

ONE HUNDRED SIXTH LEGISLATURE - SECOND SESSION - 2020
COMMITTEE STATEMENT
LB1218

Hearing Date: Thursday February 13, 2020
Committee On: Government, Military and Veterans Affairs
Introducer: Wayne
One Liner: Adopt the Nebraska Historically Underutilized Business Program Act

Roll Call Vote - Final Committee Action:

Advanced to General File with amendment(s)

Vote Results:

Aye:	7	Senators Blood, Brewer, Hilgers, Kolowski, La Grone, Lowe, Hunt
Nay:		
Absent:	1	Senator Hansen, M.
Present Not Voting:		

Oral Testimony:

Proponents:

Senator Justin Wayne
Winsley Durand III

Representing:

Introducer
Greater Omaha Chamber

Opponents:

Doug Carlson
Kyle Schneweis
Christy Abraham

Representing:

DAS
NDOT
League of NE Municipalities

Neutral:

Representing:

Summary of purpose and/or changes:

This bill, entitled the Nebraska Historically Underutilized Business Program Act, proposes a new state contracting policy that is intended to "encourage the use of historically underutilized businesses" by the State of Nebraska and its political subdivisions in order to create "a vibrant, sustainable, and diverse business community in Nebraska."

The bill defines a number of terms relating to public contracts. It would define a "historically underutilized business" ("HUB") on the basis of its average annual gross receipts over the preceding three years, the form of the enterprise, the owner's location in Nebraska, the net worth of the owners, and the owner's interests in other businesses. The bill also describes several tiers of HUB that would be based on self-certifications as to number of employees and investment in a primary headquarters in Nebraska in an economic redevelopment area.

Self-certification would be completed using a form prescribed by the Department of Labor, or, alternatively, by participation in the Department of Transportation's Nebraska Unified Certification Program. These departments would have the authority to investigate a business's qualifications for the program. This investigative authority would include inquiry into the number of employees, gross receipts, owner net worth, owner interest in other businesses, bonding history, and a putative owner's

actual involvement with the enterprise and other employment. The bill specifies certain business documents subject to such investigations.

The Department of Labor would be required to maintain a list of certified businesses. If a business fails to meet the qualifications for HUB certification during an affected contract, decertification would not occur until completion of that contract.

The bill would require constitutional offices, state agencies, and political subdivisions to "make a good faith effort to utilize" HUBs. The bill would set statewide HUB goals for a number of different procurement categories and sets rules for subcontracting under the program. Every government entity funded by the state, any tax, the Community Development Law, or any other state law would be required to "implement rules, regulations, and procedures to effectuate the provisions" of the Act and to provide formal protest procedures, with contested cases handled according to the Administrative Procedures Act.

Contractors not complying with the Act could be subject to withholding of payments and exclusion from bidding on future contracts.

The Department of Labor would be required to offer "assistance and training" regarding state procurement, to send orientation materials to newly certified HUBs, and to establish and maintain a directory of HUBs. The directory would be distributed twice annually to "every government entity."

All government entities would be required to make information publicly available on the number and dollar amount of contracts awarded and paid to certified HUBs and other performance metrics relating to the purposes of the Act. State constitutional officers and agencies would include details on HUB utilization as a part of their appropriations requests.

The bill would apply to all public contracts with an expected value of \$100,000 or more. Emergency contracts are excluded.

The Director of the Department of Administrative Services would be given permissive authority to promulgate rules and regulations to administer the Act.

The bill contains an operative date of August 1, 2021.

Explanation of amendments:

AM 3242 strikes the original sections of LB 1218 and inserts provisions from LB 1179, the ImagiNE Small Business and Urban Revitalization Act.

Tom Brewer, Chairperson