

By: Geren, Escobar

H.B. No. 116

Substitute the following for H.B. No. 116:

By: Miller

C.S.H.B. No. 116

A BILL TO BE ENTITLED

AN ACT

relating to the establishment of the farm and ranch lands conservation program.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

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

SUBCHAPTER A. CONSERVATION EASEMENTS GENERALLY

SECTION 2. Chapter 183, Natural Resources Code, is amended by adding Subchapter B to read as follows:

SUBCHAPTER B. TEXAS FARM AND RANCH LANDS CONSERVATION PROGRAM

Sec. 183.051. PURPOSE. The purpose of this subchapter is to enable and facilitate the purchase and donation of agricultural conservation easements.

Sec. 183.052. DEFINITIONS. In this subchapter:

(1) "Agricultural conservation easement" means a conservation easement as that term is defined in Section 183.001, except that an easement established under this subchapter for the specific purpose of conserving qualified land must accomplish one or more of the following additional purposes:

(A) conserve water quality or quantity;

(B) conserve native wildlife species through

1 protection of their habitat;

2 (C) conserve rare or sensitive plant species; or

3 (D) conserve large tracts of qualified
4 open-space land that are threatened with fragmentation or
5 development.

6 (2) "Commissioner" means the commissioner of the
7 General Land Office.

8 (3) "Council" means the seven member Texas Farm and
9 Ranch Lands Conservation Advisory Council, appointed by the
10 governor, whose purpose is to provide recommendations to the
11 commissioner on the administration of the program.

12 (4) "Fund" means the Texas farm and ranch lands
13 conservation fund, an account of the land office dedicated to
14 funding the purchase of agricultural conservation easements
15 through grants to qualified easement holders under this subchapter.

16 (5) "Land office" means the General Land Office.

17 (6) "Program" means the Texas farm and ranch lands
18 conservation program of the land office, the purpose of which is to
19 conserve qualified lands through the purchase of agricultural
20 conservation easements.

21 (7) "Purchase of agricultural conservation easement"
22 means the purchase from a willing seller of an agricultural
23 conservation easement on qualified land either in perpetuity or for
24 a term of 30 years.

25 (8) "Qualified easement holder" means a "holder" as
26 defined by Section 183.001, except that for purposes of this
27 subchapter, only a state agency, a municipality or a Section

1 501(c)(3) organization that is organized for the purpose of
2 preserving agriculture, open space, or natural resources may
3 receive grants from the fund.

4 (9) "Qualified land" means qualified open-space land
5 as that term is defined by Section 23.51, Tax Code.

6 Sec. 183.053. TERMS OF AGRICULTURAL CONSERVATION EASEMENT.

7 The owner of qualified land and a potential purchaser of an
8 agricultural conservation easement should consider and negotiate
9 easement terms, including the following considerations:

10 (1) whether the landowner will receive a lump sum or
11 annual or monthly payments;

12 (2) whether the term of the easement shall be
13 perpetual or for a term of 30 years;

14 (3) whether a term easement is renewable;

15 (4) whether the landowner retains limited development
16 rights for personal or family residences on the land; and

17 (5) the market value of the easement.

18 Sec. 183.054. TERMINATION OF EASEMENT. (a) An easement
19 under this subchapter may not be assigned to or enforced by a third
20 party without the express written consent of the landowner.

21 (b) Any time after an agricultural conservation easement is
22 acquired with a grant awarded under this subchapter, the landowner
23 may request the commissioner to terminate the easement as provided
24 by this subchapter on the ground that the landowner is unable to
25 meet the conservation goals as described in this subchapter. The
26 termination request must contain a verifiable statement of
27 impossibility.

1 (c) Upon receipt of the request for termination, the
2 commissioner shall notify the easement holder and conduct an
3 inquiry. Within 180 days after receipt of the request the
4 commissioner shall notify the parties of the decision to grant or
5 deny the request for termination. Either party shall have 45 days
6 from the date of the notification to appeal the decision in district
7 court.

