

1.1 A bill for an act

1.2 relating to transportation; modifying or adding provisions concerning
1.3 disadvantaged business enterprises; governing provisions related to Department
1.4 of Transportation contracting for construction work and training; establishing
1.5 collaborative group related to disadvantaged business enterprise program;
1.6 amending legislative reporting; making technical changes; appropriating money;
1.7 amending Minnesota Statutes 2008, section 174.03, subdivision 11; proposing
1.8 coding for new law in Minnesota Statutes, chapters 161; 174.

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

1.10 Section 1. **[161.363] DISADVANTAGED BUSINESS ENTERPRISE; BIDDING**
1.11 **AND CONTRACTING.**

1.12 Subdivision 1. **Definitions.** (a) For purposes of this section and section 174.188, the
1.13 following terms have the meanings given them.

1.14 (b) "Disadvantaged business enterprise" has the meaning given in Code of Federal
1.15 Regulations, title 49, section 26.5.

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

1.18 (d) "Federally assisted contract" means a contract with a prime contractor that
1.19 is covered by the disadvantaged business enterprise program under Code of Federal
1.20 Regulations, title 49, part 26.

1.21 Subd. 2. **Bid solicitation.** (a) The commissioner shall include in every bid
1.22 solicitation for a federally assisted contract:

1.23 (1) the disadvantaged business enterprise contract goal as provided in subdivision 4;

1.24 (2) a notice to bidders that the proposal must identify the percentage of disadvantaged
1.25 business enterprises proposed to participate in the project; and

2.1 (3) notice of the sanction that will be imposed against a contractor who does not
2.2 meet the disadvantaged business enterprise participation goal.

2.3 (b) A bidder shall include in the submitted bid, information necessary to establish the
2.4 bidder's plan to achieve the participation goal under the contract or adequate good-faith
2.5 efforts to meet the goal. A plan or demonstration of adequate good-faith efforts must
2.6 include documentation of:

2.7 (1) publication of requests for disadvantaged business enterprise participation
2.8 in the project;

2.9 (2) written notice of bid solicitation provided to certified disadvantaged business
2.10 enterprises, along with follow-up contacts, if appropriate;

2.11 (3) items of work available to disadvantaged business enterprise firms;

2.12 (4) identity of rejected disadvantaged business enterprise firms, firms selected for
2.13 the work, and the reasons for the rejections and the choice;

2.14 (5) efforts made to assist interested disadvantaged business enterprises in obtaining
2.15 bonding, credit, or insurance;

2.16 (6) efforts made to assist disadvantaged business enterprises to obtain necessary
2.17 equipment, supplies, and materials;

2.18 (7) names of agencies contacted to assist in contracting, recruiting, and using
2.19 disadvantaged business enterprise firms; and

2.20 (8) any additional information supportive of obtaining the goals or demonstrating
2.21 good-faith efforts.

2.22 Subd. 3. **Award of contract.** The commissioner shall reject a bid for a federally
2.23 assisted contract that does not, in conformance with subdivision 2, either (1) meet the
2.24 participation goal under the contract, or (2) demonstrate adequate good-faith efforts on the
2.25 part of the bidder.

2.26 Subd. 4. **Contract requirements.** The commissioner shall establish a disadvantaged
2.27 business enterprise participation goal in each federally assisted contract. The contract
2.28 must identify the goal for disadvantaged business enterprise participation.

2.29 Subd. 5. **Disadvantaged business enterprise capacity account; appropriation.**

2.30 (a) A disadvantaged business enterprise capacity account is established in the special
2.31 revenue fund. The account consists of funds as provided under section 174.03, subdivision
2.32 11, paragraph (a), and any other money donated, allotted, transferred, or otherwise
2.33 provided to the account.

2.34 (b) Money in the account is annually appropriated to the commissioner for purposes
2.35 of building capacity among disadvantaged business enterprises, including but not limited
2.36 to:

3.1 (1) performing business development workshops as required under section 174.188,
3.2 subdivision 1;

3.3 (2) assisting new and startup disadvantaged business enterprises; and

3.4 (3) assisting disadvantaged business enterprises in expansion and establishment as
3.5 prime contractors.

3.6 **EFFECTIVE DATE.** This section is effective July 1, 2010, except that subdivisions
3.7 2 and 3 are effective for contracts awarded on or after August 1, 2011.

