

By: Hilderbran

H.B. No. 1697

A BILL TO BE ENTITLED

AN ACT

relating to the protection of property subject to certain conservation easements.

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 PROPERTY SUBJECT TO CONSERVATION EASEMENT. (a) In this section, "municipality" means a home-rule municipality 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, which easement was acquired by or transferred to a municipality or to a nonprofit entity for the purpose of establishing or preserving a:

(A) park;

(B) open space;

(C) natural area;

(D) wildlife conservation area;

(E) public recreation area; or

(F) nature preserve; and

(2) a municipality the voters of which at an election held for that purpose have authorized the imposition of a tax to fund the municipality's acquisition of:

1 (A) open space;

2 (B) park property; or

3 (C) an area related to the protection of a
4 natural resource.

5 (c) A municipality or a nonprofit organization holding a
6 conservation easement on behalf of a municipality may not use, or
7 authorize the use of, real property subject to a conservation
8 easement for the construction, erection, or operation of a
9 building, facility, or other item of infrastructure unless that
10 infrastructure is to be used only for a purpose directly related to
11 the operation of the real property as a park, open space, natural
12 area, wildlife conservation area, public recreation area, or nature
13 preserve in accordance with the terms of the conservation easement.

14 (d) An action to enforce this section may be brought by:

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

16 (2) a taxpayer of the municipality.

17 (e) Sovereign immunity to suit and to liability is waived
18 for a suit to enforce this section or the terms of a conservation
19 easement subject to this section.

20 (f) A suit to enforce this section may be brought for:

21 (1) injunctive relief, mandamus, declaratory
22 judgment, or specific performance of the terms of the conservation
23 easement; and

24 (2) damages caused by an action in violation of this
25 section to the real property subject to the conservation easement.

26 (g) A plaintiff who prevails in an action brought to enforce
27 this section is entitled to reasonable attorney's fees, costs of

1 court, and expenses directly related to the litigation required for
2 the enforcement of this section.

3 (h) A plaintiff described by Section 183.003(a)(1) who
4 prevails in an action under this section is entitled to:

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

7 (2) an injunction requiring the municipality to
8 restore the real property to its condition before the violation at
9 the municipality's expense.

10 (i) To the extent that this section is in conflict with any
11 other provision of state law or a municipal ordinance, this section
12 controls.

13 SECTION 2. Section 183.006, Natural Resources Code, as
14 added by this Act, applies to an action taken by a municipality:

15 (1) on or after the effective date of this Act; or

16 (2) before the effective date of this Act if the action
17 is the subject of litigation filed after January 1, 2005, in which a
18 final judgment has not been entered as of the effective date of this
19 Act.

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