

## BILL ANALYSIS

Senate Research Center

C.S.S.B. 1273  
By: Jackson, Mike  
S/C on Agriculture & Coastal Resources  
4/7/2005  
Committee Report (Substituted)

### AUTHOR'S/SPONSOR'S STATEMENT OF INTENT

Texas is losing its rural lands at a faster rate than any other state in the country. As the state becomes more urbanized, the pressure to protect natural resources through condemnation or acquisition will increase. Through the purchase of agricultural conservation easements, cities and other public entities can achieve resource protection goals while keeping rural lands in private ownership and on the tax rolls.

C.S.S.B. 1273 creates a grant-making program that will provide landowners with financial incentives to conserve Texas' agriculture and natural resources through the voluntary sale of either perpetual or term conservation easements.

### RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Texas Farmland and Ranchland Conservation Council in SECTION 1 (Section 59A.102, Agriculture Code) of this bill. Rulemaking authority is expressly granted to the Department of Agriculture in SECTION 1 (Section 59A.152, Agriculture Code)

### SECTION BY SECTION ANALYSIS

SECTION 1. Amends Title 4, Agriculture Code, by adding Chapter 59A, as follows:

#### CHAPTER 59A. TEXAS FARMLAND AND RANCLAND CONSERVATION PROGRAM

##### SUBCHAPTER A. GENERAL PROVISIONS

Sec. 59A.001. DEFINITIONS. Defines "agricultural conservation easement," "council," "fund," "holder," "program," "qualified land," and "qualified landowner."

Sec. 59A.002. EASEMENT TERMS; PURPOSES. (a) Requires an agricultural conservation easement under this chapter to be voluntarily agreed to by the qualified landowner. Prohibits the easement from being assigned to or enforced by a third party, except the Texas Farmland and Ranchland Conservation Council (council), without the express written consent of the qualified landowner.

(b) Requires an agricultural conservation easement under this chapter to accomplish the purpose of conservation of natural resources on qualified land and at least one of specified additional purposes.

(c) Requires the instrument granting an agricultural conservation easement purchased with funds provided under this chapter to include a provision that gives the council the right to enforce the terms of the easement.

(d) Authorizes an agricultural conservation easement purchased with funds provided under this chapter to provide for certain collateral, guaranties, insurance, surety bonds, or other enhancements if the terms of the easement are breached. Requires the council to determine whether the form and amount of any enhancement provided under this subsection is sufficient.

Sec. 59A.003. VENUE. Authorizes a suit filed by or on behalf of the council under this chapter to be brought in Travis County.

[Reserves Sections 59A.004-59A.050 for expansion.]

#### SUBCHAPTER B. OPERATION OF COUNCIL

Sec. 59A.051. TEXAS FARMLAND AND RANGLAND CONSERVATION COUNCIL. (a) Sets forth the membership of the council.

(b) Provides that members are appointed by the governor, with certain exceptions.

(c) Requires appointed members of the council to serve staggered terms of six years, with one-third of the appointed members' terms expiring February 1 of each odd-numbered year.

(d) Requires appointments to the council to be made without regard to the race, color, disability, sex, religion, age, or national origin of the appointees.

(e) Provides that a council member is not entitled to compensation for serving on the council or to reimbursement for expenses incurred in performing the official duties of office.

Sec. 59A.052. OFFICERS. Requires the governor to designate a member of the council as the chair of the council to serve in the capacity at the pleasure of the governor. Requires the council to elect a vice-chairman biennially from its members and to elect a secretary, treasurer, and other officers it considers necessary. Sets forth the duties of the officers. Authorizes the council to appoint one or more individuals who are not council members to perform any duty of the secretary or the treasurer.

Sec. 59A.053. MEETINGS; ADMINISTRATIVE PROCEDURE. (a) Requires the council to hold regular and special meetings at times specified by the chair.

(b) Provides that a majority of the voting membership of the council constitutes a quorum. Requires the council to act by adopting resolutions. Provides that the affirmative vote of a majority of the voting members present is necessary to adopt a resolution.

(c) Requires the council to develop and implement policies that provide the public with a reasonable opportunity to appear before the council and speak on any issue under the jurisdiction of the council.

