

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

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HOUSE BILL 963

Short Title: Small Business Surety Bonds.

(Public)

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Sponsors: Representatives Shaw; Adams, Blue, Boyd-McIntyre, Braswell, Cummings, Cunningham, Earle, H. Hunter, Womble, and Wright.

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Referred to: Finance.

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April 12, 1995

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 creation  
10 of jobs by helping financially responsible small businesses that are unable to get adequate  
11 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 or  
17 warranty period required by the contract and the period during which  
18 the surety may be liable.

19 (3) Fund. – The Small Business Surety Bond Fund.

1           (4) Principal. – A small business entity that has combined total assets of  
2           five million dollars (\$5,000,000) or less.

3 **"§ 143B-472.42. Authority creation; powers.**

4           (a) Creation. – The North Carolina Small Business Development Financing  
5 Authority is created. The Authority shall be located within the Department of  
6 Administration for organizational, budgetary, and administrative purposes.

7           (b) Membership. – The Authority shall consist of nine members as follows:

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

11           (2) Two 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 experience  
14 in administering public contracts.

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

17           (4) The Secretary of the Department of Administration, or the Secretary's  
18 designee, ex officio.

19           (5) The Secretary of the Department of Commerce, or the Secretary's  
20 designee, ex officio.

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

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

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

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

31 Initial terms shall commence on August 1, 1995.

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

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

37           (f) Meetings. – The Secretary of the Department of Administration shall convene  
38 the first meeting of the Authority within 60 days after August 1, 1995. Meetings shall be  
39 held as necessary as determined by the Authority.

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

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

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

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

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

11       (2) To procure supplies and services and to enter into legal agreements and  
12 contracts to carry out the purposes of the Authority.

13       (3) To specify the form and content of applications, guaranty agreements,  
14 or agreements entered into by the Authority, principals, or sureties.

15       (4) To adopt rules for prequalifying eligible small business entities for  
16 financial assistance and maintaining a list of qualified small business  
17 entities.

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

21       (6) To adopt rules for withholding a percentage of the payment due the  
22 principal under the contract until completion of the contract to guarantee  
23 the applicable bonds.

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

27       (8) To adopt rules, in accordance with Chapter 150B of the General  
28 Statutes, to implement this Part.

29       (9) To take any other action necessary to carry out the purposes of the  
30 Authority.

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

34       (k) Supplies. – The Department of Administration shall provide the Authority any  
35 office space and supplies needed by the Authority and shall not receive reimbursement  
36 for space and supplies provided.

37 **"§ 143B-472.43. Small Business Surety Bond Fund.**

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

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

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

1           (2) Funds withheld from the contract payment in an amount determined by  
2 the Authority.

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

5           (4) Proceeds designated by the Authority from the sale, lease, or other  
6 disposition of property or contracts held or acquired by the Authority.

7           (5) Investment income of the Fund.

8           (6) Any other moneys made available to the Fund.

9 **"§ 143B-472.44. Sureties.**

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

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

21       (c) Bonds. – The Authority may execute and perform bid bonds, performance  
22 bonds, and payment bonds as a surety for the benefit of a principal in connection with a  
23 contract of which the majority of the funding is provided by the federal government, a  
24 state government, a local government, a utility regulated by the North Carolina Utilities  
25 Commission, or a combination of those entities. The bond shall be at least fifty thousand  
26 dollars (\$50,000) and shall not exceed two million five hundred thousand dollars  
27 (\$2,500,000). The bond is subject to the approval of the Authority, based on the bond  
28 worthiness of the principal, as determined by the Authority. The monetary limit in this  
29 subsection does not apply if the bond is funded by grants.

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

34           (1) The amount of the guaranty obligation.

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

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

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

39       (e) Obligation of State. – The total amount of guarantees issued and bonds  
40 executed shall not exceed ninety percent (90%) of the amount of money in the Fund. The  
41 Authority shall not pledge any money other than money in the Fund for payment of a loss  
42 or bond. No action by the Authority shall constitute the creation of a debt secured by a  
43 pledge of the taxing power or the faith and credit of the State or any of its political

1 subdivisions. The face of each guarantee issued or bond executed shall contain a  
2 statement that the Authority is obligated to pay the guarantee or bond only from the  
3 revenue in the Fund and that neither the taxing power nor the faith and credit of the State  
4 or any of its political subdivisions is pledged in payment of the guarantee or bond.  
5 Nothing in this subsection shall limit the ability of the Authority to obtain reinsurance.

6 **"§ 143B-472.45. Surety bonding line.**

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

10 **"§ 143B-472.46. Requirements; prequalification.**

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

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

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

19 (3) The principal must be and have been a resident of or incorporated in the  
20 State, with its principal place of business in the State, for at least three  
21 years prior to applying for financial assistance under this Part.

22 (4) The principal must be unable to obtain adequate bonding on reasonable  
23 terms through an authorized surety company and must have been denied  
24 bonding from two surety companies.

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

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

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

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

33 (c) Prequalification. – A principal may file a statement of interest with the  
34 Authority prior to applying for financial assistance pursuant to G.S. 143B-472.47. The  
35 statement of interest shall state that the principal meets the requirements set forth in  
36 subsection (a) of this section. Based on the statement of interest and any other  
37 considerations adopted by the Authority, the Authority may prequalify the principal for  
38 future financial assistance. The Authority shall maintain a list of all principals in the  
39 State that are prequalified for bonding assistance.

40 **"§ 143B-472.47. Application.**

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

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

2 (1) A detailed description of the project.

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

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

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

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

7 (6) Information that relates to the inability of the principal to obtain  
8 adequate bonding on reasonable terms through an authorized surety  
9 company.

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

11 a. A current balance sheet.

12 b. A profit and loss statement.

13 c. Credit references.

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

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

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

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

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

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

25 **"§ 143B-472.48. Premiums and fees.**

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

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

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

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

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

40 **"§ 143B-472.49. Percentage of payment to Fund.**

41 The Authority shall require every principal to pay the Authority a percentage of each  
42 contract payment to the principal at the time the payment is made to be deposited in the  
43 Fund. The funds paid under this section, less administrative costs in an amount

1 determined by the Authority, shall be paid to the principal at the completion of the  
2 contract.

3 **"§ 143B-472.50. False statements; penalty.**

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

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

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

14 Sec. 2. This act becomes effective July 1, 1995, and applies to offenses  
15 committed or causes of action arising on or after that date.