

# HB3718



## 96TH GENERAL ASSEMBLY

### State of Illinois

2009 and 2010

HB3718

Introduced 2/25/2009, by Rep. Renée Kosel

#### SYNOPSIS AS INTRODUCED:

55 ILCS 5/5-12001.1

Amends the Counties Code. In a Section concerning AM broadcast towers and facilities and specified facilities of telecommunication carriers, authorizes any county to impose a minimum lot line set back distance of 300 feet for a telecommunication carrier facility or an AM broadcast facility from a residentially zoned lot.

LRB096 08458 RLJ 18577 b

A BILL FOR

1 AN ACT concerning local government.

2 **Be it enacted by the People of the State of Illinois,**  
3 **represented in the General Assembly:**

4 Section 5. The Counties Code is amended by changing Section  
5 5-12001.1 as follows:

6 (55 ILCS 5/5-12001.1)

7 Sec. 5-12001.1. Authority to regulate certain specified  
8 facilities of a telecommunications carrier and to regulate,  
9 pursuant to subsections (a) through (g), AM broadcast towers  
10 and facilities.

11 (a) Notwithstanding any other Section in this Division, the  
12 county board or board of county commissioners of any county  
13 shall have the power to regulate the location of the  
14 facilities, as defined in subsection (c), of a  
15 telecommunications carrier or AM broadcast station established  
16 outside the corporate limits of cities, villages, and  
17 incorporated towns that have municipal zoning ordinances in  
18 effect. The power shall only be exercised to the extent and in  
19 the manner set forth in this Section.

20 (b) The provisions of this Section shall not abridge any  
21 rights created by or authority confirmed in the federal  
22 Telecommunications Act of 1996, P.L. 104-104.

23 (c) As used in this Section, unless the context otherwise

1 requires:

2 (1) "county jurisdiction area" means those portions of  
3 a county that lie outside the corporate limits of cities,  
4 villages, and incorporated towns that have municipal  
5 zoning ordinances in effect;

6 (2) "county board" means the county board or board of  
7 county commissioners of any county;

8 (3) "residential zoning district" means a zoning  
9 district that is designated under a county zoning ordinance  
10 and is zoned predominantly for residential uses;

11 (4) "non-residential zoning district" means the county  
12 jurisdiction area of a county, except for those portions  
13 within a residential zoning district;

14 (5) "residentially zoned lot" means a zoning lot in a  
15 residential zoning district;

16 (6) "non-residentially zoned lot" means a zoning lot in  
17 a non-residential zoning district;

18 (7) "telecommunications carrier" means a  
19 telecommunications carrier as defined in the Public  
20 Utilities Act as of January 1, 1997;

21 (8) "facility" means that part of the signal  
22 distribution system used or operated by a  
23 telecommunications carrier or AM broadcast station under a  
24 license from the FCC consisting of a combination of  
25 improvements and equipment including (i) one or more  
26 antennas, (ii) a supporting structure and the hardware by

1           which antennas are attached; (iii) equipment housing; and  
2           (iv) ancillary equipment such as signal transmission  
3           cables and miscellaneous hardware;

4           (9) "FAA" means the Federal Aviation Administration of  
5           the United States Department of Transportation;

6           (10) "FCC" means the Federal Communications  
7           Commission;

8           (11) "antenna" means an antenna device by which radio  
9           signals are transmitted, received, or both;

10          (12) "supporting structure" means a structure, whether  
11          an antenna tower or another type of structure, that  
12          supports one or more antennas as part of a facility;

13          (13) "qualifying structure" means a supporting  
14          structure that is (i) an existing structure, if the height  
15          of the facility, including the structure, is not more than  
16          15 feet higher than the structure just before the facility  
17          is installed, or (ii) a substantially similar,  
18          substantially same-location replacement of an existing  
19          structure, if the height of the facility, including the  
20          replacement structure, is not more than 15 feet higher than  
21          the height of the existing structure just before the  
22          facility is installed;

23          (14) "equipment housing" means a combination of one or  
24          more equipment buildings or enclosures housing equipment  
25          that operates in conjunction with the antennas of a  
26          facility, and the equipment itself;

