

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2017

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SENATE BILL 641

Short Title: Uniform System Development Fees for Water. (Public)

Sponsors: Senators Newton, Edwards, Sanderson (Primary Sponsors); Barringer, Cook, J. Davis, Ford, Harrington, McKissick, Smith-Ingram, and Tucker.

Referred to: Rules and Operations of the Senate

April 5, 2017

1 A BILL TO BE ENTITLED
2 AN ACT TO PROVIDE FOR UNIFORM AUTHORITY TO IMPLEMENT SYSTEM
3 DEVELOPMENT FEES FOR PUBLIC WATER AND SEWER SYSTEMS IN NORTH
4 CAROLINA.

5 The General Assembly of North Carolina enacts:

6 SECTION 1. Part 1 of Article 16 of Chapter 160A of the General Statutes is
7 amended by adding a new section to read:

8 **§ 160A-314.2. System development fees for water and sewer.**

9 (a) In addition to monthly or periodic rates, the governing board of a water or sewer, or
10 water and sewer, system may impose a system development fee only as provided in this
11 section. The system development fee shall be comprised of two parts as follows:

12 (1) A charge for a portion of the infrastructure existing at the time the new
13 customer asks for additional infrastructure or new services to be provided.

14 (2) A charge for a portion of the future needs of the water or sewer, or water and
15 sewer, system that bears a reasonable relationship to the service requested
16 and its impact on the water or sewer, or water and sewer, system.

17 (b) A system development fee may be charged and collected from only the following:

18 (1) Real property not previously served by the water or sewer, or water and
19 sewer, system.

20 (2) A developer or other owner of real property that agrees to pay the system
21 development fee as part of a development agreement under Part 3A of
22 Article 18 of Chapter 153A of the General Statutes or Part 3D of Article 19
23 of Chapter 160A of the General Statutes.

24 (c) The formula or other means of calculating the system development fee shall be
25 reviewed annually and published in the budget ordinance, with any changes in the formula or
26 other means of calculating the system development fee being effective from July 1 until June
27 30 of each year. The formula or other means of calculating the system development fee shall
28 take into account the future growth of the system, the age of the system, the estimated users,
29 and other factors related to repair, maintenance, and expansion of the system. The formula or
30 other means of calculating the system development fee shall not take into account personnel or
31 other overhead costs of the system.

32 (d) The monies collected as a system development fee shall be segregated and used
33 only for repairs, maintenance, expansion, or other construction needs of the water or sewer, or
34 water and sewer, system. The monies collected as a system development fee shall not be used
35 for overhead costs of the system or transferred to the general fund of the governing board.



1 (e) Notwithstanding the provisions of any local act, it is the intent of the General
2 Assembly that, effective October 1, 2017, the authority set out in this statute is the exclusive
3 authority to impose fees of property owners connecting to the water or sewer, or water and
4 sewer, system for the availability of the services and future needs of the service. Effective
5 October 1, 2017, a local act granting the authority to impose an impact fee or other type of
6 system development fee for connecting to a water or sewer, or water and sewer, system, is not
7 effective for that use or purpose. Provided that any fee properly imposed under such a local act
8 prior to October 1, 2017, may be lawfully collected pursuant to the provisions of that local act.

9 (f) For purposes of this section, "governing board" means the governing body of the
10 city, county, or other unit of government as established by Part 2 of Article 2 of Chapter 130A,
11 Article 1 of Chapter 162A, Article 4 of Chapter 162A, Article 5 of Chapter 162A, Article 5A of
12 Chapter 162A, or Article 6 of Chapter 162A of the General Statutes."

13 **SECTION 2.** G.S. 160A-314 is amended by adding a new subsection to read:

14 "(a4) A city may require system development charges only in accordance with
15 G.S. 160A-314.2."

16 **SECTION 3.** G.S. 160A-317 is amended by adding a new subsection to read:

17 "(a1) A city may require system development charges only in accordance with
18 G.S. 160A-314.2."

