

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2021

SESSION LAW 2021-76  
HOUSE BILL 344

AN ACT TO CLARIFY THE PROCESS WITH WHICH A LOCAL GOVERNMENTAL UNIT MAY IMPOSE AND COLLECT SYSTEM DEVELOPMENT FEES AND TO PROVIDE THAT A WATER OR WASTEWATER PUBLIC UTILITY IS SOLELY RESPONSIBLE FOR INCOME TAXES DUE ON TAXABLE CONTRIBUTIONS IN AID OF CONSTRUCTION.

The General Assembly of North Carolina enacts:

**SECTION 1.** G.S. 162A-201 reads as rewritten:

**"§ 162A-201. Definitions.**

The following definitions apply in this Article:

- ...
- (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,~~ facility providing a general benefit to the area that facility serves and is owned or operated, or to be owned or operated, by a local governmental unit and land associated with such facility. unit. This shall include facilities for the reuse or reclamation of water and any land associated with the facility.
- ...
- (7) Service. – Water or sewer service, or water and sewer service, provided by a local governmental ~~unit.~~ unit, including water or sewer service provided pursuant to a wholesale arrangement between a water and sewer authority organized under Article 1 of Chapter 162A of the General Statutes and a local governmental unit.
- ...
- (9) System development fee. – A charge or assessment for ~~service~~ service, including service provided pursuant to a wholesale arrangement between a water and sewer authority organized under Article 1 of Chapter 162A of the General Statutes and a local governmental unit, imposed with respect to 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, 153A-451, 160A-320, 160A-499 or Part 3A of Article 18, Chapter 153A or Part 3D of Article 19, Chapter 160A of the General Statutes.
- e. Reimbursement to the local governmental unit for its expenses in constructing or providing for water or sewer utility capital improvements adjacent or ancillary to the development if the owner or developer has agreed to be financially responsible for such expenses; however, such reimbursement shall be credited to any system development fee charged as set forth in G.S. 162A-207(c).

...."

**SECTION 2.** G.S. 162A-205 reads as rewritten:

**"§ 162A-205. Supporting analysis.**

A system development fee shall 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 five 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.
- (9) Uses the gallons per day per service unit that the local governmental unit applies to its water or sewer system engineering or planning purposes for water or sewer, as appropriate, in calculating the system development fee."

**SECTION 3.** G.S. 162A-207 reads as rewritten:

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

(a) Maximum. – A system development fee shall 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 shall be applied, however, for ~~water or sewer~~ capital improvements on-site or to connect new development to ~~water or sewer~~ facilities."

**SECTION 4.** Article 7 of Chapter 62 of the General Statutes is amended by adding a new section to read:

**"§ 62-133.12B. Computation of income tax expense for rate-making purposes; taxable contributions.**

A water or wastewater public utility is solely responsible for funding the income taxes on taxable contributions in aid of construction and customer advances for construction and shall record the income taxes the water or wastewater utility pays in accumulated deferred income taxes for accounting and rate-making purposes."

**SECTION 5.** This act is effective when it becomes law and clarifies existing law with minimum standards employed by all generally accepted accounting, engineering, and planning methodologies used to calculate system development fees for public water and sewer systems.

In the General Assembly read three times and ratified this the 24<sup>th</sup> day of June, 2021.

s/ Mark Robinson  
President of the Senate

s/ Tim Moore  
Speaker of the House of Representatives

s/ Roy Cooper  
Governor

Approved 12:03 p.m. this 2<sup>nd</sup> day of July, 2021