

BILL ANALYSIS

C.S.H.B. 3741
By: Canales
Transportation
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Years of plantings in certain rights-of-way across the state have resulted in the obscuring of commercial interests along roadways where substantial investments have been made. Retail establishments such as auto dealers, restaurants, commercial signs, and other businesses who depend on roadway visibility to advertise their services are now obscured. Additionally, many businesses could use plantings to enhance their property's aesthetic appeal to the traveling public. Without basic vegetation maintenance or a mitigation program, businesses lose revenue, which affects the overall economy of the state, but the Texas Department of Transportation (TxDOT) lacks clear authority to create a right-of-way landscaping program. C.S.H.B. 3741 seeks to address these issues by requiring TxDOT to develop and implement such a program that will allow businesses to work with TxDOT to address right-of-way vegetation abutting or adjoining their businesses. The program would require landowners to bear all associated costs and to use plants that are native, regionally appropriate, and pollinator-friendly.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the Texas Department of Transportation in SECTION 1 of this bill.

ANALYSIS

C.S.H.B. 3741 amends the Transportation Code to require the Texas Department of Transportation (TxDOT) by rule to develop and implement a program to allow an owner of real property abutting or adjoining property acquired by TxDOT for the right-of-way of a road in the state highway system to do the following:

- plant vegetation or replace existing vegetation in the right-of-way, including its outer separation, that is located within 500 feet of the owner's property if the owner determines that the new vegetation will enhance the aesthetic appeal of the property; or
- replace existing vegetation in such a right-of-way if the vegetation to be replaced reduces the visibility of the property.

A property owner who plants or replaces vegetation under this provision is responsible for all costs associated with the planting or replacement, may only use plants that are native, regionally appropriate, and pollinator-friendly, and may not interfere with any public utility infrastructure located in the right-of-way.

C.S.H.B. 3741 prohibits the rules adopted by TxDOT for the program from impairing or relinquishing the state's right to use the right-of-way when needed to construct or reconstruct the road for which it was acquired and establishes that use by the owner of adjoining or abutting

real property under the bill is not abandonment of the right-of-way by TxDOT. The bill expressly does not require an applicable utility that performs work in the right-of-way to replace vegetation or provide compensation to an owner for replacing vegetation if the removal of vegetation is necessary to perform the work. Such a utility includes a publicly, privately, or cooperatively owned utility that provides telephone, telegraph, communications, electric, gas, heating, water, railroad, storm sewer, sanitary sewer, or pipeline service.

EFFECTIVE DATE

September 1, 2023.

COMPARISON OF INTRODUCED AND SUBSTITUTE

While C.S.H.B. 3741 may differ from the introduced in minor or nonsubstantive ways, the following summarizes the substantial differences between the introduced and committee substitute versions of the bill.

While the introduced and the substitute both require the TxDOT program to allow certain property owners to plant or replace right-of-way vegetation, the introduced applies with respect to landowners with property adjacent to the state highway system doing so in the right-of-way that affects their property, while the substitute applies with respect to an owner of real property abutting or adjoining property acquired for the right-of-way of a road in that system doing so.

The substitute includes the following, which were not present in the introduced:

- a requirement for TxDOT to develop and implement the program by rule;
- a condition on a property owner's authority to plant or replace existing vegetation that the owner determines the new vegetation will enhance the aesthetic appeal of the land;
- a condition on a property owner's authority to replace existing vegetation that the vegetation to be replaced reduces the visibility of the property;
- a requirement that the applicable right-of-way, including the outer separation, be located within 500 feet of the owner's property; and
- provisions establishing that:
 - the property owner is responsible for all costs associated with the vegetation and that planting may not interfere with public utility infrastructure located in the right-of-way;
 - the rules adopted by TxDOT may not impair or relinquish the state's right to use the right-of-way when needed to construct or reconstruct the applicable road;
 - use of property by an owner under the bill's provisions is not abandonment of the right-of-way by TxDOT; and
 - an applicable utility is not required to replace vegetation or provide an owner compensation for replacing vegetation if the vegetation removal is necessary to perform work in the right-of-way.