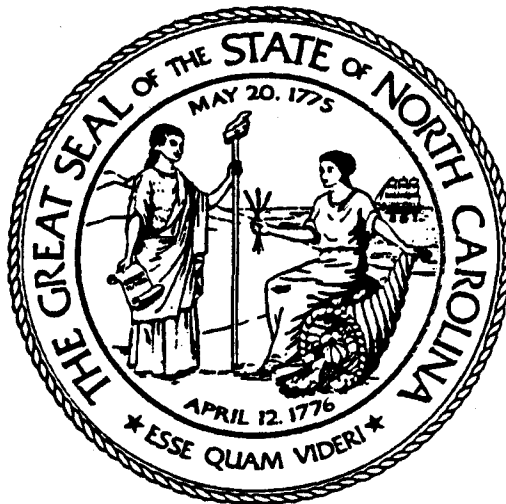


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**LEGISLATIVE
RESEARCH COMMISSION**

**MINORITY BUSINESS CONTRACTS
AND SMALL BUSINESS ASSISTANCE**



**REPORT TO THE
1989 GENERAL ASSEMBLY
OF NORTH CAROLINA
1990 SESSION**

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State Legislative Building
North Carolina

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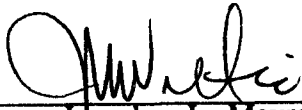


May 21, 1990

TO THE MEMBERS OF THE 1989 GENERAL ASSEMBLY (SECOND SESSION,
1990):

The Legislative Research Commission herewith submits to you for your consideration its interim report on Minority Business Contracts and Small Business Assistance. The report was prepared by the Legislative Research Commission's Committee on Minority Business Contracts and Small Business Assistance pursuant to Section 2.1 of Chapter 802 of the 1989 Session Laws.

Respectfully submitted,



Josephus L. Mavretic
Speaker



Henson P. Barnes
President Pro Tempore

Cochairmen
Legislative Research Commission



1989-1990

LEGISLATIVE RESEARCH COMMISSION

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PREFACE

The Legislative Research Commission, established by Article 6B of Chapter 120 of the General Statutes, is a general purpose study group. The Commission is co-chaired by the Speaker of the House and the President Pro Tempore of the Senate and has five additional members appointed from each house of the General Assembly. Among the Commission's duties is that of making or causing to be made, upon the direction of the General Assembly, "such studies of and investigations into governmental agencies and institutions and matters of public policy as will aid the General Assembly in performing its duties in the most efficient and effective manner" (G.S. 120-30.17(1)).

At the direction of the 1989 General Assembly, the Legislative Research Commission has undertaken studies of numerous subjects. These studies were grouped into broad categories and each member of the Commission was given responsibility for one category of study. The Co-chairs of the Legislative Research Commission, under the authority of G.S. 120-30.10(b) and (c), appointed committees consisting of members of the General Assembly and the public to conduct the studies. Co-chairs, one from each house of the General Assembly, were designated for each committee.

The study of Minority Business Contracts and Small Business Assistance was authorized by Section 2.1(8) of Chapter 802 of the 1989 Session Laws (1989 Session). That act states that the Commission may consider Senate Bill 927 and House Joint Resolution 1514 in determining the nature, scope and aspects of the study. The relevant portions of Chapter 802 and Senate Bill 927 and HJR 1514 are included in Appendix A. The Legislative Research Commission grouped this study in its Governmental Capital Assets, Contracting and Functioning area under the direction of Senator Ralph A. Hunt. The Committee was chaired by Senator Hunt and Representative Thomas C. Hardaway. The full membership of the Committee is listed

in Appendix C of this report. A committee notebook containing the committee minutes and all information presented to the committee is filed in the Legislative Library.

COMMITTEE PROCEEDINGS.

The Committee is charged with conducting a study based on:

- * Senate Bill 927, which proposed a 10% goal for participation by minority businesses in all State contracts; and
- * House Joint Resolution 1514, which proposed a study of coordination and duplication in small business assistance programs.

The Committee has met three times. It has focused thus far on participation by minorities, females, the disabled, and small businesses in public contracts. The co-chairmen hope to coordinate the study of small business assistance programs with a performance audit of the same topic that is now being conducted by the Office of the State Auditor.

In its study of participation in public contracts by the various categories of disadvantaged businesses, the Committee has done the following:

- * Examined the various goals programs that are now in place for public contracts, most prominently the 10% goals that the 1989 General Assembly enacted for construction contracts in public buildings and highways, and the Governor's 4% goals program for procurement of goods and services in his Cabinet departments.
- * Requested and received an Attorney General's opinion on the constitutionality of North Carolina's goals approach in light of the U.S. Supreme Court's decision in the case of City of Richmond v. Croson. The Attorney General stated that goals provisions are constitutional on their face.
- * Received reports on participation by the various categories of disadvantaged businesses in public contracts. The Office of Purchase and Contract reported on the data it has collected from the Governor's Cabinet departments, and the legislative staff conducted its own survey of all State agencies. One of the chief findings of the surveys was the spottiness of available data.
- * Heard from spokespersons of groups affected by the government decisions on participation and goals: minority business, women, the disabled, contractors, small business, local government.

At its third meeting, on March 20, the Committee tentatively approved a proposal by the Co-Chairmen that the Committee recommend to the short session a bill to empower the Office of Purchase and Contract to collect and report data on participation by minorities, women, and the disabled, from all state agencies and from local school boards. The bill would enable to Office to provide a service that it provided during the 1987-88 fiscal year, but has not provided since that time for anything beyond the Cabinet departments.

At its fourth meeting on April 17 the Committee approved a draft of this interim report, including the Findings and Recommendation on Page 5 and the Legislative Proposal at Appendix D.

It is expected that the Committee will continue its inquiry into both aspects of the study before it decides on recommendations to make in its final report to the 1991 General Assembly.

FINDINGS AND RECOMMENDATIONS.

BACKGROUND: In 1983 the General Assembly enacted a statement of policy "to encourage and promote the use of small, minority, physically handicapped and women contractors in State purchasing of goods and services." G.S. 143-48.

