

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

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SENATE BILL 1029

Pensions & Retirement and Insurance Committee Substitute Adopted 5/22/97

Short Title: Insolvent Insurer Revenue Bonds.

(Public)

Sponsors:

Referred to: Finance.

April 21, 1997

1 A BILL TO BE ENTITLED
2 AN ACT TO PROVIDE REVENUE BOND FUNDING FOR THE PAYMENT OF
3 NATURAL DISASTER CLAIMS UNDER POLICIES OF INSOLVENT
4 INSURERS.

5 The General Assembly of North Carolina enacts:

6 Section 1. The General Statutes are amended by adding a new Chapter to read:

7 **"CHAPTER 159J.**

8 **"INSURANCE GUARANTY ASSOCIATION BOND ACT.**

9 **"§ 159J-1. Short title.**

10 This Chapter shall be known and cited as the North Carolina Insurance Guaranty
11 Association Bond Act.

12 **"§ 159J-2. Definitions.**

13 The following definitions apply in this Chapter.

14 (1) Association. – The North Carolina Insurance Guaranty Association
15 created under G.S. 58-48-25, or any successor of that association.

16 (2) Bonds. – Bonds, notes, or other obligations issued by the State under
17 this Chapter.

1 (3) Covered claim. – A covered claim, as defined in G.S. 58-48-20, to be
2 paid from the issuance of bonds under this Chapter in the event of
3 insolvencies as described in G.S. 58-48-35(c).

4 (4) 'Natural disaster' means any hurricane, tornado, storm, flood, high
5 water, wind-driven water, tidal wave, tsunami, earthquake, volcanic
6 eruption, landslide, mudslide, snowstorm, ice storm, drought, fire,
7 explosion, civil disturbance, or other catastrophe which causes or may
8 cause substantial damage or injury to property.

9 **"§ 159J-3. Authorization of bonds.**

10 The State may issue bonds in an amount not to exceed the ability of the Association to
11 repay the bond indebtedness from assessments assessed pursuant to G.S. 58-48-35(a)(3)
12 and G.S. 58-48-35(c) to fund with the proceeds of the bonds a loan to the Association in
13 accordance with the provisions of the bond documents under which the bonds are issued.
14 The Association shall expend the loan funds for the purpose of paying to claimants or
15 policyholders covered claims arising through an insolvency that results in whole or in
16 part from a natural disaster. Any bonds issued by the State under this Chapter may all be
17 payable from and secured by moneys received by or on behalf of the State from
18 assessments levied under G.S. 58-48-35(c), and assigned and pledged under G.S. 58-48-
19 35(c), to or on behalf of the State for the benefit of the holders of the bonds. The funds,
20 credit, property, and taxing power of the State shall not be pledged for the payment of the
21 bonds.

22 **"§ 159J-4. Review by Commissioner of Insurance.**

23 Before bonds may be issued under this Chapter to pay covered claims, the
24 Commissioner of Insurance must recommend the amount of unpaid covered claims to be
25 paid from the bond issuance. In making this recommendation, the Commissioner shall
26 review whether the amount of assessments proposed by the Association could service
27 repayment of the bond indebtedness and whether the insurers have the ability to pay the
28 assessments to be levied.

29 **"§ 159J-5. Conditions for issuance of bonds and notes.**

30 For the purpose of providing money to fund loans authorized by this Chapter, the
31 State may issue from time to time negotiable bonds and notes in accordance with the
32 following terms:

33 (1) The State shall establish a repayment schedule to be made under a loan
34 agreement. The repayments shall be in such amounts as will be at least
35 sufficient, together with other funds available therefor, to pay the
36 principal of, and interest on, bonds and notes issued under this Chapter
37 and as may be necessary for the State to maintain a reserve for debt
38 service. The State may collect a reasonable administrative fee in
39 addition to the repayment schedule in an amount as may be set forth in
40 the loan agreement.

41 (2) The annual repayment schedule for each loan shall be:

42 a. In cases prior to the funding of the loans or in which the loans
43 have been financed on a interim basis other than by bonds, an

1 estimated annual repayment schedule showing debt service
2 requirements under the loan agreement as if the bonds to be
3 issued to fund the loans will bear interest at a rate per annum and
4 mature in the manner the State establishes at the time of the
5 approval of each loan.

6 b. In cases in which bonds have been issued to fund the loans, the
7 actual debt service requirements on the bonds.

8 (3) The State shall not authorize the issuance of bonds under this Chapter
9 for loans until it has determined that the Association has the ability to
10 repay the amount loaned.

11 **"§ 159J-6. Administration of loans; rules.**

12 The Department of Administration shall administer loans made under this Chapter.
13 The Department of Administration shall establish prerequisites that must be fulfilled by
14 the Association in order to be eligible for a loan, procedures to be followed in making
15 loan applications to the State, procedures to be followed in the disbursement of loan
16 funds, and procedures for enforcing loan agreements entered into by the Association with
17 the State. The Department of Administration may adopt rules to implement this Chapter.

18 **"§ 159J-7. Loan agreements.**

19 A loan agreement may include any provisions agreed upon by the State and the
20 Association and shall include, in substance, the following:

21 (1) The amount of the loan as determined by the State.

