

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2017

SESSION LAW 2017-40
HOUSE BILL 158

AN ACT AUTHORIZING CITIES AND COUNTIES TO PROVIDE FOR THE PAYMENT OF ALL OR A PORTION OF THE COST OF CRITICAL INFRASTRUCTURE PROJECTS BY USING FUNDS FROM PRIVATE PARTIES AND REPAYING THE FUNDS BY MAKING SPECIAL ASSESSMENTS ON BENEFITED PROPERTY AND CLARIFYING THE RECIPIENT OF PROCEEDS FROM A PERFORMANCE GUARANTEE.

The General Assembly of North Carolina enacts:

SECTION 1. Article 9A of Chapter 153A of the General Statutes reads as rewritten:

"Article 9A.

"Special Assessments for Critical Infrastructure Needs.

"§ 153A-210.1. Purpose; sunset.

(a) Purpose. – This Article enables counties that face increased demands for infrastructure improvements as a result of rapid growth and development to ~~issue revenue bonds payable from~~ impose special assessments imposed under as provided in this Article on benefited ~~property.~~ property and to use the resulting revenues as provided in this Article. This Article supplements the authority counties have in Article 9 of this Chapter. The provisions of Article 9 of this Chapter apply to this Article, to the extent they do not conflict with this Article.

...

(b) Sunset. – This Article expires ~~July 1, 2020.~~ July 1, 2020, for projects that have not been approved under a final assessment resolution. For projects authorized in G.S. 153A-210.2(a1), this Article expires July 1, 2019. The expiration does not affect the validity of assessments imposed or to be imposed or bonds issued or authorized or to be issued or authorized under the provisions of this Article if a final assessment resolution has been adopted prior to the effective date of the expiration.

"§ 153A-210.2. Assessments.

(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~~ assisting in arranging for payment of the capital costs of projects (i) for which project development financing debt instruments may be issued under G.S. 159-103 or (ii) 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.

...

(b) Costs. – The board of commissioners must determine a project's total estimated ~~cost~~ cost and the amount of costs to be paid from assessments. In addition to the costs allowed under G.S. 153A-193, the costs may include any expenses allowed under ~~G.S. 159-84.~~ G.S. 159-84 and expenses for the administration of the assessments. A preliminary assessment roll may be prepared before the costs are incurred based on the estimated cost of the project.



(c) Method. – The board of commissioners must establish an assessment method that ~~will most will, in the board's judgment,~~ accurately assess each lot or parcel of land subject to the assessments according to the benefits conferred upon it by the project for which the assessment is made. In addition to other bases upon which assessments may be made under G.S. 153A-186, the board may select any other method designed to allocate the costs in accordance with benefits conferred. In doing so, the board may provide that the benefits conferred are measured on the basis of use being made on the lot or parcel of land and provide for adjustments of assessments upon a change in use, provided that the total amount of all assessments is sufficient to pay the portion of the costs of the project to be funded from assessments after the adjustments have been made.

"§ 153A-210.3. Petition required.

(a) Petition. – The board of commissioners may not impose a special assessment under this Article unless it receives a petition for the project to be financed by the assessment signed by (i) at least a majority of the owners of real property to be assessed and (ii) owners who represent at least sixty-six percent (66%) of the assessed value of all real property to be assessed. For purposes of determining whether the petition has been signed by a majority of owners, an owner who holds title to a parcel of real property alone shall be treated as having one vote each, and an owner who shares title to a parcel of real property with one or more other owners shall have a vote equal to one vote multiplied by a fraction, the numerator of which is one, and the denominator of which is the total number of owners of the parcel. For purposes of determining whether the assessed value represented by those signing the petition constitutes at least sixty-six percent (66%) of the assessed value of all real property to be assessed, an owner who holds title to a parcel of real property alone shall have the full assessed value of the parcel included in the calculation, and an owner who shares title to a parcel of real property with one or more other owners shall have their proportionate share of the full assessed value of the parcel included in the calculation. The petition must include the following:

- (1) A statement of the project proposed to be financed in whole or in part by the imposition of an assessment under this Article.
- (2) An estimate of the cost of the project.
- (3) An estimate of the portion of the cost of the project to be assessed.

