SUBJECT: Impact fees imposed by cities on new development

COMMITTEE: Natural Resources — committee substitute recommended

VOTE: 5 ayes — Counts, Cook, Hamric, R. Lewis, Shields

0 nays

4 absent — T. King, Corte, Puente, Walker

WITNESSES: For — Douglas Gilliland, Gary Sheffield, and Keller Webster, Texas Association of Home Builders; L.M. Dyson

Against — Tim Barbee and Michael Hasler, Texas Municipal League and City of Arlington; David Gattis, American Planning Association, Texas Chapter; Van James, Town of Flower Mound; Sandy Kristoferson, City of Denton; John McGrane, City of Plano

On — Jack Harris, Texas A&M Real Estate Center

BACKGROUND: Cities are allowed to charge impact fees against new developments to recoup the costs a city may incur for capital improvements or facility expansions necessitated by the development. Impact fees are based on "service units," a standardized measure of consumption, generation, or discharge attributable to an individual unit of development calculated in accordance with generally accepted engineering or planning standards.

The city must prepare a capital improvements plan that identifies capital improvements or facility expansions for which impact fees may be assessed. The plan describes the capital improvements or facility expansions and their costs attributable to the new development in the service area, and calculates the impact fees for that plan. The plan must include the total number of projected service units necessitated by and attributable to new development within the service area, based on approved land use and the projected demand for capital improvements or facility expansions required by new service units projected over a reasonable period of time not to exceed 10 years.

To impose an impact fee, a political subdivision must hold a public hearing to consider land-use assumptions within the designated service area that will be used to develop the capital improvements plan. Land-use assumptions include a description of the service area and a projection of changes in land uses, densities, intensities, and population in the service area over a 10-year period.

A service area is the area within the city or its extraterritorial jurisdiction to be served by the capital improvements or facility expansions specified in the capital improvements plan, except roadway, stormwater, drainage, or flood-control facilities.

Advisory committee. The advisory committee created under Local Government Code, sec. 395.058 includes at least five members appointed by a majority vote of the governing body of the political subdivision and must include representatives of the real estate, development, or building industries. A political subdivision's planning and zoning commission can act as the advisory committee if it includes at least one member of the real estate, development, or building industry.

The advisory committee assists the political subdivision in adopting land-use assumptions, reviews and monitors capital improvements, and files written comments. The committee also reports and advises the political subdivision on any perceived inequities in implementing the plan or imposing impact fees and on the need to update land-use assumptions, capital improvement plans, or impact fees.

DIGEST:

CSHB 2045 would alter the way in which cities calculate impact fees; provide that impact fees could be charged only after a building permit was issued by a political subdivision; combine notice and hearing requirements for land-use assumptions and capital improvements plans; and require political subdivisions to certify to the attorney general their compliance with impact fee statutes.

Credits to be subtracted from impact fees. CSHB 2045 would require that the capital improvements plan used to calculate impact fees include:

- a credit for the portion of property tax revenue generated by new service units identified in land-use assumptions that would be used to pay construction costs, including the debt service on bonds to pay for the

political subdivisions's construction projects; and

- a credit for the portion of the monthly water and wastewater service charges received from new service units identified in the land-use assumptions that would be used to pay construction costs for water and wastewater infrastructure to serve new development, including debt service on bonds to pay for the water and wastewater infrastructure.

When the impact fee was determined, these two credits would have to be subtracted from costs of the capital improvements and divided by the amount of projected service units.

Timing of impact fee payment. CSHB 2045 would provide that the political subdivision could collect impact fees at the time it issued a building permit, if water and wastewater capacity were available. The bill would delete current language allowing political subdivisions to collect such fees either at the time the subdivision plat is recorded or at the time of connection to the political subdivision's water and sewer system.

Update of plans. CSHB 2045 also would require that a political subdivision that imposed an impact fee update its land-use assumptions and capital improvements plan at least every five years, instead of every three years as required by current law.

