BILL ANALYSIS

Senate Research Center   S.B. 13
85S10600 NC-F   By: Burton
                                                             Business & Commerce
                                                                        7/21/2017
                                                                            As Filed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Interested parties contend that current law regarding permitting by local entities lacks uniformity and time-certain deadlines that are transparent and consistent for both local entities and permit applicants.

S.B. 13 remedies this by establishing a new, uniform process and timeline for certain local entity permit applications. The bill provides permit applicants a clear expectation of time for action on their application.

Current law provides a series of timeframes for the review and approval of local entity building permits. The bill would shorten these deadlines, and create a time-certain for approval of building permit applications. Under the bill, a permit seeker can reasonably expect permit action within no more than 30 days after applying. For situations in which entities need more time to evaluate applications, extension options are available and contain a similar time-certain protection for applicants.

The bill also contains a process for remediation of deficiencies in applications before a final denial decision can be issued. Permit applicants are notified in an expedient manner and are allowed sufficient time to remedy any specific deficiencies that substantiate denial of an application before the denial becomes final.

The bill would prevent protracted permit applications by establishing clear limitations on local permit requirements and prevent changes in requirements for applicants that have sought to remedy a deficient application. Permit seekers could not be denied for reasons that were not previously disclosed to the applicant or for reasons that are not substantially related to the construction permit. Local entities would not be allowed to enforce ordinances or policies that prohibit denied applicants from reapplying, require private employers to pay wages that are higher than those required by law, or authorize private employers to be subject to on-site monitoring by a non-governmental entity for granting or denying permits.

Lastly, the bill would affect certain provisions of law pertaining to all types of local entity permitting to provide clarity, uniformity, and consistency in local permit application approvals. This includes the authorization for an expedited permit review and approval process.

As proposed, S.B. 13 amends current law relating to the issuance of a permit by a political subdivision.

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 214.904, Local Government Code, as follows:

> Sec. 214.904. New heading: PROCEDURES AND PERIOD FOR APPROVAL OR DENIAL OF MUNICIPAL BUILDING PERMIT APPLICATIONS; PROHIBITED

PERMIT REQUIREMENTS. (a) Provides that this section applies to any permit, rather than only to a permit, required by a municipality to construct, rather than erect, or improve a building or other structure in the municipality or its extraterritorial jurisdiction.

(b) Requires the municipality, not later than the 30th day, rather than 45th day, after the date an application for a permit is submitted, to:

(1) grant or make a preliminary determination to deny the permit;

(2) provide written notice to the applicant stating the reasons why the municipality has been unable to act on, rather than grant or deny, the permit application; or

(3) reach a written agreement with the applicant providing for a deadline not later than the 120th day after the date the application was submitted for granting or denying the permit.

(c) Requires the municipality, for a permit application for which notice is provided under Subsection (b)(2), to grant or make a preliminary determination to deny the permit not later than the 15th day, rather than 30th day, after the date the notice is received. Prohibits a municipality from extending the period for the municipality to act on an application under this subsection more than once.

(d) Provides that if a municipality fails to act on, rather than grant or deny, a permit application within the period, rather than a permit application in the time, required by Subsection (c) or by an agreement under Subsection (b)(3), the permit application is considered approved and the municipality is prohibited from collecting any permit fees associated with the application and is required to refund to the applicant any permit fees associated with the application that have been collected.

(e) Requires the municipality, if a municipality makes a preliminary determination to deny a permit application, to send written notice of the determination to the applicant not later than the first business day after the date the determination is made stating:

(1) each application deficiency that is a reason for the determination, including a citation to the specific ordinance, order, regulation, or policy relevant to the determination;

(2) the specific actions required by the applicant to remedy each specified deficiency; and

(3) a deadline not earlier than the 30th day after the date the notice is sent for the applicant to complete the remedial actions specified in the notice before the denial becomes final.

(f) Authorizes the applicant, if an applicant substantially completes the remedial actions specified in the notice under Subsection (e) within the period required, to request reconsideration of the determination. Requires the municipality to grant the permit if the municipality determines the applicant has substantially completed the specified remedial actions. Requires the municipality, not later than the 15th day after the date the applicant's request for reconsideration is received, to send the applicant written notice of a final determination to grant or deny a permit application. Provides that if the municipality fails to send notice of a final determination within the period required by this subsection, the permit application is considered approved.

(g) Requires that written notice of the municipality's final determination that a permit is denied include the information required by Subsections (e)(1) and (2) in

addition to written findings of the reasons the municipality determined that any remedial actions taken by the applicant were insufficient to correct the deficiencies specified in the notice provided under Subsection (e).

