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Impending Changes to Bonding Requirements for Finance Officers: Prepare Now for January 1, 2023, and Beyond

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CONTENTS

Since 2005, the Local Government Budget and Fiscal Control Act (LGBFCA) has required finance officers for units of local government and public authorities in North Carolina to provide to their respective entities a "faithful performance bond with sufficient sureties in an amount . . . *not less than fifty thousand dollars*."[1] Due to the General Assembly's recent enactment of S.L. 2022-53, that minimum coverage amount will change on January 1, 2023, for units with "annually budgeted funds" in excess of $500,000.

This bulletin explains bonding requirements for finance officers of units of local government and public authorities subject to the LGBFCA and explains how these entities and their finance officers should prepare for the implementation of Section 9.(a) of S.L. 2022-53 on January 1, 2023.

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1. S.L. 2005-238, § 2 (codified as amended at Chapter 159, Section 29(a) of the North Carolina General Statutes (hereinafter G.S.)) (emphasis added).

Back to Basics: Fidelity Bonds Versus Faithful Performance Bonds

Each unit of local government and public authority subject to the LGBFCA must, "at all times, have a finance officer . . . to hold office at the pleasure of the appointing board."[2] While a unit of local government or public authority may provide such an individual with the title of "accountant," "treasurer," "finance director," or "any other reasonably descriptive title,"[3] the LGBFCA assigns certain duties to the person that assumes the statutory role of "finance officer."[4]

One of those obligations is found in Chapter 159, Section 29(a), of the North Carolina General Statutes (hereinafter G.S.), which requires the finance officer of a unit of local government or public authority subject to the LGBFCA to "give a true accounting and faithful performance bond" in favor of each entity for which the individual serves as a finance officer.[5]

The payment for and execution of a "true accounting and faithful performance bond" establishes a three-party contractual relationship between (1) a "surety" (i.e., a bonding company), (2) a "principal" (i.e., an individual serving as finance officer) and (3) an "obligee" (i.e., the local government or public authority for which the individual serves as finance officer). When it executes a faithful performance bond, a surety agrees by contract that it shall pay up to a certain amount of money to the obligee in the event that (1) the individual serving as finance officer fails to "faithfully perform" the duties of his or her office or honestly account for all monies which may come under the finance officer's control, and (2) the action or inaction of the finance officer causes a loss to the obligee.

Somewhat confusingly, the section title of G.S. 159-29 is "Fidelity bonds," which might lead some to question whether faithful performance bonds and fidelity bonds are one and the same.

In generic terms, most sureties would say that they are not. Even though many state legislatures (including the North Carolina General Assembly) frequently use these two terms interchangeably, bonding companies generally consider faithful performance bonds and fidelity bonds to be distinct.

> A fidelity bond is one designed to guarantee honesty. It typically consists of a contract "whereby one agrees . . . to indemnify another against a loss arising from the want of honesty, integrity, or fidelity of an employee or other person holding a position of trust." . . . .
>
> Conversely, a faithful performance bond . . . guarantee[s] that a public official or employee will act with honesty and/or in faithful performance of his or her official duties.[6]

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2. G.S. 159-24.

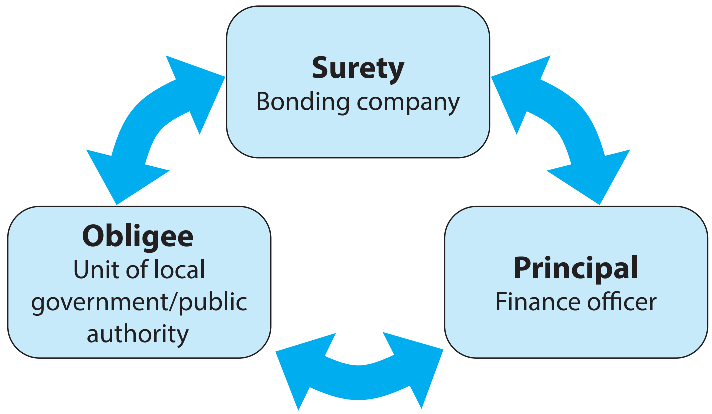
3. *Id.*

4. *See, e.g.*, G.S. 159-25(a) (setting forth duties of finance officers).

