



Reprinted
February 24, 2017

SENATE BILL No. 213

DIGEST OF SB 213 (Updated February 23, 2017 2:44 pm - DI 101)

Citations Affected: IC 8-1.

Synopsis: Support structures for wireless facilities. Makes the following changes to the statute concerning the local permitting of wireless support structures: (1) Amends the definition of "small cell facility" to: (A) increase the maximum specified antenna volume from three cubic feet to six cubic feet per antenna; (B) eliminate the maximum specified total volume for all antennas; and (C) increase the maximum specified primary equipment enclosure volume from 17 cubic feet to 28 cubic feet. (2) Amends the definition of "utility pole" to: (A) mean a structure that is designed or used for certain specified purposes (versus existing Indiana Code language defining the term to mean a structure that is designed and used for those specified purposes); and (B) include structures designed or used to provide traffic control or signage. (3) Amends the definition of "wireless support structure" to include structures that are capable of supporting (in addition to those designed to support) wireless facilities. (4) Defines a "communications service provider" as a person or an entity that offers communications service to customers in Indiana, without regard to the technology or medium used to provide the service. (5) Defines a "micro wireless facility" as a small cell facility that does not exceed certain
(Continued next page)

Effective: July 1, 2017.

Hershman, Houchin

January 4, 2017, read first time and referred to Committee on Rules and Legislative Procedure.

January 26, 2017, amended; reassigned to Committee on Utilities.

February 20, 2017, amended, reported favorably — Do Pass.

February 23, 2017, read second time, amended, ordered engrossed.

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specified dimensions. (6) Prohibits a permit authority from requiring an application or a permit for, or charging fees for: (A) the routine maintenance of wireless facilities; (B) the replacement of wireless facilities with others that are: (i) substantially similar to; or (ii) the same size or smaller than; those being replaced; or (C) the installation, placement, maintenance, or replacement of micro wireless facilities that are suspended on messenger cables strung between existing utility poles in compliance with applicable codes. (7) Provides that the placement of a small cell facility and an associated supporting structure in the public right-of-way is considered a permitted use and is exempt from local zoning review if the supporting structure does not exceed certain specified height limitations. (8) Provides that for an application for the construction, placement, or use of a small cell facility and the associated supporting structure, a permit authority shall follow the application procedures that apply to collocation permit applications under the statute. (9) Prohibits a permit authority from taking certain specified actions with respect to the construction, placement, or use of small cell facilities and the associated supporting structures. (10) With respect to the construction, placement, or use of small cell facilities on a utility pole owned or controlled by a governmental unit, sets forth certain requirements with which the unit must comply and certain actions that the unit is prohibited from taking, including a prohibition against the unit or a utility owned by the unit imposing a rental or other recurring fee for small cell facilities that are strung or located between utility poles if one or more of the utility poles has an associated attachment for which a rental rate is charged.



Reprinted
February 24, 2017

First Regular Session 120th General Assembly (2017)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2016 Regular Session of the General Assembly.

SENATE BILL No. 213

A BILL FOR AN ACT to amend the Indiana Code concerning utilities.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 8-1-32.3-4.2 IS ADDED TO THE INDIANA
2 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
3 [EFFECTIVE JULY 1, 2017]: **Sec. 4.2. As used in this chapter,**
4 **"communications service provider" has the meaning set forth in**
5 **IC 8-1-2.6-13.**

6 SECTION 2. IC 8-1-32.3-7.5 IS ADDED TO THE INDIANA
7 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
8 [EFFECTIVE JULY 1, 2017]: **Sec. 7.5. As used in this chapter, "**
9 **micro wireless facility" means a small cell facility to which both of**
10 **the following apply:**

- 11 (1) **The small cell facility is not larger in dimension than:**
12 (A) **twenty-four (24) inches in length;**
13 (B) **fifteen (15) inches in width; and**
14 (C) **twelve (12) inches in height.**
15 (2) **If the small cell facility has an exterior antenna, the**
16 **exterior antenna is not longer than eleven (11) inches.**

17 SECTION 3. IC 8-1-32.3-9, AS ADDED BY P.L.145-2015,

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SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2017]: Sec. 9. (a) As used in this chapter, "small cell facility" means:

- (1) a personal wireless service facility (as defined by the Federal Telecommunications Act of 1996 as in effect on July 1, 2015); or
- (2) a wireless ~~service~~ facility that satisfies the following requirements:

- (A) Each antenna, including exposed elements, has a volume of ~~three (3)~~ **six (6)** cubic feet or less.

