

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1991

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HOUSE BILL 191

Short Title: Comprehensive Goals.

(Public)

Sponsors: Representatives Hardaway; Buchanan and Cunningham.

Referred to: State Government.

February 28, 1991

1 A BILL TO BE ENTITLED
2 AN ACT TO ESTABLISH A COMPREHENSIVE GOALS PROGRAM FOR
3 INCLUSION OF BUSINESSES OWNED BY MINORITIES, WOMEN, AND THE
4 DISABLED IN PUBLIC CONTRACTS.

5 The General Assembly of North Carolina enacts:

6 Section 1. Chapter 143 of the General Statutes is amended by adding a new
7 Article to read:

8 **"ARTICLE 3E.**

9 **"FULL INCLUSION IN PUBLIC CONTRACTS.**

10 **"§ 143-64.40. Purpose.**

11 The purpose of this Article is to provide maximum contracting opportunities to
12 Minority Business Enterprises (MBEs), Women's Business Enterprises (WBEs), and
13 Disabled Business Enterprises (DBEs). To further this purpose:

14 (1) Each procurement agency in State government, other than the
15 Department of Transportation with regard to highway construction,
16 shall structure its procedures for procuring supplies, services,
17 maintenance, and construction to attempt to achieve the following
18 minimum verifiable percentage goals:

19 a. Ten percent (10%) of the total dollar value of these
20 procurements that are made directly or indirectly from certified
21 MBEs;

22 b. Five percent (5%) of the total dollar value of these
23 procurements that are made directly or indirectly from certified
24 WBEs;

1 c. Two percent (2%) of the total dollar value of these
2 procurements that are made directly or indirectly from certified
3 DBEs;

4 For purposes of these goals, a contract shall be counted as being with
5 an MBE without regard to the gender of the owner, but only if the
6 business does not qualify as a DBE; shall be counted as being with a
7 WBE only if the business does not also qualify as a DBE or MBE; and
8 shall be counted as a DBE without regard to the race or gender of the
9 owner.

10 (2) Each procurement agency of local government shall adopt, after notice
11 and public hearing, a minimum appropriate verifiable percentage goal
12 for inclusion of certified MBEs, WBEs, and DBEs in contracts for
13 supplies, services, maintenance, or construction, unless those contracts
14 fall below the dollar thresholds set by G.S. 143-129 for the competitive
15 bidding requirement.

16 (3) Nothing in this Article shall be construed to require procurement
17 agencies or contractors to award contracts or subcontracts to or to
18 make purchases of materials or equipment from an MBE, WBE, or
19 DBE who does not submit the lowest responsible bid, taking into
20 consideration quality, performance, and the time specified in the
21 proposals for the performance of the contract.

22 **"§ 143-64.41. Definitions.**

23 As used in this Article, unless the context indicates otherwise:

24 (1) 'Appropriate verifiable percentage goal' means a verifiable percentage
25 goal that the governing body of the procurement agency determines,
26 after a public hearing, will foster maximum contracting opportunities
27 for certified MBEs, WBEs, and DBEs, in light of local circumstances;
28 provided that no goals are appropriate that are lower than the following
29 percentages of the total value of the procurements:

30 a. Five percent (5%) from certified MBEs;

31 b. Two and one-half percent (2.5%) from certified WBEs;

32 c. One percent (1%) from certified DBEs.

33 For purposes of these goals, a contract shall be counted as being with
34 an MBE without regard to the gender of the owner, but only if the
35 business does not qualify as a DBE; shall be counted as being with a
36 WBE only if the business does not also qualify as a DBE or MBE; and
37 shall be counted as a DBE without regard to the race or gender of the
38 owner.

39 (2) 'Certification' means a determination made in accordance with the
40 provisions of G.S. 143-64.47 that a legal entity is an MBE, a WBE, or
41 a DBE, for purposes of this Article.

42 (3) 'Control' means the exercise of the power to manage and operate a
43 business enterprise.

