

By: Jackson

S.B. No. 1273

A BILL TO BE ENTITLED

AN ACT

relating to the establishment of the Texas Farmland and Ranchland Conservation Program.

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

SECTION 1. Title 4, Agriculture Code, is amended by adding Chapter 59A to read as follows:

CHAPTER 59A. TEXAS FARMLAND AND RANGLAND CONSERVATION PROGRAM

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 59A.001. DEFINITIONS. In this chapter:

(1) "Agricultural conservation easement" means a conservation easement as that term is defined by Section 183.001, Natural Resources Code, except that an agricultural conservation easement established under this chapter for the specific purpose of conserving qualified land may be in perpetuity or for a term of 30 years.

(2) "Council" means the 13-member Texas Farmland and Ranchland Conservation Council.

(3) "Fund" means the Texas farmland and ranchland conservation fund.

(4) "Holder" has the meaning assigned by Section 183.001, Natural Resources Code.

(5) "Program" means the Texas Farmland and Ranchland Conservation Program.

(6) "Qualified land" means qualified open-space land

1 as that term is defined by Section 23.51, Tax Code.

2 (7) "Qualified landowner" means a person that owns
3 qualified land.

4 Sec. 59A.002. EASEMENT TERMS; PURPOSES. (a) An
5 agricultural conservation easement under this chapter must be
6 voluntarily agreed to by the qualified landowner and may not be
7 assigned to or enforced by a third party, except the council,
8 without the express written consent of the qualified landowner.

9 (b) An agricultural conservation easement under this
10 chapter must accomplish the purpose of conservation of natural
11 resources on qualified land and at least one of the following
12 additional purposes:

13 (1) the conservation of water quality or quantity;

14 (2) the conservation of native wildlife species
15 through the protection of their habitat;

16 (3) the conservation of rare or sensitive plant
17 species; or

18 (4) the conservation of tracts of qualified land that
19 are threatened with fragmentation or development.

20 (c) The instrument granting an agricultural conservation
21 easement purchased with funds provided under this chapter must
22 include a provision that gives the council the right to enforce the
23 terms of the easement.

24 (d) An agricultural conservation easement purchased with
25 funds provided under this chapter may provide for collateral,
26 guaranties, insurance, surety bonds, or other enhancements in a
27 form and amount sufficient to repay all grant funds provided by the

1 council if the terms of the agricultural conservation easement are
2 breached. The council shall determine whether the form and amount
3 of any enhancement provided under this subsection is sufficient.

4 Sec. 59A.003. VENUE. A suit filed by or on behalf of the
5 council under this chapter may be brought in Travis County.

6 [Sections 59A.004-59A.050 reserved for expansion]

7 SUBCHAPTER B. OPERATION OF COUNCIL

8 Sec. 59A.051. TEXAS FARMLAND AND RANCLAND CONSERVATION
9 COUNCIL. (a) The council is composed of:

10 (1) three members who are actively engaged in the
11 production of agriculture in the state;

12 (2) one landowning member who is the designated
13 representative of a statewide nonprofit conservation organization
14 that is exempt from taxation under Section 501(c)(3), Internal
15 Revenue Code of 1986, and that has been in existence in this state
16 for at least 10 years;

17 (3) one member who is the designated representative of
18 an agricultural banking or lending organization;

19 (4) one nonvoting member who is the director of the
20 Real Estate Center of Texas A&M University or the director's
21 designee;

22 (5) two members who are the designated representatives
23 of statewide agricultural organizations that have been in existence
24 in this state for at least 10 years;

25 (6) one member who has significant experience with
26 water policy and water management issues;

27 (7) one member who is a member in good standing of the

1 State Bar of Texas and who has significant experience in the
2 practice of real estate law;

3 (8) the commissioner or the commissioner's designee;

4 (9) one nonvoting member who is the state
5 conservationist of the United States Department of Agriculture's
6 Natural Resources Conservation Service or that person's designee;
7 and

8 (10) the chairman of the Parks and Wildlife Commission
9 or that person's designee.

