

1-1 By: Jackson S.B. No. 1273
1-2 (In the Senate - Filed March 9, 2005; March 21, 2005, read
1-3 first time and referred to Subcommittee on Agriculture and Coastal
1-4 Resources; April 7, 2005, reported adversely, with favorable
1-5 Committee Substitute to Committee on Natural Resources;
1-6 April 18, 2005, reported adversely, with favorable Committee
1-7 Substitute from Committee on Natural Resources by the following
1-8 vote: Yeas 9, Nays 0; April 18, 2005, sent to printer.)

1-9 COMMITTEE SUBSTITUTE FOR S.B. No. 1273 By: Jackson

1-10 A BILL TO BE ENTITLED
1-11 AN ACT

1-12 relating to the establishment of the Texas Farmland and Ranchland
1-13 Conservation Program.

1-14 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-15 SECTION 1. Title 4, Agriculture Code, is amended by adding
1-16 Chapter 59A to read as follows:

1-17 CHAPTER 59A. TEXAS FARMLAND AND RANGLAND CONSERVATION PROGRAM

1-18 SUBCHAPTER A. GENERAL PROVISIONS

1-19 Sec. 59A.001. DEFINITIONS. In this chapter:

1-20 (1) "Agricultural conservation easement" means a
1-21 conservation easement as that term is defined by Section 183.001,
1-22 Natural Resources Code, except that an agricultural conservation
1-23 easement established under this chapter for the specific purpose of
1-24 conserving qualified land may be in perpetuity or for a term of 30
1-25 years.

1-26 (2) "Council" means the 13-member Texas Farmland and
1-27 Ranchland Conservation Council.

1-28 (3) "Fund" means the Texas farmland and ranchland
1-29 conservation fund.

1-30 (4) "Holder" has the meaning assigned by Section
1-31 183.001, Natural Resources Code.

1-32 (5) "Program" means the Texas Farmland and Ranchland
1-33 Conservation Program.

1-34 (6) "Qualified land" means qualified open-space land
1-35 as that term is defined by Section 23.51, Tax Code.

1-36 (7) "Qualified landowner" means a person that owns
1-37 qualified land.

1-38 Sec. 59A.002. EASEMENT TERMS; PURPOSES. (a) An
1-39 agricultural conservation easement under this chapter must be
1-40 voluntarily agreed to by the qualified landowner and may not be
1-41 assigned to or enforced by a third party, except the council,
1-42 without the express written consent of the qualified landowner.

1-43 (b) An agricultural conservation easement under this
1-44 chapter must accomplish the purpose of conservation of natural
1-45 resources on qualified land and at least one of the following
1-46 additional purposes:

1-47 (1) the conservation of water quality or quantity;

1-48 (2) the conservation of native wildlife species
1-49 through the protection of their habitat;

1-50 (3) the conservation of rare or sensitive plant
1-51 species; or

1-52 (4) the conservation of tracts of qualified land that
1-53 are threatened with fragmentation or development.

1-54 (c) The instrument granting an agricultural conservation
1-55 easement purchased with funds provided under this chapter must
1-56 include a provision that gives the council the right to enforce the
1-57 terms of the easement.

1-58 (d) An agricultural conservation easement purchased with
1-59 funds provided under this chapter may provide for collateral,
1-60 guaranties, insurance, surety bonds, or other enhancements in a
1-61 form and amount sufficient to repay all grant funds provided by the
1-62 council if the terms of the agricultural conservation easement are
1-63 breached. The council shall determine whether the form and amount

2-1 of any enhancement provided under this subsection is sufficient.
2-2 Sec. 59A.003. VENUE. A suit filed by or on behalf of the
2-3 council under this chapter may be brought in Travis County.

