

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1991

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SENATE BILL 176

Short Title: Comprehensive Goals.

(Public)

Sponsors: Senator Hunt.

Referred to: State Personnel and State Government.

February 21, 1991

1 A BILL TO BE ENTITLED  
2 AN ACT TO ESTABLISH A COMPREHENSIVE GOALS PROGRAM FOR  
3 INCLUSION OF BUSINESSES OWNED BY MINORITIES, WOMEN, AND THE  
4 DISABLED IN PUBLIC CONTRACTS.

5 The General Assembly of North Carolina enacts:

6 Section 1. Chapter 143 of the General Statutes is amended by adding a new  
7 Article to read:

8 **“ARTICLE 3E.**

9 **“FULL INCLUSION IN PUBLIC CONTRACTS.**

10 **“§ 143-64.40. Purpose.**

11 The purpose of this Article is to provide maximum contracting opportunities to  
12 minority business enterprises (MBEs), womens business enterprises (WBEs), and  
13 disabled business enterprises (DBEs). To further this purpose:

14 (1) Each procurement agency in State government, other than the  
15 Department of Transportation with regard to highway construction,  
16 shall structure its procedures for procuring supplies, services,  
17 maintenance, and construction to attempt to achieve the following  
18 minimum verifiable percentage goals:

19 a. Ten percent (10%) of the total dollar value of these  
20 procurements that are made directly or indirectly from certified  
21 MBEs;

22 b. Five percent (5%) of the total dollar value of these  
23 procurements that are made directly or indirectly from certified  
24 WBEs;

1           c. Two percent (2%) of the total dollar value of these  
2           procurements that are made directly or indirectly from certified  
3           DBEs;

4           For purposes of these goals, a contract shall be counted as being with  
5           an MBE without regard to the gender of the owner, but only if the  
6           business does not qualify as a DBE; shall be counted as being with a  
7           WBE only if the business does not also qualify as a DBE or MBE; and  
8           shall be counted as a DBE without regard to the race or gender of the  
9           owner.

10          (2) Each procurement agency of local government shall adopt, after notice  
11          and public hearing, a minimum appropriate verifiable percentage goal  
12          for inclusion of certified MBEs, WBEs, and DBEs in contracts for  
13          supplies, services, maintenance, or construction, unless those contracts  
14          fall below the dollar thresholds set by G.S. 143-129 for the competitive  
15          bidding requirement;

16          (3) Nothing in this Article shall be construed to require procurement  
17          agencies or contractors to award contracts or subcontracts to or to  
18          make purchases of materials or equipment from an MBE, WBE, or  
19          DBE who does not submit the lowest responsible bid, taking into  
20          consideration quality, performance, and the time specified in the  
21          proposals for the performance of the contract.

22          **"§ 143-64.41. Definitions.**

23          As used in this Article, unless the context indicates otherwise:

24          (1) 'Appropriate verifiable percentage goal' means a verifiable percentage  
25          goal that the governing body of the procurement agency determines,  
26          after a public hearing, will foster maximum contracting opportunities  
27          for certified MBEs, WBEs, and DBEs, in light of local circumstances;  
28          provided that no goals are appropriate that are lower than the following  
29          percentages of the total value of the procurements:

30           a. Five percent (5%) from certified MBEs,

31           b. Two and one half percent (2.5%) from certified WBEs,

32           c. One percent (1%) from certified DBEs.

33          For purposes of these goals, a contract shall be counted as being with  
34          an MBE without regard to the gender of the owner, but only if the  
35          business does not qualify as a DBE; shall be counted as being with a  
36          WBE only if the business does not also qualify as a DBE or MBE; and  
37          shall be counted as a DBE without regard to the race or gender of the  
38          owner.

39          (2) 'Certification' means a determination made in accordance with the  
40          provisions of G.S. 143-64.47 that a legal entity is an MBE, a WBE, or  
41          a DBE, for purposes of this Article.

42          (3) 'Control' means the exercise of the power to manage and operate a  
43          business enterprise.

