



Reprinted
April 6, 2017

ENGROSSED SENATE BILL No. 213

DIGEST OF SB 213 (Updated April 5, 2017 5:17 pm - DI 101)

Citations Affected: Noncode.

Synopsis: Study of local permitting for wireless facilities. Urges the legislative council to assign to the interim study committee on energy, utilities, and telecommunications (committee) during the 2017 legislative interim the topic of local permitting for wireless facilities and wireless support structures. Provides that if the topic is assigned to the committee, the committee may: (1) consider specified issues related to the construction, installation, modification, or siting of wireless facilities or wireless support structures; and (2) request information concerning these issues from: (A) communications service providers and customers; (B) local government officials and representatives; and (C) experts, stakeholders, or other interested parties. Provides that if the topic is assigned to the committee, the committee shall issue a final report, including any recommendations for legislation, to the council not later than November 1, 2017.

Effective: July 1, 2017.

Hershman, Merritt, Houchin, Koch

(HOUSE SPONSORS — OBER, LEHMAN, MACER, HATFIELD)

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.

February 24, 2017, engrossed.

February 27, 2017, read third time, passed. Yeas 46, nays 3.

HOUSE ACTION

March 6, 2017, read first time and referred to Committee on Utilities, Energy and Telecommunications.

March 30, 2017, amended, reported — Do Pass.

April 3, 2017, read second time, ordered engrossed. Engrossed.

April 4, 2017, read third time. Returned to second reading.

April 5, 2017, re-read second time, amended, ordered engrossed.

ES 213—LS 6015/DI 13



Reprinted
April 6, 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.

ENGROSSED SENATE BILL No. 213

A BILL FOR AN ACT concerning utilities.

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

- 1 SECTION 1. [EFFECTIVE JULY 1, 2017] (a) As used in this
2 SECTION, "legislative council" refers to the legislative council
3 established by IC 2-5-1.1-1.
4 (b) As used in this SECTION, "committee" refers to the interim
5 study committee on energy, utilities, and telecommunications
6 established by IC 2-5-1.3-4(8).
7 (c) The legislative council is urged to assign to the committee
8 during the 2017 legislative interim the topic of local permitting for
9 the construction, installation, modification, or siting of wireless
10 facilities or wireless support structures.
11 (d) If the topic described in subsection (c) is assigned to the
12 committee, the committee may:
13 (1) consider, as part of its study:
14 (A) the construction, placement, and use of small cell
15 facilities and associated supporting structures, including
16 placements in public rights-of-way;
17 (B) the construction, placement, or use of small cell

ES 213—LS 6015/DI 13



- 1 facilities on utility poles owned or controlled by
2 governmental units;
- 3 (C) the installation, placement, maintenance, or
4 replacement of micro wireless facilities; and
- 5 (D) any other matter concerning permitting for wireless
6 facilities or wireless support structures that the committee
7 considers appropriate; and
- 8 (2) request information from:
- 9 (A) communications service providers and customers;
10 (B) local government officials and representatives; and
11 (C) any experts, stakeholders, or other interested parties;
12 concerning the issues set forth in subdivision (1).
- 13 (e) If the topic described in subsection (c) is assigned to the
14 committee, the committee shall issue a final report to the legislative
15 council containing the committee's findings and recommendations,
16 including any recommended legislation concerning the topic
17 described in subsection (c) or the specific issues described in
18 subsection (d)(1), in an electronic format under IC 5-14-6 not later
19 than November 1, 2017.
- 20 (f) This SECTION expires December 31, 2017.



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."**

ES 213—LS 6015/DI 13



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.

ES 213—LS 6015/DI 13



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

 COMMITTEE REPORT

Mr. Speaker: Your Committee on Utilities, Energy and Telecommunications, to which was referred Senate Bill 213, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 1, line 8, delete """".

Page 1, line 9, delete "micro" and insert ""micro".

Page 1, between lines 16 and 17, begin a new paragraph and insert:

"SECTION 3. IC 8-1-32.3-8, AS ADDED BY P.L.145-2015, SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2017]: Sec. 8. (a) As used in this chapter, "permit authority" means a unit, a board, a commission, or any other governing body that makes legislative or administrative decisions concerning the construction, installation, modification, or siting of wireless facilities or wireless support structures. The term does not include:

- (1) the Indiana department of transportation;
- (2) the Indiana finance authority;
- (3) the state or any of its agencies, departments, boards, commissions, authorities, or instrumentalities;
- (4) the director of the department of natural resources; or
- (5) a court or other judicial body that reviews decisions or rulings made by a permit authority.

