

By: Workman

H.B. No. 164

A BILL TO BE ENTITLED

AN ACT

relating to the issuance of a permit by a political subdivision.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 214.904, Local Government Code, is amended to read as follows:

Sec. 214.904. PROCEDURES AND PERIOD ~~[TIME]~~ FOR APPROVAL OR DENIAL ~~[ISSUANCE]~~ OF MUNICIPAL BUILDING PERMIT APPLICATIONS; PROHIBITED PERMIT REQUIREMENTS. (a) This section applies ~~[only]~~ to any ~~[a]~~ permit required by a municipality to construct ~~[erect]~~ or improve a building or other structure in the municipality or its extraterritorial jurisdiction.

(b) Not later than the 30th ~~[45th]~~ day after the date an application for a permit is submitted, the municipality must:

(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 ~~[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) For a permit application for which notice is provided under Subsection (b)(2), the municipality must grant or make a preliminary determination to deny the permit not later than the

1 15th [~~30th~~] day after the date the notice is received. A
2 municipality may not extend the period for the municipality to act
3 on an application under this subsection more than once.

4 (d) If a municipality fails to act on [~~grant or deny~~] a
5 permit application within [~~in~~] the period [~~time~~] required by
6 Subsection (c) or by an agreement under Subsection (b)(3), the
7 permit application is considered approved and the municipality:

8 (1) may not collect any permit fees associated with
9 the application; and

10 (2) shall refund to the applicant any permit fees
11 associated with the application that have been collected.

12 (e) If a municipality makes a preliminary determination to
13 deny a permit application, the municipality must send written
14 notice of the determination to the applicant not later than the
15 first business day after the date the determination is made
16 stating:

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

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

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

25 (f) If an applicant substantially completes the remedial
26 actions specified in the notice under Subsection (e) within the
27 period required, the applicant may request reconsideration of the

1 determination. The municipality shall grant the permit if the
2 municipality determines the applicant has substantially completed
3 the specified remedial actions. Not later than the 15th day after
4 the date the applicant's request for reconsideration is received,
5 the municipality shall send the applicant written notice of a final
6 determination to grant or deny a permit application. If the
7 municipality fails to send notice of a final determination within
8 the period required by this subsection, the permit application is
9 considered approved.

10 (g) Written notice of the municipality's final
11 determination that a permit is denied must include the information
12 required by Subsections (e)(1) and (2) in addition to written
13 findings of the reasons the municipality determined that any
14 remedial actions taken by the applicant were insufficient to
15 correct the deficiencies specified in the notice provided under
16 Subsection (e).

17 (h) Any final determination that a permit is denied may not
18 be based on:

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

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

26 (i) A municipality may not adopt or enforce an ordinance,
27 order, regulation, or policy relating to granting or denying a

1 permit under this section that:

2 (1) restricts or prohibits the right of an applicant
3 to reapply for a permit to construct or improve the same building or
4 other structure that was the subject of a denied permit
5 application;

6 (2) requires a private employer to offer wages higher
7 than the wages required under Chapter 62, Labor Code; or

8 (3) authorizes on-site monitoring of a private
9 employer by a nongovernmental entity.

10 SECTION 2. Section 233.901, Local Government Code, is
11 amended to read as follows:

12 Sec. 233.901. PROCEDURES AND PERIOD [TIME] FOR APPROVAL OR
13 DENIAL [ISSUANCE] OF COUNTY BUILDING PERMIT APPLICATIONS;
14 PROHIBITED PERMIT REQUIREMENTS. (a) This section applies [~~only~~]
15 to any [~~a~~] permit required by a county [~~with a population of 3.3~~
16 ~~million or more~~] to construct or improve a building or other
17 structure in the county, but does not apply to a permit for an
18 on-site sewage disposal system.

19 (b) Not later than the 30th [~~45th~~] day after the date an
20 application for a permit is submitted, the county must:

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

23 (2) provide written notice to the applicant stating
24 the reasons why the county has been unable to act on the permit
25 application; or

26 (3) reach a written agreement with the applicant
27 providing for a deadline not later than the 120th day after the date

1 the application was submitted for granting or denying the permit.

2 (c) For a permit application for which notice is provided
3 under Subsection (b)(2), the county must grant or make a
4 preliminary determination to deny the permit not later than the
5 15th [~~30th~~] day after the date the notice is received. A county may
6 not extend the period for the county to act on an application under
7 this subsection more than once.

