HOUSE BILL 436:
Local Government/Regulatory Fees.

2017-2018 General Assembly

Committee:	Senate Rules and Operations of the Senate	**Date:**	June 27, 2017
Introduced by:	Rep. Stevens	**Prepared by:**	Erika Churchill and Billy Godwin, Staff Attorneys
Analysis of:	Fourth Edition		

OVERVIEW: House Bill 436 would establish a uniform authority for system development fees to be charged by a publicly operated water or sewer system, or both.

CURRENT LAW: G.S. 153A-331 and G.S. 160A-372 authorize cities and counties, 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 there is no implied local government authority to charge school impact fees in several cases, including *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. Connections to the public system can be mandated unless the property owner qualifies for, and the city allows the owner to pay an availability fee in lieu of actually connecting to the city system. G.S. 160A-314. Connections to a county water or sewer system can also be mandated under G.S. 153A-284, but availability fees in lieu of connecting to the county system are more restricted than with cities.

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 Homes 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 cities and counties, 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)
➢ County Water & Sewer Districts	G.S. 162A-88

BILL ANALYSIS: House Bill 436 would enact a new Article 8 to Chapter 162A to authorize 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 bill would:

- Define 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.
- Require the unit of local government'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.
- Limit the system development fee to that calculated in the written analysis.
- Provide for certain revenue and construction credits against the system development fee.
- Require the unit of local government 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.
- Limit use of proceeds from system development fees as follows:
  - Fees calculated using the incremental costs or marginal costs method could 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 could be used either for previously completed capital improvement projects for which capacity still exists or for capital rehabilitation projects.
- Require system development fees to be placed in the local government unit's capital reserve fund.
- Authorize 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 and for all other development the fee would be collected at the time of service connection.
- Clarify that the statute of limitations is three years for repayment of an unlawful fee, charge or exaction imposed by a local unit of government.

EFFECTIVE DATE: The changes related to the system development fee are effective on October 1, 2017. The remainder of the act is effective when it becomes law.