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## Coates' Canons Blog: Levying Special Assessments to Fund Public Infrastructure

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As I detailed in a previous **post**, among the funding options available to local units for capital projects are special assessments. Special assessments are charges levied on a subset of real properties located within a county or municipality to fund public infrastructure projects that directly benefit those properties. As such, special assessments are a form of targeted revenue generation. State law currently allows for two types of special assessments—traditional assessments and critical infrastructure assessments.

The latter are described **here**, **here**, and **here**. As a practical matter, critical infrastructure assessments likely are limited to funding public infrastructure projects that benefit new development. They function as an economic development tool. (The authority for critical infrastructure assessments currently expires on June 30, 2015.)

Traditional assessments, in contrast, are used to fund projects that benefit either existing properties or new development. The types of projects that may be financed with traditional assessments are limited in scope, though, and the process of levying assessments can be daunting. This post lists the allowable projects, itemizes the costs that may be assessed, and provides a summary of the traditional special assessment process.

### Traditional Special Assessment Projects

Before turning to the process for levying special assessments, a unit must first determine if it has statutory authority to levy traditional assessments for the project it wants to fund.

Counties may levy special assessments to fund the *capital costs* of:

- Water systems
- Sewage systems
- Beach erosion control or flood and hurricane protection works (including costs of maintaining and operating project)
- Watershed improvement projects, drainage projects, and water resources development projects (including costs of maintaining and operating project)
- Certain subdivision and residential street construction and improvement projects
- Street lights and street lighting in a residential subdivision

See **G.S. 153A-185**; **G.S. 153A-204.1**; **G.S. 153A-205**; and **G.S. 153A-206**.

Municipalities may levy special assessments to fund the *capital costs* of:

- Streets
- Sidewalks
- Water systems
- Sewage systems
- Storm sewer and drainage systems
- Beach erosion control and flood and hurricane protection works

See **G.S. 160A-216**; **G.S. 160A-238**.

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## Costs that May Be Assessed

With the potential exception of municipal street and sidewalk projects, see **G.S. 160A-217**, a unit may impose assessments for up to 100 percent of the *capital costs* of the project. **G.S. 153A-193; G.S. 160A-226**. Capital costs may include any expenses necessary for the acquisition of real or personal property and the construction, expansion, and improvement of real property. Costs may include engineering, inspection, legal and financial fees, the costs of acquiring rights-of-way, working capital, certain costs associated with issuing debt, the costs of publishing and mailing notices and resolutions, and all other incidental and necessary expenses.

## Traditional Special Assessment Process

There is a very detailed process for levying assessments and a unit must perform all of the steps in the proper order to have a valid assessment. The following lists the steps and describes what a unit must do at each stage of the process. The process is the same for both counties and municipalities. As noted below, however, the process varies for a few categories of projects.

### Step 1: Petition (only required for certain projects)

For most of the projects for which traditional special assessments are authorized, there is no requirement that the unit first receive a petition, or other type of formal request, from the affected property owners. There is a petition requirement for a few projects, though. A county may not levy assessments for subdivision or residential street improvements unless it first receives a petition signed by at least 75 percent of the owners of property to be assessed, who also represent at least 75 percent of all the lineal feet of frontage of the lands abutting on the street or portion of the street to be improved. **G.S. 153A-206**. And street lights and street lighting projects require a petition signed by at least two-thirds of the owners of lots within the subdivision. **G.S. 153A-206**. A municipality may not levy assessments for street or sidewalk improvements unless it receives a petition signed by at least a majority of the owners of the property to be assessed, who also represent at least a majority of all the lineal feet of frontage of the lands abutting on the street or portion of the street to be improved. **G.S. 160A-217**.

### Step 2: Due Diligence

Before proceeding with the statutory process a unit will need to determine the scope of the project, identify benefited property owners, calculate estimated costs, and decide whether the property owners will bear all or a portion of the costs. This may require significant due diligence by staff members. It also may require the assistance of outside consultants. A unit needs to have some gauge of whether or not the benefited property owners support the project and the proposed funding method. Property owner support is not a legal prerequisite (except for the projects that require a petition), but as a practical matter a governing board may not want to proceed if there is significant opposition by the affected property owners. Governing board members or staff members can talk directly to the property owners (or representatives of the property owners), hold a public forum, or conduct other informal surveys. Some units require a certain percentage of property owners to submit a petition requesting the project and funding method, even if one is not legally required.