For the 1987-88 Fiscal Year the Department of Administration was authorized and directed by the General Assembly to collect, compile and report on data showing participation by minority, women and disabled businesses in all agencies of State Government, all campuses of the University of North Carolina, all community colleges, and all local school districts. The Department's authority was based on Section 52 of Chapter 738 of the 1987 Session Laws, which appropriated \$50,000 for the Department and directed it to use the money for a goals and reporting program. (Appendix B).

The Department determined, however, that for the 1988-89 fiscal year it had no authority to spend funds it had available to continue the goals/reporting program for any agencies beyond the Governor's Cabinet Departments, even though authority for such continuance appeared to be set out in Section 38 of the Appropriations Act of 1988 (Session Law Chapter 1086 at Appendix B). The Department's reasoning, concurred in by attorneys for the General Assembly, was this:

1. That Section 38 of the act directed the expenditure of \$50,000 for the reporting program in 1988-89 "if appropriated by the General Assembly..."
2. That the appropriations committee of the General Assembly considered appropriating the \$50,000, but the General Assembly did not appropriate it.
3. That G.S. 143-16.3 (Appendix B), after prohibiting the expenditure of funds for purposes considered by the General Assembly but not approved for appropriations, goes on to specify that "the General Assembly has considered a purpose when ... any committee of the Senate or House of Representatives deliberates on that purpose."

Since its determination that it could no longer collect data from all State and educational agencies, the Department of Administration has continued to collect data for the Governor's Cabinet Departments under authority of an Executive Order whose origins predate the legislative authorization for the goals/reporting program. In collecting that data, the Department has separately collected participation rates for minorities, women and the disabled, but not for small businesses.

Section 38 of the 1988 Appropriations Act expired July 1, 1989 with the end of that fiscal year. The 1989 General Assembly enacted nothing to continue it. The same 1989 General Assembly did, however, direct the State Construction Office of the Department of Administration to collect similar data from public agencies on participation in construction contracts.

FINDING I: The Committee finds that, in order to make informed policy decisions, the General Assembly needs information about the participation of

minorities, women, and the disabled in public contracts for the procurement of goods and services.

FINDING II: The Committee finds that both the Governor and the General Assembly have recognised the need to collect data on participation of disadvantaged businesses in public contracts: the Governor through his Executive Orders and the General Assembly through its expansion of the Governor's Executive Orders for procurement contracts during 1987-88 and its own direction in 1989 that data be collected on construction contracts.

FINDING III: The Committee finds that the operation of G.S. 143-16.3 in reducing the data-collecting authority of the Office of Purchase and Contract did not represent a fully conscious decision of the General Assembly not to have the data collected.

FINDING IV: The Committee finds that data on participation by disadvantaged businesses is most useful when reported separately for minorities, women, etc. The Office of Purchase and Contract, recognising this fact, has voluntarily set up its reporting system so that rates for the different kinds of disadvantaged businesses are reported separately.

RECOMMENDATION I: The Committee recommends that the 1989 General Assembly at its 1990 Session amend G.S. 143-48 to do the following:

1. direct all governmental entities required to use the services of the Department of Administration for purchasing goods and services to report to the Department annually its rate of participation in procurement contracts by minority-owned, women-owned, and disabled-owned businesses;
2. direct that the reports be done separately for minorities, women, and disabled, making clear that a woman or disabled person is not a minority unless that person is also a member of one of four recognised racial/ethnic groups.
3. require that the Department collect and compile the data and make an annual report to the General Assembly.

RECOMMENDATION II: The Committee recommends that the General Assembly state clearly its intention that the Department use whatever money is available that is needed to gather data, so that G.S. 143-16.3 does not once again apply.

RECOMMENDATION III: The Committee recommends that the Department be directed to include in its 1991 report to the General Assembly any data from previous years that it has received but has not reported.

Recommendations I, II, and III are incorporated in the draft bill at Appendix D.

APPENDIX A

**GENERAL ASSEMBLY OF NORTH CAROLINA
1989 SESSION
RATIFIED BILL**

**CHAPTER 802
SENATE BILL 231**

AN ACT TO AUTHORIZE STUDIES BY THE LEGISLATIVE RESEARCH COMMISSION, TO CREATE AND CONTINUE VARIOUS COMMITTEES AND COMMISSIONS, TO MAKE APPROPRIATIONS THEREFOR, AND TO DIRECT VARIOUS STATE AGENCIES TO STUDY SPECIFIED ISSUES.

The General Assembly of North Carolina enacts:

PART I. TITLE

Section 1. This act shall be known as "The Studies Act of 1989."

...

PART II.-----LEGISLATIVE RESEARCH COMMISSION

Sec. 2.1. The Legislative Research Commission may study the topics listed below. Listed with each topic is the 1989 bill or resolution that originally proposed the issue or study and the name of the sponsor. The Commission may consider the original bill or resolution in determining the nature, scope and aspects of the study. The topics are:

...

- (8) State Procurement Contracts to Minority Business Enterprises (S.B. 927 - Hunt of Durham) and Small Business Technical Assistance Programs (H.J.R. 1514 - Colton),

...

Sec. 2.2. Legislative Activity Between Legislative Sessions and Procedures to Shorten the Legislative Session. The Legislative Research Commission may study the procedures of this State's, other states' and other legislative bodies' practices and procedures regulating legislative and study activity and may make recommendations as to changes in law, procedures and rules that will lead to greater efficiency in the legislative process while safeguarding the rights of all members of the General Assembly and of the citizens in this State's legislative process.

...

Sec. 2.4. Committee Membership. For each Legislative Research Commission Committee created during the 1989-1991 biennium, the Cochairmen of the Commission each shall appoint a minimum of seven members.

Sec. 2.5. Reporting Dates. For each of the topics the Legislative Research Commission decides to study under this act or pursuant to G.S. 120-30.17(1), the Commission may report its findings, together with any recommended legislation, to the 1990 Session of the 1989 General Assembly or the 1991 General Assembly, or both.

Sec. 2.6. Bills and Resolution References. The listing of the original bill or resolution in this Part is for reference purposes only and shall not be deemed to have incorporated by reference any of the substantive provisions contained in the original bill or resolution.

