COUNTIES, CITIES AND TOWNS: PUBLIC UTILITIES;
FRANCHISES; ETC. - VIRGINIA WATER AND SEWER
AUTHORITIES ACT.

DRAINAGE, SOIL CONSERVATION, ETC.: SANITARY
DISTRICTS.

Water and sewer connection fee assessment is subject
only to requirement of reasonableness, based on
particular facts presented, when no standard for such
charge has been established. Correlation between
connection charge and cost incurred in providing
service may be significant in determining
reasonableness.

The Honorable Riley E. Ingram

Member, House of Delegates

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You ask whether a county may impose any amount as a
water and sewer connection fee or whether the amount
must bear a relation to the actual cost the county
incurs in installing the connection.

Sections 15.1292, 15.1300, 15.1320 and 15.1321 of the
Code of Virginia authorize a county to establish,
operate and maintain water and sewer systems and to
fix fees and charges for the use of the systems.
While § 15.1321 sets forth various methods for
computing the fees and charges, none of the sections
establishes a standard for determining the charges
which may be assessed for connection fees. Prior
opinions of the Attorney General conclude that, in
the absence of such standard, the fees and charges
that may be assessed are subject only to the implicit
general requirement of reasonableness.¹

A county also may provide water and sewer services
through a water and sewer authority established
pursuant to the Virginia Water and Sewer Authorities
Act.² Section 15.11260 authorizes an authority
created pursuant to the Act to fix the rates and charges for the services. Section 15.11260 sets forth the following standard for determining the charges:

The rates shall be sufficient to cover the expenses necessary or properly attributable to the furnishing of the class of services for which charges are made; provided, however, that the authority may fix rates and charges for the services and facilities of its water system sufficient to pay all or any part of the cost of operating and maintaining its sewer system, including disposal, and all or any part of the principal of or the interest upon the revenue bonds issued on account of such sewer and/or disposal system, and to pledge any surplus revenues for its water system, subject to prior pledges thereof, for such purposes.

A prior opinion of the Attorney General concludes that a reasonable inference from this language is that all charges assessed by an authority are to be cost-based, but that the costs are not necessarily limited to the actual costs of providing a particular service.³

The third method by which a county may establish a water and sewer system is through the creation of a sanitary district pursuant to Chapter 2 of Title 21.⁴ The statutes authorize the county governing body to fix the rates of charge for use of the system and the rate of charge for connection to the system but contain no language establishing a standard for determining the connection charge or expressly requiring that the connection fees be cost-based.⁵ Accordingly, like the connection charge fixed by a county providing service under § 15.1292 or § 15.1-300, the connection charge fixed under Chapter 2 is subject only to the general requirement of reasonableness.

That which constitutes reasonableness, of course, depends on the particular facts presented.⁶ The cost
to the county of providing the connection clearly would be a factor, and the extent to which the connection charge correlates to the actual cost incurred may be significant in determining reasonableness. In the absence of statutory language to the contrary, however, there is no requirement limiting the connection charge to the actual cost of installation.


2Sections 15.11239 to 15.11270.


4Sections 21112.22 to 21140.3.

5Sections 21118(5), 21118.4(e). If the governing body of the sanitary district issues bonds pursuant to Article 2 of Chapter 2, the revenues from operation of the system are also used to pay the interest on the bonds. Sections 21137.1, 21137.2. The governing body also may levy taxes to pay expenses incident to constructing and operating the system. Section 21-118(6).


7While the Supreme Court of Virginia has deferred to the discretion exercised by boards of supervisors in establishing rates and connection charges, the Court's rulings have expressly recognized that the evidence established either a sound reason for the fees or a cost-based relation between the charge imposed and the benefits conferred. See McMahon v. City of Virginia Beach, 221 Va. 102, 10708, 267 S.E.2d 130, 134, cert. denied, 449 U.S. 954 (1980); Abbott v. Board of Supervisors, 200 Va. 820,
823, 108 S.E.2d 243, 245 (1959); see also Tidewater Homebuilders v. City of Va. Beach, 241 Va. 114, 121, 124, 400 S.E.2d 523, 527, 529 (1991) (in light of evidence that revenue from connection fees imposed on new connections would not exceed amount needed to finance project as whole, amount of fees is not arbitrary; if reasonableness of fee is fairly debatable, court will defer to legislative decision of city council).