### Step 3: Preliminary Assessment Resolution\*

To start the legal process for levying assessments, the governing board must adopt a preliminary assessment resolution. **G.S. 153A-190; G.S. 160A-223**. The resolution must include the following information:

- a. **A statement of the unit's intent to undertake the project.**
- b. **A general description of the nature, location, and scope of the project.**

A unit may not increase the scope of the project once it has adopted the preliminary assessment resolution. **G.S. 153A-192; G.S. 160A-225**.

- c. **The percentage of the total cost that will be assessed.**

A unit may levy special assessments to cover up to 100 percent of a project's actual costs. (A municipality is limited

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to assessing a maximum of 50 percent of the costs of street or sidewalk projects unless the petition requesting the assessments specifies a higher percentage. **G.S. 160A-217.**) A unit may not change the percentage that will be assessed once it adopts the preliminary assessment resolution. **G.S. 153A-192; G.S. 160A-225.**

A unit need not specify the estimated cost of the project in the preliminary assessment resolution. Assessments will be based on the actual cost of the project. If, however, a unit provides a “hard” or “not-to-exceed” estimate in the preliminary assessment resolution, it is bound by that cost estimate.

**d. The proposed basis for making assessments.**

Permissible bases of assessment for most projects are frontage abutting the project, at an equal rate per foot; area of land served by the project, at an equal rate per unit; value added to the land served by the project, at an equal rate per dollar of value added; number of lots served, where the project involves extension of an existing system to a residential or commercial subdivision, at an equal rate per lot; or a combination of two or more bases. **G.S. 153A-186; G.S. 160A-218.** (The allowable bases of assessment are more limited for certain projects. See **G.S. 153A-186; G.S. 160A-238.**) The governing board must select a method that most accurately assesses each lot or parcel of land according to the benefit conferred upon it by the project.

**e. The proposed terms of payment of the assessment.**

A unit may require assessments to be paid in full within thirty days of confirmation of the assessment roll (Step 12 below). Alternatively, a unit may allow assessments to be paid in up to ten yearly installments, with interest. The board may set the interest rate up to a maximum of 8 percent per year. **G.S. 153A-199 – 200; G.S. 160A-232 – 233.**

**f. A statement as to which, if any, assessments will be held in abeyance and for how long.**

A county may allow any assessment to be held in abeyance without interest. **G.S. 153A-201.** The period of abeyance must be the same for all properties in the same class (e.g. all residential properties or all commercial properties). Assessments for water and sewer projects may be held in abeyance until the property connects to the water or sewer system or until the expiration of ten years, whichever occurs first. Assessments for beach erosion projects may only be held in abeyance for up to ten years. When the abeyance period ends, the assessment is payable in accordance with the terms set forth in the final assessment resolution.

A municipality only may hold assessments for water and sewer projects in abeyance. **G.S. 160A-237.** The governing board may specify that no assessment payment or interest is due until the property connects to the water or sewer system or until the expiration of ten years, whichever occurs first. The period of abeyance must be the same for all assessed property in the same class. When the abeyance period ends, the assessment is payable according to the terms set forth in the final assessment resolution.

**g. An order setting a time and place for a public hearing on all matters covered by the preliminary assessment resolution.**

**Step 4: Publish Notice of First Public Hearing\***

The unit must publish notice that the governing board has adopted the preliminary assessment resolution. **G.S. 153A-191; G.S. 160A-224.** 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. It must be published at least ten days before the public hearing. Also, at least ten days before the public hearing, 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.

**Step 5: Hold Public Hearing on Preliminary Assessment Resolution\***

At the public hearing all interested persons must be given an opportunity to be heard. **G.S. 153A-192; G.S. 160A-225.**

**Step 6: Final Assessment Resolution\***

The board may adopt the final assessment resolution at the conclusion of the public hearing (or at a subsequent meeting). **G.S. 153A-192; G.S. 160A-22**

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5. The final assessment resolution may direct that the entire project or only portions of the project be undertaken. The following must be included in the final assessment resolution:

- a. A general description of the project.**
- b. The basis on which the special assessments will be levied.** A unit likely may not change the basis of assessment after the final assessment resolution is adopted.
- c. The percentage of the cost to be specially assessed.** The percentage must be the same as that stated in the preliminary assessment resolution.
- d. The terms of payment (including the conditions under which assessments are to be held in abeyance, if any).** A unit may not change the terms of payment after the final assessment resolution is adopted.

