

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

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HOUSE BILL 2069*

Short Title: Durham Stormwater Facilities Assessments. (Local)

Sponsors: Representatives Hall, Luebke, Michaux, Wilkins (Primary Sponsors); and Hughes.

Referred to: Local Government II, if favorable, Finance.

May 27, 2010

1 A BILL TO BE ENTITLED
2 AN ACT AMENDING THE CHARTER OF THE CITY OF DURHAM TO AUTHORIZE
3 ASSESSMENTS AGAINST PROPERTIES SERVED BY STORMWATER FACILITIES
4 FOR THE CONSTRUCTION AND REPAIR OF THOSE FACILITIES.

5 The General Assembly of North Carolina enacts:

6 **SECTION 1.** Article 7 of Chapter VI of the Charter of the City of Durham, being
7 Chapter 671 of the 1975 Session Laws, as amended, is amended by adding a new section to
8 read as follows:

9 "Sec. 82.1. Assessment Authority for Stormwater Facilities.

10 (a) The City Council is authorized to assess the City's direct and indirect costs for
11 projects that construct, reconstruct, or repair stormwater facilities on private or public property
12 when the projects remediate a flooding or other public nuisance or enable compliance with
13 State or federal requirements regarding water quality. The assessments shall be made against
14 properties the project serves or will serve or against the owner of a failing facility or the
15 property on which the facility is located. The authority granted under this section does not
16 allow the City to enter private property except as otherwise authorized by law or agreement. In
17 the event that work is necessary on an existing facility, unless the project is necessary to
18 remediate a current public nuisance, prior to initiating a project, the City shall give advance
19 written notice to the property owner or owners upon which the facility is located and shall
20 afford the owner or owners a reasonable opportunity to cure any deficiency in the facility. The
21 City Council's assessment authority under this section shall be exercised pursuant to one or
22 more ordinances adopted by the City Council which are consistent with the provisions of this
23 section.

24 (b) The City shall make a professional engineering determination regarding the
25 properties that are or will be served by the project using drainage basins, subdivision plats, site
26 plans, or other professionally recognized indicators. When costs are to be allocated to more
27 than one property, the City shall allocate the costs using any or a combination of the following
28 criteria: (i) the area of individual properties; (ii) tax valuation; (iii) the number of buildable lots
29 or properties; (iv) zoning; (v) one or more professional appraisals; or (vi) impervious area.
30 Properties owned by the federal government or State government shall not be assessed unless
31 authorized by law, and the assessments that would have been made against federal government
32 or State government properties shall not be charged against the remaining properties.

33 (c) The City shall prepare an assessment roll showing the cost allocated to each
34 property which shall be filed and available for public review in the office indicated in notices
35 provided pursuant to this subsection. The City Council shall conduct a public hearing regarding
36 the proposed assessment and assessment roll. At least 21 days prior to the public hearing,



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1 individual notice by first-class mail shall be sent to each impacted property owner at the
2 address shown on the most current county tax records. The notice shall include a description of
3 the project, the assessment roll, and the time and date of the council meeting at which the
4 public hearing is scheduled. Notice shall also be published not less than 10 days before the
5 public hearing on the City's Web site and in a daily newspaper that serves the City. Published
6 notice shall include a description and location of the project, the total costs to be assessed, the
7 geographic area subject to the assessment, the public office in which the assessment roll
8 showing individual properties and assessment amounts can be found, and an Internet link where
9 the specifics of the assessment roll can be located. The person who has mailed notice and
10 ensured compliance with the published and Internet postings shall file with the City Council a
11 certificate of compliance with the requirements of this subsection and, in the absence of fraud,
12 the certificate shall be conclusive.

13 (d) After the public hearing, the City Council may confirm the assessment as proposed,
14 continue the matter, not approve the proposed assessment, or direct that the assessment process
15 begin anew. All documentation regarding the approved assessment shall be retained in the
16 Office of the City Clerk or the Department of Public Works.

17 (e) The City Council may set aside or reduce a prior assessment made against a
18 property, with individual notice to the affected property owner, if a clerical or factual error has
19 substantially impacted the result of any assessment by more than five percent (5%). For
20 purposes of this subsection, the term "error" includes, but is not limited to, the use of an
21 incorrect tax value, incorrect calculation of buildable lots or area of property, or mistaken
22 identification of a property or lot. In addition, the City Council may set aside the whole of an
23 assessment if there has been a substantial irregularity in the proceedings or process as required
24 under this section. The assessment process shall be considered an in rem proceeding.

25 (f) A final assessment approved by the City Council shall be a lien against the property
26 assessed of the same nature and to the same extent as a lien for county and city taxes, according
27 to the priorities set forth in G.S. 160A-233(c).

28 (g) The provisions of subsections (21), (22), (22.1), (23), (26), (27), and (29) of Section
29 77 of this Charter shall apply to assessments approved pursuant to the provisions of this
30 section. A request for apportionment of an assessment for property that is subdivided as
31 provided under Section 77(26) of this Charter may be approved administratively by the City
32 Manager and the City Manager's approval, and the resulting assessment amounts for subdivided
33 properties shall be filed with the City Clerk with the originally approved assessment amounts.
34 Notwithstanding the provisions of subsections (21), (22), (22.1), (23), (26), (27), and (29) of
35 Section 77 of this Charter, the City Council may, in its discretion, by ordinance, accelerate
36 payment of assessments due for land that at the time of assessment was undeveloped so that
37 payment is required prior to issuance of a building permit or a certificate of compliance.

38 (h) The authority provided in this section is in addition to and not in limitation of any
39 other authority granted by this Charter or any other provision of general or local law."

40 **SECTION 2.** This act is effective when it becomes law.