

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

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SENATE BILL 982*
Commerce Committee Substitute Adopted 5/12/09

Short Title: Small Business Assistance Fund.

(Public)

Sponsors:

Referred to:

March 26, 2009

1 A BILL TO BE ENTITLED
2 AN ACT TO ENACT THE SMALL BUSINESS ASSISTANCE ACT OF 2009 AND TO
3 ESTABLISH THE SMALL BUSINESS JOBS PRESERVATION FUND IN THE OFFICE
4 OF STATE BUDGET AND MANAGEMENT WITH RELATED PROGRAMS
5 COORDINATED BY A TECHNICAL ASSISTANCE PROVIDER.

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

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

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

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

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

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

19 The General Assembly of North Carolina enacts:

20 SECTION 1. Part 2I of Article 10 of Chapter 143B of the General Statutes reads as
21 rewritten:

22 "Part 2I. ~~One North Carolina Small Business Program Assistance.~~

23 "Subpart A. One North Carolina Small Business Program."

24 SECTION 2. Part 2I of Article 10 of Chapter 143B of the General Statutes is
25 amended by adding a new Subpart to read:

26 "Subpart B. Small Business Assistance Fund.

27 "**§ 143B-437.89. Establishment of fund; use of moneys; application for moneys from the**
28 **fund; disbursal; repayment; inspections; rules; reports.**

29 (a) Fund Established. – A revolving, special revenue fund to be known as the Small
30 Business Jobs Preservation and Emergency Assistance Fund is established in the Department of
31 Commerce. This Fund shall be administered by the Department through the Small Business and
32 Technology Development Center or any other entity as selected by the Secretary of Commerce.
33 The Department shall be responsible for receipt and disbursement of all moneys as provided in
34 this section. Interest earnings shall be credited to the Fund. The Fund consists of revenue
35 resulting from funds appropriated by the State, repayments of principal of and interest on loans,
36 fees, and other amounts received by the Department with respect to financial assistance
37 provided by the Department, and any other public or private funds made available to the Fund.



1 **(b) Department Authority; Loan Terms; Commission.** – The Department may approve
2 for disbursements of moneys in the Fund to small businesses in accordance with the provisions
3 of this section. The Department in conjunction with a Small Business Advisory Commission
4 (Commission) supported by the advice and counsel of the Small Business and Technology
5 Development Center of any other professional entity as selected by the Secretary of Commerce,
6 shall develop criteria, technical specifications, policies, and procedures to be used in
7 determining whether the conditions of this section apply. The Commission shall be comprised
8 of the Secretary of Commerce or the Secretary's designee; the President of the Community
9 College System or the President's designee; a representative of The University of North
10 Carolina General Administration; three members appointed by the Governor; three members
11 appointed by the Lieutenant Governor; three members appointed by the President Pro Tempore
12 of the Senate; and three members appointed by the Speaker of the House of Representatives. In
13 addition to administering the Small Business Assistance Fund, the Commission shall receive
14 comments regarding the needs and concerns of small businesses as they relate to matters of
15 State. The Commission shall report to the Joint Legislative Commission on Governmental
16 Operations annually.

17 As used in this section, "moneys" means a disbursement from the Fund in the form of a
18 loan, or loan guarantee, and "small business" means a business whose annual receipts and
19 number of full-time employees, combined with the annual receipts and full-time employees of
20 all related persons, did not exceed one million dollars (\$1,000,000) or 100 full-time employees.
21 No more than twenty percent (20%) of the Fund may be loaned to businesses in Article 3J Tier
22 3 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 small business to enter into
24 federal stimulus contracts. Priority also may be given to requests for loans or loan guarantees
25 made by otherwise qualifying historically underutilized business. A small business may apply
26 for a loan for: any legitimate business purposes, but may not be used to enhance executive pay,
27 provide bonuses, or consolidate operations in a manner that reduces the existing workforce.
28 Existing small businesses applying for assistance from the Fund must have a proven record of
29 success and must demonstrate that but for the recent economic downturn, the business would
30 not be in need of capital assistance.

