

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1993

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HOUSE BILL 2057\*

Short Title: Small Business Surety Bonds.

(Public)

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Sponsors: Representatives Cunningham, Adams, Barnhill, Braswell, D. Brown, Burton, Cummings, Fitch, McAllister, Green, H. Hunter, Kennedy, Kinney, Michaux, Oldham, Wright, Wainwright; Baddour, Black, Crawford, Cromer, Flaherty, Hackney, Hensley, Holt, Joye, Luebke, Nesbitt, Nichols, J. Preston, Sutton, and Warner.

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Referred to: Judiciary I.

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June 6, 1994

1 A BILL TO BE ENTITLED  
2 AN ACT TO PROVIDE FOR SURETY BONDS FOR SMALL BUSINESSES THAT  
3 CONTRACT WITH GOVERNMENTAL AGENCIES.

4 The General Assembly of North Carolina enacts:

5 Section 1. Article 10 of Chapter 143B of the General Statutes is amended by  
6 adding a new Part to read:

7 **"PART 16. SMALL BUSINESS SURETY BOND FUND.**

8 **"§ 143B-472.40. Definitions.**

9 The following definitions apply in this Part:

- 10 (1) 'Authority' means the North Carolina Small Business Development  
11 Financing Authority created in G.S. 143B-472.41(a).  
12 (2) 'Contract term' means the term of the contract, including the  
13 maintenance or warranty period required by the contract and the period  
14 during which the surety may be liable for latent defects.  
15 (3) 'Fund' means the Small Business Surety Bond Fund.  
16 (4) 'Principal' means a small business entity that has assets, income, or  
17 employees that do not exceed limits established by rules adopted by  
18 the Authority.

19 **"§ 143B-472.41. Authority creation; powers.**

1       (a) Creation. – There is created the North Carolina Small Business Development  
2 Financing Authority. The Authority is a separate agency of the State.

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

4           (1) Four members appointed by the General Assembly upon the  
5 recommendation of the Speaker of the House of Representatives;

6           (2) Four members appointed by the General Assembly upon  
7 recommendation of the President Pro Tempore of the Senate;

8           (3) Two members appointed by the Governor; and

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

11       (c) Terms. – Members shall serve four-year terms, with no prohibition against  
12 being reappointed, except initial appointments shall be for terms as follows:

13           (1) The General Assembly upon recommendation of the Speaker of the  
14 House of Representatives shall initially appoint two members for a  
15 term of three years and two members for a term of four years;

16           (2) The General Assembly upon recommendation of the President Pro  
17 Tempore of the Senate shall initially appoint two members for a term  
18 of three years and two members for a term of four years; and

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

21 Initial terms shall commence on July 1, 1994.

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

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

27       (f) Meetings. – The chair shall convene the first meeting of the Authority.  
28 Meetings shall be held as necessary as determined by the Authority.

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

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

38       (i) Removal. – Members may be removed in accordance with G.S. 143B-13.

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

40           (1) To accept grants, loans, contributions, and services from the federal  
41 government, the State, State agencies, and local governments for the  
42 purpose of providing support to the Authority;

- 1           (2) To procure supplies, services, and property as appropriate and to enter  
2 into contracts, leases, or other legal agreements to carry out the  
3 purposes of the Authority;
- 4           (3) To acquire, manage, operate, dispose of, or otherwise deal with  
5 property, take assignments of rentals and leases, and enter into  
6 contracts, leases, agreements, and arrangements that are necessary or  
7 incidental to the performance of the duties of the Authority, upon  
8 terms and conditions that it considers appropriate;
- 9           (4) To adopt rules related to the form and content of applications, guaranty  
10 agreements, or agreements entered into by the Authority, principals, or  
11 sureties;
- 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; and
- 18           (7) To adopt rules or take any other action necessary to carry out the  
19 purposes of the Authority.

20 **"§ 143B-472.42. Small Business Surety Bond Fund.**

21       (a) Creation. – The Small Business Surety Bond Fund is created.

22       (b) Fund. – The Fund is a nonlapsing, revolving fund that comprises:

23           (1) Funds appropriated by the State;

24           (2) Premiums, fees, and any other amounts received by the Authority with  
25 respect to bonding assistance provided by the Authority;

26           (3) Proceeds designated by the Authority from the sale, lease, or other  
27 disposition of property or contracts held or acquired by the Authority;

28           (4) Interest earnings from investments of the Fund by the State Treasurer;  
29 and

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

31       (c) Purpose. – The Fund shall be used for the purposes of and to pay the expenses  
32 of the Authority.

33       (d) Investments. – The Fund shall be deposited with the State Treasurer and may  
34 be invested and reinvested in the same manner permitted for investment of funds  
35 belonging to the State or held in the State treasury. Interest earnings from investments  
36 shall be credited to the Fund.

37 **"§ 143B-472.43. Sureties.**

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

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

5       (c) Bonds. – The Authority may execute and perform bid bonds, performance  
6 bonds, and payment bonds as a surety for the benefit of a principal in connection with a  
7 contract, of which the majority of the funding is provided by the federal government, a  
8 state government, a local government, or a utility regulated by the North Carolina  
9 Utilities Commission. Each bond shall not exceed two hundred fifty thousand dollars  
10 (\$250,000) and is subject to the approval of the Authority, based on the bond worthiness  
11 of the principal, as determined by the Authority. The monetary limit in this subsection  
12 does not apply if the bond is funded by grants.

