

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2009

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HOUSE BILL 912

Short Title: Encourage Use of Military Veteran Contractors. (Public)

Sponsors: Representatives Killian, Sutton, Parmon, McElraft (Primary Sponsors); Faison, Harrison, Hughes, Lucas, McGee, McLawhorn, and Wray.

Referred to: Homeland Security, Military, and Veterans Affairs, if favorable, State Government/State Personnel.

April 1, 2009

1 A BILL TO BE ENTITLED

2 AN ACT TO ENCOURAGE STATE AND LOCAL GOVERNMENT TO USE MILITARY
3 VETERAN CONTRACTORS.

4 The General Assembly of North Carolina enacts:

5

6 **PART I. CREATE MILITARY VETERAN BUSINESS PARTICIPATION GOALS FOR**
7 **PUBLIC CONTRACTS**

8

9 **SECTION 1.(a)** G.S. 143-48 reads as rewritten:

10 "§ 143-48. State policy; cooperation in promoting the use of small contractors, minority
11 contractors, physically handicapped ~~contractors, and women~~
12 ~~contractors; contractors, women contractors, and military veteran contractors;~~
13 purpose; required annual reports.

14 (a) Policy. – It is the policy of this State to encourage and promote the use of small
15 contractors, minority contractors, physically handicapped ~~contractors, and women~~
16 ~~contractors; contractors, women contractors, and military veteran contractors,~~
17 of goods and services. All State agencies, institutions and political subdivisions shall cooperate
18 with the Department of Administration and all other State agencies, institutions and political
19 subdivisions in efforts to encourage the use of small contractors, minority contractors,
20 physically handicapped ~~contractors, and women~~
21 ~~contractors; contractors, women contractors, and military veteran contractors~~ in achieving the purpose of this Article, which is to provide for
22 the effective and economical acquisition, management and disposition of goods and services by
23 and through the Department of Administration.

24 (b) Reporting. – Every governmental entity required by statute to use the services of the
25 Department of Administration in the purchase of goods and services, every local school
26 administrative unit, and every private, nonprofit corporation other than an institution of higher
27 education or a hospital that receives an appropriation of five hundred thousand dollars
28 (\$500,000) or more during a fiscal year from the General Assembly shall report to the
29 department of Administration annually on what percentage of its contract purchases of goods
30 and services, through term contracts and open-market contracts, were from minority-owned
31 businesses, what percentage from female-owned businesses, what percentage from
32 disabled-owned businesses, what percentage from disabled business enterprises and enterprises,
33 what percentage from nonprofit work centers for the blind and the severely disabled disabled,
34 and what percentage from military veteran contractors. The same governmental entities shall
35 include in their reports what percentages of the contract bids for such purchases were from such



1 businesses. The Department of Administration shall provide instructions to the reporting
2 entities concerning the manner of reporting and the definitions of the businesses referred to in
3 this act, provided that, for the purposes of this act:

4 (1) Except as provided in subdivision (1a) of this subsection, a business in one
5 of the categories above means one:

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

11 (1a) A "disabled business enterprise" means a nonprofit entity whose main
12 purpose is to provide ongoing habilitation, rehabilitation, independent living,
13 and competitive employment for persons who are handicapped through
14 supported employment sites or business operated to provide training and
15 employment and competitive wages.

16 (1b) A "nonprofit work center for the blind and the severely disabled" means an
17 agency:

- 18 a. Organized under the laws of the United States or this State, operated
19 in the interest of the blind and the severely disabled, the net income
20 of which agency does not inure in whole or in part to the benefit of
21 any shareholder or other individual;
- 22 b. In compliance with any applicable health and safety standard
23 prescribed by the United States Secretary of Labor; and
- 24 c. In the production of all commodities or provision of services,
25 employs during the current fiscal year severely handicapped
26 individuals for (i) a minimum of seventy-five percent (75%) of the
27 hours of direct labor required for the production of commodities or
28 provision of services, or (ii) in accordance with the percentage of
29 direct labor required under the terms and conditions of Public Law
30 92-28 (41 U.S.C. § 46, et seq.) for the production of commodities or
31 provision of services, whichever is less.

