

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2021

FILED SENATE  
Apr 6, 2021  
S.B. 568  
PRINCIPAL CLERK

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SENATE BILL DRS45325-LMa-98

Short Title: Expand Minority Business Capacity. (Public)

Sponsors: Senators deViere, Robinson, and Foushee (Primary Sponsors).

Referred to:

A BILL TO BE ENTITLED

AN ACT APPROPRIATING FUNDS TO THE DEPARTMENT OF ADMINISTRATION AND CLARIFYING THE DEFINITION OF THE TERM "RESPONSIBLE, RESPONSIVE BIDDER" TO INCREASE THE NUMBER OF MINORITY AND HISTORICALLY UNDERUTILIZED BUSINESSES USED IN STATE CONTRACTS.

The General Assembly of North Carolina enacts:

**PART I. DEPARTMENT OF ADMINISTRATION/FUNDS FOR MINORITY AND HISTORICALLY UNDERUTILIZED BUSINESSES**

**SECTION 1.(a)** There is appropriated from the General Fund to the Department of Administration, Office of Historically Underutilized Business (HUB), the sum of five hundred thousand dollars (\$500,000) in nonrecurring funds for the 2020-2021 fiscal year for the purpose of improving existing and creating new outreach plans to educate minority businesses, as that term is defined in G.S. 143-128.2, about State laws that encourage or require minority participation in State contracts. In addition, HUB shall improve existing and create new programs designed to foster interaction between minority and nonminority businesses in an effort to increase the number of minority subcontractors used in State contracts.

**SECTION 1.(b)** To further improve the State's efforts to increase minority participation in State contracts, HUB shall study whether the current "good-faith efforts" required by G.S. 143-128.2 should be expanded or simplified. By February 15, 2022, HUB shall report its findings, and any recommendations for legislation, to the Joint Legislative Oversight Committee on General Government and the Fiscal Research Division.

**SECTION 2.** There is appropriated from the General Fund to the Department of Administration for the ReTOOLNC grant program the sum of fifteen million dollars (\$15,000,000) in nonrecurring funds for the 2020-2021 fiscal year for the purpose of providing additional funds to assist historically underutilized businesses, as that term is defined is G.S. 143-128.4, in recovering from the economic impact of the COVID-19 pandemic.

**SECTION 3.** There is appropriated from the General Fund to the Department of Administration, Office of Historically Underutilized Business, the sum of two million dollars (\$2,000,000) in nonrecurring funds for the 2020-2021 fiscal year to be allocated to community development financial institutions which shall use the funds to help support and develop African American– and minority-owned businesses.

**SECTION 4.(a)** There is appropriated from the General Fund to the Department of Administration, Office of Historically Underutilized Business, the sum of one million dollars (\$1,000,000) in nonrecurring funds for the 2020-2021 fiscal year to be allocated to African American and community-based organizations throughout the State to aid in outreach efforts to



1 encourage minority participation in State contracts and to conduct training, including webinars,  
2 on the State certification process for historically underutilized businesses, as that term is defined  
3 in G.S. 143-128.4.

4 **SECTION 4.(b)** The Department shall develop eligibility criteria for the grants  
5 authorized by subsection (a) of this section. No later than December 1, 2021, the Department  
6 shall report on the eligibility criteria and the names of the recipient organizations to the Joint  
7 Legislative Oversight Committee on General Government and the Fiscal Research Division.

8 **SECTION 5.(a)** There is appropriated from the General Fund to the Department of  
9 Administration, Office of Historically Underutilized Business, the sum of two million dollars  
10 (\$2,000,000) in nonrecurring funds for the 2020-2021 fiscal year to be allocated to local  
11 governments in the State to study disparities in the awarding of local public contracts to minority  
12 and nonminority contractors and subcontractors. For purposes of this subsection, the term "local  
13 government" means a county or city.

14 **SECTION 5.(b)** The Department of Administration shall develop eligibility criteria  
15 for the grants authorized by subsection (a) of this section. No later than December 1, 2021, the  
16 Department shall report on the eligibility criteria and the names of the recipient local  
17 governments to the Joint Legislative Oversight Committee on General Government and the  
18 Fiscal Research Division.

