



93RD GENERAL ASSEMBLY
State of Illinois
2003 and 2004
HB4238

Introduced 1/28/2004, by Patricia Reid Lindner

SYNOPSIS AS INTRODUCED:

55 ILCS 5/5-12001.1

Amends the Counties Code. Allows a county board or board of county commissioners to regulate the placement, construction, and modification of the facilities of a telecommunications carrier as provided by the federal Telecommunications Act of 1996. Prohibits the county board or board of county commissioners from unreasonably discriminating among providers of functionally equivalent services. In designing a telecommunications facility, provides that a carrier shall, at a minimum, abide by (now, shall consider) certain guidelines. Provides that certain guidelines concerning the construction and siting of facilities apply only in counties that have not adopted an ordinance to exercise the powers of the Divisions of the Counties Code concerning zoning and building or set-back lines. Makes other changes. Authorizes a county board to require a telecommunications carrier to notify any owners of property located within a designated radius of a proposed facility lot. Authorizes a county board to require a telecommunications carrier to include certain evidence and information with a building permit application. Effective immediately.

LRB093 15901 MKM 41518 b

1 AN ACT concerning counties.

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
5 Section 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.

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

18 (b) The provisions of this Section shall not abridge any
19 rights created by or authority confirmed in the federal
20 Telecommunications Act of 1996, P.L. 104-104. The county board
21 or board of county commissioners of any county is authorized to
22 regulate the placement, construction, and modification of the
23 facilities of a telecommunications carrier as provided in the
24 federal Telecommunications Act of 1996, P.L. 104-104. The
25 county board or board of county commissioners may not
26 unreasonably discriminate among providers of functionally
27 equivalent services and shall not prohibit or have the effect
28 of prohibiting the provision of telecommunications services as
29 provided in the federal Telecommunications Act of 1996, P.L.
30 104-104.

31 (c) As used in this Section, unless the context otherwise
32 requires:

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

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

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

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

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

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

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

20 (8) "facility" means that part of the signal
21 distribution system used or operated by a
22 telecommunications carrier under a license from the FCC
23 consisting of a combination of improvements and equipment
24 including (i) one or more antennas, (ii) a supporting
25 structure and the hardware by which antennas are attached;
26 (iii) equipment housing; and (iv) ancillary equipment such
27 as signal transmission cables and miscellaneous hardware;

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

30 (10) "FCC" means the Federal Communications
31 Commission;

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

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

1 (13) "qualifying structure" means a supporting
2 structure that is (i) an existing structure, if the height
3 of the facility, including the structure, is not more than
4 15 feet higher than the structure just before the facility
5 is installed, or (ii) a substantially similar,
6 substantially same-location replacement of an existing
7 structure, if the height of the facility, including the
8 replacement structure, is not more than 15 feet higher than
9 the height of the existing structure just before the
10 facility is installed;

11 (14) "equipment housing" means a combination of one or
12 more equipment buildings or enclosures housing equipment
13 that operates in conjunction with the antennas of a
14 facility, and the equipment itself;

15 (15) "height" of a facility means the total height of
16 the facility's supporting structure and any antennas that
17 will extend above the top of the supporting structure;
18 however, if the supporting structure's foundation extends
19 more than 3 feet above the uppermost ground level along the
20 perimeter of the foundation, then each full foot in excess
21 of 3 feet shall be counted as an additional foot of
22 facility height. The height of a facility's supporting
23 structure is to be measured from the highest point of the
24 supporting structure's foundation;

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

27 (17) "principal residential building" has its common
28 meaning but shall not include any building under the same
29 ownership as the land of the facility lot. "Principal
30 residential building" shall not include any structure that
31 is not designed for human habitation;

32 (18) "horizontal separation distance" means the
33 distance measured from the center of the base of the
34 facility's supporting structure to the point where the
35 ground meets a vertical wall of a principal residential
36 building; and

1 (19) "lot line set back distance" means the distance
2 measured from the center of the base of the facility's
3 supporting structure to the nearest point on the common lot
4 line between the facility lot and the nearest residentially
5 zoned lot. If there is no common lot line, the measurement
6 shall be made to the nearest point on the lot line of the
7 nearest residentially zoned lot without deducting the
8 width of any intervening right of way.

9 (d) In choosing a location for a facility, a
10 telecommunications carrier shall consider the following:

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

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

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

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

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

25 (e) In designing a facility, a telecommunications carrier
26 shall at a minimum abide by ~~consider~~ the following ~~guidelines~~:

27 (1) No building or tower that is part of a facility
28 will ~~should~~ encroach onto any recorded easement
29 prohibiting the encroachment unless the grantees of the
30 easement have given their approval.

31 (2) Lighting will ~~should~~ be installed for security and
32 safety purposes only. Except with respect to lighting
33 required by the FCC or FAA, all lighting will ~~should~~ be
34 shielded so that no glare extends substantially beyond the
35 boundaries of a facility.

36 (3) No facility will ~~should~~ encroach onto an existing

1 septic field.

2 (4) Any facility located in a special flood hazard area
3 or wetland will ~~should~~ meet the legal requirements for
4 those lands.