- ~~(B) All antennas, including exposed elements, have a total volume of six (6) cubic feet or less.~~

- ~~(C)~~ **(B)** The primary equipment enclosure located with the facility has a volume of ~~seventeen (17)~~ **twenty-eight (28)** cubic feet or less.

(b) For purposes of subsection ~~(a)(2)(C)~~, **(a)(2)(B)**, the volume of the primary equipment enclosure does not include the following equipment that is located outside the primary equipment enclosure:

- (1) Electric meters.
- (2) Concealment equipment.
- (3) Telecommunications demarcation boxes.
- (4) Ground based enclosures.
- (5) Back up power systems.
- (6) Grounding equipment.
- (7) Power transfer switches.
- (8) Cut off switches.

SECTION 4. IC 8-1-32.3-12, AS ADDED BY P.L.145-2015, SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2017]: Sec. 12. As used in this chapter, "utility pole" means a structure that is:

- (1) owned or operated by:
 - (A) a public utility;
 - (B) a communications service provider;
 - (C) a municipality;
 - (D) an electric membership corporation; or
 - (E) a rural electric cooperative; and
- (2) designed ~~and~~ **or** used to:
 - (A) carry lines, cables, or wires for telephony, cable television, or electricity; ~~or~~
 - (B) provide lighting;
 - (C) provide traffic control; or**
 - (D) provide signage.**

The term does not include a wireless support structure or an electrical



transmission tower.

SECTION 5. IC 8-1-32.3-12.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2017]: **Sec. 12.5. As used in this chapter, "wireless communications service" means services, whether mobile or at a fixed location, that are provided using wireless facilities through licensed or unlicensed spectrum.**

SECTION 6. IC 8-1-32.3-13, AS ADDED BY P.L.145-2015, SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2017]: Sec. 13. As used in this chapter, "wireless facility" means the set of equipment and network components **that are:**

(1) owned and operated by a communications service provider; and

(2) necessary to provide wireless communications service.

The term does not include a wireless support structure.

SECTION 7. IC 8-1-32.3-14, AS ADDED BY P.L.145-2015, SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2017]: Sec. 14. **(a)** As used in this chapter, "wireless support structure" means a freestanding structure **that is:**

(1) designed to support; or

(2) capable of supporting;

wireless facilities.

(b) The term does not include a utility pole or an electrical transmission tower.

SECTION 8. IC 8-1-32.3-15, AS ADDED BY P.L.145-2015, SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2017]: Sec. 15. **(a)** This chapter applies to permits issued by a permit authority, under local law and consistent with IC 36-7, for the following:

(1) Construction of a new wireless support structure.

(2) Substantial modification of a wireless support structure.

(3) Collocation of wireless facilities on an existing structure.

(4) Construction, placement, and use of small cell facilities.

(b) A permit authority may not require an application or a permit for, or charge fees for, any of the following:

(1) The routine maintenance of wireless facilities.

(2) The replacement of wireless facilities with wireless facilities that are:

(A) substantially similar to; or

(B) the same size or smaller than;

the wireless facilities being replaced.

(3) The installation, placement, maintenance, or replacement



of micro wireless facilities that are suspended on messenger cables strung between existing utility poles in compliance with applicable codes by a communications service provider that is authorized to use the public rights-of-way. For purposes of this subdivision, "applicable codes" means uniform building, fire, electrical, plumbing, or mechanical codes that are:

(A) adopted by a recognized national code organization; and

(B) enacted solely to address imminent threats of destruction of property or injury to persons; including any local amendments to those codes.

SECTION 9. IC 8-1-32.3-26, AS ADDED BY P.L.145-2015, SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2017]: Sec. 26. (a) An application for a permit or approval for the construction, placement, or use of small cell facilities is subject to the following:

(1) The placement of a small cell facility and the associated supporting structure in the public right-of-way is considered a permitted use and is exempt from local zoning review if the total height of the structure supporting the small cell facility does not exceed the greater of:

(A) fifty (50) feet measured from grade; or

(B) the height of any existing utility pole in place within five hundred (500) feet of the proposed small cell facility, plus ten (10) feet.

(2) A permit authority shall allow an applicant to submit a single consolidated application for multiple small cell facilities that are located within the permit authority's jurisdiction and constitute a single small cell network. The permit authority shall issue a single permit for the small cell network rather than multiple permits for each small cell facility.

