

House File 783 - Introduced

HOUSE FILE _____
BY COMMITTEE ON ECONOMIC
GROWTH

(SUCCESSOR TO HF 582)

Passed House, Date _____ Passed Senate, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act relating to small business concerns regarding contracts
2 with the department of transportation, and providing an
3 applicability date.
4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:
5 TLSB 2504HV 83
6 ak/nh/5

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1 1 Section 1. Section 314.14, Code 2009, is amended to read
1 2 as follows:
1 3 314.14 CONTRACTS SET ASIDE FOR ~~DISADVANTAGED~~ SMALL
1 4 BUSINESS ENTERPRISES CONCERNS.
1 5 1. DEFINITIONS. As used in this section:
1 6 a. "Small business" means any enterprise, which is
1 7 operated for profit and under a single management, and which
1 8 has either fewer than twenty employees or an annual gross
1 9 income of less than four million dollars computed as the
1 10 average of the three business's preceding fiscal years. This
1 11 definition does not apply to any program or activity for which
1 12 a definition for small business is provided for the program or
1 13 activity by federal law or regulation or other state law.
1 14 ~~a. b. "Disadvantaged business enterprise" means a small~~
1 15 ~~"Small business concern concern" means a small business which~~
1 16 ~~meets either of the following:~~
1 17 (1) Is at least fifty-one percent owned by one or more
1 18 socially and economically disadvantaged individuals.
1 19 (2) Whose management and daily business operations are
1 20 controlled by one or more of the socially and economically
1 21 disadvantaged individuals who own it.
1 22 ~~b. "Small business concern" means a business which is~~
1 23 ~~independently owned and operated and which is not dominant in~~
1 24 ~~its field of operation.~~
1 25 c. "Socially and economically disadvantaged individuals"
1 26 means those individuals who are citizens of the United States
1 27 or who are lawfully admitted permanent residents and who are
1 28 women, Black Americans, Hispanic Americans, Native Americans,
1 29 Asian-Pacific Americans, Asian-Indian Americans, or any other
1 30 minority or individuals found to be disadvantaged by the
1 31 United States small business administration. However, the
1 32 department may also determine, on a case-by-case basis, that
1 33 an individual who is not a member of one of the enumerated
1 34 groups is socially and economically disadvantaged. A
1 35 rebuttable presumption exists that individuals in the
2 1 following groups are socially and economically disadvantaged:
2 2 (1) "Black Americans" which includes persons having
2 3 origins in any of the black racial groups of Africa.
2 4 (2) "Hispanic Americans" which includes persons of
2 5 Mexican, Puerto Rican, Cuban, Central or South American, or
2 6 other Spanish culture or origin, regardless of race.
2 7 (3) "Native Americans" which includes persons who are
2 8 American Indians, Eskimos, Aleuts, or Native Hawaiians.
2 9 (4) "Asian-Pacific Americans" which includes persons whose
2 10 origins are from Japan, China, Taiwan, Korea, Vietnam, Laos,
2 11 Cambodia, the Philippines, Samoa, Guam, the United States
2 12 Trust Territories of the Pacific, and the Northern Marianas.
2 13 (5) "Asian-Indian Americans" which includes persons whose
2 14 origins are from India, Pakistan, and Bangladesh.
2 15 d. "Prequalified" means that the ~~disadvantaged business~~
2 16 enterprise ~~small business concern~~ is currently approved by the

2 17 department as a disadvantaged business enterprise small
2 18 business concern, is a recognized contractor engaged in the
2 19 class of work provided for in the plans and specifications,
2 20 possesses sufficient resources to complete the work, and is
2 21 able to furnish a performance bond for one hundred percent of
2 22 the contract.

