

By: Geren

H.B. No. 1925

A BILL TO BE ENTITLED

AN ACT

relating to the transfer of the Texas Farm and Ranch Lands Conservation Program to the Parks and Wildlife Department.

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

SECTION 1. Subchapter B, Chapter 183, Natural Resources Code, is transferred to Subtitle E, Title 5, Parks and Wildlife Code, redesignated as Chapter 84, Parks and Wildlife Code, and amended to read as follows:

CHAPTER 84 [~~SUBCHAPTER B~~]. TEXAS FARM AND RANCH LANDS CONSERVATION PROGRAM

Sec. 84.001 [~~183.051~~]. PURPOSE. The purpose of the program established under this chapter [~~subchapter~~] is to enable and facilitate the purchase and donation of agricultural conservation easements.

Sec. 84.002 [~~183.052~~]. DEFINITIONS. In this chapter [~~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) "Conservation easement" has the meaning assigned
5 by Section 183.001, Natural Resources Code [~~"Commissioner" means~~
6 ~~the commissioner of the General Land Office~~].

7 (3) "Council" means the Texas Farm and Ranch Lands
8 Conservation Council established under Section 84.011 [~~183.061~~].

9 (4) "Fund" means the Texas farm and ranch lands
10 conservation fund established under Section 84.008 [~~183.058~~].

11 (5) "Holder" has the meaning assigned by Section
12 183.001, Natural Resources Code [~~"Land office" means the General~~
13 ~~Land Office~~].

14 (6) "Program" means the Texas farm and ranch lands
15 conservation program established under this chapter [~~subchapter~~].

16 (7) "Purchase of agricultural conservation easement"
17 means the purchase from a willing seller of an agricultural
18 conservation easement.

19 (8) "Qualified easement holder" means a holder that
20 is:

21 (A) a state agency, a county, or a municipality;

22 or

23 (B) an organization that is exempt from federal
24 income taxation under Section 501(a), Internal Revenue Code of
25 1986, as an organization described by Section 501(c)(3) of that
26 code and that is organized for the purpose of preserving
27 agriculture, open space, or natural resources.

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

3 Sec. 84.003 [~~183.053~~]. PROGRAM. The Texas farm and ranch
4 lands conservation program is established as a program of the
5 department [~~land office~~] for the purpose of administering the
6 assistance to be provided by the fund for the purchase of
7 agricultural conservation easements.

8 Sec. 84.004 [~~183.054~~]. TERMS OF AGRICULTURAL CONSERVATION
9 EASEMENT. (a) An agricultural conservation easement under this
10 chapter [~~subchapter~~] must be perpetual or for a term of 30 years.

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

14 (1) whether the landowner will receive a lump sum or
15 annual payments;

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

18 (3) whether a term easement is renewable;

19 (4) whether the landowner retains limited development
20 rights; and

21 (5) the purchase price of the easement.

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

25 Sec. 84.005 [~~183.055~~]. TERMINATION OF EASEMENT. (a) Any
26 time after an agricultural conservation easement is acquired with a
27 grant awarded under this chapter [~~subchapter~~], the landowner may

1 request that the council terminate the easement as provided by
2 Subsection (b) on the ground that the landowner is unable to meet
3 the conservation goals as described by Section 84.002(1)
4 [~~183.052(1)~~]. The termination request must contain a verifiable
5 statement of impossibility.

6 (b) On receipt of the request for termination, the council
7 shall notify the qualified easement holder and conduct an inquiry.
8 Not later than the 180th day after the date the council receives the
9 request, the council shall notify the parties of the decision to
10 grant or deny the request for termination. Either party may appeal
11 the decision in district court not later than the 45th day after the
12 date of the notification.

13 Sec. 84.006 [~~183.056~~]. REPURCHASE BY LANDOWNER. (a) In
14 this section:

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

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

24 (b) If a request for termination of an agricultural
25 conservation easement is granted under Section 84.005 [~~183.055~~],
26 the director [~~commissioner~~] shall order an appraisal of the fair
27 market value and the agricultural value of the property subject to

1 the easement. The landowner shall bear the cost of the appraisal.

