



# HOUSE BILL 873: System Development Fee/Accessory Dwelling Units Sewer Permit.

2019-2020 General Assembly

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<b>Committee:</b>		<b>Date:</b>	October 26, 2020
<b>Introduced by:</b>		<b>Prepared by:</b>	Jennifer McGinnis Staff Attorney
<b>Analysis of:</b>	S.L. 2020-61		

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**OVERVIEW:** *S.L. 2020-61 does all of the following:*

- *Clarifies the timing of collection of system development fees.*
- *Allows system development fees calculated under the combined cost method to be used for previously completed capital improvements for which capacity still exists and capital rehabilitation projects once collected by the local governmental unit.*
- *Requires 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.*

*This act has various effective dates. Please see the full summary for more details.*

## **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 Bisette*, 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:

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- 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 and 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, effective January 1, 2021, clarify the timing of collection of system development fees for new development involving the subdivision of land, the fee will 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 may not be charged on other new development if a system development fee had been collected 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, effective July 1, 2020, authorizes 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 requires the Environmental Management Commission (EMC) to amend a rule, [15A NCAC 02T .0303 \(PERMITTING BY REGULATION\)](#), which, at the time Section 4 was enacted, provided that sewers that serve a single building may be deemed permitted, subject to compliance with certain criteria specified under the Administrative Code. Section 4 requires that sewers shared by a main building and an accessory building on the same lot must also be deemed permitted, subject to compliance with the same criteria under the Code. An "accessory building," as defined under the section, include garages, storage buildings, workshops, dwelling units, etc. The provision only applies to sewers that serve one main building and one accessory building on the same lot. Until the EMC adopts the revised permanent rule as required, the EMC must implement the Permitting by Regulation for Building Sewer Systems Rule in accordance with the directives of this section.

Section 4 and rules adopted pursuant to this section only apply to common sewer lines in existence on, or constructed on or after, the effective date of this act (June 30, 2020), which are shared by accessory dwelling units or accessory residential buildings and a primary residence. The section will expire when permanent rules adopted as required by subsection (d) of this section become effective.

**EFFECTIVE DATE:** This act has various effective dates.