

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1993

H

1

HOUSE BILL 688

Short Title: Durham Co. Impact Fees.

(Local)

Sponsors: Representative Luebke.

Referred to: Finance.

March 31, 1993

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) A 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) No impact fee may be levied for any purpose or activity specified in subdivision (3) of this subsection until the county has adopted a program which provides for the collection and expenditure of funds for the purpose or activity. No impact fee may be levied in an area in which a municipality has levied and is collecting impact fees for the same purpose or activity.

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

(4) An ordinance adopted under this subsection may be made applicable to 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 Part 2 of Article
24 3 of Chapter 159 of the General Statutes. Such funds may be
25 expended only on the type of capital improvements for which such
26 impact fees were established, and then only in accordance with the
27 provision of 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
36 for 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
41 herein may provide that any person aggrieved by a decision regarding an impact fee
42 may appeal to the County Board of Adjustment. If the ordinance establishes an appeals
43 procedure, it shall spell out the time within which the appeal must be taken to the
44 County Board of Adjustment, the possible grounds for an appeal and the Board's

1 authority in the matter, whether the fee must be paid prior to resolution of the appeal,
2 and other procedural or substantive matters related to appeals. Any decision by the
3 County Board of Adjustment shall be subject to review by the superior court by
4 proceedings in the nature of certiorari in the same manner as is provided in G.S. 153A-
5 345.

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

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

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

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

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

41 (i) Limitations on Actions. –

42 (1) Any action contesting the validity of an ordinance adopted as herein
43 provided must be commenced not later than nine months after the
44 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) A county may provide by ordinance for a system of impact fees to be
7 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) of this subsection until the county has adopted a
13 program which provides for the collection and expenditure of funds for
14 the purpose or activity. No impact fee may be levied in an area in
15 which a municipality has levied and is collecting impact fees for the
16 same purpose or activity.

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

20 (4) An ordinance adopted under this subsection may be made applicable to
21 all development that occurs within the county.

22 (c) Amount of Fees. – In establishing the amount of any impact fee, the county
23 shall endeavor to approach the objective of having every development contribute to a
24 capital improvements fund an amount of revenue that bears a reasonable relationship to
25 that development's fair share of the costs of the capital improvements that are needed in
26 part because of that development. In fulfilling this objective, the county shall, among
27 other steps and actions:

28 (1) Estimate the total cost of improvements by category that will be
29 needed to provide in a reasonable manner for the public health, safety,
30 and welfare of persons residing within the county during a reasonable
31 planning period not to exceed 20 years. The Board of County
32 Commissioners may divide the county into two or more districts and
33 estimate the costs of needed improvements within each district. These
34 estimates shall be periodically reviewed and updated and the planning
35 period used may be changed from time to time.

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

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

42 (d) Capital Improvements Reserve Funds; Expenditures. –

43 (1) Impact fees received by the county shall be deposited in a capital
44 improvements reserve fund or funds established under Part 2 of Article

1 3 of Chapter 159 of the General Statutes. Such funds may be
2 expended only on the type of capital improvements for which such
3 impact fees were established, and then only in accordance with the
4 provision of subdivision (2) of this section.

5 (2) In order to ensure that impact fees paid by a particular development
6 are expended on capital improvements that benefit that development,
7 the county may establish for each category of capital improvement for
8 which it collects an impact fee at least two geographical districts or
9 zones, and impact fees generated by developments within those
10 districts or zones must be spent on improvements that are located
11 within or that benefit property located within those districts or zones.

12 (e) Credits for Improvements. – An impact fee ordinance shall make provision
13 for credits against required fees when a developer installs improvements of a type that
14 generally would be paid for by the county out of a capital reserve account funded by
15 impact fees. The ordinance may spell out the circumstances under which a developer
16 will be allowed to install such improvements and receive such credits.

17 (f) Appeals Procedure. – An ordinance authorizing impact fees as provided
18 herein may provide that any person aggrieved by a decision regarding an impact fee
19 may appeal to the County Board of Adjustment. If the ordinance establishes an appeals
20 procedure, it shall spell out the time within which the appeal must be taken to the
21 County Board of Adjustment, the possible grounds for an appeal and the Board's
22 authority in the matter, whether the fee must be paid prior to resolution of the appeal,
23 and other procedural or substantive matters related to appeals. Any decision by the
24 County Board of Adjustment shall be subject to review by the superior court by
25 proceedings in the nature of certiorari in the same manner as is provided in G.S. 153A-
26 345.

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

33 The county may permit the payment of an impact fee in a lump sum or in equal
34 monthly or annual installments over a period of time not to exceed five years. If the fee
35 is paid in installments, the installments shall bear interest at a rate fixed by the county
36 not to exceed nine percent (9%) per annum from the date when payment by lump sum
37 would have otherwise been due. The impact fee, with accrued interest, may be paid in
38 full at any time.

39 If an impact fee is to be paid in installments pursuant to this subsection, then from
40 and after the date when payment by lump sum would have otherwise been due, the fee
41 shall be a lien on the property of the person against which the fee was imposed. The
42 impact fee lien shall be of the same nature and to the same extent as the lien for county
43 property taxes. The lien shall be inferior to all prior and subsequent liens for State,

1 local, and federal taxes, equal to liens for special assessments, and superior to all other
2 liens and encumbrances.

3 If any installment on an impact fee is not paid when due, then all of the installments
4 remaining unpaid shall immediately become due and payable, and the sums due may be
5 collected by the same process and in the same manner as property taxes due upon the
6 property subject to the lien. By way of illustration and not limitation, the property may
7 be sold by the county under the same rules as are prescribed by law for the foreclosure
8 and sale of land for unpaid property taxes. Foreclosure may be begun at any time
9 following 30 days after the due date. The county shall not be entitled to a deficiency
10 judgment in an action to foreclose an impact fee lien. The county may not maintain an
11 action or proceeding to enforce any remedy for foreclosure of an impact fee lien unless
12 the action or proceeding is begun within the period of time prescribed by law for the
13 foreclosure of special assessment liens.

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

19 (i) Limitations on Actions. –

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

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

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

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