

SUBJECT: Prohibiting home value as a factor in inspection fees

COMMITTEE: Urban Affairs — committee substitute recommended

VOTE: 6 ayes — Button, Shaheen, Goodwin, Middleton, Patterson, Swanson
3 nays — J. González, E. Johnson, Morales

WITNESSES: For — Kevin Webb, Altura Homes; David Lehde, Dallas Builders Association; Ned Munoz, Texas Association of Builders; (*Registered, but did not testify*: Jon Fisher, Associated Builders and Contractors of Texas; David Glenn, Home Builders Association of Greater Austin; Cary Cheshire, Texans for Fiscal Responsibility; Todd Kercheval and Michael Warner, Texas Affiliation of Affordable Housing Providers; Kyle Jackson, Texas Apartment Association; D.J. Pendleton, Texas Manufactured Housing Association; Daniel Gonzalez and Julia Parenteau, Texas Realtors)

Against — (*Registered, but did not testify*: Kevin Shunk, City of Austin; Clifford Sparks, City of Dallas; Sarah Kuechler, City of Denton; Bill Kelly, City of Houston Mayor’s Office)

On — (*Registered, but did not testify*: Michael Kovacs, City of Fate)

DIGEST: CSHB 852 would prohibit a city from considering the value of a dwelling or the cost of constructing or improving that dwelling in determining the amount of a building permit or inspection fee for the dwelling's construction or improvement.

Cities also would be prohibited from requiring the disclosure of information related to the value of or cost of constructing or improving a dwelling as a condition of obtaining a building permit, except as required by the Federal Emergency Management Agency for participation in the National Flood Insurance Program.

The bill would take immediate effect if finally passed by a two-thirds

record vote of the membership of each house. Otherwise, it would take effect September 1, 2019. The bill would apply only to a building permit or inspection fee assessed on or after the effective date.

**SUPPORTERS
SAY:**

CSHB 852 would keep cities from using construction fees as a backdoor tax for the funding of other services, bring greater fairness to the distribution of the fee burden, and reduce property taxes on homeowners undergoing construction or building projects.

Long-standing Texas Supreme Court precedent holds that fees, unlike taxes, can cover the cost of providing a service but may not serve the purpose of generating revenue. On this principle, fees collected for the inspection of construction projects may be used only to fund inspection programs. Infrastructure and other related expenses related to new construction and municipal growth should be covered by other means, such as impact fees.

Some Texas cities violate this principle by charging construction permit fees the amount of which are determined by the selling price of the house rather than the costs of the inspection process. Because a difference in home values does not necessarily indicate a difference in the difficulty of inspecting homes, charging different fees based on home value is irrelevant to the cost of providing the service for which the fees are nominally collected. CSHB 852 would end this practice by banning the use of home values in the setting of inspection fees.

In Texas, appraisal districts may not require homeowners to disclose the sale price of a home, yet cities that learn of the value of new homes may share that knowledge with their assessment districts. Property taxes levied on homes with disclosed purchase prices are often higher than an appraisal might have warranted. By prohibiting cities from requiring disclosure of the value of the home, the bill would show respect for the privacy of homeowners and avoid burdening them with higher property taxes.

**OPPONENTS
SAY:**

CSHB 852 could represent an infringement on local control and place a burden on less affluent homeowners. Although cities are prohibited from

using fees generated by a program for expenses unrelated to that program, they are not required to set each individual fee so that it corresponds directly to the costs of a specific project.

New building and construction projects require infrastructure and utilities the costs of which are impossible to tie to a particular new home. The overall cost of new services must be divided among a city's construction projects, and cities should be allowed to choose the principle on which they make that division. The bill would remove that choice by disallowing cities from apportioning costs on the principle that those who have more should pay more.

When cities share information on the sale price of a home with assessment districts, the districts are able to assess the property tax of the home on the basis of its market value. This does not represent an excessive valuation but the actual price upon which a buyer and seller were willing to agree. Denying cities this information could lead to the newest and most expensive houses being systematically under-assessed, resulting in longtime homeowners subsidizing the property taxes of real estate developers and the wealthy.