

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1993

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SENATE BILL 1242

Short Title: State Contract Bonding.

(Public)

Sponsors: Senator Sherron.

Referred to: State Personnel and State Government.

June 17, 1993

1 A BILL TO BE ENTITLED  
2 AN ACT TO AMEND THE PAYMENT AND PERFORMANCE BOND LAWS AND  
3 TO PROVIDE ENHANCED OPPORTUNITIES FOR SMALL BUSINESS  
4 CONTRACTORS ON STATE PROJECTS.

5 The General Assembly of North Carolina enacts:

6 Section 1. Article 3 of Chapter 44A of the General Statutes is amended by  
7 adding the following new sections to read:

8 **"§ 44A-26.1. State building contracts; bond waivers.**

9 (a) Notwithstanding the provisions of G.S. 44A-26, the Secretary of  
10 Administration may, with respect to any contract upon which a State agency other than  
11 the Department of Transportation is the contracting body, do one or more of the  
12 following:

13 (1) Waive the performance bond requirement, the payment bond  
14 requirement, or both, for a contractor if:

15 a. The contractor's contract is one hundred thousand dollars  
16 (\$100,000) or less; and

17 b. The total amount of contracts awarded for the project is two  
18 hundred fifty thousand dollars (\$250,000) or less.

19 (2) Accept from a contractor, in lieu of a payment or performance bond, a  
20 fee equal to the cost of a Small Business Administration guaranteed  
21 bond.

22 **"§ 44A-26.2. State highway contracts; bond waivers.**

1       (a) Notwithstanding the provisions of G.S. 44A-26, the Secretary of  
2 Transportation may, with respect to contracts awarded by the Department of  
3 Transportation, do one or more of the following:

- 4           (1) Waive the performance bond requirement, the payment bond  
5 requirement, or both, for a contractor if:  
6           a. The contractor's contract is fifty thousand dollars (\$50,000) or  
7 less; and  
8           b. The total amount of contracts awarded for the project is one  
9 hundred thousand dollars (\$100,000) or less.
- 10          (2) Establish for the contract a percentage of the payment bond,  
11 performance bond, or both, to be secured by the contractor. The  
12 percentage of the contract to be secured shall be no less than fifty  
13 percent (50%) of and no greater than one hundred percent (100%) of  
14 the amount bid, based upon the Secretary's assessment of the risk  
15 presented to the State by the type of contract, past experience with the  
16 contractor, and other factors as set out by the Board of Transportation.
- 17          (3) Accept from a contractor, in lieu of a payment or performance bond, a  
18 fee equal to the cost of a Small Business Administration guaranteed  
19 bond.

20 **"§ 44A-26.3. Qualifications.**

21 Only a contractor that meets the following qualifications is eligible to participate  
22 under the bond programs listed in G.S. 44A-26.1 and G.S. 44A-26.2:

- 23           (1) The contractor qualifies as a small business, in accordance with rules  
24 adopted by the State Building Commission or the Board of  
25 Transportation, as appropriate;
- 26           (2) The contractor has been operating as the same business for a  
27 continuous period of three years;
- 28           (3) The contractor has demonstrated the capability to perform its work in  
29 accordance with the terms of the contract without excessive delays,  
30 extensions, cost overruns, or changes for which the contractor or its  
31 subcontractor was held responsible;
- 32           (4) The contractor does not have a documented record of past projects  
33 resulting in arbitration or litigation in which the contractor was found  
34 to be liable or at fault; and
- 35           (5) With respect to the fee in lieu of bond under G.S. 44A-26.1(a)(3) or  
36 G.S. 44A-26.2(a)(3), the contractor has been denied guaranteed bond  
37 by the Small Business Administration or denied performance and  
38 payment bond by an established surety company legally authorized to  
39 do business in the State of North Carolina for reasons other than prior  
40 defaults.

41 **"§ 44A-26.4. Bond Fund.**

42 There is hereby established a State Projects Bond Fund (hereinafter 'Fund') within  
43 the Office of the State Treasurer, to consist of a Highway Account and a Building  
44 Account. The Fund shall be the repository of all appropriations made by the General

1 Assembly for the implementation of G.S. 44A-26.1 through G.S. 44A-26.4 and all fees  
2 collected pursuant to G.S. 44A-26.1(a)(3) and G.S. 44A-26.2(a)(3). The monies in the  
3 Fund's Highway Account may be used by the Secretary of Transportation to wholly or  
4 partially indemnify surety companies that provide performance and payment bonds for  
5 construction contracts and to provide security for defaults by contractors. The monies  
6 in the Fund's Building Account may be used by the Secretary of Administration to  
7 wholly or partially indemnify surety companies that provide performance and payment  
8 bonds for construction contracts and to provide security for defaults by contractors.

9 **"§ 44A-26.5. Percentage of contract bonded.**

10 Notwithstanding the provisions of G.S. 44A-26, the Secretary of Administration and  
11 the Secretary of Transportation, as appropriate, may establish a percentage of the  
12 contract to be secured by the contractor under a payment bond, performance bond, or  
13 both. The percentage of the contract to be secured shall be no less than fifty percent  
14 (50%) of and no greater than one hundred percent (100%) of the amount bid, based  
15 upon the Secretary's assessment of the risk presented to the State by the type of contract,  
16 past experience with the contractor, and other factors as set out by the State Building  
17 Commission or the Board of Transportation, as appropriate."

18 Sec. 2. This act is effective upon ratification.