



Sen. Pamela J. Althoff

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09400HB0655sam001

LRB094 04104 AJ0 45575 a

1 AMENDMENT TO HOUSE BILL 655

2 AMENDMENT NO. _____. Amend House Bill 655 on page 1, line
3 4, by replacing "Section" with "Sections 5-12001.1 and"; and
4 on page 1, between lines 5 and 6, by inserting the following:

5 "(55 ILCS 5/5-12001.1)
6 Sec. 5-12001.1. Authority to regulate certain specified
7 facilities of a telecommunications carrier and to regulate,
8 pursuant to subsections (a) through (g), AM broadcast towers
9 and facilities.

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

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

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

24 (1) "county jurisdiction area" means those portions of

1 a county that lie outside the corporate limits of cities,
2 villages, and incorporated towns that have municipal
3 zoning ordinances in effect;

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

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

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

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

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

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

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

1 an antenna tower or another type of structure, that
2 supports one or more antennas as part of a facility;

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

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

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

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

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

34 (18) "horizontal separation distance" means the

1 distance measured from the center of the base of the
2 facility's supporting structure to the point where the
3 ground meets a vertical wall of a principal residential
4 building; ~~and~~

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

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

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

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

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

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

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

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

34 (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
27 on or near the facility lot to provide at least partial
28 screening of the facility. The quantity and type of that
29 landscaping should be in accordance with any county
30 landscaping regulations of general applicability, except
31 that paragraph (5) of this subsection (e) shall control
32 over any tree-related regulations imposing a greater
33 burden.

34 (7) Fencing should be installed around a facility. The

1 height and materials of the fencing should be in accordance
2 with any county fence regulations of general
3 applicability.

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

8 (f) The following provisions shall apply to all facilities
9 established in any county jurisdiction area (i) after the
10 effective date of the amendatory Act of 1997 with respect to
11 telecommunications carriers and (ii) after the effective date
12 of this amendatory Act of the 94th General Assembly with
13 respect to AM broadcast stations:

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

17 (2) A facility may be located on the same zoning lot as
18 one or more other structures or uses without violating any
19 ordinance or regulation that prohibits or limits multiple
20 structures, buildings, or uses on a zoning lot.

21 (3) No minimum lot area, width, or depth shall be
22 required for a facility, and unless the facility is to be
23 manned on a regular, daily basis, no off-street parking
24 spaces shall be required for a facility. If the facility is
25 to be manned on a regular, daily basis, one off-street
26 parking space shall be provided for each employee regularly
27 at the facility. No loading facilities are required.

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

32 (5) No bulk regulations or lot coverage, building
33 coverage, or floor area ratio limitations shall be applied
34 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.

19 (9) Any decision regarding a facility by the county
20 board or a county agency or official shall be supported by
21 written findings of fact. The circuit court shall have
22 jurisdiction to review the reasonableness of any adverse
23 decision and the plaintiff shall bear the burden of proof,
24 but there shall be no presumption of the validity of the
25 decision.

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

33 (1) A facility is permitted if its supporting structure
34 is a qualifying structure or if both of the following

1 conditions are met:

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

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

19 (2) Unless a facility is permitted under paragraph (1)
20 of this subsection (g), a facility can be established only
21 after the county board gives its approval following
22 consideration of the provisions of paragraph (3) of this
23 subsection (g). The county board may give its approval
24 after one public hearing on the proposal, but only by the
25 favorable vote of a majority of the members present at a
26 meeting held no later than 75 days after submission of a
27 complete application by the telecommunications carrier. If
28 the county board fails to act on the application within 75
29 days after its submission, the application shall be deemed
30 to have been approved. No more than one public hearing
31 shall be required.

32 (3) For purposes of paragraph (2) of this subsection
33 (g), the following siting considerations, but no other
34 matter, shall be considered by the county board or any

1 other body conducting the public hearing:

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

3 (B) whether a substantial adverse effect on public
4 safety will result from some aspect of the facility's
5 design or proposed construction, but only if that
6 aspect of design or construction is modifiable by the
7 applicant;

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

13 (D) the existing uses on adjacent and nearby
14 properties; and

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

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

23 (h) The following provisions shall apply to all facilities
24 established after the effective date of this amendatory Act of
25 1997 in the county jurisdiction area of any county with a
26 population of 180,000 or more. A facility is permitted in any
27 zoning district subject to the following:

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

32 (2) Unless a height variation is granted by the county
33 board, the height of a facility shall not exceed 75 feet if
34 the facility will be located in a residential zoning

1 district or 200 feet if the facility will be located in a
2 non-residential zoning district. However, the height of a
3 facility may exceed the height limit in this paragraph, and
4 no height variation shall be required, if the supporting
5 structure is a qualifying structure.

6 (3) The improvements and equipment of the facility
7 shall be placed to comply with the requirements of this
8 paragraph at the time a building permit application for the
9 facility is submitted. If the supporting structure is an
10 antenna tower other than a qualifying structure then (i) if
11 the facility will be located in a residential zoning
12 district the lot line set back distance to the nearest
13 residentially zoned lot shall be at least 50% of the height
14 of the facility's supporting structure or (ii) if the
15 facility will be located in a non-residential zoning
16 district the horizontal separation distance to the nearest
17 principal residential building shall be at least equal to
18 the height of the facility's supporting structure.

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

31 (A) whether, but for the granting of a variation,
32 the service that the telecommunications carrier seeks
33 to enhance or provide with the proposed facility will
34 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 (Source: P.A. 90-522, eff. 1-1-98.); and

27 on page 4, below line 13, by adding the following:

28 "Section 99. Effective date. This Act takes effect upon
29 becoming law."