(h) Prohibits any final determination that a permit is denied from being based on:

(1) a reason or remedial requirement that was not previously disclosed to the applicant in the notice required under Subsection (e); or

(2) a requirement for the applicant to comply with any ordinance, order, regulation, or policy that is not substantially related to the construction or improvement of a building or other structure.

(i) Prohibits a municipality from adopting or enforcing an ordinance, order, regulation, or policy relating to granting or denying a permit under this section that restricts or prohibits the right of an applicant to reapply for a permit to construct or improve the same building or other structure that was the subject of a denied permit application; requires a private employer to offer wages higher than the wages required under Chapter 62 (Minimum Wage), Labor Code; or authorizes on-site monitoring of a private employer by a nongovernmental entity.

SECTION 2. Amends Section 233.901, Local Government Code, as follows:

Sec. 233.901. New heading: PROCEDURES AND PERIOD FOR APPROVAL OR DENIAL OF COUNTY BUILDING PERMIT APPLICATIONS; PROHIBITED PERMIT REQUIREMENTS. (a) Provides that this section applies to any permit required by a county, rather than applies only to a permit required by a county with a population of 3.3 million or more, to construct or improve a building or other structure in the county, but does not apply to a permit for an on-site sewage disposal system.

(b) Requires the county, not later than the 30th day, rather than 45th day, after the date an application for a permit is submitted, to:

(1) grant or make a preliminary determination to deny the permit;

(2) makes no changes to this subdivision; or

(3) reach a written agreement with the applicant providing for a deadline not later than the 120th day after the date the application was submitted for granting or denying the permit.

(c) Requires the county, for a permit application for which notice is provided under Subsection (b)(2) (relating to requiring a county to provide certain written notice to the applicant), to grant or make a preliminary determination to deny the permit not later than the 15th day, rather than 30th day, after the date the notice is received. Prohibits a county from extending the period for the county to act on an application under this subsection more than once.

(d) Provides that if a county fails to act on a permit application within the period required by Subsection (c) or by an agreement under Subsection (b)(3), the permit application is considered approved and the county is prohibited from collecting any permit fees associated with the application and is required to refund to the applicant any permit fees associated with the application that have been collected. Makes nonsubstantive changes.

(e) Requires the county, if a county makes a preliminary determination to deny a permit application, to send written notice of the determination to the applicant not later than the first business day after the date the determination is made stating:

(1) each application deficiency that is a reason for the determination, including a citation to the specific ordinance, order, regulation, or policy relevant to the determination;

(2) the specific actions required by the applicant to remedy each specified deficiency; and

(3) a deadline not earlier than the 30th day after the date the notice is sent for the applicant to complete the remedial actions specified in the notice before the denial becomes final.

(f) Authorizes the applicant, if an applicant substantially completes the remedial actions specified in the notice under Subsection (e) within the period required, to request reconsideration of the determination. Requires the county to grant the permit if the county determines the applicant has substantially completed the specified remedial actions. Requires the county, not later than the 15th day after the date the applicant's request for reconsideration is received, to send the applicant written notice of a final determination to grant or deny a permit application. Provides that if the county fails to send notice of a final determination within the period required by this subsection, the permit application is considered approved.

(g) Requires that a written notice of the county's final determination that a permit is denied include the information required by Subsections (e)(1) and (2) in addition to written findings of the reasons the county determined that any remedial actions taken by the applicant were insufficient to correct the deficiencies specified in the notice provided under Subsection (e).

(h) Prohibits any final determination that a permit is denied from being based on a reason or remedial requirement that was not previously disclosed to the applicant in the notice required under Subsection (e) or a requirement for the applicant to comply with any ordinance, order, regulation, or policy that is not substantially related to the construction or improvement of a building or other structure.

(i) Prohibits a county from adopting or enforcing an ordinance, order, regulation, or policy relating to granting or denying a permit under this section that restricts or prohibits the right of an applicant to reapply for a permit to construct or improve the same building or other structure that was the subject of a denied permit application; requires a private employer to offer wages higher than the wages required under Chapter 62, Labor Code; or authorizes on-site monitoring of a private employer by a nongovernmental entity.

SECTION 3. Amends Sections 245.001(1) and (3), Local Government Code, to redefine "permit" and "project."

