

# SENATE BILL No. 160

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## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 36-7-5.2; IC 36-7-5.3.

**Synopsis:** Siting of telecommunications towers. Allows a municipality or county that has or does not have planning and zoning powers to regulate the location, erection, construction, reconstruction, change, alteration, removal, or enlargement of a telecommunications tower. Provides that if a person must obtain permission from a zoning authority or local unit to locate, erect, or construct a telecommunications tower, the person must provide notice by certified mail to each owner of real property that is contiguous to, or located across a street, roadway, or alley and not more than 100 feet from, the real property where the tower will be located. Requires a notice to a real property owner to contain specified information in addition to any  
(Continued next page)

**Effective:** July 1, 1998.

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January 6, 1998, read first time and referred to Committee on Governmental and Regulatory Affairs.

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Digest Continued

information required by the zoning authority. Provides that if the notice is returned unclaimed or refused, the person shall mail the notice by regular mail. Provides that the failure of delivery of the notice does not invalidate the notice.



Introduced

Second Regular Session 110th General Assembly (1998)

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 1997 General Assembly.

## SENATE BILL No. 160

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A BILL FOR AN ACT to amend the Indiana Code concerning local government.

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

1 SECTION 1. IC 36-7-5.2 IS ADDED TO THE INDIANA CODE  
2 AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE  
3 JULY 1, 1998]:

4 **Chapter 5.2. Telecommunications Towers in Areas with**  
5 **Planning and Zoning**

6 **Sec. 1. This chapter applies to a telecommunications tower that:**

7 **(1) is constructed after June 30, 1998; and**  
8 **(2) has attached to it radio frequency transmission or**  
9 **reception equipment.**

10 **Sec. 2. As used in this chapter, "applicant" means a person who**  
11 **requests permission from an authority under this chapter to locate,**  
12 **erect, construct, reconstruct, change, alter, remove, or enlarge a**  
13 **telecommunications tower.**

14 **Sec. 3. As used in this chapter, "authority" means the planning**  
15 **and zoning authority of a local unit.**

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1           **Sec. 4.** As used in this chapter, "local unit" means a  
2 municipality or county that has planning and zoning powers under  
3 IC 36-7-4.

4           **Sec. 5.** As used in this chapter, "public utility" has the meaning  
5 set forth in IC 8-1-2-1.

6           **Sec. 6.** As used in this chapter, "telecommunications tower"  
7 means:

8               (1) a free standing structure; or

9               (2) a structure to be attached to a building or other structure;  
10 that is proposed to be owned or principally used by a public utility  
11 engaged in the provision of telecommunications services.

12           **Sec. 7.** This chapter does not apply to a local unit's management  
13 of a right of way.

14           **Sec. 8.** Except as provided in section 9 of this chapter, this  
15 chapter does not confer power on a local unit with respect to the  
16 location, erection, construction, reconstruction, change, alteration,  
17 maintenance, removal, use, or enlargement of buildings or  
18 structures of a public utility, whether publicly or privately owned,  
19 or the use of land by a public utility for the operation of its  
20 business.

21           **Sec. 9.** (a) Except as provided in subsection (b), and subject to  
22 section 10 of this chapter, a local unit may regulate the location,  
23 erection, construction, reconstruction, change, alteration, removal,  
24 or enlargement of a telecommunications tower.

25               (b) This chapter does not confer power on a local unit with  
26 respect to the maintenance or use of a telecommunications tower  
27 or change or alteration that would not substantially increase the  
28 tower's height.

29           **Sec. 10.** (a) If a person is required to obtain a permit or other  
30 approval from an authority under the local planning and zoning  
31 laws to locate, erect, or construct a telecommunications tower, the  
32 person shall provide written notice by certified mail to each owner  
33 of real property, as shown on the county auditor's current tax list,  
34 whose real property is located:

35               (1) contiguous to; or

36               (2) across a street, roadway, or alley, and not more than one  
37 hundred (100) feet from;

38 the property on which the telecommunications tower is located or  
39 is proposed to be located.

40               (b) The notice under subsection (a) is in addition to any notice  
41 required by the authority.

42           **Sec. 11.** The notice required under section 10 of this chapter



1 must include the following:

- 2 (1) A statement of the person's intent to construct the tower.  
 3 (2) A description of the property where the tower is proposed  
 4 to be located sufficient to identify the proposed location.  
 5 (3) A statement that the person is applying for permission to  
 6 construct the tower from the local unit.  
 7 (4) Any other information required by the authority.

8 **Sec. 12. (a)** The authority may not approve the construction of  
 9 a telecommunications tower until the person provides proof to the  
 10 authority that the person provided the notice required under this  
 11 chapter.

12 (b) The authority shall determine the form of proof required to  
 13 be submitted to the authority under this section.

