the department may also determine, on a~~  
~~3 37 case-by-case basis, that an individual who is not a~~  
~~3 38 member of one of the enumerated groups is socially and~~  
~~3 39 economically disadvantaged. A rebuttable presumption~~  
~~3 40 exists that individuals in the following groups are~~  
~~3 41 socially and economically disadvantaged:~~

~~3 42 (1) "Black Americans" which includes persons~~  
~~3 43 having origins in any of the black racial groups of~~  
~~3 44 Africa.~~

~~3 45 (2) "Hispanic Americans" which includes persons of~~  
~~3 46 Mexican, Puerto Rican, Cuban, Central or South~~  
~~3 47 American, or other Spanish culture or origin,~~  
~~3 48 regardless of race.~~

~~3 49 (3) "Native Americans" which includes persons who~~  
~~3 50 are American Indians, Eskimos, Aleuts, or Native~~  
~~4 1 Hawaiians.~~

~~4 2 (4) "Asian-Pacific Americans" which includes~~  
~~4 3 persons whose origins are from Japan, China, Taiwan,~~  
~~4 4 Korea, Vietnam, Laos, Cambodia, the Philippines,~~  
~~4 5 Samoa, Guam, the United States Trust Territories of~~

~~4 6 the Pacific, and the Northern Marianas.~~  
~~4 7 (5) "Asian-Indian Americans" which includes~~  
~~4 8 persons whose origins are from India, Pakistan, and~~  
~~4 9 Bangladesh.~~  
~~4 10 d. "Prequalified" means that the disadvantaged~~  
~~4 11 business enterprise is currently approved by the~~  
~~4 12 department as a disadvantaged business enterprise, is~~  
~~4 13 a recognized contractor engaged in the class of work~~  
~~4 14 provided for in the plans and specifications,~~  
~~4 15 possesses sufficient resources to complete the work,~~  
~~4 16 and is able to furnish a performance bond for one~~  
~~4 17 hundred percent of the contract.~~  
4 18 2. ~~Set-aside.~~ Notwithstanding section 314.1,  
4 19 there may be set aside contracts for bidding by  
4 20 prequalified ~~disadvantaged business enterprises~~ small  
4 21 businesses a percentage of the total annual dollar  
4 22 amount of public contracts let by the department. The  
4 23 annual dollar amount set aside for bidding by  
4 24 prequalified ~~disadvantaged business enterprises~~ small  
4 25 businesses shall not exceed ten percent of the total  
4 26 dollar amount of ~~federal aid~~ highway construction  
4 27 contracts let by the department and ~~federal aid~~  
4 28 transit dollars administered by the department. The  
4 29 director may estimate the set-aside amount at the  
4 30 beginning of each fiscal year and a suit shall not be  
4 31 brought by any party as a result of this estimate.  
4 32 Set-aside contracts will be awarded to the lowest  
4 33 responsible prequalified ~~disadvantaged business~~  
~~4 34 enterprise~~ small business. This section shall not be  
4 35 construed as limiting the department's right to refuse  
4 36 any or all ~~disadvantaged business enterprise~~ small  
4 37 business bids.  
4 38 Sec. 4. PARTICIPATIONS GOALS == SMALL BUSINESSES  
4 39 AND DISADVANTAGED BUSINESS ENTERPRISES.  
4 40 1. The department of transportation, in  
4 41 cooperation with organizations that represent highway  
4 42 contractors, shall submit recommendations to the  
4 43 general assembly and the governor by November 1, 2009,  
4 44 concerning methods to track and assess the  
4 45 participation of small businesses and disadvantaged  
4 46 business enterprises in receiving nonfederal highway  
4 47 funding. The recommendations may include methods to  
4 48 assess the effort on the part of contractors to  
4 49 achieve participation by small businesses and  
4 50 disadvantaged business enterprises and may involve the  
5 1 establishment of participation goals. Following the  
5 2 consideration and adoption of recommendations by the  
5 3 general assembly, the department shall annually review  
5 4 the small business and disadvantaged business  
5 5 enterprise participation achievements of contractors  
5 6 who were awarded contracts for nonfederal aid highway  
5 7 projects with the department.  
5 8 2. The department shall work in cooperation with  
5 9 organizations that represent highway contractors,  
5 10 small businesses, and disadvantaged business  
5 11 enterprises to maintain communication among the  
5 12 entities to further the dissemination of information  
5 13 about contract and training resources that are  
5 14 available from the department.>  
5 15 #2. Title page, by striking lines 1 through 3 and  
5 16 inserting the following: <An Act relating to small  
5 17 business and disadvantaged business enterprise  
5 18 contracts with the department of transportation.>  
5 19 #3. By renumbering as necessary.  
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5 22  
5 23 COMMITTEE ON TRANSPORTATION  
5 24 QUIRK of Chickasaw, Chairperson  
5 25 HF 783.502 83  
5 26 ak/nh/12508