2-4 [Sections 59A.004-59A.050 reserved for expansion]

2-5 SUBCHAPTER B. OPERATION OF COUNCIL

2-6 Sec. 59A.051. TEXAS FARMLAND AND RANGLAND CONSERVATION
2-7 COUNCIL. (a) The council is composed of:

2-8 (1) three members who are actively engaged in the
2-9 production of agriculture in the state;

2-10 (2) one landowning member who is the designated
2-11 representative of a statewide nonprofit conservation organization
2-12 that is exempt from taxation under Section 501(c)(3), Internal
2-13 Revenue Code of 1986, and that has been in existence in this state
2-14 for at least 10 years;

2-15 (3) one member who is the designated representative of
2-16 an agricultural banking or lending organization;

2-17 (4) one nonvoting member who is the director of the
2-18 Real Estate Center of Texas A&M University or the director's
2-19 designee;

2-20 (5) two members who are the designated representatives
2-21 of statewide agricultural organizations that have been in existence
2-22 in this state for at least 10 years;

2-23 (6) one member who has significant experience with
2-24 water policy and water management issues;

2-25 (7) one member who is a member in good standing of the
2-26 State Bar of Texas and who has significant experience in the
2-27 practice of real estate law;

2-28 (8) the commissioner or the commissioner's designee;

2-29 (9) one nonvoting member who is the state
2-30 conservationist of the United States Department of Agriculture's
2-31 Natural Resources Conservation Service or that person's designee;
2-32 and

2-33 (10) the chairman of the Parks and Wildlife Commission
2-34 or that person's designee.

2-35 (b) Members are appointed by the governor, except for the
2-36 commissioner, the state conservationist, the director of the Real
2-37 Estate Center of Texas A&M University, and the chairman of the Parks
2-38 and Wildlife Commission.

2-39 (c) Appointed members of the council serve staggered terms
2-40 of six years, with one-third of the appointed members' terms
2-41 expiring February 1 of each odd-numbered year.

2-42 (d) Appointments to the council shall be made without regard
2-43 to the race, color, disability, sex, religion, age, or national
2-44 origin of the appointees.

2-45 (e) A council member is not entitled to compensation for
2-46 servicing on the council and is not entitled to reimbursement for
2-47 expenses incurred in performing the official duties of office.

2-48 Sec. 59A.052. OFFICERS. (a) The governor shall designate
2-49 a member of the council as the chair of the council to serve in that
2-50 capacity at the pleasure of the governor. The council shall elect a
2-51 vice-chairman biennially from its members and shall elect a
2-52 secretary, a treasurer, and other officers it considers necessary.

2-53 (b) The chair shall preside at meetings of the council and
2-54 perform other duties prescribed by the council.

2-55 (c) The vice-chair shall perform the duties of the chair
2-56 when the chair is not present or is incapacitated or unable to
2-57 perform the duties of the chair.

2-58 (d) The secretary is the custodian of the minutes, books,
2-59 records, and seal of the council and shall perform other duties as
2-60 prescribed by the council.

2-61 (e) The treasurer shall perform duties as prescribed by the
2-62 council. The offices of secretary and treasurer may be held by the
2-63 same individual.

2-64 (f) The council may appoint one or more individuals who are
2-65 not council members to perform any duty of the secretary or the
2-66 treasurer.

2-67 Sec. 59A.053. MEETINGS; ADMINISTRATIVE PROCEDURE.

2-68 (a) The council shall hold regular and special meetings at times
2-69 specified by the chair.

3-1 (b) A majority of the voting membership of the council
 3-2 constitutes a quorum. The council shall act by adopting
 3-3 resolutions. The affirmative vote of a majority of the voting
 3-4 members present is necessary to adopt a resolution.

3-5 (c) The council shall develop and implement policies that
 3-6 provide the public with a reasonable opportunity to appear before
 3-7 the council and to speak on any issue under the jurisdiction of the
 3-8 council.

3-9 (d) The council is subject to Chapters 551 and 2001,
 3-10 Government Code.

3-11 Sec. 59A.054. ADMINISTRATION. (a) The commissioner, with
 3-12 the assistance of the council, shall administer the program. If
 3-13 funds are available, the council shall reimburse the department for
 3-14 expenses incurred by the department as required by the business of
 3-15 the council with approval from the council.

3-16 (b) The commissioner may, with the approval of the council,
 3-17 appoint, employ, contract with, and provide for the compensation of
 3-18 employees, consultants, and other persons to administer the
 3-19 program.

3-20 Sec. 59A.055. FISCAL ACCOUNTING OF ADMINISTRATION.