8 (d) If a county fails to act on a permit application within
9 [~~in~~] the period [~~time~~] required by Subsection (c) or by an agreement
10 under Subsection (b)(3), the permit application is considered
11 approved and the county:

12 (1) may not collect any permit fees associated with
13 the application; and

14 (2) shall refund to the applicant any permit fees
15 associated with the application that have been collected.

16 (e) If a county makes a preliminary determination to deny a
17 permit application, the county must send written notice of the
18 determination to the applicant not later than the first business
19 day after the date the determination is made stating:

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

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

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

1 (f) If an applicant substantially completes the remedial
2 actions specified in the notice under Subsection (e) within the
3 period required, the applicant may request reconsideration of the
4 determination. The county shall grant the permit if the county
5 determines the applicant has substantially completed the specified
6 remedial actions. Not later than the 15th day after the date the
7 applicant's request for reconsideration is received, the county
8 shall send the applicant written notice of a final determination to
9 grant or deny a permit application. If the county fails to send
10 notice of a final determination within the period required by this
11 subsection, the permit application is considered approved.

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

18 (h) Any final determination that a permit is denied may not
19 be based on:

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

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

27 (i) A county may not adopt or enforce an ordinance, order,

1 regulation, or policy relating to granting or denying a permit
2 under this section that:

3 (1) restricts or prohibits the right of an applicant
4 to reapply for a permit to construct or improve the same building or
5 other structure that was the subject of a denied permit
6 application;

7 (2) requires a private employer to offer wages higher
8 than the wages required under Chapter 62, Labor Code; or

9 (3) authorizes on-site monitoring of a private
10 employer by a nongovernmental entity.

11 SECTION 3. Sections 245.001(1) and (3), Local Government
12 Code, are amended to read as follows:

13 (1) "Permit" means a license, certificate, approval,
14 registration, consent, permit, contract or other agreement for
15 construction related to, or provision of, service from a water or
16 wastewater utility owned, operated, or controlled by a regulatory
17 agency, or other form of authorization required by law, rule,
18 regulation, order, or ordinance that a person must obtain to
19 perform an action, including engaging in an occupation, or
20 initiate, continue, or complete a project for which the permit is
21 sought.

22 (3) "Project" means an endeavor, occupation, or
23 activity over which a regulatory agency exerts its jurisdiction and
24 for which one or more permits are required to initiate, continue,
25 engage in, or complete the endeavor, occupation, or activity.

26 SECTION 4. Section 245.002, Local Government Code, is
27 amended by amending Subsections (a-1) and (e) and adding

1 Subsections (e-1) and (f-1) to read as follows:

2 (a-1) Rights to which a permit applicant is entitled under
3 this chapter accrue on the filing of an original application or plan
4 for development or plat application that gives the regulatory
5 agency fair notice of the project and the nature of the permit
6 sought. An application or plan is considered filed on the date the
7 applicant delivers the application or plan to the regulatory
8 agency, ~~or~~ deposits the application or plan with the United
9 States Postal Service by certified mail addressed to the regulatory
10 agency, or submits the application electronically if the regulatory
11 agency accepts applications electronically by a method that
12 provides confirmation of receipt. A certified mail receipt or
13 other confirmation or receipt obtained by the applicant at the time
14 of deposit or submission is prima facie evidence of the date the
15 application or plan was filed [~~deposited with the United States~~
16 ~~Postal Service~~].

17 (e) A regulatory agency may provide that a permit
18 application expires on or after the 61st [~~45th~~] day after the date
19 the application is filed if:

20 (1) the applicant fails to provide documents or other
21 information necessary to comply with the agency's technical
22 requirements relating to the form and content of the permit
23 application;

24 (2) the agency provides to the applicant not later
25 than the 10th business day after the date the application is filed
26 written notice of the failure that specifies the necessary
27 documents or other information required to complete the application

1 and the date the application will expire if the documents or other
2 information is not provided; and

3 (3) the applicant fails to provide the specified
4 documents or other information within the period [~~time~~] provided in
5 the notice.

6 (e-1) A permit application may not expire before the 11th
7 business day after the date the regulatory agency provides the
8 applicant with the notice described by Subsection (e)(2).

9 (f-1) A regulatory agency may not deny a permit application
10 based on a requirement for the applicant to comply with any
11 ordinance, order, regulation, or policy that is not substantially
12 related to the purposes for which the permit is required.

