

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2005

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SENATE BILL 1127  
State and Local Government Committee Substitute Adopted 6/1/05

Short Title: DOT Minority/Women Bus. Program/SBE Projects. (Public)

Sponsors:

Referred to:

March 24, 2005

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 AND PROMOTE PARTICIPATION BY SMALL BUSINESS ENTERPRISES IN DEPARTMENT OF TRANSPORTATION PROJECTS.

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 businesses at least five percent (5%), by value, of the contracts it lets for these purposes. The Department shall adopt written procedures specifying the steps it will take to~~

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

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

1 handicapping condition, as defined in G.S. 168A-3, to all contractors and businesses  
2 otherwise qualified.

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

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

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

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

20 (e) This section expires August 31, 2009."

21 **SECTION 2.** Chapter 120 of the General Statutes is amended by adding a  
22 new Article to read:

23 "Article 30.

24 "Joint Legislative Commission on the Department of Transportation  
25 Disadvantaged Minority-Owned and Women-Owned Businesses Program.

26 **"§ 120-270. Commission established.**

27 There is established the Joint Legislative Commission on the Department of  
28 Transportation Disadvantaged Minority-Owned and Women-Owned Businesses  
29 Program.

30 **"§ 120-271. Membership; terms.**

31 (a) Membership. – The Commission shall be composed of 12 members as  
32 follows:

33 (1) Five members of the House of Representatives appointed by the  
34 Speaker of the House.

35 (2) Five members of the Senate appointed by the President Pro Tempore  
36 of the Senate.

37 (3) The Senate and House cochairs of the Joint Legislative Transportation  
38 Oversight Committee, or their designees, shall serve as ex officio  
39 members.

40 (b) Terms. – Members of the Commission shall serve two-year terms, beginning  
41 July 1 of each odd-numbered year. Members shall serve at the pleasure of the  
42 appointing authority. Members may complete a term of service on the Commission even  
43 if they do not seek reelection or are not reelected to the General Assembly, but

1 resignation or removal from service in the General Assembly constitutes resignation or  
2 removal from the Commission.

3 (c) Vacancies. – Vacancies on the Commission shall be filled by the appointing  
4 authority.

5 **"§ 120-271. Duties of the Commission.**

6 The Commission shall:

7 (1) Monitor the implementation, and assess and evaluate the effectiveness,  
8 of the Department of Transportation program under G.S. 136-28.4.

9 (2) Review the strategies the Department of Transportation plans to use to  
10 implement the requirements of G.S. 136-28.4.

11 (3) Develop recommendations for submittal to the Department of  
12 Transportation or the General Assembly to improve the program under  
13 G.S. 136-28.4.

14 **"§ 120-272. Department of Transportation reporting.**

15 The Department of Transportation shall report quarterly to the Commission on the  
16 status of the program under G.S. 136-28.4 and efforts made to achieve the goals of the  
17 program.

18 **"§ 120-273. Organization of Commission.**

19 (a) The President Pro Tempore of the Senate and the Speaker of the House of  
20 Representatives shall each designate a cochair of the Joint Legislative Commission on  
21 the Department of Transportation Disadvantaged Minority-Owned and Women-Owned  
22 Businesses Program. The Commission shall meet upon the joint call of the cochairs.

23 (b) A quorum of the Commission is seven members. No action may be taken  
24 except by a majority vote at a meeting at which a quorum is present. While in the  
25 discharge of its official duties, the Commission has the powers of a joint commission  
26 under G.S. 120-19 and G.S. 120-19.1 through G.S. 120-19.4.

27 (c) Members of the Commission receive subsistence and travel expenses as  
28 provided in G.S. 120-3.1. The Commission may contract for consultants or hire  
29 employees in accordance with G.S. 120-32.02. The Legislative Services Commission,  
30 through the Legislative Services Officer, shall assign professional staff to assist the  
31 Commission in its work. Upon the direction of the Legislative Services Commission,  
32 the Supervisors of Clerks of the Senate and of the House of Representatives shall assign  
33 clerical staff to the Commission. The expenses for clerical employees shall be borne by  
34 the Commission."

35 **SECTION 3.** G.S. 136-28.10 reads as rewritten:

36 **"§ 136-28.10. Highway Fund and Highway Trust Fund Small Project Bidding.**

37 (a) Notwithstanding the provisions of G.S. 136-28.4(b), for Highway Fund or  
38 Highway Trust Fund projects of five hundred thousand dollars (\$500,000) or less, the  
39 Board of Transportation may, after soliciting at least three informal bids in writing from  
40 Small Business Enterprises, award contracts to the lowest responsible bidder. The  
41 Department of Transportation may identify projects likely to attract increased  
42 participation by Small Business Enterprises, and restrict the solicitation and award to  
43 those bidders. The Board of Transportation may delegate full authority to award

1 contracts, adopt necessary rules, and administer the provisions of this section to the  
2 Secretary of Transportation.

3 (b) The letting of contracts under this section is not subject to any of the  
4 provisions of G.S. 136-28.1 relating to the letting of contracts. The Department may  
5 waive the bonding requirements of Chapter 44A of the General Statutes and the  
6 licensing requirements of Chapter 87 for contracts awarded under this section.

7 (c) The Secretary of Transportation shall report quarterly to the Joint Legislative  
8 Transportation Oversight Committee on the implementation of this section.

9 (d) The Department of Transportation shall set a spending target of one hundred  
10 million dollars (\$100,000,000) per biennium for Small Business Enterprise projects."

11 **SECTION 4.** The provisions of this act are severable. In the event that any  
12 provision of this act shall be declared invalid, that invalidity shall not affect the  
13 remaining provisions of this act.

14 **SECTION 5.** This act is effective when it becomes law. Section 2 of this act  
15 expires June 30, 2015.