

AN OVERVIEW OF SPECIAL ASSESSMENT BOND AUTHORITY IN NORTH CAROLINA

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During the 2008 and 2009 legislative sessions, the General Assembly bestowed new special assessment authority—entitled special assessments for critical infrastructure needs—on counties and municipalities to fund a wide range of capital projects.¹ It also authorized local governments to pledge the new assessments as security for revenue bonds or as additional security for project development financing debt instruments. The new special assessment authority became effective on August 3, 2008, and currently sunsets on July 1, 2013.

The following question-and-answer series defines special assessments generally, compares the new special assessment authority to local governments' existing special assessment authority, details the contours of the new special assessment authority and describes the procedures for imposing the assessments. It also explains how special assessments may be pledged as security for certain types of debt financing.

1. WHAT IS A SPECIAL ASSESSMENT?

- A special assessment is levied against property to pay for public improvements that benefit that property. Like a user charge and unlike a property tax, a special assessment is levied in some proportion to the benefit received by the assessed property. Unlike a user charge, a special assessment is levied against property rather than persons and typically is used to fund public improvements rather than to fund services.

2. WHAT IS A SPECIAL ASSESSMENT IMPROVEMENT DISTRICT (SAID)?

- A SAID is the geographic area in which the market value of real estate is enhanced due to a public improvement and in which a special assessment charge is apportioned among the real property parcels within the area to recover some or all of the costs of the public improvement.

Although “SAID” is a common term of art in the development finance community, the North Carolina authorizing legislation for special assessments does not specifically reference SAIDs. Instead, it authorizes local governments to levy special assessments on *benefitted property* within a geographic area to fund certain public improvements.

¹ See S.L. 2008-165 (HB 1770); S.L. 2009-525 (SB 97).

3. ARE LOCAL GOVERNMENTS IN NORTH CAROLINA AUTHORIZED TO IMPOSE SPECIAL ASSESSMENTS?

- Yes. Both counties and municipalities are authorized to impose special assessments on real property within a defined geographic area to fund certain specified projects that benefit the real property being assessed.

As of August 2008, there are two different statutory methods to impose special assessments in North Carolina. The authorizing statutes for the first special assessment method (traditional special assessments) are G.S. 153A, Art. 9 (counties) and G.S. 160A, Art. 10 (municipalities). The authorizing statutes for the second special assessment method (new special assessments) are G.S. 153A, Art. 9A (counties) and G.S. 160A, Art. 10A (municipalities).

Question 4 of this series briefly summarizes the traditional special assessment method to establish a benchmark. The remainder of the document focuses on the new special assessment authority.

4. HOW DOES THE TRADITIONAL SPECIAL ASSESSMENT METHOD WORK?

- The traditional special assessment method, authorized by G.S. 153A, Art. 9, allows counties to impose special assessments to fund the following public improvements²—
 - constructing, reconstructing, extending, or otherwise building or improving water systems;
 - constructing, reconstructing, extending, or otherwise building or improving sewage collection and disposal systems of all types, including septic tank systems or other on-site collection or disposal facilities or systems;
 - acquiring, constructing, reconstructing, extending, renovating, enlarging, maintaining, operating, or otherwise building or improving
 - beach erosion control or flood and hurricane protection works; and
 - watershed improvement projects, drainage projects and water resources development projects;
 - constructing, reconstructing, paving, widening, installing curbs and gutters, and otherwise building and improving streets, as provided in G.S. 153A-205 (local costs

² Although most special assessments are imposed for capital projects, counties also may impose them on benefiting properties for the annual maintenance and operating costs for beach erosion control or flood or hurricane protection works and street lights.

of improvements made by the Department of Transportation to subdivision and residential streets outside municipalities); and

- providing street lights and street lighting in a residential subdivision.

Likewise, the traditional special assessment method, authorized by G.S. 160A, Art. 10, allows municipalities to impose special assessments to finance the following public improvements—

- constructing, reconstructing, paving, widening, installing curbs and gutters, and otherwise building and improving streets;
- constructing, reconstructing, paving, widening, and otherwise building or improving sidewalks in any public street;
- constructing, reconstructing, extending, and otherwise building or improving water systems;
- constructing, reconstructing, extending, or otherwise building or improving sewage collection and disposal systems of all types, including septic tank systems or other on-site collection or disposal facilities or systems;
- constructing, reconstructing, extending, and otherwise building or improving storm sewer and drainage systems; and
- acquiring, constructing, reconstructing, extending, or otherwise building or improving beach erosion control or flood and hurricane protection works.

