

## **BILL ANALYSIS**

H.B. 1704  
By: Kuempel  
Land & Resource Management  
Committee Report (Amended)

### **BACKGROUND AND PURPOSE**

In 1999 the legislature reenacted an inadvertently repealed section of the Local Government Code that ensures property owners have the right to begin and complete the development of a project under the existing laws and regulations in effect when their first permit application is filed. Some property owners were investing hundreds of thousands of dollars in meeting local permit application requirements only to find that after filing an application but before permit approval was granted the local governments had adopted more restrictive development regulations, often with the express purpose of delaying or halting land development. This forced property owners to either restructure their projects at great cost or abandon them altogether when local regulatory changes made the project no longer viable.

Section 2(a) of Chapter 245 plainly states that development rights vest at the time the first application for the project is filed. In spite of this clear intent, current practice in some localities is to refuse to acknowledge vested rights until an application is “administratively complete,” meaning days or weeks of reviews and approvals. In 1999 the House rejected just such an amendment requiring administratively complete applications during floor debate.

The purpose of H.B. 1704 is to clarify the intent of Chapter 245 that rights vest upon filing an application, regardless of local administrative procedural barriers. H.B. 1704 also ensures that where local policies require an applicant to obtain utility commitments before the first permit can be filed, compliance with these requirements is considered the first permit for a project.

### **RULEMAKING AUTHORITY**

It is the opinion of the committee that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency or institution.

### **ANALYSIS**

SECTION 1. *Amends Subdivision (1), Section 245.001, Local Government Code, to amend the definition of “permit” to include a contract or commitment for utilities or any other condition precedent required by law or local regulations.*

SECTION 2. *Amends Section 245.002, Local Government Code, by amending Subsection (a) and adding Subsection (a-1), as follows:*

Clarifies that the permit application or plan for development is considered filed when it is submitted for any purpose, including a submission for a review of administrative completeness.

Clarifies that the permit applicant’s rights accrue if the application or plan of development gives the local regulatory authority fair notice of the project and the nature of the permit sought. A “filed” application or plan is further clarified to mean one delivered to the regulatory authority or deposited with the U.S. Postal Service by certified mail.

SECTION 3. *Adds a clarifying statement that the act should be construed to ensure that rights are vested at a time certain and to provide that a regulatory agency*

can make an applicant comply with technical requirements in affect at the time the rights were vested.

SECTION 4. Effective Date.

**EFFECTIVE DATE**

Effective date is September 1, 2005 or immediately if approved by two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution.

**EXPLANATION OF AMENDMENTS**

Amendment Number 1 substituted "utilities or any other form of authorization or condition precedent" from the original and replaced it with "service from a utility owned, operated or controlled by the regulatory agency, or other form of authorization" in the substitute.

Amendment Number 2 adds a new SECTION 3. to clarify that the act should be construed to ensure that rights are vested at a time certain and to provide that a regulatory agency can make an applicant comply with technical requirements in affect at the time the rights were vested.