(d) Provides that the council is subject to Chapters 551 (Open Meetings) and 2001 (Administrative Procedure), Government Code.

Sec. 59A.054. ADMINISTRATION. (a) Requires the commissioner of agriculture (commissioner), with the assistance of the council, to administer the program. Requires the council, if funds are available, to reimburse the Department of Agriculture (department) for expenses incurred by the department as required by the business of the council with approval from the council.

(b) Authorizes the commissioner, with the approval of the council, to appoint, employ, contract with, and provide for the compensation of employees, consultants, and other persons to administer the program.

Sec. 59A.055. FISCAL ACCOUNTING OF ADMINISTRATION. (a) Authorizes funds acquired under this chapter to be used to pay the reasonable cost of administering this chapter. Provides that this section is not applicable unless the council receives funds necessary to operate the program.

(b) Requires the department, not later than August 1 of each year, to file with the council the proposed annual budget for the program for the succeeding fiscal year. Requires the budget to set forth certain information. Requires the council, not later than September 1 of each year to consider the proposed annual budget and is authorizes the council to approve or amend it. Requires copies of the annual budget certified by the chair to be promptly filed with the governor and the Legislative Budget Board (LBB). Authorizes the council to adopt an amended annual budget for the current fiscal year, but prohibits the amended annual budget from superseding a prior budget until it is filed with the governor and the LBB.

(c) Requires the council to have an audit of its books and accounts for each fiscal year to be conducted by a certified public accountant. Provides that the cost of the audit is an expense of the council. Requires a copy of the audit to be filed with the governor and the LBB not later than January 1 of each year.

(d) Provides that the council members and the department are not liable for contracts executed by the council and requires the council to exculpate and fully indemnify them, except in certain cases.

Sec. 59A.056. COUNCIL CONFLICT OF INTEREST. (a) Defines "Texas trade association."

(b) Sets forth which persons are prohibited from being an appointed member of the council.

(c) Sets forth persons engaged in certain lobbyist activities who are prohibited from being appointed members of the council or acting as general counsel to the council.

(d) Requires a council member to recuse himself or herself from any action taken by the council on an application involving a holder that employs the council member or for which the council member serves as an officer, director, or elected official. Provides that a holder remains eligible to use the program if a council member properly recuses himself or herself in accordance with this section.

Sec. 59A.057. REMOVAL OF COUNCIL MEMBER. (a) Sets forth the grounds for removal from the council.

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

(c) Requires the presiding officer, if the presiding officer has knowledge that a potential ground for removal exists, to notify the governor and the attorney general.

Sec. 59A.058. STANDARDS OF CONDUCT. Requires the chair or the chair's designee to provide to members of the council, as often as necessary, information regarding their qualification for office under this chapter and their responsibilities under applicable laws relating to standards of conduct for officers.

Sec. 59A.059. SEPARATION OF RESPONSIBILITIES. Requires the council to develop and implement policies that clearly separate the policymaking responsibilities of the council and the management responsibilities of the commissioner and the staff of the department.

Sec. 59A.060. COUNCIL MEMBER TRAINING. (a) Prohibits a person who is appointed to and qualifies for office as a member of the council to vote, deliberate, or be counted as a member in attendance at a meeting of the council until the person completes a training program that complies with this section.

(b) Requires the training program to provide the person with certain information.

Sec. 59A.061. COMPLAINTS. (a) Requires the council to maintain a file containing each written complaint filed with the council and certain other information.

(b) Requires the council to provide the person filing the complaint and each person who is a subject of the complaint a copy of the council's policies and procedures relating to complaint investigation and resolution.

(c) Provides that complaints filed under this section are confidential and excepted from disclosure under Chapter 552 (Public Information), Government Code.

[Reserves Sections 59A.062-59A.100 for expansion.]

#### SUBCHAPTER C. PURPOSES AND POWERS OF THE COUNCIL

Sec. 59A.101. PURPOSE OF THE COUNCIL. Requires the council to design and implement programs to provide financial incentives for the conservation of natural resources on qualified land through the use of purchased or donated agricultural conservation easements.

