

SENATE BILL No. 228

DIGEST OF INTRODUCED BILL

Citations Affected: IC 4-33-14; IC 4-35-11; IC 5-28-15-8; IC 5-28-15-16.5.

Synopsis: Qualified zone business contract goals. Requires the Indiana gaming commission (commission) to establish annual goals for: (1) riverboat gambling operations; and (2) slot machine gambling operations at racetracks; concerning contracts for goods and services with qualified zone businesses. Provides that the goals apply to contracts awarded after December 31, 2007. Provides that in establishing the goals for qualified zone businesses, the commission may not impair any rights or obligations under a contract in existence on January 1, 2008. Requires the board of the Indiana economic development corporation to: (1) establish a list of qualified zone businesses; and (2) update and transmit the list to the commission at least annually. Requires the commission to provide the list to: (1) riverboat operating agents and owners; and (2) holders of permits for slot machine gambling operations at racetracks; for use in complying with the goals for contracts with qualified zone businesses established by the commission.

Effective: January 1, 2008 (retroactive).

Jackman

January 8, 2008, read first time and referred to Committee on Commerce, Public Policy & Interstate Cooperation.

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Second Regular Session 115th General Assembly (2008)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2007 Regular Session of the General Assembly.

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SENATE BILL No. 228



A BILL FOR AN ACT to amend the Indiana Code concerning state offices and administration.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 4-33-14-1 IS AMENDED TO READ AS
2 FOLLOWS [EFFECTIVE JANUARY 1, 2008 (RETROACTIVE)]:
3 Sec. 1. **(a)** The general assembly declares that the opportunity for full
4 minority and women's business enterprise participation in the riverboat
5 industry is essential if social and economic parity is to be obtained by
6 minority and women business persons and if the economies of the
7 riverboat cities are to be stimulated as contemplated by this article.

8 **(b) The general assembly additionally declares that it is essential**
9 **for qualified zone businesses to have the opportunity for full**
10 **participation in the riverboat industry if:**

11 **(1) these businesses that have committed to employing**
12 **residents of economically distressed areas in Indiana are to**
13 **have a fair opportunity to compete for contracts to provide**
14 **goods and services to operating agents and persons holding**
15 **owners' licenses; and**

16 **(2) the economies of the riverboat cities are to be stimulated**
17 **as contemplated by this article.**



1 SECTION 2. IC 4-33-14-3.5 IS ADDED TO THE INDIANA CODE
2 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE
3 JANUARY 1, 2008 (RETROACTIVE)]: **Sec. 3.5. As used in this
4 chapter, "qualified zone business" means:**

- 5 (1) a zone business (as defined in IC 5-28-15-3) that is located
6 in; or
- 7 (2) a qualified HUBZone small business concern (as defined in
8 15 U.S.C. 632(p)(5)) whose principal office is located in a
9 HUBZone (as defined in 15 U.S.C. 632(p)(2)) that is located in;
10 a county in Indiana in which the county's average annualized
11 unemployment rate in each of the two (2) calendar years
12 immediately preceding the current calendar year exceeded the
13 statewide average annualized unemployment rate for each of the
14 same calendar years by at least one and one-half (1.5) percentage
15 points, as determined by the board of the Indiana economic
16 development corporation under IC 5-28-15-16.5.

17 SECTION 3. IC 4-33-14-5 IS AMENDED TO READ AS
18 FOLLOWS [EFFECTIVE JANUARY 1, 2008 (RETROACTIVE)]:
19 Sec. 5. (a) As used in this section, "goods and services" does not
20 include the following:

- 21 (1) Utilities and taxes.
- 22 (2) Financing costs, mortgages, loans, or other debt.
- 23 (3) Medical insurance.
- 24 (4) Fees and payments to a parent or an affiliated company of an
25 operating agent or the person holding an owner's license, other
26 than fees and payments for goods and services supplied by
27 nonaffiliated persons through an affiliated company for the use or
28 benefit of the operating agent or the person holding the owner's
29 license.
- 30 (5) Rents paid for real property or payments constituting the price
31 of an interest in real property as a result of a real estate
32 transaction.

