



April 3, 2015

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## ENGROSSED HOUSE BILL No. 1318

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DIGEST OF HB 1318 (Updated April 2, 2015 12:24 pm - DI 101)

**Citations Affected:** IC 8-1; IC 14-8; IC 14-18; IC 36-7; noncode.

**Synopsis:** Communications services and energy production. Eliminates the state requirement that a communications service provider allow a physical connection by other providers to its system. Establishes a uniform statewide procedure for applications for and issuance of permits for the construction and modification of structures and facilities for the provision of wireless communications service. Specifies that local planning and zoning laws apply to the issuance of permits for communications structures and facilities under the new provisions. Requires applications for permits to show evidence of compliance with criteria set forth in applicable zoning ordinances with respect to special exceptions, special uses, contingent uses, conditional uses, and variances. Provides that a permit authority may not: (1) require an applicant to submit information about; or (2) evaluate; certain business decisions of the applicant. Specifies that the Indiana department of transportation and the director of the department of  
(Continued next page)

**Effective:** July 1, 2015; January 1, 2016.

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### Koch, Frye R

(SENATE SPONSORS — HERSHMAN, WALKER, BRODEN)

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January 13, 2015, read first time and referred to Committee on Utilities, Energy and Telecommunications.

January 22, 2015, amended, reported — Do Pass.

January 26, 2015, read second time, amended, ordered engrossed.

January 27, 2015, engrossed. Read third time, passed. Yeas 84, nays 14.

#### SENATE ACTION

February 24, 2015, read first time and referred to Committee on Utilities.

April 2, 2015, amended, reported favorably — Do Pass; reassigned to Committee on Tax & Fiscal Policy.

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EH 1318—LS 7416/DI 103



## Digest Continued

natural resources (DNR) are not permit authorities for purposes of the provisions. Defines "utility" for purposes of the law concerning utility easements across land under the jurisdiction of the DNR to include a communications service provider. Provides that the director of the DNR may not impose a charge to issue a permit to erect or construct a utility line upon or across a public highway right-of-way that passes through state land. Urges the legislative council to assign to the interim study committee on energy, utilities, and telecommunications (committee) the topic of amending Indiana's statute concerning alternate energy production, cogeneration, and small hydro facilities to: (1) include as private generation projects under the statute certain cogeneration facilities; and (2) include as eligible facilities under the statute certain alternate energy production facilities, cogeneration facilities, and small hydro facilities. Provides that if the topic is assigned to the committee, the committee shall issue a final report, including any recommendations for legislation, to the legislative council not later than November 1, 2015.

**EH 1318—LS 7416/DI 103**



April 3, 2015

First Regular Session of the 119th General Assembly (2015)

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 2014 Regular Session and 2014 Second Regular Technical Session of the General Assembly.

## ENGROSSED HOUSE BILL No. 1318

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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 8-1-2-1, AS AMENDED BY P.L.27-2006,  
2 SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
3 JANUARY 1, 2016]: Sec. 1. (a) Except as provided in section 1.1 of  
4 this chapter, "public utility", as used in this chapter, means every  
5 corporation, company, partnership, limited liability company,  
6 individual, association of individuals, their lessees, trustees, or  
7 receivers appointed by a court, that may own, operate, manage, or  
8 control any plant or equipment within the state for the:  
9 (1) conveyance of telegraph or telephone messages;  
10 (2) production, transmission, delivery, or furnishing of heat, light,  
11 water, or power; or  
12 (3) collection, treatment, purification, and disposal in a sanitary  
13 manner of liquid and solid waste, sewage, night soil, and  
14 industrial waste.  
15 The term does not include a municipality that may acquire, own, or

**EH 1318—LS 7416/DI 103**



- 1 operate any of the foregoing facilities.
- 2 (b) "Municipal council", as used in this chapter, means the  
3 legislative body of any town or city in Indiana wherein the property of  
4 the public utility or any part thereof is located.
- 5 (c) "Municipality", as used in this chapter, means any city or town  
6 of Indiana.
- 7 (d) "Rate", as used in this chapter, means every individual or joint  
8 rate, fare, toll, charge, rental, or other compensation of any utility or  
9 any two (2) or more such individual or joint rates, fares, tolls, charges,  
10 rentals, or other compensation of any utility or any schedule or tariff  
11 thereof, but nothing in this subsection shall give the commission any  
12 control, jurisdiction, or authority over the rate charged by a municipally  
13 owned utility except as in this chapter expressly provided.
- 14 (e) "Service" is used in this chapter in its broadest and most  
15 inclusive sense and includes not only the use or accommodation  
16 afforded consumers or patrons but also any product or commodity  
17 furnished by any public or other utility and the plant, equipment,  
18 apparatus, appliances, property, and facility employed by any public or  
19 other utility in performing any service or in furnishing any product or  
20 commodity and devoted to the purposes in which such public or other  
21 utility is engaged and to the use and accommodation of the public.
- 22 (f) "Commission", as used in this chapter, means the commission  
23 created by IC 8-1-1-2.
- 24 (g) "Utility", as used in this chapter, means every plant or equipment  
25 within the state used for:
- 26 (1) the conveyance of telegraph and telephone messages;  
27 (2) the production, transmission, delivery, or furnishing of heat,  
28 light, water, or power, either directly or indirectly to the public;  
29 or  
30 (3) collection, treatment, purification, and disposal in a sanitary  
31 manner of liquid and solid waste, sewage, night soil, and  
32 industrial waste.
- 33 The term does not include a municipality that may acquire, own, or  
34 operate facilities for the collection, treatment, purification, and disposal  
35 in a sanitary manner of liquid and solid waste, sewage, night soil, and  
36 industrial waste. A warehouse owned or operated by any person, firm,  
37 limited liability company, or corporation engaged in the business of  
38 operating a warehouse business for the storage of used household  
39 goods is not a public utility within the meaning of this chapter.
- 40 (h) "Municipally owned utility", as used in this chapter, includes  
41 every utility owned or operated by a municipality.
- 42 (i) "Indeterminate permit", as used in this chapter, means every



1 grant, directly or indirectly from the state, to any corporation, company,  
 2 partnership, limited liability company, individual, association of  
 3 individuals, their lessees, trustees, or receivers appointed by a court, of  
 4 power, right, or privilege to own, operate, manage, or control any plant  
 5 or equipment, or any part of a plant or equipment, within this state, for  
 6 the:

7 (1) production, transmission, delivery, or furnishing of heat, light,  
 8 water, or power, either directly or indirectly to or for the public;

9 (2) collection, treatment, purification, and disposal in a sanitary  
 10 manner of liquid and solid waste, sewage, night soil, and  
 11 industrial waste; or

12 (3) furnishing of facilities for the transmission of intelligence by  
 13 electricity between points within this state;

14 which shall continue in force until such time as the municipality shall  
 15 exercise its right to purchase, condemn, or otherwise acquire the  
 16 property of such public utility, as provided in this chapter, or until it  
 17 shall be otherwise terminated according to law.