22 (2) An agreement by the Association to:

23 a. Proceed expeditiously with the complete payment of the covered
24 claims in accordance with the loan agreement.

25 b. Pledge any assessments and make payments according to the
26 repayment schedule established by the State.

27 c. Establish and maintain adequate financial records for the
28 payment of covered claims, have an annual audit made of the
29 financial records and transactions covering each fiscal year in
30 accordance with generally accepted accounting principles, and
31 furnish a copy of the audits to the State Treasurer.

32 **"§ 159J-8. Approval of agreements; audits.**

33 All loan agreements entered into pursuant to this Chapter must be approved by the
34 State Treasurer. The form of all loan agreements entered into pursuant to this Chapter
35 must be approved by the Attorney General. The funding of all payments made pursuant
36 to loan agreements entered into pursuant to this Chapter must be approved by the
37 Department of Administration and the Council of State in amounts consistent with the
38 loan amount; these payments may be audited at any time.

39 **"§ 159J-9. Requirements and procedure.**

40 (a) Nature of Bonds. – The bonds authorized under this Chapter are revenue bonds
41 as if issued pursuant to Article 5 of Chapter 159 of the General Statutes; the procedures,
42 power, and conditions described in Article 5 apply to bonds under this Chapter, except
43 where inconsistent with this Chapter. The bonds and notes for covered claims payment

1 shall be authorized by resolution issued by the Department of Administration, may be in
2 one or more series, shall bear such date or dates, and shall mature at such time or times,
3 in the case of any note or any renewals thereof, not exceeding eight years after the date of
4 issue of the original note, and in the case of any bond, not exceeding 30 years after the
5 date of issue, as the resolution may provide.

6 The bonds and notes shall bear interest at such rate or rates, be in such denominations,
7 be in such form, either coupon or registered, carry such registration privileges, be
8 executed in such manner, be payable in such medium of payment at such place or places,
9 and be subject to such terms of redemption as the resolution may provide.

10 The bonds and notes may be sold at public or private sale, at any price or prices the
11 State may provide.

12 (b) Resolution. – A resolution authorizing any bonds or notes, or any series
13 thereof, may contain the following provisions, which shall be part of the contract with the
14 holders thereof:

15 (1) Pledging all or any part of the moneys which the State is permitted by
16 law to pledge, and securing the payment of the bonds or notes or of any
17 series thereof, subject to any agreements with bondholders or
18 noteholders that then exist.

19 (2) Creating and establishing any funds and accounts considered necessary
20 or advisable, setting aside reserves or sinking funds, and agreeing as to
21 the maintenance, regulation, and disposition thereof.

22 (3) Limiting the issuance of additional bonds or notes, the terms upon
23 which additional bonds or notes may be issued and secured, and the
24 refunding of outstanding or other bonds or notes.

25 (4) Prescribing the procedure, if any, by which the terms of any contract
26 with bondholders or noteholders may be amended or abrogated, the
27 amount of bonds or notes the holders of which must consent thereto,
28 and the manner in which the consent may be given.

29 (5) Investing in a trustee or trustees any property, rights, powers, and duties
30 in trust as the State may determine, which may include any or all of the
31 rights, powers, and duties of the trustee appointed by bondholders, and
32 limiting or abrogating the right of the bondholders to appoint a trustee
33 or limiting the rights, powers, and duties of the trustee.

34 (6) Setting forth any other matters that in any way affect the security or
35 protection of the bonds or notes.

36 (c) Purchase. – The State, subject to any agreements with bondholders or
37 noteholders as may then exist, shall have power to purchase bonds or notes out of any
38 moneys available therefor at a price not exceeding the redemption price then applicable,
39 plus accrued interest to the next interest payment date thereon, if the bonds or notes are
40 then redeemable. All bonds and notes so purchased shall be canceled.

41 (d) Personal Liability. – Neither the State nor any person executing the bonds or
42 notes shall be liable personally on the bonds or notes or be subject to any personal
43 liability or accountability by reason of the issuance thereof.

1 (e) Pledge. – Any pledge made by the State pursuant to this Chapter shall be valid
2 and binding from the time when the pledge is made. The moneys or property so pledged
3 and thereafter received by the State shall immediately be subject to the lien of the pledge
4 without any physical delivery thereof or further act and the lien of the pledge shall be
5 valid and binding as against all parties having claims of any kind in tort, contract, or
6 otherwise, against the State, irrespective of whether the parties have notice thereof.
7 Neither the resolution nor any other instrument of which a pledge is created must be
8 recorded.

9 Bonds and notes of the State shall not constitute a debt or a pledge of the faith and
10 credit of the State or a local governmental unit, and the holders or owners of the bonds
11 and notes shall have no right to have taxes levied by the General Assembly or any local
12 governmental unit or any other taxing authority within the State for the payment of the
13 principal of, premium, if any, and interest on, any bonds and notes; the bonds and notes
14 shall be payable solely from the assessments pledged for their payment. Except as may
15 otherwise be expressly provided by the State, each issue of its bonds or notes issued
16 pursuant to this Chapter shall be limited special obligations of the State, payable solely
17 from and secured solely by moneys derived by the State from all or a portion of payments
18 made pursuant to the loan agreement with the Association as provided in the resolution
19 authorizing such bonds and notes.

