

## **BILL ANALYSIS**

C.S.H.B. 946  
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Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

Interested parties note that the increasing prevalence of meteorological evaluation towers, which are used to measure wind speed and direction to identify locations for future wind turbines, has caused concern due to the number of fatal accidents involving these towers and low altitude pilots. The parties report that some types of towers, including certain meteorological evaluation towers, are not required to be marked or lighted despite such requirements for other types of towers. According to these reports, many low altitude pilots experience difficulty seeing unmarked meteorological evaluation towers from the air, and the near invisibility of these unmarked towers contributes to extremely dangerous conditions for low altitude flight. C.S.H.B. 946 seeks to address this issue in order to help prevent tower-related accidents and fatalities.

### **CRIMINAL JUSTICE IMPACT**

It is the committee's opinion that this bill expressly does one or more of the following: creates a criminal offense, increases the punishment for an existing criminal offense or category of offenses, or changes the eligibility of a person for community supervision, parole, or mandatory supervision.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that rulemaking authority is expressly granted to the Texas Department of Transportation in SECTION 1 of this bill.

### **ANALYSIS**

C.S.H.B. 946 amends the Transportation Code to require a meteorological evaluation tower that is at least 50 feet but not more than 200 feet in height above ground level to be painted in equal alternating bands of aviation orange and white beginning with orange at the top of the tower and to have aviation orange marker balls installed and displayed in accordance with federal aviation standards. The bill prohibits such a tower from being supported by guy wires unless the guy wires have a seven-foot-long safety sleeve at each anchor point that extends from the anchor point along each guy wire attached to the anchor point. The bill defines "meteorological evaluation tower" for purposes of its provisions to mean a structure that is self-standing or supported by guy wires and anchors, is not more than six feet in diameter at the base of the structure, and has accessory facilities on which equipment is mounted for the purpose of documenting whether a site has sufficient wind resources for the operation of a wind turbine generator. The bill excludes from the definition a structure that is located adjacent to a building, including a barn, or an electric utility substation or that is located in the curtilage of a residence.

C.S.H.B. 946 makes it a Class C misdemeanor for a person to own, operate, or erect a meteorological evaluation tower in violation of the bill's provisions and enhances the penalty to a Class B misdemeanor if it is shown on the trial of the offense that as a result of the commission of the offense a collision with the tower occurred causing bodily injury or death to another

person.

C.S.H.B. 946 requires the Texas Department of Transportation (TxDOT), not later than December 31, 2015, to adopt rules to implement and administer the bill's provisions, including rules requiring a person who owns, operates, or erects a meteorological evaluation tower to provide notice to TxDOT of the existence of or intent to erect such a tower and to register the tower with TxDOT. The bill establishes that a meteorological evaluation tower erected before the bill's effective date is not required to comply with the painting and marking requirements until September 1, 2016.

### **EFFECTIVE DATE**

September 1, 2015.

### **COMPARISON OF ORIGINAL AND SUBSTITUTE**

While C.S.H.B. 946 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and formatted in a manner that indicates the substantial differences between the introduced and committee substitute versions of the bill.

#### INTRODUCED

SECTION 1. Subchapter B, Chapter 21, Transportation Code, is amended by adding Section 21.071 to read as follows:

Sec. 21.071. PAINTING AND MARKING REQUIREMENTS FOR CERTAIN TOWERS; OFFENSE.

(a) In this section, "tower" means a structure that:

- (1) is self-standing or supported by guy wires and anchors;
- (2) is not more than six feet in diameter at the base of the structure; and
- (3) has accessory facilities on which an antenna, sensor, camera, meteorological instrument, or other equipment is mounted.

(b) For purposes of this section, "tower" does not include a structure that is located:

- (1) adjacent to a building, including a barn, or an electric utility substation; or
- (2) in the curtilage of a residence.

(c) A tower that is at least 50 feet but not more than 200 feet in height above ground level:

- (1) must be painted in equal alternating bands of aviation orange and white, beginning with orange at the top of the tower;
- (2) must have aviation orange marker balls installed and displayed in accordance with

#### HOUSE COMMITTEE SUBSTITUTE

SECTION 1. Subchapter B, Chapter 21, Transportation Code, is amended by adding Section 21.071 to read as follows:

Sec. 21.071. PAINTING AND MARKING REQUIREMENTS FOR CERTAIN METEOROLOGICAL EVALUATION TOWERS; OFFENSE.

