

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
Senate Insurance Committee Substitute Adopted 7/12/94

Short Title: Small Business Surety Bonds.

(Public)

Sponsors:

Referred to: Finance.

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. – The North Carolina Small Business Development
11 Financing Authority created in G.S. 143B-472.41(a).
12 (2) Contract term. – The term of the contract, including the maintenance
13 or warranty period required by the contract and the period during
14 which the surety may be liable.
15 (3) Fund. – The Small Business Surety Bond Fund.
16 (4) Principal. – 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. – The North Carolina Small Business Development Financing
21 Authority is created within the Department of Commerce.

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

2 (1) Four members appointed by the General Assembly upon the
3 recommendation of the Speaker of the House of Representatives, one
4 of whom has experience in underwriting surety bonds.

5 (2) Four members appointed by the General Assembly upon
6 recommendation of the President Pro Tempore of the Senate, one of
7 whom is a present or former governmental employee and has
8 experience in administering public contracts.

9 (3) Two members appointed by the Governor, one of whom is a licensed
10 general contractor.

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

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

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

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

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

24 Initial terms shall commence on August 1, 1994.

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

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

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

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

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

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

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

2 (1) To accept grants, loans, contributions, and services.

3 (2) To employ staff, procure supplies, services, and property, and enter
4 into contracts, leases, or other legal agreements, including the
5 procurement of reinsurance, to carry out the purposes of the Authority.

6 (3) To acquire, manage, operate, dispose of, or otherwise deal with
7 property, take assignments of rentals and leases, and enter into
8 contracts, leases, agreements, and arrangements that are necessary or
9 incidental to the performance of the duties of the Authority, upon
10 terms and conditions that it considers appropriate.

11 (4) To specify the form and content of applications, guaranty agreements,
12 or agreements entered into by the Authority, principals, or sureties.

13 (5) To acquire or take assignments of documents executed, obtained, or
14 delivered in connection with assistance provided by the Authority
15 under this Part.

16 (6) To fix, determine, charge, and collect any premiums, fees, charges,
17 costs, and expenses in connection with any assistance provided by the
18 Authority under this Part.

19 (7) To adopt rules, in accordance with Chapter 150B of the General
20 Statutes, to implement this Part.

21 (8) To take any other action necessary to carry out the purposes of the
22 Authority.

23 **"§ 143B-472.42. Small Business Surety Bond Fund.**

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

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

29 (1) Funds appropriated to the Fund by the State.

30 (2) Premiums, fees, and any other amounts received by the Authority with
31 respect to bonding assistance provided by the Authority.

32 (3) Proceeds designated by the Authority from the sale, lease, or other
33 disposition of property or contracts held or acquired by the Authority.

34 (4) Investment income of the Fund.

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

36 **"§ 143B-472.43. Sureties.**

37 (a) Guaranty. – Subject to the restrictions of this Part, the Authority, on
38 application, may guarantee a surety for losses incurred under a bid bond, payment bond,
39 or performance bond on a contract, of which the majority of the funding is provided by
40 the federal government, a state government, a local government, a utility regulated by
41 the North Carolina Utilities Commission, or a combination of those entities, up to ninety
42 percent (90%) of the surety's losses, or nine hundred thousand dollars (\$900,000),
43 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, a utility regulated by the North Carolina Utilities
9 Commission, or a combination of those entities. Each bond shall not exceed two
10 hundred fifty thousand dollars (\$250,000) and is subject to the approval of the
11 Authority, based on the bond worthiness of the principal, as determined by the
12 Authority. The monetary limit in this subsection does not apply if the bond is funded by
13 grants.

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

- 18 (1) The amount of the guaranty obligation.
- 19 (2) The terms of the bond to be guaranteed.
- 20 (3) The number of new jobs that will be created by the contract to be
21 bonded.
- 22 (4) Any other factor that the Authority considers relevant.

23 (e) Obligation of State. – The total amount of guarantees issued and bonds
24 executed shall not exceed ninety percent (90%) of the amount of money in the Fund.
25 The Authority shall not pledge any money other than money in the Fund for payment of
26 a loss or bond. No action by the Authority shall constitute the creation of a debt secured
27 by a pledge of the taxing power or the faith and credit of the State or any of its political
28 subdivisions. The face of each guarantee issued or bond executed shall contain a
29 statement that the Authority is obligated to pay the guarantee or bond only from the
30 revenue in the Fund and that neither the taxing power nor the faith and credit of the
31 State or any of its political subdivisions is pledged in payment of the guarantee or bond.
32 Nothing in this subsection shall limit the ability of the Authority to obtain reinsurance.

