



## 97TH GENERAL ASSEMBLY

### State of Illinois

2011 and 2012

**HB4114**

by Rep. JoAnn D. Osmond

#### SYNOPSIS AS INTRODUCED:

55 ILCS 5/5-12001.1

Amends the Counties Code. Authorizes the county board or board of county commissioners of any county to regulate the placement, construction, and modification of the facilities of a telecommunications carrier as provided in the federal Telecommunications Act of 1996. In provisions concerning the design of a facility, provides that a telecommunications carrier or AM broadcast station shall abide by (now, consider) the specified guidelines. Removes provisions concerning the placement of a facility, review of permits, improvements and equipment, public hearings, and decisions regarding a facility. Further provides that a permit applicant shall provide performance and restoration assurances for facility removal and site restoration in the event of permanent cessation of use or abandonment. Sets rules concerning the assurances. Makes other changes. Effective immediately.

LRB097 16311 KMW 61465 b

FISCAL NOTE ACT  
MAY APPLY

A BILL FOR

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) ~~The Notwithstanding any other Section in this Division,~~  
12 ~~the~~ 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. The county board  
23 or board of county commissioners of any county is authorized to

1 regulate the placement, construction, and modification of the  
2 facilities of a telecommunications carrier as provided for in  
3 the federal Telecommunications Act of 1996, P.L. 104-104. The  
4 county board or board of county commissioners may not  
5 unreasonably discriminate among providers of functionally  
6 equivalent services and may not prohibit or have the effect of  
7 prohibiting the provision of telecommunications services as  
8 provided for in the federal Telecommunications Act of 1996,  
9 P.L. 104-104.

10 (c) As used in this Section, unless the context otherwise  
11 requires:

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

16 (2) "county board" means the county board or board of  
17 county commissioners of any county;

18 (3) "residential zoning district" means a zoning  
19 district that is designated under a county zoning ordinance  
20 and is zoned predominantly for residential uses;

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

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

26 (6) "non-residentially zoned lot" means a zoning lot in

1 a non-residential zoning district;

2 (7) "telecommunications carrier" means a  
3 telecommunications carrier as defined in the Public  
4 Utilities Act as of January 1, 1997;

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

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

16 (10) "FCC" means the Federal Communications  
17 Commission;

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

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

23 (13) "qualifying structure" means a supporting  
24 structure that is (i) an existing structure, if the height  
25 of the facility, including the structure, is not more than  
26 15 feet higher than the structure just before the facility

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

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

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

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

23 (17) "principal residential building" has its common  
24 meaning but shall not include any building under the same  
25 ownership as the land of the facility lot. "Principal  
26 residential building" shall not include any structure that

1 is not designed for human habitation;

2 (18) "horizontal separation distance" means the  
3 distance measured from the center of the base of the  
4 facility's supporting structure to the point where the  
5 ground meets a vertical wall of a principal residential  
6 building;

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

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

19 (d) In choosing a location for a facility, a  
20 telecommunications carrier or AM broadcast station shall  
21 consider the following:

22 (1) A non-residentially zoned lot is the most desirable  
23 location.

24 (2) A residentially zoned lot that is not used for  
25 residential purposes is the second most desirable  
26 location.

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

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

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

10          (e) In designing a facility, a telecommunications carrier  
11          or AM broadcast station shall at a minimum abide by ~~consider~~  
12          the following guidelines:

13               (1) No building or tower that is part of a facility may  
14               ~~should~~ encroach onto any recorded easement prohibiting the  
15               encroachment unless the grantees of the easement have given  
16               their approval.

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

22               (3) No facility may ~~should~~ encroach onto an existing  
23               septic field.

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

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

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

18           (7) Fencing shall ~~should~~ be installed around a  
19 facility. The height and materials of the fencing shall  
20 ~~should~~ be in accordance with any county fence regulations  
21 of general applicability.

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



1           (9) A facility shall provide additional capacity for at  
2           least 2 additional carriers' antennae, equipment housing,  
3           and ancillary equipment.

4           (f) The following provisions shall apply to all facilities  
5 established in any county jurisdiction area (i) after the  
6 effective date of the amendatory Act of 1997 with respect to  
7 telecommunications carriers and (ii) after the effective date  
8 of this amendatory Act of the 94th General Assembly with  
9 respect to AM broadcast stations:

10           (1) (Blank). ~~Except as provided in this Section, no~~  
11 ~~yard or set back regulations shall apply to or be required~~  
12 ~~for a facility.~~

13           (2) (Blank). ~~A facility may be located on the same~~  
14 ~~zoning lot as one or more other structures or uses without~~  
15 ~~violating any ordinance or regulation that prohibits or~~  
16 ~~limits multiple structures, buildings, or uses on a zoning~~  
17 ~~lot.~~

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

25           (4) (Blank). ~~No portion of a facility's supporting~~  
26 ~~structure or equipment housing shall be less than 15 feet~~

