

AN ACT

relating to notice of proposed construction and the marking and location of certain wireless communication facilities.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. This Act may be cited as the Jennings-Payne Act.

SECTION 2. Chapter 35, Business & Commerce Code, is amended by adding Subchapter J to read as follows:

SUBCHAPTER J. WIRELESS COMMUNICATION FACILITY

Sec. 35.111. DEFINITION. In this subchapter, "wireless communication facility" means an equipment enclosure, antenna, antenna support structure, and any associated facility used for the reception or transmittal of a radio frequency, microwave, or other signal for a commercial communications purpose.

Sec. 35.112. NOTICE OF CONSTRUCTION. (a) A person proposing to construct a wireless communication facility that is taller than 100 feet shall, on or before the 30th day before the date the construction begins, mail a letter to each of the following:

(1) any airport located within three miles of the proposed facility location; and

(2) the Texas Agricultural Aviation Association.

(b) The letter must state:

(1) the legal description of the proposed site of construction, including a graphic depiction showing the location,

1 height, longitude, latitude, pad size, roadway access, and proposed  
2 use of the wireless communication facility and location of any guy  
3 wires;

4 (2) at a minimum, the name, phone number, electronic  
5 mail address, if any, and mailing address of the person proposing  
6 construction of the wireless communication facility; and

7 (3) a phone number that is operational 24 hours a day,  
8 seven days a week, for emergency purposes.

9 Sec. 35.113. EXCEPTIONS. This subchapter does not apply to  
10 any structure whose main purpose is to provide electric service, a  
11 wireless communication facility used by an entity only for internal  
12 communications, a wireless communication facility constructed by a  
13 municipality, a wireless communication facility used for emergency  
14 communications, a radio or television reception antenna, a  
15 satellite or microwave parabolic antenna not used by a wireless  
16 communication service provider, a receive-only antenna, an antenna  
17 owned and operated by a federally licensed amateur radio station  
18 operator, a cable television company facility, a radio or  
19 television broadcasting facility, a colocation antenna, or a  
20 wireless communication facility installed for colocation purposes.

21 Sec. 35.114. EFFECT ON CERTAIN ORDINANCES. This subchapter  
22 does not preempt a local ordinance regulating a wireless  
23 communication facility.

24 SECTION 3. Subchapter B, Chapter 21, Transportation Code,  
25 is amended by adding Section 21.070 to read as follows:

26 Sec. 21.070. MARKING OF WIRELESS COMMUNICATION FACILITY.

27 (a) In this section:

1           (1) "Cultivated field" means any open space or pasture  
2 larger than five acres in which a plant or tree nursery is located  
3 or an agricultural crop, including cotton, corn, grain, grapes,  
4 beets, peanuts, and rice, but not including grass grown for hay, is  
5 grown on a continuing basis.

6           (2) "Wireless communication facility" has the meaning  
7 assigned by Section 35.111, Business & Commerce Code.

8           (b) Absence of plants, seedlings, or a crop on a temporary  
9 basis due to crop rotation or other farm management techniques does  
10 not remove an open area from the definition of "cultivated field."

11           (c) This section applies only to an antenna structure that  
12 is used to provide commercial wireless communications services and  
13 that is located in a cultivated field or within 100 feet of a  
14 cultivated field.

15           (d) A person who proposes to construct a wireless  
16 communication facility that is at least 100 feet but not more than  
17 200 feet in height above ground level shall mark the highest guy  
18 wires on the facility, if any, with two warning spheres each.

19           SECTION 4. (a) The changes in law made by this Act apply  
20 only to a wireless communication facility constructed on or after  
21 the effective date of this Act.

22           (b) This Act takes effect immediately if it receives a vote  
23 of two-thirds of all the members elected to each house, as provided  
24 by Section 39, Article III, Texas Constitution. If this Act does  
25 not receive the vote necessary for immediate effect, this Act takes  
26 effect September 1, 2003.

David Swinhart  
President of the Senate

Jim Caddick  
Speaker of the House

I hereby certify that S.B. No. 1261 passed the Senate on April 25, 2003, by the following vote: Yeas 31, Nays 0; and that the Senate concurred in House amendment on May 29, 2003, by the following vote: Yeas 31, Nays 0.

Letsy Saw  
Secretary of the Senate

I hereby certify that S.B. No. 1261 passed the House, with amendment, on May 24, 2003, by the following vote: Yeas 113, Nays 0, one present not voting.

Robert Hawey  
Chief Clerk of the House

Approved:

20 JUN 03  
Date

Rick Perry  
Governor

FILED IN THE OFFICE OF THE  
SECRETARY OF STATE  
8:30 P.M. O'CLOCK

Ann Shea  
Secretary of State