

By: Hilderbran

H.B. No. 1697

Substitute the following for H.B. No. 1697:

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C.S.H.B. No. 1697

A BILL TO BE ENTITLED

AN ACT

relating to the protection of real property used as open space or
for another similar purpose.

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

SECTION 1. Subchapter A, Chapter 183, Natural Resources
Code, is amended by adding Section 183.006 to read as follows:

Sec. 183.006. PROTECTION OF CERTAIN OPEN SPACE PROPERTY.

(a) In this section, "municipality" means only a home-rule
municipality that owns both a water utility and an electric
utility, each of which is governed by a board of trustees that is
not composed exclusively of members of the municipality's governing
body, and includes a department or agency of the municipality.

(b) This section applies only to:

(1) real property subject to a conservation easement
evidenced by an instrument dated on or after January 1, 1996, if the
easement was acquired by or transferred to a municipality or to a
nonprofit entity acting for the municipality for the purpose of
establishing or preserving:

(A) a park;

(B) an open space;

(C) a natural area;

(D) a wildlife conservation area;

(E) a public recreation area; or

(F) a nature preserve; and

1 (2) real property acquired by a municipality with
2 money collected from the imposition of a tax approved at an election
3 under Chapter 334, Local Government Code, for the purpose of
4 acquiring:

5 (A) open space;
6 (B) park property; or
7 (C) an area related to the protection of a
8 natural resource.

9 (c) Except as provided by Subsection (d) or (k), a
10 municipality or a nonprofit organization acting for the
11 municipality may not use, or authorize the use of, real property for
12 the construction, erection, or operation of a building, facility,
13 utility project, or other item of infrastructure unless that
14 building, facility, utility project, or other item of
15 infrastructure is to be used only for a purpose directly related to
16 the operation of the real property as a park, open space, natural
17 area, wildlife conservation area, public recreation area, or nature
18 preserve.

19 (d) If the terms of an original conservation easement
20 expressly authorize the construction or operation of a building,
21 facility, utility project, or other item of infrastructure, this
22 section does not prohibit the construction or operation of the
23 building, facility, utility project, or other item of
24 infrastructure.

25 (e) An action to enforce this section may be brought by:

26 (1) a person described by Section 183.003(a); or

27 (2) a taxpayer of the municipality.

1 (f) Sovereign immunity to suit and to liability is waived
2 for a suit to enforce this section or the terms of a conservation
3 easement subject to this section.

4 (g) A suit to enforce this section may be brought for:

5 (1) injunctive relief, mandamus, declaratory
6 judgment, or specific performance; and

7 (2) damages caused by an action in violation of this
8 section.

9 (h) A plaintiff who prevails in an action brought to enforce
10 this section is entitled to reasonable attorney's fees, costs of
11 court, and expenses directly related to the litigation required for
12 the enforcement of this section.

13 (i) A plaintiff described by Section 183.003(a)(1) who
14 prevails in an action under this section is entitled to:

15 (1) damages in an amount equal to the cost of restoring
16 the real property to its condition before the violation; or

17 (2) an injunction requiring the municipality to
18 restore the real property to its condition before the violation at
19 the municipality's expense.

20 (j) To the extent that this section is in conflict with any
21 other provision of state law or a municipal ordinance, this section
22 controls.

23 (k) This section does not prohibit the use of real property:

24 (1) under the terms of a mineral lease applicable to
25 the property; or

26 (2) by a gas utility, common carrier, or energy
27 transporter, as those terms are defined by Section 186.051,

1 Utilities Code, other than a municipally owned utility.

2 SECTION 2. This Act takes effect immediately if it receives
3 a vote of two-thirds of all the members elected to each house, as
4 provided by Section 39, Article III, Texas Constitution. If this
5 Act does not receive the vote necessary for immediate effect, this
6 Act takes effect September 1, 2007.