

BILL ANALYSIS

Senate Research Center
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C.S.S.B. 744
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Intergovernmental Relations
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Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Many Texas cities regulate the removal of trees from private property as development occurs. 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.

S.B. 744 requires a municipality that imposes a tree mitigation fee to allow the developer to apply for a credit for tree planting to offset the fee. A developer would be allowed to plant a tree somewhere else in the city on land that they either owned or in a place to which the city agrees instead of paying the fee. If the city bases mitigation on the size of the tree, then S.B. 744 requires the amount of the credit to be based on at least 60 percent of the projected size of the planted tree at full maturity.

The committee substitute to S.B. 744 has several changes to attempt to address the concerns of the Nature Conservancy, the Texas Municipal League, cities and the military. The Texas Association of Builders and my office are continuing to work with all parties to make the bill more satisfactory to them all, but we would like to move the bill and are committed to addressing those changes on the Senate floor.

The substitute:

- Clarifies that the owner's property on which the trees may be planted is the property on which the trees were removed (it will keep the existing language that the city and landowner can agree on other land).
- Lowers the credit percentage that a landowner gets for trees planted from 60 percent to 50 percent.
- Provides that the trees planted meet a minimum size of two inches in diameter.
- Allows cities to work with organizations that provide tree science/heat island mapping services in determining where to plant the trees.
- Exempts land that is within five miles of a military base from the bill.
- Exempts other city regulations on the size and number of trees that must be planted, as long as those regulations do not conflict with the credit requirements.

C.S.S.B. 744 amends current law relating to a tree planting credit to offset tree mitigation fees imposed by a municipality.

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 Subchapter Z, Chapter 212, Local Government Code, by adding Section 212.905, as follows:

Sec. 212.905. TREE MITIGATION FEE CREDIT FOR PLANTED TREES. (a) Requires a municipality that imposes a tree mitigation fee for tree removal that is necessary for development or construction on a person's property that is located in the municipality to allow that person to apply for a credit for tree planting under this section to offset the amount of the fee.

(b) Requires that an application for a credit under Subsection (a) be in the form and manner prescribed by the municipality. Requires that the tree, to qualify for a credit under this section, be planted on property for which the tree mitigation fee was assessed or mutually agreed upon by the municipality and the person and at least two inches in diameter at the point on the trunk 4.5 feet above ground.

(c) Authorizes the municipality and the person, for purposes of Subsection (b)(1)(B), to consult with an academic organization, state agency, or nonprofit organization to identify an area for which tree planting will best address the science-based benefits of trees and other reforestation needs of the municipality.

(d) Requires that the amount of a credit provided to a person be applied in the same manner as the tree mitigation fee assessed against the person. Requires that the amount of the credit, if the amount of the tree mitigation fee is based on the size of the tree being removed, be based on at least 50 percent of the projected size of the planted tree at full maturity, as determined by the municipality.

(e) Provides that, as long as the municipality meets the requirement to provide a person a credit under Subsection (a), this section does not affect the ability of a municipality to make certain determinations.

(f) Provides that this section does not apply to property within five miles of a federal military base in active use as of September 1, 2017.

SECTION 2. Makes application of this Act prospective.

SECTION 3. Effective date: upon passage or September 1, 2017.