

- SUBJECT:** Establishing a farm and ranch lands conservation program
- COMMITTEE:** Land and Resource Management — committee substitute recommended
- VOTE:** 8 ayes — Mowery, Harper-Brown, Blake, Escobar, Leibowitz, Miller, Orr, Pickett
- 0 nays
- 1 absent — R. Cook
- WITNESSES:** For — Blair Fitzsimmons, American Farmland Trust; David Langford, Texas Wildlife Association; Ed Small, Texas and Southwestern Cattle Raiser Association; Robert Turner; (*Registered but did not testify*: Ken Kramer, Lone Star Chapter, Sierra Club; Jerry Patterson, Texas General Land Office; (*Registered, but did not testify on original version*: Robert Strauser, San Antonio Water System))
- Against — Dan Byfield, American Land Foundation; Jimmy Gaines, Texas Landowners Council
- BACKGROUND:** Under Natural Resource Code, chapter 183, a conservation easement is a legally binding agreement that prohibits certain development and places restrictions on land to protect natural landscapes, open space, agricultural use, natural resources, environmental quality, and historical and architectural significance. These easements are voluntary sales or donations of development rights by land owners to a governmental body or charitable organization, which becomes the "holder" in the agreement.
- Generally, Purchase of Development Rights (PDR) programs financially compensate willing landowners for not developing their land. When development rights are bought, the holder obtains a conservation easement restricting development on the land. The landowner still owns the land and can use or sell it for purposes specified in the easement, such as farming, timber production, or hunting.
- Development rights represent a portion of the land's total value. This amount can be estimated by appraisal. The value of development rights is

the difference between the fair market value of the land without the easement and its restricted value.

DIGEST:

CSHB 116 would create the Texas Farm and Ranch Lands Conservation Program to conserve water, native wildlife species and their habitats, certain plant species, and open space from fragmentation or development through the purchase or donation of agricultural conservation easements. The program would be administered through the General Land Office (GLO) and overseen by the commissioner along with an advisory council.

The land owner and the buyer would develop a mutual conservation resource management plan for the land and negotiate the following terms of an agricultural conservation easement:

- payment in a lump sum or installments;
- a perpetual or 30-year easement;
- options to renew;
- any limited development rights retained by the landowner; and
- the market value of the easement.

Funding and grants. Easements could be purchased outright or through the grants provided through the Texas Farm and Ranch Lands Conservation Fund, a special GLO program. The fund could consist of state appropriations, public or private funds, bond proceeds, or any other local, state, and federal sources. The fund also could be applied toward transaction costs and appraisals, with no more than 5 percent going toward administrative costs.

Grants from the fund would help buyers with easement purchases. To obtain a grant from the fund, potential easement holders would identify conservation goals, appraise the market value of the easement, and show a capacity to match the amount of the grant by 50 percent.

Grants would be awarded based on a scoring process evaluating certain criteria, including:

- water and natural resource conservation capacity;
- protection of agricultural productivity;
- wildlife protection;
- susceptibility to development and partition;

- potential to leverage additional funding for the program;
- proximity to other protected lands ; and
- term of the proposed easement .
- resource management plan

Termination. If a land owner could not meet the program's conservation goals and the buyer acquired the easement through a grant, the land owner could ask the GLO to terminate the easement. The GLO would have 180 days upon the request to grant or deny termination. Within 45 days the buyer or the land owner could appeal that decision in district court.

If termination were granted, the GLO would have the land appraised at fair market value according to the highest and best use of the land. The agricultural value also would be appraised and these costs deferred to the land owner. Within 180 days of the appraisals, the land owner would pay the difference to the fund, and the easement would be terminated within another 30 days.

When the GLO did not grant termination or the owner failed to repurchase the easement, the owner could not request termination for five years.

Advisory council. Texas Farm and Ranch Lands Conservation Advisory Council, a seven-member council appointed by the governor would provide assistance and recommendations to the GLO on the administration of the program.

The council would include:

- one family farmer or rancher;
- one representative of an agricultural banking or lending organization;
- one licensed real estate appraiser with expertise in appraising farm and ranch lands with conservation easements;
- two representatives from statewide agricultural organizations in existence for 10 years or more;
- one water policy manager;
- one wildlife management expert from a state institution of higher education; and
- the state conservationist of the USDA Natural Resource Conservation Service or a designee as an ex-officio member

All members would complete a training program and serve staggered, six-year terms. Members would not be compensated but reimbursed for travel expenses. They would meet twice a year or more. Members could be removed when absent from more than half of the meetings.

Takings. A taking through eminent domain of private land encumbered by an agricultural conservation easement could not be approved unless the governmental entity wishing to exercise it determined that no feasible and prudent alternative existed and that the project included plans to minimize harm to the land. Such a finding would have to be made at a properly noticed public hearing.