(b) With respect to decisions concerning the construction, installation, modification, or siting of wireless facilities or wireless support structures in an area designated as:

ES 213—LS 6015/DI 13



(1) a historic preservation district under IC 36-7-11, "permit authority" means the historic preservation commission that:

(A) is established under IC 36-7-11-4; and

(B) has jurisdiction over the historic preservation district;
or

(2) a historic preservation area under IC 36-7-11.1, "permit authority" means the historic preservation commission that:

(A) is established under IC 36-7-11.1-3; and

(B) has jurisdiction over the historic preservation area."

Page 4, line 14, delete "An application for a permit or approval" and insert **"This section does not apply to an application for a permit or approval for the construction, placement, or use of small cell facilities in or within five hundred (500) feet of the boundaries of an area designated as:**

(1) a historic preservation district under IC 36-7-11; or

(2) a historic preservation area under IC 36-7-11.1.

(b) An application for a permit or approval for the construction, placement, or use of small cell facilities is subject to the following:"

Page 4, delete lines 15 through 16.

Page 4, line 21, delete "the greater of:" and insert **"fifty (50) feet measured from grade."**

Page 4, delete lines 22 through 25.

Page 5, line 1, delete "one hundred dollars (\$100)" and insert **"five hundred dollars (\$500)"**.

Page 5, line 5, delete "fifty dollars (\$50)" and insert **"two hundred fifty dollars (\$250)"**.

Page 5, between lines 6 and 7, 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 may propose, as an alternative location for the proposed small cell facility, that the small cell facility be collocated on an existing utility pole or on an existing wireless support structure if the existing utility pole or the existing wireless support structure is located within fifty (50) feet of the location proposed in the application. The applicant shall use the alternative location proposed by the permit authority if:

(A) the applicant will have the right to use the alternative location on reasonable terms and conditions; and

(B) the alternative location will not result in technical limitations or additional costs, as determined by the



applicant."

Page 5, line 7, delete "(4)" and insert "(5)".

Page 5, line 12, after "chapter." insert "**However, notwithstanding section 22(f) of this chapter, not more than sixty (60) days after making an initial determination of completeness under section 22(d) of this chapter 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 notify the applicant in writing whether the application is approved or denied. However, if the applicant requested additional time as allowed under section 22(e) of this chapter to cure defects in the application, the sixty (60) day period is extended for a corresponding amount of time.**".

Page 5, line 13, delete "(b) With" and insert "**(c) Subject to subsection (d), with**".

Page 5, delete lines 18 through 22.

Page 5, line 23, delete "(3)" and insert "(2)".

Page 5, line 23, delete "applicant's" and insert "**applicant's**".

Page 5, line 27, delete "(4)" and insert "(3)".

Page 5, line 31, delete "(5)" and insert "(4)".

Page 5, line 32, delete "area" and insert "**area**".

Page 5, delete lines 33 through 38.

Page 5, line 39, delete "(7)" and insert "(5)".

Page 6, between lines 4 and 5, begin a new paragraph and insert:

"(d) This chapter does not prohibit a permit authority from applying a reasonable and generally applicable safety regulation under IC 8-1-2-101(b) to the construction, placement, or use of small cell facilities and associated supporting structures in the public right-of-way."

Page 6, line 5, delete "(c)" and insert "(e)".

Page 6, line 10, delete "the lesser of:" and insert "**fifty dollars (\$50) per utility pole per year**".

Page 6, delete lines 11 through 15.

Page 6, line 19, delete "§".

Page 7, line 1, delete "consultants'" and insert "**consultants'**".

Page 7, line 2, delete "The" and insert "**Subject to subdivision (7), the**".

Page 7, after line 19, begin a new line block indented and insert:

"(7) The unit may impose additional general terms and conditions for the construction, placement, or use of small cell facilities on utility poles owned or controlled by the unit if the additional general terms and conditions are reasonable and



consistent with this chapter. Any additional general terms and conditions authorized by this subdivision must be included in the rates, fees, and terms that the unit is required to establish and make available under subdivision (5)."

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to SB 213 as reprinted February 24, 2017.)

OBER

Committee Vote: yeas 11, nays 2.

HOUSE MOTION

Mr. Speaker: I move that Senate Bill 213 be returned to the second reading calendar forthwith for the purpose of amendment.

OBER

HOUSE MOTION

Mr. Speaker: I move that Engrossed Senate Bill 213 be amended to read as follows:

Delete the title and insert the following:

A BILL FOR AN ACT concerning utilities.

Delete everything after the enacting clause and insert the following:

(SEE TEXT OF BILL)

(Reference is to ESB 213 as printed March 31, 2017.)

OBER