3.8 Sec. 2. Minnesota Statutes 2008, section 174.03, subdivision 11, is amended to read:

3.9 Subd. 11. **Disadvantaged business enterprise program; report.** (a) The
3.10 commissioner shall include in each federally assisted contract ~~that is funded at least in~~
3.11 ~~part by federal funds,~~ a sanction for each contractor who does not meet the established
3.12 project disadvantaged business enterprise participation goal or demonstrate good faith
3.13 effort to meet the goal. The commissioner shall monitor disadvantaged business enterprise
3.14 compliance throughout the term of the contract in order to minimize the need for
3.15 imposition of sanctions. Any funds collected from imposition of a sanction under this
3.16 subdivision must be deposited in the disadvantaged business enterprise capacity account.

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

3.22 ~~(1) state the department's annual overall goal, compared with the percentage attained;~~

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

3.25 ~~(3) describe good faith efforts to meet the goal, if the goal was not attained;~~

3.26 ~~(4) describe actions to address overconcentration of disadvantaged business~~
3.27 ~~enterprises in certain types of work;~~

3.28 ~~(5) state the number of contracts that included disadvantaged business enterprise~~
3.29 ~~goals, the number of contractors that met established disadvantaged business enterprise~~
3.30 ~~goals, and sanctions imposed for lack of good faith effort; and~~

3.31 ~~(6) describe contracts with no disadvantaged business enterprise goals, and, of~~
3.32 ~~those, state number of contracts and amount of each contract with targeted groups under~~
3.33 ~~section 16C.16.~~

3.34 **EFFECTIVE DATE.** This section is effective July 1, 2010.

4.1 Sec. 3. [174.188] DISADVANTAGED BUSINESS ENTERPRISE PROGRAM.

4.2 Subdivision 1. Training. The commissioner shall hold business development
4.3 workshops throughout the state to educate and build capacity for disadvantaged business
4.4 enterprise owners and managers on the pursuit of Department of Transportation projects.
4.5 The commissioner may not charge a fee for participation in the workshops.

4.6 Subd. 2. Legislative report. Annually by February 1, the commissioner shall
4.7 submit a report electronically to the legislative committees having jurisdiction over
4.8 transportation policy and finance concerning the commissioner's disadvantaged business
4.9 enterprise program. The report must, with respect to the previous calendar year:

4.10 (1) identify disadvantaged business enterprise participation rates for transportation
4.11 contracts, which must include:

4.12 (i) the overall goal compared with the actual percentage attained;

4.13 (ii) group-specific attainment percentages, for each group identified in clause (2)
4.14 of the definition of "socially and economically disadvantaged individual" under Code of
4.15 Federal Regulations, title 49, section 26.5;

4.16 (iii) the percentage of federally assisted contracts in which the contractor met the
4.17 participation goal; and

4.18 (iv) the dollar amounts used in the calculations of goal and attainment percentages;

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

4.21 (3) describe the department's primary strategies and techniques in attaining the
4.22 participation goal, or the department's efforts to attain the participation goal if the goal
4.23 was not attained;

4.24 (4) describe the department's actions to address underconcentration and
4.25 overconcentration of disadvantaged business enterprises in certain types of work;

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

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

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

4.33 (8) describe the sanctions included in contracts for failure to meet disadvantaged
4.34 business enterprise goals or to demonstrate good-faith efforts, and identify contractors
4.35 who were sanctioned; and

5.1 (9) describe the department's efforts to increase capacity among disadvantaged
5.2 business enterprises and to increase the overall goal for the next year, including use of
5.3 funds from the disadvantaged business enterprise capacity account.

5.4 **EFFECTIVE DATE.** This section is effective the day following final enactment.

5.5 Sec. 4. **DISADVANTAGED BUSINESS ENTERPRISE COLLABORATIVE.**

5.6 Subdivision 1. **Definitions.** For purposes of this section, the following terms have
5.7 the meanings given:

5.8 (1) "executive committee" means the executive committee of the collaborative
5.9 established in this section;

5.10 (2) "commissioner" means the commissioner of transportation; and

5.11 (3) "the collaborative" means the DBE and Workforce Development Group
5.12 established by the commissioner of transportation and transportation stakeholders, as
5.13 constituted by the commissioner as of January 1, 2010.

5.14 Subd. 2. **Purpose.** The collaborative shall review and evaluate the commissioner's
5.15 implementation of the disadvantaged business enterprise program under Code of Federal
5.16 Regulations, title 49, and the executive committee shall recommend changes, including
5.17 legislation, to improve the effectiveness of the program.

5.18 Subd. 3. **Executive committee; membership.** (a) An executive committee of the
5.19 collaborative is established. The executive committee consists of the following members:

5.20 (1) the commissioner of transportation, or a designee, who serves as a nonvoting
5.21 member;

5.22 (2) two representatives from among prime contractors;

5.23 (3) two representatives from among women-owned disadvantaged business
5.24 enterprises;

5.25 (4) two representatives from among minority group-owned disadvantaged business
5.26 enterprises;

5.27 (5) two representatives from among those in the collaborative with an interest
5.28 primarily concerning employee training and workforce development; and

5.29 (6) one representative from among community stakeholders who are not part of a
5.30 group specified in clauses (2) through (5).

