

1-1 By: Perry, et al. S.B. No. 1421  
1-2 (In the Senate - Filed March 1, 2023; March 16, 2023, read  
1-3 first time and referred to Committee on Water, Agriculture & Rural  
1-4 Affairs; March 28, 2023, reported adversely, with favorable  
1-5 Committee Substitute by the following vote: Yeas 9, Nays 0;  
1-6 March 28, 2023, sent to printer.)

1-7 COMMITTEE VOTE

|      | Yea | Nay | Absent | PNV |
|------|-----|-----|--------|-----|
| 1-8  |     |     |        |     |
| 1-9  | X   |     |        |     |
| 1-10 | X   |     |        |     |
| 1-11 | X   |     |        |     |
| 1-12 | X   |     |        |     |
| 1-13 | X   |     |        |     |
| 1-14 | X   |     |        |     |
| 1-15 | X   |     |        |     |
| 1-16 | X   |     |        |     |
| 1-17 | X   |     |        |     |

1-18 COMMITTEE SUBSTITUTE FOR S.B. No. 1421 By: Perry

1-19 A BILL TO BE ENTITLED  
1-20 AN ACT

1-21 relating to the effect of nuisance actions, other actions, and  
1-22 governmental requirements on certain agricultural operations.

1-23 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-24 SECTION 1. The heading to Chapter 251, Agriculture Code, is  
1-25 amended to read as follows:

1-26 CHAPTER 251. EFFECT OF NUISANCE ACTIONS, OTHER ACTIONS, AND  
1-27 GOVERNMENTAL REQUIREMENTS ON CERTAIN [~~PREEXISTING~~] AGRICULTURAL  
1-28 OPERATIONS

1-29 SECTION 2. Section 251.001, Agriculture Code, is amended to  
1-30 read as follows:

1-31 Sec. 251.001. POLICY. Food security being essential, it  
1-32 [~~It~~] is the policy of this state to conserve, protect, and encourage  
1-33 the development and improvement of its agricultural land for the  
1-34 production of food and other agricultural products. It is the  
1-35 purpose of this chapter to reduce the loss to the state of its  
1-36 agricultural resources by limiting the circumstances under which  
1-37 agricultural operations may be legally threatened, subject to suit,  
1-38 regulated, or otherwise declared [~~considered~~] to be a nuisance.

1-39 SECTION 3. Sections 251.002(1) and (2), Agriculture Code,  
1-40 are amended to read as follows:

1-41 (1) "Agricultural operation" includes the following  
1-42 activities:

1-43 (A) cultivating the soil;  
1-44 (B) producing crops or growing vegetation for  
1-45 human food, animal feed, including hay and other forages, planting  
1-46 seed, or fiber;

1-47 (C) floriculture;

1-48 (D) viticulture;

1-49 (E) horticulture;

1-50 (F) silviculture;

1-51 (G) wildlife management;

1-52 (H) raising or keeping livestock or poultry,  
1-53 including veterinary services; and

1-54 (I) planting cover crops or leaving land idle for  
1-55 the purpose of participating in any governmental program or normal  
1-56 crop or livestock rotation procedure.

1-57 (2) "Governmental requirement" includes any rule,  
1-58 regulation, ordinance, zoning, license or permit requirement, or  
1-59 other requirement or restriction enacted or promulgated by a  
1-60 county, city, or other municipal corporation that has the power to

2-1 enact or promulgate the requirement or restriction.