(3) The total of any application fees allowed under this section may not exceed the lesser of:

(A) the amount charged by the permit authority for an application for a building permit for any similar type of commercial:

(i) construction;

(ii) activity; or

(iii) land use development;

within the jurisdiction of the permit authority; or

(B) an amount equal to:

(i) for the first five (5) small cell facilities included in the



1 application, one hundred dollars (\$100) per small cell
2 facility included in the application; plus

3 (ii) for any additional small cell facility included in the
4 application above the first five (5) referenced in item (i),
5 fifty dollars (\$50) per small cell facility included in the
6 application.

7 (4) With respect to an application for the construction,
8 placement, or use of a small cell facility and the associated
9 supporting structure, a permit authority shall follow the
10 application procedures and time limits for review and
11 approval that apply to collocation permit applications under
12 section 22 of this chapter.

13 (b) With respect to the construction, placement, or use of any
14 small cell facility and the associated supporting structure, a permit
15 authority shall not do any of the following:

16 (1) Limit the placement of the small cell facility by minimum
17 separation distances or maximum height limitations.

18 (2) Impose unreasonable requirements regarding the
19 maintenance or appearance of the small cell facility and
20 associated supporting structure, including requirements
21 concerning the types of materials to be used or the screening
22 or landscaping of the location.

23 (3) Condition the grant of approval on the applicant's
24 agreement to allow other wireless facilities to be placed at,
25 attached to, or located on the associated wireless support
26 structure or utility pole.

27 (4) Limit the duration of any permit that is granted. However,
28 a permit authority may require that, as applicable,
29 construction commence not later than two (2) years after the
30 date the permit is granted.

31 (5) Prohibit an applicant from locating a small cell facility,
32 wireless support structure, or utility pole in a residential area
33 or within a specific distance from a residence or other
34 structure.

35 (6) Impose setback or fall-zone requirements for the
36 associated wireless support structure or utility pole that are
37 different from requirements imposed on other types of
38 structures in the right-of-way.

39 (7) Require the removal of existing wireless support
40 structures, wireless facilities, or utility poles, wherever
41 located, as a condition for approval of the application.
42 However, this subdivision does not prohibit the permit



1 authority from adopting reasonable rules intended to ensure
2 the public health, safety, and welfare with respect to the
3 removal of an abandoned wireless support structure or
4 abandoned wireless facilities.

5 (c) The construction, placement, or use of small cell facilities on
6 a utility pole owned or controlled by a governmental unit is subject
7 to the following:

8 (1) The rate for the construction, placement, or use of small
9 cell facilities on the utility pole owned or controlled by the
10 unit may not exceed the lesser of:

11 (A) the annual recurring rate that would apply under the
12 regulations adopted by the Federal Communications
13 Commission under 47 U.S.C. 224(e) if the rates were
14 regulated by the Federal Communications Commission; or

15 (B) twenty dollars (\$20) per utility pole per year.

16 (2) For a utility pole used to provide communications service
17 or electric service, the parties to the construction, placement,
18 or use shall comply with the process for make ready work
19 under 47 U.S.C. § 224 and any associated implementing
20 regulations. The good faith estimate of the unit owning or
21 controlling the utility pole with respect to any make ready
22 work necessary to enable the utility pole to support the
23 requested placement must include pole replacement if
24 necessary.

25 (3) For a utility pole that does not support aerial facilities
26 used to provide communications service or electric service,
27 the unit shall provide a good faith estimate for any make
28 ready work necessary to enable the utility pole to support the
29 requested construction, placement, or use, including pole
30 replacement if necessary, not later than sixty (60) days after
31 the unit's receipt of a complete application. Make ready work,
32 including any pole replacement, shall be completed not later
33 than sixty (60) days after the applicant's written acceptance
34 of the good faith estimate.

