

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2009

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SENATE BILL 982\*  
Commerce Committee Substitute Adopted 5/12/09  
House Committee Substitute Favorable 8/5/09

Short Title: Small Business Assistance Fund.

(Public)

Sponsors:

Referred to:

March 26, 2009

1 A BILL TO BE ENTITLED  
2 AN ACT TO ESTABLISH THE SMALL BUSINESS JOBS PRESERVATION FUND IN  
3 THE DEPARTMENT OF COMMERCE WITH RELATED PROGRAMS  
4 COORDINATED BY A TECHNICAL ASSISTANCE PROVIDER.

5 Whereas, North Carolina has historically provided assistance to small businesses  
6 after natural disasters; and

7 Whereas, North Carolina and the State's small businesses face an economic disaster  
8 of historic proportions; and

9 Whereas, unemployment approaches 15 percent in many North Carolina counties  
10 and may ultimately exceed 10 percent for the entire State; and

11 Whereas, small business accounts for more than half of all North Carolina jobs and  
12 more than 98 percent of its businesses; and

13 Whereas, small business has been especially hard hit by the global downturn and  
14 resulting shortage of available credit; and

15 Whereas, this shortage of credit has caused businesses to be closed in record  
16 numbers across North Carolina and rendered thousands more North Carolinians jobless every  
17 month; Now, therefore,

18 The General Assembly of North Carolina enacts:

19 **SECTION 1.** If Senate Bill 202, 2009 Regular Session, becomes law, then  
20 G.S. 143B-437.89, as enacted by Section 14.3(b) of Senate Bill 202, reads as rewritten:

21 "Subpart B. Small Business Assistance Fund.

22 **"§ 143B-437.89. Establishment of fund; use of moneys; application for moneys from the  
23 fund; disbursal; repayment; inspections; rules; reports.**

24 (a) Fund Established. – A revolving, special revenue fund to be known as the Small  
25 Business Jobs Preservation and Emergency Assistance Fund is established in the Department of  
26 Commerce. This Fund shall be administered by the ~~Department~~Department through the Small  
27 Business and Technology Development Center or any other entity as selected by the Secretary  
28 of Commerce. The Department shall be responsible for receipt and disbursement of all moneys  
29 as provided in this section. The Department may approve the payment of costs and  
30 administrative fees not to exceed five percent (5%) for the administration of the Fund. Interest  
31 earnings shall be credited to the Fund. The Fund consists of revenue resulting from funds  
32 appropriated by the State, repayments of principal of and interest on loans, fees, and other  
33 amounts received by the Department with respect to financial assistance provided by the  
34 Department, and any other public or private funds made available to the Fund.

35 (b) Department Authority; Loan ~~Terms~~Terms; Commission. – The Department may  
36 approve ~~for~~ disbursements of moneys in the Fund to small businesses in accordance with the



1 provisions of this section. The ~~Department~~ Department, supported by the advice and counsel of  
2 the Small Business Advisory Commission (Commission), the Small Business and Technology  
3 Development Center, or any other professional entity as selected by the Secretary of  
4 Commerce, shall develop criteria, technical specifications, policies, and procedures to be used  
5 in determining whether the conditions of this section are satisfied and whether the activities  
6 described in the application are otherwise consistent with the purposes of this section. The  
7 Commission shall comprise the Secretary of Commerce or the Secretary's designee; the  
8 President of the Community College System or the President's designee; a representative of  
9 The University of North Carolina General Administration; three members appointed by the  
10 Governor; three members appointed by the Lieutenant Governor; three members appointed by  
11 the President Pro Tempore of the Senate; and three members appointed by the Speaker of the  
12 House of Representatives. In addition to its advisory role to the Department as stated above, the  
13 Commission shall receive comments regarding the needs and concerns of small businesses as  
14 they relate to matters of State. The Commission shall report to the Joint Legislative  
15 Commission on Governmental Operations annually. The cost of the Commission shall be taken  
16 from the administrative fees collected pursuant to subsection (a) of this section. As used in this  
17 section, "moneys" means a disbursement from the Fund in the form of a loan, or loan  
18 guarantee, and "small business" means a business whose annual receipts and number of  
19 full-time employees, combined with the annual receipts and full-time employees of all related  
20 persons, did not exceed one million dollars (\$1,000,000) or 100 full-time employees. No more  
21 than twenty percent (20%) of the Fund may be loaned to businesses in Article 3J Tier 3  
22 counties. The remainder of the Fund is reserved for businesses in Article 3J Tier 1 and Tier 2  
23 counties. The main priority of the Fund shall be to protect existing jobs rather than to create  
24 new jobs. However, priority also may be given to loans or loan guarantees that will enhance the  
25 ability of otherwise qualifying small businesses to enter into federal stimulus contracts. Priority  
26 also may be given to requests for loans or loan guarantees made by otherwise qualifying  
27 historically underutilized business. A small business may apply for a loan for:

