

1.1 A bill for an act

1.2 relating to transportation; requiring commissioner of transportation to establish
1.3 contract goals for targeted group business participation; directing commissioner
1.4 of transportation to require bids for federally assisted contracts to include
1.5 information on inclusion of disadvantaged business enterprises; requiring
1.6 commissioner of transportation to provide training for disadvantaged business
1.7 enterprises; imposing reporting requirements; requiring application for waiver;
1.8 establishing collaborative to recommend improvements to disadvantaged
1.9 business enterprise program; amending Minnesota Statutes 2009 Supplement,
1.10 section 161.321, by adding a subdivision; proposing coding for new law in
1.11 Minnesota Statutes, chapters 161; 174; repealing Minnesota Statutes 2008,
1.12 section 174.03, subdivision 11.

1.13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

1.14 Section 1. Minnesota Statutes 2009 Supplement, section 161.321, is amended by
1.15 adding a subdivision to read:

1.16 Subd. 2a. Targeted group business goal. The commissioner shall establish a
1.17 contract goal for targeted group business participation in each contract with a prime
1.18 contractor that involves highway construction, improvement, or maintenance, and is
1.19 not covered by the disadvantaged business enterprise program under Code of Federal
1.20 Regulations, title 49. The contract goal must be stated in the bid solicitation. The contract
1.21 must identify the contract goal for targeted group business participation and must state
1.22 sanctions that may be imposed on the contractor who does not either meet the goal or
1.23 demonstrate good-faith efforts to meet the goal.

1.24 Sec. 2. [161.363] DISADVANTAGED BUSINESS ENTERPRISE PROGRAM.

1.25 Subdivision 1. Bids for federally assisted contracts. (a) The commissioner shall
1.26 include in every bid solicitation for a federally assisted contract:

- 2.1 (1) the disadvantaged business enterprise contract goal;
2.2 (2) a notice to bidders that the proposal must include the percentage of disadvantaged
2.3 business enterprises participating in the project and a waiver request if the percentage is
2.4 less than the contract goal; and
2.5 (3) notice of the sanction that will be imposed against a contractor who does not
2.6 meet the disadvantaged business enterprise contract goal.
- 2.7 (b) A bidder who submits a request for a waiver from the contract goal shall include
2.8 information necessary to establish the bidder's adequate good-faith efforts to meet the
2.9 contract goal. A showing of adequate good-faith efforts must include documentation of:
- 2.10 (1) publication of requests for disadvantaged business enterprise participation
2.11 in the project;
2.12 (2) written notice of bid solicitation provided to certified disadvantaged business
2.13 enterprises, along with follow-up contacts, if appropriate;
2.14 (3) items of work available to disadvantaged business enterprise firms;
2.15 (4) identity of rejected disadvantaged business enterprise firms, firms selected for
2.16 the work, and the reasons for the rejections and the choice;
2.17 (5) efforts made to assist interested disadvantaged business enterprises in obtaining
2.18 bonding, credit, or insurance;
2.19 (6) efforts made to assist disadvantaged business enterprises to obtain necessary
2.20 equipment, supplies, and materials;
2.21 (7) names of agencies contacted to assist in contracting, recruiting, and using
2.22 disadvantaged business enterprise firms; and
2.23 (8) any additional information supportive of a demonstration of good-faith efforts.
- 2.24 The request for a waiver must state the proposed percentage of disadvantaged business
2.25 enterprise participation.
- 2.26 (c) The commissioner shall reject a bid that does not either meet the contract goal or
2.27 include a waiver application that documents adequate good-faith efforts on the part of the
2.28 bidder in conformance with paragraph (b).
- 2.29 Subd. 2. **Reduction of contract goal.** The commissioner may not award a contract
2.30 that contains a waiver application unless the commissioner:
- 2.31 (1) evaluates the waiver application, makes a finding of good-faith efforts, and
2.32 grants the waiver; and
2.33 (2) reduces the contract goal upon the grant of a waiver to a bidder who documents
2.34 adequate good-faith efforts to meet the goal.
- 2.35 Subd. 3. **Definitions.** For purposes of this section and sections 174.186 to 174.188:

3.1 (a) "Disadvantaged business enterprise" has the meaning given in Code of Federal
3.2 Regulations, title 49, section 26.5.

