

By: Hilderbran

H.B. No. 3146

A BILL TO BE ENTITLED

AN ACT

relating to the establishment of a land conservation program and
land conservation council in the Parks and Wildlife Department.

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

SECTION 1. Title 2, Parks and Wildlife Code, is amended by
adding Chapter 15 to read as follows:

CHAPTER 15. VOLUNTARY LAND CONSERVATION PROGRAM

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 15.001. DEFINITIONS. In this chapter:

(1) "Agricultural conservation easement" means a nonpossessory interest of a holder in real property that imposes limitations or affirmative obligations designed to:

(A) conserve water quality or quantity;

(B) conserve native wildlife species through protection of their habitat;

(C) conserve rare or sensitive plant species; or

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

(2) "Council" means the voluntary land conservation council established under Section 15.051.

(3) "Fund" means the land conservation fund established under Section 15.202.

(4) "Program" means the land conservation program

1 established by this chapter.

2 (5) "Qualified easement holder" means:

3 (A) a state agency or a municipality authorized
4 to hold an interest in real property under the laws of this state or
5 of the United States; or

6 (B) a nonprofit charitable corporation,
7 charitable association, or charitable trust, as described by
8 Section 501(c)(3), Internal Revenue Code of 1986, created or
9 organized for the purpose of preserving open space or agricultural
10 or natural resources.

11 [Sections 15.002-15.050 reserved for expansion]

12 SUBCHAPTER B. VOLUNTARY LAND CONSERVATION COUNCIL

13 Sec. 15.051. COMPOSITION OF COUNCIL. (a) The voluntary
14 land conservation council is established in the Parks and Wildlife
15 Department and consists of 13 members.

16 (b) Ten members are appointed by the governor as follows:

17 (1) two members must operate a family farm or ranch in
18 this state and must receive at least 50 percent of their gross
19 income in one of the past three years from that operation;

20 (2) one member who is a representative of a regional or
21 statewide land trust operating in the state for at least the past
22 five years;

23 (3) one member who is a representative of a statewide
24 nonprofit conservation organization that has been in existence in
25 this state for at least 10 years;

26 (4) one member who is a representative of an
27 agricultural banking and lending organization who has experience in

1 lending for farms and ranches or other lands encumbered by
2 conservation easements;

3 (5) one member who is a licensed real estate appraiser
4 in good standing who has experience appraising farms, ranches, or
5 other lands encumbered by conservation easements;

6 (6) two members who are representatives of statewide
7 agricultural organizations in existence in this state for at least
8 10 years;

9 (7) one member who:

10 (A) is a representative of a rural landowners'
11 group; and

12 (B) has experience with water policy and
13 management issues; and

14 (8) one member who is a lawyer in good standing with
15 the State Bar of Texas with experience in the practice of real
16 estate law.

17 (c) Three council members serve ex officio as follows:

18 (1) the presiding officer of the commission or the
19 presiding officer's designee;

20 (2) the state conservationist of the United States
21 Department of Agriculture Natural Resource Conservation Service or
22 that person's designee; and

23 (3) the agriculture commissioner or that person's
24 designee.

25 (d) The governor shall make appointments to the council
26 without regard to race, color, disability, sex, religion, age, or
27 national origin.

1 Sec. 15.052. TERMS. Appointed members of the council serve
2 staggered six-year terms, with one-third of the appointed members'
3 terms expiring February 1 of each odd-numbered year.

4 Sec. 15.053. OFFICERS. (a) The governor shall designate a
5 member of the council as the presiding officer of the council to
6 serve in that capacity at the will of the governor.

7 (b) The council may choose from its members other officers
8 the council considers necessary.

9 Sec. 15.054. COMPENSATION; EXPENSES. (a) An appointed
10 member of the council is not entitled to compensation but is
11 entitled to reimbursement of the travel expenses incurred by the
12 member while conducting the business of the council as provided by
13 the General Appropriations Act.