35 (4) The unit shall not require more make ready work than
36 required to meet applicable codes (as defined in section
37 15(b)(3) of this chapter) or industry standards. Fees for make
38 ready work may not include costs related to preexisting or
39 prior damage or to noncompliance. Fees for make ready
40 work, including any utility pole replacement, may not:

41 (A) exceed actual costs or the amount charged to
42 communications service providers for similar work; and



- 1 **(B) include any consultants' fees or expenses.**
2 **(5) The unit shall offer rates, fees, and other terms for the**
3 **construction, placement, or use that comply with this chapter.**
4 **Not later than:**
5 **(A) December 31, 2017; or**
6 **(B) three (3) months after receiving the first request under**
7 **this chapter for the construction, placement, or use of a**
8 **small wireless facility on a utility pole owned or controlled**
9 **by the unit;**
10 **whichever occurs later, the unit shall establish and make**
11 **available, by ordinance or otherwise, the rates, fees, and**
12 **terms that govern the construction, placement, or use of small**
13 **cell facilities on utility poles owned or controlled by the unit**
14 **and that are in compliance with this chapter.**
15 **(6) The unit or a utility owned by the unit shall not impose a**
16 **rental or other recurring fee for small cell facilities that are**
17 **strung or located between utility poles if one (1) or more of**
18 **the utility poles has an associated attachment for which a**
19 **rental rate is charged.**



COMMITTEE REPORT

Madam President: The Senate Committee on Rules and Legislative Procedure, to which was referred Senate Bill No. 213, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Delete everything after the enacting clause and insert the following:

(SEE TEXT OF BILL)

and when so amended that said bill be reassigned to the Senate Committee on Utilities.

(Reference is to SB 213 as introduced.)

LONG, Chairperson

COMMITTEE REPORT

Madam President: The Senate Committee on Utilities, to which was referred Senate Bill No. 213, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 1, delete lines 1 through 12, begin a new paragraph and insert:

"SECTION 1. IC 8-1-32.3-4.2 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2017]: **Sec. 4.2. As used in this chapter, "communications service provider" has the meaning set forth in IC 8-1-2.6-13.**

SECTION 2. IC 8-1-32.3-7.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2017]: **Sec. 7.5. As used in this chapter, "micro wireless facility" means a small cell facility to which both of the following apply:**

- (1) The small cell facility is not larger in dimension than:**
 - (A) twenty-four (24) inches in length;**
 - (B) fifteen (15) inches in width; and**
 - (C) twelve (12) inches in height.**
- (2) If the small cell facility has an exterior antenna, the exterior antenna is not longer than eleven (11) inches."**

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Page 2, line 2, strike "service".

Page 2, line 32, strike "and" and insert "or".

Page 2, between lines 39 and 40, begin a new paragraph and insert:

"SECTION 5. IC 8-1-32.3-12.5 IS ADDED TO THE INDIANA CODE AS A **NEW SECTION TO READ AS FOLLOWS** [EFFECTIVE JULY 1, 2017]: **Sec. 12.5. As used in this chapter, "wireless communications service" means services, whether mobile or at a fixed location, that are provided using wireless facilities through licensed or unlicensed spectrum.**

SECTION 6. IC 8-1-32.3-13, AS ADDED BY P.L.145-2015, SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2017]: **Sec. 13. As used in this chapter, "wireless facility" means the set of equipment and network components that are:**

(1) owned and operated by a communications service provider; and

(2) necessary to provide wireless communications service.

The term does not include a wireless support structure."

Page 3, between lines 14 and 15, begin a new line block indented and insert:

"(4) Construction, placement, and use of small cell facilities."

Page 3, line 16, delete "for:" and insert **"for, or charge fees for, any of the following:**

(1) The routine maintenance of wireless facilities.

(2) The replacement of wireless facilities with wireless facilities that are:

(A) substantially similar to; or

(B) the same size or smaller than;

the wireless facilities being replaced.

(3) The installation, placement, maintenance, or replacement of micro wireless facilities that are suspended on messenger cables strung between existing utility poles in compliance with applicable codes by a communications service provider that is authorized to use the public rights-of-way. For purposes of this subdivision, "applicable codes" means uniform building, fire, electrical, plumbing, or mechanical codes that are:

(A) adopted by a recognized national code organization; and

(B) enacted solely to address imminent threats of destruction of property or injury to persons;

including any local amendments to those codes."

Page 3, delete lines 17 through 42.

Delete page 4.



Page 5, delete line 1.

Page 5, line 4, delete "the collocation of" and insert **"a permit or approval for the construction, placement, or use of"**.

Page 5, between lines 5 and 6, begin a new line block indented and insert:

"(1) The placement of a small cell facility and the associated supporting structure in the public right-of-way is considered a permitted use and is exempt from local zoning review if the total height of the structure supporting the small cell facility does not exceed the greater of:

(A) fifty (50) feet measured from grade; or

(B) the height of any existing utility pole in place within five hundred (500) feet of the proposed small cell facility, plus ten (10) feet."

Page 5, line 6, delete "(1)" and insert "(2)".