- 1           (4) 'Disabled person' means a handicapped person as defined in G.S.  
2           168A-3.
- 3           (5) 'Disabled Business Enterprise' (DBE), means any legal entity, other  
4           than a joint venture, organized to engage in commercial transactions,  
5           that is at least fifty-one percent (51%) owned and controlled by one or  
6           more disabled persons, or a nonprofit entity organized to promote the  
7           interests of disabled persons, or a sheltered workshop whose main  
8           function is to provide services to disabled persons.
- 9           (6) 'Goal' means a voluntary percentage or quantitative objective.
- 10          (7) 'Minority Business Enterprise' (MBE), means any legal entity, other  
11          than a joint venture, organized to engage in commercial transactions,  
12          that is at least fifty-one percent (51%) owned and controlled by one or  
13          more minority persons.
- 14          (8) 'Minority person' means a member of one of the following groups:  
15          African-Americans, Hispanics, American Indians, Asians.
- 16          (9) 'Ownership' means:
- 17           a. For a sole proprietorship, that the sole proprietor is a disabled  
18           person, a minority person, or a woman. If the ownership  
19           interest held by a disabled person, a minority person, or a  
20           woman is subject to formal or informal restrictions such as  
21           options, security interests, or agreements held by a nonminority  
22           person or business entity, the options, security interests, or  
23           agreements held by the nonminority person or business entity  
24           may not significantly impair the minority person's ownership  
25           interest.
- 26           b. For a partnership, that at least fifty-one percent (51%) of the  
27           partnership's assets or interests are owned by a minority person  
28           or minority persons. If the ownership interest held by a  
29           minority person is subject to formal or informal restrictions  
30           such as options, security interests, or agreements, held by a  
31           nonminority person or business entity, the options, security  
32           interests, or agreements held by the nonminority person or  
33           business entity may not significantly impair the minority  
34           person's ownership interest.
- 35           c. For a corporation, that legal and equitable ownership of at least  
36           fifty-one percent (51%) of all classes of stock, bonds, or other  
37           securities issued by the corporation is owned by a minority  
38           person or minority persons. If an ownership interest held by a  
39           minority person is subject to formal or informal restrictions  
40           such as options, security interests, or agreements held by a  
41           nonminority person or business entity, the options, security  
42           interests, or agreements held by the nonminority person or  
43           business entity may not significantly impair the minority  
44           person's ownership interest.

- 1           (10) 'Procurement agency' means any State agency or local government  
2 that is authorized by law or regulations to procure or contract. The  
3 term includes, but is not limited to, cities, counties, and boards of  
4 education.
- 5           (11) 'Verifiable percentage goal' means that the procurement agency has  
6 adopted written guidelines specifying the actions that will be taken;  
7 a. By the procurement agency itself in the case of the separate  
8 prime contract system; and  
9 b. By the prime contractor in the case of the single-prime contract  
10 system  
11 to ensure a good faith effort in the recruitment and selection of  
12 certified MBEs, WBEs, and DBEs for inclusion in contracts awarded  
13 for procurement of supplies, services, maintenance, and construction.  
14 Guidelines adopted shall conform to rules issued by the Department of  
15 Administration under G.S. 143-64.46.
- 16           (12) 'Womens Business Enterprise' (WBE), means any legal entity, other  
17 than a joint venture, organized to engage in commercial transactions,  
18 that is at least fifty-one percent (51%) owned and controlled by one or  
19 more women.

20 **"§ 143-64.42. Scope of Article.**

21 This Article applies to every procurement of supplies, services, maintenance, and  
22 construction by a procurement agency.

23 **"§ 143-64.43. Procurement agency responsibility.**

24 (a) Each procurement agency shall make its procurements in accordance with  
25 this Article. Each local board of education shall adopt procedures consistent with this  
26 Article before obtaining State funds for public school construction projects. When  
27 delegating procurement authority to procurement agencies and other departments, the  
28 Department of Administration shall condition the delegation on compliance with this  
29 Article.

30 (b) Procurement agencies shall, to the extent practicable, develop uniform  
31 affidavits and reporting forms required by this Article.

32 **"§ 143-64.44. MBE-WBE-DBE Liaison Officer.**

33 The head of each procurement agency shall designate an employee to be an MBE-  
34 WBE-DBE Liaison Officer in the administration of that agency's minority business  
35 enterprise program. The MBE-WBE-DBE Liaison Officer shall be a high-level  
36 employee reporting directly to a Secretary, Deputy Secretary, or head of a department or  
37 procurement agency. The MBE-WBE-DBE Liaison Officer shall be responsible for  
38 coordinating agency outreach efforts to the minority business community, reviewing  
39 agency contracting procedures to assure compliance with this Article, assisting in the  
40 resolution of contracting issues, and for the submission of all required MBE-WBE-DBE  
41 program reports or information.

42 **"§ 143-64.45. Central directory.**

43 The Department of Administration shall publish a central directory of MBEs, WBEs,  
44 and DBEs certified in accordance with G.S. 143-64.47. The central directory shall

1 specify the type of supplies, services, maintenance, or construction primarily provided  
2 by the MBE, WBE, or DBE, and the date of certification. The central directory shall  
3 include:

- 4 (1) The address;
- 5 (2) Phone number; and
- 6 (3) Contact person

7 of all certified MBEs, WBEs, and DBEs; and the name of every business entity that has  
8 been denied certification or decertified within the last two years. The directory shall be  
9 updated at least quarterly, and if feasible, monthly.