- 1 (4) 'Disabled person' means a handicapped person as defined in G.S.
2 168A-3.
- 3 (5) 'Disabled Business Enterprise' (DBE) means any legal entity, other
4 than a joint venture, organized to engage in commercial transactions,
5 that is at least fifty-one percent (51%) owned and controlled by one or
6 more disabled persons, or a nonprofit entity organized to promote the
7 interests of disabled persons, or a sheltered workshop whose main
8 function is to provide services to disabled persons.
- 9 (6) 'Goal' means a voluntary percentage or quantitative objective.
- 10 (7) 'Minority Business Enterprise' (MBE) means any legal entity, other
11 than a joint venture, organized to engage in commercial transactions,
12 that is at least fifty-one percent (51%) owned and controlled by one or
13 more minority persons.
- 14 (8) 'Minority person' means a member of one of the following groups:
15 African-Americans, Hispanics, American Indians, Asians.
- 16 (9) 'Ownership' means:
- 17 a. For a sole proprietorship, that the sole proprietor is a disabled
18 person, a minority person, or a woman. If the ownership
19 interest held by a disabled person, a minority person, or a
20 woman is subject to formal or informal restrictions such as
21 options, security interests, or agreements held by a nonminority
22 person or business entity, the options, security interests, or
23 agreements held by the nonminority person or business entity
24 may not significantly impair the minority person's ownership
25 interest.
- 26 b. For a partnership, that at least fifty-one percent (51%) of the
27 partnership's assets or interests are owned by a minority person
28 or minority persons. If the ownership interest held by a
29 minority person is subject to formal or informal restrictions
30 such as options, security interests, or agreements, held by a
31 nonminority person or business entity, the options, security
32 interests, or agreements held by the nonminority person or
33 business entity may not significantly impair the minority
34 person's ownership interest.
- 35 c. For a corporation, that legal and equitable ownership of at least
36 fifty-one percent (51%) of all classes of stock, bonds, or other
37 securities issued by the corporation is owned by a minority
38 person or minority persons. If an ownership interest held by a
39 minority person is subject to formal or informal restrictions
40 such as options, security interests, or agreements held by a
41 nonminority person or business entity, the options, security
42 interests, or agreements held by the nonminority person or
43 business entity may not significantly impair the minority
44 person's ownership interest.

- 1 (10) 'Procurement agency' means any State agency or local government that
2 is authorized by law or regulations to procure or contract. The term
3 includes, but is not limited to, cities, counties, and boards of education.
- 4 (11) 'Verifiable percentage goal' means that the procurement agency has
5 adopted written guidelines specifying the actions that will be taken:
6 a. By the procurement agency itself in the case of the separate
7 prime contract system; and
8 b. By the prime contractor in the case of the single-prime contract
9 system to ensure a good faith effort in the recruitment and
10 selection of certified MBEs, WBEs, and DBEs for inclusion in
11 contracts awarded for procurement of supplies, services,
12 maintenance, and construction. Guidelines adopted shall
13 conform to rules issued by the Department of Administration
14 under G.S. 143-64.46.
- 15 (12) 'Women's Business Enterprise' (WBE) means any legal entity, other
16 than a joint venture, organized to engage in commercial transactions,
17 that is at least fifty-one percent (51%) owned and controlled by one or
18 more women.

19 **"§ 143-64.42. Scope of Article.**

20 This Article applies to every procurement of supplies, services, maintenance, and
21 construction by a procurement agency.

22 **"§ 143-64.43. Procurement agency responsibility.**

23 (a) Each procurement agency shall make its procurements in accordance with
24 this Article. Each local board of education shall adopt procedures consistent with this
25 Article before obtaining State funds for public school construction projects. When
26 delegating procurement authority to procurement agencies and other departments, the
27 Department of Administration shall condition the delegation on compliance with this
28 Article.

29 (b) Procurement agencies shall, to the extent practicable, develop uniform
30 affidavits and reporting forms required by this Article.

31 **"§ 143-64.44. MBE-WBE-DBE Liaison Officer.**

32 The head of each procurement agency shall designate an employee to be an MBE-
33 WBE-DBE Liaison Officer in the administration of that agency's minority business
34 enterprise program. The MBE-WBE-DBE Liaison Officer shall be a high-level
35 employee reporting directly to a secretary, deputy secretary, or head of a department or
36 procurement agency. The MBE-WBE-DBE Liaison Officer shall be responsible for
37 coordinating agency outreach efforts to the minority business community, reviewing
38 agency contracting procedures to assure compliance with this Article, assisting in the
39 resolution of contracting issues, and for the submission of all required MBE-WBE-DBE
40 program reports or information.

41 **"§ 143-64.45. Central directory.**

42 The Department of Administration shall publish a central directory of MBEs, WBEs,
43 and DBEs certified in accordance with G.S. 143-64.47. The central directory shall
44 specify the type of supplies, services, maintenance, or construction primarily provided

1 by the MBE, WBE, or DBE, and the date of certification. The central directory shall
2 include:

- 3 (1) The address;
- 4 (2) Phone number; and
- 5 (3) Contact person

6 of all certified MBEs, WBEs, and DBEs; and the name of every business entity that has
7 been denied certification or decertified within the last two years. The directory shall be
8 updated at least quarterly, and if feasible, monthly.

