

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1991

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HOUSE BILL 757
Second Edition Engrossed 5/2/91
Senate Local Government and Regional Affairs
Committee Substitute Adopted 6/19/91

Short Title: Dunn Facility Fees.

(Local)

Sponsors:

Referred to:

April 15, 1991

1 A BILL TO BE ENTITLED

2 AN ACT TO AUTHORIZE THE CITY OF DUNN AND THE TOWN OF
3 KERNERSVILLE TO IMPOSE FACILITY FEES.

4 The General Assembly of North Carolina enacts:

5 Section 1. Chapter 818 of the 1969 Session Laws, as amended by Chapter
6 104 of the 1971 Session Laws, being the revised and consolidated Charter of the City of
7 Dunn, is amended by adding a new Article to read:

8 **"ARTICLE XIV. FACILITIES FEES.**

9 "Sec. 14.1. **Definitions.** The following definitions apply in this act:

- 10 (1) 'Capital costs' means costs spent for developing community service
11 facilities. Capital costs are limited to capital outlay items listed in the
12 'Uniform Local Government Accounting Systems' procedural manual
13 prepared by the North Carolina Local Government Commission.
- 14 (2) 'Community service facilities' means the following public facilities or
15 improvements provided or established by the local government or in
16 conjunction with other units of government: streets and sidewalks,
17 water, sewer and drainage projects, parks, open spaces, and
18 recreational facilities and any other capital costs needs of duly
19 constituted departments of city government.

- 1 (3) 'Developer' means an individual, corporation, partnership,
2 organization, association, firm, political subdivision, or other legal
3 entity constructing or creating new construction.
- 4 (4) 'Facility fee' means the charge imposed upon new construction under
5 this Article.
- 6 (5) 'New construction' means any new development, construction, or
7 installation for which a building or zoning permit, certification, or any
8 other type of governmental approval is required. New construction
9 includes the installation of a mobile home, factory-built, or modular
10 housing. New construction does not include: (i) renovation and repair
11 of existing structures, accessory uses and their structures, or additions,
12 unless the renovations, repairs or additions, will cause an increase in
13 off-street parking requirements or a change in occupancy as occupancy
14 is defined by the North Carolina State Building Code; (ii) fences,
15 billboards, poles, pipelines, transmission lines, advertising signs or
16 similar structures that do not generate a need for community facilities.

17 "Sec. 14.2. The City of Dunn may impose facility fees upon all new construction
18 within the City's corporate limits and within the extraterritorial jurisdiction for the
19 purpose of placing an equitable share of the cost of providing new community service
20 facilities upon developers and inhabitants of newly developed areas. This Article
21 provides the City with the legal mechanism for imposing facility fees to recover capital
22 costs associated with community service facilities necessitated by rapid and continued
23 growth in the Dunn area. A facility fee ordinance adopted under this Article shall be
24 designed to maintain the level of service presently available within the City.

25 "Sec. 14.3. (a) The amount of each facility fee imposed shall be uniform and
26 based upon the capital costs to be incurred by the City as a result of the new
27 construction. In establishing the facilities fees, the City shall establish zones within
28 which the costs of providing community service facilities are estimated. Zones may
29 have different facility fees, depending upon the community service facilities available
30 and the extent to which capital costs have been paid in each zone. Facilities upon which
31 fees are based must directly result in additional capital costs, and fees must be expended
32 within the same zone as or otherwise benefit the new construction upon which the fee is
33 imposed. A public hearing shall be held before the zones authorized in this subdivision
34 are established.

35 (b) The amount of each facility fee shall be based upon documented needs, and
36 specific classifications and rates that shall be uniformly applied. Classifications upon
37 which fees are based must account for the costs and extent of additional burden placed
38 upon community service facilities by different types and sizes of new construction.

39 (c) Before imposing a facility fee, the City shall prepare or have prepared a
40 report containing:

- 41 (1) A description of the anticipated capital cost to the City of each
42 additional or expanded community service facility necessitated by the
43 new construction;

1 (2) A description of the characteristics of the new construction that
2 necessitate the additional or expanded community service facility, such
3 as, population, trip generation, stormwater runoff and flow
4 characteristics; and

5 (3) A plan for providing the community service facilities necessitated by
6 the new construction.

7 "Sec. 14.4. The City may enact regulations as it deems necessary to implement this
8 Article. Before adopting or amending any ordinance authorized by this Article, the City
9 shall hold a public hearing on the ordinance. Notice of any public hearing required
10 under this Article shall be given in accordance with G.S. 160A-364.

11 "Sec. 14.5. Funds for each community service facility for which a facility fee is
12 collected shall be placed in a separate trust fund. Separate trust funds shall be
13 established for separate zones. All funds shall be expended for the facility for which
14 they were collected. Payment of facility fees does not entitle the payor to any greater
15 right to use or ownership in the facility for which the fee is collected than is shared by
16 the general public.

17 "Sec. 14.6. The authority provided in this Article is in addition to all other authority
18 provided by law. Assessments and fees authorized by law are not affected by this
19 Article.

20 "Sec. 14.7. A developer who wishes to challenge a facility fee shall pay the amount
21 charged by the City, clearly identify that payment is made under protest, and give notice
22 of appeal within 30 days after the date that payment under protest is made. The notice
23 required by this section shall be delivered to the city manager by personal service or
24 registered or certified mail, return receipt requested. The City Council shall hold a
25 public hearing to review the appeal within 35 days after receiving the notice of appeal.
26 The decision of the City Council on the appeal is subject to review by the Harnett
27 County Superior Court in the nature of **certiorari**. A petition for review by the Superior
28 Court shall be filed with the Clerk of Superior Court within 30 days after the date that
29 the City Council delivers its decision in writing, either by personal service, or registered
30 or certified mail, return receipt requested, to the appealing party."

