

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2017

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HOUSE BILL 436
Committee Substitute Favorable 4/20/17
PROPOSED SENATE COMMITTEE SUBSTITUTE H436-PCS40617-STf-36

Short Title: Local Government/Regulatory Fees. (Public)

Sponsors:

Referred to:

March 23, 2017

1 A BILL TO BE ENTITLED
2 AN ACT TO PROVIDE FOR UNIFORM AUTHORITY TO IMPLEMENT SYSTEM
3 DEVELOPMENT FEES FOR PUBLIC WATER AND SEWER SYSTEMS IN NORTH
4 CAROLINA AND TO CLARIFY THE APPLICABLE STATUTE OF LIMITATIONS.

5 The General Assembly of North Carolina enacts:

6 SECTION 1. Chapter 162A of the General Statutes is amended by adding a new
7 Article to read:

8 "Article 8.

9 "System Development Fees.

10 "§ 162A-200. Short title.

11 This Article shall be known and may be cited as the "Public Water and Sewer System
12 Development Fee Act."

13 "§ 162A-201. Definitions.

14 The following definitions apply in this Article:

- 15 (1) Capital improvement. – A planned facility or expansion of capacity of an
16 existing facility other than a capital rehabilitation project necessitated by and
17 attributable to new development.
18 (2) Capital rehabilitation project. – Any repair, maintenance, modernization,
19 upgrade, update, replacement, or correction of deficiencies of a facility,
20 including any expansion or other undertaking to increase the preexisting
21 level of service for existing development.
22 (3) Existing development. – Land subdivisions, structures, and land uses in
23 existence at the start of the written analysis process required by
24 G.S. 162A-205, no more than one year prior to the adoption of a system
25 development fee.
26 (4) Facility. – A water supply, treatment, storage, or distribution facility, or a
27 wastewater collection, treatment, or disposal facility, including for reuse or
28 reclamation of water, owned or operated, or to be owned or operated, by a
29 local governmental unit and land associated with such facility.
30 (5) Local governmental unit. – Any entity that owns or operates a facility
31 pursuant to Part 2 of Article 2 of Chapter 130A, Article 15 of Chapter 153A,
32 Article 16 of Chapter 160A, or Articles 1, 4, 5, 5A, or 6 of Chapter 162A of
33 the General Statutes.
34 (6) New development. – Any of the following occurring after the date a local
35 government begins the written analysis process required by G.S. 162A-205,



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1 no more than one year prior to the adoption of a system development fee,
2 which increases the capacity necessary to serve that development:

- 3 a. The subdivision of land.
4 b. The construction, reconstruction, redevelopment, conversion,
5 structural alteration, relocation, or enlargement of any
6 structure which increases the number of service units.
7 c. Any use or extension of the use of land which increases the
8 number of service units.
- 9 (7) Service. – Water or sewer service, or water and sewer service, provided by a
10 local governmental unit.
- 11 (8) Service unit. – A unit of measure, typically an equivalent residential unit,
12 calculated in accordance with generally accepted engineering or planning
13 standards.
- 14 (9) System development fee. – A charge or assessment for service imposed with
15 respect to new development to fund costs of capital improvements
16 necessitated by and attributable to such new development, to recoup costs of
17 existing facilities which serve such new development, or a combination of
18 those costs, as provided in this Article. The term includes amortized charges,
19 lump-sum charges, and any other fee that functions as described by this
20 definition regardless of terminology. The term does not include any of the
21 following:
- 22 a. A charge or fee to pay the administrative, plan review, or
23 inspection costs associated with permits required for
24 development.
- 25 b. Tap or hookup charges for the purpose of reimbursing the
26 local governmental unit for the actual cost of connecting the
27 service unit to the system.
- 28 c. Availability charges.
- 29 d. Dedication of capital improvements on-site, adjacent, or
30 ancillary to a development absent a written agreement
31 providing for credit or reimbursement to the developer
32 pursuant to G.S. 153A-280, 153A-451, 160A-320, 160A-499
33 or Part 3A of Article 18, Chapter 153A or Part 3D of Article
34 19, Chapter 160A of the General Statutes.
- 35 e. Reimbursement to the local governmental unit for its
36 expenses in constructing or providing for water or sewer
37 utility capital improvements adjacent or ancillary to the
38 development if the owner or developer has agreed to be
39 financially responsible for such expenses; however, such
40 reimbursement shall be credited to any system development
41 fee charged as set forth in G.S. 162A-207(c).
- 42 (10) System development fee analysis. – An analysis meeting the
43 requirements of G.S. 162A-205.

44 **"§ 162A-202. Reserved.**

45 **"§ 162A-203. Authorization of system development fee.**

46 (a) A local governmental unit may adopt a system development fee for water or sewer
47 service only in accordance with the conditions and limitations of this Article.