5. As my colleague Kara Millonzi explained in 2012, this bonding requirement applies to *each* "unit of local government" and "public authority" subject to the LGBFCA for which an individual serves as a finance officer. If, for example, the finance officer of a county also serves as the finance officer of a tourism-development authority in the county, the individual must tender one faithful performance bond to the county and one to the tourism-development authority. Kara Millonzi, *Finance Officer Fidelity Bonds: When Are Multiple Bonds Required?*, Coates' Canons N.C. Loc. Gov't L., UNC Sch. of Gov't Blog (Jan. 12, 2012).

6. Jeffrey S. Price, Dennis E. McDonnell & Rebecca B. Howald, *The Public Officials Bond—A Statutory Obligation Requiring "Faithful Performance," "Fidelity," and Flexibility*, 12 Fidelity L. Ass'n J. 151, 155–56 (Oct. 2006) (quoting 35A Am. Jur. 2d *Fidelity Bonds & Insurance* § 1 (2005)).

Figure 1. The Legal Relationship Between a Surety, Principal, and Obligee



The difference matters because faithful performance bonds encompass the coverage that fidelity bonds afford, but fidelity bonds do not cover all losses that faithful performance bonds cover. Fidelity bonds typically only cover losses arising from an employee's dishonesty (e.g., embezzlement)—but faithful performance bonds usually afford broader coverage, including "situations such as a loss of funds resulting from an employee's malfeasance, willful neglect of duty, bad faith[,] or *negligence*."[7] Unless a state law provides otherwise, a fidelity bond typically will not compensate an obligee for the negligent acts or omissions of an employee.

Neither the General Assembly nor North Carolina courts have directly addressed a possible distinction between a fidelity bond and a faithful performance bond under North Carolina law,[8] but the distinction does exist in the laws of some other states.[9] Ultimately, units of local government and public authorities subject to the LGBFCA should be aware that the text of G.S. 159-29(a) requires that their finance officers provide a "true accounting and faithful performance bond." Courts tend to construe surety bonds according to the scope of the language that they contain—and a unit of local government or public authority that only obtains a fidelity bond (i.e., a bond that covers only fraud or dishonesty) likely will fail to comply with G.S. 159-29(a) and could suffer noncompensable losses arising from a finance officer's negligence.

7. *Id.* (emphasis added).

8. The North Carolina Supreme Court has on one occasion labeled a bond securing a municipal officer's obligation to "faithfully perform the duties of . . . office and . . . honestly account for all moneys and effects" as a fidelity bond—suggesting that the court simply used the term in a generic sense to refer to what should more properly be called a faithful performance bond. Town of Scotland Neck v. W. Sur. Co., 271 S.E.2d 501, 502–03 (N.C. 1980).

9. Price et al., *supra* note 6, at 156–57.

Faithful Performance Bonds and Insurance Policies Are Distinct

Surety bonds and insurance policies are not legally equivalent under North Carolina law.[10] Units of local government or public authorities that obtain an insurance policy in lieu of a bond will not comply with G.S. 159-29(a).

From an obligee's perspective, a surety bond is largely identical to an insurance policy because it protects the obligee against loss arising from a named risk (i.e., a principal's failure to fulfill its obligations).[11] But whereas an insurance policy typically creates obligations between two parties (i.e., the insurer and the insured), a surety bond creates obligations between three parties (i.e., a principal, a surety, and an obligee).[12]

A finance officer should be aware that a principal (e.g., a finance officer covered by a faithful performance bond) can be personally liable for losses incurred by a surety under the terms of the bond. Although an insured individual or entity generally has no duty to reimburse or indemnify an insurer for losses arising from a risk covered by an insurance policy, a surety is entitled under the common law to seek reimbursement from a defaulting principal after a surety has fulfilled its obligations to the obligee.[13] For example, if a surety pays a unit of local government for losses arising from a finance officer's misappropriation of funds, the surety could (and would) seek reimbursement from the finance officer. In practice, most sureties do not rely upon this common law right of reimbursement, but instead typically condition their issuance of a surety bond upon a principal's execution of an indemnification agreement providing the surety with a broad set of rights (including a right of reimbursement) against a principal.[14]

G.S. 159-29(a) plainly contemplates that finance officers provide a "bond," not a "contract of insurance."[15] For that reason, units of local of government and public authorities covered by the LGBFCA must obtain coverage under a separate surety bond.

