

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1989

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HOUSE BILL 476  
Committee Substitute Favorable 6/29/89

Short Title: Minority/Small Business Contracts.

(Public)

Sponsors:

Referred to:

March 7, 1989

1 A BILL TO BE ENTITLED  
2 AN ACT TO FURTHER THE DEVELOPMENT OF SMALL, MINORITY, FEMALE,  
3 AND HANDICAPPED-OWNED BUSINESSES BY CREATING THE  
4 DISADVANTAGED BUSINESS DEVELOPMENT COUNCIL AND THE  
5 DISADVANTAGED BUSINESS DEVELOPMENT OFFICE, AND BY  
6 ESTABLISHING GOALS FOR STATE CONTRACTS.

7 The General Assembly of North Carolina enacts:

8 Section 1. Article 9 of Chapter 143B is amended by adding a Part to read:

9 **"PART 29.**

10 **"MINORITY, SMALL, FEMALE, AND HANDICAPPED-OWNED**  
11 **BUSINESS DEVELOPMENT ACT.**

12 **"§ 143B-426.45. Policy; purpose.**

13 (a) The State of North Carolina declares that it is the public policy of the State to  
14 promote and encourage the economic development of small, minority, female, and  
15 handicapped-owned businesses and to promote their participation in the State's  
16 procurement programs as both prime contractors and subcontractors.

17 (b) The purposes of this Part are:

18 (1) To increase the State's knowledge of small, minority, female, and  
19 handicapped-owned businesses and to become familiar with their  
20 products and services.

- 1           (2) To assist by providing information from both public and private  
2 sectors concerning capital and credit opportunities for small, minority,  
3 female, and handicapped-owned businesses.
- 4           (3) To provide documentation of the number of small, minority, female,  
5 and handicapped-owned businesses that are available to undertake  
6 procurement, construction, real property, and State-funded highway  
7 construction contracts and to report levels of participation in these  
8 contracts by these groups.
- 9           (4) To serve the public interest in the efficient performance of its public  
10 contracts by making information regarding small, minority, female,  
11 and handicapped-owned businesses readily available.
- 12           (5) To encourage small, minority, female, and handicapped-owned  
13 businesses to participate in State contracts by establishing  
14 goals for these businesses regarding State procurement, construction,  
15 real property, and State-funded highway construction contracts.

16 **"§ 143B-426.46. Definitions.**

17 As used in this Part, unless the context requires otherwise:

- 18           (1) 'Certification' means a determination made by the Director of the  
19 Disadvantaged Business Development Office in the Division of  
20 Purchase and Contract of the Department of Administration that a  
21 business entity is a small, minority, female, or handicapped-owned  
22 business.
- 23           (2) 'Construction contract' means all construction contracts governed by  
24 Article 8 of Chapter 143 of the General Statutes and Title I of the  
25 North Carolina Administrative Code.
- 26           (3) 'Control' means the exclusive or ultimate and sole control of the  
27 business, including capital investment and all other financial matters,  
28 property, acquisitions, contract negotiations, legal matters, officer-  
29 director-employee selection and comprehensive hiring, operating  
30 responsibilities, cost-control matters, income and dividend matters,  
31 financial transactions and rights of other shareholders or joint partners.  
32 Control shall be real, substantial, and continuing, not **pro forma**.  
33 Control shall include the power to direct or cause the direction of the  
34 management and policies of the business and to make the day-to-day  
35 as well as major decisions in matters of policy, management, and  
36 operations. Control does not mean simple majority or absentee  
37 ownership.
- 38           (4) 'Female' shall mean a person who is a citizen or lawful  
39 permanent resident of the United States and who is of the female  
40 gender.
- 41           (5) 'Female-owned business' means a business concern:  
42 a. In which at least fifty-one percent (51%) is owned by one or  
43 more females, or, in the case of a corporation, in which at least

