By:  Burns, et al. (Senate Sponsor - Perry) H.B. No. 1750

(In the Senate - Received from the House April 11, 2023; April 20, 2023, read first time and referred to Committee on Water, Agriculture & Rural Affairs; May 3, 2023, reported favorably by the following vote: Yeas 8, Nays 0; May 3, 2023, sent to printer.)

COMMITTEE VOTE

               Yea Nay Absent  PNV

Perry           X

Hancock         X

Blanco          X

Flores          X

Gutierrez                 X

Johnson         X

Kolkhorst       X

Sparks          X

Springer        X

A BILL TO BE ENTITLED

AN ACT

relating to the applicability of certain city requirements to agricultural operations.

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

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

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

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

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

(A)  cultivating the soil;

(B)  producing crops or growing vegetation for human food, animal feed, livestock forage, forage for wildlife management, planting seed, or fiber;

(C)  floriculture;

(D)  viticulture;

(E)  horticulture;

(F)  silviculture;

(G)  wildlife management;

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

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

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

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

(c)  A governmental requirement of a city:

(1)  does not apply to any agricultural operation located [~~situated~~] 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 [~~on the effective date of this chapter.  If an agricultural operation so situated is subsequently annexed or otherwise brought within the corporate boundaries of the city, the governmental requirements 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, Local Government Code~~].

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

Sec. 251.0055.  LIMITATIONS ON CITY GOVERNMENTAL REQUIREMENTS APPLICABLE WITHIN CORPORATE BOUNDARIES. (a) A city may not impose 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)  Before making a finding described by Subsection (a)(2), the governing body of the city must 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)  A city may not impose 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, Article VIII, Texas Constitution; or

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

(d)  A city may 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)  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)  A city may require a person to provide a written management plan that meets the specifications described by Section 23.521(c), Tax Code, to establish that activities constitute an agricultural operation on the basis of being wildlife management activities.

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

Sec. 251.007.  GENERALLY ACCEPTED AGRICULTURAL PRACTICES. The Texas A&M AgriLife Extension Service shall 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. If there is a conflict between this chapter and other law, this chapter prevails.

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

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

SECTION 8.  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.  This Act takes effect September 1, 2023.

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