

BILL ANALYSIS

C.S.H.B. 843
By: Truitt
Regulated Industries
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Cellular companies have business incentives to build large cell towers in unincorporated areas in close proximity to major metropolitan areas. It saves them money and time. This is a problem when a tower built close to a subdivision detrimentally impacts the value of homes by being an eyesore and potential safety hazard.

This bill requires parties constructing cell towers in excess of 60' in height in unincorporated portions of heavily populated counties (currently Harris, Dallas and Tarrant) to apply to the county for a waiver if there is a residential subdivision within a quarter mile of their proposed structure. The county is authorized to hold a public hearing regarding the application for a waiver, and required to give affected residents notice of this application. This notice will give residents an opportunity to ask the county to prevent the construction of the tower if they do not want the structure built.

Failure to advise the county of such a planned structure prior to beginning its construction can result in the constructing entity being given a citation for a Class C Misdemeanor, enabling the county district attorney to apply for injunctive relief in county court.

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

The bill amends Chapter 240 of the Local Government Code by authorizing the commissioners of county court, in counties with populations in excess of 1.4 million people, to restrict wireless communication facilities in excess of 60 feet in height within a quarter mile radius of a subdivision. The bill requires the person proposing to construct such a tower to notify of the county within specified time frames prior to beginning construction. Failure to provide such notification is made a Class C Misdemeanor and the county attorney is granted the authority to file for injunctive relief in county court.

EFFECTIVE DATE

Upon passage, or, if the Act does not receive the necessary vote, the Act takes effect September 1, 2005.

COMPARISON OF ORIGINAL TO SUBSTITUTE

C.S.H.B. 843 differs from the original in that it clarifies the intent of the bill is to regulate construction of wireless communication facilities in certain circumstances, and not to regulate these towers or their operators on an ongoing basis. The only regulation of these specific facilities resulting from C.S.H.B. 843 would occur during their planning and construction.

The substitute adds language to the definition of a residential subdivision to include the presence of at least five home owners in residence.

The substitute specifically states that it does not restrict the construction of replacement towers (and defines the term "replacement tower"), or towers built primarily for private ham radio or public safety purposes.

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The substitute removes all language assigning responsibility for potential and actual applicants to notify residents of affected neighborhoods or hold public hearings. The substitute requires applicants to notify the county and post signage at the location of the proposed tower within specified time frames. The county is authorized to hold a public hearing on the matter, and required to notify homeowners within a quarter mile of the proposed construction in a specified manner and time frame.

The substitute allows the county to grant a variance from the stated restrictions if the applicant can demonstrate to the Commissioners Court that a hardship results from this provision.