3.3 (b) "Certified" refers to a disadvantaged business enterprise that is currently certified
3.4 according to Code of Federal Regulations, title 49, sections 26.81 to 26.91.

3.5 **DISADVANTAGED BUSINESS ENTERPRISES**

3.6 **Sec. 3. [174.186] DISADVANTAGED BUSINESS ENTERPRISE SANCTIONS.**

3.7 The commissioner shall include in each contract that is funded at least in part by
3.8 federal funds, a sanction for each contractor who does not meet the established project
3.9 disadvantaged business enterprise goal or demonstrate good-faith efforts to meet the goal.
3.10 The commissioner shall monitor disadvantaged business enterprise compliance throughout
3.11 the term of the contract in order to minimize the need for imposition of sanctions.

3.12 **Sec. 4. [174.187] DISADVANTAGED BUSINESS ENTERPRISE TRAINING.**

3.13 The commissioner shall hold business development workshops in various
3.14 metropolitan area locations to educate disadvantaged business enterprise owners and
3.15 managers concerning estimating and bidding for Department of Transportation projects.
3.16 The commissioner may not charge a fee for participation in the workshops.

3.17 **Sec. 5. [174.188] DISADVANTAGED BUSINESS ENTERPRISE REPORT.**

3.18 The commissioner shall report annually by February 1 to the legislative committees
3.19 having jurisdiction over transportation policy and finance concerning the commissioner's
3.20 disadvantaged business enterprise program. The report must, with respect to the previous
3.21 calendar year:

3.22 (1) identify the overall goal for transportation contracts compared with the actual
3.23 percentage attained;

3.24 (2) explain the methodology, applicable facts, and public participation used to
3.25 establish the overall goal;

3.26 (3) describe the department's good-faith efforts to attain the goal, if the goal was not
3.27 attained;

3.28 (4) describe the department's actions to address overconcentration of disadvantaged
3.29 business enterprises in certain types of work;

3.30 (5) describe the department's use of group-specific goals, or the department's
3.31 attempts to gain federal approval to impose group-specific goals;

3.32 (6) detail the department's efforts to increase the number of bids received from
3.33 certified disadvantaged business enterprises;

4.1 (7) describe the department's efforts to monitor contracts and work with prime
4.2 contractors to improve the rate of compliance with disadvantaged business enterprise
4.3 contract goals;

4.4 (8) state the percentage of federally assisted contracts that include disadvantaged
4.5 business enterprise project goals, and the percentage of those contracts in which the
4.6 contractor met the goal;

4.7 (9) describe the sanctions included in contracts for failure to meet disadvantaged
4.8 business enterprise goals or to demonstrate good-faith efforts, and identify contractors
4.9 who were sanctioned; and

4.10 (10) describe the department's efforts to increase the overall goal for the next year.

4.11 **Sec. 6. WAIVER OF DISADVANTAGED BUSINESS ENTERPRISE**
4.12 **PROVISIONS.**

4.13 The commissioner of transportation shall submit a request to the federal Department
4.14 of Transportation for a waiver of the provisions of the disadvantaged business enterprise
4.15 rules that prohibit the state Department of Transportation from establishing group-specific
4.16 goals for underutilized disadvantaged business enterprise groups within the overall
4.17 disadvantaged business enterprise goal. In requesting the waiver, the commissioner shall
4.18 prepare and submit updated information concerning disparities in this state between
4.19 available enterprises and utilized enterprises.