32 (2) A female or a disabled person is not a minority, unless the female or
33 disabled person is also a member of one of the minority groups described in
34 G.S. 143-128(2)a. through d.

35 (3) A disabled person means a person with a handicapping condition as defined
36 in G.S. 168-1 or G.S. 168A-3.

37 (4) A veteran contractor is a contractor that is a military veteran or a veteran
38 business, as those terms are defined in G.S. 143-128.5(f).

39 (c) The Department of Administration shall compile information on small and
40 medium-sized business participation in State contracts subject to this Article and report the
41 information as provided in subsection (d) of this section. The report shall analyze (i) contract
42 awards by business size category, (ii) historical trends in small and medium-sized business
43 participation in these contracts, and (iii) to the extent feasible, participation by small and
44 medium-sized businesses in the State procurement process as dealers, service companies, and
45 other indirect forms of participation. The Department may require reports on contracting by
46 business size in the same manner as reports are required under subsection (b) of this section.

47 (d) The Department of Administration shall collect and compile the data described in
48 this section and report it annually to the General Assembly.

49 (d1) Repealed by Session Laws 2007-392, s. 1, effective October 1, 2007.

50 (e) In seeking contracts with the State, a disabled business enterprise must provide
51 assurances to the Secretary of Administration that the payments that would be received from

1 the State under these contracts are directed to the training and employment of and payment of
2 competitive wages to handicapped employees."

3 **SECTION 1.(b)** Article 8 of Chapter 143 of the General Statutes is amended by
4 adding a new section to read:

5 **§ 143-128.5. Military veteran business participation goals.**

6 (a) The State shall have a verifiable ten percent (10%) goal for participation by military
7 veteran businesses in the total value of work for each State building project, including building
8 projects done by a private entity on a facility to be leased or purchased by the State. A local
9 government unit or other public or private entity that receives State appropriations for a
10 building project or other State grant funds for a building project, including a building project
11 done by a private entity on a facility to be leased or purchased by the local government unit,
12 where the project cost is one hundred thousand dollars (\$100,000) or more, shall have a
13 verifiable ten percent (10%) goal for participation by veteran businesses in the total value of the
14 work.

15 Each city, county, or other local public entity shall adopt, after a notice and public hearing,
16 an appropriate verifiable percentage goal for participation by veteran businesses in the total
17 value of work for building projects.

18 Each entity required to have verifiable percentage goals under this subsection shall make a
19 good faith effort to recruit veteran participation in accordance with this section or
20 G.S. 143-131(c), as applicable.

21 (b) A public entity shall establish prior to solicitation of bids the good faith efforts that
22 it will take to make it feasible for veteran businesses to submit successful bids or proposals for
23 the contracts for building projects. Public entities shall make good faith efforts as set forth in
24 subsection (e) of this section. Public entities shall require contractors to make good faith efforts
25 to meet the veteran business participation goal established in subsection (a) of this section.
26 Each first-tier subcontractor on a construction management at risk project shall comply with the
27 requirements applicable to contractors under this subsection.

28 (c) Each bidder, which shall mean first-tier subcontractor for construction manager at
29 risk projects for purposes of this subsection, on a project bid under any of the methods
30 authorized under G.S. 143-128(a1) shall identify on its bid the veteran businesses that it will
31 use on the project and an affidavit listing the good faith efforts it has made pursuant to
32 subsection (b) of this section and the total dollar value of the bid that will be performed by the
33 veteran businesses. A contractor, including a first-tier subcontractor on a construction manager
34 at risk project, that performs all of the work under a contract with its own workforce may
35 submit an affidavit to that effect in lieu of the affidavit otherwise required under this
36 subsection. The apparent lowest responsible, responsive bidder shall also file the following:

37 (1) Within the time specified in the bid documents, either:

38 a. An affidavit that includes a description of the portion of work to be
39 executed by veteran businesses, expressed as a percentage of the total
40 contract price, which is equal to or more than the applicable goal. An
41 affidavit under this sub-subdivision shall give rise to a presumption
42 that the bidder has made the required good faith or effort; or

43 b. Documentation of its good faith effort to meet the goal. The
44 documentation must include evidence of all good faith efforts that
45 were implemented, including any advertisements, solicitations, and
46 evidence of other specific actions demonstrating recruitment and
47 selection of veteran businesses for participation in the contract.

