

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

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SENATE BILL 97
Finance Committee Substitute Adopted 5/4/09
PROPOSED HOUSE COMMITTEE SUBSTITUTE S97-PCS35359-RR-59

Short Title: Critical Infrastructure Assm't Changes.

(Public)

Sponsors:

Referred to:

February 11, 2009

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

12 The General Assembly of North Carolina enacts:

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

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

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

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

28 **"§ 153A-210.4. Financing a project for which an assessment is imposed.**

29 (a) Financing Sources. – A board of commissioners may provide for the payment of the
30 cost of a project for which an assessment may be imposed under this Article from one or more
31 of the financing sources listed in this subsection. ~~solely from revenue bonds to be repaid from~~
32 ~~the assessments or from a combination of financing sources that include the revenue bonds.~~
33 ~~Other financing sources include general obligation bonds and general revenues.~~ The assessment



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1 resolution must include the estimated cost of the project and the amount of the cost to be
2 derived from ~~revenue bonds and any other financing source~~, each respective financing source.

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

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

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

9 (4) General revenues.

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

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

17 **"§ 153A-210.7. Project implementation.**

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

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

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

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

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

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

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

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

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

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

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

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

50 **"§ 160A-239.4. Financing a project for which an assessment is imposed.**

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

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

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

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

14 (4) General revenues.

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

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

22 **"§ 160A-239.7. Project implementation.**

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

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

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

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

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

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

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

1 required to restore such reserve fund to its required level during the next
2 budget year.

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

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

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

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

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

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

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

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