**G.S. 153A-192; G.S. 160A-225.**

#### **Step 7: Complete Project**

The unit must front the costs of the project. It may use general revenues, or it may borrow money through one of its authorized debt mechanisms to finance the project. Some units establish a special assessment revolving fund whereby assessment payments from previous projects fund new projects. When the project is complete, the governing board must ascertain its total cost. **G.S. 153A-193; G.S. 160A-226.**

#### **Step 8: Prepare Preliminary Assessment Roll**

After the governing board determines the total cost of the project, the unit must prepare a preliminary assessment roll. **G.S. 153A-194; G.S. 160A-227.** The preliminary assessment roll must contain:

- a. A brief description of each lot, parcel, or tract of land assessed**
- b. The basis of assessment. (It may not differ from that indicated in the final assessment resolution.)**
- c. The amount assessed against each lot, parcel, or tract of land**
- d. The terms of payment, including any authorized discounts**
- e. The name of the owner of each parcel of land, as ascertained by the county tax records.**

#### **Step 9: Provide Notice of Preliminary Assessment Roll and Public Hearing**

The preliminary assessment roll must be filed in the county or city clerk's office and made available for public inspection. The unit must publish notice of the preliminary assessment roll at least ten days before the date set for the public hearing on the roll. The notice must provide a general description of the project; alert individuals that the preliminary assessment roll is available in the clerk's office for inspection; and state the time and place for the public hearing. At the same time, the unit must send a copy of the preliminary assessment roll by first-class mail to each owner of property subject to assessment, along with the amount of the assessment against the particular property. **G.S. 153A-194; G.S. 160A-227.**

#### **Step 10: Hold Public Hearing on Preliminary Assessment Roll**

At the public hearing all interested persons must be given an opportunity to be heard. **G.S. 153A-195; G.S. 160A-228.**

#### **Step 11: Confirm Assessment Roll**

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 omitted from the preliminary assessment roll. The clerk must enter in the board minutes the "date, hour, and minute of confirmation." **G.S. 153A-195; G.S. 160A-228.**

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. A unit is not required to file the lien for it to attach, but it is common practice for units to do so to provide notice to all potential property owners.

A property owner who is “dissatisfied with the amount of the assessment,” has ten days after the assessment roll is confirmed to file suit in the appropriate court. **G.S. 153A-197; G.S. 160A-230**. The property owner must provide the board or the clerk with a statement of facts upon which the claim is based within twenty days after the assessment roll is confirmed.

### **Step 12: Collect Assessment Payments**

The board may require that assessments be paid in full within thirty days after notice of the confirmation of the assessment roll is published. Alternatively, the board may allow payment in up to ten annual installments, with interest. **G.S. 153A-199 – 200; G.S. 160A-232 – 233**. The board may set the rate of interest up to maximum of 8 percent per year.

The board also may establish a schedule of discounts to be applied to assessments that are paid within thirty days from the date the notice is published of confirmation of the assessment roll. **G.S. 153A-193.1; G.S. 160A-226.1**. The maximum allowable discount is 30 percent.

If the board allows for installment payments, the unit may include the assessments on the yearly property tax bill or bill the assessments separately. **G.S. 153A-199; G.S. 160A-232**. If an installment payment is not made on time, all remaining installments become due immediately unless the board waives acceleration. Tax collectors are responsible for collecting special assessments “in the same manner as property taxes,” meaning that the Machinery Act remedies of levy, attachment, garnishment, and foreclosure are available to collect delinquent payments. **G.S. 153A-200; G.S. 160A-233**. A unit also may submit delinquent assessments over \$50 to the state’s debt set-off program. See **G.S. Ch. 105A**.

### **Step 13 (optional): Reassessment**

Once the final assessment roll is confirmed, the assessment is fixed. A unit’s governing board 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. **G.S. 153A-198; G.S. 160A-231**. The board does not have authority to release or alter the assessment on an individual property parcel.

*\*Note that a county need not adopt preliminary or final resolutions for assessments levied for street light or street lighting projects or for assessments levied to pay for the costs of maintaining or operating beach erosion control or flood and hurricane protection works projects or watershed improvement projects, drainage projects, and water resources development projects. The process and bases of assessment differ for these projects. See **G.S. 153A-206; G.S. 153A-204.1**.*

## **Links**

- [canons.sog.unc.edu/?p=6981](https://canons.sog.unc.edu/?p=6981)
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