48 (2) Within 30 days after award of the contract, a list of all identified
49 subcontractors that the contractor will use on the project.

50 Failure to file a required affidavit or documentation that demonstrates that the contractor
51 made the required good faith effort is grounds for rejection of the bid.

1 (d) No subcontractor who is identified and listed pursuant to subsection (c) of this
2 section may be replaced with a different subcontractor except:

- 3 (1) If the subcontractor's bid is later determined by the contractor or
4 construction manager at risk to be nonresponsible or nonresponsive, or the
5 listed subcontractor refuses to enter into a contract for the complete
6 performance of the bid work, or
7 (2) With the approval of the public entity for good cause.

8 Good faith efforts as set forth in G.S. 143-131(c) shall apply to the selection of a substitute
9 subcontractor. Prior to substituting a subcontractor, the contractor shall identify the substitute
10 subcontractor and inform the public entity of its good faith efforts pursuant to G.S. 143-131(c).

11 (e) Before awarding a contract, a public entity shall do the following:

- 12 (1) Develop and implement a veteran business participation outreach plan to
13 identify veteran businesses that can perform public building projects and to
14 implement outreach efforts to encourage veteran business participation in
15 these projects to include education, recruitment, and interaction between
16 veteran businesses and nonveteran businesses.
17 (2) Attend the scheduled prebid conference.
18 (3) Utilize other media, as appropriate, likely to inform potential veteran
19 businesses of the bid being sought.

20 (f) As used in this section:

- 21 (1) The term 'veteran business' means a business:
22 a. In which at least fifty-one percent (51%) is owned by one or more
23 military veterans, or in the case of a corporation, in which at least
24 fifty-one percent (51%) of the stock is owned by one or more
25 military veterans; and
26 b. Of which the management and daily business operations are
27 controlled by one or more of military veterans who own it.
28 (2) The term 'military veteran' means a person who is a citizen or lawful
29 permanent resident of the United States and who served in the armed forces
30 of the United States or the North Carolina National Guard and who was
31 discharged or released therefrom under conditions other than dishonorable.

32 (g) Nothing in this section shall be construed to require contractors or awarding
33 authorities to award contracts or subcontracts to or to make purchases of materials or
34 equipment from veteran-business contractors or veteran-business subcontractors who do not
35 submit the lowest responsible, responsive bid or bids.

36 (h) Notwithstanding G.S. 132-3 and G.S. 121-5, all public records created pursuant to
37 this section shall be maintained by the public entity for a period of not less than three years
38 from the date of the completion of the building project.

39 (i) Except as provided in subsections (a), (f), (g), and (h) of this section, this section
40 shall only apply to building projects costing three hundred thousand dollars (\$300,000) or
41 more. This section shall not apply to the purchase and erection of prefabricated or relocatable
42 buildings or portions thereof, except that portion of the work which must be performed at the
43 construction site.

44 (j) Each public or private entity that is subject to this section shall annually report to
45 the Department of Administration on its compliance with the requirements of this section. The
46 Department of Administration shall provide instructions to the reporting entities concerning the
47 manner and date of reporting. The Secretary of the Department of Administration shall make
48 reports annually to the Joint Legislative Commission on Governmental Operations on
49 information reported pursuant to this subsection.

50 (k) If the death of a military veteran causes a business to be less than fifty-one percent
51 (51%) owned by one or more military veterans, the surviving spouse of the military veteran

who acquires ownership rights in the business shall, for the period set forth in this subsection, be treated as if the surviving spouse were the veteran for the purpose of maintaining the status of the business as a veteran business. This period shall begin on the date the veteran dies and end on the earliest of the following:

- (1) The date on which the surviving spouse remarries.
(2) The date on which the surviving spouse relinquishes an ownership interest in the business.
(3) The date that is ten years after the veteran's death."