Must a Finance Officer's Faithful Performance Bond Take a Particular Form?

North Carolina law prescribes the form of surety bonds that must be tendered in some contexts,[16] but G.S. 159-29(a) does not provide the exact form that a faithful performance bond given by a finance officer must take. Instead, the statute requires that the finance officer give a

10. *See* Gibbs v. Mayo, 591 S.E.2d 905, 916 (N.C. App. 2004) ("In North Carolina, insurance and suretyship are not synonymous terms, but rather involve different functions, relationships, rights, and obligations.") (internal quotations and citations omitted); Beachcrete, Inc. v. Water St. Ctr. Assocs., L.L.C., 615 S.E.2d 719, 722 (N.C. App. 2005) ("While insurance contracts are in many respects similar to surety contracts, there is a very wide difference between them.") (internal quotations and citations omitted).

11. Philip L. Bruner & Patrick J. O'Connor, Jr., 4A Bruner & O'Connor on Construction Law § 12.2 (2022).

12. *Id.*

13. Conner Gwyn Schenck PLLC, North Carolina Construction Law § 4.40 (2022).

14. *Id.*

15. *Cf.* G.S. 58-1-10 ("A contract of insurance is an agreement by which the insurer is bound to pay money or its equivalent or to do some act of value to the insured upon, and as an indemnity or reimbursement for the destruction, loss, or injury of something in which the other party has an interest.").

16. *See, e.g.*, G.S. 44A-33(a) (prescribing form of performance bond for certain public construction contracts).

"true accounting and faithful performance bond," provides the minimum coverage amount for such a bond, and directs the governing board of the local government or public authority to set the actual coverage amount and pay the premiums for such a bond.

Ultimately, a surety's obligation to pay an obligee (e.g., a unit of local government or public authority) for losses sustained due to the action or inaction of a principal (e.g., a finance officer) will be determined by the language in the executed bond.[17] To satisfy G.S. 159-29(a), a finance officer's faithful performance bond should (1) be expressly conditioned upon a finance officer's faithful performance of the duties of office and "true accounting" for the funds of the obligee that may come under the finance officer's control and (2) contain coverage that equals or exceeds the minimum coverage amount set by the statute. While the exact forms of faithful performance bonds can differ slightly between underwriters,[18] all bonds must meet these essential elements.[19]

When to Renew Faithful Performance Bonds

A faithful performance bond tendered under G.S. 159-29(a) secures the faithful performance of a *specific individual* acting as a finance officer, and not the faithful performance of all individuals that might act as finance officer in a given period. Stated alternatively, the bond required by G.S. 159-29(a) is an "individual" bond, not a "position" bond.[20]

Sometimes individual faithful performance bonds have a definite term (e.g., one, two, or three fiscal years). But a bond with a definite term that secures the faithful performance of a specific individual as finance officer loses its effectiveness when a governing board appoints a new finance officer. When appointing a new finance officer, a unit of local government or public authority subject to the LGBFCA must ensure that the new appointee has tendered a new faithful performance bond satisfying the requirements of G.S. 159-29(a). Similarly, while state law does not require a unit of local government or public authority subject to the LGBFCA to appoint a finance officer to a particular term of office, an entity that *has* taken that step should ensure that its finance officer renews the faithful performance bond if the term of the bond is tied to the finance officer's term of office.

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17. *See* Town of Scotland Neck v. W. Sur. Co., 271 S.E.2d 501, 503 (N.C. 1980) (noting, in construing the terms of a faithful performance bond, that "[t]he liability of a surety . . . is determined by the language of the bond and cannot be enlarged beyond the scope of its definite terms").

18. Figure 3, on page 12 of this bulletin, provides a representative example of a typical faithful performance bond for a North Carolina county's finance officer.

19. Most faithful performance bonds specifically exclude liability "for the loss of any public moneys or funds resulting from the failure of or default in payment by any banks or depositories in which any public moneys or funds have been deposited."

