

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
24 requires:

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

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

31 (3) "residential zoning district" means a zoning
32 district that is designated under a county zoning ordinance

1 and is zoned predominantly for residential uses;

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

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

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

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

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

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

23 (10) "FCC" means the Federal Communications
24 Commission;

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

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

30 (13) "qualifying structure" means a supporting
31 structure that is (i) an existing structure, if the height
32 of the facility, including the structure, is not more than
33 15 feet higher than the structure just before the facility
34 is installed, or (ii) a substantially similar,
35 substantially same-location replacement of an existing
36 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
27 facility's supporting structure to the point where the
28 ground meets a vertical wall of a principal residential
29 building; ~~and~~

30 (19) "lot line set back distance" means the distance
31 measured from the center of the base of the facility's
32 supporting structure to the nearest point on the common lot
33 line between the facility lot and the nearest residentially
34 zoned lot. If there is no common lot line, the measurement
35 shall be made to the nearest point on the lot line of the
36 nearest residentially zoned lot without deducting the

1 width of any intervening right of way; and ~~or~~

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

6 (d) In choosing a location for a facility, a
7 telecommunications carrier or AM broadcast station shall
8 consider the following:

9 (1) A non-residentially zoned lot is the most desirable
10 location.

11 (2) A residentially zoned lot that is not used for
12 residential purposes is the second most desirable
13 location.

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

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

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

23 (e) In designing a facility, a telecommunications carrier
24 or AM broadcast station shall consider the following
25 guidelines:

26 (1) No building or tower that is part of a facility
27 should encroach onto any recorded easement prohibiting the
28 encroachment unless the grantees of the easement have given
29 their approval.

30 (2) Lighting should be installed for security and
31 safety purposes only. Except with respect to lighting
32 required by the FCC or FAA, all lighting should be shielded
33 so that no glare extends substantially beyond the
34 boundaries of a facility.

35 (3) No facility should encroach onto an existing septic
36 field.

1 (4) Any facility located in a special flood hazard area
2 or wetland should meet the legal requirements for those
3 lands.

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

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

21 (7) Fencing should be installed around a facility. The
22 height and materials of the fencing should be in accordance
23 with any county fence regulations of general
24 applicability.

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

29 (f) The following provisions shall apply to all facilities
30 established in any county jurisdiction area (i) after the
31 effective date of the amendatory Act of 1997 with respect to
32 telecommunications carriers and (ii) after the effective date
33 of this amendatory Act of the 94th General Assembly with
34 respect to AM broadcast stations:

35 (1) Except as provided in this Section, no yard or set
36 back regulations shall apply to or be required for a

1 facility.

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

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

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

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

23 (6) A county's review of a building permit application
24 for a facility shall be completed within 30 days. If a
25 decision of the county board is required to permit the
26 establishment of a facility, the county's review of the
27 application shall be simultaneous with the process leading
28 to the county board's decision.

29 (7) The improvements and equipment comprising the
30 facility may be wholly or partly freestanding or wholly or
31 partly attached to, enclosed in, or installed in or on a
32 structure or structures.

33 (8) Any public hearing authorized under this Section
34 shall be conducted in a manner determined by the county
35 board. Notice of any such public hearing shall be published
36 at least 15 days before the hearing in a newspaper of

1 general circulation published in the county.

2 (9) Any decision regarding a facility by the county
3 board or a county agency or official shall be supported by
4 written findings of fact. The circuit court shall have
5 jurisdiction to review the reasonableness of any adverse
6 decision and the plaintiff shall bear the burden of proof,
7 but there shall be no presumption of the validity of the
8 decision.

9 (g) The following provisions shall apply to all facilities
10 established (i) after the effective date of this amendatory Act
11 of 1997 with respect to telecommunications carriers and (ii)
12 after the effective date of this amendatory Act of the 94th
13 General Assembly with respect to AM broadcast stations in the
14 county jurisdiction area of any county with a population of
15 less than 180,000:

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

19 (A) the height of the facility shall not exceed 200
20 feet, except that if a facility is located more than
21 one and one-half miles from the corporate limits of any
22 municipality with a population of 25,000 or more the
23 height of the facility shall not exceed 350 feet; and

24 (B) the horizontal separation distance to the
25 nearest principal residential building shall not be
26 less than the height of the supporting structure;
27 except that if the supporting structure exceeds 99 feet
28 in height, the horizontal separation distance to the
29 nearest principal residential building shall be at
30 least 100 feet or 80% of the height of the supporting
31 structure, whichever is greater. Compliance with this
32 paragraph shall only be evaluated as of the time that a
33 building permit application for the facility is
34 submitted. If the supporting structure is not an
35 antenna tower this paragraph is satisfied.

36 (2) Unless a facility is permitted under paragraph (1)

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

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

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

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

23 (C) the benefits to be derived by the users of the
24 services to be provided or enhanced by the facility and
25 whether public safety and emergency response
26 capabilities would benefit by the establishment of the
27 facility;

28 (D) the existing uses on adjacent and nearby
29 properties; and

30 (E) the extent to which the design of the proposed
31 facility reflects compliance with subsection (e) of
32 this Section.

33 (4) On judicial review of an adverse decision, the
34 issue shall be the reasonableness of the county board's
35 decision in light of the evidence presented on the siting
36 considerations and the well-reasoned recommendations of

1 any other body that conducts the public hearing.

2 (h) The following provisions shall apply to all facilities
3 established after the effective date of this amendatory Act of
4 1997 in the county jurisdiction area of any county with a
5 population of 180,000 or more. A facility is permitted in any
6 zoning district subject to the following:

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

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

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

32 (4) The county board may grant variations for any of
33 the regulations, conditions, and restrictions of this
34 subsection (h), after one public hearing on the proposed
35 variations, by a favorable vote of a majority of the
36 members present at a meeting held no later than 75 days

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

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

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

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

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

28 (E) the extent to which the design of the proposed
29 facility reflects compliance with subsection (e) of
30 this Section.

31 No more than one public hearing shall be required.

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

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

2 Section 99. Effective date. This Act takes effect upon
3 becoming law.