33 (b) **Subject to subsection (f) and** notwithstanding any law or rule
34 to the contrary, the commission shall establish annual goals for an
35 operating agent or a person issued an owner's license:

- 36 (1) for the use of:
 - 37 (A) minority and women's business enterprises; and
 - 38 (B) **qualified zone businesses, with respect to contracts for
39 goods and services awarded after December 31, 2007; and**
- 40 (2) derived from a statistical analysis of utilization study of
41 licensee and operating agent contracts for goods and services that
42 are required to be updated every five (5) years.

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1 (c) An operating agent or a person holding an owner's license shall
 2 submit annually to the commission a report that includes the following
 3 information:

4 (1) The total dollar value of contracts awarded for goods or
 5 services and the percentage awarded to:

6 (A) minority and women's business enterprises; **and**

7 (B) **qualified zone businesses, with respect to contracts for
 8 goods and services awarded after December 31, 2007.**

9 (2) The following information relating to each minority business
 10 enterprise or women's business enterprise awarded a contract for
 11 goods or services:

12 (A) The name.

13 (B) The address.

14 (C) The total dollar amount of the contract.

15 (3) **The following information relating to each qualified zone
 16 business awarded a contract for goods or services after
 17 December 31, 2007:**

18 (A) **The name.**

19 (B) **The address.**

20 (C) **The total dollar amount of the contract.**

21 A record containing information described in this subsection is not
 22 exempt from the disclosure requirements of IC 5-14-3-3 under
 23 IC 5-14-3-4.

24 (d) An operating agent or a person holding an owner's license shall
 25 make a good faith effort to meet the requirements of this section and
 26 shall annually demonstrate to the commission that an effort was made
 27 to meet the requirements.

28 (e) An operating agent or a person holding an owner's license may
 29 fulfill not more than seventy percent (70%) of an obligation under this
 30 chapter by requiring a vendor to set aside a part of a contract for
 31 minority **business enterprises, or** women's business enterprises, **or**
 32 **qualified zone businesses.** Upon request, the licensee or operating
 33 agent shall provide the commission with proof of the amount of the set
 34 aside.

35 (f) **The commission shall establish the goals described in
 36 subsection (b)(1)(B) not later than May 1, 2008. The goals
 37 established by the commission under subsection (b)(1)(B):**

38 (1) **apply to contracts for goods and services awarded after
 39 December 31, 2007; and**

40 (2) **do not impair the rights or obligations of:**

41 (A) **a person holding an owner's license;**

42 (B) **an operating agent;**

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**(C) a contractor or subcontractor; or
(D) any other party;**

under a contract in existence on January 1, 2008.

SECTION 4. IC 4-33-14-6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2008 (RETROACTIVE)]:
Sec. 6. If the commission determines that the provisions of this chapter relating to expenditures and assignments to minority **business enterprises, and** women's business enterprises, **and qualified zone businesses** have not been met, the commission may suspend, limit, or revoke the owner's license or operating agent's gaming operations, or may fine or impose appropriate conditions on the licensee or operating agent to ensure that the goals for expenditures and assignments to minority **business enterprises, and** women's business enterprises, **and qualified zone businesses** are met. However, if a determination is made that a person holding an owner's license or an operating agent has failed to demonstrate compliance with this chapter, the person has ninety (90) days from the date of the determination of noncompliance to comply.

SECTION 5. IC 4-33-14-7 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2008 (RETROACTIVE)]:
Sec. 7. **(a)** The commission shall use the certifications made under IC 4-13-16.5 for minority and women's business enterprises that do business with riverboat operations on contracts for goods and services or contracts for business.

(b) In making any determinations under this chapter with respect to qualified zone businesses that do business with riverboat operations on contracts for goods and services or contracts for business, the commission shall use the list of qualified zone businesses prepared and maintained by the board of the Indiana economic development corporation under IC 5-28-15-16.5.

