

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

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SENATE BILL 97
Finance Committee Substitute Adopted 5/4/09
House Committee Substitute Favorable 7/7/09

Short Title: Critical Infrastructure Assm't Changes.

(Public)

Sponsors:

Referred to:

February 11, 2009

A BILL TO BE ENTITLED

AN ACT TO ALIGN THE AUTHORIZED PURPOSES FOR SPECIAL ASSESSMENTS FOR CRITICAL INFRASTRUCTURE NEEDS WITH THE PURPOSES OF PROJECT DEVELOPMENT FINANCING; TO ADD RENEWABLE ENERGY SOURCES AND ENERGY EFFICIENCY IMPROVEMENTS AS PURPOSES; TO CLARIFY THE LAW CONCERNING FINANCING A PROJECT FOR WHICH ASSESSMENTS MAY BE PLEDGED, TO EXEMPT PRIVATE ENTITIES THAT IMPLEMENT CERTAIN PROJECTS FOR WHICH ASSESSMENTS MAY BE PLEDGED FROM THE COMPETITIVE BIDDING REQUIREMENTS OF LOCAL GOVERNMENTS; AND TO PROVIDE GUIDANCE FOR LOCAL GOVERNMENTS WHEN ISSUING CERTAIN DEBT INSTRUMENTS AND ENTERING INTO CERTAIN AGREEMENTS.

The General Assembly of North Carolina enacts:

SECTION 1.(a) G.S. 153A-210.2(a) reads as rewritten:

"(a) Projects. – The board of commissioners of a county may make special assessments as provided in this Article against benefited property within the county for the purpose of financing the capital costs of projects for which project development financing debt instruments may be issued under G.S. 159-103 or for the purpose of financing the installation of distributed generation renewable energy sources or energy efficiency improvements that are permanently fixed to residential, commercial, industrial, or other real property. ~~bonds may be issued under any of the following:~~

- (1) ~~G.S. 159-48(b)(17), sanitary sewer systems.~~
- (2) ~~G.S. 159-48(b)(19), storm sewers and flood control facilities.~~
- (3) ~~G.S. 159-48(b)(21), water systems.~~
- (4) ~~G.S. 159-48(b)(23), public transportation facilities.~~
- (5) ~~G.S. 159-48(c)(4), school facilities.~~
- (6) ~~G.S. 159-48(d)(5), streets and sidewalks."~~

SECTION 1.(b) G.S. 153A-210.4 reads as rewritten:

"§ 153A-210.4. **Financing a project for which an assessment is imposed.**

(a) Financing Sources. – A board of commissioners may provide for the payment of the cost of a project for which an assessment may be imposed under this Article from one or more of the financing sources listed in this subsection. ~~solely from revenue bonds to be repaid from the assessments or from a combination of financing sources that include the revenue bonds. Other financing sources include general obligation bonds and general revenues.~~ The assessment resolution must include the estimated cost of the project and the amount of the cost to be derived from ~~revenue bonds and any other financing source.~~ each respective financing source.

- (1) Revenue bonds issued under G.S. 153A-210.6.



1 (2) Project development financing debt instruments issued under the North
2 Carolina Project Development Financing Act, Article 6 of Chapter 159 of
3 the General Statutes.

4 (3) General obligation bonds issued under the Local Government Bond Act,
5 Article 4 of Chapter 159 of the General Statutes.

6 (4) General revenues.

7 (b) Assessments Pledged. – An assessment imposed under this Article may be pledged
8 to secure revenue bonds under G.S. 153A-210.6 or as additional security for a project
9 development financing debt instrument under G.S. 159-111. If an assessment imposed under
10 this Article is pledged to secure financing, the board of commissioners must covenant to
11 enforce the payment of the assessments."

12 **SECTION 1.(c)** Article 9A of Chapter 153A of the General Statutes is amended by
13 adding a new section to read:

14 **"§ 153A-210.7. Project implementation.**

15 A county may act directly, through one or more contracts with other public agencies,
16 through one or more contracts with private agencies, or by any combination thereof to
17 implement the project financed in whole or in part by the imposition of an assessment imposed
18 under this Article. If no more than twenty-five percent (25%) of the estimated cost of a project
19 is to be funded from the proceeds of general obligation bonds or general revenue, a private
20 agency that enters into a contract with a county for the implementation of all or part of the
21 project is subject to the provisions of Article 8 of Chapter 143 of the General Statutes only to
22 the extent specified in the contract, except that if the property upon which the project is
23 developed is owned in whole or in part by a public agency, both of the following shall apply:

24 (1) The contract or contracts shall require bonds or other security for the faithful
25 performance of the contract and for the payment of all sums due for labor
26 and materials as required by G.S. 143-129(c).

27 (2) The private developer shall provide an irrevocable letter of credit for the
28 benefit of contractors dealing directly with the private developer in an
29 amount not less than five percent (5%) of the total cost of the improvements
30 and shall maintain the letter of credit through the construction of the
31 project."

