



Reprinted  
January 27, 2015

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## HOUSE BILL No. 1318

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DIGEST OF HB 1318 (Updated January 26, 2015 2:29 pm - DI 103)

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

**Synopsis:** Communications services and providers. 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. Defines "utility" for purposes of IC 14-18-10 (the law concerning utility easements) to include a communications service provider. Provides that the director of the department of natural resources 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.

**Effective:** July 1, 2015.

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### Koch, Frye R

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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.

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HB 1318—LS 7416/DI 103





Reprinted  
January 27, 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.

## 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 JULY 1, 2015]: Sec. 1. (a) Except as provided in section 1.1 of this  
4 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

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- 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 JULY 1, 2015]: 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 SECTION 3. IC 8-1-32.3 IS ADDED TO THE INDIANA CODE  
 5 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE  
 6 JULY 1, 2015]:

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

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

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

17 **Sec. 3. As used in this chapter, "collocation" means the**  
 18 **placement or installation of wireless facilities on existing**  
 19 **structures, including electrical transmission towers, water towers,**  
 20 **and other buildings or structures. The term includes the placement,**  
 21 **replacement, or modification of wireless facilities within an**  
 22 **approved equipment compound.**

23 **Sec. 4. As used in this chapter, "electrical transmission tower"**  
 24 **means a structure that physically supports high voltage overhead**  
 25 **power lines. The term does not include a utility pole.**

26 **Sec. 5. As used in this chapter, "equipment compound" means**  
 27 **the area that:**

- 28 (1) surrounds or is near the base of a wireless support  
 29 structure; and  
 30 (2) encloses wireless facilities.

31 **Sec. 6. As used in this chapter, "existing structure" does not**  
 32 **include a utility pole.**

33 **Sec. 7. As used in this chapter, "permit authority" means a unit,**  
 34 **a board, a commission, or any other governing body that makes**  
 35 **legislative or administrative decisions concerning the construction,**  
 36 **installation, modification, or siting of wireless facilities or wireless**  
 37 **support structures. The term does not include a court or other**  
 38 **judicial body that reviews decisions or rulings made by a permit**  
 39 **authority.**

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

- 41 (1) a personal wireless service facility (as defined by the  
 42 Federal Telecommunications Act of 1996 as in effect on July



- 1           **1, 2015); or**  
 2           **(2) a wireless service facility that satisfies the following**  
 3           **requirements:**  
 4               **(A) Each antenna, including exposed elements, has a**  
 5               **volume of three (3) cubic feet or less.**  
 6               **(B) All antennas, including exposed elements, have a total**  
 7               **volume of six (6) cubic feet or less.**  
 8               **(C) The primary equipment enclosure located with the**  
 9               **facility has a volume of seventeen (17) cubic feet or less.**  
 10          **(b) For purposes of subsection (a)(2)(C), the volume of the**  
 11          **primary equipment enclosure does not include the following**  
 12          **equipment that is located outside the primary equipment**  
 13          **enclosure:**  
 14               **(1) Electric meters.**  
 15               **(2) Concealment equipment.**  
 16               **(3) Telecommunications demarcation boxes.**  
 17               **(4) Ground based enclosures.**  
 18               **(5) Back up power systems.**  
 19               **(6) Grounding equipment.**  
 20               **(7) Power transfer switches.**  
 21               **(8) Cut off switches.**  
 22          **Sec. 9. As used in this chapter, "small cell network" means a**  
 23          **collection of interrelated small cell facilities designed to deliver**  
 24          **wireless service.**  
 25          **Sec. 10. (a) As used in this chapter, "substantial modification of**  
 26          **a wireless support structure" means the mounting of a wireless**  
 27          **facility on a wireless support structure in a manner that:**  
 28               **(1) increases the height of the wireless support structure by**  
 29               **the greater of:**  
 30                   **(A) ten percent (10%) of the original height of the wireless**  
 31                   **support structure; or**  
 32                   **(B) twenty (20) feet;**  
 33               **(2) adds an appurtenance to the wireless support structure**  
 34               **that protrudes horizontally from the wireless support**  
 35               **structure more than the greater of:**  
 36                   **(A) twenty (20) feet; or**  
 37                   **(B) the width of the wireless support structure at the**  
 38                   **location of the appurtenance; or**  
 39               **(3) increases the square footage of the equipment compound**  
 40               **in which the wireless facility is located by more than two**  
 41               **thousand five hundred (2,500) square feet.**  
 42          **(b) The term does not include the following:**





1 (1) Increasing the height of a wireless support structure to  
2 avoid interfering with an existing antenna.