Sec. 2.7. Funding. From the funds available to the General Assembly, the Legislative Services Commission may allocate additional monies to fund the work of the Legislative Research Commission.

...

PART XXV.-----EFFECTIVE DATE

Sec. 25.1. This act shall become effective July 1, 1989.
In the General Assembly read three times and ratified this the 12th day of August, 1989.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1989

S

1

SENATE BILL 927

Short Title: Minority Business Enterprises.

(Public)

Sponsors: Senators Hunt of Durham, Ballance, Richardson, and Martin of Guilford.

Referred to: Small Business.

April 18, 1989

A BILL TO BE ENTITLED

1
2 AN ACT TO PROVIDE OPPORTUNITIES TO PARTICIPATE IN STATE
3 PROCUREMENT CONTRACTS TO MINORITY BUSINESS ENTERPRISES.

4 The General Assembly of North Carolina enacts:

5 Section 1. Chapter 143 of the General Statutes is amended by adding a
6 new Article to read:

7 "ARTICLE 3E.

8 "Minority Business Enterprises.

9 "§ 143-64.40. Purpose.

10 The purpose of this Article is to provide maximum contracting opportunities to
11 minority business enterprises. To further this purpose:

12 (1) Each Department, except the Department of Transportation as to
13 construction contracts, shall structure its procedures for procuring
14 supplies, services, maintenance, and construction to attempt to
15 achieve a minimum goal of ten percent (10%) of the total dollar
16 value of these procurements that are made directly or indirectly
17 from certified minority business enterprises;

1 (2) The Department of Transportation shall structure its procurements
2 for procuring construction to attempt to achieve participation by
3 certified minority business enterprises, in the amount of a
4 minimum goal of ten percent (10%) of the dollar value of contracts
5 in excess of one hundred thousand dollars (\$100,000) on the prime
6 or subcontract level; and

7 (3) Each procurement agency shall structure its procedures for
8 procuring supplies, services, maintenance, and construction to
9 encourage a fair participation in the State procurement process by
10 certified minority business enterprises.

11 "§ 143-64.41. Definitions.

12 As used in this Article, unless the context indicates otherwise:

13 (1) 'Certification' means a determination by the Minority Business
14 Development agency in the Department of Commerce that a legal
15 entity is a minority business enterprise for purposes of this Article.

16 (2) 'Control' means the exercise of the power to manage and operate
17 a business enterprise.

18 (3) 'Department' means the Department of Administration, The
19 University of North Carolina, and the Department of
20 Transportation.

21 (4) 'Goal' means a voluntary percentage or quantitative objective.

22 (5) 'Minority Business Enterprise' (MBE), means any legal entity,
23 other than a joint venture, organized to engage in commercial
24 transactions, that is at least fifty-one percent (51%) owned and
25 controlled by one or more minority persons, or a non-profit entity
26 organized to promote the interests of the physically or mentally
27 disabled.

28 (6) 'Minority person' means a member of a socially or economically
29 disadvantaged minority group, and includes Blacks, Hispanics,
30 American Indians, Alaska natives, Asians, Pacific Islanders,
31 women, and the physically or mentally disabled.

32 (7) 'North Carolina Minority Business Development agency' means an
33 agency in the Small Business Development Division of the
34 Department of Commerce.

35 (8) 'Ownership' means:

1 providing the supplies, services, maintenance, or construction
2 activity being procured, and that may be reasonably expected to be
3 interested in an upcoming procurement as decided by the
4 Department or procurement agency, shall be sent a copy of the
5 solicitation notice as part of the solicitation process being
6 employed for the business community in general. The Department
7 or procurement agency shall solicit a sufficient number of MBEs as
8 to reasonably assure one or more MBE responses to the
9 solicitation. A Department or procurement agency shall have
10 fulfilled the solicitation requirements of this Article if it has used
11 the central directory in the solicitation process. Each solicitation
12 notice shall include the following statement: "Minority business
13 enterprises are encouraged to respond to this solicitation notice."

14 (2) Within 30 days following the first day of the fiscal year, every
15 Department and procurement agency shall forward to the Minority
16 Business Development agency a complete listing of all known
17 regularly recurring procurement solicitations reasonably expected
18 to be of one hundred thousand dollars (\$100,000) or more. The
19 list shall include the subject of the contract, where the work is to
20 be performed or delivery made, the approximate solicitation date
21 and the name and telephone number of the procurement officer.
22 The Minority Business Development agency shall compile a master
23 list containing the above information, and distribute it to the
24 Division of Small Business Development of the Department of
25 Commerce, appropriate minority business associations, minority
26 business assistance agencies, trade organizations, and to each
27 Department and procurement agency which shall post the list on
28 all bid boards for the remainder of the fiscal year.

29 (3) Except for sole source, small, and emergency procurements, a copy
30 of the solicitation notice for each procurement shall be sent to the
31 Minority Business Development agency for distribution to the
32 appropriate minority business associations, minority business
33 assistance agencies, and trade organizations identified by the
34 Minority Business Development agency. One copy of solicitation
35 documents for these procurements shall be made available by the

1 Department or agency, free of charge, to these entities on request.
 2 The copy shall be marked 'For Informational Purposes Only.'

3 "§ 143-64.48. Procurement solicitations.

4 (a) A Department or procurement agency shall assess the potential for MBE
 5 participation expected under each of the methods described in subsection (b) of this
 6 section before initiating the procurement. The Department or procurement agency
 7 shall utilize the MBE procurement method, or combination of methods decided most
 8 appropriate for the particular contract.

9 (b) The following factors shall be used to anticipate the degree of MBE
 10 participation, to decide the MBE subcontract participation goal, when used, and the
 11 MBE procurement method to be used:

12 (1) The extent to which the direct solicitation, subcontracting
 13 opportunity method, or combination of both methods, is
 14 determined most likely to result in maximum MBE participation in
 15 the contract;

16 (2) The number of MBEs listed in the central directory or otherwise
 17 identified for a particular supply, service, maintenance, or
 18 construction;

19 (3) The geographical proximity, when relevant, of MBEs identified
 20 under subdivision (2) of this section to the location of the work to
 21 be performed;

22 (4) The feasibility of subcontracting opportunities given the nature and
 23 extent of the proposed contract; and

24 (5) Specific statutory participation goals applicable to a Department's
 25 procurement.

