

**As Introduced**

**127th General Assembly  
Regular Session  
2007-2008**

**H. B. No. 84**

**Representative Hottinger**

**Cosponsors: Representatives Peterson, McGregor, R., Koziura, Setzer,  
Adams, Collier**

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**A B I L L**

To amend sections 303.211 and 519.211 of the Revised 1  
Code to expand township and county zoning 2  
authority to telecommunications towers located on 3  
land used for agricultural purposes and to modify 4  
notice requirements for a proposed tower. 5

**BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:**

**Section 1.** That sections 303.211 and 519.211 of the Revised 6  
Code be amended to read as follows: 7

**Sec. 303.211.** (A) Except as otherwise provided in division 8  
(B) or (C) of this section, sections 303.01 to 303.25 of the 9  
Revised Code do not confer any power on any board of county 10  
commissioners or board of zoning appeals in respect to the 11  
location, erection, construction, reconstruction, change, 12  
alteration, maintenance, removal, use, or enlargement of any 13  
buildings or structures of any public utility or railroad, whether 14  
publicly or privately owned, or the use of land by any public 15  
utility or railroad for the operation of its business. 16

(B)(1) As used in this division, "telecommunications tower" 17  
means any free-standing structure, or any structure to be attached 18

to a building or other structure, that meets ~~all of~~ the following 19  
criteria: 20

(a) The free-standing or attached structure is proposed to be 21  
constructed on or after October 31, 1996. 22

(b) The free-standing or attached structure is proposed to be 23  
owned or principally used by a public utility engaged in the 24  
provision of telecommunications services. 25

(c) The free-standing or attached structure is proposed to be 26  
located in an unincorporated area of a township, in an area zoned 27  
for residential use or on land used for agricultural purposes. 28

(d)(i) ~~The~~ For a free-standing structure that is proposed to 29  
be located in an area zoned for residential use, the free-standing 30  
structure is proposed to top at a height that is greater than 31  
either the maximum allowable height of residential structures 32  
within the zoned area as set forth in the applicable zoning 33  
regulations, or the maximum allowable height of such a 34  
free-standing structure as set forth in any applicable zoning 35  
regulations in effect immediately prior to October 31, 1996, or as 36  
those regulations subsequently are amended. 37

(ii) ~~The~~ For an attached structure that is proposed to be 38  
located in an area zoned for residential use, the attached 39  
structure is proposed to top at a height that is greater than 40  
either the height of the building or other structure to which it 41  
is to be attached, or the maximum allowable height of such an 42  
attached structure as set forth in any applicable zoning 43  
regulations in effect immediately prior to October 31, 1996, or as 44  
those regulations subsequently are amended. 45

(e) The free-standing or attached structure is proposed to 46  
have attached to it radio frequency transmission or reception 47  
equipment. 48

(2) Sections 303.01 to 303.25 of the Revised Code confer 49

power on a board of county commissioners or board of zoning 50  
appeals with respect to the location, erection, construction, 51  
reconstruction, change, alteration, removal, or enlargement of a 52  
telecommunications tower, but not with respect to the maintenance 53  
or use of such a tower or any change or alteration that would not 54  
substantially increase the tower's height. However, the power so 55  
conferred shall apply to a particular telecommunications tower 56  
only upon the provision of a notice, in accordance with division 57  
(B)(4)(a) of this section, to the person proposing to construct 58  
the tower. 59

(3) Any person who plans to construct a telecommunications 60  
tower in an area subject to county zoning regulations shall 61  
provide both of the following by certified mail: 62

(a) Written notice to the board of township trustees of the 63  
township in which the tower is proposed to be constructed and to 64  
each owner of property, as shown on the county auditor's current 65  
tax list, whose land is ~~contiguous to or directly across a street~~ 66  
~~or roadway from~~ within two thousand feet of the property on which 67  
the tower is proposed to be constructed, stating all of the 68  
following in clear and concise language: 69

(i) The person's intent to construct the tower; 70

(ii) A description of the property sufficient to identify the 71  
proposed location; 72

(iii) That, no later than fifteen days after the date of 73  
mailing of the notice, such board of township trustees or any such 74  
property owner may give written notice to the board of county 75  
commissioners requesting that sections 303.01 to 303.25 of the 76  
Revised Code apply to the proposed location of the tower as 77  
provided under division (B)(4)(a) of this section. 78

If the notice to the board of township trustees or to a 79  
property owner is returned unclaimed or refused, the person shall 80

mail the notice by regular mail. The failure of delivery of the 81  
notice does not invalidate the notice. 82

(b) Written notice to the board of county commissioners of 83  
the information specified in divisions (B)(3)(a)(i) and (ii) of 84  
this section. The notice to the board also shall include 85  
verification that the person has complied with division (B)(3)(a) 86  
of this section. 87

