

HB4936



95TH GENERAL ASSEMBLY

State of Illinois

2007 and 2008

HB4936

by Rep. Renée Kosel

SYNOPSIS AS INTRODUCED:

55 ILCS 5/5-12001.1

Amends the Counties Code. Provides that, with respect to public hearings concerning telecommunications facilities and AM broadcast towers, notice must be sent by certified mail at least 15 days prior to the hearing to the owners of record of all residential property that is adjacent to the lot upon which the facility is proposed to be sited. Effective immediately.

LRB095 19538 HLH 45859 b

A BILL FOR

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 (g), AM broadcast towers
10 and facilities.

11 (a) Notwithstanding any other Section in this Division, the
12 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 power shall only be exercised to the extent and in
19 the manner set forth in this Section.

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

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

1 requires:

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

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

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

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

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

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

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

21 (8) "facility" means that part of the signal
22 distribution system used or operated by a
23 telecommunications carrier or AM broadcast station under a
24 license from the FCC consisting of a combination of
25 improvements and equipment including (i) one or more
26 antennas, (ii) a supporting structure and the hardware by

1 which antennas are attached; (iii) equipment housing; and
2 (iv) ancillary equipment such as signal transmission
3 cables and miscellaneous hardware;

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

6 (10) "FCC" means the Federal Communications
7 Commission;

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

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

13 (13) "qualifying structure" means a supporting
14 structure that is (i) an existing structure, if the height
15 of the facility, including the structure, is not more than
16 15 feet higher than the structure just before the facility
17 is installed, or (ii) a substantially similar,
18 substantially same-location replacement of an existing
19 structure, if the height of the facility, including the
20 replacement structure, is not more than 15 feet higher than
21 the height of the existing structure just before the
22 facility is installed;

23 (14) "equipment housing" means a combination of one or
24 more equipment buildings or enclosures housing equipment
25 that operates in conjunction with the antennas of a
26 facility, and the equipment itself;

1 (15) "height" of a facility means the total height of
2 the facility's supporting structure and any antennas that
3 will extend above the top of the supporting structure;
4 however, if the supporting structure's foundation extends
5 more than 3 feet above the uppermost ground level along the
6 perimeter of the foundation, then each full foot in excess
7 of 3 feet shall be counted as an additional foot of
8 facility height. The height of a facility's supporting
9 structure is to be measured from the highest point of the
10 supporting structure's foundation;

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

13 (17) "principal residential building" has its common
14 meaning but shall not include any building under the same
15 ownership as the land of the facility lot. "Principal
16 residential building" shall not include any structure that
17 is not designed for human habitation;

18 (18) "horizontal separation distance" means the
19 distance measured from the center of the base of the
20 facility's supporting structure to the point where the
21 ground meets a vertical wall of a principal residential
22 building;

23 (19) "lot line set back distance" means the distance
24 measured from the center of the base of the facility's
25 supporting structure to the nearest point on the common lot
26 line between the facility lot and the nearest residentially

1 zoned lot. If there is no common lot line, the measurement
2 shall be made to the nearest point on the lot line of the
3 nearest residentially zoned lot without deducting the
4 width of any intervening right of way; and

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

9 (d) In choosing a location for a facility, a
10 telecommunications carrier or AM broadcast station shall
11 consider the following:

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

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

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

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

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

26 (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

1 on or near the facility lot to provide at least partial
2 screening of the facility. The quantity and type of that
3 landscaping should be in accordance with any county
4 landscaping regulations of general applicability, except
5 that paragraph (5) of this subsection (e) shall control
6 over any tree-related regulations imposing a greater
7 burden.

8 (7) Fencing should be installed around a facility. The
9 height and materials of the fencing should be in accordance
10 with any county fence regulations of general
11 applicability.

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

16 (f) The following provisions shall apply to all facilities
17 established in any county jurisdiction area (i) after the
18 effective date of the amendatory Act of 1997 with respect to
19 telecommunications carriers and (ii) after the effective date
20 of this amendatory Act of the 94th General Assembly with
21 respect to AM broadcast stations:

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

25 (2) A facility may be located on the same zoning lot as
26 one or more other structures or uses without violating any

1 ordinance or regulation that prohibits or limits multiple
2 structures, buildings, or uses on a zoning lot.

3 (3) No minimum lot area, width, or depth shall be
4 required for a facility, and unless the facility is to be
5 manned on a regular, daily basis, no off-street parking
6 spaces shall be required for a facility. If the facility is
7 to be manned on a regular, daily basis, one off-street
8 parking space shall be provided for each employee regularly
9 at the facility. No loading facilities are required.

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

14 (5) No bulk regulations or lot coverage, building
15 coverage, or floor area ratio limitations shall be applied
16 to a facility or to any existing use or structure
17 coincident with the establishment of a facility. Except as
18 provided in this Section, no height limits or restrictions
19 shall apply to a facility.

20 (6) A county's review of a building permit application
21 for a facility shall be completed within 30 days. If a
22 decision of the county board is required to permit the
23 establishment of a facility, the county's review of the
24 application shall be simultaneous with the process leading
25 to the county board's decision.

26 (7) The improvements and equipment comprising the

1 facility may be wholly or partly freestanding or wholly or
2 partly attached to, enclosed in, or installed in or on a
3 structure or structures.

4 (8) Any public hearing authorized under this Section
5 shall be conducted in a manner determined by the county
6 board. Notice of any such public hearing shall be published
7 at least 15 days before the hearing in a newspaper of
8 general circulation published in the county. Notice of any
9 such public hearing shall also be sent by certified mail at
10 least 15 days prior to the hearing to the owners of record
11 of all residential property that is adjacent to the lot
12 upon which the facility is proposed to be sited.

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

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

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

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

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

21 (2) Unless a facility is permitted under paragraph (1)
22 of this subsection (g), a facility can be established only
23 after the county board gives its approval following
24 consideration of the provisions of paragraph (3) of this
25 subsection (g). The county board may give its approval
26 after one public hearing on the proposal, but only by the

1 favorable vote of a majority of the members present at a
2 meeting held no later than 75 days after submission of a
3 complete application by the telecommunications carrier. If
4 the county board fails to act on the application within 75
5 days after its submission, the application shall be deemed
6 to have been approved. No more than one public hearing
7 shall be required.

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

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

13 (B) whether a substantial adverse effect on public
14 safety will result from some aspect of the facility's
15 design or proposed construction, but only if that
16 aspect of design or construction is modifiable by the
17 applicant;

18 (C) the benefits to be derived by the users of the
19 services to be provided or enhanced by the facility and
20 whether public safety and emergency response
21 capabilities would benefit by the establishment of the
22 facility;

23 (D) the existing uses on adjacent and nearby
24 properties; and

25 (E) the extent to which the design of the proposed
26 facility reflects compliance with subsection (e) of

1 this Section.

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

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

1 facility is submitted. If the supporting structure is an
2 antenna tower other than a qualifying structure then (i) if
3 the facility will be located in a residential zoning
4 district the lot line set back distance to the nearest
5 residentially zoned lot shall be at least 50% of the height
6 of the facility's supporting structure or (ii) if the
7 facility will be located in a non-residential zoning
8 district the horizontal separation distance to the nearest
9 principal residential building shall be at least equal to
10 the height of the facility's supporting structure.

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

23 (A) whether, but for the granting of a variation,
24 the service that the telecommunications carrier seeks
25 to enhance or provide with the proposed facility will
26 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. 94-728, eff. 4-6-06.)

1 Section 99. Effective date. This Act takes effect upon
2 becoming law.