
Coates' Canons Blog: 2018 System Development Fee Law Changes

By Kara Millonzi

Article: <https://canons.sog.unc.edu/2018-system-development-fee-law-changes/>

This entry was posted on June 26, 2018 and is filed under Finance & Tax, Public Enterprise / Utility Finance

In the 2017 legislative session, the General Assembly specifically authorized all local government utility providers to charge upfront fees for water and wastewater services. The legislation, however, limited the types of upfront charges that could be assessed on new development within the unit's territorial boundaries. A prior post summarized the new law and detailed the new procedural requirements for adopting upfront water or wastewater charges. This post details changes the legislature made to the law during the 2018 legislative session. These changes do not address all of the ambiguities in the SDF law but do clarify certain aspects of calculating, collecting, and administering the fees.

The following summarizes the changes that **S.L. 2018-34** made to the SDF law.

Change Planning Horizon to Between 5 and 20 Years

The system development fee law allows a local government to use one of three methodologies to calculate the fee schedule—the buy-in method, incremental/marginal cost method, or combined method. If a unit uses the incremental/marginal cost method or the combined cost method, it must identify the specific capital improvement projects that will be necessitated to serve the new development. The original legislation set the planning horizon between 10 and 20 years. That has now been changed to a planning horizon of between 5 and 20 years. (Note that the law continues to allow a local government that uses the incremental/marginal cost method or combined method and does not have any planned projects within the initial 5-year period, to use the SDF proceeds to make debt service payments on past water or wastewater capital projects.)

The legislature retroactively applied this change to October 1, 2018.

Change to Timing of Collection of SDFs

There are three different triggers for the imposition of SDFs—(1) subdivision of land; (2) change to structure that increases the number of required service units; or (3) changes to use of land, or extension of land, that increases the number of required service units. A service unit is the base unit of measure, typically an equivalent residential unit, of water or wastewater capacity needs. Which trigger a local government utility selects dictates the timing of the fee collection. Again, the new law makes some changes to the collection timing.

Subdivision of Land. If the trigger is subdivision of land, the local government utility must collect the SDF at the **later occurrence** of the following:

- The time of plat recordation, OR
- When water or sewer service is committed by the local government unit.

Most often the service commitment will come after the time of plat recordation, but that may not always be the case. The timing of the commitment of service should either be specified in the water or wastewater ordinance (for example, if service will be committed when building permits are pulled), or be spelled out in a contractual agreement between the developer and local government.

Change to structure or land that increases service units. If the trigger is a change to structures or land that increases service units, the SDF fee must be collected at the **earlier occurrence** of the following:

-
- The time of application for connection of the individual unit of development to the service or facilities, OR
 - When water or sewer service is committed by the local government utility.

In this case, the service commitment is likely to occur in most cases before the application for connection of individual units. As stated above, the timing of the commitment of service should either be specified in the water or wastewater ordinance (for example, if service will be committed when building permits are pulled), or be spelled out in a contractual agreement between the developer and local government.

Note that the changes to the collection timing are effective as of July 1, 2018.

Eliminate Capital Reserve Fund Requirement When Outstanding Revenue Bonds

As detailed [here](#), SDFs must be accounted for in a capital reserve fund (CRF). A CRF is not an accounting fund. It is more akin to a savings account within a fund. A unit may have a CRF in each of its enterprise funds. It also may have a CRF in a debt service fund.

The new law however, eliminates the CRF requirement for SDF proceeds that are pledged to secure revenue bonds or notes issued by a local government. These revenues will simply be deposited in the appropriate debt service funds, accounts or subaccounts, and applied as required by the bond order, resolution, trust agreement, or similar instrument authorizing the bonds or notes until all the revenue bonds or notes are paid off. All other SDF proceeds must be accounted for in a CRF.

Note that this change is effective as of July 1, 2018.

Links

- www.ncleg.net/Sessions/2017/Bills/House/PDF/H826v5.pdf