

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

SESSION LAW 2006-261
HOUSE BILL 1827

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.

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

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

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

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

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

"§ 136-28.4. State policy concerning participation by disadvantaged-disadvantaged minority-owned and women-owned 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-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 among themselves in all efforts to conduct outreach and to encourage and promote the use of disadvantaged-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 continued compelling governmental interest in remedying such race and gender discrimination in highway contracting. Under such circumstances, the Department shall, in conformity with State and federal law, adopt by rule and contract provisions a specific program to remedy such discrimination. This specific program shall, to the extent reasonably practicable, address each barrier identified in such study that adversely affects contract participation by disadvantaged minority-owned and women-owned businesses.~~

(b1) Based upon the findings of the Department's Second Generation Disparity Study completed in 2004, hereinafter referred to as 'Study', the program design shall, to the extent reasonably practicable, incorporate narrowly tailored remedies identified in the Study, and the Department shall implement a comprehensive antidiscrimination enforcement policy. As appropriate, the program design shall be modified by rules adopted by the Department that are consistent with findings made in the Study and in subsequent studies conducted in accordance with subsection (b) of this section. As part of this program, the Department shall review its budget and establish annual aspirational goals, not mandatory goals, in percentages, for the overall participation in contracts by disadvantaged minority-owned and women-owned businesses. These annual aspirational goals for disadvantaged minority-owned and women-owned businesses shall be established consistent with methodology specified in the Study, and they shall not be applied rigidly on specific contracts or projects. Instead, the Department shall establish contract-specific goals or project-specific goals for the participation of such firms in a manner consistent with availability of disadvantaged minority-owned and women-owned businesses, as appropriately defined by its most recent Study, for each disadvantaged minority-owned and women-owned business category that has demonstrated significant disparity in contract utilization. Nothing in this section shall

authorize the use of quotas. Any program implemented as a result of the Study conducted in accordance with this section shall be narrowly tailored to eliminate the effects of historical and continuing discrimination and its impacts on such disadvantaged minority-owned and women-owned businesses without any undue burden on other contractors. 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.

(c) The following definitions apply in this section:

- (1) "Disadvantaged business" has the same meaning as "disadvantaged business enterprise" in 49 C.F.R. § 23.62-26.5 or any subsequently promulgated replacement regulation.
- (2) "Minority" has the same meaning as in 49 C.F.R. § 23.5; includes only those racial or ethnicity classifications identified by a study conducted in accordance with this section that have been subjected to discrimination in the relevant marketplace and that have been adversely affected in their ability to obtain contracts with the Department.

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

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

SECTION 5. Chapter 120 of the General Statutes is amended by adding a new Article to read:

"Article 30.

"Joint Legislative Commission on the Department of Transportation
Disadvantaged Minority-Owned and Women-Owned Businesses Program.

"§ 120-270. Commission established.

There is established the Joint Legislative Commission on the Department of Transportation Disadvantaged Minority-Owned and Women-Owned Businesses Program.

"§ 120-271. Membership; terms.

(a) Membership. – The Commission shall be composed of 12 members as follows:

- (1) Five members of the House of Representatives appointed by the Speaker of the House.
- (2) Five members of the Senate appointed by the President Pro Tempore of the Senate.
- (3) The Senate and House cochairs of the Joint Legislative Transportation Oversight Committee, or their designees, shall serve as ex officio members.

(b) Terms. – Members of the Commission shall serve two-year terms, beginning July 1 of each odd-numbered year. Members shall serve at the pleasure of the appointing authority. Members may complete a term of service on the Commission even if they do not seek reelection or are not reelected to the General Assembly, but resignation or removal from service in the General Assembly constitutes resignation or removal from the Commission.

(c) Vacancies. – Vacancies on the Commission shall be filled by the appointing authority.

"§ 120-271. Duties of the Commission.

The Commission shall:

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

"§ 120-272. Department of Transportation reporting.

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

"§ 120-273. Organization of Commission.

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

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

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

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

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

In the General Assembly read three times and ratified this the 27th day of July, 2006.

s/ Beverly E. Perdue
President of the Senate

s/ James B. Black
Speaker of the House of Representatives

s/ Michael F. Easley
Governor

Approved 1:10 p.m. this 27th day of August, 2006