9 **"§ 143-64.46. Outreach and notification.**

10 The Department of Administration shall establish procedures for outreach,
11 notification, and solicitation of MBEs, WBEs, and DBEs.

12 **"§ 143-64.47. Certification.**

13 (a) The Department of Administration shall develop a procedure for the
14 certification, recertification, and decertification of businesses as MBEs, WBEs, or
15 DBEs. Any procurement agency may certify, decertify, or recertify a business as MBE,
16 WBE, DBE, or more than one of the three if the procurement agency follows the
17 procedures established by the Department of Administration.

18 (b) If a business petitions the Department of Administration for action under the
19 certification process developed under subsection (a), the Department of Administration
20 shall take the appropriate action according to the certification process not more than 60
21 days after the receipt of the application. If a business petitions a procurement agency
22 other than the Department of Administration for action under the certification process,
23 that procurement agency may take the appropriate action itself, or it may forward the
24 petition to the Department of Administration for action. If the procurement agency
25 elects to take the appropriate action itself, it shall do so not more than 60 days after
26 receipt of the application; if the procurement agency elects to forward the application to
27 the Department of Administration, it shall do so not more than 30 days after receipt of
28 the application. If the Department of Administration receives a petition forwarded from
29 a procurement agency, the Department shall take the appropriate action according to the
30 certification process not more than 60 days after the Department's receipt of the
31 application.

32 (c) A business certified as an MBE, a WBE, or a DBE in accordance with this
33 section shall be recognized as such by all other procurement agencies for the purposes
34 of this Article.

35 (d) The Department of Administration or another procurement agency may
36 request the following information to assist in any certification, recertification, and
37 decertification determination:

- 38 (1) Copies of articles of incorporation, bylaws, minutes, shareholder
39 agreements, stock certificates, stock transfer ledgers, any additional
40 profit-sharing agreements or buy out rights, or in the case of a
41 partnership, the partnership agreement;
- 42 (2) Current financial statements, business licenses, the prior two years'
43 federal tax returns, cancelled checks, resumes of principal parties, and

1 any relevant personal and third-party agreements, such as rental and
2 management agreements;

3 (3) Any other information that the certifying entity determines is
4 necessary.

5 Failure to furnish the requested information within 30 days may result in a denial of
6 certification or recertification, or a determination to decertify.

7 **"§ 143-64.48. Adoption of rules.**

8 The Department of Administration shall submit for review by the Administrative
9 Rules Review Commission any rules deemed appropriate for the enforcement of this
10 Article.

11 **"§ 143-64.49. False information supplied by business.**

12 (a) When a procurement agency determines that a business has knowingly
13 supplied false information in order to be classified as an MBE, WBE, or DBE, the
14 procurement agency shall contact the Department of Administration to determine, after
15 consultation with legal counsel, the appropriate action to be taken.

16 (b) Prior to any final determination under subsection (a) of this section, the
17 business charged with supplying false information may commence an action under
18 Chapter 150B of the General Statutes.

19 (c) Any person who, with intent to defraud another, represents himself as an
20 MBE, WBE, or DBE for the purpose of obtaining money, goods, property, services,
21 chooses in action, or any item of value from a person within this State is guilty of a Class
22 H felony.

23 **"§ 143-64.50. Reporting requirements.**

24 (a) Each procurement agency, other than the Department of Transportation with
25 regard to highway construction, and each private nonprofit corporation, other than an
26 institution of higher education or a hospital, that receives an appropriation of five
27 hundred thousand dollars (\$500,000) or more during a fiscal year from the General
28 Assembly, shall make a report annually within 90 days following the close of the fiscal
29 year to the Department of Administration. The report shall include:

30 (1) The total number and value of its procurements from certified MBEs,
31 WBEs, and DBEs as prime contractors and separately as
32 subcontractors.

33 (2) The percentage which purchases and contracts from MBEs, WBEs,
34 and DBEs represent of its total number and value of its procurements
35 from business enterprises for the fiscal year just ended. The
36 procurement agency or corporation shall report percentages for each of
37 the following groups:

38 a. Nondisabled MBEs, regardless of the gender of the owner,

39 b. Nonminority, nondisabled WBEs,

40 c. All DBEs, regardless of the minority status or gender,

41 d. Male disabled MBEs,

42 e. Female disabled MBEs,

43 f. Male nondisabled MBEs,

44 g. Female nondisabled MBEs,

1 h. Minority disabled WBEs,

2 i. Nonminority disabled WBEs,

3 j. Minority nondisabled WBEs,

4 k. Male minority DBEs,

5 l. Female minority DBEs,

6 m. Female nonminority DBEs;

7 (3) An evaluation by the procurement agency or corporation of the success
8 of its MBE-WBE-DBE program;

9 provided that procurement agencies of local government shall not be required to report
10 on contracts that fall below the dollar thresholds set by G.S. 143-129 for the competitive
11 bidding requirement.

