



98TH GENERAL ASSEMBLY

State of Illinois

2013 and 2014

HB0168

Introduced 1/16/2013, by Rep. Dwight Kay

SYNOPSIS AS INTRODUCED:

55 ILCS 5/5-12001.1

Amends the Counties Code. Provides that a facility proposed to be located within 1,000 feet of a residentially zoned lot shall be subject to certain requirements that are consistent with federal law. Further provides that a facility shall not be approved by the county board or constructed in an unincorporated area within 1,000 feet of a municipal jurisdiction boundary except where the facility has already been authorized by an annexation agreement with such municipality. Effective immediately.

LRB098 04166 OMW 34189 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 (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 (10) Thirty days prior to the issuance of a building
21 permit for a facility necessitating the erection of a new
22 tower, the permit applicant shall provide written notice of
23 its intent to construct the facility to the State
24 Representative and the State Senator of the district in
25 which the subject facility is to be constructed and all
26 county board members for the county board district in the

1 county in which the subject facility is to be constructed.

2 This notice shall include, but not be limited to, the

3 following information: (i) the name, address, and

4 telephone number of the company responsible for the

5 construction of the facility; (ii) the name, address, and

6 telephone number of the governmental entity authorized to

7 issue the building permit; and (iii) the location of the

8 proposed facility. The applicant shall demonstrate

9 compliance with the notice requirements set forth in this

10 item (10) by submitting certified mail receipts or

11 equivalent mail service receipts at the same time that the

12 applicant submits the permit application.

13 (g) The following provisions shall apply to all facilities

14 established (i) after the effective date of this amendatory Act

15 of 1997 with respect to telecommunications carriers and (ii)

16 after the effective date of this amendatory Act of the 94th

17 General Assembly with respect to AM broadcast stations in the

18 county jurisdiction area of any county with a population of

19 less than 180,000:

20 (1) A facility is permitted if its supporting structure

21 is a qualifying structure or if both of the following

22 conditions are met:

23 (A) the height of the facility shall not exceed 200

24 feet, except that if a facility is located more than

25 one and one-half miles from the corporate limits of any

26 municipality with a population of 25,000 or more the

1 height of the facility shall not exceed 350 feet; and
2 (B) the horizontal separation distance to the
3 nearest principal residential building shall not be
4 less than the height of the supporting structure;
5 except that if the supporting structure exceeds 99 feet
6 in height, the horizontal separation distance to the
7 nearest principal residential building shall be at
8 least 100 feet or 80% of the height of the supporting
9 structure, whichever is greater. Compliance with this
10 paragraph shall only be evaluated as of the time that a
11 building permit application for the facility is
12 submitted. If the supporting structure is not an
13 antenna tower this paragraph is satisfied.

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

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

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

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

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

16 (D) the existing uses on adjacent and nearby
17 properties; and

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

21 (4) 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 on the siting
24 considerations and the well-reasoned recommendations of
25 any other body that conducts the public hearing.

26 (h) The following provisions shall apply to all facilities

1 established after the effective date of this amendatory Act of
2 1997 in the county jurisdiction area of any county with a
3 population of 180,000 or more. A facility is permitted in any
4 zoning district subject to the following:

5 (1) A facility shall not be located on a lot under
6 paragraph (4) of subsection (d) unless a variation is
7 granted by the county board under paragraph (4) of this
8 subsection (h).

9 (2) Unless a height variation is granted by the county
10 board, the height of a facility shall not exceed 75 feet if
11 the facility will be located in a residential zoning
12 district or 200 feet if the facility will be located in a
13 non-residential zoning district. However, the height of a
14 facility may exceed the height limit in this paragraph, and
15 no height variation shall be required, if the supporting
16 structure is a qualifying structure.

17 (3) The improvements and equipment of the facility
18 shall be placed to comply with the requirements of this
19 paragraph at the time a building permit application for the
20 facility is submitted. If the supporting structure is an
21 antenna tower other than a qualifying structure then (i) if
22 the facility will be located in a residential zoning
23 district the lot line set back distance to the nearest
24 residentially zoned lot shall be at least 50% of the height
25 of the facility's supporting structure or (ii) if the
26 facility will be located in a non-residential zoning

1 district the horizontal separation distance to the nearest
2 principal residential building shall be at least equal to
3 the height of the facility's supporting structure.

