

BILL ANALYSIS

Senate Research Center
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C.S.S.B. 1421
By: Perry et al.
Water, Agriculture, & Rural Affairs
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Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Chapter 251 of the Agriculture Code was enacted more than 30 years ago to protect the ability of farmers and ranchers to continue practicing when their agricultural operations become threatened by urban sprawl or other factors. Current statute is outdated; cities and municipalities have ordinances that do not allow for traditional farming and ranching within city boundaries. Current statute is intended to protect agricultural operations from nuisance actions, but the protection is no longer adequate to protect farmers and ranchers in Texas.

Rules such as the creation of buffer zones, limitations on the keeping of livestock, and vegetation height restrictions are examples of restrictive ordinances that need to be addressed. Additionally, agricultural operations are subject to legal actions such as regulatory complaints, injunctions, and lawsuits.

Under C.S.S.B. 1421:

- Updates definitions
 - Includes growing vegetation, hay and other forages, and veterinary services as agricultural operations.
 - Updates the definition of a governmental requirement to include licensing or permitting.
- Expands the established date of operation to include subsequent expansions to existing operations.
- Increases the burden of proof for individuals bringing nuisance or other actions intended to restrain agricultural operations.
- Limits city governmental requirements on operations situated within the corporate boundaries unless there is imminent danger to the public in the immediate vicinity of the operation.
- Protects agricultural improvements from injunctions or suits.
- Directs Texas A&M AgriLife Extension to develop a manual of generally accepted agricultural practices.
- Agriculture Code prevails in the event there is a conflict with other law.
- Changes in law by this Act take effect September 1, 2023.
- Adds clarifying language that in order for protections of the date of establishment to be applicable to expansion, the operation must remain substantially unchanged from the original operation.
- Defines a substantial change as being a material alteration to the operation or type of production at an agricultural operation that is substantially inconsistent with the operational practices since the established date of operation.

- Adds in stricken language that clarifies the authority of the state to protect the public health, safety, and welfare.

C.S.S.B. 1421 amends current law relating to the effect of nuisance actions, other actions, and governmental requirements on certain 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, OTHER ACTIONS, AND GOVERNMENTAL REQUIREMENTS ON CERTAIN AGRICULTURAL OPERATIONS

SECTION 2. Amends Section 251.001, Agriculture Code, as follows:

Sec. 251.001. POLICY. Provides that food security being essential, it is the policy of this state to conserve, protect, and encourage the development and improvement of its agricultural land for the production of food and other agricultural products. Provides that it is the purpose of this chapter to reduce the loss to the state of its agricultural resources by limiting the circumstances under which agricultural operations may be legally threatened, subject to suit, regulated, or otherwise declared, rather than considered, to be a nuisance. Makes a nonsubstantive change.

SECTION 3. Amends Sections 251.002(1) and (2), Agriculture Code, to redefine "agricultural operation" and "governmental requirement."

SECTION 4. Amends Sections 251.003 and 251.004, Agriculture Code, as follows:

Sec. 251.003. ESTABLISHED DATE OF OPERATION. Provides that the established date of operation, for purposes of this chapter, is the date on which an agricultural operation commenced agricultural operations. Deletes existing text providing that if physical facilities of the agricultural operation are subsequently expanded, the established date of operation for each expansion is a separate and independent established date of operation established as of the date of commencement of the expanded operation, and the commencement of expanded operation does not divest the agricultural operation of a previously established date of operation. Makes a nonsubstantive change.

Sec. 251.004. New heading: NUISANCE OR OTHER ACTIONS. (a) Prohibits any nuisance action or other action to restrain an agricultural operation from being brought against an agricultural operation that has lawfully been in operation and substantially unchanged for one year or more prior to the date on which the action is brought. Requires a person who brings a nuisance action or other action to restrain an agricultural operation that is not prohibited by this section to establish each element of the action by clear and convincing evidence. Provides that this subsection does not restrict or impede the authority of this state to protect the public health, safety, and welfare or enforce state law. Provides that for the purposes of this subsection, a substantial change to an agricultural operation means a material alteration to the operation of or type of production at an agricultural operation that is substantially inconsistent with the operational practices since the established date of operation. Deletes existing text prohibiting any nuisance action from being brought against an agricultural operation that has lawfully been in operation for one year or more prior to the date on which the action is brought, if the conditions or circumstances complained of as constituting the basis for the nuisance action have existed substantially unchanged since the established date of operation. Deletes existing text providing that this subsection does not restrict or impede the authority of a municipality to enforce state law.

(b) Provides that a person who brings a nuisance action or other action to restrain an agricultural operation and seeks damages or injunctive relief against an agricultural operation that has existed for one year or more prior to the date that the action is instituted or who violates the provisions of Subsection (a) is liable to the agricultural operator for:

(1) all costs and expenses incurred in defense of the action, including, rather than including but not limited to, attorney's fees, court costs, travel, and other related incidental expenses incurred in the defense; and

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

(c) Makes no changes to this subsection.

SECTION 5. Amends Section 251.005(c), Agriculture Code, as follows:

(c) Provides that a governmental requirement of a city:

(1) does not apply to any agricultural operation located outside the corporate boundaries of the city; and

(2) 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 do not apply to the agricultural operation, if an agricultural operation so situated is subsequently annexed or otherwise brought within the corporate boundaries of the city, 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 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 discharge of firearms or other weapons, subject to the restrictions in Section 229.002 (Regulation of Discharge of Weapon), Local Government Code.

SECTION 6. 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 evidence that the purposes of the requirement cannot be addressed through less restrictive means and 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 imminent danger of:

(A) explosion;

(B) flooding;

(C) an infestation of vermin or insects;

(D) physical injury;

(E) the significant 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 or prohibit 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 or forage, 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 public sidewalk, street, or highway.

(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.

SECTION 7. Amends Section 251.006, Agriculture Code, as follows:

Sec. 251.006. AGRICULTURAL IMPROVEMENTS. (a) Provides that an owner, lessee, or occupant of agricultural land is not liable to the state, a governmental unit, or the owner, lessee, or occupant of other agricultural land for the construction or maintenance on the land of an agricultural improvement if the construction is not expressly prohibited by statute, rather than by statute or a governmental requirement, in effect at the time the improvement is constructed. Provides that such an improvement does not constitute a nuisance and is not otherwise subject to suit or injunction.

(b) Provides that this section does not prevent the enforcement of a state or federal statute. Deletes existing text providing that this section does not apply to an improvement that obstructs the flow of water, light, or air to other land. Deletes existing text providing that this section does not prevent the enforcement of a statute or governmental requirement to protect public health or safety.

(c) Redefines "agricultural land" and "agricultural improvement."

SECTION 8. 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 9. Repealers: Sections 251.005(c-1) (relating to requiring the governing body of a city to take certain procedures prior to the body imposing a governmental requirement on certain agricultural operations) and (c-2) (relating to providing an exemption from certain city restraint requirements for dogs used in agricultural operations), Agriculture Code.

SECTION 10. 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 11. 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 12. Makes application of this Act prospective.

SECTION 13. Effective date: September 1, 2023.