

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

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HOUSE BILL 1017

Short Title: Small Business Dev. Act.

(Public)

Sponsors: Representatives McAllister, Linney; Blue, Braswell, Cansler, Cummings, Cunningham, Earle, Easterling, Fitch, Hightower, H. Hunter, Richardson, Sherrill, Sutton, Wainwright, Warner, Womble, and Yongue.

Referred to: Finance.

May 4, 1995

1 A BILL TO BE ENTITLED
2 AN ACT TO PROVIDE FOR CONTRACT FINANCING AND SURETY BONDS FOR
3 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 by
7 adding a new Part to read:

8 **"PART 16. SMALL BUSINESS DEVELOPMENT ACT.**

9 **"§ 143B-472.40. Purpose and intent.**

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

14 **"§ 143B-472.41. Definitions.**

15 The following definitions apply in this Part:

16 (1) Authority. – The North Carolina Small Business Development
17 Financing Authority created in G.S. 143B-472.42(a).

1 (2) Contract term. – The term of the contract, including the maintenance or
2 warranty period required by the contract and the period during which
3 the surety may be liable.

4 (3) Secretary.– The Secretary of the Department of Commerce.

5 **"§ 143B-472.42. Authority creation; powers.**

6 (a) Creation. – The North Carolina Small Business Development Financing
7 Authority is created within the Department of Commerce.

8 (b) Membership. – The Authority shall consist of 11 members:

9 (1) Four members appointed by the General Assembly upon
10 recommendation of the Speaker of the House of Representatives, one of
11 whom has experience in underwriting surety bonds.

12 (2) Four members appointed by the General Assembly upon
13 recommendation of the President Pro Tempore of the Senate, one of
14 whom is a present or former governmental employee and has experience
15 in administering public contracts.

16 (3) Two members appointed by the Governor, one of whom is a licensed
17 general contractor.

18 (4) One member appointed by the General Assembly upon recommendation
19 of the President of the Senate.

20 (c) Terms. – Members shall serve four-year terms, with no prohibition against
21 being reappointed, except initial appointments other than by the President of the Senate
22 shall be for terms as follows:

23 (1) The General Assembly upon recommendation of the Speaker of the
24 House of Representatives shall initially appoint two members for a term
25 of three years and two members for a term of four years.

26 (2) The General Assembly upon recommendation of the President Pro
27 Tempore of the Senate shall initially appoint two members for a term of
28 three years and two members for a term of four years.

29 (3) The Governor shall initially appoint one member for a term of three
30 years and one member for a term of four years.

31 Initial terms shall commence on August 1, 1995.

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

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

37 (f) Meetings. – The Secretary of the Department of Commerce shall convene the
38 first meeting of the Authority within 60 days after August 1, 1995. Meetings shall be
39 held as necessary as determined by the Authority.

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

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

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

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

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

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

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

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

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

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

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

29 (8) To take any other action necessary to carry out the purposes of the
30 Authority.

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

34 **"§ 143B-472.43. Small Business Contract Financing Fund.**

35 (a) Creation and Use. – The Small Business Contract Financing Fund is created as
36 a special revenue fund. Revenue in the Fund does not revert at the end of a fiscal year
37 and interest and other investment income earned by the Fund accrues to the Fund. The
38 Fund shall be used to make direct loans and guaranty payments required by defaults and
39 to pay the portion of the expenses of the Authority related to providing financial
40 assistance pursuant to G.S. 143B-472.44.

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

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

- 1 (2) Repayments of principal of and interest on direct loans made pursuant to
2 G.S. 143B-472.44.
- 3 (3) Premiums, fees, and any other amounts received by the Authority with
4 respect to financial assistance provided by the Authority.
- 5 (4) Proceeds designated by the Authority from the sale, lease, or other
6 disposition of property or contracts held or acquired by the Authority.
- 7 (5) Investment income of the Fund.
- 8 (6) Any other moneys made available to the Fund.

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

12 **"§ 143B-472.44. Financial assistance authorized.**

13 The Authority is authorized to provide the following financial assistance:

- 14 (1) A guarantee of a loan made to the applicant;
- 15 (2) A guarantee of an equity investment in the applicant; or
- 16 (3) If the applicant is unable to obtain money from any other source, a loan
17 to the applicant.

18 In providing assistance to applicants, the Authority shall consider the need to serve all
19 geographic and political areas and subdivisions of the State.

20 **"§ 143B-472.45. Terms of financial assistance.**

21 The Authority is authorized to set the terms and conditions for the guarantee of loans
22 and, when it lends money from the Small Business Contract Financing Fund, it shall
23 prepare loan documents that include:

- 24 (1) The rate of interest on the loan, which shall not exceed the market rate
25 for a conventional loan of comparable risk.
- 26 (2) A payment schedule that provides money to the applicant in the
27 amounts and at the times that the applicant needs the money to perform
28 the contract.
- 29 (3) A requirement that, before each advance of money is released to the
30 applicant, the applicant and the Authority co-sign the request for the
31 money.
- 32 (4) Provisions for repayment of the loan.
- 33 (5) Any other provision the Authority determines is necessary to secure the
34 loan, including an assignment of or a lien on payment under the
35 contract, if allowable.

