



Sen. Terry Link

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1 AMENDMENT TO SENATE BILL 2895

2 AMENDMENT NO. _____. Amend Senate Bill 2895 by replacing
3 everything after the enacting clause 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 ~~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 (10) Thirty days prior to the issuance of a building
2 permit for a facility necessitating the erection of a new
3 tower, the permit applicant shall provide written notice of
4 its intent to construct the facility to the State
5 Representative and the State Senator of the district in
6 which the subject facility is to be constructed and all
7 county board members for the county board district in the
8 county in which the subject facility is to be constructed.
9 This notice shall include, but not be limited to, the
10 following information: (i) the name, address, and
11 telephone number of the company responsible for the
12 construction of the facility; (ii) the name, address, and
13 telephone number of the governmental entity authorized to
14 issue the building permit; and (iii) the location of the
15 proposed facility. The applicant shall demonstrate
16 compliance with the notice requirements set forth in this
17 item (10) by submitting certified mail receipts or
18 equivalent mail service receipts at the same time that the
19 applicant submits the permit application.

20 (g) The following provisions shall apply to all facilities
21 established (i) after the effective date of this amendatory Act
22 of 1997 with respect to telecommunications carriers and (ii)
23 after the effective date of this amendatory Act of the 94th
24 General Assembly with respect to AM broadcast stations in the
25 county jurisdiction area of any county with a population of
26 less than 180,000:

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

4 (A) the height of the facility shall not exceed 200
5 feet, except that if a facility is located more than
6 one and one-half miles from the corporate limits of any
7 municipality with a population of 25,000 or more the
8 height of the facility shall not exceed 350 feet; and

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

21 (2) Unless a facility is permitted under paragraph (1)
22 of this subsection (g), a facility can be established only
23 after the county board gives its approval following
24 consideration of the provisions of paragraph (3) of this
25 subsection (g). The county board may give its approval
26 after one public hearing on the proposal, but only by the

1 favorable vote of a majority of the members present at a
2 meeting held no later than 75 days after submission of a
3 complete application by the telecommunications carrier. If
4 the county board fails to act on the application within 75
5 days after its submission, the application shall be deemed
6 to have been approved. No more than one public hearing
7 shall be required.

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

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

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

18 (C) the benefits to be derived by the users of the
19 services to be provided or enhanced by the facility and
20 whether public safety and emergency response
21 capabilities would benefit by the establishment of the
22 facility;

23 (D) the existing uses on adjacent and nearby
24 properties; and

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

1 this Section.

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

7 (h) The following provisions shall apply to all facilities
8 established after the effective date of this amendatory Act of
9 1997 in the county jurisdiction area of any county with a
10 population of 180,000 or more. A facility is permitted in any
11 zoning district subject to the following:

12 (1) A facility shall not be located on a lot under
13 paragraph (4) of subsection (d) unless a variation is
14 granted by the county board under paragraph (4) of this
15 subsection (h).

16 (2) Unless a height variation is granted by the county
17 board, the height of a facility shall not exceed 75 feet if
18 the facility will be located in a residential zoning
19 district or 200 feet if the facility will be located in a
20 non-residential zoning district. However, the height of a
21 facility may exceed the height limit in this paragraph, and
22 no height variation shall be required, if the supporting
23 structure is a qualifying structure.

24 (3) The improvements and equipment of the facility
25 shall be placed to comply with the requirements of this
26 paragraph at the time a building permit application for the

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

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

25 (A) whether, but for the granting of a variation,
26 the service that the telecommunications carrier seeks

1 to enhance or provide with the proposed facility will
2 be less available, impaired, or diminished in quality,
3 quantity, or scope of coverage;

4 (B) whether the conditions upon which the
5 application for variations is based are unique in some
6 respect or, if not, whether the strict application of
7 the regulations would result in a hardship on the
8 telecommunications carrier;

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

14 (D) whether there are benefits to be derived by the
15 users of the services to be provided or enhanced by the
16 facility and whether public safety and emergency
17 response capabilities would benefit by the
18 establishment of the facility; and

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

22 No more than one public hearing shall be required.

23 (5) On judicial review of an adverse decision, the
24 issue shall be the reasonableness of the county board's
25 decision in light of the evidence presented and the
26 well-reasoned recommendations of any other body that

1 conducted the public hearing.

2 (i) Notwithstanding any other provision of law to the
3 contrary, 30 days prior to the issuance of any permits for a
4 new telecommunications facility within a county, the
5 telecommunications carrier constructing the facility shall
6 provide written notice of its intent to construct the facility.
7 The notice shall include, but not be limited to, the following
8 information: (i) the name, address, and telephone number of the
9 company responsible for the construction of the facility, (ii)
10 the address and telephone number of the governmental entity
11 that is to issue the building permit for the telecommunications
12 facility, (iii) a site plan and site map of sufficient
13 specificity to indicate both the location of the parcel where
14 the telecommunications facility is to be constructed and the
15 location of all the telecommunications facilities within that
16 parcel, and (iv) the property index number and common address
17 of the parcel where the telecommunications facility is to be
18 located. The notice shall not contain any material that appears
19 to be an advertisement for the telecommunications carrier or
20 any services provided by the telecommunications carrier. The
21 notice shall be provided in person, by overnight private
22 courier, or by certified mail to all owners of property within
23 250 feet of the parcel in which the telecommunications carrier
24 has a leasehold or ownership interest. For the purposes of this
25 notice requirement, "owners" means those persons or entities
26 identified from the authentic tax records of the county in

1 which the telecommunications facility is to be located. If,
2 after a bona fide effort by the telecommunications carrier to
3 determine the owner and his or her address, the owner of the
4 property on whom the notice must be served cannot be found at
5 the owner's last known address, or if the mailed notice is
6 returned because the owner cannot be found at the last known
7 address, the notice requirement of this paragraph is deemed
8 satisfied.

9 (Source: P.A. 96-696, eff. 1-1-10; 97-242, eff. 8-4-11; 97-496,
10 eff. 8-22-11; revised 9-28-11.)".