

By: Jackson

S.B. No. 1273

Substitute the following for S.B. No. 1273:

By: Orr

C.S.S.B. No. 1273

A BILL TO BE ENTITLED

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 183.001-183.005 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 advisory 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 commissioner terminate the easement as provided by Subsection (b)
24 on the ground that the landowner is unable to meet the conservation
25 goals as described by Section 183.052(1). The termination request
26 must contain a verifiable statement of impossibility.

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

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

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

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

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

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

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

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

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

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

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

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

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

24 (c) The governing body or officers of the governmental
25 entity or public utility may consider clearly enunciated local
26 preferences, and the provisions of this subchapter do not
27 constitute a mandatory prohibition against the use of the area if

1 the determinations required by Subsection (a) are made.

2 (d) A department or agency of this state, a county, a
3 municipality, another political subdivision, or a public utility
4 exercising the power of eminent domain in accordance with the
5 provisions of this subchapter on land encumbered by an agricultural
6 conservation easement purchased under this subchapter shall:

7 (1) pay to the fund an amount equal to the amount
8 granted from the fund for the purchase of the easement; and

9 (2) pay to the landowner the fair market value less an
10 amount equal to the amount granted from the fund for the purchase of
11 the easement.

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

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

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

19 (2) public or private grants, gifts, donations or
20 contributions; and

21 (3) funds from any other source, including proceeds
22 from the sale of bonds, state or federal mitigation funds, or funds
23 from any local, state, or federal program.

24 (b) The fund may be used only:

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

27 (2) to pay transaction costs related to the purchase

1 of agricultural conservation easements, which may include
2 reimbursement of appraisal costs; and

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

5 Sec. 183.059. ADMINISTRATION OF FUND. (a) The
6 commissioner, in consultation with the council, may:

7 (1) adopt rules necessary to perform program duties
8 under this subchapter;

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

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

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

19 (5) seek ways to coordinate and leverage public and
20 private sources of funding;

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

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

26 (8) evaluate selection and eligibility based on
27 criteria established by this subchapter and administer grants

1 awarded to successful applicants;

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

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

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

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

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

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

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

27 (c) For the purposes of determining the amount of a grant

1 under this subchapter, the value of an agricultural conservation
2 easement shall be determined by a site-specific estimate-of-value
3 appraisal performed by a licensed, qualified appraiser.

4 Sec. 183.060. CRITERIA FOR AWARDDING GRANTS. The
5 commissioner shall adopt a scoring process that considers the
6 following:

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

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

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

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

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

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

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

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

24 Sec. 183.061. TEXAS FARM AND RANCH LANDS CONSERVATION
25 ADVISORY COUNCIL. (a) The Texas farm and ranch lands conservation
26 advisory council is established to advise and assist the
27 commissioner with administration of the program. The council

1 consists of:

2 (1) seven members appointed by the governor as
3 follows:

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

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

10 (C) one member who is a certified real estate
11 appraiser in good standing and who has significant experience
12 appraising farms and ranches;

13 (D) two members who are the designated
14 representatives of statewide agricultural organizations in
15 existence in this state for not less than 10 years;

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

19 (F) one member from a state institution of higher
20 education who has significant experience with natural resources
21 issues; and

22 (2) two ex-officio members as follows:

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

25 (B) the state conservationist of the Natural
26 Resource Conservation Service of the United States Department of
27 Agriculture or a designee of that person.

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

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

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

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

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

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

20 (1) is employed by or participates in the management
21 of a business entity or other organization receiving money under
22 the program;

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

26 (3) uses or receives a substantial amount of tangible
27 goods, services, or money under the program other than

1 reimbursement authorized by law for travel expenses as described by
2 Subsection (e).

3 (h) In this subsection, "Texas trade association" means a
4 cooperative and voluntarily joined statewide association of
5 business or professional competitors in this state designed to
6 assist its members and its industry or profession in dealing with
7 mutual business or professional problems and in promoting their
8 common interest. A person may not be an appointed member of the
9 council 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 the 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 (i) 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 (j) It is a ground for removal from the council if a member:
25 (1) is ineligible for membership under this section;
26 (2) cannot, because of illness or disability,
27 discharge the member's duties for a substantial part of the member's

1 term; or

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

6 (k) The validity of an action of the council is not affected
7 by the fact that it is taken when a ground for removal of a
8 participating council member exists.

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

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

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

24 (1) the legislation that created the council;

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

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

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

3 (5) the current budget for the council;

4 (6) the results of the most recent formal audit of the
5 council;

6 (7) the requirements of:

7 (A) the open meetings law, Chapter 551,
8 Government Code;

9 (B) the public information law, Chapter 552,
10 Government Code;

11 (C) the administrative procedure law, Chapter
12 2001, Government Code; and

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

15 (8) any applicable policies adopted by the council or
16 the Texas Ethics Commission.

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

22 Sec. 183.062. PROPOSED RULES. The council shall develop
23 proposed rules governing the program and shall recommend the
24 proposed rules to the commissioner.

25 Sec. 183.063. 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. 183.064. REPORT TO TEXAS DEPARTMENT OF TRANSPORTATION.
4 The land office shall provide the Texas Department of
5 Transportation a legal description of each property subject to an
6 easement under this subchapter and shall include with the
7 description the date of the closing of the purchase of the easement.

8 SECTION 3. As soon as practicable after the effective date
9 of this Act, the governor shall appoint the members of the Texas
10 farm and ranch lands conservation advisory council, as required
11 under Section 183.061, Natural Resources Code, as added by this
12 Act. In appointing the initial members of the council under this
13 section, the governor shall appoint:

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

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