48 (b) A system development fee adopted by a local governmental unit under any lawful
49 authority other than this Article and in effect on October 1, 2017, shall be conformed to the
50 requirements of this Article not later than July 1, 2018.

51 **"§ 162A-204. Reserved.**

"§ 162A-205. Supporting analysis.

A system development fee must be calculated based on a written analysis, which may constitute or be included in a capital improvements plan, that:

- (1) Is prepared by a financial professional or a licensed professional engineer qualified by experience and training or education to employ generally accepted accounting, engineering, and planning methodologies to calculate system development fees for public water and sewer systems.
- (2) Documents in reasonable detail the facts and data used in the analysis and their sufficiency and reliability.
- (3) Employs generally accepted accounting, engineering, and planning methodologies, including the buy-in, incremental cost or marginal cost, and combined cost methods for each service, setting forth appropriate analysis as to the consideration and selection of a method appropriate to the circumstances and adapted as necessary to satisfy all requirements of this Article.
- (4) Documents and demonstrates the reliable application of the methodologies to the facts and data, including all reasoning, analysis, and interim calculations underlying each identifiable component of the system development fee and the aggregate thereof.
- (5) Identifies all assumptions and limiting conditions affecting the analysis and demonstrates that they do not materially undermine the reliability of conclusions reached.
- (6) Calculates a final system development fee per service unit of new development and includes an equivalency or conversion table for use in determining the fees applicable for various categories of demand.
- (7) Covers a planning horizon of not less than 10 years nor more than 20 years.
- (8) Is adopted by resolution or ordinance of the local governmental unit in accordance with G.S. 162A-209.

"§ 162A-206. Reserved.**"§ 162A-207. Minimum requirements.**

(a) Maximum. – A system development fee may not exceed that calculated based on the system development fee analysis.

(b) Revenue Credit. – In applying the incremental cost or marginal cost, or the combined cost, method to calculate a system development fee with respect to water or sewer capital improvements, the system development fee analysis must include as part of that methodology a credit against the projected aggregate cost of water or sewer capital improvements. That credit shall be determined based upon generally accepted calculations and shall reflect a deduction of either the outstanding debt principal or the present value of projected water and sewer revenues received by the local governmental unit for the capital improvements necessitated by and attributable to such new development, anticipated over the course of the planning horizon. In no case shall the credit be less than twenty-five percent (25%) of the aggregate cost of capital improvements.

(c) Construction or Contributions Credit. – In calculating the system development fee with respect to new development, the local governmental unit shall credit the value of costs in excess of the development's proportionate share of connecting facilities required to be oversized for use of others outside of the development. No credit will be applied, however, for water or sewer capital improvements on-site or to connect new development to water or sewer facilities.

"§ 162A-208. Reserved.**"§ 162A-209. Adoption and periodic review.**

1 (a) For not less than 45 days prior to considering the adoption of a system development
2 fee analysis, the local governmental unit will post the analysis on its Web site and solicit and
3 furnish a means to submit written comments, which shall be considered by the preparer of the
4 analysis for possible modifications or revisions.

5 (b) After expiration of the period for posting, the governing body of the local
6 governmental unit will conduct a public hearing prior to considering adoption of the analysis
7 with any modifications or revisions.

8 (c) The local governmental unit will publish the system development fee in its annual
9 budget or rate plan or ordinance. The local governmental unit will update the system
10 development fee analysis at least every five years.

11 **"§ 162A-210. Reserved.**

12 **"§ 162A-211. Use and administration of revenue.**

13 (a) Revenue from system development fees calculated using the incremental cost
14 method or marginal cost method, exclusively or as part of the combined cost method, may be
15 expended only to pay:

16 (1) Costs of constructing capital improvements including, and limited to, any of
17 the following:

18 a. Construction contract prices.

19 b. Surveying and engineering fees.

20 c. Land acquisition cost.

21 d. Principal and interest on bonds, notes, or other obligations issued by
22 or on behalf of the local governmental unit to finance any costs for
23 an item listed in sub-subdivisions a. through c. of this subdivision.

24 (2) Professional fees incurred by the local governmental unit for preparation of
25 the system development fee analysis.

26 (3) If no capital improvements are planned for construction within five years or
27 the foregoing costs are otherwise paid or provided for, then principal and
28 interest on bonds, notes, or other obligations issued by or on behalf of a local
29 governmental unit to finance the construction or acquisition of existing
30 capital improvements.

31 (b) Revenue from system development fees calculated using the buy-in method may be
32 expended for previously completed capital improvements for which capacity exists and for
33 capital rehabilitation projects. The basis for the buy-in calculation for previously completed
34 capital improvements shall be determined by using a generally accepted method of valuing the
35 actual or replacement costs of the capital improvement for which the buy-in fee is being
36 collected less depreciation, debt credits, grants, and other generally accepted valuation
37 adjustments.

