

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2007

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SENATE DRS15229-MC-245 (5/13)

Short Title: Small Business Contractor Act Revisions.

(Public)

Sponsors: Senator Rand.

Referred to:

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.

1 (5) Related party. – A party related to the applicant in a manner that would  
2 require an attribution of stock to or from the party under section 318 of  
3 the Internal Revenue Code.

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

5 (7) Statewide Intermediary. – The North Carolina Institute of Minority  
6 Economic Development.

7 "**§ 143B-472.102. Authority creation; powers.**Statewide Intermediary powers.

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

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

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

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

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

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

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

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

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

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

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

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

1 (j) Powers and Duties. – The ~~Authority~~ Statewide Intermediary has the following  
2 powers and duties:

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

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

36 **"§ 143B-472.103. Eligibility.**

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

- 39 (1) The applicant must be a small business concern that meets the  
40 applicable size standards established by the United States Small  
41 Business Administration for business loans based on the industry in  
42 which the concern, including its affiliates, is primarily engaged and  
43 based on the industry in which the concern, not including its affiliates,  
44 is primarily engaged. In addition, in the case of an application for

1 bonding assistance, the applicant, including its affiliates, may not have  
2 receipts for construction and service contracts in excess of the  
3 maximum amount established by the United States Small Business  
4 Administration for surety bond guarantee assistance. The applicant  
5 may be a Veteran-Owned enterprise.

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

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

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

20 **"§ 143B-472.104. Small Business Contract Financing Fund.**

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

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

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

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

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

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

38 (5) Investment income of the Fund.

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

40 **"§ 143B-472.105. Contract performance assistance authorized.**

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

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

- 1 (2) If the applicant demonstrates to the satisfaction of the ~~Authority~~  
2 Statewide Intermediary that it is unable to obtain money from any  
3 other source, a loan to the applicant.
- 4 (b) Qualification. – The ~~Authority~~ Statewide Intermediary shall not lend money  
5 to an applicant or guarantee a loan unless all of the following requirements are met:
- 6 (1) The applicant meets the requirements of  
7 ~~G.S. 143B-472.78.~~ G.S. 143B-472.103.
- 8 (2) The loan is to be used to perform an identified contract, of which the  
9 majority of funding is provided by a government agency or a  
10 combination of government agencies.
- 11 (3) The loan is to be used for working capital or equipment needed to  
12 perform the contract, the cost of which can be repaid from contract  
13 proceeds, if the ~~Authority~~ Statewide Intermediary has entered into an  
14 agreement with the applicant necessary to secure the loan or guaranty.
- 15 (c) Terms and Conditions. – The ~~Authority~~ Statewide Intermediary shall set the  
16 terms and conditions for loans and for the guarantee of loans. When the ~~Authority~~  
17 Statewide Intermediary lends money from the Small Business Contract Financing Fund,  
18 it shall prepare loan documents that include all of the following:
- 19 (1) The rate of interest on the loan, which shall not exceed any applicable  
20 statutory limit for a loan of the same type.
- 21 (2) A payment schedule that provides money to the applicant in the  
22 amounts and at the times that the applicant needs the money to  
23 perform the contract for which the loan is made.
- 24 (3) A requirement that, before each advance of money is released to the  
25 applicant, the applicant and the ~~Authority~~ Statewide Intermediary must  
26 cosign the request for the money.
- 27 (4) Provisions for repayment of the loan.
- 28 (5) Any other provision the ~~Authority~~ Statewide Intermediary considers  
29 necessary to secure the loan, including an assignment of, or a lien on,  
30 payment under the contract, if allowable.
- 31 (d) Maturity. – A loan made by the ~~Authority~~ Statewide Intermediary shall  
32 mature not later than the date the applicant is to receive full payment under the  
33 identified contract, unless the ~~Authority~~ Statewide Intermediary determines that a later  
34 maturity date is required to fulfill the purposes of this Part.
- 35 (e) Diversity. – In selecting applicants for assistance, the ~~Authority~~ Statewide  
36 Intermediary must consider the need to serve all geographic and political areas and  
37 subdivisions of the State.
- 38 (f) Limitation. – The total amount of loan guarantees and loans issued to each  
39 recipient during a fiscal year shall not exceed fifteen percent (15%) of the amount of  
40 money in the Fund as of the beginning of that fiscal year.
- 41 **"§ 143B-472.106. Small Business Surety Bond Fund.**
- 42 (a) Creation and Use. – The Small Business Surety Bond Fund is created as a  
43 special revenue fund. Revenue in the Fund does not revert at the end of a fiscal year,  
44 and interest and other investment income earned by the Fund accrues to the Fund. The

1 ~~Authority~~ Statewide Intermediary shall use the Fund for the purposes of and to pay the  
2 expenses of the ~~Authority~~ Statewide Intermediary related to providing bonding  
3 assistance.

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

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

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

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

13 (4) Investment income of the Fund.

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

15 **"§ 143B-472.107. Bonding assistance authorized.**

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

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

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

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

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

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

7 **"§ 143B-472.108. Bonding assistance conditions.**

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

- 11 (1) A bond is required in order to bid on a contract or to serve as a prime  
12 contractor or subcontractor.
- 13 (2) A bond is not obtainable on reasonable terms and conditions without  
14 assistance under this Part.
- 15 (3) The applicant will not subcontract more than seventy-five percent  
16 (75%) of the face value of the contract.

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

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

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

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

35 **"§ 143B-472.109. Surety bonding line.**

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

39 **"§ 143B-472.110. Application.**

40 To apply for assistance from the ~~Authority~~ Statewide Intermediary under this Part,  
41 an applicant and, where applicable, a surety must submit to the ~~Authority~~ Statewide  
42 Intermediary an application on a form prescribed by the ~~Authority~~ Statewide  
43 Intermediary. The application must include any information and documentation the  
44 ~~Authority~~ Statewide Intermediary considers necessary to enable the ~~Authority~~ Statewide

1 Intermediary to evaluate the application in accordance with this Part. The Authority  
2 Statewide Intermediary may require an applicant to provide an audited balance sheet  
3 unless the AuthorityStatewide Intermediary determines that such a requirement is not  
4 necessary or appropriate to fulfill the purposes of this Part.

5 **"§ 143B-472.111. Premiums and fees.**

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

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

21 (c) Forms. – The AuthorityStatewide Intermediary shall develop forms to be  
22 used for financing and bonding assistance.

23 **"§ 143B-472.112. False statements; penalty.**

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

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

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

32 **SECTION 2.** There is appropriated from the General Fund to the Rural  
33 Economic Development Center, Inc., in partnership with the North Carolina Institute of  
34 Minority Economic Development, Inc., the sum of ten million dollars (\$10,000,000) for  
35 the Small Business Contract Financing Fund and the sum of fifteen million dollars  
36 (\$15,000,000) for the Small Business Surety Bond Fund as set forth in the Small  
37 Business Contractor Act for the 2008-2009 fiscal year.

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