19 **SECTION 6.(a)** There is appropriated from the General Fund to the Department of  
20 Administration, Office of Historically Underutilized Business, the sum of two hundred fifty  
21 thousand dollars (\$250,000) in nonrecurring funds for the 2020-2021 fiscal year for the purpose  
22 of purchasing software or contracting for software services to collect data on the State's  
23 compliance with:

- 24 (1) As provided in G.S. 143-48, the State's policy to encourage and promote the  
25 use of small contractors, minority contractors, physically handicapped  
26 contractors, and women contractors in State purchasing of goods and services.  
27 (2) As provided in G.S. 143-128.2, the State's verifiable ten percent (10%) goal  
28 for participation by minority businesses in the total value of work for each  
29 State building project, including building projects done by a private entity on  
30 a facility to be leased or purchased by the State.

31 **SECTION 6.(b)** The Department of Administration, Office of Historically  
32 Underutilized Business, shall also use the software described in subsection (a) of this section to  
33 assist in preparing quarterly reports on the data collected and to enforce the State's compliance  
34 with the provisions of G.S. 143-48 and G.S. 143-128.2.

35 **SECTION 6.(c)** No later than February 15 of each year, the Department of  
36 Administration, Office of Historically Underutilized Business, shall submit a report on the data  
37 and information collected for each of the preceding four quarters to the Joint Legislative  
38 Oversight Committee on General Government and the Fiscal Research Division.

39  
40 **PART II. CLARIFY LAW TO INCREASE MINORITY AND HISTORICALLY**  
41 **UNDERUTILIZED BUSINESS PARTICIPATION**

42 **SECTION 7.** G.S. 143-129 reads as rewritten:

43 **"§ 143-129. Procedure for letting of public contracts.**

44 ...

45 (b) Advertisement and Letting of Contracts. – Where the contract is to be let by a board  
46 or governing body of the State government or of a State institution, proposals shall be invited by  
47 advertisement in a newspaper having general circulation in the State of North Carolina. Where  
48 the contract is to be let by a political subdivision of the State, proposals shall be invited by  
49 advertisement in a newspaper having general circulation in the political subdivision or by  
50 electronic means, or both. A decision to advertise solely by electronic means, whether for

1 particular contracts or generally for all contracts that are subject to this Article, shall be approved  
2 by the governing board of the political subdivision of the State at a regular meeting of the board.

3 The advertisements for bidders required by this section shall appear at a time where at least  
4 seven full days shall lapse between the date on which the notice appears and the date of the  
5 opening of bids. The advertisement shall: (i) state the time and place where plans and  
6 specifications of proposed work or a complete description of the apparatus, supplies, materials,  
7 or equipment may be had; (ii) state the time and place for opening of the proposals; and (iii)  
8 reserve to the board or governing body the right to reject any or all proposals.

9 Proposals may be rejected for any reason determined by the board or governing body to be  
10 in the best interest of the ~~unit~~unit, including the failure to comply with the provisions of  
11 G.S. 143-128.2(c). However, the proposal shall not be rejected for the purpose of evading the  
12 provisions of this Article. No board or governing body of the State or political subdivision thereof  
13 may assume responsibility for construction or purchase contracts, or guarantee the payments of  
14 labor or materials therefor except under provisions of this Article.

15 All proposals shall be opened in public and the board or governing body shall award the  
16 contract to the lowest responsible bidder or bidders, taking into consideration quality,  
17 ~~performance~~performance, and the time specified in the proposals for the performance of the  
18 ~~contract~~contract, the bidder's compliance with the provisions of G.S. 143-128.2(c), and the  
19 bidder's past performance on contracts subject to this Article, including quality, performance, the  
20 time specified in the proposals for the performance of the contract, and cooperation with other  
21 bidders and persons involved in the project.

22 ...."

### 23 24 **PART III. EFFECT OF HEADINGS**

25 **SECTION 8.** The headings to the parts of this act are a convenience to the reader  
26 and are for reference only. The headings do not expand, limit, or define the text of this act, except  
27 for effective dates referring to a part.

### 28 29 **PART IV. EFFECTIVE DATE**

30 **SECTION 9.** This act becomes effective July 1, 2021.