

AN ACT

relating to the establishment of the Texas 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 through 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 the program established under 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 in qualified land that is designed to accomplish one or more of the following additional purposes:

(A) conserving water quality or quantity;

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

(C) conserving rare or sensitive plant species;

or

1 (D) conserving large tracts of qualified
2 open-space land that are threatened with fragmentation or
3 development.

4 (2) "Commissioner" means the commissioner of the
5 General Land Office.

6 (3) "Council" means the Texas Farm and Ranch Lands
7 Conservation Council established under Section 183.061.

8 (4) "Fund" means the Texas farm and ranch lands
9 conservation fund established under Section 183.058.

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

11 (6) "Program" means the Texas farm and ranch lands
12 conservation program established under this subchapter.

13 (7) "Purchase of agricultural conservation easement"
14 means the purchase from a willing seller of an agricultural
15 conservation easement.

16 (8) "Qualified easement holder" means a holder that
17 is:

18 (A) a state agency or a municipality; or

19 (B) an organization that is exempt from federal
20 income taxation under Section 501(a), Internal Revenue Code of
21 1986, as an organization described by Section 501(c)(3) of that
22 code and that is organized for the purpose of preserving
23 agriculture, open space, or natural resources.

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

26 Sec. 183.053. PROGRAM. The Texas farm and ranch lands
27 conservation program is established as a program of the land office

1 for the purpose of administering the assistance to be provided by
2 the fund for the purchase of agricultural conservation easements.

3 Sec. 183.054. TERMS OF AGRICULTURAL CONSERVATION EASEMENT.

4 (a) An agricultural conservation easement under this subchapter
5 must be perpetual or for a term of 30 years.

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

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

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

13 (3) whether a term easement is renewable;

14 (4) whether the landowner retains limited development
15 rights; and

16 (5) the purchase price of the easement.

17 (c) An agricultural conservation easement may not be
18 assigned to or enforced by a third party without the express written
19 consent of the landowner.

20 Sec. 183.055. TERMINATION OF EASEMENT. (a) Any time after
21 an agricultural conservation easement is acquired with a grant
22 awarded under this subchapter, the landowner may request that the
23 council terminate the easement as provided by Subsection (b) on the
24 ground that the landowner is unable to meet the conservation goals
25 as described by Section 183.052(1). The termination request must
26 contain a verifiable statement of impossibility.

27 (b) On receipt of the request for termination, the council

1 shall notify the qualified easement holder and conduct an inquiry.
2 Not later than the 180th day after the date the council receives the
3 request, the council shall notify the parties of the decision to
4 grant or deny the request for termination. Either party may appeal
5 the decision in district court not later than the 45th day after the
6 date of the notification.

7 Sec. 183.056. REPURCHASE BY LANDOWNER. (a) In this
8 section:

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

14 (2) "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 (b) If a request for termination of an agricultural
19 conservation easement is granted under Section 183.055, the
20 commissioner shall order an appraisal of the fair market value and
21 the agricultural value of the property subject to the easement. The
22 landowner shall bear the cost of the appraisal.

23 (c) Not later than the 180th day after the date of the
24 appraisal under Subsection (b), the landowner must pay to the
25 qualified easement holder an amount equal to the difference between
26 the fair market value and the agricultural value. The qualified
27 easement holder shall pay to the fund any amounts received under

1 this subsection, not to exceed the amount paid by the fund for
2 purchase of the easement.

3 (d) Not later than the 30th day after the date of payment by
4 the landowner under Subsection (c), the qualified easement holder
5 shall terminate the easement.

6 (e) If the request for termination is denied or if the
7 landowner fails to make the payment required by Subsection (c) in
8 the time required by that subsection, the landowner may not submit
9 another request for termination of the easement before the fifth
10 anniversary of the date of the last request.

11 Sec. 183.057. PROTECTED LAND; NOTICE OF TAKING. (a) A
12 department or agency of this state, a county, a municipality,
13 another political subdivision, or a public utility may not approve
14 any program or project that requires the use or taking through
15 eminent domain of private land encumbered by an agricultural
16 conservation easement purchased under this subchapter unless the
17 governmental entity or public utility acting through its governing
18 body or officers determines that:

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

21 (2) the program or project includes all reasonable
22 planning to minimize harm to the land resulting from the use or
23 taking.

24 (b) A determination required by Subsection (a) may be made
25 only at a properly noticed public hearing.

26 (c) The governing body or officers of the governmental
27 entity or public utility may consider clearly enunciated local

1 preferences, and the provisions of this subchapter do not
2 constitute a mandatory prohibition against the use of the area if
3 the determinations required by Subsection (a) are made.

