

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

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HOUSE BILL 1602
Committee Substitute Favorable 6/20/00

Short Title: Stormwater Utility Fees.

(Public)

Sponsors:

Referred to:

May 18, 2000

A BILL TO BE ENTITLED
AN ACT TO CLARIFY THAT STORMWATER UTILITY FEES MAY BE USED TO
FUND ALL COSTS OF STORMWATER MANAGEMENT PROGRAMS, AS
RECOMMENDED BY THE ENVIRONMENTAL REVIEW COMMISSION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 153A-274 reads as rewritten:

"§ 153A-274. Public enterprise defined.

As used in this Article, 'public enterprise' includes:

- (1) Water supply and distribution ~~systems,~~ systems.
- (2) Wastewater collection, treatment, and disposal systems of all types, including septic tank systems or other on-site collection or disposal facilities or ~~systems,~~ systems.
- (3) Solid waste collection and disposal systems and ~~facilities,~~ facilities.
- (4) ~~Airports,~~ Airports.
- (5) Off-street parking ~~facilities,~~ facilities.
- (6) Public transportation ~~systems,~~ systems.
- (7) ~~Structural~~ Stormwater management programs designed to protect water quality by controlling the level of pollutants in, and the quantity and

1 flow of, stormwater and structural and natural stormwater and drainage
2 systems of all types."

3 Section 2. G.S. 153A-277 reads as rewritten:

4 **"§ 153A-277. Authority to fix and enforce rates.**

5 (a) A county may establish and revise from time to time schedules of rents, rates,
6 fees, charges, and penalties for the use of or the services furnished by a public enterprise.
7 Schedules of rents, rates, fees, charges, and penalties may vary for the same class of
8 service in different areas of the county and may vary according to classes of service, and
9 different schedules may be adopted for services provided outside of the county. A county
10 may include a fee relating to subsurface discharge wastewater management systems and
11 services on the property tax bill for the real property where the system for which the fee
12 is imposed is located.

13 (a1) (1) Before it establishes or revises a schedule of rates, fees,
14 charges, or penalties for stormwater management programs and
15 structural and natural stormwater and drainage systems under this
16 section, the board of commissioners shall hold a public hearing on the
17 matter. A notice of the hearing shall be given at least once in a
18 newspaper having general circulation in the area, not less than seven
19 days before the public hearing. The hearing may be held concurrently
20 with the public hearing on the proposed budget ordinance.

21 (2) The fees established under this subsection must be made applicable
22 throughout the area of the county outside municipalities. Schedules of
23 rates, fees, charges, and penalties for providing stormwater management
24 programs and structural and natural stormwater and drainage system
25 service may vary according to whether the property served is residential,
26 commercial, or industrial property, the property's use, the size of the
27 property, the area of impervious surfaces on the property, the quantity
28 and quality of the runoff from the property, the characteristics of the
29 watershed into which stormwater from the property drains, and other
30 factors that affect the stormwater drainage system. Rates, fees, and
31 charges imposed under this subsection may not exceed the county's cost
32 of providing a stormwater management program and a structural and
33 natural stormwater and drainage system. The county's cost of providing
34 a stormwater management program and a structural and natural
35 stormwater and drainage system includes any costs necessary to assure
36 that all aspects of stormwater quality and quantity are managed in
37 accordance with federal and State laws, regulations, and rules.

38 (3) No stormwater utility fee may be levied under this subsection whenever
39 two or more units of local government operate separate stormwater
40 management programs or separate structural and natural stormwater and
41 drainage system services in the same area within a county. However,
42 two or more units of local government may allocate among themselves
43 the functions, duties, powers, and responsibilities for jointly operating a

1 ~~single~~ stormwater management program and structural and natural
2 stormwater and drainage system service in the same area within a
3 county, provided that only one unit may levy a fee for the service within
4 the joint service area. For purposes of this subsection, a unit of local
5 government shall include a regional authority providing stormwater
6 management programs and structural and natural stormwater and
7 drainage system services.