20 All bonds and notes shall contain on their face a statement to the effect that the bonds
21 or notes, as the case may be, are not a debt of the State, any local governmental unit, or
22 any other taxing authority, but are payable solely from the assessments pledged for their
23 payment.

24 (f) Validity. – The bonds and notes shall not be invalid for any irregularity or
25 defect in the proceedings for their issuance or sale. The bonds and notes shall contain a
26 recital that they have been authorized and issued pursuant to the laws of the State,
27 including particularly this Chapter, which recital shall be conclusive evidence of their
28 validity and the regularity of their issuance.

29 (g) Refunding Bonds. – The refunding bonds shall be sold and the proceeds
30 applied to the purchase, redemption, or payment of the bonds to be refunded.

31 (h) Default. – If the State defaults in the payment of principal of or interest and
32 premium, if any, on the bonds or notes, the determination of the default and the remedies
33 therefor shall be governed by this Chapter.

34 **"§ 159J-10. North Carolina Insurance Guaranty Association Fund.**

35 (a) The Department of Administration shall establish a special trust fund of the
36 State to be known as the 'North Carolina Insurance Guaranty Association Fund'.

37 (b) The State covenants and agrees that after the issuance of any bonds or notes
38 under this Chapter, moneys derived by the State from payments made pursuant to loan
39 agreements with the Association as permitted under the terms of the loan agreements
40 which are pledged to the payment of the bonds or notes shall be paid into the particular
41 fund established for the issuance of bonds or notes to which the moneys are pledged.

42 These moneys shall be accounted for separately from all other moneys in the treasury
43 and shall be applied by the State solely for the purpose of paying principal of and interest

1 and premium, if any, on the bonds and notes issued pursuant to this Chapter, refunding
2 moneys due to the Association where appropriate, and paying all other costs incidental to
3 the administration of the State in connection with the loan agreements and the issuance of
4 the bonds and notes.

5 **"§ 159J-11. Powers of the State.**

6 The State has the right, in addition to all other rights, by mandamus or other suit,
7 action, or proceeding in any court of competent jurisdiction, to require the Association
8 and the board of directors and any proper officer, agent, or employee of the Association
9 to carry out any agreements and to perform its and their duties under this Chapter or any
10 rule adopted pursuant to this Chapter.

11 **"§ 159J-12. Relationship with other laws.**

12 This Chapter is supplemental to any other law providing for financing by the
13 Association and does not amend or repeal any other law. Notwithstanding any other
14 provision of law, no proceedings by the Association are required for loan agreements
15 under this Chapter, except as provided by this Chapter. Any requirements or restrictions
16 applicable to borrowing by the Association contained in any other law do not apply to
17 loans under this Chapter."

18 Section 2. G.S. 58-48-35 is amended by adding a new subsection to read:

19 "(c) In the event of an insolvency caused in whole or in part by a natural disaster, as
20 defined in Chapter 159J of the General Statutes, resulting in covered claims payable by
21 the Association in excess of its capacity to pay from assessments under subdivision (a)(3)
22 of this section, the Association, in its sole discretion, may by resolution request the State
23 to issue bonds, notes, or both pursuant to Chapter 159J of the General Statutes, in
24 amounts the Association considers necessary to provide funds for the payment of covered
25 claims and expenses related to the claims. The amount of the bond issuance may be
26 limited by Chapter 159J of the General Statutes, and the State has the final authority to
27 determine the total amount of the bond issuance including issuance costs. When the
28 Association and the State agree that bonds or notes shall be issued to pay covered claims
29 in the event of an insolvency caused in whole or in part by a natural disaster, the
30 Association may annually assess member insurers for amounts necessary to secure and
31 provide for the repayment of the indebtedness, including, without limitation, the
32 principal, redemption premium, if any, and interest on, and related costs of, issuance of
33 the indebtedness, including bond investors insurance. Necessary assessments collected
34 pursuant to this subsection shall be collected under the same procedures provided in
35 subdivision (a)(3) of this section. Assessments collected under this section may be
36 assigned and pledged to or on behalf of the State for the benefit of the holders of the
37 indebtedness, in order to provide for the payment of the principal of, redemption
38 premium, if any, and interest on the indebtedness, the costs of issuance, and funding of
39 any reserves and any other payments under the documents under which the indebtedness
40 was incurred. In addition to the assessments provided for in this subsection, the
41 Association in its sole discretion may utilize assessments made under subdivision (a)(3)
42 of this section to service the indebtedness, if necessary. The Association is not obligated
43 to pay covered claims solely from the proceeds of bonds or notes issued under Chapter

1 159J, except that if the Association makes assessments under this section for the covered
2 claims, and assigns and pledges the assessments to or on behalf of the State as issuer of
3 the indebtedness for the benefit of the holders of bonds or notes, the Association may
4 administer the covered claims and present valid covered claims for payment."

5 Section 3. This act is effective when it becomes law.