

1-1 By: Burton S.B. No. 13
1-2 (In the Senate - Filed July 14, 2017; July 20, 2017, read
1-3 first time and referred to Committee on Business & Commerce;
1-4 July 24, 2017, reported adversely, with favorable Committee
1-5 Substitute by the following vote: Yeas 6, Nays 3; July 24, 2017,
1-6 sent to printer.)

1-7 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-8				
1-9	Hancock	X		
1-10	Creighton	X		
1-11	Campbell	X		
1-12	Estes	X		
1-13	Nichols	X		
1-14	Schwertner	X		
1-15	Taylor of Galveston		X	
1-16	Whitmire		X	
1-17	Zaffirini		X	

1-18 COMMITTEE SUBSTITUTE FOR S.B. No. 13 By: Campbell

1-19 A BILL TO BE ENTITLED
1-20 AN ACT

1-21 relating to the issuance of a permit by a political subdivision.
1-22 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:
1-23 SECTION 1. Section [214.904](#), Local Government Code, is
1-24 amended to read as follows:
1-25 Sec. 214.904. PROCEDURES AND PERIOD [TIME] FOR APPROVAL OR
1-26 DENIAL [ISSUANCE] OF MUNICIPAL BUILDING PERMIT APPLICATIONS;
1-27 PROHIBITED PERMIT REQUIREMENTS. (a) This section applies [only]
1-28 to any [a] permit required by a municipality to construct [erect] or
1-29 improve a building or other structure in the municipality or its
1-30 extraterritorial jurisdiction.
1-31 (b) Not later than the 30th [45th] day after the date an
1-32 application for a permit is submitted, the municipality must:
1-33 (1) grant or make a preliminary determination to deny
1-34 the permit;
1-35 (2) provide written notice to the applicant stating
1-36 the reasons why the municipality has been unable to act on [grant or
1-37 deny] the permit application; or
1-38 (3) reach a written agreement with the applicant
1-39 providing for a deadline not later than the 120th day after the date
1-40 the application was submitted for granting or denying the permit.
1-41 (c) For a permit application for which notice is provided
1-42 under Subsection (b)(2), the municipality must grant or make a
1-43 preliminary determination to deny the permit not later than the
1-44 15th [30th] day after the date the notice is received. A
1-45 municipality may not extend the period for the municipality to act
1-46 on an application under this subsection more than once.
1-47 (d) If a municipality fails to act on [grant or deny] a
1-48 permit application within [in] the period [time] required by
1-49 Subsection (c) or by an agreement under Subsection (b)(3), the
1-50 permit application is considered approved and the municipality:
1-51 (1) may not collect any permit fees associated with
1-52 the application; [and]
1-53 (2) shall refund to the applicant any permit fees
1-54 associated with the application that have been collected; and
1-55 (3) shall issue the permit.
1-56 (e) If a municipality makes a preliminary determination to
1-57 deny a permit application, the municipality must send written
1-58 notice of the determination to the applicant not later than the
1-59 first business day after the date the determination is made
1-60 stating:

(1) each 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) If an applicant substantially completes the remedial actions specified in the notice under Subsection (e) within the period required, the applicant may request reconsideration of the determination. The municipality shall grant the permit if the municipality determines the applicant has substantially completed the specified remedial actions. Not later than the 15th day after the date the applicant's request for reconsideration is received, the municipality shall send the applicant written notice of a final determination to grant or deny a permit application. If the municipality fails to send notice of a final determination within the period required by this subsection, the permit application is considered approved and the municipality shall issue the permit.

(g) Written notice of the municipality's final determination that a permit is denied must 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) Any final determination that a permit is denied may not be 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) A municipality may not adopt or enforce an ordinance, order, regulation, or policy relating to granting or denying a permit that:

(1) 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;

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

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

(j) The right of a permit applicant to the issuance of a determination or a permit as required by this section may be enforced only through mandamus or declaratory or injunctive relief. A municipality's immunity from suit is waived in regard to an action under this section.

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

Sec. 233.901. PROCEDURES AND PERIOD [TIME] FOR APPROVAL OR DENIAL [ISSUANCE] OF COUNTY BUILDING PERMIT APPLICATIONS; PROHIBITED PERMIT REQUIREMENTS. (a) This section applies [only] to any [a] permit required by a county for an activity relating to the construction or improvement of [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) Not later than the 30th [45th] day after the date an application for a permit is submitted, the county must:

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

(2) provide written notice to the applicant stating the reasons why the county has been unable to act on 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 county must grant or make a preliminary determination to deny the permit not later than the 15th [30th] day after the date the notice is received. A county may not extend the period for the county to act on an application under this subsection more than once.