5.31 (b) The collaborative shall select the representatives to the executive committee
5.32 by August 1, 2010. Each of the representatives from among the groups specified
5.33 under clauses (2) through (6) must be selected only from among those members of the
5.34 collaborative who are eligible to serve as a representative for that group. Each member of
5.35 the collaborative may select or vote for representatives only for one of the groups specified

6.1 under clauses (2) through (6). The commissioner shall establish a decision-making
6.2 procedure for selection of the representatives under this paragraph.

6.3 (c) The commissioner of transportation or the commissioner's designee shall convene
6.4 the first meeting of the executive committee by September 1, 2010. At the initial meeting
6.5 the council must elect a chair or cochair from its membership or designate a facilitator.
6.6 The commissioner or commissioner's designee may not serve as the chair or as a cochair.

6.7 Subd. 4. **Executive committee; duties.** (a) The executive committee shall formally
6.8 adopt and submit recommendations as provided in subdivision 7.

6.9 (b) The executive committee shall establish policies and procedures for the
6.10 collaborative, and shall establish (1) quorum requirements and (2) a formal majority-based
6.11 decision-making procedure for the committee that does not require full consensus.

6.12 (c) The executive committee shall establish a publicly accessible meeting schedule
6.13 and convene monthly meetings of the collaborative.

6.14 Subd. 5. **Administrative provisions.** (a) The commissioner may obtain or retain the
6.15 services of a facilitator for purposes of the collaborative.

6.16 (b) The commissioner shall provide staff and administrative support for the
6.17 collaborative.

6.18 (c) The representatives of the Department of Transportation with responsibility for
6.19 civil rights and contracting shall participate in collaborative meetings and deliberations,
6.20 but no employee of the department may vote on collaborative decisions.

6.21 (d) Voting members of the collaborative do not receive compensation or
6.22 reimbursement of expenses.

6.23 Subd. 6. **Expiration.** The collaborative expires December 31, 2012.

6.24 Subd. 7. **Recommendations; legislative report.** (a) The executive committee,
6.25 in consultation with the collaborative, shall develop findings and adopt formal
6.26 recommendations to the department, and to the legislature as provided in paragraph (b),
6.27 regarding full and effective implementation of the disadvantaged business enterprise
6.28 program. The recommendations, including any necessary draft legislation, may include,
6.29 but are not limited to, strategies, polices, and actions focused on:

6.30 (1) requiring bid proposals to include information on disadvantaged business
6.31 enterprise participation;

6.32 (2) defining and implementing appropriate sanctions for contractors who fail to meet
6.33 disadvantaged business enterprise contract goals;

6.34 (3) identifying strategies and techniques to build disadvantaged business enterprise
6.35 capacity, including through training and development workshops;

7.1 (4) strengthening the content and frequency of department reporting requirements
7.2 relating to the disadvantaged business enterprise program; and

7.3 (5) requiring the department to submit a waiver application to allow group-specific
7.4 goals.

7.5 (b) By January 3, 2011, the executive committee shall submit a report on its findings
7.6 and legislative recommendations to members of the house of representatives and senate
7.7 committees with jurisdiction over transportation policy and finance.

7.8 **EFFECTIVE DATE.** This section is effective the day following final enactment.

7.9 Sec. 5. **WAIVER OF DISADVANTAGED BUSINESS ENTERPRISE**
7.10 **PROVISIONS.**

7.11 The executive committee, as provided in section 4, may request the commissioner
7.12 of transportation to submit a waiver request as described in this section. Upon receipt
7.13 of a resolution from the executive committee, the commissioner of transportation shall
7.14 submit a request to the federal Department of Transportation for a waiver of the provisions
7.15 of the disadvantaged business enterprise rules that prohibit the state Department of
7.16 Transportation from establishing group-specific goals for underutilized disadvantaged
7.17 business enterprise groups within the overall disadvantaged business enterprise goal. In
7.18 requesting the waiver, the commissioner shall prepare and submit updated information
7.19 concerning disparities in this state between available enterprises and utilized enterprises.

7.20 **EFFECTIVE DATE.** This section is effective the day following final enactment.

7.21 Sec. 6. **REVISOR'S INSTRUCTION.**

7.22 (a) The revisor of statutes shall recodify Minnesota Statutes, section 174.03,
7.23 subdivision 11, paragraph (a), as Minnesota Statutes, section 161.363, subdivision 4,
7.24 paragraph (b).

7.25 (b) The revisor of statutes shall make any cross reference changes made necessary
7.26 by this recodification.