14 (b) An ex officio member of the council is not entitled to
15 additional compensation for service on the council. The member
16 shall serve on the council as part of the member's underlying state
17 office or employment for purposes of receiving reimbursement for
18 expenses related to service on the council.

19 Sec. 15.055. CONFLICTS OF INTEREST. (a) In this section,
20 "Texas trade association" means a cooperative and voluntarily
21 joined statewide association of business or professional
22 competitors in this state designed to assist its members and its
23 industry or profession in dealing with mutual business or
24 professional problems and in promoting their common interest.

25 (b) A person may not be appointed as a council member if the
26 person or the person's spouse:

27 (1) is employed by or participates in the management

1 of a business entity or other organization receiving money from the
2 council;

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

6 (3) uses or receives a substantial amount of tangible
7 goods, services, or money from the council other than compensation
8 or reimbursement authorized by law for council membership,
9 attendance, or expenses.

10 (c) A person may not be an appointed member of the council
11 if:

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

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

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

26 Sec. 15.056. GROUNDS FOR REMOVAL. (a) It is a ground for
27 removal from the council that an appointed member:

1 (1) is ineligible for membership under Section 15.055;
2 (2) cannot, because of illness or disability,
3 discharge the member's duties for a substantial part of the member's
4 term; or

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

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

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

16 Sec. 15.057. VOTING. The council may vote on the award of
17 grants, the termination of easements, or any other action necessary
18 to further the goals of the program or this chapter.

19 Sec. 15.058. INFORMATION REGARDING REQUIREMENTS FOR
20 OFFICE. The presiding officer of the council or the presiding
21 officer's designee shall provide to members of the council, as
22 often as necessary, information regarding a person's
23 responsibilities under applicable laws relating to standards of
24 conduct for state officers.

25 Sec. 15.059. TRAINING. (a) A person who is appointed to
26 and qualifies for office as a member of the council may not vote,
27 deliberate, or be counted as a member in attendance at a meeting of

1 the council until the person completes a training program that
2 complies with this section.

3 (b) The training program must provide the person with
4 information regarding:

5 (1) the provisions of this chapter;

6 (2) programs operated by the council;

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

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

10 (5) the current budget for the council;

11 (6) the results of the most recent formal audit of the
12 council;

13 (7) the requirements of:

14 (A) the open meetings law, Chapter 551,
15 Government Code;

16 (B) the public information law, Chapter 552,
17 Government Code;

18 (C) the administrative procedure law, Chapter
19 2001, Government Code; and

20 (D) other laws relating to public officials,
21 including conflict of interest laws; and

22 (8) any applicable ethics policies adopted by the
23 council or the Texas Ethics Commission.

24 (c) A person appointed to the council is entitled to
25 reimbursement, as provided by the General Appropriations Act, for
26 the travel expenses incurred in attending the training program
27 regardless of whether the attendance at the program occurs before

1 or after the person qualifies for office.

2 Sec. 15.060. PUBLIC INPUT. The council shall develop and
3 implement policies that provide the public with a reasonable
4 opportunity to appear before the council and to speak on any issue
5 under the jurisdiction of the council.

6 Sec. 15.061. COMPLAINTS. (a) The council shall maintain a
7 file containing each written complaint filed with the council. The
8 file must also include:

9 (1) the name of the person who filed the complaint;

10 (2) the date the complaint is received by the council;

11 (3) the subject matter of the complaint;

12 (4) the name of each person contacted in relation to
13 the complaint;

14 (5) a summary of the results of the review or
15 investigation of the complaint; and

16 (6) an explanation of the reason the file was closed,
17 if the council closed the file without taking action other than to
18 investigate the claim.

19 (b) The council shall provide the person filing the
20 complaint and each person who is a subject of the complaint a copy
21 of the council's policies and procedures relating to complaint
22 investigation and resolution.

23 (c) The council, at least quarterly until final disposition
24 of the complaint, shall notify the person filing the complaint of
25 the status of the complaint.

