

BILL ANALYSIS

C.S.H.B. 1858
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Business & Industry
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Texas recently endured a series of destructive wildfires that engulfed millions of acres of land and destroyed thousands of homes and other structures. Under current law, certain political subdivisions may restrict homeowners' ability to clear their property of trees and other vegetation, including trees and vegetation that might increase the risk of fire on such property, and interested parties contend that homeowners should have the right to clear their property of vegetation that could fuel a fire. C.S.H.B. 1858 seeks to amend the law to assert a homeowner's right to clear the homeowner's property for the purposes of fire prevention.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.H.B. 1858 amends the Local Government Code to prohibit a municipality, county, or other political subdivision from enacting or enforcing any ordinance, rule, or other regulation that restricts a property owner's ability to remove a tree or vegetation on the owner's property that the owner believes poses a risk of fire to a structure on the property or on adjacent property, including a regulation that requires the owner to file an affidavit or notice before removing the tree or vegetation. The bill specifies that these provisions do not prevent the enforcement of an ordinance, rule, or other regulation on property being developed under a municipal permit; an ordinance, rule, or other regulation that restricts a property owner's ability to remove certain trees; or an ordinance, rule, or other regulation that is designed to mitigate tree-borne diseases as recommended by the Texas A&M Forest Service.

C.S.H.B. 1858 amends the Property Code to prohibit a property owners' association from including or enforcing a provision in a dedicatory instrument that restricts a property owner's ability to undertake such removal of a tree or vegetation on the owner's property other than a provision designed to mitigate tree-borne disease as recommended by the Texas A&M Forest Service. The bill applies to a dedicatory instrument without regard to whether the dedicatory instrument takes effect or is renewed before, on, or after the bill's effective date.

EFFECTIVE DATE

On passage, or, if the bill does not receive the necessary vote, September 1, 2013.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 1858 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and highlighted in a manner that indicates the substantial differences between the introduced and committee substitute versions of the bill.

INTRODUCED

SECTION 1. Section 240.909(b), Local Government Code, is amended.

SECTION 2. The heading to Chapter 250, Local Government Code, is amended.

SECTION 3. Chapter 250, Local Government Code, is amended by adding Section 250.007 to read as follows:

Sec. 250.007. REMOVAL OF TREE OR VEGETATION THAT POSES FIRE RISK.

A municipality, county, or other political subdivision may not enact or enforce any ordinance, rule, or other regulation that restricts the ability of a property owner to remove a tree or vegetation on the owner's property that the owner believes poses a risk of fire to a structure on the property or on adjacent property, including a regulation that requires the owner to file an affidavit or notice before removing the tree or vegetation.

SECTION 4. Chapter 202, Property Code, is amended by adding Section 202.013 to read as follows:

Sec. 202.013. REGULATION OF CERTAIN TREE OR VEGETATION

HOUSE COMMITTEE SUBSTITUTE

SECTION 1. Same as introduced version.

SECTION 2. Same as introduced version.

SECTION 3. Chapter 250, Local Government Code, is amended by adding Section 250.007 to read as follows:

Sec. 250.007. REMOVAL OF TREE OR VEGETATION THAT POSES FIRE RISK.

(a) Except as provided by Subsections (b) and (c), a municipality, county, or other political subdivision may not enact or enforce any ordinance, rule, or other regulation that restricts the ability of a property owner to remove a tree or vegetation on the owner's property that the owner believes poses a risk of fire to a structure on the property or on adjacent property, including a regulation that requires the owner to file an affidavit or notice before removing the tree or vegetation.

(b) This section does not prevent the enforcement of an ordinance, rule, or other regulation:

(1) on property being developed under a municipal permit; or

(2) that:

(A) restricts the ability of a property owner to remove a tree eight inches or larger in diameter at four and a half feet above the natural ground, except that no restrictions may be made on the ability to remove a mesquite (genus Prosopis), juniper (genus Juniperus), or salt cedar (genus Tamarix) tree, regardless of size; or

(B) is designed to mitigate tree-borne diseases as recommended by the Texas A&M Forest Service.

(c) This section does not apply to a municipality whose extraterritorial jurisdiction is immediately adjacent to or includes all or part of a federal military installation in active use as of September 1, 2013.

SECTION 4. Chapter 202, Property Code, is amended by adding Section 202.013 to read as follows:

Sec. 202.013. REGULATION OF CERTAIN TREE OR VEGETATION

REMOVAL. A property owners' association may not include or enforce a provision in a dedicatory instrument that restricts the ability of a property owner to remove a tree or vegetation on the owner's property that the owner believes poses a risk of fire to a structure on the property or on adjacent property, including a provision that requires the owner to file an affidavit or notice before removing the tree or vegetation.

SECTION 5. Section 202.013, Property Code, as added by this Act, applies to a dedicatory instrument without regard to whether the dedicatory instrument takes effect or is renewed before, on, or after the effective date of this Act.

SECTION 6. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2013.

REMOVAL. (a) A property owners' association may not include or enforce a provision in a dedicatory instrument that restricts the ability of a property owner to remove a tree or vegetation on the owner's property that the owner believes poses a risk of fire to a structure on the property or on adjacent property, including a provision that requires the owner to file an affidavit or notice before removing the tree or vegetation.

(b) This section does not apply to a provision in a dedicatory instrument designed to mitigate tree-borne disease as recommended by the Texas A&M Forest Service.

SECTION 5. Same as introduced version.

SECTION 6. Same as introduced version.