10 (b) Members are appointed by the governor, except for the
11 commissioner, the state conservationist, the director of the Real
12 Estate Center of Texas A&M University, and the chairman of the Parks
13 and Wildlife Commission.

14 (c) Appointed members of the council serve staggered terms
15 of six years, with one-third of the appointed members' terms
16 expiring February 1 of each odd-numbered year.

17 (d) Appointments to the council shall be made without regard
18 to the race, color, disability, sex, religion, age, or national
19 origin of the appointees.

20 (e) A council member is not entitled to compensation for
21 serving on the council and is not entitled to reimbursement for
22 expenses incurred in performing the official duties of office.

23 Sec. 59A.052. OFFICERS. (a) The governor shall designate
24 a member of the council as the chair of the council to serve in that
25 capacity at the pleasure of the governor. The council shall elect a
26 vice-chairman biennially from its members and shall elect a
27 secretary, a treasurer, and other officers it considers necessary.

1 (b) The chair shall preside at meetings of the council and
2 perform other duties prescribed by the council.

3 (c) The vice-chair shall perform the duties of the chair
4 when the chair is not present or is incapacitated or unable to
5 perform the duties of the chair.

6 (d) The secretary is the custodian of the minutes, books,
7 records, and seal of the council and shall perform other duties as
8 prescribed by the council.

9 (e) The treasurer shall perform duties as prescribed by the
10 council. The offices of secretary and treasurer may be held by the
11 same individual.

12 (f) The council may appoint one or more individuals who are
13 not council members to perform any duty of the secretary or the
14 treasurer.

15 Sec. 59A.053. MEETINGS; ADMINISTRATIVE PROCEDURE.

16 (a) The council shall hold regular and special meetings at times
17 specified by the chair.

18 (b) A majority of the voting membership of the council
19 constitutes a quorum. The council shall act by adopting
20 resolutions. The affirmative vote of a majority of the voting
21 members present is necessary to adopt a resolution.

22 (c) The council shall develop and implement policies that
23 provide the public with a reasonable opportunity to appear before
24 the council and to speak on any issue under the jurisdiction of the
25 council.

26 (d) The council is subject to Chapters 551 and 2001,
27 Government Code.

1 Sec. 59A.054. ADMINISTRATION. (a) The commissioner, with
2 the assistance of the council, shall administer the program. If
3 funds are available, the council shall reimburse the department for
4 expenses incurred by the department as required by the business of
5 the council with approval from the council.

6 (b) The commissioner may, with the approval of the council,
7 appoint, employ, contract with, and provide for the compensation of
8 employees, consultants, and other persons to administer the
9 program.

10 Sec. 59A.055. FISCAL ACCOUNTING OF ADMINISTRATION.

11 (a) Funds acquired under this chapter may be used to pay the
12 reasonable cost of administering this chapter. This section is not
13 applicable unless the council receives funds necessary to operate
14 the program as provided by Section 59A.151(c).

15 (b) Not later than August 1 of each year, the department
16 shall file with the council the proposed annual budget for the
17 program for the succeeding fiscal year. The budget must set forth
18 the general categories of expected expenditures out of revenues and
19 income of the funds administered by the council and the amount on
20 account of each expenditure. Not later than September 1 of each
21 year, the council shall consider the proposed annual budget and may
22 approve or amend it. Copies of the annual budget certified by the
23 chair shall be promptly filed with the governor and the Legislative
24 Budget Board. The council may adopt an amended annual budget for
25 the current fiscal year, but the amended annual budget may not
26 supersede a prior budget until it is filed with the governor and the
27 Legislative Budget Board.

1 (c) The council shall have an audit of its books and
2 accounts for each fiscal year conducted by a certified public
3 accountant. The cost of the audit is an expense of the council. A
4 copy of the audit shall be filed with the governor and the
5 Legislative Budget Board not later than January 1 of each year.

6 (d) The council members and the department are not liable
7 for contracts executed by the council and shall be exculpated and
8 fully indemnified by the council except in the case of fraudulent or
9 wilful misconduct on the part of the individual seeking exculpation
10 or indemnification.

