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SENATE BILL 673
Agriculture, Energy, and Environment Committee Substitute Adopted 4/26/23
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Short Title: Wastewater Regulatory Relief Act.

(Public)

Sponsors:

Referred to:

April 10, 2023

A BILL TO BE ENTITLED

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



1 wastewater treatment, utilization, or disposal system and, if construction is
2 needed, submit final plans and specifications for expansion, including a
3 construction schedule. If expansion is not proposed or is proposed for a later
4 date, a justification shall be made that wastewater treatment needs will be met
5 based on past growth records and future growth projections and, as
6 appropriate, shall include conservation plans or other specific measures to
7 achieve waste flow reductions.

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

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

29 SYSTEM DEVELOPMENT FEE CLARIFICATION

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

31 "(9) System development fee. – A charge or assessment for service, including
32 service provided pursuant to a wholesale arrangement between a water and
33 sewer authority organized under Article 1 of Chapter 162A of the General
34 Statutes and a local governmental unit, imposed with respect to new
35 development to fund costs of capital improvements necessitated by and
36 attributable to such new development, to recoup costs of existing facilities
37 which serve such new development, to recoup costs incurred by a local
38 government unit to purchase capacity in, or reserve capacity supplied by,
39 capital improvements or facilities owned by another local government unit, or
40 a combination of those costs, as provided in this Article. The term includes
41 amortized charges, lump-sum charges, and any other fee that functions as
42 described by this definition regardless of terminology. The term does not
43 include any of the following:

- 44 a. A charge or fee to pay the administrative, plan review, or inspection
45 costs associated with permits required for development.
- 46 b. Tap or hookup charges for the purpose of reimbursing the local
47 governmental unit for the actual cost of connecting the service unit to
48 the system.
- 49 c. Availability charges.
- 50 d. Dedication of capital improvements on-site, adjacent, or ancillary to a
51 development absent a written agreement providing for credit or

1 reimbursement to the developer pursuant to G.S. 153A-280,
2 153A-451, 160A-320, 160A-499 or Part 3A of Article 18, Chapter
3 153A or Part 3D of Article 19, Chapter 160A of the General Statutes.

4 e. Reimbursement to the local governmental unit for its expenses in
5 constructing or providing for water or sewer utility capital
6 improvements adjacent or ancillary to the development if the owner or
7 developer has agreed to be financially responsible for such expenses;
8 however, such reimbursement shall be credited to any system
9 development fee charged as set forth in G.S. 162A-207(c).

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

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

14 **"§ 162A-205. Supporting analysis.**

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

- 17 (1) Is prepared by a financial professional or a licensed professional engineer
18 qualified by experience and training or education to employ generally
19 accepted accounting, engineering, and planning methodologies to calculate
20 system development fees for public water and sewer systems.
- 21 (2) Documents in reasonable detail the facts and data used in the analysis and their
22 sufficiency and reliability.
- 23 (3) Employs generally accepted accounting, engineering, and planning
24 methodologies, including the buy-in, incremental cost or marginal cost, and
25 combined cost methods for each service, setting forth appropriate analysis as
26 to the consideration and selection of a method appropriate to the
27 circumstances and adapted as necessary to satisfy all requirements of this
28 Article.
- 29 (4) Documents and demonstrates the reliable application of the methodologies to
30 the facts and data, including all reasoning, analysis, and interim calculations
31 underlying each identifiable component of the system development fee and
32 the aggregate thereof.
- 33 (5) Identifies all assumptions and limiting conditions affecting the analysis and
34 demonstrates that they do not materially undermine the reliability of
35 conclusions reached.
- 36 (6) Calculates a final system development fee per service unit of new
37 development and includes an equivalency or conversion table for use in
38 determining the fees applicable for various categories of demand.
- 39 (7) Covers a planning horizon of not less than five years nor more than 20 years.
- 40 (8) Is adopted by resolution or ordinance of the local governmental unit in
41 accordance with G.S. 162A-209.
- 42 (9) Uses the gallons per day per service unit that the local governmental unit
43 applies to its water or sewer system engineering or planning purposes for
44 water or sewer, as appropriate, in calculating the system development fee.
- 45 (10) Includes any purchased capacity in, or reserved capacity supplied by, capital
46 improvements or facilities owned by another local government unit as part of
47 the local government unit's overall capacity in capital improvements."

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

49 **"§ 162A-211. Use and administration of revenue.**

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

4 (1) Costs of constructing capital improvements including, and limited to, any of
5 the following:

- 6 a. Construction contract prices.
- 7 b. Surveying and engineering fees.
- 8 c. Land acquisition cost.
- 9 d. Principal and interest on bonds, notes, or other obligations issued by
10 or on behalf of the local governmental unit to finance any costs for an
11 item listed in sub-subdivisions a. through c. of this subdivision.

12 (2) Professional fees incurred by the local governmental unit for preparation of
13 the system development fee analysis.

14 (3) If no capital improvements are planned for construction within five years or
15 the foregoing costs are otherwise paid or provided for, then principal and
16 interest on bonds, notes, or other obligations issued by or on behalf of a local
17 governmental unit to finance the construction or acquisition of existing capital
18 improvements.

19 (4) Contractual obligations to another local government unit for capacity in such
20 facilities owned by another local government unit.

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

25 **EFFECTIVE DATE**

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