

**NORTH CAROLINA GENERAL ASSEMBLY**

**LEGISLATIVE FISCAL NOTE**

**BILL NUMBER:** House Bill 1602 (First Edition)

**SHORT TITLE:** Stormwater Utility Fees

**SPONSOR(S):** Representatives Gibson, McMahan, Adams, Insko, Jarrell, and Jeffus.

**FISCAL IMPACT**

	Yes ( )	No (X)	No Estimate Available ( )		
	<u>FY 2000-01</u>	<u>FY 2001-02</u>	<u>FY 2002-03</u>	<u>FY 2003-04</u>	<u>FY 2004-05</u>

**REVENUES**

**EXPENDITURES**

No Fiscal Impact

**POSITIONS:**

**PRINCIPAL DEPARTMENT(S) &  
PROGRAM(S) AFFECTED:** County Governments

**EFFECTIVE DATE:** Effective when the act becomes law and applies retroactively to July 15, 1989.

**BILL SUMMARY:** This bill amends the definition of “public enterprise” in the county and municipal statutes to include, among other things, “stormwater management programs designed to protect water quality by controlling the level of pollutants in, and the quantity and flow of, stormwater and structural and natural stormwater and drainage systems of all types.” The bill also makes conforming changes to the statutes that allow counties and municipalities to charge fees for the use of and services provided by public enterprises (also known as utilities).<sup>1</sup>

**ASSUMPTIONS AND METHODOLOGY:**

**Background:** The federal Clean Water Act of 1987 requires operators of municipal storm sewer systems serving 100,000 people or more to develop stormwater management programs. In response to this federal requirement, the 1989 General Assembly enacted legislation designed to allow counties and municipalities to establish and operate stormwater systems as public enterprises (or utilities) and to charge fees for the services provided by these stormwater

<sup>1</sup> House Environment and Natural Resources, Committee Counsel Bill Summary, June 6, 2000.

systems. In 1999, the North Carolina Supreme Court ruled that counties' and municipalities' authority to establish and operate stormwater systems as public enterprises was limited to the construction, maintenance and operation of the physical infrastructure of the stormwater system, and did not extend to the operation of stormwater management programs, which include supplemental activities such as public education, pollution prevention efforts and land use planning and management techniques.<sup>2</sup>

This bill amends the definition of public enterprise to explicitly include stormwater management programs and applies retroactively to July 15, 1989, the effective date of original state legislation. This expanded definition is intended to clarify that stormwater utility fees may be used to fund all costs of stormwater management programs, not just the physical infrastructure of the stormwater system.

**Expenditures:** This bill imposes no new expenditure requirements on counties or municipalities. It only expands counties' and municipalities' options for ways to pay for the expenses associated with the federal law that requires operators of municipal storm sewer systems serving 100,000 people or more to develop stormwater management programs. In March 2003, the federal government is expanding the number of municipal stormwater systems required to develop stormwater management programs to include urbanized areas with populations of 50,000 or greater. According to the Department of Environment and Natural Resources, there are 85 urbanized areas that will automatically fall under this new requirement and approximately 30 more that may have to comply with the federal law. This bill provides these additional urbanized areas with an option to pay for this federal requirement, but again it does not impose any new expenditures.

**Revenues:** Counties and municipalities that either voluntarily develop stormwater management programs or are required to develop stormwater management programs under the federal Clean Water Act have two options for paying for the costs associated with these programs: establish a stormwater management utility fee or use general fund money raised through property taxes. This bill provides those counties and municipalities with *the option* of charging a stormwater management utility fee. The authority to act on this option is discretionary. Because this bill does not require any county or municipality to charge a stormwater utility fee, there is no fiscal impact on the local governments' revenues as a result of this bill.

Of the six municipalities (Charlotte, Durham, Greensboro, Raleigh, Winston-Salem, and Fayetteville/Cumberland County) currently required to develop stormwater management programs, five have established stormwater utility fees to cover the costs of operation. Only one (Raleigh) has chosen to fund the program through its general fund. Of the five municipalities charging a stormwater utility fee, all five thought the initial state legislation gave them the authority to fund costs associated with a stormwater management program. This bill provides the clarifying language that explicitly states that the stormwater utility fees can be used for stormwater management programs and applies this expanded definition retroactively to July 15, 1989. Because this bill only adds clarifying language to allow the existing municipalities to continue funding their stormwater management programs out of their stormwater utility fees, there is no new fiscal impact on the local governments' budgets.

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<sup>2</sup> House Environment and Natural Resources, Committee Counsel Bill Summary, June 6, 2000.

**TECHNICAL CONSIDERATIONS:** None

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**DATE:** June 13, 2000



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