88R9846 MP-D

By:  Perry, et al. S.B. No. 1421

A BILL TO BE ENTITLED

AN ACT

relating to the effect of nuisance actions, other actions, and governmental requirements on certain 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, OTHER ACTIONS, AND GOVERNMENTAL REQUIREMENTS ON CERTAIN [~~PREEXISTING~~] AGRICULTURAL OPERATIONS

SECTION 2.  Section 251.001, Agriculture Code, is amended to read as follows:

Sec. 251.001.  POLICY. Food security being essential, it [~~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. 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 [~~considered~~] to be a nuisance.

SECTION 3.  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, including hay and other forages, 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 4.  Sections 251.003 and 251.004, Agriculture Code, are amended to read as follows:

Sec. 251.003.  ESTABLISHED DATE OF OPERATION. For purposes of this chapter, the established date of operation is the date on which an agricultural operation commenced agricultural operations [~~operation. If the 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~~].

Sec. 251.004.  NUISANCE OR OTHER ACTIONS. (a) No nuisance action or other action to restrain an agricultural operation may be 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. A person who brings a nuisance action or other action to restrain an agricultural operation that is not prohibited by this section must establish each element of the action by clear and convincing evidence [~~, 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~~]. This subsection does not restrict or impede the authority of this state to [~~protect the public health, safety, and welfare or the authority of a municipality to~~] enforce state law.

(b)  A person who brings a nuisance action or other action to restrain an agricultural operation and seeks [~~for~~] 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) [~~of this section~~] is liable to the agricultural operator for:

(1)  all costs and expenses incurred in defense of the action, 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)  This section does not affect or defeat the right of any person to recover for injuries or damages sustained because of an agricultural operation or portion of an agricultural operation that is conducted in violation of a federal, state, or local statute or governmental requirement that applies to the agricultural operation or portion of an agricultural operation.

SECTION 5.  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 6.  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 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)  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 or prohibit 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;

(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, 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 public sidewalk, street, or highway.

(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.

SECTION 7.  Section 251.006, Agriculture Code, is amended to read as follows:

Sec. 251.006.  AGRICULTURAL IMPROVEMENTS. (a) 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 [~~or a governmental requirement~~] in effect at the time the improvement is constructed. Such an improvement does not constitute a nuisance and is not otherwise subject to suit or injunction.

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

(c)  In this section:

(1)  "Agricultural land" includes:

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

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

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

(A)  the sheltering, restriction, or feeding of animal or aquatic life;

(B)  [~~, for~~] storage of produce or feed; [~~,~~] or

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

(i)  implements used for management functions; or

(ii)  equipment necessary to carry out agricultural operations.

SECTION 8.  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 9.  Sections 251.005(c-1) and (c-2), Agriculture Code, are repealed.

SECTION 10.  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 11.  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.  The changes in law made by this Act apply only to a cause of action that accrues on or after the effective date of this Act. A cause of action that accrued before the effective date of this Act is governed by the law applicable to the cause of action immediately before the effective date of this Act, and that law is continued in effect for that purpose.

SECTION 13.  This Act takes effect September 1, 2023.