Under the traditional special assessment method, the amount of each assessment must be based on one or more statutory bases. The most common basis of assessment is front footage: each property is assessed on a uniform rate per foot of property that abuts on the project. Other authorized bases include the size of the area benefited and the value added to the property because of the improvement.³ The governing board may impose the special

³ Counties are authorized to make special assessments for water or sewer projects on one or more of the following bases: the frontage abutting on the project, at an equal rate per foot of frontage; the street frontage of the lots served, or subject to being served, by the project, at an equal rate per foot of frontage; the area of land served, or subject to being served, by the project, at an equal rate per unit of area; the valuation of land served, or subject to being served, by the project, being the value of the land without improvements as shown on the tax records of the county, at an equal rate per dollar of valuation; or the number of lots served, or subject to being served, by the project when the project involves extension of an existing system to a residential or commercial subdivision, at an equal rate per lot. G.S. 153A-186(a). Counties otherwise are authorized to make special assessments on one or more of the following bases: the frontage abutting on the project, at an equal rate per foot of frontage; the frontage abutting on a beach or shoreline or watercourse protected or benefited by the project, at an equal rate per foot of frontage; the area of land benefited by the project, at an equal rate per unit of area; or the valuation of land benefited by the project, being the value of the land without improvements as shown on the tax records of the county, at an equal rate per dollar of valuation. G.S. 153A-186(b).

assessments without a petition except for street and sidewalk improvements.⁴ The assessments may be paid (and often are) in up to ten annual installments along with interest on the amount outstanding in any year. Assessment revenue, including the interest portion, generally is not earmarked and may be used for any public purpose.

Local improvements often are financed from special-assessment revolving funds; assessment revenues generated from finished projects are used to finance new improvements. The special assessments may not be imposed until the improvement being financed has been completed. Therefore, the county or municipality must advance its own funds to construct the improvement.

Finally, under the traditional special assessment method there is no statutory authority for using the assessments directly to borrow money to fund the costs of the projects. That is, with one exception, the special assessments may not be pledged as security for debt financing. A local unit may provide additional security for project development bonds (commonly known as tax increment bonds) by pledging or granting a security interest in the special assessment revenue generated under the traditional special assessment method on property located within a project development financing district.⁵

5. HOW DOES THE NEW SPECIAL ASSESSMENT METHOD DIFFER FROM THE TRADITIONAL SPECIAL ASSESSMENT METHOD?

- The new special assessment method, authorized by G.S. 153A, Art. 9A (counties) and G.S. 160A, Art. 10A (municipalities), differs from the traditional special assessment method (summarized in Question 4 above) in several respects:

Municipalities are authorized to make special assessments for beach erosion control or flood and hurricane protection works on one or more of the following bases: the frontage abutting on the project, at an equal rate per foot of frontage; the frontage abutting on a beach or shoreline protected or benefited by the project, at an equal rate per foot of frontage; the area of land benefited by the project, at an equal rate per unit of area; or the valuation of land benefited by the project, being the value of the land without improvements as shown on the tax records of the county, at an equal rate per dollar of valuation. G.S. 160A-238. Municipalities otherwise are authorized to make special assessments on one or more of the following bases: the frontage abutting on the project, at an equal rate per foot of frontage, the area of land served, or subject to being served, by the project, at an equal rate per unit of area, the value added to the land served by the project, or subject to being served by it, being the difference between the appraised value of the land without improvements as shown on the tax records of the county, and the appraised value of the land with improvements according to the appraisal standards and rules adopted by the county at its last revaluation, at an equal rate per dollar of value added; or the number of lots served, or subject to being served, where the project involves extension of an existing system to a residential or commercial subdivision, at an equal rate per lot. G.S. 160A-218.

⁴ For such improvements a county must first receive a petition requesting the assessments from 75 percent of the property owners to be assessed, and those who petition must own at least 75 percent of the frontage on the street. In a municipality the comparable percentages are a majority of the owners and a majority of the frontage.

⁵ G.S. 159-111.

