HOUSE BILL 873:
System Development Fee/ADU Sewer Permit.

2019-2020 General Assembly

Committee:	Senate Agriculture/Environment/Natural Resources. If favorable, re-refer to Finance. If favorable, re-refer to Rules and Operations of the Senate	**Date:**	June 17, 2020
Introduced by:	Reps. Arp, Boles, McNeill	**Prepared by:**	Erika Churchill and Jennifer McGinnis Staff Attorneys
Analysis of:	PCS to Third Edition H873-CSST-81		

OVERVIEW: The Proposed Committee Substitute for House Bill 873 would: clarify the timing of collection of system development fees and require the Department of Environmental Quality to amend a rule that currently allows a sewer that serves a single building to be deemed permitted, to allow a sewer shared with an accessory building on the same property to be deemed permitted as well.

Sections 1-3. – System Development Fees.

CURRENT LAW and BILL ANALYSIS: County and city public enterprise statutes 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, 369 NC 15 (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" upon new development that increases the capacity need to serve water or sewer. With that authority to impose system development fees, 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 at the later of the time of plat recording or when the local government unit commits to providing water and sewer service. Fees for any other type of new development are to be collected at earlier of the application for service connection or when the local government unit commits to providing water and sewer service.
- System development fees were effective October 1, 2017. Any local ordinances in conflict had to be updated prior to that date to remain effective.

Sections 1 and 2 of the PCS, effective January 1, 2021, would clarify the timing of collection of system development fees for new development involving the subdivision of land, the fee would be collected at the later of the time of application for a building permit or when water or sewer service is committed by the local governmental unit.

A system development fee could not be charged on other new development if a system development fee had been with respect to that land upon recordation of the plat subdividing the land, as long as the capacity usage that system development fee was based upon is not increased at the time of the application for the building permit.

Section 3 of the PCS, effective July 1, 2020, would authorize the use of collected system development fees, based upon the combined cost method of calculation, for (i) previously completed capital improvements for which capacity still exists and (ii) capital rehabilitation projects.

Section 4 – Accessory Dwelling Units.

BILL ANALYSIS:

Section 4 would require the Department of Environmental Quality to amend a rule, 15A NCAC 02T .0303 (PERMITTING BY REGULATION), which currently provides that sewers that serve a single building may be deemed permitted, subject to compliance with certain criteria specified under the Administrative Code. Section 4 would provide that sewers shared by a main building and an accessory building on the same lot shall also be deemed permitted, subject to compliance with the same criteria under the Code. An "accessory building," as defined under the section, could include garages, storage buildings, workshops, dwelling units, etc. The provision would only apply to sewers that serve one main building and one accesory building on the same lot.

EFFECTIVE DATE: Except as otherwise provided, the bill would be effective when it becomes law.