

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2001

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SENATE BILL 832
Finance Committee Substitute Adopted 12/5/01

Short Title: Small Business Contractor Initiative/Funds.

(Public)

Sponsors:

Referred to:

April 3, 2001

1 A BILL TO BE ENTITLED
2 AN ACT TO PROVIDE FOR CONTRACT FINANCING AND SURETY BONDS
3 FOR SMALL BUSINESSES THAT CONTRACT WITH GOVERNMENTAL
4 AGENCIES.

5 The General Assembly of North Carolina enacts:

6 SECTION 1. Article 10 of Chapter 143B of the General Statutes is amended
7 by adding a new Part to read:

8 "Part 18. Small Business Contractor Act.

9 "**§ 143B-472.75. Purpose and intent.**

10 The purpose and intent of this Part is to foster economic development and the
11 creation of jobs by providing financial assistance to financially responsible small
12 businesses that are unable to obtain adequate financing and bonding assistance in
13 connection with contracts.

14 "**§ 143B-472.76. Definitions.**

15 The following definitions apply in this Part:

- 16 (1) Authority. – The North Carolina Small Business Contractor Authority
17 created in this Part.
- 18 (2) Internal Revenue Code. – The Code as defined in G.S. 105-228.90.
- 19 (3) Contract term. – The term of a contract, including the maintenance or
20 warranty period required by the contract and the period during which
21 the surety may be liable for latent defects.
- 22 (4) Government agency. – The federal government, the State, an agency,
23 or a political subdivision of the federal government or the State, or a
24 utility regulated by the North Carolina Utilities Commission.
- 25 (5) Related party. – A party related to the applicant in a manner that would
26 require an attribution of stock to or from the party under section 318 of
27 the Internal Revenue Code.
- 28 (6) Secretary. – The Secretary of Commerce.

29 "**§ 143B-472.77. Authority creation; powers.**

1 (a) Creation. – The North Carolina Small Business Contractor Authority is
2 created within the Department of Commerce.

3 (b) Membership. – The Authority consists of 11 members appointed as follows:

4 (1) Four members appointed by the General Assembly upon the
5 recommendation of the President Pro Tempore of the Senate, one of
6 whom has experience in underwriting surety bonds.

7 (2) Four members appointed by the General Assembly upon the
8 recommendation of the Speaker of the House of Representatives, one
9 of whom is a present or former governmental employee with
10 experience in administering public contracts.

11 (3) Three members appointed by the Governor, one of whom is a licensed
12 general contractor and one of whom is experienced in working for
13 private, nonprofit, small, or underutilized businesses.

14 (c) Terms. – Members serve four-year terms, except initial appointments. There
15 is no prohibition against reappointment for subsequent terms. Initial appointments shall
16 begin on January 1, 2002. Each appointing authority shall designate two of its initial
17 appointments to serve four-year terms and the remainder of its initial appointments to
18 serve three-year terms.

19 (d) Chair. – The chair shall be elected annually by the members of the Authority
20 from the membership of the Authority and shall be a voting member.

21 (e) Compensation. – The Authority members shall receive no salary as a result of
22 serving on the Authority but are entitled to per diem and allowances in accordance with
23 G.S. 138-5.

24 (f) Meetings. – The Secretary shall convene the first meeting of the Authority
25 within 60 days after January 1, 2002. Meetings shall be held as necessary as determined
26 by the Authority.

27 (g) Quorum. – A majority of the members of the Authority constitutes a quorum
28 for the transaction of business. A vacancy in the membership of the Authority does not
29 impair the right of the quorum to exercise all rights and to perform all duties of the
30 Authority.

31 (h) Vacancies. – A vacancy on the Authority resulting from the resignation of a
32 member or otherwise is filled in the same manner in which the original appointment was
33 made, for the balance of the unexpired term. Vacancies in appointments made by the
34 General Assembly shall be filled in accordance with G.S. 120-122.

35 (i) Removal. – Members may be removed in accordance with G.S. 143B-13. A
36 member who misses three consecutive meetings of the Authority may be removed for
37 nonfeasance.

38 (j) Powers and Duties. – The Authority has the following powers and duties:

39 (1) To accept grants, loans, contributions, and services.

40 (2) To employ staff, procure supplies, services, and property, and enter
41 into contracts, leases, or other legal agreements, including the
42 procurement of reinsurance, to carry out the purposes of the Authority.