31 **(c) Eligible Purposes.** – Moneys in the Fund shall be used for any of the following
32 eligible purposes:

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

38 **(d) Application.** – Any small business may apply for moneys from the Fund by
39 submitting an application to the Department its designated loan administration resource. The
40 application shall list each of the following:

- 41 (1) The proposed activities for which the moneys are to be used.
- 42 (2) The amount of moneys requested for these activities.
- 43 (3) Projections of the dollar amount of private investment that is expected to
44 occur as a direct result of the proposed activities.
- 45 (4) An explanation of the nature of the private investment that will result from
46 the proposed activities.
- 47 (5) A requirement for any reports, disclosures, or information required by this
48 section or necessary for the Department to fulfill its duties under this section.
- 49 (6) The total compensation received for the previous year from the small
50 business and all related persons for each of the five highest-compensated
51 employees of the small business.

1 (7) Any additional or supplemental information required by the Department
2 upon written request.

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

8 (f) Limitation. – A small business that is selected for a loan may not receive moneys
9 from the Fund pursuant to this section with an aggregate total of more than fifty thousand
10 dollars (\$50,000). A small business selected for a loan guarantee may not receive a guarantee
11 for a loan of more than one hundred thousand dollars (\$100,000).

12 (g) Disbursements of Moneys. – The Department or its designee shall not disburse
13 moneys for any loans until the small business has confirmed a method of repayment for the
14 loan. The terms for repayment established for a given loan shall apply through the period of
15 that loan. A small business that has been selected to receive moneys shall use the full amount of
16 the moneys for the activities that were approved pursuant to subsection (b) of this section.
17 Moneys are deemed used if the small business is legally committed to spend the moneys on the
18 approved activities. For purposes of this section, approved activities do not include an increase
19 in the total compensation of any employee identified in the application under subdivision (6) of
20 subsection (d) of this section. A small business shall lose any moneys that have not been used
21 within three years of being selected. These unused moneys shall be credited to the Fund. A
22 small business that loses moneys pursuant to this subsection may file a new application. Any
23 moneys repaid or credited to the Fund pursuant to this subsection shall be available to other
24 applicants as long as the Fund exists.

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

32 (i) Inspection. – Inspection of a project for which moneys have been awarded may be
33 performed by personnel of the Department or its designee. No person may be approved to
34 perform an inspection who is an officer or employee of the small business to which the moneys
35 were disbursed or who is an owner, officer, employee, or agent of a contractor or subcontractor
36 engaged in the activities for which the moneys were disbursed.

37 (j) Administration. – The Department or its designee may adopt, modify, and repeal
38 rules establishing the procedures to be followed in the administration of this section and
39 interpreting and applying the provisions of this section, as provided in the Administrative
40 Procedure Act.

41 (k) Legislative Reports. – The Department shall prepare and file on or before
42 September 1 of each year with the Joint Legislative Commission on Governmental Operations
43 and the Fiscal Research Division a consolidated report for the preceding fiscal year concerning
44 the allocation of moneys authorized by this section, including a separate listing of the moneys
45 disbursed to historically underutilized businesses. The report shall set forth for the preceding
46 fiscal year itemized and total allocations from the Fund. The Department shall also prepare a
47 summary report of all allocations made from the Fund for each fiscal year; the total funds
48 received and allocations made; the total amount of moneys repaid to the Fund; and the total
49 unallocated funds in the Fund.

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

- 1 (1) The total amount of private funds that was committed and the amount that
2 was invested in activities for which moneys from the Fund were made
3 available during the preceding fiscal year.
- 4 (2) The total amount and character of moneys received from the Fund during the
5 preceding fiscal year.
- 6 (3) The total amount of moneys repaid to the Fund during the preceding fiscal
7 year.
- 8 (4) A description of how moneys from the Fund and funds from private
9 investors were used during the preceding fiscal year.
- 10 (5) Details regarding the types of private investment created or stimulated, the
11 dates of this activity, the amount of public money involved, and any other
12 pertinent information, including any jobs created, businesses started, and
13 number of jobs retained due to the approved activities."

14 **SECTION 3.** This act becomes effective July 1, 2009.