(a1) Preliminary Assessment Resolution. – Upon the receipt of a petition as provided for under subsection (a) of this section, the board of commissioners shall adopt a preliminary assessment resolution containing all of the following:

- (1) A statement of intent to undertake the project.
- (2) A general description of the nature and location of the project.
- (3) An estimate of the total cost of the project.
- (4) A statement as to the proposed terms of payment of the assessment.
- (5) An order setting a time and place for a public hearing on all matters covered by the preliminary assessment resolution. The hearing shall be not earlier than three weeks and not later than 10 weeks from the day on which the preliminary resolution is adopted.

(a2) Hearing on Preliminary Assessment Resolution; Assessment Resolution. – At the public hearing, the board of commissioners shall hear all interested persons who appear with respect to any matter covered by the preliminary assessment resolution. Not earlier than 10 days after the public hearing, the board may adopt a final assessment resolution directing that the project or portions thereof be undertaken. The final assessment resolution shall include all of the information provided for in subdivisions (1) through (4) of subsection (a1) of this section.

(b) Petition Withdrawn. – The board of commissioners must wait at least 10 days after the public hearing on the preliminary assessment resolution before adopting a final assessment resolution. A petition submitted under subsection (a) of this section may be withdrawn if notice

of petition withdrawal is given in writing to the board signed by at least a majority of the owners who signed the petition submitted under subsection (a) of this section representing at least fifty percent (50%) of the assessed value of all real property to be assessed. The board may not adopt a final assessment resolution if it receives a timely notice of petition withdrawal.

(c) **Validity of Assessment.** – No right of action or defense asserting the invalidity of an assessment on grounds that the county did not comply with this section may be asserted except in an action or proceeding begun within 90 days after publication of the notice of adoption of the preliminary assessment resolution.

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

(a) Financing Funding Sources. – ~~A board of commissioners~~ In addition to funding from sources otherwise authorized for use by a county in connection with a project, a board of commissioners may provide for the payment of all or a portion of the cost of a project for which an assessment may be imposed under this Article from one or more of the financing funding sources listed in this subsection. The assessment resolution must include the estimated cost of the project to be funded from assessments and the amount of the cost estimated to be derived from each respective financing funding source.

- (1) Revenue bonds issued under G.S. 153A-210.6.
- (2) Project development financing debt instruments issued under the North Carolina Project Development Financing Act, Article 6 of Chapter 159 of the General Statutes.
- (3) General obligation bonds issued under the Local Government Bond Act, Article 4 of Chapter 159 of the General Statutes.
- (4) General revenues.
- (5) Funds from private parties.

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

(c) Reimbursement From Assessments. – If a county contracts with a private party to construct a project on behalf of the county as provided in G.S. 153A-210.7, the board of commissioners may agree to impose one or more assessments pursuant to this Article in order to reimburse the private party for actual costs incurred by the private party related to the project and documented to the county. The board of commissioners shall not be obligated to reimburse a private party any amount in excess of assessment revenues actually collected less the county's related administrative costs.

A reimbursement shall not include reimbursement to the private party for any interest costs, whether actual or imputed, of the funds invested by the private party in the project except in the event that an abeyance in the collection of assessments is permitted pursuant to G.S. 153A-210.5. If an abeyance in the collection of assessments is permitted, the amount to be reimbursed may include an inflationary factor applicable for the period of the abeyance.

(d) Performance Bond. – A subdivision control ordinance adopted by a county under G.S. 153A-331 providing for a performance bond or guarantee to assure successful completion of required improvements will apply to a project funded in whole or in part by an assessment under this Article.

"§ 153A-210.5. Payment of assessments by installments.

(a) An assessment imposed under this Article is payable in annual installments. The board of commissioners must set the number of annual installments, which may not be more than 25. The installments are due on the date that real property taxes are due.

