

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1993

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HOUSE BILL 2057*
Committee Substitute Favorable 6/23/94
Committee Substitute #2 Favorable 6/30/94

Short Title: Small Business Surety Bonds.

(Public)

Sponsors:

Referred to:

June 6, 1994

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

The General Assembly of North Carolina enacts:

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

"PART 16. SMALL BUSINESS SURETY BOND FUND.

"§ 143B-472.40. Definitions.

The following definitions apply in this Part:

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

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

1 (a) Creation. – The North Carolina Small Business Development Financing
2 Authority is created within the Department of Commerce. The Authority shall exercise
3 its powers independently of the Secretary of the Department of Commerce.

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

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

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

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

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

12 (c) Terms. – Members shall serve four-year terms, with no prohibition against
13 being reappointed, except initial appointments other than by the President of the Senate
14 shall be for terms as follows:

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

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

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

23 Initial terms shall commence on August 1, 1994.

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

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

29 (f) Meetings. – The Secretary of the Department of Commerce shall convene the
30 first meeting of the Authority within 60 days after July 1, 1994. Meetings shall be held
31 as necessary as determined by the Authority.

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

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

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

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

- 1 (1) To accept grants, loans, contributions, and services.
- 2 (2) To employ staff, procure supplies, services, and property, and enter
3 into contracts, leases, or other legal agreements to carry out the
4 purposes of the Authority.
- 5 (3) To acquire, manage, operate, dispose of, or otherwise deal with
6 property, take assignments of rentals and leases, and enter into
7 contracts, leases, agreements, and arrangements that are necessary or
8 incidental to the performance of the duties of the Authority, upon
9 terms and conditions that it considers appropriate.
- 10 (4) To specify the form and content of applications, guaranty agreements,
11 or agreements entered into by the Authority, principals, or 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.
- 18 (7) To adopt rules, in accordance with Chapter 150B of the General
19 Statutes, to implement this Part.
- 20 (8) To take any other action necessary to carry out the purposes of the
21 Authority.

22 **"§ 143B-472.42. Small Business Surety Bond Fund.**

23 (a) Creation and Use. – The Small Business Surety Bond Fund is created as a
24 special revenue fund. Revenue in the Fund does not revert at the end of a fiscal year
25 and interest and other investment income earned by the Fund accrues to the Fund. The
26 Fund shall be used for the purposes of and to pay the expenses of the Authority.

27 (b) Content. – The Fund consists of all of the following revenue:

- 28 (1) Funds appropriated to the Fund by the State.
- 29 (2) Premiums, fees, and any other amounts received by the Authority with
30 respect to bonding assistance provided by the Authority.
- 31 (3) Proceeds designated by the Authority from the sale, lease, or other
32 disposition of property or contracts held or acquired by the Authority.
- 33 (4) Investment income of the Fund.
- 34 (5) Any other moneys made available to the Fund.

35 **"§ 143B-472.43. Sureties.**

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

43 (b) Term. – The term of a guaranty under this Part shall not exceed the contract
44 term. The Authority may vary the terms and conditions of the guaranty from surety to

1 surety, based on the Authority's history of experience with the surety and other factors
2 that the Authority considers relevant.

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

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

16 (1) The amount of the guaranty obligation.

17 (2) The terms of the bond to be guaranteed.

18 (3) The number of new jobs that will be created by the contract to be
19 bonded.

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

21 **"§ 143B-472.44. Surety bonding line.**

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

25 **"§ 143B-472.45. Requirements.**

26 (a) Principal Requirements. – To qualify for a surety bond or guaranty under this
27 Part, a principal must meet all of the following requirements:

28 (1) The principal must be an individual, or controlled by one or more
29 individuals, of good moral character.

30 (2) The principal must be an individual, or be controlled by one or more
31 individuals, with a reputation for financial responsibility, as
32 determined from creditors, employers, and other individuals with
33 personal knowledge.

34 (3) The principal must be a resident of the State or have its principal place
35 of business in the State.

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

38 (b) Bond Requirements. – The principal shall certify to the Authority and the
39 Authority shall be satisfied that all of the following apply:

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

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

1 (3) The principal will not subcontract more than seventy-five percent
2 (75%) 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 all of the following:

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.

20 c. Credit references.

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

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 bond or guaranty provided by
27 the Authority, the Authority may approve a guaranty or bond under this Part if both the
28 following apply:

29 (1) Two years have elapsed since the time of the default.

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

32 **"§ 143B-472.47. Premiums and fees.**

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

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. Of the funds appropriated to the North Carolina Small Business
12 Development Financing Authority for the 1994-95 fiscal year in Section 3 of Senate Bill
13 1505, AN ACT TO MODIFY THE CURRENT OPERATIONS APPROPRIATIONS
14 ACT OF 1993, TO MAKE APPROPRIATIONS FOR CAPITAL IMPROVEMENTS
15 FOR THE 1994-95 FISCAL YEAR, AND TO MAKE OTHER CHANGES IN THE
16 BUDGET OPERATION OF THE STATE, the sum of one million dollars (\$1,000,000)
17 shall be credited to the Small Business Surety Bond Fund created in Section 1 of this
18 act.

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