

# SENATE BILL No. 215

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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 exercises or does not exercise planning and zoning powers to regulate the placement, construction, and modification of a telecommunications tower. Provides that if a person must obtain permission: (1) from a zoning authority to place or construct a telecommunications tower in a location where the tower is not a permitted use; or (2) from a local unit to place or construct a telecommunications tower on real property, the person must provide notice by certified mail to each owner of real property that is contiguous to, or not more than 100 feet from, the real property where the tower will be located. Provides additional notice requirements.  
(Continued next page)

**Effective:** Upon passage.

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January 6, 1999, read first time and referred to Committee on Governmental and Regulatory Affairs.

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Digest Continued

Specifies that the requirements for telecommunications towers apply to telecommunications towers that are placed, constructed, or modified after May 8, 1999. Provides that a person applying for a permit to place, construct, or modify a telecommunications tower may appeal the decision of the local unit to the Indiana utility regulatory commission. Provides that the law does not affect a person's right under federal law to appeal the decision of the local unit to a court.

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Introduced

First Regular Session 111th General Assembly (1999)

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 1998 General Assembly.

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## SENATE BILL No. 215



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 UPON PASSAGE]:

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 **is placed, constructed, or modified after May 8, 1999.**

8 **Sec. 2. As used in this chapter, "authority" refers to the**  
9 **planning and zoning authority of a local unit.**

10 **Sec. 3. As used in this chapter, "commission" refers to the**  
11 **Indiana utility regulatory commission.**

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

15 **Sec. 5. As used in this chapter, "person" means an individual,**



1 agency, governmental entity, partnership, corporation, limited  
2 liability company, association, or other entity of any character.

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

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

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

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

14 (1) a freestanding structure; or

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

18 (b) The term includes a microwave tower, cellular telephone and  
19 wireless communications tower, tower for the transmission of  
20 paging services, and tower for the transmission of personal  
21 communications services.

22 (c) The term does not include the following:

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

26 (2) A utility pole.

27 (3) A satellite dish.

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

30 **Sec. 11.** Except as provided in section 12 of this chapter, this  
31 chapter does not confer power on a local unit with respect to the  
32 location, erection, construction, reconstruction, change, alteration,  
33 maintenance, removal, use, or enlargement of buildings, structures  
34 or facilities of a public utility, whether publicly or privately owned,  
35 or the use of land by a public utility for the operation of its  
36 business.

37 **Sec. 12. (a)** Except as provided in subsection (b) and subject to  
38 47 U.S.C. 332(c)(7)(B), a local unit may regulate the placement,  
39 construction, and modification of a telecommunications tower.

40 (b) This chapter does not confer power on a local unit with  
41 respect to the maintenance or use of a telecommunications tower  
42 or a modification that would not substantially increase the tower's

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1 height.

2 **Sec. 13. (a) If a person is required to obtain a permit or other**  
 3 **approval from an authority under the local planning and zoning**  
 4 **laws to place or construct a telecommunications tower in a location**  
 5 **for which a telecommunications tower is not a permitted use under**  
 6 **the local planning laws or ordinances then in effect, the person**  
 7 **shall provide written notice by certified mail to each owner of real**  
 8 **property, as shown on the county auditor's current tax list, whose**  
 9 **real property is located:**

10 (1) contiguous to; or

11 (2) not more than one hundred (100) feet from;

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

14 (b) The authority may require notice in addition to the notice  
 15 required under subsection (a).

16 **Sec. 14. The notice required under section 13 of this chapter**  
 17 **must include the following:**

18 (1) A statement of the person's intent to place or construct the  
 19 telecommunications tower on real property.

20 (2) A description of the real property where the  
 21 telecommunications tower is proposed to be located sufficient  
 22 to identify the proposed location.

23 (3) A statement that the person is applying for permission  
 24 from the local unit to place or construct the  
 25 telecommunications tower on real property.

26 (4) Any other information required by the authority and  
 27 reasonably necessary for the authority's consideration of the  
 28 application.

29 **Sec. 15. (a) The authority may not approve the placement or**  
 30 **construction of a telecommunications tower until the person**  
 31 **provides proof to the authority that the person provided the notice**  
 32 **required under this chapter.**

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

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

38 **Sec. 17. (a) The local unit may collect a reasonable fee for the**  
 39 **issuance of a permit or other approval under this chapter.**

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

42 (1) The administrative cost of processing the permit or

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1 approval application.

