



102ND GENERAL ASSEMBLY

State of Illinois

2021 and 2022

HB5037

Introduced 1/27/2022, by Rep. Deanne M. Mazzochi

SYNOPSIS AS INTRODUCED:

65 ILCS 5/Art. 11 Div. 117.2 heading new
65 ILCS 5/11-117.2-1 new
220 ILCS 5/10-205 new

Amends the Illinois Municipal Code and the Public Utilities Act. Provides that when a utility easement is materially changed such that it interferes with the quiet enjoyment of a residential property, the property owner shall have a civil cause of action in the State for an injunction against such modification. Provides that the injunction may not extend beyond the duration of the existing owner's residential use, provided that a successor-in-interest to the owner's entire rights of title and possession shall, within 90 days of acquiring title, notify the utility in writing of a desire to continue the easement on existing terms conditions. Provides conditions where a residential property owner's utility easement is presumptively changed so as to interfere with use. Provides that prior to installation within a residence's easement, notice of the installation shall be provided to the residential owner's address. Provides that the notice shall include certain requirements.

LRB102 25146 AMQ 34408 b

1 AN ACT concerning utilities.

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

4 Section 5. The Illinois Municipal Code is amended by
5 adding Division 117.2 to Article 11 and Section 11-117.2-1 as
6 follows:

7 (65 ILCS 5/Art. 11 Div. 117.2 heading new)

8 DIVISION 117.2.

9 UTILITY EASEMENTS

10 (65 ILCS 5/11-117.2-1 new)

11 Sec. 11-117.2-1. Cause of action for an injunction or
12 modification of a utility easement. When a utility easement
13 is, or is planned to be changed in a manner that materially
14 changes the easement, such that it does or will interfere with
15 the quiet enjoyment of a residential property by the property
16 owner, or lawfully leased residential tenant, the property
17 owner or lawfully leased tenant shall have a civil cause of
18 action in this State for an injunction against such
19 modification of a utility easement. The injunction may not
20 extend beyond the duration of the existing owner's residential
21 use, or tenant's residential use, provided that a
22 successor-in-interest to the owner's entire rights of title

1 and possession shall, within 90 days of acquiring title,
2 notify the utility in writing of a desire to continue the
3 easement on existing terms and conditions, or else such
4 objection shall be waived.

5 For purposes of this cause of action, and notwithstanding
6 any other provision of law, a residential property owner's
7 utility easement is presumptively changed so as to interfere
8 with use if any of the following conditions apply:

9 (1) an existing telephone or electric pole is
10 increased by more than 50% of the existing height; a new
11 telephone or electric pole is added that exceeds the
12 height of the neighboring 10 poles by 20%; the number of
13 telephone or electric poles within the existing easement
14 space associated with the homeowner that contain a small
15 cell wireless installation is increased; or, a box,
16 including, but not limited to, an equipment cabinet,
17 street furniture, ground furniture, or ground fixtures, is
18 installed within 25 feet of an existing driveway,
19 sidewalk, front door, or children's play area;

20 (2) the number of small cell wireless facilities,
21 canisters, or antennas on any existing poles or wire or
22 other apparatus that contacts or enters into a residence
23 on the property exceeds one within the existing easement
24 space associated with the residential property; or

25 (3) a documented environmental condition or
26 deterioration of health condition has arisen in connection

1 with prior installations of comparable devices within
2 easements in connection with the installation of wireless
3 facilities in or near the property or within the
4 community.

5 Interference with the quiet enjoyment of property of a
6 residence independently shall be presumed if wireless
7 facilities or installations are installed in easement
8 locations where no documented gap in coverage exists for the
9 residence or residences in question, or for a location within
10 500 feet of such location. To demonstrate a gap in coverage,
11 the burden shall be on the proposed installer or permit
12 applicant to secure a drive test by an independent radio
13 frequency engineer shall first be prepared. Prior to
14 installation within a residence's easement, notice of the
15 installation shall be provided to the residential address, to
16 be sent by first class mail with the phrase "Legal Notice of
17 Proposed Installation" displayed prominently on the envelope,
18 with either a copy of the report, or a working electronic link
19 to the report to be provided. The report shall include a
20 description of the placement and an explanation why the
21 proposed installation is the least intrusive means for
22 remedying any gap in service, and notify the resident of an
23 individual who has been designated to serve as a contact
24 person to address any complaints, or provide reasonable
25 accommodation, including under the federal Americans with
26 Disability Act. The report shall also be provided to any city,

1 village, or other unit of local government that has permitting
2 authority over the wireless facility installation, as well as
3 the local assessor's office, so that the assessor can
4 ascertain whether the proposed installation will lead to the
5 depreciation of the value of the adjacent real estate in
6 accordance with Article IX, Section 4(c) of the Illinois
7 Constitution.

8 Section 10. The Public Utilities Act is amended by adding
9 Section 10-205 as follows:

10 (220 ILCS 5/10-205 new)

11 Sec. 10-205. Cause of action for an injunction or
12 modification of a utility easement. When a utility easement
13 is, or is planned to be changed in a manner that materially
14 changes the easement, such that it does or will interfere with
15 the quiet enjoyment of a residential property by the property
16 owner, or lawfully leased residential tenant, the property
17 owner or lawfully leased tenant shall have a civil cause of
18 action in this State for an injunction against such
19 modification of a utility easement. The injunction may not
20 extend beyond the duration of the existing owner's residential
21 use, or tenant's residential use, provided that a
22 successor-in-interest to the owner's entire rights of title
23 and possession shall, within 90 days of acquiring title,
24 notify the utility in writing of a desire to continue the

1 easement on existing terms and conditions, or else such
2 objection shall be waived.

3 For purposes of this cause of action, and notwithstanding
4 any other provision of law, a residential property owner's
5 utility easement is presumptively changed so as to interfere
6 with use if any of the following conditions apply:

7 (1) an existing telephone or electric pole is
8 increased by more than 50% of the existing height; a new
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15 street furniture, ground furniture, or ground fixtures, is
16 installed within 25 feet of an existing driveway,
17 sidewalk, front door, or children's play area;

18 (2) the number of small cell wireless facilities,
19 canisters, or antennas on any existing poles or wire or
20 other apparatus that contacts or enters into a residence
21 on the property exceeds one within the existing easement
22 space associated with the residential property; or

23 (3) a documented environmental condition or
24 deterioration of health condition has arisen in connection
25 with prior installations of comparable devices within
26 easements in connection with the installation of wireless

1 facilities in or near the property or within the
2 community.

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5 Constitution.