

**Amendment One:
Project Development Financing
9/2005
(Updated through 3/2007)**

On November 2, North Carolina voters approved a method of financing that will give local governments a new tool to bring new jobs and revitalization to their communities. Constitutional Amendment One permits local governments to issue bonds without a referendum for a variety of public improvements (such as streets, sidewalks, utilities, street lighting and parking decks) that businesses often require in order to locate in a community, and then pay the bonds with the increased tax revenues generated by those improvements. This financing method is known in North Carolina as “self-financing bonds” or “project development financing.” For purposes of the Local Government Commission and this explanation prepared in consultation with our bond counsel, we will refer to financing as project development financing. (See N. C. General Statutes 159-101 through 115; 160A-515.1 and 158-7.1 through 7.4).

Assume that a local government unit (either a city or county referred to as the unit) in North Carolina, is approached by ABC Co. about locating its headquarters or a factory to the unit. ABC Co., which produces virtual reality software and hardware for military use, expects that the move will bring 200 high-paying manufacturing jobs as well as 75 white collar jobs to the unit. In addition, it is expected that other small businesses such as restaurants, dry cleaners, retail shops and other professional services will develop in the area as a result of the new factory. ABC Co. informs the unit officials that the site it is considering does not have adequate water and sewer service for its manufacturing process nor the curbing, street lighting and sidewalks that ABC Co. requires for its corporate headquarters. ABC Co.’s second choice for its factory is in South Carolina, where the local municipality is willing to provide the entire infrastructure required by ABC Co.

The North Carolina unit is interested in doing everything it can to attract ABC Co. to the area. Unit officials estimate the cost of the necessary infrastructure improvements for ABC Co.’s facility to be approximately \$7 million. There are many options for a unit to finance such projects but due to rough economic times the unit did not feel that it is appropriate to use its rainy day fund to pay for the improvements, and because the unit does not wish for the general public to pay for this type of project, a general obligation bond is not warranted. In the end, unit officials decide that project development financing is the appropriate way to finance this project and win ABC Co.’s factory.

Approval Process Required by Statute

Set forth below are the steps a unit is required by law to obtain the money it needs for ABC Co.’s project using project development financing:

1. Define a Development Financing District – Unit officials will work with ABC Co. to define the development financing district (the “District”). The total land area of

the District may not exceed 5% of the total land area of the unit. The District must be comprised of property that is **either** (a) blighted, deteriorating or undeveloped, (b) appropriate for rehabilitation or conservation activities or (c) appropriate for economic development of the community.

2. Establish Development Financing Plan - Unit officials and ABC Co. will work together to establish a development financing plan which, among other things, describes (i) the boundaries of the District, (ii) the proposed public and private development of the District, (iii) the costs of the proposed public activities, (iv) the sources and amounts of funds to pay for the public activities, (v) the base valuation of the District, (vi) the projected incremental increase in property valuation of the land located within the District after completion of the improvements, (vii) how the proposed development of the District will benefit the residents and business owners of the District in terms of jobs, affordable housing or services and (viii) any action which will be undertaken if the proposed project has a negative impact on residents or business owners of the District in terms of jobs, affordable housing, services or displacement.

Before adopting a financing plan for the District, the unit must notify the board of county commissioners of the county in which the District is located of the development financing plan. Unless the board of county commissioners by resolution disapproves the proposed plan within 28 days, the unit may proceed to adopt the plan. Because ABC Co.'s headquarters will include manufacturing operations, the Department of Commerce and Department of Environment and Natural Resources must review the project. If the project does not involve manufacturing operations, these approvals are not necessary. Finally, after publishing a notice in the unit's local newspaper and notifying property owners in the District as required by State law, the unit must hold a public hearing on the development financing plan. The plan may be adopted by the unit's board any time after the public hearing is held.

3. Local Government Commission (LGC) Application and Approval – The unit must submit an application to the LGC, along with any statements of facts and documents concerning the proposed project development financing, the unit's financial condition, the establishment of the proposed development District, the development financing plan and the projected incremental tax revenues available for debt service payments on the proposed debt instruments. Additional information and applications can be obtained from Jim Baker, Assistant Director, Debt Management, 919 807 2370.

In addition to its normal findings of sound debt management practices of the unit, the LGC must find the following:

- That the unit has adopted a development financing plan.
- That the proposed projects are feasible.
- That the proposed project development financing is necessary to secure significant new project development for a district.

- That the private development forecast in the development financing plan would not be likely to occur without the public projects to be financed by the project development financing.
- That the incremental tax revenues accruing to the district, together with any other revenues pledged by the unit, will be sufficient to pay the proposed project development financing debt.
- That the proposed project development financing debt can be marketed at reasonable interest cost to the unit.

4. Determination of Incremental Valuation – Once a unit has established the District and the LGC has approved the financing, the unit must notify the county tax assessor who then determines the base valuation of the District. The base valuation is the assessed value of all taxable property located in the District on the January 1 immediately preceding the effective date of the District. The base valuation may be adjusted if property is removed from or added to the District. Each year the District is in existence, the tax assessor must determine the current assessed value of taxable property located in the District. The assessor must also compute the difference between this current value and the base valuation of the District. If the current value exceeds the base value, the difference is the incremental valuation of the District.

