



April 8, 2015

ENGROSSED HOUSE BILL No. 1318

DIGEST OF HB 1318 (Updated April 7, 2015 11:07 am - DI 73)

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;
(Continued next page)

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

Koch, Frye R

(SENATE SPONSORS — HERSHMAN, WALKER, BRODEN)

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.

April 7, 2015, amended, reported favorably — Do Pass.

EH 1318—LS 7416/DI 103



Digest Continued

certain business decisions of the applicant. Specifies that the Indiana department of transportation, the Indiana finance authority, the state of Indiana (and its agencies, departments, boards, commissions, authorities, and instrumentalities), and the director of the department of 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 8, 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

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 **(k) "Private toll facility", as used in this chapter, means any new**
 21 **or existing highway, toll road, street, motorway, road, or bridge**
 22 **owned or operated by a private entity, including all tunnels,**
 23 **overpasses, underpasses, interchanges, entrance plazas,**
 24 **approaches, tollhouses, service stations, and administration,**
 25 **storage, and other buildings and facilities necessary or desirable**
 26 **for the operation of a private toll facility, together with all**
 27 **property, rights, easements, and interests that may be acquired by**
 28 **the private entity for the construction or operation of the facility.**
 29 **The term includes any subsequent improvement, betterment,**
 30 **enlargement, extension, or reconstruction of an existing private toll**
 31 **facility.**

32 SECTION 2. IC 8-1-2-5 IS AMENDED TO READ AS FOLLOWS
 33 [EFFECTIVE JANUARY 1, 2016]: Sec. 5. (a) Every public utility, ~~and~~
 34 **every communications service provider**, every municipality, and
 35 every person, association, limited liability company, or corporation
 36 having tracks, conduits, subways, poles, or other equipment on, over,
 37 or under any street or highway **(except in the case of a private toll**
 38 **facility)** shall for a reasonable compensation, permit the use of the
 39 same by any other public utility **or communications service provider**
 40 or by a municipality owning or operating a utility, whenever public
 41 convenience and necessity require such use, and such use will not
 42 result in irreparable injury to the owner or other users of such



1 equipment, nor in any substantial detriment to the service to be
 2 rendered by such owners or other users. Every public utility for the
 3 conveyance of telephone messages shall permit a physical connection
 4 or connections to be made, and telephone service to be furnished,
 5 before any telephone system operated by it; and the telephone toll line
 6 operated by another such public utility or between its toll line and the
 7 telephone system of another such public utility; or between its toll line
 8 and the toll line of another such public utility; or between its telephone
 9 system and the telephone system of another such public utility;
 10 whenever public convenience and necessity require such physical
 11 connection or connections and such physical connection or connections
 12 will not result in irreparable injury to the owner or other users of the
 13 facilities of such public utilities; nor in any substantial detriment to the
 14 service to be rendered by such public utilities. If any prospective
 15 consumers or patrons of any public utility for the production,
 16 transmission, delivery, or furnishing of light or power, living in
 17 territory outside of cities and towns, and within not to exceed one-half
 18 (1/2) mile of the transmission line of such utility, shall agree to and
 19 shall construct and install the necessary equipment, in compliance with
 20 plans and specifications prescribed by such utility, such public utility
 21 shall permit the necessary physical connection or connections to be
 22 made and service to be furnished to the person or persons who have
 23 constructed and installed such equipment. The term "physical
 24 connection"; as used in this section; shall mean such number of trunk
 25 lines or complete wire circuits and connections as may be required to
 26 furnish reasonably adequate telephone service between such public
 27 utilities.

28 (b) In case of failure to agree upon such use or the terms and
 29 conditions or compensations for such use, or in case of failure to agree
 30 upon such physical connection or connections; or the terms and
 31 conditions upon which the same shall be made; any public utility, any
 32 communications service provider, or any person, association, limited
 33 liability company, or corporation interested may apply to the
 34 commission and if after investigation the commission shall ascertain
 35 that public convenience and necessity require such use, or such
 36 physical connections; and that such use or such physical connection or
 37 connections would not result in irreparable injury to the owner or other
 38 users of such equipment or the facilities of such public utilities, nor in
 39 any substantial detriment to the service to be rendered by such owner
 40 or other public utilities or other users of such equipment or facilities,
 41 it shall by order direct that such use be permitted and prescribe
 42 reasonable conditions and compensations for such joint use. and that



1 such physical connection or connections be made and determine how
 2 and within what time such connection or connections shall be made;
 3 and by whom the expense of making and maintaining such connection
 4 or connections shall be paid.