8 Sec. 183.055. REPURCHASE BY LANDOWNER. (a) If a
9 request for termination is granted, the commissioner shall order an
10 appraisal of the fair market value and the agricultural value of the
11 property subject to the easement. The landowner shall bear the cost
12 of the appraisal.

13 (b) For purposes of this section:

14 (1) "Fair market value" means the price as of the
15 appraisal date that a buyer willing, but not obligated, to buy would
16 pay for the land at its best and most beneficial use under any
17 obtainable development zoning category.

18 (2) "Agricultural value" means the price as of the
19 appraisal date a buyer willing, but not obligated, to buy would pay
20 for a farm or ranch unit with land comparable in quality and
21 composition to the subject property, but located in the nearest
22 location where profitable farming or ranching is feasible.

23 (c) Within 180 days of the appraisal, the landowner must pay
24 to the fund an amount equal to the difference between the current
25 fair market value and the agricultural value.

26 (d) Within 30 days of payment as described by Subsection (c)
27 of this section the easement holder shall terminate the easement.

1 (e) If the request for termination is denied, or the owner
2 fails to repurchase the easement within 180 days of the appraisal,
3 the owner may not subsequently request termination until the
4 expiration of five years from the date of the last request.

5 Sec. 183.056. PROTECTED LAND; NOTICE OF TAKING. (a) A
6 department or agency of this state, a county, a municipality, or
7 other political subdivision may not approve any program or project
8 that requires the use or taking through eminent domain of private
9 land encumbered by an agricultural conservation easement purchased
10 under this subchapter unless the governmental entity acting through
11 its governing body or officers determines that:

12 (1) there is no feasible and prudent alternative to
13 the use or taking of the land; and

14 (2) the program or project includes all reasonable
15 planning to minimize harm to the land resulting from the use or
16 taking.

17 (b) A finding required by Subsection (a) may be made only at
18 a properly noticed public hearing.

19 (c) The governing body or officer shall consider clearly
20 enunciated local preferences, and the provisions of this subchapter
21 do not constitute a mandatory prohibition against the use of the
22 area if the findings are made that justify the approval of a program
23 or project.

24 (d) Any department or agency of this state, a county, a
25 municipality, or other political subdivision exercising the power
26 of eminent domain in accordance with the provisions of this
27 subchapter on land encumbered by an agricultural conservation

1 easement purchased under this subchapter shall:

2 (1) pay to the fund an amount equal to the original
3 amount granted from the fund for the purchase of the easement; and

4 (2) pay to the landowner the sum of the fair market
5 value and the agricultural value less an amount equal to the
6 original grant from the fund for the purchase of the easement.

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

8 (a) The Texas agricultural lands conservation fund is established
9 as an account of the land office dedicated to funding the purchase
10 of agricultural conservation easements through grants to qualified
11 easement holders under this subchapter. The fund may not be used
12 for grants to purchase or acquire any right or interest in property
13 by eminent domain. The fund consists of:

14 (1) money appropriated by the legislature to the fund;

15 (2) public or private grants, gifts, donations or
16 contributions; or

17 (3) funds from any other source, including proceeds
18 from the sale of bonds, state or federal mitigation funds, or funds
19 from any local, state, or federal program.

20 (b) The Texas farm and ranch lands conservation program is
21 established as a program of the land office for the purpose of
22 administering the assistance to be provided by the fund.

23 (c) The fund may be used only:

24 (1) to award grants for the purchase of agricultural
25 conservation easements, the value of which shall be determined by a
26 site-specific estimate-of-value appraisal performed by a licensed,
27 qualified appraiser;

1 (2) to pay transaction costs related to the purchase
2 of agricultural conservation easements, which may include
3 reimbursement of appraisal costs; and

4 (3) to pay not more than five percent of the money in
5 the fund for associated administrative costs of the land office.