Page 5, line 12, delete **"(2) The total of any application fees allowed under section 16"** and insert **"(3) The total of any application fees allowed under this section"**.

Page 5, line 13, delete "of this chapter".

Page 5, delete lines 29 through 36, begin a new line block indented and insert:

"(4) With respect to an application for the construction, placement, or use of a small cell facility and the associated supporting structure, a permit authority shall follow the application procedures and time limits for review and approval that apply to collocation permit applications under section 22 of this chapter.

(b) With respect to the construction, placement, or use of any small cell facility and the associated supporting structure, a permit authority shall not do any of the following:

(1) Limit the placement of the small cell facility by minimum separation distances or maximum height limitations.

(2) Impose unreasonable requirements regarding the maintenance or appearance of the small cell facility and associated supporting structure, including requirements concerning the types of materials to be used or the screening or landscaping of the location.

(3) Condition the grant of approval on the applicant's agreement to allow other wireless facilities to be placed at, attached to, or located on the associated wireless support structure or utility pole.



(4) Limit the duration of any permit that is granted. However, a permit authority may require that, as applicable, construction commence not later than two (2) years after the date the permit is granted.

(5) Prohibit an applicant from locating a small cell facility, wireless support structure, or utility pole in a residential area or within a specific distance from a residence or other structure.

(6) Impose setback or fall-zone requirements for the associated wireless support structure or utility pole that are different from requirements imposed on other types of structures in the right-of-way.

(7) Require the removal of existing wireless support structures, wireless facilities, or utility poles, wherever located, as a condition for approval of the application. However, this subdivision does not prohibit the permit authority from adopting reasonable rules intended to ensure the public health, safety, and welfare with respect to the removal of an abandoned wireless support structure or abandoned wireless facilities.

(c) The construction, placement, or use of small cell facilities on a utility pole owned or controlled by a governmental unit is subject to the following:

(1) The rate for the construction, placement, or use of small cell facilities on the utility pole owned or controlled by the unit may not exceed the lesser of:

(A) the annual recurring rate that would apply under the regulations adopted by the Federal Communications Commission under 47 U.S.C. 224(e) if the rates were regulated by the Federal Communications Commission; or

(B) twenty dollars (\$20) per utility pole per year.

(2) For a utility pole used to provide communications service or electric service, the parties to the construction, placement, or use shall comply with the process for make ready work under 47 U.S.C. § 224 and any associated implementing regulations. The good faith estimate of the unit owning or controlling the utility pole with respect to any make ready work necessary to enable the utility pole to support the requested placement must include pole replacement if necessary.



(3) For a utility pole that does not support aerial facilities used to provide communications service or electric service, the unit shall provide a good faith estimate for any make ready work necessary to enable the utility pole to support the requested construction, placement, or use, including pole replacement if necessary, not later than sixty (60) days after the unit's receipt of a complete application. Make ready work, including any pole replacement, shall be completed not later than sixty (60) days after the applicant's written acceptance of the good faith estimate.

(4) The unit shall not require more make ready work than required to meet applicable codes (as defined in section 15(b)(3) of this chapter) or industry standards. Fees for make ready work may not include costs related to preexisting or prior damage or to noncompliance. Fees for make ready work, including any utility pole replacement, may not:

- (A) exceed actual costs or the amount charged to communications service providers for similar work; and**
- (B) include any consultants' fees or expenses.**

(5) The unit shall offer rates, fees, and other terms for the construction, placement, or use that comply with this chapter. Not later than:

- (A) December 31, 2017; or**
- (B) three (3) months after receiving the first request under this chapter for the construction, placement, or use of a small wireless facility on a utility pole owned or controlled by the unit;**

whichever occurs later, the unit shall establish and make available, by ordinance or otherwise, the rates, fees, and terms that govern the construction, placement, or use of small cell facilities on utility poles owned or controlled by the unit and that are in compliance with this chapter."

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to SB 213 as printed January 27, 2017.)

MERRITT, Chairperson

Committee Vote: Yeas 8, Nays 2.



SENATE MOTION

Madam President: I move that Senate Bill 213 be amended to read as follows:

Page 7, after line 14, begin a new line block indented and insert:

"(6) The unit or a utility owned by the unit shall not impose a rental or other recurring fee for small cell facilities that are strung or located between utility poles if one (1) or more of the utility poles has an associated attachment for which a rental rate is charged."

(Reference is to SB 213 as printed February 21, 2017.)

HERSHMAN

