

BILL ANALYSIS

Senate Research Center
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S.B. 1677
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Natural Resources
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As Filed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

The 74th Legislature created Chapter 2007 (Governmental Action Affecting Private Property Rights), Government Code, in 1995 to afford private property owners more certainty that appropriate compensation would be provided if governmental actions substantially reduce a property's value. The Act has not resulted in the intended protection and certainty for property owners and has been largely ineffective due to exceptions for municipal land use regulations and the lack of a meaningful process to challenge the adequacy of takings impact assessments the Act mandates.

As proposed, S.B. 1677 strengthens takings provisions for land owners when certain regulations devalue their property.

RULEMAKING AUTHORITY

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

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Chapter 2007, Government Code, by adding Subchapter D, as follows:

SUBCHAPTER D. CONDEMNATION OF CONSERVATION EASEMENTS

Sec. 2007.101. DEFINITIONS. Defines "buffer zone," "governmental action," "100-year floodplain," "impervious cover," and "natural or undeveloped state."

Sec. 2007.102. GENERAL PROVISIONS. (a) Provides that a governmental action by a governmental entity creates a conservation easement if the governmental action has certain effects.

(b) Provides that if an owner affected by a governmental action that creates a conservation easement does not consent to or is not a party to an instrument creating a conservation easement as required by Section 183.002(e) (Creation, Conveyances, Acceptance, and Duration), Natural Resources Code, a conservation easement on the affected real property is authorized to be created only by a proceeding under this subchapter.

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

(b) Provides that this subchapter does not apply to certain governmental actions.

(c) Provides that Section 2007.003 (Applicability), Government Code, does not apply to this subchapter.

Sec. 2007.104. ENFORCEMENT. (a) Authorizes an owner to bring suit under this subchapter to determine whether a governmental action creates a conservation easement on the owner's property.

- (b) Provides that an owner is not required to pursue or exhaust administrative remedies against a governmental entity before bringing suit under this subchapter.
- (c) Requires a suit under this subchapter to be filed in a district court in the county in which the affected property is located.
- (d) Authorizes the owner to file suit in any county in which any portion of the affected property is located if the affected property is located in more than one county.
- (e) Requires a suit under this subchapter to be filed not later than the second anniversary of the date the owner knew or reasonably should have known that the governmental action created a conservation easement on the owner's property or the date a land use permit is denied because of a conservation easement created by a governmental action, whichever date is later.
- (f) Requires a judge to take certain actions if the court determines that a conservation easement has been created. Authorizes the governmental entity take certain actions if the court determines that a conservation easement has been created.
- (g) Requires a governmental entity and an owner to take certain actions if the governmental entity elects to pay compensation to the owner for the creation of a conservation easement.
- (h) Authorizes a person aggrieved by a judgment rendered in a suit filed under this subchapter to appeal as provided by law.
- (i) Requires the district court to enjoin the governmental entity from enforcing the governmental action that created the conservation easement pending the appeal of the suit if a governmental entity appeals a judgment in a suit filed under this subchapter.
- (j) Requires the court to award an owner who prevails in a suit under this subchapter reasonable and necessary attorney's fees and court costs.
- (k) Provides that sovereign immunity to liability is waived to the extent that the governmental entity elects to pay compensation under this subchapter.

SECTION 2. Makes application of this Act prospective.

SECTION 3. Effective date: September 1, 2007.