5 (5) Existing trees more than 3 inches in diameter will
6 ~~should~~ be preserved if reasonably feasible during
7 construction. If any tree more than 3 inches in diameter is
8 removed during construction a tree 3 inches or more in
9 diameter of the same or a similar species shall be planted
10 as a replacement if reasonably feasible. Tree diameter
11 shall be measured at a point 3 feet above ground level.

12 (6) If any elevation of a facility faces an existing,
13 ~~adjoining~~ residential use or ~~within~~ a residential zoning
14 district, low maintenance landscaping will ~~should~~ be
15 provided on or near the facility lot to provide at least
16 partial screening of the facility. The quantity and type of
17 that landscaping will ~~should~~ be in accordance with any
18 county landscaping regulations of general applicability,
19 except that paragraph (5) of this subsection (e) shall
20 control over any tree-related regulations imposing a
21 greater burden.

22 (7) Fencing will ~~should~~ be installed around a facility.
23 The height and materials of the fencing will ~~should~~ be in
24 accordance with any county fence regulations of general
25 applicability.

26 (8) Any building that is part of a facility located
27 adjacent to a residentially zoned lot will ~~should~~ be
28 designed with exterior materials and colors that are
29 reasonably compatible with the residential character of
30 the area.

31 (9) A monopole supporting structure will be required
32 when a facility is located within 1,000 feet of a principal
33 residential building.

34 (10) All supporting structures will be designed to
35 accommodate 2 additional telecommunications carriers.

36 (f) (Blank). ~~The following provisions shall apply to all~~

1 ~~facilities established in any county jurisdiction area after~~
2 ~~the effective date of the amendatory Act of 1997:~~

3 ~~(1) Except as provided in this Section, no yard or set~~
4 ~~back regulations shall apply to or be required for a~~
5 ~~facility.~~

6 ~~(2) A facility may be located on the same zoning lot as~~
7 ~~one or more other structures or uses without violating any~~
8 ~~ordinance or regulation that prohibits or limits multiple~~
9 ~~structures, buildings, or uses on a zoning lot.~~

10 ~~(3) No minimum lot area, width, or depth shall be~~
11 ~~required for a facility, and unless the facility is to be~~
12 ~~manned on a regular, daily basis, no off-street parking~~
13 ~~spaces shall be required for a facility. If the facility is~~
14 ~~to be manned on a regular, daily basis, one off-street~~
15 ~~parking space shall be provided for each employee regularly~~
16 ~~at the facility. No loading facilities are required.~~

17 ~~(4) No portion of a facility's supporting structure or~~
18 ~~equipment housing shall be less than 15 feet from the front~~
19 ~~lot line of the facility lot or less than 10 feet from any~~
20 ~~other lot line.~~

21 ~~(5) No bulk regulations or lot coverage, building~~
22 ~~coverage, or floor area ratio limitations shall be applied~~
23 ~~to a facility or to any existing use or structure~~
24 ~~coincident with the establishment of a facility. Except as~~
25 ~~provided in this Section, no height limits or restrictions~~
26 ~~shall apply to a facility.~~

27 ~~(6) A county's review of a building permit application~~
28 ~~for a facility shall be completed within 30 days. If a~~
29 ~~decision of the county board is required to permit the~~
30 ~~establishment of a facility, the county's review of the~~
31 ~~application shall be simultaneous with the process leading~~
32 ~~to the county board's decision.~~

33 ~~(7) The improvements and equipment comprising the~~
34 ~~facility may be wholly or partly freestanding or wholly or~~
35 ~~partly attached to, enclosed in, or installed in or on a~~
36 ~~structure or structures.~~

1 ~~(8) Any public hearing authorized under this Section~~
2 ~~shall be conducted in a manner determined by the county~~
3 ~~board. Notice of any such public hearing shall be published~~
4 ~~at least 15 days before the hearing in a newspaper of~~
5 ~~general circulation published in the county.~~

6 ~~(9) Any decision regarding a facility by the county~~
7 ~~board or a county agency or official shall be supported by~~
8 ~~written findings of fact. The circuit court shall have~~
9 ~~jurisdiction to review the reasonableness of any adverse~~
10 ~~decision and the plaintiff shall bear the burden of proof,~~
11 ~~but there shall be no presumption of the validity of the~~
12 ~~decision.~~

13 (g) The following provisions shall apply to all facilities
14 established after the effective date of this amendatory Act of
15 1997 in the county jurisdiction area of any county with a
16 population of less than 180,000 that has not adopted an
17 ordinance to exercise the powers granted in Division 5-12 or
18 Division 5-13:

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

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

27 (B) the horizontal separation distance to the
28 nearest principal residential building shall not be
29 less than the height of the supporting structure;
30 except that if the supporting structure exceeds 99 feet
31 in height, the horizontal separation distance to the
32 nearest principal residential building shall be at
33 least 100 feet or 80% of the height of the supporting
34 structure, whichever is greater. Compliance with this
35 paragraph shall only be evaluated as of the time that a
36 building permit application for the facility is

1 submitted. If the supporting structure is not an
2 antenna tower this paragraph is satisfied.

