

BILL ANALYSIS

Senate Research Center
82R6417 TJB-F

S.B. 1741
By: Fraser
Natural Resources
4/2/2011
As Filed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Many Texas cities regulate the removal of trees from private property as development. Some cities require the property owner to pay the city a mitigation fee as a condition for the issuance of a permit to remove a tree. Many cities have adopted ordinances and rules that calculate mitigation fees based on the cost of replacing a tree or a multiple of the replacement cost. Property owners who want to remove a tree are compelled to compensate the municipality as if the city owned the tree. The methods and values used to calculate tree removal mitigation fees and appeal rights vary greatly among cities. Currently, the only remedy an aggrieved person can pursue is to file a lawsuit asserting a violation of rights under the United States and Texas Constitutions.

S.B. 1741 will allow municipal assessments and calculations of tree removal mitigation fees to conform with constitutional requirements.

As proposed, S.B. 1741 amends current law relating to tree mitigation fees imposed by municipalities.

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 Chapter 212, Local Government Code, by adding Subchapter H, as follows:

SUBCHAPTER H. MUNICIPAL TREE MITIGATION FEE

Sec. 212.191. **APPLICABILITY.** Provides that this subchapter applies to a municipality that requires as a condition for approval of a permit that an applicant pay the municipality or a third party a tree mitigation fee.

Sec. 212.192. **AMOUNT OF MUNICIPAL TREE MITIGATION FEE.** Requires a municipality that requires a tree mitigation fee to offset the impact of an activity that a municipal permit authorizes to set the fee in an amount that is roughly proportionate to the impact that the activity will have on the public.

Sec. 212.193. **FILING OF APPEAL WITH MUNICIPALITY.** Authorizes a permit applicant to appeal the amount of a tree mitigation fee set by a municipality under this subchapter by filing an appeal with the governing body of the municipality. Requires the appeal to be in writing and specify the grounds for the appeal.

Sec. 212.194. **HEARING ON APPEAL TO MUNICIPALITY.** (a) Requires the governing body of the municipality, not later than the 30th day after the date the notice of appeal is filed under Section 212.193, to set a hearing for the appeal.

(b) Authorizes the permit applicant to present evidence and witness testimony at the hearing that is relevant to the tree mitigation fee determination.

(c) Authorizes the permit applicant to appear at the hearing in person or by agent or attorney.

(d) Requires the governing body to make a final determination regarding the amount of the tree mitigation fee not later than the 30th day after the date the hearing concludes.

Sec. 212.195. APPEAL TO COUNTY OR DISTRICT COURT. (a) Authorizes a permit applicant, not later than the 30th day after the date the final determination is made under Section 212.194, to appeal the determination to a county or district court in the county in which the activity to be permitted will occur.

(b) Provides that the municipality shall have the burden of proof to establish that the amount of the tree mitigation fee is roughly proportionate to the impact that the activity to be permitted will have on the public.

(c) Requires the court to award attorney's fees and costs of court to a permit applicant who prevails in a suit under this section.

Sec. 212.196. NO WAIVER OF RIGHT TO APPEAL. (a) Prohibits a municipality from requiring a permit applicant to waive a right of appeal under this subchapter as a condition for approval of a permit.

(b) Provides that a permit applicant who pays a contested tree mitigation fee does not waive a right of appeal under this subchapter by taking an action authorized by a permit issued by the municipality.

Sec. 212.197. APPLICATION OF LAW RELATED TO CAPITAL IMPROVEMENTS. Provides that this subchapter does not diminish the authority or modify the procedures specified by Chapter 395 (Financing Capital Improvement Required by New Development in Municipalities, Counties, and Certain Other Local Governments).

SECTION 2. (a) Makes application of changes in law made by Subchapter H, Chapter 212, Local Government Code, as added by this Act, prospective, except as provided by Subsection (b) of this section.

(b) Provides that the changes in law made by Subchapter H, Chapter 212, Local Government Code, as added by this Act, apply to a contested tree mitigation fee assessed by a municipality before the effective date of this Act if an appeal of the amount of the fee has not been finally determined or adjudicated on the effective date of this Act.

SECTION 3. Effective date: upon passage or September 1, 2011.