3-21 (a) Funds acquired under this chapter may be used to pay the
 3-22 reasonable cost of administering this chapter. This section is not
 3-23 applicable unless the council receives funds necessary to operate
 3-24 the program as provided by Section 59A.151(c).

3-25 (b) Not later than August 1 of each year, the department
 3-26 shall file with the council the proposed annual budget for the
 3-27 program for the succeeding fiscal year. The budget must set forth
 3-28 the general categories of expected expenditures out of revenues and
 3-29 income of the funds administered by the council and the amount on
 3-30 account of each expenditure. Not later than September 1 of each
 3-31 year, the council shall consider the proposed annual budget and may
 3-32 approve or amend it. Copies of the annual budget certified by the
 3-33 chair shall be promptly filed with the governor and the Legislative
 3-34 Budget Board. The council may adopt an amended annual budget for
 3-35 the current fiscal year, but the amended annual budget may not
 3-36 supersede a prior budget until it is filed with the governor and the
 3-37 Legislative Budget Board.

3-38 (c) The council shall have an audit of its books and
 3-39 accounts for each fiscal year conducted by a certified public
 3-40 accountant. The cost of the audit is an expense of the council. A
 3-41 copy of the audit shall be filed with the governor and the
 3-42 Legislative Budget Board not later than January 1 of each year.

3-43 (d) The council members and the department are not liable
 3-44 for contracts executed by the council and shall be exculpated and
 3-45 fully indemnified by the council except in the case of fraudulent or
 3-46 wilful misconduct on the part of the individual seeking exculpation
 3-47 or indemnification.

3-48 Sec. 59A.056. COUNCIL CONFLICT OF INTEREST. (a) In this
 3-49 section, "Texas trade association" means a cooperative and
 3-50 voluntarily joined statewide association of business or
 3-51 professional competitors in this state designed to assist its
 3-52 members and its industry or profession in dealing with mutual
 3-53 business or professional problems and in promoting their common
 3-54 interest.

3-55 (b) A person may not be an appointed member of the council
 3-56 if:

3-57 (1) the person is an officer, employee, or paid
 3-58 consultant of a Texas trade association or a land trust; or

3-59 (2) the person's spouse is an officer, manager, or paid
 3-60 consultant of a Texas trade association or a land trust.

3-61 (c) A person may not be an appointed council member or act as
 3-62 the general counsel to the council if the person is required to
 3-63 register as a lobbyist under Chapter 305, Government Code, because
 3-64 of the person's activities for compensation on behalf of an
 3-65 occupation or profession with an interest in land conservation that
 3-66 is related to that occupation or profession.

3-67 (d) A council member shall recuse himself or herself from
 3-68 any action taken by the council on an application involving a holder
 3-69 that employs the council member or for which the council member

4-1 serves as an officer, director, or elected official. A holder
4-2 remains eligible to use the program if a council member properly
4-3 recuses himself or herself in accordance with this section.

4-4 Sec. 59A.057. REMOVAL OF COUNCIL MEMBER. (a) It is a
4-5 ground for removal from the council that an appointed member:

4-6 (1) is ineligible for membership under Section
4-7 59A.056(c);

4-8 (2) cannot, because of illness or disability,
4-9 discharge the member's duties for a substantial part of the member's
4-10 term; or

4-11 (3) is absent from more than half of the regularly
4-12 scheduled council meetings that the member is eligible to attend
4-13 during a calendar year without an excuse approved by a majority vote
4-14 of the council.

4-15 (b) The validity of an action of the council is not affected
4-16 by the fact that it is taken when a ground for removal of a council
4-17 member exists.

4-18 (c) The presiding officer shall notify the governor and the
4-19 attorney general if the presiding officer has knowledge that a
4-20 potential ground for removal exists.

4-21 Sec. 59A.058. STANDARDS OF CONDUCT. The chair or the
4-22 chair's designee shall provide to members of the council, as often
4-23 as necessary, information regarding their qualification for office
4-24 under this chapter and their responsibilities under applicable laws
4-25 relating to standards of conduct for state officers.

4-26 Sec. 59A.059. SEPARATION OF RESPONSIBILITIES. The council
4-27 shall develop and implement policies that clearly separate the
4-28 policymaking responsibilities of the council and the management
4-29 responsibilities of the commissioner and the staff of the
4-30 department.

