

BILL ANALYSIS

C.S.H.B. 3876
By: Workman
Land & Resource Management
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Real estate development projects often span many years from the time the subdivision plat is first approved until the last lot in a commercial or residential subdivision is built. Interested parties note that if the regulations of the political subdivision change before the project is completed, the incomplete lots may be rendered unbuildable. The parties note that there are certain laws meant to protect such projects from shifting regulations but assert that the laws do not sufficiently address denials for applications for protection under such laws. C.S.H.B. 3876 seeks, among other things, to prevent applicants from being unfairly denied that protection.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

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

ANALYSIS

C.S.H.B. 3876 amends the Local Government Code to authorize an applicant for a local permit for construction related to, or provision of, service from certain water or wastewater utilities associated with a regulatory agency of a political subdivision or another form of authorization required for certain actions on regulated projects for which the permit is sought to request, by written notice to the chief administrative law judge of the State Office of Administrative Hearings (SOAH) and the applicable regulatory agency, mediation of a dispute arising out of a regulatory agency's determination that statutory provisions relating to the issuance of local permits do not apply to the applicant's project. The bill establishes that, except as otherwise provided by the bill's provisions, Civil Practice and Remedies Code provisions relating to alternative dispute resolution procedures govern the mediation. The bill requires the chief administrative law judge to appoint a mediator from a list of qualified mediators maintained by SOAH through random assignment and to give notice to the parties in writing and authorizes the parties to substitute a mediator of their choice in place of the appointed mediator not later than the seventh day after the date of the appointment. The bill entitles the mediator to a reasonable fee, due at the time mediation convenes, and requires the fee to be borne equally by the parties unless the parties agree otherwise.

C.S.H.B. 3876 requires the parties to cooperate with the mediator in setting the date, time, and place of the mediation and requires the mediation to be convened and completed not later than the 30th day after the date of the applicant's written notice. The bill requires the mediator, if the parties fail to agree on a date, time, or place for the mediation, to unilaterally set the date, time, and place of the mediation so that the mediation is convened and completed in the 30-day period.

The bill requires an authorized representative of each party with authority to settle the dispute to be physically present at the mediation. The bill establishes that the failure by a party to attend and participate in mediation is considered a default, entitling the other party to the party's requested relief and reserving only the issue of any attorney's fees or damages otherwise legally permitted, and the bill requires such fees or damages to be determined by an administrative law judge of SOAH after a hearing to which each party is given notice. The bill requires additional rules governing the conduct of the mediation to be provided by the mediator consistent with the bill's provisions and Civil Practice and Remedies Code provisions relating to alternative dispute resolution procedures. The bill requires any dispute arising out of the procedure in convening the mediation to be determined by an administrative law judge assigned by SOAH on the request of a party with written notice to the other party. The bill caps at \$250 a fee imposed by a regulatory agency to review an application for determination of the applicability of statutory provisions relating to the issuance of local permits to the permit applicant's project.

C.S.H.B. 3876 makes a political subdivision that has been found by a court to have violated statutory provisions relating to the issuance of local permits liable for the permit applicant's attorney's fees and administrative and court costs and the applicant's portion of the cost of any mediation the applicant requested that did not result in an agreement.

EFFECTIVE DATE

September 1, 2015.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 3876 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and formatted in a manner that indicates the substantial differences between the introduced and committee substitute versions of the bill.

INTRODUCED

SECTION 1. Section 245.006, Local Government Code, is amended.

SECTION 2. Chapter 245, Local Government Code, is amended by adding Section 245.0061 to read as follows:

Sec. 245.0061. REQUIRED MEDIATION ON REQUEST OF PERMIT APPLICANT.

(a) A permit applicant may request mandatory mediation regarding any regulatory agency determination that this chapter does not apply to the applicant's project.

(b) The mediation must begin not later than the 30th day after written notice by the permit applicant to the regulatory agency official who made the determination under Subsection (a).