SECTION 1.(c) G.S. 143-131 is amended by adding a new subsection to read:

"(c) All public entities shall solicit military veteran participation in contracts for the erection, construction, alteration, or repair of any building awarded pursuant to this section. The public entity shall maintain a record of contractors solicited and shall document efforts to recruit military veteran business participation in those contracts. Nothing in this section shall be construed to require formal advertisement of bids. All data, including the type of project, total dollar value of the project, dollar value of military veteran business participation on each project, and documentation of efforts to recruit military veteran participation shall be reported to the Department of Administration, Division of Veterans Affairs, upon the completion of the project."

PART II. CONFORMING CHANGES

SECTION 2.(a) G.S. 18C-151(a)(4) reads as rewritten:

"(4) The Commission has complied with the minority participation goals of G.S. 143-128.2 and G.S. 143-128.3, and with the veteran participation goals of G.S. 143-128.5."

SECTION 2.(b) G.S. 113-315.36 reads as rewritten:

"§ 113-315.36. Building contracts.

(a) The following general laws, to the extent provided below, do not apply to the North Carolina Seafood Industrial Park Authority:

- (1) Repealed by Session Laws 1999-368, s. 1.

(2) Except for G.S. 143-128.2, G.S. 143-128.2 and G.S. 143-128.5, Article 8 of Chapter 143 of the General Statutes does not apply to public building contracts of the Authority that require the estimated expenditure of public money in an amount less than two hundred fifty thousand dollars (\$250,000). With respect to a contract that is exempted from certain provisions of Article 8 under this subdivision, the powers and duties set out in Article 8 shall be exercised by the Authority, and the Secretary of Administration and other State officers, employees, or agencies shall have the responsibilities and immunities provided in Article 8.

- (3) no duties or responsibilities concerning the contract.

G.S. 143-341(3) does not apply to plans and specifications for construction or renovation authorized by the Authority that require the estimated expenditure of public money in an amount less than two hundred fifty thousand dollars (\$250,000).

(b) Notwithstanding the other provisions of this section, the services of the Department of Administration may be made available to the Authority, when requested by the Authority, with regard to matters governed by Article 8 of Chapter 143 of the General Statutes and G.S. 143-341(3). The Authority shall report quarterly to the Joint Legislative Commission on Governmental Operations on any building contract to which this exemption is applied. The quarterly report required by this subsection shall specifically include information regarding the Authority's compliance with the provisions of G.S. 143-128.2G.S. 143-128.2 and G.S. 143-128.5."

1 **SECTION 2.(c)** G.S. 116-31.11(f) is amended by adding a new subdivision to
2 read:

3 ~~(5) Whether the person or business awarded a contract under this section meets~~
4 ~~the definition of 'veteran business' or 'military veteran' as defined in~~
5 ~~G.S. 143-128.5(f).~~"

6 **SECTION 2.(d)** G.S. 116D-4 reads as rewritten:

7 **"§ 116D-4. Minority and Minority, veteran, and historically underutilized business
8 participation."**

9 (a) Minority Business and Veteran Business Participation. – The goals set by
10 G.S. 143-128 and G.S. 143-128.5 for participation in projects by minority and veteran
11 businesses apply to projects funded by the proceeds of bonds or notes issued under this section.
12 The following State agencies shall monitor compliance with this requirement and shall report to
13 the General Assembly by January 1 of each year on the participation by minority and veteran
14 businesses in these projects. The State Construction Office, Department of Administration,
15 shall monitor compliance with regard to projects funded by the proceeds of university
16 improvement general obligation bonds and notes and special obligation bonds and notes; the
17 Board of Governors of The University of North Carolina shall provide the State Construction
18 Office any information required by the State Construction Office to monitor compliance. The
19 Community Colleges System Office shall monitor compliance with regard to projects funded
20 by the proceeds of community college general obligation bonds and notes.