36 **"§ 143B-472.46. Limitations on assistance.**

37 (a) Guarantee of Equity Investment. – The Authority shall not guarantee the
38 equity investment of a person who:

- 39 (1) Previously held an equity investment in the applicant;
- 40 (2) Previously participated in the management of the applicant; or
- 41 (3) Is related to the applicant or any of its current stockholders, officers,
42 directors, or management personnel.

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

- 3 (1) The applicant meets the requirements of G.S. 143B-472.51.
4 (2) The loan to be made or the part of the loan to be guaranteed does not
5 exceed five hundred thousand dollars (\$500,000).
6 (3) The loan is to be used to perform a contract, of which the majority of
7 funding is provided by the federal government, a state government, a
8 local government, or a utility regulated by the North Carolina Utilities
9 Commission, or a combination of those entities.
10 (4) The loan is to be used for working capital or equipment needed to
11 perform the contract, the cost of which can be repaid from contract
12 proceeds, if the Authority has entered into an agreement with the
13 applicant necessary to secure the loan or guaranty.

14 A loan made by the Authority shall mature not later than the term of the contract, unless
15 the Authority determines that a longer term is required to fulfill the purposes of this Part.

16 **"§ 143B-472.47. Small Business Surety Bond Fund.**

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

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

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

31 **"§ 143B-472.48. Bonding assistance authorized.**

32 (a) Guaranty. – Subject to the restrictions of this Part, the Authority, on
33 application, may guarantee a surety for losses incurred under a bid bond, payment bond,
34 or performance bond on a contract, of which the majority of the funding is provided by
35 the federal government, a state government, a local government, a utility regulated by the
36 North Carolina Utilities Commission, or a combination of those entities, up to ninety
37 percent (90%) of the surety's losses, or nine hundred thousand dollars (\$900,000),
38 whichever is less.

39 (b) Term. – The term of a guaranty under this Part shall not exceed the contract
40 term. The Authority may vary the terms and conditions of the guaranty from surety to
41 surety, based on the Authority's history of experience with the surety and other factors
42 that the Authority considers relevant.

1 (c) Bonds. – The Authority may execute and perform bid bonds, performance
2 bonds, and payment bonds as a surety for the benefit of an applicant in connection with a
3 contract, of which the majority of the funding is provided by the federal government, a
4 state government, a local government, a utility regulated by the North Carolina Utilities
5 Commission, or a combination of those entities. Each bond shall not exceed two hundred
6 fifty thousand dollars (\$250,000) and is subject to the approval of the Authority, based on
7 the bond worthiness of the applicant, as determined by the Authority. The monetary limit
8 in this subsection does not apply if the bond is funded by grants.

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

20 **"§ 143B-472.49. Limitations on assistance.**

21 (a) Bond Requirements. – To obtain bonding assistance under this Part, an
22 applicant shall meet the requirements in G.S. 143B-472.51 and shall certify to the
23 Authority and the Authority shall be satisfied that all of the following apply:

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

30 (b) Default. – If an applicant has ever defaulted on a bond or guaranty provided by
31 the Authority, the Authority may approve a guaranty or bond under this Part if both the
32 following apply:

- 33 (1) Two years have elapsed since the time of the default.
- 34 (2) The applicant has cured any default in any program administered by the
35 Authority.

36 (c) Economic Effect. – The Authority shall determine that the contract for which a
37 bond is sought to be guaranteed or issued has a substantial economic effect before it
38 issues a guaranty or bond. To determine the economic effect of a contract, the Authority
39 shall consider all of the following:

- 40 (1) The amount of the guaranty obligation.
- 41 (2) The terms of the bond to be guaranteed.
- 42 (3) The number of new jobs that will be created by the contract to be
43 bonded.

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

2 **"§ 143B-472.50. Surety bonding line.**

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

6 **"§ 143B-472.51. Requirements.**

7 (a) Applicant Requirements. – To qualify for financial assistance pursuant to G.S.
8 143B-472.44 or G.S. 143B-472.48, an applicant must meet all of the following
9 requirements:

10 (1) The applicant must be a small business entity that has assets, income, or
11 employees that do not exceed limits established by rules adopted by the
12 Authority.

13 (2) The applicant must be an individual, or controlled by one or more
14 individuals, of good moral character. If the applicant is other than a sole
15 proprietorship, to obtain financial assistance under G.S. 143B-472.44, at
16 least seventy percent (70%) of the business shall be owned by
17 individuals of good moral character.