14 **Sec. 13.** If the notice is returned unclaimed or refused, the  
 15 person shall mail the notice by regular mail. The failure of delivery  
 16 of the notice does not invalidate the notice.

17 **Sec. 14.** The local unit may collect a reasonable fee for the  
 18 issuance of a permit or other approval under this chapter.

19 SECTION 2. IC 36-7-5.3 IS ADDED TO THE INDIANA CODE  
 20 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE  
 21 JULY 1, 1998]:

22 **Chapter 5.3. Telecommunications Towers in Areas Without**  
 23 **Planning and Zoning**

24 **Sec. 1.** This chapter applies to the following:

- 25 (1) A local unit that does not have planning and zoning powers  
 26 under IC 36-7-4.  
 27 (2) A telecommunications tower that:  
 28 (A) is constructed after June 30, 1998; and  
 29 (B) has attached to it radio frequency transmission or  
 30 reception equipment.

31 **Sec. 2.** As used in this chapter, "applicant" means a person who  
 32 requests permission from a local unit under this chapter to locate,  
 33 erect, construct, reconstruct, change, alter, remove, or enlarge a  
 34 telecommunications tower.

35 **Sec. 3.** As used in this chapter, "legislative body" means a  
 36 legislative body of a local unit.

37 **Sec. 4.** As used in this chapter, "local unit" means a  
 38 municipality or county.

39 **Sec. 5.** As used in this chapter, "permit" means a permit to  
 40 locate, erect, construct, reconstruct, change, alter, remove, or  
 41 enlarge a telecommunications tower on real property.

42 **Sec. 6.** As used in this chapter, "public utility" has the meaning



1 set forth in IC 8-1-2-1.

2 **Sec. 7. As used in this chapter, "telecommunications tower"**  
3 **means:**

4 (1) a free standing structure; or

5 (2) a structure to be attached to a building or other structure;  
6 that is proposed to be owned or principally used by a public utility  
7 engaged in the provision of telecommunications services.

8 **Sec. 8. This chapter does not apply to a local unit's management**  
9 **of a right of way.**

10 **Sec. 9. Except as provided in this chapter, this chapter does not**  
11 **confer power on a local unit with respect to the location, erection,**  
12 **construction, reconstruction, change, alteration, maintenance,**  
13 **removal, use, or enlargement of buildings or structures of a public**  
14 **utility, whether publicly or privately owned, or the use of land by**  
15 **a public utility for the operation of its business.**

16 **Sec. 10. (a) Except as provided in subsection (b), and subject to**  
17 **section 11 of this chapter, a local unit may regulate the location,**  
18 **erection, construction, reconstruction, change, alteration, removal,**  
19 **or enlargement of a telecommunications tower.**

20 (b) This chapter does not confer power on a local unit with  
21 respect to the maintenance or use of a telecommunications tower  
22 or change or alteration that would not substantially increase the  
23 tower's height.

24 **Sec. 11. (a) A local unit may require a person to obtain a permit**  
25 **from the legislative body before locating, erecting, constructing,**  
26 **reconstructing, changing, altering, removing, or enlarging a**  
27 **telecommunications tower.**

28 (b) The local unit may collect a reasonable fee for the issuance  
29 of a permit under this chapter.

30 **Sec. 12. (a) An applicant shall provide written notice that the**  
31 **applicant is applying for a permit from the legislative body to**  
32 **locate, erect or construct a telecommunications tower. The notice**  
33 **must be by certified mail to each owner of real property, as shown**  
34 **on the county auditor's current tax list, whose real property is**  
35 **located:**

36 (1) contiguous to; or

37 (2) across a street, roadway, or alley, and not more than one  
38 hundred (100) feet from;  
39 the property on which the telecommunications tower is located or  
40 proposed to be located.

41 (b) The notice under subsection (a) is in addition to any notice  
42 required by the legislative body.



1           (c) Subject to the notice requirements set forth in this chapter,  
2 the legislative body may prescribe rules to govern the provision of  
3 notice by an applicant under this section.

4           **Sec. 13. The notice required under section 12 of this chapter**  
5 **must include the following:**

6           (1) A statement of the person's intent to construct the tower.

7           (2) A description of the property where the tower is proposed  
8 to be located sufficient to identify the proposed location.

9           (3) A statement that the person is applying for permission to  
10 construct the tower from the local unit.

11           (4) Any other information required by the legislative body.

12           **Sec. 14. (a) The legislative body may not approve a permit until**  
13 **the applicant provides proof to the legislative body that the**  
14 **applicant provided the notice required under this chapter.**

15           (b) The legislative body shall determine the form of proof  
16 required to be submitted to the legislative body under this section.

17           **Sec. 15. If the notice is returned unclaimed or refused, the**  
18 **person shall mail the notice by regular mail. The failure of delivery**  
19 **of the notice does not invalidate the notice.**

