

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

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SENATE BILL 1029

Short Title: Insolvent Insurer Revenue Bonds.

(Public)

Sponsors: Senator Miller.

Referred to: Pensions & Retirement and Insurance.

April 21, 1997

A BILL TO BE ENTITLED

AN ACT TO PROVIDE REVENUE BOND FUNDING FOR THE PAYMENT OF
NATURAL DISASTER CLAIMS UNDER POLICIES OF INSOLVENT
INSURERS.

The General Assembly of North Carolina enacts:

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

"CHAPTER 159J.

"INSURANCE GUARANTY ASSOCIATION BOND ACT.

"§ 159J-1. Short title.

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

"§ 159J-2. Legislative findings.

The General Assembly finds that if a natural disaster causes, in whole or in part, an insolvency resulting in covered claims in excess of the capacity of the North Carolina Insurance Guaranty Association to pay from the assessments under G.S. 58-48-35(a)(3), it is proper to authorize the State to issue bonds to expedite the handling and payment of covered claims against insolvent insurers operating in this State. The General Assembly finds that it is in the best interest of and necessary for the protection of public health, safety, and general welfare of the residents of this State, and finds that it is an essential public purpose, to permit these actions to provide relief to claimants and policyholders

1 having covered claims against insolvent insurers operating in this State, by expediting the
2 handling and payment of covered claims.

3 **"§ 159J-3. Definitions.**

4 The following definitions apply in this Chapter.

- 5 (1) Association. – The North Carolina Insurance Guaranty Association
6 created under G.S. 58-48-25, or any successor of that association.
7 (2) Bonds. – Bonds, notes, or other obligations issued by the State under
8 this Chapter.
9 (3) Covered claim. – A covered claim, as defined in G.S. 58-48-20, to be
10 paid from the issuance of bonds under this Chapter in the event of
11 insolvencies as described in G.S. 58-48-35(c).
12 (4) 'Natural disaster' means any hurricane, tornado, storm, flood, high
13 water, wind-driven water, tidal wave, tsunami, earthquake, volcanic
14 eruption, landslide, mudslide, snowstorm, ice storm, drought, fire,
15 explosion, civil disturbance, or other catastrophe which causes or may
16 cause substantial damage or injury to property.

17 **"§ 159J-4. Authorization of bonds.**

18 The State may issue bonds in an amount not to exceed the ability of the Association to
19 repay the bond indebtedness from assessments assessed pursuant to G.S. 58-48-35(a)(3)
20 and G.S. 58-48-35(c) to fund with the proceeds of the bonds a loan to the Association in
21 accordance with the provisions of the bond documents under which the bonds are issued.
22 The Association shall expend the loan funds for the purpose of paying to claimants or
23 policyholders covered claims arising through an insolvency that results in whole or in
24 part from a natural disaster. Any bonds issued by the State under this Chapter may all be
25 payable from and secured by moneys received by or on behalf of the State from
26 assessments levied under G.S. 58-48-35(c), and assigned and pledged under G.S. 58-48-
27 35(c), to or on behalf of the State for the benefit of the holders of the bonds. The funds,
28 credit, property, and taxing power of the State shall not be pledged for the payment of the
29 bonds.

30 **"§ 159J-5. Review by Commissioner of Insurance.**

31 Before bonds may be issued under this Chapter to pay covered claims, the
32 Commissioner of Insurance must recommend the amount of unpaid covered claims to be
33 paid from the bond issuance. In making this recommendation, the Commissioner shall
34 review whether the amount of assessments proposed by the Association could service
35 repayment of the bond indebtedness and whether the insurers have the ability to pay the
36 assessments to be levied.

37 **"§ 159J-6. Conditions for issuance of bonds and notes.**

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

- 41 (1) The State shall establish a repayment schedule to be made under a loan
42 agreement. The repayments shall be in such amounts as will be at least
43 sufficient, together with other funds available therefor, to pay the

1 principal of, and interest on, bonds and notes issued under this Chapter
2 and as may be necessary for the State to maintain a reserve for debt
3 service. The State may collect a reasonable administrative fee in
4 addition to the repayment schedule in an amount as may be set forth in
5 the loan agreement.

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

7 a. In cases prior to the funding of the loans or in which the loans
8 have been financed on a interim basis other than by bonds, an
9 estimated annual repayment schedule showing debt service
10 requirements under the loan agreement as if the bonds to be
11 issued to fund the loans will bear interest at a rate per annum and
12 mature in the manner the State establishes at the time of the
13 approval of each loan.

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

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

19 **"§ 159J-7. Administration of loans; rules.**

20 The Department of Administration shall administer loans made under this Chapter.
21 The Department of Administration shall establish prerequisites that must be fulfilled by
22 the Association in order to be eligible for a loan, procedures to be followed in making
23 loan applications to the State, procedures to be followed in the disbursement of loan
24 funds, and procedures for enforcing loan agreements entered into by the Association with
25 the State. The Department of Administration may adopt rules to implement this Chapter.

