HOUSE BILL 158:
Special Assessments/Critical Infrastructure.

2017-2018 General Assembly

Committee:		**Date:**	August 17, 2017
Introduced by:		**Prepared by:**	Cindy Avrette
Analysis of:	S.L. 2017-40		Staff Attorney

OVERVIEW: S.L. 2017-40 does two things:

- ***It authorizes 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 clarifies who may be entitled to the proceeds of a performance guarantee issued by a developer to a county or city to assure successful completion of required improvements by the developer under a subdivision control ordinance.***

This act became effective June 21, 2017, and applies to assessments made on or after that date.

SPECIAL ASSESSMENTS FOR CRITICAL INFRASTRUCTURE NEEDS

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: Sections 1 and 2 of S.L 2017-40 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 Chapter 153A or Article 10A of Chapter 160A. The county or city is not 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.[1]

Generally, when 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. However, in this instance, the assessment is not pledged to secure a governmental financing; therefore, the local government does not have to adhere to the provisions in the Local Government Finance Act that concern debt issuance.

The act modifies 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[2] 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 prior process, a final assessment resolution could be adopted at or after the hearing.[3]
- The final assessment resolution must include the information required in the preliminary assessment resolution. Under the prior process, the final assessment resolution had to include the basis on which the special assessments would be made, the percentage of the cost of the work to be specially assessed, and the terms of payment.[4]

When a project is 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 act clarifies that special assessments are not general revenue, and are excluded from this 25% determination..

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[1] G.S. 153A-331 and G.S. 160A-372.
[2] G.S. 153A-190 and G.S. 160A-223.
[3] G.S. 153A-192 and G.S. 160A-225.
[4] Ibid.

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. The act stipulates that the July 1, 2020, sunset does not apply to projects that have been approved under a final assessment resolution on or before the sunset date.

PROCEEDS FROM A PERFORMANCE GUARANTEE

CURRENT LAW: A city or county may adopt a subdivision control ordinance or a development agreement to provide for its orderly growth and development. Under that ordinance or agreement, the local government may require a developer to make certain improvements, and it may require the developer to issue it a performance guarantee to assure successfully completion of those required improvements. The performance guarantee may be in the form of a surety, a letter of credit, or some other form of guarantee that provides equivalent security, at the election of the developer. The amount of the performance guarantee may not exceed 125% of the estimated cost of compliance at the time the performance guarantee is issued. The performance guarantee may only be used for completion of the required improvements, and not for repairs or maintenance after completion.

BILL ANALYSIS: Section 3 of S.L. 2017-40 provides that only the following entities have any rights to the proceeds of a performance guarantee:

- The local government to whom the performance guarantee is provided.
- The developer at whose request or for whose benefit the performance guarantee is given.
- The person or entity issuing or providing the performance guarantee at the request of or for the benefit of the developer.

The act states that it is the intent of this section to clarify the existing law as it pertains to a performance guarantee issued by a developer to a local government unit pursuant to a subdivision control ordinance. Rarely do local governments have unexpended funds remaining from a performance guarantee once the required improvements are made. However, in some instances where it has occurred, homeowner associations and property owner associations have claimed to have a right to any unexpended funds.

EFFECTIVE DATE: The act became effective on June 21, 2017.