13       (d) Economic Effect. – The Authority shall determine that the contract for which  
14 a bond is sought to be guaranteed or issued has a substantial economic effect before it  
15 issues a guaranty or bond. To determine the economic effect of a contract, the Authority  
16 may consider:

17           (1) The amount of the guaranty obligation;

18           (2) The terms of the bond to be guaranteed;

19           (3) The number of new jobs that will be created by the contract to be  
20 bonded; and

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

22 **"§ 143B-472.44. Surety bonding line.**

23       The Authority may, on application, establish a surety bonding line in order to issue  
24 or guarantee multiple bonds to a principal within preapproved terms, conditions, and  
25 limitations.

26 **"§ 143B-472.45. Requirements.**

27       (a) Principal requirements. – To qualify for a surety bond or guaranty under this  
28 Part, a principal shall meet the following requirements:

29           (1) The principal is an individual, or is controlled by an individual or  
30 individuals, of good moral character;

31           (2) The principal is an individual, or is controlled by an individual or  
32 individuals, with a reputation for financial responsibility, as  
33 determined from creditors, employers, and other individuals with  
34 personal knowledge;

35           (3) The principal is a resident of the State or has its principal place of  
36 business in the State; and

37           (4) The principal is unable to obtain adequate bonding on reasonable  
38 terms through an authorized surety company.

39       (b) Bond requirements. – The principal shall certify to the Authority and the  
40 Authority shall be satisfied that:

41           (1) A bond is required in order to bid on a contract or to serve as a prime  
42 contractor or subcontractor;

43           (2) A bond is not obtainable on reasonable terms and conditions without  
44 assistance under this Part; and

1           (3) The principal will not subcontract more than seventy-five percent (75  
2           %) of the face value of the contract.

3 **"§ 143B-472.46. Application.**

4           (a) Form. – To apply for financial assistance from the Authority under this Part, a  
5 principal and, where applicable, a surety, shall submit to the Authority an application on  
6 the form that the Authority provides.

7           (b) Contents. – The application shall include:

8               (1) A detailed description of the project;

9               (2) An itemization of known and estimated costs;

10              (3) The total amount of investment required to perform the contract;

11              (4) The funds available to the principal for working capital;

12              (5) The amount of bonding assistance sought from the Authority;

13              (6) Information that relates to the inability of the principal to obtain  
14 adequate bonding on reasonable terms through an authorized surety  
15 company;

16              (7) Information that relates to the financial status of the principal,  
17 including:

18                   a. A current balance sheet;

19                   b. A profit and loss statement; and

20                   c. Credit references;

21              (8) A schedule of all existing and pending contracts and the current status  
22 of each; and

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

24           (c) Balance sheet. – The Authority may require a principal to provide an audited  
25 balance sheet before the Authority makes its decision on the application.

26           (d) Default. – If a principal has ever defaulted on a loan or guaranty provided by  
27 the Authority, the Authority may approve a guaranty or bond under this Part if:

28               (1) Two years have elapsed since the time of the default; and

29               (2) The principal has cured any default in any financing program  
30 administered by the Authority.

31 **"§ 143B-472.47. Premiums and fees.**

32           (a) Amount. – The Authority may set the premiums and fees to be paid for  
33 providing bonding assistance under this Part. The premiums and fees set by the  
34 Authority shall be payable in the amounts, at the time, and in the manner that the  
35 Authority requires and shall remain effective throughout the period during which the  
36 bonding assistance is in effect.

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

39 **"§ 143B-472.48. False statements; penalty.**

40           (a) Application. – A person shall not knowingly make or cause any false  
41 statement or report to be made in any application or in any document submitted to the  
42 Authority.

43           (b) Statements. – A person shall not knowingly make or cause any false  
44 statement or report to be made to the Authority for the purpose of influencing the action

1 of the Authority on an application for assistance or affecting bonding assistance,  
2 whether or not assistance has been previously extended.

3 (c) Penalty. – A person who violates any provision of this section is guilty of a  
4 misdemeanor and on conviction is subject to a fine not exceeding one thousand dollars  
5 (\$1,000), or imprisonment not exceeding six months, or both."

6 Sec. 2. G.S. 143B-472.48(c) as enacted by Section 1 of this act reads as  
7 rewritten:

8 "(c) Penalty. – A person who violates any provision of this section is guilty of a  
9 Class 2 misdemeanor~~misdemeanor and on conviction is subject to a fine not exceeding~~  
10 ~~one thousand dollars (\$1,000), or imprisonment not exceeding six months, or both."~~

11 Sec. 3. There is appropriated from the General Fund to the North Carolina  
12 Small Business Development Financing Authority the sum of one million dollars  
13 (\$1,000,000) for the 1994-95 fiscal year for the purposes specified in this act.

14 Sec. 4. Sections 1, 3, and 4 of this act become effective July 1, 1994, and  
15 apply to offenses committed or causes of action arising on or after that date. Section 2  
16 of this act becomes effective October 1, 1994, and applies to offenses committed or  
17 causes of action arising on or after that date. Prosecutions for offenses committed  
18 before the effective date of Section 2 of this act are not abated or affected by this act,  
19 and the statutes that would be applicable but for this act remain applicable to those  
20 prosecutions.