



Community and Economic Development in North Carolina and Beyond Blog: Leveraging Revenues from New Development: Critical Infrastructure Assessment Authority in 2017

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Article: <https://ced.sog.unc.edu/leveraging-revenues-from-new-development-critical-infrastructure-assessment-authority-in-2017/>

This entry was posted on November 14, 2017 and is filed under Financing Development

Critical infrastructure assessments are charges levied against property (usually new development) to reimburse a local government for the costs incurred for certain public infrastructure projects that directly benefit the property. In other states this tool offers an alternative to imposing impact fees on new development (that is often preferred by developers) to compensate the local government for the impact of that new development. In North Carolina, local governments do not have authority under general law to impose impact fees (with the limited exception of **system development fees** for water and sewer infrastructure). Nonetheless, critical infrastructure assessments are among the many tools that counties and municipalities in this state have to fund public infrastructure projects that benefit private development. Like project development financing authority (aka tax increment financing or TIF), the critical infrastructure assessment authority allows a local government to leverage new growth to pay for public infrastructure improvements that are necessitated by and/or benefit the new growth. And it does so without putting all the financial risk on the developer and without directly affecting the local unit's general fund. For these reasons, it is a potentially attractive tool to both local government officials and developers. That said, of all the methods available to local governments to fund public capital outlay, a critical infrastructure assessment is among the most complex and most costly. Because of that, it is not be the right tool for every circumstance.

I have blogged about the general contours of a local government's critical infrastructure assessment authority **here**, and **here**. During the past few legislative sessions, the General Assembly has both extended the sunset date (now to July 1, 2020), and made a few (mainly clarifying) amendments to the law. This post reviews the general structure of, and process for levying, these assessments, and for funding and undertaking the underlying project(s), as the law has been amended in recent years.

Authority for Critical Infrastructure Assessments

Counties (**G.S. 153A, Art. 9A**) and municipalities (**G.S. 160A, Art. 10A**), have authority to levy critical infrastructure assessments to reimburse the government for the costs associated with a wide variety of public infrastructure projects (as well as a **few private projects**). Like traditional special assessments, critical infrastructure assessments are levied against the property parcels in a defined area that benefit from the public infrastructure project(s). As stated above, critical infrastructure assessments provide a method for a local government to leverage revenues generated by new growth to pay for the additional capital needed to support the new growth.

Critical Infrastructure Assessments vs. Traditional Special Assessments

Many of you likely are familiar with traditional special assessments. Generally speaking, critical infrastructure assessments are a type of special assessment. In North Carolina, however, the critical infrastructure assessment authority differs from traditional assessment authority in a few significant ways. First, critical infrastructure assessments may be used to reimburse a local government for a much broader subset of capital outlay projects. (For a complete list of authorized projects, see this **bulletin**.) Second, the critical infrastructure assessment law expressly allows a local government to issue revenue bonds and pledge the assessment payments as security for the borrowing. Third, the critical infrastructure assessment law gives a local government more flexibility to determine the basis(es) of assessment and to change it/them, and the scope of the project, after the assessment resolution is adopted. Fourth, the critical infrastructure assessment law expressly allows a local government to use the assessment payments to reimburse a private person or entity for undertaking the public capital outlay project(s). Fifth, the critical infrastructure assessment law requires that all assessment processes be initiated by property owner petition. Finally, the critical infrastructure assessment law provides that if no more than 25 percent of the estimated cost of the project is funded with general obligation bonds or general revenues



(excluding assessment payments) a private entity that undertakes the public capital project on behalf of the government (and is reimbursed with assessment payments) is not subject to the bidding laws (in **G.S. 143, Art. 8**), except as specified in the contract with the local government.

Critical Infrastructure Assessment Process

The process for levying critical infrastructure assessments largely mirrors that of traditional special assessments (again, with a few key differences). A local government must first receive a petition 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 the real property to be assessed. The petition must include (1) a statement of the project or projects for which the assessments ultimately will be used to pay for all or a portion of; (2) an estimate of the cost of the project(s); and (3) an estimate of the portion of the cost of the project(s) that will be assessed. Note that the petition must list one or more specific projects (from the approved list). Unlike in other states, in NC, this method may not be used to provide a pool of money for future, unknown projects.

After a unit receives a valid petition, its governing board decides whether or not to proceed. If it chooses to go forward, the board adopts a preliminary assessment resolution that, among other things, specifies the nature and scope of the project, provides an estimate of its total cost, states the proposed terms of payment of the assessments, and gives notice of the public hearing on the assessment resolution. (The preliminary assessment resolution no longer needs to state the percentage of the cost that will be assessed or if any assessments will be held in abeyance.) For the terms of payment, a governing board may allow payment in up to 25 yearly installments, with or without interest. The cost of a project may include construction costs, the cost of necessary legal services, the amount of interest paid during construction, the cost of rights-of-way, the cost of publishing mailing notices and resolutions, the costs incurred in arranging for debt financing to front the costs of the project, and the costs associated with administering the assessments.

The unit must then hold a public hearing before the board adopts a final assessment resolution. (The board must wait at least ten days after the public hearing to adopt the final assessment resolution. If the petition is withdrawn during that ten-day period, the board may not proceed with the assessment process. Note that it takes a slightly lower threshold of property owner signatures to withdraw a petition than to submit one to begin with.) It includes all of the information in the preliminary assessment resolution (except notice of the hearing), plus the amount of the estimated cost of the project(s) to be derived from each funding source (bonds, general resources, private sector, etc.).

After adopting the final assessment resolution, the unit secures the upfront funding for the project and completes the project. If the upfront funding involves issuing revenue bonds secured by the critical infrastructure assessment payments, the unit will finalize the assessment roll before it borrows money to do the project. Otherwise, it may wait until the project is completed to determine final costs and the amount to be assessed.

Once it determines the estimated (or final) costs of the project, the unit prepares a preliminary assessment roll. The roll must contain a brief description of each lot, parcel, or tract of land assessed, the basis(es) for the assessments; the amount assessed against each lot, parcel or tract of land; the terms of payment, including any authorized schedule of discounts; and the name of the owner of each parcel of land, as ascertained by the county tax records.

The governing board then holds another public hearing, after which it may confirm 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.

The assessments are paid in up to 25 yearly installments (as specified in the assessment resolution); each installment is due on the date that real property taxes are due each year.

Fronting the Costs of Assessed Projects

One difficulty local governments have faced in using the traditional assessment tool is coming up with the funds to front the costs of the project(s). The critical infrastructure assessment law eases this burden by providing some additional upfront funding options. In addition to using general revenues and borrowing methods secured by other revenues or assets (general obligation bonds, installment financings, and project development bonds), a county or municipality may issue revenue bonds secured by the special assessment payments. It also may front the cost of the project(s) with funds



paid by private entities.

In fact, a local government may simply contract with a developer to undertake the public capital outlay project. The unit may contractually commit to reimburse the developer for the full costs of the project, as sufficiently documented, with the special assessment payments. The law specifically states, though, that a local government “shall not be obligated to reimburse a private party any amount in excess of assessment revenues actually collected less the [county’s or municipality’s] related administrative costs.” Further, the law prohibits reimbursement to a private party of any interest costs, whether actual or imputed, of the funds invested by the private party in the project(s).

Sunset of Critical Infrastructure Assessment Authority

The critical infrastructure assessment authority currently expires on July 1, 2020. Recent amendments to the law clarify that the expiration only applies to projects that have not been approved under a final assessment resolution. The expiration does not apply to assessments imposed and/or bonds issued after that date, if a final assessment resolution was adopted prior to that date.