- It authorizes counties and municipalities to impose special assessments to finance a different, although somewhat overlapping, set of purposes than the traditional special assessment method.⁶
- It requires that counties and municipalities receive a petition for any of the authorized projects to be financed by assessments signed by at least a majority of the owners of real property to be assessed and who represent at least 66 percent of the assessed value of all real property to be assessed.
- It authorizes counties and municipalities that impose special assessments to borrow money to front the costs of projects for which assessments may be imposed according to one or more of the following methods: revenue bonds, project development financing debt instruments and general obligation bonds.
- It authorizes counties and municipalities to pledge the special assessment revenue as security for revenue bonds used to fund the projects for which the assessments are imposed. And it allows local governments to include in the cost of assessments any expenses allowed under the State and Local Government Revenue Bond Act.
- It allows counties and municipalities to impose the special assessments before the projects being financed are complete. The assessments are based on estimated costs.
- It does not expressly limit the bases upon which the assessments may be made. Instead, it leaves the bases of the assessments within the discretion of the governing board, subject only to the requirement that the assessments bear some relationship to the amount of benefit that accrues to the assessed property.
- It allows a governing board to authorize assessments to be paid in up to 30 annual installments, with interest.
- It expressly authorizes counties and municipalities to contract with private agencies to implement a project financed by the imposition of special assessments. And, if no more than 25 percent of the estimated cost of a project is to be funded from the proceeds of general obligation bonds or general revenues it authorizes the local government to exempt a private agency from the provisions of Article 8 of Chapter 143, with certain restrictions.
- It expires on July 1, 2013. (The expiration date will not affect the validity of assessments or bonds issued or authorized before the effective date of the expiration.)

⁶ See Question 6 for a comparison of the authorized projects under the traditional and new special assessment authorities.

6. FOR WHAT PURPOSES MAY A LOCAL GOVERNMENT IMPOSE THE NEW SPECIAL ASSESSMENTS?

- The new special assessment authority may be used by counties and municipalities to fund all or a portion of the capital costs for which project development financing debt instruments may be used 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.

The following chart sets forth the specific authorized purposes for which the new special assessments may be imposed and compares them to the authorized purposes under the traditional special assessment method. The left-hand column lists all the potential capital projects that may be funded through special assessments. The three right-hand columns indicate whether a particular project may be funded by counties under the traditional special assessment authority, municipalities under the traditional assessment authority, or counties and municipalities under the new special assessment authority, respectively.

| Authorized Projects | Traditional Special Assessment Authority Counties | Traditional Special Assessment Authority Municipalities | New Special Assessment Authority Counties & Municipalities |
|--|--|--|---|
| Capital costs of providing airport facilities | | | X |
| Capital costs of providing auditoriums, coliseums, arenas, stadiums, civic centers, convention centers, and facilities for exhibitions, athletic and cultural events, shows, and public gatherings | | | X |
| Capital costs of providing hospital facilities, facilities for the provision of public health services, and facilities for care of the mentally retarded | | | X |
| Capital costs of art galleries, museums, art centers, and historic properties | | | X |
| Capital costs of on- and off-street parking and parking facilities, including meters, buildings, garages, driveways, and approaches open to public use | | | X |
| Capital costs of providing certain parks and recreation facilities, including land, athletic fields, parks, playgrounds, recreation centers, shelters, permanent and temporary stands, and lighting ⁷ | | | X |

⁷ G.S. 159-103(a), as amended by S.L. 2007-395 (SB 1196), specifically exempts certain types of parks and recreation facilities—stadiums, arenas, golf courses, swimming pools, wading pools, and marinas.

| Authorized Projects | Traditional Special Assessment Authority Counties | Traditional Special Assessment Authority Municipalities | New Special Assessment Authority Counties & Municipalities |
|--|--|--|---|
| Capital costs of redevelopment through acquisition and improvement of land for assisting local redevelopment commissions | | | x |
| Capital costs of sanitary sewer systems (including septic systems) | x | x | x |
| Capital costs of storm sewers and flood control facilities | | x | x |
| Capital costs of water systems, including facilities for supply, storage, treatment, and distribution of water | x | x | x |
| Capital costs of public transportation facilities, including equipment, buses, railways, ferries, and garages | | | x |
| Capital costs of industrial parks, including land and shell buildings, in order to provide employment opportunities for citizens of a county or city | | | x |
| Capital costs of property to preserve a railroad corridor | | | x |
| Capital costs of providing community colleges facilities | | | x |
| Capital costs of providing school facilities | | | x |
| Capital costs of improvements to subdivision and residential streets, in accordance with G.S. 153A-205 | x | | x |
| To finance housing projects for persons of low or moderate income | | | x |
| Capital costs of electric systems | | | x |
| Capital costs of gas systems | | | x |
| Capital costs of streets and sidewalks (including traffic controls and lighting) | x | x | x |
| Capital costs of improving existing systems or facilities for transmission or distribution of telephone services | | | x |
| Capital costs of housing projects for low- or moderate-income persons | | | x |
| <i>In a municipal service district only, to provide or maintain beach erosion control and flood and hurricane protection, downtown</i> | | | x |

| Authorized Projects | Traditional Special Assessment Authority Counties | Traditional Special Assessment Authority Municipalities | New Special Assessment Authority Counties & Municipalities |
|--|---|---|--|
| revitalization projects, urban area revitalization projects, drainage projects, sewage collection and disposal systems, off-street parking facilities, and watershed improvement projects | | | |
| Capital costs of beach erosion control of flood and hurricane protection works projects | x | x | |
| Capital costs of watershed improvement projects, drainage projects, and water resources development projects | x | | |
| Capital costs of providing street lights and street lighting in residential subdivisions | x | | |
| Installation of distributed generation renewable energy sources or energy efficiency improvements that are permanently fixed to residential, commercial, industrial, or other real property ⁸ | | | x |