1 ~~from the front lot line of the facility lot or less than 10~~  
2 ~~feet from any other lot line.~~

3 (5) (Blank). ~~No bulk regulations or lot coverage,~~  
4 ~~building coverage, or floor area ratio limitations shall be~~  
5 ~~applied to a facility or to any existing use or structure~~  
6 ~~coincident with the establishment of a facility. Except as~~  
7 ~~provided in this Section, no height limits or restrictions~~  
8 ~~shall apply to a facility.~~

9 (6) (Blank). ~~A county's review of a building permit~~  
10 ~~application for a facility shall be completed within 30~~  
11 ~~days. If a decision of the county board is required to~~  
12 ~~permit the establishment of a facility, the county's review~~  
13 ~~of the application shall be simultaneous with the process~~  
14 ~~leading to the county board's decision.~~

15 (7) (Blank). ~~The improvements and equipment comprising~~  
16 ~~the facility may be wholly or partly freestanding or wholly~~  
17 ~~or partly attached to, enclosed in, or installed in or on a~~  
18 ~~structure or structures.~~

19 (8) (Blank). ~~Any public hearing authorized under this~~  
20 ~~Section shall be conducted in a manner determined by the~~  
21 ~~county board. Notice of any such public hearing shall be~~  
22 ~~published at least 15 days before the hearing in a~~  
23 ~~newspaper of general circulation published in the county.~~  
24 ~~Notice of any such public hearing shall also be sent by~~  
25 ~~certified mail at least 15 days prior to the hearing to the~~  
26 ~~owners of record of all residential property that is~~

1 ~~adjacent to the lot upon which the facility is proposed to~~  
2 ~~be sited.~~

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

10 (10) Thirty days prior to the issuance of a building  
11 permit for a facility necessitating the erection of a new  
12 tower, the permit applicant shall provide written notice of  
13 its intent to construct the facility to the State  
14 Representative and the State Senator of the district in  
15 which the subject facility is to be constructed and all  
16 county board members for the county board district in the  
17 county in which the subject facility is to be constructed.  
18 This notice shall include, but not be limited to, the  
19 following information: (i) the name, address, and  
20 telephone number of the company responsible for the  
21 construction of the facility; (ii) the name, address, and  
22 telephone number of the governmental entity authorized to  
23 issue the building permit; and (iii) the location of the  
24 proposed facility. The applicant shall demonstrate  
25 compliance with the notice requirements set forth in this  
26 item (10) by submitting certified mail receipts or

1 equivalent mail service receipts at the same time that the  
2 applicant submits the permit application.

3 (11) The permit applicant shall provide, concurrent  
4 with the building permit application for a new facility,  
5 performance and restoration assurances for facility  
6 removal and site restoration in the event of the facility's  
7 permanent cessation of use or abandonment. Such  
8 assurances, in the form of a cash bond or irrevocable  
9 letter of credit, shall be sufficient to cover 100% of the  
10 cost of (i) dismantling and removal of the facility as  
11 defined herein in addition to any co-locate equipment,  
12 equipment housing, and other ground-based improvements,  
13 and (ii) corresponding housing site stabilization.

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

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

24 (A) the height of the facility shall not exceed 200  
25 feet, except that if a facility is located more than  
26 one and one-half miles from the corporate limits of any

1 municipality with a population of 25,000 or more the  
2 height of the facility shall not exceed 350 feet; and

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

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

1 shall be required.

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

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

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

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

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

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

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

1           (h) The following provisions shall apply to all facilities  
2 established after the effective date of this amendatory Act of  
3 1997 in the county jurisdiction area of any county with a  
4 population of 180,000 or more that has not adopted an ordinance  
5 to exercise the powers granted in Division 5-12 or Division  
6 5-13. A facility is permitted in any zoning district subject to  
7 the following:

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

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

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

1 residentially zoned lot shall be at least 50% of the height  
2 of the facility's supporting structure or (ii) if the  
3 facility will be located in a non-residential zoning  
4 district the horizontal separation distance to the nearest  
5 principal residential building shall be at least equal to  
6 the height of the facility's supporting structure.

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

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

26 (B) whether the conditions upon which the



1 application for variations is based are unique in some  
2 respect or, if not, whether the strict application of  
3 the regulations would result in a hardship on the  
4 telecommunications carrier;

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

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

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

18 No more than one public hearing shall be required.

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

24 (i) Notwithstanding any other provision of law to the  
25 contrary, 30 days prior to the issuance of any permits for a  
26 new telecommunications facility within a county, the

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

1 the owner's last known address, or if the mailed notice is  
2 returned because the owner cannot be found at the last known  
3 address, the notice requirement of this paragraph is deemed  
4 satisfied.

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

7 Section 99. Effective date. This Act takes effect upon  
8 becoming law.