

## **BILL ANALYSIS**

C.S.H.B. 116

By: Geren

Land & Resource Management  
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 1970's 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. Twenty states currently have this type of program, and funding is handled in a variety of ways; including private donations. There are several federal funding sources that could possibly be leveraged: the Forest Legacy Program, the North American Wetland Conservation Act, and the USDA Farmland Protection Program. The recently passed federal Farm Bill provides \$1 billion for protection of farmland.

CSHB 116 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. CSHB 116 establishes the structure of the Purchase of Development Rights program. While no funding mechanism is provided in CSHB 116; the bill establishes a PDR account with the Comptroller 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**

SECTION 2. The General Land Commissioner (in consultation with the Texas Farm and Ranch Lands Conservation Advisory Council) is authorized to adopt rules in Sec. 183.058.

**ANALYSIS**

SECTION 1. Amends Chapter 183, Natural Resources Code, by designating Sections 183.001-183.005, Natural Resources Code, as Chapter 183A, Natural Resources Code, and by adding a heading for that subchapter to read as follows:

SUBCHAPTER A. CONSERVATION EASEMENTS GENERALLY

SECTION 2. Amends Chapter 183, Natural Resources Code, by adding Subchapter B as follows:

Sec. 183.051. PURPOSE. States that the purpose of this subchapter is to enable and facilitate the purchase and donation of certain easements.

Sec. 183.052. DEFINITIONS.

Defines "Agricultural conservation easement," "Commissioner," "Council," "Fund," "Land Office," "Program," "Purchase of agricultural conservation easement," "Qualified easement holder," "Qualified land. "

Sec. 183.053. TERMS OF AGRICULTURAL CONSERVATION EASEMENT.

Lists several factors that a seller and buyer should consider when negotiating easement terms (lump sum or payments, term of easement, etc.).

Sec. 183.054. TERMINATION OF EASEMENT.

Provides that an easement may not be assigned or enforced by a third party without the written consent of the landowner.

Provides a process by which the landowner can request and be granted a termination of the easement when the landowner is unable to meet the conservation goals.

Sec. 183.055. REPURCHASE BY LANDOWNER.

Provides that when a request for termination of the easement is granted that an appraisal of the fair market value of the agricultural value of the property will be made.

Defines "Fair market value" and "Agricultural value."

Requires the landowner to pay to the fund the difference between the fair market value and the agricultural value within 180 days of the appraisal.

Requires the easement holder to terminate the easement within 30 days of repayment.

Provides that the owner may not request another termination for five years if the request for termination is denied or the owner fails to repurchase the easement within 180 days.

Sec. 183.056. PROTECTED LAND; NOTICE OF TAKING.

Prohibits the state from taking land encumbered by an easement by eminent domain unless there is no feasible and prudent alternative and the project includes all reasonable planning to minimize harm to the property.

A public hearing is required to make the finding that the taking by eminent domain is required.

Requires the state and any of its subdivisions to pay to the fund the original amount granted for the easement and pay to the landowner the fair market value and agricultural value minus the original grant amount if the property is taken.

Sec. 183.057. TEXAS FARM AND RANCH LANDS  
CONSERVATION FUND.

Creates the Texas Agricultural Lands Conservation Fund as an account in the General Land Office for the purpose of buying easements through grants.

Prohibits the use of the fund to acquire property through eminent domain.

States that the fund consists of money appropriated by the legislature, grants, gifts, donations, or contributions, or funds from any other source.

Creates the Texas Farm and Ranch Lands Conservation Program to administer the fund.

Requires that the fund only be used to award grants to buy easements, to pay related transaction costs, and to pay no more than 5% of the fund for administrative costs.

Sec. 183. 058. ADMINISTRATION OF THE FUND.

Provides that the fund is managed by the General Land Commissioner who has the following discretionary powers:

Adopt rules

Request, accept, and use money or any item of value in furtherance of this subchapter.

Establish, charge, and collect money in connection with the programs provided by this subchapter.

Make, enter into, and enforce contracts that further the purposes of this subchapter.

Seek ways to coordinate and leverage sources of funding.

Adopt best practices and enforcement standards for the evaluation of easements.

Establish a protocol for the purchase of easements and for the distribution of funds.

Evaluate selection and eligibility based on certain criteria, and administer grants.

Ensure that easements purchased are not inconsistent with the preservation of open space and the conservation of wildlife habitat or water.

Award grants and approve termination of easements and take any other action necessary to further the goals of the program.

Provides the requirements of the application required to receive a grant.

#### Sec. 183.059. CRITERIA FOR AWARDING GRANTS.

States the criteria that the General Land Commissioner must adopt as part of scoring process for awarding grants.

#### Sec. 183.060. TEXAS FARM AND RANCH LANDS CONSERVATION ADVISORY COUNCIL.

Creates the Texas Farm and Ranch Lands Conservation Advisory Council to advise and assist the General Land Commissioner with the administration of the program.

Provides that the Council shall consist of the following:

One member who operates a family farm or ranch.

One member who is the designated representative of an agricultural banking or lending organization.

Two members who are the designated representatives of statewide agricultural organizations.

One member who has significant experience with water policy and management issues.

One member from an institution of higher education who has significant experience with wildlife management issues.

One ex-officio member who is the state conservationist of the USDA Natural Resource Conservation Service or a designee.

Provides that the members serve six year staggered terms.

Provides that the governor can appoint and remove members, but not discriminatorily.

Requires the General Land Commissioner to designate the chair and vice-chair to serve at his or her will. Authorizes the Council to appoint other officers.

Provides that members will not be paid, but can be reimbursed for travel expenses.

Requires the Council to meet at least twice per year.

Defines "Texas trade association"

Prohibits certain people from being appointed to the Council or named as general counsel.

Provides for grounds for removal from the council.

Provides that an action of the Council is not affected by the fact that grounds for removal exist for a member.

Requires the presiding officer to notify the General Land Commissioner and governor if he or she has knowledge that a potential ground for removal exists.

Requires the presiding officer, with help of others, to see that the members receive information regarding their responsibilities and certain applicable laws.

Requires that a member of the council receive certain specific training prior to voting, deliberating, or being counted as a member in attendance at a meeting.

Provides that a member is entitled to travel expenses incurred in attending the training program.

SECTION 3. Effective Date.

**EFFECTIVE DATE**

September 1, 2005

**COMPARISON OF ORIGINAL TO SUBSTITUTE**

The introduced bill's purpose is for the purchase of conservation easements generally, while the committee substitute is limited to agricultural conservation easements.

The introduced bill contains definitions relevant to conservation easements, while the committee substitute contains different definitions relevant to agricultural conservation easements.

The introduced bill places the administration of purchasing conservation easements in the hands of the Texas Legacy Council, while the committee substitute places the administration of purchasing agricultural conservation easements in the hands of the General Land Commissioner with the assistance of the Texas Farm and Ranch Lands Conservation Advisory Council.

The introduced bill has no provision for the taking by eminent domain of easement land, while the committee substitute provides provisions for such a taking.

The introduced bill puts the program under the control of the Department of Agriculture, while the committee substitute puts the program under the control of the General Land Office.

The introduced bill creates an 11 member Texas Legacy Council, while the committee substitute creates a seven member Texas Farm and Ranch Lands Conservation Advisory Council. The makeup of each council is also different.

The introduced bill has no provision for the criteria for making grants, while the committee substitute sets out certain criteria for awarding grants.

The introduced bill has no provision for the contents of an application for a grant, while the committee substitute states the contents of an application.

The introduced bill creates a fund in the general revenue fund, while the committee substitute creates a dedicated fund for the General Land Office.