

BILL ANALYSIS

C.S.H.B. 895
By: Geren
Natural Resources
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Purchase of Development Rights (PDR) programs are voluntary transactions between land owners and public or private entities in which the development rights to real property are sold in order to preserve the land in its natural state.

PDR programs began in the 1970s when communities in the eastern United States, concerned by the rapid loss of the farms that supplied food and fiber for the region, instituted public finance measures that could fund the acquisition and retirement of development rights in order to preserve agricultural lands in perpetuity. Through PDR programs, a cash payment is made to a landowner for the value of the development rights associated with a land parcel. The owner continues to own the land and is compensated for relinquishing the right to develop it commercially. Agriculture and other uses of the land continue.

PDR programs have enabled land conservation at a much-reduced expense. The cost associated with PDR is generally less than the outright purchase of land, and costs associated with subsequent management of the land remain the responsibility of the landowner.

In Texas, ninety-seven percent of all land is in private hands. The average land value in Texas is five times higher if it is used for non-agriculture rather than agriculture. Between 1982 and 1997, Texas lost 2.3 million acres of productive farmland. Farmers and ranchers in Texas today are faced with escalating land costs, extreme weather such as drought and flooding, shrinking commodity costs, and encroaching development. Many landowners are finding that their property is worth much more to developers to build residential areas.

PDR is a voluntary option for landowners who never want to sell their land. Just as mineral rights attached to a parcel of land can be bought and sold, a willing landowner can sell the development rights to an entity such as a non-profit land trust or government entity. The program compensates landowners for the development value of their property, yet allows the landowner to retain the property and keep it in a non-developed state.

C.S.H.B. 895 establishes a PDR program in Texas and provides for the voluntary purchases of development rights of real property. The purpose of the program is to enable eligible holders, such as land trusts or local or state governments, to purchase development rights for conservation purposes from private landowners. Landowners participate in the program on a voluntary basis. Conservation purposes include retaining or protecting natural, scenic, or open-space values of real property or assuring its availability for agricultural, forest, recreational or open-space use; protecting natural resources; maintaining or enhancing air or water quality; or preserving the historical, architectural, archeological, or cultural aspects of real property. C.S.H.B. 895 establishes the structure of the Purchase of Development Rights program. While no funding mechanism is provided in C.S.H.B. 895, the bill establishes a PDR account so that private funds may be deposited and future funds may be leveraged. The bill creates the Texas Legacy Council to oversee the program and implement rules to determine eligible property.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the Texas Legacy Council in SECTION 3 (Section 183.064, Chapter 183, Subchapter B, Natural Resources Code) of this bill.

ANALYSIS

The bill amends the Texas Natural Resources Code Chapter 183 by designating sections 183.001 – 183.005 as Subchapter A, and by adding a heading for that subchapter to read: Subchapter A. Conservation Easements Generally. Chapter 183 is also amended by adding Subchapter B to read: Subchapter B. Purchase of Development Rights Grant Program.

The bill provides for the purpose of and outlines the basis for a PDR program. The program enables eligible holders, such as land trusts or local or state governments, to purchase development rights for conservation purposes from private landowners. Landowners participate in the program on a voluntary basis and eminent domain may not be used in the program to acquire land or development rights.

C.S.H.B. 895 creates The Texas Legacy Council (Council) which is composed of 11 members, nine of which are appointed and two of who are ex officio. These 11 members include four members appointed by the Governor, two members appointed by the Governor from a list of candidates submitted by the speaker of the House of Representatives, one member appointed by the Governor from a list of candidates submitted by the Texas Land Trust Council, and two members appointed by the Lieutenant Governor. The two ex officio members represent the Texas Department of Agriculture and the Texas Parks and Wildlife Department. Ex officio members have full voting powers.

Members of the council serve staggered six-year terms. The Governor shall designate the presiding officer of the council. Appointed members of the council are not entitled to compensation but can receive reimbursement of travel expenses. The bill outlines criteria for grounds for removal from the council. The council's presiding officer is required to provide members with their legal responsibilities for state officers. Training is required of council members prior to their participation.

The Council is required to develop and implement policies that provide for public input and must implement procedures for maintaining written complaints to the council.

The bill establishes the Purchase of Development Rights Account, which is a general revenue account to be used only to implement the purchase of development rights grant program. The account could consist of money transferred at the direction of the legislature; public and private grants, gifts, donations or contributions; and money from other sources, including mitigations, remediation and bond proceeds. Money in the account may be used to purchase development rights; to administer the program; and to cover the transaction costs incurred by a purchaser of development rights.

The role of the Texas Legacy Council is defined to develop, maintain, and administer a program to provide grants to purchase development rights. The council will adopt rules for administering the program. Texas Department of Agriculture will assist the council in carrying out its duties.

The bill provides that a grant may not constitute more than 50 percent of the project costs. The prospective purchaser must provide the remaining 50 percent of project costs. A landowner may choose to donate money or a portion of the appraised fair market value of the development rights to assist the purchaser in achieving this match.

The bill provides that the value of the development rights will be determined by a site-specific appraisal prepared by a Texas certified or licensed appraiser.

The bill requires that before a contract for the purchase of development rights is signed, the landowner who is selling the development rights must sign a disclosure statement. The bill also sets forth a sample statement and requires that a substantially similar form be used.

The Texas Legacy Council shall report to the legislature not later than January 1 of odd-numbered years, and the Council is also subject to the Texas Sunset Act.

The bill sets staggered terms for members of the Texas Legacy Council, and it allows for the training prohibition to go into effect January 1, 2005.

EFFECTIVE DATE

September 1, 2003

COMPARISON OF ORIGINAL TO SUBSTITUTE

C.S.H.B. 895 alters the definition of agriculture by changing the word “and” to “or” in the list of applicable agricultural activities (SECTION 2).

C.S.H.B. 895 specifies that a purchase of development rights may be used for a term specified by contractual agreement or in perpetuity (SECTION 3).

C.S.H.B. 895 changes one of the rules that shall be adopted by the council for administering the program from “development rights purchase procedures” to “procedures for term and perpetual development rights purchase” (SECTION 3).

C.S.H.B. 895 also adds Sec. 183.067 relating to disclosure statements. The section requires that before a contract for the purchase of development rights is signed, the landowner who is selling the development rights must sign a disclosure statement. The bill also sets forth a sample statement and requires that a substantially similar form be used (SECTION 3).