4-31 Sec. 59A.060. COUNCIL MEMBER TRAINING. (a) A person who
4-32 is appointed to and qualifies for office as a member of the council
4-33 may not vote, deliberate, or be counted as a member in attendance at
4-34 a meeting of the council until the person completes a training
4-35 program that complies with this section.

4-36 (b) The training program must provide the person with
4-37 information regarding:

4-38 (1) the legislation that created the council;

4-39 (2) the program;

4-40 (3) the role and functions of the council;

4-41 (4) the rules of the council, with an emphasis on the
4-42 rules that relate to disciplinary and investigatory authority;

4-43 (5) the current budget for the council;

4-44 (6) the results of the most recent formal audit of the
4-45 council;

4-46 (7) the requirements of:

4-47 (A) the open meetings law, Chapter 551,
4-48 Government Code;

4-49 (B) the public information law, Chapter 552,
4-50 Government Code;

4-51 (C) the administrative procedure law, Chapter
4-52 2001, Government Code; and

4-53 (D) other laws relating to public officials,
4-54 including conflict-of-interest laws; and

4-55 (8) any applicable ethics policies adopted by the
4-56 council or the Texas Ethics Commission.

4-57 Sec. 59A.061. COMPLAINTS. (a) The council shall maintain
4-58 a file containing each written complaint filed with the council.
4-59 The file must also include:

4-60 (1) the name of the person who filed the complaint;

4-61 (2) the date the complaint is received by the council;

4-62 (3) the subject matter of the complaint;

4-63 (4) the name of each person contacted in relation to
4-64 the complaint;

4-65 (5) a summary of the results of the review or
4-66 investigation of the complaint; and

4-67 (6) an explanation of the reason the file was closed,
4-68 if the department closed the file without taking action other than
4-69 to investigate the claim.

5-1 (b) The council shall provide to the person filing the
5-2 complaint and to each person who is a subject of the complaint a
5-3 copy of the council's policies and procedures relating to complaint
5-4 investigation and resolution.

5-5 (c) Complaints filed under this section are confidential
5-6 and excepted from disclosure under Chapter 552, Government Code.

5-7 [Sections 59A.062-59A.100 reserved for expansion]

5-8 SUBCHAPTER C. PURPOSES AND POWERS OF THE COUNCIL

5-9 Sec. 59A.101. PURPOSES OF COUNCIL. The council shall
5-10 design and implement programs to provide financial incentives for
5-11 the conservation of natural resources on qualified land through the
5-12 use of purchased or donated agricultural conservation easements.

5-13 Sec. 59A.102. POWERS OF THE COUNCIL. The council has all
5-14 the powers necessary to accomplish the purposes and programs of the
5-15 council, including the power:

5-16 (1) to adopt and enforce bylaws, rules, and procedures
5-17 and to perform all functions necessary to carry out this chapter;

5-18 (2) to sue and be sued, complain, and defend in its own
5-19 name;

5-20 (3) to adopt and use an official seal and alter it when
5-21 considered advisable;

5-22 (4) to establish, charge, and collect fees, charges,
5-23 and penalties in connection with the programs, services, and
5-24 activities provided by the council in accordance with this chapter;

5-25 (5) to make, enter into, and enforce contracts and
5-26 agreements;

5-27 (6) to request, accept, and use gifts, loans,
5-28 donations, aid, guaranties, appropriations, allocations,
5-29 subsidies, grants, or contributions of any item of value for the
5-30 furtherance of any of the council's purposes;

5-31 (7) to seek ways to coordinate and leverage public and
5-32 private sources of funding;

5-33 (8) to adopt a policy for the monitoring by holders of
5-34 agricultural conservation easements purchased through grants from
5-35 the fund that is consistent with the requirements of any entity that
5-36 provides funds used to purchase an agricultural conservation
5-37 easement;

5-38 (9) to monitor holders of the agricultural
5-39 conservation easements;

5-40 (10) to create an advisory board for the purpose of
5-41 reviewing grant applications, if necessary;

5-42 (11) to establish a protocol for the purchase of
5-43 agricultural conservation easements under the program;

