

# Legislative Changes Affecting the Tools in the North Carolina Water Finance Toolbox

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Water and wastewater utilities have a wide range of capital project needs. Most utilities have existing assets (treatment plants, water storage tanks, underground lines) that have reached the end of their functional life and need significant rehabilitation and replacement investment. Some utilities also have capital investment needs that are driven more by customer growth. These types of growth projects may include a new water line and storage tank to reach a new industrial park or a wastewater treatment plant expansion that provides capacity to a new residential sub-division.

Figuring out how to pay for the costs of water and wastewater capital in general is hard, but paying for the cost of growth related projects carries its own set of unique challenges. Existing customers are often wary of paying for projects to serve newcomers, particularly when their existing system has so many capital needs. In the past, water and wastewater utilities have used a [variety of upfront fees](#) to generate revenue that to offset the costs of serving new customers. Many utilities believed authority for these different fees was far reaching and granted in the general fee setting authority all public enterprises (e.g. [G.S. 160A-314](#) for municipal public enterprises.)

The repercussions of a [court case](#) involving an application of an upfront fee resulted in concern throughout the state about what types of fees were authorized and how they should be calculated. Late in this legislative session, the general assembly passed a bill, [S.L. 2017-138 \(H436\)](#), that addressed a number of issues related to these fees that will have far-reaching impacts for any utility that uses upfront fees to pay for growth related capital. (Fees such as tap fees or hook on fees that only cover the direct costs of making the connection are not considered system development fees.)

S.L. 2017-138 includes a definition for “system development fees” and describes the process for establishing one. The law sets an ambitious deadline of July 1, 2018 for local governments that have existing water system development fees (or fees that may fit the definition of system development fees) to complete all the actions needed to comply with the new law. Utilities will have to carry out a utility fee analysis to assure fees are calculated following a set of guidelines outlined in the law and will have to follow a set of administrative tasks before the fees can be formally implemented. The law also restricts how revenue from fees can be spent and lays out requirements

for the creation of capital reserve funds to account for revenue from these fees. In the coming months, we will publish additional guidance on complying with this bill, including a webinar on the topic. Click [here](#) to register or access the recording of the webinar.

Another bill that received less attention also addresses an important growth financing tool, property [special assessments](#). [Session Law 2017-40 \(H158\)](#) makes modifications to one of the types of property assessments that local governments may use to finance growth by attaching part or all of the value of the improvement project to the properties that benefit from the project. While assessments can be used for similar water projects as system development fees, they are quite different from system development fees in that the assessment goes against a property that “benefits” from a service even if they do not choose to use the service. A system development fee on the other hand can only be charged to a customer who actually uses a service. Assessments are typically recovered over long period—as long as 20 to 25 years in some cases.

S.L. 2017-40 modifies several aspects of assessment authority including providing some expanded opportunities for local governments to work with private developers to help pay for projects where assessment revenue will be used to reimburse private expenditures. Assessments have not been widely used for water and wastewater projects in the past, partially because of the perceived ease of the alternative of using upfront fees such as system development fees. Now that there are new system development fee requirements, some utilities may take another (hopefully careful) look at assessments as an alternative.