

**NORTH CAROLINA GENERAL ASSEMBLY**

**LEGISLATIVE FISCAL NOTE**

**BILL NUMBER:** Senate Bill 572

**SHORT TITLE:** Small Business Surety Bonds

**SPONSOR(S):** Senators Henry McKoy and Luther Henry Jordan, Jr.

**FISCAL IMPACT:**   **Expenditures:**    **Increase ( )**       **Decrease ( )**  
                  **Revenues:**           **Increase ( )**       **Decrease ( )**  
                  **No Impact (x)**  
                  **No Estimate Available ( )**

**FUND AFFECTED:**   **General Fund (x)**   **Highway Fund ( )**   **Local Fund ( )**  
                          **Other Funds ( )**

**BILL SUMMARY:**

SMALL BUSINESS SURETY BONDS. TO PROVIDE FOR SURETY BONDS FOR SMALL BUSINESSES THAT CONTRACT WITH GOVERNMENTAL AGENCIES. Creates the North Carolina Small Business Development Authority in the Department of Administration to assist small businesses that are unable to obtain adequate surety bonds in order to undertake contracts with governmental agencies. Authorizes the Authority to guarantee a surety for losses incurred under bid bonds, payment bonds, or performance bonds, or to execute such bonds itself. Limits guarantees to the lesser of 90% of losses or \$900,000, and limits direct bonding by the Authority to \$500,000 (except no limit if bond is funded by grants). Applies to contracts in which a majority of the funding is provided by federal government, a state government, a local government, or a utility regulated by NC Utilities Commission. To qualify for assistance, a business must meet all of the following requirements: (1) must be an individual, or controlled by individuals, of good moral character; (2) must have reputation for financial responsibility; (3) must be resident of NC or incorporated in NC and have its principal place of business in NC; and (4) must be unable to obtain adequate bonding on reasonable terms through authorized surety company. To obtain a bond, the business must certify that (1) a bond is required for it to bid on the contract or serve as a subcontractor, (2) it cannot obtain a bond on reasonable terms assistance, and (3) it will not subcontract more than 75% of the contract. To provide assistance, the Authority must determine that the contract for which a bond is sought has a substantial economic impact. Spells out application procedures.

Establishes the Authority with nine members: two appointed by General Assembly on recommendation of Speaker, two appointed by General Assembly on recommendation of President Pro Tem., two appointed by Governor, Secretary of Administration (or designee), Secretary of Commerce (or designee), and Commissioner of Insurance (or designee). Appointed members serve staggered four-year terms and serve without pay but are entitled to per diem and expenses

provided for State officers and employees generally.

Creates the Small Business Surety Bond Fund as a special, nonreverting revenue fund. Credits to the Fund any funds appropriated to it, funds withheld from the contract payment in an amount determined by the Authority, any premiums or other monies received with respect to bonding assistance, proceeds from disposition of Authority's property or contracts, and Fund's investment income. Provides that total amount of guarantees and bonds executed may not exceed 90% of money held in the Fund; that Authority may not pledge any other money for payment of a loss or bond; and that no action by Authority will pledge the taxing power or faith and credit of the State.

Appropriates from General Fund to Department of Administration \$500,000 for 1995-96 to be deposited in the Fund. Directs Secretary of Administration to coordinate with Commissioner of Insurance in obtaining coverage for the Fund from a licensed insurance company.

Makes false statements or reports in connection with applications for assistance a Class 2 misdemeanor, subject to fine up to \$1,000 or imprisonment up to six months or both.

AMENDMENTS/COMMITTEE SUBSTITUTES-July 13, 1995

SMALL BUSINESS SURETY BONDS. Introduced 4/3/95. Senate committee substitute replaces 1st edition. Deletes provisions creating NC Small Business Development Financing Authority to administer act and grants powers to Secretary of Administration. Specifies that Fund to be used to help financially responsible small businesses that are unable to get adequate bonding obtain surety bonds and guarantees in connection with contracts. Sets maximum amount of individual bond at \$1,000,000 (was, \$500,000); requires that principal on bond certify that not more than 49% (was, 75%) of the face value of the contract will be subcontracted; and authorizes Secretary to impose fee on principal who is issued surety bond or guaranty from the Fund. Deletes appropriation and changes effective date from July 1 to Aug. 1, 1995.

**EFFECTIVE DATE:** August 1, 1995

**PRINCIPAL DEPARTMENT/PROGRAM AFFECTED:** Department of Administration, Purchase and Contract Division

FISCAL IMPACT			
<u>FY</u>	<u>FY</u>	<u>FY</u>	<u>FY</u>
<u>FY</u>			
	95-96	96-97	97-98
	99-2000		98-99

<b>APPROPRIATION:</b>	0	0	0	0	0
<b>POSITIONS:</b>	0	0	0	0	0

**ASSUMPTIONS AND METHODOLOGY:** Administration of the Small Business Surety Bond Fund would be handled either with the Department of Administration's existing resources or, in the event that the Fund receives financial support, with fees and other charges that Administration may receive for providing bonding assistance. Because no money is appropriated to the Fund, the Department of Administration would not initially have resources to execute bonds or guarantee sureties for losses. Therefore, initially, its role would be limited to advocating on behalf of small businesses and referring small businesses to insurers willing to conduct business with smaller companies. Because DOA's Division of Purchase and Contract already has an office devoted to helping small businesses, the Department of Administration should be able to absorb the responsibilities of this bill without additional resources from the General Fund.

This fiscal estimate is based on the assumption that the State could not be obligated to fund losses beyond the amount of money in the Fund. This assumption is a reasonable one in that the bill states "the Secretary shall not pledge any money other than money in the Fund for payment of a loss or bond. No action by the Secretary shall constitute the creation of debt secured by a pledge of the taxing power or the faith and credit of the State or any of its political subdivisions." In an advisory opinion, the Attorney General's Office stated that this language was sufficient to prohibit the Secretary "from pledging the full faith and credit of the State..."

The Administrative Office of the Courts does not anticipate that this legislation would have a significant impact on the Judicial Branch since relatively few new cases would be filed. Likewise, the proposed legislation is not anticipated to have a significant impact on the Department of Correction assuming that the courts would order active sentences very rarely.

**SOURCES OF DATA:** Department of Administration, Department of Insurance, Department of Justice, Administrative Office of the Courts, N. C. Sentencing and Policy Advisory Commission, Self Help Credit Union, N. C. Institute of Minority Economic Development

**FISCAL RESEARCH DIVISION**

**733-4910**

**PREPARED BY:** Evan Rodewald

**APPROVED BY:** Tom L. Covington

**DATE:** July 17, 1995



**Signed Copy Located in the NCGA Principal Clerk's Offices**