



H.B. 684

126th General Assembly
(As Introduced)

Reps. Fessler, Peterson, Reidelbach, D. Evans, Perry

BILL SUMMARY

- Provides that a board of county commissioners' or board of township trustees' zoning power over the location, erection, construction, reconstruction, change, alteration, removal, or enlargement of a telecommunications tower *automatically extends* to telecommunications towers proposed to be constructed on or after the bill's effective date, *without the need* for the board to give the person proposing to construct a tower notice (1) of objections to the tower's location and (2) of the consequent application of the relevant zoning regulations to the tower.
- Provides that the person who proposes to construct a telecommunications tower on or after the bill's effective date must give to the appropriate county and/or township legislative authorities and specified property owners *by regular mail* a notice of the intent to construct the tower that includes a description of the property on which the tower would be constructed which is sufficient to identify the proposed location.
- Requires that township and county zoning authorities require, when feasible, that a person proposing to construct a telecommunications tower make a reasonable attempt to co-locate on an appropriate existing structure.

CONTENT AND OPERATION

Current law

Overview

Current law generally does not allow township and county zoning authorities to regulate the location, erection, construction, reconstruction, change,

alteration, maintenance, removal, use, or enlargement of any building or structure of any public utility, whether publicly or privately owned, or the use of land by any public utility, for the operation of its business. However, the county and township zoning laws do confer power on those zoning authorities with respect to the location, erection, construction, reconstruction, change, alteration, removal, or enlargement of a *telecommunications tower* in an area zoned for *residential use*, but not with respect to the maintenance or use of such a tower or any change or alteration that would not substantially increase the tower's height.¹ (R.C. 303.211(A) and (B)(1) and (2) and 519.211(A) and (B)(1) and (2).)

Notice requirement

Any person who plans to construct a telecommunications tower in an area that is subject to township or county zoning regulations and is zoned for residential use must provide by certified mail and, in certain instances, regular mail written notice to the appropriate legislative authority or authorities and to each owner of property, as shown on the county auditor's current tax list, whose land is contiguous to or directly across a street or roadway from the property on which the tower is proposed to be constructed, stating information about the proposal as set forth in the applicable statute. (R.C. 303.211(B)(2) and (3) [counties] and R.C. 519.211(B)(2) and (3) [townships]). Upon receiving the notice, a property owner (and in certain cases a board of township trustees) can request by a specified written notice that the township or county legislative authority apply the relevant zoning regulations to the proposed location of the tower, or a member of the applicable legislative authority can object to the proposed location and thus have the regulations apply to the tower.² After the person planning the tower's construction is notified of such a request or objection, the relevant zoning regulations apply to the tower. If no such request or objection is timely made, the regulations do not apply to the tower. (R.C. 303.211(B)(3) and (4) and 519.211(B)(3) and (4).)

Notice of a proposed location within 100 feet of a residential dwelling

Current law also includes another notice requirement that is *unrelated* to county or township zoning regulations. Any person who plans to construct, in any

¹ A *telecommunications provider* is a public utility. See *Campanelli v. AT&T Wireless Servs., Inc.* (1999), 85 *Ohio St.3d* 103, 107. Accordingly, unless the proposed location is in an area zoned for residential use, county and township zoning authorities lack any zoning authority over a proposed telecommunications tower.

² In an area subject to county zoning, the board of township trustees also can request that the board of county commissioners apply the county's zoning regulations to a telecommunications tower.

area of a county or township, a telecommunications tower within 100 feet of a residential dwelling must provide a written notice by certified mail to the owner of the residential dwelling and to the person occupying the residence, if that person is not the owner, stating in clear and concise language the person's intent to construct the tower and a description of the property sufficient to identify the proposed location. (R.C. 303.211(E) [counties] and R.C. 519.211(E) [townships].)

For purposes of these provisions, "telecommunications tower" has the same meaning as under the provisions explained above, except that the proposed location need not be in an unincorporated area of a township that is zoned for residential use, but "may be an area other than an unincorporated area of a township, in an area zoned for residential use" (R.C. 303.211(E)(2)(b) and 519.211(E)(2)(b)).³

Changes made by the bill

Under the bill, the power of a board of county commissioners (as well as a county board of zoning appeals) and the power of a board of township trustees (as well as a township board of zoning appeals), by means of county or township zoning regulations, over the location, erection, construction, reconstruction, change, alteration, removal, or enlargement of a telecommunications tower as discussed under "**Current law**," above, *automatically extends* to telecommunications towers that are proposed to be constructed *on or after the bill's effective date*. This power arises, then, *without the need* (1) for the person who proposes to construct the tower to give the certified mail and, in certain instances, regular mail notice to the appropriate legislative authority or authorities and to the specified property owners as discussed under "**Current law: Notice requirement**," above [but see new requirement discussed in the next paragraph], or (2) for the board of county commissioners or board of township trustees to give that person the notice of objections to the tower's location and of the consequent application of the relevant zoning regulations to the tower as discussed under "**Current law: Notice requirement**," above. The bill continues the law discussed under that portion of the analysis only with respect to telecommunications towers proposed to be constructed *before* the bill's effective date. (R.C. 303.211(B)(2)(a) and (b) and (3) and 519.211(B)(2)(a) and (b) and (3).)

For purposes of the bill's "automatic extension of county or township zoning power" provisions, any person proposing to construct a telecommunications tower on or after the bill's effective date in an area subject to

³ Presumably this means that the proposed location of a telecommunications tower could be in an **incorporated area** of a township and zoned by **municipal** zoning authorities for residential use.

county or township zoning regulations must provide a specified notice by *regular mail* (as contrasted with current law's certified mail and, in certain instances, regular mail notice) to (1) the board of county commissioners and the board of township trustees of the township in which the tower is proposed to be constructed [county zoning] or the board of township trustees of the township in which the tower is proposed to be constructed [township zoning] and (2) each owner of property, as shown on the county auditor's current tax list, whose land is contiguous to or directly across a street or roadway from the property on which the tower is proposed to be constructed. This notice must state the person's intent to construct the tower and include a description of the property on which the tower would be constructed which is sufficient to identify the proposed location (R.C. 303.211(B)(1) and (F) and 519.211(B)(1) and (F)).⁴

Finally, under the bill, whenever it exercises its zoning power with respect to the location, erection, construction, reconstruction, change, alteration, removal, or enlargement of a telecommunications tower, a board of county commissioners (as well as county board of zoning appeals) and a board of township trustees (as well as township board of zoning appeals) must require--when feasible--the person proposing to construct a telecommunications tower to make a reasonable attempt to *co-locate* on an appropriate existing structure (R.C. 303.211(B)(2)(a) and 519.211(B)(2)(a)).

HISTORY

ACTION	DATE
Introduced	11-16-06

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⁴ *The recipients of this notice as well as the contents of this notice bear similarities to current law (see R.C. 303.211(B)(3)(a)(i) and (ii) and (b) and R.C. 519.211(B)(3)(a)(i) and (ii) and (b)).*