

- SUBJECT:** Awarding court costs and attorney's fees in certain regulatory lawsuits
- COMMITTEE:** Judiciary and Civil Jurisprudence — favorable, without amendment
- VOTE:** 9 ayes — Smithee, Farrar, Gutierrez, Hernandez, Laubenberg, Murr, Neave, Rinaldi, Schofield
- 0 nays
- WITNESSES:** For — Trevor Whitney, Greater San Antonio Builders Association; Ned Munoz, Texas Association of Builders; (*Registered, but did not testify:* Edward Martin, Greater Houston Builders Association; Geoffrey Tahuahua, Home Builders Association of Greater Austin; Guy Herman, Statutory Probate Courts of Texas; Lee Parsley, Texans for Lawsuit Reform; David Mintz, Texas Apartment Association, Texas Institute of Building Design; Scott Norman, Texas Association of Builders; Julia Parenteau, Texas Association of Realtors; DJ Pendleton, Texas Manufactured Housing Association; Lee Woods, Texas Trial Lawyers Association)
- Against — (*Registered, but did not testify:* Eddie Solis, City of Arlington; Christine Wright, City of San Antonio; Scott Houston, Texas Municipal League)
- BACKGROUND:** Local Government Code, sec. 245.002 prohibits regulatory agencies from reviewing construction permit applications under a different standard than one in effect at the time when the original permit application or development plan was filed. Sec. 245.006 authorizes enforcement through mandamus, declaratory, or injunctive relief.
- DIGEST:** HB 1704 would allow a court to award court costs and attorney's fees to the prevailing party in a suit under Local Government Code, ch. 245.
- The bill would take effect September 1, 2017.
- SUPPORTERS** HB 1704 would make enforcement of existing law easier. The Local

SAY: Government Code vests property rights in permit applicants, and if a municipality tries to change the requirements for a permit after an application is filed, the applicant can enforce those vested rights through a lawsuit. Vested rights suits allowed under existing law provide only injunctive or declaratory relief. Although construction on a project may have been delayed for months or longer, the best outcome for a plaintiff undertaking the project is a court order telling the municipality not to break the law. This often makes meritorious cases unattractive to pursue due to the significant expense involved in filing and litigation, which renders vested property rights toothless.

This bill would ensure both sides of the regulatory process had an interest in carefully considering rule changes and the decision to sue because the prevailing party could recover costs and attorney's fees from the party who lost. Attorneys and their clients would have to think carefully before deciding whether to file a lawsuit, ensuring that only the most warranted cases resulted in legal action.

OPPONENTS SAY: HB 1704 could create uncertainty for local government and increase the costs of necessary rulemaking. Current law allows only injunctive or declaratory relief because any monetary damages would have to be paid with taxpayer dollars. Litigation should not be made even more expensive and complicated. The bill could make these types of lawsuits more attractive to plaintiff's attorneys, likely increasing the number of cases filed each year and the potential expense to the taxpayers.

NOTES: A companion bill, SB 787 by Huffman, was referred to the Senate State Affairs Committee on February 22.