

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2017

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HOUSE BILL 436  
Committee Substitute Favorable 4/20/17  
Senate State and Local Government Committee Substitute Adopted 6/20/17  
PROPOSED SENATE COMMITTEE SUBSTITUTE H436-PCS10393-ST-38

Short Title: Local Government/Regulatory Fees.

(Public)

Sponsors:

Referred to:

March 23, 2017

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR UNIFORM AUTHORITY TO IMPLEMENT SYSTEM DEVELOPMENT FEES FOR PUBLIC WATER AND SEWER SYSTEMS IN NORTH CAROLINA AND TO CLARIFY THE APPLICABLE STATUTE OF LIMITATIONS.

The General Assembly of North Carolina enacts:

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

"Article 8.

"System Development Fees.

**"§ 162A-200. Short title.**

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

**"§ 162A-201. Definitions.**

The following definitions apply in this Article:

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



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- 1           (6) New development. – Any of the following occurring after the date a local  
2 government begins the written analysis process required by G.S. 162A-205,  
3 no more than one year prior to the adoption of a system development fee,  
4 which increases the capacity necessary to serve that development:
- 5               a. The subdivision of land.  
6               b. The construction, reconstruction, redevelopment, conversion,  
7 structural alteration, relocation, or enlargement of any  
8 structure which increases the number of service units.  
9               c. Any use or extension of the use of land which increases the  
10 number of service units.
- 11           (7) Service. – Water or sewer service, or water and sewer service, provided by a  
12 local governmental unit.
- 13           (8) Service unit. – A unit of measure, typically an equivalent residential unit,  
14 calculated in accordance with generally accepted engineering or planning  
15 standards.
- 16           (9) System development fee. – A charge or assessment for service imposed with  
17 respect to new development to fund costs of capital improvements  
18 necessitated by and attributable to such new development, to recoup costs of  
19 existing facilities which serve such new development, or a combination of  
20 those costs, as provided in this Article. The term includes amortized charges,  
21 lump-sum charges, and any other fee that functions as described by this  
22 definition regardless of terminology. The term does not include any of the  
23 following:
- 24               a. A charge or fee to pay the administrative, plan review, or  
25 inspection costs associated with permits required for  
26 development.
- 27               b. Tap or hookup charges for the purpose of reimbursing the  
28 local governmental unit for the actual cost of connecting the  
29 service unit to the system.
- 30               c. Availability charges.
- 31               d. Dedication of capital improvements on-site, adjacent, or  
32 ancillary to a development absent a written agreement  
33 providing for credit or reimbursement to the developer  
34 pursuant to G.S. 153A-280, 153A-451, 160A-320, 160A-499  
35 or Part 3A of Article 18, Chapter 153A or Part 3D of Article  
36 19, Chapter 160A of the General Statutes.
- 37               e. Reimbursement to the local governmental unit for its  
38 expenses in constructing or providing for water or sewer  
39 utility capital improvements adjacent or ancillary to the  
40 development if the owner or developer has agreed to be  
41 financially responsible for such expenses; however, such  
42 reimbursement shall be credited to any system development  
43 fee charged as set forth in G.S. 162A-207(c).
- 44           (10) System development fee analysis. – An analysis meeting the  
45 requirements of G.S. 162A-205.

46 **"§ 162A-202. Reserved.**

47 **"§ 162A-203. Authorization of system development fee.**

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

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

4 **"§ 162A-204. Reserved.**

5 **"§ 162A-205. Supporting analysis.**

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

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

33 **"§ 162A-206. Reserved.**

34 **"§ 162A-207. Minimum requirements.**

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

37       (b) Revenue Credit. – In applying the incremental cost or marginal cost, or the  
38 combined cost, method to calculate a system development fee with respect to water or sewer  
39 capital improvements, the system development fee analysis must include as part of that  
40 methodology a credit against the projected aggregate cost of water or sewer capital  
41 improvements. That credit shall be determined based upon generally accepted calculations and  
42 shall reflect a deduction of either the outstanding debt principal or the present value of  
43 projected water and sewer revenues received by the local governmental unit for the capital  
44 improvements necessitated by and attributable to such new development, anticipated over the  
45 course of the planning horizon. In no case shall the credit be less than twenty-five percent  
46 (25%) of the aggregate cost of capital improvements.

47       (c) Construction or Contributions Credit. – In calculating the system development fee  
48 with respect to new development, the local governmental unit shall credit the value of costs in  
49 excess of the development's proportionate share of connecting facilities required to be  
50 oversized for use of others outside of the development. No credit shall be applied, however, for

1 water or sewer capital improvements on-site or to connect new development to water or sewer  
2 facilities.

3 **"§ 162A-208. Reserved.**

4 **"§ 162A-209. Adoption and periodic review.**

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

9 (b) After expiration of the period for posting, the governing body of the local  
10 governmental unit shall conduct a public hearing prior to considering adoption of the analysis  
11 with any modifications or revisions.

12 (c) The local governmental unit shall publish the system development fee in its annual  
13 budget or rate plan or ordinance. The local governmental unit shall update the system  
14 development fee analysis at least every five years.

15 **"§ 162A-210. Reserved.**

16 **"§ 162A-211. Use and administration of revenue.**

17 (a) Revenue from system development fees calculated using the incremental cost  
18 method or marginal cost method, exclusively or as part of the combined cost method, shall be  
19 expended only to pay:

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

22 a. Construction contract prices.

23 b. Surveying and engineering fees.

24 c. Land acquisition cost.

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

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

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

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

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

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

48 **"§ 162A-212. Reserved.**

49 **"§ 162A-213. Time for collection of system development fees.**

50 For new development involving the subdivision of land, the system development fee shall  
51 be collected by a local governmental unit either at the time of plat recordation or when water or

1 sewer service for the subdivision or other development is committed by the local governmental  
2 unit. For all other new development, the local governmental unit shall collect the system  
3 development fee at the time of application for connection of the individual unit of development  
4 to the service or facilities.

5 "**§ 162A-214. Reserved.**

6 "**§ 162A-215. Narrow construction.**

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

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

11 "**§ 130A-64. Service charges and rates.**

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

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

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

24 "**§ 153A-277. Authority to fix and enforce rates.**

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

33 ...

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

36 ...."

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

38 "**§ 160A-314. Authority to fix and enforce rates.**

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

44 ...

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

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

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

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

1           "(9a) To impose and require system development fees only in accordance with  
2           Article 8 of this Chapter."

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

4           "(a5) An authority may require system development fees only in accordance with Article  
5           8 of this Chapter."

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

7           "(8a) To impose and require system development fees only in accordance with  
8           Article 8 of this Chapter."

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

10          **"§ 162A-49. Rates and charges for services.**

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

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

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

30          "(8a) To impose and require system development fees only in accordance with  
31          Article 8 of this Chapter."

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

33          **"§ 162A-72. Rates and charges for services.**

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

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

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

2           "(a1) The district board may require system development fees only in accordance with

3 Article 8 of this Chapter."

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

5 **"§ 162A-88. District is a municipal corporation.**

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

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

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

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

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

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