7. WHAT COSTS MAY BE INCLUDED IN DETERMINING THE AMOUNT TO BE ASSESSED UNDER THE NEW SPECIAL ASSESSMENT METHOD?

- A local government may impose special assessments against benefitted properties to fund all or a portion of the *capital costs* of the projects listed in Question 6.

In determining the *capital costs* of the project to be assessed, the governing board may include any expenses necessary to provide sufficient moneys for the acquisition, construction, reconstruction, extension, betterment, improvement, or payment of the cost of the project, including engineering, inspection, legal and financial fees and costs, the cost of

⁸ Note that G.S. 153A-455 (counties) and G.S. 160A-459.1 (municipalities) authorize local governments to establish programs to finance the purchase and installation of distributed generation renewable energy sources or energy efficiency improvements that are permanently affixed to residential, commercial, or other real property. These statutes authorize a local government to purchase and install the renewable energy sources or energy efficiency improvements, or contract for their purchase or installation, on private property. *Renewable energy source* is defined as “a solar electric, solar thermal, wind, hydropower, geothermal, or ocean current or wave energy resource; a biomass resource, including agricultural waste, animal waste, wood waste, spent pulping liquors, combustible residues, combustible liquids, combustible gases, energy crops, or landfill methane; waste heat derived from a renewable energy resource and used to produce electricity or useful, measurable thermal energy at a retail electric customer’s facility; or hydrogen derived from a renewable energy resource.” It does not include peat, a fossil fuel, or nuclear energy resource. *Energy efficiency improvements* are not statutorily defined.

rights-of-way, working capital, the amount of interest paid during construction, the interest on any bonds or notes issued in anticipation a revenue bond issuance during construction, establishment of debt service reserves, the cost of publishing and mailing notices and resolutions, and all other incidental and necessary costs.

8. WHAT IS THE STATUTORY PROCEDURE FOR EMPLOYING THE NEW SPECIAL ASSESSMENT METHOD?

Step 1

- **The local government receives a petition from the majority of owners of the real property to be assessed who represent at least 66 percent of the assessed value of all the real property to be assessed.**
 - The petition must include:
 - a statement of the project proposed to be financed by the assessment;
 - an estimate of the cost of the project; and
 - an estimate of the portion of the cost of the project to be assessed.

Step 2

- **The local government adopts the preliminary assessment resolution.⁹**
 - The resolution must contain:
 - a statement of the intent to undertake the project;
 - a general description of the nature and location of the project;
 - a statement of the estimated cost of the project;
 - a statement of the amount of the estimated cost of the project the local government expects to derive from each respective financing source (the potential financing sources are revenue bonds; project development financing debt instruments, general obligation bonds, and general revenues);
 - a statement as to the proposed basis for making assessments, which includes a general description of the boundaries of the area benefitted if the basis of assessment is either area or valuation;
 - a statement as to the percentage of the cost of the work that is to be specially assessed;

⁹ Note that if the local government proposes to make improvements that would benefit lands owned by the State, the local unit must request the Council of State's consent to impose the special assessments against the property.

- a statement as to which, if any, assessments will be held in abeyance and for how long;
 - a statement as to the proposed terms of payment of the assessments; and
 - an order setting a time and place for a public hearing on all matters covered by the preliminary assessment resolution.
- *Note that G.S. 153A-192 (counties) and G.S. 160A-225 (municipalities) specifically state that the percentage of the cost of the project to be funded by special assessments may not differ from that proposed in the preliminary assessment resolution and that the scope of the project authorized may not be greater than the project described in the preliminary assessment resolution. Based on an interpretation of the special assessment statutory scheme as a whole, the local unit likely also is prohibited from altering the terms of the payment of the assessments from those stated in the final assessment resolution. It is an open question, however, whether the local unit may change the basis of assessment after adoption of the assessment resolution.*

Step 3

- **The local government publishes notice that the preliminary assessment resolution has been adopted.**¹⁰
 - The notice must describe the nature and location of the proposed project and announce the time and place for a public hearing on the resolution.
 - A copy of the preliminary assessment resolution must be mailed by first-class mail to each owner of property subject to assessment if the project is undertaken, at least 10 days before the public hearing.

