

By: Geren

H.B. No. 116

A BILL TO BE ENTITLED

AN ACT

relating to the establishment of a program to provide grants to make voluntary purchases of development rights in real property.

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, Natural Resources Code, 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. Section 183.001, Natural Resources Code, is amended by adding Subdivisions (5) and (6) to read as follows:

(5) "Agriculture" means any of the following activities:

(A) cultivating the soil to produce crops for human food, animal feed, or planting seed or for the production of fibers;

(B) the practice of floriculture, viticulture, silviculture, or horticulture;

(C) raising, feeding, or keeping animals for breeding purposes or for the production of food or fiber, leather, pelts, or other tangible products having a commercial value;

(D) planting cover crops, including cover crops cultivated for transplantation, or leaving land idle for the purpose of participating in any governmental program or normal crop

1 or livestock rotation procedure;

2 (E) wildlife management; or

3 (F) raising or keeping equine animals.

4 (6) "Agricultural use" means any use or activity
5 involving agriculture.

6 SECTION 3. Chapter 183, Natural Resources Code, is amended
7 by adding Subchapter B to read as follows:

8 SUBCHAPTER B. PURCHASE OF DEVELOPMENT RIGHTS

9 GRANT PROGRAM

10 Sec. 183.051. PURPOSE. The purpose of the purchase of
11 development rights grant program under this subchapter is to
12 encourage private landowners to conserve all or part of their land.
13 The program assists certain governmental entities and conservation
14 organizations in purchasing the development rights in the land so
15 that the land may be used only for conservation purposes, including
16 agricultural, forest, recreational, or open-space purposes.
17 Landowners participate in the program only on a voluntary basis;
18 the Texas Legacy Council may not acquire land or the development
19 rights in land by eminent domain for the program.

20 Sec. 183.052. DEFINITIONS. In this subchapter:

21 (1) "Account" means the purchase of development rights
22 account established by this subchapter.

23 (2) "Council" means the Texas Legacy Council.

24 (3) "Department" means the Department of Agriculture.

25 (4) "Program" means the purchase of development rights
26 grant program established under this subchapter.

27 (5) "Project costs" means the sum of the appraised

1 value of a conservation easement and the transaction costs incurred
2 in connection with the purchase of the easement.

3 (6) "Purchase of development rights" means the
4 purchase of a conservation easement under the program.

5 (7) "Transaction costs" means the costs of obtaining:

6 (A) adequate title insurance for a conservation
7 easement;

8 (B) an appraisal under Section 183.066; and

9 (C) a legal survey by a land surveyor registered
10 or licensed by the Texas Board of Professional Land Surveying.

11 Sec. 183.053. TEXAS LEGACY COUNCIL. (a) The Texas Legacy
12 Council consists of 11 members, nine of whom are appointed and two
13 of whom are ex officio.

14 (b) The appointed members are:

15 (1) four members appointed by the governor, including:

16 (A) an appraiser certified or licensed by the
17 Texas Appraiser Licensing and Certification Board with
18 demonstrated experience in appraising conservation easements;

19 (B) a municipal or county official;

20 (C) a person with demonstrated knowledge of water
21 resource issues; and

22 (D) a real estate attorney who has negotiated,
23 drafted, and recorded conservation easements;

24 (2) two members appointed by the governor from a list
25 of candidates submitted by the speaker of the house of
26 representatives, including:

27 (A) a landowner engaged in wildlife management;

1 and

2 (B) a landowner engaged in agriculture other than
3 wildlife management;

4 (3) one member appointed by the governor from a list of
5 candidates submitted by the Texas Land Trust Council; and

6 (4) two members appointed by the lieutenant governor,
7 including:

8 (A) a rural landowner; and

9 (B) a person active in the field of conservation.

10 (c) The ex officio members are:

11 (1) the commissioner of the department or the
12 commissioner's representative, who is designated by the
13 commissioner and must be an employee of the department; and

14 (2) the presiding officer of the Parks and Wildlife
15 Commission or the presiding officer's representative, who is
16 designated by the presiding officer and must be a member of the
17 commission.