26 **"§ 159J-8. Loan agreements.**

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

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

30 (2) An agreement by the Association to:

31 a. Proceed expeditiously with the complete payment of the covered
32 claims in accordance with the loan agreement.

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

35 c. Establish and maintain adequate financial records for the
36 payment of covered claims, have an annual audit made of the
37 financial records and transactions covering each fiscal year in
38 accordance with generally accepted accounting principles, and
39 furnish a copy of the audits to the State Treasurer.

40 **"§ 159J-9. Approval of agreements; audits.**

41 All loan agreements entered into pursuant to this Chapter must be approved by the
42 State Treasurer. The form of all loan agreements entered into pursuant to this Chapter
43 must be approved by the Attorney General. The funding of all payments made pursuant

1 to loan agreements entered into pursuant to this Chapter must be approved by the
2 Department of Administration and the Council of State in amounts consistent with the
3 loan amount; these payments may be audited at any time.

4 **"§ 159J-10. Requirements and procedure.**

5 (a) Nature of Bonds. – The bonds authorized under this Chapter are revenue bonds
6 as if issued pursuant to Article 5 of Chapter 159 of the General Statutes; the procedures,
7 power, and conditions described in Article 5 apply to bonds under this Chapter, except
8 where inconsistent with this Chapter. The bonds and notes for covered claims payment
9 shall be authorized by resolution issued by the Department of Administration, may be in
10 one or more series, shall bear such date or dates, and shall mature at such time or times,
11 in the case of any note or any renewals thereof, not exceeding eight years after the date of
12 issue of the original note, and in the case of any bond, not exceeding 30 years after the
13 date of issue, as the resolution may provide.

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

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

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

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

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

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

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

37 (5) Investing in a trustee or trustees any property, rights, powers, and duties
38 in trust as the State may determine, which may include any or all of the
39 rights, powers, and duties of the trustee appointed by bondholders, and
40 limiting or abrogating the right of the bondholders to appoint a trustee
41 or limiting the rights, powers, and duties of the trustee.

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

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

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

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

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

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

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

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

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

42 **"§ 159J-11. North Carolina Insurance Guaranty Association Fund.**

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

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

8 These moneys shall be accounted for separately from all other moneys in the treasury
9 and shall be applied by the State solely for the purpose of paying principal of and interest
10 and premium, if any, on the bonds and notes issued pursuant to this Chapter, refunding
11 moneys due to the Association where appropriate, and paying all other costs incidental to
12 the administration of the State in connection with the loan agreements and the issuance of
13 the bonds and notes.

14 **"§ 159J-12. Powers of the State.**

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

20 **"§ 159J-13. Relationship with other laws.**

21 This Chapter is supplemental to any other law providing for financing by the
22 Association and does not amend or repeal any other law. Notwithstanding any other
23 provision of law, no proceedings by the Association are required for loan agreements
24 under this Chapter, except as provided by this Chapter. Any requirements or restrictions
25 applicable to borrowing by the Association contained in any other law do not apply to
26 loans under this Chapter."

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

28 "(c) In the event of an insolvency caused in whole or in part by a natural disaster, as
29 defined in Chapter 159J of the General Statutes, resulting in covered claims payable by
30 the Association in excess of its capacity to pay from assessments under subdivision (a)(3)
31 of this section, the Association, in its sole discretion, may by resolution request the State
32 to issue bonds, notes, or both pursuant to Chapter 159J of the General Statutes, in
33 amounts the Association considers necessary to provide funds for the payment of covered
34 claims and expenses related to the claims. The amount of the bond issuance may be
35 limited by Chapter 159J of the General Statutes, and the State has the final authority to
36 determine the total amount of the bond issuance including issuance costs. When the
37 Association and the State agree that bonds or notes shall be issued to pay covered claims
38 in the event of an insolvency caused in whole or in part by a natural disaster, the
39 Association may annually assess member insurers for amounts necessary to secure and
40 provide for the repayment of the indebtedness, including, without limitation, the
41 principal, redemption premium, if any, and interest on, and related costs of, issuance of
42 the indebtedness, including bond investors insurance. Necessary assessments collected
43 pursuant to this subsection shall be collected under the same procedures provided in

1 subdivision (a)(3) of this section. Assessments collected under this section may be
2 assigned and pledged to or on behalf of the State for the benefit of the holders of the
3 indebtedness, in order to provide for the payment of the principal of, redemption
4 premium, if any, and interest on the indebtedness, the costs of issuance, and funding of
5 any reserves and any other payments under the documents under which the indebtedness
6 was incurred. In addition to the assessments provided for in this subsection, the
7 Association in its sole discretion may utilize assessments made under subdivision (a)(3)
8 of this section to service the indebtedness, if necessary. The Association is not obligated
9 to pay covered claims solely from the proceeds of bonds or notes issued under Chapter
10 159J, except that if the Association makes assessments under this section for the covered
11 claims, and assigns and pledges the assessments to or on behalf of the State as issuer of
12 the indebtedness for the benefit of the holders of bonds or notes, the Association may
13 administer the covered claims and present valid covered claims for payment."

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