SUBJECT: Calculation of impact fees imposed by cities on new development

COMMITTEE: Land and Resource Management — committee substitute recommended

VOTE: 7 ayes — Walker, Crabb, F. Brown, Geren, Krusee, Truitt, B. Turner

0 nays

2 absent — Howard, Mowery

SENATE VOTE: On final passage, March 8 — voice vote

WITNESSES: For — Shanna Igo, Texas Municipal League; Lyle Johansen, Texas Association of Builders

Against — Donnis Baggett, Texas Daily Newspaper Association and Texas Press Association

BACKGROUND: Local Government Code, ch. 395 allow cities to impose impact fees on new developments to recoup the city's costs for capital improvements or facility expansions necessitated by the development. Impact fees are based on "service units," a standardized measure of consumption, generation, or discharge attributable to an individual unit of development, calculated in accordance with generally accepted engineering or planning standards.

The city must prepare a capital improvements plan that identifies capital improvements or facility expansions for which impact fees may be assessed. The plan describes the improvements or expansions and their costs attributable to new development in the service area and calculates the impact fees for that plan. The plan must include the total number of projected service units necessitated by and attributable to new development within the service area, based on approved land use and the projected demand for capital improvements or facility expansions required by new service units projected over a reasonable period of time, not to exceed 10 years.

To impose an impact fee, a political subdivision must hold a public hearing to consider land-use assumptions within the designated service area that will

be used to develop the capital improvements plan. Land-use assumptions include a description of the service area and a projection of changes in land uses, densities, intensities, and population in the service area over a 10-year period. A service area is the area within the city or its extraterritorial jurisdiction (ETJ) to be served by the capital improvements or facility expansions specified in the capital improvements plan, except roadway, storm water, drainage, or flood-control facilities.

In 1999, the 76th Legislature enacted a similar bill, HB 2405 by Brimer, which would have altered the way cities calculate impact fees on new development. Gov. George W. Bush vetoed the bill, stating that it "could cause an increase in property taxes and force additional costs of new development upon existing residents" and would "restrict the flexibility of local governments to determine how to pay for new development."

DIGEST:

Calculation of impact fee. CSSB 243 would require a capital improvements plan to include a plan for awarding a credit for the portion of ad valorem property tax and utility service revenues generated by the new service units during the 10-year period when the debt is repaid under the proposed capital improvements plan. Alternatively, the plan could include a plan for awarding a credit of 50 percent of the total cost of the capital improvements plan.

The total impact fee could be no more than the costs of capital improvements minus the credit calculated as part of the capital improvement plan. The fee assessed each service unit would be determined by taking the total impact fee and dividing it by the number of service units in the development.

CSSB 243 would exclude from the calculation of the impact fee the costs of off-site water improvements, pro-rata fees for reimbursement of water and sewer mains or lines, and municipalities' share of costs for arterial and collector roads and streets. It also would require that the standardized measure used for a service unit be based on historical data and trends in the municipality during the past 10 years.

Timing of impact fee. CSSB 243 would amend portions of the Local Government Code that apply to subdivisions in the ETJs of municipalities in counties with a population of more than 5,000 that border the Rio Grande

River or for municipalities that adopted an impact fee after June 20, 1987. This provision would apply if water and wastewater capacity was available. The bill would require collection of impact fees for these ETJ subdivisions when a building permit was issued or an individual meter was connected to the water or wastewater system, rather than when the subdivision was platted or connected to the city's water or sewer system.

Development of capital improvements plan. The municipality would have to use qualified professionals to develop the capital improvements plan. The plan would have to be updated every five years, rather than every three years, as in current law.

Notice and hearing requirements. CSSB 243 would amend current hearing and notice requirements for hearings on land-use assumptions and would apply those requirements to capital improvement plans. It would require publication 30 days before the hearing, rather than the current requirement for two notices 30 days and 60 days before hearings, and would delete the requirement that the notice be a quarter-page advertisement in a section other than in the legal notices.

CSSB 243 would require a hearing 30 days before the imposition of an impact fee. It would delete the current requirement for two notices, a quarter-page advertisement, and a map showing the service area. Also, it would prohibit adoption of an impact fee as an emergency measure.

The notice of hearings on amendment of land-use assumptions, capital improvements plan, or impact fee would have to be advertised in a notice announcing the time, date, and location of the hearing, a statement of purpose of the hearing, and a statement that the public could appear and give testimony at the hearing.

Certification requirements. CSSB 243 would require that the municipality submit written certification, signed by the presiding officer, to the attorney general that it had complied with the requirements to impose an impact fee. This certification would be due each year by the last day of the city's fiscal year. CSSB 243 would provide a penalty of 10 percent of the impact fees erroneously charged if the certification was not submitted. That civil penalty would be deposited to the housing trust fund.

CSSB 243 would repeal portions of the Local Government Code concerning the calculation of the costs of capital improvements, approval of land-use assumptions used for capital improvement plans, information provided to the public about public improvement plans, and consolidation of land-use assumptions and capital improvement plans.

This bill would take effect September 1, 2001.

SUPPORTERS SAY:

CSSB 243 would address the concerns that led Gov. Bush to veto HB 2045 in 1999. It represents a compromise among the cities and development community to ensure that impact fees are calculated fairly, taking into account both the costs and benefits that new development creates.

The bill would require that cities that charge impact fees include positive revenue generated by the subdivision in the impact fee calculation, including property taxes and the portion of utility bills used for principal and interest on water and wastewater bonds. It would prohibit a city from collecting impact fees until a building permit was issued. To ensure that cities calculated their impact fees fairly and properly, the city's presiding officer would have to file a certificate of compliance with the Attorney General's Office.

The bill would eliminate the "double tax" that new home buyers pay when they pay for impact fees up front to cover the city's costs of bringing water and wastewater services to them at their new homes, then continue to pay water and wastewater fees for the debt service on the bonds sold to finance that same infrastructure. Home buyers also pay a double tax when they pay for infrastructure through impact fees and pay for it again through property taxes. Impact fees charged to developers are passed through to the home buyer in the form of an increased purchase price. Adoption of CSSB 243 would help keep housing affordable.

CSSB 243 would require adequate notice for public hearings and would reduce the cities' costs for running these advertisements. Criticism of the change in the notice requirements reflects merely the self-interest of the newspapers in protecting their revenues.

OPPONENTS SAY:

CSSB 243 would reduce the amount that cities could charge for impact fees, when actually no city in Texas charges the full amount that could be charged. In fact, most cities charge only 50 percent of the costs they incur in providing services for new development. Reducing or eliminating impact fees would mean only that those costs would have to made up in increased property taxes or higher water and sewer rates.

CSSB 243 substantially would reduce the amount of notice and information available to the public by deleting the requirements for two notices for the public hearings. It also would delete the requirements for quarter-page advertisements outside of the legal notices and publication of a map showing where the impact fees would apply. This is a question of the public's right to know, rather than of newspapers' profits. Publication of these notices represents only a small part of newspaper revenues. Citizens should be fully informed of deliberations about land development policy, particularly if those decisions could affect existing taxes and fees.

NOTES:

The committee substitute changed the original bill to require, rather than authorize, a political subdivision to collect fees when a building permit was issued or when an individual meter was connected to a water or wastewater system in a subdivision outside the municipality's corporate limits.