18 (d) In making appointments from a list under Subsection
19 (b)(2) or (3), the governor may reject the candidates on the list
20 and request a new list of candidates.

21 (e) The ex officio members have full voting powers.

22 Sec. 183.054. TERMS; CONSIDERATIONS IN MAKING
23 APPOINTMENTS. (a) Appointed members of the council serve
24 staggered terms of six years, with one-third of the appointed
25 members' terms expiring February 1 of each odd-numbered year.

26 (b) Appointments to the council shall be made without regard
27 to the race, color, disability, sex, religion, age, or national

1 origin of the appointees.

2 Sec. 183.055. OFFICERS; COMPENSATION. (a) The governor
3 shall designate a member of the council as the presiding officer of
4 the council to serve in that capacity at the will of the governor.
5 The council may choose from its members other officers as the
6 council considers necessary.

7 (b) An appointed member of the council is not entitled to
8 compensation but is entitled to reimbursement of the travel
9 expenses incurred by the member while conducting the business of
10 the council, as provided by the General Appropriations Act. An ex
11 officio member of the council is not entitled to additional
12 compensation for service on the council, and service on the council
13 is considered a duty of the member's underlying state office or
14 employment for purposes of receiving reimbursement for expenses
15 related to service on the council.

16 Sec. 183.056. PUBLIC MEMBERS OF COUNCIL. A person may not
17 be a council member appointed under Section 183.053(b)(1), (2), or
18 (4) if the person or the person's spouse:

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

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

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

1 attendance, or expenses.

2 Sec. 183.057. CONFLICTS OF INTEREST. (a) In this section,
3 "Texas trade association" means a cooperative and voluntarily
4 joined statewide association of business or professional
5 competitors in this state designed to assist its members and its
6 industry or profession in dealing with mutual business or
7 professional problems and in promoting their common interest.

8 (b) A person may not be an appointed member of the council
9 if:

10 (1) the person is an officer, employee, or paid
11 consultant of a Texas trade association for an occupation or
12 profession with an interest in land conservation that is related to
13 that occupation or profession; or

14 (2) the person's spouse is an officer, manager, or paid
15 consultant of a Texas trade association for an occupation or
16 profession with an interest in land conservation that is related to
17 that occupation or profession.

18 (c) A person may not be an appointed member of the council or
19 act as the general counsel to the council if the person is required
20 to register as a lobbyist under Chapter 305, Government Code,
21 because of the person's activities for compensation on behalf of an
22 occupation or profession with an interest in land conservation that
23 is related to that occupation or profession.

24 Sec. 183.058. GROUNDS FOR REMOVAL. (a) It is a ground for
25 removal from the council that an appointed member:

26 (1) is ineligible for membership under Section 183.056
27 or 183.057;

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

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

8 (b) The validity of an action of the council is not affected
9 by the fact that it is taken when a ground for removal of a council
10 member exists.

11 (c) If the presiding officer has knowledge that a potential
12 ground for removal exists, the presiding officer shall notify the
13 governor and the attorney general that a potential ground for
14 removal exists.

15 Sec. 183.059. INFORMATION REGARDING REQUIREMENTS FOR
16 OFFICE. The presiding officer or the presiding officer's designee
17 shall provide to members of the council, as often as necessary,
18 information regarding a person's responsibilities under applicable
19 laws relating to standards of conduct for state officers.

20 Sec. 183.060. TRAINING. (a) A person who is appointed to
21 and qualifies for office as a member of the council may not vote,
22 deliberate, or be counted as a member in attendance at a meeting of
23 the council until the person completes a training program that
24 complies with this section.

