

**LEGISLATIVE BUDGET BOARD**  
**Austin, Texas**

**FISCAL NOTE, 80TH LEGISLATIVE REGULAR SESSION**

**April 8, 2007**

**TO:** Honorable Harvey Hilderbran, Chair, House Committee on Culture, Recreation, & Tourism

**FROM:** John S. O'Brien, Director, Legislative Budget Board

**IN RE: HB1697** by Hilderbran (Relating to the protection of real property used as open space or for another similar purpose. ), **Committee Report 1st House, Substituted**

<b>No fiscal implication to the State is anticipated.</b>
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The bill would add Section 183.006 to the Natural Resources Code to prohibit certain home-rule municipalities or a nonprofit organization acting for the municipality from using or authorizing the use of real property for the construction, erection, or operation of a building, facility, utility project, or other item of infrastructure unless that infrastructure is to be used only for a purpose directly related to the operation of the real property as a park, open space, natural area, wildlife conservation area, public recreation area, or nature preserve. Certain exceptions to the prohibition are stipulated in the bill.

The bill would waive the municipality's sovereign immunity to suit and to liability regarding enforcement of Section 183.006, Natural Resources Code. If a plaintiff were to prevail against the municipality, the municipality would be responsible for paying the plaintiff's reasonable attorney's fees, costs of court, and expenses directly related to the litigation. If the plaintiff prevails in a suit and is an owner of an interest in the real property burdened by the easement, the municipality would be required to pay damages in an amount equal to the cost of restoring the real property or to restore the real property at the municipality's expense.

The bill would take effect immediately if it were to receive the required two-thirds vote in each house; otherwise, it would take effect September 1, 2007.

**Local Government Impact**

If a municipality were to be the subject of a lawsuit under the proposed statute and were to lose the suit, the municipality would incur costs in addition to its own legal expenses and those of the plaintiff. Those additional costs would vary depending on what is involved in restoring the affected real property to its original condition, but could be significant.

**Source Agencies:**

**LBB Staff:** JOB, DB, WK