10 **"§ 143-64.46. Outreach and notification.**

11 The Department of Administration shall establish procedures for outreach,  
12 notification, and solicitation of MBEs, WBEs, and DBEs.

13 **"§ 143-64.47. Certification.**

14 (a) The Department of Administration shall develop a procedure for the  
15 certification, recertification, and decertification of businesses as MBEs, WBEs, or  
16 DBEs. Any procurement agency may certify, decertify, or recertify a business as MBE,  
17 WBE, DBE, or more than one of the three, if the procurement agency follows the  
18 procedures established by the Department of Administration.

19 (b) If a business petitions the Department of Administration for action under the  
20 certification process developed under subsection (a), the Department of Administration  
21 shall take the appropriate action according to the certification process not more than 60  
22 days after the receipt of the application. If a business petitions a procurement agency  
23 other than the Department of Administration for action under the certification process,  
24 that procurement agency may take the appropriate action itself, or it may forward the  
25 petition to the Department of Administration for action. If the procurement agency  
26 elects to take the appropriate action itself, it shall do so not more than 60 days after  
27 receipt of the application; if the procurement agency elects to forward the application to  
28 the Department of Administration, it shall do so not more than 30 days after receipt of  
29 the application. If the Department of Administration receives a petition forwarded from  
30 a procurement agency, the Department shall take the appropriate action according to the  
31 certification process not more than 60 days after the Department's receipt of the  
32 application.

33 (c) A business certified as an MBE, a WBE, or a DBE in accordance with this  
34 section shall be recognized as such by all other procurement agencies for the purposes  
35 of this Article.

36 (d) The Department of Administration or another procurement agency may  
37 request the following information to assist in any certification, recertification, and  
38 decertification determination:

- 39 (1) Copies of articles of incorporation, bylaws, minutes, shareholder  
40 agreements, stock certificates, stock transfer ledgers, any additional  
41 profit-sharing agreements or buy out rights, or in the case of a  
42 partnership, the partnership agreement;
- 43 (2) Current financial statements, business licenses, the prior two years'  
44 federal tax returns, cancelled checks, resumes of principal parties, and

1                   any relevant personal and third-party agreements, such as rental and  
2                   management agreements;

3           (3) Any other information that the certifying entity determines is  
4                   necessary.

5 Failure to furnish the requested information within 30 days may result in a denial of  
6 certification or recertification, or a determination to decertify.

7 **"§ 143-426.48. Adoption of rules.**

8           The Department of Administration shall submit for review by the Administrative  
9 Rules Review Commission any rules deemed appropriate for the enforcement of this  
10 Article.

11 **"§ 143-426.49. False information supplied by business.**

12           (a) When a procurement agency determines that a business has knowingly  
13 supplied false information in order to be classified as an MBE, WBE, or DBE, the  
14 procurement agency shall contact the Department of Administration to determine, after  
15 consultation with legal counsel, the appropriate action to be taken.

16           (b) Prior to any final determination under subsection (a) of this section, the  
17 business charged with supplying false information may commence an action under  
18 Chapter 150B of the General Statutes.

19           (c) Any person who, with intent to defraud another, represents himself as an  
20 MBE, WBE, or DBE for the purpose of obtaining money, goods, property, services,  
21 chooses in action, or any item of value from a person within this State is guilty of a Class  
22 H felony.

23 **"§ 143-64.50. Reporting requirements.**

24           (a) Each procurement agency, other than the Department of Transportation with  
25 regard to highway construction, and each private nonprofit corporation, other than an  
26 institution of higher education or a hospital, that receives an appropriation of five  
27 hundred thousand dollars (\$500,000) or more during a fiscal year from the General  
28 Assembly, shall make a report annually within 90 days following the close of the fiscal  
29 year to the Department of Administration:

30                   (1) The total number and value of its procurements from certified MBEs,  
31 WBEs, and DBEs as prime contractors, and separately as  
32 subcontractors.