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

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

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

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

24 **Sec. 1. As used in this chapter, "antenna" means any**
 25 **communications equipment that transmits or receives**
 26 **electromagnetic radio signals used in the provision of wireless**
 27 **communications service.**

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

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

36 **Sec. 4. As used in this chapter, "collocation" means the**
 37 **placement or installation of wireless facilities on existing structures**
 38 **that include a wireless facility or a wireless support structure,**
 39 **including water towers and other buildings or structures. The term**
 40 **includes the placement, replacement, or modification of wireless**
 41 **facilities within an approved equipment compound.**

42 **Sec. 5. As used in this chapter, "electrical transmission tower"**



1 means a structure that physically supports high voltage overhead
2 power lines. The term does not include a utility pole.

3 Sec. 6. As used in this chapter, "equipment compound" means
4 the area that:

5 (1) surrounds or is near the base of a wireless support
6 structure; and

7 (2) encloses wireless facilities.

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

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

15 (1) the Indiana department of transportation;

16 (2) the Indiana finance authority;

17 (3) the state or any of its agencies, departments, boards,
18 commissions, authorities, or instrumentalities;

19 (4) the director of the department of natural resources; or

20 (5) a court or other judicial body that reviews decisions or
21 rulings made by a permit authority.

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

23 (1) a personal wireless service facility (as defined by the
24 Federal Telecommunications Act of 1996 as in effect on July
25 1, 2015); or

26 (2) a wireless service facility that satisfies the following
27 requirements:

28 (A) Each antenna, including exposed elements, has a
29 volume of three (3) cubic feet or less.

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

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

34 (b) For purposes of subsection (a)(2)(C), the volume of the
35 primary equipment enclosure does not include the following
36 equipment that is located outside the primary equipment
37 enclosure:

38 (1) Electric meters.

39 (2) Concealment equipment.

40 (3) Telecommunications demarcation boxes.

41 (4) Ground based enclosures.

42 (5) Back up power systems.



- 1 **(6) Grounding equipment.**
 2 **(7) Power transfer switches.**
 3 **(8) Cut off switches.**
 4 **Sec. 10. As used in this chapter, "small cell network" means a**
 5 **collection of interrelated small cell facilities designed to deliver**
 6 **wireless service.**
 7 **Sec. 11. (a) As used in this chapter, "substantial modification of**
 8 **a wireless support structure" means the mounting of a wireless**
 9 **facility on a wireless support structure in a manner that:**
 10 **(1) increases the height of the wireless support structure by**
 11 **the greater of:**
 12 **(A) ten percent (10%) of the original height of the wireless**
 13 **support structure; or**
 14 **(B) twenty (20) feet;**
 15 **(2) adds an appurtenance to the wireless support structure**
 16 **that protrudes horizontally from the wireless support**
 17 **structure more than the greater of:**
 18 **(A) twenty (20) feet; or**
 19 **(B) the width of the wireless support structure at the**
 20 **location of the appurtenance; or**
 21 **(3) increases the square footage of the equipment compound**
 22 **in which the wireless facility is located by more than two**
 23 **thousand five hundred (2,500) square feet.**
 24 **(b) The term does not include the following:**
 25 **(1) Increasing the height of a wireless support structure to**
 26 **avoid interfering with an existing antenna.**
 27 **(2) Increasing the diameter or area of a wireless support**
 28 **structure to:**
 29 **(A) shelter an antenna from inclement weather; or**
 30 **(B) connect an antenna to the wireless support structure by**
 31 **cable.**
 32 **Sec. 12. As used in this chapter, "utility pole" means a structure**
 33 **that is:**
 34 **(1) owned or operated by:**
 35 **(A) a public utility;**
 36 **(B) a communications service provider;**
 37 **(C) a municipality;**
 38 **(D) an electric membership corporation; or**
 39 **(E) a rural electric cooperative; and**
 40 **(2) designed and used to:**
 41 **(A) carry lines, cables, or wires for telephony, cable**
 42 **television, or electricity; or**