2-2 SECTION 4. Sections 251.003 and 251.004, Agriculture Code,  
2-3 are amended to read as follows:

2-4 Sec. 251.003. ESTABLISHED DATE OF OPERATION. For purposes  
2-5 of this chapter, the established date of operation is the date on  
2-6 which an agricultural operation commenced agricultural operations  
2-7 ~~[operation. If the physical facilities of the agricultural~~  
2-8 ~~operation are subsequently expanded, the established date of~~  
2-9 ~~operation for each expansion is a separate and independent~~  
2-10 ~~established date of operation established as of the date of~~  
2-11 ~~commencement of the expanded operation, and the commencement of~~  
2-12 ~~expanded operation does not divest the agricultural operation of a~~  
2-13 ~~previously established date of operation].~~

2-14 Sec. 251.004. NUISANCE OR OTHER ACTIONS. (a) No nuisance  
2-15 action or other action to restrain an agricultural operation may be  
2-16 brought against an agricultural operation that has lawfully been in  
2-17 operation and substantially unchanged for one year or more prior to  
2-18 the date on which the action is brought. A person who brings a  
2-19 nuisance action or other action to restrain an agricultural  
2-20 operation that is not prohibited by this section must establish  
2-21 each element of the action by clear and convincing evidence [~~, if~~  
2-22 ~~the conditions or circumstances complained of as constituting the~~  
2-23 ~~basis for the nuisance action have existed substantially unchanged~~  
2-24 ~~since the established date of operation]. This subsection does not  
2-25 restrict or impede the authority of this state to protect the public  
2-26 health, safety, and welfare or [~~the authority of a municipality]~~ to  
2-27 enforce state law. For the purposes of this subsection, a  
2-28 substantial change to an agricultural operation means a material  
2-29 alteration to the operation of or type of production at an  
2-30 agricultural operation that is substantially inconsistent with the  
2-31 operational practices since the established date of operation.~~

2-32 (b) A person who brings a nuisance action or other action to  
2-33 restrain an agricultural operation and seeks [~~for~~] damages or  
2-34 injunctive relief against an agricultural operation that has  
2-35 existed for one year or more prior to the date that the action is  
2-36 instituted or who violates the provisions of Subsection (a) [~~of~~  
2-37 ~~this section]~~ is liable to the agricultural operator for:

2-38 (1) all costs and expenses incurred in defense of the  
2-39 action, including [~~but not limited to~~] attorney's fees, court  
2-40 costs, travel, and other related incidental expenses incurred in  
2-41 the defense; and

2-42 (2) any other damages found by the trier of fact.

2-43 (c) This section does not affect or defeat the right of any  
2-44 person to recover for injuries or damages sustained because of an  
2-45 agricultural operation or portion of an agricultural operation that  
2-46 is conducted in violation of a federal, state, or local statute or  
2-47 governmental requirement that applies to the agricultural  
2-48 operation or portion of an agricultural operation.

2-49 SECTION 5. Section 251.005(c), Agriculture Code, is amended  
2-50 to read as follows:

2-51 (c) A governmental requirement of a city:

2-52 (1) does not apply to any agricultural operation  
2-53 located [~~situated~~] outside the corporate boundaries of the city;  
2-54 and

2-55 (2) applies to an agricultural operation located in  
2-56 the corporate boundaries of the city only if the governmental  
2-57 requirement complies with Section 251.0055 [~~on the effective date~~  
2-58 ~~of this chapter. If an agricultural operation so situated is~~  
2-59 ~~subsequently annexed or otherwise brought within the corporate~~  
2-60 ~~boundaries of the city, the governmental requirements of the city~~  
2-61 ~~do not apply to the agricultural operation unless the requirement~~  
2-62 ~~is reasonably necessary to protect persons who reside in the~~  
2-63 ~~immediate vicinity or persons on public property in the immediate~~  
2-64 ~~vicinity of the agricultural operation from the danger of:~~

2-65 [~~(1) explosion, flooding, vermin, insects, physical~~  
2-66 ~~injury, contagious disease, removal of lateral or adjacent~~  
2-67 ~~support, contamination of water supplies, radiation, storage of~~  
2-68 ~~toxic materials, or traffic hazards, or~~

2-69 [~~(2) discharge of firearms or other weapons, subject~~

3-1 ~~to the restrictions in Section 229.002, Local Government Code].~~  
3-2 SECTION 6. Chapter 251, Agriculture Code, is amended by  
3-3 adding Section 251.0055 to read as follows:

3-4 Sec. 251.0055. LIMITATIONS ON CITY GOVERNMENTAL  
3-5 REQUIREMENTS APPLICABLE WITHIN CORPORATE BOUNDARIES. (a) A city  
3-6 may not impose a governmental requirement that applies to  
3-7 agricultural operations located in the corporate boundaries of the  
3-8 city unless:

3-9 (1) there is evidence that the purposes of the  
3-10 requirement cannot be addressed through less restrictive means and  
3-11 the requirement is reasonably necessary to protect persons who  
3-12 reside in the immediate vicinity or persons on public property in  
3-13 the immediate vicinity of the agricultural operation from the  
3-14 imminent danger of:

- 3-15 (A) explosion;
- 3-16 (B) flooding;
- 3-17 (C) an infestation of vermin or insects;
- 3-18 (D) physical injury;
- 3-19 (E) the significant spread of an identified  
3-20 contagious disease that is directly attributable to the  
3-21 agricultural operation;

- 3-22 (F) the removal of lateral or subjacent support;
- 3-23 (G) an identified source of contamination of  
3-24 water supplies;

- 3-25 (H) radiation;
- 3-26 (I) improper storage of toxic materials;
- 3-27 (J) crops planted or vegetation grown in a manner  
3-28 that will cause traffic hazards; or

- 3-29 (K) discharge of firearms or other weapons,  
3-30 subject to the restrictions in Section 229.002, Local Government  
3-31 Code;

3-32 (2) the governing body of the city makes a finding by  
3-33 resolution, based on a report described by Subsection (b), that the  
3-34 requirement is necessary to protect public health; and

3-35 (3) the requirement is not otherwise prohibited by  
3-36 this section.

3-37 (b) Before making a finding described by Subsection (a)(2),  
3-38 the governing body of the city must obtain and review a report  
3-39 prepared by the city health officer or a consultant that:

3-40 (1) identifies evidence of the health hazards related  
3-41 to agricultural operations;

3-42 (2) determines the necessity of regulation and the  
3-43 manner in which agricultural operation should be regulated;

3-44 (3) states whether each manner of regulation under  
3-45 Subdivision (2) will restrict or prohibit a generally accepted  
3-46 agricultural practice listed in the manual prepared under Section  
3-47 251.007; and

3-48 (4) if applicable, includes an explanation why the  
3-49 report recommends a manner of regulation that will restrict or  
3-50 prohibit the use of a generally accepted agricultural practice that  
3-51 the manual indicates does not pose a threat to public health.

3-52 (c) A city may not impose a governmental requirement that  
3-53 directly or indirectly:

3-54 (1) prohibits the use of a generally accepted  
3-55 agricultural practice listed in the manual prepared under Section  
3-56 251.007, except as provided by Subsections (a) and (b);

3-57 (2) prohibits or restricts the growing or harvesting  
3-58 of vegetation for animal feed or forage, except as provided by  
3-59 Subsection (d);

3-60 (3) prohibits the use of pesticides or other measures  
3-61 to control vermin or disease-bearing insects to the extent  
3-62 necessary to prevent an infestation; or

3-63 (4) requires an agricultural operation be designated  
3-64 for:

3-65 (A) agricultural use under Section 1-d, Article  
3-66 VIII, Texas Constitution; or

3-67 (B) farm, ranch, wildlife management, or timber  
3-68 production use under Section 1-d-1, Article VIII, Texas  
3-69 Constitution.

4-1 (d) A city may impose a maximum height for vegetation that  
4-2 applies to agricultural operations only if:

4-3 (1) the maximum vegetation height is at least 12  
4-4 inches; and

4-5 (2) the requirement applies only to portions of an  
4-6 agricultural operation located no more than 10 feet from a property  
4-7 boundary that is adjacent to a public sidewalk, street, or highway.