6 Sec. 183.058. ADMINISTRATION OF THE FUND. (a) The fund
7 shall be managed and administered by the commissioner to achieve
8 the goals of the program. The commissioner may:

9 (1) in consultation with the council adopt rules
10 necessary to perform program duties under this subchapter;

11 (2) request, accept, and use gifts, loans, donations,
12 aid, appropriations, guaranties, subsidies, grants, or
13 contributions of any item of value for the furtherance of any
14 purposes of this subchapter;

15 (3) establish, charge, and collect fees, charges, and
16 penalties in connection with the programs, services, and activities
17 provided for by this subchapter;

18 (4) make, enter into, and enforce contracts and
19 agreements, and take other actions as may accomplish any of the
20 purposes of this subchapter;

21 (5) seek ways to coordinate and leverage public and
22 private sources of funding;

23 (6) adopt best practices and enforcement standards for
24 the evaluation of easements purchased through grants from the fund;

25 (7) establish a protocol for the purchase of
26 agricultural conservation easements and for the distribution of
27 funds to approved applicants;

1 (8) evaluate selection and eligibility based on
2 criteria established by this subchapter and administer grants
3 awarded to successful applicants;

4 (9) ensure that agricultural conservation easements
5 purchased under this subchapter are not inconsistent with the
6 preservation of open space and the conservation of wildlife habitat
7 or water; and

8 (10) award grants and approve the termination of
9 easements and take any other action necessary to further the goals
10 of the program.

11 (b) To receive a grant from the fund under this subchapter,
12 an applicant who is qualified to be an easement holder under this
13 subchapter must submit an application to the commissioner. The
14 application must:

15 (1) set out the parties' clear conservation goals
16 consistent with the program;

17 (2) include a site-specific estimate-of-value
18 appraisal by a licensed appraiser qualified to determine the market
19 value of the easement;

20 (3) demonstrate that the applicant is able to match 50
21 percent of the amount of the grant being sought, considering that
22 the council may choose to allow a donation of part of the appraised
23 value of the easement to be considered as in-kind matching funds;
24 and

25 (4) include a memorandum of understanding from the
26 landowner and signed by the applicant indicating intent to sell a
27 conservation easement and the terms of the contract.

1 Sec. 183.059. CRITERIA FOR AWARDING GRANTS. The
2 commissioner shall adopt a scoring process that considers the
3 following:

4 (1) maintenance of landscape and watershed integrity
5 to conserve water and natural resources;

6 (2) protection of highly productive agricultural
7 lands;

8 (3) protection of habitats for native plant and animal
9 species, including habitats for endangered, threatened, rare, or
10 sensitive species;

11 (4) susceptibility of the subject property to
12 subdivision, fragmentation, or other development;

13 (5) potential for leveraging state money allocated to
14 the program with additional public or private money;

15 (6) proximity of the subject property to other
16 protected lands;

17 (7) term of the proposed easement, whether perpetual
18 or for a specified term of years; and

19 (8) resource management plan agreed to by both parties
20 and approved by the commissioner.

21 Sec. 183.060. TEXAS FARM AND RANCH LANDS CONSERVATION
22 ADVISORY COUNCIL. (a) The Texas Farm and Ranch Lands Conservation
23 Advisory Council is established to advise and assist the
24 commissioner with administration of the program established within
25 the land office and consists of:

26 (1) one member who operates a family farm or ranch in
27 this state;

1 (2) one member who is the designated representative of
2 an agricultural banking or lending organization and who has
3 significant experience lending for farms and ranches and lands
4 encumbered by conservation easements;

5 (3) one member who is a licensed real estate appraiser
6 in good standing and who has significant experience appraising
7 farms and ranches and lands encumbered by conservation easements;

8 (4) two members who are the designated representatives
9 of statewide agricultural organizations in existence in this state
10 for at least ten years;

11 (5) one member who has significant experience with
12 water policy and management issues;

13 (6) one member from a state institution of higher
14 education who has significant experience with wildlife management
15 issues; and

16 (7) One ex-officio member is the state conservationist
17 of the U.S.D.A. Natural Resource Conservation Service or a designee
18 of that person.

19 (b) Members of the council serve staggered terms of six
20 years, with two or three of the members' terms expiring February 1
21 of each odd-numbered year.

22 (c) Appointments to and removal from the council shall be
23 made by the governor without regard to the race, color, disability,
24 sex, religion, age, or national origin of the appointees.