20. G.S. 159-29 contains an example of a "position" bond. G.S. 159-29(b) requires that each "officer, employee, or agent of a local government or public authority who handles or has in his custody more than one hundred dollars ($100.00) of the unit's or public authority's funds at any time, or who has or has access to the inventories of the unit or public authority . . . give a faithful performance bond with sufficient sureties payable to the local government or public authority." Except for elected officials, finance officers, and tax collectors, G.S. 159-29(c) permits units of local governments and public authorities subject to the LGBFCA to "adopt a system of blanket faithful performance bonding *as an alternative to individual bonds*" (emphasis added). A blanket faithful performance bond obtained pursuant to G.S. 159-29(c) would cover any individual meeting the criteria set forth in G.S. 159-29(b).

At other times, bonds covering a particular individual have an indefinite term tied to the service of that individual in the office of finance officer (e.g., from the effective date until that individual no longer holds the office). There, too, if a unit of local government or public authority appoints a new finance officer, the entity must ensure that the new appointee tenders a new faithful performance bond satisfying the requirements of G.S. 159-29(a).

As a practical matter, units of local government and public authorities subject to the LGBFCA also should ensure that each faithful performance bond has been properly executed by an individual authorized to bind the surety and that the premium has been paid before the bond's effective date.

Changes Effected by Section 9.(a) of S.L. 2022-53

Prior to the adoption of S.L. 2022-53, G.S. 159-29(a) required governing boards of units of local government and public authorities subject to the LGBFCA to fix the exact coverage amount of a finance officer's faithful performance bond, subject to a mandatory minimum coverage amount of $50,000. A board could fix the bond's exact amount to require a higher coverage level (with no maximum cap), but many did not.

With the passage of S.L. 2022-53, Section 9.(a), the General Assembly raised that minimum coverage amount for units of local governments and public authorities with "annually budgeted funds" exceeding $500,000. Effective as of January 1, 2023, the governing board of a local government or public authority subject to G.S. 159-29(a) must fix the amount of the finance officer's faithful performance bond to equal or exceed the greater of (1) $50,000 or (2) an amount equal to 10 percent of the "unit's annually budgeted funds," up to a cap of $1,000,000.[21]

Complying with the New Requirements

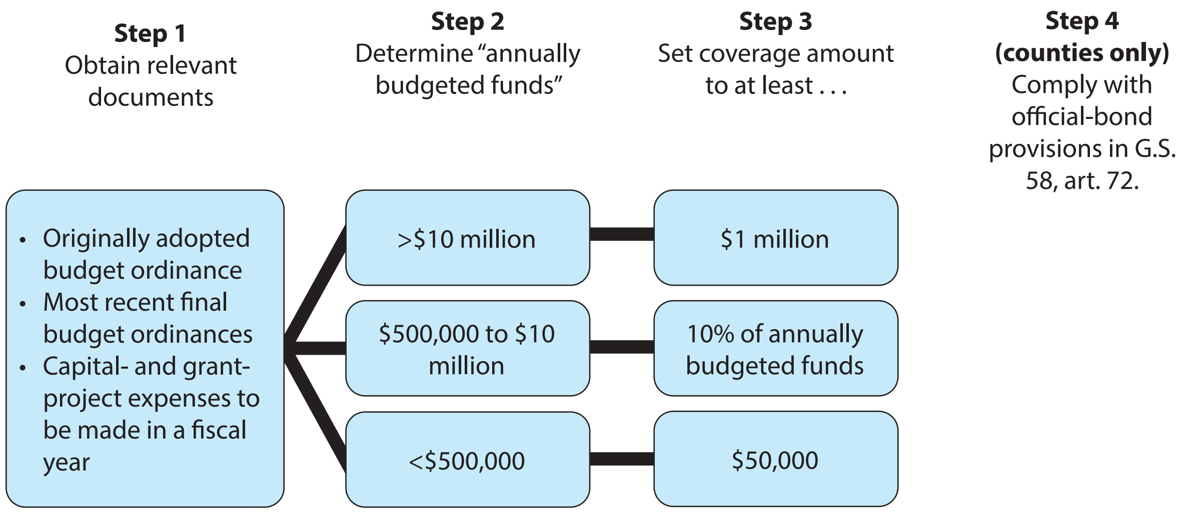
Prior to January 1, 2023, units of local government, public authorities, and their respective finance officers can take the following steps to comply with the revisions to G.S. 159-29(a) found in S.L. 2022-53.