Step 4

- **The local government determines the estimated cost of the project.**¹¹
 - The governing board may include any expenses necessary to provide sufficient moneys for the acquisition, construction, reconstruction, extension, betterment, improvement, or payment of the cost of the project, including engineering, inspection, legal and financial fees and costs, the cost of rights-of-way, working capital, the

¹⁰ Any claim that a local government did not comply with the statutory requirements for adopting special assessments must be asserted in an action or proceeding that is commenced within 90 days after the publication of the notice of adoption of the preliminary assessment resolution.

¹¹ G.S. 153A-210.4 (counties) and G.S. 160A-239.4 (municipalities) state that the “assessment resolution must include the estimated cost of the project and the amount of the cost to be derived from each respective financing source.” It is unclear whether this information must be included in the preliminary or final assessment resolutions (or both). It may be prudent for a local government to determine estimated costs before adopting the preliminary assessment resolution and include this information in that document, as well as the final assessment resolution.

amount of interest paid during construction, the interest on any bonds or notes issued in anticipation a revenue bond issuance during construction, establishment of debt service reserves, the cost of publishing and mailing notices and resolutions, and all other incidental and necessary costs.

Step 5

- **The local government holds a public hearing.**
 - The public hearing must be held between 3 and 10 weeks from the date the preliminary assessment resolution is adopted.

Step 6

- **The local government adopts the final assessment resolution.**
 - The local government must wait at least 10 days after the public hearing to adopt the final assessment resolution.
 - If the petition is withdrawn within the 10 day period, the local government may not proceed.
 - The petition may be withdrawn if notice is given to the governing board of the local unit signed by at least a majority of the owners who signed the original petition representing at least 50 percent of the value of the property to be assessed.
 - The final assessment resolution may direct that the entire project be undertaken or that only portions of the project be undertaken.
 - The final assessment resolution must:
 - describe the project in general terms;
 - state the estimated cost of the project;
 - state the amount of the estimated cost of the project that will be derived from one or more of the following financing sources—revenue bonds, project development financing debt instruments, general obligation bonds, and general revenues;
 - describe the basis on which the assessments will be levied, together with a general description of the boundaries of the area benefitted if the basis of assessment is either area or value added;
 - specify the percentage of the cost of the project that will be funded by special assessments; and

- state the terms of the payment, including any conditions under which assessments will be held in abeyance.

Step 7

- **The local government prepares a preliminary assessment roll.**
 - The preliminary assessment roll must contain:
 - a brief description of each lot, parcel, or tract of land assessed;
 - the basis for the assessment;
 - the amount assessed against each lot, parcel, or tract of land;
 - the terms of payment, including any authorized schedule of discounts;
 - the name of the owner of each parcel of land, as ascertained by the county tax records.¹²

Step 8

- **The local government files the preliminary assessment roll in the county or municipal clerk's office for public inspection, publishes notice of the preliminary assessment roll, and distributes the notice by first-class mail to each property owner listed on the preliminary assessment roll.**
 - The notice must describe the project in general terms, state that the preliminary assessment roll is available in the clerk's office for inspection, and state the time and place for the public hearing on the preliminary assessment roll.
 - The notice must be published and distributed at least 10 days before the public hearing.

Step 9

- **The local government holds a public hearing on the assessment roll.**
 - All interested persons must be given an opportunity to be heard.
 - Either at or after the public hearing the governing board may confirm, annul, or modify the assessments in whole or in part. The board may place on the roll any property that is omitted from the preliminary assessment roll.

¹² A map of the project with the required information is sufficient to satisfy the statutory requirements.

Step 10

- **The governing board confirms the assessment roll.**
 - From the time of confirmation, the assessments are a lien on the property assessed. The lien is of the same nature and to the same extent as a lien for local property taxes. The lien is inferior to all prior and subsequent liens for state, local, and federal taxes, and superior to all other liens.
 - A copy of the assessment roll is delivered to the local government tax collector for collection in the same manner as property taxes.
 - Property owners have 10 days from the date the assessment roll is confirmed to file a notice of appeal with the General Court of Justice. The property owner must file a statement of the facts upon which the appeal is based with the county or municipal clerk within 20 days of the confirmation.

Step 11

- **If a local government chooses to pay for all or a portion of the costs of a project for which special assessments are imposed with revenue bonds, project development financing debt instruments, or general obligation bonds, it will need to follow the applicable statutory procedures for issuing the debt.**
 - Note that a local government will need to proceed with at least some of the procedural steps for issuing debt concurrently with the procedures outlined above for imposing the special assessments.