25 (d) The commissioner shall designate two members of the
26 council as the chair and the vice chair of the council to serve in
27 those capacities at the will of the commissioner. The council may

1 choose from its members other officers as the council considers
2 necessary.

3 (e) A member of the council is not entitled to compensation
4 for service on the council but is entitled to reimbursement of the
5 necessary and reasonable travel expenses incurred by the member
6 while conducting the business of the council, as provided for state
7 employees by the General Appropriations Act.

8 (f) The council shall meet not less than twice each year.

9 (g) In this section, "Texas trade association" means a
10 cooperative and voluntarily joined statewide association of
11 business or professional competitors in this state designed to
12 assist its members and its industry or profession in dealing with
13 mutual business or professional problems and in promoting their
14 common interest. A person may not be appointed as a council member
15 or general counsel to the council if the person or the person's
16 spouse:

17 (1) is employed by or participates in the management
18 of a business entity or other organization receiving money from the
19 council;

20 (2) owns or controls, directly or indirectly, more
21 than a 10 percent interest in a business entity or other
22 organization receiving money from the council;

23 (3) uses or receives a substantial amount of tangible
24 goods, services, or money from the council other than compensation
25 or reimbursement authorized by law for council membership,
26 attendance, or expenses;

27 (4) the person is an officer, employee, or paid

1 consultant of a Texas trade association for an occupation or
2 profession with an interest in land conservation that is related to
3 the occupation or profession;

4 (5) the person's spouse is an officer, manager, or paid
5 consultant of a Texas trade association for an occupation or
6 profession with an interest in land conservation that is related to
7 that occupation or profession; or

8 (6) the person is required to register as a lobbyist
9 under Chapter 305, Government Code, because of the person's
10 activities for compensation on behalf of an occupation or
11 profession with an interest in land conservation that is related to
12 that occupation or profession.

13 (h) It is a ground for removal from the council if a member:

14 (1) is ineligible for membership under this section;

15 (2) cannot, because of illness or disability,
16 discharge the member's duties for a substantial part of the member's
17 term; or

18 (3) is absent from more than half of the regularly
19 scheduled council meetings that the member is eligible to attend
20 during a calendar year without an excuse approved by a majority vote
21 of the council.

22 (i) The validity of an action of the council is not affected
23 by the fact that it is taken when a ground for removal of a
24 participating council member exists.

25 (j) If the presiding officer has knowledge that a potential
26 ground for removal exists, the presiding officer shall notify the
27 commissioner and the governor that a potential ground for removal

1 exists.

2 (k) The presiding officer or the presiding officer's
3 designee, with the assistance of staff of the land office, shall
4 provide to members of the council information regarding a member's
5 responsibilities under applicable laws relating to standards of
6 conduct for state officers.

7 (l) A person who is appointed to and qualifies for office as
8 a member of the council may not vote, deliberate, or be counted as a
9 member in attendance at a meeting of the council until the person
10 completes a training program that complies with this section. The
11 training program must provide the person with information
12 regarding:

13 (1) the legislation that created the council;

14 (2) the program to be administered under this
15 subchapter;

16 (3) the role and functions of the council;

17 (4) the rules of the council, with an emphasis on the
18 rules that relate to disciplinary and investigatory authority;

19 (5) the current budget for the council;

20 (6) the results of the most recent formal audit of the
21 council;

22 (7) the requirements of:

23 (A) the open meetings law, Chapter 551,
24 Government Code;

25 (B) the public information law, Chapter 552,
26 Government Code;

27 (C) the administrative procedure law, Chapter

1 2001, Government Code; and

2 (D) other laws relating to public officials,
3 including conflict-of-interest laws; and

4 (8) any applicable policies adopted by the council or
5 the Texas Ethics Commission.

6 (m) A person appointed to the council is entitled to
7 reimbursement, as provided by the General Appropriations Act, for
8 the travel expenses incurred in attending the training program
9 regardless of whether the attendance at the program occurs before
10 or after the person qualifies for office.

11 SECTION 3. This Act takes effect September 1, 2005.