25 (b) The training program must provide the person with
26 information regarding:

27 (1) the legislation that created the council;

- 1 (2) the programs;
2 (3) the role and functions of the council;
3 (4) the rules of the council with an emphasis on the
4 rules that relate to disciplinary and investigatory authority;
5 (5) the current budget for the council;
6 (6) the results of the most recent formal audit of the
7 council;
8 (7) the requirements of:
9 (A) the open meetings law, Chapter 551,
10 Government Code;
11 (B) the public information law, Chapter 552,
12 Government Code;
13 (C) the administrative procedure law, Chapter
14 2001, Government Code; and
15 (D) other laws relating to public officials,
16 including conflict-of-interest laws; and
17 (8) any applicable ethics policies adopted by the
18 council or the Texas Ethics Commission.
19 (c) A person appointed to the council is entitled to
20 reimbursement, as provided by the General Appropriations Act, for
21 the travel expenses incurred in attending the training program
22 regardless of whether the attendance at the program occurs before
23 or after the person qualifies for office.
24 Sec. 183.061. PUBLIC INPUT. The council shall develop and
25 implement policies that provide the public with a reasonable
26 opportunity to appear before the council and to speak on any issue
27 under the jurisdiction of the council.

1 Sec. 183.062. COMPLAINTS. (a) The council shall maintain a
2 file on each written complaint filed with the council. The file
3 must include:

4 (1) the name of the person who filed the complaint;
5 (2) the date the complaint is received by the council;
6 (3) the subject matter of the complaint;
7 (4) the name of each person contacted in relation to
8 the complaint;

9 (5) a summary of the results of the review or
10 investigation of the complaint; and

11 (6) an explanation of the reason the file was closed,
12 if the agency closed the file without taking action other than to
13 investigate the complaint.

14 (b) The council shall provide to the person filing the
15 complaint and to each person who is a subject of the complaint a
16 copy of the council's policies and procedures relating to complaint
17 investigation and resolution.

18 (c) The council, at least quarterly until final disposition
19 of the complaint, shall notify the person filing the complaint and
20 each person who is a subject of the complaint of the status of the
21 investigation unless the notice would jeopardize an undercover
22 investigation.

23 Sec. 183.063. PURCHASE OF DEVELOPMENT RIGHTS ACCOUNT. (a)
24 The purchase of development rights account is an account in the
25 general revenue fund that may be appropriated to the council only
26 for the purpose of implementing this subchapter. The account
27 consists of:

1 (1) money transferred to the account at the direction
2 of the legislature for the program;

3 (2) public or private grants, gifts, donations, or
4 contributions; and

5 (3) money from other sources, including mitigation,
6 remediation, and bond proceeds.

7 (b) Money in the account may be used only:

8 (1) for the purchase of development rights;

9 (2) to administer the program; and

10 (3) to cover the transaction costs incurred by a
11 purchaser of development rights.

12 (c) The council may not use more than five percent of the
13 money in the account for administrative costs.

14 Sec. 183.064. PURCHASE OF DEVELOPMENT RIGHTS GRANT PROGRAM.

15 (a) The council shall develop, maintain, and administer a program
16 to provide grants to be used for the purchase of development rights.
17 A purchase of development rights may be for a term specified by
18 contractual agreement or in perpetuity.

19 (b) The council, in consultation with the department, shall
20 adopt rules for administering the program, including:

21 (1) grant eligibility and selection criteria;

22 (2) grant application procedures;

23 (3) procedures for term and perpetual development
24 rights purchase;

25 (4) compliance procedures; and

26 (5) grant disbursement procedures.

27 (c) Information submitted to the council in the application

1 is confidential and not subject to disclosure under Chapter 552,
2 Government Code.

3 (d) The department shall assist the council in carrying out
4 its duties under this subchapter.

5 Sec. 183.065. MATCHING FUNDS. A grant under the program may
6 not constitute more than 50 percent of the project costs. To
7 qualify for a grant under the program, a prospective purchaser of
8 development rights must provide proof to the council that the
9 prospective purchaser will obtain matching funds for the remainder
10 of the project costs. A landowner may donate money to assist the
11 prospective purchaser in paying the purchaser's share of the
12 project costs. The amount donated by the landowner is credited
13 against the purchaser's share of the project costs.

14 Sec. 183.066. APPRAISAL REQUIRED. The value of a purchase
15 of development rights shall be determined by a site-specific
16 appraisal prepared by an appraiser certified or licensed by the
17 Texas Appraiser Licensing and Certification Board. The appraiser
18 may not be a member of the council.