9. MAY A GOVERNING BOARD AUTHORIZE THE IMPOSITION OF SPECIAL ASSESSMENTS UNDER THE NEW SPECIAL ASSESSMENT METHOD ON ITS OWN INITIATIVE?

- No. The new special assessment authority requires that the governing board of a local government receive a petition for the project to be financed, at least in part, by assessments signed by at least a majority of the owners of the real property to be assessed and who represent at least 66 percent of the assessed value of all real property to be assessed before special assessments are imposed.

The petition must include:

- a statement of the project;
- an estimate of the total cost of the project; and
- an estimate of the portion of the cost of the project to be assessed.

The petition may be withdrawn up to 10 days after the public hearing held on the preliminary assessment resolution. To withdraw a petition, the governing board must receive notice of the petition withdrawal in writing, signed by at least a majority of the owners who signed the original petition and who represent at least 50 percent of the assessed values of all real property to be assessed.

10. WHAT IS THE METHOD BY WHICH THE SPECIAL ASSESSMENTS ARE ALLOCATED AMONG THE BENEFITTED PROPERTY PARCELS OR TRACTS?

- The governing board of the local unit must select an assessment method that most accurately allocates the costs among each lot or parcel of land according to the benefits conferred upon it by the project for which the assessments are imposed. It is not limited to the statutory bases of assessment prescribed under the traditional special assessment method.¹³

11. WHEN MUST THE SPECIAL ASSESSMENTS BE PAID?

- The special assessments must be paid within 30 days of the publication of notice of the confirmation of the assessment roll, unless the governing board of the local unit has authorized payment in installments. Under the new special assessment authority, the local unit may authorize payment of the special assessments in up to 30 yearly installments, with annual interest not to exceed 8 percent. The rate of interest must be set in the assessment resolution.

If the governing board authorizes payment in installments, each yearly installment is due on the date that property taxes are due.

12. MAY A LOCAL GOVERNMENT AUTHORIZE DISCOUNTS FOR PREPAYMENT OF THE SPECIAL ASSESSMENTS?

- Yes. The governing board may establish a schedule of discounts to be applied to assessments that are paid within 30 days from the date the notice is published of confirmation of the assessment roll. The maximum allowable discount is 30 percent.

Note that the schedule of discounts may be authorized even if it was not included among the terms of payment specified in the preliminary or final assessment resolutions.

13. IS A SPECIAL ASSESSMENT A LIEN ON THE PROPERTY BEING ASSESSED?

- Yes. A special assessment is a lien on each parcel real property that is assessed from the date that the assessment roll is confirmed. The lien is inferior to all prior and subsequent liens for state, local, and federal taxes, and superior to all other liens.

¹³ See, *supra*, note 2 for list of allowable statutory bases of assessment under the traditional special assessment authority.

Assessment liens may be foreclosed in the same manner as the foreclosure of property tax liens. The special assessment lien is inferior to all prior and subsequent liens for state, local, and federal taxes, and superior to all other liens. Foreclosure sales may begin 30 days after the due date for the special assessment payment.

If the governing board of the local unit authorizes payment of the assessments in installments, if any installment is not paid on or before the due date, all of the installments remaining unpaid immediately become due and payable, unless the governing board waives the acceleration.

14. ONCE THE FINAL ASSESSMENT ROLL IS ADOPTED, MAY THE LOCAL UNIT SUBSEQUENTLY REVISE IT TO REFLECT ANY COST INCREASES ASSOCIATED WITH THE PROJECT?

- No. Once the final assessment roll is confirmed, the assessment is fixed. The governing board of the local unit may set aside the whole of any special assessment and make a reassessment only when in its judgment any irregularity, omission, error or lack of jurisdiction in any of the proceedings has occurred.

15. MUST A LOCAL GOVERNMENT FRONT THE COST OF A PROJECT FOR WHICH SPECIAL ASSESSMENTS ARE IMPOSED?

- Probably. Under the new special assessment authority, a local government may impose the special assessments on benefitted property before the project is complete. The assessments may be based on the estimated cost of the project, as determined by the governing board. And, a local unit may require that the assessments be paid within 30 days of confirmation of the assessment roll. Thus, at least theoretically, a local government does not have to front the costs of the project with other revenue. As a practical matter, however, most local units will allow the assessments to be paid in installments over time (the statute allows up to 30 yearly installments) and will front the costs of the project from other revenue sources.

A local government may use general fund revenues or may issue revenue bonds, general obligation bonds, or project development finance debt instruments to front the costs of the project.

