

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003

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HOUSE BILL 1359*
Committee Substitute Favorable 6/30/04
Committee Substitute #2 Favorable 7/15/04

Short Title: DOT Minority/Women Businesses Program.

(Public)

Sponsors:

Referred to:

May 11, 2004

1 A BILL TO BE ENTITLED
2 AN ACT TO REAFFIRM AND CLARIFY STATE POLICY CONCERNING
3 PARTICIPATION BY DISADVANTAGED MINORITY-OWNED AND
4 WOMEN-OWNED BUSINESSES IN HIGHWAY CONSTRUCTION.

5 The General Assembly of North Carolina enacts:

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

7 "**§ 136-28.4. State policy concerning participation by disadvantaged-disadvantaged**
8 **minority-owned and women-owned businesses in highway contracts.**

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

19 (b) ~~A ten percent (10%) goal is established for participation by minority~~
20 ~~businesses and a five percent (5%) goal for participation by women businesses is~~
21 ~~established in contracts let by the Department of Transportation for the design,~~
22 ~~construction, alteration, or maintenance of State highways, roads, streets, or bridges and~~
23 ~~for the procurement of materials for these projects. The Department of Transportation~~
24 ~~shall endeavor to award to minority businesses at least ten percent (10%), by value, of~~
25 ~~the contracts it lets for these purposes, and shall endeavor to award to women~~
26 ~~businesses at least five percent (5%), by value, of the contracts it lets for these purposes.~~
27 ~~The Department shall adopt written procedures specifying the steps it will take to~~
28 ~~achieve these goals. The Department shall give equal opportunity for contracts it lets~~

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

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