

By: Hegar

S.B. No. 1677

A BILL TO BE ENTITLED

AN ACT

relating to conservation easements created by governmental action.

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

SECTION 1. Chapter 2007, Government Code, is amended by adding Subchapter D to read as follows:

SUBCHAPTER D. CONDEMNATION OF CONSERVATION EASEMENTS

Sec. 2007.101. DEFINITIONS. In this subchapter:

(1) "Buffer zone" means an area within which buildings and other water impermeable improvements are prohibited.

(2) "Governmental action" includes an action by any governmental entity to enforce or implement any ordinance, rule, regulation, resolution, policy, guideline, or similar measure that affects the use or development of privately owned property, including:

(A) subdivision and platting;

(B) site development;

(C) building construction;

(D) stormwater management and stormwater quality;

(E) environmental controls;

(F) provision of utility services through service agreements and other methods;

(G) incorporation of land into the jurisdictional boundaries of a governmental entity, by annexation

1 or other method;

2 (H) zoning classifications requiring a
3 particular lot size or open space or limiting impervious cover; and

4 (I) flood or drainage management outside the
5 boundaries of the 100-year floodplain.

6 (3) "100-year floodplain" means an area in the
7 100-year floodplain that is susceptible to being inundated by water
8 from any source as identified by the Federal Emergency Management
9 Agency under the National Flood Insurance Act of 1968 (42 U.S.C.
10 Sections 4001-4127).

11 (4) "Impervious cover" means surface improvements
12 constructed on land that prevent the infiltration of rainwater into
13 the soil, excluding an area in a natural or undeveloped state.

14 (5) "Natural or undeveloped state" means an area of
15 private real property that is permeable to water, including:

16 (A) an undeveloped area, buffer zone, building
17 setback area, stormwater detention facility, pond, vegetated
18 landscaped surface, or irrigated or nonirrigated natural turf
19 sports field or golf course;

20 (B) an area paved with water permeable concrete;
21 and

22 (C) a roofing area incorporated into a rainwater
23 collection system that collects and stores at least 1.1 inches of
24 rainfall in a one-hour period.

25 Sec. 2007.102. GENERAL PROVISIONS. (a) A governmental
26 action by a governmental entity creates a conservation easement if
27 the governmental action has the effect of:

1 (1) requiring that more than 55 percent of the surface
2 area of any parcel or lot of an owner's property remain in a natural
3 or undeveloped state, excluding the portion of the property located
4 in the 100-year floodplain; or

5 (2) requiring a buffer zone adjacent to the portion of
6 the property located in the 100-year floodplain or adjacent to an
7 inundation easement of a man-made lake, impoundment, or reservoir.

8 (b) If an owner affected by a governmental action that
9 creates a conservation easement does not consent to or is not a
10 party to an instrument creating a conservation easement as required
11 by Section 183.002(e), Natural Resources Code, a conservation
12 easement on the affected real property may be created only by a
13 proceeding under this subchapter.

14 Sec. 2007.103. APPLICABILITY. (a) Except as provided by
15 Subsection (b), this subchapter applies to a governmental action
16 that affects the use or development of privately owned real
17 property.

18 (b) This subchapter does not apply to the following
19 governmental actions:

20 (1) a lawful forfeiture or seizure of contraband as
21 defined by Article 59.01, Code of Criminal Procedure;

22 (2) a lawful seizure of property as evidence of a crime
23 or violation of law;

24 (3) the authority of a governmental entity with
25 respect to implementing or enforcing an ordinance, rule, or
26 statutory standard of a program, plan, or ordinance that was
27 adopted under:

1 (A) the Coastal Zone Management Act of 1972 (16
2 U.S.C. Section 1451 et seq.); or

3 (B) Subtitle E, Title 2, Natural Resources Code;
4 (4) a permit, order, rule, regulation, or other action
5 issued, adopted, or undertaken by a governmental entity in
6 connection with:

7 (A) the Coastal Zone Management Act of 1972 (16
8 U.S.C. Section 1451 et seq.); or

9 (B) Subtitle E, Title 2, Natural Resources Code;
10 (5) the enforcement or implementation of Subchapter B,
11 Chapter 61, Natural Resources Code, or to the enforcement or
12 implementation of any rule or similar measure adopted under that
13 subchapter;

14 (6) an action taken by a governmental entity to ensure
15 compliance with on-site sewage facility regulations adopted by the
16 Texas Commission on Environmental Quality; or

17 (7) an action taken by a governmental entity to zone a
18 particular use of a building structure or building height,
19 excluding a zoning classification relating to lot size, open-space
20 requirements, or impervious cover limitations.

21 (c) Section 2007.003 does not apply to this subchapter.

22 Sec. 2007.104. ENFORCEMENT. (a) An owner may bring suit
23 under this subchapter to determine whether a governmental action
24 creates a conservation easement on the owner's property.

25 (b) An owner is not required to pursue or exhaust
26 administrative remedies against a governmental entity before
27 bringing suit under this subchapter.

1 (c) A suit under this subchapter must be filed in a district
2 court in the county in which the affected property is located.

3 (d) If the affected property is located in more than one
4 county, the owner may file suit in any county in which any portion
5 of the affected property is located.

6 (e) A suit under this subchapter must be filed not later
7 than the second anniversary of the later of:

8 (1) the date the owner knew or reasonably should have
9 known that the governmental action created a conservation easement
10 on the owner's property; or

11 (2) the date a land use permit is denied because of a
12 conservation easement created by a governmental action.

13 (f) If the court determines that a conservation easement has
14 been created:

15 (1) the judge shall:

16 (A) include a finding that determines the value
17 of the conservation easement in the manner provided by Section
18 21.042, Property Code, as of the effective date of the governmental
19 action; and

20 (B) grant the governmental entity the option to
21 modify the governmental action not later than the 30th day after the
22 date of the order to void the creation of the conservation easement;
23 and

24 (2) the governmental entity may elect to:

25 (A) modify the governmental action to void the
26 creation of the conservation easement; or

27 (B) compensate the owner for the conservation

1 easement in accordance with the determination provided by the court
2 judgment.

3 (g) If the governmental entity elects to pay compensation to
4 the owner for the creation of a conservation easement:

5 (1) the governmental entity shall pay the owner the
6 amount determined by the court not later than the 30th day after the
7 date of the judgment; and

8 (2) the owner shall execute and deliver to the
9 governmental entity an instrument in recordable form consenting to
10 the creation of a conservation easement as determined by the
11 judgment and in accordance with Section 183.002, Natural Resources
12 Code.

13 (h) A person aggrieved by a judgment rendered in a suit
14 filed under this subchapter may appeal as provided by law.

15 (i) If a governmental entity appeals a judgment in a suit
16 filed under this subchapter, the district court shall enjoin the
17 governmental entity from enforcing the governmental action that
18 created the conservation easement pending the appeal of the suit.

19 (j) The court shall award an owner who prevails in a suit
20 under this subchapter reasonable and necessary attorney's fees and
21 court costs.

22 (k) Sovereign immunity to liability is waived to the extent
23 the governmental entity elects to pay compensation under this
24 subchapter.

25 SECTION 2. This Act applies only to a governmental action
26 that commences on or after the effective date of this Act. A
27 governmental action that commences before the effective date of

1 this Act is governed by the law that existed at the time the
2 governmental action commenced, and the former law is continued in
3 effect for that purpose.

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