26 [Sections 15.062-15.100 reserved for expansion]

1 SUBCHAPTER C. GENERAL POWERS AND DUTIES

2 Sec. 15.101. GENERAL AUTHORITY. The council may exercise
3 any power necessary to accomplish the purposes of this chapter.

4 Sec. 15.102. RULES. The council may adopt rules as
5 necessary to implement this chapter.

6 Sec. 15.103. GRANTS; DONATIONS. The council may request,
7 accept, and use loans, donations, aid, appropriations, guaranties,
8 subsidies, grants, or contributions of any item of value for the
9 purposes of this chapter.

10 Sec. 15.104. FEES. The council may set fees in connection
11 with the programs, services, and activities provided for by this
12 chapter.

13 Sec. 15.105. CONTRACTS. The council may contract with any
14 person for any purpose of this chapter.

15 Sec. 15.106. ADVISORY COMMITTEE. The council may create an
16 advisory committee to review grant applications.

17 [Sections 15.107-15.150 reserved for expansion]

18 SUBCHAPTER D. LAND CONSERVATION PROGRAM

19 Sec. 15.151. PROTOCOL; CRITERIA. The council shall
20 establish a protocol for the purchase of agricultural conservation
21 easements and for the distribution of money to approved applicants
22 under this subchapter.

23 Sec. 15.152. APPLICATION PROCESS. (a) To receive a grant
24 under this chapter, an applicant must be a qualified easement
25 holder and submit an application to the council.

26 (b) The application must:

27 (1) set out the applicant's conservation goals

1 consistent with the program;

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

4 (3) include evidence that the applicant is able to
5 match 50 percent of the amount of the grant being sought; and

6 (4) include a memorandum of understanding from the
7 landowner signed by the applicant and the landowner indicating
8 intent to sell a conservation easement and the terms of the
9 contract.

10 (c) The council may allow an in-kind donation to be
11 considered as a matching amount under Subsection (b)(3).

12 Sec. 15.153. CRITERIA FOR AWARDING GRANTS. (a) The council
13 shall establish criteria for evaluating grant applicants and
14 administer grants awarded to successful applicants.

15 (b) The council shall adopt a scoring process that gives
16 equal weight to each of the categories under this section.

17 (c) Grants will be awarded to the applicant that
18 demonstrates strength in the highest number of the following
19 categories:

20 (1) landscape and watershed integrity for conserving
21 water and natural resources;

22 (2) productivity of agricultural lands;

23 (3) availability of habitats for native species,
24 including important, endangered, threatened, rare, or sensitive
25 species;

26 (4) susceptibility of the subject property to
27 fragmentation or development;

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

3 (6) duration of the easement's term;

4 (7) proximity of the subject property to other
5 protected lands; and

6 (8) inclusion in the application of a resource
7 management plan agreed to by the applicant and the landowner and
8 approved by the council.

9 Sec. 15.154. TERMS OF AGRICULTURAL CONSERVATION EASEMENT.

10 (a) The landowner and the potential purchaser of the easement may
11 consider and negotiate the terms of the easement, including
12 consideration of:

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

15 (2) whether the term of the easement is perpetual or
16 for a term of at least 30 years;

17 (3) whether a term easement is renewable;

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

20 (5) the market value of the easement.

21 (b) An easement under this section may not be assigned to or
22 enforced by a third party without the express written consent of the
23 landowner.

24 Sec. 15.155. TERMINATION OF EASEMENTS. (a) A landowner may
25 request that the council terminate an easement on grounds that the
26 qualified easement holder is unable to meet the conservation goals
27 described by this chapter on the land covered by the easement. The

1 termination request must contain a statement of the reasons for the
2 request as verified by the landowner, who shall deliver a copy of
3 the request to the easement holder.

4 (b) On receipt of the termination request, the council shall
5 conduct an inquiry. Not later than the 180th day after the date on
6 which the council receives the request, the council shall notify
7 the parties of its decision to grant or deny the request for
8 termination.

