



96TH GENERAL ASSEMBLY

State of Illinois

2009 and 2010

HB4877

Introduced 1/15/2010, by Rep. JoAnn D. Osmond

SYNOPSIS AS INTRODUCED:

55 ILCS 5/5-12001.1

Amends the Counties Code. In provisions concerning the regulation of telecommunication and AM broadcast facilities, provides that the county board or board of county commissioners of any county may regulate the placement, construction, and modification of the facilities of a telecommunication carrier. Sets forth minimum design requirements for a telecommunications carrier or AM broadcast station. Deletes provisions pertaining to the regulation of specified telecommunication and AM broadcast facilities. Authorizes a county board or board of county commissioners to require a telecommunications carrier to include specified information and documents with a building permit application. Effective immediately.

LRB096 16304 RLJ 31562 b

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 (h) ~~(g)~~, AM broadcast
10 towers and facilities.

11 (a) ~~The Notwithstanding any other Section in this Division,~~
12 ~~the~~ 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 county board or board of county commissioners may
19 regulate the placement, construction, and modification of the
20 facilities of a telecommunication carrier consistent with the
21 federal Telecommunications Act of 1996. The county board or
22 board of county commissioners may not unreasonably
23 discriminate among providers of functionally equivalent

1 services or prohibit or have the effect of prohibiting the
2 provision of telecommunication services as provided in the
3 federal Telecommunications Act of 1996. ~~The power shall only be~~
4 ~~exercised to the extent and in the manner set forth in this~~
5 ~~Section.~~

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

9 (c) As used in this Section, unless the context otherwise
10 requires:

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

15 (2) "county board" means the county board or board of
16 county commissioners of any county;

17 (3) "residential zoning district" means a zoning
18 district that is designated under a county zoning ordinance
19 and is zoned predominantly for residential uses;

20 (4) "non-residential zoning district" means the county
21 jurisdiction area of a county, except for those portions
22 within a residential zoning district;

23 (5) "residentially zoned lot" means a zoning lot in a
24 residential zoning district;

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

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

4 (8) "facility" means that part of the signal
5 distribution system used or operated by a
6 telecommunications carrier or AM broadcast station under a
7 license from the FCC consisting of a combination of
8 improvements and equipment including (i) one or more
9 antennas; 7 (ii) a supporting structure and the hardware by
10 which antennas are attached; (iii) equipment housing; and
11 (iv) ancillary equipment such as signal transmission
12 cables and miscellaneous hardware;

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

15 (10) "FCC" means the Federal Communications
16 Commission;

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

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

22 (13) "qualifying structure" means a supporting
23 structure that is (i) an existing structure, if the height
24 of the facility, including the structure, is not more than
25 15 feet higher than the structure just before the facility
26 is installed, or (ii) a substantially similar,

1 substantially same-location replacement of an existing
2 structure, if the height of the facility, including the
3 replacement structure, is not more than 15 feet higher than
4 the height of the existing structure just before the
5 facility is installed;

6 (14) "equipment housing" means a combination of one or
7 more equipment buildings or enclosures housing equipment
8 that operates in conjunction with the antennas of a
9 facility, and the equipment itself;

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

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

22 (17) "principal residential building" has its common
23 meaning but shall not include any building under the same
24 ownership as the land of the facility lot. "Principal
25 residential building" shall not include any structure that
26 is not designed for human habitation;

1 (18) "horizontal separation distance" means the
2 distance measured from the center of the base of the
3 facility's supporting structure to the point where the
4 ground meets a vertical wall of a principal residential
5 building;

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

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

18 (d) In choosing a location for a facility, a
19 telecommunications carrier or AM broadcast station shall
20 consider the following:

21 (1) A non-residentially zoned lot is the most desirable
22 location.

23 (2) A residentially zoned lot that is not used for
24 residential purposes is the second most desirable
25 location.

26 (3) A residentially zoned lot that is 2 acres or more

1 in size and is used for residential purposes is the third
2 most desirable location.

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

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

9 (e) In designing a facility, a telecommunications carrier
10 or AM broadcast station shall, at a minimum, abide by ~~consider~~
11 the following ~~guidelines~~:

12 (1) No building or tower that is part of a facility may
13 ~~should~~ encroach onto any recorded easement prohibiting the
14 encroachment unless the grantees of the easement have given
15 their approval.

