

## **BILL ANALYSIS**

H.B. 3492  
By: Stucky  
Land & Resource Management  
Committee Report (Unamended)

### **BACKGROUND AND PURPOSE**

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. Despite these constitutional provisions, 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 seeks to prohibit municipalities and counties from considering the cost of constructing or improving public infrastructure in determining the amount of inspection fees. The bill 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, the bill 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.

### **CRIMINAL JUSTICE IMPACT**

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

### **ANALYSIS**

H.B. 3492 amends the Local Government Code to prohibit a municipality and county, respectively, 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 value-based fee subject to the bill's provisions. The bill requires the municipality or county to determine the fee by considering the municipality's or county's actual cost, as applicable, to review and process the engineering or construction plan or to inspect the public infrastructure improvement. Such an actual cost is calculated as the lowest amount of the following:

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

H.B. 3492 prohibits the municipality or 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 FEMA for participation in the National Flood Insurance Program. The bill requires a municipality or county that imposes a fee for reviewing or processing an engineering or construction plan or inspecting a public infrastructure improvement to annually publish the fee and the hourly rate and estimated direct time incurred by municipal or county employees for a fee calculated using that rate and estimated time under the bill's provisions. The municipality or county must publish the information on their respective website or in a newspaper of general circulation in the county in which the municipality is primarily located, or in the county, respectively, if the municipality or county does not maintain a website.

H.B. 3492 applies only to an application, review, engineering, inspection, acceptance, administrative, or other fee imposed by a municipality or county 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 that is assessed by the municipality or county on or after the bill's effective date.

**EFFECTIVE DATE**

September 1, 2023.