

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

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HOUSE BILL 237*

Short Title: DOT Minority/Women Businesses Program. (Public)

Sponsors: Representatives Coates, Saunders (Primary Sponsors); Alexander, B. Allen, Bordsen, Carney, Coleman, Culp, Faison, Farmer-Butterfield, Fisher, Hackney, Jones, Lucas, Luebke, McLawhorn, Parmon, Wainwright, Warren, Wilkins, and Wray.

Referred to: State Government, if favorable, Transportation.

February 16, 2005

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, AS RECOMMENDED BY THE JOINT LEGISLATIVE TRANSPORTATION OVERSIGHT COMMITTEE.

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 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~~

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

24 (b1) Based upon the findings of the Department's Second Generation Disparity
25 Study completed in 2004, hereinafter referred to as 'Study', the program design shall, to
26 the extent reasonably practicable, incorporate narrowly tailored remedies identified in
27 the Study, and the Department shall implement a comprehensive antidiscrimination
28 enforcement policy. As appropriate, the program design shall be modified by rules
29 adopted by the Department that are consistent with findings made in the Study and in
30 subsequent studies conducted in accordance with subsection (b) of this section. As part
31 of this program, the Department shall review its budget and establish annual aspirational
32 goals, not mandatory goals, in percentages, for the overall participation in contracts by
33 disadvantaged minority-owned and women-owned businesses. These annual
34 aspirational goals for disadvantaged minority-owned and women-owned businesses
35 shall be established consistent with methodology specified in the Study, and they shall
36 not be applied rigidly on specific contracts or projects. Instead, the Department shall
37 establish contract-specific goals or project-specific goals for the participation of such
38 firms in a manner consistent with availability of disadvantaged minority-owned and
39 women-owned businesses, as appropriately defined by its most recent Study, for each
40 disadvantaged minority-owned and women-owned business category that has
41 demonstrated significant disparity in contract utilization. Nothing in this section shall
42 authorize the use of quotas. Any program implemented as a result of the Study
43 conducted in accordance with this section shall be narrowly tailored to eliminate the
44 effects of historical and continuing discrimination and its impacts on such

1 disadvantaged minority-owned and women-owned businesses without any undue
2 burden on other contractors. The Department shall give equal opportunity for contracts
3 it lets without regard to race, religion, color, creed, national origin, sex, age, or
4 handicapping condition, as defined in G.S. 168A-3, to all contractors and businesses
5 otherwise qualified.

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

7 (1) "Disadvantaged business" has the same meaning as "disadvantaged
8 business enterprise" in 49 C.F.R. § ~~23.62.26.5~~ or any subsequently
9 promulgated replacement regulation.

10 (2) "~~Minority~~" ~~has the same meaning as in 49 C.F.R. § 23.5.~~ includes only
11 those racial or ethnicity classifications identified by a study conducted
12 in accordance with this section that have been subjected to
13 discrimination in the relevant marketplace, and that have been
14 adversely affected in their ability to obtain contracts with the
15 Department.

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

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

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