18 **(j) "Communications service provider", as used in this chapter,**  
 19 **has the meaning set forth in IC 8-1-2.6-13.**

20 SECTION 2. IC 8-1-2-5 IS AMENDED TO READ AS FOLLOWS  
 21 [EFFECTIVE JANUARY 1, 2016]: Sec. 5. (a) Every public utility, ~~and~~  
 22 **every communications service provider**, every municipality, and  
 23 every person, association, limited liability company, or corporation  
 24 having tracks, conduits, subways, poles, or other equipment on, over,  
 25 or under any street or highway shall for a reasonable compensation,  
 26 permit the use of the same by any other public utility **or**  
 27 **communications service provider** or by a municipality owning or  
 28 operating a utility, whenever public convenience and necessity require  
 29 such use, and such use will not result in irreparable injury to the owner  
 30 or other users of such equipment, nor in any substantial detriment to  
 31 the service to be rendered by such owners or other users. ~~Every public~~  
 32 ~~utility for the conveyance of telephone messages shall permit a physical~~  
 33 ~~connection or connections to be made; and telephone service to be~~  
 34 ~~furnished; before any telephone system operated by it; and the~~  
 35 ~~telephone toll line operated by another such public utility or between~~  
 36 ~~its toll line and the telephone system of another such public utility; or~~  
 37 ~~between its toll line and the toll line of another such public utility; or~~  
 38 ~~between its telephone system and the telephone system of another such~~  
 39 ~~public utility; whenever public convenience and necessity require such~~  
 40 ~~physical connection or connections and such physical connection or~~  
 41 ~~connections will not result in irreparable injury to the owner or other~~  
 42 ~~users of the facilities of such public utilities; nor in any substantial~~



1 ~~detriment to the service to be rendered by such public utilities.~~ If any  
 2 prospective consumers or patrons of any public utility for the  
 3 production, transmission, delivery, or furnishing of light or power,  
 4 living in territory outside of cities and towns, and within not to exceed  
 5 one-half (1/2) mile of the transmission line of such utility, shall agree  
 6 to and shall construct and install the necessary equipment, in  
 7 compliance with plans and specifications prescribed by such utility,  
 8 such public utility shall permit the necessary physical connection or  
 9 connections to be made and service to be furnished to the person or  
 10 persons who have constructed and installed such equipment. ~~The term~~  
 11 ~~"physical connection", as used in this section, shall mean such number~~  
 12 ~~of trunk lines or complete wire circuits and connections as may be~~  
 13 ~~required to furnish reasonably adequate telephone service between~~  
 14 ~~such public utilities.~~

15 (b) In case of failure to agree upon such use or the **terms and**  
 16 **conditions or compensations for such use, or in case of failure to agree**  
 17 **upon such physical connection or connections, or the terms and**  
 18 **conditions upon which the same shall be made,** any public utility or any  
 19 person, association, limited liability company, or corporation interested  
 20 may apply to the commission and if after investigation the commission  
 21 shall ascertain that public convenience and necessity require such use,  
 22 ~~or such physical connections,~~ and that such use ~~or such physical~~  
 23 ~~connection or connections~~ would not result in irreparable injury to the  
 24 owner or other users of such equipment or the facilities of such public  
 25 utilities, nor in any substantial detriment to the service to be rendered  
 26 by such owner or other public utilities or other users of such equipment  
 27 or facilities, it shall by order direct that such use be permitted and  
 28 prescribe reasonable conditions and compensations for such joint use.  
 29 ~~and that such physical connection or connections be made and~~  
 30 ~~determine how and within what time such connection or connections~~  
 31 ~~shall be made, and by whom the expense of making and maintaining~~  
 32 ~~such connection or connections shall be paid.~~

33 (c) Such use so ordered shall be permitted, ~~and such physical~~  
 34 ~~connection or connections so ordered shall be made and such~~  
 35 ~~conditions and compensation so prescribed for such use and such terms~~  
 36 ~~and conditions upon which such physical connection or connections~~  
 37 ~~shall be made, as so determined,~~ shall be lawful conditions and  
 38 compensations for such use, ~~and the lawful terms and conditions upon~~  
 39 ~~which such physical connection or connections shall be made,~~ to be  
 40 observed, followed, and paid, subject to recourse to the courts upon the  
 41 complaint of any interested party as provided in sections 73 and 74 of  
 42 this chapter and IC 8-1-3, and such statute so far as applicable shall



1 apply to any action arising on such complaint so made. Any such order  
 2 of the commission may be from time to time revised by the commission  
 3 upon application of any interested party or upon its own motion.

4 **(d) This section does not affect the commission's authority**  
 5 **under IC 8-1-2.6.**

6 SECTION 3. IC 8-1-32.3 IS ADDED TO THE INDIANA CODE  
 7 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE  
 8 JANUARY 1, 2016]:

9 **Chapter 32.3. Permits for Wireless Service Providers**

10 **Sec. 1. As used in this chapter, "antenna" means any**  
 11 **communications equipment that transmits or receives**  
 12 **electromagnetic radio signals used in the provision of wireless**  
 13 **communications service.**

14 **Sec. 2. As used in this chapter, "base station" means a station**  
 15 **located at a specific site that is authorized to communicate with**  
 16 **mobile stations. The term includes all radio transceivers, antennas,**  
 17 **coaxial cables, power supplies, and other electronics associated**  
 18 **with a station.**

19 **Sec. 3. As used in this chapter, "business day" means a day**  
 20 **other than a Saturday, a Sunday, or a legal holiday (as defined in**  
 21 **IC 1-1-9-1).**

22 **Sec. 4. As used in this chapter, "collocation" means the**  
 23 **placement or installation of wireless facilities on existing structures**  
 24 **that include a wireless facility or a wireless support structure,**  
 25 **including water towers and other buildings or structures. The term**  
 26 **includes the placement, replacement, or modification of wireless**  
 27 **facilities within an approved equipment compound.**

28 **Sec. 5. As used in this chapter, "electrical transmission tower"**  
 29 **means a structure that physically supports high voltage overhead**  
 30 **power lines. The term does not include a utility pole.**

31 **Sec. 6. As used in this chapter, "equipment compound" means**  
 32 **the area that:**

33 **(1) surrounds or is near the base of a wireless support**  
 34 **structure; and**

35 **(2) encloses wireless facilities.**

36 **Sec. 7. As used in this chapter, "existing structure" does not**  
 37 **include a utility pole or an electrical transmission tower.**

38 **Sec. 8. As used in this chapter, "permit authority" means a unit,**  
 39 **a board, a commission, or any other governing body that makes**  
 40 **legislative or administrative decisions concerning the construction,**  
 41 **installation, modification, or siting of wireless facilities or wireless**  
 42 **support structures. The term does not include:**



- 1 (1) the Indiana department of transportation;
- 2 (2) the director of the department of natural resources; or
- 3 (3) a court or other judicial body that reviews decisions or
- 4 rulings made by a permit authority.

5 **Sec. 9. (a) As used in this chapter, "small cell facility" means:**

- 6 (1) a personal wireless service facility (as defined by the
- 7 Federal Telecommunications Act of 1996 as in effect on July
- 8 1, 2015); or
- 9 (2) a wireless service facility that satisfies the following
- 10 requirements:

11 (A) Each antenna, including exposed elements, has a

12 volume of three (3) cubic feet or less.

13 (B) All antennas, including exposed elements, have a total

14 volume of six (6) cubic feet or less.

15 (C) The primary equipment enclosure located with the

16 facility has a volume of seventeen (17) cubic feet or less.

