

111TH CONGRESS  
2D SESSION

# H. R. 5010

To amend title 49, United States Code, to require that not less than 10 percent of the amounts made available for certain high-speed rail projects be expended through small business concerns owned and controlled by socially and economically disadvantaged individuals, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

APRIL 13, 2010

Ms. MOORE of Wisconsin introduced the following bill; which was referred to the Committee on Transportation and Infrastructure, and in addition to the Committee on Small Business, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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## A BILL

To amend title 49, United States Code, to require that not less than 10 percent of the amounts made available for certain high-speed rail projects be expended through small business concerns owned and controlled by socially and economically disadvantaged individuals, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. FINDINGS.**

4 Congress finds the following:

1           (1) Encouraging the participation in Federal  
2           contracting of small businesses owned and controlled  
3           by socially and economically disadvantaged individ-  
4           uals is in the Federal Government’s interest, helps  
5           spur competition and innovation, and supports com-  
6           munity-level economic revitalization and entrepre-  
7           neurship.

8           (2) Small businesses are key engines of eco-  
9           nomic growth, but they have had difficulties access-  
10          ing Federal contracting and procurement opportuni-  
11          ties and participating in federally funded projects,  
12          particularly in the area of transportation.

13          (3) Congress has supported efforts to ensure  
14          that small businesses owned and controlled by so-  
15          cially and economically disadvantaged individuals are  
16          regular participants in projects funded by agencies  
17          throughout the Federal Government.

18          (4) The United States Department of Trans-  
19          portation has used Disadvantaged Business Enter-  
20          prise programs to ensure nondiscrimination in the  
21          award and administration of contracts by entities re-  
22          ceiving funds through the Department’s highway,  
23          transit, and airport financial assistance programs.

24          (5) Congress and the Department have also  
25          worked to ensure that—

1 (A) Disadvantaged Business Enterprise  
2 programs are narrowly tailored to provide a  
3 level playing field on which small businesses  
4 owned and controlled by socially and economi-  
5 cally disadvantaged individuals can compete  
6 fairly for contracts awarded by entities receiv-  
7 ing Department assistance;

8 (B) only small businesses that meet the eli-  
9 gibility requirements for Disadvantaged Busi-  
10 ness Enterprise programs are permitted to par-  
11 ticipate in such programs;

12 (C) Disadvantaged Business Enterprise  
13 programs assist the development of small busi-  
14 nesses that can compete successfully in the  
15 marketplace outside of such programs; and

16 (D) recipients of Department assistance  
17 have appropriate flexibility in providing oppor-  
18 tunities for small businesses owned and con-  
19 trolled by socially and economically disadvan-  
20 taged individuals.

21 (6) Congress has supported efforts to encourage  
22 veteran-owned small businesses to participate in  
23 Federal contracting and procurement opportunities,  
24 including by creating and strengthening programs  
25 and institutions for veterans who own or operate

1 small businesses and requiring the President to es-  
 2 tablish an annual Government-wide goal of at least  
 3 3 percent for the award of procurement contracts to  
 4 small businesses owned by service-disabled veterans.

5 **SEC. 2. PARTICIPATION OF DISADVANTAGED BUSINESS EN-**  
 6 **TERPRISES IN HIGH-SPEED RAIL PROJECTS.**

7 (a) IN GENERAL.—Chapter 261 of title 49, United  
 8 States Code, is amended by adding at the end the fol-  
 9 lowing new section:

10 **“§ 26107. Disadvantaged business enterprises**

11 “(a) IN GENERAL.—Except as provided in subsection  
 12 (b), not less than 10 percent of the amounts made avail-  
 13 able for any project under sections 26101 and 26106 shall  
 14 be expended through small business concerns owned and  
 15 controlled by socially and economically disadvantaged indi-  
 16 viduals.

17 “(b) EXCEPTION.—

18 “(1) DETERMINATION BY SECRETARY.—If the  
 19 Secretary determines that the requirement of sub-  
 20 section (a) will prevent the satisfactory completion of  
 21 a project described in such subsection because of a  
 22 lack of competitive bids by small business concerns  
 23 owned and controlled by socially and economically  
 24 disadvantaged individuals, the Secretary may, with  
 25 respect to such project, reduce the percentage stated

1 in such subsection to the extent necessary to ensure  
2 satisfactory completion of such project.

3 “(2) REPORT TO CONGRESS.—If the Secretary  
4 reduces the percentage as provided in paragraph (1),  
5 the Secretary shall submit to Congress a report de-  
6 scribing the reduction and how the Secretary deter-  
7 mined that the reduction was necessary to ensure  
8 satisfactory completion of the project involved.

9 “(c) UNIFORM CERTIFICATION CRITERIA.—The Sec-  
10 retary shall establish minimum uniform criteria for a re-  
11 cipient of funds under section 26101 or 26106 to use in  
12 certifying whether a small business concern qualifies for  
13 purposes of this section. Such minimum criteria shall in-  
14 clude on-site visits, personal interviews, licenses, analysis  
15 of stock ownership, listing of equipment, analysis of bond-  
16 ing capacity, listing of work completed, resume of prin-  
17 cipal owners, financial capacity, and type of work pre-  
18 ferred.

19 “(d) COMPLIANCE WITH COURT ORDERS.—Nothing  
20 in this section limits the eligibility of a person to receive  
21 funds made available under section 26101 or 26106 if the  
22 person is prevented, in whole or in part, from satisfying  
23 a requirement of this section because a Federal court  
24 issues a final order finding that such requirement is un-  
25 constitutional.

1       “(e) DEFINITIONS.—In this section, the following  
2 definitions apply:

3               “(1) SMALL BUSINESS CONCERN.—The term  
4       ‘small business concern’ has the meaning given such  
5 term in section 3(a) of the Small Business Act (15  
6 U.S.C. 632(a)), except that such term does not in-  
7 clude any concern, or group of concerns controlled  
8 by the same socially and economically disadvantaged  
9 individual or individuals, which has gross receipts  
10 over the preceding 3 fiscal years averaging in excess  
11 of \$19,570,000 per year. The Secretary shall adjust  
12 annually for inflation the threshold amount in the  
13 preceding sentence.

14               “(2) SOCIALLY AND ECONOMICALLY DISADVAN-  
15 TAGED INDIVIDUALS.—The term ‘socially and eco-  
16 nomically disadvantaged individuals’ has the mean-  
17 ing given such term in section 8(d)(3)(C) of the  
18 Small Business Act (15 U.S.C. 637(d)(3)(C)) and  
19 relevant subcontracting regulations issued under  
20 such Act, except that women shall be presumed to  
21 be socially and economically disadvantaged individ-  
22 uals.”.

23       (b) CLERICAL AMENDMENT.—The table of sections  
24 at the beginning of such chapter is amended by inserting

1 after the item relating to section 26106 the following new  
2 item:

“26107. Disadvantaged business enterprises.”.

3 **SEC. 3. SENSE OF CONGRESS REGARDING VETERAN-**  
4 **OWNED SMALL BUSINESSES.**

5 It is the sense of Congress that the Federal Govern-  
6 ment should continue to encourage participation by vet-  
7 eran-owned small businesses in Federal contracting and  
8 procurement opportunities and federally funded projects,  
9 including by making veteran-owned businesses a key part  
10 of the small business programs of the Department of  
11 Transportation and other Federal agencies.

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