- 28 (1) ~~Up to eighty percent (80%) of the projected cost of the proposed activities,~~  
29 ~~subject to repayment within five years at the prime rate plus four percent~~  
30 ~~(4%).~~  
31 (2) ~~Up to eighty percent (80%) of the projected cost of the proposed activities,~~  
32 ~~subject to repayment within 10 years at the prime rate plus six percent (6%).~~  
33 (3) ~~Up to eighty percent (80%) of the projected cost of the proposed activities,~~  
34 ~~subject to repayment within 15 years at the prime rate plus eight percent~~  
35 ~~(8%).for any legitimate business purposes, but a loan or loan guarantee from~~  
36 ~~the Small Business Assistance Fund may not be used to enhance executive~~  
37 ~~pay, provide bonuses, or consolidate operations in a manner that reduces the~~  
38 ~~existing workforce. Existing small businesses applying for assistance from~~  
39 ~~the Fund must have a proven record of success and must demonstrate that~~  
40 ~~but for the recent economic downturn, the business would not be in need of~~  
41 ~~capital assistance.~~

42 (c) Eligible Purposes. – In order to make the most expeditious use of limited resources,  
43 preference shall be given to loan guarantees for the first two years of the Fund. Thereafter,  
44 Moneys-moneys in the Fund shall be used for any of the following eligible purposes:

- 45 (1) To provide emergency bridge loans where clear and apparent ability to repay  
46 has been established but credit remains unavailable.  
47 (2) To lend for other purposes related to small business job preservation as  
48 approved or recommended by the Department.  
49 (3) To guarantee commercial loans.

1 (d) Application. – Any small business may apply for moneys from the Fund by  
2 submitting an application to the ~~Department~~Department through its designated loan  
3 administration resource. The application shall list each of the following:

- 4 (1) The proposed activities for which the moneys are to be used.
- 5 (2) The amount of moneys requested for these activities.
- 6 (3) Projections of the dollar amount of private investment that is expected to  
7 occur as a direct result of the proposed activities.
- 8 (4) An explanation of the nature of the private investment that will result from  
9 the proposed activities.
- 10 (5) A requirement for any reports, disclosures, or information required by this  
11 section or necessary for the Department to fulfill its duties under this section.
- 12 (6) The total compensation received for the previous year from the small  
13 business and all related persons for each of the five highest-compensated  
14 employees of the small business.
- 15 (7) Any additional or supplemental information required by the Department  
16 upon written request.

17 (e) Determination. – The Department or its designee shall review an application  
18 submitted by a small business, determine whether the activities listed in the application are  
19 activities that are eligible for moneys from the Fund, and determine which applicants are  
20 selected to receive moneys from the Fund. A small business whose application is denied may  
21 file a new or amended application.

22 (f) Limitation. – A small business that is selected may not receive moneys from the  
23 Fund pursuant to this section with an aggregate total of more than ~~thirty five thousand dollars~~  
24 ~~(\$35,000)~~fifty thousand dollars (\$50,000). A small business selected for a loan guarantee may  
25 not receive a guarantee of more than one hundred thousand dollars (\$100,000).