3 (2) Increasing the diameter or area of a wireless support  
4 structure to:

5 (A) shelter an antenna from inclement weather; or

6 (B) connect an antenna to the wireless support structure by  
7 cable.

8 Sec. 11. As used in this chapter, "utility pole" means a structure  
9 that is:

10 (1) owned or operated by:

11 (A) a public utility;

12 (B) a communications service provider;

13 (C) a municipality;

14 (D) an electric membership corporation; or

15 (E) a rural electric cooperative; and

16 (2) designed and used to:

17 (A) carry lines, cables, or wires for telephony, cable  
18 television, or electricity; or

19 (B) provide lighting.

20 Sec. 12. As used in this chapter, "wireless facility" means the set  
21 of equipment and network components necessary to provide  
22 wireless communications service. The term does not include a  
23 wireless support structure.

24 Sec. 13. As used in this chapter, "wireless support structure"  
25 means a freestanding structure designed to support wireless  
26 facilities. The term does not include a utility pole.

27 Sec. 14. This chapter applies to permits issued by a permit  
28 authority for the following:

29 (1) Construction of a new wireless support structure.

30 (2) Substantial modification of a wireless support structure.

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

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

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



1 approval of the application.

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

- 3 (1) travel expenses incurred by a third party in its review of  
 4 an application; or  
 5 (2) direct payment or reimbursement of third party fees  
 6 charged on a contingency basis.

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

- 10 (1) Approving applications, issuing permits, or otherwise  
 11 establishing terms and conditions for construction of wireless  
 12 or wireline communications facilities.  
 13 (2) Authorizing or approving tax incentives for wireless or  
 14 wireline communications facilities.  
 15 (3) Providing access to rights-of-way, infrastructure, utility  
 16 poles, river and bridge crossings, and other physical assets  
 17 owned or controlled by the permit authority.

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

25 Sec. 17. This chapter does not:

- 26 (1) affect the ability of a permit authority to exercise zoning,  
 27 land use, planning, or permitting authority otherwise allowed  
 28 under law with respect to the siting of new wireless support  
 29 structures; or  
 30 (2) exempt an applicant from complying with applicable laws  
 31 and ordinances concerning land use.

32 Sec. 18. (a) The following may apply for a permit under this  
 33 chapter on a form and in the manner prescribed by the  
 34 appropriate permit authority:

- 35 (1) A person that provides wireless communications service.  
 36 (2) A person that owns or otherwise makes available  
 37 infrastructure required for wireless communications service.

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

- 39 (1) The name, business address, and point of contact for the  
 40 applicant.  
 41 (2) The location of the proposed or affected wireless support  
 42 structure or wireless facility.



1           **Sec. 19. (a) An application for a permit to construct a new**  
 2 **wireless support structure must include only the following:**

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

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

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

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

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

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

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

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

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

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

37           **(1) review the application to determine if it complies with**  
 38 **applicable laws and ordinances governing land use and**  
 39 **zoning; and**

40           **(2) notify the applicant in writing whether the application is**  
 41 **approved or denied.**

42 **However, if the applicant requested additional time under**



1 subsection (d) to cure defects in the application, the ninety (90) day  
2 period is extended for a corresponding amount of time.

3 **Sec. 20. (a) An application for a permit for substantial**  
4 **modification of a wireless support structure must include only the**  
5 **following:**

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

7 (2) A construction plan that describes the proposed  
8 modifications to the wireless support structure and all  
9 equipment and network components, including antennas,  
10 transmitters, receivers, base stations, power supplies, cabling,  
11 and related equipment.

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

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

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

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

31 (1) review the application to determine if it complies with  
32 applicable laws and ordinances governing land use and  
33 zoning; and

34 (2) notify the applicant in writing whether the application is  
35 approved or denied.

