

Article 8.

System Development Fees.

**§ 162A-200. Short title.**

This Article shall be known and may be cited as the "Public Water and Sewer System Development Fee Act." (2017-138, s. 1.)

**§ 162A-201. Definitions.**

The following definitions apply in this Article:

- (1) Capital improvement. – A planned facility or expansion of capacity of an existing facility other than a capital rehabilitation project necessitated by and attributable to new development.
- (2) Capital rehabilitation project. – Any repair, maintenance, modernization, upgrade, update, replacement, or correction of deficiencies of a facility, including any expansion or other undertaking to increase the preexisting level of service for existing development.
- (3) Existing development. – Land subdivisions, structures, and land uses in existence at the start of the written analysis process required by G.S. 162A-205, no more than one year prior to the adoption of a system development fee.
- (4) Facility. – A water supply, treatment, storage, or distribution facility, or a wastewater collection, treatment, or disposal facility providing a general benefit to the area that facility serves and is owned or operated, or to be owned or operated, by a local governmental unit. This shall include facilities for the reuse or reclamation of water and any land associated with the facility.
- (5) Local governmental unit. – Any political subdivision of the State that owns or operates a facility, including those owned or operated pursuant to local act of the General Assembly or pursuant to Part 2 of Article 2 of Chapter 130A, Article 15 of Chapter 153A, Article 16 of Chapter 160A, or Articles 1, 4, 5, 5A, or 6 of Chapter 162A of the General Statutes.
- (6) New development. – Any of the following occurring after the date a local government begins the written analysis process required by G.S. 162A-205, no more than one year prior to the adoption of a system development fee, which increases the capacity necessary to serve that development:
  - a. The subdivision of land.
  - b. The construction, reconstruction, redevelopment, conversion, structural alteration, relocation, or enlargement of any structure which increases the number of service units.
  - c. Any use or extension of the use of land which increases the number of service units.
- (7) Service. – Water or sewer service, or water and sewer service, provided by a local governmental unit, including water or sewer service provided pursuant to a wholesale arrangement between a water and sewer authority organized under Article 1 of Chapter 162A of the General Statutes and a local governmental unit.
- (8) Service unit. – A unit of measure, typically an equivalent residential unit, calculated in accordance with generally accepted engineering or planning standards.

- (9) System development fee. – A charge or assessment for service, including service provided pursuant to a wholesale arrangement between a water and sewer authority organized under Article 1 of Chapter 162A of the General Statutes and a local governmental unit, imposed with respect to new development to fund costs of capital improvements necessitated by and attributable to such new development, to recoup costs of existing facilities which serve such new development, or a combination of those costs, as provided in this Article. The term includes amortized charges, lump-sum charges, and any other fee that functions as described by this definition regardless of terminology. The term does not include any of the following:
- a. A charge or fee to pay the administrative, plan review, or inspection costs associated with permits required for development.
  - b. Tap or hookup charges for the purpose of reimbursing the local governmental unit for the actual cost of connecting the service unit to the system.
  - c. Availability charges.
  - d. Dedication of capital improvements on-site, adjacent, or ancillary to a development absent a written agreement providing for credit or reimbursement to the developer pursuant to G.S. 153A-280, 153A-451, 160A-320, 160A-499 or Part 3A of Article 18, Chapter 153A or Part 3D of Article 19, Chapter 160A of the General Statutes.
  - e. Reimbursement to the local governmental unit for its expenses in constructing or providing for water or sewer utility capital improvements adjacent or ancillary to the development if the owner or developer has agreed to be financially responsible for such expenses; however, such reimbursement shall be credited to any system development fee charged as set forth in G.S. 162A-207(c).
- (10) System development fee analysis. – An analysis meeting the requirements of G.S. 162A-205. (2017-138, s. 1; 2021-76, s. 1.)

**§ 162A-202:** Reserved for future codification purposes.

**§ 162A-203. Authorization of system development fee.**

(a) A local governmental unit may adopt a system development fee for water or sewer service only in accordance with the conditions and limitations of this Article.

