

SUBJECT: Prohibiting application of new regulations after state permit is issued

COMMITTEE: Land and Resource Management — committee substitute recommended

VOTE: 8 ayes — Walker, Crabb, F. Brown, Geren, Krusee, Mowery, Truitt, B. Turner
0 nays
1 absent — Howard

WITNESSES: For — Jimmy Gaines, Jim Nias, Texas Landowners Council; Dale A. Pound
Against — None
On — Jerry Cooke, Texas Parks and Wildlife Department

BACKGROUND: Various state agencies issue permits, licenses, certificates, approvals, and other forms of authorization to allow a person to perform an action or initiate a project as spelled out under state law or rules or regulations promulgated by state agencies. Currently, state agencies may apply changes in regulations and permit requirements retroactively.

DIGEST: CSHB 1630 would amend the Government Code to require state agencies to apply the rules applicable during the original permit process to the duration of the permit. A state agency would have to apply existing orders, rules, regulations, expiration dates, or other requirements when considering the approval, disapproval, or conditional approval of a permit application. The state agency could not shorten the duration of a permit, but other provisions would allow the permit holder to take advantage of any regulatory changes, including lengthening the time the permit was effective.

CSHB 1630 would apply to any permit or project that was begun or in progress on or after September 1, 1997, and if a state agency had taken action to shorten the length of the permit, established a new deadline for completing the project, or added a requirement that did not apply before September 1, 1997.

CSHB 1630 would exempt from the prohibition established by this bill:

- ! gaming or gambling permits;
- ! Tax Code, title 2 permits;
- ! permits issued by state agencies implementing federal programs;
- ! colonia regulations;
- ! regulations to prevent imminent destruction of property or injury to persons;
- ! public works standards for construction on state lands;
- ! a building permit at least two years old;
- ! a uniform building, fire, electrical, plumbing, or mechanical code adopted by a recognized national code organization;
- ! a Texas Parks and Wildlife Department permit;
- ! Texas Railroad Commission permits;
- ! Texas Alcoholic Beverage Commission permits; and
- ! ordinances, rule, or standards for the Coastal Zone Management Act.

CSHB 1630 would be enforced only through mandamus or declaratory or injunctive relief. The bill would not affect the rights or remedies of anyone under a final court judgment rendered before the effective date of the legislation nor anyone with pending litigation involving interpretation of the Smart Jobs Fund program as it existed before its repeal by the 75th Legislature.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2001.

**SUPPORTERS
SAY:**

CSHB 1630 would help eliminate obstacles to economic development caused by unnecessary governmental regulatory delays and changing standards for processing and issuing permits. It would provide permit holders with a more orderly and predictable administrative process.

CSHB 1630 would apply only to the two-year term of a permit. The applicant would have to meet the any new standards in renewing the permit. The bill would not “grandfather” existing standards beyond the current term of the permit.

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The Legislature frequently sets standards to protect property rights and eliminate red tape in the administration of regulations and ordinances by cities, counties, and other subdivisions in the state. CSHB 1630 would provide a degree of equity by applying the same kind of standards to state agencies and demonstrating how government could be more responsive.

OPPONENTS
SAY:

CSHB 1630 would eliminate the flexibility of state agencies to respond to changing circumstances when it could become necessary to impose more stringent regulations to protect the public's health, safety, or general welfare.

OTHER
OPPONENTS
SAY:

CSHb 1630 is unnecessary and only could lead to costly and unneeded litigation. The bill would be weakened by the laundry list of exemptions that likely would be expanded in the future.

NOTES:

The committee substitute added exemptions for permits issued by the Texas Parks and Wildlife Department and the Texas Alcoholic Beverage Commission.