18 (3) The applicant must be an individual, or be controlled by one or more
19 individuals, with a reputation for financial responsibility, as determined
20 from creditors, employers, and other individuals with personal
21 knowledge. If the applicant is other than a sole proprietorship, to obtain
22 financial assistance under G.S. 143B-472.44, at least seventy percent
23 (70%) of the business shall be owned by individuals with a reputation
24 for financial responsibility.

25 (4) The applicant must be:

26 a. A resident of the State; or

27 b. Be incorporated in the State; and

28 the applicant must have its principal place of business in the State.

29 (5) The applicant must be unable to obtain adequate financing or bonding
30 on reasonable terms through an authorized company. If the applicant is
31 applying for a guarantee of a loan, the applicant must have applied for
32 and been denied a loan by a financial institution.

33 (6) If the applicant has applied for financing assistance, the applicant, in
34 addition to the requirements set forth in subdivisions (1) through (4) of
35 this subsection must either:

36 a. Belong to a group that historically has been deprived of access to
37 normal economic or financial resources due to race, color, creed,
38 sex, religion, or national origin;

39 b. Have an identifiable physical handicap that severely limits the
40 ability of the applicant to obtain financial assistance, but does not
41 limit the ability of the applicant to perform the contract or other
42 activity for which the applicant would be receiving financial
43 assistance; or

- 1 c. Have any other social or economic impediment that is beyond the
2 personal control of the applicant, such as lack of formal
3 education or financial capacity or geographic or regional
4 economic distress but that does not limit the ability of the
5 applicant to perform the contract or other activity for which the
6 applicant would be receiving financial assistance.

7 **"§ 143B-472.52. Application.**

8 (a) Form. – To apply for assistance from the Authority under this Part, an
9 applicant and, where applicable, a surety, shall submit to the Authority an application on
10 the form that the Authority provides.

11 (b) Contents. – The application shall include all of the following:

12 (1) A detailed description of the project.

13 (2) An itemization of known and estimated costs.

14 (3) The total amount of investment required to perform the contract.

15 (4) The funds available to the applicant for working capital.

16 (5) The amount of assistance sought from the Authority.

17 (6) Information that relates to the inability of the applicant to obtain
18 adequate financing or bonding on reasonable terms through an
19 authorized surety company.

20 (7) Information that relates to the financial status of the applicant,
21 including:

22 a. A current balance sheet.

23 b. A profit and loss statement.

24 c. Credit references.

25 (8) A schedule of all existing and pending contracts and the current status
26 of each.

27 (9) Any other relevant information that the Authority requests.

28 (c) Balance Sheet. – The Authority may require an applicant to provide an audited
29 balance sheet before the Authority makes its decision on the application.

30 **"§ 143B-472.53. Premiums and fees.**

31 (a) Amount. – The Authority shall by rule set the premiums and fees to be paid for
32 providing assistance under this Part. The premiums and fees set by the Authority shall be
33 payable in the amounts, at the time, and in the manner that the Authority requires.

34 (b) Variation. – The premiums and fees may vary in amount among transactions
35 and at different stages during the terms of transactions.

36 (c) Rate Standards. – The rate standards in G.S. 58-40-20 apply to premiums set
37 by the Authority under this section. The Authority may also use the forms and rates of
38 rating or advisory organizations licensed under G.S. 58-40-50 or G.S. 58-40-55.

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

41 (e) Approval. – The premiums set and forms developed by the Authority under
42 this section must be approved by the Commissioner of Insurance before they may be
43 used.

1 **"§ 143B-472.54. False statements; penalty.**

2 (a) Application. – A person shall not 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. – A person shall not knowingly make or cause any false statement
5 or report to be made to the Authority for the purpose of influencing the action of the
6 Authority on an application for assistance or affecting assistance, whether or not
7 assistance has been previously extended.

8 (c) Penalty. – A person who violates any provision of this section is guilty of a
9 Class 2 misdemeanor."

10 Sec. 2. There is appropriated from the General Fund to the Department of
11 Commerce the sum of one million dollars (\$1,000,000) for the 1995-96 fiscal year, five
12 hundred thousand dollars (\$500,000) to be credited to the Small Business Surety Bond
13 Fund and five hundred thousand dollars (\$500,000) to be credited to the Small Business
14 Contract Financing Fund created in Section 1 of this act.

15 Sec. 3. (a) This act becomes effective July 1, 1995, and applies to offenses
16 committed or causes of action arising on or after that date.

17 (b) This act expires June 30, 1999. The expiration of this act does not affect
18 prosecutions for offenses committed before that date, and the statutes that would be
19 applicable but for this act remain applicable to those prosecutions. The expiration of this
20 act does not affect any guarantees or bonds executed prior to the expiration.