

113TH CONGRESS
2D SESSION

H. R. 4439

To ensure that minority-owned and women-owned businesses have a full and fair opportunity to compete in covered rail projects and contracts, and that the Federal Government does not subsidize discrimination in covered rail projects.

IN THE HOUSE OF REPRESENTATIVES

APRIL 9, 2014

Ms. BROWN of Florida 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

A BILL

To ensure that minority-owned and women-owned businesses have a full and fair opportunity to compete in covered rail projects and contracts, and that the Federal Government does not subsidize discrimination in covered rail projects.

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. DISADVANTAGED BUSINESS ENTERPRISE PRO-**
4 **GRAM.**

5 (a) FINDINGS.—Congress finds the following:

1 (1) While significant progress has occurred due
2 to the enactment of a disadvantaged business enter-
3 prise program for highways and mass transit, in-
4 cluding commuter rail passenger transportation, dis-
5 crimination and related barriers continue to pose
6 significant obstacles for minority-owned and women-
7 owned businesses seeking to do business in federally
8 assisted surface transportation-related markets, in-
9 cluding intercity rail passenger transportation mar-
10 kets. This continuing discrimination warrants the es-
11 tablishment of the disadvantaged business enterprise
12 program under this section.

13 (2) Discrimination poses serious barriers to the
14 full and fair participation of minority and women
15 business owners, including African-Americans, His-
16 panic-Americans, Asian-Americans, and Native
17 Americans in federally assisted surface transpor-
18 tation-related projects and contracts, including inter-
19 city rail passenger transportation projects and con-
20 tracts.

21 (3) Discrimination impacts minority and women
22 business owners in every geographic region of the
23 United States and throughout all of the surface
24 transportation-related industries, including intercity
25 rail passenger transportation industries.

1 (4) Congress has reviewed evidence of discrimi-
2 nation against minority and women business owners
3 throughout the transportation sector, including—

4 (A) statistical analyses demonstrating sig-
5 nificant disparities in the utilization of minor-
6 ity-owned and women-owned businesses in fed-
7 erally and locally funded transportation con-
8 tracting;

9 (B) statistical analyses of private sector
10 disparities in business success by minority-
11 owned and women-owned businesses in trans-
12 portation industries;

13 (C) research compiling anecdotal reports of
14 discrimination against individual minority and
15 women business owners;

16 (D) individual reports of discrimination
17 against minority and women business owners
18 and the organizations and individuals who rep-
19 resent minority and women business owners;

20 (E) analyses demonstrating significant re-
21 ductions in the participation of minority and
22 women businesses in jurisdictions that have re-
23 duced or eliminated their minority-owned and
24 women-owned business programs;

1 (F) statistical analyses showing significant
2 disparities in the credit available to minority-
3 owned and women-owned businesses;

4 (G) research and statistical analyses dem-
5 onstrating how discrimination negatively im-
6 pacts firm formation, growth, and success;

7 (H) experience of State departments of
8 transportation and localities demonstrating that
9 race-neutral and gender-neutral efforts alone
10 are insufficient to remedy discrimination; and

11 (I) other qualitative and quantitative evi-
12 dence of discrimination against minority-owned
13 and women-owned businesses in the transpor-
14 tation sector.

15 (5) Congress has received and reviewed compel-
16 ling evidence of discrimination from many different
17 sources, including congressional hearings and round-
18 tables, studies, scientific reports, reports issued by
19 public and private agencies, news stories, reports of
20 discrimination by organizations and individuals, and
21 discrimination lawsuits.

22 (6) All of this evidence applies not only to high-
23 way and mass transportation programs, but also to
24 rail programs, providing a compelling need for the
25 establishment of the disadvantaged business enter-

1 prise program under this section to address race and
2 gender discrimination in intercity rail passenger
3 transportation.

4 (b) PROGRAM.—There is established a disadvantaged
5 business enterprise program for the Federal Railroad Ad-
6 ministration to ensure that disadvantaged business enter-
7 prises have a full and fair opportunity to compete in cov-
8 ered rail projects and to ensure that the Federal Govern-
9 ment does not subsidize discrimination in covered rail
10 projects.

