

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

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SENATE BILL 493

Short Title: Minority Businesses/DOT Contracts. (Public)

Sponsors: Senator Shaw.

Referred to: Commerce.

March 10, 2009

A BILL TO BE ENTITLED

AN ACT TO REINSTATE GOALS FOR PARTICIPATION BY MINORITY AND WOMEN
BUSINESSES IN CERTAIN CONTRACTS LET BY THE DEPARTMENT OF
TRANSPORTATION.

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 minority-owned and women-owned businesses in highway contracts.

(a) It is the policy of this State, based on a compelling governmental interest, to encourage and promote participation by 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 and among themselves in all efforts to conduct outreach and to encourage and promote the use of 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 achieve these goals. The Department shall give equal opportunity for contracts it lets without regard to race, religion, color, creed, national origin, sex, age, or handicapping condition, as defined in G.S. 168A-3, to all contractors and businesses otherwise qualified. At least every five years, the Department shall conduct a study on the availability and utilization of disadvantaged minority-owned and women-owned business enterprises and examine relevant evidence of the effects of race-based or gender-based discrimination upon the utilization of such business enterprises in contracts for planning, design, preconstruction, construction, alteration, or maintenance of State highways, roads, streets, or bridges and in the procurement of materials for these projects. Should the study show a strong basis in evidence of ongoing effects of past or present discrimination that prevents or limits disadvantaged minority-owned and women-owned businesses from participating in the above contracts at a level which would have existed absent such discrimination, such evidence shall constitute a basis for the State's



1 continued compelling governmental interest in remedying such race and gender discrimination
2 in highway contracting. Under such circumstances, the Department shall, in conformity with
3 State and federal law, adopt by rule and contract provisions a specific program to remedy such
4 discrimination. This specific program shall, to the extent reasonably practicable, address each
5 barrier identified in such study that adversely affects contract participation by disadvantaged
6 minority-owned and women-owned businesses.

7 (b1) Based upon the findings of the Department's Second Generation Disparity Study
8 completed in 2004, hereinafter referred to as "Study", the program design shall, to the extent
9 reasonably practicable, incorporate narrowly tailored remedies identified in the Study, and the
10 Department shall implement a comprehensive antidiscrimination enforcement policy. As
11 appropriate, the program design shall be modified by rules adopted by the Department that are
12 consistent with findings made in the Study and in subsequent studies conducted in accordance
13 with subsection (b) of this section. As part of this program, the Department shall review its
14 budget and establish annual aspirational goals, not mandatory goals, in percentages, for the
15 overall participation in contracts by disadvantaged minority-owned and women-owned
16 businesses. These annual aspirational goals for disadvantaged minority-owned and
17 women-owned businesses shall be established consistent with methodology specified in the
18 Study, and they shall not be applied rigidly on specific contracts or projects. Instead, the
19 Department shall establish contract-specific goals or project-specific goals for the participation
20 of such firms in a manner consistent with availability of disadvantaged minority-owned and
21 women-owned businesses, as appropriately defined by its most recent Study, for each
22 disadvantaged minority-owned and women-owned business category that has demonstrated
23 significant disparity in contract utilization. Nothing in this section shall authorize the use of
24 quotas. Any program implemented as a result of the Study conducted in accordance with this
25 section shall be narrowly tailored to eliminate the effects of historical and continuing
26 discrimination and its impacts on such disadvantaged minority-owned and women-owned
27 businesses without any undue burden on other contractors. The Department shall give equal
28 opportunity for contracts it lets without regard to race, religion, color, creed, national origin,
29 sex, age, or handicapping condition, as defined in G.S. 168A-3, to all contractors and
30 businesses otherwise qualified.

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

- 32 (1) "Disadvantaged business" has the same meaning as "disadvantaged business
33 enterprise" in 49 C.F.R. § 26.5 or any subsequently promulgated
34 replacement regulation.
35 (2) "Minority" includes only those racial or ethnicity classifications identified by
36 a study conducted in accordance with this section that have been subjected to
37 discrimination in the relevant marketplace and that have been adversely
38 affected in their ability to obtain contracts with the Department.

39 (d) The Department shall report semiannually to the Joint Legislative Transportation
40 Oversight Committee on the utilization of disadvantaged minority-owned businesses and
41 women-owned businesses and any program adopted to promote contracting opportunities for
42 those businesses. Following each study of availability and utilization, the Department shall
43 report to the Joint Legislative Transportation Oversight Committee on the results of the study
44 for the purpose of determining whether the provisions of this section should continue in force
45 and effect.

46 (e) ~~This section expires August 31, 2009.~~

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