SENATE BILL No. 160

DIGEST OF SB 160 (Updated January 14, 1998 6:12 pm - DI 87)

Citations Affected: IC 36-7.

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 in a location for which a telecommunications tower is not a permitted use under the local planning laws or ordinances, 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 information required by the zoning authority. Provides

(Continued next page)

Effective: See text of bill.

Gard, Server

January 6, 1998, read first time and referred to Committee on Governmental and Regulatory Affairs.
January 15, 1998, amended, reported favorably — Do Pass.

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Digest Continued

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.

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January 16, 1998

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.

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SENATE BILL No. 160

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:

SECTION 1. IC 36-7-5.2 IS ADDED TO THE INDIANA CODE AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]:

Chapter 5.2. Telecommunications Towers in Areas with Planning and Zoning

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

(1) is constructed after June 30, 1998; and

(2) has attached to it radio frequency transmission or reception equipment.

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

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

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

Sec. 5. As used in this chapter, "public utility" has the meaning

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

Sec. 6. As used in this chapter, "telecommunications" means the electronic transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information sent and received.

Sec. 7. As used in this chapter, "telecommunications service" means the making of telecommunications available to the public for a fee.

Sec. 8. (a) As used in this chapter, "telecommunications tower" means:

(1) a free standing structure; or

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

(b) The term includes a microwave tower, common carrier tower, cellular telephone and wireless communications tower, tower for the transmission of paging services, and tower for the transmission of personal communications services.

(c) The term does not include the following:

(1) A tower or a structure attached to a tower, a building, or other structure that is used for the broadcast of radio or television services.

(2) A utility pole.

(3) A satellite dish.

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

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

Sec. 11. (a) Except as provided in subsection (b), and subject to section 12 of this chapter and 47 U.S.C. 332(7)(B), a local unit may regulate the location, erection, construction, reconstruction, change, alteration, removal, or enlargement of a telecommunications tower.

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

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Sec. 12. (a) If a person is required to obtain a permit or other approval from an authority under the local planning and zoning laws to locate, erect, or construct a telecommunications tower in a location for which a telecommunications tower is not a permitted use under the local planning laws or ordinances then in effect, the person shall provide written notice by certified mail to each owner of real property, as shown on the county auditor's current tax list, whose real property is located:

(1) contiguous to; or

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

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

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

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

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

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

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

(4) Any other information required by the authority and reasonably necessary for its consideration of the application.

Sec. 14. (a) The authority may not approve the construction of a telecommunications tower until the person provides proof to the authority that the person provided the notice required under this chapter.

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

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

Sec. 16. (a) The local unit may collect a reasonable fee for the issuance of a permit or other approval under this chapter.

(b) A fee under subsection (a) may not exceed the lesser of the following:

(1) The administrative cost of processing the permit or approval application.

(2) The fee charged by the local unit for a petition for a variance or special exception from a zoning ordinance.

SECTION 2. IC 36-7-5.3 IS ADDED TO THE INDIANA CODE

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AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]:

Chapter 5.3. Telecommunications Towers in Areas Without Planning and Zoning

Sec. 1. This chapter applies to the following:

(1) A local unit that does not have planning and zoning powers under IC 36-7-4.

(2) A telecommunications tower that:

(A) is constructed after June 30,1998; and

(B) has attached to it radio frequency transmission or reception equipment.

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

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

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

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

Sec. 6. As used in this chapter, "public utility" has the meaning set forth in IC 8-1-2-1.

Sec. 7. As used in this chapter, "telecommunications" means the electronic transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information sent and received.

Sec. 8. As used in this chapter, "telecommunications service" means the making of telecommunications available to the public for a fee.

Sec. 9. (a) As used in this chapter, "telecommunications tower" means:

(1) a free standing structure; or

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

(b) The term includes a microwave tower, common carrier tower, cellular telephone and wireless communications tower, tower for the transmission of paging services, and tower for the transmission of personal communications services.

(c) The term does not include the following:

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(1) A tower or structure attached to a tower, a building, or other structure for the broadcast of radio or television services.

(2) A utility pole.

(3) A satellite dish.

Sec. 10. This chapter does not apply to a local unit's management of a right of way.

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

Sec. 12. (a) Except as provided in subsection (b), and subject to section 13 of this chapter and 47 U.S.C.332(7)(B), a local unit may regulate the location, erection, construction, reconstruction, change, alteration, removal, or enlargement of a telecommunications tower.

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

Sec. 13. (a) A local unit may require a person to obtain a permit from the legislative body before locating, erecting, constructing, reconstructing, changing, altering, removing, or enlarging a telecommunications tower.