21 (b) Participation in Providing Professional Services. – The Department of State
22 Treasurer shall provide contracting opportunities for historically underutilized businesses in
23 providing professional services in connection with the issuance of bonds and notes authorized
24 by this section. As used in this subsection, the term "historically underutilized business" means
25 a business described in G.S. 143-48. The Department of State Treasurer shall strive to increase
26 the amount of legal, financial, and other professional services acquired by it from historically
27 underutilized businesses. With the assistance of the Office for Historically Underutilized
28 Businesses in the Department of Administration, the Department of State Treasurer shall set
29 objectives for contracting with these businesses, identify and eliminate barriers or constraints
30 that may restrict these businesses from contracting with the Department, and develop a plan for
31 meeting its objectives. The Department of State Treasurer shall report quarterly to the Office
32 for Historically Underutilized Businesses on its progress in carrying out the requirements of
33 this subsection."

34 **SECTION 2.(e)** G.S. 143-128.1 reads as rewritten:

35 **"§ 143-128.1. Construction management at risk contracts."**

36 (a) For purposes of this section and G.S. 143-64.31:

37 (1) "Construction management services" means services provided by a
38 construction manager, which may include preparation and coordination of
39 bid packages, scheduling, cost control, value engineering, evaluation,
40 preconstruction services, and construction administration.

41 (2) "Construction management at risk services" means services provided by a
42 person, corporation, or entity that (i) provides construction management
43 services for a project throughout the preconstruction and construction
44 phases, (ii) who is licensed as a general contractor, and (iii) who guarantees
45 the cost of the project.

46 (3) "Construction manager at risk" means a person, corporation, or entity that
47 provides construction management at risk services.

48 (4) "First-tier subcontractor" means a subcontractor who contracts directly with
49 the construction manager at risk.

1 (b) The construction manager at risk shall be selected in accordance with Article 3D of
2 this Chapter. Design services for a project shall be performed by a licensed architect or
3 engineer. The public owner shall contract directly with the architect or engineer.

4 (c) The construction manager at risk shall contract directly with the public entity for all
5 construction; shall publicly advertise as prescribed in G.S. 143-129; and shall prequalify and
6 accept bids from first-tier subcontractors for all construction work under this section. The
7 prequalification criteria shall be determined by the public entity and the construction manager
8 at risk to address quality, performance, the time specified in the bids for performance of the
9 contract, the cost of construction oversight, time for completion, capacity to perform, and other
10 factors deemed appropriate by the public entity. The public entity shall require the construction
11 manager at risk to submit its plan for compliance with G.S. 143-128.2 and G.S. 143-128.5 for
12 approval by the public entity prior to soliciting bids for the project's first-tier subcontractors. A
13 construction manager at risk and first-tier subcontractors shall make a good faith effort to
14 recruit and select minority businesses for participation in contracts pursuant to
15 G.S. 143-128.2, G.S. 143-128.2 and military veteran businesses for participation in contracts
16 pursuant to G.S. 143-128.5. A construction manager at risk may perform a portion of the work
17 only if (i) bidding produces no responsible, responsive bidder for that portion of the work, the
18 lowest responsible, responsive bidder will not execute a contract for the bid portion of the
19 work, or the subcontractor defaults and a prequalified replacement cannot be obtained in a
20 timely manner, and (ii) the public entity approves of the construction manager at risk's
21 performance of the work. All bids shall be opened publicly, and once they are opened, shall be
22 public records under Chapter 132 of the General Statutes. The construction manager at risk
23 shall act as the fiduciary of the public entity in handling and opening bids. The construction
24 manager at risk shall award the contract to the lowest responsible, responsive bidder, taking
25 into consideration quality, performance, the time specified in the bids for performance of the
26 contract, the cost of construction oversight, time for completion, compliance with
27 G.S. 143-128.2, G.S. 143-128.2 and G.S. 143-128.5, and other factors deemed appropriate by
28 the public entity and advertised as part of the bid solicitation. The public entity may require the
29 selection of a different first-tier subcontractor for any portion of the work, consistent with this
30 section, provided that the construction manager at risk is compensated for any additional cost
31 incurred.

