

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

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HOUSE DRH10055-RWz-3* (12/2)

Short Title: DOT Minority/Women Businesses Program.

(Public)

Sponsors: Representatives Coates and Saunders (Primary Sponsors).

Referred to:

A BILL TO BE ENTITLED

AN ACT TO REAFFIRM AND CLARIFY STATE POLICY CONCERNING PARTICIPATION BY DISADVANTAGED MINORITY-OWNED AND WOMEN-OWNED BUSINESSES IN HIGHWAY CONSTRUCTION, AS RECOMMENDED BY THE JOINT LEGISLATIVE TRANSPORTATION OVERSIGHT COMMITTEE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 136-28.4 reads as rewritten:

"§ 136-28.4. State policy concerning participation by ~~disadvantaged-disadvantaged~~ minority-owned and women-owned businesses in highway contracts.

(a) It is the policy of this ~~State~~ State, based on a compelling governmental interest, to encourage and promote participation by ~~disadvantaged-disadvantaged~~ minority-owned and women-owned businesses in contracts let by the Department pursuant to this Chapter for the planning, design, preconstruction, construction, alteration, or maintenance of State highways, roads, streets, or bridges and in the procurement of materials for these projects. All State agencies, institutions, and political subdivisions shall cooperate with the Department of Transportation and ~~all other State agencies, institutions, and political subdivisions~~ among themselves in all efforts to conduct outreach and to encourage and promote the use of ~~disadvantaged-disadvantaged~~ minority-owned and women-owned businesses in these contracts.

(b) ~~A ten percent (10%) goal is established for participation by minority businesses and a five percent (5%) goal for participation by women businesses is established in contracts let by the Department of Transportation for the design, construction, alteration, or maintenance of State highways, roads, streets, or bridges and for the procurement of materials for these projects. The Department of Transportation shall endeavor to award to minority businesses at least ten percent (10%), by value, of the contracts it lets for these purposes, and shall endeavor to award to women~~

1 businesses at least five percent (5%), by value, of the contracts it lets for these purposes.
2 The Department shall adopt written procedures specifying the steps it will take to
3 achieve these goals. The Department shall give equal opportunity for contracts it lets
4 without regard to race, religion, color, creed, national origin, sex, age, or handicapping
5 condition, as defined in G.S. 168A-3, to all contractors and businesses otherwise
6 qualified. At least every five years, the Department shall conduct a study on the
7 availability and utilization of disadvantaged minority-owned and women-owned
8 business enterprises and examine relevant evidence of the effects of race-based or
9 gender-based discrimination upon the utilization of such business enterprises in
10 contracts for planning, design, preconstruction, construction, alteration, or maintenance
11 of State highways, roads, streets, or bridges and in the procurement of materials for
12 these projects. Should the study show a strong basis in evidence of ongoing effects of
13 past or present discrimination that prevents or limits disadvantaged minority-owned and
14 women-owned businesses from participating in the above contracts at a level which
15 would have existed absent such discrimination, such evidence shall constitute a basis for
16 the State's continued compelling governmental interest in remedying such race and
17 gender discrimination in highway contracting. Under such circumstances, the
18 Department shall, in conformity with State and federal law, adopt by rule and contract
19 provisions a specific program to remedy such discrimination. This specific program
20 shall, to the extent reasonably practicable, address each barrier identified in such study
21 that adversely affects contract participation by disadvantaged minority-owned and
22 women-owned businesses.

23 (b1) Based upon the findings of the Department's Second Generation Disparity
24 Study completed in 2004, hereinafter referred to as 'Study', the program design shall, to
25 the extent reasonably practicable, incorporate narrowly tailored remedies identified in
26 the Study, and the Department shall implement a comprehensive antidiscrimination
27 enforcement policy. As appropriate, the program design shall be modified by rules
28 adopted by the Department that are consistent with findings made in the Study and in
29 subsequent studies conducted in accordance with subsection (b) of this section. As part
30 of this program, the Department shall review its budget and establish annual aspirational
31 goals, not mandatory goals, in percentages, for the overall participation in contracts by
32 disadvantaged minority-owned and women-owned businesses. These annual
33 aspirational goals for disadvantaged minority-owned and women-owned businesses
34 shall be established consistent with methodology specified in the Study, and they shall
35 not be applied rigidly on specific contracts or projects. Instead, the Department shall
36 establish contract-specific goals or project-specific goals for the participation of such
37 firms in a manner consistent with availability of disadvantaged minority-owned and
38 women-owned businesses, as appropriately defined by its most recent Study, for each
39 disadvantaged minority-owned and women-owned business category that has
40 demonstrated significant disparity in contract utilization. Nothing in this section shall
41 authorize the use of quotas. Any program implemented as a result of the Study
42 conducted in accordance with this section shall be narrowly tailored to eliminate the
43 effects of historical and continuing discrimination and its impacts on such
44 disadvantaged minority-owned and women-owned businesses without any undue

1 burden on other contractors. The Department shall give equal opportunity for contracts
2 it lets without regard to race, religion, color, creed, national origin, sex, age, or
3 handicapping condition, as defined in G.S. 168A-3, to all contractors and businesses
4 otherwise qualified.

5 (c) The following definitions apply in this section:

6 (1) "Disadvantaged business" has the same meaning as "disadvantaged
7 business enterprise" in 49 C.F.R. § ~~23.62~~.26.5 or any subsequently
8 promulgated replacement regulation.

9 (2) "~~Minority~~" ~~has the same meaning as in 49 C.F.R. § 23.5.~~ includes only
10 those racial or ethnicity classifications identified by a study conducted
11 in accordance with this section that have been subjected to
12 discrimination in the relevant marketplace, and that have been
13 adversely affected in their ability to obtain contracts with the
14 Department.

15 (d) The Department shall report semiannually to the Joint Legislative
16 Transportation Oversight Committee on the utilization of disadvantaged
17 minority-owned businesses and women-owned businesses and any program adopted to
18 promote contracting opportunities for those businesses. Following each study of
19 availability and utilization, the Department shall report to the Joint Legislative
20 Transportation Oversight Committee on the results of the study for the purpose of
21 determining whether the provisions of this section should continue in force and effect.

22 (e) This section expires August 31, 2009.

23 **SECTION 2.** This act is effective when it becomes law.