1           (15) "height" of a facility means the total height of  
2           the facility's supporting structure and any antennas that  
3           will extend above the top of the supporting structure;  
4           however, if the supporting structure's foundation extends  
5           more than 3 feet above the uppermost ground level along the  
6           perimeter of the foundation, then each full foot in excess  
7           of 3 feet shall be counted as an additional foot of  
8           facility height. The height of a facility's supporting  
9           structure is to be measured from the highest point of the  
10          supporting structure's foundation;

11          (16) "facility lot" means the zoning lot on which a  
12          facility is or will be located;

13          (17) "principal residential building" has its common  
14          meaning but shall not include any building under the same  
15          ownership as the land of the facility lot. "Principal  
16          residential building" shall not include any structure that  
17          is not designed for human habitation;

18          (18) "horizontal separation distance" means the  
19          distance measured from the center of the base of the  
20          facility's supporting structure to the point where the  
21          ground meets a vertical wall of a principal residential  
22          building;

23          (19) "lot line set back distance" means the distance  
24          measured from the center of the base of the facility's  
25          supporting structure to the nearest point on the common lot  
26          line between the facility lot and the nearest residentially

1           zoned lot. If there is no common lot line, the measurement  
2           shall be made to the nearest point on the lot line of the  
3           nearest residentially zoned lot without deducting the  
4           width of any intervening right of way; and

5           (20) "AM broadcast station" means a facility and one or  
6           more towers for the purpose of transmitting communication  
7           in the 540 kHz to 1700 kHz band for public reception  
8           authorized by the FCC.

9           (d) In choosing a location for a facility, a  
10          telecommunications carrier or AM broadcast station shall  
11          consider the following:

12          (1) A non-residentially zoned lot is the most desirable  
13          location.

14          (2) A residentially zoned lot that is not used for  
15          residential purposes is the second most desirable  
16          location.

17          (3) A residentially zoned lot that is 2 acres or more  
18          in size and is used for residential purposes is the third  
19          most desirable location.

20          (4) A residentially zoned lot that is less than 2 acres  
21          in size and is used for residential purposes is the least  
22          desirable location.

23          The size of a lot shall be the lot's gross area in square  
24          feet without deduction of any unbuildable or unusable land, any  
25          roadway, or any other easement.

26          (e) In designing a facility, a telecommunications carrier

1 or AM broadcast station shall consider the following  
2 guidelines:

3 (1) No building or tower that is part of a facility  
4 should encroach onto any recorded easement prohibiting the  
5 encroachment unless the grantees of the easement have given  
6 their approval.

7 (2) Lighting should be installed for security and  
8 safety purposes only. Except with respect to lighting  
9 required by the FCC or FAA, all lighting should be shielded  
10 so that no glare extends substantially beyond the  
11 boundaries of a facility.

12 (3) No facility should encroach onto an existing septic  
13 field.

14 (4) Any facility located in a special flood hazard area  
15 or wetland should meet the legal requirements for those  
16 lands.

17 (5) Existing trees more than 3 inches in diameter  
18 should be preserved if reasonably feasible during  
19 construction. If any tree more than 3 inches in diameter is  
20 removed during construction a tree 3 inches or more in  
21 diameter of the same or a similar species shall be planted  
22 as a replacement if reasonably feasible. Tree diameter  
23 shall be measured at a point 3 feet above ground level.

24 (6) If any elevation of a facility faces an existing,  
25 adjoining residential use within a residential zoning  
26 district, low maintenance landscaping should be provided

1 on or near the facility lot to provide at least partial  
2 screening of the facility. The quantity and type of that  
3 landscaping should be in accordance with any county  
4 landscaping regulations of general applicability, except  
5 that paragraph (5) of this subsection (e) shall control  
6 over any tree-related regulations imposing a greater  
7 burden.

8 (7) Fencing should be installed around a facility. The  
9 height and materials of the fencing should be in accordance  
10 with any county fence regulations of general  
11 applicability.

12 (8) Any building that is part of a facility located  
13 adjacent to a residentially zoned lot should be designed  
14 with exterior materials and colors that are reasonably  
15 compatible with the residential character of the area.

16 (f) The following provisions shall apply to all facilities  
17 established in any county jurisdiction area (i) after the  
18 effective date of the amendatory Act of 1997 with respect to  
19 telecommunications carriers and (ii) after the effective date  
20 of this amendatory Act of the 94th General Assembly with  
21 respect to AM broadcast stations:

22 (1) Except as provided in this Section, no yard or set  
23 back regulations shall apply to or be required for a  
24 facility.

