

GENERAL ASSEMBLY OF NORTH CAROLINA
1985 SESSION

CHAPTER 536
HOUSE BILL 677

AN ACT TO ALLOW THE TOWNS OF KILL DEVIL HILLS, KITTY HAWK,
MANTEO, NAGS HEAD, AND SOUTHERN SHORES TO IMPOSE FACILITY
FEES.

The General Assembly of North Carolina enacts:

Section 1. Purpose. It is the purpose of this act to place an equitable share of the cost of providing new community service facilities upon all new inhabitants and upon those associated with the development process.

Sec. 2. Definitions. The following definitions apply in this act, unless the context clearly requires otherwise:

- (1) "Capital costs" means costs spent for developing community service facilities; such costs are limited to Capital Outlay items listed in the "Uniform Local Government Accounting Systems" procedural manual prepared by the North Carolina Local Government Commission.
- (2) "Community service facilities" means the following public facilities or improvements provided or established by the local government or in conjunction with other units of government: streets and drainage projects, open space and water access projects, emergency refuge shelters, and fire department capital improvements.
- (3) "Developer" means an individual, corporation, partnership, organization, association, firm, political subdivision, or other legal entity constructing or creating new construction.
- (4) "Facility fee" means the charge imposed upon new construction pursuant to the grant of regulatory authority contained herein.
- (5) "New construction" means any new development, construction, or installation that results in real property improvement or that requires any building permit, certification, or other action permitting real property improvement. The term includes the installation of a mobile home or factory-built or modular housing. The term does not include fences, billboards, poles, pipelines, transmission lines, advertising signs, or similar structures and improvements that do not generate the need for additional or expanded community facilities upon completion of the additions or improvements.

Sec. 3. Subject to the conditions hereinafter set forth, a town that adopts an ordinance or ordinances shall have the right, power, and authority to impose and collect

a regulatory fee defined herein as a facility fee on all new construction within its town limits and extraterritorial jurisdiction.

Sec. 4. (a) No facility fee shall be imposed until the town governing board has caused to be prepared a report containing:

- (1) A description of the anticipated capital costs to the town of each additional or expanded community service facility generated by new construction;
- (2) A description of the relevant characteristics of construction that give rise to additional or expanded community service facilities such as population, trip generation, stormwater runoff, and flow characteristics; and
- (3) A plan for providing one or more of the community service facilities has been prepared.

(b) Before adopting or amending any facility fee ordinance authorized by this act, the town governing board shall hold a public hearing on it. A notice of the public hearing shall be given so as to conform with G.S. 160A-364, as it may be amended from time to time. No facility fee ordinance shall be adopted or amended without first giving the planning board a reasonable opportunity to make comments and recommendations to the town governing board.

(c) The amount of each facility fee imposed and collected shall be based upon reasonable and uniform considerations of capital costs to be incurred by the town as a result of new construction. The facility fee must bear a direct relationship to additional or expanded public capital costs of the community service facilities to be rendered for the inhabitants, occupants of the new construction, or those associated with the development process.

(d) The amount of each facility fee shall be based on quantified needs and specific classifications and rates, which shall be uniformly applied to all members of a class; however, the fees may differ within service areas and zones depending on the special needs and costs for community service facilities in those areas or zones. To the extent that the developer installs, according to municipal plans and specifications, and dedicates capital assets for which the fee was intended and which immediately become the property of the government and are not otherwise reimbursed by the government, the facility fee shall be reduced by the documented actual cash value not to exceed the fee chargeable for the specific facility. The facility fee shall be imposed only for those community service facilities that the town provides independently or that it provides in conjunction with other units of government, and it may not exceed the public cost of providing the additional community service facility.

(e) Monies for each particular facility for which a facility fee is collected shall be placed in a separate trust fund. All such revenues shall be spent for the capital facilities for which they were collected, and such benefits shall not be exclusive. Separate service areas and zones with separate trust funds may be established to satisfy this requirement. Facility fees shall be spent for those community service facilities the town alone provides within six years after collection of the fees, and shall be spent for those

community service facilities the town provides in conjunction with other units of government within 10 years of collection of the fees.

Sec. 5. A cause of action as to the validity of any facility fee adopted under this act shall be brought within 90 days after its collection.

Sec. 6. The town is authorized to enact ordinances, resolutions, rules and regulations that are necessary or expedient to carry this act into execution and effect.

Sec. 7. The powers conferred in this act shall be supplementary to all other powers and procedures authorized by any other general or local law. Assessments, charges, fees, or rates authorized by any other general or local law are not affected by this act.

Sec. 8. This act applies to the Towns of Kill Devil Hills, Kitty Hawk, Manteo, Nags Head, and Southern Shores only.

Sec. 9. This act is effective upon ratification.

In the General Assembly read three times and ratified, this the 1st day of July, 1985.