Step 1: Obtain the Relevant Documents

To determine its "annually budgeted funds," the staff of a unit of local government or public authority staff should obtain, at a minimum, the annual budget ordinance, three years of its most recent final budget ordinances, as amended; project ordinances; and information concerning expenditures authorized outside of the budget ordinance. Each of these items is described below.

21. The revisions to G.S. 159-29(a) contained in S.L. 2022-53, Section 9.(a), tie this higher amount to 10 percent of a "*unit's* annually budgeted funds" (emphasis added). Although the LGBFCA separately defines "unit" (G.S. 159-7(b)(15)) and "[p]ublic authority" (G.S. 159-7(b)(10)), public authorities should interpret this higher amount to apply to their own budgeted funds rather than the budgeted funds of another unit. The statute's failure to reference the "annually budgeted funds" may be the result of a drafting error.

Figure 2. Four Steps to Comply with the New Requirements



The LGBFCA requires that all local governments and public authorities operate under an annual, balanced budget ordinance that, ordinarily, should be adopted by July 1 of each year.[22] But local governments and public authorities also can, subject to certain restrictions, amend their budget ordinances throughout the fiscal year.[23] A unit of local government might, for example, consistently end a fiscal year with higher or lower overall appropriations than contained in the originally adopted ordinance.

Because the LGBFCA permits local governments and public authorities to account for some funds outside of the annual budget ordinance, the annual budget ordinance alone might not describe or authorize all financial transactions.[24] For example, a local government or public authority may also budget for a "capital project" (i.e., a project financed in whole or in part by debt) or a "grant project" (a project financed in whole or in part by revenues received from the federal or state government) through the use of a project ordinance.[25] And while this information is not necessarily contained in the budget ordinance, a budget officer must include in the annual budget information about each grant project or capital project that will have appropriations available for expenditure during the budget year.[26]

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22. *See* G.S. 159, §§ 8(a), 13(a).
23. *See* G.S. 159-15.
24. An annual budget ordinance need not authorize financial transactions that are (1) authorized by a project ordinance, (2) accounted for in an intragovernmental-service fund for which a financial plan is prepared and approved, (3) accounted for in a trust or custodial fund established to account for moneys held by a local government or public authority as an agent or common law trustee or to account for a retirement, pension, or similar employee-benefit system, or (4) representative-payee funds received under the Social Security Agency Representative Payee Program. *See* G.S. 159-13, § (a)(1) to (4). Items 2 through 4 are not included in an annual budget ordinance, nor are they accounted for in a project ordinance. A unit of local government or public authority *could* include these funds when determining the minimum amount of coverage under G.S. 159-29(a), but it is not required.
25. *See* G.S. 159-13.2.
26. *See* G.S. 159-13.2(f).

Step 2: Determine the "Annually Budgeted Funds"

Units of local government and public authorities will fall into one of three categories under G.S. 159-29(a) based on the amount of their "annually budgeted funds": (1) those with funds of $500,000 or less; (2) those with funds exceeding $500,000 but not exceeding $10,000,000; and (3) those with funds exceeding $10,000,000.

The revisions to G.S. 159-29(a) tie the minimum coverage amount of a finance officer's faithful performance bond to a unit or authority's "annually budgeted funds," but in doing so fail to expressly define the term or clarify at which point in time this figure should be determined. How, then, should local governments and public authorities proceed?

The State and Local Government Finance Division of the North Carolina Department of State Treasurer has released a memorandum (LGC Memo 2023-06) suggesting that "annually budgeted funds" should be interpreted to (1) include budgeted expenditures in a unit or public authority's originally adopted annual budget ordinance in the fiscal year in which a bond is obtained, and (2) exclude expenditures for which a unit or public authority budgeted in a multiyear project ordinance.[27] In many cases, this interpretation will automatically yield a legally defensible bonding amount under the new statute. For example, units of local government and public authorities that consistently have annual budget ordinances authorizing expenditures in excess of $10,000,000 must obtain a faithful performance bond with coverage of no less than $1,000,000, irrespective of whether a unit or authority accounts for any additional funds in a project ordinance. But in the absence of a clarifying statutory definition of "annually budgeted funds," units of local government and public authorities with initial annual budget ordinances of less than $10,000,000 may wish to adopt a more conservative interpretation.

