

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

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SENATE BILL 363
Health Care Committee Substitute Adopted 4/27/15
House Committee Substitute Favorable 5/25/16
House Committee Substitute #2 Favorable 6/2/16
PROPOSED HOUSE COMMITTEE SUBSTITUTE S363-PCS45518-SVxr-52

Short Title: Wage & Hour/Local Gov't Assessments.

(Public)

Sponsors:

Referred to:

March 24, 2015

A BILL TO BE ENTITLED

AN ACT PROVIDING THAT EMPLOYEES OF SEASONAL AMUSEMENT OR RECREATIONAL FACILITIES ARE EXEMPT FROM OVERTIME AND RECORD-KEEPING REQUIREMENTS OF THE NORTH CAROLINA WAGE AND HOUR ACT AND 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.

The General Assembly of North Carolina enacts:

SECTION 1.(a) G.S. 95-25.14(c) reads as rewritten:

"(c) The provisions of G.S. 95-25.4 (Overtime), and the provisions of G.S. 95-25.15(b) (Record Keeping) as they relate to this exemption, do not apply to:

...

(8) Any employee of a seasonal amusement or recreational establishment."

SECTION 1.(b) G.S. 95-25.3(e) reads as rewritten:

"(e) The Commissioner, in order to prevent curtailment of opportunities for employment, and to not adversely affect the viability of seasonal establishments, may, by regulation, establish a wage rate not less than eighty-five percent (85%) of the otherwise applicable wage rate in effect under subsection (a) ~~which that~~ shall apply to any employee employed by an establishment ~~which that is a seasonal amusement or recreational establishment, or a seasonal food service establishment.~~"

SECTION 1.(c) G.S. 95-25.4(a) reads as rewritten:

"(a) Every employer shall pay each employee who works longer than 40 hours in any workweek at a rate of not less than time and one half of the regular rate of pay of the employee for those hours in excess of 40 per week; ~~provided that employers of seasonal amusement or recreational establishment employees are required to pay those employees the overtime rate only for hours in excess of 45 per workweek-week.~~"

SECTION 2.(a) 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.



* S 3 6 3 - P C S 4 5 5 1 8 - S V X R - 5 2 *

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

7 ...

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

14 **"§ 153A-210.2. Assessments.**

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

22 ...

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

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

37 **"§ 153A-210.3. Petition required.**

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

1 proportionate share of the full assessed value of the parcel included in the calculation. The petition
2 must include the following:

3 (1) A statement of the project proposed to be financed in whole or in part by the
4 imposition of an assessment under this Article.

5 (2) An estimate of the cost of the project.

6 (3) An estimate of the portion of the cost of the project to be assessed.

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

10 (1) A statement of intent to undertake the project.

11 (2) A general description of the nature and location of the project.

12 (3) A statement as to the proposed terms of payment of the assessment.

13 (4) An order setting a time and place for a public hearing on all matters covered by
14 the preliminary assessment resolution. The hearing shall be not earlier than
15 three weeks and not later than 10 weeks from the day on which the preliminary
16 resolution is adopted.

17 (a2) Hearing on Preliminary Assessment Resolution; Assessment Resolution. – At the
18 public hearing, the board of commissioners shall hear all interested persons who appear with
19 respect to any matter covered by the preliminary assessment resolution. Not earlier than 10 days
20 after the public hearing, the board may adopt a final assessment resolution directing that the
21 project or portions thereof be undertaken. The final assessment resolution shall include all of the
22 information provided for in subdivisions (1) through (3) of subsection (a1) of this section.

23 (b) Petition Withdrawn. – The board of commissioners must wait at least 10 days after the
24 public hearing on the preliminary assessment resolution before adopting a final assessment
25 resolution. A petition submitted under subsection (a) of this section may be withdrawn if notice of
26 petition withdrawal is given in writing to the board signed by at least a majority of the owners who
27 signed the petition submitted under subsection (a) of this section representing at least fifty percent
28 (50%) of the assessed value of all real property to be assessed. The board may not adopt a final
29 assessment resolution if it receives a timely notice of petition withdrawal.

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

34 **"§ 153A-210.4. ~~Financing~~Funding a project for which an assessment is imposed.**

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

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

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

46 (3) General obligation bonds issued under the Local Government Bond Act, Article
47 4 of Chapter 159 of the General Statutes.

48 (4) General revenues.

49 (5) Funds from private parties.

50 (b) Assessments Pledged. – An assessment imposed under this Article may be pledged to
51 secure revenue bonds under G.S. 153A-210.6 or as additional security for a project development

1 financing debt instrument under G.S. 159-111. If an assessment imposed under this Article is
2 pledged to secure financing, the board of commissioners must covenant to enforce the payment of
3 the assessments.

