HOUSE BILL 826:
Clarify System Development Fees.

2017-2018 General Assembly

Committee:	Senate Rules and Operations of the Senate	**Date:**	June 13, 2018
Introduced by:	Reps. Riddell, Saine, Dulin, Fraley	**Prepared by:**	Erika Churchill and Billy Godwin, Staff Attorneys
Analysis of:	Second Edition		

OVERVIEW: House Bill 826 would amend the laws governing the imposition of system development fees to:

- ***Provide that the planning horizon used in calculating the system development fee is not less than five years, rather than 10 years.***
- ***Clarify that if revenues from the system development fees are pledged to secure revenue bonds, the revenues may be used in accordance with the bond order, resolution, trust agreement or similar instrument authorizing and securing the bonds.***
- ***Clarify the timing of the collection of system development fees.***
- ***Require the Environmental Management Commission to review and revise certain rules related to per day usage to reflect newer construction methods.***

CURRENT LAW: G.S. 153A-331 and G.S. 160A-372 authorize counties and cities, as part of their subdivision ordinances, to require developers to provide: (1) street right-of-ways (ROWs), street construction, or fees in lieu, (2) dedication of utility ROWs, (3) dedication of parkland or fees in lieu, (4) construction of community service facilities, (5) reservation of school sites for later purchase. North Carolina courts have ruled in several cases that there is no implied local government authority to charge school impact fees. See *Lanvale Properties, LLC v. County of Cabarrus*, 366 N.C. 142 (2012).

County and city public enterprise statutes also authorize certain fees and charges related to public enterprise functions, including a variety of fees pertaining to the operation of water and sewer systems. Cities, under G.S. 160A-314, and counties, under G.S. 153A-277, have the authority to establish rents, rates, fees, charges and penalties for the use of or the public enterprises services being furnished. Tap fees are authorized, and are charged at the time a customer connects to a water or sewer system. User fees, as part of a customer's monthly bill, are also authorized, to pay the costs of repair, maintenance or replacement of existing public enterprise facilities when necessary to maintain the existing level of service. *Town of Spring Hope v Bissette, 305 NC 248 (1982).*

Impact fees are those fees charged to pay for future services yet to be furnished. *Quality Built Homes Inc. v Town of Carthage, 789 S.E.2d, 454 (N.C. 2016).* The North Carolina Supreme Court ruled in *Quality Built Homes Inc.* that there is no implied local government authority to assess water and sewer impact fees on new development unless specifically authorized.

In 2017, the General Assembly specifically authorized local governmental units to impose a system development fee for water and sewer service. Local governmental units, for this purpose, are counties, cities, sanitary districts, water and sewer authorities, metropolitan water districts, metropolitan sewerage districts, metropolitan water and sewerage districts, and county water and sewer districts. S.L. 2017-138.

With that authority, the following apply:

- The local government unit's system development fee must be calculated based upon a written analysis prepared by either a qualified financial professional or professional engineer using either the buy-in, incremental cost, marginal cost, or combined cost methodology that calculates a final system development fee per service unit of new development covering a planning horizon of not less than 10 years nor more than 20 years.
- The use of proceeds from system development fees are limited as follows:
    - Fees calculated using the incremental costs or marginal costs method may only pay for the construction costs of capital improvements including the contract price, surveying & engineer fees, land acquisition, and principal and interest on debt obligation used to finance the costs.
    - Fees calculated using the buy-in method may be used either for previously completed capital improvement projects for which capacity still exists or for capital rehabilitation projects.
- System development fees involving the subdivision of land are authorized to be collected either at the time of plat recording or when the local government unit commits to providing water and sewer service. Fees for any other type of development would be collected at the time of service connection.

BILL ANALYSIS: The bill would do all of the following:

- Provide that the planning horizon used in calculating the system development fee is not less than five years, rather than 10 years, effective October 1, 2018.
- Clarify that if revenues from the system development fees are pledged to secure revenue bonds, the revenues may be used in accordance with the bond order, resolution, trust agreement or similar instrument authorizing and securing the bonds, effective July 1, 2018.
- Clarify the timing of the collection of system development fees, effective July 1, 2018.
- Require the Environmental Management Commission to review and revise certain rules related to per day usage to reflect newer construction methods, with amended rules to take effect on or before January 1, 2020.

EFFECTIVE DATE: As noted above.