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SENATE BILL DRS25018-LMf-30A* (02/14)

Short Title: Special Assessments/Critical Infrastructure. (Public)

Sponsors: Senators Lee, Rabon, and Tucker (Primary Sponsors).

Referred to:

A BILL TO BE ENTITLED

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.

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 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



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1 and expenses for the administration of the assessments. A preliminary assessment roll may be
2 prepared before the costs are incurred based on the estimated cost of the project.

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

12 **"§ 153A-210.3. Petition required.**

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

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

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

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

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

48 (b) Petition Withdrawn. – The board of commissioners must wait at least 10 days after the
49 public hearing on the preliminary assessment resolution before adopting a final assessment
50 resolution. A petition submitted under subsection (a) of this section may be withdrawn if notice of
51 petition withdrawal is given in writing to the board signed by at least a majority of the owners who

1 signed the petition submitted under subsection (a) of this section representing at least fifty percent
2 (50%) of the assessed value of all real property to be assessed. The board may not adopt a final
3 assessment resolution if it receives a timely notice of petition withdrawal.

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

8 **"§ 153A-210.4. ~~Financing~~ Funding a project for which an assessment is imposed.**

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

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

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

20 (3) General obligation bonds issued under the Local Government Bond Act, Article
21 4 of Chapter 159 of the General Statutes.

22 (4) General revenues.

23 (5) Funds from private parties.

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

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

37 **"§ 153A-210.5. Payment of assessments by installments.**

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

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

45 ...

46 **"§ 153A-210.7. Project implementation.**

47 A county may act directly, through one or more contracts with other public agencies, through
48 one or more contracts with private agencies, or by any combination thereof to implement the
49 project ~~financed~~ funded in whole or in part by the imposition of an assessment imposed under this
50 Article. Initial funding for the project may be provided by the public or private agencies. If no
51 more than twenty-five percent (25%) of the estimated cost of a project is to be funded from the

1 proceeds of general obligation bonds or general revenue, excluding assessments imposed pursuant
2 to this Article, a private agency that enters into a contract with a county for the implementation of
3 all or part of the project is subject to the provisions of Article 8 of Chapter 143 of the General
4 Statutes only to the extent specified in the contract. In the event any contract relating to
5 construction a substantial portion of which is to be performed on publicly owned property is
6 excluded from the provisions of Article 8 of Chapter 143, the county or any trustee or fiduciary
7 responsible for disbursing funds shall obtain certification acceptable to the county in the amount
8 due for work done or materials supplied for which payment will be paid from such disbursement.
9 If the county or any trustee or fiduciary responsible for disbursing funds receives notice of a claim
10 from any person who would be entitled to a mechanic's or materialman's lien but for the fact that
11 the claim relates to work performed on or supplies provided to publicly owned property, then
12 either no disbursement of funds may be made until the county, trustee, or fiduciary receives
13 satisfactory proof of resolution of the claim or funds in the amount of the claim shall be set aside
14 for payment thereof upon resolution of the claim."

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

16 "Article 10A.

17 "Special Assessments for Critical Infrastructure Needs.

18 **"§ 160A-239.1. Purpose; sunset.**

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

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

30 **"§ 160A-239.2. Assessments.**

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

37 (b) Costs. – The city council must determine a project's total estimated ~~cost~~ cost and the
38 amount of costs to be paid from assessments. In addition to the costs allowed under ~~G.S.~~
39 ~~153A-193,~~ G.S. 160A-226, the costs may include any expenses allowed under ~~G.S.~~
40 ~~159-84.~~ G.S. 159-84 and expenses for the administration of the assessments. A preliminary
41 assessment roll may be prepared before the costs are incurred based on the estimated cost of the
42 project.

43 (c) Method. – The city council must establish an assessment method that ~~will most~~ will, in
44 the city council's judgment, accurately assess each lot or parcel of land subject to the assessments
45 according to the benefits conferred upon it by the project for which the assessment is made. In
46 addition to other bases upon which assessments may be made under G.S. 160A-218, the council
47 may select any other method designed to allocate the costs in accordance with benefits conferred.
48 In doing so, the council may provide that the benefits conferred are measured on the basis of use
49 being made on the lot or parcel of land and provide for adjustments of assessments upon a change
50 in use, provided that the total amount of all assessments is sufficient to pay the portion of the costs
51 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) A statement as to the proposed terms of payment of the assessment.
- (4) 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 (3) 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

1 this Article from one or more ~~financing~~-funding sources listed in this subsection. The assessment
2 resolution must include the estimated cost of the project to be funded from assessments and the
3 amount of the cost estimated to be derived from ~~the each~~ respective ~~financing~~-funding source.

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

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

8 (3) General obligation bonds issued under the Local Government Bond Act, Article
9 4 of Chapter 159 of the General Statutes.

10 (4) General revenues.

11 (5) Funds from private parties.

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

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

24 **"§ 160A-239.5. Payment of assessments by installments.**

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

28 (b) The city council may provide for the abeyance of assessments as authorized in Article
29 10 of this Chapter. The abeyance may apply to any assessed property. Annual installments shall be
30 deferred until the period of abeyance ends. The assessment shall be payable on the first annual
31 installment payment date after the period of abeyance ends.

32 ...

33 **"§ 160A-239.7. Project implementation.**

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

1 of resolution of the claim or funds in the amount of the claim shall be set aside for payment
2 thereof upon resolution of the claim."

3 **SECTION 3.** This act becomes effective June 30, 2017, and applies to assessments
4 made on or after that date.