16. MAY A LOCAL GOVERNMENT ISSUE DEBT TO FUND THE PROJECT FOR WHICH THE NEW SPECIAL ASSESSMENTS ARE IMPOSED?

- Yes. A local government may issue debt to provide for the payment of the cost of a project for which assessments are imposed according to one or more of the following methods:
 - Revenue bonds (issued under Article 5 of Chapter 159 of the General Statutes)
 - The special assessment revenue may be pledged as security for the revenue bonds and used to make debt service payments.

- Project development financing debt instruments (issued under Article 6 of Chapter 159 of the General Statutes);
 - The special assessment revenue may be pledged as additional security for the project development financing debt instruments. The revenue likely will not be used to make debt service payments unless the tax increment revenue is insufficient to satisfy the amount owed.
- General obligation bonds (issued under Article 4 of Chapter 159 of the General Statutes).
 - The special assessments are not pledged as security for general obligation bonds. The security is a pledge of the unlimited taxing power of the issuing unit. The special assessment revenue may be used to make debt service payments, though.

17. IS A LOCAL GOVERNMENT REQUIRED TO ISSUE DEBT TO FUND THE PROJECT FOR WHICH THE NEW SPECIAL ASSESSMENTS ARE IMPOSED?

- No. A local unit may provide for the payment of the cost of a project for which assessments are imposed from one or more of the following revenue sources:
 - General revenues (local government revenues that are not restricted to a different purpose);
 - Revenue bonds (issued under Article 5 of Chapter 159 of the General Statutes);
 - Project development financing debt instruments (issued under Article 6 of Chapter 159 of the General Statutes); and
 - General obligation bonds (issued under Article 4 of Chapter 159 of the General Statutes).

18. ONCE IT IMPOSES SPECIAL ASSESSMENTS TO FINANCE AN AUTHORIZED PROJECT, IS A LOCAL GOVERNMENT OBLIGATED TO COLLECT THE SPECIAL ASSESSMENT REVENUE FROM THE ASSESSED PROPERTY OWNERS?

- Yes. The local unit must collect the special assessments from the property owners of the properties that are assessed. The governing board may allow property owners to pay the special assessments in up to 30 yearly installments, with up to 8 percent interest per year. The governing board must designate the payment terms in its assessment resolution. If the governing board does not authorize payment over time, payment is due in full within 30 days after publication of the notice that the assessment roll has been confirmed.

Once the assessment roll is confirmed the assessment is a lien on each parcel of real property that is assessed. Assessment liens may be foreclosed in the same manner as the foreclosure of

property tax liens. The special assessment lien is inferior to all prior and subsequent liens for state, local, and federal taxes, and superior to all other liens. Foreclosure sales may begin 30 days after the due date for the special assessment payment.

Note that if a local government issues revenue bonds to provide for the payment of all or a portion of the cost of a project for which an assessment is imposed, the governing board must covenant to enforce the payment of the assessments.

19. WHAT IF ONE OR MORE PROPERTY OWNERS IS EITHER UNABLE OR REFUSES TO PAY THE SPECIAL ASSESSMENTS?

- Once the assessment roll is confirmed, the assessment is a lien on each parcel of real property that is assessed. If a property owner does not pay the assessment (or assessment installment¹⁴) a local government may foreclose on the real property that is assessed. Assessment liens may be foreclosed in the same manner as the foreclosure of property tax liens. The special assessment lien is inferior to all prior and subsequent liens for state, local, and federal taxes, and superior to all other liens. Foreclosure sales may begin 30 days after the due date for the special assessment payment.

Note that if a local government issues revenue bonds to provide for the payment of all or a portion of the cost of a project for which an assessment is imposed, the governing board must covenant to enforce the payment of the assessments.

20. IF A LOCAL GOVERNMENT ISSUES *REVENUE BONDS* TO FUND A PROJECT FOR WHICH THE NEW SPECIAL ASSESSMENTS ARE IMPOSED AND THE SPECIAL ASSESSMENT REVENUE IS INSUFFICIENT TO MEET THE DEBT SERVICE OBLIGATIONS, IS THE LOCAL GOVERNMENT LEGALLY OBLIGATED TO USE OTHER REVENUE SOURCES TO MAKE THE DEBT PAYMENTS?

- No, if the local government only pledges the special assessment revenue as security for the bonds. The security for a debt is defined by reference to the contractual rights of the lender—what the lender can require the borrowing government to do or to give up should it fail to repay the loan. If the local government only pledges the special assessment revenue as security for the revenue bonds and the special assessment revenue is insufficient to meet the debt service payments, the lender may not force the local government to repay the loan from any other source of revenue. In fact, state law prohibits the payment of the principal of and interest on a revenue bond from any revenue source except those that are explicitly pledged to its payment.¹⁵

¹⁴ If the governing board of the local unit authorizes payment of the assessments in installments, if any installment is not paid on or before the due date, all of the installments remaining unpaid immediately become due and payable, unless the governing board waives the acceleration.