19 Sec. 183.067. DISCLOSURE STATEMENT. Before a contract for
20 the purchase of development rights is signed, the landowner who is
21 selling the development rights must sign a disclosure statement in
22 substantially the following form:

23 "DISCLOSURE STATEMENT REQUIRED FOR SALE OF CONSERVATION EASEMENT

24 UNDER THE TEXAS PURCHASE OF DEVELOPMENT RIGHTS PROGRAM

25 Owner(s)/Seller(s): _____

26 Description of Land/Address: _____

27 Buyer/Holder: _____

1 "KNOW YOUR RIGHTS AND RESPONSIBILITIES UNDER THE LAW. You
2 are about to enter into a transaction to sell a conservation
3 easement on your property. Texas law requires the buyer to provide
4 you with this brief overview of some of your rights,
5 responsibilities, and risks in this transaction. You need to be
6 aware that a conservation easement places development restrictions
7 on your property that may be PERPETUAL, but that you have the right,
8 at any time before the transaction is finalized, to negotiate to
9 limit the duration of the conservation easement to a specified
10 term. The buyer will have the right to enforce these development
11 restrictions as defined in the conservation easement document.

12 "CONVEYANCE TO BUYER NOT REQUIRED. Unless a satisfactory
13 agreement is reached between you and the buyer, you are under no
14 obligation and are not required to convey a conservation easement
15 on your property to a buyer.

16 "KNOW THE BUYER. Before you sell a conservation easement on
17 your property, make sure that you have investigated the buyer to
18 ensure that your objectives and goals are compatible with those of
19 the buyer.

20 "GET IT IN WRITING. Make sure that you have a written
21 conservation easement document with the buyer that includes:

22 (1) a description of the development restrictions you
23 have agreed to impose on your property;

24 (2) the rights of the buyer with respect to access to
25 your property, and enforcement rights;

26 (3) a written account of any third-party designees and
27 easement successors; and

1 (4) the amount you are being paid for the conservation
2 easement; an oral promise that is not included in the written
3 conservation easement document may not be enforceable under Texas
4 law.

5 "READ BEFORE YOU SIGN. Do not sign any conservation easement
6 document before you have read and understood it. You should have
7 your own attorney review the document. If you have any questions
8 about the meaning of the document, consult an attorney.

9 "THIS IS TO VERIFY THAT I (WE) HAVE RECEIVED A COPY OF THIS
10 DISCLOSURE STATEMENT REGARDING THE CONSERVATION EASEMENT AND
11 UNDERSTAND IT.

12 "SIGNED this the _____ day of _____, _____.

13 OWNER(S)/SELLER(S):

14 _____
15 _____"

16 Sec. 183.068. ADVISORY COMMITTEE. (a) The council may
17 establish an advisory committee to advise the council about the
18 council's functions.

19 (b) An advisory committee is subject to Chapter 2110,
20 Government Code, except that Section 2110.002 does not apply.

21 Sec. 183.069. SUNSET PROVISION. The Texas Legacy Council
22 is subject to Chapter 325, Government Code (Texas Sunset Act).
23 Unless continued in existence as provided by that chapter, the
24 council is abolished and this subchapter expires September 1, 2015.

25 Sec. 183.070. REPORT. Not later than January 1 of each
26 odd-numbered year, the council shall report to the legislature on
27 the council's progress in accomplishing the objectives of this

1 subchapter.

2 SECTION 4. In appointing the initial members of the Texas
3 Legacy Council:

4 (1) the governor shall designate:

5 (A) two persons to serve terms expiring February
6 1, 2005;

7 (B) three persons to serve terms expiring
8 February 1, 2007; and

9 (C) two persons to serve terms expiring February
10 1, 2009; and

11 (2) the lieutenant governor shall designate:

12 (A) one person to serve a term expiring February
13 1, 2005; and

14 (B) one person to serve a term expiring February
15 1, 2009.

16 SECTION 5. The prohibition related to training imposed by
17 Section 183.060, Natural Resources Code, as added by this Act, does
18 not apply to an initial appointed member of the Texas Legacy Council
19 until January 1, 2005.

20 SECTION 6. This Act takes effect September 1, 2003.