

By: Jackson

S.B. No. 1273

A BILL TO BE ENTITLED

AN ACT

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:  
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. Title 4 Agriculture Code is amended by adding  
Chapter 59A. Chapter 59A. TEXAS FARM AND RANCH LANDS CONSERVATION  
PROGRAM. The purpose of this chapter is to provide financial  
incentives for the conservation of natural resources on working  
farms and ranches through the use of purchased or donated  
agricultural conservation easements.

SECTION 2. Title 4 of the Agriculture Code is amended by  
adding the following: Section 59A.001. DEFINITIONS.

1. "Agricultural conservation easement" means a  
conservation easement as that term is defined in §183.001(1)  
Natural Resources Code, except that an easement established under  
this Chapter for the specific purpose of conserving qualified land  
may be in perpetuity, or for a term of 30 years. An easement under  
this Chapter may not be assigned to or enforced by a third party  
without the express written consent of the landowner. An easement  
under this Chapter must accomplish one or more of the following  
additional purposes:

(a) Conserve water quality or quantity;

(b) Conserve native wildlife species through

1 protection of their habitat;

2 (c) Conserve rare or sensitive plant species;

3 (d) Conserve large tracts of qualified open space land  
4 that are threatened with fragmentation or development.

5 2. "Council" means the 11 member Texas Farm and Ranch Lands  
6 Conservation Council, appointed by the Governor, whose purpose is  
7 to administer the program.

8 3. "Center" means the Real Estate Research Center of Texas  
9 A&M University.

10 5. "Fund" means the Texas Farm and Ranch Lands Conservation  
11 Fund, an account of the Center dedicated to funding the purchase of  
12 agricultural conservation easements through grants to qualified  
13 easement holders under this Chapter. The account shall consist of:

14 (a) Public or private grants, gifts, donations or  
15 contributions; or

16 (c) Funds from any other source including but not  
17 limited to proceeds from the sale of bonds, state or federal  
18 mitigation funds or funds from any local, state or federal program.

19 6. "Program" means the Texas Farm and Ranch Lands  
20 Conservation Program of the Center, the purpose of which is to  
21 conserve qualified land through the purchase of agricultural  
22 conservation easements.

23 7. "Purchase of Agricultural Conservation Easement" means  
24 the purchase from a willing seller of an agricultural conservation  
25 easement either in perpetuity or for a term of 30 years.

26 8. "Qualified easement holder" is defined at §183.001(2)  
27 Natural Resources Code except that for purposes of this Chapter,

1 only a state agency, a municipality or a §501(c)(3) organization  
2 that is organized for the purpose of preserving agriculture, open  
3 space or natural resources may receive grants from the fund.

4 8. "Qualified land" means qualified open space land as that  
5 term is defined at §23.51(a) Tax Code.

6 SECTION 3. Title 4 Agriculture Code is amended by adding the  
7 following:

8 Sec. 59A.002. TEXAS FARM AND RANCH LANDS CONSERVATION  
9 COUNCIL.

10 1. The Council is established within the Real Estate  
11 Research Council and consists of:

12 (a) Two members who operate a family farm or ranch in  
13 this state;

14 (b) One member who is the designated representative of  
15 a statewide Section 501(c)(3) nonprofit conservation organization  
16 that has been in existence in this state for 10 or more years;

17 (c) One member who is the designated representative of  
18 an agricultural banking/lending organization;

19 (d) One member who is a licensed real estate appraiser  
20 in good standing who has significant experience appraising farms  
21 and ranches;

22 (e) Two members who are the designated representatives  
23 of statewide agricultural organizations in existence in this state  
24 for at least 10 years;

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

27 (g) One member who is a member in good standing with

1 the State Bar of Texas with significant experience in the practice  
2 of real estate law;

3 (h) One member is the Agriculture Commissioner or the  
4 Commissioner's designee;

5 (i) One ex-officio member is the State Conservationist  
6 of the U.S.D.A. Natural Resource Conservation Service or that  
7 person's designee; and

8 (j) One member is the Chairman of the Texas Parks and  
9 Wildlife Commission or that person's designee.