SECTION 4. Amends Section 245.002, Local Government Code, by amending Subsections (a-1) and (e) and adding Subsections (e-1) and (f-1), as follows:

(a-1) Provides that an application or plan is considered filed on the date the applicant delivers the application or plan to the regulatory agency, deposits the application or plan with the United States Postal Service (USPS) by certified mail addressed to the regulatory agency, or submits the application electronically if the regulatory agency accepts applications electronically by a method that provides confirmation of receipt. Provides that a certified mail receipt or other confirmation or receipt obtained by the applicant at the time of deposit or submission is prima facie evidence of the date the application or plan was filed, rather than deposited with USPS. Makes a nonsubstantive change.

(e) Authorizes a regulatory agency to provide that a permit application expires on or after the 61st day, rather than 45th day, after the date the application is filed if:

(1) makes no changes to this subdivision;

(2) the agency provides to the applicant not later than the 10th business day after the date the application is filed written notice of the failure that specifies the necessary documents or other information required to complete the application and the date the application will expire if the documents or other information is not provided; and

(3) the applicant fails to provide the specified documents or other information within the period, rather than time, provided in the notice.

(e-1) Prohibits a permit application from expiring before the 11th business day after the date the regulatory agency provides the applicant with the notice described by Subsection (e)(2).

(f-1) Prohibits a regulatory agency from denying a permit application based on a requirement for the applicant to comply with any ordinance, order, regulation, or policy that is not substantially related to the purposes for which the permit is required.

SECTION 5. Amends Section 245.004, Local Government Code, as follows:

Sec. 245.004. EXEMPTIONS. Provides that this chapter (Issuance of Local Permits) does not apply to:

(1) and (2) makes no changes to these subdivisions;

(3) regulations for sexually oriented businesses as defined by Section 243.002 (Definition), massage parlors as defined by Section 234.101 (Definitions), or game rooms as defined by Section 234.131 (Definitions). Deletes existing text of Subdivision (3) and redesignates existing Subdivision (4) as Subdivision (3);

(4) through (6) redesignates existing Subdivisions (5), (6), and (7) as Subdivisions (4), (5), and (6) respectively and makes no further changes to these subdivisions;

(7) deletes existing Subdivision (8) and redesignates existing Subdivision (9) as Subdivision (7);

(8) and (9) redesignates existing Subdivisions (10) and (11) as Subdivisions (8) and (9) respectively and makes no further changes to these subdivisions.

SECTION 6. Amends Chapter 245, Local Government Code, by adding Section 245.008 and 245.009, as follows:

Sec. 245.008. PROCEDURES AND PERIOD FOR APPROVAL OR DENIAL OF PERMIT APPLICATIONS; PROHIBITED PERMIT REQUIREMENTS. (a) Requires a regulatory agency, except as provided by Section 214.904, 233.901, or other law that provides for a shorter period, to approve or deny an application for a permit not later than the 60th business day after the date the regulatory agency received the completed application.

(b) Authorizes a regulatory agency to extend the period under Subsection (a) for approving or denying an application by an additional 10 business days if the regulatory agency provides written notice of the extension to the applicant during that period stating the reasons the regulatory agency has been unable to grant or deny the permit application during that period. Prohibits a regulatory agency from extending the period for the regulatory agency to grant or deny an application under this subsection more than once.

(c) Provides that if a regulatory agency fails to approve or deny a completed application as provided by this section, the application is considered to be approved.

(d) Requires the regulatory agency, if a regulatory agency denies a permit application, to send written notice of the denial to the applicant not later than the first business day after the date of the denial stating:

> (1) each application deficiency that is a reason for the denial, including a citation to the specific ordinance, order, regulation, or policy relevant to the denial; and

> (2) the specific actions required by the applicant to remedy each specified deficiency.

Sec. 245.009. EXPEDITED PERMITTING PROCEDURES. (a) Provides that this title (Regulation of Land Use, Structures, Businesses, and Related Activities), does not prohibit a political subdivision from adopting procedures to provide a shorter period than provided by law for the approval of a permit.

> (b) Requires that any ordinance, order, regulation, or policy providing procedures for the expedited approval of a permit comply with the requirements of this chapter.

> (c) Prohibits a procedure authorized by this section from restricting or prohibiting the right of an applicant to reapply for a permit that was the subject of a denied permit application; requiring a private employer to offer wages higher than the wages required under Chapter 62, Labor Code; authorizing on-site monitoring of a private employer by a nongovernmental entity; or requiring an applicant for an expedited permit to comply with an ordinance, order, regulation, or policy that is not substantially related to the purposes for which the permit is required.

SECTION 7. Repealer: Section 245.002(g) (relating to providing that the change in law and addition of certain subsections apply only to a project commenced on or after a certain effective date), Local Government Code.

SECTION 8. Makes application of this Act prospective.

SECTION 9. Effective date: upon passage or December 1, 2017.