

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1991

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HOUSE BILL 765  
Committee Substitute Favorable 7/2/91

Short Title: Durham Cnty. Impact Fees.

(Local)

Sponsors:

Referred to:

April 15, 1991

1 A BILL TO BE ENTITLED  
2 AN ACT TO AUTHORIZE DURHAM COUNTY TO IMPLEMENT A SYSTEM OF  
3 IMPACT FEES.

4 The General Assembly of North Carolina enacts:

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

7 "(b) Impact Fees Authorized.

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

13 (2) No impact fee may be levied for any purpose or activity specified in  
14 subdivision (3) below until the County has adopted a program which  
15 provides for the collection and expenditure of funds for the purpose or  
16 activity. No impact fee may be levied in an area in which a  
17 municipality has levied and is collecting impact fees for the same  
18 purpose or activity.

19 (3) For purposes of this subsection, the term 'capital improvements' means  
20 construction of, including the acquisition of land for, open space,  
21 greenways, storm water management, and water and sewer facilities.

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

1       (c) Amount of Fees. In establishing the amount of any impact fee, the County  
2 shall endeavor to approach the objective of having every development contribute to a  
3 capital improvements fund an amount of revenue that bears a reasonable relationship to  
4 that development's fair share of the costs of the capital improvements that are needed in  
5 part because of that development. In fulfilling this objective, the County shall, among  
6 other steps and actions:

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

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

18           (3) Establish a formula that fairly and objectively apportions the total  
19 costs that are to be borne by those paying impact fees among various  
20 types of developments.

21       (d) Capital Improvements Reserve Funds: Expenditures.

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

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

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

40       (f) Appeals Procedure. An ordinance authorizing impact fees as provided herein  
41 may provide that any person aggrieved by a decision regarding an impact fee may  
42 appeal to the Durham County Board of Adjustment. If the ordinance establishes an  
43 appeals procedure, it shall spell out the time within which the appeal must be taken to  
44 the board of adjustment, the possible grounds for an appeal and the board's authority in

1 the matter, whether the fee must be paid prior to resolution of the appeal, and other  
2 procedural or substantive matters related to appeals. Any decision by the board of  
3 adjustment shall be subject to review by the superior court by proceedings in the nature  
4 of certiorari in the same manner as is provided in G.S. 153A-345.

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

11 The County may permit the payment of an impact fee in a lump sum or in equal  
12 monthly or annual installments over a period of time not to exceed five years. If the fee  
13 is paid in installments, the installments shall bear interest at a rate fixed by the County  
14 not to exceed 9% per annum from the date when payment by lump sum would have  
15 otherwise been due. The impact fee, with accrued interest, may be paid in full at any  
16 time.

17 If an impact fee is to be paid in installments pursuant to this subsection, then from  
18 and after the date when payment by lump sum would have otherwise been due, the fee  
19 shall be a lien on the property of the person against which the fee was imposed. The  
20 impact fee lien shall be of the same nature and to the same extent as the lien for county  
21 property taxes. The lien shall be inferior to all prior and subsequent liens for State,  
22 local, and federal taxes, equal to liens for special assessments, and superior to all other  
23 liens and encumbrances.

24 If any installment on an impact fee is not paid when due, then all of the installments  
25 remaining unpaid shall immediately become due and payable, and the sums due may be  
26 collected by the same process and in the same manner as property taxes due upon the  
27 property subject to the lien. By way of illustration and not limitation, the property may  
28 be sold by the County under the same rules as are prescribed by law for the foreclosure  
29 and sale of land for unpaid property taxes. Foreclosure may be begun at any time  
30 following 30 days after the due date. The County shall not be entitled to a deficiency  
31 judgment in an action to foreclose an impact fee lien. The County may not maintain an  
32 action or proceeding to enforce any remedy for foreclosure of an impact fee lien unless  
33 the action or proceeding is begun within the period of time prescribed by law for the  
34 foreclosure of special assessment liens.

35 (h) Refunds. If this section or any ordinance adopted thereunder is declared to be  
36 unconstitutional or otherwise invalid, then any impact fees collected shall be refunded  
37 to the person paying them together with interest at the rate established under G.S. 105-  
38 241.1, being the same rate paid by the Secretary of Revenue on refunds for tax  
39 overpayments.

40 (i) Limitations on Actions.

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

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

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

5       "(b) Impact Fees Authorized.

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

11           (2) No impact fee may levied for any purpose or activity specified in  
12           subdivision (3) below until the County has adopted a program which  
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25       that development's fair share of the costs of the capital improvements that are needed in  
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20            effective date of such ordinance.

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

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

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