2 (c) Not later than the 180th day after the date of the
3 appraisal under Subsection (b), the landowner must pay to the
4 qualified easement holder an amount equal to the difference between
5 the fair market value and the agricultural value. The qualified
6 easement holder shall pay to the fund any amounts received under
7 this subsection, not to exceed the amount paid by the fund for
8 purchase of the easement.

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

12 (e) If the request for termination is denied or if the
13 landowner fails to make the payment required by Subsection (c) in
14 the time required by that subsection, the landowner may not submit
15 another request for termination of the easement before the fifth
16 anniversary of the date of the last request.

17 Sec. 84.007 [~~183.057~~]. PROTECTED LAND; NOTICE OF TAKING.

18 (a) A department or agency of this state, a county, a municipality,
19 another political subdivision, or a public utility may not approve
20 any program or project that requires the use or taking through
21 eminent domain of private land encumbered by an agricultural
22 conservation easement purchased under this chapter [~~subchapter~~]
23 unless the governmental entity or public utility acting through its
24 governing body or officers determines that:

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

27 (2) the program or project includes all reasonable

1 planning to minimize harm to the land resulting from the use or
2 taking.

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

5 (c) The governing body or officers of the governmental
6 entity or public utility may consider clearly enunciated local
7 preferences, and the provisions of this chapter [~~subchapter~~] do not
8 constitute a mandatory prohibition against the use of the area if
9 the determinations required by Subsection (a) are made.

10 (d) If, after making the determination required by
11 Subsection (a), a department or agency of this state, a county, a
12 municipality, another political subdivision, or a public utility
13 acquires by eminent domain a fee simple interest in land encumbered
14 by an agricultural conservation easement purchased under this
15 chapter [~~subchapter~~]:

16 (1) the easement on the condemned property terminates;
17 and

18 (2) the entity exercising the power of eminent domain
19 shall:

20 (A) pay for an appraisal of the fair market
21 value, as that term is defined by Section 84.006 [~~183.056~~], of the
22 property subject to condemnation;

23 (B) pay to the qualified easement holder an
24 amount equal to the amount paid by the holder for the portion of the
25 easement affecting the property to be condemned;

26 (C) pay to the landowner an amount equal to the
27 fair market value of the condemned property less the amount paid to

1 the qualified easement holder under Paragraph (B); and

2 (D) pay to the landowner and the qualified
3 easement holder any additional damages to their interests in the
4 remaining property, as determined by the special commissioners
5 under Section 21.042, Property Code.

6 (e) If, after making the determination required by
7 Subsection (a), a department or agency of this state, a county, a
8 municipality, another political subdivision, or a public utility
9 acquires by eminent domain an interest other than a fee simple
10 interest in land encumbered by an agricultural conservation
11 easement purchased under this chapter [~~subchapter~~]:

12 (1) the entity exercising the power of eminent domain
13 shall pay for an appraisal of the fair market value, as that term is
14 defined by Section 84.006 [~~183.056~~], of the property subject to
15 condemnation; and

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

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

22 Sec. 84.008 [~~183.058~~]. TEXAS FARM AND RANCH LANDS
23 CONSERVATION FUND. (a) The Texas farm and ranch lands conservation
24 fund is an account in the general revenue fund that may be
25 appropriated only to the department [~~land office~~] to be used as
26 provided by Subsection (b). The fund may not be used for grants to
27 purchase or acquire any right or interest in property by eminent

1 domain. The fund consists of:

- 2 (1) money appropriated by the legislature to the fund;
- 3 (2) public or private grants, gifts, donations, or
4 contributions;
- 5 (3) funds from any other source, including proceeds
6 from the sale of bonds, state or federal mitigation funds, or funds
7 from any local, state, or federal program;
- 8 (4) proceeds of the sale of real property not required
9 for the management of real property under Section 31.065(d),
10 Natural Resources Code; and
- 11 (5) proceeds of the sale of real property under
12 Section 31.066(d), Natural Resources Code.

