

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2007

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SENATE BILL 1896

Short Title: Small Business Contractor Act Revisions.

(Public)

Sponsors: Senators Rand; and Malone.

Referred to: Appropriations/Base Budget.

May 22, 2008

A BILL TO BE ENTITLED

AN ACT TO MAKE CHANGES TO THE SMALL BUSINESS CONTRACTOR ACT  
AND TO APPROPRIATE FUNDS FOR CONTRACT FINANCING AND  
SURETY BONDS FOR SMALL BUSINESSES THAT CONTRACT WITH  
GOVERNMENTAL AGENCIES.

The General Assembly of North Carolina enacts:

**SECTION 1.** Part 20 of Article 10 of Chapter 143B of the General Statutes  
reads as rewritten:

"Part 20. Small Business Contractor Act.

**"§ 143B-472.100. 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 public contracts. The Rural Economic Development Center, Inc. shall  
partner with the Statewide Intermediary to administer this program.

**"§ 143B-472.101. 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.

1           (6) Secretary.—The Secretary of Commerce.

2           (7) Statewide Intermediary. – The North Carolina Institute of Minority  
3           Economic Development.

4 **"§ 143B-472.102. Authority creation; powers.Statewide Intermediary powers.**

5           (a) ~~Creation.~~—The North Carolina Small Business Contractor Authority is  
6 created within the Department of Commerce.

7           (b) ~~Membership.~~—The Authority consists of 11 members appointed as follows:

8           (1) ~~Four members appointed by the General Assembly upon the~~  
9           ~~recommendation of the President Pro Tempore of the Senate, one of~~  
10           ~~whom has experience in underwriting surety bonds.~~

11           (2) ~~Four members appointed by the General Assembly upon the~~  
12           ~~recommendation of the Speaker of the House of Representatives, one~~  
13           ~~of whom is a present or former governmental employee with~~  
14           ~~experience in administering public contracts.~~

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

18           (c) ~~Terms.~~—Members serve four year terms, except initial appointments. There  
19 is no prohibition against reappointment for subsequent terms. Initial appointments shall  
20 begin on January 1, 2008. Each appointing authority shall designate two of its initial  
21 appointments to serve four year terms and the remainder of its initial appointments to  
22 serve three year terms.

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

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

28           (f) ~~Meetings.~~—The Secretary shall convene the first meeting of the Authority  
29 within 60 days after January 1, 2008. Meetings shall be held as necessary as determined  
30 by the Authority.

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

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

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

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

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

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

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

33 **"§ 143B-472.103. Eligibility.**

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

- 36 (1) The applicant must be a small business concern that meets the  
37 applicable size standards established by the United States Small  
38 Business Administration for business loans based on the industry in  
39 which the concern, including its affiliates, is primarily engaged and  
40 based on the industry in which the concern, not including its affiliates,  
41 is primarily engaged. In addition, in the case of an application for  
42 bonding assistance, the applicant, including its affiliates, may not have  
43 receipts for construction and service contracts in excess of the  
44 maximum amount established by the United States Small Business

1 Administration for surety bond guarantee assistance. The applicant  
2 may be a Veteran-Owned enterprise.

3 (2) The applicant must be an individual, or be controlled by one or more  
4 individuals, with a reputation for financial responsibility, as  
5 determined from creditors, employers, and other individuals with  
6 personal knowledge. If the applicant is other than a sole proprietorship,  
7 at least seventy percent (70%) of the business must be owned by  
8 individuals with a reputation for financial responsibility.

9 (3) The applicant must be a resident of this State or be incorporated in this  
10 State and must have its principal place of business in this State.

11 (4) The applicant must demonstrate to the satisfaction of the ~~Authority~~  
12 Statewide Intermediary that it has been unable to obtain adequate  
13 financing or bonding on reasonable terms through an authorized  
14 company. If the applicant is applying for a guarantee of a loan, the  
15 applicant must have applied for and been denied a loan by a financial  
16 institution.

17 **"§ 143B-472.104. Small Business Contract Financing Fund.**

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

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

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

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

29 (3) Premiums, fees, and any other amounts received by the ~~Authority~~  
30 Statewide Intermediary with respect to financial assistance provided  
31 ~~by the Authority~~under this Part.

32 (4) Proceeds designated by the ~~Authority~~Statewide Intermediary from the  
33 sale, lease, or other disposition of property or contracts held or  
34 acquired by the ~~Authority~~Statewide Intermediary.

35 (5) Investment income of the Fund.