31 Sec. 2. Chapter 381 of the 1989 Session Laws, being the Charter of the Town
32 of Kernersville, is amended by adding a new section to read:

33 "Sec. 27.1. Facilities Fees.

34 (a) Definitions. The following definitions apply in this act:

35 (1) 'Capital costs' means costs spent for developing community service
36 facilities. Capital costs are limited to capital outlay items listed in the
37 'Uniform Local Government Accounting Systems' procedural manual
38 prepared by the North Carolina Local Government Commission.

39 (2) 'Community service facilities' means the following public facilities or
40 improvements provided or established by the local government or in
41 conjunction with other units of government: streets and sidewalks,
42 water, sewer and drainage projects, parks, open spaces, and
43 recreational facilities and any other capital costs needs of duly
44 constituted departments of city government.

1 (3) 'Developer' means an individual, corporation, partnership,
2 organization, association, firm, political subdivision, or other legal
3 entity constructing or creating new construction.

4 (4) 'Facility fee' means the charge imposed upon new construction under
5 this section.

6 (5) 'New construction' means any new development, construction, or
7 installation for which a building or zoning permit, certification, or any
8 other type of governmental approval is required. New construction
9 includes the installation of a mobile home, factory-built, or modular
10 housing. New construction does not include: (i) renovation and repair
11 of existing structures, accessory uses and their structures, or additions,
12 unless the renovations, repairs or additions, will cause an increase in
13 off-street parking requirements or a change in occupancy as occupancy
14 is defined by the North Carolina State Building Code; (ii) fences,
15 billboards, poles, pipelines, transmission lines, advertising signs or
16 similar structures that do not generate a need for community facilities.

17 (b) The Town of Kernersville may impose facility fees upon all new construction
18 within the Town's corporate limits and within the extraterritorial jurisdiction for the
19 purpose of placing an equitable share of the cost of providing new community service
20 facilities upon developers and inhabitants of newly developed areas. This section
21 provides the Town with the legal mechanism for imposing facility fees to recover
22 capital costs associated with community service facilities necessitated by rapid and
23 continued growth in the Kernersville area. A facility fee ordinance adopted under this
24 section shall be designed to maintain the level of service presently available within the
25 Town.

26 (c) The amount of each facility fee imposed shall be uniform and based upon the
27 capital costs to be incurred by the Town as a result of the new construction. In
28 establishing the facilities fees, the Town shall establish zones within which the costs of
29 providing community service facilities are estimated. Zones may have different facility
30 fees, depending upon the community service facilities available and the extent to which
31 capital costs have been paid in each zone. Facilities upon which fees are based must
32 directly result in additional capital costs, and fees must be expended within the same
33 zone as or otherwise benefit the new construction upon which the fee is imposed. A
34 public hearing shall be held before the zones authorized in this subdivision are
35 established.

36 (d) The amount of each facility fee shall be based upon documented needs, and
37 specific classifications and rates that shall be uniformly applied. Classifications upon
38 which fees are based must account for the costs and extent of additional burden placed
39 upon community service facilities by different types and sizes of new construction.

40 (e) Before imposing a facility fee, the Town shall prepare or have prepared a report
41 containing:

42 (1) A description of the anticipated capital cost to the Town of each
43 additional or expanded community service facility necessitated by the
44 new construction;

1 (2) A description of the characteristics of the new construction that
2 necessitate the additional or expanded community service facility, such
3 as, population, trip generation, stormwater runoff and flow
4 characteristics; and

5 (3) A plan for providing the community service facilities necessitated by
6 the new construction.

7 (f) The Town may enact regulations as it deems necessary to implement this
8 section. Before adopting or amending any ordinance authorized by this section, the
9 Town shall hold a public hearing on the ordinance. Notice of any public hearing
10 required under this section shall be given in accordance with G.S. 160A-364.

11 (g) Funds for each community service facility for which a facility fee is collected
12 shall be placed in a separate trust fund. Separate trust funds shall be established for
13 separate zones. All funds shall be expended for the facility for which they were
14 collected. Payment of facility fees does not entitle the payor to any greater right to use
15 or ownership in the facility for which the fee is collected than is shared by the general
16 public.

17 (h) The authority provided in this section is in addition to all other authority
18 provided by law. Assessments and fees authorized by law are not affected by this
19 section.

20 (i) A developer who wishes to challenge a facility fee shall pay the amount
21 charged by the Town, clearly identify that payment is made under protest, and give
22 notice of appeal within 30 days after the date that payment under protest is made. The
23 notice required by this section shall be delivered to the town manager by personal
24 service or registered or certified mail, return receipt requested. The Town Board of
25 Aldermen shall hold a public hearing to review the appeal within 35 days after receiving
26 the notice of appeal. The decision of the Town Board of Aldermen on the appeal is
27 subject to review by the Forsyth County Superior Court in the nature of **certiorari**. A
28 petition for review by the Superior Court shall be filed with the Clerk of Superior Court
29 within 30 days after the date that the Town Board of Aldermen delivers its decision in
30 writing, either by personal service, or registered or certified mail, return receipt
31 requested, to the appealing party."

32 Sec. 3. This act is effective upon ratification.