

By: Burns, Bell of Kaufman,
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et al.

H.B. No. 1750

Substitute the following for H.B. No. 1750:

By: Cain

C.S.H.B. No. 1750

A BILL TO BE ENTITLED

AN ACT

1
2 relating to the applicability of certain city requirements to
3 agricultural operations.

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

5 SECTION 1. The heading to Chapter 251, Agriculture Code, is
6 amended to read as follows:

7 CHAPTER 251. EFFECT OF NUISANCE ACTIONS AND GOVERNMENTAL
8 REQUIREMENTS ON CERTAIN [~~PREEXISTING~~] AGRICULTURAL OPERATIONS

9 SECTION 2. Sections 251.002(1) and (2), Agriculture Code,
10 are amended to read as follows:

11 (1) "Agricultural operation" includes the following
12 activities:

13 (A) cultivating the soil;

14 (B) producing crops or growing vegetation for
15 human food, animal feed or forage, planting seed, or fiber;

16 (C) floriculture;

17 (D) viticulture;

18 (E) horticulture;

19 (F) silviculture;

20 (G) wildlife management;

21 (H) raising or keeping livestock or poultry,
22 including veterinary services; and

23 (I) planting cover crops or leaving land idle for
24 the purpose of participating in any governmental program or normal

1 crop or livestock rotation procedure.

2 (2) "Governmental requirement" includes any rule,
3 regulation, ordinance, zoning, license or permit requirement, or
4 other requirement or restriction enacted or promulgated by a
5 county, city, or other municipal corporation that has the power to
6 enact or promulgate the requirement or restriction.

7 SECTION 3. Section 251.005(c), Agriculture Code, is amended
8 to read as follows:

9 (c) A governmental requirement of a city:

10 (1) does not apply to any agricultural operation
11 located [situated] outside the corporate boundaries of the city;
12 and

13 (2) applies to an agricultural operation located in
14 the corporate boundaries of the city only if the governmental
15 requirement complies with Section 251.0055 [on the effective date
16 of this chapter. If an agricultural operation so situated is
17 subsequently annexed or otherwise brought within the corporate
18 boundaries of the city, the governmental requirements of the city
19 do not apply to the agricultural operation unless the requirement
20 is reasonably necessary to protect persons who reside in the
21 immediate vicinity or persons on public property in the immediate
22 vicinity of the agricultural operation from the danger of:

23 [~~(1) explosion, flooding, vermin, insects, physical~~
24 ~~injury, contagious disease, removal of lateral or subjacent~~
25 ~~support, contamination of water supplies, radiation, storage of~~
26 ~~toxic materials, or traffic hazards, or~~

27 [~~(2) discharge of firearms or other weapons, subject~~

1 ~~to the restrictions in Section 229.002, Local Government Code].~~

2 SECTION 4. Chapter 251, Agriculture Code, is amended by
3 adding Section 251.0055 to read as follows:

4 Sec. 251.0055. LIMITATIONS ON CITY GOVERNMENTAL
5 REQUIREMENTS APPLICABLE WITHIN CORPORATE BOUNDARIES. (a) A city
6 may not impose a governmental requirement that applies to
7 agricultural operations located in the corporate boundaries of the
8 city unless:

9 (1) there is clear and convincing evidence that the
10 purposes of the requirement cannot be addressed through less
11 restrictive means and that the requirement is necessary to protect
12 persons who reside in the immediate vicinity or persons on public
13 property in the immediate vicinity of the agricultural operation
14 from the imminent danger of:

15 (A) explosion;

16 (B) flooding;

17 (C) an infestation of vermin or insects;

18 (D) physical injury;

19 (E) the spread of an identified contagious
20 disease that is directly attributable to the agricultural
21 operation;

22 (F) the removal of lateral or subjacent support;

23 (G) an identified source of contamination of
24 water supplies;

25 (H) radiation;

26 (I) improper storage of toxic materials;

27 (J) crops planted or vegetation grown in a manner

1 that will cause traffic hazards; or

2 (K) discharge of firearms or other weapons,
3 subject to the restrictions in Section 229.002, Local Government
4 Code;

5 (2) the governing body of the city makes a finding by
6 resolution, based on a report described by Subsection (b), that the
7 requirement is necessary to protect public health; and

8 (3) the requirement is not otherwise prohibited by
9 this section.

