

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2023**

**SESSION LAW 2023-55
SENATE BILL 673**

AN ACT TO ALLOW ALTERNATIVE PEAK DAILY SEWAGE FLOW RATES FOR DESIGN RATE MODELING, TO PERMIT WASTEWATER TREATMENT SYSTEM EXPANSIONS BEYOND EXISTING ALLOCATION IN CERTAIN CIRCUMSTANCES, AND TO MAKE CLARIFICATIONS TO THE SYSTEM DEVELOPMENT FEE STATUTES.

The General Assembly of North Carolina enacts:

ALLOW ALTERNATIVE PEAK DAILY SEWAGE FLOW RATES AND PERMIT WASTEWATER TREATMENT SYSTEM EXPANSIONS BEYOND EXISTING ALLOCATION IN CERTAIN CIRCUMSTANCES

SECTION 1. G.S. 143-215.1 is amended by adding the following new subsections to read:

"(f3) The permittee for a wastewater treatment system may calculate its wastewater flows for new dwelling units, including units that have yet to be connected and for which the permittee has allocated capacity, at 75 gallons per day per bedroom, or at a lower rate approved by the Department.

(f4) No permits for sewer line extensions shall be issued to wastewater treatment systems owned or operated by municipalities, counties, sanitary districts, or public utilities unless the systems meet the following requirements:

- (1) Prior to actual flow exceeding eighty percent (80%) of the system's permitted hydraulic capacity, based on the average flow during the last calendar year, the permittee shall submit an engineering evaluation of its future wastewater treatment, utilization, and disposal needs. This evaluation shall outline plans for meeting future wastewater treatment, utilization, or disposal needs by either expansion of the existing system, elimination or reduction of extraneous flows, or water conservation and shall include the source of funding for the improvements. If expansion is not proposed or is proposed for a later date, a justification shall be made that wastewater treatment needs will be met based on past growth records and future growth projections and, as appropriate, shall include conservation plans or other measures to achieve waste flow reductions.
- (2) Prior to actual flow exceeding ninety percent (90%) of the system's permitted hydraulic capacity, based on the average flow during the last calendar year, the permittee shall obtain all permits needed for the expansion of the wastewater treatment, utilization, or disposal system and, if construction is needed, submit final plans and specifications for expansion, including a construction schedule. If expansion is not proposed or is proposed for a later date, a justification shall be made that wastewater treatment needs will be met based on past growth records and future growth projections and, as appropriate, shall include conservation plans or other specific measures to achieve waste flow reductions.



- (3) The Director shall allow permits to be issued to facilities that are exceeding the eighty percent (80%) or ninety percent (90%) disposal capacity if the additional flow is not projected to result in the facility exceeding its permitted hydraulic capacity, the facility is in compliance with all other permit limitations and requirements, and adequate progress is being made in developing the required engineering evaluations or plans and specifications. In determining the adequacy of the progress, the Director shall consider the projected flows, the complexity and scope of the work to be completed, and any projected environmental impacts.

(f5) A permittee for a wastewater treatment system, who has signed a contract for the expansion of its wastewater treatment system, utilization, or disposal system and whose current system is located in a county with a projected population growth rate above two percent (2%) annually or is located in one of the top twenty percent (20%) of the fastest growing counties in the State, by population, and is meeting flow and pollutant discharge limits set out in the system's current permit, may allocate one hundred ten percent (110%) of its existing system's hydraulic capacity and increase the allocation amount to one hundred fifteen percent (115%) when the expansion of its system is within 24 months of completion, but may not allocate more than the permitted projected capacity after expansion without approval by the Department. Nothing in this subsection shall be construed to limit the Department from authorizing allocations above one hundred fifteen percent (115%) of a system's hydraulic capacity."

SYSTEM DEVELOPMENT FEE CLARIFICATION

SECTION 2.(a) G.S. 162A-201(9) reads as rewritten:

- "(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, to recoup costs incurred by a local government unit to purchase capacity in, or reserve capacity supplied by, capital improvements or facilities owned by another local government unit, 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).

- f. A charge or fee paid by one local government unit to another local government unit for capacity in, or reserve capacity supplied by, capital improvements or facilities."

SECTION 2.(b) G.S. 162A-205 reads as rewritten:

"§ 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.
- (10) Includes any purchased capacity in, or reserved capacity supplied by, capital improvements or facilities owned by another local government unit as part of the local government unit's overall capacity in capital improvements."

SECTION 2.(c) G.S. 162A-211 reads as rewritten:

"§ 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.
- (4) Contractual obligations to another local government unit for capacity in such facilities owned by another local government unit.

...."

SECTION 2.(d) This section is effective when it becomes law. This section clarifies and restates the intent of existing law and applies to ordinances adopted before, on, and after the effective date.

EFFECTIVE DATE

SECTION 3. Except as otherwise provided, this act is effective when it becomes law.

In the General Assembly read three times and ratified this the 15th day of June, 2023.

s/ Phil Berger
President Pro Tempore of the Senate

s/ Jeff Zenger
Presiding Officer of the House of Representatives

s/ Roy Cooper
Governor

Approved 3:41 p.m. this 23rd day of June, 2023