If a taking did occur, the public entity that performed the taking would pay to the fund an amount equal to the amount used to purchase the easement, and to the landowner the sum of the fair market value and the agricultural value minus the amount used to purchase the easement.

The bill would take effect September 1, 2005.

**SUPPORTERS
SAY:**

CSHB 116 would promote conservation of valuable open space and agricultural lands. Between 1982 and 1997, Texas lost 2.3 million acres of productive farmland. One reason for this loss was that agricultural land is five times less valuable than nonagricultural lands. The program would not only preserve land but financially compensate willing landowners for not developing their land.

The bill would offer substantial benefits to landowners. Many agricultural landowners are cash poor. While they may have a great deal of equity in land, they may have little income. By selling only their development rights, owners could convert some of the wealth tied up in their land into cash without relinquishing ownership of the land or use of its productive capacity.

Many PDR programs heavily rely on donation of development rights. The bill would authorize the creation of a special GLO account to organize funds that would sustain purchases and justly pay land owners without the need for state appropriations. Mitigation funds and military base encroachment program funds would be eligible for the fund. The program could leverage federal funds from the U.S. Department of Agriculture. Until such funds were leveraged, the program would not begin, even though the bill would provide a legal basis for state appropriations.

Landowners could use proceeds from the sale of development rights to purchase additional acreage, upgrade equipment, or pay taxes. While proceeds would be subject to federal income tax, selling development rights could increase other tax savings by reducing the taxable value of the land or future inheritance taxes.

The program would be a free-market choice offering maximum flexibility to land owners. It would not control with which buyers land owners could contract and would provide flexible easement terms. The buyer and the land owner would adjust the resource management plan and easement contract to meet mutual objectives. An easement could be designed to preserve agricultural resources but still might allow the landowner to build an additional home as long as its location did not limit the property's long-term agricultural potential. Land owners and buyers might also exclude ground water and mineral rights.

For growing communities, the program would be a means to manage growth and provide the benefits of open space without the expense of purchasing, maintaining, and policing publicly owned land. Preserving land also could save communities money in the long run because development often costs more in public infrastructure and community services than the tax revenue realized by the growth.

The bill would not threaten property rights. The GLO, one of the state's, foremost experts on real estate transactions, would serve as a neutral administrator of the program. A diverse council of experts would provide guidance on the program's conservation efforts.

Twenty other states successfully have implemented similar PDR programs. Unlike many of these programs, the bill would authorize a landowner to sell the development rights for perpetuity or for a limited term, with a termination option. Although the land owners would bear the costs associated with termination, it ultimately would relieve them of obligations if meeting the terms of the easement became impossible.

The bill would build in property rights protection. It would provide limited opportunity for takings on land at its highest value, and eminent domain could not be exercised on land at its restricted value. Additionally, an easement holder would not be allowed to sell the easement to another party without written consent from the land owner.

OPPONENTS
SAY:

This bill is based on the misconception that development is consuming open space, wilderness, and farmland. Only 5.2 percent of the continental United States can be defined as developed. Excessive regulation disguised as conservation efforts threatens property rights. Water quality protection programs, for example, restrict land from retaining its highest value.

This program would place further limitations on property rights. Although the program is optional, offering financial incentives would coax many farmers into giving up a valuable part of their land. The state should promote efforts to help farms retain their land without selling their development rights.

The program would duplicate existing PDR programs available to Texans. A land owner may contract with any land trust to sell or transfer its development rights. Government should not expend resources on programs that the private sector already provides.

The program would encourage the relationship land trusts share with larger national programs, like the Nature Conservancy. Land trusts often sell the easements to such agencies and in the process draw down more federal dollars to purchase more easements. This cycle promotes centralized control over open space and drives up land prices elsewhere. A comparison can be made to "redlining," the illegal practice of denying or limiting services and products to low-income and minority communities. In the past, redlining practices deprived many minority, urban residents of credit and loans for housing. Now "greenlining" would pose a similar threat in which the undue conservation of open space would drive up land prices elsewhere and create barriers to home ownership for lower-income individuals.

NOTES:

Differences between the substitute and the original bill include:

- the committee substitute would develop the program under the General Land Office, whereas the introduced bill would have developed under the Department of Agriculture;
- the committee substitute would create a dedicated fund for the General Land Office instead of drawing from general revenue;
- the committee substitute would specify that the easements would be agricultural conservation easements and provide relevant definition of terms;

- the substitute changed the 11-member Texas Legacy Council to the seven-member Texas Farm and Ranch Lands Conservation Advisory Council and changed the membership criteria;
- the committee substitute sets out certain criteria for applying and awarding grants.

A Senate bill proposing a similar conservation easement program, SB 1273 by Jackson, passed the Senate on the Local and Uncontested Calendar on April 28 and was reported favorably, as substituted, by the House Land and Resource Management Committee on May 9, making it eligible to be considered in lieu of HB 116.