3 (2) Unless a facility is permitted under paragraph (1)
4 of this subsection (g), a facility can be established only
5 after the county board gives its approval following
6 consideration of the provisions of paragraph (3) of this
7 subsection (g). The county board may give its approval
8 after one public hearing on the proposal, but only by the
9 favorable vote of a majority of the members present at a
10 meeting held no later than 75 days after submission of a
11 complete application by the telecommunications carrier. If
12 the county board fails to act on the application within 75
13 days after its submission, the application shall be deemed
14 to have been approved. No more than one public hearing
15 shall be required.

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

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

21 (B) whether a substantial adverse effect on public
22 safety will result from some aspect of the facility's
23 design or proposed construction, but only if that
24 aspect of design or construction is modifiable by the
25 applicant;

26 (C) the benefits to be derived by the users of the
27 services to be provided or enhanced by the facility and
28 whether public safety and emergency response
29 capabilities would benefit by the establishment of the
30 facility;

31 (D) the existing uses on adjacent and nearby
32 properties; and

33 (E) the extent to which the design of the proposed
34 facility reflects compliance with subsection (e) of
35 this Section.

36 (4) On judicial review of an adverse decision, the

1 issue shall be the reasonableness of the county board's
2 decision in light of the evidence presented on the siting
3 considerations and the well-reasoned recommendations of
4 any other body that conducts the public hearing.

5 (h) The following provisions shall apply to all facilities
6 established after the effective date of this amendatory Act of
7 1997 in the county jurisdiction area of any county with a
8 population of 180,000 or more that has not adopted an ordinance
9 to exercise the powers granted in Division 5-12 or Division
10 5-13. A facility is permitted in any zoning district subject to
11 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
27 facility is submitted. If the supporting structure is an
28 antenna tower other than a qualifying structure then (i) if
29 the facility will be located in a residential zoning
30 district the lot line set back distance to the nearest
31 residentially zoned lot shall be at least 50% of the height
32 of the facility's supporting structure or (ii) if the
33 facility will be located in a non-residential zoning
34 district the horizontal separation distance to the nearest
35 principal residential building shall be at least equal to
36 the height of the facility's supporting structure.

1 (4) The county board may grant variations for any of
2 the regulations, conditions, and restrictions of this
3 subsection (h), after one public hearing on the proposed
4 variations, by a favorable vote of a majority of the
5 members present at a meeting held no later than 75 days
6 after submission of an application by the
7 telecommunications carrier. If the county board fails to
8 act on the application within 75 days after submission, the
9 application shall be deemed to have been approved. In its
10 consideration of an application for variations, the county
11 board, and any other body conducting the public hearing,
12 shall consider the following, and no other matters:

13 (A) whether, but for the granting of a variation,
14 the service that the telecommunications carrier seeks
15 to enhance or provide with the proposed facility will
16 be less available, impaired, or diminished in quality,
17 quantity, or scope of coverage;

18 (B) whether the conditions upon which the
19 application for variations is based are unique in some
20 respect or, if not, whether the strict application of
21 the regulations would result in a hardship on the
22 telecommunications carrier;

23 (C) whether a substantial adverse effect on public
24 safety will result from some aspect of the facility's
25 design or proposed construction, but only if that
26 aspect of design or construction is modifiable by the
27 applicant;

28 (D) whether there are benefits to be derived by the
29 users of the services to be provided or enhanced by the
30 facility and whether public safety and emergency
31 response capabilities would benefit by the
32 establishment of the facility; and

33 (E) the extent to which the design of the proposed
34 facility reflects compliance with subsection (e) of
35 this Section.

36 No more than one public hearing shall be required.

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

6 (i) The county board or board of county commissioners of
7 any county is authorized to require a telecommunications
8 carrier to notify all owners of property within a designated
9 radius of the proposed facility lot of the proposed location of
10 the facility. The notice must include a copy of the building
11 permit application, the name of the telecommunications
12 carrier, the owner of record of the proposed facility lot, the
13 location of the proposed facility lot, the dates of all
14 meetings at which the application will be considered, and the
15 procedure for obtaining more information about the proposal.

16 (j) The county board or board of county commissioners of
17 any county is authorized to require a telecommunications
18 carrier to include any of the following with a building permit
19 application: (i) evidence that the proposed facility lot is
20 sufficient to support the proposed facility, (ii) evidence that
21 the proposed facility lot is accessible for inspections and
22 maintenance by the telecommunications carrier, (iii) evidence
23 that the proposed facility's emissions will fall within the
24 guidelines of the Federal Commerce Commission, (iv) a schedule
25 for regular inspection of the facilities by the
26 telecommunications carrier and for the provision of inspection
27 reports by the telecommunications carrier to the county board,
28 (v) a copy of any environmental assessment that the
29 telecommunications carrier is required to provide to the
30 federal government, (vi) evidence that the proposed facility
31 lot is not of historical or architectural significance, and
32 (vii) any other information concerning the telecommunications
33 carrier's efforts to address health or aesthetic concerns.

34 (Source: P.A. 90-522, eff. 1-1-98.)

35 Section 99. Effective date. This Act takes effect upon

1 becoming law.