BILL ANALYSIS

AUTHOR'S/SPONSOR'S STATEMENT OF INTENT

In 2004, the Texas Supreme Court, in *Town of Flower Mound v. Stafford Estates, Ltd. Partnerships,* 135 S.W. 3d 620 (Tex. 2004) issued a significant decision regarding Texas law relating to exactions/dedications imposed by governmental entities as conditions to issuing permits for the development of property. The court restated and followed the rules established in two landmark United States Supreme Court cases, *Nollan v. California Coastal Com'n,* 483 United States 825 (1987), and *Dolan v. City of Tigard*, 512 United States 374 (1994), in ruling that exactions/dedications that are made as a condition of development permit approvals which do not (1) bear an essential nexus to the substantial advancement of some legitimate governmental interest, and (2) are not roughly proportional to the projected impact of the proposed development, violate federal and state constitutional provisions prohibiting the taking of private property for public use without just compensation. The Texas Supreme Court also ruled that state law does not entitle a developer to recover attorney's fees or expert witness fees.

C.S.H.B. 1835 codifies the decision made in the *Stafford Estates* case, that a developer may dispute a condition of approval for a property development project that requires a developer to bear a portion of the costs of municipal infrastructure improvements, and establishes that the prevailing party in an appeal is entitled to applicable costs, and to reasonable attorney's fees, including expert witnesses fees.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Subchapter Z, Chapter 212, Local Government Code, by adding Section 212.904, as follows:

> Sec. 212.904. APPORTIONMENT OF MUNICIPAL INFRASTRUCTURE COSTS. (a) Prohibits the developer's portion of the costs from exceeding the amount required for infrastructure improvements that are roughly proportionate to the proposed development as approved by a professional engineer who holds a license under Chapter 1001 (Engineers), Occupations Code, if a municipality requires as a condition of approval for a property development project that the developer bear a portion of the costs of municipal infrastructure improvements beyond the municipality's minimum adopted standards for on-site development by the making of dedications, the payment of fees and/or the payment of the construction costs.

>> (b) Authorizes a developer who disputes the certification made under Subsection (a) to appeal to the governing body of the municipality. Authorizes the developer, at the appeal, to present evidence and testimony under procedures adopted by the governing body. Requires the governing body, after hearing any testimony and reviewing the evidence, to make the applicable determination within 30 days following the final submission of any testimony or evidence by the developer.

>> (c) Authorizes a developer to appeal the determination of the governing body to a county or district court of the county in which the development project is located within 30 days of the final determination by the governing body.

(d) Prohibits a municipality from requiring a developer to waive the right of appeal authorized by this section as a condition of approval for a development project.

(e) Entitles the prevailing party in an appeal under this section to applicable costs and to reasonable attorney's fees, including expert witnesses fees.

(f) Provides that this section does not diminish the authority or modify the procedures specified by Chapter 395 (Financing Capital Improvements Required by New Development in Municipalities, Counties, and Certain Other Local Governments).

SECTION 2. Makes application of this Act prospective.

SECTION 3. Effective date: upon passage or September 1, 2005.