

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2003

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HOUSE BILL 1359\*  
Committee Substitute Favorable 6/30/04

Short Title: DOT Minority/Women Businesses Program.

(Public)

Sponsors:

Referred to:

May 11, 2004

A BILL TO BE ENTITLED

AN ACT TO REAFFIRM AND CLARIFY STATE POLICY CONCERNING  
PARTICIPATION BY DISADVANTAGED MINORITY AND WOMEN  
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 and women 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 and women businesses in contracts let by the Department pursuant to this Chapter for the design, 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 in efforts to encourage and promote the use of ~~disadvantaged~~ disadvantaged minority and women 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~~

1 ~~qualified.~~ At least every five years, the Department shall conduct a study on the  
2 ~~availability and utilization of minority-owned and women-owned business enterprises~~  
3 ~~and evidence of race-based and gender-based discrimination against such business~~  
4 ~~enterprises in contracts for design, construction, alteration, or maintenance of State~~  
5 ~~highways, roads, streets, or bridges and for the procurement of materials for these~~  
6 ~~projects. Should the study show evidence of historical and continuing discrimination~~  
7 ~~that prevents minority businesses and women businesses from participating in the above~~  
8 ~~contracts at a level which would have existed absent such discrimination, such evidence~~  
9 ~~shall constitute a basis for the State's continued compelling governmental interest in~~  
10 ~~eliminating the effects of historical race and gender discrimination in highway~~  
11 ~~contracting. Should the study show continued effects of such discrimination, the~~  
12 ~~Department shall, in conformity with State and federal law, adopt by rule and contract~~  
13 ~~provisions a specific program of good-faith goals for the participation in contracting~~  
14 ~~opportunities by minority businesses and women businesses that the study demonstrates~~  
15 ~~continue to suffer the effects of such discrimination. Further, the Department is~~  
16 ~~authorized to establish specific project goals for participation by minority businesses~~  
17 ~~and women businesses. Nothing in this section shall authorize the use of set-asides,~~  
18 ~~quotas, sheltered markets, or bid preferences. Any program implemented as a result of~~  
19 ~~the study conducted in accordance with this section shall be narrowly tailored to~~  
20 ~~eliminate the effects of historical and continuing discrimination and its impacts on such~~  
21 ~~minority business and women business enterprises with a minimum of burden on other~~  
22 ~~contractors. The Department shall give equal opportunity for contracts it lets without~~  
23 ~~regard to race, religion, color, creed, national origin, sex, age, or handicapping~~  
24 ~~condition, as defined in G.S. 168A-3, to all contractors and businesses otherwise~~  
25 ~~qualified.~~

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

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

30 (2) "~~Minority~~" has the same meaning as in ~~49 C.F.R. § 23.5.~~

31 (d) The Department shall report annually to the Joint Legislative Transportation  
32 Oversight Committee on the utilization of minority businesses and women businesses  
33 and any program adopted to promote contracting opportunities for those businesses.  
34 Following each study of availability and utilization, the Department shall report to the  
35 Joint Legislative Transportation Oversight Committee on the results of the study for the  
36 purpose of determining whether the provisions of this section should continue in force  
37 and effect.

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

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