

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003

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SENATE BILL 1082*

Short Title: DOT Minority/Women Businesses Program.

(Public)

Sponsors: Senator Jenkins.

Referred to: Judiciary I.

May 13, 2004

A BILL TO BE ENTITLED

AN ACT TO REAFFIRM AND CLARIFY STATE POLICY CONCERNING
PARTICIPATION BY DISADVANTAGED MINORITY AND WOMEN
BUSINESSES IN HIGHWAY CONSTRUCTION.

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, and women 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, and women businesses in contracts let by the Department pursuant to this Chapter for the design, 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 in efforts to encourage and promote the use of ~~disadvantaged~~ disadvantaged, minority, and women 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~~

1 ~~qualified.~~ At least every five years, the Department shall conduct a study on the
2 availability and utilization of minority-owned and women-owned business enterprises
3 and evidence of race-based and gender-based discrimination against such business
4 enterprises in contracts for design, construction, alteration, or maintenance of State
5 highways, roads, streets, or bridges and for the procurement of materials for these
6 projects. Should the study show evidence of historical and continuing discrimination
7 that prevents minority businesses and women businesses from participating in the above
8 contracts at a level which would have existed absent such discrimination, such evidence
9 shall constitute a basis for the State's continued compelling governmental interest in
10 eliminating the effects of historical race and gender discrimination in highway
11 contracting. Should the study show continued effects of such discrimination, the
12 Department shall, in conformity with State and federal law, adopt by rule and contract
13 provisions a specific program of good-faith goals for the participation in contracting
14 opportunities by minority businesses and women businesses that the study demonstrates
15 continue to suffer the effects of such discrimination. Further, the Department is
16 authorized to establish specific project goals for participation by minority businesses
17 and women businesses. Nothing in this statute shall authorize the use of set-asides,
18 quotas, sheltered markets, or bid preferences. Any program implemented as a result of
19 the study conducted in accordance with this section shall be narrowly tailored to
20 eliminate the effects of historical and continuing discrimination and its impacts on such
21 minority business and women business enterprises with a minimum of burden on other
22 contractors. The Department shall give equal opportunity for contracts it lets without
23 regard to race, religion, color, creed, national origin, sex, age, or handicapping
24 condition, as defined in G.S. 168A-3, to all contractors and businesses otherwise
25 qualified.

26 (e) ~~The following definitions apply in this section:~~

27 (1) ~~"Disadvantaged business" has the same meaning as in 49 C.F.R. §~~
28 ~~23.62.~~

29 (2) ~~"Minority" has the same meaning as in 49 C.F.R. § 23.5.~~

30 (d) The Department shall report annually to the Joint Legislative Transportation
31 Oversight Committee on the utilization of minority businesses and women businesses
32 and any program adopted to promote contracting opportunities for those businesses.
33 Following each study of availability and utilization, the Department shall report to the
34 Joint Legislative Transportation Oversight Committee on the results of the study for the
35 purpose of determining whether the provisions of this section should continue in force
36 and effect.

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

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