

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1993

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HOUSE BILL 2057*
Committee Substitute Favorable 6/23/94

Short Title: Small Business Surety Bonds.

(Public)

Sponsors:

Referred to:

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.**

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

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

- 1 (1) Four members appointed by the General Assembly upon the
2 recommendation of the Speaker of the House of Representatives;
3 (2) Four members appointed by the General Assembly upon
4 recommendation of the President Pro Tempore of the Senate;
5 (3) Two members appointed by the Governor; and
6 (4) One member appointed by the General Assembly upon
7 recommendation of the President of the Senate.

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

- 10 (1) The General Assembly upon recommendation of the Speaker of the
11 House of Representatives shall initially appoint two members for a
12 term of three years and two members for a term of four years;
13 (2) The General Assembly upon recommendation of the President Pro
14 Tempore of the Senate shall initially appoint two members for a term
15 of three years and two members for a term of four years; and
16 (3) The Governor shall initially appoint one member for a term of three
17 years and one member for a term of four years.

18 Initial terms shall commence on July 1, 1994.

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

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

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

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

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

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

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

- 37 (1) To accept grants, loans, contributions, and services from the federal
38 government, the State, State agencies, and local governments for the
39 purpose of providing support to the Authority;
40 (2) To procure supplies, services, and property as appropriate and to enter
41 into contracts, leases, or other legal agreements to carry out the
42 purposes of the Authority;
43 (3) To acquire, manage, operate, dispose of, or otherwise deal with
44 property, take assignments of rentals and leases, and enter into

1 contracts, leases, agreements, and arrangements that are necessary or
2 incidental to the performance of the duties of the Authority, upon
3 terms and conditions that it considers appropriate;

4 (4) To adopt rules related to the form and content of applications, guaranty
5 agreements, or agreements entered into by the Authority, principals, or
6 sureties;

7 (5) To acquire or take assignments of documents executed, obtained, or
8 delivered in connection with assistance provided by the Authority
9 under this Part;

10 (6) To fix, determine, charge, and collect any premiums, fees, charges,
11 costs, and expenses in connection with any assistance provided by the
12 Authority under this Part; and

13 (7) To adopt rules or take any other action necessary to carry out the
14 purposes of the Authority.

15 **"§ 143B-472.42. Small Business Surety Bond Fund.**

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

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

18 (1) Funds appropriated by the State;

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

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

23 (4) Interest earnings from investments of the Fund by the State Treasurer;
24 and

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

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

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

32 **"§ 143B-472.43. Sureties.**

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

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

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

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

14 (1) The amount of the guaranty obligation;

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

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

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

19 **"§ 143B-472.44. Surety bonding line.**

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

23 **"§ 143B-472.45. Requirements.**

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

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

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

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

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

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

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

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

42 (3) The principal will not subcontract more than seventy-five percent (75
43 %) of the face value of the contract.

44 **"§ 143B-472.46. Application.**

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

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

5 (1) A detailed description of the project;

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

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

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

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

10 (6) Information that relates to the inability of the principal to obtain
11 adequate bonding on reasonable terms through an authorized surety
12 company;

13 (7) Information that relates to the financial status of the principal,
14 including:

15 a. A current balance sheet;

16 b. A profit and loss statement; and

17 c. Credit references;

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

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

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

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

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

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

28 **"§ 143B-472.47. Premiums and fees.**

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

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

36 **"§ 143B-472.48. False statements; penalty.**

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

40 (b) Statements. – A person shall not knowingly make or cause any false
41 statement or report to be made to the Authority for the purpose of influencing the action
42 of the Authority on an application for assistance or affecting bonding assistance,
43 whether or not assistance has been previously extended.

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

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

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

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

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