SECTION 6. IC 4-33-14-8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2008 (RETROACTIVE)]:
Sec. 8. The commission shall supply persons holding owner's licenses and the operating agent with:

- (1) a list of the ~~certified~~ minority and women's business enterprises certified under IC 4-13-16.5, as determined by the commission under section 7(a) of this chapter; and**
- (2) a copy of the list of qualified zone businesses prepared and maintained by the board of the Indiana economic development corporation under IC 5-28-15-16.5.**

SECTION 7. IC 4-35-11-2, AS ADDED BY P.L.233-2007, SECTION 21, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE

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1 JANUARY 1, 2008 (RETROACTIVE)]: Sec. 2. (a) The general
2 assembly declares that it is essential for minority and women's business
3 enterprises to have the opportunity for full participation in the racetrack
4 industry if minority and women's business enterprises are to obtain
5 social and economic parity and if the economies of the cities, towns,
6 and counties in which slot machines are operated at racetracks are to
7 be stimulated as contemplated by this article.

8 (b) **The general assembly additionally declares that it is essential**
9 **for qualified zone businesses to have the opportunity for full**
10 **participation in the racetrack industry if:**

11 (1) **these businesses that have committed to employing**
12 **residents of economically distressed areas in Indiana are to**
13 **have a fair opportunity to compete for contracts to provide**
14 **goods and services to permit holders; and**

15 (2) **the economies of the cities, towns, and counties in which**
16 **slot machines are operated at racetracks are to be stimulated**
17 **as contemplated by this article.**

18 SECTION 8. IC 4-35-11-4.5 IS ADDED TO THE INDIANA CODE
19 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE
20 JANUARY 1, 2008 (RETROACTIVE)]: **Sec. 4.5. As used in this**
21 **chapter, "qualified zone business" has the meaning set forth in**
22 **IC 4-33-14-3.5.**

23 SECTION 9. IC 4-35-11-6, AS ADDED BY P.L.233-2007,
24 SECTION 21, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
25 JANUARY 1, 2008 (RETROACTIVE)]: Sec. 6. (a) As used in this
26 section, "goods and services" does not include the following:

- 27 (1) Utilities and taxes.
- 28 (2) Financing costs, mortgages, loans, or other debt.
- 29 (3) Medical insurance.
- 30 (4) Fees and payments to a parent or an affiliated company of a
- 31 permit holder or other fees and payments for goods and services
- 32 supplied by nonaffiliated persons through an affiliated company
- 33 for the use or benefit of the permit holder.
- 34 (5) Rents paid for real property or payments constituting the price
- 35 of an interest in real property as a result of a real estate
- 36 transaction.

37 (b) **Subject to subsection (f) and** notwithstanding any law or rule
38 to the contrary, the commission shall establish goals for permit holders
39 concerning:

- 40 (1) contracts for goods and services with minority business
- 41 enterprises and women's business enterprises; **and**
- 42 (2) **contracts for goods and services with qualified zone**

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1 **businesses, with respect to contracts awarded after December**
2 **31, 2007.**

3 The goals under this subsection must be equal to goals set by the
4 commission under IC 4-33-14-5 for contracts awarded for goods or
5 services.

6 (c) A permit holder shall submit quarterly reports to the commission
7 that outline the total dollar value of contracts awarded for goods and
8 services and the percentage of contracts awarded to:

- 9 (1) minority and women's business enterprises; **and**
- 10 (2) **qualified zone businesses, for contracts awarded after**
11 **December 31, 2007.**

12 (d) A permit holder shall make a good faith effort to meet the
13 requirements of this section and shall quarterly, unless otherwise
14 directed by the commission, demonstrate to the commission at a public
15 meeting that an effort was made to meet the requirements.

16 (e) A permit holder may fulfill not more than seventy percent (70%)
17 of an obligation under this chapter by requiring a vendor to set aside a
18 part of a contract for minority **business enterprises, or** women's
19 business enterprises, **or qualified zone businesses.** Upon request, the
20 permit holder shall provide the commission with proof of the amount
21 of the set aside.

22 (f) **The commission shall establish the goals described in**
23 **subsection (b)(2) not later than May 1, 2008. The goals established**
24 **by the commission under subsection (b)(2):**

- 25 (1) **apply to contracts for goods and services awarded after**
26 **December 31, 2007; and**
- 27 (2) **do not impair the rights or obligations of:**
 - 28 (A) **a permit holder;**
 - 29 (C) **a contractor or subcontractor; or**
 - 30 (D) **any other party;**