4 (c) Reimbursement From Assessments. – If a board of commissioners contracts with a
5 private party to construct a project on behalf of the county as provided in G.S. 153A-210.7, the
6 board of commissioners may agree to impose one or more assessments pursuant to this Article in
7 order to reimburse the private party for costs incurred by the private party related to the project,
8 including an inflationary factor applicable during any period of abeyance provided under
9 G.S. 153A-210.5. The board of commissioners shall not be obligated to reimburse a private party
10 any amount in excess of assessment revenues actually collected less the county's related
11 administrative costs.

12 **"§ 153A-210.5. Payment of assessments by installments.**

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

16 (b) The board of commissioners may provide for the abeyance of assessments as
17 authorized in Article 9 of this Chapter. The abeyance may apply to any assessed property. Annual
18 installments shall be deferred until the period of abeyance ends. The assessment shall be payable
19 on the first annual installment payment date after the period of abeyance ends.

20 ...

21 **"§ 153A-210.7. Project implementation.**

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

41 **SECTION 2.(b)** Article 10A of Chapter 160A of the General Statutes reads as
42 rewritten:

43 "Article 10A.

44 "Special Assessments for Critical Infrastructure Needs.

45 **"§ 160A-239.1. Purpose; sunset.**

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

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

6 **"§ 160A-239.2. Assessments.**

7 (a) Projects. – The council of a city may make special assessments as provided in this
8 Article against benefited property within the city for the purpose of ~~financing~~ assisting in
9 arranging for payment of the capital costs of projects (i) for which project development financing
10 debt instruments may be issued under G.S. 159-103 or (ii) for the purpose of ~~financing~~ the
11 installation of distributed generation renewable energy sources or energy efficiency improvements
12 that are permanently fixed to residential, commercial, industrial, or other real property.

13 (b) Costs. – The city council must determine a project's total estimated ~~cost~~ cost and the
14 amount of costs to be paid from assessments. In addition to the costs allowed under ~~G.S.~~
15 ~~153A-193,~~ G.S. 160A-226, the costs may include any expenses allowed under ~~G.S.~~
16 ~~159-84.~~ G.S. 159-84 and expenses for the administration of the assessments. A preliminary
17 assessment roll may be prepared before the costs are incurred based on the estimated cost of the
18 project.

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

28 **"§ 160A-239.3. Petition required.**

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

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

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

- 51 (1) A statement of intent to undertake the project.

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

7 (a2) Hearing on Preliminary Assessment Resolution; Assessment Resolution. – At the
8 public hearing, the city council shall hear all interested persons who appear with respect to any
9 matter covered by the preliminary assessment resolution. Not earlier than 10 days after the public
10 hearing, the city council may adopt a final assessment resolution directing that the project or
11 portions thereof be undertaken. The final assessment resolution shall include all of the information
12 provided for in subdivisions (1) through (3) of subsection (a1) of this section.

13 (b) Petition Withdrawn. – The city council must wait at least 10 days after the public
14 hearing on the preliminary assessment resolution before adopting a final assessment resolution. A
15 petition submitted under subsection (a) of this section may be withdrawn if notice of petition
16 withdrawal is given in writing to the council signed by at least a majority of the owners who
17 signed the petition submitted under subsection (a) of this section representing at least fifty percent
18 (50%) of the assessed value of all real property to be assessed. The council may not adopt a final
19 assessment resolution if it receives a timely notice of petition withdrawal.

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

24 **"§ 160A-239.4. ~~Financing~~ Funding a project for which an assessment is imposed.**

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

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

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

35 (3) General obligation bonds issued under the Local Government Bond Act, Article
36 4 of Chapter 159 of the General Statutes.

37 (4) General revenues.

38 (5) Funds from private parties.

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

44 (c) Reimbursement From Assessments. – If a city council contracts with a private party to
45 construct a project on behalf of the city as provided in G.S. 160A-239.7, the city council may
46 agree to impose one or more assessments pursuant to this Article in order to reimburse the private
47 party for costs incurred by the private party related to the project, including an inflationary factor
48 applicable during any period of abeyance provided under G.S. 160A-239.5. The city council shall
49 not be obligated to reimburse a private party any amount in excess of assessment revenues actually
50 collected less the city's related administrative costs.

51 **"§ 160A-239.5. Payment of assessments by installments.**

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

4 (b) The city council may provide for the abeyance of assessments as authorized in Article
5 10 of this Chapter. The abeyance may apply to any assessed property. Annual installments shall be
6 deferred until the period of abeyance ends. The assessment shall be payable on the first annual
7 installment payment date after the period of abeyance ends.

8 ...

9 **"§ 160A-239.7. Project implementation.**

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

29 **SECTION 3.** Section 1 of this act is effective when it becomes law and applies to
30 wages earned after that date and after notice has been given to employees in accordance with
31 G.S. 95-25.13(3). Section 2 of this act becomes effective June 30, 2016, and applies to
32 assessments made on or after that date. The remainder of this act is effective when it becomes law.