

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

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SENATE BILL 572
Finance Committee Substitute Adopted 7/13/95

Short Title: Small Business Surety Bonds.

(Public)

Sponsors:

Referred to:

April 3, 1995

A BILL TO BE ENTITLED
AN ACT TO PROVIDE FOR SURETY BONDS FOR SMALL BUSINESSES THAT
CONTRACT WITH GOVERNMENTAL AGENCIES.

The General Assembly of North Carolina enacts:

Section 1. Article 10 of Chapter 143B of the General Statutes is amended by adding a new Part to read:

"PART 16. SMALL BUSINESS SURETY BOND FUND.

"§ 143B-472.40. Purpose and intent.

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

"§ 143B-472.41. Definitions.

The following definitions apply in this Part:

- (1) Contract term. – The term of the contract during which the surety may be liable.
- (2) Fund. – The Small Business Surety Bond Fund.
- (3) Principal. – A small business entity that has combined total assets of two million dollars (\$2,000,000) or less.
- (4) Secretary. – Secretary of Administration.

1 **"§ 143B-472.42. Small Business Surety Bond Fund.**

2 (a) Creation and Use. – The Small Business Surety Bond Fund is created as a
3 special revenue fund. Revenue in the Fund does not revert at the end of a fiscal year, and
4 interest and other investment income earned by the Fund accrues to the Fund. The Fund
5 shall be used to help financially responsible small businesses that are unable to get
6 adequate bonding obtain surety bonds and guarantees in connection with contracts.

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

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

9 (2) Funds withheld from the contract payment in an amount determined by
10 the Secretary.

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

13 (4) Proceeds designated by the Secretary from the sale, lease, or other
14 disposition of property or contracts held or acquired by the Secretary.

15 (5) Investment income of the Fund.

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

17 (c) Administration. – The Secretary of Administration shall administer the Fund.
18 In administering the Fund, the Secretary shall have the following powers and duties:

19 (1) To accept grants, loans, contributions, and services for the Fund.

20 (2) To employ staff, procure supplies, services, and property, and enter into
21 contracts, leases, or other legal agreements, including the procurement
22 of reinsurance, to carry out the purposes of the Fund.

23 (3) To acquire, manage, operate, dispose of, or otherwise deal with
24 property, take assignments of rentals and leases, and enter into
25 contracts, leases, agreements, and arrangements that are necessary or
26 incidental to the performance of the duties of the Secretary, upon terms
27 and conditions that the Secretary considers appropriate.

28 (4) To specify the form and content of applications, guaranty agreements,
29 or agreements entered into by the Secretary, principals, or sureties.

30 (5) To adopt rules for prequalifying eligible small business entities for
31 financial assistance and maintaining a list of qualified small business
32 entities.

33 (6) To acquire or take assignments of documents executed, obtained, or
34 delivered in connection with assistance provided by the Fund under this
35 Part.

36 (7) To fix, determine, charge, and collect any premiums, fees, charges,
37 costs, and expenses in connection with any assistance provided by the
38 Fund under this Part.

39 (8) To take any other action necessary to carry out the purposes of the
40 Fund.

41 (9) To report quarterly to the Joint Legislative Commission on
42 Governmental Operations on the activities of the Fund, including the
43 amount of rates, sureties, and bonds.

1 **"§ 143B-472.43. Assistance authorized.**

2 (a) Applicability. – The assistance authorized by this Part applies only to contracts
3 awarded by a board or governing body of the State, or of an institution of the State
4 government, of which the majority of the funding is provided by the federal or State
5 government.

6 (b) Guaranty. – Subject to the restrictions of this Part, the Secretary, on
7 application, may guarantee a surety for losses incurred under a bid bond, payment bond,
8 or performance bond on an applicable contract up to ninety percent (90%) of the surety's
9 losses, or nine hundred thousand dollars (\$900,000), whichever is less. The term of a
10 guaranty shall not exceed the contract term. The Secretary may vary the terms and
11 conditions of the guaranty from surety to surety, based on the Secretary's history of
12 experience with the surety and other factors that the Secretary considers relevant.

13 (c) Bonds. – The Secretary may execute and perform bid bonds, performance
14 bonds, and payment bonds as a surety for the benefit of a principal in connection with an
15 applicable contract. Each bond shall not exceed one million dollars (\$1,000,000) and is
16 subject to the approval of the Secretary, based on the bond worthiness of the principal, as
17 determined by the Secretary. The monetary limit in this subsection does not apply if the
18 bond is funded by grants.

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

23 (1) The amount of the guaranty obligation.

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

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

27 (4) Any other factor that the Secretary considers relevant.

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

37 **"§ 143B-472.44. Surety bonding line.**

38 The Secretary may, on application, establish a surety bonding line in order to issue or
39 guarantee multiple bonds to a principal within preapproved terms, conditions, and
40 limitations.

