
Coates' Canons Blog: Recent Amendments to Special Assessment Authority

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Special assessments are charges levied against property to pay for public infrastructure projects (and in some limited cases private infrastructure projects) that benefit that property. They represent a form of targeted revenue generation for capital outlay. The General Assembly has authorized two different (albeit closely related) statutory processes for levying special assessments in North Carolina—Special Assessments, **G.S. 160A, Art. 10** (municipalities) and **G.S. 153A, Art. 9** (counties) (hereinafter traditional assessment method); and Special Assessment Authority for Critical Infrastructure Needs, **G.S. 160A, Art. 10A** (municipalities) and **G.S. 153A, Art. 9A** (counties) (hereinafter newer assessment method). The legislature recently reauthorized and made a few changes to the newer assessment method.

Newer Assessment Method

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. See **S.L. 2008-165**; **S.L. 2009-525**. The new authority largely mimicked existing special assessment authority, but it differed in three key respects. First, the newer authority allows for assessments to fund a much broader array of capital projects. Second, the newer method requires that a unit first receive a petition signed by a certain portion of affected property owners before imposing assessments for any of the projects. (Under the traditional assessment authority, a petition is required only to fund streets and sidewalks, and for counties street lights.) Third, the new method also authorizes a local unit to pledge the new assessments as security for revenue bonds or as additional security for project development financing debt instruments.

This **local finance bulletin** details the authority to levy assessments under the new method; it lists the projects that may be funded with assessments, sets forth the procedural requirements for levying the assessments, and summarizes the major limitations. However, during the 2013 legislative session the General Assembly made a few key changes to the newer special assessment authority that are not reflected in the bulletin. See **S.L. 2013-371**. They are discussed below.

Reauthorization of Newer Assessment Method

Perhaps the most significant change the legislature made was to reauthorize the newer assessment method. The authority was scheduled to expire on July 1, 2013. The legislature extended that date by two years, to July 1, 2015. **S.L. 2013-371**.

Modifications to Newer Assessment Method

The legislature also made two substantive changes to the newer assessment method—it clarified the petition requirement and authorized adjustments to be made to assessments under certain circumstances. **S.L. 2013-371**.

Defining “Owner” for Purposes of Petition Requirement

Before levying assessments under the newer assessment method, a local government must first receive a petition signed by a majority of the owners of the real property to be assessed who also represent at least 66 percent of the value of the real property to be assessed. The amendments clarify how multiple owners of a single property parcel are counted for purposes of the petition. If a real property parcel has one owner, then that property owner gets one “vote.” In other words, that owner counts as one signator for purposes of determining whether a petition was signed by a majority of owners of the real property to be assessed. If there are multiple owners of a single real property parcel, each owner gets a “vote” equivalent to his or her proportional ownership share. The proportional ownership share is determined by dividing a

numerator of one by a denominator of the number of total number of owners of the property parcel (1 / # of property owners of single property parcel).

The amendments similarly clarify how property values are calculated for purposes of meeting the 66 percent requirement when property parcels have multiple owners. If a real property parcel has one owner, then that property owner has the full value of the property parcel included in the calculation. If there are multiple owners of a single real property parcel, the proportional share is assigned to each owner for purposes of the calculation. The proportional share is determined by dividing the total value of the property by the number of total number of owners of the property (total value of single property parcel / # of property owners of single property parcel).

To illustrate, assume that there are three property parcels that will be assessed. Property A is owned by Hope Solo and is valued at \$250,000. Property B is co-owned by husband and wife, Dick and Jane, and is valued at \$80,000. Property C is owned by three brothers, Larry, Curly, and Moe, and is valued at \$600,000.

For purposes of determining whether a petition includes the majority of owners of the real property to be assessed, Hope Solo has a vote that is equivalent to one owner. Dick and Jane each have a vote equivalent to one-half of an owner. And, Larry, Curly, and Moe each have a vote equivalent to one-third of an owner. For purposes of determining whether the owners who sign the petition represent at least 66 percent of the value of the real property to be assessed, Hope Solo's signature represents \$250,000 of value, Dick and Jane each represent \$40,000 of value, and Larry, Curly, and Moe each represent \$200,000 of value.

Allowing for Adjustments to Assessments under Certain Circumstances

A local unit's governing board must select one or more bases of assessment that correlate to the benefit conferred on the property from the capital project being financed with the assessments. Common bases of assessment include front footage abutting the project being financed with the assessments and value added to the property by the project being financed with the assessments.

S.L. 2013-371 amended this authority to also allow a local governing board, when it adopts its preliminary assessment resolution and establishes the bases of assessment, to provide for "adjustments to assessments upon a change of use" of the property being assessed. Although this change appears to afford local units more flexibility in tailoring assessments, that flexibility actually is quite limited. A unit's governing board may provide only for an *increase* in the amount assessed if there is a change in use of the property being assessed. The unit may not allow for decreases in assessments because the "the total amount of all assessments [must be] sufficient to pay the costs of the project after the adjustments have been made." Additionally, a unit may not take advantage of this assessment flexibility if it initially assesses the full amount of the project. That is because the assessment authority does not allow a unit to collect revenue that exceeds the estimated costs of the capital project(s) identified in the assessment resolution. This authority cannot be used by a unit as a general revenue-raising mechanism.

The primary purpose of the newer assessment authority is to provide local units with a funding source for public infrastructure projects that benefit *new* development. Imposing assessments allows local units to recoup some or all of the costs of the projects over time, typically from the eventual property owners of the developed property. (A unit may authorize assessments to be paid in up to 30 yearly installments). Developers typically favor this funding mechanism because it shifts (much of) the costs of the public infrastructure to the eventual property owners and shifts (much of) the risk of non-payment to the local unit. The new amendment allows a governing board to shift even more risk from the developer to the local government. A unit could allow a developer to pay a lower assessment on undeveloped lots. The assessed amount would only increase if the property's use changed—for example, if the property was developed and used for commercial or residential purposes.

Links

- www.ncga.state.nc.us/EnactedLegislation/Statutes/HTML/ByArticle/Chapter_160A/Article_10.html
- www.ncga.state.nc.us/EnactedLegislation/Statutes/HTML/ByArticle/Chapter_153A/Article_9.html
- www.ncga.state.nc.us/EnactedLegislation/Statutes/HTML/ByArticle/Chapter_160A/Article_10A.html
- www.ncga.state.nc.us/EnactedLegislation/Statutes/HTML/ByArticle/Chapter_153A/Article_9A.html



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