



Rep. JoAnn D. Osmond

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09600HB4877ham002

LRB096 16304 RLJ 39203 a

1 AMENDMENT TO HOUSE BILL 4877

2 AMENDMENT NO. _____. Amend House Bill 4877, AS AMENDED, by
3 replacing everything after the enacting clause with the
4 following:

5 "Section 5. The Counties Code is amended by changing
6 Section 5-12001.1 as follows:

7 (55 ILCS 5/5-12001.1)

8 Sec. 5-12001.1. Authority to regulate certain specified
9 facilities of a telecommunications carrier and to regulate,
10 pursuant to subsections (a) through (g), AM broadcast towers
11 and facilities.

12 (a) Notwithstanding any other Section in this Division, the
13 county board or board of county commissioners of any county
14 shall have the power to regulate the location of the
15 facilities, as defined in subsection (c), of a
16 telecommunications carrier or AM broadcast station established

1 outside the corporate limits of cities, villages, and
2 incorporated towns that have municipal zoning ordinances in
3 effect. The power shall only be exercised to the extent and in
4 the manner set forth in this Section.

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

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

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

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

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

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

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

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

26 (7) "telecommunications carrier" means a

1 telecommunications carrier as defined in the Public
2 Utilities Act as of January 1, 1997;

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

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

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

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

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

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

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

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

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

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

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

26 (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;

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

1 most desirable location.

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

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

8 (e) In designing a facility, a telecommunications carrier
9 or AM broadcast station shall consider the following
10 guidelines:

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

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

20 (3) No facility should encroach onto an existing septic
21 field.

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

25 (5) Existing trees more than 3 inches in diameter
26 should be preserved if reasonably feasible during

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

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

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

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

24 (f) The following provisions shall apply to all facilities
25 established in any county jurisdiction area (i) after the
26 effective date of the amendatory Act of 1997 with respect to

1 telecommunications carriers and (ii) after the effective date
2 of this amendatory Act of the 94th General Assembly with
3 respect to AM broadcast stations:

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

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

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

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

22 (5) No bulk regulations or lot coverage, building
23 coverage, or floor area ratio limitations shall be applied
24 to a facility or to any existing use or structure
25 coincident with the establishment of a facility. Except as
26 provided in this Section, no height limits or restrictions

1 shall apply to a facility.

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

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

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

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

1 decision.

2 (10) Thirty days prior to the issuance of a building
3 permit for a facility necessitating the erection of a new
4 tower, the permit applicant shall provide written notice of
5 its intent to construct the facility to the State
6 Representative and the State Senator of the district in
7 which the subject facility is to be constructed and a
8 member of the county board of the county in which the
9 subject facility is to be constructed. This notice shall
10 include, but not be limited to, the following information:
11 (i) the name, address, and telephone number of the company
12 responsible for the construction of the facility; (ii) the
13 name, address, and telephone number of the governmental
14 entity authorized to issue the building permit; and (iii)
15 the location of the proposed facility. The applicant shall
16 demonstrate compliance with the notice requirements set
17 forth in this item (10) by submitting certified mail
18 receipts or equivalent mail service receipts at the same
19 time that the applicant submits the permit application.

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 held at a zoning or other appropriate committee
15 meeting with proper notice given as provided in this
16 Section, by a favorable vote of a majority of the members
17 present at a meeting held no later than 75 days after
18 submission of an application by the telecommunications
19 carrier. If the county board fails to act on the
20 application within 75 days after submission, the
21 application shall be deemed to have been approved. In its
22 consideration of an application for variations, the county
23 board, and any other body conducting the public hearing,
24 shall consider the following, and no other matters:

25 (A) whether, but for the granting of a variation,
26 the service that the telecommunications carrier seeks

1 to enhance or provide with the proposed facility will
2 be less available, impaired, or diminished in quality,
3 quantity, or scope of coverage;

4 (B) whether the conditions upon which the
5 application for variations is based are unique in some
6 respect or, if not, whether the strict application of
7 the regulations would result in a hardship on the
8 telecommunications carrier;

9 (C) whether a substantial adverse effect on public
10 safety will result from some aspect of the facility's
11 design or proposed construction, but only if that
12 aspect of design or construction is modifiable by the
13 applicant;

14 (D) whether there are benefits to be derived by the
15 users of the services to be provided or enhanced by the
16 facility and whether public safety and emergency
17 response capabilities would benefit by the
18 establishment of the facility; and

19 (E) the extent to which the design of the proposed
20 facility reflects compliance with subsection (e) of
21 this Section.

22 No more than one public hearing shall be required.

23 (5) On judicial review of an adverse decision, the
24 issue shall be the reasonableness of the county board's
25 decision in light of the evidence presented and the
26 well-reasoned recommendations of any other body that

1 conducted the public hearing.

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

3 Section 99. Effective date. This Act takes effect upon
4 becoming law.".