

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

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SENATE BILL 1336\*

Agriculture/Environment/National Resources Committee Substitute Adopted 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.