(b) The board of commissioners may provide for the abeyance of assessments as authorized in Article 9 of this Chapter. The abeyance may apply to any assessed property.

Annual installments shall be deferred until the period of abeyance ends. The assessment shall be payable on the first annual installment payment date after the period of abeyance ends.

...

"§ 153A-210.7. Project implementation.

A county may act directly, through one or more contracts with other public agencies, through one or more contracts with private agencies, or by any combination thereof to implement the project ~~financed~~ funded in whole or in part by the imposition of an assessment imposed under this Article. Initial funding for the project may be provided by the public or private agencies. If no more than twenty-five percent (25%) of the estimated cost of a project is to be funded from the proceeds of general obligation bonds or general revenue, excluding assessments imposed pursuant to this Article, a private agency that enters into a contract with a county for the implementation of all or part of the project is subject to the provisions of Article 8 of Chapter 143 of the General Statutes only to the extent specified in the contract. In the event any contract relating to construction a substantial portion of which is to be performed on publicly owned property is excluded from the provisions of Article 8 of Chapter 143, the county or any trustee or fiduciary responsible for disbursing funds shall obtain certification acceptable to the county in the amount due for work done or materials supplied for which payment will be paid from such disbursement. If the county or any trustee or fiduciary responsible for disbursing funds receives notice of a claim from any person who would be entitled to a mechanic's or materialman's lien but for the fact that the claim relates to work performed on or supplies provided to publicly owned property, then either no disbursement of funds may be made until the county, trustee, or fiduciary receives satisfactory proof of resolution of the claim or funds in the amount of the claim shall be set aside for payment thereof upon resolution of the claim."

SECTION 2. Article 10A of Chapter 160A of the General Statutes reads as rewritten:

"Article 10A.

"Special Assessments for Critical Infrastructure Needs.

"§ 160A-239.1. Purpose; sunset.

(a) Purpose. – This Article enables cities that face increased demands for infrastructure improvements as a result of rapid growth and development to ~~issue revenue bonds payable from~~ impose special assessments imposed as provided under this Article on benefited ~~property~~ property and to use the resulting revenues as provided in this Article. This Article supplements the authority cities have in Article 10 of this Chapter. The provisions of Article 10 of this Chapter apply to this Article, to the extent they do not conflict with this Article.

(b) Sunset. – This Article expires ~~July 1, 2020~~ July 1, 2020, for projects that have not been approved under a final assessment resolution. The expiration does not affect the validity of assessments imposed or to be imposed or bonds issued or authorized or to be issued or authorized under the provisions of this Article if a final assessment resolution has been adopted prior to the effective date of the expiration.

"§ 160A-239.2. Assessments.

(a) Projects. – The council of a city may make special assessments as provided in this Article against benefited property within the city for the purpose of ~~financing~~ assisting in arranging for payment of the capital costs of projects (i) for which project development financing debt instruments may be issued under G.S. 159-103 or (ii) 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.

(b) Costs. – The city council must determine a project's total estimated ~~cost~~ cost and the amount of costs to be paid from assessments. In addition to the costs allowed under ~~G.S. 153A-193,~~ G.S. 160A-226, the costs may include any expenses allowed under ~~G.S.~~

~~159-84.G.S. 159-84~~ and expenses for the administration of the assessments. A preliminary assessment roll may be prepared before the costs are incurred based on the estimated cost of the project.

(c) Method. – The city council must establish an assessment method that ~~will most will,~~ in the city council's judgment, accurately assess each lot or parcel of land subject to the assessments according to the benefits conferred upon it by the project for which the assessment is made. In addition to other bases upon which assessments may be made under G.S. 160A-218, the council may select any other method designed to allocate the costs in accordance with benefits conferred. In doing so, the council may provide that the benefits conferred are measured on the basis of use being made on the lot or parcel of land and provide for adjustments of assessments upon a change in use, provided that the total amount of all assessments is sufficient to pay the portion of the costs of the project to be funded from assessments after the adjustments have been made.