4.20 **Sec. 7. DISADVANTAGED BUSINESS ENTERPRISE COLLABORATIVE.**

4.21 Subdivision 1. **Establishment; purpose.** (a) The commissioner of transportation
4.22 shall convene monthly meetings of the disadvantaged business enterprise program
4.23 collaborative, as constituted by the commissioner as of January 1, 2010.

4.24 (b) The collaborative shall review and evaluate the commissioner's implementation
4.25 of the disadvantaged business enterprise program, under Code of Federal Regulations,
4.26 title 49, and to recommend changes, including legislation, to improve the effectiveness of
4.27 the program in this state.

4.28 (c) The commissioner shall provide staff and administrative support for the
4.29 collaborative and shall establish policies and procedures for the collaborative including
4.30 quorum requirements and majority decision making.

4.31 (d) The representatives of the Department of Transportation with responsibility for
4.32 civil rights and contracting shall participate in collaborative meetings and deliberations,
4.33 but no employee of the department may vote on collaborative decisions.

5.1 (e) Voting members of the collaborative do not receive compensation or
5.2 reimbursement of expenses.

5.3 Subd. 2. Powers and duties; report. (a) The collaborative shall develop
5.4 recommendations to the department and to the legislature as provided in paragraph (b)
5.5 designed to implement fully the federal Disadvantaged Business Enterprise program in
5.6 this state and to improve the effectiveness of the program. These recommendations,
5.7 including any necessary draft legislation, may include, but are not limited to, strategies,
5.8 policies, and actions focused on:

5.9 (1) requiring bid proposals to include information on disadvantaged business
5.10 enterprise participation;

5.11 (2) requiring bidding contractors to submit a waiver application if disadvantaged
5.12 business enterprise participation is less than the established contract goal;

5.13 (3) defining and implementing appropriate sanctions for contractors who fail to meet
5.14 disadvantaged business enterprise contract goals;

5.15 (4) sponsoring disadvantaged business enterprise training and development
5.16 workshops;

5.17 (5) strengthening the content and frequency of department reporting requirements
5.18 relating to the disadvantaged business enterprise program; and

5.19 (6) requiring the department to submit a waiver application to allow group-specific
5.20 goals.

5.21 (b) The collaborative shall report its findings and legislative recommendations
5.22 including draft legislation to the chairs and ranking minority members of the legislative
5.23 committees and divisions with jurisdiction over transportation policy and finance by
5.24 February 1, 2011.

5.25 (c) The collaborative expires December 31, 2012.

5.26 Sec. 8. **REPEALER.**

5.27 Minnesota Statutes 2008, section 174.03, subdivision 11, is repealed.

5.28 Sec. 9. **EFFECTIVE DATE.**

5.29 Sections 1 and 2 are effective for contracts awarded on and after August 1, 2011.

5.30 Sections 3 to 6 and 8 are effective March 1, 2011. Section 7 is effective the day following
5.31 final enactment.

174.03 DUTIES OF COMMISSIONER.

Subd. 11. **Disadvantaged business enterprise program; report.** (a) The commissioner shall include in each contract that is funded at least in part by federal funds, a sanction for each contractor who does not meet the established project disadvantaged business enterprise goal or demonstrate good faith effort to meet the goal.

(b) The commissioner of transportation shall report by February 1 of each odd-numbered year to the house of representatives and senate committees having jurisdiction over transportation policy and finance concerning the commissioner's disadvantaged business enterprise program. The report must, with respect to each of the two previous calendar years:

- (1) state the department's annual overall goal, compared with the percentage attained;
- (2) explain the methodology, applicable facts, and public participation used to establish the overall goal;
- (3) describe good faith efforts to meet the goal, if the goal was not attained;
- (4) describe actions to address overconcentration of disadvantaged business enterprises in certain types of work;
- (5) state the number of contracts that included disadvantaged business enterprise goals, the number of contractors that met established disadvantaged business enterprise goals, and sanctions imposed for lack of good faith effort; and
- (6) describe contracts with no disadvantaged business enterprise goals, and, of those, state number of contracts and amount of each contract with targeted groups under section 16C.16.