10 2. The Council shall:

11 (a) Have the authority to adopt rules necessary to  
12 perform its duties;

13 (b) Have the authority to request, accept, and use  
14 gifts, loans, donations, aid, appropriations, guaranties,  
15 subsidies, grants or contributions of any item of value for the  
16 furtherance of any of its purposes;

17 (c) Have the authority to establish, charge, and  
18 collect fees, charges and penalties in connection with the  
19 programs, services and activities provided for by the chapter;

20 (d) Have the authority to make, enter into, and  
21 enforce contracts, agreements, and to take other actions as may  
22 accomplish any of its purposes;

23 (e) Seek ways to coordinate and leverage public and  
24 private sources of funding;

25 (f) Adopt standards for the monitoring by easement  
26 holders of agricultural conservation easements purchased through  
27 grants from the fund;

1           (g) Create an advisory board for the purpose of  
2 reviewing grant applications, if necessary;

3           (h) Establish a protocol for the purchase of  
4 agricultural conservation easements and for the distribution of  
5 funds directly to approved landowner applicants;

6           (i) Evaluate selection and eligibility based on  
7 criteria established by this Chapter and administer grants awarded  
8 to successful applicants;

9           (j) Ensure that agricultural conservation easements  
10 purchased under this Chapter are not inconsistent with the  
11 preservation of open space and the conservation of wildlife habitat  
12 and/or water; and

13           (k) Be authorized to vote upon the award of grants and  
14 the termination of easements, and any other action necessary to  
15 further the goals of the program. Any question shall be decided by a  
16 majority of the voting members.

17           Section 59A.003. TERMS; CONSIDERATION IN MAKING  
18 APPOINTMENTS. (a) Appointed members of the council serve  
19 staggered terms of six years, with one-third of the appointed  
20 members' terms expiring February 1 of each odd-numbered year.

21           (b) Appointments to the council shall be made without regard  
22 to the race, color, disability, sex, religion, age or national  
23 origin of the appointees.

24           Section 59A.004. OFFICERS; COMPENSATION. (a) The  
25 governor shall designate a member of the council as the presiding  
26 officer of the council to serve in that capacity at the will of the  
27 governor. The council may choose from its members other officers as

1 the council considers necessary.

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

11 Section 59A.005. PUBLIC MEMBERS OF COUNCIL. A person may  
12 not be appointed as a council member if the person or the person's  
13 spouse:

14 (1) is employed by or participates in the management  
15 of a business entity or other organization receiving money from the  
16 council;

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

20 (3) uses or receives a substantial amount of tangible  
21 goods, services, or money from the council other than compensation  
22 or reimbursement authorized by law for council membership,  
23 attendance, or expenses.

24 Sec. 59A.006. CONFLICTS OF INTEREST. (a) In this section,  
25 "Texas trade association" means a cooperative and voluntarily  
26 joined statewide association of business or professional  
27 competitors in this state designed to assist its members and its

1 industry or profession in dealing with mutual business or  
2 professional problems and in promoting their common interest.

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

5 (1) the person is an officer, employee, or paid  
6 consultant of a Texas trade association for an occupation or  
7 profession with an interest in land conservation that is related to  
8 the occupation or profession; or

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

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

19 Sec. 59A.007. GROUNDS FOR REMOVAL. (a) It is a ground for  
20 removal from the council that an appointed member:

21 (1) is ineligible for membership under Section 59A.005  
22 or 59A.006;

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

26 (3) is absent from more than half of the regularly  
27 scheduled council meetings that the member is eligible to attend

1 during a calendar year without an excuse approved by a majority vote  
2 of the council.

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

6 (c) If the presiding officer has knowledge that a potential  
7 ground for removal exists, the presiding officer shall notify the  
8 governor and the attorney general that a potential ground for  
9 removal exists.

10 Sec. 59A.008. INFORMATION REGARDING REQUIREMENTS FOR  
11 OFFICE. The presiding officer or the presiding officer's designee  
12 shall provide to members of the council, as often as necessary,  
13 information regarding a person's responsibilities under applicable  
14 laws relating to standards of conduct for state officers.

15 Sec. 59A.009. TRAINING. (a) A person who is appointed to  
16 and qualifies for office as a member of the council may not vote,  
17 deliberate, or be counted as a member in attendance at a meeting of  
18 the council until the person completes a training that complies  
19 with this section.

