

By: Fraser

S.B. No. 1741

A BILL TO BE ENTITLED

AN ACT

relating to tree mitigation fees imposed by municipalities.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Chapter 212, Local Government Code, is amended by adding Subchapter H to read as follows:

SUBCHAPTER H. MUNICIPAL TREE MITIGATION FEE

Sec. 212.191. APPLICABILITY. 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. A municipality that requires a tree mitigation fee to offset the impact of an activity that a municipal permit authorizes must 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. A permit applicant may 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. The appeal must be in writing and specify the grounds for the appeal.

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

1 (b) At the hearing the permit applicant may present evidence
2 and witness testimony that is relevant to the tree mitigation fee
3 determination.

4 (c) The permit applicant may appear at the hearing in person
5 or by agent or attorney.

6 (d) Not later than the 30th day after the date the hearing
7 concludes, the governing body shall make a final determination
8 regarding the amount of the tree mitigation fee.

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

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

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

20 Sec. 212.196. NO WAIVER OF RIGHT TO APPEAL. (a) A
21 municipality may not require a permit applicant to waive a right of
22 appeal under this subchapter as a condition for approval of a
23 permit.

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

27 Sec. 212.197. APPLICATION OF LAW RELATED TO CAPITAL

1 IMPROVEMENTS. This subchapter does not diminish the authority or
2 modify the procedures specified by Chapter 395.

3 SECTION 2. (a) Except as provided by Subsection (b) of this
4 section, the changes in law made by Subchapter H, Chapter 212, Local
5 Government Code, as added by this Act, apply only to a tree
6 mitigation fee assessed by a municipality on or after the effective
7 date of this Act.

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

14 SECTION 3. This Act takes effect immediately if it receives
15 a vote of two-thirds of all the members elected to each house, as
16 provided by Section 39, Article III, Texas Constitution. If this
17 Act does not receive the vote necessary for immediate effect, this
18 Act takes effect September 1, 2011.