10 (b) Before making a finding described by Subsection (a)(2),
11 the governing body of the city must obtain and review a report
12 prepared by the city health officer or a consultant that:

13 (1) identifies evidence of the health hazards related
14 to agricultural operations;

15 (2) determines the necessity of regulation and the
16 manner in which agricultural operation should be regulated;

17 (3) states whether each manner of regulation under
18 Subdivision (2) will restrict or prohibit a generally accepted
19 agricultural practice listed in the manual prepared under Section
20 251.007; and

21 (4) if applicable, includes an explanation why the
22 report recommends a manner of regulation that will restrict the use
23 of a generally accepted agricultural practice that the manual
24 indicates does not pose a threat to public health.

25 (c) A city may not impose a governmental requirement that
26 directly or indirectly:

27 (1) prohibits the use of a generally accepted

1 agricultural practice listed in the manual prepared under Section
2 251.007, except as provided by Subsections (a) and (b);

3 (2) prohibits or restricts the growing or harvesting
4 of vegetation for animal feed or forage, except as provided by
5 Subsection (d);

6 (3) prohibits the use of pesticides or other measures
7 to control vermin or disease-bearing insects to the extent
8 necessary to prevent an infestation; or

9 (4) requires an agricultural operation be designated
10 for:

11 (A) agricultural use under Section 1-d, Article
12 VIII, Texas Constitution; or

13 (B) farm, ranch, wildlife management, or timber
14 production use under Section 1-d-1, Article VIII, Texas
15 Constitution.

16 (d) A city may impose a maximum height for vegetation that
17 applies to agricultural operations only if:

18 (1) the maximum vegetation height is at least 12
19 inches; and

20 (2) the requirement applies only to portions of an
21 agricultural operation located no more than 10 feet from a property
22 boundary that is adjacent to:

23 (A) a public sidewalk, street, or highway; or

24 (B) a property that:

25 (i) is owned by a person other than the
26 owner of the agricultural operation; and

27 (ii) has a structure that is inhabited.

1 (e) A governmental requirement of a city relating to the
2 restraint of a dog that would apply to an agricultural operation
3 does not apply to a dog used to protect livestock on property
4 controlled by the property owner while the dog is being used on such
5 property for that purpose.

6 SECTION 5. Chapter 251, Agriculture Code, is amended by
7 adding Sections 251.007 and 251.008 to read as follows:

8 Sec. 251.007. GENERALLY ACCEPTED AGRICULTURAL PRACTICES.
9 The Texas A&M AgriLife Extension Service shall develop a manual
10 that identifies generally accepted agricultural practices and
11 indicates which of those practices do not pose a threat to public
12 health, including a threat to public health posed by a danger listed
13 in Section 251.0055(a)(1).

14 Sec. 251.008. CONFLICT WITH OTHER LAW. If there is a
15 conflict between this chapter and other law, this chapter prevails.

16 SECTION 6. Sections 251.005(c-1) and (c-2), Agriculture
17 Code, are repealed.

18 SECTION 7. As soon as practicable after the effective date
19 of this Act, the Texas A&M AgriLife Extension Service shall develop
20 the manual described by Section 251.007, Agriculture Code, as added
21 by this Act.

22 SECTION 8. Sections 251.002 and 251.005, Agriculture Code,
23 as amended by this Act, and Section 251.0055, Agriculture Code, as
24 added by this Act, apply to a governmental requirement adopted
25 before, on, or after the effective date of this Act.

26 SECTION 9. This Act takes effect September 1, 2023.