

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009**

**SESSION LAW 2009-525
SENATE BILL 97**

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(e)(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.
- (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.

(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."



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

"§ 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 in whole or in part by the imposition of an assessment imposed under this Article. 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, 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.(a) G.S. 160A-239.2(a) reads as rewritten:

"(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 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(e)(4), school facilities.
- (6) G.S. 159-48(d)(5), streets and sidewalks."

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

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

(a) Financing Sources. – A city council 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 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, the respective financing 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.

(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 city council must covenant to enforce the payment of the assessments."

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

"§ 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 in whole or in part by the imposition of an assessment imposed under this Article. 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, 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. G.S. 159-111 is amended by adding a two new subsections to read:

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

- (1) That in preparing its budget for any fiscal year its finance officer shall include in the proposed budget an appropriation for the amount due on such debt instruments during the next budget year.
- (2) In the event any portion of a reserve fund relating to such debt instruments is less than any reserve requirement relating thereto, including as a result of a use of the reserve fund for the payment of amounts due on such debt instrument, that in preparing its budget for any fiscal year its finance officer shall include in the proposed budget an appropriation for the amount required to restore such reserve fund to its required level during the next budget year.
- (3) That if there is any surplus in any year in any fund or account of such unit of local government, it will consider appropriating such surplus for one or both of the uses set forth in subdivision (1) or (2) of this subsection.

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

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

- (1) That in preparing its budget for any fiscal year its finance officer shall include in the proposed budget an appropriation for that portion of the amount due on such debt instruments during the next budget year which represents the expected percentage of such amount that would come from the taxes levied by such unit of local government.
- (2) In the event any portion of a reserve fund relating to such debt instruments is less than any reserve requirement relating thereto, including as a result of a use of the reserve fund for the payment of amounts due on such debt instrument, that in preparing its budget for any fiscal year its finance officer shall include in the proposed budget an appropriation for some portion or all of the amount required to restore such reserve fund to its required level during the next budget year.
- (3) That if there is any surplus in any year in any fund or account of such unit of local government, it will consider appropriating such surplus for one or both of the uses set forth in subdivision (1) or (2) of this subsection.

In every instance, the unit of local government shall expressly state that its agreement under this provision is subject to a decision by its governing body to make such appropriation and that

such an agreement does not create an obligation on such a governing body to make such appropriation."

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

In the General Assembly read three times and ratified this the 6th day of August, 2009.

s/ Marc Basnight
President Pro Tempore of the Senate

s/ Joe Hackney
Speaker of the House of Representatives

s/ Beverly E. Perdue
Governor

Approved 3:40 p.m. this 26th day of August, 2009