

**GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2001**

**H**

**1**

**HOUSE BILL 864**

Short Title:   Modify Orange Impact Fee. (Local)

---

Sponsors:   Representatives Insko and Hackney.

---

Referred to:  Rules, Calendar, and Operations of the House.

---

March 29, 2001

A BILL TO BE ENTITLED

AN ACT TO MODIFY THE ORANGE COUNTY IMPACT FEES.

The General Assembly of North Carolina enacts:

**SECTION 1.** Sections 17 through 18.1 of Chapter 460 of the 1987 Session Laws, as amended by Chapter 324 of the 1991 Session Laws, are repealed.

**SECTION 2.** Definitions. – The following definitions apply to this act:

(1) Commercial building enclosed floor space. – All enclosed floor space used for any purpose except:

- a. Dwelling units and accessory structures to dwelling units.
- b. Recreational facilities constructed as part of a residential development and used primarily by residents of the development.
- c. Buildings owned by the United States, the State of North Carolina, any county, or any municipal corporation.
- d. Buildings owned and operated by nonprofit entities for noncommercial and nonresidential purposes.
- e. Schools and day care centers.

(2) Dwelling unit. – An enclosure containing sleeping, kitchen, and bathroom facilities designed for and used or held ready for use as a permanent residence by one family.

(3) Land development. –

a. Land development includes any of the following:

- 1. Construction of any dwelling unit, other than one excluded under sub-subdivision b. of this subdivision, for which a building permit was issued or should have been issued after the effective date of an ordinance adopted under this act.

- 1                                    2.    Construction of any commercial building enclosed floor  
2                                    space for which a building permit was issued or should  
3                                    have been issued after the effective date of an ordinance  
4                                    adopted under this act.  
5                                    3.    Conversion of a building that adds one or more new  
6                                    dwelling units or that creates new commercial building  
7                                    enclosed floor space.  
8                                    4.    The initial location of a manufactured home or other  
9                                    dwelling or commercial structure within Orange County.  
10                                   b.    For purposes of determining the impact of land development for  
11                                   this act, land development does not include:  
12                                   1.    Construction of an addition to a dwelling unit.  
13                                   2.    The relocation within Orange County of any structure  
14                                   located within the county on the effective date of an  
15                                   ordinance adopted pursuant to this act or any structure  
16                                   with respect to which an impact tax pursuant to this act  
17                                   has been paid.  
18                                   3.    Within the county, the reconstruction or replacement of  
19                                   one dwelling unit by another or the replacement or  
20                                   reconstruction of commercial building enclosed floor  
21                                   space that was in existence on the effective date of an  
22                                   ordinance adopted pursuant to this act or of any such  
23                                   floor space with respect to which an impact tax adopted  
24                                   pursuant to this act has been paid.  
25                                   (4)   Net proceeds. – The gross proceeds of the tax less the cost to the  
26                                   county of collecting and administering the tax.  
27                                   (5)   Person. – An individual, a partnership, a corporation, or another legal  
28                                   entity.  
29                                   (6)   Person responsible for the impact of land development. – The owner of  
30                                   any dwelling unit or commercial building enclosed floor space on the  
31                                   date an occupancy permit is issued for the dwelling unit or commercial  
32                                   floor space or, if no occupancy permit is issued, the date the dwelling  
33                                   unit or commercial floor space is occupied.

34                                   **SECTION 3.** Authorization. – Orange County may adopt an ordinance  
35                                   levying a tax on the impact of land development within the county and provide for the  
36                                   administration, enforcement, and collection of the tax.

37                                   **SECTION 4.** Use of tax proceeds. – The purpose of the tax authorized by  
38                                   this act is to generate funds to partially offset the cost of constructing new school capital  
39                                   facilities or replacing, expanding, or improving existing school capital facilities  
40                                   necessitated in part by new growth within Orange County. Accordingly, the net  
41                                   proceeds generated by the tax authorized by this act shall be deposited by Orange  
42                                   County in its capital reserve improvements fund or funds established under Part 2 of  
43                                   Article 3 of Chapter 159 of the General Statutes and may be expended, to the extent

1 otherwise authorized by law, only for capital improvements projects related to public  
2 schools.

3 **SECTION 5.** Liability; administration. – An ordinance adopted pursuant to  
4 this act shall provide that:

5 (1) A person responsible for the impact of land development shall pay an  
6 impact tax for each square foot of dwelling space and commercial  
7 building enclosed floor space for which an occupancy permit is issued  
8 or, if no occupancy permit is issued, for each square foot of dwelling  
9 space in an occupied dwelling and for each square foot of occupied  
10 enclosed floor space in a commercial building.

11 (2) The tax shall be due on or before the date an occupancy permit is  
12 initially issued for the dwelling unit or commercial building enclosed  
13 floor space in question or, if no occupancy permit is issued, the date  
14 the dwelling unit or commercial floor space is initially occupied.  
15 However, no tax due shall be considered delinquent until 60 days after  
16 the tax becomes due. Delinquent taxes shall bear interest at the legal  
17 rate.

18 (3) Taxes authorized by this act may be collected pursuant to G.S.  
19 153A-147 or G.S. 160A-207. In addition, taxes authorized by this act  
20 may be recovered in a civil action in the nature of debt including an  
21 award of reasonable attorneys' fees as part of costs.

22 **SECTION 6.** Rates. – Orange County shall establish annually at the time it  
23 adopts its annual budget the tax rate to be levied per square foot of dwelling space and  
24 per square foot of commercial building enclosed floor space for the ensuing fiscal year.  
25 Different tax rates may be established for different types of dwelling units and different  
26 types of commercial building enclosed floor space.

27 **SECTION 7.** Disclosure. – Whenever the sale of real property located in  
28 Orange County involves new construction, the seller shall prepare and sign, and the  
29 buyer shall receive and sign, a disclosure statement. The disclosure statement shall  
30 either be included in a contract for sale or contained in a separate document executed  
31 prior to the execution of a sales contract. This disclosure statement shall fully and  
32 completely disclose that the owner of the property at the time an occupancy permit is  
33 issued for the new construction or, if no occupancy permit is issued, on the date the new  
34 construction is occupied, may be subject to a tax levied by the county on the impact of  
35 land development. If a seller fails to make this disclosure and the buyer suffers injury  
36 as a result of the seller's failure to disclose, the seller is liable to the buyer to the extent  
37 of the buyer's injury.

38 **SECTION 8.** Refunds. – If any provision of this act or an ordinance adopted  
39 under this act is held invalid by a final decision of a court of competent jurisdiction,  
40 then any impact taxes collected under this act shall be refunded with interest at the rate  
41 established in G.S. 105-241.1(i).

42 **SECTION 9.** Limitation on actions. – Any action contesting the validity of  
43 an ordinance adopted under this act must be commenced not later than nine months after

- 1 the effective date of the ordinance. Any action seeking to recover an impact tax must be
- 2 commenced not later than nine months after the impact tax is paid.
- 3           **SECTION 10.** This act is effective when it becomes law.