26 (g) Disbursements of Moneys. – The Department or its designee shall not disburse  
27 moneys for any loans until the small business has confirmed a method of repayment for the  
28 loan. The terms for repayment established for a given loan shall apply through the period of  
29 that loan. A small business that has been selected to receive moneys shall use the full amount of  
30 the moneys for the activities that were approved pursuant to subsection (b) of this section.  
31 Moneys are deemed used if the small business is legally committed to spend the moneys on the  
32 approved activities. For purposes of this section, approved activities do not include an increase  
33 in the total compensation of any employee identified in the application under subdivision (d)(6)  
34 of this section. A small business shall lose any moneys that have not been used within three  
35 years of being selected. These unused moneys shall be credited to the Fund. A small business  
36 that loses moneys pursuant to this subsection may file a new application. Any moneys repaid or  
37 credited to the Fund pursuant to this subsection shall be available to other applicants as long as  
38 the Fund exists.

39 (h) Cost Report. – After activities financed in whole or in part pursuant to this section  
40 have been completed, the small business shall report the actual cost of the project to the  
41 Department. If the actual costs of the activities exceed the projected cost upon which the  
42 moneys were based, the small business may submit an application to the Department for  
43 additional moneys for the difference. If the actual costs of the activities are less than the  
44 projected cost, the small business shall arrange to pay the difference to the Fund according to  
45 terms set by the Department.

46 (i) Inspection. – Inspection of a project for which moneys have been awarded may be  
47 performed by personnel of the ~~Department~~Department or its designee. No person may be  
48 approved to perform inspections who is an officer or employee of the small business to which  
49 the moneys were disbursed or who is an owner, officer, employee, or agent of a contractor or  
50 subcontractor engaged in the activities for which the moneys were disbursed.

1 (j) Administration. – The Department may ~~adopt, modify, and repeal~~adopt rules  
2 establishing the procedures to be followed in the administration of this section and interpreting  
3 and applying the provisions of this section, as provided in the Administrative Procedure Act.

4 (k) Legislative Reports. – The Department shall prepare and file on or before  
5 September 1 of each year with the Joint Legislative Commission on Governmental Operations  
6 and the Fiscal Research Division a consolidated report for the preceding fiscal year concerning  
7 the allocation of moneys authorized by this section, including a separate listing of the moneys  
8 disbursed to historically underutilized businesses. The report shall set forth for the preceding  
9 fiscal year itemized and total allocations from the Fund. The Department also shall prepare a  
10 summary report of all allocations made from the Fund for each fiscal year; the total funds  
11 received and allocations made; the total amount of moneys repaid to the Fund; and the total  
12 unallocated funds in the Fund.

13 Small businesses that have been selected to receive moneys from the Fund shall prepare and  
14 file a report that shall include the following information:

- 15 (1) The total amount of private funds that was committed and the amount that  
16 was invested in activities for which moneys from the Fund were made  
17 available during the preceding fiscal year.
- 18 (2) The total amount and character of moneys received from the Fund during the  
19 preceding fiscal year.
- 20 (3) The total amount of moneys repaid to the Fund during the preceding fiscal  
21 year.
- 22 (4) A description of how moneys from the Fund and funds from private  
23 investors were used during the preceding fiscal year.
- 24 (5) Details regarding the types of private investment created or stimulated, the  
25 dates of this activity, the amount of public money involved, and any other  
26 pertinent information, including any jobs created, businesses started, and  
27 number of jobs retained due to the approved activities.

28 (m) ~~Administrative Expenses. – The Department may use up to fifty thousand dollars~~  
29 ~~(\$50,000) of the funds in the Small Business Jobs Preservation and Emergency Assistance~~  
30 ~~Fund for expenses related to the administration of the Fund. Nothing in this section shall be~~  
31 ~~deemed a pledge of the faith and credit of the State. Any loan guarantees authorized by this~~  
32 ~~section shall be limited to the funds available to the Fund as created by this section."~~

33 **SECTION 2.** This act is effective when it becomes law.