No equivalent provision.

HOUSE COMMITTEE SUBSTITUTE

SECTION 1. Same as introduced version.

SECTION 2. Chapter 245, Local Government Code, is amended by adding Section 245.0061 to read as follows:

Sec. 245.0061. AVAILABILITY OF MANDATORY MEDIATION.

(a) A permit applicant, by written notice to the chief administrative law judge of the State Office of Administrative Hearings and the regulatory agency, may request mediation of a dispute arising out of a regulatory agency's determination that this chapter does not apply to the applicant's project.

No equivalent provision. *(But see Subsec. (e) below.)*

(b) Except as otherwise provided by this

section, Chapter 154, Civil Practice and Remedies Code, governs the mediation.

(c) The mediation shall be conducted before a licensed attorney mediator chosen by agreement of the parties from a pool of mediators approved by the attorney general.

(c) The chief administrative law judge shall appoint a mediator from a list of qualified mediators maintained by the State Office of Administrative Hearings through random assignment, giving notice to the parties in writing. The parties may substitute a mediator of their choice in place of the appointed mediator not later than the seventh day after the date of the appointment.

(d) Each party must pay the mediator one half of the cost of the mediation on the day of the mediation.

(d) The mediator is entitled to a reasonable fee, due at the time mediation convenes, which shall be borne equally by the parties unless the parties agree otherwise.

(e) If the parties fail to reach a mediated agreement, the permit applicant may initiate a suit for mandamus or injunctive relief in a court of law.

No equivalent provision.

No equivalent provision. *(But see Subsec. (b) above.)*

(e) The parties shall cooperate with the mediator in setting the date, time, and place of the mediation, which shall be convened and completed not later than the 30th day after the date of the applicant's written notice. If the parties fail to agree on a date, time, or place for the mediation, the mediator shall unilaterally set the date, time, and place of the mediation so that the mediation is convened and completed in the 30-day period.

No equivalent provision.

(f) An authorized representative of each party with authority to settle the dispute must be physically present at the mediation.

(f) Failure by a regulatory agency to begin the mediation in the period described by Subsection (b) constitutes a final determination by the regulatory agency that the requested permit is subject to the original project rules, regulations, ordinances, and requirements as requested by the permit applicant, if the regulatory agency's failure is verified by:

No equivalent provision. *(But see Subsec. (g) below.)*

(1) the mediator selected by the parties; or
(2) the mediator selected by the permit applicant, if the regulatory agency and the permit applicant do not select a mediator by agreement.

No equivalent provision. (But see Subsec. (f) above.)

(g) Failure by a party to attend and participate in mediation shall be considered a default, entitling the other party to the party's requested relief and reserving only the issue of any attorney's fees or damages otherwise legally permitted, which shall be determined by an administrative law judge of the State Office of Administrative Hearings after a hearing to which each party is given notice.

No equivalent provision.

(h) Additional rules governing the conduct of the mediation shall be provided by the mediator consistent with this section and Chapter 154, Civil Practice and Remedies Code. Any dispute arising out of the procedure in convening the mediation shall be determined by an administrative law judge assigned by the State Office of Administrative Hearings on the request of a party with written notice to the other party.

SECTION 3. Chapter 245, Local Government Code, is amended by adding Section 245.008 to read as follows:

Sec. 245.008. REGULATORY AGENCY FEE. A fee imposed by a regulatory agency to review an application for determination of the applicability of this chapter to the applicant's project may not exceed \$250.

SECTION 3. Chapter 245, Local Government Code, is amended by adding Section 245.008 to read as follows:

Sec. 245.008. REGULATORY AGENCY FEE. A fee imposed by a regulatory agency to review an application for determination of the applicability of this chapter to the ~~permit~~ applicant's project may not exceed \$250.

SECTION 4. This Act takes effect September 1, 2015.

SECTION 4. Same as introduced version.