11 Sec. 59A.056. COUNCIL CONFLICT OF INTEREST. (a) In this
12 section, "Texas trade association" means a cooperative and
13 voluntarily joined statewide association of business or
14 professional competitors in this state designed to assist its
15 members and its industry or profession in dealing with mutual
16 business or professional problems and in promoting their common
17 interest.

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

20 (1) the person is an officer, employee, or paid
21 consultant of a Texas trade association or a land trust; or

22 (2) the person's spouse is an officer, manager, or paid
23 consultant of a Texas trade association or a land trust.

24 (c) A person may not be an appointed council member or act as
25 the general counsel to the council if the person is required to
26 register as a lobbyist under Chapter 305, Government Code, because
27 of the person's activities for compensation on behalf of an

1 occupation or profession with an interest in land conservation that
2 is related to that occupation or profession.

3 (d) A council member shall recuse himself or herself from
4 any action taken by the council on an application involving a holder
5 that employs the council member or for which the council member
6 serves as an officer, director, or elected official. A holder
7 remains eligible to use the program if a council member properly
8 recuses himself or herself in accordance with this section.

9 Sec. 59A.057. REMOVAL OF COUNCIL MEMBER. (a) It is a
10 ground for removal from the council that an appointed member:

11 (1) is ineligible for membership under Section
12 59A.056(c);

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

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

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

23 (c) The presiding officer shall notify the governor and the
24 attorney general if the presiding officer has knowledge that a
25 potential ground for removal exists.

26 Sec. 59A.058. STANDARDS OF CONDUCT. The chair or the
27 chair's designee shall provide to members of the council, as often

1 as necessary, information regarding their qualification for office
2 under this chapter and their responsibilities under applicable laws
3 relating to standards of conduct for state officers.

4 Sec. 59A.059. SEPARATION OF RESPONSIBILITIES. The council
5 shall develop and implement policies that clearly separate the
6 policymaking responsibilities of the council and the management
7 responsibilities of the commissioner and the staff of the
8 department.

9 Sec. 59A.060. COUNCIL MEMBER TRAINING. (a) A person who
10 is appointed to and qualifies for office as a member of the council
11 may not vote, deliberate, or be counted as a member in attendance at
12 a meeting of the council until the person completes a training
13 program that complies with this section.

14 (b) The training program must provide the person with
15 information regarding:

16 (1) the legislation that created the council;

17 (2) the program;

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

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

21 (5) the current budget for the council;

22 (6) the results of the most recent formal audit of the
23 council;

24 (7) the requirements of:

25 (A) the open meetings law, Chapter 551,
26 Government Code;

27 (B) the public information law, Chapter 552,

1 Government Code;

2 (C) the administrative procedure law, Chapter
3 2001, Government Code; and

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

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

8 Sec. 59A.061. COMPLAINTS. (a) The council shall maintain
9 a file containing each written complaint filed with the council.

10 The file must also include:

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

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

13 (3) the subject matter of the complaint;

14 (4) the name of each person contacted in relation to
15 the complaint;

16 (5) a summary of the results of the review or
17 investigation of the complaint; and

18 (6) an explanation of the reason the file was closed,
19 if the department closed the file without taking action other than
20 to investigate the claim.

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

25 (c) Complaints filed under this section are confidential
26 and excepted from disclosure under Chapter 552, Government Code.

27 [Sections 59A.062-59A.100 reserved for expansion]

1 SUBCHAPTER C. PURPOSES AND POWERS OF THE COUNCIL

2 Sec. 59A.101. PURPOSES OF COUNCIL. The council shall
3 design and implement programs to provide financial incentives for
4 the conservation of natural resources on qualified land through the
5 use of purchased or donated agricultural conservation easements.