17 (b) For purposes of subsection (a)(2)(C), the volume of the

18 primary equipment enclosure does not include the following

19 equipment that is located outside the primary equipment

20 enclosure:

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

29 **Sec. 10. As used in this chapter, "small cell network" means a**

30 **collection of interrelated small cell facilities designed to deliver**

31 **wireless service.**

32 **Sec. 11. (a) As used in this chapter, "substantial modification of**

33 **a wireless support structure" means the mounting of a wireless**

34 **facility on a wireless support structure in a manner that:**

35 (1) increases the height of the wireless support structure by

36 the greater of:

37 (A) ten percent (10%) of the original height of the wireless

38 support structure; or

39 (B) twenty (20) feet;

40 (2) adds an appurtenance to the wireless support structure

41 that protrudes horizontally from the wireless support

42 structure more than the greater of:





- 1           (A) twenty (20) feet; or  
 2           (B) the width of the wireless support structure at the  
 3           location of the appurtenance; or  
 4           (3) increases the square footage of the equipment compound  
 5           in which the wireless facility is located by more than two  
 6           thousand five hundred (2,500) square feet.
- 7           (b) The term does not include the following:
- 8           (1) Increasing the height of a wireless support structure to  
 9           avoid interfering with an existing antenna.
- 10          (2) Increasing the diameter or area of a wireless support  
 11          structure to:
- 12               (A) shelter an antenna from inclement weather; or  
 13               (B) connect an antenna to the wireless support structure by  
 14               cable.
- 15          Sec. 12. As used in this chapter, "utility pole" means a structure  
 16          that is:
- 17               (1) owned or operated by:
- 18                   (A) a public utility;  
 19                   (B) a communications service provider;  
 20                   (C) a municipality;  
 21                   (D) an electric membership corporation; or  
 22                   (E) a rural electric cooperative; and
- 23               (2) designed and used to:
- 24                   (A) carry lines, cables, or wires for telephony, cable  
 25                   television, or electricity; or  
 26                   (B) provide lighting.
- 27          The term does not include a wireless support structure or an  
 28          electrical transmission tower.
- 29          Sec. 13. As used in this chapter, "wireless facility" means the set  
 30          of equipment and network components necessary to provide  
 31          wireless communications service. The term does not include a  
 32          wireless support structure.
- 33          Sec. 14. As used in this chapter, "wireless support structure"  
 34          means a freestanding structure designed to support wireless  
 35          facilities. The term does not include a utility pole or an electrical  
 36          transmission tower.
- 37          Sec. 15. This chapter applies to permits issued by a permit  
 38          authority, under local law and consistent with IC 36-7, for the  
 39          following:
- 40               (1) Construction of a new wireless support structure.  
 41               (2) Substantial modification of a wireless support structure.  
 42               (3) Collocation of wireless facilities on an existing structure.



1           **Sec. 16. (a) A permit authority may not require an applicant to**  
 2 **pay a fee associated with the submission, review, processing, or**  
 3 **approval of an application for a permit unless the permit authority**  
 4 **requires payment of the same or a similar fee for applications for**  
 5 **permits for similar types of commercial development within the**  
 6 **jurisdiction of the permit authority.**

7           **(b) A fee associated with the submission, review, processing, or**  
 8 **approval of an application for a permit, including a fee imposed by**  
 9 **a third party that provides review, technical, or consulting**  
 10 **assistance to a permit authority, must be based on actual, direct,**  
 11 **and reasonable costs incurred for the review, processing, and**  
 12 **approval of the application.**

13           **(c) A fee described in this section may not include:**

- 14           **(1) travel expenses incurred by a third party in its review of**  
 15 **an application; or**  
 16           **(2) direct payment or reimbursement of third party fees**  
 17 **charged on a contingency basis.**

18           **Sec. 17. (a) A permit authority may not discriminate among**  
 19 **communications service providers or public utilities with respect**  
 20 **to the following:**

- 21           **(1) Approving applications, issuing permits, or otherwise**  
 22 **establishing terms and conditions for construction of wireless**  
 23 **or wireline communications facilities.**  
 24           **(2) Authorizing or approving tax incentives for wireless or**  
 25 **wireline communications facilities.**  
 26           **(3) Providing access to rights-of-way, infrastructure, utility**  
 27 **poles, river and bridge crossings, and other physical assets**  
 28 **owned or controlled by the permit authority.**

29           **(b) A permit authority may not impose a fall zone requirement**  
 30 **that:**

- 31           **(1) applies to a wireless support structure; and**  
 32           **(2) is larger than the area within which the wireless support**  
 33 **structure is designed to collapse, as set forth in the applicant's**  
 34 **engineering certification for the wireless support structure.**

35           **However, a permit authority may impose a fall zone requirement**  
 36 **that is larger than the area described in subdivision (2) if the**  
 37 **permit authority provides evidence that the applicant's engineering**  
 38 **certification is flawed. The permit authority's evidence must**  
 39 **include a study performed and certified by a professional engineer.**

40           **Sec. 18. This chapter does not:**

- 41           **(1) affect the ability of a permit authority to exercise zoning,**  
 42 **land use, planning, or permitting authority otherwise allowed**



1 under law, including IC 36-7, with respect to the siting of new  
2 wireless support structures; or

3 (2) exempt an applicant from complying with applicable laws  
4 and ordinances concerning land use.

5 Sec. 19. (a) The following may apply for a permit under this  
6 chapter on a form and in the manner prescribed by the  
7 appropriate permit authority:

8 (1) A person that provides wireless communications service.

9 (2) A person that owns or otherwise makes available  
10 infrastructure required for wireless communications service.

11 (b) An application for a permit must include the following:

12 (1) The name, business address, and point of contact for the  
13 applicant.

14 (2) The location of the proposed or affected wireless support  
15 structure or wireless facility.

16 Sec. 20. (a) An application for a permit to construct a new  
17 wireless support structure must include only the following:

18 (1) All information required by section 19 of this chapter.

19 (2) A construction plan that describes the proposed wireless  
20 support structure and all equipment and network  
21 components, including antennas, transmitters, receivers, base  
22 stations, power supplies, cabling, and related equipment.

23 (3) Evidence supporting the choice of location for the  
24 proposed wireless support structure, including a sworn  
25 statement from the individual responsible for the choice of  
26 location demonstrating that collocation of wireless facilities  
27 on an existing wireless support structure was not a viable  
28 option because collocation:

29 (A) would not result in the same wireless service  
30 functionality, coverage, and capacity;

31 (B) is technically infeasible; or

32 (C) is an economic burden to the applicant.

33 (4) If an applicable zoning ordinance specifies that a special  
34 exception, special use, contingent use, or conditional use must  
35 be approved for the proposed wireless support structure in  
36 accordance with IC 36-7-4-918.2, evidence showing that the  
37 application complies with the criteria set forth in the  
38 ordinance with respect to the special exception, special use,  
39 contingent use, or conditional use.

40 (5) If the proposed wireless support structure is not a  
41 permitted use under an applicable zoning ordinance, evidence  
42 showing that the application complies with the criteria for a



1           variance of use from the terms of the zoning ordinance in  
2           accordance with IC 36-7-4-918.4.

3           A permit authority may not require an applicant to submit  
4           information about, and may not evaluate an applicant's business  
5           decisions with respect to, the applicant's designed service, customer  
6           demand, service quality, or desired signal strength to a particular  
7           location.

8           (b) An application that contains the information required under  
9           subsection (a) is considered complete.

10          (c) A permit authority shall review an application within ten  
11          (10) business days of its receipt to determine if the application is  
12          complete. If a permit authority determines that an application is  
13          not complete, the permit authority shall notify the applicant in  
14          writing of all defects in the application. If a permit authority does  
15          not notify an applicant in writing of all defects in the application,  
16          the application is considered complete.

17          (d) An applicant that receives a written notice under subsection  
18          (c) may cure the defects set forth in the notice and resubmit the  
19          corrected application to the permit authority within thirty (30)  
20          days of receiving the notice. If an applicant is unable to cure the  
21          defects within the thirty (30) day period, the applicant shall notify  
22          the permit authority of the additional time the applicant requires  
23          to cure the defects.