5-44 (12) to evaluate selection and eligibility of
5-45 applicants based on criteria established by this chapter and
5-46 administer grants awarded to successful applicants;

5-47 (13) to determine which qualified landowners receive
5-48 program funds;

5-49 (14) to ensure that agricultural conservation
5-50 easements purchased under this chapter are consistent with the
5-51 continuation of agricultural activities and the preservation of
5-52 open space;

5-53 (15) to develop and require disclosure statements to
5-54 be signed by the owner of qualified land and the holder before the
5-55 sale of an agricultural conservation easement;

5-56 (16) to enforce the terms of any agricultural
5-57 conservation easement purchased in whole or in part with funds
5-58 under this chapter; and

5-59 (17) to adopt a standard agreement to be used between a
5-60 holder and a qualified landowner for the purpose of creating an
5-61 agricultural conservation easement on qualified land.

5-62 [Sections 59A.103-59A.150 reserved for expansion]

5-63 SUBCHAPTER D. PROGRAM; FUND

5-64 Sec. 59A.151. CREATION OF PROGRAM; PUBLIC PURPOSE.
5-65 (a) The Texas Farmland and Ranchland Conservation Program is
5-66 created within the department.

5-67 (b) The purpose of this chapter is to provide financial
5-68 incentives for the conservation of natural resources on qualified
5-69 land through the use of agricultural conservation easements that

6-1 are purchased from a willing qualified landowner or donated by the
 6-2 qualified landowner.

6-3 (c) Administration of the program by the department is
 6-4 subject to the availability of financial resources.

6-5 Sec. 59A.152. PROGRAM RULES. (a) The department shall
 6-6 adopt rules to establish criteria for determining which eligible
 6-7 projects receive program funds and to establish an application
 6-8 process. The rules must provide for the evaluation of project
 6-9 applications using the following considerations and criteria:

6-10 (1) landscape and watershed integrity to conserve
 6-11 water and natural resources;

6-12 (2) productivity of the agricultural lands;

6-13 (3) habitats for native species, including habitats
 6-14 for important, endangered, threatened, rare, or sensitive species;

6-15 (4) susceptibility of the subject property to
 6-16 fragmentation or development;

6-17 (5) potential for leveraging state money allocated to
 6-18 the program with additional public or private money;

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

6-21 (7) whether the proposed agricultural conservation
 6-22 easement is perpetual or for a term of years; and

6-23 (8) whether the application includes a resource
 6-24 management plan agreed to by both parties and approved by the
 6-25 council.

6-26 (b) The department shall adopt rules that provide that the
 6-27 qualified landowner and the potential purchaser of the agricultural
 6-28 conservation easement shall consider and negotiate the terms of the
 6-29 agricultural conservation easement, including:

6-30 (1) whether the purchase price of the agricultural
 6-31 conservation easement will be paid to the qualified landowner in a
 6-32 lump sum or in annual or monthly payments;

6-33 (2) whether the agricultural conservation easement
 6-34 will be perpetual or for a term of 30 years;

6-35 (3) whether a term agricultural conservation easement
 6-36 is renewable;

6-37 (4) whether the qualified landowner retains limited
 6-38 development rights for personal or family residences on the land;
 6-39 and

6-40 (5) the market value of the agricultural conservation
 6-41 easement.

6-42 (c) The department shall adopt rules to establish a
 6-43 procedure for the termination and repurchase of any agricultural
 6-44 conservation easement purchased under this chapter.

6-45 (d) Anytime after the date an agricultural conservation
 6-46 easement is acquired with a grant awarded under this chapter, the
 6-47 landowner may request that the council terminate the easement on
 6-48 the ground that the landowner is unable to meet the conservation
 6-49 goals as described by this chapter on the subject land. The
 6-50 termination request must contain a statement of impossibility
 6-51 verified by the landowner, who shall deliver a copy of the request
 6-52 to the easement holder. On receipt of the termination request, the
 6-53 council shall conduct an inquiry and not later than the 180th day
 6-54 after receipt of the request shall notify the parties of its
 6-55 decision to grant or deny the request for termination. Either party
 6-56 has 45 days to appeal the council's decision in district court.