6 Sec. 59A.102. POWERS OF THE COUNCIL. The council has all
7 the powers necessary to accomplish the purposes and programs of the
8 council, including the power:

9 (1) to adopt and enforce bylaws, rules, and procedures
10 and to perform all functions necessary to carry out this chapter;

11 (2) to sue and be sued, complain, and defend in its own
12 name;

13 (3) to adopt and use an official seal and alter it when
14 considered advisable;

15 (4) to establish, charge, and collect fees, charges,
16 and penalties in connection with the programs, services, and
17 activities provided by the council in accordance with this chapter;

18 (5) to make, enter into, and enforce contracts and
19 agreements;

20 (6) to request, accept, and use gifts, loans,
21 donations, aid, guaranties, appropriations, allocations,
22 subsidies, grants, or contributions of any item of value for the
23 furtherance of any of the council's purposes;

24 (7) to seek ways to coordinate and leverage public and
25 private sources of funding;

26 (8) to adopt a policy for the monitoring by holders of
27 agricultural conservation easements purchased through grants from

1 the fund that is consistent with the requirements of any entity that
2 provides funds used to purchase an agricultural conservation
3 easement;

4 (9) to monitor holders of the agricultural
5 conservation easements;

6 (10) to create an advisory board for the purpose of
7 reviewing grant applications, if necessary;

8 (11) to establish a protocol for the purchase of
9 agricultural conservation easements under the program;

10 (12) to evaluate selection and eligibility of
11 applicants based on criteria established by this chapter and
12 administer grants awarded to successful applicants;

13 (13) to determine which qualified landowners receive
14 program funds;

15 (14) to ensure that agricultural conservation
16 easements purchased under this chapter are consistent with the
17 continuation of agricultural activities and the preservation of
18 open space;

19 (15) to develop and require disclosure statements to
20 be signed by the owner of qualified land and the holder before the
21 sale of an agricultural conservation easement;

22 (16) to enforce the terms of any agricultural
23 conservation easement purchased in whole or in part with funds
24 under this chapter; and

25 (17) to adopt a standard agreement to be used between a
26 holder and a qualified landowner for the purpose of creating an
27 agricultural conservation easement on qualified land.

1 [Sections 59A.103-59A.150 reserved for expansion]

2 SUBCHAPTER D. PROGRAM; FUND

3 Sec. 59A.151. CREATION OF PROGRAM; PUBLIC PURPOSE.

4 (a) The Texas Farmland and Ranchland Conservation Program is
5 created within the department.

6 (b) The purpose of this chapter is to provide financial
7 incentives for the conservation of natural resources on qualified
8 land through the use of agricultural conservation easements that
9 are purchased from a willing qualified landowner or donated by the
10 qualified landowner.

11 (c) Administration of the program by the department is
12 subject to the availability of financial resources.

13 Sec. 59A.152. PROGRAM RULES. (a) The department shall
14 adopt rules to establish criteria for determining which eligible
15 projects receive program funds and to establish an application
16 process. The rules must provide for the evaluation of project
17 applications using the following considerations and criteria:

18 (1) landscape and watershed integrity to conserve
19 water and natural resources;

20 (2) productivity of the agricultural lands;

21 (3) habitats for native species, including habitats
22 for important, endangered, threatened, rare, or sensitive species;

23 (4) susceptibility of the subject property to
24 fragmentation or development;

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

27 (6) proximity of the subject property to other

1 protected lands;

2 (7) whether the proposed agricultural conservation
3 easement is perpetual or for a term of years; and

4 (8) whether the application includes a resource
5 management plan agreed to by both parties and approved by the
6 council.

7 (b) The department shall adopt rules that provide that the
8 qualified landowner and the potential purchaser of the agricultural
9 conservation easement shall consider and negotiate the terms of the
10 agricultural conservation easement, including:

11 (1) whether the purchase price of the agricultural
12 conservation easement will be paid to the qualified landowner in a
13 lump sum or in annual or monthly payments;

14 (2) whether the agricultural conservation easement
15 will be perpetual or for a term of 30 years;

16 (3) whether a term agricultural conservation easement
17 is renewable;

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

21 (5) the market value of the agricultural conservation
22 easement.

23 (c) The department shall adopt rules to establish a
24 procedure for the termination and repurchase of any agricultural
25 conservation easement purchased under this chapter.