8 (b) A county may collect delinquent accounts by any remedy provided by law for
9 collecting and enforcing private debts, and may specify by ordinance the order in which
10 partial payments are to be applied among the various enterprise services covered by a bill
11 for the services. A county may also discontinue service to a customer whose account
12 remains delinquent for more than 10 days. If a delinquent customer is not the owner of
13 the premises to which the services are delivered, the payment of the delinquent account
14 may not be required before providing services at the request of a new and different tenant
15 or occupant of the premises. If water or sewer services are discontinued for delinquency,
16 it is unlawful for a person other than a duly authorized agent or employee of the county to
17 reconnect the premises to the water or sewer system.

18 (c) Rents, rates, fees, charges, and penalties for enterprisory services are in no case
19 a lien upon the property or premises served and, except as provided in subsection (d) of
20 this section, are legal obligations of the person contracting for them, provided that no
21 contract shall be necessary in the case of structural and natural stormwater and drainage
22 systems.

23 (d) Rents, rates, fees, charges, and penalties for enterprisory services are legal
24 obligations of the owner of the property or premises served when:

- 25 (1) The property or premises is leased or rented to more than one tenant and
26 services rendered to more than one tenant are measured by the same
27 meter; or
28 (2) Charges made for use of a sewerage system are billed separately from
29 charges made for the use of a water distribution system."

30 Section 3. G.S. 160A-311 reads as rewritten:

31 **"§ 160A-311. Public enterprise defined.**

32 As used in this Article, the term 'public enterprise' includes:

- 33 (1) Electric power generation, transmission, and distribution ~~systems;~~
34 systems.
35 (2) Water supply and distribution ~~systems;~~ systems.
36 (3) Wastewater collection, treatment, and disposal systems of all types,
37 including septic tank systems or other on-site collection or disposal
38 facilities or ~~systems;~~ systems.
39 (4) Gas production, storage, transmission, and distribution systems, where
40 systems shall also include the purchase ~~and/or~~ or lease of natural gas
41 fields and natural gas reserves, the purchase of natural gas supplies, and
42 the surveying, drilling and any other activities related to the exploration
43 for natural gas, whether within the State or ~~without;~~ without.

- 1 (5) Public transportation ~~systems;~~ systems.
2 (6) Solid waste collection and disposal systems and ~~facilities;~~ facilities.
3 (7) Cable television ~~systems;~~ systems.
4 (8) Off-street parking facilities and ~~systems;~~ systems.
5 (9) ~~Airports;~~ Airports.
6 (10) ~~Structural~~ Stormwater management programs designed to protect water
7 quality by controlling the level of pollutants in, and the quantity and
8 flow of, stormwater and structural and natural stormwater and drainage
9 systems of all types."

10 Section 4. G.S. 160A-314 reads as rewritten:

11 "**§ 160A-314. Authority to fix and enforce rates.**

12 (a) A city may establish and revise from time to time schedules of rents, rates,
13 fees, charges, and penalties for the use of or the services furnished by any public
14 enterprise. Schedules of rents, rates, fees, charges, and penalties may vary according to
15 classes of service, and different schedules may be adopted for services provided outside
16 the corporate limits of the city.

17 (a1) (1) Before it establishes or revises a schedule of rates, fees,
18 charges, or penalties for stormwater management programs and
19 structural and natural stormwater and drainage systems under this
20 section, the city council shall hold a public hearing on the matter. A
21 notice of the hearing shall be given at least once in a newspaper
22 having general circulation in the area, not less than seven days before
23 the public hearing. The hearing may be held concurrently with the
24 public hearing on the proposed budget ordinance.

25 (2) The fees established under this subsection must be made applicable
26 throughout the area of the city. Schedules of rates, fees, charges, and
27 penalties for providing stormwater management programs and structural
28 and natural stormwater and drainage system service may vary according
29 to whether the property served is residential, commercial, or industrial
30 property, the property's use, the size of the property, the area of
31 impervious surfaces on the property, the quantity and quality of the
32 runoff from the property, the characteristics of the watershed into which
33 stormwater from the property drains, and other factors that affect the
34 stormwater drainage system. Rates, fees, and charges imposed under
35 this subsection may not exceed the city's cost of providing a stormwater
36 management program and a structural and natural stormwater and
37 drainage system. The city's cost of providing a stormwater management
38 program and a structural and natural stormwater and drainage system
39 includes any costs necessary to assure that all aspects of stormwater
40 quality and quantity are managed in accordance with federal and State
41 laws, regulations, and rules.