As a first example, assume that a unit or authority's annual budget ordinance appropriates funds in an amount (1) no greater than $500,000 or (2) greater than $500,000 but less than $10,000,000. Further assume that these types of units or authorities can identify expenditures authorized to be made in a given fiscal year under a project ordinance. Because a finance officer remains legally responsible for overseeing expenditures authorized under a project ordinance, a unit may wish to add monies expected to be expended under a project ordinance in a given fiscal year to amounts appropriated in the original annual budget ordinance when determining its "annually budgeted funds" for purposes of G.S. 159-29(a). Such a decision would both satisfy the ultimate purpose of G.S. 159-29(a)—to protect a unit of local government or public authority from losses arising from the improper use of its monies—and also shield the unit from future claims that it failed to appropriately interpret the meaning of "annually budgeted funds."

As a second example, assume that a unit or authority's appropriated funds at the close of a fiscal year are routinely and significantly higher than its appropriated funds at the beginning of a fiscal year. Although LGC Memo 2023-06 reasonably interprets "annually budgeted funds" to mean budgeted expenditures in a unit or public authority's originally adopted annual budget ordinance in the fiscal year in which a bond is obtained, a more conservative reading of the term might suggest that this figure should take into account appropriated funds at the *close* of a unit's fiscal year, and not simply appropriated funds at the *beginning* of a unit's fiscal year. The interpretation in LGC Memo 2023-06 may meet the new legal floor contained in G.S. 159-29(a), but a unit or authority that consistently increases the amount of appropriated funds over the course of its fiscal years may want to use its average annual percentage increase in appropriated

27. *See* Susan McCullen, State & Loc. Gov't Fin. Div., Memorandum No. 2023-06, Revised Fidelity Bond Requirements and Other Modifications to G.S. 159-29 (Oct. 19, 2022).

funds as a factor in determining its “annually budgeted funds” under G.S. 159-29(a). For example, if a unit determined that its average annual percentage increase in appropriated funds during the previous three fiscal years was 20 percent, it could obtain a more realistic estimate of “annually budgeted funds” by multiplying the amount of appropriated funds in its annual budget ordinance by a factor of 1.2. Such an approach would result in a conservative interpretation of the statute and increased protection.

Ultimately, for units and authorities with “annually budgeted funds” of $500,000 or less, the minimum coverage amount of a finance officer’s faithful performance bond will be $50,000. For units with “annually budgeted funds” exceeding $500,000 but no more than $10,000,000, the minimum coverage amount of a finance officer’s faithful performance bond will be 10 percent of the unit’s annually budgeted funds. And again, for units with “annually budgeted funds” exceeding $10,000,000, the minimum coverage amount of a finance officer’s faithful performance bond will be $1,000,000.

Step 3: Set the Bond’s Coverage Amount to Equal or Exceed the Minimum Coverage Amount

Once a unit of local government or public authority determines its “annually budgeted funds,” its governing board should set the amount of the bond to equal or exceed the minimum coverage amount required by G.S. 159-29(a) and authorize the payment of premiums for a bond with coverage in that amount. The governing board can take both steps by adopting a resolution.[28]

As the term suggests, the amount of a unit or authority’s “annually budgeted funds” will change annually. Therefore, units and authorities should prepare to determine this figure annually. And even if a finance officer has a multiyear bond, a unit or authority may need to increase its minimum coverage amount under the bond if the amount of its annually budgeted funds also increases.

Step 4: Counties Must Comply with Official-Bond Provisions in Article 72 of Chapter 58 of the General Statutes

Article 72 of Chapter 58 of the General Statutes imposes requirements upon counties and boards of county commissioners when certain county officers tender “official bonds” in favor of a county. But is a faithful performance bond tendered by a county finance officer an “official bond”?

