

GENERAL ASSEMBLY OF NORTH CAROLINA
1987 SESSION

CHAPTER 705
SENATE BILL 630

AN ACT TO ALLOW THE CITY OF HICKORY TO IMPOSE FACILITY FEES.

The General Assembly of North Carolina enacts:

Section 1. Purpose. It is the purpose of this act to place an equitable share of the cost of providing new community service facilities upon all new inhabitants and upon those associated with the development process.

Sec. 2. Definitions. The following definitions apply in this act unless the context clearly requires otherwise:

(1) "Capital costs" means costs spent for developing community service facilities; such costs are limited to capital outlay items listed in the "Uniform Local Government Accounting Systems" procedural manual prepared by the North Carolina Local Government Commission.

(2) "Community service facilities" means the following public facilities or improvements provided or established by the local government or in conjunction with other units of government: streets and sidewalks, water/sewer and drainage projects, and parks, open spaces, and recreational facilities. No other facility shall be considered as "Community service facilities" under the provisions of this act.

(3) "Developer" means an individual, corporation, partnership, organization, association, firm, political subdivision, or other legal entity constructing or creating new construction.

(4) "Facility fee" means the charge imposed upon new construction pursuant to the grant or authority herein contained.

(5) "New construction" means any new development, construction, or installation that requires any building or zoning permit, certification, or other action permitting real property improvements. The term includes the installation of a mobile home or factory built or modular housing. The term excludes the renovation and repair of existing structures and accessory uses and their structures, unless such renovations and repairs and accessory uses shall cause an increase in the off-street parking requirement or a change in occupancy as occupancy is defined by the North Carolina State Building Code. The term also excludes additions unless such addition causes an increase in the off-street parking requirement or a change in occupancy as occupancy is defined by the North Carolina State Building Code. Further, the term does not include fences, billboards, poles, pipelines, transmission lines, advertising signs or similar structures and improvements that do not generate the need for additional or expanded community facilities upon completion of the additions or improvements.

Sec. 3. Subject to the conditions hereinafter set forth, a city that adopts an ordinance under Section 6 of this act shall have the right, power and authority to impose and collect a regulatory fee as a facility fee on all new construction within its city limits and extraterritorial jurisdiction.

Sec. 4. (a) No facility fee shall be imposed until the city has caused to be prepared a report containing:

- (1) A description of the anticipated capital cost to the city of each additional or expanded community service facility generated by new construction;
- (2) A description of the relevant characteristics of construction that give rise to additional or expanded community service facilities such as population, trip generation and storm water run-off and flow characteristics; and
- (3) A plan for providing one or more of the community service facilities.

(b) Before adopting or amending a facility fee ordinance authorized by this act, the city council shall hold a public hearing on it. A notice of the public hearing shall be given so as to conform with G.S. 160A-364. No facility fee ordinance shall be adopted or amended without first giving the planning commission a reasonable opportunity to make comments or recommendations to the city council.

(c) The amount of each facility fee imposed and collected shall be based upon reasonable and uniform considerations of capital costs to be incurred by the city as the result of new construction. In establishing the facilities fees to be imposed, the city council may divide the city and its extraterritorial area into two or more zones in order to determine the estimated costs of providing any or all of the facilities described herein; such division shall be done only after a public hearing and after the matter has been studied and reported on to the city council by the regional planning commission. The facilities fees may be different in different zones, depending upon whether each zone already has certain facilities available and whether or not the capital costs thereof have been paid or are yet to be paid. The facility must bear a direct relationship to additional or expended public capital costs of community service facilities to be rendered for the inhabitants of the area occupants of the new construction, or those persons, firms or corporations responsible for developing any new development, whether commercial, industrial, residential or otherwise or any other developer.

(d) The amount of each facility fee shall be based upon qualified needs and specific classifications and rates, which shall be uniformly applied to all members. However, the classification shall be based upon the amount, the cost and the extent of the additional burden being placed upon the public facilities by particular types and sizes of development.

(e) Monies for each particular facility for which a facility fee is collected shall be placed in a separate trust fund. All such revenues shall be spent for the capital facilities for which they were collected and such benefits shall not be exclusive, that is, persons or developers who pay a facility fee hereunder shall not thereby obtain any rights to use public facilities greater than any other member of the public in a similar classification

and situation. Separate service areas and zones with separate trust funds may be established.

Sec. 5. The city is authorized to enact ordinances, resolutions, rules and regulations that are necessary or expedient to carry this act into execution and effect.

Sec. 6. The powers conferred in this act shall be supplementary to all other powers and procedures authorized by any other general or local law. Assessments, charges, fees or rates authorized by any other general or local law are not affected by this act.

Sec. 7. The following shall be the procedure for hearing appeals concerning the amount of a facilities fee or concerning the propriety or illegality of any zone division or classification or rate. Any person who feels aggrieved by any action by the city council pursuant to this act must first pay the amount of the facilities fee so charged to him, with such amount clearly marked as paid under protest, and thereafter give notice of appeal within a period of 30 days after such payment. Such notice shall be delivered by personal service or registered or certified mail, return receipt requested, directed to the city manager. The city council shall hold a public hearing to review said matter within a period of 35 days following receipt of said appeal; the decision by the city council upon said appeal shall then be subject to review by the Superior Court by proceedings in the nature of **certiorari**; any petition for review by the Superior Court shall be filed with the Clerk of Superior Court of Catawba County within a period of 30 days following the date the decision of the city council is delivered in writing to the appealing party, said delivery to be either by personal service or by registered mail or certified mail, return receipt requested.

Sec. 8. This act applies to the City of Hickory only.

Sec. 9. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 31st day of July, 1987.