24          (e) Subject to subsection (f), not more than ninety (90) days after  
25          making an initial determination of completeness under subsection  
26          (c), a permit authority shall:

- 27               (1) review the application to determine if it complies with  
28               applicable laws and ordinances governing land use and  
29               zoning; and  
30               (2) notify the applicant in writing whether the application is  
31               approved or denied.

32          (f) Notwithstanding the ninety (90) day period set forth in  
33          subsection (e), the following apply:

- 34               (1) If the applicant requested additional time under subsection  
35               (d) to cure defects in the application, the ninety (90) day  
36               period set forth in subsection (e) is extended for a  
37               corresponding amount of time.  
38               (2) If the application for the proposed wireless support  
39               structure requires a variance of use from the terms of an  
40               applicable zoning ordinance in accordance with  
41               IC 36-7-4-918.4, the permit authority may have not more than  
42               thirty (30) additional days to comply with subsection (e).



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**Sec. 21. (a) An application for a permit for substantial modification of a wireless support structure must include only the following:**

- (1) All information required by section 19 of this chapter.**
- (2) A construction plan that describes the proposed modifications to the wireless support structure and all equipment and network components, including antennas, transmitters, receivers, base stations, power supplies, cabling, and related equipment.**
- (3) If an applicable zoning ordinance specifies that a special exception, special use, contingent use, or conditional use must be approved for the proposed substantial modification of a wireless support structure in accordance with IC 36-7-4-918.2, evidence showing that the application complies with the criteria set forth in the ordinance with respect to the special exception, special use, contingent use, or conditional use.**
- (4) If the proposed substantial modification of a wireless support structure is not a permitted use under an applicable zoning ordinance, evidence showing that the application complies with the criteria for a variance of use from the terms of the zoning ordinance in accordance with IC 36-7-4-918.4.**

**A permit authority may not require an applicant to submit information about, and may not evaluate an applicant's business decisions with respect to, the applicant's designed service, customer demand, service quality, or desired signal strength to a particular location.**

**(b) An application that contains the information required under subsection (a) is considered complete.**

**(c) A permit authority shall review an application within ten (10) business days of its receipt to determine if the application is complete. If a permit authority determines that an application is not complete, the permit authority shall notify the applicant in writing of all defects in the application. If a permit authority does not notify an applicant in writing of all defects in the application, the application is considered complete.**

**(d) An applicant that receives a written notice under subsection (c) may cure the defects set forth in the notice and resubmit the corrected application to the permit authority within thirty (30) days of receiving the notice. If an applicant is unable to cure the defects within the thirty (30) day period, the applicant shall notify the permit authority of the additional time the applicant requires**



1 to cure the defects.

2 (e) Subject to subsection (f), not more than ninety (90) days after

3 making an initial determination of completeness under subsection

4 (c), a permit authority shall:

5 (1) review the application to determine if it complies with

6 applicable laws and ordinances governing land use and

7 zoning; and

8 (2) notify the applicant in writing whether the application is

9 approved or denied.

10 (f) Notwithstanding the ninety (90) day period set forth in

11 subsection (e), the following apply:

12 (1) If the applicant requested additional time under subsection

13 (d) to cure defects in the application, the ninety (90) day

14 period set forth in subsection (e) is extended for a

15 corresponding amount of time.

16 (2) If the application for the proposed substantial

17 modification of a wireless support structure requires a

18 variance of use from the terms of an applicable zoning

19 ordinance in accordance with IC 36-7-4-918.4, the permit

20 authority may have not more than thirty (30) additional days

21 to comply with subsection (e).

22 Sec. 22. (a) An application for a permit for collocation must

23 include only the following:

24 (1) All information required by section 19 of this chapter.

25 (2) Evidence of conformance with applicable building permit

26 requirements.

27 (b) An application for a permit for collocation:

28 (1) is not required to comply with zoning or land use

29 requirements; and

30 (2) is not subject to public hearing.

31 (c) A permit authority shall allow an applicant to submit a

32 single consolidated application to collocate multiple wireless

33 service facilities that are located within the jurisdiction of the

34 permit authority. The permit authority shall issue a single permit

35 for all wireless service facilities included in the application rather

36 than individual permits for each wireless service facility.

37 (d) A permit authority shall review an application within ten

38 (10) business days of its receipt to determine if the application is

39 complete. If a permit authority determines that an application is

40 not complete, the permit authority shall notify the applicant in

41 writing of all defects in the application. If a permit authority does

42 not notify an applicant in writing of all defects in the application,



1 the application is considered complete.

2 (e) An applicant that receives a written notice under subsection  
3 (d) may cure the defects set forth in the notice and resubmit the  
4 corrected application to the permit authority within fifteen (15)  
5 days of receiving the notice. If an applicant is unable to cure the  
6 defects within the fifteen (15) day period, the applicant shall notify  
7 the permit authority of the additional time the applicant requires  
8 to cure the defects.

9 (f) Not more than forty-five (45) days after making an initial  
10 determination of completeness under subsection (d), a permit  
11 authority shall:

12 (1) review the application to determine its conformity with  
13 applicable building permit requirements; and

14 (2) notify the applicant in writing whether the application is  
15 approved or denied.

16 However, if the applicant requested additional time under  
17 subsection (e) to cure defects in the application, the forty-five (45)  
18 day period is extended for a corresponding amount of time.

19 Sec. 23. (a) In a written notice issued under section 20, 21, or 22  
20 of this chapter, a permit authority shall state clearly the basis for  
21 its decision to approve or deny an application. If the permit  
22 authority denies an application, the written notice must include  
23 substantial evidence in support of the denial.

24 (b) For purposes of this section, a notice is considered written if  
25 it is included in the minutes of a public meeting of a permit  
26 authority.

27 (c) If a permit authority fails to act on an application within the  
28 applicable deadline under section 20, 21, or 22 of this chapter, the  
29 application is considered approved.

30 Sec. 24. A permit authority shall establish guidelines to protect  
31 any confidential or proprietary information disclosed in an  
32 application.

33 Sec. 25. A permit authority may not require or regulate the  
34 installation, location, or use of wireless service facilities on utility  
35 poles or electrical transmission towers.

36 Sec. 26. A permit authority shall allow an applicant to submit a  
37 single consolidated application for multiple small cell facilities that  
38 are located within the permit authority's jurisdiction and  
39 constitute a single small cell network. The permit authority shall  
40 issue a single permit for the small cell network rather than multiple  
41 permits for each small cell facility.

42 SECTION 4. IC 8-1-32.5-14, AS ADDED BY P.L.27-2006,



1 SECTION 55, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 2 JANUARY 1, 2016]: Sec. 14. A communications service provider that  
 3 holds a certificate issued under this chapter:

4 (1) is exempt from local franchises and related fees to the same  
 5 extent as a communications service provider that holds a  
 6 certificate of territorial authority or an indeterminate permit  
 7 issued under IC 8-1-2 before July 1, 2009; and

8 (2) may access public rights-of-way to the same extent as a  
 9 public utility (as defined in IC 8-1-2-1(a)).

10 SECTION 5. IC 14-8-2-294.5 IS ADDED TO THE INDIANA  
 11 CODE AS A NEW SECTION TO READ AS FOLLOWS  
 12 [EFFECTIVE JANUARY 1, 2016]: **Sec. 294.5. "Utility", for**  
 13 **purposes of IC 14-18-10, includes a communications service**  
 14 **provider (as defined in IC 8-1-32.5-4).**

15 SECTION 6. IC 14-18-10-2 IS AMENDED TO READ AS  
 16 FOLLOWS [EFFECTIVE JANUARY 1, 2016]: Sec. 2. The director  
 17 may issue to any person, without charge, a permit to erect or construct  
 18 a utility, telephone, or telegraph line as described in section 1 of this  
 19 chapter under the rules and restrictions that the director considers  
 20 necessary:

21 (1) for the protection and preservation of the natural scenic  
 22 conditions of the land; or

23 (2) to prevent the line from interfering with or obstructing the use  
 24 and enjoyment of the property by the public.

