

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2019

H

D

HOUSE BILL 873
Committee Substitute Favorable 4/29/19
PROPOSED COMMITTEE SUBSTITUTE H873-PCS40445-ST-26

Short Title: System Development Fee/Clarify Time of Charge.

(Public)

Sponsors:

Referred to:

April 22, 2019

1 A BILL TO BE ENTITLED
2 AN ACT TO CLARIFY THE TIMING OF COLLECTION OF SYSTEM DEVELOPMENT
3 FEES FOR EACH CATEGORY OF NEW DEVELOPMENT.

4 The General Assembly of North Carolina enacts:

5 **SECTION 1.** G.S. 162A-213 reads as rewritten:

6 **"§ 162A-213. Time for collection of system development fees.**

7 (a) Land Subdivision. – For new development ~~involving the subdivision of land, as~~
8 defined in G.S. 162A-201(6)a., the system development fee shall be collected by a local
9 governmental unit at the later of either of the following:

10 a. ~~The time of plat recordation.~~

11 b. ~~When water or sewer service is committed by the local governmental unit.~~

12 (b) Other New Development. – For ~~all other new development, development as defined~~
13 by G.S. 162A-201(6)b. or c., the local governmental unit shall collect the system development
14 fee at the earlier of either of the following:

15 a. ~~The time of application for connection of the individual unit of development~~
16 ~~to the service or facilities.~~

17 b. ~~When water or sewer service is committed by the local governmental unit.~~

18 time of issuance of the permit under Part 4 of Article 18 of Chapter 153A of the General Statutes
19 or Part 5 of Article 19 of Chapter 160A of the General Statutes. If the local governmental unit
20 collecting the system development fee is not the same as the local governmental unit issuing the
21 permit under Part 4 of Article 18 of Chapter 153A of the General Statutes or Part 5 of Article 19
22 of Chapter 160A of the General Statutes, the local governmental unit issuing the permit shall
23 notify the local governmental unit imposing the fee of the application for a permit.

24 (c) Amount of Fee. – When imposing and collecting any system development fee, the
25 amount of the system development fee to be imposed is the system development fee, as adopted
26 by the local governmental unit, in effect on the date the system development fee is paid.

27 (d) Exceptions. – A system development fee shall not be charged or assessed in either of
28 the following circumstances:

29 (1) On new development as defined by G.S. 162A-201(6)b. or c., if both the
30 following apply:

31 a. The water or sewer lines were installed to the individual unit of
32 development prior to October 1, 2017, or tap fees were paid for the
33 individual unit of development prior to October 1, 2017.

34 b. The local governmental unit did not impose a fee for capacity prior to
35 October 1, 2017, or the facility was operated under Article 15 of



* H 8 7 3 - P C S 4 0 4 4 5 - S T - 2 6 *

Chapter 153A of the General Statutes or Article 16 of Chapter 160A of the General Statutes as of October 1, 2017.

(2) On new development as defined by G.S. 162A-201(6)b. or c., if a system development fee was paid upon recordation of the plat of subdivision in accordance with subsection (a) of this section."

SECTION 2. G.S. 162A-201 reads as rewritten:

"§ 162A-201. Definitions.

...

(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 and~~ subdivisions, structures, and land uses in existence at the start of the ~~written system development fee analysis process required by G.S. 162A-205, no and~~ more than one year prior to the adoption of a system development fee.

...

(6) New development. – Any of the following ~~occurring after the date a local government begins the written analysis process required by G.S. 162A-205, no more than one year prior to the adoption of a system development fee,~~ actions with respect to real property which increases the capacity availability of service necessary to serve that development:

a. The subdivision of land.

b. ~~The construction, reconstruction, redevelopment, conversion, structural alteration, relocation, or enlargement of any structure which increases the number of service units.~~Initial construction on undeveloped property.

c. Any use or extension of the use of ~~land which increases the number of service units.~~land, including reconstruction, redevelopment, renovation, conversion, structural alteration, relocation, or enlargement of any structure on developed property which increases the number of service units.

...

(9) System development fee. – A charge or assessment for service imposed ~~with respect to~~ upon new development to fund costs of capital improvements necessitated by and attributable to such new development, to recoup costs of existing facilities which serve such new development, or a combination of those costs, as provided in this Article. The term includes amortized charges, lump-sum charges, and any other fee that functions as described by this definition regardless of terminology. The term does not include any of the following:

a. A charge or fee to pay the administrative, plan review, or inspection costs associated with permits required for development.

b. Tap or hookup charges for the purpose of reimbursing the local governmental unit for the actual cost of connecting the service unit to the system.

c. Availability charges.

d. Dedication of capital improvements on-site, adjacent, or ancillary to a development absent a written agreement providing for credit or reimbursement to the developer pursuant to G.S. 153A-280,

1 153A-451, 160A-320, 160A-499 or Part 3A of Article 18, Chapter
2 153A or Part 3D of Article 19, Chapter 160A of the General Statutes.
3 e. Reimbursement to the local governmental unit for its expenses in
4 constructing or providing for water or sewer utility capital
5 improvements adjacent or ancillary to the development if the owner or
6 developer has agreed to be financially responsible for such expenses;
7 however, such reimbursement shall be credited to any system
8 development fee charged as set forth in G.S. 162A-207(c).

9"

10 **SECTION 3.** G.S. 162A-203(a) reads as rewritten:

11 "(a) A local governmental unit may adopt and impose a system development fee for water
12 or sewer service on new development only in accordance with the conditions and limitations of
13 this Article."

14 **SECTION 4.** G.S. 162A-205 reads as rewritten:

15 "**§ 162A-205. Supporting analysis.**

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

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

43 (b) For purposes of this section, new development shall include only that new
44 development occurring after the date a local government begins the written analysis process
45 required by G.S. 162A-205, no more than one year prior to the adoption of a system development
46 fee."

47 **SECTION 5.** G.S. 162A-209(b) reads as rewritten:

48 "(b) After expiration of the period ~~for posting~~, in subsection (a) of this section, the
49 governing body of the local governmental unit shall conduct a public hearing prior to considering
50 adoption of the ~~analysis with any modifications or revisions~~ system development fee. Notice of
51 the public hearing shall be published not less than 10 days nor more than 25 days before the date

1 fixed for the public hearing in a newspaper having general circulation in the area and may be
2 published on the Web site of the local government."

3 **SECTION 6.** This act becomes effective July 1, 2019, and applies to system
4 development fees collected on or after that date.