- 1                    fifty-one percent (51%) of the stock is owned by one or more  
2                    females; and
- 3                    b.        Of which the management and daily business operations are  
4                    controlled by one or more of the females who own it.
- 5                    (6)        'Goal' means a voluntary percentage or quantitative objective.
- 6                    (7)        'Handicapped-owned business' means a business concern:
- 7                    a.        In which at least fifty-one percent (51%) is owned by one or  
8                    more handicapped persons, or in the case of a corporation, in  
9                    which at least fifty-one percent (51%) of the stock is owned by  
10                    one or more handicapped persons; and
- 11                    b.        Of which the management and daily business operations are  
12                    controlled by one or more of the handicapped persons who own  
13                    it.
- 14                    (8)        'Handicapped person' means a person who is a handicapped person  
15                    under the provisions of Chapter 168A of the General Statutes.
- 16                    (9)        'Minority person' means a person who is a citizen or lawful permanent  
17                    resident of the United States and who is:
- 18                    a.        Black, that is, a person having origins in any of the black racial  
19                    groups in Africa;
- 20                    b.        Hispanic, that is, a person of Spanish or Portugese culture with  
21                    origins in Mexico, South or Central America, or the Caribbean  
22                    Islands, regardless of race;
- 23                    c.        Asian American, that is, a person having origins in any of the  
24                    original peoples of the Far East, Southeast Asia and Asia, the  
25                    Indian subcontinent, or the Pacific Islands; or
- 26                    d.        American Indian or Alaskan Native, that is, a person having  
27                    origins in any of the original peoples of North America.
- 28                    (10)        'Minority-owned business' means a business concern:
- 29                    a.        In which at least fifty-one percent (51%) is owned by one or  
30                    more minority persons, or in the case of a corporation, in which  
31                    at least fifty-one percent (51%) of the stock is owned by one or  
32                    more minority persons; and
- 33                    b.        Of which the management and daily business operations are  
34                    controlled by one or more of the minority individuals who own  
35                    it.
- 36                    (11)        'Procurement contract' means all procurement contracts governed by  
37                    Article 3 of Chapter 143 of the General Statutes and Title I of the  
38                    North Carolina Administrative Code.
- 39                    (12)        'Real property contracts' means the personal service contracts used in  
40                    surveying and appraisals conducted by the Office of State Property.
- 41                    (13)        'Small business' means a business concern:
- 42                    a.        In which gross annual sales total less than five million dollars  
43                    (\$5,000,000); and
- 44                    b.        Which employs less than 75 full-time employees.

1           (14) 'State agencies' means all departments, officers, boards, commissions,  
2           institutions and bodies politic and corporate of the State.

3           (15) 'State contracts' means all State contracts, funded exclusively with  
4           State funds which are not subject to federal reimbursement, whether  
5           competitively bid or negotiated, including procurement contracts, real  
6           property contracts, construction contracts, and State-funded highway  
7           construction contracts.

8           (16) 'State-funded highway construction contracts' means any highway  
9           construction contracts funded entirely with State monies.

10 **"§ 143B-426.47. Disadvantaged Business Development Council; membership.**

11       (a) To help implement and monitor the progress toward the goals of this Part, the  
12 Minority and Small Business Development Council of the Department of  
13 Administration is created.

14       The Council shall be comprised of 13 members. The members shall include: the  
15 Governor's Director of Minority Affairs, or his designee; the Director of the Small  
16 Business Development Division, Department of Commerce, or his designee; the  
17 Director of the Governor's Advocacy Council for Persons with Disabilities, or his  
18 designee; the Director of Indian Affairs of the Department of Administration, or his  
19 designee; the Director of the Council on the Status of Women, Department of  
20 Administration, or his designee; the Secretary of Administration, or his designee; the  
21 President of the North Carolina Association of Minority Business, or his designee; three  
22 members appointed by the General Assembly upon the recommendation of the Speaker  
23 of the House, in accordance with G.S. 120-121, one of whom shall:

24           (1) Be a member of a minority as defined in G.S. 143B-426.46;

25           (2) Have a demonstrated interest in and knowledge of the problems  
26 confronting minorities who seek to be in business; and

27           (3) Have a demonstrated interest in minorities seeking to establish  
28 businesses,

29 and one of whom shall:

30           (1) Be a female as defined in G.S. 143B-426.46;

31           (2) Have a demonstrated interest in and knowledge of the problems  
32 confronting females who seek to be in business; and

33           (3) Have a demonstrated interest in females seeking to establish  
34 businesses,

35 and one of whom shall:

36           (1) Be a handicapped person as defined in G.S. 143B-426.26 or a person  
37 with a demonstrated interest in and knowledge of the problems  
38 confronting the disabled who seek to be in business; and

39           (2) Have a demonstrated interest in disabled persons seeking to establish  
40 businesses,

41 and three members appointed by the General Assembly upon the recommendation of the  
42 President Pro Tempore of the Senate, in accordance with G.S. 120-121, who satisfy the  
43 same criteria as the Speaker's three appointments.

1       **(b)** Members serving by virtue of their office shall serve so long as they hold that  
2 office, except that the members appointed by the General Assembly shall serve two-  
3 year terms and shall be eligible for reappointment. Vacancies in positions appointed by  
4 the General Assembly shall be filled in accordance with G.S. 120-122.

5       **(c)** The Council shall appoint one member to serve as chairman and one member  
6 to serve as vice-chairman at the pleasure of the Council.

7       **(d)** Members of the Council shall serve without compensation, but shall be  
8 reimbursed for any expenses pursuant to the provisions of G.S. 138-5 or G.S. 138-6.

9 **"§ 143-426.48. Powers and duties of the Council.**

10 The Disadvantaged Business Development Council shall:

- 11       **(1)** Develop a single certification process for businesses seeking assistance  
12 pursuant to this Part.
- 13       **(2)** Recommend methods for identifying new minority, female, small, and  
14 handicapped-owned businesses for inclusion in the North Carolina  
15 Special Interest Directory.
- 16       **(3)** Recommend alternatives to the bonding requirements governing  
17 procurement, construction, and real property contracts.
- 18       **(4)** Submit annual reports to the Governor and the General Assembly on  
19 the status of the program implemented pursuant to this Part.
- 20       **(5)** Conduct on a biennial basis a review of the established goals for the  
21 purpose of recommending to the Governor and the General Assembly  
22 increasing the goals, if deemed appropriate.