33 **"§ 143B-472.44. Surety bonding line.**

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

37 **"§ 143B-472.45. Requirements.**

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

- 40 (1) The principal must be an individual, or controlled by one or more
41 individuals, of good moral character.
- 42 (2) The principal must be an individual, or be controlled by one or more
43 individuals, with a reputation for financial responsibility, as

- 1 determined from creditors, employers, and other individuals with
2 personal knowledge.
- 3 (3) The principal must be a resident of the State and have its principal
4 place of business in the State.
- 5 (4) The principal must be unable to obtain adequate bonding on
6 reasonable terms through an authorized surety company.
- 7 (b) Bond Requirements. – The principal shall certify to the Authority and the
8 Authority shall be satisfied that all of the following apply:
- 9 (1) A bond is required in order to bid on a contract or to serve as a prime
10 contractor or subcontractor.
- 11 (2) A bond is not obtainable on reasonable terms and conditions without
12 assistance under this Part.
- 13 (3) The principal will not subcontract more than seventy-five percent
14 (75%) of the face value of the contract.

15 **"§ 143B-472.46. Application.**

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

19 (b) Contents. – The application shall include all of the following:

- 20 (1) A detailed description of the project.
- 21 (2) An itemization of known and estimated costs.
- 22 (3) The total amount of investment required to perform the contract.
- 23 (4) The funds available to the principal for working capital.
- 24 (5) The amount of bonding assistance sought from the Authority.
- 25 (6) Information that relates to the inability of the principal to obtain
26 adequate bonding on reasonable terms through an authorized surety
27 company.
- 28 (7) Information that relates to the financial status of the principal,
29 including:
- 30 a. A current balance sheet.
- 31 b. A profit and loss statement.
- 32 c. Credit references.
- 33 (8) A schedule of all existing and pending contracts and the current status
34 of each.
- 35 (9) Any other relevant information that the Authority requests.

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

38 (d) Default. – If a principal has ever defaulted on a bond or guaranty provided by
39 the Authority, the Authority may approve a guaranty or bond under this Part if both the
40 following apply:

- 41 (1) Two years have elapsed since the time of the default.
- 42 (2) The principal has cured any default in any program administered by
43 the Authority.

44 **"§ 143B-472.47. Premiums and fees.**

1 (a) Amount. – The Authority shall by rule set the premiums and fees to be paid
2 for providing bonding assistance under this Part. The premiums and fees set by the
3 Authority shall be payable in the amounts, at the time, and in the manner that the
4 Authority requires.

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

7 (c) Rate Standards. – The rate standards in G.S. 58-40-20 apply to premiums set
8 by the Authority under this section. The Authority may also use the forms and rates of
9 rating or advisory organizations licensed under G.S. 58-40-50 or G.S. 58-40-55.

10 (d) Forms. – The Authority shall develop forms to be used for bonding assistance
11 under G.S. 143-472.43(c).

12 (e) Approval. – The premiums set and forms developed by the Authority under
13 this section must be approved by the Commissioner of Insurance before they may be
14 used.

15 **"§ 143B-472.48. False statements; penalty.**

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

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

23 (c) Penalty. – A person who violates any provision of this section is guilty of a
24 misdemeanor and on conviction is subject to a fine not exceeding one thousand dollars
25 (\$1,000), or imprisonment not exceeding six months, or both."

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

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

31 Sec. 3. Of the funds appropriated to the Department of Commerce for the
32 Small Business Surety Bond Program for the 1994-95 fiscal year in Section 3 of Senate
33 Bill 1505, AN ACT TO MODIFY THE CURRENT OPERATIONS
34 APPROPRIATIONS ACT OF 1993, TO MAKE APPROPRIATIONS FOR CAPITAL
35 IMPROVEMENTS FOR THE 1994-95 FISCAL YEAR, AND TO MAKE OTHER
36 CHANGES IN THE BUDGET OPERATION OF THE STATE, the sum of one million
37 dollars (\$1,000,000) shall be credited to the Small Business Surety Bond Fund created
38 in Section 1 of this act.

39 Sec. 4. Sections 1, 3, and 4 of this act are effective upon ratification and
40 apply to offenses committed or causes of action arising on or after that date. Section 2
41 of this act becomes effective October 1, 1994, and applies to offenses committed or
42 causes of action arising on or after that date. Prosecutions for offenses committed
43 before the effective date of Section 2 of this act are not abated or affected by this act,

- 1 and the statutes that would be applicable but for this act remain applicable to those
- 2 prosecutions.