

1 AN ACT to amend the Counties Code by changing Section  
2 5-12001.1.

3 Be it enacted by the People of the State of Illinois,  
4 represented in the General Assembly:

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.

10 ~~(a) Notwithstanding--any-ether-Section-in-this-Division,~~  
11 The county board or board of county commissioners of any  
12 county shall have the power to regulate the location of the  
13 facilities, as defined in subsection (c), of a  
14 telecommunications carrier established outside the corporate  
15 limits of cities, villages, and incorporated towns that have  
16 municipal zoning ordinances in effect. The power shall only  
17 be exercised as to the extent and in the manner set forth in  
18 Divisions 5-12 and 5-13 of Article 5 of this Code ~~this~~  
19 ~~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  
24 otherwise requires:

25 (1) "county jurisdiction area" means those portions  
26 of a county that lie outside the corporate limits of  
27 cities, villages, and incorporated towns that have  
28 municipal zoning ordinances in effect;

29 (2) "county board" means the county board or board  
30 of county commissioners of any county;

31 (3) "residential zoning district" means a zoning

1 district that is designated under a county zoning  
2 ordinance and is zoned predominantly for residential  
3 uses;

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

7 (5) "residentially zoned lot" means a zoning lot in  
8 a residential zoning district;

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

11 (7) "telecommunications carrier" means a  
12 telecommunications carrier as defined in the Public  
13 Utilities Act as of January 1, 1997;

14 (8) "facility" means that part of the signal  
15 distribution system used or operated by a  
16 telecommunications carrier under a license from the FCC  
17 consisting of a combination of improvements and equipment  
18 including (i) one or more antennas, (ii) a supporting  
19 structure and the hardware by which antennas are  
20 attached; (iii) equipment housing; and (iv) ancillary  
21 equipment such as signal transmission cables and  
22 miscellaneous hardware;

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

25 (10) "FCC" means the Federal Communications  
26 Commission;

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

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

32 (13) "qualifying structure" means a supporting  
33 structure that is (i) an existing structure, if the  
34 height of the facility, including the structure, is not

1 more than 15 feet higher than the structure just before  
2 the facility is installed, or (ii) a substantially  
3 similar, substantially same-location replacement of an  
4 existing structure, if the height of the facility,  
5 including the replacement structure, is not more than 15  
6 feet higher than the height of the existing structure  
7 just before the facility is installed;

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

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

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

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

30 (18) "horizontal separation distance" means the  
31 distance measured from the center of the base of the  
32 facility's supporting structure to the point where the  
33 ground meets a vertical wall of a principal residential  
34 building; and

1           (19) "lot line set back distance" means the  
2 distance measured from the center of the base of the  
3 facility's supporting structure to the nearest point on  
4 the common lot line between the facility lot and the  
5 nearest residentially zoned lot. If there is no common  
6 lot line, the measurement shall be made to the nearest  
7 point on the lot line of the nearest residentially zoned  
8 lot without deducting the width of any intervening right  
9 of way.

10          (d) In choosing a location for a facility, a  
11 telecommunications carrier shall consider the following:

12           (1) A non-residentially zoned lot is the most  
13 desirable 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  
18 more in size and is used for residential purposes is the  
19 third most desirable location.

20           (4) A residentially zoned lot that is less than 2  
21 acres in size and is used for residential purposes is the  
22 least 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,  
25 any roadway, or any other easement.

26          (e) In designing a facility, a telecommunications  
27 carrier shall at a minimum abide by ~~consider~~ the following  
28 guidelines:

29           (1) No building or tower that is part of a facility  
30 shall ~~should~~ encroach onto any recorded easement  
31 prohibiting the encroachment unless the grantees of the  
32 easement have given their approval.

33           (2) Lighting shall ~~should~~ be installed for security  
34 and safety purposes only. Except with respect to

1 lighting required by the FCC or FAA, all lighting shall  
2 ~~should~~ be shielded so that no glare extends substantially  
3 beyond the boundaries of a facility.

4 (3) No facility shall ~~should~~ encroach onto an  
5 existing septic field.

6 (4) Any facility located in a special flood hazard  
7 area or wetland shall ~~should~~ meet the legal requirements  
8 for those lands.

9 (5) Existing trees more than 3 inches in diameter  
10 shall ~~should~~ be preserved if reasonably feasible during  
11 construction. If any tree more than 3 inches in diameter  
12 is removed during construction a tree 3 inches or more in  
13 diameter of the same or a similar species shall be  
14 planted as a replacement if reasonably feasible. Tree  
15 diameter shall be measured at a point 3 feet above ground  
16 level.

