

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2005

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SENATE DRS75265-RWz-3B (12/2)

Short Title: DOT Minority/Women Businesses Program.

(Public)

Sponsors: Senator Dannelly.

Referred to:

A BILL TO BE ENTITLED

AN ACT 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.** 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~~ 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~~ 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~~

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

21 (b1) Based upon the findings of the Department's Second Generation Disparity  
22 Study completed in 2004, hereinafter referred to as 'Study', the program design shall, to  
23 the extent reasonably practicable, incorporate narrowly tailored remedies identified in  
24 the Study, and the Department shall implement a comprehensive antidiscrimination  
25 enforcement policy. As appropriate, the program design shall be modified by rules  
26 adopted by the Department that are consistent with findings made in the Study and in  
27 subsequent studies conducted in accordance with subsection (b) of this section. As part  
28 of this program, the Department shall review its budget and establish annual aspirational  
29 goals, not mandatory goals, in percentages, for the overall participation in contracts by  
30 disadvantaged minority-owned and women-owned businesses. These annual  
31 aspirational goals for disadvantaged minority-owned and women-owned businesses  
32 shall be established consistent with methodology specified in the Study, and they shall  
33 not be applied rigidly on specific contracts or projects. Instead, the Department shall  
34 establish contract-specific goals or project-specific goals for the participation of such  
35 firms in a manner consistent with availability of disadvantaged minority-owned and  
36 women-owned businesses, as appropriately defined by its most recent Study, for each  
37 disadvantaged minority-owned and women-owned business category that has  
38 demonstrated significant disparity in contract utilization. Nothing in this section shall  
39 authorize the use of quotas. Any program implemented as a result of the Study  
40 conducted in accordance with this section shall be narrowly tailored to eliminate the  
41 effects of historical and continuing discrimination and its impacts on such  
42 disadvantaged minority-owned and women-owned businesses without any undue  
43 burden on other contractors. The Department shall give equal opportunity for contracts  
44 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.