G.S. 58-72-10, which predates the 1971 adoption of G.S. 159-29 and is entitled “Condition and terms of official bonds,” provides that “[e]very *treasurer*, sheriff, coroner, register of deeds, surveyor, and every other officer *of the several counties* who is required by law to give a bond for the faithful performance of the duties of his office, shall give a bond for the term of the office to which such officer is chosen.” A county “finance officer” conceivably could be a “treasurer” or an “other officer” falling within the scope of G.S. 58-72-10, and the title of that section would seem to indicate that a faithful performance bond tendered by a county finance officer to a county under G.S. 159-29 is an “official bond.” Ultimately, though, neither the General Assembly nor

28. If a unit has adopted an ordinance that specifically references a minimum coverage amount of $50,000 for a finance officer’s faithful performance bond, it may need to amend its ordinance to comply with the new coverage amount if its “annually budgeted funds” exceed $500,000. If a unit wishes to avoid repeated revisions of an ordinance, it may be best to state simply that the governing board will set the minimum coverage amount in accordance with state law or G.S. 159-29.

the North Carolina courts have expressly clarified whether a county finance officer's faithful performance bond is an "official bond" within the meaning of Article 72. Because complying with the provisions of Article 72 is relatively simple, however, counties should assume that it is.

To comply with Article 72, the board of county commissioners should accept a faithful performance bond prior to or contemporaneous with the appointment of the bonded individual as finance officer,[29] and the clerk to the board of commissioners must record the board's approval of official bonds and record in the board's minutes those who are present at the time such a bond is approved.[30] In addition, any official bond must be deposited with the clerk of the superior court in the relevant county for safekeeping.[31] The board of commissioners is directed by law to "carefully" examine all official bonds "on the first Monday in December of every year"—and if the bond for some reason provides "insufficient security" at that time, the bond must be "renewed or strengthened."[32]

Increasing the Coverage Amounts for Existing Bonds

LGC Memo 2023-06 interprets the revisions to G.S. 159-29(a) to "apply to . . . bonds obtained or renewed on or after [January 1, 2023]," suggesting that a finance officer currently covered by a faithful performance bond expiring after January 1, 2023**,** need not obtain increased coverage until the bond's date of expiration or renewal.[33] But more conservative interpretations are possible—and in the absence of additional statutory clarity, a finance officer of a unit of local government or public authority subject to the LGBFCA may wish to increase its coverage as of January 1, 2023, rather than wait until the expiration of the existing bond.

G.S. 159-29(a) sets out a continuing obligation of a "finance officer" to "give a true accounting and faithful performance bond . . . in an amount to be fixed by the governing board." And as of January 1, 2023, that amount "may not be less than the greater of . . . (1) [f]ifty thousand dollars ($50,000), and (2) [a]n amount equal to ten percent (10%) of the unit's annually budgeted funds, up to one million dollars ($1,000,000)." In concert, these provisions can be read to impose minimum coverage amounts—even for existing bonds—as of January 1, 2023.

Sureties can increase the amount of an existing faithful performance bond upon the payment of an additional premium. To do so, a surety typically executes a certificate providing for an increase in the amount of coverage as of a particular date.[34] A unit or authority that must increase its existing coverage as of January 1, 2023, should contact its underwriter to better understand the process for obtaining an increase in coverage.

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29. *See* G.S. 58-72-5. A person or officer "who presumes to discharge any duty of his office before executing [an official bond] in the manner prescribed by law, is liable to a forfeiture of five hundred dollars ($500.00) to the use of the State for each attempt so to exercise his office." *Id.*

30. G.S. 58-72, §§ 50, 55.

31. G.S. 58-72-50.

32. G.S. 58-72-20.

33. McCullen, *supra* note 27, at 1.

34. Figure 4, on page 13, provides an example of an increased coverage certificate from a North Carolina county.

Failure to Obtain the Required Bond

In amending G.S. 159-29(a), S.L. 2022-53 makes clear that a "person unable to obtain" the required faithful performance bond may not be appointed as a finance officer.

Before issuing a faithful performance bond, a surety will undertake some due diligence to determine whether an individual presents an unacceptable risk. It may ask whether the individual has previously been convicted or accused of a crime, whether the individual has past experience as a finance officer, or other questions related to the individual's ability to faithfully perform the duties of finance officer. It also may perform a check of the individual's credit history.

If a surety is not satisfied with the responses to these questions or determines that the particular individual poses a high level of risk, it may either decline to issue the bond or instead charge a higher premium to compensate. G.S. 159-29(a) does not mandate that a particular surety provide a bond. Therefore, if a particular surety declines to issue a bond, a unit of local government or public authority can seek out another surety.