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

37 **"§ 143B-472.105. Contract performance assistance authorized.**

38 (a) Type. – The ~~Authority~~Statewide Intermediary is authorized to provide the  
39 following contract performance assistance:

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

41 (2) If the applicant demonstrates to the satisfaction of the ~~Authority~~  
42 Statewide Intermediary that it is unable to obtain money from any  
43 other source, a loan to the applicant.

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

3 (1) The applicant meets the requirements of  
4 ~~G.S. 143B-472.78~~ G.S. 143B-472.103.

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

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

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

16 (1) The rate of interest on the loan, which shall not exceed any applicable  
17 statutory limit for a loan of the same type.

18 (2) A payment schedule that provides money to the applicant in the  
19 amounts and at the times that the applicant needs the money to  
20 perform the contract for which the loan is made.

21 (3) A requirement that, before each advance of money is released to the  
22 applicant, the applicant and the ~~Authority~~ Statewide Intermediary must  
23 cosign the request for the money.

24 (4) Provisions for repayment of the loan.

25 (5) Any other provision the ~~Authority~~ Statewide Intermediary considers  
26 necessary to secure the loan, including an assignment of, or a lien on,  
27 payment under the contract, if allowable.

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

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

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

38 **"§ 143B-472.106. Small Business Surety Bond Fund.**

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

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

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

4 (2) Premiums, fees, and any other amounts received by the ~~Authority~~  
5 Statewide Intermediary with respect to bonding assistance provided by  
6 the ~~Authority~~. Statewide Intermediary.

7 (3) Proceeds designated by the ~~Authority~~Statewide Intermediary from the  
8 sale, lease, or other disposition of property or contracts held or  
9 acquired by the ~~Authority~~Statewide Intermediary.

10 (4) Investment income of the Fund.

11 (5) Any other moneys made available to the Fund.

12 **"§ 143B-472.107. Bonding assistance authorized.**

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

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

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

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

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

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

4 **"§ 143B-472.108. Bonding assistance conditions.**

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

- 8 (1) A bond is required in order to bid on a contract or to serve as a prime  
9 contractor or subcontractor.
- 10 (2) A bond is not obtainable on reasonable terms and conditions without  
11 assistance under this Part.
- 12 (3) The applicant will not subcontract more than seventy-five percent  
13 (75%) of the face value of the contract.

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

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

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

- 26 (1) The amount of the guaranty obligation.
- 27 (2) The terms of the bond to be guaranteed.
- 28 (3) The number of new jobs that will be created by the contract to be  
29 bonded.
- 30 (4) Any other factor that the ~~Authority~~ Statewide Intermediary considers  
31 relevant.

32 **"§ 143B-472.109. Surety bonding line.**

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

36 **"§ 143B-472.110. Application.**

37 To apply for assistance from the ~~Authority~~ Statewide Intermediary under this Part,  
38 an applicant and, where applicable, a surety must submit to the ~~Authority~~ Statewide  
39 Intermediary an application on a form prescribed by the ~~Authority~~ Statewide  
40 Intermediary. The application must include any information and documentation the  
41 ~~Authority~~ Statewide Intermediary considers necessary to enable the ~~Authority~~ Statewide  
42 Intermediary to evaluate the application in accordance with this Part. The ~~Authority~~  
43 Statewide Intermediary may require an applicant to provide an audited balance sheet

1 unless the ~~Authority~~ Statewide Intermediary determines that such a requirement is not  
2 necessary or appropriate to fulfill the purposes of this Part.

3 **"§ 143B-472.111. Premiums and fees.**

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

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

19 (c) Forms. – The ~~Authority~~ Statewide Intermediary shall develop forms to be  
20 used for financing and bonding assistance.

21 **"§ 143B-472.112. False statements; penalty.**

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

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

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

30 **SECTION 2.** There is appropriated from the General Fund to the Rural  
31 Economic Development Center, Inc., in partnership with the North Carolina Institute of  
32 Minority Economic Development, Inc., the sum of ten million dollars (\$10,000,000) for  
33 the Small Business Contract Financing Fund and the sum of fifteen million dollars  
34 (\$15,000,000) for the Small Business Surety Bond Fund as set forth in the Small  
35 Business Contractor Act for the 2008-2009 fiscal year.

36 **SECTION 3.** Section 1 of this act becomes effective upon ratification and  
37 applies to offenses committed or causes of action arising on or after that date. Section 2  
38 of this act becomes effective July 1, 2008. The remainder of the act is effective when it  
39 becomes law.