4 (d) If, after making the determination required by
5 Subsection (a), a department or agency of this state, a county, a
6 municipality, another political subdivision, or a public utility
7 acquires by eminent domain a fee simple interest in land encumbered
8 by an agricultural conservation easement purchased under this
9 subchapter:

10 (1) the easement on the condemned property terminates;

11 and

12 (2) the entity exercising the power of eminent domain

13 shall:

14 (A) pay for an appraisal of the fair market
15 value, as that term is defined by Section 183.056, of the property
16 subject to condemnation;

17 (B) pay to the qualified easement holder an
18 amount equal to the amount paid by the holder for the portion of the
19 easement affecting the property to be condemned;

20 (C) pay to the landowner an amount equal to the
21 fair market value of the condemned property less the amount paid to
22 the qualified easement holder under Paragraph (B); and

23 (D) pay to the landowner and the qualified
24 easement holder any additional damages to their interests in the
25 remaining property, as determined by the special commissioners
26 under Section 21.042, Property Code.

27 (e) If, after making the determination required by

1 Subsection (a), a department or agency of this state, a county, a
2 municipality, another political subdivision, or a public utility
3 acquires by eminent domain an interest other than a fee simple
4 interest in land encumbered by an agricultural conservation
5 easement purchased under this subchapter:

6 (1) the entity exercising the power of eminent domain
7 shall pay for an appraisal of the fair market value, as that term is
8 defined by Section 183.056, of the property subject to
9 condemnation; and

10 (2) the special commissioners shall consider the fair
11 market value as the value of the property for purposes of assessing
12 damages under Section 21.042, Property Code.

13 (f) The qualified easement holder shall pay to the fund any
14 amounts received under Subsections (d) and (e), not to exceed the
15 amount paid by the fund for the purchase of the easement.

16 Sec. 183.058. TEXAS FARM AND RANCH LANDS CONSERVATION FUND.

17 (a) The Texas farm and ranch lands conservation fund is an account
18 in the general revenue fund that may be appropriated only to the
19 land office to be used as provided by Subsection (b). The fund may
20 not be used for grants to purchase or acquire any right or interest
21 in property by eminent domain. The fund consists of:

22 (1) money appropriated by the legislature to the fund;
23 (2) public or private grants, gifts, donations, or
24 contributions; and

25 (3) funds from any other source, including proceeds
26 from the sale of bonds, state or federal mitigation funds, or funds
27 from any local, state, or federal program.

1 (b) The fund may be used only:

2 (1) to award grants to qualified easement holders for
3 the purchase of agricultural conservation easements;

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

7 (3) to pay associated administrative costs of the land
8 office, not to exceed five percent of the money in the fund.

9 Sec. 183.059. ADMINISTRATION OF FUND. (a) The council may:

10 (1) adopt rules necessary to perform program duties
11 under this subchapter;

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

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

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

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

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

26 (7) establish a protocol for the purchase of
27 agricultural conservation easements and for the distribution of

1 funds to approved applicants;

2 (8) administer grants awarded to successful
3 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) approve the termination of easements and take any
9 other action necessary to further the goals of the program.

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

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

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

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

24 (4) include a memorandum of understanding signed by
25 the landowner and the applicant indicating intent to sell an
26 agricultural conservation easement and containing the terms of the
27 contract for the sale of the easement.

1 (c) For the purposes of determining the amount of a grant
2 under this subchapter, the value of an agricultural conservation
3 easement shall be determined by a site-specific estimate-of-value
4 appraisal performed by a licensed, qualified appraiser.

5 Sec. 183.060. CRITERIA FOR AWARDING GRANTS. The council
6 shall adopt a scoring process to be used in evaluating applications
7 that considers the following:

8 (1) maintenance of landscape and watershed integrity
9 to conserve water and natural resources;

10 (2) protection of highly productive agricultural
11 lands;

12 (3) protection of habitats for native plant and animal
13 species, including habitats for endangered, threatened, rare, or
14 sensitive species;

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

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

19 (6) proximity of the subject property to other
20 protected lands;

21 (7) the term of the proposed easement, whether
22 perpetual or for a term of 30 years; and

23 (8) a resource management plan agreed to by both
24 parties and approved by the council.

25 Sec. 183.061. TEXAS FARM AND RANCH LANDS CONSERVATION
26 COUNCIL. (a) The Texas Farm and Ranch Lands Conservation Council
27 is established to advise and assist the commissioner with

1 administration of the program and to select applicants to receive
2 grants under this subchapter using the criteria adopted by the
3 council under Section 183.060. The council consists of:

4 (1) six members appointed by the governor as follows:

5 (A) one member who operates a family farm or
6 ranch in this state;

7 (B) one member who is the designated
8 representative of an agricultural banking or lending organization
9 and who has significant experience lending for farms and ranches or
10 lands encumbered by conservation easements;

11 (C) two members who are the designated
12 representatives of a statewide agricultural organization in
13 existence in this state for not less than 10 years;

14 (D) one member who is a designated representative
15 of a statewide nonprofit organization that represents land trusts
16 operating in this state; and

17 (E) one member from a state institution of higher
18 education who has significant experience with natural resources
19 issues; and

20 (2) four ex officio members as follows:

21 (A) the commissioner;

22 (B) the commissioner of agriculture or the
23 commissioner's designee;

24 (C) the presiding officer of the Parks and
25 Wildlife Commission or the presiding officer's designee; and

26 (D) the state conservationist of the Natural
27 Resources Conservation Service of the United States Department of

1 Agriculture or a designee of that person, who serves as a nonvoting
2 member.

3 (b) Appointed members of the council serve staggered terms
4 of six years, with two of the members' terms expiring February 1 of
5 each odd-numbered year.