- 1 **(B) provide lighting.**
 2 **The term does not include a wireless support structure or an**
 3 **electrical transmission tower.**
- 4 **Sec. 13. As used in this chapter, "wireless facility" means the set**
 5 **of equipment and network components necessary to provide**
 6 **wireless communications service. The term does not include a**
 7 **wireless support structure.**
- 8 **Sec. 14. As used in this chapter, "wireless support structure"**
 9 **means a freestanding structure designed to support wireless**
 10 **facilities. The term does not include a utility pole or an electrical**
 11 **transmission tower.**
- 12 **Sec. 15. This chapter applies to permits issued by a permit**
 13 **authority, under local law and consistent with IC 36-7, for the**
 14 **following:**
- 15 **(1) Construction of a new wireless support structure.**
 16 **(2) Substantial modification of a wireless support structure.**
 17 **(3) Collocation of wireless facilities on an existing structure.**
- 18 **Sec. 16. (a) A permit authority may not require an applicant to**
 19 **pay a fee associated with the submission, review, processing, or**
 20 **approval of an application for a permit unless the permit authority**
 21 **requires payment of the same or a similar fee for applications for**
 22 **permits for similar types of commercial development within the**
 23 **jurisdiction of the permit authority.**
- 24 **(b) A fee associated with the submission, review, processing, or**
 25 **approval of an application for a permit, including a fee imposed by**
 26 **a third party that provides review, technical, or consulting**
 27 **assistance to a permit authority, must be based on actual, direct,**
 28 **and reasonable costs incurred for the review, processing, and**
 29 **approval of the application.**
- 30 **(c) A fee described in this section may not include:**
- 31 **(1) travel expenses incurred by a third party in its review of**
 32 **an application; or**
 33 **(2) direct payment or reimbursement of third party fees**
 34 **charged on a contingency basis.**
- 35 **Sec. 17. (a) A permit authority may not discriminate among**
 36 **communications service providers or public utilities with respect**
 37 **to the following:**
- 38 **(1) Approving applications, issuing permits, or otherwise**
 39 **establishing terms and conditions for construction of wireless**
 40 **or wireline communications facilities.**
 41 **(2) Authorizing or approving tax incentives for wireless or**
 42 **wireline communications facilities.**



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

4 (b) A permit authority may not impose a fall zone requirement
 5 that:

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

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

15 Sec. 18. This chapter does not:

- 16 (1) affect the ability of a permit authority to exercise zoning,
 17 land use, planning, or permitting authority otherwise allowed
 18 under law, including IC 36-7, with respect to the siting of new
 19 wireless support structures; or
 20 (2) exempt an applicant from complying with applicable laws
 21 and ordinances concerning land use.

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

- 25 (1) A person that provides wireless communications service.
 26 (2) A person that owns or otherwise makes available
 27 infrastructure required for wireless communications service.

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

- 29 (1) The name, business address, and point of contact for the
 30 applicant.
 31 (2) The location of the proposed or affected wireless support
 32 structure or wireless facility.

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

- 35 (1) All information required by section 19 of this chapter.
 36 (2) A construction plan that describes the proposed wireless
 37 support structure and all equipment and network
 38 components, including antennas, transmitters, receivers, base
 39 stations, power supplies, cabling, and related equipment.
 40 (3) Evidence supporting the choice of location for the
 41 proposed wireless support structure, including a sworn
 42 statement from the individual responsible for the choice of



1 location demonstrating that collocation of wireless facilities
 2 on an existing wireless support structure was not a viable
 3 option because collocation:
 4 (A) would not result in the same wireless service
 5 functionality, coverage, and capacity;
 6 (B) is technically infeasible; or
 7 (C) is an economic burden to the applicant.
 8 (4) If an applicable zoning ordinance specifies that a special
 9 exception, special use, contingent use, or conditional use must
 10 be approved for the proposed wireless support structure in
 11 accordance with IC 36-7-4-918.2, evidence showing that the
 12 application complies with the criteria set forth in the
 13 ordinance with respect to the special exception, special use,
 14 contingent use, or conditional use.
 15 (5) If the proposed wireless support structure is not a
 16 permitted use under an applicable zoning ordinance, evidence
 17 showing that the application complies with the criteria for a
 18 variance of use from the terms of the zoning ordinance in
 19 accordance with IC 36-7-4-918.4.
 20 A permit authority may not require an applicant to submit
 21 information about, and may not evaluate an applicant's business
 22 decisions with respect to, the applicant's designed service, customer
 23 demand, service quality, or desired signal strength to a particular
 24 location.
 25 (b) An application that contains the information required under
 26 subsection (a) is considered complete.
 27 (c) A permit authority shall review an application within ten
 28 (10) business days of its receipt to determine if the application is
 29 complete. If a permit authority determines that an application is
 30 not complete, the permit authority shall notify the applicant in
 31 writing of all defects in the application. If a permit authority does
 32 not notify an applicant in writing of all defects in the application,
 33 the application is considered complete.
 34 (d) An applicant that receives a written notice under subsection
 35 (c) may cure the defects set forth in the notice and resubmit the
 36 corrected application to the permit authority within thirty (30)
 37 days of receiving the notice. If an applicant is unable to cure the
 38 defects within the thirty (30) day period, the applicant shall notify
 39 the permit authority of the additional time the applicant requires
 40 to cure the defects.
 41 (e) Subject to subsection (f), not more than ninety (90) days after
 42 making an initial determination of completeness under subsection



1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42

- (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.**
 - (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).**
 - 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**



1 demand, service quality, or desired signal strength to a particular
2 location.

