



H.B. 408

124th General Assembly
(As Introduced)

Reps. Fessler, Faber, Setzer

BILL SUMMARY

- Authorizes counties and townships to zone telecommunications towers located in areas in which residential use is permitted.

CONTENT AND OPERATION

Background and general summary

The bill extends the authority of a county or township to zone telecommunications towers within an unincorporated area over which it has zoning jurisdiction. A county or township derives its zoning authority from statute. Under statute, county zoning authority is carried out by the board of county commissioners and the county board of zoning appeals, and township authority lies with the board of township trustees and the township board of zoning appeals. The existing county and township zoning statutes are virtually identical, and the bill makes identical changes in both sets of statutes.

Subject to the restrictions specified in existing statutes, counties and townships may zone telecommunications towers that are proposed to be located in any *area zoned for residential use*. The bill adds to that authority county and township authority to zone telecommunications towers in any *area in which residential use is permitted*. Related to this extension of authority is the bill's repeal of a *nonzoning* provision of existing law pertaining to telecommunications towers proposed to be located within 100 feet of a residential dwelling but in an unincorporated area of a county or township *other than* an area zoned for residential use. Following is a more detailed discussion of existing law and the bill.

County and township zoning authority regarding telecommunications towers

Under existing law unchanged by the bill, a board of county commissioners, or board of township trustees, is prohibited from adopting zoning

regulations with respect to a building or structure of a public utility (secs. 303.211(A) and 519.211(A)). However, subject to specified limitations, such a board may regulate the location, erection, construction, reconstruction, change, alteration, removal, or enlargement of a telecommunications tower, but not the maintenance or use of such a tower or any change or alteration that would not substantially increase the tower's height (secs. 303.211(B)(2) and 519.211(B)(2)).¹ The limitations on such zoning authority are that the tower must meet the statutory definition of a "telecommunications tower" *and* the board must have received an objection to the tower's location pursuant to a statutory requirement that a person proposing to construct such a tower provide notice to zoning officials and any property owners adjacent or directly across the road from the proposed location. The bill leaves the above-described zoning authority unchanged except that it broadens the definition of a "telecommunications tower," thereby broadening county and township zoning authority with respect to such a tower.

Under existing law, a "telecommunications tower" potentially subject to county or township zoning is any free-standing structure proposed to top at a height greater than the maximum height of residential structures within the zoned area as set forth in applicable zoning regulations, or the maximum height of such a free-standing structure as set forth in those regulations; *or* any attached structure proposed to top at a height greater than either the height of the building or structure to which it is to be attached, or the maximum height of such an attached structure as set forth in applicable zoning regulations.

In addition, the free-standing or attached structure must be proposed to be:

- (1) Constructed on or after October 31, 1996;
- (2) Owned or principally used by a public utility engaged in the provision of telecommunications services; and
- (3) Located in an *area zoned for residential use*. (Secs. 303.211(B)(1) and 519.211 (B)(1).)

The bill changes this third aspect of the definition of "telecommunications tower," by adding authority for a county or township to regulate a tower located in

¹ *The Ohio Supreme Court has held that wireless telecommunications providers are public utilities for purposes of the zoning exemption of division (A) of section 519.211 of the Revised Code and that the authority of a township to zone telecommunications towers under division (B) of that statute is an exception to that exemption provision. Campanelli v. AT&T Wireless Services, Inc. (1999), 85 Ohio St. 3d 103, at 106; and Symmes Twp. Bd. of Trustees v. Smyth (2000), 87 Ohio St. 3d 549, at 552.*

an *area in which residential use is permitted* (secs. 303.211(B)(1)(c) and 519.211(B)(1)(c)). (See **COMMENT**, below.)

Additionally, in recognition of this extension of zoning authority, the bill repeals a nonzoning provision of existing law, relating to telecommunications towers proposed for an area other than an area zoned for residential use. This nonzoning provision currently requires a person that plans to construct a telecommunications tower within 100 feet of a residential dwelling in such a nonresidential area to provide to the owner of the dwelling and to any nonowner occupant written notice of the intent to construct the tower and a description of the proposed location. This notice, however, does not trigger or otherwise relate to the application of zoning regulations to the tower and, thus, does not directly pertain to the exercise of county or township zoning authority. (Secs. 303.211(F) and 519.211(F).)

COMMENT

The bill's addition of a reference to *an area in which residential use is permitted* is consistent with a holding of the Ohio Supreme Court that the phrase "an area zoned for residential use" in existing section 519.211 of the Revised Code means "an area zoned as a residential district, an area with a residential zoning classification under the township's zoning resolution, or an area zoned primarily for residential use[.]" and with the Court's rejection of an interpretation that the phrase means *an area in which residential use is permitted*. *Symmes Twp. Bd. of Trustees v. Smyth* (2000), 87 Ohio St. 3d 549, at 552 and 558.

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	10-17-01	p. 951

H0408-I.124/jc