26 (d) Anytime after the date an agricultural conservation
27 easement is acquired with a grant awarded under this chapter, the

1 landowner may request that the council terminate the easement on
2 the ground that the landowner is unable to meet the conservation
3 goals as described by this chapter on the subject land. The
4 termination request must contain a statement of impossibility
5 verified by the landowner, who shall deliver a copy of the request
6 to the easement holder. On receipt of the termination request, the
7 council shall conduct an inquiry and not later than the 180th day
8 after receipt of the request shall notify the parties of its
9 decision to grant or deny the request for termination. Either party
10 has 45 days to appeal the council's decision in district court.

11 Sec. 59A.153. TEXAS FARMLAND AND RANCLAND CONSERVATION
12 FUND. (a) The Texas farmland and ranchland conservation fund is
13 an account in the state treasury dedicated to funding the purchase
14 of agricultural conservation easements through grants to holders
15 under this chapter. The account shall consist of:

16 (1) public or private grants, gifts, donations, or
17 contributions; or

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

21 (b) The fund may not be used to purchase or acquire any right
22 to property by eminent domain.

23 (c) The fund may be used to pay transaction costs related to
24 the purchase of agricultural conservation easements, which may
25 include reimbursement of appraisal costs. Program funds may not be
26 used for the monitoring of agricultural conservation easements by a
27 holder.

1 [Sections 59A.154-59A.200 reserved for expansion]

2 SUBCHAPTER E. PROTECTION OF CONSERVED LAND

3 Sec. 59A.201. PROTECTED LAND; NOTICE OF TAKING.

4 (a) Notwithstanding other law, a department or agency of this
5 state or a county, municipality, or other political subdivision of
6 this state may not approve a program or project that requires the
7 use or taking of any private land encumbered by an agricultural
8 conservation easement purchased under this chapter unless:

9 (1) the governmental entity has made a bona fide good
10 faith effort to examine alternatives to the use or taking of the
11 land and has determined that no feasible alternative exists;

12 (2) the program or project includes all reasonable
13 planning to minimize harm to the land resulting from the use or
14 taking;

15 (3) the governmental entity has made a bona fide good
16 faith effort to acquire the land by voluntary purchase or lease; and

17 (4) the governmental entity requires the land to
18 provide for the needs of the surrounding landowners.

19 (b) Notwithstanding other law, a finding required by
20 Subsection (a) may be made only at a public hearing:

21 (1) which is conducted in accordance with Chapter 551,
22 Government Code; and

23 (2) for which the governmental entity has provided
24 written notice to:

25 (A) the council;

26 (B) the qualified landowner;

27 (C) all landowners whose property is contiguous

1 to the qualified landowner's property; and

2 (D) all landowners within reasonable geographic
3 proximity to the agricultural conservation easement.

4 (c) Notwithstanding other law, if land encumbered by an
5 agricultural conservation easement purchased under this chapter is
6 condemned, the entity that condemns the land must compensate the
7 holder for the value of the development rights held by the holder.
8 The compensation must equal the value of the development rights
9 owned by the holder on the date of condemnation. Not later than the
10 30th day after the date the holder receives compensation under this
11 section, the holder must pay the council an amount equal to the
12 total compensation received by the holder multiplied by the
13 percentage of the original purchase price for the agricultural
14 conservation easement that was paid with program funds.

15 (d) Any compensation paid to a holder under this section is
16 held in trust for the benefit of the council until the holder has
17 remitted all funds owed to the council.

18 (e) Any compensation paid to a holder under this section is
19 in addition to compensation that must be paid to the qualified
20 landowner for the value of the land.

21 [Sections 59A.202-59A.250 reserved for expansion]

22 SUBCHAPTER F. EXPIRATION OF COUNCIL

23 Sec. 59A.251. SUNSET PROVISION. The council is subject to
24 Chapter 325, Government Code (Texas Sunset Act). Unless continued
25 in existence as provided by that chapter, the council is abolished
26 and this chapter expires September 1, 2009.

27 SECTION 2. The Department of Agriculture shall adopt rules

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1 required by Section 59A.152, Agriculture Code, as added by this
2 Act, as soon as practicable after the effective date of this Act.

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