

- SUBJECT:** Requiring meteorological towers to comply with marking requirements
- COMMITTEE:** Agriculture and Livestock — committee substitute recommended
- VOTE:** 7 ayes — T. King, C. Anderson, Cyrier, González, Rinaldi, Simpson, Springer
0 nays
- WITNESSES:** For — Luke Boedeker, Mitch Probasco, Chris Shields, and Jason Wooten, Texas Agricultural Aviation Association; Carol Jennings
Against — None
On — Jeffrey Clark, The Wind Coalition; (*Registered, but did not testify:* Darran Anderson, Texas Department of Transportation)
- BACKGROUND:** Any structure taller than 200 feet above ground level is subject to Federal Aviation Administration regulations.
- DIGEST:** CSHB 946 would define a meteorological evaluation tower as a structure that:
- was self-standing or supported by guy wires;
 - was not more than six feet in diameter at the base; and
 - included equipment to document whether a site had sufficient wind resources for the production of wind energy; and
- A structure adjacent to a building or within the curtilage of (immediately surrounding) a residence would not fall under the definition.
- Any meteorological evaluation tower at least 50 feet tall but not more than 200 feet above ground level would have to be painted in equal alternating bands of aviation orange and white, with orange at the top, and have orange marker balls installed in accordance with Federal Aviation Administration standards. Any guy wires used to support the tower would

be required to have seven-foot-long safety sleeves that extended from each anchor point.

The bill would require the Texas Department of Transportation by rule to create a registry of meteorological evaluation towers. Anyone who owned, operated, or erected a tower would be required to provide notice and register the tower with the department.

Failure to comply with the requirements of CSHB 946 would constitute a class C misdemeanor (maximum fine of \$500), unless that failure to comply caused a collision resulting in bodily injury or death, in which case the owner or operator would be guilty of a class B misdemeanor (up to 180 days in jail and/or a maximum fine of \$2,000).

The bill would take effect September 1, 2015. Its provisions would apply to any tower erected before, on, or after the effective date, except that any tower erected before the effective date would not be required to comply with the marking requirements until September 1, 2016.

**SUPPORTERS
SAY:**

CSHB 946 would help protect low-altitude pilots against collisions with meteorological evaluation towers. These towers traditionally are made of galvanized steel, which is a light color when unpainted that easily blends into the sky on a hazy or overcast day. Because meteorological evaluation towers can be constructed in a matter of hours, a pilot could fly a route the pilot had flown for years and on the return trip find that a tower had been constructed in the middle of the route. Meteorological evaluation towers pose a serious safety hazard, and pilots die every year from collision involving unmarked towers.

Because of the danger posed by unmarked towers, the National Transportation Safety Board (NTSB) in 2007 created a list of guidelines for marking a meteorological evaluation tower for increased visibility. The marking requirements proposed in the bill are based on these guidelines. While some companies in the wind-energy industry already are beginning to comply voluntarily with the NTSB recommendations, the bill would provide clear guidelines on whether a tower met the legal

requirements for a sufficiently visible structure, which could provide reassurances for the owners and operators of towers.

The criminal penalties are necessary to ensure that meteorological evaluation tower owners and operators comply with the bill's requirements. After a low-altitude pilot collided with a cell phone tower in 2000, the 78th Legislature enacted SB 1261 by Armbrister in 2003, which created notice and marking requirements for certain towers no more than 200 feet tall. However, the law has no enforcement clause, and the Texas Agricultural Aviation Association (TAAA) has not received notice of a low-level cell phone tower being constructed since 2009.

Thirteen states have enacted legislation requiring meteorological evaluation tower markings similar to CSHB 946, and most include a misdemeanor enforcement mechanism. The TAAA keeps in close contact with its sister organizations in these states, as well as the state regulatory bodies tasked with enforcing the legislation, and has not found one instance of noncompliance with marking requirements in states with an enforcement clause. By contrast, compliance is practically nonexistent in the three states without enforcement provisions.

Concerns that the penalties place meteorological evaluation tower owners and operators at undue risk are exaggerated. It is an affirmative defense to a misdemeanor prosecution that a corporation acted with due diligence to comply with the law. If a meteorological evaluation tower owner or operator had done everything possible to comply with the requirements of CSHB 946, it is unlikely that a court would find the owner or operator in violation of the law if vandalism or a weather event damaged their meteorological evaluation tower and knocked its markings out of compliance.

**OPPONENTS
SAY:**

This bill is unnecessary because the wind-energy industry has already begun to comply voluntarily with the National Transportation Safety Board's tower marking guidelines. After a company in California settled with the family of an agricultural pilot for \$6.7 million in September 2014, the manufacturers, owners, and operators of meteorological

evaluation towers increasingly have marked their towers.

The criminal penalties in CSHB 946 would be too harsh to impose on the owners and operators of meteorological evaluation towers who unintentionally violated the law. A corporation found guilty of a class C misdemeanor can be charged a \$2,000 fine, and a class B misdemeanor conviction could cost a corporation as much as \$10,000. Because of the specificity of marking and painting requirements, it is possible that an act of vandalism or a weather event could damage the markings on a tower, exposing owners or operators to a substantial criminal penalty when they did nothing wrong.

NOTES:

HB 946 as introduced would have applied to a broader category of towers. The committee substitute replaced the term “tower” with “meteorological evaluation tower” and defined the term.