"§ 160A-239.3. Petition required.

(a) Petition. – The city council may not impose a special assessment under this Article unless it receives a petition for the project to be financed by the assessment signed by (i) at least a majority of the owners of real property to be assessed and (ii) owners who represent at least sixty-six percent (66%) of the assessed value of all real property to be assessed. For purposes of determining whether the petition has been signed by a majority of owners, an owner who holds title to a parcel of real property alone shall be treated as having one vote each, and an owner who shares title to a parcel of real property with one or more other owners shall have a vote equal to one vote multiplied by a fraction, the numerator of which is one, and the denominator of which is the total number of owners of the parcel. For purposes of determining whether the assessed value represented by those signing the petition constitutes at least sixty-six percent (66%) of the assessed value of all real property to be assessed, an owner who holds title to a parcel of real property alone shall have the full assessed value of the parcel included in the calculation, and an owner who shares title to a parcel of real property with one or more other owners shall have their proportionate share of the full assessed value of the parcel included in the calculation. The petition must include the following:

- (1) A statement of the project proposed to be financed in whole or in part by the imposition of an assessment under this Article.
- (2) An estimate of the cost of the project.
- (3) An estimate of the portion of the cost of the project to be assessed.

(a1) Preliminary Assessment Resolution. – Upon the receipt of a petition as provided for under subsection (a) of this section, the city council shall adopt a preliminary assessment resolution containing all of the following:

- (1) A statement of intent to undertake the project.
- (2) A general description of the nature and location of the project.
- (3) An estimate of the total cost of the project.
- (4) A statement as to the proposed terms of payment of the assessment.
- (5) An order setting a time and place for a public hearing on all matters covered by the preliminary assessment resolution. The hearing shall be not earlier than three weeks and not later than 10 weeks from the day on which the preliminary resolution is adopted.

(a2) Hearing on Preliminary Assessment Resolution; Assessment Resolution. – At the public hearing, the city council shall hear all interested persons who appear with respect to any matter covered by the preliminary assessment resolution. Not earlier than 10 days after the public hearing, the city council may adopt a final assessment resolution directing that the project or portions thereof be undertaken. The final assessment resolution shall include all of the information provided for in subdivisions (1) through (4) of subsection (a1) of this section.

(b) Petition Withdrawn. – The city council must wait at least 10 days after the public hearing on the preliminary assessment resolution before adopting a final assessment resolution. A petition submitted under subsection (a) of this section may be withdrawn if notice of petition withdrawal is given in writing to the council signed by at least a majority of the owners who signed the petition submitted under subsection (a) of this section representing at least fifty percent (50%) of the assessed value of all real property to be assessed. The council may not adopt a final assessment resolution if it receives a timely notice of petition withdrawal.

(c) Validity of Assessment. – No right of action or defense asserting the invalidity of an assessment on grounds that the city did not comply with this section may be asserted except in an action or proceeding begun within 90 days after publication of the notice of adoption of the preliminary assessment resolution.

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

(a) ~~Financing~~ Funding Sources. – ~~A~~ In addition to funding from sources otherwise authorized for use by a city council in connection with a project, a city council may provide for the payment of all or a portion of the cost of a project for which an assessment may be imposed under this Article from one or more ~~financing~~ funding sources listed in this subsection. The assessment resolution must include the estimated cost of the project to be funded from assessments and the amount of the cost estimated to be derived from ~~the each~~ respective ~~financing~~ funding source.

- (1) Revenue bonds issued under G.S. 160A-239.6.
- (2) Project development financing debt instruments issued under the North Carolina Project Development Financing Act, Article 6 of Chapter 159 of the General Statutes.
- (3) General obligation bonds issued under the Local Government Bond Act, Article 4 of Chapter 159 of the General Statutes.
- (4) General revenues.
- (5) Funds from private parties.

(b) Assessments Pledged. – An assessment imposed under this Article may be pledged to secure revenue bonds under G.S. 160A-239.6 or as additional security for a project development financing debt instrument under G.S. 159-111. If an assessment imposed under this Article is pledged to secure financing, the city council must covenant to enforce the payment of the assessments.

