



H.B. 435

124th General Assembly
(As Introduced)

Reps. Schuring, Hagan, Cirelli, Reidelbach, Grendell, Patton, Carmichael, Perry, Seaver, Webster, Lendrum, Core, Carano

BILL SUMMARY

- Permits a county or township to prohibit or otherwise regulate the location, erection, construction, reconstruction, change, alteration, removal, or enlargement of certain telecommunications towers, when they are proposed to be located within 1,000 feet of a residence in an area zoned for residential use.
- Requires the Public Utilities Commission to exercise its regulatory authority so as to encourage the reasonable collocation on existing buildings or other structures of any telecommunications tower proposed for an area zoned for residential use.

CONTENT AND OPERATION

Current law

Although currently most public utilities cannot be regulated under the county and township zoning laws, counties and township have some limited authority to regulate telecommunications towers. Telecommunications towers may be regulated only when the tower is proposed to be located in an area zoned for residential use.¹ Any person who plans to construct a telecommunications

¹ *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*

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.² (Secs. 303.211(B)(2) and 519.211(B)(2).)

Changes proposed by the bill

The bill removes the current county and township regulatory procedures for telecommunications towers and instead permits counties and townships to just prohibit or otherwise regulate the location, erection, construction, reconstruction, change, alteration, removal, or enlargement of telecommunications towers within 1,000 feet of a "residential structure" within an area zoned for residential use.³

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)).

² *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.*

³ *A "residential structure" is defined as a building used or intended to be used as a personal residence by the owner, "part-time owner," or lessee of the building, or any*



The bill also changes what towers qualify as telecommunications towers for this regulation. First, the power to so regulate a telecommunications tower does not extend to any attached structure proposed to top at a height not exceeding either the height of the building or other structure to which it is to be attached, or the maximum allowable height of such an attached structure "as set forth in any applicable zoning regulations in effect immediately prior to" the bill's effective date or "as those regulations subsequently are amended."⁴ The purpose of this exemption is stated to be "to encourage reasonable collocation." Second, a telecommunications tower is redefined (a) to require the free-standing or attached structure to be proposed for construction *on or after the bill's effective date* and (b) to eliminate the "topping at a greater height" qualifications of current law for free-standing and attached structures. (Secs. 303.211(B)(1) and (2) and 519.211(B)(1) and (2).)

The bill's new definition of "telecommunications towers" applies also to current law's requirement that persons planning to construct a tower (a) in an area other than one zoned for residential use and (b) within 100 feet of a dwelling (changed to "residential structure" by the bill) provide a written notice of the tower's proposed location to the dwelling's (residential structure's) owner and occupants (secs. 308.211(F) and 519.211(F)).

The bill's provisions providing for the new type of county and township regulation of telecommunications towers, and the bill's new definition of "telecommunications towers," apparently do not affect the *continued* regulation by counties or townships *in accordance with current law* of telecommunications towers constructed prior to the bill's effective date--if those towers were made subject to zoning regulations by notice from a board of county commissioners or a township clerk (Section 3 of the bill).

person authorized by them to use the building as a personal residence. It is not clear who a "part-time owner" is in this definition.

The Ohio Supreme Court in Symmes Bd. Of Twp. Trustees v. Smyth (2000), 87 Ohio St.3d 549, 558 held that the phrase "an area zoned for residential use" 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.

⁴ *The exemption of some telecommunications towers based upon height appears to permit a choice as to whether that height is the maximum height allowable (a) in zoning regulations in effect before the bill goes into effect or (b) in the zoning regulations at any time after that date (in addition to the actual height of the building a tower is attached to). Apparently, a telecommunications tower owner could choose a height from among these choices to fit into the exemption.*



PUCO requirements

The bill requires the Public Utilities Commission to exercise its authority under its general, rate-fixing, and telecommunications powers "so as to encourage the reasonable collocation of telecommunications towers on existing buildings or other structures." Again, the telecommunications towers referred to are towers within areas zoned for residential use. It is not clear what actions the PUCO might take to fulfill this requirement. (Sec. 4905.711.)

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	11-15-01	p. 1086

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