13 (b) The fund may be used only:

- 14 (1) to award grants to qualified easement holders for
15 the purchase of agricultural conservation easements;
- 16 (2) to pay transaction costs related to the purchase
17 of agricultural conservation easements, which may include
18 reimbursement of appraisal costs; and
- 19 (3) to pay associated administrative costs of the
20 department [~~land office~~], not to exceed five percent of the money in
21 the fund.

22 Sec. 84.009 [~~183.059~~]. ADMINISTRATION OF FUND. (a) The
23 council may:

- 24 (1) adopt rules necessary to perform program duties
25 under this chapter [~~subchapter~~];
- 26 (2) request, accept, and use gifts, loans, donations,
27 aid, appropriations, guaranties, subsidies, grants, or

1 contributions of any item of value for the furtherance of any
2 purposes of this chapter [~~subchapter~~];

3 (3) establish, charge, and collect fees, charges, and
4 penalties in connection with the programs, services, and activities
5 provided for by this chapter [~~subchapter~~];

6 (4) make, enter into, and enforce contracts and
7 agreements, and take other actions as may accomplish any of the
8 purposes of this chapter [~~subchapter~~];

9 (5) seek ways to coordinate and leverage public and
10 private sources of funding;

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

13 (7) establish a protocol for the purchase of
14 agricultural conservation easements and for the distribution of
15 funds to approved applicants;

16 (8) administer grants awarded to successful
17 applicants;

18 (9) ensure that agricultural conservation easements
19 purchased under this chapter [~~subchapter~~] are not inconsistent with
20 the preservation of open space and the conservation of wildlife
21 habitat or water; and

22 (10) approve the termination of easements and take any
23 other action necessary to further the goals of the program.

24 (b) To receive a grant from the fund under this chapter
25 [~~subchapter~~], an applicant who is qualified to be an easement
26 holder under this chapter [~~subchapter~~] must submit an application
27 to the council. The application must:

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

3 (2) include a site-specific estimate-of-value
4 appraisal by a licensed appraiser qualified to determine the market
5 value of the easement; and

6 (3) include a memorandum of understanding signed by
7 the landowner and the applicant indicating intent to sell an
8 agricultural conservation easement and containing the terms of the
9 contract for the sale of the easement.

10 (c) For the purposes of determining the amount of a grant
11 under this chapter [~~subchapter~~], the value of an agricultural
12 conservation easement shall be determined by a site-specific
13 estimate-of-value appraisal performed by a licensed, qualified
14 appraiser.

15 Sec. 84.010 [~~183.060~~]. CRITERIA FOR AWARDING GRANTS. The
16 council shall:

17 (1) give priority to applications that protect highly
18 productive agricultural lands that are susceptible to development,
19 including subdivision and fragmentation; and

20 (2) adopt a scoring process to be used in evaluating
21 applications that considers the following:

22 (A) [~~(1)~~] maintenance of landscape and watershed
23 integrity to conserve water and natural resources;

24 (B) [~~(2)~~] ~~protection of highly productive~~
25 ~~agricultural lands;~~

26 [~~(3)~~] protection of habitats for native plant and
27 animal species, including habitats for endangered, threatened,

1 rare, or sensitive species;

2 (C) [~~(4)~~] ~~susceptibility of the subject property~~
3 ~~to subdivision, fragmentation, or other development;~~

4 [~~(5)~~] potential for leveraging state money allocated
5 to the program with additional public or private money;

6 (D) [~~(6)~~] proximity of the subject property to
7 other protected lands;

8 (E) [~~(7)~~] the term of the proposed easement,
9 whether perpetual or for a term of 30 years; and

10 (F) [~~(8)~~] a resource management plan agreed to by
11 both parties and approved by the council.