(c) Reimbursement From Assessments. – If a city contracts with a private party to construct a project on behalf of the city as provided in G.S. 160A-239.7, the city council may agree to impose one or more assessments pursuant to this Article in order to reimburse the private party for actual costs incurred by the private party related to the project and documented to the city. The city council shall not be obligated to reimburse a private party any amount in excess of assessment revenues actually collected less the city's related administrative costs.

A reimbursement shall not include reimbursement to the private party for any interest costs, whether actual or imputed, of the funds invested by the private party in the project except in the event that an abeyance in the collection of assessments is permitted pursuant to G.S. 160A-239.5. If an abeyance in the collection of assessments is permitted, the amount to be reimbursed may include an inflationary factor applicable for the period of the abeyance.

(d) Performance Bond. – A subdivision control ordinance adopted by a city under G.S. 160A-372 providing for a performance bond or guarantee to assure successful completion of required improvements will apply to a project funded in whole or in part by an assessment under this Article.

"§ 160A-239.5. Payment of assessments by installments.

(a) An assessment imposed under this Article is payable in annual installments. The city council must set the number of annual installments, which may not be more than 25. The installments are due on the date that real property taxes are due.

(b) The city council may provide for the abeyance of assessments as authorized in Article 10 of this Chapter. The abeyance may apply to any assessed property. Annual installments shall be deferred until the period of abeyance ends. The assessment shall be payable on the first annual installment payment date after the period of abeyance ends.

...

"§ 160A-239.7. Project implementation.

A city may act directly, through one or more contracts with other public agencies, through one or more contracts with private agencies, or by any combination thereof to implement the project ~~financed~~-funded in whole or in part by the imposition of an assessment imposed under this Article. Initial funding for the project may be provided by the public or private agencies. If no more than twenty-five percent (25%) of the estimated cost of a project is to be funded from the proceeds of general obligation bonds or general revenue, excluding assessments imposed pursuant to this Article, a private agency that enters into a contract with a city for the implementation of all or part of the project is subject to the provisions of Article 8 of Chapter 143 of the General Statutes only to the extent specified in the contract. In the event any contract relating to construction a substantial portion of which is to be performed on publicly owned property is excluded from the provisions of Article 8 of Chapter 143, the city or any trustee or fiduciary responsible for disbursing funds shall obtain certification acceptable to the city in the amount due for work done or materials supplied for which payment will be paid from such disbursement. If the city or any trustee or fiduciary responsible for disbursing funds receives notice of a claim from any person who would be entitled to a mechanic's or materialman's lien but for the fact that the claim relates to work performed on or supplies provided to publicly owned property, then either no disbursement of funds may be made until the city, trustee, or fiduciary receives satisfactory proof of resolution of the claim or funds in the amount of the claim shall be set aside for payment thereof upon resolution of the claim."

SECTION 3.(a) G.S. 160A-372(g) reads as rewritten:

"(g) For purposes of this section, all of the following shall apply with respect to performance guarantees:

...

(5) No person shall have or may claim any rights under or to any performance guarantee provided pursuant to this subsection or in the proceeds of any such performance guarantee other than the following:

- a. The local government to whom such performance guarantee is provided.
- b. The developer at whose request or for whose benefit such performance guarantee is given.
- c. The person or entity issuing or providing such performance guarantee at the request of or for the benefit of the developer."

SECTION 3.(b) It is the intent of this section to clarify the existing law as it pertains to performance guarantees issued under G.S. 160A-372 and G.S. 153A-331.

SECTION 4. This act is effective when it becomes law and applies to assessments made on or after that date.

In the General Assembly read three times and ratified this the 13th day of June, 2017.

s/ Philip E. Berger
President Pro Tempore of the Senate

s/ Sarah Stevens
Speaker Pro Tempore of the House of Representatives

s/ Roy Cooper
Governor

Approved 5:04 p.m. this 21st day of June, 2017