

BILL ANALYSIS

Senate Research Center

S.B. 1510
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Enrolled

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Infrastructure development is the most expensive part of the land development process. Developers spend millions of dollars on roads and transportation improvements, water and wastewater improvements, and storm water and drainage improvements. It is sound public policy to require a developer to build or pay for infrastructure required by a particular development. However, local governments have often demanded that a developer build or pay for expensive public infrastructure improvements that go well beyond the infrastructure needs of a particular development.

In 2004, the Supreme Court of Texas upheld prior United States Supreme Court decisions which require "rough proportionality." In *Flower Mound v. Stafford Estates*, the Supreme Court of Texas held that conditioning government approval of a development of property on payment for infrastructure improvements is a taking unless (1) the improvement is necessary to advance a legitimate government interest and (2) is roughly proportional to the projected impact of the proposed development.

Following that decision, in 2005, the legislature enacted Section 212.904, Local Government Code, which provides that a municipality cannot require a developer to bear a disproportionate share of municipal infrastructure costs. Unfortunately, Section 212.904 does not extend to counties or public utilities. S.B. 1510 extends the sound and fair public policy expressed in Section 212.904 to all counties and electric cooperatives in the state of Texas.

Committee Substitute

- The committee substitute removes electric cooperatives from the bill.
- The bill as substituted only applies to counties.
- This legislation ensures the rough proportionality rule applies to both cities and counties.

Key Provisions of C.S.S.B. 1510

- The bill as substituted copies Section 212.904, Local Government Code, and places the same language in a new section, Section 232.110, Local Government Code.
- The new Section 232.110, Local Government Code, requires a county to abide by the rough proportionality rule, continually established by the Supreme Court of Texas, the United States Supreme Court, and the state legislature. (Original Author's/Sponsor's Statement of Intent)

S.B. 1510 amends current law relating to the apportionment of infrastructure costs in regard to certain property development projects.

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 Section 212.904(a), Local Government Code, as follows:

(a) Prohibits a developer's portion of the costs from exceeding a certain amount if the municipality requires, including under an agreement under Chapter 242 (Authority of Municipality and County to Regulate Subdivisions in and Outside Municipality's Extraterritorial Jurisdiction), as a condition of approval for a property development project that the developer bear a portion of the costs of municipal infrastructure improvements, rather than prohibiting a developer's portion of the costs from exceeding a certain amount if the 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. Requires the municipality's determination to be completed within thirty days following the submission of the developer's application for determination under this subsection.

SECTION 2. Amends Subchapter E, Chapter 232, Local Government Code, by adding Section 232.110, as follows:

Sec. 232.110. APPORTIONMENT OF COUNTY INFRASTRUCTURE COSTS. (a) Prohibits a developer's portion of the costs, if, under any authority expressly authorized by this chapter (County Regulation of Subdivisions), a county requires, including under an agreement under Chapter 242, as a condition of approval for a property development project that the developer bear a portion of the costs of county infrastructure improvements by the making of dedications, the payment of fees, or the payment of construction 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 issued under Chapter 1001 (Engineers), Occupations Code, and is retained by the county. Requires the county's determination to be completed within thirty days following the submission of the developer's application for determination under this subsection.

(b) Authorizes a developer who disputes the determination made under Subsection (a) to appeal to the commissioners court of the county. Authorizes the developer, at the appeal, to present evidence and testimony under procedures adopted by the commissioners court. Requires the commissioners court, 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 commissioners court 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 commissioners court.

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

(e) Provides that a developer who prevails in an appeal under this section is entitled to applicable costs and to reasonable attorney's fees, including expert witness 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).

(g) Provides that this does not increase or expand, and is prohibited from being interpreted to increase or expand, the authority of a county to regulate plats or subdivisions under this chapter.

SECTION 3. Provides that the change in law made by this Act applies to the approval of a development project that is not finally adjudicated before the effective date of this Act.

SECTION 4. Effective date: upon passage or September 1, 2019.