

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2001**

**SESSION LAW 2002-181
SENATE BILL 832**

AN ACT TO PROVIDE FOR CONTRACT FINANCING AND SURETY BONDS
FOR SMALL BUSINESSES THAT CONTRACT WITH GOVERNMENTAL
AGENCIES.

The General Assembly of North Carolina enacts:

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

"Part 18. Small Business Contractor Act.

"§ 143B-472.75. Purpose and intent.

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

"§ 143B-472.76. Definitions.

The following definitions apply in this Part:

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

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

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

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

- (1) Four members appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate, one of whom has experience in underwriting surety bonds.
- (2) Four members appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives, one of whom is a present or former governmental employee with experience in administering public contracts.
- (3) Three members appointed by the Governor, one of whom is a licensed general contractor and one of whom is experienced in working for private, nonprofit, small, or underutilized businesses.

(c) Terms. – Members serve four-year terms, except initial appointments. There is no prohibition against reappointment for subsequent terms. Initial appointments shall begin on January 1, 2003. Each appointing authority shall designate two of its initial

appointments to serve four-year terms and the remainder of its initial appointments to serve three-year terms.

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

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

(f) Meetings. – The Secretary shall convene the first meeting of the Authority within 60 days after January 1, 2003. Meetings shall be held as necessary as determined by the Authority.

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

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

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

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

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

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

(3) To acquire, manage, operate, dispose of, or otherwise deal with property, take assignments of rentals and leases, and enter into contracts, leases, agreements, and arrangements that are necessary or incidental to the performance of the duties of the Authority, upon terms and conditions that it considers appropriate.

(4) To specify the form and content of applications, guaranty agreements, or agreements necessary to fulfill the purposes of this Part.

(5) To acquire or take assignments of documents executed, obtained, or delivered in connection with assistance provided by the Authority under this Part.

(6) To fix, determine, charge, and collect any premiums, fees, charges, costs, and expenses in connection with any assistance provided by the Authority under this Part.

(7) To adopt rules, in accordance with Chapter 150B of the General Statutes, to implement this Part.

(8) To take any other action necessary to carry out its purposes.

(9) To report quarterly to the Joint Legislative Commission on Governmental Operations on the activities of the Authority, including the amount of rates, sureties, and bonds.

(k) Limitations. – Notwithstanding any other provision of this Part, the Authority may not provide financial assistance that constitutes raising money on the credit of the State or pledging the faith and credit or the taxing power of the State directly or indirectly for the payment of any debt. Before providing financial assistance to an applicant under this Part, the Authority must obtain the written certification of the Attorney General that the proposed financial assistance does not constitute raising money on the credit of the State or pledging the faith of the State directly or indirectly for the payment of any debt as provided in Section 3(2) of Article V of the North Carolina Constitution.

"§ 143B-472.78. Eligibility.

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

- (1) The applicant must be a small business concern that meets the applicable size standards established by the United States Small Business Administration for business loans based on the industry in which the concern, including its affiliates, is primarily engaged and based on the industry in which the concern, not including its affiliates, is primarily engaged. In addition, in the case of an application for bonding assistance, the applicant, including its affiliates, may not have receipts for construction and service contracts in excess of the maximum amount established by the United States Small Business Administration for surety bond guarantee assistance.
- (2) The applicant must be an individual, or be controlled by one or more individuals, with a reputation for financial responsibility, as determined from creditors, employers, and other individuals with personal knowledge. If the applicant is other than a sole proprietorship, at least seventy percent (70%) of the business must be owned by individuals with a reputation for financial responsibility.
- (3) The applicant must be a resident of this State or be incorporated in this State and must have its principal place of business in this State.
- (4) The applicant must demonstrate to the satisfaction of the Authority that it has been unable to obtain adequate financing or bonding on reasonable terms through an authorized company. If the applicant is applying for a guarantee of a loan, the applicant must have applied for and been denied a loan by a financial institution.

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

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

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

- (1) Funds appropriated to the Fund by the State.
- (2) Repayments of principal of and interest on direct loans.
- (3) Premiums, fees, and any other amounts received by the Authority with respect to financial assistance provided by the Authority.
- (4) Proceeds designated by the Authority from the sale, lease, or other disposition of property or contracts held or acquired by the Authority.
- (5) Investment income of the Fund.
- (6) Any other moneys made available to the Fund.

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

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

- (1) A guarantee of a loan made to the applicant.
- (2) If the applicant demonstrates to the satisfaction of the Authority that it is unable to obtain money from any other source, a loan to the applicant.

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

- (1) The applicant meets the requirements of G.S. 143B-472.78.
- (2) The loan is to be used to perform an identified contract, of which the majority of funding is provided by a government agency or a combination of government agencies.

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

(c) Terms and Conditions. – The Authority shall set the terms and conditions for loans and for the guarantee of loans. When the Authority lends money from the Small Business Contract Financing Fund, it shall prepare loan documents that include all of the following:

- (1) The rate of interest on the loan, which shall not exceed any applicable statutory limit for a loan of the same type.
- (2) A payment schedule that provides money to the applicant in the amounts and at the times that the applicant needs the money to perform the contract for which the loan is made.
- (3) A requirement that, before each advance of money is released to the applicant, the applicant and the Authority must co-sign the request for the money.
- (4) Provisions for repayment of the loan.
- (5) Any other provision the Authority considers necessary to secure the loan, including an assignment of, or a lien on, payment under the contract, if allowable.

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

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

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

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

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

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

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

"§ 143B-472.82. Bonding assistance authorized.

(a) Guaranty. – Subject to the restrictions of this Part, the Authority, on application, may guarantee a surety for losses incurred under a bid bond, payment bond, or performance bond on an applicant's contract, of which the majority of the funding is provided by a government agency or a combination of government agencies, up to ninety percent (90%) of the surety's losses, or nine hundred thousand dollars (\$900,000), whichever is less. The term of a guaranty under this section shall not exceed the contract term. The Authority may vary the terms and conditions of the guaranty from surety to surety, based on the Authority's history of experience with the surety and other factors that the Authority considers relevant.

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

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

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

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

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

"§ 143B-472.83. Bonding assistance conditions.

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

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

(b) Default. – If an applicant or a person that is a related party with respect to the applicant has ever defaulted on a bond or guaranty provided by the Authority, the Authority may approve a guaranty or bond under this Part only if one of the following applies:

- (1) Five years have elapsed since the time of the default.
- (2) Every default by the applicant or related party in any program administered by the Authority has been cured.

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

- (1) The amount of the guaranty obligation.
- (2) The terms of the bond to be guaranteed.
- (3) The number of new jobs that will be created by the contract to be bonded.
- (4) Any other factor that the Authority considers relevant.

"§ 143B-472.84. Surety bonding line.

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

"§ 143B-472.85. Application.

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

"§ 143B-472.86. Premiums and fees.

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

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

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

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

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

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

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

SECTION 2.(a) This act becomes effective January 1, 2003, and applies to offenses committed or causes of action arising on or after that date.

SECTION 2.(b) This act expires June 30, 2006. The expiration of this act does not affect prosecutions for offenses committed before that date, and the statutes that would be applicable but for this act remain applicable to those prosecutions. The expiration of this act does not affect any guarantees or bonds executed prior to the expiration.

In the General Assembly read three times and ratified this the 3rd day of October, 2002.

s/ Marc Basnight
President Pro Tempore of the Senate

s/ James B. Black
Speaker of the House of Representatives

s/ Michael F. Easley
Governor

Approved 4:37 p.m. this 31st day of October, 2002