38 (c) A local governmental unit may pledge a system development fee as security for the
39 payment of debt service on a bond, note, or other obligation subject to compliance with the
40 foregoing limitations.

41 (d) System development fee revenues shall be accounted for by means of a capital
42 reserve fund established pursuant to Part 2 of Article 3 of Chapter 159 of the General Statutes
43 and limited as to expenditure of funds in accordance with this section.

44 **"§ 162A-212. Reserved.**

45 **"§ 162A-213. Time for collection of system development fees.**

46 For new development involving the subdivision of land, the system development fee shall
47 be collected by a local governmental unit either at the time of plat recordation or when water or
48 sewer service for the subdivision or other development is committed by the local governmental
49 unit. For all other new development, the local governmental unit shall collect the system
50 development fee at the time of application for connection of the individual unit of development
51 to the service or facilities.

1 **"§ 162A-214. Reserved.**

2 **"§ 162A-215. Narrow construction.**

3 Notwithstanding G.S. 153A-4 and G.S. 160A-4, in any judicial action interpreting this
4 Article, all powers conferred by this Article shall be narrowly construed to ensure that system
5 development fees do not unduly burden new development."

6 **SECTION 2.** G.S. 130A-64 reads as rewritten:

7 **"§ 130A-64. Service charges and rates.**

8 (a) A sanitary district board shall apply service charges and rates based upon the exact
9 benefits derived. These service charges and rates shall be sufficient to provide funds for the
10 maintenance, adequate depreciation and operation of the work of the district. If reasonable, the
11 service charges and rates may include an amount sufficient to pay the principal and interest
12 maturing on the outstanding bonds and, to the extent not otherwise provided for, bond
13 anticipation notes of the district. Any surplus from operating revenues shall be set aside as a
14 separate fund to be applied to the payment of interest on or to the retirement of bonds or bond
15 anticipation notes. The sanitary district board may modify and adjust these service charges and
16 rates.

17 (b) The district board may require system development fees only in accordance with
18 Article 8 of Chapter 162A of the General Statutes."

19 **SECTION 3.** G.S. 153A-277 reads as rewritten:

20 **"§ 153A-277. Authority to fix and enforce rates.**

21 (a) A county may establish and revise from time to time schedules of rents, rates, fees,
22 charges, and penalties for the use of or the services furnished or to be furnished by a public
23 enterprise. Schedules of rents, rates, fees, charges, and penalties may vary for the same class of
24 service in different areas of the county and may vary according to classes of service, and
25 different schedules may be adopted for services provided outside of the county. A county may
26 include a fee relating to subsurface discharge wastewater management systems and services on
27 the property tax bill for the real property where the system for which the fee is imposed is
28 located.

29 ...

30 (a2) A county may require system development fees only in accordance with Article 8 of
31 Chapter 162A of the General Statutes.

32"

33 **SECTION 4.(a)** G.S. 160A-314 reads as rewritten:

34 **"§ 160A-314. Authority to fix and enforce rates.**

35 (a) A city may establish and revise from time to time schedules of rents, rates, fees,
36 charges, and penalties for the use of or the services furnished or to be furnished by any public
37 enterprise. Schedules of rents, rates, fees, charges, and penalties may vary according to classes
38 of service, and different schedules may be adopted for services provided outside the corporate
39 limits of the city.

40 ...

41 (e) A city may require system development fees only in accordance with Article 8 of
42 Chapter 162A of the General Statutes."

43 **SECTION 4.(b)** G.S. 160A-317 is amended by adding a new subsection to read:

44 "(a4) System Development Fees. – A city may require system development fees only in
45 accordance with Article 8 of Chapter 162A of the General Statutes."

46 **SECTION 5.(a)** G.S. 162A-6(a) is amended by adding a new subdivision to read:

47 "(9a) To impose and require system development fees only in accordance with
48 Article 8 of this Chapter."

49 **SECTION 5.** G.S. 162A-9 is amended by adding a new subsection to read:

50 "(a5) An authority may require system development fees only in accordance with Article
51 8 of this Chapter."

1 **SECTION 6.(a)** G.S. 162A-36(a) is amended by adding a new subdivision to read:

2 "(8a) To impose and require system development fees only in accordance with
3 Article 8 of this Chapter."

