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HOUSE BILL 1602
Committee Substitute Favorable 6/20/00
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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.

- 1 (7) ~~Structural~~ Stormwater management programs designed to protect water
2 quality by controlling the level of pollutants in, and the quantity and
3 flow of, stormwater and structural and natural stormwater and drainage
4 systems of all types."

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

6 **"§ 153A-277. Authority to fix and enforce rates.**

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

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

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

40 (3) No stormwater utility fee may be levied under this subsection whenever
41 two or more units of local government operate separate stormwater
42 management programs or separate structural and natural stormwater and
43 drainage system services in the same area within a county. However,

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

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

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

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

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

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

33 **"§ 160A-311. Public enterprise defined.**

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

- 35 (1) Electric power generation, transmission, and distribution ~~systems;~~
36 systems.
37 (2) Water supply and distribution ~~systems;~~ systems.
38 (3) Wastewater collection, treatment, and disposal systems of all types,
39 including septic tank systems or other on-site collection or disposal
40 facilities or ~~systems;~~ systems.
41 (4) Gas production, storage, transmission, and distribution systems, where
42 systems shall also include the purchase ~~and/or~~ or lease of natural gas
43 fields and natural gas reserves, the purchase of natural gas supplies, and

1 the surveying, drilling and any other activities related to the exploration
2 for natural gas, whether within the State or ~~without~~; without.

3 (5) Public transportation ~~systems~~; systems.

4 (6) Solid waste collection and disposal systems and ~~facilities~~; facilities.

5 (7) Cable television ~~systems~~; systems.

6 (8) Off-street parking facilities and ~~systems~~; systems.

7 (9) ~~Airports~~; Airports.

8 (10) ~~Structural~~ Stormwater management programs designed to protect water
9 quality by controlling the level of pollutants in, and the quantity and
10 flow of, stormwater and structural and natural stormwater and drainage
11 systems of all types."

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

13 "**§ 160A-314. Authority to fix and enforce rates.**

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

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

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

1 (3) No stormwater utility fee may be levied under this subsection whenever
2 two or more units of local government operate separate stormwater
3 management programs or separate structural and natural stormwater and
4 drainage system services in the same area within a county. However,
5 two or more units of local government may allocate among themselves
6 the functions, duties, powers, and responsibilities for jointly operating a
7 single stormwater management program and structural and natural
8 stormwater and drainage system service in the same area within a
9 county, provided that only one unit may levy a fee for the service within
10 the joint service area. For purposes of this subsection, a unit of local
11 government shall include a regional authority providing stormwater
12 management programs and structural and natural stormwater and
13 drainage system services.

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

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

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

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

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

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

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

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

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

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

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

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

39 "**§ 162A-9. Rates and charges; contracts for water or services; deposits; delinquent**
40 **charges.**

41 (a) An authority may establish and revise a schedule of rates, fees, and other
42 charges for the use of and for the services furnished or to be furnished by any water
43 system or sewer system or parts thereof owned or operated by the authority. The rates,

1 fees, and charges established under this subsection are not subject to supervision or
2 regulation by any bureau, board, commission, or other agency of the State or of any
3 political subdivision.

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

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

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

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

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

1 service within the joint service area. For purposes of this subsection, a unit of local
2 government shall include a regional authority providing stormwater management
3 programs and structural and natural stormwater and drainage system services.

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

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

- 11 (1) Require reasonable advance deposits to be made with it to be subject to
12 application to the payment of delinquent rates, fees and charges.
- 13 (2) At the expiration of 30 days after any rates, fees and charges become
14 delinquent, discontinue supplying water or the services and facilities of
15 any water system or sewer system of the authority.
- 16 (3) Specify the order in which partial payments are to be applied when a bill
17 covers more than one service."

18 Section 8. The provisions of this act are severable. If any provision of this act
19 is held invalid by a court of competent jurisdiction, the invalidity does not affect other
20 provisions of the act that can be given effect without the invalid provision.

21 Section 9. Sections 1 through 4 of this act are effective retroactively to 15 July
22 1989. Sections 5 through 7 of this act are effective retroactively to 8 July 1991. Sections
23 8 and 9 of this act are effective when it becomes law.