



Sen. Linda Holmes

**Filed: 5/17/2011**

09700HB2974sam002

LRB097 10838 KMW 55755 a

1 AMENDMENT TO HOUSE BILL 2974

2 AMENDMENT NO. \_\_\_\_\_. Amend House Bill 2974 on page 1, by  
3 replacing line 4 with the following:

4 "Section 5. The Counties Code is amended by changing  
5 Section 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

1 incorporated towns that have municipal zoning ordinances in  
2 effect. The power shall only be exercised to the extent and in  
3 the manner set forth in this Section.

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

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

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

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

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

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

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

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

25 (7) "telecommunications carrier" means a  
26 telecommunications carrier as defined in the Public

1 Utilities Act as of January 1, 1997;

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

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

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

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

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

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

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

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

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

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

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

25 (18) "horizontal separation distance" means the  
26 distance measured from the center of the base of the

1 facility's supporting structure to the point where the  
2 ground meets a vertical wall of a principal residential  
3 building;

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

12 (20) "AM broadcast station" means a facility and one or  
13 more towers for the purpose of transmitting communication  
14 in the 540 kHz to 1700 kHz band for public reception  
15 authorized by the FCC.

16 (d) In choosing a location for a facility, a  
17 telecommunications carrier or AM broadcast station shall  
18 consider the following:

19 (1) A non-residentially zoned lot is the most desirable  
20 location.

21 (2) A residentially zoned lot that is not used for  
22 residential purposes is the second most desirable  
23 location.

24 (3) A residentially zoned lot that is 2 acres or more  
25 in size and is used for residential purposes is the third  
26 most desirable location.

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

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

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

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

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

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

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

24           (5) Existing trees more than 3 inches in diameter  
25           should be preserved if reasonably feasible during  
26           construction. If any tree more than 3 inches in diameter is

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

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

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

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

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

1 of this amendatory Act of the 94th General Assembly with  
2 respect to AM broadcast stations:

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

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

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

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

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



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

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

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

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

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

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

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

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

1 antenna tower this paragraph is satisfied.

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

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

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

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

25 (C) the benefits to be derived by the users of the  
26 services to be provided or enhanced by the facility and

1           whether public safety and emergency response  
2           capabilities would benefit by the establishment of the  
3           facility;

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

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

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

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

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

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

1 non-residential zoning district. However, the height of a  
2 facility may exceed the height limit in this paragraph, and  
3 no height variation shall be required, if the supporting  
4 structure is a qualifying structure.

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

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

1 application within 75 days after submission, the  
2 application shall be deemed to have been approved. In its  
3 consideration of an application for variations, the county  
4 board, and any other body conducting the public hearing,  
5 shall consider the following, and no other matters:

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

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

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

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

26 (E) the extent to which the design of the proposed

1 facility reflects compliance with subsection (e) of  
2 this Section.

3 No more than one public hearing shall be required.

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

9 (i) Notwithstanding any other provision of law to the  
10 contrary, 30 days prior to the issuance of any permits for a  
11 new telecommunications facility within a county, the  
12 telecommunications carrier constructing the facility shall  
13 provide written notice of its intent to construct the facility.  
14 The notice shall include, but not be limited to, the following  
15 information: (i) the name, address, and telephone number of the  
16 company responsible for the construction of the facility, (ii)  
17 the address and telephone number of the governmental entity  
18 that is to issue the building permit for the telecommunications  
19 facility, (iii) a site plan and site map of sufficient  
20 specificity to indicate both the location of the parcel where  
21 the telecommunications facility is to be constructed and the  
22 location of all the telecommunications facilities within that  
23 parcel, and (iv) the property index number and common address  
24 of the parcel where the telecommunications facility is to be  
25 located. The notice shall not contain any material that appears  
26 to be an advertisement for the telecommunications carrier or

1 any services provided by the telecommunications carrier. The  
2 notice shall be provided in person, by overnight private  
3 courier, or by certified mail to all owners of property within  
4 250 feet of the parcel in which the telecommunications carrier  
5 has a leasehold or ownership interest. For the purposes of this  
6 notice requirement, "owners" means those persons or entities  
7 identified from the authentic tax records of the county in  
8 which the telecommunications facility is to be located. If,  
9 after a bona fide effort by the telecommunications carrier to  
10 determine the owner and his or her address, the owner of the  
11 property on whom the notice must be served cannot be found at  
12 the owner's last known address, or if the mailed notice is  
13 returned because the owner cannot be found at the last known  
14 address, the notice requirement of this paragraph is deemed  
15 satisfied.

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

17 Section 10. The Illinois Municipal Code is amended by".