12 Sec. 84.011 [~~183.061~~]. TEXAS FARM AND RANCH LANDS
13 CONSERVATION COUNCIL. (a) The Texas Farm and Ranch Lands
14 Conservation Council is established to advise and assist the
15 director [~~commissioner~~] with administration of the program and to
16 select applicants to receive grants under this chapter [~~subchapter~~]
17 using the criteria adopted by the council under Section 84.010
18 [~~183.060~~]. The council consists of 12 members as follows:

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

20 (A) two members [~~one member~~] who each operate
21 [~~operates~~] a family farm or ranch in this state;

22 (B) one member who is the designated
23 representative of an agricultural banking or lending organization
24 and who has significant experience lending for farms and ranches or
25 lands encumbered by conservation easements;

26 (C) two members who are the designated
27 representatives of a statewide agricultural organization in

1 existence in this state for not less than 10 years; and

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

5 [~~(E) one member from a state institution of~~
6 ~~higher education who has significant experience with natural~~
7 ~~resources issues; and]~~

8 (2) six [~~four~~] ex officio members as follows:

9 (A) the executive director of the State Soil and
10 Water Conservation Board [~~the commissioner~~];

11 (B) the commissioner of agriculture or the
12 commissioner's designee;

13 (C) the chair of the Texas Water Development
14 Board, or the chair's designee [~~presiding officer of the Parks and~~
15 ~~Wildlife Commission or the presiding officer's designee~~]; [~~and~~]

16 (D) the state conservationist of the Natural
17 Resources Conservation Service of the United States Department of
18 Agriculture or a designee of that person, who serves as a nonvoting
19 member;

20 (E) the presiding officer of the commission or
21 the presiding officer's designee, who must be a member of the
22 commission; and

23 (F) the executive director of the Texas A&M
24 Institute of Renewable Natural Resources.

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

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

4 (d) The presiding officer of the commission or the presiding
5 officer's [~~commissioner or the commissioner's~~] designee shall serve
6 as the presiding officer of the council unless, at the presiding
7 officer of the commission's discretion, the executive director of
8 the department shall serve as the presiding officer of the council.

9 The presiding officer of the council [~~and~~] shall designate from
10 among the members of the council an assistant presiding officer of
11 the council to serve in that capacity at the will of the presiding
12 officer of the council [~~commissioner~~]. The council may choose from
13 its appointed members other officers as the council considers
14 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 of the council has knowledge
13 that a potential ground for removal exists, the presiding officer
14 of the council shall notify the director [~~commissioner~~] and the
15 governor that a potential ground for removal exists.

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

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

- 1 (1) the legislation that created the council;
- 2 (2) the program to be administered under this chapter
- 3 ~~[subchapter]~~;
- 4 (3) the role and functions of the council;
- 5 (4) the rules of the council, with an emphasis on the
- 6 rules that relate to disciplinary and investigatory authority;
- 7 (5) the current budget for the council;
- 8 (6) the results of the most recent formal audit of the
- 9 council;
- 10 (7) the requirements of:
 - 11 (A) the open meetings law, Chapter 551,
 - 12 Government Code;
 - 13 (B) the public information law, Chapter 552,
 - 14 Government Code;
 - 15 (C) the administrative procedure law, Chapter
 - 16 2001, Government Code; and
 - 17 (D) other laws relating to public officials,
 - 18 including conflict-of-interest laws; and
- 19 (8) any applicable policies adopted by the council or
- 20 the Texas Ethics Commission.
- 21 (o) A person appointed to the council is entitled to
- 22 reimbursement, as provided by the General Appropriations Act, for
- 23 the travel expenses incurred in attending the training program
- 24 regardless of whether the attendance at the training program occurs
- 25 before or after the person qualifies for office.

26 Sec. 84.012 [~~183.062~~]. EFFECT ON TAX APPRAISAL. An

27 agricultural conservation easement under this chapter ~~[subchapter]~~

1 does not affect the eligibility of the property subject to the
2 easement for appraisal for ad valorem tax purposes under Subchapter
3 D, Chapter 23, Tax Code.

4 Sec. 84.013 [~~183.063~~]. REPORT TO TEXAS DEPARTMENT OF
5 TRANSPORTATION. Not later than the 10th day after the date of a
6 closing of a purchase of an easement under this chapter
7 [~~subchapter~~], the department [~~land office~~] shall provide the Texas
8 Department of Transportation a legal description of the property
9 subject to the easement and shall include with the description the
10 date the closing occurred.