4 **SECTION 6.(b)** G.S. 162A-49 reads as rewritten:

5 "**§ 162A-49. Rates and charges for services.**

6 (a) The district board may fix, and may revise from time to time, rents, rates, fees and
7 other charges for the use of land for the services furnished or to be furnished by any water
8 system or sewerage system or both. Such rents, rates, fees and charges shall not be subject to
9 supervision or regulation by any bureau, board, commission, or other agency of the State or of
10 any political subdivision. Any such rents, rates, fees and charges pledged to the payment of
11 revenue bonds of the district shall be fixed and revised so that the revenues of the water system
12 or sewerage system or both, together with any other available funds, shall be sufficient at all
13 times to pay the cost of maintaining, repairing and operating the water system or the sewerage
14 system or both, the revenues of which are pledged to the payment of such revenue bonds,
15 including reserves for such purposes, and to pay the interest on and the principal of such
16 revenue bonds as the same shall become due and payable and to provide reserves therefor. If
17 any such rents, rates, fees and charges are pledged to the payment of any general obligation
18 bonds issued under this Article, such rents, rates, fees and charges shall be fixed and revised so
19 as to comply with the requirements of such pledge. The district board may provide methods for
20 collection of such rents, rates, fees and charges and measures for enforcement of collection
21 thereof, including penalties and the denial or discontinuance of service.

22 (b) The district board may require system development fees only in accordance with
23 Article 8 of this Chapter."

24 **SECTION 7.(a)** G.S. 162A-69 is amended by adding a new subdivision to read:

25 "(8a) To impose and require system development fees only in accordance with
26 Article 8 of this Chapter."

27 **SECTION 7.(b)** G.S. 162A-72 reads as rewritten:

28 "**§ 162A-72. Rates and charges for services.**

29 (a) The district board may fix, and may revise from time to time, rents, rates, fees and
30 other charges for the use of and for the services furnished or to be furnished by any sewerage
31 system. Such rents, rates, fees and charges shall not be subject to supervision or regulation by
32 any bureau, board, commission, or other agency of the State or of any political subdivision.
33 Any such rents, rates, fees and charges pledged to the payment of revenue bonds of the district
34 shall be fixed and revised so that the revenues of the sewerage system, together with any other
35 available funds, shall be sufficient at all times to pay the cost of maintaining, repairing and
36 operating the sewerage system the revenues of which are pledged to the payment of such
37 revenue bonds, including reserves for such purposes, and to pay the interest on and the
38 principal of such revenue bonds as the same shall become due and payable and to provide
39 reserves therefor. If any such rents, rates, fees and charges are pledged to the payment of any
40 general obligation bonds issued under this Article, such rents, rates, fees and charges shall be
41 fixed and revised so as to comply with the requirements of such pledge. The district board may
42 provide methods for collection of such rents, rates, fees and charges and measures for
43 enforcement of collection thereof, including penalties and the denial or discontinuance of
44 service.

45 (b) The district board may require system development fees only in accordance with
46 Article 8 of this Chapter."

47 **SECTION 8.** G.S. 162A-85.13 is amended by adding a new subsection to read:

48 "(a1) The district board may require system development fees only in accordance with
49 Article 8 of this Chapter."

50 **SECTION 9.** G.S. 162A-88 reads as rewritten:

51 "**§ 162A-88. District is a municipal corporation.**

1 (a) The inhabitants of a county water and sewer district created pursuant to this Article
2 are a body corporate and politic by the name specified by the board of commissioners. Under
3 that name they are vested with all the property and rights of property belonging to the
4 corporation; have perpetual succession; may sue and be sued; may contract and be contracted
5 with; may acquire and hold any property, real and personal, devised, sold, or in any manner
6 conveyed, dedicated to, or otherwise acquired by them, and from time to time may hold, invest,
7 sell, or dispose of the same; may have a common seal and alter and renew it at will; may
8 establish, revise and collect rates, fees or other charges and penalties for the use of or the
9 services furnished or to be furnished by any sanitary sewer system, water system or sanitary
10 sewer and water system of the district; and may exercise those powers conferred on them by
11 this Article.

12 (b) The district board may require system development fees only in accordance with
13 Article 8 of this Chapter."

14 **SECTION 10.(a)** G.S. 1-52(15) reads as rewritten:

15 "(15) For the recovery of taxes paid as provided in ~~G.S. 105-381~~G.S. 105-381 or
16 for the recovery of an unlawful fee, charge, or exaction collected by a
17 county, municipality, or other unit of local government for water or sewer
18 service or water and sewer service."

19 **SECTION 10.(b)** This section is to clarify and not alter G.S. 1-52.

20 **SECTION 11.** Sections 1 through 9 of this act become effective October 1, 2017,
21 and apply to system development fees imposed on or after that date. Section 10 of this act,
22 being a clarifying amendment, has retroactive effect and applies to claims accrued or pending
23 prior to and after the date that section becomes law. Nothing in this act provides retroactive
24 authority for any system development fee, or any similar fee for water or sewer services to be
25 furnished, collected by a local governmental unit prior to October 1, 2017. The remainder of
26 this act is effective when it becomes law and applies to claims accrued or pending prior to and
27 after that date.