(a) In this section, "meteorological evaluation tower" means a structure that:

- (1) is self-standing or supported by guy wires and anchors;
- (2) is not more than six feet in diameter at the base of the structure; and
- (3) has accessory facilities on which an antenna, sensor, camera, meteorological instrument, or other equipment is mounted for the purpose of documenting whether a site has sufficient wind resources for the operation of a wind turbine generator.

(b) For purposes of this section, "meteorological evaluation tower" does not include a structure that is located:

- (1) adjacent to a building, including a barn, or an electric utility substation; or
- (2) in the curtilage of a residence.

(c) A meteorological evaluation tower that is at least 50 feet but not more than 200 feet in height above ground level:

- (1) must be painted in equal alternating bands of aviation orange and white, beginning with orange at the top of the tower;
- (2) must have aviation orange marker balls installed and displayed in accordance with

the standards contained in 76 Fed. Reg. 36983 (June 24, 2011) and Federal Aviation Administration Advisory Circular AC 70/7460-1K; and

(3) may not be supported by guy wires unless the guy wires have a seven-foot-long safety sleeve at each anchor point that extends from the anchor point along each guy wire attached to the anchor point.

(d) A person who owns, operates, or erects a tower in violation of this section commits an offense. An offense under this subsection is a Class C misdemeanor, except that the offense is a Class B misdemeanor if it is shown on the trial of the offense that as a result of the commission of the offense a collision with the tower occurred causing bodily injury or death to another person.

(e) This section does not apply to:

(1) a tower that supports an electric utility transmission or distribution line;

(2) a facility licensed by the Federal Communications Commission or any structure with the primary purpose of supporting telecommunications equipment, including microwave relay facilities and towers erected for the purpose of providing commercial mobile data service or commercial mobile radio service as defined by 47 C.F.R. Section 20.3, other than a tower erected for the primary purpose of providing private mobile radio service as defined by 47 C.F.R. Section 20.3;

(3) a wind-powered electrical generator with a rotor blade radius greater than six feet; or

(4) a traffic-control signal erected or maintained by the department.

(f) The department shall adopt rules to implement and administer this section, including rules requiring a person:

(1) who owns, operates, or erects a tower to provide notice to the department of the existence of or intent to erect a tower; and

(2) to register the tower with the department.

SECTION 2. The Texas Department of Transportation shall adopt rules required to implement and administer Section 21.071, Transportation Code, as added by this Act, not later than December 31, 2015.

the standards contained in 76 Fed. Reg. 36983 (June 24, 2011) and Federal Aviation Administration Advisory Circular AC 70/7460-1K; and

(3) may not be supported by guy wires unless the guy wires have a seven-foot-long safety sleeve at each anchor point that extends from the anchor point along each guy wire attached to the anchor point.

(d) A person who owns, operates, or erects a meteorological evaluation tower in violation of this section commits an offense. An offense under this subsection is a Class C misdemeanor, except that the offense is a Class B misdemeanor if it is shown on the trial of the offense that as a result of the commission of the offense a collision with the meteorological evaluation tower occurred causing bodily injury or death to another person.

(e) The department shall adopt rules to implement and administer this section, including rules requiring a person:

(1) who owns, operates, or erects a meteorological evaluation tower to provide notice to the department of the existence of or intent to erect a meteorological evaluation tower; and

(2) to register the meteorological evaluation tower with the department.

SECTION 2. Same as introduced version.

SECTION 3. (a) Except as provided by this section, Section 21.071, Transportation Code, as added by this Act, applies to a tower erected before, on, or after the effective date of this Act.

(b) A tower erected before the effective date of this Act is not required to comply with the painting and marking requirements of Section 21.071, Transportation Code, as added by this Act, until September 1, 2016.

SECTION 4. This Act takes effect September 1, 2015.

SECTION 3. (a) Except as provided by this section, Section 21.071, Transportation Code, as added by this Act, applies to a meteorological evaluation tower erected before, on, or after the effective date of this Act.

(b) A meteorological evaluation tower erected before the effective date of this Act is not required to comply with the painting and marking requirements of Section 21.071, Transportation Code, as added by this Act, until September 1, 2016.

SECTION 4. Same as introduced version.