

## **BILL ANALYSIS**

Senate Research Center

H.B. 1750  
By: Burns et al. (Perry)  
Water, Agriculture & Rural Affairs  
4/28/2023  
Engrossed

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

Farmers and ranchers who engage in an agricultural operation within city boundaries are being subjected to broad overregulation by city ordinances that prohibit and greatly restrict generally accepted farming practices that a city deems a threat to the public health and safety, such as the raising and keeping of livestock and the cultivating of certain row crops. Changes to state law are needed to preserve the right to farm and ranch in Texas and to more strongly protect against city overreach. H.B. 1750 seeks to address this issue and ensure that agricultural operations are protected by providing for limitations on city governmental requirements on all agricultural operations within city limits.

H.B. 1750 amends current law relating to the applicability of certain city requirements to agricultural operations.

### **RULEMAKING AUTHORITY**

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends the heading to Chapter 251, Agriculture Code, to read as follows:

#### **CHAPTER 251. EFFECT OF NUISANCE ACTIONS AND GOVERNMENTAL REQUIREMENTS ON CERTAIN AGRICULTURAL OPERATIONS**

SECTION 2. Amends Sections 251.002(1) and (2), Agriculture Code, to redefine "agricultural operation" and "governmental requirement."

SECTION 3. Amends Section 251.005(c), Agriculture Code, as follows:

(c) Provides that a governmental requirement of a city does not apply to any agricultural operation located outside the corporate boundaries of the city and applies to an agricultural operation located in the corporate boundaries of the city only if the governmental requirement complies with Section 251.0055.

Deletes existing text providing that a governmental requirement of a city does not apply to any agricultural operation situated outside the corporate boundaries of the city on the effective date of this chapter. Deletes existing text providing that the governmental requirements of the city, if an agricultural operation so situated is subsequently annexed or otherwise brought within the corporate boundaries of the city, do not apply to the agricultural operation unless the requirement is reasonably necessary to protect persons who reside in the immediate vicinity or persons on public property in the immediate vicinity of the agricultural operation from the danger of:

(1) explosion, flooding, vermin, insects, physical injury, contagious disease, removal of lateral or subjacent support, contamination of water supplies, radiation, storage of toxic materials, or traffic hazards; or

(2) discharge of firearms or other weapons, subject to the restrictions in Section 229.002 (Regulation of Discharge of Weapon), Local Government Code.

SECTION 4. Amends Chapter 251, Agriculture Code, by adding Section 251.0055, as follows:

Sec. 251.0055. LIMITATIONS ON CITY GOVERNMENTAL REQUIREMENTS APPLICABLE WITHIN CORPORATE BOUNDARIES. (a) Prohibits a city from imposing a governmental requirement that applies to agricultural operations located in the corporate boundaries of the city unless:

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

(A) explosion;

(B) flooding;

(C) an infestation of vermin or insects;

(D) physical injury;

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

(F) the removal of lateral or subjacent support;

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

(H) radiation;

(I) improper storage of toxic materials;

(J) crops planted or vegetation grown in a manner that will cause traffic hazards; or

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

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

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

(b) Requires the governing body of the city, before making a finding described by Subsection (a)(2), to obtain and review a report prepared by the city health officer or a consultant that:

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

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

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

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

(c) Prohibits a city from imposing a governmental requirement that directly or indirectly:

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

(2) prohibits or restricts the growing or harvesting of vegetation for animal feed, livestock forage, or forage for wildlife management, except as provided by Subsection (d);

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

(4) requires an agricultural operation be designated for:

(A) agricultural use under Section 1-d (Assessment for Tax Purposes of Lands Designated for Agricultural Use), Article VIII (Taxation and Revenue), Texas Constitution; or

(B) farm, ranch, wildlife management, or timber production use under Section 1-d-1 (Taxation of Certain Open-Space Land), Article VIII, Texas Constitution.

(d) Authorizes a city to impose a maximum height for vegetation that applies to agricultural operations only if:

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

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

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

(B) a property that:

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

(ii) has a structure that is inhabited.

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

(f) Authorizes a city to require a person to provide a written management plan that meets the specifications described by Section 23.521(c) (relating to authorizing certain standards to include specifications for a written management plan to be developed by a landowner if certain criteria are met), Tax Code, to establish that activities constitute an agricultural operation on the basis of being wildlife management activities.

SECTION 5. Amends Chapter 251, Agriculture Code, by adding Sections 251.007 and 251.008, as follows:

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

Sec. 251.008. **CONFLICT WITH OTHER LAW.** Provides that this chapter prevails if there is a conflict between this chapter and other law.

SECTION 6. Repealer: Sections 251.005(c-1) (relating to authorizing a governmental requirement to be imposed only after the governing body of the city makes findings by resolution that the requirement is necessary to protect public health) and (c-2) (relating to providing that a governmental requirement of a city relating to the restraint of a dog that would apply to an agricultural operation does not apply to a dog used to protect livestock on property controlled by the property owner while being used for that purpose), Agriculture Code.

SECTION 7. Requires the Texas A&M AgriLife Extension Service, as soon as practicable after the effective date of this Act, to develop the manual described by Section 251.007, Agriculture Code, as added by this Act.

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

SECTION 9. Effective date: September 1, 2023.