25 **However, the director shall not impose a charge to issue a permit**  
 26 **to erect or construct a utility, telephone, or telegraph line as**  
 27 **described in section 1(5) of this chapter.**

28 SECTION 7. IC 36-7-4-201, AS AMENDED BY P.L.82-2005,  
 29 SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 30 JANUARY 1, 2016]: Sec. 201. (a) For purposes of IC 36-1-3-6, a unit  
 31 wanting to exercise planning and zoning powers in Indiana, **including**  
 32 **the issuance of permits under IC 8-1-32.3 (except as otherwise**  
 33 **provided in IC 8-1-32.3),** must do so in the manner provided by this  
 34 chapter.

35 (b) The purpose of this chapter is to encourage units to improve the  
 36 health, safety, convenience, and welfare of their citizens and to plan for  
 37 the future development of their communities to the end:

38 (1) that highway systems be carefully planned;

39 (2) that new communities grow only with adequate public way,  
 40 utility, health, educational, and recreational facilities;

41 (3) that the needs of agriculture, forestry, industry, and business  
 42 be recognized in future growth;





1 (4) that residential areas provide healthful surroundings for family  
2 life; and

3 (5) that the growth of the community is commensurate with and  
4 promotive of the efficient and economical use of public funds.

5 (c) Furthermore, municipalities and counties may cooperatively  
6 establish single and unified planning and zoning entities to carry out  
7 the purpose of this chapter on a countywide basis.

8 (d) METRO. Expanding urbanization in each county having a  
9 consolidated city has created problems that have made the unification  
10 of planning and zoning functions a necessity to insure the health,  
11 safety, morals, economic development, and general welfare of the  
12 county. To accomplish this unification, a single planning and zoning  
13 authority is established for the county.

14 SECTION 8. [EFFECTIVE JULY 1, 2015] (a) As used in this  
15 SECTION, "committee" refers to the interim study committee on  
16 energy, utilities, and telecommunications established by  
17 IC 2-5-1.3-4(8).

18 (b) As used in this SECTION, "legislative council" refers to the  
19 legislative council established by IC 2-5-1.1-1.

20 (c) The legislative council is urged to assign to the committee  
21 during the 2015 legislative interim the topic of amending Indiana's  
22 statute concerning alternate energy production, cogeneration, and  
23 small hydro facilities to:

24 (1) include as private generation projects for purposes of the  
25 statute certain cogeneration facilities that are either:

26 (A) located on the same site as the host operation; or

27 (B) not located on the same site as the host operation, but  
28 are proximate in location to and integrated with the host  
29 operation; and

30 (2) include as eligible facilities for purposes of the statute  
31 alternate energy production facilities, cogeneration facilities,  
32 and small hydro facilities that are either:

33 (A) located on the same site as the host operation; or

34 (B) not located on the same site as the host operation, but  
35 are proximate in location to and integrated with the host  
36 operation;

37 including the consuming elements of a host operation using  
38 the associated energy output for industrial, commercial,  
39 heating, or cooling purposes.

40 (d) If the topic described in subsection (c) is assigned to the  
41 committee, the committee shall issue a final report to the legislative  
42 council containing the committee's findings and recommendations,



- 1 **including any recommended legislation, in an electronic format**
- 2 **under IC 5-14-6 not later than November 1, 2015.**
- 3 **(e) This SECTION expires December 31, 2015.**



## COMMITTEE REPORT

Mr. Speaker: Your Committee on Utilities, Energy and Telecommunications, to which was referred House Bill 1318, 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 3, line 18, after "provider"" insert ", **as used in this chapter,**".

Page 3, delete lines 35 through 42, begin a new paragraph and insert:

"SECTION 1. IC 8-1-2-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2015]: Sec. 5. (a) Every public utility, ~~and~~ **every communications service provider**, every municipality, and every person, association, limited liability company, or corporation having tracks, conduits, subways, poles, or other equipment on, over, or under any street or highway shall for a reasonable compensation, permit the use of the same by any other public utility **or communications service provider** or by a municipality owning or operating a utility, whenever public convenience and necessity require such use, and such use will not result in irreparable injury to the owner or other users of such equipment, nor in any substantial detriment to the service to be rendered by such owners or other users. Every public utility for the conveyance of telephone messages shall permit a physical connection or connections to be made, and telephone service to be furnished, before any telephone system operated by it, and the telephone toll line operated by another such public utility or between its toll line and the telephone system of another such public utility, or between its toll line and the toll line of another such public utility, or between its telephone system and the telephone system of another such public utility, whenever public convenience and necessity require such physical connection or connections and such physical connection or connections will not result in irreparable injury to the owner or other users of the facilities of such public utilities, nor in any substantial detriment to the service to be rendered by such public utilities. If any prospective consumers or patrons of any public utility for the production, transmission, delivery, or furnishing of light or power, living in territory outside of cities and towns, and within not to exceed one-half (1/2) mile of the transmission line of such utility, shall agree to and shall construct and install the necessary equipment, in compliance with plans and specifications prescribed by such utility, such public utility shall permit the necessary physical connection or connections to be made and service to be furnished to the person or



persons who have constructed and installed such equipment. The term "physical connection", as used in this section, shall mean such number of trunk lines or complete wire circuits and connections as may be required to furnish reasonably adequate telephone service between such public utilities.

(b) In case of failure to agree upon such use or the conditions or compensations for such use, or in case of failure to agree upon such physical connection or connections, or the terms and conditions upon which the same shall be made, any public utility or any person, association, limited liability company, or corporation interested may apply to the commission and if after investigation the commission shall ascertain that public convenience and necessity require such use or such physical connections, and that such use or such physical connection or connections would not result in irreparable injury to the owner or other users of such equipment or the facilities of such public utilities, nor in any substantial detriment to the service to be rendered by such owner or other public utilities or other users of such equipment or facilities, it shall by order direct that such use be permitted and prescribe reasonable conditions and compensations for such joint use and that such physical connection or connections be made and determine how and within what time such connection or connections shall be made, and by whom the expense of making and maintaining such connection or connections shall be paid.

(c) Such use so ordered shall be permitted, and such physical connection or connections so ordered shall be made and such conditions and compensation so prescribed for such use, and such terms and conditions upon which such physical connection or connections shall be made, as so determined, shall be lawful conditions and compensations for such use, and the lawful terms and conditions upon which such physical connection or connections shall be made, to be observed, followed, and paid, subject to recourse to the courts upon the complaint of any interested party as provided in sections 73 and 74 of this chapter and IC 8-1-3, and such statute so far as applicable shall apply to any action arising on such complaint so made. Any such order of the commission may be from time to time revised by the commission upon application of any interested party or upon its own motion."

Delete page 4.

Page 5, delete lines 1 through 18.

Page 5, line 38, delete "and" and insert "or".

Page 6, delete lines 27 through 35, begin a new paragraph and insert:

**"Sec. 8. (a) As used in this chapter, "small cell facility" means:**

**EH 1318—LS 7416/DI 103**



(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) cubic feet or less.

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

(C) The primary equipment enclosure located with the facility has a volume of seventeen (17) cubic feet or less."

