

- SUBJECT:** Justification and limitation for permit fees
- COMMITTEE:** Urban Affairs — committee substitute recommended
- VOTE:** 4 ayes — Talton, Wong, Blake, Rodriguez  
0 nays  
3 absent — A. Allen, Bailey, Menendez
- WITNESSES:** For — William Dahlstrom, Douglas Gilliland, Texas Association of Builders; John Bolt Harris, Home Builders Association of Greater Austin, Texas Association of Builders; Harry Savio, Home Builders Association of Greater Austin; Ray Tonjes, Texas Association of Builders  
  
Against — Jim Allison, County Judges and Commissioners Association of Texas; Renee Green, Bexar County; Scott Houston, Texas Municipal League; Michael Pichinson, Texas Conference of Urban Counties  
  
On — Michael Boyle, City of Austin
- BACKGROUND:** Cities and counties may collect fees for issuing permits on activities including building construction, subdivision planning, and environmental regulation. Although permit fees are not codified under current law, cities and counties may collect fees to cover costs of regulating activities for which they issue permits.
- DIGEST:** CSHB 2236 would amend Local Government Code, ch. 247, to require that a fee for a permit from a regulatory agency not exceed the actual cost to process, issue, or enforce the permit. A city or county would have to adopt a budget for each permit fee that would project a revenue estimate from the fees and list the expenses the revenue would cover. A city annually would have to conduct an audit on each permit budget to identify any surplus or deficit.  
  
A city could increase permit fees only after it held two public hearings and provided public notice 30 days before each hearing. Requests for public notices on hearings could be mailed by the city upon request.

Each fiscal year, a regulatory agency would have to adopt a budget for each permit fee. Fees could increase if a study identified such a need but increases would not take effect until 30 days after approval. Subsequent fee increases could not occur more than once a year.

The attorney general could enforce these provisions when notified of a violation. A person affected by a fee still could bring an action in district court against a regulatory agency. If a court found a regulatory agency in violation, the agency would have to reimburse the plaintiff's attorney fees and permit fees.

The bill would take effect September 1, 2005.

**SUPPORTERS  
SAY:**

CSHB 2236 explicitly would require fees to be applied directly to the services they permit. Cases of exorbitant permit fees are not uncommon. The city of Cedar Park charges fees in excess of \$1.1 million. Cities and counties should not be allowed to attach unrelated costs to permit fees, nor should they randomly increase fees without justification. The bill would not prevent cities and counties from adjusting fees but require them to justify changes.

The bill would implement steps to enhance transparency and hold cities and counties accountable for fee changes through public notices, public hearings, and budgeting. Each permit fee would be analyzed according to its related regulatory requirements and administrative costs to derive a formulaic cost. Fee increases would be prohibited unless directly tied to cost recovery, and such adjustments could occur only yearly.

This bill would prevent unnecessary pricing increases on houses. While high-end development projects can absorb expensive permit fees, smaller projects often are discontinued or forced to pass on the costs to consumers. Passing down costly permit fees can be particularly detrimental to affordable housing projects and their targeted consumers

The bill would set forth guidelines for enforcing provisions against local governments who charge excessive fees. Currently, developers have no recourse when cities and counties increase permit fees without explanation. The 30-day lag time between permit fee increase approval and implementation would prevent cities and counties from stalling development or randomly penalizing projects without fair notice.

Authorizing the attorney general to investigate suspected violations would discourage cities and counties from using permit fees as a conduit for unrelated expenses. Prosecution in district court and forced reimbursement of fees and court costs would control escalating permit fees.

OPPONENTS  
SAY:

Permit fees are not mechanisms for cushioning city budgets. One study shows that permit fees make up slightly more than 5 percent of city budgets. Cities and counties already check and balance permit fee levels with regulatory requirements and administrative costs. Fee increases are related to how much a city regulates, which often is driven by public demand.

The cost of the bill would vary greatly among local governments but consistently would increase costs. Budget studies for all permit fees are not needed because local governments already justify fees through their budget processes. When local budgets are determined, fees reasonably are related to administrative costs. Within the budget process, fee structures are identified and corrected. Under current law, local governments provide public notification, workshops, and hearings on their budgets. More transparency steps, while well intentioned, would create inefficiencies. Spending additional staff time and money to determine fee formulas could create the need for raising the fee.

Some local governments combine inspection and permit responsibilities among departments. Analysis of fluid administrative responsibilities among such departments would not necessarily reflect actual costs. It also would be difficult for regulatory agencies to budget for permit costs in years of unexpected high growth without losing money because the bill would decrease administrative flexibility.

Under current law, developers could sue a city or county for prohibitive fees. The bill would strengthen developer rights but weaken the position of cities and counties. It unfairly would penalize cities and counties, which would not be entitled to court fees when the cost of fees were justified in court. The Legislature routinely gives blanket authority to state agencies to set state fees without justification of actual costs. Cities and counties must be responsive to local demands and should be entitled to the same authority.

The bill would be especially unfair to counties, which mostly impose fees set by the state. Most county services, like plat filing, are not determined at the local level. Few exceptions exist. Sometimes counties serve as authorized agents for state agencies to monitor environmental requirements. When state agencies, like the Texas Commission on Environmental Quality, change requirements, counties must raise fees to absorb the cost of state mandates.

NOTES:

The LBB fiscal note indicates no fiscal implication to the state but costs to some cities in the first year of implementation.

The substitute:

- changed the definition of permit fee to apply only to chapter 247 and not to other fees required or specified in state law;
- excluded groundwater districts from the political subdivision definition;
- stated that political subdivisions could account for actual costs of infrastructure and improvements in permit fees;
- specified that the bill only would grant authority to impose fees when authorized under state law;
- allowed fees to be increased after the first anniversary of their last increase;
- permitted regulatory agencies to prepare budget reports;
- authorized the attorney general to initiate proceedings in district court; and
- required compensation to a person who paid illegally solicited fees.

The companion bill, SB 1346 by Janek, has been referred to the Senate Intergovernmental Relations Committee.