

BILL ANALYSIS

C.S.S.B. 1273
By: Jackson, Mike
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.

CSSB 1273 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. CSSB 1273 establishes the structure of the Purchase of Development Rights program. While no funding mechanism is provided in CSSB 1273; 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 Farm and Ranch Lands Conservation Program to oversee the program and assist with the implementation of rules to determine eligible property.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the General Land Commissioner in SECTION 1 of this bill.

The Texas Farm and Ranch Lands Conservation Council is authorized to draft and submit rules to the commissioner in SECTION 1 (Sec. 183.062). The council does not have the authority to adopt rules.

ANALYSIS

SECTION 1. Amends Chapter 183, Natural Resources Code, by designating Sections 183.001-183.005, Natural Resources Code, as Subchapter A, 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. PROGRAM. Establishes the Texas Farm and Ranch Lands Conservation Program at the General Land Office.

Sec. 183.054. TERMS OF AGRICULTURAL CONSERVATION EASEMENT. Provides that an easement may be in perpetuity or for a period of 30 years. Lists several factors that a seller and buyer should consider when negotiating easement terms. Ensures that a third party may not enforce an easement without the written consent of the landowner

Sec. 183.055. TERMINATION OF EASEMENT. Provides a process by which the landowner may request and be granted a termination of the easement when the landowner is unable to meet the conservation goals.

Sec. 183.056. REPURCHASE BY LANDOWNER. Defines "Fair market value" and "Agricultural value."

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.

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. 183.057. PROTECTED LAND; NOTICE OF TAKING. Prohibits an agency of the state, a county, a municipality, other political subdivision, or a public utility 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 minimized harm to the property.

A public hearing is required to make the finding that the taking by eminent domain is required, and the governing body or officers of the governmental entity or the utility may consider local preferences in their deliberation.

Requires an agency of the state, a county, a municipality, other political subdivision, or a public utility to pay to the fund the original amount granted for the easement and pay to the landowner the fair market value less the original grant amount if the property is taken.

Sec. 183.058. 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.

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. 183.059. ADMINISTRATION OF THE FUND. Provides that the fund is managed by the General Land Commissioner in consultation with the council. Provides rulemaking authority necessary to perform the duties under the subchapter.

Provides the following additional discretionary powers:

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

Establish, charge, and collect money and penalties 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 for an application under this subchapter to be submitted by an applicant who is a qualified easement holder.

Sec. 183.060. CRITERIA FOR AWARDING GRANTS. States the criteria that the General Land Commissioner must adopt as part of scoring process for awarding grants.

Sec. 183.061. 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 appointments made by the governor:

One member who operates a family farm or ranch.

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

One member who is a certified real estate appraiser with experience in appraising farms and ranches.

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

One member who is a representative of a statewide nonprofit organization representing land trusts operating in Texas.

One member who has significant experience with natural resources issues.

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

Two ex-officio members. One who is the state conservationist of the USDA Natural Resource Conservation Service or a designee. Another who is the presiding officer of the Parks and Wildlife Commission or that persons 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 or that person's designee to serve as the presiding officer of the council and allows the Commissioner to designate an assistant presiding officer. 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.

Prohibits certain individuals from being appointed to the council.

Defines "Texas trade association."

Prohibits certain individuals from being appointed 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 commissioner and governor if he or she has knowledge that a potential ground for removal exists.

Requires the presiding officer or that person's designee, with help of staff, 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.

Sec. 183.062. PROPOSED RULES. Provides the ability for the council to develop and submit proposed rules governing the program to the commissioner for approval.

Sec. 183.063. EFFECT ON TAX APPRAISAL. Ensures that a conservation easement does not adversely effect the eligibility of the property for agricultural valuation purposes.

Sec. 183.064. REPORT TO TEXAS DEPARTMENT OF TRANSPORTATION. Requires the land office to provide TxDOT with a legal description of each property subject to an easement under this subchapter as well as the date of closing.

C.S.S.B. 1273 79(R)

SECTION 3. Effective Date.

EFFECTIVE DATE

September 1, 2005

COMPARISON OF ORIGINAL TO SUBSTITUTE

The original version adds Chapter 49A to Title 4 of the Agriculture Code and the substitute amends Chapter 183 of the Natural Resources Code.

The most substantial difference between the original bill and the substitute is generally that the original 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 original bill places the administration of purchasing conservation easements in the hands of the Texas Department of Agriculture and the specific policy and rulemaking associated with the administration of the program in the hands of the Texas Farmland and Ranchland Conservation Council. The 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 original addresses venue for suits filed on behalf of the council and the substitute provides no such section.

The original bill provides specific language associated with the filing of complaints. The substitute contains no such provision.

The original establishes that the council is subject to the Texas Sunset Act and the substitute does not.

The committee substitute makes numerous conforming changes to the original bill by amending it to fit the drafting requirements of the Texas Legislative Council.