16 (2) Lighting must ~~should~~ be installed for security and
17 safety purposes only. Except with respect to lighting
18 required by the FCC or FAA, all lighting must ~~should~~ be
19 shielded so that no glare extends substantially beyond the
20 boundaries of a facility.

21 (3) No facility may ~~should~~ encroach onto an existing
22 septic field.

23 (4) Any facility located in a special flood hazard area
24 or wetland must ~~should~~ meet the legal requirements for
25 those lands.

26 (5) Existing trees more than 3 inches in diameter must

1 ~~should~~ be preserved if reasonably feasible during
2 construction. If any tree more than 3 inches in diameter is
3 removed during construction a tree 3 inches or more in
4 diameter of the same or a similar species shall be planted
5 as a replacement if reasonably feasible. Tree diameter
6 shall be measured at a point 3 feet above ground level.

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

17 (7) Fencing must ~~should~~ be installed around a facility.
18 The height and materials of the fencing must ~~should~~ be in
19 accordance with any county fence regulations of general
20 applicability.

21 (8) Any building that is part of a facility located
22 adjacent to a residentially zoned lot must ~~should~~ be
23 designed with exterior materials and colors that are
24 reasonably compatible with the residential character of
25 the area.

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

1 ~~facilities established in any county jurisdiction area (i)~~
2 ~~after the effective date of the amendatory Act of 1997 with~~
3 ~~respect to telecommunications carriers and (ii) after the~~
4 ~~effective date of this amendatory Act of the 94th General~~
5 ~~Assembly with respect to AM broadcast stations.~~

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

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

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

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

24 ~~(5) No bulk regulations or lot coverage, building~~
25 ~~coverage, or floor area ratio limitations shall be applied~~
26 ~~to a facility or to any existing use or structure~~

1 ~~coincident with the establishment of a facility. Except as~~
2 ~~provided in this Section, no height limits or restrictions~~
3 ~~shall apply to a facility.~~

4 ~~(6) A county's review of a building permit application~~
5 ~~for a facility shall be completed within 30 days. If a~~
6 ~~decision of the county board is required to permit the~~
7 ~~establishment of a facility, the county's review of the~~
8 ~~application shall be simultaneous with the process leading~~
9 ~~to the county board's decision.~~

10 ~~(7) The improvements and equipment comprising the~~
11 ~~facility may be wholly or partly freestanding or wholly or~~
12 ~~partly attached to, enclosed in, or installed in or on a~~
13 ~~structure or structures.~~

14 ~~(8) Any public hearing authorized under this Section~~
15 ~~shall be conducted in a manner determined by the county~~
16 ~~board. Notice of any such public hearing shall be published~~
17 ~~at least 15 days before the hearing in a newspaper of~~
18 ~~general circulation published in the county. Notice of any~~
19 ~~such public hearing shall also be sent by certified mail at~~
20 ~~least 15 days prior to the hearing to the owners of record~~
21 ~~of all residential property that is adjacent to the lot~~
22 ~~upon which the facility is proposed to be sited.~~

23 ~~(9) Any decision regarding a facility by the county~~
24 ~~board or a county agency or official shall be supported by~~
25 ~~written findings of fact. The circuit court shall have~~
26 ~~jurisdiction to review the reasonableness of any adverse~~

1 ~~decision and the plaintiff shall bear the burden of proof,~~
2 ~~but there shall be no presumption of the validity of the~~
3 ~~decision.~~

4 (g) The following provisions shall apply to all facilities
5 established (i) after the effective date of this amendatory Act
6 of 1997 with respect to telecommunications carriers and (ii)
7 after the effective date of this amendatory Act of the 94th
8 General Assembly with respect to AM broadcast stations in the
9 county jurisdiction area of any county with a population of
10 less than 180,000, except that the provisions do not apply to
11 facilities located within a county which adopts or has adopted
12 an ordinance to regulate facilities under Division 5-12 or
13 Division 5-13:

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

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

22 (B) the horizontal separation distance to the
23 nearest principal residential building shall not be
24 less than the height of the supporting structure;
25 except that if the supporting structure exceeds 99 feet
26 in height, the horizontal separation distance to the

1 nearest principal residential building shall be at
2 least 100 feet or 80% of the height of the supporting
3 structure, whichever is greater. Compliance with this
4 paragraph shall only be evaluated as of the time that a
5 building permit application for the facility is
6 submitted. If the supporting structure is not an
7 antenna tower this paragraph is satisfied.