¹⁵ See G.S. 159-94.

Note that because the new special assessment legislation authorizes counties and municipalities to issue revenue bonds under Article 5 of Chapter 159 of the General Statutes to finance the project for which an assessment is imposed, the local unit also may pledge as additional security a security interest in the real property financed by the assessment and any user fee revenue generated by the asset. If it pledges this additional security, the lender likely will be able to foreclose on the asset being financed and force the local government to use the user fee revenue generated by the asset to satisfy any outstanding debt service obligations.

16. IF A LOCAL GOVERNMENT ISSUES *GENERAL OBLIGATION BONDS* AND THE SPECIAL ASSESSMENT REVENUE IS INSUFFICIENT TO MEET THE DEBT SERVICE OBLIGATIONS, IS THE LOCAL GOVERNMENT LEGALLY OBLIGATED TO USE OTHER REVENUE SOURCES TO MAKE THE DEBT PAYMENTS?

- Yes. The security for a debt is defined by reference to the contractual rights of the lender—what the lender can require the borrowing government to do or to give up should it fail to repay the loan. The security for general obligation bonds is the unlimited taxing power of the local government. Although a local government may use special assessment revenue to meet its general obligation debt service obligations, if the revenue is insufficient a lender may force a local government to raise its property tax rate to a sufficient level to satisfy any outstanding debt service payments.

17. HOW DOES THE NEW SPECIAL ASSESSMENT AUTHORITY DIFFER FROM PROJECT DEVELOPMENT FINANCING?

- Project development financing and special assessments are two different mechanisms available to local governments to fund certain public improvement projects.¹⁶ And, in fact, both financing mechanisms may be used to fund the same project.

Project development financing is a debt financing mechanism that allows local governments to borrow money to fund certain specified public improvements with the purpose of attracting private investment in a designated area. The debt incurred by funding the public improvements is both secured by and repaid from the additional property tax revenue resulting from the area's new private development. A local government may pledge other revenue, including special assessment revenue, as additional security for a project development financing debt instrument. Thus, a local government may impose special assessments on the properties located within a project development financing district to finance a project that benefits those properties within the district.

¹⁶ Additionally, the new special assessment authority may be used to fund certain improvements to private property. Specifically, counties and municipalities may levy special assessments to finance all or a portion of the costs of installing distributed generation renewable energy sources or energy efficiency improvements that are permanently fixed to residential, commercial, industrial, or other real property.

The new special assessment authority allows local governments to levy special assessments on benefitted properties for some or all of the costs of the same sub-set of public improvements for which project development financing may be used (plus a few extras—see Question 6). The special assessments are a lien on the benefitted properties on which they are imposed. Local governments may borrow money to front the costs of the projects for which special assessments are imposed in one of three ways—issuing revenue bonds, issuing project development financing debt instruments, or issuing general obligation bonds. If a local government issues revenue bonds to fund all or a portion of the projects for which special assessments are imposed, the debt incurred by funding the public improvements may be secured by, and repaid from, the special assessment revenue.

18. **MAY A LOCAL GOVERNMENT CONTRACT WITH ANOTHER GOVERNMENT OR PRIVATE ENTITY TO IMPLEMENT A PROJECT FINANCED IN WHOLE OR IN PART BY THE IMPOSITION OF THE NEW SPECIAL ASSESSMENTS?**

- Yes. G.S. 153A-210.7 (counties) and G.S. 160A-239.7 (municipalities) expressly authorize local governments to implement the projects on their own or through one or more contracts with other public or private agencies.

If no more than 25 percent of the estimated cost of a project is funded from the proceeds of general obligation bonds or general revenue, a private agency that contracts to implement a project for the local government is only subject to the provisions of Article 8 of Chapter 143 of the General Statutes (bidding statutes) to the extent specified in the contract.

Note, however, that if a contract is excluded from the provisions of Article 8 of Chapter 143 of the General Statutes, and a substantial portion of the construction is to be performed on publicly owned property, the local government must obtain certification in the amount due for work done or materials supplied for which payment will be made. And, if a local government 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, the local government may not disburse funds until it receives satisfactory proof of resolution of the claim or the unit must set aside the amount of the claim until it is resolved. This provision appears to create an additional remedy to that afforded by Chapter 44A of the General Statutes.