(b) A system development fee adopted by a local governmental unit under any lawful authority other than this Article and in effect on October 1, 2017, shall be conformed to the requirements of this Article not later than July 1, 2018. (2017-138, s. 1.)

**§ 162A-204:** Reserved for future codification purposes.

**§ 162A-205. Supporting analysis.**

A system development fee shall be calculated based on a written analysis, which may constitute or be included in a capital improvements plan, that:

- (1) Is prepared by a financial professional or a licensed professional engineer qualified by experience and training or education to employ generally accepted

- accounting, engineering, and planning methodologies to calculate system development fees for public water and sewer systems.
- (2) Documents in reasonable detail the facts and data used in the analysis and their sufficiency and reliability.
  - (3) Employs generally accepted accounting, engineering, and planning methodologies, including the buy-in, incremental cost or marginal cost, and combined cost methods for each service, setting forth appropriate analysis as to the consideration and selection of a method appropriate to the circumstances and adapted as necessary to satisfy all requirements of this Article.
  - (4) Documents and demonstrates the reliable application of the methodologies to the facts and data, including all reasoning, analysis, and interim calculations underlying each identifiable component of the system development fee and the aggregate thereof.
  - (5) Identifies all assumptions and limiting conditions affecting the analysis and demonstrates that they do not materially undermine the reliability of conclusions reached.
  - (6) Calculates a final system development fee per service unit of new development and includes an equivalency or conversion table for use in determining the fees applicable for various categories of demand.
  - (7) Covers a planning horizon of not less than five years nor more than 20 years.
  - (8) Is adopted by resolution or ordinance of the local governmental unit in accordance with G.S. 162A-209.
  - (9) Uses the gallons per day per service unit that the local governmental unit applies to its water or sewer system engineering or planning purposes for water or sewer, as appropriate, in calculating the system development fee. (2017-138, s. 1; 2018-34, s. 1(a); 2021-76, s. 2.)

**§ 162A-206:** Reserved for future codification purposes.

**§ 162A-207. Minimum requirements.**

(a) **Maximum.** – A system development fee shall not exceed that calculated based on the system development fee analysis.

(b) **Revenue Credit.** – In applying the incremental cost or marginal cost, or the combined cost, method to calculate a system development fee with respect to capital improvements, the system development fee analysis must include as part of that methodology a credit against the projected aggregate cost of capital improvements. That credit shall be determined based upon generally accepted calculations and shall reflect a deduction of either the outstanding debt principal or the present value of projected water and sewer revenues received by the local governmental unit for the capital improvements necessitated by and attributable to such new development, anticipated over the course of the planning horizon. In no case shall the credit be less than twenty-five percent (25%) of the aggregate cost of capital improvements.

(c) **Construction or Contributions Credit.** – In calculating the system development fee with respect to new development, the local governmental unit shall credit the value of costs in excess of the development's proportionate share of connecting facilities required to be oversized for use of others outside of the development. No credit shall be applied, however, for capital improvements on-site or to connect new development to facilities. (2017-138, s. 1; 2021-76, s. 3.)

§ 162A-208: Reserved for future codification purposes.

**§ 162A-209. Adoption and periodic review.**

(a) For not less than 45 days prior to considering the adoption of a system development fee analysis, the local governmental unit shall post the analysis on its Web site and solicit and furnish a means to submit written comments, which shall be considered by the preparer of the analysis for possible modifications or revisions.

(b) After expiration of the period for posting, the governing body of the local governmental unit shall conduct a public hearing prior to considering adoption of the analysis with any modifications or revisions.

(c) The local governmental unit shall publish the system development fee in its annual budget or rate plan or ordinance. The local governmental unit shall update the system development fee analysis at least every five years. (2017-138, s. 1.)

§ 162A-210: Reserved for future codification purposes.