32 **SECTION 2.(a)** G.S. 160A-239.2(a) reads as rewritten:

33 "(a) Projects. – The council of a city may make special assessments as provided in this
34 Article against benefited property within the city for the purpose of financing the capital costs
35 of projects for which project development financing debt instruments may be issued under
36 G.S. 159-103 or for the purpose of financing the installation of distributed generation
37 renewable energy sources or energy efficiency improvements that are permanently fixed to
38 residential, commercial, industrial, or other real property. ~~bonds may be issued under any of the~~
39 following:

40 (1) ~~G.S. 159-48(b)(17), sanitary sewer systems.~~

41 (2) ~~G.S. 159-48(b)(19), storm sewers and flood control facilities.~~

42 (3) ~~G.S. 159-48(b)(21), water systems.~~

43 (4) ~~G.S. 159-48(b)(23), public transportation facilities.~~

44 (5) ~~G.S. 159-48(e)(4), school facilities.~~

45 (6) ~~G.S. 159-48(d)(5), streets and sidewalks."~~

46 **SECTION 2.(b)** G.S. 160A-239.4 reads as rewritten:

47 **"§ 160A-239.4. Financing a project for which an assessment is imposed.**

48 (a) Financing Sources. – A city council may provide for the payment of the cost of a
49 project for which an assessment may be imposed under this Article ~~from one or more financing~~
50 sources listed in this subsection. ~~solely from revenue bonds to be repaid from the assessments~~
51 ~~or from a combination of financing sources that include the revenue bonds. Other financing~~

1 ~~sources include general obligation bonds and general revenues.~~ The assessment resolution must
2 include the estimated cost of the project and the amount of the cost to be derived from ~~revenue~~
3 ~~bonds and any other financing source.~~ the respective financing source.

4 (1) Revenue bonds issued under G.S. 160A-239.6.

5 (2) Project development financing debt instruments issued under the North
6 Carolina Project Development Financing Act, Article 6 of Chapter 159 of
7 the General Statutes.

8 (3) General obligation bonds issued under the Local Government Bond Act,
9 Article 4 of Chapter 159 of the General Statutes.

10 (4) General revenues.

11 (b) Assessments Pledged. – An assessment imposed under this Article may be pledged
12 to secure revenue bonds under G.S. 153A-210.6 or as additional security for a project
13 development financing debt instrument under G.S. 159-111. If an assessment imposed under
14 this Article is pledged to secure financing, the city council must covenant to enforce the
15 payment of the assessments."

16 **SECTION 2.(c)** Article 10A of Chapter 160A of the General Statutes is amended
17 by adding a new section to read:

18 **"§ 160A-239.7. Project implementation.**

19 A city may act directly, through one or more contracts with other public agencies, through
20 one or more contracts with private agencies, or by any combination thereof to implement the
21 project financed in whole or in part by the imposition of an assessment imposed under this
22 Article. If no more than twenty-five percent (25%) of the estimated cost of a project is to be
23 funded from the proceeds of general obligation bonds or general revenue, a private agency that
24 enters into a contract with a city for the implementation of all or part of the project is subject to
25 the provisions of Article 8 of Chapter 143 of the General Statutes only to the extent specified in
26 the contract, except that if the property upon which the project is developed is owned in whole
27 or in part by a public agency, both of the following shall apply:

28 (1) The contract or contracts shall require bonds or other security for the faithful
29 performance of the contract and for the payment of all sums due for labor
30 and materials as required by G.S. 143-129(c).

31 (2) The private developer shall provide an irrevocable letter of credit for the
32 benefit of contractors dealing directly with the private developer in an
33 amount not less than five percent (5%) of the total cost of the improvements
34 and shall maintain the letter of credit through the construction of the
35 project."

36 **SECTION 3.** G.S. 159-111 is amended by adding a two new subsections to read:

37 "(e) A unit of local government that issues project development financing debt
38 instruments may agree in the proceedings relating to an issue of project development financing
39 debt instruments to any one or more of the following:

40 (1) That in preparing its budget for any fiscal year its finance officer shall
41 include in the proposed budget an appropriation for the amount due on such
42 debt instruments during the next budget year.

43 (2) In the event any portion of a reserve fund relating to such debt instruments is
44 less than any reserve requirement relating thereto, including as a result of a
45 use of the reserve fund for the payment of amounts due on such debt
46 instrument, that in preparing its budget for any fiscal year its finance officer
47 shall include in the proposed budget an appropriation for the amount
48 required to restore such reserve fund to its required level during the next
49 budget year.

1 (3) That if there is any surplus in any year in any fund or account of such unit of
2 local government, it will consider appropriating such surplus for one or both
3 of the uses set forth in subdivision (1) or (2) of this subsection.

4 In every instance, the unit of local government shall expressly state that its agreement under
5 this provision is subject to a decision by its governing body to make such appropriation and that
6 such an agreement does not create an obligation on such a governing body to make such
7 appropriation.

8 (f) A unit of local government that enters into an increment agreement for the purposes
9 described in G.S. 159-107(d)(2) may include in such increment agreement any one or more of
10 the following:

11 (1) That in preparing its budget for any fiscal year its finance officer shall
12 include in the proposed budget an appropriation for that portion of the
13 amount due on such debt instruments during the next budget year which
14 represents the expected percentage of such amount that would come from
15 the taxes levied by such unit of local government.

16 (2) In the event any portion of a reserve fund relating to such debt instruments is
17 less than any reserve requirement relating thereto, including as a result of a
18 use of the reserve fund for the payment of amounts due on such debt
19 instrument, that in preparing its budget for any fiscal year its finance officer
20 shall include in the proposed budget an appropriation for some portion or all
21 of the amount required to restore such reserve fund to its required level
22 during the next budget year.

23 (3) That if there is any surplus in any year in any fund or account of such unit of
24 local government, it will consider appropriating such surplus for one or both
25 of the uses set forth in subdivision (1) or (2) of this subsection.

26 In every instance, the unit of local government shall expressly state that its agreement under
27 this provision is subject to a decision by its governing body to make such appropriation and that
28 such an agreement does not create an obligation on such a governing body to make such
29 appropriation."

30 **SECTION 4.** This act is effective when it becomes law.