

BILL ANALYSIS

C.S.H.B. 1750
By: Burns
Agriculture & Livestock
Committee Report (Substituted)

BACKGROUND AND PURPOSE

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. C.S.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.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.H.B. 1750 amends the Agriculture Code to remove provisions relating to the effect of a city's governmental requirements on an agricultural operation that was situated outside the city's corporate boundaries and was later annexed or otherwise brought within the city's corporate boundaries. The bill sets out a prohibition instead against a city imposing a governmental requirement that applies to agricultural operations located in the city's corporate boundaries that contains provisions that are substantially the same as the removed provisions, except as follows:

- with regard to the requirement that the governmental 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 specified dangers, the bill does the following:
 - removes the specification that this necessity is a reasonable necessity;
 - requires that there is evidence of the requirement's necessity;
 - requires that the evidence be clear and convincing evidence that the requirement's purposes cannot be addressed through less restrictive means; and
 - specifies that such dangers are imminent dangers;
- with regard to the danger of vermin or insects, specifies that the danger is an infestation of vermin or insects;
- with regard to the danger of contagious disease, specifies that the danger is the spread of an identified such disease that is directly attributable to the agricultural operation;
- with regard to the danger of contamination of water supplies, specifies that the danger is of an identified source of such contamination;

- with regard to the danger of the storage of toxic materials, specifies that the danger is the improper storage of those materials;
- with regard to the danger of traffic hazards, specifies that the danger is of crops planted or vegetation grown in a manner that will cause traffic hazards; and
- adds a condition that the governmental requirement is not otherwise prohibited by the bill's provisions.

C.S.H.B. 1750 requires the city's governing body, before making a finding that a requirement is necessary to protect public health, to obtain and review a report prepared by the city health officer or a consultant identifying the health hazards related to agricultural operations and determining the necessity and manner of regulation as follows:

- clarifies that the report must identify evidence of those health hazards;
- also requires the report to state whether each determined manner of agricultural operation regulation will restrict or prohibit an applicable generally accepted agricultural practice listed in the manual prepared by the Texas A&M AgriLife Extension Service; and
- also requires the report, if applicable, to include an explanation why the report recommends a manner of regulation that will restrict the use of an applicable generally accepted agricultural practice that the manual indicates does not pose a threat to public health.

The bill requires the Texas A&M AgriLife Extension Service, as soon as practicable after the bill's effective date, 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 an applicable danger.

C.S.H.B. 1750 prohibits a city from imposing a governmental requirement that directly or indirectly does the following:

- prohibits the use of an applicable generally accepted agricultural practice listed in the manual, except as otherwise provided by the bill for an applicable governmental requirement;
- prohibits or restricts the growing or harvesting of vegetation for animal feed or forage, except as otherwise provided by the bill for the maximum height of vegetation;
- prohibits the use of pesticides or other measures to control vermin or disease-bearing insects to the extent necessary to prevent an infestation; or
- requires an agricultural operation be designated for agricultural use, or for farm, ranch, wildlife management, or timber production use, under specified provisions of the Texas Constitution.

The bill authorizes a city to impose a maximum height for vegetation that applies to agricultural operations only if the maximum vegetation height is at least 12 inches and the requirement applies only to portions of an agricultural operation located no more than 10 feet from a property boundary that is adjacent to the following:

- a public sidewalk, street, or highway; or
- a property that:
 - is owned by a person other than the agricultural operation's owner; and
 - has a structure that is inhabited.

C.S.H.B. 1750 establishes that provisions relating to the effect of a nuisance action or a governmental requirement on certain agricultural operations prevail if there is a conflict between those provisions and other law. The bill revises the terms defined for purposes of those provisions as follows:

- includes as an "agricultural operation" the producing of crops for forage and the growing of vegetation for human food, animal feed or forage, planting seed, or fiber;
- specifies that the "agricultural operation" of raising or keeping livestock or poultry includes veterinary services; and

- includes as a "governmental requirement" any license or permit requirement enacted or promulgated by a county, city, or other municipal corporation that has the power to enact or promulgate the requirement.

C.S.H.B. 1750 applies to a governmental requirement adopted before, on, or after the bill's effective date.

C.S.H.B. 1750 repeals Sections 251.005(c-1) and (c-2), Agriculture Code.

EFFECTIVE DATE

September 1, 2023.

COMPARISON OF INTRODUCED AND SUBSTITUTE

While C.S.H.B. 1750 may differ from the introduced in minor or nonsubstantive ways, the following summarizes the substantial differences between the introduced and committee substitute versions of the bill.

The substitute includes a provision not in the introduced that specifies that the "agricultural operation" of raising or keeping livestock or poultry includes veterinary services.

With regard to the requirement that a city's governmental requirement imposed on an agricultural operation located in the city's corporate boundaries 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 specified dangers:

- whereas the introduced required there to be evidence that the requirement is reasonably necessary as such, the substitute instead omits the characterization that the requirement be reasonably necessary and instead requires there to be clear and convincing evidence that the requirement's purposes cannot be addressed through less restrictive means and that the requirement is necessary as such;
- the substitute characterizes such dangers as imminent dangers, whereas the introduced did not include this characterization;
- the substitute lists explosion as a danger, whereas the introduced listed the likelihood of an explosion as a danger; and
- with regard to the danger of the spread of an identified contagious disease that is directly attributable to the agricultural operation, the introduced characterized such spread as a significant spread whereas the substitute omits this characterization.

With regard to the prohibition against a city imposing a governmental requirement that directly or indirectly prohibits the use of a generally accepted agricultural practice listed in the manual, the substitute includes an exception to this prohibition as otherwise provided by the bill for an applicable governmental requirement, whereas the introduced did not include this exception.

With regard to the authorization in the introduced for a city to impose a maximum height for vegetation that applies to agricultural operations only if, in part, 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 public sidewalk, street, or highway, the substitute also provides for, which the introduced does not include, a property boundary that is adjacent to a property that is owned by a person other than the agricultural operation's owner and has a structure that is inhabited.

The substitute includes a provision not included in the introduced that establishes that provisions relating to the effect of a nuisance action or a governmental requirement on certain agricultural operations prevail if there is a conflict between those provisions and other law.