



HOUSE BILL 821: Various Land-Use Law Changes/Clarifications.

2021-2022 General Assembly

Committee:	House Local Government - Land Use, Planning and Development. If favorable, re-refer to Rules, Calendar, and Operations of the House	Date:	August 19, 2021
Introduced by:	Rep. McNeely	Prepared by:	Jonathan Zator and Billy Godwin, Committee Counsels
Analysis of:	PCS to First Edition H821-CSBVa-28		

OVERVIEW: *The Proposed Committee Substitute (PCS) to House Bill 821 would do the following:*

- *Require courts to award reasonable attorneys' fees and costs against a local government in certain civil actions and appeals.*
- *Clarify local government authority over local planning and development regulation.*
- *Require water and sewer services for certain properties in areas of extraterritorial jurisdiction.*
- *Provide an appropriation to the School of Government of the University of North Carolina at Chapel Hill to train local government board members and managers on implementing House Bill 821.*

CURRENT LAW: In any action in which a city or county is a party, the court must award reasonable attorneys' fees and costs to the party who successfully challenged the city or county's action if the court finds that the city or county (1) violated a statute or case law setting forth unambiguous limits on its authority or (2) took action that is inconsistent with or in violation of permit choice statutes. In all other matters, the court may award attorneys' fees and costs to the prevailing private litigant (G.S. 6-21.7).

Chapter 160D of the General Statutes contains the processes and procedures local governments utilize for development approvals under their planning and development regulations. A local government is a city or county (G.S. 160D-102(22)). A development approval is a written administrative or quasi-judicial approval required to commence development or undertake a specific activity and includes zoning, special use and building permits, plat and site plan approvals, and variances (G.S. 160D-102(13)). Article 4 of Chapter 160D governs the development approval process and appeals.

North Carolina law authorizes a variety of local government regulatory fees associated with public enterprises, particularly those pertaining to the operation of water and sewer systems. Cities and counties have authority to establish rents, rates, fees, charges, and penalties for the use of or the public enterprises services being furnished (G.S. 160A-314 and G.S. 153A-277). The General Statutes, however, do not allow cities and counties to collect impact fees. Impact fees are those fees charged by units of local government to pay for future expansion of public enterprise facilities for services yet to be rendered or not yet available. *Quality Homes v. Town of Carthage*, 789 S.E.2d 454 (N.C. 2016).

Local government zoning and subdivision regulations may be used for the purpose of promoting the health, safety, morals, or the general welfare of the community and may regulate and restrict the height, number of stories and size of buildings and other structures; the percentage of lots that may be occupied;

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the size of yards, courts, and other open spaces; the density of population; the location and use of buildings, structures, and land; the coordination of transportation networks, utilities, and other public facilities; and the distribution of population and traffic in a manner that will avoid congestion and overcrowding (G.S. 160D-702 and G.S. 160D-804).

Cities are not required to provide water and sewer services within the area of extraterritorial jurisdiction.

BILL ANALYSIS:

Section 1 of the PCS to House Bill 821 would require a local government to pay reasonable attorneys' fees and costs in actions where the court finds that the local government is not the prevailing party in an appeal initiated by the local government regarding a development approval decision under Chapter 160D of the General Statutes.

This section would become effective October 1, 2021 and apply to civil actions or appeals commenced on or after that date.

Section 2 of the PCS to House Bill 821 would clarify that local governments do not have authority to do the following under Chapter 160D:

- Impose impact fees for development.
- Condition a development approval on the existence of a community benefits agreement.
- Require a developer to fund, construct, set aside, or designate one or more dwellings or developments as affordable housing.
- Require a completed traffic impact analysis prior to a development approval.
- Require a developer to construct a greenway.

The PCS would prohibit developers from consenting in writing to impact fees in conditional zoning districts.

Section 3 of the PCS to House Bill 821 would require cities to provide water and sewer services to properties after one year of being added to the city's extraterritorial jurisdiction (ETJ) if the city has water and sewer capacity, a development regulation is extended to the property, and the property owner requests water and sewer services.

This section would become effective October 1, 2021 and apply to property added to the ETJ of a city on or after that date.

Section 4 of the PCS to House Bill 821 would appropriate \$10,000 to the School of Government of the University of North Carolina at Chapel Hill for the purposes of providing free training to local government board members and managers on the implementation of the bill.

EFFECTIVE DATE: Except as otherwise provided, the bill would become effective October 1, 2021.