9 (c) Not later than the 45th day after the date on which the
10 council makes the decision, either party may appeal the council's
11 decision in district court.

12 Sec. 15.156. REPURCHASE BY LANDOWNER. (a) In this
13 section:

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

19 (2) "Fair market value" means the price as of the
20 appraisal date a buyer willing, but not obligated to buy, would pay
21 for the land at its best and most beneficial use under any
22 obtainable development zoning category.

23 (b) If a request for termination is granted, the council
24 shall order an appraisal of the fair market value and the
25 agricultural value of the subject property. The landowner shall
26 bear the cost of the appraisal.

27 (c) Not later than the 180th day after the date of the

1 appraisal, the landowner must repurchase the easement by paying to
2 the fund an amount proportionally equal to the original grant
3 amount, based on the applicable appraisal amount under this
4 section.

5 (d) If the request for termination is denied or the
6 landowner fails to timely repurchase the easement, the landowner
7 may not subsequently request termination until the expiration of
8 five years from the last request.

9 Sec. 15.157. PROTECTED LAND; NOTICE OF TAKING. (a) A
10 department or agency of this state or a political subdivision,
11 including a county and a municipality, may not approve a project
12 that requires the use or taking of any private land encumbered by an
13 agricultural conservation easement purchased under this chapter
14 unless the governing body of the governmental entity determines
15 after notice and hearing that:

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

18 (2) the project includes all reasonable planning to
19 minimize harm to the land resulting from the use or taking.

20 (b) The governing body shall consider local preferences.
21 The provisions of this chapter do not constitute a prohibition
22 against the use of the area if a finding is made that justifies the
23 approval of a project.

24 (c) A finding that leads to the condemnation of land
25 encumbered by an agricultural conservation easement purchased
26 under this chapter must also include a provision that repayment to
27 the state must be based on the value of the united estate, in

1 addition to any compensation due the landowner under an eminent
2 domain proceeding.

3 Sec. 15.158. PRESERVATION OF OPEN SPACE; CONSERVATION. The
4 council shall ensure that agricultural conservation easements
5 purchased under this chapter are not inconsistent with the
6 preservation of open space and the conservation of wildlife habitat
7 or water.

8 [Sections 15.159–15.200 reserved for expansion]

9 SUBCHAPTER E. FINANCIAL PROVISIONS

10 Sec. 15.201. GENERAL FUNDING DUTY. The council shall seek
11 ways to coordinate and leverage public and private sources of
12 funding.

13 Sec. 15.202. LAND CONSERVATION FUND. (a) In this section,
14 "qualified land" means "qualified open-space land" as defined by
15 Section 23.51, Tax Code.

16 (b) The land conservation fund is a separate account in the
17 general revenue fund.

18 (c) The council shall deposit to the credit of the fund:

19 (1) grant money refunded from the repurchase of an
20 easement;

21 (2) public or private grants, gifts, or donations;

22 (3) legislative appropriations for the purposes of
23 this chapter;

24 (4) proceeds from the sale of bonds;

25 (5) state or federal mitigation money;

26 (6) money from any local, state, or federal program;

27 (7) interest earned on the fund; and

1 (8) money from any other source not otherwise
2 dedicated.

3 (d) Money in the fund may be used only to pay:

4 (1) for the award of grants to qualified easement
5 holders for the purchase of agricultural conservation easements to
6 preserve:

7 (A) water quality;

8 (B) native wildlife species and habitat;

9 (C) rare or sensitive plant species; or

10 (D) qualified land;

11 (2) transaction costs related to the purchase of
12 agricultural conservation easements, including reimbursement of
13 appraisal costs; or

14 (3) annual administrative costs of the program, not to
15 exceed an amount equal to five percent of the amount deposited to
16 the credit of the fund that year, subject to legislative
17 appropriations.

18 SECTION 2. This Act takes effect September 1, 2005.