

1-1 By: Fraser S.B. No. 1741
1-2 (In the Senate - Filed March 11, 2011; March 23, 2011, read
1-3 first time and referred to Committee on Natural Resources;
1-4 April 13, 2011, reported favorably by the following vote: Yeas 7,
1-5 Nays 0; April 13, 2011, sent to printer.)

1-6 A BILL TO BE ENTITLED
1-7 AN ACT

1-8 relating to tree mitigation fees imposed by municipalities.

1-9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-10 SECTION 1. Chapter 212, Local Government Code, is amended
1-11 by adding Subchapter H to read as follows:

1-12 SUBCHAPTER H. MUNICIPAL TREE MITIGATION FEE

1-13 Sec. 212.191. APPLICABILITY. This subchapter applies to a
1-14 municipality that requires as a condition for approval of a permit
1-15 that an applicant pay the municipality or a third party a tree
1-16 mitigation fee.

1-17 Sec. 212.192. AMOUNT OF MUNICIPAL TREE MITIGATION FEE. A
1-18 municipality that requires a tree mitigation fee to offset the
1-19 impact of an activity that a municipal permit authorizes must set
1-20 the fee in an amount that is roughly proportionate to the impact
1-21 that the activity will have on the public.

1-22 Sec. 212.193. FILING OF APPEAL WITH MUNICIPALITY. A permit
1-23 applicant may appeal the amount of a tree mitigation fee set by a
1-24 municipality under this subchapter by filing an appeal with the
1-25 governing body of the municipality. The appeal must be in writing
1-26 and specify the grounds for the appeal.

1-27 Sec. 212.194. HEARING ON APPEAL TO MUNICIPALITY. (a) Not
1-28 later than the 30th day after the date the notice of appeal is filed
1-29 under Section 212.193, the governing body of the municipality shall
1-30 set a hearing for the appeal.

1-31 (b) At the hearing the permit applicant may present evidence
1-32 and witness testimony that is relevant to the tree mitigation fee
1-33 determination.

1-34 (c) The permit applicant may appear at the hearing in person
1-35 or by agent or attorney.

1-36 (d) Not later than the 30th day after the date the hearing
1-37 concludes, the governing body shall make a final determination
1-38 regarding the amount of the tree mitigation fee.

1-39 Sec. 212.195. APPEAL TO COUNTY OR DISTRICT COURT. (a) Not
1-40 later than the 30th day after the date the final determination is
1-41 made under Section 212.194, a permit applicant may appeal the
1-42 determination to a county or district court in the county in which
1-43 the activity to be permitted will occur.

1-44 (b) The municipality shall have the burden of proof to
1-45 establish that the amount of the tree mitigation fee is roughly
1-46 proportionate to the impact that the activity to be permitted will
1-47 have on the public.

1-48 (c) The court shall award attorney's fees and costs of court
1-49 to a permit applicant who prevails in a suit under this section.

1-50 Sec. 212.196. NO WAIVER OF RIGHT TO APPEAL. (a) A
1-51 municipality may not require a permit applicant to waive a right of
1-52 appeal under this subchapter as a condition for approval of a
1-53 permit.

1-54 (b) A permit applicant who pays a contested tree mitigation
1-55 fee does not waive a right of appeal under this subchapter by taking
1-56 an action authorized by a permit issued by the municipality.

1-57 Sec. 212.197. APPLICATION OF LAW RELATED TO CAPITAL
1-58 IMPROVEMENTS. This subchapter does not diminish the authority or
1-59 modify the procedures specified by Chapter 395.

1-60 SECTION 2. (a) Except as provided by Subsection (b) of
1-61 this section, the changes in law made by Subchapter H, Chapter 212,
1-62 Local Government Code, as added by this Act, apply only to a tree
1-63 mitigation fee assessed by a municipality on or after the effective
1-64 date of this Act.

2-1 (b) The changes in law made by Subchapter H, Chapter 212,
2-2 Local Government Code, as added by this Act, apply to a contested
2-3 tree mitigation fee assessed by a municipality before the effective
2-4 date of this Act if an appeal of the amount of the fee has not been
2-5 finally determined or adjudicated on the effective date of this
2-6 Act.

2-7 SECTION 3. This Act takes effect immediately if it receives
2-8 a vote of two-thirds of all the members elected to each house, as
2-9 provided by Section 39, Article III, Texas Constitution. If this
2-10 Act does not receive the vote necessary for immediate effect, this
2-11 Act takes effect September 1, 2011.

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