

- SUBJECT:** Prohibition of retroactive changes to development permits
- COMMITTEE:** Land and Resource Management — favorable, without amendment
- VOTE:** 8 ayes — Walker, Crabb, F. Brown, Hardcastle, Howard, Krusee, Mowery, B. Turner
- 0 nays
- 1 present, not voting — Bosse
- WITNESSES:** For — Thurman Blackburn, Texas Capitol Area Builders Association and Texas Association of Builders; Jimmy Gaines, Texas Landowners Council, Inc.; Robert Heiser, Bradfield Family Partnership Ltd.; Maury Hood and Harry Savio, Texas Capitol Area Builders Association; Jim Nias, Texas Landowners Council; Larry Niemann, Austin Building Owners & Managers Association and Texas Building Owners & Managers Association; Philip Savoy, Take Back Texas; David Arscott; Carl Conley; W. B. (Bill) Howell; William D. Schultz; Wm. Kent Snead
- Against — Chris Cuny, City of Heath; Alice Glasco, City of Austin; Kevin Lasher, City of Fort Worth Development Department; Arthur Pertile III, City of Waco
- On — Margaret Hoffman, Texas Natural Resource Conservation Commission
- BACKGROUND:** Subchapter I, Chapter 481 of the Government Code, enacted in 1987 and amended in 1989 and 1995, was inadvertently repealed by an act of the 75th Legislature, 1997 (Section 51(b), Chapter 1041). Subchapter I dealt with restrictions on state and local permits. The result of the repeal was that political subdivisions may apply retroactively any changes made in regulations and permitting.
- DIGEST:** HB 1287 would require political subdivisions and state agencies, including cities, counties and school districts, to review project permits solely on the basis of any requirements in effect when the original application for a permit was filed. The bill would apply to projects in progress on, or initiated after, September 1, 1987.

If more than one permit was required, all necessary permits would be considered a single series of permits, and the project would be bound only by the requirements in effect when the application for the first of the series of permits was made. Preliminary plans and subdivision plats for a project would be considered to be part of the series of permits. Political subdivisions would not be able to shorten the duration of any permit required for a project once an application had been filed.

Permit holders would be able to operate under any changes to permitting requirements after the initial application was made if the changes would enhance or protect the project, or would lengthen the effective life of the permit. The bill would not apply to:

- permits related to gaming or gambling;
- regulations for the location of adult-oriented businesses;
- regulations or requirements affecting colonias;
- permits related to the collection of state taxes;
- uniform building, fire, electrical, plumbing, or mechanical codes adopted by a recognized national code organization;
- permits at least two years old for construction of a building intended for human occupancy for adoption of uniform construction codes;
- regulations or local amendments to construction codes to address imminent threats of destruction of property or personal injury;
- municipal zoning or land use regulations that do not affect lot size, lot dimensions, lot coverage or building size;
- fees for development permits;
- regulations for annexation or utility connections;
- construction standards for public works on public lands or easements;
- permits issued for programs implemented by a state agency for state programs that are part of a federal program or required by federal law;
- and
- duration of permits issued by the Texas Railroad Commission that did not have an expiration date or a specific duration when originally issued.

The provisions in the bill would be enforceable only through mandamus or declaratory or injunctive relief. The bill would not affect any litigation pending on the effective date of the bill or final judgments rendered by a court before the bill's effective date.

The bill would not limit the authority of state agencies or local governments to adopt regulations or issue permits related to coastal zone management.

This bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house.

NOTES:

A similar bill, HB 1704 by Kuempel, was signed into law by the governor and became effective on May 11. HB 1704 applies to projects initiated on or after September 1, 1997, or projects in progress on or after that date if a regulatory agency imposed a requirement for the project or a deadline for a permit that did not exist before that date. HB 1704 does not apply to permits issued by state agencies.