

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007**

**SESSION LAW 2008-165
HOUSE BILL 1770**

AN ACT TO CLARIFY THE AUTHORITY OF THE PARTIES TO CONSERVATION AND PRESERVATION AGREEMENTS TO INCLUDE PROVISIONS IN THE AGREEMENTS FOR THE PAYMENT OF FEES UPON FUTURE CONVEYANCE OF PROPERTY SUBJECT TO THE AGREEMENTS AND TO ALLOW SPECIAL ASSESSMENTS TO BE PAID IN MORE THAN TEN ANNUAL INSTALLMENTS AND TO BE PLEDGED TO THE REPAYMENT OF REVENUE BONDS ISSUED FOR CRITICAL INFRASTRUCTURE NEEDS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 121-38 reads as rewritten:

"§ 121-38. Validity of agreements.

- (a) No conservation or preservation agreement shall be unenforceable because of
- (1) Lack of privity of estate or contract, or
 - (2) Lack of benefit to particular land or person, or
 - (3) The assignability of the benefit to another holder as defined in this Article.
- (b) ~~Such~~ These agreements are interests in land and may be acquired by any holder in the same manner as it may acquire other interests in land.
- (c) ~~Such~~ These agreements may be effective perpetually or for shorter stipulated periods of time.
- (d) ~~Such~~ These agreements may impose present, future, or continuing obligations on either party to the agreement, or their successors, in furtherance of the purposes of the agreement.
- (e) These agreements may contain provisions which require the payment of a fee upon a future conveyance of the property that is subject to the agreement."

SECTION 2. Chapter 153A of the General Statutes is amended by adding a new Article to read:

"Article 9A.

"Special Assessments for Critical Infrastructure Needs.

"§ 153A-210.1. 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 special assessments imposed under this Article on benefited property. 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.

"§ 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 the capital costs of projects for which 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.

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

(c) Method. – The board of commissioners must establish an assessment method that will most accurately assess each lot or parcel of land according to the benefits conferred upon it by the project for which the assessment is made. In addition to the 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.

"§ 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 at least a majority of the owners of real property to be assessed who must represent at least sixty-six percent (66%) of the assessed value of all real property to be assessed. 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.

(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 a project for which an assessment is imposed.

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 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.

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

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 30. The installments are due on the date that property taxes are due.

"§ 153A-210.6. Revenue bonds.

(a) Authorization. – A board of commissioners that imposes an assessment under this Article may issue revenue bonds under Article 5 of Chapter 159 of the General Statutes to finance the project for which the assessment is imposed and use the proceeds of the assessment imposed as revenues pertaining to the project.

(b) Modifications. – This Article specifically modifies the authority of a county to issue revenue bonds under Article 5 of Chapter 159 of the General Statutes by extending the authority in that Article to include a project for which an assessment may

be imposed under this Article. In applying the provisions of Article 5, the following definitions apply:

- (1) Revenue bond project. – Defined in G.S. 159-81(3). The term includes projects for which an assessment is imposed under this Article.
- (2) Revenues. – Defined in G.S. 159-81(4). The term includes assessments imposed under this Article to finance a project allowed under this Article."

SECTION 3. Chapter 160A of the General Statutes is amended by adding a new article to read:

"Article 10A.

"Special Assessments for Critical Infrastructure Needs.

"§ 160A-239.1. 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 special assessments imposed under this Article on benefited property. 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.

"§ 160A-239.2. Assessments.

(a) Projects. – The council of a city may make special assessments against benefited property within the city for the purpose of financing the capital costs of projects for which 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.

(b) Costs. – The city council must determine a project's total estimated cost. In addition to the costs allowed under G.S. 153A-193, the costs may include any expenses allowed under G.S. 159-84. An assessment may be imposed before the costs are incurred, based on the estimated cost.

(c) Method. – The city council must establish an assessment method that will most accurately assess each lot or parcel of land according to the benefits conferred upon it by the project for which the assessment is made. In addition to the bases upon which assessments may be made under G.S. 153A-186, the council may select any other method designed to allocate the costs in accordance with benefits conferred.

"§ 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 at least a majority of the owners of real property to be assessed who must represent at least sixty-six percent (66%) of the assessed value of all real property to be assessed. 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.

(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 a project for which an assessment is imposed.

A city council may provide for the payment of the cost of a project for which an assessment may be imposed under this Article 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.

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

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 30. The installments are due on the date that property taxes are due.

"§ 160A-239.6. Revenue bonds.

(a) Authorization. – A city council that imposes an assessment under this Article may issue revenue bonds under Article 5 of Chapter 159 of the General Statutes to finance the project for which the assessment is imposed and use the proceeds of the assessment imposed as revenues pertaining to the project.

(b) Modifications. – This Article specifically modifies the authority of a city to issue revenue bonds under Article 5 of Chapter 159 of the General Statutes by extending the authority in that Article to include a project for which an assessment may be imposed under this Article. In applying the provisions of Article 5, the following definitions apply:

- (1) Revenue bond project. – Defined in G.S. 159-81(3). The term includes projects for which an assessment is imposed under this Article.
- (2) Revenues. – Defined in G.S. 159-81(4). The term includes assessments imposed under this Article to finance a project allowed under this Article."

SECTION 4. If any provision of this act or its application is held invalid, the invalidity does not affect other provisions or applications of this act that can be given effect without the invalid provisions or application, and to this end the provisions of this act are severable.

SECTION 5. This act is effective when it becomes law. Sections 2 and 3 of this act expire July 1, 2013. The expiration does not affect the validity of assessments imposed or bonds issued or authorized under the provisions of this act prior to the effective date of the expiration.

In the General Assembly read three times and ratified this the 16th day of July, 2008.

s/ Marc Basnight
President Pro Tempore of the Senate

s/ Joe Hackney
Speaker of the House of Representatives

s/ Michael F. Easley
Governor

Approved 3:46 a.m. this 3rd day of August, 2008