5. Revenue Increment Fund – Each unit establishing a development financing district must establish a separate fund (the “Revenue Increment Fund”) to account for the proceeds from taxes levied on the incremental valuation of the District. Money in the Revenue Increment Fund may be used to finance capital expenditures in the District, to meet principal and interest requirements on project development financing debt, to repay moneys expended on debt service on project development financing debt instruments, and to establish and maintain debt service reserves. Each year, after these purposes are satisfied, money remaining in the Revenue Increment Fund shall be transferred to the General Fund of the unit.

Local Government Commission Guidelines for Findings for Approval of Project Development Financings

1. The proposed issue is necessary to secure significant new project development for the district.
 - The Local Government Commission (LGC) will rely on the findings resolution of the local governing body concerning the proposed financings that would include a determination that the proposed public infrastructure improvements to be built in connection with a proposed private development are necessary in order to persuade or entice the developer to build the proposed private project. The determination may include findings that the proposed project will enhance the district’s commercial or residential tax base, increase retail sales taxes and/or provide additional job opportunities or housing opportunities for citizens.

2. The amount of the issue is adequate and not excessive.
 - The LGC will determine that the estimated cost of proposed public infrastructure improvements and capitalized interest accounts or recommended debt service reserves is adequate for the project proposed based on public bids received by the unit that comply with State bidding statutes or based on contractual agreements with a developer guaranteeing a maximum price for the proposed public improvements substantiated by certified Engineering/Architectural estimates and final design plans.
3. The proposed projects are feasible (identify and determine sufficiency of pledged revenues for debt service).
 - The LGC may require an independent consultant's report/analysis/expert study showing the following:
 - (a) estimates provided by a certified engineer of the costs of the proposed private development projects in the district.
 - (b) estimates provided by the local unit engineer of the cost of the proposed public infrastructure improvements.
 - (c) the base valuation of the project development financing district as determined by the County Tax assessor.
 - (d) that the projected incremental tax revenues expected from the private development in the district for the period of the proposed debt financing, along with any other revenues that may be pledged by the local government unit in accord with the project development financing statutes, are sufficient to pay the projected annual debt service costs of the public infrastructure improvements. (The Statutes allow debt service payments to be structured so that principal payments may be postponed for seven years, with only interest payments required in these initial years.)
 - (e) establishment of debt service reserve fund or surety bond if recommended
 - (f) if project feasibility is a concern, a referendum may be required
4. The unit's debt management procedures and policies are good.
 - The local unit has an unqualified (clean) opinion from its independent auditors for the past three fiscal years and audits were generally submitted on a timely basis.
 - There are no defaults on any debt payments for the unit.
 - The auditor has determined that there are no material weaknesses in the unit's internal accounting and control systems that have not been adequately addressed.
 - If the unit received an audit letter from the LGC staff containing findings or recommendations for improvements, the unit has responded

satisfactorily on its plan of correction or compliance with staff's recommendations.

- The unit continually demonstrates effective tax collection procedures.
5. The private development forecast in the development financing plan would not likely occur without the public projects to be financed.
- The LGC may rely on the findings resolution of the unit's Governing Body that the private developer would not proceed with the proposed development without the assistance of the unit to provide public infrastructure improvements that benefit the private development and that contribute to the feasibility of the project. If project feasibility is a concern, a referendum may be required.
6. The proposed issue can be marketed at a reasonable cost to the unit.
- An investment grade rating is preferred if achievable in order to get best interest rates (see separate discussion on ratings potential and rating characteristics considered by agencies).
 - If project cannot achieve an investment grade rating, determine that alternative financing methods and/or credit enhancements have been explored to determine most cost effective financing, including:
 - (a) pledging additional non-tax revenue.
 - (b) pledging additional tax revenue if approved in referendum in accord with Statutes.
 - (c) a private placement vs. public sale
 - (d) installment purchase financing
 - (e) using a Letter of Credit
 - (f) obtaining insurance, surety bond or guarantee
 - (g) a limited sale/distribution to sophisticated investor
7. The issuing unit has adopted a development financing plan for the development financing district.
- The unit has adopted a development financing plan with all components required in G. S. 158-7.3(d)1 including the following:
 - (1) Description of boundaries of district.
 - (2) Description of proposed development both public and private.
 - (3) Estimated costs of public infrastructure improvements as determined by the local unit.
 - (4) Sources and amounts of funds for proposed public improvements and sources and estimates of funds proposed for debt service.
 - (5) Base valuation of development financing district as determined by County tax assessor.

- (6) Projected incremental valuation of district and projection of value of proposed private development project in future years.
- (7) Estimated duration of development financing district (for term of financing or maximum of 30 years).
- (8) Description of how proposed public and private development benefits residents and businesses (jobs, tax base, retail sales, housing, commercial businesses, entertainment).
- (9) Description of activities to ameliorate any projected negative effects of project on housing, jobs, businesses.
- (10) If manufacturing, pledge to pay wage above those paid in County or 10% above average weekly manufacturing wage in State and obtain approval by Secretary of Commerce unless exempted by Secretary.