

A Guide to Billing and Collecting Public Enterprise Utility Fees for Water, Wastewater, and Solid Waste Services

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Introduction

Local governments have significant flexibility in structuring and financing water, wastewater, and solid waste utility services, but most cities and counties provide these services as public enterprises.¹ Cities and counties may finance the cost of public enterprise utility services by “levying taxes, borrowing money, and appropriating any other revenues therefor, and by accepting and administering gifts and grants from any source.”² In addition to these funding

1. See N.C. GEN. STAT. §§ 160A-312 through 160A-328 (hereinafter G.S.); G.S. 153A-274 through 153A-294. Unless otherwise indicated, statutory references to G.S. Chapter 160A apply to cities, towns, and villages (referred to collectively as cities), and references to G.S. Chapter 153A apply to counties. The General Assembly also has authorized counties to establish water and sewer districts (G.S. 162A, Art. 6); counties to define special service districts for water and wastewater services (G.S. 153A, Art. 16); cities to define special service districts for wastewater services (G.S. 160A, Art. 23); counties, or two or more political subdivisions (such as cities, towns, incorporated villages, or sanitary districts), to organize water and sewer authorities (G.S. 162A, Art. 1); any two or more political subdivisions in a county to petition the board of commissioners to create a metropolitan water or sewer district (G.S. 162A, Arts. 4 and 5); and the Commission for Health Services to create a sanitary district to operate sewage collection, treatment, and disposal systems and water supply systems for the purpose of preserving and promoting public health and welfare, without regard for county or municipal boundary lines (G.S. 130A, Art. 2, Pt. 2).

Note that for purposes of this publication, the term *public enterprise* refers to the statutory authority for a local government to provide water, wastewater, and solid waste services. It is not limited to the services that must be reported in a separate enterprise fund according to generally accepted accounting principles. For example, even though solid waste services often are accounted for in a unit’s general fund, such services comprise public enterprise services under state law.

2. G.S. 160A-313; G.S. 153A-276.

sources, local governments are authorized to impose rates, rents, fees, charges, and penalties (referred to collectively as fees) on customers³ who receive public enterprise utility services.⁴ How, though, can local governments properly bill for the utility services provided? Who is liable for the water, wastewater, and solid waste utility fees? What happens when a customer fails to pay his or her bill? What if the local government underbills a customer for the services provided? The following question-and-answer sequence offers legal guidance to local governments in addressing these and other commonly asked questions regarding billing and collecting fees for water, wastewater, and solid waste services.

This guidance is based on interpretations of applicable constitutional and statutory provisions, supplemented by a wide body of case law from North Carolina and other jurisdictions that has been developed over the course of many years and is known as common law. The focus of the question and answer series is on billing and collecting fees for water, wastewater, and solid waste utility services provided by local governments as public enterprises (referred to collectively as public enterprise utility services).⁵ Where indicated, however, the constitutional and statutory provisions and common law principles discussed apply to other public enterprise services provided by cities and counties,⁶ as well as to water and wastewater services provided by other government entities such as water and sewer authorities, county water and sewer districts, and

3. For purposes of this publication, unless otherwise indicated, the terms *customer*, *account holder*, and *contracting party* are used interchangeably and refer to the individual or entity liable for payment of the public enterprise utility service fees. The terms do not necessarily refer to the owner of the property or premises served.

4. G.S. 160A-314; G.S. 153A-277. Likewise, the General Assembly has authorized water and sewer authorities (G.S. 162A-9), county water and sewer districts (G.S. 162A-88), metropolitan water districts (G.S. 162A-49), and metropolitan sewer districts (G.S. 162A-72) to assess rates, fees, and charges for the provision of utility services.

5. Under the public enterprise statutes, *water services* are defined as “water supply and distribution systems”; *wastewater services* are defined as “wastewater collection, treatment, and disposal systems of all types, including septic tank systems or other on-site collection or disposal facilities or systems”; and *solid waste services* are defined as “solid waste collection and disposal systems and facilities.” G.S. 160A-311; G.S. 153A-274.

6. Other authorized public enterprise services for cities and counties are airports, off-street parking facilities, public transportation systems, and stormwater management systems. G.S. 160A-311; G.S. 153A-274. Cities additionally are authorized to own and operate electric power systems, natural gas systems, and cable television systems as public enterprises. G.S. 160A-311.

metropolitan water or sewer districts. Relevant constitutional and statutory citations are listed in the text; additional information, including case law citations, is provided in the footnotes.

It is important to note that some of the questions discussed are not susceptible to definitive resolution. To the extent that there are ambiguities, local government officials should discuss the potential consequences of various courses of action with counsel. Furthermore, local officials should be aware that political, strategic, and practical factors also will influence a unit's billing and collecting policies. The legal framework set forth below provides some flexibility for local governments to tailor policies to their needs based on these additional considerations.