19 **SECTION 4.** G.S. 130A-64 reads as rewritten:

20 "**§ 130A-64. Service charges and rates.**

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

30 (b) A sanitary district board may require system development charges only in
31 accordance with G.S. 160A-314.2."

32 **SECTION 5.** G.S. 153A-277 is amended by adding a new subsection to read:

33 "(a2) A county may require system development charges only in accordance with
34 G.S. 160A-314.2."

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

36 "(9a) To impose and require system development charges only as in accordance
37 with G.S. 160A-314.2."

38 **SECTION 6.(b)** G.S. 162A-9 is amended by adding a new subsection to read:

39 "(a5) An authority may require system development charges only in accordance with
40 G.S. 160A-314.2."

41 **SECTION 7.(a)** G.S. 162A-36 is amended by adding a new subdivision to read:

42 "(8a) To impose and require system development charges only in accordance with
43 G.S. 160A-314.2."

44 **SECTION 7.(b)** G.S. 162A-49 reads as rewritten:

45 "**§ 162A-49. Rates and charges for services.**

46 (a) The district board may fix, and may revise from time to time, rents, rates, fees and
47 other charges for the use of land for the services furnished or to be furnished by any water
48 system or sewerage system or both. Such rents, rates, fees and charges shall not be subject to
49 supervision or regulation by any bureau, board, commission, or other agency of the State or of
50 any political subdivision. Any such rents, rates, fees and charges pledged to the payment of
51 revenue bonds of the district shall be fixed and revised so that the revenues of the water system

1 or sewerage system or both, together with any other available funds, shall be sufficient at all
2 times to pay the cost of maintaining, repairing and operating the water system or the sewerage
3 system or both, the revenues of which are pledged to the payment of such revenue bonds,
4 including reserves for such purposes, and to pay the interest on and the principal of such
5 revenue bonds as the same shall become due and payable and to provide reserves therefor. If
6 any such rents, rates, fees and charges are pledged to the payment of any general obligation
7 bonds issued under this Article, such rents, rates, fees and charges shall be fixed and revised so
8 as to comply with the requirements of such pledge. The district board may provide methods for
9 collection of such rents, rates, fees and charges and measures for enforcement of collection
10 thereof, including penalties and the denial or discontinuance of service.

11 (b) The district board may require system development charges only in accordance with
12 G.S. 160A-314.2."

13 **SECTION 8.(a)** G.S. 162A-69 is amended by adding a new subdivision to read:

14 "(8a) To impose and require system development charges only in accordance with
15 G.S. 160A-314.2."

16 **SECTION 8.(b)** G.S. 162A-72 reads as rewritten:

17 "**§ 162A-72. Rates and charges for services.**

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

34 (b) The district board may require system development charges only in accordance with
35 G.S. 160A-314.2."

36 **SECTION 9.** G.S. 162A-85.13 is amended by adding a new subsection to read:

37 "(a1) The district board may require system development charges only in accordance with
38 G.S. 160A-314.2."

39 **SECTION 10.** G.S. 162A-88 reads as rewritten:

40 "**§ 162A-88. District is a municipal corporation.**

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

1 (b) The district board may require system development charges only in accordance with
2 G.S. 160A-314.2."

3 **SECTION 11.** G.S. 1-52 is amended by adding a new subdivision to read:
4 "**§ 1-52. Three years.**

5 Within three years an action -

6 ...

7 (21) Against a county, a municipality, or other unit of government as established
8 by Part 2 of Article 2 of Chapter 130A, Article 1 of Chapter 162A, Article 4
9 of Chapter 162A, Article 5 of Chapter 162A, Article 5A of Chapter 162A, or
10 Article 6 of Chapter 162A of the General Statutes for refund or release of
11 any system development fee improperly imposed pursuant
12 G.S. 160A-314.2."