26 (c) The Department of Administration may employ the following procurement
 27 methods:

28 (1) Direct solicitation. If known MBEs can provide the entire
 29 contract, then the MBEs may be solicited directly as part of the
 30 solicitation process being employed for the business community in
 31 general.

32 (2) MBE subcontract method. Notwithstanding whether a direct
 33 solicitation is made under subdivision (1) of this subsection, all
 34 Department of Transportation construction contracts in excess of
 35 one hundred thousand dollars (\$100,000) and all other

1 construction contracts in excess of fifty thousand dollars (\$50,000)
2 shall contain an MBE subcontract participation goal, expressed as a
3 percentage of the dollar value of the contract that should be
4 attempted to be subcontracted to MBEs. A Department or
5 procurement agency may establish an MBE subcontract goal for a
6 particular construction contract of fifty thousand dollars (\$50,000)
7 or less, or any supply, maintenance, or service contract. A bidder
8 or offeror shall submit with its bid or proposal a completed MBE
9 utilization affidavit on a form provided by the appropriate
10 Department or procurement agency. The names of prime
11 contractors requesting or purchasing solicitation documents for
12 construction contracts shall be made available on request to any
13 certified MBEs whose specialty suggests an interest in
14 subcontracting. Each prime contractor given solicitation
15 documents as part of a procurement under the MBE subcontract
16 method, and who does not have an updated central directory shall
17 be given, upon request, one copy of the directory or the pertinent
18 portions for purposes of soliciting subcontract quotations, bids, or
19 offers from certified MBEs.

20 (3) Combination procurement method. A combination of direct
21 solicitation and the MBE subcontract methods, pursuant to
22 subdivisions (2) and (3) of this subsection, which may be used
23 when the Department or procurement agency decides this method
24 will be most likely to achieve the greatest degree of MBE
25 participation.

26 (4) Pre-bid and pre-proposal conferences. When pre-bid or pre-
27 proposal conferences are held, the Department or procurement
28 agency shall explain the MBE subcontracting goal, if applicable,
29 the MBE provisions of the solicitation, the documentation required
30 and its relationship to the bidder responsiveness and responsibility
31 or offeror acceptability determinations which will be made in
32 connection with the evaluation process.

33 (5) Federal requirements. To the extent required by federal assistance
34 instruments applicable to contracts let by the State under a federal

1 assistance program, those MBEs meeting requirements and criteria
2 of the federal government shall be utilized.

3 **"§ 143-64.49. Contract award.**

4 (a) The Department of Administration may require all determinations under this
5 section and G.S. 143-64.50 to be made before execution of a contract, or approval by
6 the Department, or both.

7 (b) A contract involving subcontracts shall be subject to the Department or
8 procurement agency concluding that the apparent low bidder or successful offeror
9 meets the applicable MBE participation provisions contained in the solicitation. The
10 apparent low bidder or successful offeror shall, within 10 working days from the date
11 of award of the contract or notification that it is the apparent low bidder or successful
12 offeror, whichever is earlier, submit any required documentation. Nothing in this
13 regulation is intended to preclude the award of a contract conditionally upon receipt
14 of any required documentation.

15 (c) Whenever an uncertified minority business is identified for contract award, the
16 Department or procurement agency shall forward the affidavit of the minority
17 business to the Department of Administration and the Minority Business
18 Development agency for certification consistent with G.S. 143-64.53. A contract may
19 be awarded notwithstanding the pendency of certification. The certification entity
20 shall notify the Department or procurement agency promptly of its disposition. In
21 the event of an unfavorable disposition, the Department or procurement agency shall
22 include that fact as part of its annual report and may not, in the future, treat that
23 business entity as an MBE until it is certified.

24 (d) If a Department or procurement agency determines that the apparent low
25 bidder or successful offeror has not complied with the MBE subcontract participation
26 contract goal and has not obtained a waiver in accordance with G.S. 143-64.50, or if
27 the bidder or offeror fails to submit the documentation required by the solicitation,
28 the procurement officer, upon review by an assistant attorney general and approval of
29 the Department or agency head having jurisdiction over the contract, may reject the
30 bid or offer or cancel the award of the contract. The reasons for this action shall be
31 specified in writing and mailed or delivered to the bidder or offeror.

32 **"§ 143-64.50. Waiver.**

33 (a) If, for any reason, the apparent low bidder or successful offeror is unable to
34 achieve the contract goal for MBE participation, the bidder or offeror may request, in
35 writing, an exception to the goal with justification, including the following:

- 1 (1) A detailed statement of the efforts made to select portions of the
 2 work proposed to be performed by MBEs in order to increase the
 3 likelihood of achieving the stated goal;
- 4 (2) A detailed statement of the efforts made to contact and negotiate
 5 with MBEs including:
- 6 a. The names, addresses, dates, and telephone numbers of
 7 MBEs contacted, and
- 8 b. A description of the information provided to MBEs
 9 regarding the plans, specifications, and anticipated time
 10 schedule for portions of the work to be performed;
- 11 (3) As to each MBE that placed a subcontract quotation or offer which
 12 the apparent low bidder or successful offeror considers not to be
 13 acceptable, a detailed statement of the reasons for this conclusion;
 14 and
- 15 (4) A list of minority subcontractors found to be unavailable. This list
 16 should be accompanied by an MBE unavailability certification
 17 signed by the MBE, or a statement from the apparent low bidder
 18 or successful offeror that the MBE refused to give the written
 19 certification.
- 20 (b) A waiver of an MBE contract goal may be granted only upon a reasonable
 21 demonstration by the bidder or offeror that MBE participation was unable to be
 22 obtained or was unable to be obtained at a reasonable price, and a determination by
 23 the agency head or the agency head's designee that the public interest is served by a
 24 waiver. In making a determination under this section, the agency head or agency
 25 head's designee may consider engineering estimates, catalogue prices, general market
 26 availability, and availability of MBEs in the area work is to be performed, other bids
 27 or offers and subcontract bids or offers substantiating significant variances between
 28 MBE and non-MBE cost of participation, and their impact on the overall cost of the
 29 contract to the State, and any other relevant factor.
- 30 (c) A Department or agency head may waive any of the provisions of G.S.
 31 143-64.48 and G.S. 143-64.49 for a sole source or emergency procurement in which
 32 the public interest cannot reasonably accommodate use of those procedures.
- 33 (d) When a waiver is granted, except waivers under subsection (c) of this section,
 34 one copy of the waiver determination and the reasons for the determination shall be

1 kept by the MBE Liaison Officer with another copy forwarded to the Minority
2 Business Development agency.

