



**H.B. 167**

124th General Assembly  
(As Introduced)

Rep. Coates

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**BILL SUMMARY**

- Requires any telecommunications facilities for which the Department of Transportation provides a lease, easement, or license to comply with local zoning regulations.

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**CONTENT AND OPERATION**

**Background**

**Local zoning**

Municipal corporations, counties, and townships have at least some authority to regulate telecommunications towers. The municipal authority stems from the Ohio Constitution; statutory provisions grant counties and townships limited authority over these towers.

In township and county zoning law, unlike most public utilities, "telecommunications towers" may be regulated, but only when the tower is proposed to be located in an area zoned for residential use.<sup>1</sup> Any person who

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<sup>1</sup> In this instance, a "telecommunications tower" is a free-standing or attached structure that is to be located in an area zoned for residential use and that is proposed to (a) be owned or principally used by a public utility providing telecommunications services and (b) in the case of a free-standing structure, top at a height that is greater than either the maximum allowable height of residential structures within the area as set forth in the applicable zoning regulations or the maximum allowable height of such free-standing structures as set forth in zoning regulations for those structures in effect before October 31, 1996 or as those regulations have been amended or, in the case of an attached structure, top at a height greater than either the height of the structure to which it is to be attached or the maximum allowable height of attached structures within the area as set forth in zoning regulations in effect before October 31, 1996 or as those regulations have been amended. (Secs. 303.211(B)(1) and 519.211(B)(1).)

plans to construct a telecommunications tower in an area subject to township or county zoning must provide written notice of that intent to the relevant property owners and boards. (Secs. 303.211(B)(3) and 519.211(B)(3).)

Townships regulations apply when a property owner whose land is contiguous to or directly across a street or roadway from the property on which a telecommunications tower is proposed to be constructed notifies the board of township trustees in writing within a specified time that the property owner wants the township zoning law to apply to the location of the tower, or when the board itself makes an objection to the location of the tower. County regulations apply when such a property owner or a board of township trustees notifies the board of county commissioners in writing that the property owner or board of township trustees wants the county zoning law to apply, or when the board of county commissioners makes an objection to the location of the tower. If a notice is received or an objection is made, the township clerk or, if county zoning law applies, the board of county commissioners, must notify within a specified time the person proposing to construct the tower that it is subject to zoning. (Secs. 303.211(B)(3) and (4) and 519.211(B)(3) and (4).)

County and township zoning regulations generally can apply to the location, erection, construction, reconstruction, change, alteration, removal, or enlargement of a telecommunications tower, but not to its maintenance or use or to any change or alteration that would not substantially increase a tower's height.<sup>2</sup> (Secs. 303.211(B)(2) and 519.211(B)(2).)

### **ODOT licenses**

The Ohio Department of Transportation (ODOT) has authority to lease transportation facilities and grant leases, easements, or licenses for lands under its control, including highways and highway right-of-ways. ODOT has specific authority to grant a lease, easement, or license in a transportation facility to telecommunications service providers for the construction, placement, or operation of telecommunications facilities. As part of the lease, easement, or license, the Director of Transportation may require that the telecommunications facility accommodate state communication systems. (Sec. 5501.311(A) and (E).)

At least in one case when ODOT granted a license for a telecommunications tower in a township area zoned for residential use, an appellate court held that the cellular tower's license preempted the authority of the

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<sup>2</sup> *However, if the township clerk or board of county commissioners fails to provide to the person proposing to construct the tower within the required time the notification that the township or county zoning applies, none of the township or county zoning powers apply to the tower. (Sec. 519.211.)*

township to regulate the tower.<sup>3</sup> The court held that the cellular tower license holder was to be treated the same as any other state actor in zoning situations where the proposed use of the state's property was contrary to existing local zoning regulations: the "state immunity doctrine" applied.

That immunity, though, is not absolute; there must be a reasonable attempt to comply with local zoning restrictions. But if efforts to comply with the zoning fail or if compliance would frustrate or hinder the public purposes underlying the state use of property, then state immunity arises even if private interests also are involved.

The court found in *Anderson Township* that the licensed telecommunications tower met the state immunity doctrine for several reasons. First, ODOT's statute (sec. 5501.311(E)) does not require a telecommunications facility to comply with local zoning. Second, that statute specifically declares a licensed telecommunication facility to be serving an essential state function (an element of the state immunity doctrine) by deeming any such facility "to further the essential highway purpose of building and maintaining a safe, efficient, and accessible transportation system."

### **Changes proposed by the bill**

The bill changes the ODOT statute as it applies to telecommunications facilities to undo the effect of the holding in *Anderson Township* that ODOT leases, easements, or licenses may eliminate the need for those facilities to comply with local zoning regulations. The bill changes the ODOT statute to specifically require a telecommunications facility covered by an ODOT lease, easement, or license to comply with any applicable local zoning regulations, including county or township zoning regulations for telecommunications towers. The bill also removes the language that deems those facilities "to further the essential highway purpose of building and maintaining a safe, efficient, and accessible transportation system." (Secs. 303.211(B)(5), 519.211(B)(5), and 5501.311(E)(9) and (G).)

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## **HISTORY**

ACTION	DATE	JOURNAL ENTRY
Introduced	03-21-01	p. 250
H0167-i/ejs		

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<sup>3</sup> GTE Wireless of the Midwest, Inc. v. Anderson Township (1999), 134 Ohio App.3d 352.