



# HOUSE BILL 158: Special Assessments/Critical Infrastructure.

2017-2018 General Assembly

<b>Committee:</b>	Senate Rules and Operations of the Senate	<b>Date:</b>	June 1, 2017
<b>Introduced by:</b>	Reps. Saine, Williams, Strickland, Reives	<b>Prepared by:</b>	Cindy Avrette Staff Attorney
<b>Analysis of:</b>	Third Edition		

**OVERVIEW:** *House Bill 158<sup>1</sup> would authorize a county or city to contract with a private party to construct a project on behalf of the county or city, and to reimburse the private party for costs incurred by the private party related to the project from the imposition of special assessments on the benefited property owners. The county or city would not be obligated to reimburse the private party any amount in excess of assessment revenues actually collected, less the entity's related administrative expenses. It would also modify the procedural process counties and cities would follow when proposing a special assessment.*

**CURRENT LAW:** Counties and cities have had the authority to make special assessments against benefited property for improvements such as sidewalks, curbs, and street lights since the 1960s. As a general rule, the assessment must be paid in full at the time it is assessed, but in no event may the assessment period exceed 10 years.

In 2008, the General Assembly expanded upon this concept by authorizing counties and cities to make assessments payable over a period of time, not to exceed 25 years, and pledge the assessments to secure revenue bonds or as additional security for a project development financing debt instrument. If an assessment is pledged to secure financing, the board of commissioners must covenant to enforce the payment of the assessments.

The assessment-based financing may be used for any purpose for which project development financing may be used. Those purposes include water and sewer systems, public transportation facilities, school facilities, gas systems, electric systems, industrial parks, parks and recreation facilities, and streets and sidewalks. A county or city may only use special assessment-based financing if it receives a petition signed by a majority of the owners of the property assessed, and those owners must represent ownership of at least 66% of the assessed value of the property to be assessed.

Procedurally, a county or city must adopt a preliminary assessment resolution that describes the project, the proposed basis for making the assessment, and information concerning the cost of the work and the terms of payment of the assessment. The county or city must hold a public hearing on the matter, prepare a preliminary assessment roll, and publish a confirmation of the assessment roll once it is adopted. An owner of property against which an assessment is made may file a notice of appeal to the General Court of Justice if the owner is dissatisfied with the amount of the assessment.

**BILL ANALYSIS:** House Bill 158 would allow a county or city to contract with a private party to construct a project on behalf of the county or city, and to reimburse the private party for costs incurred by the private party related to the project from the special assessments imposed under Article 9A of

<sup>1</sup> As introduced, this bill was identical to S118, as introduced by Senators Lee, Rabon, and Tucker, which is currently in Senate Finance. The Committee discussed S118 on April 5, 2017, and adopted an amendment to it.

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# House Bill 158

Page 2

Chapter 153A or Article 10A of Chapter 160A. The county or city would not be obligated to reimburse the private party any amount in excess of assessment revenues actually collected, less the entity's related administrative expenses. A county or city may require a private developer who is reimbursed for the costs of an improvement through a special assessment to provide a performance guarantee or bond. The county or city would need to provide this requirement through the adoption of a subdivision ordinance

Under current law, if an assessment is pledged to secure governmental financing, such as revenue bonds or project development financing debt instruments, the governing body must covenant to enforce the payment of the assessments. In this instance, since the debt is not pledged to secure a governmental financing, the local government would not have to adhere to the provisions in the Local Government Finance Act that concern debt issuance.

The bill would modify the procedural process for proposing and assessing a special assessment as follows:

- The governing authority must determine the project's total estimated cost and the amount of costs to be paid from assessments. The costs of a project may include expenses the governing body incurs for the administration of the assessment.
- The preliminary assessment resolution<sup>2</sup> must include (i) a statement of intent to undertake the project, (ii) a general description and location of the project, (iii) an estimate of the total cost, (iv) a statement as to the proposed terms of the assessment, and (v) an order setting a time and place for a public hearing. The preliminary assessment resolution would not have to include (i) a statement as to the percentage of the cost of the work that is to be specially assessed; (ii) which, if any, assessments will be held in abeyance and for how long; or (iii) the proposed basis for making the assessments.
- A final assessment resolution may not be adopted by the governing body for at least 10 days following the public hearing. Under the current process, a final assessment resolution could be adopted at or after the hearing.<sup>3</sup>
- The final assessment resolution would have to include the information required in the preliminary assessment resolution. Under the current process, the final assessment resolution must include the basis on which the special assessments will be made, the percentage of the cost of the work that is to be specially assessed, and the terms of payment.<sup>4</sup>

Under current law, if a project is being financed from a combination of special assessments and other funds, then the procurement requirements of Article 8 of Chapter 143 apply if more than 25% of the cost of the project is being funded from general obligation bonds or general revenue. Special assessments have not been considered to be "general revenue". The bill would clarify that special assessments are not general revenue.

Lastly, the bill would stipulate that the sunset applies to projects that have not been approved under a final assessment resolution on or before the sunset date. The authority granted to counties and cities by Article 9A of Chapter 153A or Article 10A of Chapter 160A is set to expire on July 1, 2020.

**EFFECTIVE DATE:** The bill would become when it becomes law, and apply to assessments made on or after that date.

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<sup>2</sup> G.S. 153A-190 and G.S. 160A-223.

<sup>3</sup> G.S. 153A-192 and G.S. 160A-225.

<sup>4</sup> Ibid.