

By: Campbell

H.B. No. 2084

A BILL TO BE ENTITLED

AN ACT

1  
2 relating to notice of proposed construction sent to the county  
3 commissioners court and others regarding, and the marking,  
4 location, and removal of, certain wireless communication  
5 facilities.

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

7 SECTION 1. This Act may be cited as the LeClair-Jennings  
8 Act.

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

11 SUBCHAPTER J. WIRELESS COMMUNICATION FACILITY

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

17 Sec. 35.112. FILING REQUIREMENTS REGARDING CONSTRUCTION.

18 (a) A person wishing to construct a wireless communication  
19 facility that is taller than 100 feet shall, before the 30th day  
20 before the date construction begins, file with the county clerk or  
21 the county official designated by the commissioners court of the  
22 county in which the person wishes to construct a wireless  
23 communication facility:

24 (1) a statement that construction is proposed and that

1 provides the date on or after which the construction will begin;

2 (2) the correct phone number and address of the person  
3 proposing the construction;

4 (3) the legal description of the proposed site of  
5 construction, including a graphic depiction showing the location,  
6 height, longitude, latitude, pad size, location of any guy wires,  
7 roadway access, and proposed use of the wireless communication  
8 facility; and

9 (4) a phone number that is operational 24 hours a day,  
10 seven days a week, for emergency purposes.

11 (b) A person wishing to construct a wireless communication  
12 facility shall assign each proposed wireless communication  
13 facility a unique identification and shall provide the county clerk  
14 or official with that unique identification.

15 Sec. 35.113. NOTICE OF CONSTRUCTION. (a) A person  
16 proposing to construct a wireless communication facility that is  
17 taller than 100 feet shall, before the 30th day before the date the  
18 construction begins, mail a letter to:

19 (1) each of the following:

20 (A) a public airport located within three miles  
21 of the proposed facility location; and

22 (B) the Texas Department of Agriculture, which  
23 shall notify the boll weevil eradication foundation; and

24 (2) one of the following:

25 (A) each owner of land within two miles of the  
26 proposed facility location if the proposed location is not within a  
27 metropolitan statistical area; or

1           (B) a newspaper of general circulation in the  
2 county of construction.

3           (b) The letter must state:

4           (1) the legal description of the proposed site of  
5 construction, including a graphic depiction showing the location,  
6 height, longitude, latitude, pad size, location of any guy wires,  
7 roadway access, and proposed use of the wireless communication  
8 facility;

9           (2) at a minimum, the name, phone number, and mailing  
10 address of the person proposing construction of the wireless  
11 communication facility;

12           (3) the unique identification of the wireless  
13 communication facility; and

14           (4) a phone number that is operational 24 hours a day,  
15 seven days a week, for emergency purposes.

16           Sec. 35.114. TRANSFER OF OWNERSHIP. If a transfer of  
17 ownership of a wireless communication facility occurs that results  
18 in a change in the information required under Section 35.113(b)(2),  
19 (3), or (4), the lessee of the real property used for the wireless  
20 communication facility shall give written notice to the county  
21 clerk or official of the county of construction and the lessor of  
22 the real property.

23           Sec. 35.115. REMOVAL. A contract entered into by a property  
24 owner that conveys to a person a property interest for the purpose  
25 of allowing the person to construct a wireless communication  
26 facility must contain a provision relating to the removal of the  
27 facility and any appurtenances to the facility that prescribes the

1 circumstances under which removal shall be accomplished.

2 Sec. 35.116. EXCEPTIONS. This subchapter does not apply to  
3 any structure whose main purpose is to provide electric service, a  
4 wireless communication facility used by an entity only for internal  
5 communications, a wireless communication facility constructed by a  
6 municipality, a wireless communication facility used for emergency  
7 communications, a radio or television reception antenna, a  
8 satellite or microwave parabolic antenna not used by a wireless  
9 communication service provider, a receive-only antenna, an antenna  
10 owned and operated by a federally licensed amateur radio station  
11 operator, a cable television company facility if the company holds  
12 a valid and current franchise, a radio or television broadcasting  
13 facility, a colocation antenna, or a wireless communication  
14 facility installed for colocation purposes.

15 Sec. 35.117. EFFECT ON CERTAIN ORDINANCES. This subchapter  
16 does not preempt a local ordinance regulating a wireless  
17 communication facility.

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

20 Sec. 21.070. MARKING OF WIRELESS COMMUNICATION FACILITY.

21 (a) In this section:

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

27 (2) "Wireless communication facility" has the meaning

1 assigned by Section 35.111, Business & Commerce Code.

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

5 (c) This section applies only to an antenna structure that  
6 is used to provide commercial wireless communications services and  
7 that is located in a cultivated field or within 100 feet of a  
8 cultivated field.

9 (d) A person who proposes to construct a wireless  
10 communication facility that is at least 100 feet but not more than  
11 200 feet in height above ground level shall mark the highest guy  
12 wires on the facility, if any. The markings required under this  
13 section must be of a kind generally used for marking antennae  
14 structures.

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

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