(4)(a) If the board of county commissioners receives notice 88  
from the board of township trustees or a property owner under 89  
division (B)(3)(a)(iii) of this section within the time specified 90  
in that division or if a member of the board of county 91  
commissioners makes an objection to the proposed location of the 92  
telecommunications tower within fifteen days after the date of 93  
mailing of the notice sent under division (B)(3)(b) of this 94  
section, the board of county commissioners shall send the person 95  
proposing to construct the tower written notice that the tower is 96  
subject to the power conferred by and in accordance with division 97  
(B)(2) of this section. The notice shall be sent no later than 98  
five days after the earlier of the date the board first receives 99  
such a notice from the board of township trustees or a property 100  
owner or the date upon which a member of the board of county 101  
commissioners makes an objection. Upon the date of mailing of the 102  
notice to the person, sections 303.01 to 303.25 of the Revised 103  
Code shall apply to the tower. 104

(b) If the board of county commissioners receives no notice 105  
under division (B)(3)(a)(iii) of this section within the time 106  
prescribed by that division or no board member has an objection as 107  
provided under division (B)(4)(a) of this section within the time 108  
prescribed by that division, division (A) of this section shall 109  
apply to the tower without exception. 110

(C) Sections 303.01 to 303.25 of the Revised Code confer 111  
power on a board of county commissioners or board of zoning 112

appeals with respect to the location, erection, construction, 113  
reconstruction, change, alteration, maintenance, removal, use, or 114  
enlargement of any buildings or structures of a public utility 115  
engaged in the business of transporting persons or property, or 116  
both, or providing or furnishing such transportation service, over 117  
any public street, road, or highway in this state, and with 118  
respect to the use of land by any such public utility for the 119  
operation of its business, to the extent that any exercise of such 120  
power is reasonable and not inconsistent with Chapters 4901., 121  
4903., 4905., 4909., 4921., and 4923. of the Revised Code. 122  
However, this division confers no power on a board of county 123  
commissioners or board of zoning appeals with respect to a 124  
building or structure of, or the use of land by, a person engaged 125  
in the transportation of farm supplies to the farm or farm 126  
products from farm to market or to food fabricating plants. 127

(D) Sections 303.01 to 303.25 of the Revised Code confer no 128  
power on any county rural zoning commission, board of county 129  
commissioners, or board of zoning appeals to prohibit the sale or 130  
use of alcoholic beverages in areas where the establishment and 131  
operation of any retail business, hotel, lunchroom, or restaurant 132  
is permitted. 133

(E)(1) Any person who plans to construct a telecommunications 134  
tower within one hundred feet of a residential dwelling shall 135  
provide a written notice to the owner of the residential dwelling 136  
and to the person occupying the residence, if that person is not 137  
the owner of the residence, stating in clear and concise language 138  
the person's intent to construct the tower and a description of 139  
the property sufficient to identify the proposed location. The 140  
notice shall be sent by certified mail. If the notice is returned 141  
unclaimed or refused, the person shall mail the notice by regular 142  
mail. The failure of delivery does not invalidate the notice. 143

(2) As used in division (E) of this section: 144

(a) "Residential dwelling" means 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 person authorized by such a person to use the building as a personal residence.

(b) "Telecommunications tower" has the same meaning as in division (B)(1) of this section, except that the proposed location of the free-standing or attached structure may be an area other than an unincorporated area of a township, in an area zoned for residential use or on land used for agricultural purposes.

**Sec. 519.211.** (A) Except as otherwise provided in division (B) or (C) of this section, sections 519.02 to 519.25 of the Revised Code confer no power on any board of township trustees or board of zoning appeals in respect to the location, erection, construction, reconstruction, change, alteration, maintenance, removal, use, or enlargement of any buildings or structures of any public utility or railroad, whether publicly or privately owned, or the use of land by any public utility or railroad, for the operation of its business.

(B)(1) As used in this division, "telecommunications tower" means any free-standing structure, or any structure to be attached to a building or other structure, that meets ~~all of~~ the following criteria:

(a) The free-standing or attached structure is proposed to be constructed on or after October 31, 1996.

(b) The free-standing or attached structure is proposed to be owned or principally used by a public utility engaged in the provision of telecommunications services.

(c) The free-standing or attached structure is proposed to be located in an unincorporated area of a township, in an area zoned for residential use or on land used for agricultural purposes.

(d)(i) ~~The~~ For a free-standing structure that is proposed to be located in an area zoned for residential use, the free-standing structure is proposed to top at a height that is greater than either the maximum allowable height of residential structures within the zoned area as set forth in the applicable zoning regulations, or the maximum allowable height of such a free-standing structure as set forth in any applicable zoning regulations in effect immediately prior to October 31, 1996, or as those regulations subsequently are amended.

(ii) ~~The~~ For an attached structure that is proposed to be located in an area zoned for residential use, the attached structure is proposed to top at a height that is greater than 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 October 31, 1996, or as those regulations subsequently are amended.