41 **"§ 143B-472.45. Requirements; prequalification.**

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

- 1 (1) The principal must be an individual, or controlled by one or more
2 individuals, of good moral character.
- 3 (2) The principal must be an individual, or be controlled by one or more
4 individuals, with a reputation for financial responsibility, as determined
5 from creditors, employers, and other individuals with personal
6 knowledge.
- 7 (3) The principal must be either a resident of the State or incorporated in the
8 State and the principal must have its principal place of business in the
9 State.
- 10 (4) The principal must be unable to obtain adequate bonding on reasonable
11 terms through an authorized surety company.
- 12 (b) Bond Requirements. – The principal shall certify to the Secretary, and the
13 Secretary shall be satisfied that all of the following apply:
- 14 (1) A bond is required in order to bid on a contract or to serve as a prime
15 contractor or subcontractor.
- 16 (2) A bond is not obtainable on reasonable terms and conditions without
17 assistance under this Part.
- 18 (3) The principal will not subcontract more than forty-nine percent (49%)
19 of the face value of the contract.
- 20 (c) Prequalification. – A principal may file a statement of interest with the
21 Secretary prior to applying for financial assistance pursuant to G.S. 143B-472.47. The
22 statement of interest shall state that the principal meets the requirements set forth in
23 subsection (a) of this section. Based on the statement of interest and any other
24 considerations adopted by the Secretary, the Secretary may prequalify the principal for
25 future financial assistance. The Secretary shall maintain a list of all principals in the
26 State that are prequalified for bonding assistance.
- 27 **§ 143B-472.46. Application.**
- 28 (a) Form. – To apply for financial assistance from the Fund under this Part, a
29 principal and, where applicable, a surety, shall submit to the Secretary an application on
30 the form that the Secretary provides.
- 31 (b) Contents. – The application shall include all of the following:
- 32 (1) A detailed description of the project.
- 33 (2) An itemization of known and estimated costs.
- 34 (3) The total amount of investment required to perform the contract.
- 35 (4) The funds available to the principal for working capital.
- 36 (5) The amount of bonding assistance sought from the Fund.
- 37 (6) Information that relates to the inability of the principal to obtain
38 adequate bonding on reasonable terms through an authorized surety
39 company.
- 40 (7) Information that relates to the financial status of the principal, including:
- 41 a. A current balance sheet.
- 42 b. A profit and loss statement.
- 43 c. Credit references.

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

3 (9) Any other relevant information that the Secretary requests.

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

6 (d) Default. – If a principal has ever defaulted on a bond or guaranty provided by
7 the Fund, the Secretary may approve a guaranty or bond under this Part if both the
8 following apply:

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

10 (2) The principal has cured any default in any program administered by the
11 Secretary.

12 **"§ 143B-472.47. Premiums and fees.**

13 (a) Amount. – The Secretary shall by rule set the premiums and fees to be paid by
14 a principal receiving bonding assistance under this Part. The premiums and fees set by
15 the Secretary shall be payable in the amounts, at the time, and in the manner that the
16 Secretary requires.

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

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

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

24 (e) Approval. – The premiums set and forms developed by the Secretary under this
25 section must be approved by the Commissioner of Insurance before they may be used.

26 **"§ 143B-472.48. Percentage payment to the Fund; insurance coverage.**

27 The Secretary shall require every principal to pay the Fund a percentage of each
28 contract payment received by the principal at the time the payment is received to be
29 deposited in the Fund if the Secretary determines the principal is able to pay the required
30 amount. In lieu of withholding a percentage of the payment due the principal, the
31 Secretary may obtain insurance coverage for the bond. Any funds paid into the Fund
32 under this section, less administrative costs in an amount determined by the Secretary,
33 shall be paid to the principal at the completion of the contract.

34 **"§ 143B-472.49. Participation fee.**

35 The Secretary shall impose a fee on a principal who is issued a surety bond or
36 guaranty from the Fund. The revenues from the fees shall be used to help finance the
37 Fund and enable the Secretary to procure insurance for resale to small businesses for their
38 use in procurement of State contracts. The Secretary may establish a fee schedule for the
39 issuance of surety bonds and guarantees. The fees may vary on the basis of the amount
40 of bonding assistance needed, the size of the contract, the type of contract, the financial
41 status of the applicant, and the applicant's experience as a contractor. The fee imposed by
42 this section may not exceed five percent (5%) of the contract amount.

43 **"§ 143B-472.50. False statements; penalty.**

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

3 (b) Statements. – A person shall not knowingly make or cause any false statement
4 or report to be made to the Secretary for the purpose of influencing the action of the
5 Secretary on an application for assistance or affecting bonding assistance, whether or not
6 assistance has been previously extended.

7 (c) Penalty. – A person who violates any provision of this section is guilty of a
8 Class 2 misdemeanor."

9 Sec. 2. G.S. 143-49 is amended by adding a new subdivision to read:

10 "(7) To administer the Small Business Surety Bond Fund created under G.S.
11 143B-472.42."

12 Sec. 3. G.S. 143-53 is amended by adding a new subdivision to read:

13 "(13) Prescribing procedures for assistance from the Small Business Surety
14 Bond Fund, created under G.S. 143B-472.42, the qualifications for
15 assistance from the Fund, and any other rules necessary to implement
16 Part 16 of Chapter 143B."

17 Sec. 4. This act becomes effective August 1, 1995, and applies to offenses
18 committed or causes of action arising on or after that date.