20 (b) The training program must provide the person with  
21 information regarding:

- 22 (1) the legislation that created the council;  
23 (2) the programs;  
24 (3) the role and functions of the council;  
25 (4) the rules of the council with an emphasis on the  
26 rules that relate to disciplinary and investigatory authority;  
27 (5) the current budget for the council;



1           (6) the results of the most recent formal audit of the  
2 council;

3           (7) the requirements of;

4                 (A) the open meetings law, Chapter 551,  
5 Government Code;

6                 (B) the public information law, Chapter 552,  
7 Government Code;

8                 (C) the administrative procedure law, Chapter  
9 2001, Government Code; and

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

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

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

19           Sec. 59A.010. PUBLIC INPUT. The council shall develop and  
20 implement policies that provide the public with a reasonable  
21 opportunity to appear before the council and to speak on any issue  
22 under the jurisdiction of the council.

23           Sec. 59A.011. COMPLAINTS. (a) The council shall maintain  
24 a file containing each written complaint filed with the council.  
25 The file must also include:

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

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

- 1 (3) the subject matter of the complaint;
- 2 (4) the name of each person contacted in relation to  
3 the complaint;
- 4 (5) a summary of the results of the review or  
5 investigation of the complaint; and
- 6 (6) an explanation of the reason the file was closed,  
7 if the agency closed the file without taking action other than to  
8 investigate the claim.

9 (b) The council shall provide the person filing the  
10 complaint and to each person who is a subject of the complaint a  
11 copy of the council's policies and procedures relating to complaint  
12 investigation and resolution.

13 (c) The council, at least quarterly until final disposition  
14 of the complaint, shall notify the person filing the complaint

15 SECTION 4. Title 4 Agriculture Code is added by adding the  
16 following:

17 Section 59A.003. TEXAS FARM AND RANCH LANDS CONSERVATION  
18 FUND.

19 1. The fund may not be used for grants to purchase or acquire  
20 any right to property by eminent domain.

21 2. The fund shall be used:

22 (a) to award grants for the purchase of agricultural  
23 conservation easements. The value of an agricultural conservation  
24 easement shall be determined by a site-specific estimate-of-value  
25 appraisal performed by a licensed, qualified appraiser;

26 (b) to pay transaction costs related to the purchase  
27 of agricultural conservation easements, which may include

1 reimbursement of appraisal costs; and

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

4 SECTION 5. Title 4 Agriculture Code is amended by adding the  
5 following:

6 Section 59A.004. APPLICATION PROCESS.

7 1. To receive a grant under this Chapter, an applicant who  
8 is qualified to be an easement holder as defined by this Chapter  
9 must submit an application to the Council. The application must:

10 (a) Set out the parties' clear conservation goals  
11 consistent with the program;

12 (b) Include a site-specific estimate-of-value  
13 appraisal by a licensed appraiser qualified to determine the market  
14 value of the easement;

15 (c) Demonstrate that the applicant is able to match  
16 50% of the amount of the grant being sought. The Council may choose  
17 to allow a donation of part of the appraised value of the easement  
18 to be considered as in-kind matching funds;

19 (d) Include a memorandum of understanding from the  
20 landowner and signed by the applicant indicating intent to sell a  
21 conservation easement and the terms of the contract.

22 SECTION 6. Title 4 Agriculture Code is amended by adding the  
23 following:

24 Section 59A.005. CRITERIA FOR AWARDING GRANTS.

25 1. The Council shall adopt a scoring process that considers  
26 each of the following categories. Grants will be awarded to the  
27 applicant that demonstrates strength in the highest number of these

1 categories:

2 (a) Landscape and watershed integrity to conserve  
3 water and natural resources;

4 (b) Highly productive agricultural lands;

5 (c) Habitats for native species, including habitats  
6 for important, endangered, threatened, rare or sensitive species;

7 (d) Susceptibility of the subject property to  
8 fragmentation or development;

9 (e) Potential for leveraging state monies allocated to  
10 the program with additional public or private monies;

11 (f) Proximity of the subject property to other  
12 protected lands;

13 (g) Whether the proposed easement is perpetual or for  
14 a term of years; and

15 (h) Whether the application includes a resource  
16 management plan agreed to by both parties and approved by the  
17 council.

