



97TH GENERAL ASSEMBLY

State of Illinois

2011 and 2012

HB2845

Introduced 2/22/2011, by Rep. Renée Kosel

SYNOPSIS AS INTRODUCED:

55 ILCS 5/5-12001.1

Amends the Counties Code. Provides that when designing a telecommunications or AM broadcast station facility, the zoning restrictions of an adjoining property that is subject to stricter zoning restrictions than the facility lot shall apply. Further provides that if properties adjoining the facility lot are subject to differing zoning restrictions, the zoning restrictions that are most restrictive shall apply. Effective immediately.

LRB097 06711 KMW 46798 b

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 (9) The zoning restrictions of an adjoining property
17 that is subject to stricter zoning restrictions than the
18 facility lot shall apply. If properties adjoining the
19 facility lot are subject to differing zoning restrictions,
20 the zoning restrictions that are most restrictive shall
21 apply.

22 (f) The following provisions shall apply to all facilities
23 established in any county jurisdiction area (i) after the
24 effective date of the amendatory Act of 1997 with respect to
25 telecommunications carriers and (ii) after the effective date
26 of this amendatory Act of the 94th General Assembly with

1 respect to AM broadcast stations:

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

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

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

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

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

26 (6) A county's review of a building permit application

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

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

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

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

1 established (i) after the effective date of this amendatory Act
2 of 1997 with respect to telecommunications carriers and (ii)
3 after the effective date of this amendatory Act of the 94th
4 General Assembly with respect to AM broadcast stations in the
5 county jurisdiction area of any county with a population of
6 less than 180,000:

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

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

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

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

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

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

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

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

1 capabilities would benefit by the establishment of the
2 facility;

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

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

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

13 (h) The following provisions shall apply to all facilities
14 established after the effective date of this amendatory Act of
15 1997 in the county jurisdiction area of any county with a
16 population of 180,000 or more. A facility is permitted in any
17 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 (Source: P.A. 95-815, eff. 8-13-08; 96-696, eff. 1-1-10.)

9 Section 99. Effective date. This Act takes effect upon
10 becoming law.