

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

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SENATE BILL 982*
Commerce Committee Substitute Adopted 5/12/09
PROPOSED HOUSE COMMITTEE SUBSTITUTE S982-PCS15328-RO-81

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



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1 amounts received by the Department with respect to financial assistance provided by the
2 Department, and any other public or private funds made available to the Fund.

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

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

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

- 49 (1) To provide emergency bridge loans where clear and apparent ability to repay
50 has been established but credit remains unavailable.

- 1 (2) To lend for other purposes related to small business job preservation as
2 approved or recommended by the Department.
- 3 (3) To guarantee commercial loans.
- 4 (d) Application. – Any small business may apply for moneys from the Fund by
5 submitting an application to the ~~Department~~Department through its designated loan
6 administration resource. The application shall list each of the following:
- 7 (1) The proposed activities for which the moneys are to be used.
- 8 (2) The amount of moneys requested for these activities.
- 9 (3) Projections of the dollar amount of private investment that is expected to
10 occur as a direct result of the proposed activities.
- 11 (4) An explanation of the nature of the private investment that will result from
12 the proposed activities.
- 13 (5) A requirement for any reports, disclosures, or information required by this
14 section or necessary for the Department to fulfill its duties under this section.
- 15 (6) The total compensation received for the previous year from the small
16 business and all related persons for each of the five highest-compensated
17 employees of the small business.
- 18 (7) Any additional or supplemental information required by the Department
19 upon written request.
- 20 (e) Determination. – The Department or its designee shall review an application
21 submitted by a small business, determine whether the activities listed in the application are
22 activities that are eligible for moneys from the Fund, and determine which applicants are
23 selected to receive moneys from the Fund. A small business whose application is denied may
24 file a new or amended application.
- 25 (f) Limitation. – A small business that is selected may not receive moneys from the
26 Fund pursuant to this section with an aggregate total of more than ~~thirty-five thousand dollars~~
27 ~~(\$35,000)~~fifty thousand dollars (\$50,000). A small business selected for a loan guarantee may
28 not receive a guarantee of more than one hundred thousand dollars (\$100,000).
- 29 (g) Disbursements of Moneys. – The Department or its designee shall not disburse
30 moneys for any loans until the small business has confirmed a method of repayment for the
31 loan. The terms for repayment established for a given loan shall apply through the period of
32 that loan. A small business that has been selected to receive moneys shall use the full amount of
33 the moneys for the activities that were approved pursuant to subsection (b) of this section.
34 Moneys are deemed used if the small business is legally committed to spend the moneys on the
35 approved activities. For purposes of this section, approved activities do not include an increase
36 in the total compensation of any employee identified in the application under subdivision (d)(6)
37 of this section. A small business shall lose any moneys that have not been used within three
38 years of being selected. These unused moneys shall be credited to the Fund. A small business
39 that loses moneys pursuant to this subsection may file a new application. Any moneys repaid or
40 credited to the Fund pursuant to this subsection shall be available to other applicants as long as
41 the Fund exists.
- 42 (h) Cost Report. – After activities financed in whole or in part pursuant to this section
43 have been completed, the small business shall report the actual cost of the project to the
44 Department. If the actual costs of the activities exceed the projected cost upon which the
45 moneys were based, the small business may submit an application to the Department for
46 additional moneys for the difference. If the actual costs of the activities are less than the
47 projected cost, the small business shall arrange to pay the difference to the Fund according to
48 terms set by the Department.
- 49 (i) Inspection. – Inspection of a project for which moneys have been awarded may be
50 performed by personnel of the ~~Department~~Department or its designee. No person may be
51 approved to perform inspections who is an officer or employee of the small business to which

1 the moneys were disbursed or who is an owner, officer, employee, or agent of a contractor or
2 subcontractor engaged in the activities for which the moneys were disbursed.

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

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

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

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

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

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