

BILL ANALYSIS

Senate Research Center
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S.B. 1174
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AUTHOR'S/SPONSOR'S STATEMENT OF INTENT

In 2004, the Texas Supreme Court, in the case of *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.

As proposed, S.B. 1174 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 developer may recover court costs, attorney's fees, and expert witness fees when a developer prevails in an appeal.

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 of municipal infrastructure improvements from exceeding the amount required for infrastructure improvements that is roughly proportionate to the projected impact of the proposed development on municipal infrastructure 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 beyond the minimum standards adopted by the municipality for on-site development.

(b) Authorizes a developer that 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 a determination.

(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.

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

(e) Provides that a developer who prevails in an appeal under this section is entitled to recover court costs, reasonable attorney's fees, and fees for any expert witnesses hired by the developer for the appeal.

(f) Provides that this section does not affect the requirements of 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.