

By: Truitt, Riddle

H.B. No. 843

A BILL TO BE ENTITLED

1 AN ACT

2 relating to the authority of certain counties to regulate the
3 construction of certain communication facilities in certain
4 circumstances; providing a penalty.

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

6 SECTION 1. Chapter 240, Local Government Code, is amended
7 by adding Subchapter E to read as follows:

8 SUBCHAPTER E. COMMUNICATION FACILITIES

9 Sec. 240.081. DEFINITIONS. In this subchapter:

10 (1) "Communication facility structure" means:

11 (A) an antenna support structure for a mobile or
12 land-based telecommunication facility, or a whip antenna, panel
13 antenna, microwave dish, or receive-only satellite dish;

14 (B) a cell enhancer and related equipment for
15 wireless transmission from a sender to one or more receivers for a
16 mobile telephone, or a mobile radio system facility, commercial
17 radio service, or other service or receiver; or

18 (C) a monopole tower, a steel lattice tower, or
19 any other communication tower.

20 (2) "Residential subdivision" means a subdivision:

21 (A) for which a plat is recorded in the county
22 real property records;

23 (B) in which the majority of the lots are subject
24 to deed restrictions limiting the lots to residential use; and

1 (C) that includes at least five lots that are
2 designated as homestead property.

3 Sec. 240.082. APPLICABILITY. (a) This subchapter applies
4 only to real property that is located in the unincorporated area of
5 a county with a population of 1.4 million or more and located within
6 one-quarter mile of a residential subdivision.

7 (b) This subchapter does not apply to:

8 (1) a communication facility structure built to
9 replace an existing communication facility structure if:

10 (A) the replacement communication facility
11 structure is constructed within 300 feet of the existing
12 communication facility structure;

13 (B) the replacement communication facility
14 structure is the same size and constructed for the same purpose as
15 the existing communication facility structure; and

16 (C) the existing communication facility
17 structure is removed not later than the 14th day after the date the
18 replacement communication facility structure begins operation; or

19 (2) a communication antenna, antenna facility, or
20 antenna tower or support structure located in a residential area
21 that is used by an amateur radio operator:

22 (A) exclusively for amateur radio communication
23 or public safety services; and

24 (B) who is licensed by the Federal Communications
25 Commission.

26 Sec. 240.083. AUTHORITY OF COUNTY TO REGULATE. (a) The
27 commissioners court of a county subject to this subchapter may by

1 order regulate the location of a communication facility structure.

2 (b) The regulations may include a requirement for a permit
3 for the construction or expansion of the communication facility
4 structure and may impose fees on regulated persons to recover the
5 cost of administering the regulations.

6 Sec. 240.084. COUNTY PERMIT. (a) This section applies only
7 to the issuance of a permit to construct or improve a communication
8 facility structure under a regulation adopted under this
9 subchapter.

10 (b) The commissioners court must, not later than the 45th
11 day after the date the application for the permit is filed:

12 (1) grant or deny the permit application;

13 (2) provide written notice to the applicant stating
14 the reason the commissioners court has not acted on the permit
15 application; or

16 (3) enter into an agreement with the applicant
17 establishing a date by which the commissioners court will grant or
18 deny the permit application.

19 (c) If the commissioners court provides notice to the
20 applicant under Subsection (b)(2), the commissioners court must
21 grant or deny the permit application not later than the 30th day
22 after the date the applicant received the notice.

23 (d) If the commissioners court fails to act on a permit
24 application within the 30-day period prescribed by Subsection (c)
25 or under the terms of an agreement under Subsection (b)(3), the
26 commissioners court:

27 (1) may not collect any permit fees associated with

1 the permit application; and

2 (2) shall refund to the applicant any permit fees
3 associated with the application that have been previously
4 collected.

5 Sec. 240.085. NOTICE BY SIGN. (a) Not later than the 60th
6 day before the date a permit application is filed under Section
7 240.084, the applicant for a permit for a location not previously
8 licensed or permitted shall prominently post an outdoor sign at the
9 proposed location:

10 (1) stating that a communication facility structure is
11 proposed for the location; and

12 (2) providing the name and business address of the
13 applicant.

14 (b) The sign must be at least 24 by 36 inches in size and
15 must be published in lettering at least two inches in size. The
16 county in which the proposed communication facility structure is to
17 be located may require the sign to be published in English and in a
18 language other than English if it is likely that a substantial
19 number of residents in the area speak a language other than English
20 as their familiar language.

21 Sec. 240.086. VARIANCES. (a) A person who proposes to
22 construct or increase the height of a communication facility
23 structure in violation of a regulation adopted by order by a county
24 subject to this subchapter may apply to the commissioners court for
25 a variance from the regulation.

26 (b) The commissioners court shall hold a public hearing on
27 the proposed variance. The commissioners court may authorize a

1 variance from a regulation if the commissioners court finds that:

2 (1) a literal application or enforcement of the
3 regulation would result in practical difficulty or unnecessary
4 hardship; and

5 (2) granting the relief sought would:

6 (A) result in substantial justice;

7 (B) not be contrary to the public interest; and

8 (C) be in accordance with the spirit of the
9 regulation and this subchapter.

10 (c) The commissioners court may impose any reasonable
11 conditions on the variance that the commissioners court considers
12 necessary to accomplish the purposes of this subchapter.

13 (d) Before the 10th day before the date the commissioners
14 court holds a public hearing on the variance request, written
15 notice of the public hearing shall be provided to each owner of
16 property located within one-quarter mile of the proposed location
17 of the communication facility structure. The notice must include:

18 (1) the date, time, and place of the public hearing;

19 (2) the proposed location, height, and use of the
20 proposed communication facility structure; and

21 (3) the name and telephone number of a person
22 interested persons may contact to receive information regarding the
23 construction of the proposed communication facility structure.

24 Sec. 240.087. ADDITIONAL FILING REQUIREMENTS REGARDING
25 CONSTRUCTION. Before the 90th day before the date construction
26 begins, a person proposing to construct a communication facility
27 structure in the unincorporated area of a county subject to this

1 subchapter that is taller than 60 feet shall file with the county
2 official designated by the commissioners court:

3 (1) a statement informing the county that the
4 construction is proposed and providing the date on or after which
5 the construction will begin;

6 (2) copies of any necessary permits from the Federal
7 Communications Commission;

8 (3) any necessary engineered drawings that have been
9 approved by the Federal Aviation Administration;

10 (4) the correct phone number and address of each
11 entity involved in the construction; and

12 (5) a plat or map of the specific proposed location
13 of the communication facility structure.

14 Sec. 240.088. OFFENSE. (a) A person commits an offense if
15 the person violates an order adopted under this subchapter and the
16 order defines the violation as an offense.

17 (b) An offense under this section is prosecuted in the same
18 manner as an offense defined under state law.

19 (c) An offense under this section is a Class C misdemeanor.

20 Sec. 240.089. INJUNCTION. The county attorney or an
21 attorney representing the county may file an action in a district
22 court to enjoin a violation or threatened violation of an order
23 adopted under this subchapter. The court may grant appropriate
24 relief.

25 SECTION 2. This Act takes effect immediately if it receives
26 a vote of two-thirds of all the members elected to each house, as
27 provided by Section 39, Article III, Texas Constitution. If this

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1 Act does not receive the vote necessary for immediate effect, this

2 Act takes effect September 1, 2005.