

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

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SENATE BILL 572

Short Title: Small Business Surety Bonds.

(Public)

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Sponsors: Senators McKoy, Jordan, McDaniel, Clark, Hobbs, Sherron, Edwards, Lucas, Carrington, Simpson, Martin of Guilford, Hartsell, Davis, and Carpenter.

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Referred to: Appropriations

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April 3, 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           two million dollars (\$2,000,000) or less.

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

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

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

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

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

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

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

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

20          (6) The Commissioner of Insurance, or the Commissioner's designee, ex  
21          officio.

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

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

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

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

32          Initial terms shall commence on August 1, 1995.

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

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

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

41          (g) Quorum. – A majority of the members of the Authority constitutes a quorum  
42 for the transaction of business. A vacancy in the membership of the Authority shall not

1 impair the right of the quorum to exercise all rights and to perform all duties of the  
2 Authority.

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

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

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

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

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

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

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

23 (5) To adopt rules for prequalifying eligible small business entities for  
24 financial assistance and maintaining a list of qualified small business  
25 entities.

26 (6) To acquire or take assignments of documents executed, obtained, or  
27 delivered in connection with assistance provided by the Authority under  
28 this Part.

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

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

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

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

39 **"§ 143B-472.43. Small Business Surety Bond Fund.**

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

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

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

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

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

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

9 (5) Investment income of the Fund.

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

11 **"§ 143B-472.44. Assistance authorized.**

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

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

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

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

35 (1) The amount of the guaranty obligation.

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

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

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

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

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

7 **"§ 143B-472.45. Surety bonding line.**

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

11 **"§ 143B-472.46. Requirements; prequalification.**

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

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

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

20 (3) The principal must be:

21 a. A resident of the State; or

22 b. Be incorporated in the State; and

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

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

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

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

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

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

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

41 **"§ 143B-472.47. Application.**

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

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

5           (1) A detailed description of the project.

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

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

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

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

10          (6) Information that relates to the inability of the principal to obtain  
11 adequate bonding on reasonable terms through an authorized surety  
12 company.

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

14           a. A current balance sheet.

15           b. A profit and loss statement.

16           c. Credit references.

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

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

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

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

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

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

28 **"§ 143B-472.48. Premiums and fees.**

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

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

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

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

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

43 **"§ 143B-472.49. Percentage payment to the Fund; insurance coverage.**

1       The Authority shall require every principal to pay the Authority a percentage of each  
2 contract payment received by the principal at the time the payment is received to be  
3 deposited in the Fund if the Authority determines the principal is able to pay the required  
4 amount. In lieu of withholding a percentage of the payment due the principal, the  
5 Authority may obtain insurance coverage for the bond. Any funds paid the Authority  
6 under this section, less administrative costs in an amount determined by the Authority,  
7 shall be paid to the principal at the completion of the contract.

8 **"§ 143B-472.50. False statements; penalty.**

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

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

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

18       Sec. 2. There is appropriated from the General Fund to the Department of  
19 Administration the sum of five hundred thousand dollars (\$500,000) for the 1995-96  
20 fiscal year to be deposited into the Small Business Surety Bond Fund established in this  
21 act for the expenses of the Authority for the 1995-96 fiscal year and to obtain insurance  
22 coverage for the Fund. The Secretary of the Department of Administration shall  
23 coordinate with the Commissioner of Insurance in obtaining coverage for the Fund from  
24 a licensed insurance company.

25       Sec. 3. This act becomes effective July 1, 1995, and applies to offenses  
26 committed or causes of action arising on or after that date.