HOUSE BILL 873:
System Development Fee/Clarify Time of Charge.

2019-2020 General Assembly

Committee:	House Rules, Calendar, and Operations of the House	**Date:**	April 30, 2019
Introduced by:	Reps. Arp, Boles, McNeill	**Prepared by:**	Erika Churchill Staff Attorney
Analysis of:	PCS to Second Edition H873-CSST-26		

OVERVIEW: House Bill 873 would clarify the time of collection of system development fees imposed upon new development; effective July 1, 2019.

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, 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, 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.
- The definition of new development includes any of the following with respect to the land:
  - The subdivision of land.
  - The construction, reconstruction, redevelopment, conversion, structural alteration, relocation, or enlargement of any structure which increases the number of service units.
  - Any use or extension of the use of land which increases the number of service units.
- System development fees were effective October 1, 2017. Any local ordinances in conflict has to be updated prior to that date to remain effective.

BILL ANALYSIS: The bill would clarify the timing of collection of system development fees, based upon the type of new development triggering the imposition of the system development fee:

- **Land Subdivision**. – For new development involving the subdivision of land, the fee would be collected at the later of the time of plat recordation.
- **Other New Development**. – For initial construction or extension of the use of the land (such as redevelopment or reconstruction), the fee would be collected at the time of issuance of the building permit. If the local governmental unit collecting the fee is not the same as the one issuing the building permit, the local government issuing the permit is to notify the local governmental unit imposing the fee of the application for a building permit.

  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.

- Other new development would be exempt if both the following apply:
  - The water or sewer lines were installed to the individual unit of development prior to October 1, 2017, or tap fees were paid for the individual unit of development prior to October 1, 2017.
  - The local governmental unit did not impose a fee for capacity prior to October 1, 2017 or the facility was operated as a public enterprise by a county or city as of October 1, 2017.

The bill would also clarify that the amount of the fee is that which is in effect, per the local ordinance, on the date the system development fee is paid.

EFFECTIVE DATE: Effective July 1, 2019, and would apply to system development fees paid after that date.