BILL ANALYSIS

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Currently, when the state or a political subdivision wants to reserve private property for a compelling public interest they create easements. Chapter 183 (Conservation Easements) of the Natural Resources Code specifically grants authority to create a conservation easement to retain or protect natural, scenic, or open-space values of real property; protect natural resources; maintain or enhance air or water quality; or to preserve the historical, architectural, archeological, or cultural aspects of real property. An easement is created through eminent domain and must either have the property owner's consent or must provide fair market remuneration for the loss of the value of the property.

Cities have adopted ordinances which allow them to force property owners within their city limits to reserve almost all of the surface area of their property in a natural or underdeveloped state to achieve the same objectives as a conservation easement without gaining the property owners' consent or providing for remunerations.

S.B. 1919 attempts to strike a balance between the state law and the rights of local government by providing that any law, rule, policy, ordinance, or regulation which requires a property owner to keep 55 percent or more surface area in a natural or underdeveloped state (exclusive of the 100-year flood plain) must be done through a conservation easement.

As proposed, S.B. 1919 amends current law relating to the condemnation of conservation easements.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Subchapter B, Chapter 21, Property Code, by adding Section 21.0122, as follows:

Sec. 21.0122. CONSERVATION EASEMENT BY OPERATION OF LAW. (a) Provides that except as provided by Subsection (b), the application of any law, rule, policy, ordinance, or regulation promulgated under the Government Code, Local Government Code, Natural Resources Code, or Water Code that has the effect of requiring that more than 55 percent of the surface area of an owner's private real property remain in a natural or undeveloped state, exclusive of the 100-year floodplain as determined by an agency of the federal government, is a conservation easement, the establishment and enforcement of which requires the consent of the owner under Chapter 183 (Conservation Easements), Natural Resources Code, or the exercise of the power of eminent domain under this chapter.

(b) Provides that Subsection (a) does not apply to:

(1) the lawful forfeiture or seizure of contraband, as defined by Article 59.01 (Definitions), Code of Criminal Procedure;

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

(3) the authority of a municipality, a county, another political subdivision, the state, or an agency of the state with respect to the implementation or enforcement of an ordinance, rule, or statutory standard adopted under:

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

        (B) Subtitle E (Beaches and Dunes), Title 2 (Public Domain), Natural Resources Code;

(4) a permit, order, rule, regulation, or other action issued, adopted, or undertaken by a municipality, a county, another political subdivision, the state, or an agency of the state in connection with the laws described by Subdivisions (3)(A) and (B);

(5) the enforcement or implementation of Subchapter B (Access to Public Beaches), Chapter 61 (Use and Maintenance of Public Beaches), Natural Resources Code, as that subchapter existed on September 1, 1995, or to the enforcement or implementation of any rule or similar measure adopted under that subchapter and in existence on September 1, 1995; or

(6) an action taken by a political subdivision to ensure compliance with on-site sewage facility regulations adopted by the Texas Commission on Environmental Quality.

SECTION 2. Effective date: upon passage or September 1, 2013.