17 (6) If any elevation of a facility faces an  
18 existing, ~~---~~adjoining residential use or ~~within~~ a  
19 residential zoning district, low maintenance landscaping  
20 shall ~~should~~ be provided on or near the facility lot to  
21 provide at least partial screening of the facility. The  
22 quantity and type of that landscaping shall ~~should~~ be in  
23 accordance with any county landscaping regulations of  
24 general applicability, except that paragraph (5) of this  
25 subsection (e) shall control over any tree-related  
26 regulations imposing a greater burden.

27 (7) Fencing shall ~~should~~ be installed around a  
28 facility. The height and materials of the fencing shall  
29 ~~should~~ be in accordance with any county fence regulations  
30 of general applicability.

31 (8) Any building that is part of a facility located  
32 adjacent to a residentially zoned lot shall ~~should~~ be  
33 designed with exterior materials and colors that are  
34 reasonably compatible with the residential character of

1 the area.

2 (f) The following provisions shall apply to all  
3 facilities established in any county jurisdiction area after  
4 the effective date of the amendatory Act of 1997:

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

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

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

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

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

31 (6) A county's review of a building permit  
32 application for a facility shall be completed within 30  
33 days. If a decision of the county board is required to  
34 permit the establishment of a facility, the county's

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

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

7 (8)--Any--public--hearing--authorized---under---this  
8 Section--shall-be-conducted-in-a-manner-determined-by-the  
9 county-board.---Notice-of-any-such-public-hearing-shall-be  
10 published-at-least--15--days--before--the--hearing--in--a  
11 newspaper-of-general-circulation-published-in-the-county.

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

19 (g)--The--following--provisions--shall---apply---to---all  
20 facilities--established--after--the--effective--date--of--this  
21 amendatory-Act-of-1997-in-the-county-jurisdiction-area-of-any  
22 county-with-a-population-of-less-than-180,000:

23 (1)--A--facility--is--permitted--if--its--supporting  
24 structure-is-a-qualifying-structure-or--if--both--of--the  
25 following-conditions-are-met:

26 (A)--the--height--of--the--facility--shall--not  
27 exceed--200--feet,--except--that--if--a--facility-is  
28 located-more-than-one-and-one-half--miles--from--the  
29 corporate---limits---of---any--municipality--with--a  
30 population-of-25,000--or--more--the--height--of--the  
31 facility-shall-not-exceed-350-feet;-and

32 (B)--the--horizontal-separation-distance-to-the  
33 nearest-principal-residential-building-shall-not--be  
34 less--than--the--height-of-the-supporting-structure;

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

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

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

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

30                  (B) whether a substantial adverse effect on  
 31          public safety will result from some aspect of the  
 32          facility's design or proposed construction, but only  
 33          if that aspect of design or construction is  
 34          modifiable by the applicant;



1           (C) -- the benefits to be derived by the users of  
 2           the services to be provided or enhanced by the  
 3           facility and whether public safety and emergency  
 4           response capabilities would benefit by the  
 5           establishment of the facility;

6           (D) -- the existing uses on adjacent and nearby  
 7           properties; and

8           (E) -- the extent to which the design of the  
 9           proposed facility reflects compliance with  
 10          subsection (e) of this Section.

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

16          (h) -- The following provisions shall apply to all  
 17          facilities established after the effective date of this  
 18          amendatory Act of 1997 in the county jurisdiction area of any  
 19          county with a population of 180,000 or more. A facility is  
 20          permitted in any zoning district subject to the following:

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

25               (2) -- Unless a height variation is granted by the  
 26               county board, the height of a facility shall not exceed  
 27               75 feet if the facility will be located in a residential  
 28               zoning district or 200 feet if the facility will be  
 29               located in a non-residential zoning district. However,  
 30               the height of a facility may exceed the height limit in  
 31               this paragraph, and no height variation shall be  
 32               required, if the supporting structure is a qualifying  
 33               structure.

34          (3) -- The improvements and equipment of the facility

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

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

27 (A) whether, but for the granting of a  
 28 variation, the service that the telecommunications  
 29 carrier seeks to enhance or provide with the  
 30 proposed facility will be less available, impaired,  
 31 or diminished in quality, quantity, or scope of  
 32 coverage;

33 (B) whether the conditions upon which the  
 34 application for variations is based are unique in

1           some---respect---or,---if---not,---whether---the---strict  
 2           application-of-the-regulations---would---result---in---a  
 3           hardship-on-the-telecommunications-carrier;

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

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

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

17          No-more-than-one-public-hearing-shall-be-required.

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

23          (Source: P.A. 90-522, eff. 1-1-98.)

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