33                   (2) The percentage which purchases and contracts from MBEs, WBEs,  
34 and DBEs represent of its total number and value of its procurements  
35 from business enterprises for the fiscal year just ended. The  
36 procurement agency or corporation shall report percentages for each of  
37 the following groups:

38                           a. Nondisabled MBEs, regardless of the gender of the owner,

39                           b. Nonminority, nondisabled WBEs,

40                           c. All DBEs, regardless of the minority status or gender,

41                           d. Male disabled MBEs,

42                           e. Female disabled MBEs,

43                           f. Male nondisabled MBEs,

44                           g. Female nondisabled MBEs,

1                   h.     Minority disabled WBEs,

2                   i.     Nonminority disabled WBEs,

3                   j.     Minority nondisabled WBEs,

4                   k.     Male minority DBEs,

5                   l.     Female minority DBEs,

6                   m.     Female nonminority DBEs;

7           (3)     An evaluation by the procurement agency or corporation of the success  
8                   of its MBE-WBE-DBE program;

9     provided that procurement agencies of local government shall not be required to report  
10    on contracts that fall below the dollar thresholds set by G.S. 143-129 for the competitive  
11    bidding requirement;

12     The Department of Administration shall prepare an annual report summarizing  
13    MBE, WBE, and DBE participation throughout the State for submission by the end of  
14    each calendar year to the General Assembly and to each department and procurement  
15    agency.

16     (b) The Department of Transportation shall prepare an annual report for  
17    submission to the General Assembly by the end of each calendar year. The report shall  
18    contain the information on highway construction contracts that is equivalent to the  
19    information outlined in subsection (a) of this section."

20           Sec. 2. G.S. 143-48 reads as rewritten:

21    "**§ 143-48. State policy; cooperation in promoting the use of small, minority,**  
22    **physically handicapped and women contractors; purpose; required annual**  
23    **reports.**

24    (a) It is the policy of this State to encourage and promote the use of small,  
25    minority, physically handicapped and women contractors in State purchasing of goods  
26    and services. All State agencies, institutions and political subdivisions shall cooperate  
27    with the Department of Administration and all other State agencies, institutions and  
28    political subdivisions in efforts to encourage the use of small, minority, physically  
29    handicapped and women contractors in achieving the purpose of this Article, which is to  
30    provide for the effective and economical acquisition, management and disposition of  
31    goods and services by and through the Department of Administration. Accordingly, all  
32    contracts entered into for the purchase of goods and services pursuant to this Article  
33    shall be subject to the provision of Article 3E of this Chapter.

34    ~~(b) Every governmental entity required by statute to use the services of the~~  
35    ~~Department of Administration in the purchase of goods and services and every private,~~  
36    ~~nonprofit corporation other than an institution of higher education or a hospital that~~  
37    ~~receives an appropriation of five hundred thousand dollars (\$500,000) or more during a~~  
38    ~~fiscal year from the General Assembly shall report to the Department of Administration~~  
39    ~~annually on what percentage of its contract purchases of goods and services, through~~  
40    ~~term contracts and open market contracts, were from minority-owned businesses, what~~  
41    ~~percentage from female-owned businesses, and what percentage from disabled-owned~~  
42    ~~businesses. The same governmental entities shall include in their reports what~~  
43    ~~percentages of the contract bids for such purchases were from such businesses. The~~  
44    ~~Department of Administration shall provide instructions to the reporting entities~~

1 concerning the manner of reporting and the definitions of the businesses referred to in  
2 this act, provided that, for the purposes of this act:

3 (1) A business in one of the categories above means one:

4 a. In which at least fifty-one percent (51%) of the business, or of  
5 the stock in the case of a corporation, is owned by one or more  
6 persons in the category; and

7 b. Of which the management and daily business operations are  
8 controlled by one or more persons in the category who own it;  
9 and

10 (2) A female or a disabled person is not a minority, unless the female or  
11 disabled person is also a member of one of the minority groups  
12 described in G.S. 143-128(c)(2)a through d; and

13 (3) A disabled person means a 'handicapped person' as defined in G.S.  
14 168A-3(4).

15 The Department of Administration shall collect and compile the data described in this  
16 section and report it annually to the General Assembly."

17 Sec. 3. G.S. 143-135.5 reads as rewritten:

18 "**§ 143-135.5. State policy; cooperation in promoting the use of small, minority,  
19 physically handicapped and women contractors; purpose.**

20 It is the policy of this State to encourage and promote the use of small, minority,  
21 physically handicapped and women contractors in State construction projects. All State  
22 agencies, institutions and political subdivisions shall cooperate with the Department of  
23 Administration and all other State agencies, institutions and political subdivisions in  
24 efforts to encourage and promote the use of small, minority, physically handicapped  
25 and women contractors in achieving the purpose of this Article, which is the effective  
26 and economical construction of public buildings. Accordingly, all construction contracts  
27 entered into pursuant to this Article shall be subject to the provisions of Article 3E of  
28 this Chapter."

29 Sec. 4. G.S. 143-128(c) and (d) are repealed.

30 Sec. 5. G.S. 143-128 is amended by adding a new subsection to read:

31 "(e) Any State agency or institution or city, county or other public body shall be  
32 governed by the goals and procedures of Article 3E of this Chapter for all contracts  
33 awarded pursuant to this section."

34 Sec. 6. This act becomes effective January 1, 1992.