



96TH GENERAL ASSEMBLY

State of Illinois

2009 and 2010

HB5919

Introduced 2/10/2010, by Rep. Lisa M. Dugan

SYNOPSIS AS INTRODUCED:

55 ILCS 5/5-12001.1

Amends the Counties Code. In provisions concerning the regulation of telecommunication and AM broadcast facilities by counties, sets forth the requirements for establishing a telecommunication or AM broadcast facility on or after the effective date of the amendatory Act. Provides for at least one public hearing before a facility may be established. Requires that notice of a public hearings be (i) published in a newspaper of general circulation within the county and (ii) mailed by certified mail to specified owners of record. Effective immediately.

LRB096 20255 RLJ 35844 b

FISCAL NOTE ACT
MAY APPLY

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 (i) ~~(g)~~, AM broadcast
10 towers 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 and before the
19 effective date of this amendatory Act of the 96th General
20 Assembly with respect to telecommunications carriers and (ii)
21 after the effective date of this amendatory Act of the 94th
22 General Assembly and before the effective date of this
23 amendatory Act of the 96th General Assembly with respect to AM
24 broadcast stations:

25 (1) Except as provided in this Section, no yard or set
26 back regulations shall apply to or be required for a

1 facility.

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

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

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

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

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

1 application shall be simultaneous with the process leading
2 to the county board's decision.

3 (7) The improvements and equipment comprising the
4 facility may be wholly or partly freestanding or wholly or
5 partly attached to, enclosed in, or installed in or on a
6 structure or structures.

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

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

23 (g) The following provisions shall apply to all facilities
24 established (i) after the effective date of this amendatory Act
25 of 1997 and before the effective date of this amendatory Act of
26 the 96th General Assembly with respect to telecommunications

1 carriers and (ii) after the effective date of this amendatory
2 Act of the 94th General Assembly and before the effective date
3 of this amendatory Act of the 96th General Assembly with
4 respect to AM broadcast stations in the county jurisdiction
5 area of any county with a population of less than 180,000:

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

9 (A) the height of the facility shall not exceed 200
10 feet, except that if a facility is located more than
11 one and one-half miles from the corporate limits of any
12 municipality with a population of 25,000 or more the
13 height of the facility shall not exceed 350 feet; and

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

26 (2) Unless a facility is permitted under paragraph (1)

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

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

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

18 (B) whether a substantial adverse effect on public
19 safety will result from some aspect of the facility's
20 design or proposed construction, but only if that
21 aspect of design or construction is modifiable by the
22 applicant;

23 (C) the benefits to be derived by the users of the
24 services to be provided or enhanced by the facility and
25 whether public safety and emergency response
26 capabilities would benefit by the establishment of the

1 facility;

2 (D) the existing uses on adjacent and nearby
3 properties; and

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

7 (4) 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 on the siting
10 considerations and the well-reasoned recommendations of
11 any other body that conducts the public hearing.

12 (h) The following provisions shall apply to all facilities
13 established after the effective date of this amendatory Act of
14 1997 and before the effective date of this amendatory Act of
15 the 96th General Assembly in the county jurisdiction area of
16 any county with a population of 180,000 or more. A facility is
17 permitted in any zoning district subject to the following:

18 (1) A facility shall not be located on a lot under
19 paragraph (4) of subsection (d) unless a variation is
20 granted by the county board under paragraph (4) of this
21 subsection (h).

22 (2) Unless a height variation is granted by the county
23 board, the height of a facility shall not exceed 75 feet if
24 the facility will be located in a residential zoning
25 district or 200 feet if the facility will be located in a
26 non-residential zoning district. However, the height of a

1 facility may exceed the height limit in this paragraph, and
2 no height variation shall be required, if the supporting
3 structure is a qualifying structure.

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

17 (4) The county board may grant variations for any of
18 the regulations, conditions, and restrictions of this
19 subsection (h), after one public hearing on the proposed
20 variations held at a zoning or other appropriate committee
21 meeting with proper notice given as provided in this
22 Section, by a favorable vote of a majority of the members
23 present at a meeting held no later than 75 days after
24 submission of an application by the telecommunications
25 carrier. If the county board fails to act on the
26 application within 75 days after submission, the

1 application shall be deemed to have been approved. In its
2 consideration of an application for variations, the county
3 board, and any other body conducting the public hearing,
4 shall consider the following, and no other matters:

5 (A) whether, but for the granting of a variation,
6 the service that the telecommunications carrier seeks
7 to enhance or provide with the proposed facility will
8 be less available, impaired, or diminished in quality,
9 quantity, or scope of coverage;

10 (B) whether the conditions upon which the
11 application for variations is based are unique in some
12 respect or, if not, whether the strict application of
13 the regulations would result in a hardship on the
14 telecommunications carrier;

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

20 (D) whether there are benefits to be derived by the
21 users of the services to be provided or enhanced by the
22 facility and whether public safety and emergency
23 response capabilities would benefit by the
24 establishment of the facility; and

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

1 this Section.

2 No more than one public hearing shall be required.

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

8 (i) The following provisions shall apply to all facilities
9 established on or after the effective date of this amendatory
10 Act of the 96th General Assembly in any county. A facility may
11 be established only after the county board of the county gives
12 its approval by a record vote of the majority of the county
13 board members following one or more public hearings on the
14 matter. Notice of any such public hearing shall be published at
15 least 30 days before the hearing in a newspaper of general
16 circulation published within the county. Notice of any such
17 public hearing shall also be sent by certified mail at least 30
18 days prior to the hearing to the owners of record of all
19 residential property located within a horizontal separation
20 distance of less than 1.5 miles from the proposed facility. The
21 county board may give its approval only after its consideration
22 of the following:

23 (1) the height of the facility, which in no event shall
24 exceed 75 feet if the facility is be located within a
25 residential zoning district that is being used for
26 residential purposes, 200 feet if the facility is be

1 located within a residential zoning district that is not
2 being used for residential purposes, or 350 feet if the
3 facility is to be located within a non-residential zoning
4 district;

5 (2) the distance of the facility from any lot line,
6 which in no event, for any portion of the facility, shall
7 be less than 200 feet from any lot line;

8 (3) the horizontal separation distance, which in no
9 event shall be less than 150% of the height of the
10 facility;

11 (4) the extent to which the location and design of the
12 facility comply with subsections (d) and (e) of this
13 Section;

14 (5) the existing uses on adjacent or nearby properties;

15 (6) any proposed uses on adjacent or nearby properties;

16 (7) if any aspect of the facility's design or proposed
17 construction may have an adverse impact on public safety;

18 (8) if the facility will diminish residential property
19 values; and

20 (9) any other consideration that the county board, in
21 its discretion, deems to be necessary, relevant, or
22 appropriate.

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

24 Section 99. Effective date. This Act takes effect upon
25 becoming law.