

1-1 By: Truitt, Riddle (Senate Sponsor - Nelson) H.B. No. 843
1-2 (In the Senate - Received from the House May 12, 2005;
1-3 May 13, 2005, read first time and referred to Committee on Business
1-4 and Commerce; May 21, 2005, reported adversely, with favorable
1-5 Committee Substitute by the following vote: Yeas 6, Nays 0;
1-6 May 21, 2005, sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR H.B. No. 843 By: Carona

1-8 A BILL TO BE ENTITLED
1-9 AN ACT

1-10 relating to relating to the authority of certain counties to
1-11 regulate certain communication facility structures in certain
1-12 circumstances; providing a penalty.

1-13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-14 SECTION 1. Chapter 240, Local Government Code, is amended
1-15 by adding Subchapter E to read as follows:

1-16 SUBCHAPTER E. COMMUNICATION FACILITY STRUCTURES

1-17 Sec. 240.081. DEFINITIONS. In this subchapter:

1-18 (1) "Residential subdivision" means a subdivision:

1-19 (A) for which a plat is recorded in the county
1-20 real property records; and

1-21 (B) in which the majority of the lots are subject
1-22 to deed restrictions limiting the lots to residential use; and

1-23 (C) that includes at least 5 lots that have
1-24 existing residential structures.

1-25 (2) "Communication facility structure" means:

1-26 (A) antenna support structures for mobile and
1-27 wireless telecommunication facilities, whip antennas, panel
1-28 antennas, microwave dishes, or receive-only satellite dishes;

1-29 (B) cell enhancers and related equipment for
1-30 wireless transmission from a sender to one or more receivers for
1-31 mobile telephones, mobile radio systems facilities, commercial
1-32 radio service, or other services or receivers;

1-33 (C) a monopole tower, a steel lattice tower, or
1-34 any other communication tower supporting mobile and wireless
1-35 telecommunication facilities.

1-36 Sec. 240.082. APPLICABILITY. (a) This subchapter applies
1-37 only to real property that is located in the unincorporated area of
1-38 a county with a population of 1.4 million or more.

1-39 (b) This subchapter does not apply to existing
1-40 communication facilities or other structures used for the purpose
1-41 of co-location, provided the height is not increased by more than 10
1-42 feet.

1-43 Sec. 240.083. AUTHORITY OF COUNTY TO REGULATE. (a) Subject
1-44 to the restrictions in Section 240.084, the commissioners court of
1-45 a county subject to this subchapter may by order regulate the
1-46 location of communication facility structures in the
1-47 unincorporated areas of the county.

1-48 (b) The regulations may include a requirement for a permit
1-49 for the construction or expansion of the facility and may impose
1-50 fees, not to exceed \$50, on regulated persons to recover the cost of
1-51 administering the regulations.

1-52 Sec. 240.084. LOCATION OF A COMMUNICATION FACILITY
1-53 STRUCTURE. The commissioners court of a county that is subject to
1-54 this subchapter may by order prohibit the construction of a
1-55 communication facility structure within 300 feet, or the height of
1-56 the structure whichever is greater, of a residential subdivision.

1-57 Sec. 240.085. FILING REQUIREMENTS REGARDING CONSTRUCTION.
1-58 (a) A person proposing to construct a communication facility
1-59 structure in the unincorporated area of a county subject to this
1-60 subchapter shall file with the county official designated by the
1-61 commissioners court:

1-62 (1) a statement informing the county that the
1-63 construction is proposed and providing the date on or after which

2-1 the construction is proposed to begin;

2-2 (2) copies of any necessary permits from the Federal
2-3 Communications Commission or Federal Aviation Administration;

2-4 (3) a plat or map of the specific proposed location of
2-5 the communication facility structure;

2-6 (4) the correct phone number and address of the entity
2-7 primarily responsible for the construction.

2-8 Sec. 240.086. VARIANCES. (a) A person who desires to
2-9 construct or increase the height of a communication facility
2-10 structure in violation of an order adopted by a county subject to
2-11 this subchapter, may apply to the commissioners court of the county
2-12 for a variance from the regulation.

2-13 (b) The commissioners court may allow a variance from a
2-14 regulation if it is found that:

2-15 (1) a literal application or enforcement of the
2-16 regulation would result in practical difficulty or unnecessary
2-17 hardship; and

2-18 (2) the granting of the relief would:

2-19 (A) result in substantial justice being done;

2-20 (B) not be contrary to the public interest; and

2-21 (C) be in accordance with the spirit of the
2-22 regulation and this subchapter.

2-23 (c) The commissioners court may impose any reasonable
2-24 conditions on the variance that it considers necessary to
2-25 accomplish the purposes of this subchapter.

2-26 (d) Prior to the request for a variance issued under this
2-27 section, the county may require the applicant to prominently post
2-28 an outdoor sign at the location stating that a communication
2-29 facility structure is intended to be located on the premises and
2-30 providing the name and business address of the applicant.

2-31 (e) The sign must be at least 24 by 36 inches in size and
2-32 must be written in lettering at least two inches in size. The
2-33 county in which the communication facility structure is to be
2-34 located may require the sign to be both in English and a language
2-35 other than English if it is likely that a substantial number of the
2-36 residents in the area speak a language other than English as their
2-37 familiar language.

2-38 Sec. 240.087. OFFENSE. (a) A person commits an offense if
2-39 the person violates an order adopted under this subchapter and the
2-40 order defines the violation as an offense.

2-41 (b) An offense under this section is prosecuted in the same
2-42 manner as an offense defined under state law.

2-43 (c) An offense under this section is a Class C misdemeanor.

2-44 Sec. 240.088. INJUNCTION. The county attorney or an
2-45 attorney representing the county may file an action in a district
2-46 court to enjoin a violation or threatened violation of an order
2-47 adopted under this subchapter. The court may grant appropriate
2-48 relief.

2-49 SECTION 2. This Act takes effect immediately if it receives
2-50 a vote of two-thirds of all the members elected to each house, as
2-51 provided by Section 39, Article III, Texas Constitution. If this
2-52 Act does not receive the vote necessary for immediate effect, this
2-53 Act takes effect September 1, 2005.

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