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Coates' Canons NC Local Government Law

Funding Capital Projects in a BID (Business Improvement District)

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As discussed in a previous **post**, a North Carolina municipality may establish a special tax district that encompasses its central downtown area to raise money to fund “downtown revitalization.” See **G.S. 160A-536(a)(2)**. The special tax district is commonly referred to as a Business Improvement District or BID. Many municipalities create and maintain BIDs to provide targeted services in their downtown areas—such as marketing, additional security, supplementary trash collection, and community activities to enhance the downtown area and promote and benefit its commercial entities. (And several contract with private entities to “manage” the BIDs.) Questions often arise, however, as to whether a unit may engage in capital projects in a BID and, if so, what type and how are the projects funded?

Funding Capital Projects in BID with General Municipal Revenue

The answer to the first question is “yes.” A municipality may undertake capital projects in a BID to the same extent that it undertakes them in the rest of its territory. And it may finance the projects with General Fund dollars, which include property tax proceeds, local sales and use tax proceeds, and other unrestricted revenue sources. It also may fund certain, authorized capital projects by imposing special assessments on the real properties in the BID that benefit from the projects. (For more information on

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imposing special assessments, including a list of authorized projects, click [here](#).) And, if the capital projects relate to one or more of the municipality's public enterprises (for example, water or sewer systems) the unit may finance the projects with Enterprise Fund monies.

Funding Capital Projects in BID with BID Tax Revenue

There is an additional option to fund capital projects in a BID. A municipality may use the proceeds generated by the special tax levied on real and personal properties in the BID (BID tax). **G.S. 160A-536(b)** provides a non-exclusive list of activities that can be supported with the special tax revenue in a municipality's downtown area. The list includes:

improvements to water mains, sanitary sewer mains, storm sewer mains, electric power distribution lines, gas mains, street lighting, streets and sidewalks, including rights-of-way and easements therefor, the construction of pedestrian malls, bicycle paths, overhead pedestrian walkways, sidewalk canopies, and parking facilities both on-street and off-street, *and other improvements* intended to relieve traffic congestion in the central city, improve pedestrian and vehicular access thereto, reduce the incidence of crime therein, and *generally to further the public health, safety, welfare, and convenience by promoting the economic health of the central city or downtown area.* (emphasis added)

The statutory authority is very broad and supports the expenditure of BID tax proceeds on any capital project that generally benefits the downtown area. For example, in addition to the projects specifically listed in the statute, a municipality likely may use BID tax proceeds to provide grants to property owners to make façade or other structural improvements to buildings in the downtown area. It also likely may use the BID tax monies to construct new buildings to entice additional economic development in the district.

Issuing Debt to Fund Capital Projects in BID

What about borrowing money to finance the capital projects in a BID? A municipality is authorized to borrow money according to five different statutory methods. All of the financing mechanisms are available to a municipality to fund capital projects in its downtown area, but they each have different restrictions and limitations that make them a better fit for some types of projects and not others. The following is a brief description of the security for each type of debt financing mechanism (which is the major distinguishing characteristic among the five different methods), the projects that it may be used to fund, and any special restrictions that apply when using it to fund projects in a BID.

General Obligation Bonds (G.S. 159, Art. 4)—When a local government issues general obligation (G.O.) debt it pledges its full faith and credit or unlimited taxing power as security for the bonds or notes. **G.S. 159-48** sets forth the projects that may be funded with G.O. debt; it is an expansive list

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and includes almost any type of capital project that a municipality might want to undertake in its downtown area. A municipality may use General Fund revenues to make its annual debt service payments on the G.O. debt. It also may use BID tax revenues for this purpose, subject to one additional requirement. If the municipality borrows money by issuing general obligation bonds, the municipality's governing board must first hold a successful voter referendum to approve the issuance of the bonds. **G.S. 160A-543** specifies that in the voter referendum, there must be approval by a majority of voters who vote in the referendum municipality-wide, and a majority of voters who vote in the referendum within the district, in order to use BID tax proceeds to make the debt service payments.

Revenue Bonds (including Special Assessment Revenue Bonds) (**G.S. 159, Art. 5; G.S. 153A, Art. 9A; G.S. 160A, Art. 10A**)—When a local government issues revenue bonds or notes it pledges as security the revenues from the debt-financed asset or system. It also may pledge the asset that is being financed as additional security for the borrowing. **G.S. 159-81** (and **G.S. 160A-239.2**) list the projects that may be funded with revenue bonds, some of which a unit may undertake in its downtown area. Unlike with general obligation debt, if revenue bonds or notes are issued to finance a capital project in a BID the municipality may not use BID tax revenue to make the debt service payments, though. The unit is statutorily restricted to using the revenues generated by the asset being financed, or the system in which the asset becomes a part of, to repay the loan. **G.S. 159-94**.

Installment Purchase Financings (**G.S. 160A-20**)—When a local government enters into an installment-purchase financing it pledges the asset that is being financed or the real property that is being improved using the borrowed monies. There is broad statutory authority to use this type of financing to acquire capital assets or to construct or repair fixtures or improvements on real property throughout the municipality, including within its BID. As a practical matter, because of the nature of the security for this type of debt, the lender or investors will gauge the “essentiality” of the undertaking to the municipality in determining whether to loan money to fund a particular project.

Special Obligation Bonds (**G.S. 159I**)—When a local government issues special obligation (S.O.) bonds or notes it pledges any unrestricted revenue sources other than local taxes under the unit's control. A unit also may pledge the asset that is being financed. There is a limited subset of

<https://canons.sog.unc.edu/2011/03/funding-capital-projects-in-a-bid-business-improvement-district/>

projects that may be funded with this type of debt. *See* **G.S. 159I-30**. The list includes any capital projects that are “authorized by **G.S. 160A-536** and provided in a municipal service district,” which includes any projects that are provided in a BID.

Project Development Financings (G.S. 159, Art. 6)—When a local government enters into project development financing it pledges the incremental increase in property tax proceeds generated, at least in part, by new development in a defined area. (Note that this is not a pledge of a unit’s taxing power.) A unit also may pledge the asset or assets that are being financed and any additional unrestricted revenue sources other than local taxes under the unit’s control. **G.S. 159-103** details the capital projects that may be funded with this type of debt financing mechanism. It is a fairly expansive list, but in order to fund these projects in a municipality’s downtown area, that area must be included in (and meet the statutory criteria for) a project development district. (For more information on project development financings, click **here**.)

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