12 The Department of Administration shall prepare an annual report summarizing
13 MBE, WBE, and DBE participation throughout the State for submission by the end of
14 each calendar year to the General Assembly and to each department and procurement
15 agency.

16 (b) The Department of Transportation shall prepare an annual report for
17 submission to the General Assembly by the end of each calendar year. The report shall
18 contain the information on highway construction contracts that is equivalent to the
19 information outlined in subsection (a) of this section."

20 Sec. 2. G.S. 143-48 reads as rewritten:

21 "**§ 143-48. State policy; cooperation in promoting the use of small, minority,**
22 **physically handicapped and women contractors; purpose; required annual**
23 **reports.**

24 (a) It is the policy of this State to encourage and promote the use of small,
25 minority, physically handicapped and women contractors in State purchasing of goods
26 and services. All State agencies, institutions and political subdivisions shall cooperate
27 with the Department of Administration and all other State agencies, institutions and
28 political subdivisions in efforts to encourage the use of small, minority, physically
29 handicapped and women contractors in achieving the purpose of this Article, which is to
30 provide for the effective and economical acquisition, management and disposition of
31 goods and services by and through the Department of Administration. Accordingly, all
32 contracts entered into for the purchase of goods and services pursuant to this Article
33 shall be subject to the provision of Article 3E of this Chapter.

34 ~~(b) Every governmental entity required by statute to use the services of the~~
35 ~~Department of Administration in the purchase of goods and services and every private,~~
36 ~~nonprofit corporation other than an institution of higher education or a hospital that~~
37 ~~receives an appropriation of five hundred thousand dollars (\$500,000) or more during a~~
38 ~~fiscal year from the General Assembly shall report to the Department of Administration~~
39 ~~annually on what percentage of its contract purchases of goods and services, through~~
40 ~~term contracts and open market contracts, were from minority-owned businesses, what~~
41 ~~percentage from female-owned businesses, and what percentage from disabled-owned~~
42 ~~businesses. The same governmental entities shall include in their reports what~~
43 ~~percentages of the contract bids for such purchases were from such businesses. The~~
44 ~~Department of Administration shall provide instructions to the reporting entities~~

1 ~~concerning the manner of reporting and the definitions of the businesses referred to in~~
2 ~~this act, provided that, for the purposes of this act:~~

3 (1) ~~A business in one of the categories above means one:~~

4 a. ~~In which at least fifty-one percent (51%) of the business, or of~~
5 ~~the stock in the case of a corporation, is owned by one or more~~
6 ~~persons in the category; and~~

7 b. ~~Of which the management and daily business operations are~~
8 ~~controlled by one or more persons in the category who own it;~~
9 ~~and~~

10 (2) ~~A female or a disabled person is not a minority, unless the female or~~
11 ~~disabled person is also a member of one of the minority groups~~
12 ~~described in G.S. 143-128(c)(2)a through d; and~~

13 (3) ~~A disabled person means a 'handicapped person' as defined in G.S.~~
14 ~~168A-3(4).~~

15 ~~The Department of Administration shall collect and compile the data described in this~~
16 ~~section and report it annually to the General Assembly."~~

17 Sec. 3. G.S. 143-135.5 reads as rewritten:

18 **"§ 143-135.5. State policy; cooperation in promoting the use of small, minority,**
19 **physically handicapped and women contractors; purpose.**

20 It is the policy of this State to encourage and promote the use of small, minority,
21 physically handicapped and women contractors in State construction projects. All State
22 agencies, institutions and political subdivisions shall cooperate with the Department of
23 Administration and all other State agencies, institutions and political subdivisions in
24 efforts to encourage and promote the use of small, minority, physically handicapped
25 and women contractors in achieving the purpose of this Article, which is the effective
26 and economical construction of public buildings. Accordingly, all construction contracts
27 entered into pursuant to this Article shall be subject to the provisions of Article 3E of
28 this Chapter."

29 Sec. 4. G.S. 143-128(c) and (d) are repealed.

30 Sec. 5. G.S. 143-128 is amended by adding a new subsection to read:

31 "(e) Any State agency or institution or city, county or other public body shall be
32 governed by the goals and procedures of Article 3E of this Chapter for all contracts
33 awarded pursuant to this section."

34 Sec. 6. This act becomes effective January 1, 1992.