

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

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HOUSE BILL 1827*
Committee Substitute Favorable 5/30/06
Committee Substitute #2 Favorable 6/21/06
Committee Substitute #3 Favorable 7/13/06
Senate Commerce Committee Substitute Adopted 7/19/06

Short Title: General Contractor License Exceptions/DOT.

(Public)

Sponsors:

Referred to:

May 10, 2006

A BILL TO BE ENTITLED

AN ACT TO EXEMPT CERTAIN DEPARTMENT OF TRANSPORTATION CONTRACTORS FROM THE REQUIREMENT FOR A GENERAL CONTRACTOR'S LICENSE, AS RECOMMENDED BY THE JOINT LEGISLATIVE TRANSPORTATION OVERSIGHT COMMITTEE, TO CLARIFY A GENERAL CONTRACTING EXCEPTION, AND TO REAFFIRM AND CLARIFY STATE POLICY CONCERNING PARTICIPATION BY DISADVANTAGED MINORITY-OWNED AND WOMEN-OWNED BUSINESSES IN HIGHWAY CONSTRUCTION.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 136 of the General Statutes is amended by adding a new section to read:

"§ 136-28.14. Project contractor licensing requirements.

The letting of contracts under this Chapter for the following types of projects shall not be subject to the licensing requirements of Article 1 of Chapter 87 of the General Statutes:

- (1) Routine maintenance and minor repair of pavements, bridges, roadside vegetation and plantings, drainage systems, concrete sidewalks, curbs, gutters, and rest areas.
- (2) Installation and maintenance of pavement markings and markers, ground mounted signs, guardrail, fencing, and roadside vegetation and plantings."

SECTION 2. Chapter 87 of the General Statutes is amended by adding a new section to read:

"§ 87-1.2. Exception for specified Department of Transportation contractors.

1 The letting of contracts for the types of projects specified in G.S. 136-28.14 shall not
2 be subject to the licensing requirement of this Article."

3 **SECTION 3.** G.S. 87-1.1 reads as rewritten:

4 **"§ 87-1.1. Exception for licensees under Article 2 or 4.**

5 G.S. 87-1 shall not apply to a licensee under Article 2 or 4 of this Chapter of the
6 ~~General Statutes~~ Statutes, G.S. 87-43 shall not apply to a licensee under Article 2 of this
7 ~~Chapter of the General Statutes~~, and G.S. 87-21(a)(5) shall not apply to a licensee under
8 Article 4 of this Chapter of the General Statutes when the licensee is bidding and
9 contracting directly with the owner of a public building project if: (i) a licensed general
10 contractor performs all work that falls within the classifications in G.S. 87-10(b) and the
11 State Licensing Board of General Contractor's rules; and (ii) the total amount of the
12 general contracting work so classified does not exceed a percentage of the total bid price
13 pursuant to rules established by the ~~Board~~ Board; and (iii) a licensee with the
14 appropriate license under Article 2 or Article 4 of this Chapter performs all work that
15 falls within the classifications in Article 2 and Article 4 of this Chapter."

16 **SECTION 4.** G.S. 136-28.4 reads as rewritten:

17 **"§ 136-28.4. State policy concerning participation by ~~disadvantaged~~ disadvantaged**
18 **minority-owned and women-owned businesses in highway contracts.**

19 (a) It is the policy of this ~~State~~ State, based on a compelling governmental
20 interest, to encourage and promote participation by ~~disadvantaged~~ disadvantaged
21 minority-owned and women-owned businesses in contracts let by the Department
22 pursuant to this Chapter for the planning, design, preconstruction, construction,
23 alteration, or maintenance of State highways, roads, streets, or bridges and in the
24 procurement of materials for these projects. All State agencies, institutions, and political
25 subdivisions shall cooperate with the Department of Transportation and ~~all other State~~
26 ~~agencies, institutions, and political subdivisions~~ among themselves in all efforts to
27 conduct outreach and to encourage and promote the use of ~~disadvantaged~~ disadvantaged
28 minority-owned and women-owned businesses in these contracts.

29 (b) ~~A ten percent (10%) goal is established for participation by minority~~
30 ~~businesses and a five percent (5%) goal for participation by women businesses is~~
31 ~~established in contracts let by the Department of Transportation for the design,~~
32 ~~construction, alteration, or maintenance of State highways, roads, streets, or bridges and~~
33 ~~for the procurement of materials for these projects. The Department of Transportation~~
34 ~~shall endeavor to award to minority businesses at least ten percent (10%), by value, of~~
35 ~~the contracts it lets for these purposes, and shall endeavor to award to women~~
36 ~~businesses at least five percent (5%), by value, of the contracts it lets for these purposes.~~
37 ~~The Department shall adopt written procedures specifying the steps it will take to~~
38 ~~achieve these goals. The Department shall give equal opportunity for contracts it lets~~
39 ~~without regard to race, religion, color, creed, national origin, sex, age, or handicapping~~
40 ~~condition, as defined in G.S. 168A-3, to all contractors and businesses otherwise~~
41 ~~qualified.~~ At least every five years, the Department shall conduct a study on the
42 availability and utilization of disadvantaged minority-owned and women-owned
43 business enterprises and examine relevant evidence of the effects of race-based or
44 gender-based discrimination upon the utilization of such business enterprises in

1 contracts for planning, design, preconstruction, construction, alteration, or maintenance
2 of State highways, roads, streets, or bridges and in the procurement of materials for
3 these projects. Should the study show a strong basis in evidence of ongoing effects of
4 past or present discrimination that prevents or limits disadvantaged minority-owned and
5 women-owned businesses from participating in the above contracts at a level which
6 would have existed absent such discrimination, such evidence shall constitute a basis for
7 the State's continued compelling governmental interest in remedying such race and
8 gender discrimination in highway contracting. Under such circumstances, the
9 Department shall, in conformity with State and federal law, adopt by rule and contract
10 provisions a specific program to remedy such discrimination. This specific program
11 shall, to the extent reasonably practicable, address each barrier identified in such study
12 that adversely affects contract participation by disadvantaged minority-owned and
13 women-owned businesses.

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

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

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

- 1 (1) Monitor the implementation, and assess and evaluate the effectiveness,
2 of the Department of Transportation program under G.S. 136-28.4.
- 3 (2) Review the strategies the Department of Transportation plans to use to
4 implement the requirements of G.S. 136-28.4.
- 5 (3) Develop recommendations for submittal to the Department of
6 Transportation or the General Assembly to improve the program under
7 G.S. 136-28.4.

8 "**§ 120-272. Department of Transportation reporting.**

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

12 "**§ 120-273. Organization of Commission.**

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

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

21 (c) Members of the Commission receive subsistence and travel expenses as
22 provided in G.S. 120-3.1. The Commission may contract for consultants or hire
23 employees in accordance with G.S. 120-32.02. The Legislative Services Commission,
24 through the Legislative Services Officer, shall assign professional staff to assist the
25 Commission in its work. Upon the direction of the Legislative Services Commission,
26 the Directors of Legislative Assistants of the Senate and of the House of
27 Representatives shall assign clerical staff to the Commission. The expenses for clerical
28 employees shall be borne by the Commission."

29 **SECTION 6.** The provisions of this act are severable. In the event that any
30 provision of this act shall be declared invalid, that invalidity shall not affect the
31 remaining provisions of this act.

32 **SECTION 7.** This act is effective when it becomes law. Section 5 of this act
33 expires June 30, 2015.