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

Sec. 14. (a) An applicant shall provide written notice that the applicant is applying for a permit from the legislative body to locate, erect or construct a telecommunications tower. The notice must be by certified mail to each owner of real property, as shown on the county auditor's current tax list, whose real property is located:

(1) contiguous to; or

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

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

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

(c) Subject to the notice requirements set forth in this chapter,

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the legislative body may prescribe rules to govern the provision of notice by an applicant under this section.

Sec. 15. The notice required under section 14 of this chapter must include the following:

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

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

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

(4) Any other information required by the legislative body and reasonably necessary for its consideration of the application.

Sec. 16. (a) The legislative body may not approve a permit until the applicant provides proof to the legislative body that the applicant provided the notice required under this chapter.

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

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

SECTION 3. **An emergency is declared for this act.**

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SENATE MOTION

Mr. President: I move that Senator Server be added as coauthor of Senate Bill 160.

GARD

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COMMITTEE REPORT

Mr. President: The Senate Committee on Governmental and Regulatory Affairs, to which was referred Senate Bill 160, 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 2 with "[EFFECTIVE UPON PASSAGE]".

Page 2, between lines 5 and 6, begin a new paragraph and insert:

"**Sec. 6. As used in this chapter, "telecommunications" means the electronic transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information sent and received.**

Sec. 7. As used in this chapter, "telecommunications service" means the making of telecommunications available to the public for a fee.".

Page 2, line 6, delete "6." and insert "**8. (a)**".

Page 2, between lines 11 and 12, begin a new paragraph and insert:

"**(b) The term includes a microwave tower, common carrier tower, cellular telephone and wireless communications tower, tower for the transmission of paging services, and tower for the transmission of personal communications services.**

(c) The term does not include the following:

(1) A tower or a structure attached to a tower, a building, or other structure that is used for the broadcast of radio or television services.

(2) A utility pole.

(3) A satellite dish.".

Page 2, line 12, delete "7" and insert "**9**".

Page 2, line 14, delete "8" and insert "**10**".

Page 2, line 14, delete "9" and insert "**11**".

Page 2, line 21, delete "9" and insert "**11**".

Page 2, line 22, delete "10" and insert "**12**".

Page 2, line 22, after "chapter" insert "**and 47 U.S.C. 332(7)(B)**".

Page 2, line 29, delete "10" and insert "**12**".

Page 2, line 31, after "tower" insert "**in a location for which a telecommunications tower is not a permitted use under the local planning laws or ordinances then in effect**".

Page 2, line 42, delete "11" and insert "**13**".

Page 2, line 42, delete "10" and insert "**12**".

Page 3, line 7, after "authority" insert "**and reasonably necessary for its consideration of the application**".

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Page 3, line 8, delete "12" and insert "**14**".

Page 3, line 14, delete "13" and insert "**15**".

Page 3, line 17, delete "14" and insert "**16 (a)**".

Page 3, between lines 18 and 19, begin a new paragraph and insert:

"**(b) A fee under subsection (a) may not exceed the lesser of the following:**

(1) The administrative cost of processing the permit or approval application.

(2) The fee charged by the local unit for a petition for a variance or special exception from a zoning ordinance.".

Page 4, between lines 1 and 2, begin a new paragraph and insert:

"**Sec. 7. As used in this chapter, "telecommunications" means the electronic transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information sent and received.**

Sec. 8. As used in this chapter, "telecommunications service" means the making of telecommunications available to the public for a fee.".

Page 4, line 2, delete "7." and insert "**9. (a)**".

Page 4, between lines 7 and 8, begin a new paragraph and insert:

"**(b) The term includes a microwave tower, common carrier tower, cellular telephone and wireless communications tower, tower for the transmission of paging services, and tower for the transmission of personal communications services.**

(c) The term does not include the following:

(1) A tower or structure attached to a tower, a building, or other structure for the broadcast of radio or television services.

(2) A utility pole.

(3) A satellite dish.".

Page 4, line 8, delete "8" and insert "**10**".

Page 4, line 10, delete "9" and insert "**11**".

Page 4, line 16, delete "10" and insert "**12**".

Page 4, line 17, delete "11" and insert "**13**".

Page 4, line 17, after "chapter" insert "**and 47 U.S.C. 332(7)(B)**".

Page 4, line 24, delete "11" and insert "**13**".

Page 4, line 30, delete "12" and insert "**14**".

Page 5, line 4, delete "13" and insert "**15**".

Page 5, line 4, delete "12" and insert "**14**".

Page 5, line 11, after "body" insert "**and reasonably necessary for its consideration of the application**".

Page 5, line 12, delete "14" and insert "**16**".

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Page 5, line 17, delete "15" and insert "**17**".
Page 5, after line 19 begin a new paragraph and insert:
"SECTION 3. **An emergency is declared for this act.**".

and when so amended that said bill do pass.
(Reference is to Senate Bill 160 as introduced.)

GARD, Chairperson

Committee Vote: Yeas 9, Nays 0.

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