

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

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HOUSE DRH10309-LYx-257 (5/3)

Short Title: Insurance Guaranty Bonds. (Public)

Sponsors: Representative Culpepper.

Referred to:

A BILL TO BE ENTITLED

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

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 159 of the North Carolina General Statutes is amended by adding a new Article to read:

"Article 14.

"Insurance Guaranty Association Bond Act.

"§ 159-201. Short title.

This Article is the North Carolina Insurance Guaranty Association Bond Act.

"§ 159-202. Legislative findings and declarations.

The General Assembly finds and declares that if a disaster or other circumstances cause, 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 determines that it is in the best interest of and necessary for the protection of the public health, safety, and general welfare of the residents of this State, and is an essential public purpose, to permit actions that will provide relief to claimants and policyholders having covered claims against insolvent insurers operating in this State, by expediting the handling and payment of covered claims.

"§ 159-203. Definitions.

The following definitions apply in this Article:

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

- 1 (2) Bonds. – Bonds, notes, or other obligations issued by the State under
2 this Article.
- 3 (3) Covered claim. – A covered claim as defined in G.S. 58-48-20, to be
4 paid from the issuance of bonds under this Article in the event of
5 insolvencies as described in G.S. 58-48-35(c).
- 6 (4) Disaster. – Any hurricane, tornado, storm, flood, high water,
7 wind-driven water, tidal wave, tsunami, earthquake, volcanic eruption,
8 landslide, mudslide, snowstorm, ice storm, drought, fire, explosion,
9 civil disturbance, terrorist attack, hazardous materials discharge,
10 epidemic, or other catastrophe that causes or may cause substantial
11 damage or injury to persons or property.

12 **"§ 159-204. Authorization of bonds.**

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

24 **"§ 159-205. Review by Commissioner of Insurance.**

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

31 **"§ 159-206. Conditions for issuance of bonds and notes.**

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

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

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

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

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

13 **"§ 159-207. Administration of loans; rules.**

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

21 **"§ 159-208. Loan agreements.**

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

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

25 (2) An agreement by the Association to do all of the following:

26 a. Proceed expeditiously with the complete payment of the
27 covered claims that are payable in accordance with the loan
28 agreement and Article 48 of Chapter 58 of the General Statutes.

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

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

36 **"§ 159-209. Approval of agreements; audits.**

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

43 **"§ 159-210. Requirements and procedure.**

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

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

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

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

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

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

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

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

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

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

41 (c) Purchase. – The State, subject to any agreements with bondholders or
42 noteholders as may then exist, may purchase bonds or notes out of any moneys
43 available therefor at a price not exceeding the redemption price then applicable, plus

1 accrued interest to the next interest payment date thereon, if the bonds or notes are then
2 redeemable. All bonds and notes so purchased shall be canceled.

3 (d) Personal Liability. – Neither the State nor any person executing the bonds or
4 notes is liable personally on the bonds or notes or subject to any personal liability or
5 accountability by reason of the issuance thereof.

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

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

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

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

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

36 (h) Default. – If the State defaults in the payment of principal of or interest and
37 premium, if any, on the bonds or notes, the determination of the default and the
38 remedies therefor are governed by this Article.

39 **"§ 159-211. North Carolina Insurance Guaranty Association Account.**

40 (a) The Department of Administration shall establish a special trust account of
41 the State to be known as the 'North Carolina Insurance Guaranty Association Account'.

42 (b) The State covenants and agrees that after the issuance of any bonds or notes
43 under this Article, moneys derived by the State from payments made pursuant to loan
44 agreements with the Association as permitted under the terms of the loan agreements

1 which are pledged to the payment of the bonds or notes will be paid into the particular
2 account established for the issuance of bonds or notes to which the moneys are pledged.

3 These moneys must be accounted for separately from all other moneys in the
4 treasury and applied by the State solely for the purpose of paying principal of and
5 interest and premium, if any, on the bonds and notes issued pursuant to this Article,
6 refunding moneys due to the Association where appropriate, and paying all other costs
7 incidental to the administration of the State in connection with the loan agreements and
8 the issuance of the bonds and notes.

9 **"§ 159-212. Powers of the State.**

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

15 **"§ 159-213. Relationship with other laws.**

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

22 **SECTION 2.** G.S. 58-48-35 is amended by adding a new subsection to read:

23 "(c) In the event of an insolvency resulting in covered claims payable by the
24 Association in excess of its capacity to pay from assessments under subdivision (a)(3)
25 of this section, the Association, in its sole discretion, may by resolution request the State
26 to issue bonds, notes, or both pursuant to Article 14 of Chapter 159 of the General
27 Statutes, in amounts the Association considers necessary to provide funds for the
28 payment of covered claims and expenses related to the covered claims. The amount of
29 the bond issuance may be limited by Article 14 of Chapter 159 of the General Statutes,
30 however, and the State has the final authority to determine the total amount of the bond
31 issuance including issuance costs. When the Association and the State agree that bonds
32 or notes will be issued to pay covered claims in the event of an insolvency, the
33 Association may annually assess member insurers for amounts necessary to secure and
34 provide for the repayment of the indebtedness, including, without limitation, the
35 principal, redemption premium, if any, and interest on, and related costs of issuance of,
36 the indebtedness, including bond investors insurance. Necessary assessments collected
37 pursuant to this subsection shall be collected under the same procedures provided in
38 subdivision (a)(3) of this section. Assessments collected under this subsection may be
39 assigned and pledged to or on behalf of the State for the benefit of the holders of the
40 indebtedness, in order to provide for the payment of the principal of, redemption
41 premium, if any, and interest on the indebtedness, the costs of issuance, and funding of
42 any reserves and any other payments under the documents under which the indebtedness
43 was incurred. In addition to the assessments provided for in this subsection, the
44 Association in its sole discretion may utilize assessments made under subdivision (a)(3)

1 of this section to service the indebtedness, if necessary. The Association is not
2 obligated to pay covered claims solely from the proceeds of bonds or notes issued under
3 Article 14 of Chapter 159 of the General Statutes, except that if the Association makes
4 assessments under this subsection for the covered claims, and assigns and pledges the
5 assessments to or on behalf of the State as issuer of the indebtedness for the benefit of
6 the holders of bonds or notes, the Association may administer the covered claims and
7 present valid covered claims for payment."

8 **SECTION 3.** This act is effective when it becomes law.