Page 6, line 36, delete "(a)(2)(B)," and insert "(a)(2)(C),".

Page 8, delete lines 16 through 42, begin a new paragraph and insert:

"Sec. 15. (a) A permit authority may not require an applicant to pay a fee associated with the submission, review, processing, or approval of an application for a permit unless the permit authority requires payment of the same or a similar fee for applications for permits for similar types of commercial development within the jurisdiction of the permit authority.

(b) A fee associated with the submission, review, processing, or approval of an application for a permit, including a fee imposed by a third party that provides review, technical, or consulting assistance to a permit authority, must be based on actual, direct, and reasonable costs incurred for the review, processing, and approval of the application.

(c) A fee described in this section may not include:

(1) travel expenses incurred by a third party in its review of an application; or

(2) direct payment or reimbursement of third party fees charged on a contingency basis.

Sec. 16. (a) A permit authority may not discriminate among communications service providers or public utilities with respect to the following:

(1) Approving applications, issuing permits, or otherwise establishing terms and conditions for construction of wireless or wireline communications facilities.

(2) Authorizing or approving tax incentives for wireless or wireline communications facilities.

(3) Providing access to rights-of-way, infrastructure, utility poles, river and bridge crossings, and other physical assets owned or controlled by the permit authority.



**(b) Notwithstanding subsection (a), a permit authority may not impose a setback or fall zone requirement for a wireless support structure that is designed to collapse within an area that is smaller than the setback or fall zone requirement unless the permit authority demonstrates to the satisfaction of the applicant that the engineering certification for the wireless support structure is flawed.**

**Sec. 17. A permit authority may not limit the height of a wireless structure to less than two hundred (200) feet."**

Delete page 9.

Page 10, delete lines 1 through 13.

Page 10, line 14, delete "20." and insert "18."

Page 10, line 21, delete "21." and insert "19."

Page 10, delete lines 32 through 42, begin a new paragraph and insert:

**"Sec. 20. (a) An application for a permit to construct a new wireless support structure must include only the following:**

**(1) All information required by section 19 of this chapter.**

**(2) A construction plan that describes the proposed wireless support structure and all equipment and network components, including antennas, transmitters, receivers, base stations, power supplies, cabling, and related equipment.**

**(3) Evidence supporting the choice of location for the proposed wireless support structure, including a sworn statement from the individual responsible for the choice of location demonstrating that collocation of wireless facilities on an existing wireless support structure was not a viable option because collocation:**

**(A) would not result in the same wireless service functionality, coverage, and capacity;**

**(B) is technically infeasible; or**

**(C) is an economic burden to the applicant.**

**(b) An application that contains the information required under subsection (a) is considered complete.**

**(c) A permit authority shall review an application within ten (10) days of its receipt to determine if the application is complete. If a permit authority determines that an application is not complete, the permit authority shall notify the applicant in writing of all defects in the application. If a permit authority does not notify an applicant in writing of all defects in the application, the application is considered complete.**

**(d) An applicant that receives a written notice under subsection**



(c) may cure the defects set forth in the notice and resubmit the corrected application to the permit authority within thirty (30) days of receiving the notice. If an applicant is unable to cure the defects within the thirty (30) day period, the applicant shall notify the permit authority of the additional time the applicant requires to cure the defects.

(e) Not more than ninety (90) days after making an initial determination of completeness under subsection (c), a permit authority shall:

- (1) review the application to determine if it complies with applicable laws and ordinances governing land use and zoning; and
- (2) notify the applicant in writing whether the application is approved or denied.

However, if the applicant requested additional time under subsection (d) to cure defects in the application, the ninety (90) day period is extended for a corresponding amount of time.

**Sec. 21. (a)** An application for a permit for substantial modification of a wireless support structure must include only the following:

- (1) All information required by section 19 of this chapter.
- (2) A construction plan that describes the proposed modifications to the wireless support structure and all equipment and network components, including antennas, transmitters, receivers, base stations, power supplies, cabling, and related equipment.

(b) An application that contains the information required under subsection (a) is considered complete.

(c) A permit authority shall review an application within ten (10) days of its receipt to determine if the application is complete. If a permit authority determines that an application is not complete, the permit authority shall notify the applicant in writing of all defects in the application. If a permit authority does not notify an applicant in writing of all defects in the application, the application is considered complete.

(d) An applicant that receives a written notice under subsection (c) may cure the defects set forth in the notice and resubmit the corrected application to the permit authority within thirty (30) days of receiving the notice. If an applicant is unable to cure the defects within the thirty (30) day period, the applicant shall notify the permit authority of the additional time the applicant requires to cure the defects.



(e) Not more than ninety (90) days after making an initial determination of completeness under subsection (c), a permit authority shall:

- (1) review the application to determine if it complies with applicable laws and ordinances governing land use and zoning; and
- (2) notify the applicant in writing whether the application is approved or denied.

However, if the applicant requested additional time under subsection (d) to cure defects in the application, the ninety (90) day period is extended for a corresponding amount of time.

**Sec. 22. (a)** An application for a permit for collocation must include only the following:

- (1) All information required by section 19 of this chapter.
- (2) Evidence of conformance with applicable building permit requirements.

(b) An application for a permit for collocation:

- (1) is not required to comply with zoning or land use requirements; and
- (2) is not subject to public hearing.

(c) A permit authority may allow an applicant to submit a single consolidated application to collocate multiple wireless service facilities that are located within the jurisdiction of the permit authority. The permit authority may issue a single permit for all wireless service facilities included in the application rather than individual permits for each wireless service facility.

(d) A permit authority shall review an application within five (5) days of its receipt to determine if the application is complete. If a permit authority determines that an application is not complete, the permit authority shall notify the applicant in writing of all defects in the application. If a permit authority does not notify an applicant in writing of all defects in the application, the application is considered complete.

(e) An applicant that receives a written notice under subsection (d) may cure the defects set forth in the notice and resubmit the corrected application to the permit authority within fifteen (15) days of receiving the notice. If an applicant is unable to cure the defects within the fifteen (15) day period, the applicant shall notify the permit authority of the additional time the applicant requires to cure the defects.

(f) Not more than forty-five (45) days after making an initial determination of completeness under subsection (d), a permit





**authority shall:**

- (1) review the application to determine its conformity with applicable building permit requirements; and**
- (2) notify the applicant in writing whether the application is approved or denied.**

**However, if the applicant requested additional time under subsection (e) to cure defects in the application, the forty-five (45) day period is extended for a corresponding amount of time.**

**Sec. 23. (a) In a written notice issued under section 20, 21, or 22 of this chapter, a permit authority shall state clearly the basis for its decision to approve or deny an application. If the permit authority denies an application, the written notice must include substantial evidence in support of the denial.**

**(b) For purposes of this section, a notice is considered written if it is included in the minutes of a public meeting of a permit authority.**

**(c) If a permit authority fails to act on an application within the applicable deadline under section 20, 21, or 22 of this chapter, the application is considered approved."**

Delete page 11.

Page 12, delete lines 1 through 3.

Page 12, line 4, delete "26." and insert "**24.**".

Page 12, line 7, delete "27." and insert "**25.**".

Page 12, line 10, delete "28." and insert "**26.**".

Page 12, delete lines 16 through 42.

Page 13, delete lines 1 through 7.

Page 13, line 8, delete "31." and insert "**27.**".

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to HB 1318 as introduced.)

KOCH

Committee Vote: yeas 9, nays 2.



