

BILL ANALYSIS

Senate Research Center

C.S.H.B. 843
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Business & Commerce
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Committee Report (Substituted)

AUTHOR'S/SPONSOR'S STATEMENT OF INTENT

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

C.S.H.B. 843 requires parties constructing cell towers in unincorporated portions of heavily populated counties (currently Harris, Dallas, and Tarrant) to apply to the county for a variance if there is residential subdivision within a certain distance of the proposed structure site. C.S.H.B. 843 authorizes the county to require the applicant to give affected residents notice of this application. This notice will provide 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, or violating any order adopted under this subchapter, can result in the constructing entity being cited for a Class C misdemeanor, enabling the county attorney to apply for injunctive relief in county court.

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 Chapter 240, Local Government Code, by adding Subchapter E, as follows:

SUBCHAPTER E. COMMUNICATION FACILITIES

Sec. 240.081. DEFINITIONS. Defines "residential subdivision" and "community facility structure."

Sec. 240.082. APPLICABILITY. Provides that this subchapter applies only to real property that is located in the unincorporated area of a county with a population of 1.4 million or more. Sets forth certain structures to which this subchapter does not apply.

Sec. 240.083. AUTHORITY OF COUNTY TO REGULATE. Authorizes a commissioners court of a county, subject to Section 240.084, to regulate the location of a communication facility structure in the unincorporated areas of the county by order. Authorizes the regulations to include a requirement for a permit for the construction or expansion of the facility and the imposition of fees, not to exceed \$50, on regulated persons to recover the cost of administering the regulations.

Sec. 240.084. LOCATION OF A COMMUNICATION FACILITY STRUCTURE. Authorizes the commissioners court of a county that is subject to this subchapter to by order prohibit the construction of a communication facility structure within 300 feet, or the height of the structure, whichever is greater, of a residential subdivision.

Sec. 240.085. FILING REQUIREMENTS REGARDING CONSTRUCTION. Requires a person proposing to construct a communication facility structure in the unincorporated area of a county subject to this subchapter to file specific information and documentation with the county official designated by the commissioners court.

Sec. 240.086. VARIANCES. (a) Authorizes a person who desires to construct or increase the height of a communication facility structure in violation of an order adopted by a county subject to this subchapter to apply to the commissioners court for a variance from the regulation.

(b) Authorizes the commissioners court to allow a variance from a regulation if specific findings are made.

(c) Authorizes the commissioners court to impose any reasonable conditions on the variance that it deems necessary to accomplish the purposes of this subchapter.

(d) Authorizes the county, prior to the request for a variance issued under this section, to require the applicant to prominently post an outdoor sign at the location stating that a communication facility structure is intended to be located on the premises and providing the name and business address of the applicant.

(e) Sets forth the required dimensions of the sign and the lettering. Authorizes the county in which the communication facility structure is to be located to require the sign to be both in English and a language other than English in certain circumstances.

Sec. 240.087. OFFENSE. (a) Provides that a person commits an offense if the person violates an order adopted under this subchapter and the order defines the violation as an offense.

(b) Provides that an offense under this section is prosecuted in the same manner as an offense defined under state law.

(c) Provides that an offense under this section is a Class C misdemeanor.

Sec. 240.088. INJUNCTION. Authorizes the county attorney or an attorney representing the county to file an action in a district court to enjoin a violation or threatened violation of an order adopted under this subchapter. Authorizes the court to grant appropriate relief.

SECTION 2. Effective date: upon passage or September 1, 2005.