Calculating service units. CSHB 2045 would require that service units be calculated based on historical data and trends applicable to the political subdivision in which the individual development unit was located during the previous 10 years. The bill would delete current language specifying that service units be calculated for a particular category of capital improvements or facility expansions.

Impact fee definitions. Under CSHB 2045, impact fees would not include construction or dedication of off-site water distribution, wastewater collection or drainage facilities, streets, sidewalks, or curbs if the dedication or construction were required by a valid ordinance and were necessitated by and attributable to a new development. Impact fees also would not include pro-rata fees for reimbursements of water or sewer mains or lines extended by the political subdivision.

Roadway facilities. The bill would amend the definition of roadway facilities and specify that the term "roadway improvements" would include the political subdivision's share of costs for roadways and associated improvements designated on the federal or Texas highway system, including local matching funds and costs related to utility line relocation and the establishment of curbs, gutters, sidewalks, drainage appurtenances, and rights-of-way.

The service area for roadway facilities in the capital improvements plan would be limited to an area within the corporate boundaries of the political subdivision, and that distance could not could not exceed six miles. This would replace a current statutory provision that the service area cannot exceed a distance equal to the average trip length from the new development — a distance that cannot exceed three miles.

Repeal of refund requirement. CSHB 2045 would delete a requirement that on completion of capital improvements or facility expansions, the political subdivision must recalculate the impact fee, and if the cost was less than the fee paid, would refund the difference if it exceeded the impact fee by 10 percent.

Certification of compliance with impact fee statutes. A political subdivision that imposed an impact fee would have to submit a written certification verifying compliance with Local Government Code, chapter 395 to the attorney general annually, no later than the last day of the political subdivision's fiscal year. Chapter 395 concerns the financing of capital improvements required by new developments in cities, counties, and other local governments.

The certification would have to be signed by the presiding officer of the governing body of the political subdivision and would have to include a statement of compliance. A political subdivision that failed to submit a certification would be liable to the state for a civil penalty of 10 percent of the amount of the impact fees erroneously charged. The attorney general would have to collect the civil penalty and deposit it to the credit of the Housing Trust Fund.

Hearings and notice for land-use assumptions and capital improvements plans. Current law provides for two separate hearings: one for land-use

assumptions and one for the capital improvements plan and impact fees. Despite these separate provisions, current law does allow the land-use assumption, capital improvements plan, and impact fee to be heard at one hearing and adopted simultaneously.

CSHB 2045 would repeal the current provision allowing consolidation of the land-use assumption, capital improvements plan, and impact fee to be adopted simultaneously and would expand the hearing for land-use assumptions to include consideration of the capital improvements plan. A second hearing would have to be held on the imposition of impact fees.

The bill would change notice requirements for a land-use assumption hearing, which under the bill would become a joint land-use assumption and capital improvements hearing. CSHB 2045 would require notice for this type of hearing at least 30 days before the date set for the hearing, rather than once a week for three consecutive weeks at least 30 days and no more than 60 days before the hearing, as current law requires.

The bill also would delete current statutory requirements concerning notice for the hearing that provide that notice cannot be in the part of the paper in which legal notices and classified ads appear, cannot be smaller than one-quarter page, and must be in 18-point type or larger. The bill also would delete a requirement that notice must include an easily understood map of the service area to which the land-use assumptions apply.

The bill would specify that the hearing provided under current law for the capital improvements plan and impact fee would be solely on the imposition of an impact fee, since CSHB 2045 would consolidate the hearing on the capital improvements plans with that on land-use assumptions. The bill would change notice requirements for the impact fee hearing in the same way that it would change requirements for a land-use assumption hearing.

Advisory committee. The advisory committee created under Local Government Code, sec. 395.058 would have to file written comments on the proposed impact fees rather than on the proposed capital improvements plan and impact fees, as required by current law.

The bill would take effect September 1, 1999.

SUPPORTERS SAY:

CSHB 2045 would ensure that cities calculate impact fees fairly, taking into account both the costs and benefits that new development creates. The current impact fee is really a cost analysis without any recognition of the revenue generated by new homes.