## HOUSE MOTION

Mr. Speaker: I move that House Bill 1318 be amended to read as follows:

Page 3, delete lines 20 through 42, begin a new paragraph and insert:

"SECTION 2. IC 8-1-2-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2015]: Sec. 5. (a) Every public utility, **and every communications service provider**, every municipality, and every person, association, limited liability company, or corporation having tracks, conduits, subways, poles, or other equipment on, over, or under any street or highway shall for a reasonable compensation, permit the use of the same by any other public utility **or communications service provider** or by a municipality owning or operating a utility, whenever public convenience and necessity require such use, and such use will not result in irreparable injury to the owner or other users of such equipment, nor in any substantial detriment to the service to be rendered by such owners or other users. ~~Every public utility for the conveyance of telephone messages shall permit a physical connection or connections to be made; and telephone service to be furnished; before any telephone system operated by it; and the telephone toll line operated by another such public utility or between its toll line and the telephone system of another such public utility; or between its toll line and the toll line of another such public utility; or between its telephone system and the telephone system of another such public utility; whenever public convenience and necessity require such physical connection or connections and such physical connection or connections will not result in irreparable injury to the owner or other users of the facilities of such public utilities; nor in any substantial detriment to the service to be rendered by such public utilities.~~ If any prospective consumers or patrons of any public utility for the production, transmission, delivery, or furnishing of light or power, living in territory outside of cities and towns, and within not to exceed one-half (1/2) mile of the transmission line of such utility, shall agree to and shall construct and install the necessary equipment, in compliance with plans and specifications prescribed by such utility, such public utility shall permit the necessary physical connection or connections to be made and service to be furnished to the person or persons who have constructed and installed such equipment. ~~The term "physical connection"; as used in this section; shall mean such number of trunk lines or complete wire circuits and connections as may be required to furnish reasonably adequate telephone service between~~

EH 1318—LS 7416/DI 103



such public utilities:

(b) In case of failure to agree upon such use or the **terms and conditions or compensations for such use, or in case of failure to agree upon such physical connection or connections; or the terms and conditions upon which the same shall be made;** any public utility or any person, association, limited liability company, or corporation interested may apply to the commission and if after investigation the commission shall ascertain that public convenience and necessity require such use, **or such physical connections;** and that such use **or such physical connection or connections** would not result in irreparable injury to the owner or other users of such equipment or the facilities of such public utilities, nor in any substantial detriment to the service to be rendered by such owner or other public utilities or other users of such equipment or facilities, it shall by order direct that such use be permitted and prescribe reasonable conditions and compensations for such joint use. **and that such physical connection or connections be made and determine how and within what time such connection or connections shall be made; and by whom the expense of making and maintaining such connection or connections shall be paid:**

(c) Such use so ordered shall be permitted, **and such physical connection or connections so ordered shall be made** and such conditions and compensation so prescribed for such use **and such terms and conditions upon which such physical connection or connections shall be made;** as so determined; shall be lawful conditions and compensations for such use; and the lawful terms and conditions upon which such physical connection or connections shall be made; to be observed, followed, and paid, subject to recourse to the courts upon the complaint of any interested party as provided in sections 73 and 74 of this chapter and IC 8-1-3, and such statute so far as applicable shall apply to any action arising on such complaint so made. Any such order of the commission may be from time to time revised by the commission upon application of any interested party or upon its own motion."

Delete page 4.

Page 5, delete lines 1 through 32.

Page 9, delete lines 12 through 13.

Page 9, line 14, delete "18." and insert "17."

Page 9, line 21, delete "19." and insert "18."

Page 9, line 32, delete "20." and insert "19."

Page 9, line 34, delete "19" and insert "18".

Page 10, line 34, delete "21." and insert "20."

Page 10, line 37, delete "19" and insert "18".

Page 11, line 28, delete "22." and insert "21."



Page 11, line 30, delete "19" and insert "18".  
 Page 12, line 25, delete "23." and insert "22".  
 Page 12, line 25, delete "20, 21, or 22" and insert "19, 20, or 21".  
 Page 12, line 34, delete "20, 21, or 22" and insert "19, 20, or 21".  
 Page 12, line 36, delete "24." and insert "23".  
 Page 12, line 39, delete "25." and insert "24".  
 Page 12, line 42, delete "26." and insert "25".  
 Page 13, line 6, delete "27." and insert "26".  
 Renumber all SECTIONS consecutively.

(Reference is to HB 1318 as printed January 23, 2015.)

KOCH

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#### COMMITTEE REPORT

Madam President: The Senate Committee on Utilities, to which was referred House Bill No. 1318, 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:

Replace the effective dates in SECTIONS 1 through 6 with "[EFFECTIVE JANUARY 1, 2016]".

Page 4, line 37, reset in roman "shall be lawful conditions and".

Page 4, line 38, reset in roman "compensations for such use,".

Page 5, between lines 3 and 4, begin a new paragraph and insert:

**"(d) This section does not affect the commission's authority under IC 8-1-2.6."**

Page 5, between lines 16 and 17, begin a new paragraph and insert:

**"Sec. 3. As used in this chapter, "business day" means a day other than a Saturday, a Sunday, or a legal holiday (as defined in IC 1-1-9-1)."**

Page 5, line 17, delete "3." and insert "4.".

Page 5, line 18, after "existing" insert **"structures that include a wireless facility or a wireless support structure, including water towers"**.

Page 5, delete line 19.

Page 5, line 23, delete "4." and insert "5.".

Page 5, line 26, delete "5." and insert "6.".

Page 5, line 31, delete "6." and insert "7.".

Page 5, line 32, delete "pole." and insert **"pole or an electrical transmission tower."**

EH 1318—LS 7416/DI 103



Page 5, line 33, delete "7." and insert "8."

Page 5, line 37, delete "include a court or other" and insert **"include:  
(1) the Indiana department of transportation;  
(2) the director of the department of natural resources; or  
(3) a court or other judicial body that reviews decisions or  
rulings made by a permit authority."**

Page 5, delete lines 38 through 39.

Page 5, line 40, delete "8." and insert "9."

Page 6, line 22, delete "9." and insert "10."

Page 6, line 25, delete "10." and insert "11."

Page 7, line 8, delete "11." and insert "12."

Page 7, between lines 19 and 20, begin a new line blocked left and insert:

**"The term does not include a wireless support structure or an electrical transmission tower."**

Page 7, line 20, delete "12." and insert "13."

Page 7, line 24, delete "13." and insert "14."

Page 7, line 26, delete "pole." and insert **"pole or an electrical transmission tower."**

Page 7, line 27, delete "14." and insert "15."

Page 7, line 28, delete "authority" and insert **"authority, under local law and consistent with IC 36-7,"**

Page 7, line 32, delete "15." and insert "16."

Page 8, line 7, delete "16." and insert "17."

Page 8, delete lines 18 through 24, begin a new paragraph and insert:

**"(b) A permit authority may not impose a fall zone requirement that:**

- (1) applies to a wireless support structure; and**
- (2) is larger than the area within which the wireless support structure is designed to collapse, as set forth in the applicant's engineering certification for the wireless support structure.**

**However, a permit authority may impose a fall zone requirement that is larger than the area described in subdivision (2) if the permit authority provides evidence that the applicant's engineering certification is flawed. The permit authority's evidence must include a study performed and certified by a professional engineer."**

Page 8, line 25, delete "17." and insert "18."

Page 8, line 28, delete "law" and insert **"law, including IC 36-7,"**

Page 8, line 32, delete "18." and insert "19."

Page 9, line 1, delete "19." and insert "20."



Page 9, line 3, delete "18" and insert "19".

