

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1991

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HOUSE BILL 765

Short Title: Durham Cnty. Impact Fees.

(Local)

Sponsors: Representative Luebke.

Referred to: Finance.

April 15, 1991

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE DURHAM COUNTY TO IMPLEMENT A SYSTEM OF
IMPACT FEES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 153A-331 is amended by identifying the existing provisions
as subsection (a) and by adding new subsections to read:

"(b) Impact Fees Authorized.

(1) Durham County may provide by ordinance for a system of impact fees
to be paid by developers to help defray the costs to the County of
constructing certain capital improvements, the need for which is
created in substantial part by the new development that takes place
within the County.

(2) For purposes of this subsection, the term 'capital improvements'
includes the acquisition of land for open space and greenways, capital
improvements to public streets, schools, bridges, sidewalks, bikeways,
on and off street surface water drainage ditches, pipes, culverts, other
drainage facilities, water and sewer facilities, and public recreation
facilities.

(3) An ordinance adopted under this subsection may be made applicable to
all development that occurs within the County.

(c) Amount of Fees. In establishing the amount of any impact fee, the County
shall endeavor to approach the objective of having every development contribute to a
capital improvements fund an amount of revenue that bears a reasonable relationship to
that development's fair share of the costs of the capital improvements that are needed in

1 part because of that development. In fulfilling this objective, the County shall, among
2 other steps and actions:

3 (1) Estimate the total cost of improvements by category (e.g., streets,
4 sidewalks, drainage ways, etc.) that will be needed to provide in a
5 reasonable manner for the public health, safety and welfare of persons
6 residing within the County during a reasonable planning period not to
7 exceed 20 years. The Board of County Commissioners may divide the
8 County into two or more districts and estimate the costs of needed
9 improvements within each district. These estimates shall be
10 periodically reviewed and updated and the planning period used may
11 be changed from time to time.

12 (2) Establish a percentage of the total costs of each category of
13 improvement that, in keeping with the objective set forth above,
14 should fairly be borne by those paying the impact fee.

15 (3) Establish a formula that fairly and objectively apportions the total
16 costs that are to be borne by those paying impact fees among various
17 types of developments. By way of illustration without limitation:

18 a. In the case of street improvements, the impact fee may be
19 related to the number of trips per day generated by different
20 types of uses according to recognized estimates;

21 b. In the case of drainage improvements, the impact fee may be
22 related to the size of a development, the amount of impervious
23 surface the development has, or other factors that bear upon the
24 degree to which a development contributes to the need for
25 drainage improvements made at public expense.

26 (d) Capital Improvements Reserve Funds: Expenditures.

27 (1) Impact fees received by the County shall be deposited in a capital
28 improvements reserve fund or funds established under Chapter 159 of
29 the General Statutes, Article 3, Part 2. Such funds may be expended
30 only on the type of capital improvements for which such impact fees
31 were established, and then only in accordance with the provision of
32 subsection (2) of this section.

33 (2) In order to ensure that impact fees paid by a particular development
34 are expended on capital improvements that benefit that development,
35 the County may establish for each category of capital improvement for
36 which it collects an impact fee at least two geographical districts or
37 zones, and impact fees generated by developments within those
38 districts or zones must be spent on improvements that are located
39 within or that benefit property located within those districts or zones.

40 (e) Credits for Improvements. An impact fee ordinance shall make provision for
41 credits against required fees when a developer installs improvements of a type that
42 generally would be paid for by the County out of a capital reserve account funded by
43 impact fees. The ordinance may spell out the circumstances under which a developer
44 will be allowed to install such improvements and receive such credits.

1 (f) Appeals Procedure. An ordinance authorizing impact fees as provided herein
2 may provide that any person aggrieved by a decision regarding an impact fee may
3 appeal to the Durham County Board of Adjustment. If the ordinance establishes an
4 appeals procedure, it shall spell out the time within which the appeal must be taken to
5 the board of adjustment, the possible grounds for an appeal and the board's authority in
6 the matter, whether the fee must be paid prior to resolution of the appeal, and other
7 procedural or substantive matters related to appeals. Any decision by the board of
8 adjustment shall be subject to review by the superior court by proceedings in the nature
9 of certiorari in the same manner as is provided in G.S. 153A-345.

10 (g) Payment of Impact Fees. An ordinance authorizing impact fees as herein
11 provided shall spell out when in the process of development approval and construction
12 impact fees shall be paid and by whom. By way of illustration without limitation, the
13 ordinance may provide that an applicant for a building permit shall submit the impact
14 fee along with the permit application and that building permits shall not be issued until
15 the impact fee has been paid.

16 (h) Refunds. If this section or any ordinance adopted thereunder is declared to be
17 unconstitutional or otherwise invalid, then any impact fees collected shall be refunded
18 to the person paying them together with interest at the rate established under G.S. 105-
19 241.1, being the same rate paid by the Secretary of Revenue on refunds for tax
20 overpayments.

21 (i) Limitations on Actions.

22 (1) Any action contesting the validity of an ordinance adopted as herein
23 provided must be commenced not later than nine months after the
24 effective date of such ordinance.

25 (2) Any action seeking to recover an impact fee must be commenced not
26 later than nine months after the impact fee is paid."

27 Sec. 2. G.S. 153A-340 is amended by identifying the existing provisions as
28 subsection (a) and by adding new subsections to read:

29 "(b) Impact Fees Authorized.

30 (1) Durham County may provide by ordinance for a system of impact fees
31 to be paid by developers to help defray the costs to the County of
32 constructing certain capital improvements, the need for which is
33 created in substantial part by the new development that takes place
34 within the County.

35 (2) For purposes of this subsection, the term 'capital improvements'
36 includes the acquisition of land for open space and greenways, capital
37 improvements to public streets, schools, bridges, sidewalks, bikeways,
38 on and off street surface water drainage ditches, pipes, culverts, other
39 drainage facilities, water and sewer facilities, and public recreation
40 facilities.

41 (3) An ordinance adopted under this subsection may be made applicable to
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44 shall endeavor to approach the objective of having every development contribute to a

1 capital improvements fund an amount of revenue that bears a reasonable relationship to
2 that development's fair share of the costs of the capital improvements that are needed in
3 part because of that development. In fulfilling this objective, the County shall, among
4 other steps and actions:

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7 reasonable manner for the public health, safety and welfare of persons
8 residing within the County during a reasonable planning period not to
9 exceed 20 years. The Board of County Commissioners may divide the
10 County into two or more districts and estimate the costs of needed
11 improvements within each district. These estimates shall be
12 periodically reviewed and updated and the planning period used may
13 be changed from time to time.

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17 (3) Establish a formula that fairly and objectively apportions the total
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19 types of developments. By way of illustration without limitation:

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19 unconstitutional or otherwise invalid, then any impact fees collected shall be refunded
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26 effective date of such ordinance.

27 (2) Any action seeking to recover an impact fee must be commenced not
28 later than nine months after the impact fee is paid."

29 Sec. 3. This act applies only to Durham County, and applies only within the
30 planning jurisdiction of Durham County.

31 Sec. 4. This act is effective upon ratification.