

By: Baxter, Seaman

H.B. No. 2236

A BILL TO BE ENTITLED

AN ACT

relating to restrictions on the imposition of permit fees by political subdivisions.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subtitle C, Title 7, Local Government Code, is amended by adding Chapter 247 to read as follows:

CHAPTER 247. FEES FOR LOCAL PERMITS

Sec. 247.001. DEFINITIONS. In this chapter:

(1) "Permit" means a license, certificate, approval, registration, consent, or other form of authorization required by law, rule, regulation, order, or ordinance that a person must obtain to perform an action or initiate, continue, or complete a project related to residential construction or development.

(2) "Permit fee" means an assessment, fee, cost, or charge imposed by a political subdivision on a person seeking to obtain a permit. The term does not include a fee that is charged by a political subdivision as a result of state law separate and apart from this chapter that is specific as to both the purpose for which the fee may be imposed and the amount that the political subdivision may charge.

(3) "Political subdivision" means a county or municipality of this state or an entity owned, operated, or controlled by a county or municipality of this state. The term does not include a school district or groundwater district or other

1 district or authority created under Section 59, Article XVI, Texas  
2 Constitution.

3 (4) "Regulatory agency" means the governing body or a  
4 department, division, or other agency of a political subdivision  
5 acting in the political subdivision's capacity of processing,  
6 approving, or issuing a permit.

7 Sec. 247.002. LIMITATION ON AUTHORITY TO IMPOSE PERMIT FEE.

8 (a) A regulatory agency may impose a permit fee only if the agency  
9 complies with this chapter and only in the amount necessary to  
10 compensate the regulatory agency for the actual costs to review,  
11 process, issue, or enforce the permit or to compensate the  
12 regulatory agency for the actual and attributable costs of  
13 infrastructure or improvements for which the fee is imposed.

14 (b) A fee collected by a regulatory agency for a permit may  
15 not be used for a purpose other than to pay the costs of reviewing,  
16 processing, issuing, or enforcing the permit or to compensate the  
17 regulatory agency for the actual and attributable costs of  
18 infrastructure or improvements for which the fee is imposed.

19 (c) Nothing in this chapter shall be construed as a grant of  
20 authority to a regulatory agency or a political subdivision to  
21 impose a permit fee or any other fee unless this authority has been  
22 conferred to the regulatory agency or political subdivision by  
23 other state law separate and apart from this chapter.

24 Sec. 247.003. ANNUAL BUDGET AND ACCOUNTING. (a) Before the  
25 first day of the political subdivision's fiscal year, a regulatory  
26 agency shall adopt a budget for each permit fee that:

27 (1) lists expenses for which the permit fee may be

1 used; and

2 (2) estimates the revenue that the regulatory agency  
3 will collect from the permit fee.

4 (b) As soon as practicable after the last day of the  
5 political subdivision's fiscal year, the regulatory agency shall  
6 conduct an audit of the permit fees collected and the costs of  
7 reviewing, processing, issuing, or enforcing the permits or to  
8 compensate the regulatory agency for the actual and attributable  
9 costs of infrastructure or improvements for which fees were imposed  
10 in the preceding fiscal year. The audit shall identify a surplus or  
11 deficit in the budget for each permit fee.

12 Sec. 247.004. LIMITATION ON INCREASE IN PERMIT FEES. (a) A  
13 regulatory agency may increase a permit fee only if the political  
14 subdivision holds two public hearings on the matter at which  
15 interested parties and residents of the political subdivision have  
16 an opportunity to be heard. The second hearing may not be held  
17 before the 15th day after the date on which the first hearing is  
18 held.

19 (b) Before the 30th day before the date of each hearing, the  
20 regulatory agency shall publish notice of the time and place of each  
21 hearing in an official newspaper designated by the political  
22 subdivision or a newspaper of general circulation in the political  
23 subdivision or the county in which the political subdivision is  
24 located. The political subdivision shall also mail notice to any  
25 person who requests, in writing, notice of a public hearing on the  
26 increase of a permit fee.

27 (c) The regulatory agency proposing a permit fee increase

1 must make available to the public, not later than the 30th day  
2 before the first hearing, a study that:

3 (1) is prepared by the regulatory agency; and

4 (2) conclusively demonstrates that an increase in the  
5 permit fee is necessary to offset an increase to the reasonable cost  
6 incurred by the regulatory agency in reviewing, processing,  
7 issuing, or enforcing the permit or to compensate the regulatory  
8 agency for the actual and attributable costs of infrastructure or  
9 improvements for which the fee is imposed.

10 (d) An increase in a permit fee may not take effect before  
11 the 30th day after the date on which the regulatory agency approves  
12 the increase.

13 (e) A regulatory agency may not increase a permit fee before  
14 the first anniversary of the effective date of the previous  
15 increase of the permit fee.

16 Sec. 247.005. ENFORCEMENT. (a) Any person may notify the  
17 attorney general of a violation of this chapter. If the attorney  
18 general determines that a regulatory agency has violated any  
19 provision of this chapter, the attorney general may initiate a  
20 proceeding in district court to compel performance of this chapter.  
21 Additionally, the attorney general may seek an order from a  
22 district court directing the regulatory agency to immediately  
23 reimburse each person who paid any fee imposed by the regulatory  
24 agency in violation of this chapter.

25 (b) A person affected by the permit fee may bring an action  
26 in district court against a regulatory agency for a violation of  
27 this chapter. A person is not required to notify the attorney

1 general under Subsection (a) before a person may file an action  
2 under this subsection.

3 (c) A regulatory agency that violates this chapter is liable  
4 for attorney's fees incurred by a person in the enforcement of this  
5 chapter.

6 SECTION 2. (a) A regulatory agency shall adopt a budget for  
7 each permit fee imposed by the agency, as required by Section  
8 247.003(a), Local Government Code, as added by this Act, before  
9 January 1, 2006.

10 (b) A regulatory agency shall conduct audits, as required by  
11 Section 247.003(b), Local Government Code, as added by this Act,  
12 beginning as soon as practicable after January 1, 2006.

13 SECTION 3. This Act takes effect September 1, 2005.