**§ 162A-211. Use and administration of revenue.**

(a) Revenue from system development fees calculated using the incremental cost method or marginal cost method, exclusively or as part of the combined cost method, shall be expended only to pay:

- (1) Costs of constructing capital improvements including, and limited to, any of the following:
  - a. Construction contract prices.
  - b. Surveying and engineering fees.
  - c. Land acquisition cost.
  - d. Principal and interest on bonds, notes, or other obligations issued by or on behalf of the local governmental unit to finance any costs for an item listed in sub-subdivisions a. through c. of this subdivision.
- (2) Professional fees incurred by the local governmental unit for preparation of the system development fee analysis.
- (3) If no capital improvements are planned for construction within five years or the foregoing costs are otherwise paid or provided for, then principal and interest on bonds, notes, or other obligations issued by or on behalf of a local governmental unit to finance the construction or acquisition of existing capital improvements.

(a1) Revenue from system development fees calculated using the combined cost method may be expended for previously completed capital improvements for which capacity exists and for capital rehabilitation projects.

(b) Revenue from system development fees calculated using the buy-in method may be expended for previously completed capital improvements for which capacity exists and for capital rehabilitation projects. The basis for the buy-in calculation for previously completed capital improvements shall be determined by using a generally accepted method of valuing the actual or replacement costs of the capital improvement for which the buy-in fee is being collected less depreciation, debt credits, grants, and other generally accepted valuation adjustments.

(c) A local governmental unit may pledge a system development fee as security for the payment of debt service on a bond, note, or other obligation subject to compliance with this section.

(d) Except as otherwise provided in subsection (e) of this section, system development fee revenues shall be accounted for by means of a capital reserve fund established pursuant to Part 2 of Article 3 of Chapter 159 of the General Statutes and limited as to expenditure of funds in accordance with this section.

(e) If and to the extent that revenues derived from system development fees are pledged to secure revenue bonds or notes issued by a local government unit under the provisions of Article 5 of Chapter 159 of the General Statutes, such revenues may be deposited in such funds, accounts or subaccounts, and applied in such manner, as set forth in the bond order, resolution, trust agreement or similar instrument authorizing and securing such bonds or notes until all such revenue bonds or notes are no longer outstanding. (2017-138, s. 1; 2018-34, s. 2(a); 2020-61, s. 3(a).)

**§ 162A-212:** Reserved for future codification purposes.

**§ 162A-213. Time for collection of system development fees.**

(a) Land Subdivision. – For new development involving the subdivision of land, the system development fee shall be collected by a local governmental unit at the later of either of the following:

- (1) The time of application for a building permit.
- (2) When water or sewer service is committed by the local governmental unit.

(b) Other New Development. – For all other new development, the local governmental unit shall collect the system development fee at the earlier of either of the following:

- (1) The time of application for connection of the individual unit of development to the service or facilities.
- (2) When water or sewer service is committed by the local governmental unit.

(c) If the system development fee is collected under subdivision (a)(1) of this section and the local governmental unit that charges or assesses the system development fee is different from the local governmental unit that issues the building permit, the local governmental unit issuing the building permit shall require proof of collection of the system development fee prior to issuance of the building permit.

(d) No system development fee shall be charged or assessed with respect to any new development for which a system development fee under this Article has been collected at the time of plat recordation involving the subdivision of land and the amount of capacity associated with that payment of the system development fee has not increased at the time of application for the building permit. If the amount of capacity is increased at the time of application for a building permit, then a system development fee may be charged for the difference in the amount of the increased capacity minus the system development fee previously paid under this Article. (2017-138, s. 1; 2018-34, s. 3(a); 2020-61, ss. 1(a)-(d), 2(a).)

**§ 162A-214:** Reserved for future codification purposes.

**§ 162A-215. Narrow construction.**

Notwithstanding G.S. 153A-4 and G.S. 160A-4, in any judicial action interpreting this Article, all powers conferred by this Article shall be narrowly construed to ensure that system development fees do not unduly burden new development. (2017-138, s. 1.)