2 23 2. SET-ASIDE. Notwithstanding section 314.1, there may be
2 24 set aside for bidding by prequalified ~~disadvantaged business~~
2 25 ~~enterprises~~ small business concerns a percentage of the total
2 26 annual dollar amount of public contracts let by the
2 27 department. The annual dollar amount set aside for bidding by
2 28 prequalified ~~disadvantaged business enterprises~~ small business
2 29 concerns shall not exceed ten percent of the total dollar
2 30 amount of ~~federal aid~~ highway construction contracts let by
2 31 the department and ~~federal aid~~ transit dollars administered by
2 32 the department. The director may estimate the set-aside
2 33 amount at the beginning of each fiscal year and a suit shall
2 34 not be brought by any party as a result of this estimate.
2 35 Set-aside contracts will be awarded to the lowest responsible
3 1 prequalified ~~disadvantaged business enterprise~~ small business
3 2 concern. This section shall not be construed as limiting the
3 3 department's right to refuse any or all ~~disadvantaged business~~
3 4 ~~enterprise~~ small business concern bids.

3 5 Sec. 2. NEW SECTION. 314.14A SMALL BUSINESS CONCERNS ==
3 6 NONFEDERAL PROJECTS.

3 7 1. Each bid submitted for a contract for a nonfederal aid
3 8 project with the department shall include a small business
3 9 concern assistance form that contains documents that
3 10 demonstrate one of the following:

3 11 a. The contractor obtained enough participation from small
3 12 business concerns, as established by the department, in the
3 13 project to meet the participation goal in order to be awarded
3 14 the contract.

3 15 b. The contractor demonstrated adequate effort to meet the
3 16 participation goal for small business concerns, as established
3 17 by the department, in the project in order to be awarded the
3 18 contract, although the contractor did not meet the
3 19 participation goal.

3 20 2. The department shall review the small business concern
3 21 participation achievements of each contractor who was awarded
3 22 a contract for a nonfederal aid project with the department.
3 23 The department shall establish an increasing participation
3 24 goal for contractors in order to raise small business concern
3 25 participation. The department may establish rules in
3 26 accordance with this section that deny or restrict the
3 27 awarding of contracts to contractors who fail to improve small
3 28 business concern participation after multiple years.

3 29 3. The department shall create and include with notices
3 30 for bids for a contract a small business concern assistance
3 31 form.

3 32 4. The directives of this section shall be carried out to
3 33 the extent consistent with federal law.

3 34 Sec. 3. APPLICABILITY. This Act applies to notices for
3 35 bids for contracts with the department posted on and after
4 1 July 1, 2009.

4 2 EXPLANATION

4 3 This bill relates to small business concerns involved with
4 4 the awarding of contracts by the department of transportation.

4 5 In Code section 314.14(1), disadvantaged enterprises
4 6 language is replaced with definitions of small business and
4 7 small business concern. Women are now included in the
4 8 socially and economically disadvantaged individuals
4 9 definition. In Code section 314.14(2), all references to
4 10 federal projects are removed, making this section relevant to
4 11 nonfederal projects that the department is funding.

4 12 New Code section 314.14A lays out the requirements for the
4 13 department to ensure that small business concerns are included
4 14 in contractor bids for nonfederal projects. The bill requires
4 15 that each bid submitted for a contract includes a small
4 16 business concern assistance form that contains documents that
4 17 show that the contractor submitting a bid did one of the
4 18 following: obtained enough participation from small business
4 19 concerns, as established by the department, in the project to
4 20 meet the participation goal in order to be awarded the
4 21 contract or demonstrated adequate effort to meet the
4 22 participation goal for small business concerns despite not
4 23 meeting the goal.

4 24 The bill requires the department to review the small
4 25 business concern participation achievements of each contractor
4 26 who was awarded a contract. The department must establish an
4 27 increasing participation goal for contractors in order to

4 28 increase small business concern participation. The department
4 29 has the authority to establish rules to deny or restrict the
4 30 awarding of contracts to contractors who fail to improve their
4 31 small business concern participation over multiple years.
4 32 The bill also requires that the department create the small
4 33 business assistance form.
4 34 The bill applies to notices for bids for contracts with the
4 35 department posted on or after July 1, 2009.
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