CSHB 2045 would require that cities that charge impact fees include positive revenue generated by the subdivision in the impact fee calculation, including sales taxes from future residents, property taxes, and the portion of utility bills used for principal and interest on water and wastewater bonds. The bill also would prohibit a city from collecting impact fees until a building permit was issued. To ensure that cities calculated their impact fees fairly and properly, the presiding officer of city would have to file a certificate of compliance with the Attorney General's Office stating that the city would be in compliance with the impact fee statute.

Recent studies have shown that residential subdivisions have positive fiscal impacts on the cities where they are located. New residential growth creates additional revenue for the local government through sales taxes, property taxes, and franchise fees paid by the residents of the new subdivisions. Homebuilders also pay sales taxes on building materials and pay for building inspections and permits. In other words, the amount of debt service that can be supported by the property tax revenues from the new subdivisions exceeds the cost per household of capital improvements that have been provided to those areas by a city.

The bill would eliminate the "double tax" that new home buyers pay when they pay for impact fees up front to cover the city's costs in bringing water and wastewater services to them at their new homes, then continue to pay water and wastewater fees for the debt service on the bonds sold to finance that same infrastructure. Home buyers also pay a double tax when they pay for infrastructure through impact fees and pay for it again through property taxes. Impact fees charged to developers are passed through to the home buyer in the form of an increased purchase price.

Under this bill, the credit that would have to be subtracted from the impact fees would only be for the portion of the property tax used for debt service on the bonds that the city sold for infrastructure or the portion of the property tax used to pay for construction projects built by the city. The credit for the water and wastewater charges would only be for new homes identified in the impact

fee's land-use assumptions. These credits would eliminate the double tax that new home buyers are paying now.

Providing a uniform definition of "service unit" would prevent impact fee consultants from raising the water and wastewater fees or other numbers to attain the impact fee amount they wish, rather one that reflects real expenditures.

Requiring that impact fees be paid at the time the city issues a building permit, if the cities have the water and wastewater capacity to do so, would stop cities from taking money from developers long before infrastructure improvements are planned or needed.

OPPONENTS SAY:

CSHB 2045 would change fundamentally the way impact fees are calculated and ultimately could increase the need for local property taxes to pay for the lost revenues necessary to build new infrastructure to support new growth. Reducing or eliminating impact fees would place the burden of new development unfairly on existing property taxpayers and ratepayers.

This bill would reduce the amount that cities could charge for impact fees, when actually no city in Texas charges the full amount that could be charged for these fees. In fact, most cities charge only 50 percent of the costs they incur in providing services for new development. Reducing or eliminating impact fees would mean only that those costs would have to made up in increased property taxes or higher water and sewer rates.

Some cite studies supposedly showing that developments generate more revenue than they cost. These studies, however, assume that a new development's capital costs are equal to the average paid by all existing residents of the city. A city's debt service, however, is based on capital projects that may have been built 15 to 20 years ago and therefore do not reflect the marginal costs associated with new development. These studies simply did not take into account all cost components in calculating the costs of serving new developments, including the cost of administering the fee, and they left out overhead costs associated with providing services to new developments, including administering and managing police and fire services, park services, and water and sewer services.

Requiring that revenue from new developments be subtracted from impact fees would reduce funding for other all vital services like police and fire protection, street maintenance, parks, building inspectors, and other service needs generated by new development but not included in the impact fee calculation. Although it is true that a portion of the property tax and water and sewer rates goes to pay off bonded indebtedness, in many cases it is used to pay off the bonded indebtedness for previous capital expenditures, including police and fire-protection services. If cities had to reduce impact fees by this amount, costs would go up for everyone in the city.

Currently, cities may assess impact fees at the time of platting or issuance of a building permit or certificate of occupancy. This bill would allow impact fees to be assessed only at the time a political subdivision issued a building permit, if water and wastewater capacity were available. This would create difficulties for cities, because when a city approves a subdivision plat, it is committing to providing the necessary off-site facilities to support the new development. A city sometimes cannot afford to wait for the fee revenue until the city issues a building permit. This would force city taxpayers to front the money until all the new houses were built.