

- SUBJECT:** Requiring wireless towers with guy wires to provide notice and markings
- COMMITTEE:** Regulated Industries — committee substitute recommended
- VOTE:** 5 ayes — King, Hunter, Baxter, Crabb, Guillen  
0 nays  
2 absent — Turner, Wolens
- SENATE VOTE:** On final passage, April 25 — 31-0, on Local and Uncontested Calendar
- WITNESSES:** For — Chris Shields, Texas Agricultural Aviation Association  
  
Against — Ron Hinkle, Verizon Wireless; (*Registered, but did not testify:*)  
Jean Ryall, Cingular Wireless
- BACKGROUND:** Federal law (47 C.F.R., sec. 17.7) requires notification to the Federal Aviation Administration of any antenna construction that is taller than 200 feet or within certain distances of airports. Other provisions require painting and lighting the antenna to enhance flight safety. Most cellular and wireless towers are less than 200 feet tall, and some are supported by guy wires.
- DIGEST:** CSSB 1261, to be cited as the “Jennings-Payne Act,” would require a person who proposed to build a wireless communication facility taller than 100 feet to notify the Texas Agricultural Aviation Association and airports within three miles of the building location at least 30 days before construction began. The builder would have to mail a letter containing a legal description of the proposed construction site, including a graphic depiction of the location, height, longitude, latitude, pad size, roadway access, and proposed use of the wireless telecommunications facility and location of any guy wires. The letter would have to list contact information for the person proposing construction and a telephone number with 24-hour access for emergency situations. The bill would define “wireless communication facility” as 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 communication purpose.

CSSB 1261 would not apply to:

- any structure whose main purpose was to provide electric service;
- a wireless communication facility used by an entity only for internal communications or used for emergency communications;
- a wireless communication facility built by a municipality;
- a radio or television reception antenna;
- a satellite or microwave parabolic antenna not used by a wireless communication service provider;
- a receive-only antenna;
- an antenna owned and operated by a federally licensed amateur radio station operator;
- a cable television company facility;
- a radio or television broadcasting facility;
- a colocation antenna; or
- a wireless communication facility installed for colocation purposes.

The bill would not preempt a local ordinance regulating a wireless communication facility.

A person who proposed to build a wireless communication antenna between 100 and 200 feet tall in or within 100 feet of a cultivated field would have to mark the highest guy wires on the facility with two warning spheres each. A “cultivated field” would mean any open space or pasture larger than five acres in which a plant or tree nursery was located or in which an agricultural crop, other than grass grown for hay, was grown on a continuing basis. The absence of plants, seedlings, or a crop on a temporary basis due to crop rotation or other farm management techniques would not remove a location from the definition of an open field.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2003.

**SUPPORTERS  
SAY:**

CSSB 1261 would help promote the safety of agricultural pilots. Cellular towers pose a risk to these aviators, who often fly below 200 feet for cropdusting. Several agricultural pilots have died in crashes caused by striking an antenna structure or guy wire.

The bill's notification provision would keep agricultural aviators informed as to the location of these towers in rural areas, and the visibility provision, requiring safety balls to be placed on the guy wires, would provide better protection for the pilots. Pilots strike guy wires not necessarily because they do not know that the towers are there, but often because they cannot see the wires when flying at 150 miles per hour. Requiring the balls to be placed on the wires would enable a pilot to see the wires before it was too late.

Although some wireless companies register with the Federal Communications Commission (FCC), this is not required, and FCC's database is not complete. Also, requiring the towers to register in that database would not solve the problem of pilots being unable to see guy wires. A pilot that strikes another type of obstruction, such as an electrical transmission tower, does so because of an error in judgment, not because he or she could not see the obstruction. CSSB 1261 would give pilots an important protection by requiring wireless and cellular towers to be made more visible to prevent accidents.

The bill would be called the "Jennings-Payne Act" in honor of two cropduster pilots who died after hitting guy wires.

**OPPONENTS  
SAY:**

If the bill's intention is to protect cropdusters from harm, it should impose the same notification and marking requirements for all towers that are supported by guy wires, not only on wireless towers. By singling out wireless providers, CSSB 1261 would ignore other types of towers with guy wires that could pose a serious danger to cropdusters.

Most wireless companies register automatically with the FCC, rendering the notification requirements under CSSB 1261 superfluous. The FCC database of these towers is searchable online, so flyers and landowners easily can locate any towers in their area.

**NOTES:**

The committee substitute would change the name of the act from the LeClair-Jennings Act to the Jennings-Payne Act.

The 77th Legislature in 2001 enacted HB 1148 by R. Cook, which included many of the same provisions as CSSB 1261, except that it would have required notice of construction to be filed with the county clerk. It also would have prohibited location of a wireless communications facility on a particularly defined property, and for that reason Gov. Rick Perry vetoed the bill, saying it was defined so narrowly as to apply only to a single individual and single parcel of land, in violation of the Texas Constitution.