13 SECTION 5. Section 245.004, Local Government Code, is
14 amended to read as follows:

15 Sec. 245.004. EXEMPTIONS. This chapter does not apply to:

16 (1) a permit that is at least two years old, is issued
17 for the construction of a building or structure intended for human
18 occupancy or habitation, and is issued under laws, ordinances,
19 procedures, rules, or regulations adopting only:

20 (A) uniform building, fire, electrical,
21 plumbing, or mechanical codes adopted by a recognized national code
22 organization; or

23 (B) local amendments to those codes enacted
24 solely to address imminent threats of destruction of property or
25 injury to persons;

26 (2) municipal zoning regulations that do not affect
27 landscaping or tree preservation, open space or park dedication,

1 property classification, lot size, lot dimensions, lot coverage, or
2 building size or that do not change development permitted by a
3 restrictive covenant required by a municipality;

4 (3) [~~regulations that specifically control only the~~
5 ~~use of land in a municipality that does not have zoning and that do~~
6 ~~not affect landscaping or tree preservation, open space or park~~
7 ~~dedication, lot size, lot dimensions, lot coverage, or building~~
8 ~~size;~~

9 [(4)] regulations for sexually oriented businesses as
10 defined by Section 243.002, massage parlors as defined by Section
11 234.101, or game rooms as defined by Section 234.131;

12 (4) [(5)] municipal or county ordinances, rules,
13 regulations, or other requirements affecting colonias;

14 (5) [(6)] fees imposed in conjunction with
15 development permits;

16 (6) [(7)] regulations for annexation that do not
17 affect landscaping or tree preservation or open space or park
18 dedication;

19 (7) [(8)] ~~regulations for utility connections;~~

20 [(9)] regulations to prevent imminent destruction of
21 property or injury to persons from flooding that are effective only
22 within a flood plain established by a federal flood control program
23 and enacted to prevent the flooding of buildings intended for
24 public occupancy;

25 (8) [(10)] construction standards for public works
26 located on public lands or easements; or

27 (9) [(11)] regulations to prevent the imminent

1 destruction of property or injury to persons if the regulations do
2 not:

3 (A) affect landscaping or tree preservation,
4 open space or park dedication, lot size, lot dimensions, lot
5 coverage, building size, residential or commercial density, or the
6 timing of a project; or

7 (B) change development permitted by a
8 restrictive covenant required by a municipality.

9 SECTION 6. Chapter 245, Local Government Code, is amended
10 by adding Sections 245.008 and 245.009 to read as follows:

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

18 (b) A regulatory agency may extend the period under
19 Subsection (a) for approving or denying an application by an
20 additional 10 business days if the regulatory agency provides
21 written notice of the extension to the applicant during that period
22 stating the reasons the regulatory agency has been unable to grant
23 or deny the permit application during that period. A regulatory
24 agency may not extend the period for the regulatory agency to grant
25 or deny an application under this subsection more than once.

26 (c) If a regulatory agency fails to approve or deny a
27 completed application as provided by this section, the application

1 is considered to be approved.

2 (d) If a regulatory agency denies a permit application, the
3 regulatory agency must send written notice of the denial to the
4 applicant not later than the first business day after the date of
5 the denial stating:

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

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

11 Sec. 245.009. EXPEDITED PERMITTING PROCEDURES. (a) This
12 title does not prohibit a political subdivision from adopting
13 procedures to provide a shorter period than provided by law for the
14 approval of a permit.

15 (b) Any ordinance, order, regulation, or policy providing
16 procedures for the expedited approval of a permit must comply with
17 the requirements of this chapter.

18 (c) A procedure authorized by this section may not:

19 (1) restrict or prohibit the right of an applicant to
20 reapply for a permit that was the subject of a denied permit
21 application;

22 (2) require a private employer to offer wages higher
23 than the wages required under Chapter 62, Labor Code;

24 (3) authorize on-site monitoring of a private employer
25 by a nongovernmental entity; or

26 (4) require an applicant for an expedited permit to
27 comply with an ordinance, order, regulation, or policy that is not

1 substantially related to the purposes for which the permit is
2 required.

3 SECTION 7. Section 245.002(g), Local Government Code, is
4 repealed.

5 SECTION 8. The changes in law made by this Act apply only to
6 a permit application filed on or after the effective date of this
7 Act. An application filed before the effective date of this Act is
8 governed by the law in effect immediately before the effective date
9 of this Act, and the former law is continued in effect for that
10 purpose.

11 SECTION 9. This Act takes effect immediately if it receives
12 a vote of two-thirds of all the members elected to each house, as
13 provided by Section 39, Article III, Texas Constitution. If this
14 Act does not receive the vote necessary for immediate effect, this
15 Act takes effect December 1, 2017.