

SUBJECT: Vesting landscaping and other regulations upon filing for a permit

COMMITTEE: Land and Resource Management — committee substitute recommended

VOTE: 8 ayes — Mowery, Harper-Brown, Pickett, Blake, Escobar, Leibowitz, Miller, Orr

0 nays

1 absent — R. Cook

WITNESSES: For — Bobby Bowling, Texas Association of Builders; Michael Moore, Greater San Antonio Builders Association and Texas Association of Builders; Scott Norman, Terry Weaver, Texas Association of Builders; Brad Rockwell, Greater Edwards Aquifer Alliance; (*Registered, but did not testify*: Daniel Gonzalez, Texas Association of Realtors; Michele Molter, Texas Apartment Association; Todd Morgan, Temple - Inland Inc.; Chuck Rice, Pohl Brown and Associates; Harry Savio, Home Builders Association of Greater Austin)

Against — Norbert Hart, City of San Antonio; Scott Houston, Texas Municipal League; Ben Luckens, Texas Chapter of The American Planning Association; Patrick Murphy, City of Austin; Frank Turner, City of Plano; (*Registered, but did not testify*: John Cabrales, City of Denton)

BACKGROUND: Local Government Code, ch. 245, requires political subdivisions, including cities, counties, and school districts, to review project permits solely on the basis of requirements in effect when the original application for a permit was filed. When a project requires a series of permits, the regulations in effect at the time of the first permit's filing apply to all subsequent permits.

Some exemptions to vested permit rights include municipal zoning regulations that do not affect lot size, lot dimensions, lot coverage, or building size or that do not change development permitted by a restrictive covenant.

Under Chapter 245, a regulatory agency may place an expiration date on a permit if, as of May 11, 2000 (the first anniversary of Chapter 245's

effective date), the permit did not have an expiration date and no progress has been made toward completion of the project. An expiration date can be no earlier than May 11, 2004 (the fifth anniversary of the May 11, 1999, effective date of Chapter 245).

DIGEST:

CSHB 2748 would allow municipal zoning, land use, and annexation regulations on landscaping, tree preservation, and park or open space dedication to vest upon the filing of a permit application.

An agency could enact a regulation that placed an expiration date on a permit of not less than two years if no progress had been made toward project completion. A project could not expire in less than five years from the date a first permit application was filed when no progress had been made.

A political subdivision's immunity from suit would be waived for actions taken under Local Government Code, chapter 245. This change would apply to a suit pending before a trial court on, or filed on or after, September 1, 2005.

The changes made by the bill concerning permits would apply to a person who filed a permit application and demonstrated progress toward completion of a project on or after September 1, 2005.

The bill would take effect on September 1, 2005.

**SUPPORTERS
SAY:**

CSHB 2748 would clarify that agencies could apply to permits only those regulations already enacted at the time of application, including municipal zoning, land use, and annexation regulations on landscaping, tree preservation, and park or open space dedication. Without such clarification, development rights could be subject to expensive and capricious regulatory changes. While most cities already include guidelines on landscaping and open space provisions in their subdivision regulations, some developers would benefit from more regulatory certainty.

Retroactive changes of any sort create regulatory uncertainty for developers and landowners, resulting in the repeal of previously approved permits, project failures, declines in land values, and bankruptcies. When retroactive regulatory changes increase fees to developers, those increases often are passed on to the public. Whereas some sectors of the public

might be able to absorb higher development costs, low-income sectors might lose valuable projects. For example, affordable housing developments could not sustain higher fees to homebuyers without compromising the development's sole purpose.

The new expiration date provisions update current law. The bill would allow two year expiration dates to be applied on all other permits, reducing dormancy time. Cities would be able to de-certify projects on which no action had been taken for five years or more. This would provide clear guidelines in advance for developers and cities, avoiding any future confusion over the dormancy period.

The bill would clarify that political subdivisions were not immune from suit for enforcement of Chapter 245. Developers who have tried in good faith to complete projects under certain regulations would have added regulatory certainty. When a municipality retroactively imposed regulations, developers could hold them accountable in court.

OPPONENTS
SAY:

Current law provides weak support for cities that need to regulate development that affects urban and suburban growth. CSHB 2748 would further promote development interests over municipal authority to impose reasonable regulations. Development plans should not supplant meaningful city regulations intended to serve city residents. What developers consider regulatory uncertainty often is, in fact, a safeguard for public safety and environmental quality.

The bill could prevent cities from providing buffers between land uses and adequate green space. Grandfathering landscaping and open space regulations is unwise because of the changes that may occur in an area while a project is being completed. Large subdivision sites often take many years to build, time during which other developments are completed. If developers have not landscaped and conserved open space in nearby projects, that may create a need for new regulations on existing projects for public benefit. Adequate buffers may be needed between parking lots and streets or between mechanical equipment and residential neighborhoods. Cities should be able to upgrade landscaping and open space regulations on development while projects are being built, even when the need for such regulations was unforeseen when the project was permitted.

Loopholes to avoid permit expiration already exist in current law, and the bill would not provide improve the process of imposing expiration dates. A developer now can overcome an expiration date through negligible actions like filing a curb cut or making a utility payment. The bill's expiration dates on permits and projects are confusing and actually would not prevent development from operating under antiquated regulations.

Municipalities would be inhibited in enacting new regulations, even for public benefit, to avoid possible lawsuits. The bill unfairly could subject cities to litigation for enacting planning and development policies that may not only be needed but demanded by the public. Landscaping adds to the value of property. Parks and open space are attractive components of all types of development – from residential neighborhoods to busy urban centers. Streets without trees and cities without parks often are concerns to the public, as demonstrated in some local referendums.

NOTES:

The committee substitute added the provision concerning expiration dates for permits if no progress was made toward completion of the project.

HB 1704 by Kuempel, which would expand the definition of what constitutes filing for purposes of vesting rights under Chapter 245, was placed on the General State Calendar for April 13, but was postponed until April 20.

The companion bill, SB 574 by Armbrister, passed the Senate by 30-1 (Zaffirini) on April 14 and was reported favorably, as substituted, by the House Land and Resource Management Committee on April 21, making it eligible to be considered in lieu of HB 2748.