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

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

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

26 (B) whether a substantial adverse effect on public

1 safety will result from some aspect of the facility's
2 design or proposed construction, but only if that
3 aspect of design or construction is modifiable by the
4 applicant;

5 (C) the benefits to be derived by the users of the
6 services to be provided or enhanced by the facility and
7 whether public safety and emergency response
8 capabilities would benefit by the establishment of the
9 facility;

10 (D) the existing uses on adjacent and nearby
11 properties; and

12 (E) the extent to which the design of the proposed
13 facility reflects compliance with subsection (e) of
14 this Section.

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

20 (h) The following provisions shall apply to all facilities
21 established after the effective date of this amendatory Act of
22 1997 in the county jurisdiction area of any county with a
23 population of 180,000 or more, except that the provisions do
24 not apply to facilities located within a county which adopts or
25 has adopted an ordinance to regulate facilities under Division
26 5-12 or Division 5-13. A facility is permitted in any zoning

1 district subject to the following:

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

6 (2) Unless a height variation is granted by the county
7 board, the height of a facility shall not exceed 75 feet if
8 the facility will be located in a residential zoning
9 district or 200 feet if the facility will be located in a
10 non-residential zoning district. However, the height of a
11 facility may exceed the height limit in this paragraph, and
12 no height variation shall be required, if the supporting
13 structure is a qualifying structure.

14 (3) The improvements and equipment of the facility
15 shall be placed to comply with the requirements of this
16 paragraph at the time a building permit application for the
17 facility is submitted. If the supporting structure is an
18 antenna tower other than a qualifying structure then (i) if
19 the facility will be located in a residential zoning
20 district the lot line set back distance to the nearest
21 residentially zoned lot shall be at least 50% of the height
22 of the facility's supporting structure or (ii) if the
23 facility will be located in a non-residential zoning
24 district the horizontal separation distance to the nearest
25 principal residential building shall be at least equal to
26 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 held at a zoning or other appropriate committee
5 meeting with proper notice given as provided in this
6 Section, by a favorable vote of a majority of the members
7 present at a meeting held no later than 75 days after
8 submission of an application by the telecommunications
9 carrier. If the county board fails to act on the
10 application within 75 days after submission, the
11 application shall be deemed to have been approved. In its
12 consideration of an application for variations, the county
13 board, and any other body conducting the public hearing,
14 shall consider the following, and no other matters:

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

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

25 (C) whether a substantial adverse effect on public
26 safety will result from some aspect of the facility's

1 design or proposed construction, but only if that
2 aspect of design or construction is modifiable by the
3 applicant;

4 (D) whether there are benefits to be derived by the
5 users of the services to be provided or enhanced by the
6 facility and whether public safety and emergency
7 response capabilities would benefit by the
8 establishment of the facility; and

9 (E) the extent to which the design of the proposed
10 facility reflects compliance with subsection (e) of
11 this Section.

12 No more than one public hearing shall be required.

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

18 (i) The county board of any county may require a
19 telecommunications carrier to include with a building permit
20 application any of the following: (i) evidence that the
21 proposed facility lot is sufficient to support the proposed
22 facility; (ii) evidence that the proposed facility lot is
23 accessible for inspections and maintenance by the
24 telecommunications carrier; (iii) evidence that the proposed
25 facility's emissions will fall within the guidelines of the
26 Federal Commerce Commission; (iv) a schedule for regular

1 inspection reports by the telecommunications carrier to the
2 county board; (v) a copy of any environmental assessment that
3 the telecommunications carrier is required to provide to the
4 federal government; (vi) evidence that the proposed facility
5 lot is not of historical or architectural significance; and
6 (vii) any other information concerning the telecommunications
7 carrier's efforts to address public health and aesthetic
8 concerns.

9 (Source: P.A. 95-815, eff. 8-13-08; 96-696, eff. 1-1-10.)

10 Section 99. Effective date. This Act takes effect upon
11 becoming law.