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

39 **Sec. 21. (a) An application for a permit for collocation must**  
40 **include only the following:**

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

42 (2) Evidence of conformance with applicable building permit



- 1 requirements.
- 2 (b) An application for a permit for collocation:
- 3 (1) is not required to comply with zoning or land use
- 4 requirements; and
- 5 (2) is not subject to public hearing.
- 6 (c) A permit authority may allow an applicant to submit a single
- 7 consolidated application to collocate multiple wireless service
- 8 facilities that are located within the jurisdiction of the permit
- 9 authority. The permit authority may issue a single permit for all
- 10 wireless service facilities included in the application rather than
- 11 individual permits for each wireless service facility.
- 12 (d) A permit authority shall review an application within five (5)
- 13 days of its receipt to determine if the application is complete. If a
- 14 permit authority determines that an application is not complete,
- 15 the permit authority shall notify the applicant in writing of all
- 16 defects in the application. If a permit authority does not notify an
- 17 applicant in writing of all defects in the application, the application
- 18 is considered complete.
- 19 (e) An applicant that receives a written notice under subsection
- 20 (d) may cure the defects set forth in the notice and resubmit the
- 21 corrected application to the permit authority within fifteen (15)
- 22 days of receiving the notice. If an applicant is unable to cure the
- 23 defects within the fifteen (15) day period, the applicant shall notify
- 24 the permit authority of the additional time the applicant requires
- 25 to cure the defects.
- 26 (f) Not more than forty-five (45) days after making an initial
- 27 determination of completeness under subsection (d), a permit
- 28 authority shall:
- 29 (1) review the application to determine its conformity with
- 30 applicable building permit requirements; and
- 31 (2) notify the applicant in writing whether the application is
- 32 approved or denied.
- 33 However, if the applicant requested additional time under
- 34 subsection (e) to cure defects in the application, the forty-five (45)
- 35 day period is extended for a corresponding amount of time.
- 36 Sec. 22. (a) In a written notice issued under section 19, 20, or 21
- 37 of this chapter, a permit authority shall state clearly the basis for
- 38 its decision to approve or deny an application. If the permit
- 39 authority denies an application, the written notice must include
- 40 substantial evidence in support of the denial.
- 41 (b) For purposes of this section, a notice is considered written if
- 42 it is included in the minutes of a public meeting of a permit



1 authority.

2 (c) If a permit authority fails to act on an application within the  
3 applicable deadline under section 19, 20, or 21 of this chapter, the  
4 application is considered approved.

5 Sec. 23. A permit authority shall establish guidelines to protect  
6 any confidential or proprietary information disclosed in an  
7 application.

8 Sec. 24. A permit authority may not require or regulate the  
9 installation, location, or use of wireless service facilities on utility  
10 poles.

11 Sec. 25. A permit authority may allow an applicant to submit a  
12 single consolidated application for multiple small cell facilities that  
13 are located within the permit authority's jurisdiction and comprise  
14 a single small cell network. The permit authority may issue a single  
15 permit for the small cell network rather than multiple permits for  
16 each small cell facility.

17 Sec. 26. An applicant may:

18 (1) bring an action for a violation of this chapter in any court  
19 with jurisdiction; and

20 (2) seek recovery of litigation costs and attorney's fees.

21 SECTION 4. IC 8-1-32.5-14, AS ADDED BY P.L.27-2006,  
22 SECTION 55, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
23 JULY 1, 2015]: Sec. 14. A communications service provider that holds  
24 a certificate issued under this chapter:

25 (1) is exempt from local franchises and related fees; and

26 (2) enjoys access to public rights-of-way;

27 to the same extent as a communications service provider that holds a  
28 certificate of territorial authority or an indeterminate permit issued  
29 under IC 8-1-2 before July 1, 2009.

30 SECTION 5. IC 14-8-2-294.5 IS ADDED TO THE INDIANA  
31 CODE AS A NEW SECTION TO READ AS FOLLOWS  
32 [EFFECTIVE JULY 1, 2015]: Sec. 294.5. "Utility", for purposes of  
33 IC 14-18-10, includes a communications service provider (as  
34 defined in IC 8-1-32.5-4).

35 SECTION 6. IC 14-18-10-2 IS AMENDED TO READ AS  
36 FOLLOWS [EFFECTIVE JULY 1, 2015]: Sec. 2. The director may  
37 issue to any person, without charge, a permit to erect or construct a  
38 utility, telephone, or telegraph line as described in section 1 of this  
39 chapter under the rules and restrictions that the director considers  
40 necessary:

41 (1) for the protection and preservation of the natural scenic  
42 conditions of the land; or



1           (2) to prevent the line from interfering with or obstructing the use  
2           and enjoyment of the property by the public.  
3       **However, the director shall not impose a charge to issue a permit**  
4       **to erect or construct a utility, telephone, or telegraph line as**  
5       **described in section 1(5) of this chapter.**



## 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:**



(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~~

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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**".  
Re-number all SECTIONS consecutively.

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

KOCH