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

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

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

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

22 (1) review the application to determine if it complies with
23 applicable laws and ordinances governing land use and
24 zoning; and

25 (2) notify the applicant in writing whether the application is
26 approved or denied.

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

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

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

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

41 (1) All information required by section 19 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 shall allow an applicant to submit a
- 7 single consolidated application to collocate multiple wireless
- 8 service facilities that are located within the jurisdiction of the
- 9 permit authority. The permit authority shall issue a single permit
- 10 for all wireless service facilities included in the application rather
- 11 than individual permits for each wireless service facility.
- 12 (d) A permit authority shall review an application within ten
- 13 (10) business days of its receipt to determine if the application is
- 14 complete. If a permit authority determines that an application is
- 15 not complete, the permit authority shall notify the applicant in
- 16 writing of all defects in the application. If a permit authority does
- 17 not notify an applicant in writing of all defects in the application,
- 18 the application 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. 23. (a) In a written notice issued under section 20, 21, or 22
- 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
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42

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.

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

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

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

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)), other than rights-of-way, property, or projects that are the subject of a public-private agreement under IC 8-15.5 or IC 8-15.7 or communications systems infrastructure, including all infrastructure used for wireless communications, owned by or under the jurisdiction of the Indiana finance authority or the state or any of its agencies, departments, boards, commissions, authorities, or instrumentalities.

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

SECTION 6. IC 14-18-10-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2016]: Sec. 2. The director may issue to any person, without charge, a permit to erect or construct a utility, telephone, or telegraph line as described in section 1 of this



1 chapter under the rules and restrictions that the director considers
2 necessary:

- 3 (1) for the protection and preservation of the natural scenic
4 conditions of the land; or
5 (2) to prevent the line from interfering with or obstructing the use
6 and enjoyment of the property by the public.

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

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

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

- 20 (1) that highway systems be carefully planned;
21 (2) that new communities grow only with adequate public way,
22 utility, health, educational, and recreational facilities;
23 (3) that the needs of agriculture, forestry, industry, and business
24 be recognized in future growth;
25 (4) that residential areas provide healthful surroundings for family
26 life; and
27 (5) that the growth of the community is commensurate with and
28 promotive of the efficient and economical use of public funds.

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

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

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

42 (b) **As used in this SECTION, "legislative council" refers to the**



1 legislative council established by IC 2-5-1.1-1.

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

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

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

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

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

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

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

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

22 (d) If the topic described in subsection (c) is assigned to the
23 committee, the committee shall issue a final report to the legislative
24 council containing the committee's findings and recommendations,
25 including any recommended legislation, in an electronic format
26 under IC 5-14-6 not later than November 1, 2015.

27 (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

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."**



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.

COMMITTEE REPORT

Madam President: The Senate Committee on Tax and Fiscal Policy, to which was referred Engrossed 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:

Page 3, between lines 19 and 20, begin a new paragraph and insert:

"(k) "Private toll facility", as used in this chapter, means any new or existing highway, toll road, street, motorway, road, or bridge owned or operated by a private entity, including all tunnels, overpasses, underpasses, interchanges, entrance plazas, approaches, tollhouses, service stations, and administration, storage, and other buildings and facilities necessary or desirable for the operation of a private toll facility, together with all property, rights, easements, and interests that may be acquired by the private entity for the construction or operation of the facility. The term includes any subsequent improvement, betterment, enlargement, extension, or reconstruction of an existing private toll facility."

Page 3, line 25, after "highway" insert **"(except in the case of a private toll facility)"**.

Page 4, line 18, after "utility" insert **", any communications service provider,"**.

Page 6, between lines 1 and 2, begin a new line block indented and insert:

"(2) the Indiana finance authority;

(3) the state or any of its agencies, departments, boards, commissions, authorities, or instrumentalities;".

Page 6, line 2, delete "(2)" and insert **"(4)"**.

EH 1318—LS 7416/DI 103



Page 6, line 3, delete "(3)" and insert "(5)".

Page 14, line 9, after "IC 8-1-2-1(a)" delete "." and insert ", **other than rights-of-way, property, or projects that are the subject of a public-private agreement under IC 8-15.5 or IC 8-15.7 or communications systems infrastructure, including all infrastructure used for wireless communications, owned by or under the jurisdiction of the Indiana finance authority or the state or any of its agencies, departments, boards, commissions, authorities, or instrumentalities.**".

and when so amended that said bill do pass.

(Reference is to EHB 1318 as printed April 3, 2015.)

HERSHMAN, Chairperson

Committee Vote: Yeas 11, Nays 0.

