

BILL ANALYSIS

Senate Research Center

H.B. 3492
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Local Government
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Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Under the Texas Constitution, regulatory fees assessed by a municipality that are not proportional to the operating costs of the program for which the fee is charged and that return more than what it costs to run the program associated with the regulation constitute an unconstitutional occupations tax. Texas municipalities and counties frequently do not base the amount of development inspection fees on the municipality's or county's cost to perform these inspections. Instead, fees are calculated based on the cost or estimated value of the improvement itself, and doing so can result in a fee that is an unauthorized occupations tax because these figures do not bear a reasonable relationship to the municipality's or county's cost of performing the services covered by the fee.

H.B. 3492 prohibits municipalities and counties from considering the cost of constructing or improving public infrastructure in determining the amount of inspection fees. H.B. 3492 requires the municipality or county to use the actual cost to review and process the engineering or construction plan or inspect the infrastructure improvement. Furthermore, H.B. 3492 requires the governmental entity to calculate what the actual cost is to provide the inspection and provides entities with a method for determining how to calculate these costs.

H.B. 3492 amends current law relating to county and municipal authority to impose certain value-based fees and require disclosure of certain information related to subdivision construction.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Subchapter Z, Chapter 212, Local Government Code, by adding Section 212.906, as follows:

Sec. 212.906. CERTAIN VALUE-BASED FEES AND DISCLOSURE OF CERTAIN INFORMATION PROHIBITED. (a) Provides that this section applies only to an application, review, engineering, inspection, acceptance, administrative, or other fee imposed by a municipality related to the acceptance, review, or processing of engineering or construction plans or for the inspection of improvements for construction of a subdivision or lot or a related improvement associated with or required in conjunction with that construction.

(b) Prohibits a municipality from considering the cost of constructing or improving the public infrastructure for a subdivision, lot, or related property development in determining the amount of a fee subject to this section. Requires the municipality to determine the fee by considering the municipality's actual cost to, as applicable, review and process the engineering or construction plan or to inspect the public infrastructure improvement.

(c) Authorizes a municipality, in determining the municipality's actual cost for reviewing and processing an engineering or construction plan or inspecting a public infrastructure improvement under Subsection (b), to consider:

- (1) the fee that would be charged by a qualified, independent third-party entity for those services;
- (2) the hourly rate for the estimated actual direct time of the municipality's employees performing those services; or
- (3) the actual costs assessed to the municipality by a third-party entity that provides those services to the municipality.

(d) Prohibits a municipality from requiring the disclosure of information related to the value of or cost of constructing or improving a residential dwelling or the public infrastructure improvements for a subdivision, lot, or related property development as a condition of obtaining approval for subdivision construction or for the acceptance of those public infrastructure improvements except as required by the Federal Emergency Management Agency for participation in the National Flood Insurance Program.

(e) Requires a municipality that imposes a fee for reviewing or processing an engineering or construction plan or inspecting a public infrastructure improvement to publish annually the fee and the hourly rate and estimated direct time incurred by municipal employees for a fee calculated under Subsection (c)(2). Requires the municipality to publish the information:

- (1) on the municipality's Internet website; or
- (2) if the municipality does not maintain an Internet website, in a newspaper of general circulation in the county in which the municipality is primarily located.

SECTION 2. Amends Chapter 232, Local Government Code, by adding Subchapter Z, as follows:

SUBCHAPTER Z. MISCELLANEOUS PROVISIONS

Sec. 232.901. CERTAIN VALUE-BASED FEES AND DISCLOSURE OF CERTAIN INFORMATION PROHIBITED. (a) Provides that this section applies only to an application, review, engineering, inspection, acceptance, administrative, or other fee imposed by a county related to the acceptance, review, or processing of engineering or construction plans or for the inspection of improvements for construction in a subdivision or a related improvement associated with or required in conjunction with that construction.

(b) Prohibits a county from considering the cost of constructing or improving the public infrastructure for a subdivision, lot, or related property development in determining the amount of a fee subject to this section. Requires the county to determine the fee by considering the county's actual cost to, as applicable, review and process the engineering or construction plan or to inspect the public infrastructure improvement.

(c) Authorizes a county, in determining the county's actual cost for reviewing and processing an engineering or construction plan or inspecting a public infrastructure improvement under Subsection (b), to consider:

- (1) the fee that would be charged by a qualified, independent third-party entity for those services;

(2) the hourly rate for the estimated actual direct time of the county's employees performing those services; or

(3) the actual costs assessed to the county by a third-party entity that provides those services to the county.

(d) Prohibits a county from requiring the disclosure of information related to the value of or cost of constructing or improving a residential dwelling or the public infrastructure improvements for a subdivision, lot, or related property development as a condition of obtaining approval for subdivision construction or for the acceptance of those public infrastructure improvements except as required by the Federal Emergency Management Agency for participation in the National Flood Insurance Program.

(e) Requires a county that imposes a fee for reviewing or processing an engineering or construction plan or inspecting a public infrastructure improvement to publish annually the fee and the hourly rate and estimated direct time incurred by county employees for a fee calculated under Subsection (c)(2). Requires the county to publish the information:

(1) on the county's Internet website; or

(2) if the county does not maintain an Internet website, in a newspaper of general circulation in the county.

SECTION 3. Makes application of Section 212.906 or 232.901, Local Government Code, as added by this Act, prospective.

SECTION 4. Effective date: September 1, 2023.