3 "§ 143-64.51. Amendment for unforeseen circumstances.

4 If at any time before execution of a contract, the apparent low bidder or successful
5 offeror determines that an MBE has become or will become unavailable, then the
6 apparent low bidder or successful offeror shall immediately notify the procurement
7 officer. Any desired change in the schedule for participation shall be approved in
8 advance by the procurement officer and shall indicate the contractor's efforts to
9 substitute another MBE subcontractor to perform the work. Desired changes
10 occurring after the date of contract execution may occur only upon written approval
11 by the Department or agency head and subsequently by contract amendment.

12 "§ 143-64.52. Compliance.

13 (a) To assure compliance with MBE subcontract requirements, a Department or
14 procurement agency may require a contractor to furnish:

15 (1) Copies of purchase orders, subcontracts, cancelled checks, and
16 other records that may indicate the number, names, dollar value of
17 MBE subcontracts, dates, and schedule time for performance of
18 work by an MBE subcontractor; and

19 (2) Entry for an on-site verification inspection.

20 (b) Upon determining a contractor's noncompliance, the Department or
21 procurement agency shall notify the contractor in writing of its findings and shall
22 specify what corrective actions are required. The contractor shall be required to
23 initiate the corrective actions within 10 days and complete them within the time
24 specified by the Department or procurement agency.

25 (c) If a Department or procurement agency determines that substantial non-
26 compliance with MBE contract provisions exists and that the prime contractor refuses
27 or fails to take the corrective action required by the Department or procurement
28 agency, then the following sanctions may be invoked:

29 (1) Termination of the contract;

30 (2) Referral to the office of the Attorney General for appropriate
31 action; or

32 (3) Initiation of any other specific remedy identified by contract.

33 "§ 143-64.53. Certification.

34 (a) Contractors seeking to be certified by and do business with the Department of
35 Transportation shall use certification procedures developed by that Department. The

1 Department of Transportation shall also develop recertification and decertification
2 procedures.

3 (b) Contractors seeking to be certified for procurements solicited by other
4 Departments or procurement agencies shall file an application with the Minority
5 Business Development agency of North Carolina.

6 (c) The Minority Business Development agency may request the following
7 information to assist in any certification, recertification, and decertification
8 determination.

9 (1) Copies of articles of incorporation, bylaws, minutes, shareholder
10 agreements, stock certificates, stock transfer ledgers, any additional
11 profit-sharing agreements or buyout rights, or in the case of a
12 partnership, the partnership agreement;

13 (2) Current financial statements, business licenses, the prior two years'
14 federal tax returns, cancelled checks, resumes of principal parties,
15 and any relevant personal and third-party agreements, such as
16 rental and management agreements;

17 (3) Any other information that the certifying entity determines is
18 necessary.

19 Failure to furnish the requested information within a reasonable time as specified in
20 writing may result in a denial of certification or recertification, or a determination to
21 decertify.

22 (d) Certification as an MBE by the Minority Business Development agency shall
23 be made by disclosure affidavit and any other supporting documentation that may be
24 required.

25 (e) All certifications by the Minority Business Development agency shall be valid
26 until terminated by the agency after which MBEs previously certified are required to
27 re-submit disclosure affidavits and other required supporting documentation. All
28 MBEs certified before the effective date of this Article may be recertified as required
29 by the Minority Business Development agency.

30 (f) The Minority Business Development agency may decertify a business, which it
31 finds no longer is a minority business enterprise. A decertified business entity may
32 reapply for certification 12 months from the date of the decertification. A new
33 affidavit and any supporting documentation required shall be submitted as if the
34 business entity were requesting initial certification.

35 "§ 143-64.54. Reporting requirements.

1 (a) Each Department and procurement agency shall make a report annually
 2 within 90 days following the close of the fiscal year to the Minority Business

3 Development agency:

4 (1) The total number and value of its procurements from State
 5 certified MBEs as prime contractors, and separately as
 6 subcontractors;

7 (2) The percentage which purchases and contracts from MBEs
 8 represent of its total number and value of its procurements from
 9 business enterprises for the fiscal year just ended;

10 (3) The number of waivers granted pursuant to G.S. 143-64.50; and

11 (4) An evaluation by the Department of the success of its MBE
 12 program.

13 The Minority Business Development agency shall prepare an annual report
 14 summarizing MBE participation throughout the State for submission by the end of
 15 each calendar year to the General Assembly and to each Department and
 16 procurement agency."

17 Sec. 2. G.S. 143-48 reads as rewritten:

18 "**§ 143-48. State policy; cooperation in promoting the use of small, minority, physically**
 19 **handicapped and women contractors; purpose.**

20 It is the policy of this State to encourage and promote the use of small, minority,
 21 physically handicapped and women contractors in State purchasing of goods and
 22 services. All State agencies, institutions and political subdivisions shall cooperate with
 23 the Department of Administration and all other State agencies, institutions and
 24 political subdivisions in efforts to encourage the use of small, minority, physically
 25 handicapped and women contractors in achieving the purpose of this Article, which
 26 is to provide for the effective and economical acquisition, management and
 27 disposition of goods and services by and through the Department of Administration.
 28 Accordingly, all contracts entered into for the purchase of goods and services
 29 pursuant to this Article shall be subject to the provision of Article 3E of this
 30 Chapter."