11 SECTION 2. Section 31.065(d), Natural Resources Code, is
12 amended to read as follows:

13 (d) If real property acquired by grant, gift, devise, or
14 bequest is not held as part of the permanent school fund or
15 possessed, administered, or used by a particular state agency,
16 board, commission, department, or other particular state entity,
17 the commissioner may manage that real property or sell or exchange
18 the real property under terms and conditions the commissioner
19 determines to be in the best interest of the state. Real property
20 sold under this subsection must be sold in accordance with Section
21 31.158. Proceeds of the sale that are not required for the
22 management of real property under this subsection shall be
23 deposited in the Texas farm and ranch lands conservation fund
24 established under Chapter 84, Parks and Wildlife Code [~~183~~]. Real
25 property acquired under this subsection may be dedicated by the
26 commissioner to any state agency, board, commission, or department,
27 a political subdivision or other governmental entity of this state,

1 or the federal government, for the benefit and use of the public in
2 exchange for nonmonetary consideration, if the commissioner
3 determines that the exchange is in the best interest of the state.

4 SECTION 3. Section 31.066(d), Natural Resources Code, is
5 amended to read as follows:

6 (d) The commissioner may sell any title or interest acquired
7 by the state under this section in accordance with Section
8 31.158. Proceeds of the sale shall be deposited in the Texas farm
9 and ranch lands conservation fund established under Chapter 84,
10 Parks and Wildlife Code [~~183~~].

11 SECTION 4. (a) Not later than January 1, 2016, the governor
12 shall make the appointments described by Section 84.011, Parks and
13 Wildlife Code, as amended by this Act.

14 (b) Not later than January 1, 2016, the General Land Office
15 and the Parks and Wildlife Department shall enter into a memorandum
16 of understanding relating to the transfer of the administration of
17 the Texas Farm and Ranch Lands Conservation Program from the
18 General Land Office to the Parks and Wildlife Department. The
19 memorandum of understanding must include a timetable and specific
20 steps and methods for the transfer on September 1, 2016, of all
21 powers, duties, obligations, rights, contracts, leases, records,
22 real or personal property, personnel, and unspent and unobligated
23 appropriations and other funds relating to the administration of
24 the Texas Farm and Ranch Lands Conservation Program from the
25 General Land Office to the Parks and Wildlife Department.

26 (c) On September 1, 2016, the following are transferred to
27 the Parks and Wildlife Department:

1 (1) all powers, duties, obligations, and liabilities
2 of the General Land Office relating to the administration of the
3 Texas Farm and Ranch Lands Conservation Program;

4 (2) all unobligated and unexpended funds appropriated
5 to the General Land Office designated for the purpose of the
6 administration of the Texas Farm and Ranch Lands Conservation
7 Program;

8 (3) all equipment and property of the General Land
9 Office used for the administration of the Texas Farm and Ranch Lands
10 Conservation Program;

11 (4) all personnel, as described by the memorandum of
12 understanding entered into under Subsection (b) of this section;
13 and

14 (5) all files and other records of the General Land
15 Office kept by the office regarding the Texas Farm and Ranch Lands
16 Conservation Program.

17 (d) Before September 1, 2016, the General Land Office may
18 agree with the Parks and Wildlife Department to transfer any
19 property of the General Land Office to the Parks and Wildlife
20 Department to implement the transfer required by this Act.

21 (e) In the period beginning on the effective date of this
22 Act and ending on September 1, 2016, the General Land Office shall
23 continue to perform functions and activities under Subchapter B,
24 Chapter 183, Natural Resources Code, as if that subchapter had not
25 been transferred, redesignated, and amended by this Act, and the
26 former law is continued in effect for that purpose.

27 SECTION 5. This Act takes effect immediately if it receives

H.B. No. 1925

1 a vote of two-thirds of all the members elected to each house, as
2 provided by Section 39, Article III, Texas Constitution. If this
3 Act does not receive the vote necessary for immediate effect, this
4 Act takes effect September 1, 2015.