Finance Officers Who Are Not Affected by the New Requirements

S.L. 2022-53 modifies bonding requirements for finance officers of units of local government and public authorities subject to the LGBFCA (e.g., cities, counties, water-and-sewer authorities, sanitary districts, airport authorities, transportation authorities, councils of government, and tourism-development authorities)—but not all local governments are subject to the LGBFCA. For example, local school administrative units are subject to the School Budget and Fiscal Control Act[35] and the financial operations of ABC boards are subject to Article 7 of Chapter 18B of the General Statutes. The General Assembly has not amended the minimum coverage amounts for faithful performance bonds obtained by finance officers of school administrative units or ABC boards.[36]

35. G.S. 115C, art. 31.

36. *See* G.S. 115C-442(a) (bonding requirements for finance officers of school administrative units); G.S. 18B-700(i) (bonding requirements for finance officers of ABC boards).

Figure 3. Representative Example of Faithful Performance Bond for a North Carolina County

[redacted] [redacted]

PUBLIC OFFICIAL BOND -
FOR DEFINITE TERM

BOND NO. [redacted]

KNOW ALL MEN BY THESE PRESENTS, That we [redacted] of [redacted], as Principal, and [redacted], a corporation of [redacted], as Surety are held and firmly bound unto [redacted] County in the penal sum of Fifty Thousand ($50,000.00) Dollars, lawful money of the United States of America, for the payment of which well and truly to be made, said principal binds himself/herself, his/her heirs, executors, administrators and assigns, and said Surety binds itself, its successors and assigns, jointly and severally, firmly by these presents.

SEALED and dated this [redacted] day of [redacted], [redacted].

WHEREAS, the said principal has been ☐ elected or ☒ appointed to the office of: Finance Director for a definite term beginning [redacted] and ending [redacted] and is required to furnish a bond for the faithful performance of the duties of the said office or position.

NOW, THEREFORE THE CONDITION OF THIS OBLIGATION is such that if the above bounden Principal shall (except as hereinafter provided) faithfully perform the duties of his/her said office or position during the said term, and shall pay over to the persons authorized by law to receive the same all moneys that may come into his/her hands during the said term without fraud or delay, and at the expiration of said term, or in case of his/her resignation or removal from office, shall turn over to his/her successor all records and property which have come into his/her hands, then this obligation to be null and void; otherwise to remain in full force and effect.

PROVIDED, HOWEVER, that the above named Surety shall not be liable hereunder for any loss of any public fund resulting from the insolvency of any bank or banks in which said funds are deposited; and, if this provision shall be held void, this entire bond shall be void.

AND PROVIDED FURTHER, that the Surety may cancel bond at any time during the said term by giving to the obligee a written notice of its desire so to cancel and at the expiration of thirty (30) days from the receipt of such notice by the obligee the surety shall be completely released as to all liability thereafter accruing. If this provision shall be held void, this entire bond shall be void.

WITNESS:

[redacted] [redacted] (Seal)
(Principal)

[redacted] Attorney-in-Fact

[redacted]

Producer Name
(Required in Arizona Only)

Figure 4. Representative Example of an Increased Coverage Certificate for a North Carolina County

[redacted]

INCREASE CERTIFICATE

Bond No. [redacted]
License No.
Amount of Bond: **$50,000.00**
Hereby increased to: **$500,000.00**

Principal: [redacted]

Obligee: [redacted] **County** [redacted]

As of **July 18, 2022**, the amount of the above described bond is increased from the sum of **$50,000.00** to the sum of **$500,000.00**, but the liability of the Surety for any acts or defaults occurring before the effective date hereof shall in no event exceed the total sum of **$50,000.00**, and the aggregate liability of the Surety for any acts or defaults, whenever committed, shall in no event exceed the total sum of **$500,000.00**, it being the intent hereof to preclude cumulative liability. This certificate, when signed by the Principal shall become a part of the said bond.

Signed, sealed and dated **July 18, 2022**

[redacted]

By [redacted]
Attorney-in-Fact

I hereby consent to the above increase.

Witness my hand and seal this [redacted] day of [redacted]

[redacted] (Seal)
Principal

INSTRUCTIONS TO AGENTS - IMPORTANT

Do not deliver this certificate to the Obligee until it has been dated and signed by the Principal. One signed copy must be returned to the Surety.