

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
Senate Finance Committee Substitute #2 Adopted 7/13/94

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. Purpose and intent.**

9 The purpose and intent of this Part is to foster economic development and the
10 creation of jobs by helping financially responsible small businesses that are unable to
11 get adequate bonding obtain surety bonds and guarantees in connection with contracts.

12 **"§ 143B-472.41. Definitions.**

13 The following definitions apply in this Part:

- 14 (1) Authority. – The North Carolina Small Business Development
15 Financing Authority created in G.S. 143B-472.42(a).
16 (2) Contract term. – The term of the contract, including the maintenance
17 or warranty period required by the contract and the period during
18 which the surety may be liable.
19 (3) Fund. – The Small Business Surety Bond Fund.

1 (4) Principal. – A small business entity that has assets, income, or
2 employees that do not exceed limits established by rules adopted by
3 the Authority.

4 **"§ 143B-472.42. Authority creation; powers.**

5 (a) Creation. – The North Carolina Small Business Development Financing
6 Authority is created within the Department of Commerce.

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

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

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

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

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

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

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

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

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

30 Initial terms shall commence on August 1, 1994.

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

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

36 (f) Meetings. – The Secretary of the Department of Commerce shall convene the
37 first meeting of the Authority within 60 days after August 1, 1994. Meetings shall be
38 held as necessary as determined by the Authority.

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

43 (h) Vacancies. – A vacancy on the Authority resulting from the resignation of a
44 member or otherwise shall be filled in the same manner in which the original

1 appointment was made and the term shall be for the balance of the unexpired term.
2 Vacancies in appointments made by the General Assembly shall be filled in accordance
3 with G.S. 120-122.

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

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

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

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

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

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

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

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

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

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

29 (9) To report quarterly to the Joint Legislative Commission on
30 Governmental Operations on the activities of the Authority, including
31 the amount of rates, sureties, and bonds.

32 **"§ 143B-472.43. Small Business Surety Bond Fund.**

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

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

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

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

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

43 (4) Investment income of the Fund.

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

1 **"§ 143B-472.44. Sureties.**

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

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

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

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

26 (1) The amount of the guaranty obligation.

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

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

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

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

41 **"§ 143B-472.45. Surety bonding line.**

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

1 **"§ 143B-472.46. Requirements.**

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

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

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

10 (3) The principal must be:

11 a. A resident of the State; or

12 b. Be incorporated in the State; and

13 the principal must have its principal place of business in the State.

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

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

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

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

22 (3) The principal will not subcontract more than seventy-five percent
23 (75%) of the face value of the contract.

24 **"§ 143B-472.47. Application.**

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

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

29 (1) A detailed description of the project.

30 (2) An itemization of known and estimated costs.

31 (3) The total amount of investment required to perform the contract.

32 (4) The funds available to the principal for working capital.

33 (5) The amount of bonding assistance sought from the Authority.

34 (6) Information that relates to the inability of the principal to obtain
35 adequate bonding on reasonable terms through an authorized surety
36 company.

37 (7) Information that relates to the financial status of the principal,
38 including:

39 a. A current balance sheet.

40 b. A profit and loss statement.

41 c. Credit references.

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

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

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

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

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

7 (2) The principal has cured any default in any program administered by
8 the Authority.

9 **"§ 143B-472.48. Premiums and fees.**

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

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

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

19 (d) Forms. – The Authority shall develop forms to be used for bonding assistance
20 under G.S. 143-472.44(c).

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

24 **"§ 143B-472.49. False statements; penalty.**

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

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

32 (c) Penalty. – A person who violates any provision of this section is guilty of a
33 misdemeanor and on conviction is subject to a fine not exceeding one thousand dollars
34 (\$1,000), or imprisonment not exceeding six months, or both."

35 Sec. 2. G.S. 143B-472.49(c), as enacted by Section 1 of this act, reads as
36 rewritten:

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

40 Sec. 3. Of the funds appropriated to the Department of Commerce for the
41 Small Business Surety Bond Program for the 1994-95 fiscal year in Section 3 of Senate
42 Bill 1505, AN ACT TO MODIFY THE CURRENT OPERATIONS
43 APPROPRIATIONS ACT OF 1993, TO MAKE APPROPRIATIONS FOR CAPITAL
44 IMPROVEMENTS FOR THE 1994-95 FISCAL YEAR, AND TO MAKE OTHER

1 CHANGES IN THE BUDGET OPERATION OF THE STATE, the sum of one million
2 dollars (\$1,000,000) shall be credited to the Small Business Surety Bond Fund created
3 in Section 1 of this act. It is the intent of the General Assembly that no further State
4 appropriations be made to that Fund, and that the Fund be self-supporting.

5 Sec. 4. (a) Sections 1, 3, and 4 of this act are effective upon ratification and
6 apply to offenses committed or causes of action arising on or after that date. Section 2
7 of this act becomes effective October 1, 1994, and applies to offenses committed or
8 causes of action arising on or after that date. Prosecutions for offenses committed
9 before the effective date of Section 2 of this act are not abated or affected by this act,
10 and the statutes that would be applicable but for this act remain applicable to those
11 prosecutions.

12 (b) This act expires June 30, 1999. The expiration of this act does not affect
13 prosecutions for offenses committed before that date, and the statutes that would be
14 applicable but for this act remain applicable to those prosecutions. The expiration of
15 this act does not affect any guarantees or bonds executed prior to the expiration.