31 Sec. 3. G.S. 143-135.5 reads as rewritten:

32 "**§ 143-135.5. State policy; cooperation in promoting the use of small, minority,**
 33 **physically handicapped and women contractors; purpose.**

34 It is the policy of this State to encourage and promote the use of small, minority,
 35 physically handicapped and women contractors in State construction projects. All.

1 State agencies, institutions and political subdivisions shall cooperate with the
2 Department of Administration and all other State agencies, institutions and political
3 subdivisions in efforts to encourage and promote the use of small, minority,
4 physically handicapped and women contractors in achieving the purpose of this
5 Article, which is the effective and economical construction of public buildings.
6 Accordingly, all contracts entered into for the purchase of goods and services
7 pursuant to this Article shall be subject to the provision of Article 3E of this
8 Chapter."

9 Sec. 4. G.S. 136-28.4 reads as rewritten:

10 "**§ 136-28.4. State policy; cooperation in promoting the use of small, minority,**
11 **physically handicapped and women contractors.**

12 It is the policy of this State to encourage and promote the use of small, minority,
13 physically handicapped and women contractors in the construction, alteration and
14 maintenance of State roads, streets, highways, and bridges and in the procurement of
15 materials for such projects. All State agencies, institutions and political subdivisions
16 shall cooperate with the Department of Transportation and all other State agencies,
17 institutions and political subdivisions in efforts to encourage and promote the use of
18 small, minority, physically handicapped and women contractors in such State
19 construction, alteration, maintenance and procurement. Accordingly, all contracts
20 entered into for construction, alteration, maintenance, and procurement in excess of
21 one hundred thousand dollars (\$100,000) pursuant to this Article shall be subject to
22 the provisions of Article 3E of Chapter 143 of the General Statutes."

23 Sec. 5. This act shall become effective January 1, 1990.



GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1989

H

1

HOUSE JOINT RESOLUTION 1514

Sponsors: Representatives Colton, Redwine, DeVane, and Hardaway.

Referred to: Rules.

May 1, 1989

1 A JOINT RESOLUTION TO AUTHORIZE THE LEGISLATIVE RESEARCH
2 COMMISSION TO STUDY SMALL BUSINESS TECHNICAL ASSISTANCE
3 PROGRAMS.

4 Whereas, The North Carolina Department of Administration has
5 estimated that the State spends approximately \$9,000,000 each year on small business
6 assistance programs: and

7 Whereas, program direction and administration is divided among a
8 number of different agencies, including the Small Business Division in the
9 Department of Commerce, the Technological Development Authority in the
10 Department of Commerce, the Small Business Centers in the Department of
11 Community Colleges, and the Small Business and Technology Development program
12 in The University of North Carolina: and

13 Whereas, several universities have affiliated economic development
14 centers, such as the Regional Development Institute, the Center for Improving Rural
15 and Coastal Living, and the Center for Improving Mountain Living, which offer
16 business-related assistance: and

17 Whereas, regional organizations such as Councils of Government and
18 other development and planning agencies also receive annual appropriations for
19 economic development: and

1 Whereas, in addition, there is also a variety of services from State, local,
2 and volunteer organizations;

3 Now, therefore, be it resolved by the House of Representatives, the Senate
4 concurring:

5 Section 1. The Legislative Research Commission is authorized to study
6 small business assistance programs. The Commission shall:

7 (1) Develop a complete listing of all small business technical assistance
8 services currently offered in North Carolina, with special emphasis
9 on those receiving annual appropriations of State funds specifically
10 directed to technical and managerial assistance:

11 (2) Determine what services are offered and to what extent they are
12 utilized;

13 (3) Identify areas of overlap and duplication:

14 (4) Explore particular kinds of services actually needed by small
15 business, and to what extent these are provided by existing
16 agencies; and

17 (5) Investigate the extent of coordination and cooperation among the
18 service providers.

19 Sec. 2. The Commission shall include representatives from small
20 businesses in both urban and rural areas of the State in its study of small business
21 assistance programs. In addition, the Commission shall include at least one
22 representative of a State, local government, or private entity that provides a small
23 business assistance program.

24 Sec. 3. The Commission shall make a final report of its findings and
25 recommendations to the 1991 Session of the General Assembly. The report shall
26 include recommendations on the following issues:

27 (1) How to improve coordination and efficiency of service delivery
28 among the programs providing small business services;

29 (2) Whether additional changes, including additional services, are
30 needed to provide quality assistance to small business;

31 (3) The need for increases or decreases in funding to carry out these
32 recommendations; and

33 (4) Whether to develop a performance-based funding system for
34 providers of technical and managerial services to small business in
35 North Carolina.

1 Sec. 4. This resolution is effective upon ratification.



APPENDIX B

CHAPTER 738

Session Laws — 1987

Requested by: Rep. Bob Etheridge

—SMALL BUSINESSES/STATE CONTRACTS

Sec. 52. (a) Of the funds appropriated in a reserve to the Office of State Budget and Management in Section 2 of this act, the sum of fifty thousand dollars (\$50,000) for the 1987-88 fiscal year shall be used by the Department to:

(1) identify small businesses, especially those owned by minorities, disabled persons, and women, that could do business with the State, and to provide pre- and post-bid information and assistance to these businesses on how to do business with the State;

(2) publish and distribute to State purchasers a directory of small business enterprises, especially those owned by minorities, disabled persons, and women; and

(3) establish a system to monitor, record, and measure the use of small businesses, especially those owned by minorities, disabled persons, and women, by the State.

(b) The General Assembly urges all subdivisions and agencies of the State, all local governments, and all other entities, authorized to use the services of the Department of Administration in the purchase of materials, supplies, and equipment, (i) to participate in a Program to Encourage Business Enterprises Owned by Minority, Women and Disabled Persons, and (ii) to purchase a minimum of four percent (4%) of their contract purchases from businesses owned by minorities, disabled persons, and women, provided that the purchases comply with the policy set forth in G.S. 143-48.

All participating entities required to use the services of the Department of Administration in the purchase of materials, supplies, and equipment shall report to the Department of Administration in March of 1988 on what percentage of their contract purchases were from businesses owned by minorities, disabled persons, and women.