4-8 (e) A governmental requirement of a city relating to the  
4-9 restraint of a dog that would apply to an agricultural operation  
4-10 does not apply to a dog used to protect livestock on property  
4-11 controlled by the property owner while the dog is being used on such  
4-12 property for that purpose.

4-13 SECTION 7. Section 251.006, Agriculture Code, is amended to  
4-14 read as follows:

4-15 Sec. 251.006. AGRICULTURAL IMPROVEMENTS. (a) An owner,  
4-16 lessee, or occupant of agricultural land is not liable to the state,  
4-17 a governmental unit, or the owner, lessee, or occupant of other  
4-18 agricultural land for the construction or maintenance on the land  
4-19 of an agricultural improvement if the construction is not expressly  
4-20 prohibited by statute [~~or a governmental requirement~~] in effect at  
4-21 the time the improvement is constructed. Such an improvement does  
4-22 not constitute a nuisance and is not otherwise subject to suit or  
4-23 injunction.

4-24 (b) [~~This section does not apply to an improvement that~~  
4-25 ~~obstructs the flow of water, light, or air to other land.~~] This  
4-26 section does not prevent the enforcement of a state or federal  
4-27 statute [~~or governmental requirement to protect public health or~~  
4-28 ~~safety~~].

4-29 (c) In this section:

4-30 (1) "Agricultural land" includes:

4-31 (A) any land the use of which qualifies the land  
4-32 for appraisal based on agricultural use as defined under Subchapter  
4-33 D, Chapter 23, Tax Code; and

4-34 (B) any other land on which agricultural  
4-35 operations exist or may take place.

4-36 (2) "Agricultural improvement" includes pens, barns,  
4-37 fences, arenas, and other improvements designed for:

4-38 (A) the sheltering, restriction, or feeding of  
4-39 animal or aquatic life;

4-40 (B) [~~for~~] storage of produce or feed; [~~r~~] or

4-41 (C) [~~for~~] storage or maintenance of:

4-42 (i) implements used for management  
4-43 functions; or

4-44 (ii) equipment necessary to carry out  
4-45 agricultural operations.

4-46 SECTION 8. Chapter 251, Agriculture Code, is amended by  
4-47 adding Sections 251.007 and 251.008 to read as follows:

4-48 Sec. 251.007. GENERALLY ACCEPTED AGRICULTURAL PRACTICES.  
4-49 The Texas A&M AgriLife Extension Service shall develop a manual  
4-50 that identifies generally accepted agricultural practices and  
4-51 indicates which of those practices do not pose a threat to public  
4-52 health, including a threat to public health posed by a danger listed  
4-53 in Section 251.0055(a)(1).

4-54 Sec. 251.008. CONFLICT WITH OTHER LAW. If there is a  
4-55 conflict between this chapter and other law, this chapter prevails.

4-56 SECTION 9. Sections 251.005(c-1) and (c-2), Agriculture  
4-57 Code, are repealed.

4-58 SECTION 10. As soon as practicable after the effective date  
4-59 of this Act, the Texas A&M AgriLife Extension Service shall develop  
4-60 the manual described by Section 251.007, Agriculture Code, as added  
4-61 by this Act.

4-62 SECTION 11. Sections 251.002 and 251.005, Agriculture Code,  
4-63 as amended by this Act, and Section 251.0055, Agriculture Code, as  
4-64 added by this Act, apply to a governmental requirement adopted  
4-65 before, on, or after the effective date of this Act.

4-66 SECTION 12. The changes in law made by this Act apply only  
4-67 to a cause of action that accrues on or after the effective date of  
4-68 this Act. A cause of action that accrued before the effective date  
4-69 of this Act is governed by the law applicable to the cause of action

5-1 immediately before the effective date of this Act, and that law is  
5-2 continued in effect for that purpose.

5-3 SECTION 13. This Act takes effect September 1, 2023.

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