4 (4) The county board may grant variations for any of
5 the regulations, conditions, and restrictions of this
6 subsection (h), after one public hearing on the proposed
7 variations held at a zoning or other appropriate committee
8 meeting with proper notice given as provided in this
9 Section, by a favorable vote of a majority of the members
10 present at a meeting held no later than 75 days after
11 submission of an application by the telecommunications
12 carrier. If the county board fails to act on the
13 application within 75 days after submission, the
14 application shall be deemed to have been approved. In its
15 consideration of an application for variations, the county
16 board, and any other body conducting the public hearing,
17 shall consider the following, and no other matters:

18 (A) whether, but for the granting of a variation,
19 the service that the telecommunications carrier seeks
20 to enhance or provide with the proposed facility will
21 be less available, impaired, or diminished in quality,
22 quantity, or scope of coverage;

23 (B) whether the conditions upon which the
24 application for variations is based are unique in some
25 respect or, if not, whether the strict application of
26 the regulations would result in a hardship on the

1 telecommunications carrier;

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

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

12 (E) the extent to which the design of the proposed
13 facility reflects compliance with subsection (e) of
14 this Section.

15 No more than one public hearing shall be required.

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

21 (i) Notwithstanding any other provision of law to the
22 contrary, 30 days prior to the issuance of any permits for a
23 new telecommunications facility within a county, the
24 telecommunications carrier constructing the facility shall
25 provide written notice of its intent to construct the facility.
26 The notice shall include, but not be limited to, the following

1 information: (i) the name, address, and telephone number of the
2 company responsible for the construction of the facility, (ii)
3 the address and telephone number of the governmental entity
4 that is to issue the building permit for the telecommunications
5 facility, (iii) a site plan and site map of sufficient
6 specificity to indicate both the location of the parcel where
7 the telecommunications facility is to be constructed and the
8 location of all the telecommunications facilities within that
9 parcel, and (iv) the property index number and common address
10 of the parcel where the telecommunications facility is to be
11 located. The notice shall not contain any material that appears
12 to be an advertisement for the telecommunications carrier or
13 any services provided by the telecommunications carrier. The
14 notice shall be provided in person, by overnight private
15 courier, or by certified mail to all owners of property within
16 250 feet of the parcel in which the telecommunications carrier
17 has a leasehold or ownership interest. For the purposes of this
18 notice requirement, "owners" means those persons or entities
19 identified from the authentic tax records of the county in
20 which the telecommunications facility is to be located. If,
21 after a bona fide effort by the telecommunications carrier to
22 determine the owner and his or her address, the owner of the
23 property on whom the notice must be served cannot be found at
24 the owner's last known address, or if the mailed notice is
25 returned because the owner cannot be found at the last known
26 address, the notice requirement of this paragraph is deemed

1 satisfied.

2 (j) Notwithstanding any other provision or limitation in
3 this Section to the contrary:

4 (1) a facility proposed to be located within 1,000 feet
5 of any residentially zoned lot shall continue to be subject
6 to the siting requirements established by the county board
7 and not inconsistent with federal law including, but not
8 limited to, notice to the public and property owners,
9 public hearings, and reasonable standards for review,
10 approval, denial, or conditions.

11 (2) a facility shall not be approved by the county
12 board or constructed in an unincorporated area within 1,000
13 feet of any municipal jurisdiction boundary within this
14 State except where such facility has been authorized by an
15 annexation agreement with a municipality or where the
16 municipality waives such a requirement by a vote of its
17 governing body.

18 (Source: P.A. 96-696, eff. 1-1-10; 97-242, eff. 8-4-11; 97-496,
19 eff. 8-22-11; 97-813, eff. 7-13-12.)

20 Section 99. Effective date. This Act takes effect upon
21 becoming law.