23 **"§ 143B-426.49. Disadvantaged Business Development Office; creation.**

24 The Disadvantaged Business Development Office shall be located in the Division of  
25 Purchase and Contract in the Department of Administration.

26 **"§ 143B-426.50. Powers and duties of the Disadvantaged Business Development**  
27 **Office.**

28 The Disadvantaged Business Development Office shall:

- 29       **(1)** Implement the certification procedure to assure businesses seeking  
30 assistance under this Part are small, minority, female, or handicapped-  
31 owned businesses.
- 32       **(2)** Maintain a list of all certified minority, small, female, and  
33 handicapped-owned businesses to provide to all State agencies.
- 34       **(3)** Review rules and regulations for the implementation of the provisions  
35 of this Part.
- 36       **(4)** Review compliance plans submitted by each agency pursuant to this  
37 Part.
- 38       **(5)** Serve as a central clearinghouse for information on State contracts,  
39 including the maintenance of a list of all pending State contracts upon  
40 which minority, small, female, and handicapped-owned businesses  
41 may bid.
- 42       **(6)** Serve as a coordinator for the State's minority, small, female, and  
43 disabled business goals programs and as an information and referral

1 center for all State minority, small, female, and handicapped-owned  
2 business initiatives.

- 3 (7) Make findings, recommendations, and proposals to the Governor and  
4 the General Assembly as are necessary and appropriate to implement  
5 the provisions of this Part.

6 **"§ 143B-426.51. Adoption of rules.**

7 The Department of Administration shall submit for review by the Administrative  
8 Rules Review Commission any rules deemed appropriate for adoption pursuant to this  
9 Part.

10 **"§ 143B-426.52. Goals.**

11 It is a goal to award not less than twenty-five percent (25%) of the total dollar  
12 amount of State contracts to minority, female, small, and handicapped-owned business,  
13 provided, however:

- 14 (1) At least ten percent (10%) of the total dollar amount of State contracts  
15 shall be targeted for minority-owned businesses;  
16 (2) At least ten percent (10%) of the total dollar amount of procurement  
17 contracts shall be targeted for female-owned businesses; and  
18 (3) At least two percent (2%) of the total dollar amount of all State  
19 construction contracts and real property contracts shall be targeted for  
20 female-owned businesses.

21 (b) The percentage of the total dollar amount of State contracts is calculated for  
22 one fiscal year and is calculated by examining independently each type of contract for  
23 each agency which enters into contracts pursuant to Article 3 and Article 8 of Chapter  
24 143 of the General Statutes and Article 2 of Chapter 136 of the General Statutes.

25 **"§ 143B-426.53. Annual compliance plans.**

26 (a) Each State agency shall file with the Disadvantaged Business Development  
27 Office an annual compliance plan which outlines the agency's minority, small, female,  
28 and handicapped-owned business contracting goals for the fiscal year, the manner in  
29 which the agency intends to reach these goals, and a timetable for reaching these goals.  
30 The Disadvantaged Business Development Office shall review and approve the plan of  
31 each agency or reject any plan that does not comply with the provisions of this Part or  
32 any rules adopted pursuant to this Part.

33 (b) The compliance plan shall include a policy statement signed by the agency  
34 head, expressing a commitment to use minority, small, female, and handicapped-owned  
35 businesses in all aspects of contracting to the maximum extent feasible.

36 **"§ 143B-426.54. False information supplied by business.**

37 (a) When a State agency determines that a business has knowingly supplied false  
38 information in order to be classified as a minority, small, female, or handicapped-owned  
39 business, the State agency shall contact the Director of the Disadvantaged Business  
40 Development Office to determine, after consultation with legal counsel, the appropriate  
41 action to be taken.

42 (b) Prior to any final determination under subsection (a) of this section, the  
43 business charged with supplying false information may commence an action under  
44 Chapter 150B of the General Statutes.

1 (c) Any person who, with intent to defraud another, represents himself as a  
2 minority, small, female, or handicapped-owned business for the purpose of obtaining  
3 money, goods, property, services, choses in action, or any item of value from a person  
4 within this State is guilty of a Class J felony."

5 Sec. 2. G.S. 120-123 is amended by adding a new subdivision to read:

6 "(56) The Disadvantaged Business Development Council, as established  
7 by Part 29 of Article 9 of Chapter 143B of the General Statutes."

8 Sec. 3. There is appropriated from the General Fund to the Department of  
9 Administration the sum of \$100,000 for fiscal year 1989-90 and \$100,000 for fiscal year  
10 1990-91 for the creation of the Disadvantaged Business Development Office and for the  
11 implementation of the provisions of this act.

12 Sec. 4. Section 3 of this act shall become effective July 1, 1989. Sections 1  
13 and 2 of this act shall become effective January 1, 1990.