SUBJECT: Providing notice of wireless communications towers in rural areas

COMMITTEE: County Affairs — committee substitute recommended

VOTE: 5 ayes — Ramsay, G. Lewis, B. Brown, Farabee, Shields

0 nays

4 absent — Chisum, Hilderbran, Krusee, Salinas

WITNESSES: For — *(On original version)* Anne Beck; James Harris; George Mitchell, Texas Ag Aviation; Bette Stockbauer, McElwreath Landowners Subdivision; Graham Voelzel. *(On CSHB 1148)* Thomas Ratliff, AT&T Wireless, Voicestream Wireless, Western Wireless, Texas Association of Paging Service Providers

Against — *(On original version)* Chris Hudgins; Robert Morgan; Thomas Ratliff, AT&T Wireless, Voicestream Wireless, Western Wireless, Texas Association of Paging Service Providers; Brad Steele; Jimmy R. Taylor, Crown Castle, Inc. American Tower, SBA Spectrasite; *(On CSHB 1148)* Ron Hinkle, Verizon Wireless

BACKGROUND: Federal law (47C.F.R.§17.7) requires notification to the Federal Aviation Administration of any antenna construction that is higher than 200 feet or within certain distances of airports. Other provisions call for painting and lighting of the antenna to enhance flight safety.

Texas municipalities control the location of antennas for cellular telephone and wireless communication systems though zoning ordinances. Placement of these towers frequently requires special use permits that involve notice to adjacent property owners and public hearings before the city council or the zoning board of adjustment.

Texas law provides little authority for land use regulation by counties and no specific authority for counties to regulate the placement of cellular telephone or wireless communications towers.

DIGEST:

CSHB 1148 would define a “wireless communication facility” as an equipment enclosure, antenna, or antenna support structure being used for a commercial communications purpose. CSHB 1148 would require that notification of proposed construction of a new wireless communication facility be filed with the county clerk 30 days before construction began. The notice would include contact information on the tower owner and the contractor building the tower, including a 24-hour emergency number. The statement also would include a legal description of the property showing location, height, longitude, latitude, pad size, location of guy wires, roadway access, and proposed use of the antenna or tower. The facility would also be assigned a unique identification that would be provided to the county clerk or official.

CSHB 1148 also would require the tower owner to mail notices to a public airport within three miles of the proposed facility and to the Texas Department of Agriculture, which would in turn notify the boll weevil eradication foundation. The tower owner would have the option of either mailing a letter to each landowner within two miles of the proposed location if it was not within a metropolitan statistical area or publishing a notice in a newspaper of general circulation in the county. These notices would have to be made 30 days before construction began and list information regarding legal description, contact information, and unique identification of the tower provided in the documents filed with the county clerk.

CSHB 1148 also would require written notices to the county clerk if the tower ownership was transferred or if the facility were to be removed.

Exempted from provisions of CSHB 1148 would be:

- radio or television reception antennas;
- satellite or microwave parabolic antennas not used by a wireless communications service provider;
- antennas used by a federally licensed amateur radio station or “ham radio” operator;
- radio or television broadcasting facilities; and
- towers and antennas that were legally installed before the effective date of CSHB 1148.

This bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2001.

SUPPORTERS SAY:

CSHB 1148 would represent a compromise among wireless communications companies and rural residents that would allow companies to be good neighbors to adjoining property owners while serving a growing need for cellular telephone and pager services. It merely would require notice to the county and neighboring landowners and would not trigger a burdensome permitting process.

Neighbors would be informed of plans to build the tower and would have the necessary information to contact the wireless communications company to ask questions and express their concerns. A 24-hour contact number is needed to notify the company or contractor of any emergency related to the tower site.

Effective communication could have circumvented problems that led to Bastrop County landowners asking the Legislature to consider cellular telephone tower regulation. If such notification procedures under CSHB 1148 had been required in January 2000, Bastrop County residents could have informed contractors that a private road being used for access to the proposed tower site was not intended to carry heavy truck traffic. More effective communication would have benefitted both the contractor and the residents of the rural subdivision affected.

Notification of counties would help create a public record database of cellular telephone towers in each county. This database could be helpful to individuals who live in neighborhoods near proposed cellular telephone towers who have to deal with visual obstructions and tower lighting. The database would serve a public health and safety function as well because county emergency personnel would know where cell phone towers were located in their area.

CSHB 1148 would provide wireless communications companies flexibility in notifying adjoining landowners. The information could be mailed if there were a limited number of property owners within two miles of the site, and a newspaper notice would be published if it were not be feasible to contact all

the property owners by a letter. The decision could be made on a case-by-case basis.

CSHB 1148 would help provide a forum to mediate conflicting property right claims. Wireless communications companies must place towers and antennas in carefully circumscribed areas to extend their networks and serve their customers. Property owners have the right to lease their land for tower locations, but CSHB 1148 would recognize that adjoining property owners have the right to use and enjoy their land. The bill would provide a formal procedure for the affected parties to work together without necessarily creating an adversarial situation.

OPPONENTS SAY:

CSHB 1148 would represent a form of burdensome regulation. The cost of filing notices with the county and notifying property owners could be reflected in higher cellular telephone and pager bills. It also could set a precedent for more intrusive land use regulation in unincorporated areas.

OTHER OPPONENTS SAY:

CSHB 1148 would not go far enough in regulating towers that could harm property values or interfere with adjoining property owners's rights to enjoy use of their land and home. Residents should have the same level of protection as do city residents. Providing notice and hearings when residents cannot influence the final decision would only promote frustration among neighboring property owners.

NOTES:

HB 1148 as originally filed would have granted counties the authority to regulate the height, lighting, location and removal of towers and other facilities. The original bill also would have required a 120-day notice before a public hearing and would have provided for criminal and civil penalties for violation of the permit and notice requirements.