

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 ENROLLED ACT No. 213

AN ACT to amend the Indiana Code concerning utilities.

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

SECTION 1. IC 8-1-32.3-4.2 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE APRIL 30, 2017 (RETROACTIVE)]: **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 APRIL 30, 2017 (RETROACTIVE)]: **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.

SECTION 3. IC 8-1-32.3-9, AS ADDED BY P.L.145-2015, SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE APRIL 30, 2017 (RETROACTIVE)]: **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 APRIL 30, 2017 (RETROACTIVE)]: 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 APRIL 30, 2017 (RETROACTIVE)]: **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 APRIL 30, 2017 (RETROACTIVE)]: 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 APRIL 30, 2017 (RETROACTIVE)]: 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 APRIL 30, 2017 (RETROACTIVE)]: 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 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.

(c) With respect to the construction, placement, or use of a small cell facility and the associated supporting structure, a permit authority may prohibit the placement of a new utility pole or a new wireless support structure in a right-of-way within an area that is designated strictly for underground or buried utilities, if all of the following apply:

(1) The area is designated strictly for underground or buried utilities before May 1, 2017.

(2) The permit authority does all of the following:

(A) Allows the collocation of small cell facilities on existing:

(i) utility poles; and

(ii) wireless support structures;

within the area.

(B) Allows the replacement of existing:

(i) utility poles; and

(ii) wireless support structures;

within the area.

(C) Provides:

(i) a waiver;

(ii) a zoning process; or

(iii) another procedure;

that addresses requests to install new utility poles or new wireless support structures within the area.

(D) Upon receipt of an application for the construction, placement, or use of a small cell facility on one (1) or more new utility poles or one (1) or more new wireless support structures in an area that is designated strictly for underground or buried utilities, posts notice of the application on the permit authority's Internet web site, if the permit authority maintains an Internet web site. The notice of the application required by this clause must include a statement indicating that the application is available to the public upon request.

(3) The prohibition or other restrictions with respect to the



placement of new utility poles or new wireless support structures within the area are applied in a nondiscriminatory manner.

(d) A permit authority shall allow a neighborhood association or a homeowners association to register with the permit authority to receive notice by United States mail of any application filed with the permit authority for the construction, placement, or use of a small cell facility on one (1) or more new utility poles or one (1) or more new wireless support structures in an area within the jurisdiction of the neighborhood association or homeowners association. If the permit authority maintains an Internet web site, the permit authority shall post on the permit authority's Internet web site instructions for how a neighborhood association or homeowners association may register to receive notice under this subsection.

(e) Subject to section 26(b) of this chapter, with respect to the construction, placement, or use of a small cell facility and the associated supporting structure within an area:

- (1) designated as a historic preservation district under IC 36-7-11;
- (2) designated as a historic preservation area under IC 36-7-11.1; or
- (3) that is subject to the jurisdiction of the Meridian Street preservation commission under IC 36-7-11.2;

a permit authority may apply any generally applicable procedures that require applicants to obtain a certificate of appropriateness.

(f) An applicant for the placement of a small cell facility and an associated supporting structure shall comply with applicable:

- (1) Federal Communications Commission requirements; and
- (2) industry standards;

for identifying the owner's name and contact information.

SECTION 9. IC 8-1-32.3-26, AS ADDED BY P.L.145-2015, SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE APRIL 30, 2017 (RETROACTIVE)]: 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 utility pole in place on July 1, 2017, and 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) one hundred dollars (\$100) per small cell facility included in the application.

(4) With respect to an application for the construction, placement, or use of a small cell facility and the associated supporting structure at a location where a supporting structure does not exist, 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's right to use the alternative location is subject to reasonable terms and conditions; and

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

(5) 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 procedures and time limits for review and approval that apply to collocation permit applications under section 22 of this chapter. 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 permit authority may extend the sixty (60) day period for a corresponding amount of time.

(b) Subject to subsection (c), 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.
- (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 regarding the removal of an abandoned wireless support structure or abandoned



wireless facilities.

(c) 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.

(d) 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 fifty dollars (\$50) 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; or

(B) include any consultants' fees or expenses.

(5) Subject to subdivision (7), 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.

(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.

(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:

(A) consistent with this chapter;

(B) reasonable;

(C) nondiscriminatory; and

(D) generally applicable to users of the rights-of-way.

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).

SECTION 10. IC 8-1-32.3-27 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE APRIL 30, 2017 (RETROACTIVE)]: **Sec. 27. (a) This chapter does not authorize the collocation of small cell facilities on any:**

(1) privately owned utility pole;

(2) privately owned wireless support structure; or

(3) private property;

without the consent of the owner of the utility pole, wireless support structure, or property, as applicable.

(b) This chapter does not affect the duty of an entity that seeks to place a small cell facility on a utility pole or wireless support structure owned, controlled, or operated by a public utility to



obtain from the public utility any necessary authority to place the small cell facility on the utility pole or wireless support structure.

(c) This chapter does not affect the authority of a public utility that owns, controls, or operates a utility pole or a wireless support structure to:

(1) deny, limit, or restrict; or

(2) determine the rates, fees, terms, and conditions for; the use of or attachment to the utility pole or wireless support structure, consistent with federal law and any applicable decisions of or rules promulgated by the Federal Communications Commission.

SECTION 11. An emergency is declared for this act.



President of the Senate

President Pro Tempore

Speaker of the House of Representatives

Governor of the State of Indiana

Date: _____ Time: _____