- 1 (3) To acquire, manage, operate, dispose of, or otherwise deal with
2 property, take assignments of rentals and leases, and enter into
3 contracts, leases, agreements, and arrangements that are necessary or
4 incidental to the performance of the duties of the Authority, upon
5 terms and conditions that it considers appropriate.
- 6 (4) To specify the form and content of applications, guaranty agreements,
7 or agreements necessary to fulfill the purposes of this Part.
- 8 (5) To acquire or take assignments of documents executed, obtained, or
9 delivered in connection with assistance provided by the Authority
10 under this Part.
- 11 (6) To fix, determine, charge, and collect any premiums, fees, charges,
12 costs, and expenses in connection with any assistance provided by the
13 Authority under this Part.
- 14 (7) To adopt rules, in accordance with Chapter 150B of the General
15 Statutes, to implement this Part.
- 16 (8) To take any other action necessary to carry out its purposes.
- 17 (9) To report quarterly to the Joint Legislative Commission on
18 Governmental Operations on the activities of the Authority, including
19 the amount of rates, sureties, and bonds.

20 **"§ 143B-472.78. Eligibility.**

21 To qualify for assistance under this Part, an applicant must meet all of the following
22 requirements:

- 23 (1) The applicant must be a small business concern that meets the
24 applicable size standards established by the United States Small
25 Business Administration for business loans based on the industry in
26 which the concern, including its affiliates, is primarily engaged and
27 based on the industry in which the concern, not including its affiliates,
28 is primarily engaged. In addition, in the case of an application for
29 bonding assistance, the applicant, including its affiliates, may not have
30 receipts for construction and service contracts in excess of the
31 maximum amount established by the United States Small Business
32 Administration for surety bond guarantee assistance.
- 33 (2) The applicant must be an individual, or be controlled by one or more
34 individuals, with a reputation for financial responsibility, as
35 determined from creditors, employers, and other individuals with
36 personal knowledge. If the applicant is other than a sole proprietorship,
37 at least seventy percent (70%) of the business must be owned by
38 individuals with a reputation for financial responsibility.
- 39 (3) The applicant must be a resident of this State or be incorporated in this
40 State and must have its principal place of business in this State.
- 41 (4) The applicant must demonstrate that it has been unable to obtain
42 adequate financing or bonding on reasonable terms through an

1 authorized company. If the applicant is applying for a guarantee of a
2 loan, the applicant must have applied for and been denied a loan by a
3 financial institution.

4 **"§ 143B-472.79. Small Business Contract Financing Fund.**

5 (a) Creation and Use. – The Small Business Contract Financing Fund is created
6 as a special revenue fund. Revenue in the Fund does not revert at the end of a fiscal year
7 and interest and other investment income earned by the Fund accrues to the Fund. The
8 Authority shall use the Fund to make direct loans and guaranty payments required by
9 defaults and to pay the portion of the administrative expenses of the Authority related to
10 making these loans and payments.

11 (b) Content. – The Small Business Contract Financing Fund consists of all of the
12 following revenue:

13 (1) Funds appropriated to the Fund by the State.

14 (2) Repayments of principal of and interest on direct loans.

15 (3) Premiums, fees, and any other amounts received by the Authority with
16 respect to financial assistance provided by the Authority.

17 (4) Proceeds designated by the Authority from the sale, lease, or other
18 disposition of property or contracts held or acquired by the Authority.

19 (5) Investment income of the Fund.

20 (6) Any other moneys made available to the Fund.

21 (c) Emergency Funds. – If the Authority and the Secretary determine that the
22 Small Business Contract Financing Fund does not have adequate funds, the Authority
23 may request funding from the Contingency and Emergency Fund.

24 **"§ 143B-472.80. Contract performance assistance authorized.**

25 (a) Type. – The Authority is authorized to provide the following contract
26 performance assistance:

27 (1) A guarantee of a loan made to the applicant.

28 (2) If the applicant is unable to obtain money from any other source, a
29 loan to the applicant.

30 (b) Qualification. – The Authority shall not lend money to an applicant or
31 guarantee a loan unless all of the following requirements are met:

32 (1) The applicant meets the requirements of G.S. 143B-472.78.

33 (2) The loan is to be used to perform an identified contract, of which the
34 majority of funding is provided by a government agency or a
35 combination of government agencies.

36 (3) The loan is to be used for working capital or equipment needed to
37 perform the contract, the cost of which can be repaid from contract
38 proceeds, if the Authority has entered into an agreement with the
39 applicant necessary to secure the loan or guaranty.