25 (2) A facility may be located on the same zoning lot as  
26 one or more other structures or uses without violating any



1 ordinance or regulation that prohibits or limits multiple  
2 structures, buildings, or uses on a zoning lot.

3 (3) No minimum lot area, width, or depth shall be  
4 required for a facility, and unless the facility is to be  
5 manned on a regular, daily basis, no off-street parking  
6 spaces shall be required for a facility. If the facility is  
7 to be manned on a regular, daily basis, one off-street  
8 parking space shall be provided for each employee regularly  
9 at the facility. No loading facilities are required.

10 (4) No portion of a facility's supporting structure or  
11 equipment housing shall be less than 15 feet from the front  
12 lot line of the facility lot or less than 10 feet from any  
13 other lot line.

14 (5) No bulk regulations or lot coverage, building  
15 coverage, or floor area ratio limitations shall be applied  
16 to a facility or to any existing use or structure  
17 coincident with the establishment of a facility. Except as  
18 provided in this Section, no height limits or restrictions  
19 shall apply to a facility.

20 (6) A county's review of a building permit application  
21 for a facility shall be completed within 30 days. If a  
22 decision of the county board is required to permit the  
23 establishment of a facility, the county's review of the  
24 application shall be simultaneous with the process leading  
25 to the county board's decision.

26 (7) The improvements and equipment comprising the

1 facility may be wholly or partly freestanding or wholly or  
2 partly attached to, enclosed in, or installed in or on a  
3 structure or structures.

4 (8) Any public hearing authorized under this Section  
5 shall be conducted in a manner determined by the county  
6 board. Notice of any such public hearing shall be published  
7 at least 15 days before the hearing in a newspaper of  
8 general circulation published in the county. Notice of any  
9 such public hearing shall also be sent by certified mail at  
10 least 15 days prior to the hearing to the owners of record  
11 of all residential property that is adjacent to the lot  
12 upon which the facility is proposed to be sited.

13 (9) Any decision regarding a facility by the county  
14 board or a county agency or official shall be supported by  
15 written findings of fact. The circuit court shall have  
16 jurisdiction to review the reasonableness of any adverse  
17 decision and the plaintiff shall bear the burden of proof,  
18 but there shall be no presumption of the validity of the  
19 decision.

20 (g) The following provisions shall apply to all facilities  
21 established (i) after the effective date of this amendatory Act  
22 of 1997 with respect to telecommunications carriers and (ii)  
23 after the effective date of this amendatory Act of the 94th  
24 General Assembly with respect to AM broadcast stations in the  
25 county jurisdiction area of any county with a population of  
26 less than 180,000:

1           (1) A facility is permitted if its supporting structure  
2 is a qualifying structure or if both of the following  
3 conditions are met:

4           (A) the height of the facility shall not exceed 200  
5 feet, except that if a facility is located more than  
6 one and one-half miles from the corporate limits of any  
7 municipality with a population of 25,000 or more the  
8 height of the facility shall not exceed 350 feet; and

9           (B) the horizontal separation distance to the  
10 nearest principal residential building shall not be  
11 less than the height of the supporting structure;  
12 except that if the supporting structure exceeds 99 feet  
13 in height, the horizontal separation distance to the  
14 nearest principal residential building shall be at  
15 least 100 feet or 80% of the height of the supporting  
16 structure, whichever is greater. Compliance with this  
17 paragraph shall only be evaluated as of the time that a  
18 building permit application for the facility is  
19 submitted. If the supporting structure is not an  
20 antenna tower this paragraph is satisfied.

21           (2) Unless a facility is permitted under paragraph (1)  
22 of this subsection (g), a facility can be established only  
23 after the county board gives its approval following  
24 consideration of the provisions of paragraph (3) of this  
25 subsection (g). The county board may give its approval  
26 after one public hearing on the proposal, but only by the

1 favorable vote of a majority of the members present at a  
2 meeting held no later than 75 days after submission of a  
3 complete application by the telecommunications carrier. If  
4 the county board fails to act on the application within 75  
5 days after its submission, the application shall be deemed  
6 to have been approved. No more than one public hearing  
7 shall be required.