Sec. 59A.102. POWERS OF THE COUNCIL. Provides that the council has all the powers necessary to accomplish the purposes and programs of the council. Sets forth the powers of the council, including the power to adopt and enforce bylaws, rules, and procedures.

[Reserves Sections 59A.103-59A.150 for expansion.]

#### SUBCHAPTER D. PROGRAM; FUND

Sec. 59A.151. CREATION OF PROGRAM; PUBLIC PURPOSE. (a) Creates the Texas Farmland and Ranchland Conservation Program (program) within the department.

(b) Sets forth the purpose of this chapter.

(c) Provides that administration of the program by the department is subject to the availability of financial resources.

Sec. 59A.152. PROGRAM RULES. (a) Requires the department to adopt rules to establish criteria for determining which eligible projects receive program funds and establish an application process. Requires the rules to provide for the evaluation of the project applications using certain considerations and criteria.

(b) Requires the department to adopt rules that provide that the qualified landowner and the potential purchaser of the agricultural conservation easement are required to consider and negotiate certain terms of the agricultural conservation easement.

(c) Requires the department to adopt rules to establish a procedure for the termination and repurchase of any agricultural conservation easement purchased under this chapter.

(d) Authorizes a landowner at any time after the acquisition of an agricultural conservation easement to request that the council terminate the easement on the ground that the landowner is unable to meet the conservation goals. Requires the termination request to contain a statement of impossibility verified by the owner. Requires the owner to deliver a copy of the request to the easement holder. Requires the council, on receipt of the request, to conduct an inquiry and, not later than the 180th day after receipt of the request, to notify the parties of its decision to grant or deny the request for termination. Provides that either party has 45 days to appeal the council's decision in district court.

Sec. 59A.153. TEXAS FARMLAND AND RANCLAND CONSERVATION FUND. (a) Provides that the Texas Farmland and Ranchland Conservation Fund (fund) is an account in the state treasury dedicated to funding the purchase of agricultural conservation easements through grants to holders under this chapter. Sets forth the funds which are in the account.

(b) Prohibits the fund to be used to purchase or acquire any right to property by eminent domain.

(c) Authorizes the fund to be used to pay transaction costs related to the purchase of agricultural easements, including reimbursement of appraisal costs. Prohibits program funds to be used for the monitoring of agricultural conservation easements by a holder.

[Reserves Sections 59A.154-59A.200 for expansion.]

#### SUBCHAPTER E. PROTECTION OF CONSERVED LAND

Sec. 59A.201. PROTECTED LAND; NOTICE OF TAKING. (a) Prohibits a department or agency of this state or a county, municipality, or other political subdivision of this state, notwithstanding other law, from approving a program or project that requires the use or taking of any private land encumbered with an agricultural conservation easement, except if certain findings are made regarding the land.

(b) Authorizes a finding required by Subsection (a), notwithstanding other law, to be made only at a public hearing conducted in a certain manner for which the governmental entity has provided written notice to certain interested persons and entities.

(c) Requires the entity that condemns land encumbered by an agricultural conservation easement to compensate the holder for the value of the development rights held by the holder. Sets forth the amount of compensation. Requires the holder, not later than the 30th day after the date the holder receives compensation, to pay the council a certain amount.

(d) Provides that any compensation paid to a holder under this section is held in trust for the benefit of the council until the holder has remitted all funds owed to the council.

(e) Provides that any compensation paid to a holder under this section is in addition to compensation that must be paid to the qualified landowner for the value of the land.

[Reserves Sections 59A.202-59A.250 for expansion.]

#### SUBCHAPTER F. EXPIRATION OF COUNCIL.

Sec. 59A.251. SUNSET PROVISION. Provides that the council is subject to Chapter 325, Government Code (Texas Sunset Act), and unless continued in existence as provided by this chapter, is abolished on September 1, 2009, and this chapter expires September 1, 2009.

SECTION 2. Requires the Department of Agriculture to adopt rules required by Section 59A.152, Agriculture Code, as added by this Act, as soon as practicable after the effective date of this act.

SECTION 3. Effective date: September 1, 2005.