

SUBJECT: Expediting impervious-cover permits for telephone switching stations

COMMITTEE: Land and Resource Management — committee substitute recommended

VOTE: 8 ayes — Walker, Crabb, F. Brown, Geren, Howard, Krusee, Mowery, B. Turner
0 nays
1 absent — Truitt

WITNESSES: For — Dewey A. Biscotto, Southwestern Bell
Against — Patrick Murphy, City of Austin; Kirk Nixon, San Antonio Water System
On — Monte Akers, Texas Municipal League

BACKGROUND: The federal Telecommunications Act of 1996 (P.L. 104-104) and the Texas Utilities Code, chapter 11, adopted in 1997, have required regulated local telephone companies such as Southwestern Bell to maintain service to their existing customers while allowing competing companies to have access to those customers as well. Access is available through local phone companies' central switching offices. Increased demand from existing customers or the need for more access to competitors through co-location may require the expansion of the central switching offices.

As regulated utilities, local phone companies have a limited power of eminent domain, or the ability to condemn and take property, with a special commission or a district court determining the compensation to be paid to the property owner for taking the land.

Some Texas cities, including Austin and Houston, require property owners to maintain a certain percentage of green space and limit impervious cover, such as buildings, parking lots, or other hard improvements. These local ordinances are intended to prevent flooding, protect water quality, or allow recharge of underlying aquifers. These standards may be mandated by

federal regulations. Typically, a business that expands existing facilities must meet impervious-cover standards or seek a variance from the requirement.

DIGEST:

CSHB 2977 would require a city, county, or other political subdivision to approve or deny a request within 60 days for expansion of a central switching office in an area where impervious cover was regulated. The regulating entity would have to approve the request unless it determined after a hearing that additional, suitable vacant land contiguous with the proposed expansion was not available, unless the phone company would have to use eminent domain to acquire the land or the land was available only at a price that exceeded the fair market value of vacant land within a one-mile radius of the property.

The regulating entity would have to provide a written notice of denial specifying the reasons for denying the permit. If the entity did not make a decision within 60 days of the application, the request would be considered approved and the regulating entity could not apply the impervious-cover standards to the expansion project.

The Public Utility Commission would have jurisdiction to ensure that the bill's legal requirements were enforced in a competitively neutral, nondiscriminatory, and reasonable manner.

CSHB 2977 would not apply to flood-control regulations or to other requirements for silt fences, vegetative cover, or other similar requirements. It would apply only to central switching offices that existed on April 1, 2001.

This bill would take effect September 1, 2001.

**SUPPORTERS
SAY:**

Dramatic changes in telecommunications place new demands on central switching offices that were built 20 to 40 years ago. Many of those facilities were built in residential areas and have become landlocked, with no room for expansion that meets impervious-cover requirements. The only alternative, acquiring adjacent property through eminent domain, would result in homes and businesses being taken from their owners, demolished, and replaced with grass, which would disrupt neighborhoods. CSHB 2977 would allow

neighborhoods to remain intact and would preserve the sense of community important to Texas cities.

CSHB 2977 would apply only to expansions of central switching offices that existed as of April 1, 2001. It would not apply to construction of new central switching offices, most of which already have sufficient land for expansions that typically call for only about 10,000 to 20,000 square feet of additional space. These relatively small expansions do not contribute to flooding, and other steps can be taken to address water-quality issues.

The 60-day limit provision in CSHB 2977 represents a compromise to meet some of the cities' concerns. It would be a reasonable requirement and would keep cities from delaying decisions on impervious-cover requirements. The local telephone company still would have to justify its exemption request and would not be exempt from other permit requirements.

Central switching offices have coexisted with residential neighborhoods and in business districts for many decades. Local telephone companies have been good neighbors and usually remodel the outside of these facilities to match the surrounding neighborhoods.

OPPONENTS
SAY:

CSHB 2977 would set a bad precedent by exempting telephone companies from impervious-cover requirements that are enforced for other types of development. Impervious-cover requirements are not aesthetic measures. These ordinances protect the public health, safety, and welfare by limiting floods and reducing pollution.

Exempting any property from impervious-cover requirements could jeopardize a city's ability to meet federal stormwater quality permit standards. Local governments could face fines and other penalties if those standards are not met on October 1, 2001.

NOTES:

The companion bill, SB 1185 by Whitmire, passed the Senate on April 20 by voice vote and was referred to the House Land and Resource Management Committee.

The filed version of HB 2977 would have required the regulating entity to make a decision on an exemption to an impervious-cover requirement within

30 days and would have allowed preemption of those requirements. The committee substitute added the exemption for flood-control regulations or requirements for silt fences, vegetative cover, or similar requirements.