31 **under a contract in existence on January 1, 2008.**

32 SECTION 10. IC 4-35-11-7, AS ADDED BY P.L.233-2007,
33 SECTION 21, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
34 JANUARY 1, 2008 (RETROACTIVE)]: Sec. 7. If the commission
35 determines that the provisions of this chapter relating to expenditures
36 and assignments to minority **business enterprises, and** women's
37 business enterprises, **and qualified zone businesses** have not been
38 met, the commission may suspend, limit, or revoke the person's license
39 or permit, or may fine or impose appropriate conditions on the license
40 or permit to ensure that the goals for expenditures and assignments to
41 minority **business enterprises, and** women's business enterprises, **and**
42 **qualified zone businesses** are met. However, if a determination is

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1 made that a permit holder has failed to demonstrate compliance with
 2 this chapter, the person has ninety (90) days from the date of the
 3 determination of noncompliance to comply.

4 SECTION 11. IC 4-35-11-8, AS ADDED BY P.L.233-2007,
 5 SECTION 21, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 6 JANUARY 1, 2008 (RETROACTIVE)]: Sec. 8. (a) The commission
 7 shall establish and administer a unified certification procedure for
 8 minority and women's business enterprises that do business with permit
 9 holders on contracts for goods and services or contracts for business.

10 **(b) In making any determinations under this chapter with**
 11 **respect to qualified zone businesses that do business with permit**
 12 **holders on contracts for goods and services or contracts for**
 13 **business, the commission shall use the list of qualified zone**
 14 **businesses prepared and maintained by the board of the Indiana**
 15 **economic development corporation under IC 5-28-15-16.5.**

16 SECTION 12. IC 4-35-11-9, AS ADDED BY P.L.233-2007,
 17 SECTION 21, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 18 JANUARY 1, 2008 (RETROACTIVE)]: Sec. 9. (a) The commission
 19 shall supply permit holders with a list of minority and women's
 20 business enterprises the commission has certified under section 8 of
 21 this chapter. The commission shall review the list at least annually to
 22 determine the minority and women's business enterprises that should
 23 continue to be certified. The commission shall establish procedures for
 24 challenging the designation of a certified minority and women's
 25 business enterprise. The procedure must include proper notice and a
 26 hearing for all concerned parties.

27 **(b) The commission shall also supply permit holders with a copy**
 28 **of the list of qualified zone businesses prepared and maintained by**
 29 **the board of the Indiana economic development corporation under**
 30 **IC 5-28-15-16.5.**

31 SECTION 13. IC 5-28-15-8, AS ADDED BY P.L.4-2005,
 32 SECTION 34, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 33 JANUARY 1, 2008 (RETROACTIVE)]: Sec. 8. (a) This section
 34 applies to records and other information, including records and
 35 information that are otherwise confidential, maintained by the
 36 following:

- 37 (1) The board.
- 38 (2) A U.E.A.
- 39 (3) The department of state revenue.
- 40 (4) The corporation.
- 41 (5) The department of local government finance.
- 42 (6) A county auditor.

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(7) A township assessor.

(8) The Indiana gaming commission under:

(A) IC 4-33-14; or

(B) IC 4-35-11.

(b) A person or an entity listed in subsection (a) may request a second person or entity described in subsection (a) to provide any records or other information maintained by the second person or entity that concern an individual or a business that is receiving a tax deduction, exemption, or credit related to an enterprise zone. Notwithstanding any other law, the person or entity to whom the request is made under this section must comply with the request. A person or entity receiving records or information under this section that are confidential must also keep the records or information confidential.

(c) A person or an entity that receives confidential records or information under this section and knowingly or intentionally discloses the records or information to an unauthorized person commits a Class A misdemeanor.

SECTION 14. IC 5-28-15-16.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2008 (RETROACTIVE)]: **Sec. 16.5. (a) As used in this section, "commission" refers to the Indiana gaming commission established by IC 4-33-3-1.**

(b) As used in this section, "list" refers to the list established by the board under subsection (c).

(c) Not later than May 1, 2008, the board shall establish a list of all qualified zone businesses (as defined in IC 4-33-14-3.5).

(d) Not less frequently than annually, and in accordance with a schedule agreed to by the board and the commission, the board shall:

- (1) review the list;**
- (2) update the list, as necessary; and**
- (3) transmit the list, as updated, to the commission for use in administering IC 4-33-14 and IC 4-35-11.**

SECTION 15. An emergency is declared for this act.

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