HOUSE BILL 436: Local Government/Regulatory Fees.

2017-2018 General Assembly

Committee:		**Date:**	August 25, 2017
Introduced by:		**Prepared by:**	Billy R. Godwin
Analysis of:	S.L. 2017-138		Erika Churchill
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OVERVIEW: S.L. 2017-138 establishes a uniform authority for system development fees to be charged by a publicly operated water or sewer system, or both, effective October 1, 2017, applying to system development fees imposed on or after that date. The act also clarifies that the statute of limitations is three years for repayment of an unlawful fee, charge, or exaction imposed by a local unit of government, applying to claims accrued or pending prior to and after July 20, 2017.

CURRENT LAW: G.S. 153A-331 and G.S. 160A-372 authorize counties and cities, as part of their subdivision ordinances, to require developers to provide: (1) street right-of-ways (ROWs), street construction, or fees in lieu, (2) dedication of utility ROWs, (3) dedication of parkland or fees in lieu, (4) construction of community service facilities, (5) reservation of school sites for later purchase. North Carolina courts have ruled in several cases that there is no implied local government authority to charge school impact fees. See Lanvale Properties, LLC v. County of Cabarrus, 366 N.C. 142 (2012).

County and city public enterprise statutes also authorize certain fees and charges related to public enterprise functions, including a variety of fees pertaining to the operation of water and sewer systems. Cities, under G.S. 160A-314, and counties, under and G.S. 153A-277, have the authority to establish rents, rates, fees, charges and penalties for the use of or the public enterprises services being furnished. Tap fees are authorized, and are charged at the time a customer connects to a water or sewer system. User fees, as part of a customer's monthly bill, are also authorized, to pay the costs of repair, maintenance or replacement of existing public enterprise facilities when necessary to maintain the existing level of service. Town of Spring Hope v Bissette, *305 NC 248 (1982).*

The General Statutes do not explicitly authorize cities or counties to collect impact fees. Impact fees are those fees charged to pay for future services yet to be furnished. *Quality Built Homes Inc. v Town of Carthage, 789 S.E.2d, 454 (N.C. 2016).* The North Carolina Supreme Court ruled in *Quality Built Homes Inc.* that there is no implied local government authority to assess water and sewer impact fees on new development unless specifically authorized. The General Assembly has, by local act, authorized some cities and counties to collect impact fees.

Unlike counties and cities, the following units of local government do have general statutory authority to charge customers impact fees to pay for the costs of future expansion of facilities:

- Water and Sewer Authorities — G.S. 162A-9 & G.S. 162A-14(3)
- Metropolitan Water Districts — G.S. 162A-49 & G.S. 162A-53(3)
- Metropolitan Sewerage Districts — G.S. 162A-72 & G.S. 162A-73(3)
- Metropolitan Water & Sewerage Districts — G.S. 162A-85.13 & G.S. 162A-85.19(3)

This bill analysis was prepared by the nonpartisan legislative staff for the use of legislators in their deliberations and does not constitute an official statement of legislative intent.

- County Water & Sewer Districts G.S. 162A-88

ANALYSIS: S.L. 2017-138 specifically authorizes local governmental units to impose a system development fee for water and sewer service. Local governmental units, for this purpose, are counties, cities, sanitary districts, water and sewer authorities, metropolitan water districts, metropolitan sewerage districts, metropolitan water and sewerage districts, and county water and sewer districts. Specifically, the act:

- Defines a system development fee as a charge for services imposed with respect to new development to do any of the following:
  - Fund the cost of capital improvements necessitated by the new development.
  - Recoup the costs of existing facilities serving the new development.
  - A combination of the above costs.
- Requires the local government unit's system development fee to be calculated based upon a written analysis prepared by either a qualified financial professional or professional engineer using either the buy-in, incremental cost, marginal cost, or combined cost methodology that calculates a final system development fee per service unit of new development covering a planning horizon of not less than 10 years nor more than 20 years.
- Limits the system development fee to that calculated in the written analysis.
- Provides for certain revenue and construction credits against the system development fee.
- Requires the local government unit to post the written analysis and accept public comment on its website for no less than 45 days, after which the governing body must conduct a public hearing prior to adoption of the system development fee.
- Limits the use of proceeds from system development fees as follows:
  - Fees calculated using the incremental costs or marginal costs method may only pay for the construction costs of capital improvements including the contract price, surveying & engineer fees, land acquisition, and principal and interest on debt obligation used to finance the costs.
  - Fees calculated using the buy-in method may be used either for previously completed capital improvement projects for which capacity still exists or for capital rehabilitation projects.
- Requires system development fees to be placed in the local government unit's capital reserve fund.
- Authorizes system development fees involving the subdivision of land to be collected either at the time of plat recording or when the local government unit commits to providing water and sewer service. Fees for any other type of development would be collected at the time of service connection.
- Clarifies that the statute of limitations is three years for recovery of an unlawfully imposed fee, charge, or exaction.

EFFECTIVE DATE: The portion of the act pertaining to system development fees is effective on October 1, 2017 and applies to system development fees imposed on or after that date. The portion of the act clarifying the statute of limitations applies to claims accrued or pending prior to and after July 20, 2017.