42 (3) No stormwater utility fee may be levied under this subsection whenever
43 two or more units of local government operate separate stormwater

1 management programs or separate structural and natural stormwater and
2 drainage system services in the same area within a county. However,
3 two or more units of local government may allocate among themselves
4 the functions, duties, powers, and responsibilities for jointly operating a
5 single stormwater management program and structural and natural
6 stormwater and drainage system service in the same area within a
7 county, provided that only one unit may levy a fee for the service within
8 the joint service area. For purposes of this subsection, a unit of local
9 government shall include a regional authority providing stormwater
10 management programs and structural and natural stormwater and
11 drainage system services.

12 (a2) A fee for the use of a disposal facility provided by the city may vary based on
13 the amount, characteristics, and form of recyclable materials present in solid waste
14 brought to the facility for disposal. This section does not prohibit a city from providing
15 aid to low-income persons to pay all or part of the cost of solid waste management
16 services for those persons.

17 (b) A city shall have power to collect delinquent accounts by any remedy provided
18 by law for collecting and enforcing private debts, and may specify by ordinance the order
19 in which partial payments are to be applied among the various enterprise services covered
20 by a bill for the services. A city may also discontinue service to any customer whose
21 account remains delinquent for more than 10 days. When service is discontinued for
22 delinquency, it shall be unlawful for any person other than a duly authorized agent or
23 employee of the city to do any act that results in a resumption of services. If a delinquent
24 customer is not the owner of the premises to which the services are delivered, the
25 payment of the delinquent account may not be required before providing services at the
26 request of a new and different tenant or occupant of the premises, but this restriction shall
27 not apply when the premises are occupied by two or more tenants whose services are
28 measured by the same meter.

29 (c) Except as provided in subsection (d) of this section and G.S. 160A-314.1,
30 rents, rates, fees, charges, and penalties for enterprisory services shall be legal obligations
31 of the person contracting for them, and shall in no case be a lien upon the property or
32 premises served, provided that no contract shall be necessary in the case of structural and
33 natural stormwater and drainage systems.

34 (d) Rents, rates, fees, charges, and penalties for enterprisory services shall be legal
35 obligations of the owner of the premises served when:

36 (1) The property or premises is leased or rented to more than one tenant and
37 services rendered to more than one tenant are measured by the same
38 meter.

39 (2) Charges made for use of a sewage system are billed separately from
40 charges made for the use of a water distribution system.

41 (e) Nothing in this section shall repeal any portion of any city charter inconsistent
42 herewith."

43 Section 5. G.S. 162A-2(12) reads as rewritten:

1 "(12) The term 'water system' shall mean and include all plants, systems,
2 facilities or properties used or useful or having the present capacity for
3 future use in connection with the supply or distribution of water or the
4 control and drainage of stormwater runoff and any integral part thereof,
5 including but not limited to water supply systems, water distribution
6 systems, stormwater management programs designed to protect water
7 quality by controlling the level of pollutants in, and the quantity and
8 flow of, stormwater and structural and natural stormwater and drainage
9 systems of all types, sources of water supply including lakes, reservoirs
10 and wells, intakes, mains, laterals, aqueducts, pumping stations,
11 standpipes, filtration plants, purification plants, hydrants, meters,
12 valves, and all necessary appurtenances and equipment and all
13 properties, rights, easements and franchises relating thereto and deemed
14 necessary or convenient by the authority for the operation thereof."

15 Section 6. G.S. 162A-6(14c) reads as rewritten:

16 "(14c) To adopt ordinances to regulate and control the discharge of
17 sewage or stormwater into any sewerage system owned or
18 operated by the ~~authority and~~ authority, to adopt ordinances
19 concerning stormwater management programs designed to
20 protect water quality by controlling the level of pollutants in and
21 the quantity and flow of stormwater, and to adopt ordinances to
22 regulate and control structural and natural stormwater and
23 drainage systems of all types. Prior to the adoption of any such
24 ordinance or any amendment to any such ordinance, the authority
25 shall first pass a declaration of intent to adopt such ordinance or
26 amendment. The declaration of intent shall describe the
27 ordinance which it is proposed that the authority adopt. The
28 declaration of intent shall be submitted to each governing body
29 for review and comment. The authority shall consider any
30 comment or suggestions offered by any governing body with
31 respect to the proposed ordinance or amendment. Thereafter, the
32 authority shall be authorized to adopt such ordinance or
33 amendment to it at any time after 60 days following the
34 submission of the declaration of intent to each governing body."

