

BILL ANALYSIS

Senate Research Center
85R8443 JTS-D

H.B. 1704
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State Affairs
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Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Chapter 245, Local Government Code, relates to vested development rights of property owners. It provides that projects are grandfathered against new regulatory requirements upon the filing of an application for certain permits. It is designed to protect a property owner or developer against municipalities that change the rules on a piece of property once development and/or construction has begun. Depending on the severity, a rule change can delay a project or even render it worthless.

While there are no material penalties for municipalities that violate Chapter 245, Section 245.006 of the Local Government Code allows for enforcement through mandamus, declaratory judgment, or injunctive relief. It has been a common practice over the years that recovery of court costs and attorney's fees under the Uniform Declaratory Judgments Act (UDJA) applies to vested rights actions. In 2014, however, the fourth Court of Appeals held that Chapter 245 does not, in fact, allow for the recovery of court costs and attorney's fees.

This ruling creates an undesirable inconsistency with the UDJA and leaves the vested development rights of many property owners susceptible to violation due to the high cost of litigation.

In efforts to address the court's ruling and return to a long-standing common practice, H.B. 1704 amends Chapter 245, Local Government Code, to clearly state that this chapter allows for the recovery of court costs and attorney's fees. Not allowing for the recovery of attorney fees is a disincentive to those who might otherwise bring an action against a violation of their vested property rights.

H.B. 1704 amends current law relating to the award of court costs and attorney's fees in actions to determine the applicability of certain local government regulations.

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 245.006, Local Government Code, by adding Subsection (c), to authorize a court to award court costs and reasonable and necessary attorney's fees to the prevailing party in an action under this chapter (Issuance of Local Permits).

SECTION 2. Effective date: upon passage or September 1, 2017.