(e) The free-standing or attached structure is proposed to have attached to it radio frequency transmission or reception equipment.

(2) Sections 519.02 to 519.25 of the Revised Code confer power on a board of township trustees or board of zoning appeals with respect to the location, erection, construction, reconstruction, change, alteration, removal, or enlargement of a telecommunications tower, 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. However, the power so conferred shall apply to a particular telecommunications tower only upon the provision of a notice, in accordance with division (B)(4)(a) of this section, to the person proposing to construct the tower.

(3) Any person who plans to construct a telecommunications

tower in an area subject to township zoning regulations shall 207  
provide both of the following by certified mail: 208

(a) Written notice to each owner of property, as shown on the 209  
county auditor's current tax list, whose land is ~~contiguous to or~~ 210  
~~directly across a street or roadway from~~ within two thousand feet 211  
of the property on which the tower is proposed to be constructed, 212  
stating all of the following in clear and concise language: 213

(i) The person's intent to construct the tower; 214

(ii) A description of the property sufficient to identify the 215  
proposed location; 216

(iii) That, no later than fifteen days after the date of 217  
mailing of the notice, any such property owner may give written 218  
notice to the board of township trustees requesting that sections 219  
519.02 to 519.25 of the Revised Code apply to the proposed 220  
location of the tower as provided under division (B)(4)(a) of this 221  
section. 222

If the notice to a property owner is returned unclaimed or 223  
refused, the person shall mail the notice by regular mail. The 224  
failure of delivery of the notice does not invalidate the notice. 225

(b) Written notice to the board of township trustees of the 226  
information specified in divisions (B)(3)(a)(i) and (ii) of this 227  
section. The notice to the board also shall include verification 228  
that the person has complied with division (B)(3)(a) of this 229  
section. 230

(4)(a) If the board of township trustees receives notice from 231  
a property owner under division (B)(3)(a)(iii) of this section 232  
within the time specified in that division or if a board member 233  
makes an objection to the proposed location of the 234  
telecommunications tower within fifteen days after the date of 235  
mailing of the notice sent under division (B)(3)(b) of this 236  
section, the board shall request that the fiscal officer of the 237



township send the person proposing to construct the tower written 238  
notice that the tower is subject to the power conferred by and in 239  
accordance with division (B)(2) of this section. The notice shall 240  
be sent no later than five days after the earlier of the date the 241  
board first receives such a notice from a property owner or the 242  
date upon which a board member makes an objection. Upon the date 243  
of mailing of the notice to the person, sections 519.02 to 519.25 244  
of the Revised Code shall apply to the tower. 245

(b) If the board of township trustees receives no notice 246  
under division (B)(3)(a)(iii) of this section within the time 247  
prescribed by that division or no board member has an objection as 248  
provided under division (B)(4)(a) of this section within the time 249  
prescribed by that division, division (A) of this section shall 250  
apply to the tower without exception. 251

(C) Sections 519.02 to 519.25 of the Revised Code confer 252  
power on a board of township trustees or board of zoning appeals 253  
with respect to the location, erection, construction, 254  
reconstruction, change, alteration, maintenance, removal, use, or 255  
enlargement of any buildings or structures of a public utility 256  
engaged in the business of transporting persons or property, or 257  
both, or providing or furnishing such transportation service, over 258  
any public street, road, or highway in this state, and with 259  
respect to the use of land by any such public utility for the 260  
operation of its business, to the extent that any exercise of such 261  
power is reasonable and not inconsistent with Chapters 4901., 262  
4903., 4905., 4909., 4921., and 4923. of the Revised Code. 263  
However, this division confers no power on a board of township 264  
trustees or board of zoning appeals with respect to a building or 265  
structure of, or the use of land by, a person engaged in the 266  
transportation of farm supplies to the farm or farm products from 267  
farm to market or to food fabricating plants. 268

(D) Sections 519.02 to 519.25 of the Revised Code confer no 269

power on any township zoning commission, board of township trustees, or board of zoning appeals to prohibit the sale or use of alcoholic beverages in areas where the establishment and operation of any retail business, hotel, lunchroom, or restaurant is permitted.

(E)(1) Any person who plans to construct a telecommunications tower within one hundred feet of a residential dwelling shall provide a written notice to the owner of the residential dwelling and to the person occupying the residence, if that person is not the owner of the residence 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. The notice shall be sent by certified mail. If the notice is returned unclaimed or refused, the person shall mail the notice by regular mail. The failure of delivery does not invalidate the notice.

(2) As used in division (E) of this section:

(a) "Residential dwelling" means 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 person authorized by such a person to use the building as a personal residence.

(b) "Telecommunications tower" has the same meaning as in division (B)(1) of this section, except that the proposed location of the free-standing or attached structure may be an area other than an unincorporated area of a township, in an area zoned for residential use or on land used for agricultural purposes.

**Section 2.** That existing sections 303.211 and 519.211 of the Revised Code are hereby repealed.