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## **Coates' Canons Blog: New Electronic Notice of Imposition or Increase in Fees Applicable to Construction of Development: Part II**

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UPDATE August 2013: For more recent information on this topic, click [here](#).

Last week, I summarized the new electronic notice and public comment requirements on the imposition of, or increase in, certain fees and charges assessed by local governments, and (at least potentially) sanitary districts and water and sewer authorities, imposed by S.L. 2009-436 (SB 698). In that post, I posited that although the basic requirements under the new law are fairly straight-forward, determining the fees and charges to which the requirements apply is anything but straight-forward. I then proposed one of two possible interpretations of the fees and charges to which the requirements apply. I believe that interpretation to be the better reading of the Act because of both the plain language of the provisions at issue and the legislative history of the Act. That said, the interpretation requires ignoring the portions of the Act that purport to require sanitary districts and water and sewer authorities to comply with the requirements.

In this post, I propose an alternative interpretation of the provisions at issue—one that is consistent with the inclusion of sanitary districts and water and sewer authorities as covered entities, but one that arguably requires a strained reading of the plain language of the provisions at issue.

First, I will provide a quick review of the basic requirements under the Act, the covered entities, and a list of the fees and charges to which the Act applies under the first interpretation (discussed last week). Then I will offer a second possible interpretation and list the fees and charges to which the requirements apply under that interpretation.

### ***Basic Requirements***

The following are the basic requirements imposed under the Act.

- If a covered entity has a web site that is maintained by its employees, it must provide notice on the web site of the imposition of, or increase in, certain fees or charges at least 7 days before the first meeting at which the fees or charges are on the agenda for consideration. The local government or authority need not provide similar notice if the fees or charges are discussed or considered at subsequent meetings.
- The governing board of a covered entity must provide a period of public comment on the imposition of, or increase in, the fees or charges during the first meeting at which the fees or charges are discussed.
- Neither of the above two requirements applies if the imposition of, or increase in, the fees or charges are included in the proposed budget ordinance that the covered entity's budget officer submits to the governing board during the annual budget process, in accordance with G.S. 159-12.

### ***Covered Entities***

The new requirements purportedly apply to counties, municipalities, sanitary districts, and water and sewer authorities.

### ***Applicable Fees and Charges***

The Act states that the requirements apply to the assessment by counties, municipalities, sanitary districts, and water and sewer authorities of "fees or charges applicable solely to the construction of development subject to the provisions of" either G.S. 153A, Art. 18, Part 2 (for counties) or G.S. 160A, Art. 19, Part 2 (for municipalities), or both (for sanitary districts or water and sewer authorities). (Note that these statutory provisions authorize counties and municipalities to

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regulate subdivisions. I will refer to them collectively as “subdivision regulation statutes”).

#### Interpretation 1:

As I discussed last week, one potential interpretation of the phrase at issue is that the new requirements apply only to fees and charges that are directly related to the subdivision regulations. Under this reading, the following fees and charges likely are subject to the new requirements:

- Fees and charges assessed in conjunction with the review of subdivision plats, and
- Fees and charges paid by developers in lieu of dedicating recreation areas and constructing road improvements.

The difficulty with this interpretation, though, is that only counties and municipalities are authorized to regulate subdivisions and impose the above-listed fees and charges.

#### Interpretation 2:

Is there an alternative interpretation of the provisions at issue that includes fees and charges that legally could be imposed by sanitary districts and water and sewer districts? If we assume that the Act applies to sanitary districts and water and sewer authorities, then it must apply to at least some water and sewer fees. In order to include water and sewer fees, the provisions at issue likely must apply to any fees and charges that are assessed on the construction of development in subdivisions.

The difficulty with this interpretation, of course, is the word “solely.” Under this interpretation, we must assume that “solely” modifies “construction of development” and limits the fees and charges to those that are assessed during the construction phase of subdivision development as opposed to fees and charges that may be assessed on subdivisions once the construction phase is complete. As I acknowledge above, this appears to be a strained reading of the plain language, but it likely is necessary to give effect to the provisions of the Act that state that the new requirements apply to fees and charges assessed by sanitary districts and water and sewer authorities.

Under this interpretation, what fees and charges likely are subject to the new requirements? The answer is potentially any fees and charges that are assessed on the construction of development of subdivisions—including, but not necessarily limited to, plan review fees, fees and charges paid by developers in lieu of dedicating recreation areas and constructing road improvements, permit fees, inspection fees, water and sewer impact fees, (potentially) water and sewer tap or connection fees, and other regulatory fees assessed on the construction of subdivision development.

## Links

- [canons.sog.unc.edu/?p=3024](https://canons.sog.unc.edu/?p=3024)
- [www.ncleg.net/Sessions/2009/Bills/Senate/PDF/S698v7.pdf](http://www.ncleg.net/Sessions/2009/Bills/Senate/PDF/S698v7.pdf)
- [www.ncleg.net/EnactedLegislation/Statutes/HTML/BySection/Chapter\\_159/GS\\_159-12.html](http://www.ncleg.net/EnactedLegislation/Statutes/HTML/BySection/Chapter_159/GS_159-12.html)
- [www.ncleg.net/EnactedLegislation/Statutes/HTML/ByArticle/Chapter\\_153A/Article\\_18.html](http://www.ncleg.net/EnactedLegislation/Statutes/HTML/ByArticle/Chapter_153A/Article_18.html)
- [www.ncleg.net/EnactedLegislation/Statutes/HTML/ByArticle/Chapter\\_160A/Article\\_19.html](http://www.ncleg.net/EnactedLegislation/Statutes/HTML/ByArticle/Chapter_160A/Article_19.html)