18 SECTION 7. Title 4 Agriculture Code is amended by adding the  
19 following:

20 Section 59A.006. TERMS OF AGRICULTURAL CONSERVATION  
21 EASEMENT.

22 1. The owner of qualified land and the potential purchaser  
23 of an agricultural conservation easement should consider and  
24 negotiate the following easement terms, including but not limited  
25 to the following considerations:

26 (a) Whether the landowner will receive a lump sum or  
27 annual or monthly payments;

1           (b) Whether the term of the easement shall be  
2 perpetual or for a term of 30 years;

3           (c) Whether a term easement is renewable;

4           (d) Whether the landowner retains limited development  
5 rights for personal or family residences on the land; and

6           (e) The market value of the easement.

7           SECTION 8. Title 4 Agriculture Code is amended by adding the  
8 following:

9           Section 59A.007. TERMINATION OF EASEMENTS.

10          (1.) Any time from the date an agricultural conservation  
11 easement is acquired with a grant awarded under this Chapter, the  
12 landowner may request the Council to terminate the easement on  
13 grounds that the landowner is unable to meet the conservation goals  
14 as described in this Chapter on the subject land. The termination  
15 request must contain a statement of impossibility verified by the  
16 owner, who shall deliver a copy of the request to the easement  
17 holder.

18          (2) On receipt of the termination request, the Council shall  
19 conduct an inquiry and within 180 days after the request shall  
20 notify the parties of its decision to grant or deny the request for  
21 termination. Either party has 45 days to appeal the council's  
22 decision in district court.

23           SECTION 9. Title 4 Agriculture Code is amended by adding the  
24 following:

25           Section 59A.008. REPURCHASE BY LANDOWNER.

26          1. If a request for termination is granted, the Council  
27 shall order an appraisal of the fair market value and the

1 agricultural value of the subject property. The landowner shall  
2 bear the cost of the appraisal. For purposes of this section, the  
3 term "fair market value" means the price as of the appraisal date a  
4 buyer willing but not obligated to buy would pay for the land at its  
5 best and most beneficial use under any obtainable development  
6 zoning category. The term "agricultural value" means the price as  
7 of the appraisal date a buyer willing but not obligated to buy would  
8 pay for a farm or ranch unit with land comparable in quality and  
9 composition to the subject property, but located in the nearest  
10 location where profitable farming or ranching is feasible.

11 2. Within 180 days of the appraisal, the landowner must  
12 repurchase the easement by paying to the fund, an amount  
13 proportionally equal to the original grant amount, the current  
14 value of the development rights.

15 3. If the request for termination is denied, or the owner  
16 fails to repurchase the easement within 180 days of the appraisal,  
17 the owner may not subsequently request termination until the  
18 expiration of five years from the last request.

19 SECTION 10. Title 4 Agriculture Code is amended by adding  
20 the following:

21 Section 59A.009. PROTECTED LAND; NOTICE OF TAKING.

22 1. No department or agency of this state, nor any county,  
23 municipality or other political subdivision may approve any program  
24 or project that requires the use or taking of any private land  
25 encumbered by an agricultural conservation easement purchased  
26 under this Chapter unless the governmental entity acting through  
27 its duly authorized governing body or officers determines that:

1           (a) There is no feasible and prudent alternative to  
2 the use or taking of such land; and

3           (b) The program or project includes all reasonable  
4 planning to minimize harm to the land resulting from the use or  
5 taking.

6           2. A finding required by Subdivision (1) of this section may  
7 be made only at a properly noticed public hearing.

8           3. The governing body or officer shall consider clearly  
9 enunciated local preferences, and the provisions of this Chapter do  
10 not constitute a mandatory prohibition against the use of the area  
11 if the findings are made that justify the approval of a program or  
12 project.

13           4. Any such finding that leads to the condemnation of land  
14 encumbered by an agricultural conservation easement purchased  
15 under this Chapter must also include a provision that repayment to  
16 the state must be based on the value of the united estate, in  
17 addition to any compensation due the landowner under an eminent  
18 domain proceeding.

19           5. Section 11. This Act takes effect September 1, 2005.