Requested by: Representatives Bob Etheridge and Hardaway
 -----CONTINUE PROGRAM TO ENCOURAGE STATE
 PURCHASES FROM MINORITY BUSINESSES

Sec. 38. Section 52 of Chapter 738 of the 1987 Session Laws reads as rewritten:

"Sec. 52. (a) Of the funds appropriated in a reserve to the Office of State Budget and Management in Section 2 of this act, the sum of fifty thousand dollars (\$50,000) for the 1987-88 fiscal year, and an additional sum of fifty thousand dollars (\$50,000) for the 1988-89 fiscal year if appropriated by the General Assembly, shall be used by the Department to:

- (1) Identify small businesses, especially those owned by minorities, disabled persons, and women, that could do business with the State, and to provide pre- and post-bid information and assistance to these businesses on how to do business with the State;
- (2) Publish and distribute to State purchasers a directory of small business enterprises, especially those owned by minorities, disabled persons, and women; and
- (3) Establish a system to monitor, record, and measure the use of small businesses, especially those owned by minorities, disabled persons, and women, by the State.

(b) The General Assembly urges all subdivisions and agencies of the State, all local governments, and all other entities, authorized to use the services of the Department of Administration in the purchase of materials, supplies, and equipment, (i) to participate in a Program to Encourage Business Enterprises Owned by Minority, Women and Disabled Persons, and (ii) to purchase a minimum of four percent (4%) of their contract purchases from businesses owned by minorities, disabled persons, and women, provided that the purchases comply with the policy set forth in G.S. 143-48.

All participating entities required to use the services of the Department of Administration in the purchase of materials, supplies, and equipment shall report to the Department of Administration in March of 1988 and in March of 1989 on what percentage of their contract purchases were from businesses owned by minorities, disabled persons, and women, and what percentage of the contract bids for such purchases were from businesses owned by such persons. The Department of Administration shall provide the reports to the House and Senate Base Budget Appropriations Committees on General Government in April of 1989.

For the purpose of this section, whenever it is specified that a business must be owned by minorities, disabled persons, and women, it means such persons who are also either United States Citizens or United States Nationals."

APPENDIX B

§ 143-16.3. No expenditures for purposes for which the General Assembly has considered but not enacted an appropriation.

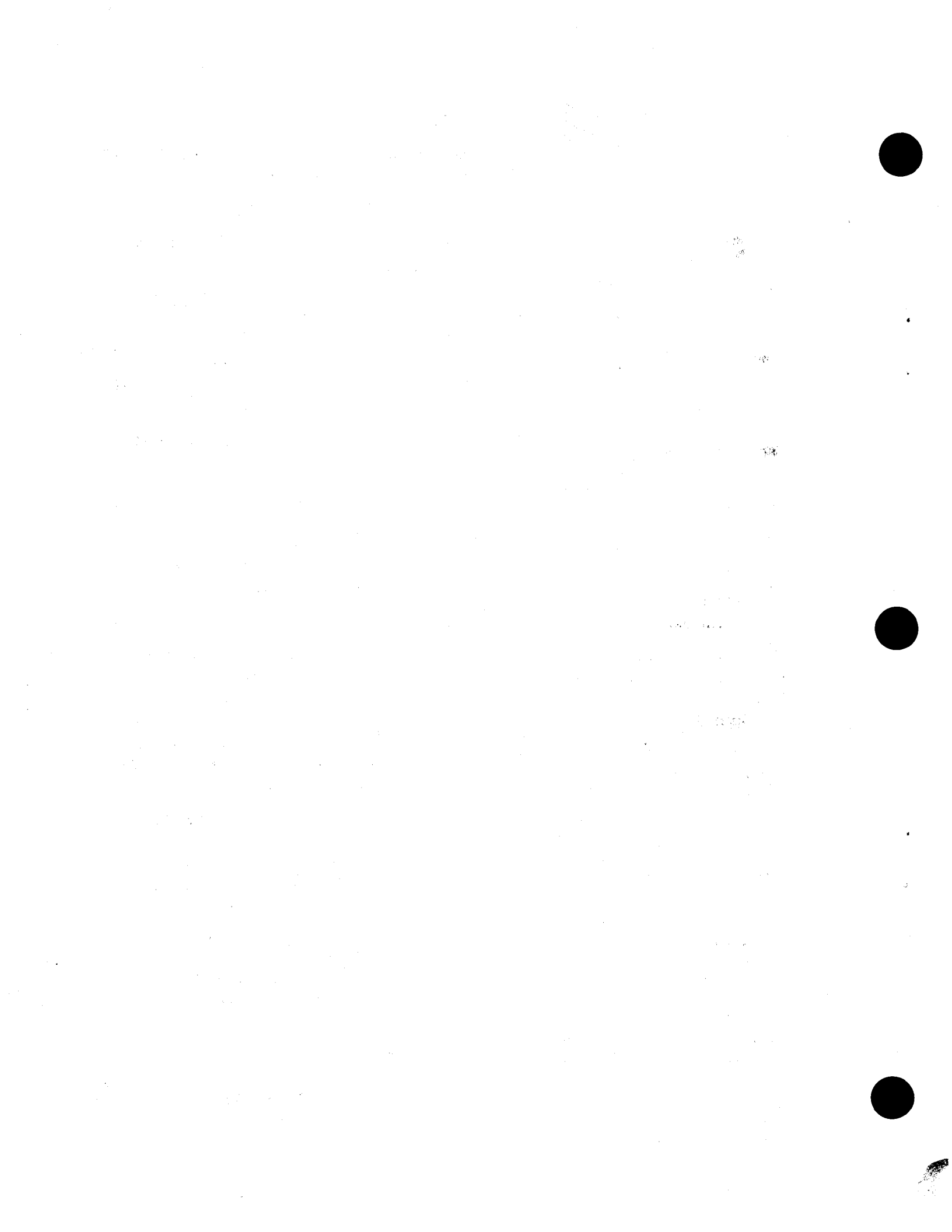
Notwithstanding any other provision of law, no funds from any source, except for gifts, grants, and funds allocated from the Contingency and Emergency Fund by the Council of State, may be expended for any purpose for which the General Assembly has considered but not enacted an appropriation of funds for the current fiscal period. For the purpose of this section, the General Assembly has considered a purpose when that purpose is included in a bill or petition or when any committee of the Senate or the House of Representatives deliberates on that purpose. (1985 (Reg. Sess., 1986), c. 1014, s. 177; 1987 (Reg. Sess., 1988), c. 1086, s. 50; 1989, c. 752, s. 47.)

