

BILL ANALYSIS

Senate Research Center
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C.S.H.B. 7
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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.

H.B. 7 requires a municipality that imposes a tree mitigation fee that is necessary for development or construction to allow the developer to apply for a credit for tree planting to offset the fee. In order to qualify for the credit, a replacement tree must:

- be planted on property where the original tree was cut down; or
- be planted in a place mutually agreed upon by the city and the property owner; and
- be at least two inches at diameter at 4.5 feet above the ground (this is called "breast height" in tree lingo).

The bill allows the landowners and city to consult with academic organizations, state agencies, and non-profits to determine the best place for replacement trees.

H.B. 7 requires that a tree planting credit be applied in the same manner as the tree mitigation fee and requires that the credit be at least 50 percent of the amount of the mitigation fee. The bill clarifies that it does not limit a city's power to determine the size, number, and type of replacement trees, the requirements for tree removal, and the best practices associated with tree planting. Finally, added Subsection (f) clarifies that this bill does not apply to property within five miles of a military base in active use as of December 1, 2017. (Original Author's / Sponsor's Statement of Intent)

C.S.H.B. 7 amends current law relating to municipal regulation of the removal of trees or vegetation on private property.

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 Section 212.003(a), Local Government Code, as follows:

(a) Prohibits a municipality, unless otherwise authorized by state law, in its extraterritorial jurisdiction from regulating:

(1) through (3) makes no changes to these subdivisions;

(4) and (5) makes nonsubstantive changes; or

(6) the ability of an owner of property that has been platted to remove a tree or vegetation on the owner's property, except as necessary to mitigate tree-borne diseases as recommended by the Texas A&M Forest Service, including by requiring the owner to file an affidavit or notice before removing the tree or vegetation or imposing a tree mitigation fee.

Makes a nonsubstantive change.

SECTION 2. Amends Subchapter Z, Chapter 212, Local Government Code, by adding Section 212.905, as follows:

Sec. 212.905. REGULATION OF TREE REMOVAL. (a) Defines "residential structure" and "tree mitigation fee."

(b) Requires a municipality that imposes a tree mitigation fee for tree removal on a person's property to allow that person to apply for a credit for tree planting under this section to offset the amount of the fee.

(c) Requires that an application for a credit under Subsection (b) be in the form and manner prescribed by the municipality. Requires that a tree, to qualify for a credit under this section, be:

(1) planted on property:

(A) for which the tree mitigation fee was assessed; or

(B) mutually agreed upon by the municipality and the person; and

(2) at least two inches in diameter at the point on the trunk 4.5 feet above ground.

(d) Authorizes the municipality and the person, for purposes of Subsection (c)(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.

(e) Requires that the amount of a credit provided to a person under this section be applied in the same manner as the tree mitigation fee assessed against the person and equal to the amount of the tree mitigation fee assessed against the person if the property is an existing one-family or two-family dwelling that is the person's residence; at least 50 percent of the amount of the tree mitigation fee assessed against the person if certain requirements are met; or at least 40 percent of the amount of the tree mitigation fee assessed against the person if certain requirements are met.

(f) Provides that as long as the municipality meets the requirement to provide a person a credit under Subsection (b), this section does not affect the ability of or require a municipality to determine the type of trees that are required to be planted to receive a credit under this section, except as provided by Subsection (c); the requirements for tree removal and corresponding tree mitigation fees, if applicable; the requirements for tree-planting methods and best management practices to ensure that the tree grows to the anticipated height at maturity; or the amount of a tree mitigation fee, except that a tree mitigation fee is prohibited from exceeding \$400.

(g) Prohibits a municipality from imposing a tree mitigation fee for the removal of a tree that is diseased or dead or poses an imminent or immediate threat to persons or property.

(h) Prohibits a municipality from prohibiting the removal of a tree that is less than 24 inches in diameter at the point on the trunk 4.5 feet above the ground, is diseased or dead, or poses an imminent or immediate threat to persons or property.

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

SECTION 3. Makes application of this Act prospective.

SECTION 4. Effective date: December 1, 2017.