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

9 (d) The commissioner or the commissioner's designee shall
10 serve as the presiding officer of the council and shall designate
11 from among the members of the council an assistant presiding
12 officer to serve in that capacity at the will of the commissioner.
13 The council may choose from its members other officers as the
14 council considers necessary.

15 (e) A member of the council is not entitled to compensation
16 for service on the council but is entitled to reimbursement of the
17 necessary and reasonable travel expenses incurred by the member
18 while conducting the business of the council, as provided for state
19 employees by the General Appropriations Act.

20 (f) The council shall meet not less than once each year.

21 (g) A person may not be appointed as a council member if the
22 person or the person's spouse:

23 (1) is employed by or participates in the management
24 of a business entity or other organization receiving money under
25 the program;

26 (2) owns or controls, directly or indirectly, more
27 than a 10 percent interest in a business entity or other

1 organization receiving money under the program; or

2 (3) uses or receives a substantial amount of tangible
3 goods, services, or money under the program other than
4 reimbursement authorized by law for travel expenses as described by
5 Subsection (e).

6 (h) In this subsection, "Texas trade association" means a
7 cooperative and voluntarily joined statewide association of
8 business or professional competitors in this state designed to
9 assist its members and its industry or profession in dealing with
10 mutual business or professional problems and in promoting their
11 common interest. A person may not be an appointed member of the
12 council if:

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

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

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

27 (j) It is a ground for removal from the council if a member:

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

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 (k) 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
11 participating council member exists.

12 (l) If the presiding officer has knowledge that a potential
13 ground for removal exists, the presiding officer shall notify the
14 commissioner and the governor that a potential ground for removal
15 exists.

16 (m) The presiding officer or the presiding officer's
17 designee, with the assistance of staff of the land office, shall
18 provide to members of the council information regarding a member's
19 responsibilities under applicable laws relating to standards of
20 conduct for state officers.

21 (n) A person who is appointed to and qualifies for office as
22 a member of the council may not vote, deliberate, or be counted as a
23 member in attendance at a meeting of the council until the person
24 completes a training program that complies with this section. The
25 training program must provide the person with information
26 regarding:

27 (1) the legislation that created the council;

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

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

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

6 (5) the current budget for the council;

7 (6) the results of the most recent formal audit of the
8 council;

9 (7) the requirements of:

10 (A) the open meetings law, Chapter 551,
11 Government Code;

12 (B) the public information law, Chapter 552,
13 Government Code;

14 (C) the administrative procedure law, Chapter
15 2001, Government Code; and

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

18 (8) any applicable policies adopted by the council or
19 the Texas Ethics Commission.

20 (o) A person appointed to the council is entitled to
21 reimbursement, as provided by the General Appropriations Act, for
22 the travel expenses incurred in attending the training program
23 regardless of whether the attendance at the training program occurs
24 before or after the person qualifies for office.

25 Sec. 183.062. EFFECT ON TAX APPRAISAL. An agricultural
26 conservation easement under this subchapter does not affect the
27 eligibility of the property subject to the easement for appraisal

1 for ad valorem tax purposes under Subchapter D, Chapter 23, Tax
2 Code.

3 Sec. 183.063. REPORT TO TEXAS DEPARTMENT OF TRANSPORTATION.
4 Not later than the 10th day after the date of a closing of a purchase
5 of an easement under this subchapter, the land office shall provide
6 the Texas Department of Transportation a legal description of the
7 property subject to the easement and shall include with the
8 description the date the closing occurred.

9 SECTION 3. As soon as practicable after the effective date
10 of this Act, the governor shall appoint the members of the Texas
11 Farm and Ranch Lands Conservation Council, as required under
12 Section 183.061, Natural Resources Code, as added by this Act. In
13 appointing the initial members of the council under this section,
14 the governor shall appoint:

- 15 (1) two members for terms expiring February 1, 2007;
16 (2) two members for terms expiring February 1, 2009;
17 and
18 (3) two members for terms expiring February 1, 2011.

19 SECTION 4. This Act takes effect September 1, 2005.

President of the Senate

Speaker of the House

I hereby certify that S.B. No. 1273 passed the Senate on April 28, 2005, by the following vote: Yeas 31, Nays 0; May 18, 2005, Senate refused to concur in House amendments and requested appointment of Conference Committee; May 20, 2005, House granted request of the Senate; May 29, 2005, Senate adopted Conference Committee Report by the following vote: Yeas 31, Nays 0.

Secretary of the Senate

I hereby certify that S.B. No. 1273 passed the House, with amendments, on May 12, 2005, by a non-record vote; May 20, 2005, House granted request of the Senate for appointment of Conference Committee; May 29, 2005, House adopted Conference Committee Report by a non-record vote.

Chief Clerk of the House

Approved:

Date

Governor