11 (c) AMOUNTS FOR DISADVANTAGED BUSINESS EN-
12 TERPRISES.—Except to the extent that the Secretary of
13 Transportation determines otherwise, not less than 10
14 percent of the amounts made available through a grant,
15 contract, loan, or other financing instrument for any cov-
16 ered rail project shall be expended through disadvantaged
17 business enterprises.

18 (d) ANNUAL LISTING OF DISADVANTAGED BUSINESS
19 ENTERPRISES.—The unified certification program estab-
20 lished under subsection (e) shall annually survey and com-
21 pile a list of disadvantaged business enterprises and their
22 location, and shall include an indication of the percentage
23 of such enterprises which are controlled by women, by so-
24 cially and economically disadvantaged individuals (other
25 than women), and by individuals who are women and are

1 otherwise socially and economically disadvantaged individ-
2 uals.

3 (e) UNIFORM CERTIFICATION.—For purposes of car-
4 rying out this section, the Secretary of Transportation
5 shall establish minimum uniform criteria to use in certi-
6 fying whether a concern qualifies as a small business con-
7 cern. The minimum uniform criteria shall include on-site
8 visits, personal interviews with personnel, issuance or in-
9 spection of licenses, analyses of stock ownership, listing
10 of equipment, analyses of bonding capacity, listing of work
11 completed, examination of the resume of principal owners,
12 analyses of financial capacity, and analyses of the type of
13 work preferred. Federal Railroad Administration recipi-
14 ents of funds subject to this section must participate in
15 unified certification program approved by the Secretary.

16 (f) REPORTING.—The Secretary of Transportation
17 shall establish minimum requirements for covered rail
18 project Federal funding recipients to report to the Sec-
19 retary—

20 (1) information concerning minority-owned and
21 women-owned business awards, commitments, and
22 achievements; and

23 (2) such other information as the Secretary de-
24 termines to be appropriate for the proper monitoring

1 of the disadvantaged business enterprise program
2 under this section.

3 (g) COMPLIANCE WITH COURT ORDERS.—Nothing
4 in this section limits the eligibility of an entity or person
5 to receive funds if the entity or person is prevented, in
6 whole or in part, from complying with subsection (c) be-
7 cause a Federal court issues a final order in which the
8 court finds that a requirement or the implementation of
9 subsection (c) is unconstitutional.

10 (h) DEFINITIONS.—In this section, the following defi-
11 nitions apply:

12 (1) COMMUTER RAIL PASSENGER TRANSPOR-
13 TATION AND INTERCITY RAIL PASSENGER TRANS-
14 PORTATION.—The terms “commuter rail passenger
15 transportation” and “intercity rail passenger trans-
16 portation” have the meaning given those terms in
17 section 24102 of title 49, United States Code.

18 (2) COVERED RAIL PROJECT.—The term “cov-
19 ered rail project” means any railroad project that is
20 carried out or is planned to be carried out with the
21 use of Federal funds administered by the Federal
22 Railroad Administration through a grant, contract,
23 loan, or other financing instrument.

24 (3) DISADVANTAGED BUSINESS ENTERPRISE.—
25 The term “disadvantaged business enterprise”

1 means a small business concern owned by socially
2 and economically disadvantaged individuals.

3 (4) SMALL BUSINESS CONCERN.—The term
4 “small business concern” has the meaning given
5 that term under section 3 of the Small Business Act
6 (15 U.S.C. 632), except that the term shall not in-
7 clude any concern or group of concerns controlled by
8 the same socially and economically disadvantaged in-
9 dividual or individuals that have average annual
10 gross receipts over the preceding 3 fiscal years in ex-
11 cess of \$22,410,000, as adjusted annually by the
12 Secretary of Transportation for inflation.

13 (5) SOCIALLY AND ECONOMICALLY DISADVAN-
14 TAGED INDIVIDUALS.—The term “socially and eco-
15 nomically disadvantaged individuals” has the mean-
16 ing given that term under section 8(d) of the Small
17 Business Act (15 U.S.C. 637(d)) and relevant sub-
18 contracting regulations issued pursuant to that Act,
19 except that women shall be presumed to be socially
20 and economically disadvantaged individuals for pur-
21 poses of this section.

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