8 (3) For purposes of paragraph (2) of this subsection  
9 (g), the following siting considerations, but no other  
10 matter, shall be considered by the county board or any  
11 other body conducting the public hearing:

12 (A) the criteria in subsection (d) of this Section;

13 (B) whether a substantial adverse effect on public  
14 safety will result from some aspect of the facility's  
15 design or proposed construction, but only if that  
16 aspect of design or construction is modifiable by the  
17 applicant;

18 (C) the benefits to be derived by the users of the  
19 services to be provided or enhanced by the facility and  
20 whether public safety and emergency response  
21 capabilities would benefit by the establishment of the  
22 facility;

23 (D) the existing uses on adjacent and nearby  
24 properties; and

25 (E) the extent to which the design of the proposed  
26 facility reflects compliance with subsection (e) of

1           this Section.

2           (4) On judicial review of an adverse decision, the  
3           issue shall be the reasonableness of the county board's  
4           decision in light of the evidence presented on the siting  
5           considerations and the well-reasoned recommendations of  
6           any other body that conducts the public hearing.

7           (h) The following provisions shall apply to all facilities  
8           established after the effective date of this amendatory Act of  
9           1997 in the county jurisdiction area of any county with a  
10          population of 180,000 or more. A facility is permitted in any  
11          zoning district subject to the following:

12           (1) A facility shall not be located on a lot under  
13          paragraph (4) of subsection (d) unless a variation is  
14          granted by the county board under paragraph (4) of this  
15          subsection (h).

16           (2) Unless a height variation is granted by the county  
17          board, the height of a facility shall not exceed 75 feet if  
18          the facility will be located in a residential zoning  
19          district or 200 feet if the facility will be located in a  
20          non-residential zoning district. However, the height of a  
21          facility may exceed the height limit in this paragraph, and  
22          no height variation shall be required, if the supporting  
23          structure is a qualifying structure.

24           (3) The improvements and equipment of the facility  
25          shall be placed to comply with the requirements of this  
26          paragraph at the time a building permit application for the

1 facility is submitted. If the supporting structure is an  
2 antenna tower other than a qualifying structure then (i) if  
3 the facility will be located in a residential zoning  
4 district the lot line set back distance to the nearest  
5 residentially zoned lot shall be at least 50% of the height  
6 of the facility's supporting structure or (ii) if the  
7 facility will be located in a non-residential zoning  
8 district the horizontal separation distance to the nearest  
9 principal residential building shall be at least equal to  
10 the height of the facility's supporting structure.

11 (4) The county board may grant variations for any of  
12 the regulations, conditions, and restrictions of this  
13 subsection (h), after one public hearing on the proposed  
14 variations, by a favorable vote of a majority of the  
15 members present at a meeting held no later than 75 days  
16 after submission of an application by the  
17 telecommunications carrier. If the county board fails to  
18 act on the application within 75 days after submission, the  
19 application shall be deemed to have been approved. In its  
20 consideration of an application for variations, the county  
21 board, and any other body conducting the public hearing,  
22 shall consider the following, and no other matters:

23 (A) whether, but for the granting of a variation,  
24 the service that the telecommunications carrier seeks  
25 to enhance or provide with the proposed facility will  
26 be less available, impaired, or diminished in quality,

1 quantity, or scope of coverage;

2 (B) whether the conditions upon which the  
3 application for variations is based are unique in some  
4 respect or, if not, whether the strict application of  
5 the regulations would result in a hardship on the  
6 telecommunications carrier;

7 (C) whether a substantial adverse effect on public  
8 safety will result from some aspect of the facility's  
9 design or proposed construction, but only if that  
10 aspect of design or construction is modifiable by the  
11 applicant;

12 (D) whether there are benefits to be derived by the  
13 users of the services to be provided or enhanced by the  
14 facility and whether public safety and emergency  
15 response capabilities would benefit by the  
16 establishment of the facility; and

17 (E) the extent to which the design of the proposed  
18 facility reflects compliance with subsection (e) of  
19 this Section.

20 No more than one public hearing shall be required.

21 (5) On judicial review of an adverse decision, the  
22 issue shall be the reasonableness of the county board's  
23 decision in light of the evidence presented and the  
24 well-reasoned recommendations of any other body that  
25 conducted the public hearing.

26 (i) After the effective date of this amendatory Act of the

1 96th General Assembly, any county may impose a minimum lot

2 line set back distance of 300 feet for any facility.

3 (Source: P.A. 94-728, eff. 4-6-06; 95-815, eff. 8-13-08.)