Page 9, between lines 17 and 18, begin a new line block indented and insert:

**"(4) If an applicable zoning ordinance specifies that a special exception, special use, contingent use, or conditional use must be approved for the proposed wireless support structure in accordance with IC 36-7-4-918.2, evidence showing that the application complies with the criteria set forth in the ordinance with respect to the special exception, special use, contingent use, or conditional use.**

**(5) If the proposed wireless support structure is not a permitted use under an applicable zoning ordinance, evidence showing that the application complies with the criteria for a variance of use from the terms of the zoning ordinance in accordance with IC 36-7-4-918.4.**

**A permit authority may not require an applicant to submit information about, and may not evaluate an applicant's business decisions with respect to, the applicant's designed service, customer demand, service quality, or desired signal strength to a particular location."**

Page 9, line 21, after "(10)" insert "**business**".

Page 9, line 34, delete "Not" and insert "**Subject to subsection (f), not**".

Page 9, delete line 42, begin a new paragraph and insert:

**"(f) Notwithstanding the ninety (90) day period set forth in subsection (e), the following apply:**

**(1) If the applicant requested additional time under subsection (d) to cure defects in the application, the ninety (90) day period set forth in subsection (e) is extended for a corresponding amount of time.**

**(2) If the application for the proposed wireless support structure requires a variance of use from the terms of an applicable zoning ordinance in accordance with IC 36-7-4-918.4, the permit authority may have not more than thirty (30) additional days to comply with subsection (e)."**

Page 10, delete lines 1 through 2.

Page 10, line 3, delete "20." and insert "**21.**".

Page 10, line 6, delete "18" and insert "**19**".

Page 10, between lines 11 and 12, begin a new line block indented and insert:

**"(3) If an applicable zoning ordinance specifies that a special exception, special use, contingent use, or conditional use must**



be approved for the proposed substantial modification of a wireless support structure in accordance with IC 36-7-4-918.2, evidence showing that the application complies with the criteria set forth in the ordinance with respect to the special exception, special use, contingent use, or conditional use.

(4) If the proposed substantial modification of a wireless support structure is not a permitted use under an applicable zoning ordinance, evidence showing that the application complies with the criteria for a variance of use from the terms of the zoning ordinance in accordance with IC 36-7-4-918.4.

A permit authority may not require an applicant to submit information about, and may not evaluate an applicant's business decisions with respect to, the applicant's designed service, customer demand, service quality, or desired signal strength to a particular location."

Page 10, line 15, after "(10)" insert "**business**".

Page 10, line 28, delete "Not" and insert "**Subject to subsection (f), not**".

Page 10, delete lines 36 through 38, begin a new paragraph and insert:

**"(f) Notwithstanding the ninety (90) day period set forth in subsection (e), the following apply:**

**(1) If the applicant requested additional time under subsection (d) to cure defects in the application, the ninety (90) day period set forth in subsection (e) is extended for a corresponding amount of time.**

**(2) If the application for the proposed substantial modification of a wireless support structure requires a variance of use from the terms of an applicable zoning ordinance in accordance with IC 36-7-4-918.4, the permit authority may have not more than thirty (30) additional days to comply with subsection (e)."**

Page 10, line 39, delete "21." and insert "**22.**".

Page 10, line 41, delete "18" and insert "**19**".

Page 11, line 6, delete "may" and insert "**shall**".

Page 11, line 9, delete "may" and insert "**shall**".

Page 11, line 12, delete " five (5)" and insert "**ten (10) business**".

Page 11, line 36, delete "22." and insert "**23.**".

Page 11, line 36, delete "19, 20, or 21" and insert "**20, 21, or 22**".

Page 12, line 3, delete "19, 20, or 21" and insert "**20, 21, or 22**".

Page 12, line 5, delete "23." and insert "**24.**".



Page 12, line 8, delete "24." and insert "25."

Page 12, line 10, delete "poles." and insert "**poles or electrical transmission towers.**".

Page 12, line 11, delete "25. A permit authority may" and insert "**26. A permit authority shall**".

Page 12, line 13, delete "comprise" and insert "**constitute**".

Page 12, line 14, delete "may" and insert "**shall**".

Page 12, delete lines 17 through 20.

Page 12, delete lines 21 through 29, begin a new paragraph and insert:

"SECTION 4. IC 8-1-32.5-14, AS ADDED BY P.L.27-2006, SECTION 55, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2016]: Sec. 14. A communications service provider that holds a certificate issued under this chapter:

(1) is exempt from local franchises and related fees to the same extent as a communications service provider that holds a certificate of territorial authority or an indeterminate permit issued under IC 8-1-2 before July 1, 2009; **and**

(2) **may access public rights-of-way to the same extent as a public utility (as defined in IC 8-1-2-1(a)).**"

Page 13, after line 5, begin a new paragraph and insert:

"SECTION 7. IC 36-7-4-201, AS AMENDED BY P.L.82-2005, SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2016]: Sec. 201. (a) For purposes of IC 36-1-3-6, a unit wanting to exercise planning and zoning powers in Indiana, **including the issuance of permits under IC 8-1-32.3 (except as otherwise provided in IC 8-1-32.3)**, must do so in the manner provided by this chapter.

(b) The purpose of this chapter is to encourage units to improve the health, safety, convenience, and welfare of their citizens and to plan for the future development of their communities to the end:

(1) that highway systems be carefully planned;

(2) that new communities grow only with adequate public way, utility, health, educational, and recreational facilities;

(3) that the needs of agriculture, forestry, industry, and business be recognized in future growth;

(4) that residential areas provide healthful surroundings for family life; and

(5) that the growth of the community is commensurate with and promotive of the efficient and economical use of public funds.

(c) Furthermore, municipalities and counties may cooperatively establish single and unified planning and zoning entities to carry out





the purpose of this chapter on a countywide basis.

(d) METRO. Expanding urbanization in each county having a consolidated city has created problems that have made the unification of planning and zoning functions a necessity to insure the health, safety, morals, economic development, and general welfare of the county. To accomplish this unification, a single planning and zoning authority is established for the county.

**SECTION 8. [EFFECTIVE JULY 1, 2015] (a) As used in this SECTION, "committee" refers to the interim study committee on energy, utilities, and telecommunications established by IC 2-5-1.3-4(8).**

**(b) As used in this SECTION, "legislative council" refers to the legislative council established by IC 2-5-1.1-1.**

**(c) The legislative council is urged to assign to the committee during the 2015 legislative interim the topic of amending Indiana's statute concerning alternate energy production, cogeneration, and small hydro facilities to:**

**(1) include as private generation projects for purposes of the statute certain cogeneration facilities that are either:**

**(A) located on the same site as the host operation; or**

**(B) not located on the same site as the host operation, but are proximate in location to and integrated with the host operation; and**

**(2) include as eligible facilities for purposes of the statute alternate energy production facilities, cogeneration facilities, and small hydro facilities that are either:**

**(A) located on the same site as the host operation; or**

**(B) not located on the same site as the host operation, but are proximate in location to and integrated with the host operation;**

**including the consuming elements of a host operation using the associated energy output for industrial, commercial, heating, or cooling purposes.**

**(d) If the topic described in subsection (c) is assigned to the committee, the committee shall issue a final report to the legislative council containing the committee's findings and recommendations, including any recommended legislation, in an electronic format**



**under IC 5-14-6 not later than November 1, 2015.**

**(e) This SECTION expires December 31, 2015."**

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass and be reassigned to the Senate Committee on Tax and Fiscal Policy.

(Reference is to HB 1318 as reprinted January 27, 2015.)

MERRITT, Chairperson

Committee Vote: Yeas 7, Nays 0.

