



Adopted in House Comm. on Mar 04, 2004

09300HB4238ham001

LRB093 15901 MKM 48171 a

1 AMENDMENT TO HOUSE BILL 4238

2 AMENDMENT NO. _____. Amend House Bill 4238 by replacing
3 everything after the enacting clause with the following:

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.

21 (c) As used in this Section, unless the context otherwise
22 requires:

23 (1) "county jurisdiction area" means those portions of
24 a county that lie outside the corporate limits of cities,

1 villages, and incorporated towns that have municipal
2 zoning ordinances in effect;

3 (2) "county board" means the county board or board of
4 county commissioners of any county;

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

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

11 (5) "residentially zoned lot" means a zoning lot in a
12 residential zoning district;

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

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

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

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

28 (10) "FCC" means the Federal Communications
29 Commission;

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

32 (12) "supporting structure" means a structure, whether
33 an antenna tower or another type of structure, that
34 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

1 ground meets a vertical wall of a principal residential
2 building; and

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

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

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

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

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

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

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

27 (e) In designing a facility, a telecommunications carrier
28 shall consider the following guidelines:

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

33 (2) Lighting should be installed for security and
34 safety purposes only. Except with respect to lighting

1 required by the FCC or FAA, all lighting should be shielded
2 so that no glare extends substantially beyond the
3 boundaries of a facility.

4 (3) No facility should encroach onto an existing septic
5 field.

6 (4) Any facility located in a special flood hazard area
7 or wetland should meet the legal requirements for those
8 lands.

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

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

26 (7) Fencing should be installed around a facility. The
27 height and materials of the fencing should be in accordance
28 with any county fence regulations of general
29 applicability.

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

34 (f) The following provisions shall apply to all facilities

1 established in any county jurisdiction area after the effective
2 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

1 partly attached to, enclosed in, or installed in or on a
2 structure or structures.

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

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

15 (g) The following provisions shall apply to all facilities
16 established after the effective date of this amendatory Act of
17 1997 in the county jurisdiction area of any county with a
18 population of less than 180,000:

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

1 paragraph shall only be evaluated as of the time that a
2 building permit application for the facility is
3 submitted. If the supporting structure is not an
4 antenna tower this paragraph is satisfied.

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

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

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

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

33 (D) the existing uses on adjacent and nearby
34 properties; and

1 (E) the extent to which the design of the proposed
2 facility reflects compliance with subsection (e) of
3 this Section.

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

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

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

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

26 (3) The improvements and equipment of the facility
27 shall be placed to comply with the requirements of this
28 paragraph at the time a building permit application for the
29 facility is submitted. If the supporting structure is an
30 antenna tower other than a qualifying structure then (i) if
31 the facility will be located in a residential zoning
32 district the lot line set back distance to the nearest
33 residentially zoned lot shall be at least 50% of the height
34 of the facility's supporting structure or (ii) if the

1 facility will be located in a non-residential zoning
2 district the horizontal separation distance to the nearest
3 principal residential building shall be at least equal to
4 the height of the facility's supporting structure.

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

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

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

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

32 (D) whether there are benefits to be derived by the
33 users of the services to be provided or enhanced by the
34 facility and whether public safety and emergency

1 response capabilities would benefit by the
2 establishment of the facility; and

3 (E) the extent to which the design of the proposed
4 facility reflects compliance with subsection (e) of
5 this Section.

6 No more than one public hearing shall be required.

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

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