13 **SECTION 12.(a)** Statement of Defense. – All persons asserting a valid claim to the
14 return of monies paid to a county, municipality, or other unit of government as established by
15 Part 2 of Article 2 of Chapter 130A, Article 1 of Chapter 162A, Article 4 of Chapter 162A,
16 Article 5 of Chapter 162A, Article 5A of Chapter 162A, or Article 6 of Chapter 162A of the
17 General Statutes as a fee improperly imposed prior to October 1, 2017, for the future services
18 of a water or sewer system, or both, shall proceed as follows:

- 19 (1) If the fee has not been paid, the person may make a demand for the release
20 of the claim by submitting to the governing body of the unit a written
21 statement of his or her defense to payment or enforcement of the fee and a
22 request for release of the fee at any time prior to payment of the fee.
- 23 (2) If the fee has been paid, the person, at any time within 36 months after the
24 fee first became due or within 36 months from the date of payment of such
25 fee, whichever is the later date, may make a demand for a refund of the fee
26 paid by submitting to the governing body of the unit a written statement of
27 his or her defense and a request for refund thereof. A claim not brought
28 within 36 months shall be untimely and declined by the governing board of
29 the unit.

30 **SECTION 12.(b)** Action of Governing Body. – Upon receiving a person's written
31 statement of defense and request for release or refund, the governing body of the unit shall
32 within 90 days after receipt of such request, determine whether the person has a valid defense
33 to the fee imposed or any part thereof and shall either release or refund that portion of the
34 amount of the fee that is determined to be in excess of the correct liability or notify the person
35 in writing that no release or refund will be made. If the real property associated with the
36 improperly imposed fee has transferred ownership between the time of the payment of the
37 improperly imposed fee and the request for release or refund of the fee, the governing body
38 may require proof from the person requesting release or refund that the amount of the fee was
39 not considered in the purchase price of the real property and adjust the amount of the release or
40 refund accordingly. The governing body may, by resolution, delegate its authority to determine
41 requests for a release or refund of fees of less than one hundred dollars (\$100.00) to the finance
42 officer, manager, or attorney of the unit. A finance officer, manager, or attorney to whom this
43 authority is delegated shall report monthly to the governing body of the unit the actions taken
44 by him or her on requests for release or refund. All actions taken by the governing body or
45 finance officer, manager, or attorney on requests for release or refund shall be recorded in the
46 minutes of the governing body.

47 **SECTION 12.(c)** Suit for Recovery of Improper Fees. –

- 48 (1) Request for release before payment. – If within 90 days after receiving a
49 person's request for release of an unpaid fee claim under subsection (a) of
50 this section, the governing body of the unit has declined the request for
51 untimely filing, failed to grant the release, has notified the person that no

1 release will be granted, or has taken no action on the request, the person
2 shall be liable to pay the fee.
3 (2) Request for refund. – If within 90 days after receiving a person's request for
4 refund under subsection (a) of this section, the governing body has failed to
5 refund the full amount requested by the person, has notified the person that
6 no refund will be made, or has taken no action on the request, the person
7 may bring a civil action against the unit for the amount claimed. Such action
8 shall be brought at any time within three years from the expiration of the
9 90-day period in which the governing body is required to act.

10 **SECTION 12.(d)** Civil Actions. – Civil actions brought pursuant to subsection (c)
11 of this section shall be brought in the appropriate division of the general court of justice of the
12 county in which the unit is located. If, upon trial, it is determined that the fee or any part of it
13 was improper, judgment shall be rendered therefor with interest thereon at six percent (6%) per
14 annum, plus costs, and the judgment shall be collected as in other civil actions.

15 **SECTION 13.** Sections 1 through 10 of this act become effective October 1, 2017.
16 Section 11 of this act becomes effective October 1, 2017, and applies to pending actions and
17 actions arising on or after that date. The remainder of this act is effective when it becomes law.