40 (c) Terms and Conditions. – The Authority shall set the terms and conditions for
41 loans and for the guarantee of loans. When the Authority lends money from the Small

1 Business Contract Financing Fund, it shall prepare loan documents that include all of
2 the following:

- 3 (1) The rate of interest on the loan, which shall not exceed the market rate
4 for a conventional loan with the risk inherent in a loan of the same
5 type.
- 6 (2) A payment schedule that provides money to the applicant in the
7 amounts and at the times that the applicant needs the money to
8 perform the contract for which the loan is made.
- 9 (3) A requirement that, before each advance of money is released to the
10 applicant, the applicant and the Authority must co-sign the request for
11 the money.
- 12 (4) Provisions for repayment of the loan.
- 13 (5) Any other provision the Authority considers necessary to secure the
14 loan, including an assignment of, or a lien on, payment under the
15 contract, if allowable.

16 (d) Maturity. – A loan made by the Authority shall mature not later than the date
17 the applicant is to receive full payment under the identified contract, unless the
18 Authority determines that a later maturity date is required to fulfill the purposes of this
19 Part.

20 (e) Diversity. – In selecting applicants for assistance, the Authority must consider
21 the need to serve all geographic and political areas and subdivisions of the State.

22 (f) Limitation. – The total amount of loan guarantees and loans issued to each
23 recipient during a fiscal year shall not exceed fifteen percent (15%) of the amount of
24 money in the Fund as of the beginning of that fiscal year.

25 **"§ 143B-472.81. Small Business Surety Bond Fund.**

26 (a) Creation and Use. – The Small Business Surety Bond Fund is created as a
27 special revenue fund. Revenue in the Fund does not revert at the end of a fiscal year and
28 interest and other investment income earned by the Fund accrues to the Fund. The
29 Authority shall use the Fund for the purposes of and to pay the expenses of the
30 Authority related to providing bonding assistance.

31 (b) Content. – The Small Business Surety Bond Fund consists of all of the
32 following revenue:

- 33 (1) Funds appropriated to the Fund by the State.
- 34 (2) Premiums, fees, and any other amounts received by the Authority with
35 respect to bonding assistance provided by the Authority.
- 36 (3) Proceeds designated by the Authority from the sale, lease, or other
37 disposition of property or contracts held or acquired by the Authority.
- 38 (4) Investment income of the Fund.
- 39 (5) Any other moneys made available to the Fund.

40 **"§ 143B-472.82. Bonding assistance authorized.**

41 (a) Guaranty. – Subject to the restrictions of this Part, the Authority, on
42 application, may guarantee a surety for losses incurred under a bid bond, payment bond,

1 or performance bond on an applicant's contract, of which the majority of the funding is
2 provided by a government agency or a combination of government agencies, up to
3 ninety percent (90%) of the surety's losses, or nine hundred thousand dollars
4 (\$900,000), whichever is less. The term of a guaranty under this section shall not exceed
5 the contract term. The Authority may vary the terms and conditions of the guaranty
6 from surety to surety, based on the Authority's history of experience with the surety and
7 other factors that the Authority considers relevant.

8 (b) Notice. – When the Authority provides a guaranty under this section with
9 respect to a contract, it must give the government agencies that are parties to the
10 contract written notice of the guaranty.

11 (c) Bonds. – The Authority may execute and perform bid bonds, performance
12 bonds, and payment bonds as a surety for the benefit of an applicant in connection with
13 a contract, of which the majority of the funding is provided by a government agency or
14 a combination of government agencies.

15 (d) Obligation of State. – The total amount of guarantees issued and bonds
16 executed shall not exceed ninety percent (90%) of the amount of money in the Small
17 Business Surety Bond Fund. The Authority shall not pledge any money other than
18 money in the Fund for payment of a loss or bond. No action by the Authority constitutes
19 the creation of a debt secured by a pledge of the taxing power or the faith and credit of
20 the State or any of its political subdivisions. The face of each guarantee issued or bond
21 executed shall contain a statement that the Authority is obligated to pay the guarantee or
22 bond only from the revenue in the Small Business Surety Bond Fund and that neither
23 the taxing power nor the faith and credit of the State or any of its political subdivisions
24 is pledged in payment of the guarantee or bond. Nothing in this subsection limits the
25 ability of the Authority to obtain reinsurance.