32 When contracts are awarded pursuant to this section, the public entity shall provide for a
33 dispute resolution procedure as provided in G.S. 143-128(f1).

34 (d) The construction manager at risk shall provide a performance and payment bond to
35 the public entity in accordance with the provisions of Article 3 of Chapter 44A of the General
36 Statutes."

37 **SECTION 2.(f)** G.S. 143-129.4 reads as rewritten:

38 **"§ 143-129.4. Guaranteed energy savings contracts.**

39 The solicitation and evaluation of proposals for guaranteed energy savings contracts, as
40 defined in Part 2 of Article 3B of this Chapter, and the letting of contracts for these proposals
41 are not governed by this Article but instead are governed by the provisions of that Part; except
42 that guaranteed energy savings contracts are subject to the requirements of
43 G.S. 143-128.2, G.S. 143-128.2, 143-128.5, and G.S. 143-135.3."

44 **SECTION 2.(g)** G.S. 143-135.5(a) reads as rewritten:

45 **"§ 143-135.5. State policy; cooperation in promoting the use of small, minority, physically**
46 ~~handicapped and womenhandicapped, women, and military veteran~~
47 **contractors; purpose.**

48 (a) It is the policy of this State to encourage and promote the use of small, minority,
49 physically ~~handicapped and womenhandicapped, women, and military veteran~~ contractors in
50 State construction projects. All State agencies, institutions and political subdivisions shall
51 cooperate with the Department of Administration and all other State agencies, institutions and

1 political subdivisions in efforts to encourage and promote the use of small, minority, physically
2 ~~handicapped and women~~handicapped, women, and military veteran contractors in achieving the
3 purpose of this Article, which is the effective and economical construction of public buildings."

4 **SECTION 2.(h)** G.S. 143-135.26(9)b1 reads as rewritten:

5 "b1. The entity includes in its bid or proposal requirements that the
6 contractor will file a plan for making a good faith effort to reach the
7 minority participation goal set out in ~~G.S. 143-128.2.~~G.S. 143-128.2
8 and ~~the~~ the veteran business participation goal set out in
9 G.S. 143-128.5."

10 **SECTION 2.(i)** G.S. 147-33.97 reads as rewritten:

11 "**§ 147-33.97. Information technology procurement policy; reporting requirements.**

12 (a) Policy. – In order to further the policy of the State to encourage and promote the use
13 of small, minority, physically ~~handicapped, and women~~handicapped, women, and veteran
14 contractors in State purchasing of goods and services, all State agencies covered by this Part
15 shall cooperate with the Office in efforts to encourage the use of small, minority, physically
16 ~~handicapped, and women~~handicapped, women, and veteran contractors in achieving the
17 purpose of this Part, which is to provide for the effective and economical acquisition,
18 management, and disposition of information technology.

19 (a1) A vendor submitting a bid shall disclose in a statement, provided
20 contemporaneously with the bid, where services will be performed under the contract sought,
21 including any subcontracts and whether any services under that contract, including any
22 subcontracts, are anticipated to be performed outside the United States. Nothing in this section
23 is intended to contravene any existing treaty, law, agreement, or regulation of the United States.

24 (a2) The State Chief Information Officer shall retain the statements required by
25 subsection (a1) of this section regardless of the State entity that awards the contract and shall
26 report annually to the Secretary of Administration on the number of contracts which are
27 anticipated to be performed outside the United States.

28 (b) Reporting. – Every State agency that makes a direct purchase of information
29 technology using the services of the Office shall report directly to the Department of
30 Administration all information required by G.S. 143-48(b).

31 (c) The Department of Administration shall collect and compile the data described in
32 this section and report it annually to the Office."

33 **SECTION 2.(j)** G.S. 148-37.2(j) reads as rewritten:

34 "(j) Minority Business Participation. – G.S. 143-128.2 applies and G.S. 143-128.5 apply
35 to the Projects authorized in this section."

36 **SECTION 3.** This act is effective when it becomes law and applies to bids solicited
37 on or after that date.