Editor's Note. —
Session Laws 1987 (Reg. Sess., 1988), c. 1086, s. 172 is a severability clause.
Session Laws 1989, c. 752, s. 167 contains a severability clause.

Effect of Amendments. — The 1987 (Reg. Sess., 1988) amendment, effective July 1, 1988, inserted "Notwithstanding

any other provision of law" at the beginning of this section.

The 1989 amendment, effective July 1, 1989, inserted "and funds allocated from the Contingency and Emergency Fund by the Council of State" in the first sentence.



APPENDIX C

MEMBERSHIP OF LRC COMMITTEE ON MINORITY BUSINESS CONTRACTS
AND SMALL BUSINESS ASSISTANCE.

President Pro Tem's Appointments

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11-11-11

11-11-11

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 1989

H

D

89-RRY-1
THIS IS A DRAFT 19-APR-90 17:00:25

Short Title: Participation Reports.

(Public)

Sponsors:

Referred to:

- 1 A BILL TO BE ENTITLED
2 AN ACT TO REQUIRE REPORTING TO THE DEPARTMENT OF
3 ADMINISTRATION OF PARTICIPATION BY DISADVANTAGED
4 BUSINESSES IN PUBLIC PROCUREMENT CONTRACTS AND TO
5 REQUIRE THE DEPARTMENT TO COLLECT, COMPILE, AND
6 REPORT THE DATA.
7 The General Assembly of North Carolina enacts:
8 Section 1. G.S. 143-48 reads as rewritten:
9 "§ 143-48. State policy; cooperation in promoting the use of small,
10 minority, physically handicapped and women contractors; purpose;
11 required annual reports.
12 (a) It is the policy of this State to encourage and promote the use of small,
13 minority, physically handicapped and women contractors in State purchasing of
14 goods and services. All State agencies, institutions and political subdivisions
15 shall cooperate with the Department of Administration and all other State
16 agencies, institutions and political subdivisions in efforts to encourage the use
17 of small, minority, physically handicapped and women contractors in achieving
18 the purpose of this Article, which is to provide for the effective and economical
19 acquisition, management and disposition of goods and services by and through
20 the Department of Administration.
21 (b) All governmental entities required by statute to use the services of the
22 Department of Administration in the purchase of goods and services shall
23 report to the Department of Administration annually on what percentage of
24 their contract purchases of goods and services, through term contracts and

1 open-market contracts, were from minority-owned businesses, what percentage
 2 from female-owned businesses, and what percentage from disabled-owned
 3 businesses. The same governmental entities shall include in their reports what
 4 percentages of the contract bids for such purchases were from such businesses.
 5 The Department of Administration shall provide instructions to the reporting
 6 entities concerning the manner of reporting and the definitions of the
 7 businesses referred to in this act, provided that, for the purposes of this act:

8 (1) a business in one of the categories above means one:

- 9 a. in which at least fifty-one percent (51%) of the
 10 business, or of the stock in the case of a corporation, is
 11 owned by one or more persons in the category; and
 12 b. of which the management and daily business operations
 13 are controlled by one or more persons in the category
 14 who own it; and

15 (2) a female or a disabled person is not a minority, unless the
 16 female or disabled person is also a member of one of the
 17 minority groups described in G.S. 143-128(c)(2)a-d; and

18 (3) a disabled person means a "handicapped person" as defined
 19 in G.S. 168A-3(4).

20 The Department of Administration shall collect and compile the data described
 21 in this section and report it annually to the General Assembly."

22 Sec. 2. The Department of Administration shall include in its report
 23 to the General Assembly in 1991 any data on participation by businesses
 24 described in this section that has been reported to it from governmental entities
 25 during previous years but that the Department has never reported to a standing
 26 committee of the General Assembly.

27 Sec. 3. The Department shall use any moneys available to it that
 28 are necessary to implement this act.

29 Sec. 4. This act shall become effective July 1, 1990.

SUMMARY OF LEGISLATIVE PROPOSAL

Sec. 1 - This section of the bill would add a new subsection to G.S. 143-48. That statutory section, enacted in 1983, states the policy of the State to encourage and promote the use of small, minority, physically handicapped, and women contractors in State purchasing of goods and services. The existing statute directs all State agencies, institutions and political subdivisions to cooperate with the Department of Administration toward that end. That Department houses the State Office of Purchase and Contract.

The proposed subsection (b) of 143-48 would direct all governmental entities required to use the services of the Department of Administration in the purchase of goods and services to make annual reports to the Department. The governmental entities required to use the Department are:

- * all agencies of State government;
- * all campuses of the University of North Carolina;
- * all community colleges; and
- * all local public school districts.

Their annual reports would give the percentage of their contract purchases of goods and services from minority-owned businesses, from women-owned businesses, and from disabled-owned businesses. The Department would be given much discretion in determining the manner of reporting and the content of the annual reports, except that:

- * it would be required to use a basic definition of ownership designed to avoid sham front companies;
- * the three categories would have to be reported separately, with no one counted as a minority unless he or she is African-American, Hispanic-American, Native American, or Asian-American; and
- * "disabled person" means the same as "handicapped person" in G.S. 168A-3(4).

The Department would be required to compile the data it receives and report it annually to the General Assembly.

Sec. 2 - This section would direct the Department in its first report to the General Assembly any back data it has received from State agencies but has not reported.

Sec. 3 - This section would direct the Department to use any money available that is necessary to carry out the act. The purpose of this section is to make clear the General Assembly's intent that the Department should not be blocked from using funds available to it to implement the act, regardless of whether a specific appropriation is approved.

Sec. 4 - This section would make the act effective July 1, 1990.