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

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

(2) shall refund to the applicant any permit fees associated with the application that have been collected; and

(3) shall issue the permit.

(e) If a county makes a preliminary determination to deny a permit application, the county must 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 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) If an applicant substantially completes the remedial actions specified in the notice under Subsection (e) within the period required, the applicant may request reconsideration of the determination. The county shall grant the permit if the county determines the applicant has substantially completed the specified remedial actions. Not later than the 15th day after the date the applicant's request for reconsideration is received, the county shall send the applicant written notice of a final determination to grant or deny a permit application. If the county fails to send notice of a final determination within the period required by this subsection, the permit application is considered approved and the county shall issue the permit.

(g) Written notice of the county's final determination that a permit is denied must 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) Any final determination that a permit is denied may not be 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 activity for which the permit is required.

(i) A county may not adopt or enforce an ordinance, order, regulation, or policy relating to granting or denying a permit that:

(1) 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;

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

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

(j) The right of a permit applicant to the issuance of a determination or a permit as required by this section may be

enforced only through mandamus or declaratory or injunctive relief.
 A county's immunity from suit is waived in regard to an action under
 this section.

(k) Nothing in this section shall be construed to authorize
 a county to require a permit to undertake an activity relating to
 the construction or improvement of a building or other structure in
 the county.

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

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

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

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

(a-1) Rights to which a permit applicant is entitled under
 this chapter accrue on the filing of an original application or plan
 for development or plat application that gives the regulatory
 agency fair notice of the project and the nature of the permit
 sought. An application or plan is considered filed on the date the
 applicant delivers the application or plan to the regulatory
 agency, ~~or~~ deposits the application or plan with the United
 States Postal Service 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. 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 ~~[deposited with the United States
 Postal Service]~~.

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

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

(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 ~~[time]~~ provided in
 the notice.

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

(f-1) A regulatory agency may not deny 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. Section 245.004, Local Government Code, is
 amended to read as follows:

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

(1) a permit that is at least two years old, is issued
 for the construction of a building or structure intended for human
 occupancy or habitation, and is issued under laws, ordinances,

procedures, rules, or regulations adopting only:

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

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

(2) municipal zoning regulations that do not affect landscaping or tree preservation, open space or park dedication, property classification, lot size, lot dimensions, lot coverage, or building size or that do not change development permitted by a restrictive covenant required by a municipality;

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

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

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

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

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

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

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

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

~~(9) [(11)]~~ regulations to prevent the imminent destruction of property or injury to persons if the regulations do not:

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

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

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

Sec. 245.008. PROCEDURES AND PERIOD FOR APPROVAL OR DENIAL OF PERMIT APPLICATIONS; PROHIBITED PERMIT REQUIREMENTS.

(a) Except as provided by Section 214.904, 233.901, or other law that provides for a shorter period, a regulatory agency shall approve or make a preliminary determination to deny an application for a permit not later than the 60th business day after the date the regulatory agency received the completed application.

(b) A regulatory agency may extend the period under Subsection (a) for approving or making a preliminary determination to deny 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 make a preliminary determination to deny the permit application during that period. A regulatory agency may not extend the period for the regulatory agency to act on an application under this subsection more than once.

(c) If a regulatory agency fails to act on a completed application within the period required by this section, the application is considered to be approved and the regulatory agency shall issue the permit.

(d) If a regulatory agency makes a preliminary determination to deny a permit application, the regulatory agency must send written notice of the determination to the applicant not

later than the first business day after the date of the determination stating:

(1) each 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.

(e) If an applicant substantially completes the remedial actions specified in the notice under Subsection (d) within the period required, the applicant may request reconsideration of the determination. The regulatory agency shall grant the permit if the regulatory agency determines the applicant has substantially completed the specified remedial actions. Not later than the 15th day after the date the applicant's request for reconsideration is received, the regulatory agency shall send the applicant written notice of a final determination to grant or deny a permit application. If the regulatory agency fails to send notice of a final determination within the period required by this subsection, the permit application is considered approved and the regulatory agency shall issue the permit.

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

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

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

(2) a requirement for the applicant to comply with any ordinance, order, regulation, or policy that is not substantially related to the project for which a permit is required.

Sec. 245.009. EXPEDITED PERMITTING PROCEDURES. (a) This title 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) Any ordinance, order, regulation, or policy providing procedures for the expedited approval of a permit must comply with the requirements of this chapter.

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

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

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

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

(4) require 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. Section 245.002(g), Local Government Code, is repealed.

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

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

7-1 Act takes effect December 1, 2017.

7-2 * * * * *