6-57 Sec. 59A.153. TEXAS FARMLAND AND RANGLAND CONSERVATION
 6-58 FUND. (a) The Texas farmland and ranchland conservation fund is
 6-59 an account in the state treasury dedicated to funding the purchase
 6-60 of agricultural conservation easements through grants to holders
 6-61 under this chapter. The account shall consist of:

6-62 (1) public or private grants, gifts, donations, or
 6-63 contributions; or

6-64 (2) funds from any other source, including proceeds
 6-65 from the sale of bonds, state or federal mitigation funds, or funds
 6-66 from any local, state, or federal program.

6-67 (b) The fund may not be used to purchase or acquire any right
 6-68 to property by eminent domain.

6-69 (c) The fund may be used to pay transaction costs related to

7-1 the purchase of agricultural conservation easements, which may
7-2 include reimbursement of appraisal costs. Program funds may not be
7-3 used for the monitoring of agricultural conservation easements by a
7-4 holder.

7-5 [Sections 59A.154-59A.200 reserved for expansion]

7-6 SUBCHAPTER E. PROTECTION OF CONSERVED LAND

7-7 Sec. 59A.201. PROTECTED LAND; NOTICE OF TAKING.

7-8 (a) Notwithstanding other law, a department or agency of this
7-9 state or a county, municipality, or other political subdivision of
7-10 this state may not approve a program or project that requires the
7-11 use or taking of any private land encumbered by an agricultural
7-12 conservation easement purchased under this chapter unless:

7-13 (1) the governmental entity has made a bona fide good
7-14 faith effort to examine alternatives to the use or taking of the
7-15 land and has determined that no feasible alternative exists;

7-16 (2) the program or project includes all reasonable
7-17 planning to minimize harm to the land resulting from the use or
7-18 taking;

7-19 (3) the governmental entity has made a bona fide good
7-20 faith effort to acquire the land by voluntary purchase or lease; and

7-21 (4) the governmental entity requires the land to
7-22 provide for the needs of the surrounding landowners.

7-23 (b) Notwithstanding other law, a finding required by
7-24 Subsection (a) may be made only at a public hearing:

7-25 (1) which is conducted in accordance with Chapter 551,
7-26 Government Code; and

7-27 (2) for which the governmental entity has provided
7-28 written notice to:

7-29 (A) the council;

7-30 (B) the qualified landowner;

7-31 (C) all landowners whose property is contiguous
7-32 to the qualified landowner's property; and

7-33 (D) all landowners within reasonable geographic
7-34 proximity to the agricultural conservation easement.

7-35 (c) Notwithstanding other law, if land encumbered by an
7-36 agricultural conservation easement purchased under this chapter is
7-37 condemned, the entity that condemns the land must compensate the
7-38 holder for the value of the development rights held by the holder.
7-39 The compensation must equal the value of the development rights
7-40 owned by the holder on the date of condemnation. Not later than the
7-41 30th day after the date the holder receives compensation under this
7-42 section, the holder must pay the council an amount equal to the
7-43 total compensation received by the holder multiplied by the
7-44 percentage of the original purchase price for the agricultural
7-45 conservation easement that was paid with program funds.

7-46 (d) Any compensation paid to a holder under this section is
7-47 held in trust for the benefit of the council until the holder has
7-48 remitted all funds owed to the council.

7-49 (e) Any compensation paid to a holder under this section is
7-50 in addition to compensation that must be paid to the qualified
7-51 landowner for the value of the land.

7-52 [Sections 59A.202-59A.250 reserved for expansion]

7-53 SUBCHAPTER F. EXPIRATION OF COUNCIL

7-54 Sec. 59A.251. SUNSET PROVISION. The council is subject to
7-55 Chapter 325, Government Code (Texas Sunset Act). Unless continued
7-56 in existence as provided by that chapter, the council is abolished
7-57 and this chapter expires September 1, 2009.

7-58 SECTION 2. The Department of Agriculture shall adopt rules
7-59 required by Section 59A.152, Agriculture Code, as added by this
7-60 Act, as soon as practicable after the effective date of this Act.

7-61 SECTION 3. This Act takes effect September 1, 2005.

7-62 * * * * *