35 Section 7. G.S. 162A-9 reads as rewritten:

36 "**§ 162A-9. Rates and charges; contracts for water or services; deposits; delinquent**
37 **charges.**

38 (a) An authority may establish and revise a schedule of rates, fees, and other
39 charges for the use of and for the services furnished or to be furnished by any water
40 system or sewer system or parts thereof owned or operated by the authority. The rates,
41 fees, and charges established under this subsection are not subject to supervision or
42 regulation by any bureau, board, commission, or other agency of the State or of any
43 political subdivision.

1 Before an authority sets or revises rates, fees, or other charges for stormwater
2 management programs and structural or natural stormwater and drainage system service,
3 the authority shall hold a public hearing on the matter. At least seven days before the
4 hearing, the authority shall publish notice of the public hearing in a newspaper having
5 general circulation in the area. An authority may impose rates, fees, or other charges for
6 stormwater management programs and stormwater and drainage system service on a
7 person even though the person has not entered into a contract to receive the service.

8 Rates, fees, and charges shall be fixed and revised so that the revenues of the
9 authority, together with any other available funds, will be sufficient at all times:

- 10 (1) To pay the cost of maintaining, repairing, and operating the systems or
11 parts thereof owned or operated by the authority, including reserves for
12 such purposes, and including provision for the payment of principal of
13 and interest on indebtedness of a political subdivision or of political
14 subdivisions which payment shall have been assumed by the authority,
15 and
16 (2) To pay the principal of and the interest on all bonds issued by the
17 authority under the provisions of this Article as the same shall become
18 due and payable and to provide reserves therefor.

19 The fees established under this subsection must be made applicable throughout the
20 service area. Schedules of rates, fees, charges, and penalties for providing stormwater
21 management programs and structural and natural stormwater and drainage system service
22 may vary according to whether the property served is residential, commercial, or
23 industrial property, the property's use, the size of the property, the area of impervious
24 surfaces on the property, the quantity and quality of the runoff from the property, the
25 characteristics of the watershed into which stormwater from the property drains, and
26 other factors that affect the stormwater drainage system. Rates, fees, and charges imposed
27 under this subsection for stormwater management programs and stormwater and drainage
28 system service may not exceed the authority's cost of providing a stormwater
29 management program and a structural and natural stormwater and drainage system. The
30 authority's cost of providing a stormwater management program and a structural and
31 natural stormwater and drainage system includes any costs necessary to assure that all
32 aspects of stormwater quality and quantity are managed in accordance with federal and
33 State laws, regulations, and rules.

34 No stormwater utility fee may be levied under this subsection whenever two or more
35 units of local government operate separate stormwater management programs or separate
36 structural and natural stormwater and drainage system services in the same area within a
37 county. However, two or more units of local government may allocate among themselves
38 the functions, duties, powers, and responsibilities for jointly operating a ~~single~~ stormwater
39 management program and structural and natural stormwater and drainage system service
40 in the same area within a county, provided that only one unit may levy a fee for the
41 service within the joint service area. For purposes of this subsection, a unit of local
42 government shall include a regional authority providing stormwater management
43 programs and structural and natural stormwater and drainage system services.

1 (b) Notwithstanding any of the foregoing provisions of this section, the authority
2 may enter into contracts relating to the collection, treatment or disposal of sewage or the
3 purchase or sale of water which shall not be subject to revision except in accordance with
4 their terms.

5 (c) In order to insure the payment of such rates, fees and charges as the same shall
6 become due and payable, the authority may do the following in addition to exercising any
7 other remedies which it may have:

8 (1) Require reasonable advance deposits to be made with it to be subject to
9 application to the payment of delinquent rates, fees and charges.

10 (2) At the expiration of 30 days after any rates, fees and charges become
11 delinquent, discontinue supplying water or the services and facilities of
12 any water system or sewer system of the authority.

13 (3) Specify the order in which partial payments are to be applied when a bill
14 covers more than one service."

15 Section 8. Sections 1 through 4 of this act are effective retroactively to 15 July
16 1989. Sections 5 through 7 of this act are effective retroactively to 8 July 1991. Section
17 8 of this act is effective when this act becomes law.