26 (e) Limitation. – The total amount of bonding assistance provided to each
27 recipient during a fiscal year shall not exceed fifteen percent (15%) of the amount of
28 money in the Fund as of the beginning of that fiscal year.

29 (f) Payment. – If the Authority considers it prudent, it may require that payment
30 be made either to the contractor and lending institution or the bonding authority.

31 **§ 143B-472.83. Bonding assistance conditions.**

32 (a) Requirements. – To obtain bonding assistance under this Part, an applicant
33 must meet the eligibility requirements of G.S. 143B-472.78 and must demonstrate to the
34 satisfaction of the Authority that all of the following apply:

- 35 (1) A bond is required in order to bid on a contract or to serve as a prime
36 contractor or subcontractor.
- 37 (2) A bond is not obtainable on reasonable terms and conditions without
38 assistance under this Part.
- 39 (3) The applicant will not subcontract more than seventy-five percent
40 (75%) of the face value of the contract.

41 (b) Default. – If an applicant or a person that is a related party with respect to the
42 applicant has ever defaulted on a bond or guaranty provided by the Authority, the

1 Authority may approve a guaranty or bond under this Part only if one the following
2 applies:

3 (1) Five years have elapsed since the time of the default.

4 (2) Every default by the applicant or related party in any program
5 administered by the Authority has been cured.

6 (c) Economic Effect. – Before issuing a guaranty or bond, the Authority must
7 determine that the contract for which a bond is sought to be guaranteed or issued has a
8 substantial economic effect. To determine the economic effect of a contract, the
9 Authority must consider all of the following:

10 (1) The amount of the guaranty obligation.

11 (2) The terms of the bond to be guaranteed.

12 (3) The number of new jobs that will be created by the contract to be
13 bonded.

14 (4) Any other factor that the Authority considers relevant.

15 **"§ 143B-472.84. Surety bonding line.**

16 The Authority may, on application, establish a surety bonding line in order to issue
17 or guarantee multiple bonds to an applicant within preapproved terms, conditions, and
18 limitations.

19 **"§ 143B-472.85. Application.**

20 To apply for assistance from the Authority under this Part, an applicant and, where
21 applicable, a surety, must submit to the Authority an application on a form prescribed
22 by the Authority. The application must include any information and documentation the
23 Authority considers necessary to enable the Authority to evaluate the application in
24 accordance with this Part. The Authority may require an applicant to provide an audited
25 balance sheet unless the Authority determines that such a requirement is not necessary
26 or appropriate to fulfill the purposes of this Part.

27 **"§ 143B-472.86. Premiums and fees.**

28 (a) Amount. – The Authority shall by rule set the premiums and fees to be paid
29 for providing assistance under this Part. The premiums and fees set by the Authority
30 shall be payable in the amounts, at the time, and in the manner that the Authority
31 requires. The premiums and fees may vary in amount among transactions and at
32 different stages during the terms of transactions.

33 (b) Rate Standards. – The rate standards in G.S. 58-40-20 apply to premiums set
34 by the Authority under this section. The Authority may also use the forms and rates of
35 rating or advisory organizations licensed under G.S. 58-40-50 or G.S. 58-40-55. The
36 Authority may vary from these rates in order to broaden participation by small
37 businesses that are unable to obtain adequate financing and bonding assistance in
38 connection with contracts. The premiums set and forms developed by the Authority
39 under this section must be approved by the Commissioner of Insurance before they may
40 be used.

41 (c) Forms. – The Authority shall develop forms to be used for financing and
42 bonding assistance.

1 **"§ 143B-472.87. False statements; penalty.**

2 (a) Documents. – It is unlawful to knowingly make or cause any false statement
3 or report to be made in any application or in any document submitted to the Authority.

4 (b) Statements. – It is unlawful to make or cause any false statement or report to
5 be made to the Authority for the purpose of influencing the action of the Authority on
6 an application for assistance or affecting assistance, whether or not assistance has been
7 previously extended.

8 (c) Penalty. – A violation of this section is a Class 2 misdemeanor."

9 **SECTION 2.(a)** This act becomes effective January 1, 2002, and applies to
10 offenses committed or causes of action arising on or after that date.

11 **SECTION 2.(b)** This act expires June 30, 2005. The expiration of this act
12 does not affect prosecutions for offenses committed before that date, and the statutes
13 that would be applicable but for this act remain applicable to those prosecutions. The
14 expiration of this act does not affect any guarantees or bonds executed prior to the
15 expiration.