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

4 **Sec. 18. (a)** A person applying for a permit to place, construct,  
5 or modify a telecommunications tower may appeal the authority's  
6 decision on the permit application to the commission not later than  
7 ten (10) days after the date of the authority's decision.

8 (b) The commission shall expedite the appeal and issue a  
9 decision not later than ten (10) days after the date the appeal is  
10 received by the commission.

11 **Sec. 19.** This chapter does not affect a person's right to appeal  
12 a decision of the authority to a court as set forth in 47 U.S.C. 332  
13 (c)(7)(B).

14 SECTION 2. IC 36-7-5.3 IS ADDED TO THE INDIANA CODE  
15 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE  
16 UPON PASSAGE]:

17 **Chapter 5.3. Telecommunications Towers in Areas Without**  
18 **Planning and Zoning**

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

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

22 (2) A telecommunications tower that is placed, constructed, or  
23 modified after May 8, 1999.

24 **Sec. 2.** As used in this chapter, "commission" refers to the  
25 Indiana utility regulatory commission.

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

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

30 **Sec. 5.** As used in this chapter, "person" means an individual,  
31 agency, governmental entity, partnership, corporation, limited  
32 liability company, association, or other entity of any character.

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

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

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

42 **Sec. 9. (a)** As used in this chapter, "telecommunications tower"

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- 1 means:
- 2 (1) a freestanding structure; or
- 3 (2) a structure to be attached to a building or other structure;
- 4 that is proposed to be owned or principally used by a public utility
- 5 engaged in the provision of telecommunications services.
- 6 (b) The term includes a microwave tower, cellular telephone and
- 7 wireless communications tower, tower for the transmission of
- 8 paging services, and tower for the transmission of personal
- 9 communications services.
- 10 (c) The term does not include the following:
- 11 (1) A tower or structure attached to a tower, a building, or
- 12 other structure that is used for the broadcast of radio or
- 13 television services.
- 14 (2) A utility pole.
- 15 (3) A satellite dish.
- 16 Sec. 10. This chapter does not apply to a local unit's
- 17 management of a right-of-way.
- 18 Sec. 11. Except as provided in section 12 of this chapter, this
- 19 chapter does not confer power on a local unit with respect to the
- 20 location, erection, construction, reconstruction, change, alteration,
- 21 maintenance, removal, use, or enlargement of buildings, structures,
- 22 or facilities of a public utility, whether publicly or privately owned,
- 23 or the use of land by a public utility for the operation of its
- 24 business.
- 25 Sec. 12. (a) Except as provided in subsection (b) and subject to
- 26 47 U.S.C. 332(c)(7)(B), a local unit may regulate the placement,
- 27 construction, and modification of a telecommunications tower.
- 28 (b) This chapter does not confer power on a local unit with
- 29 respect to the maintenance or use of a telecommunications tower
- 30 or a modification that would not substantially increase the tower's
- 31 height.
- 32 Sec. 13. (a) A local unit may require a person to obtain a permit
- 33 from the legislative body before placing, constructing, or modifying
- 34 a telecommunications tower.
- 35 (b) The local unit may collect a reasonable fee for the issuance
- 36 of a permit or other approval under this chapter.
- 37 Sec. 14. (a) A person shall provide written notice that the person
- 38 is applying for a permit from the legislative body to place or
- 39 construct a telecommunications tower. The notice must be sent by
- 40 certified mail to each owner of real property, as shown on the
- 41 county auditor's current tax list, whose real property is located:
- 42 (1) contiguous to; or

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1           (2) not more than one hundred (100) feet from;  
2 the property on which the telecommunications tower is proposed  
3 to be located.

4           (b) The legislative body may require notice in addition to the  
5 notice required under subsection (a).

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

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

11           (1) A statement of the person's intent to place or construct the  
12 telecommunications tower on real property.

13           (2) A description of the real property where the  
14 telecommunications tower is proposed to be located sufficient  
15 to identify the proposed location.

16           (3) A statement that the person is applying for permission  
17 from the local unit to place or construct the  
18 telecommunications tower on real property.

19           (4) Any other information required by the legislative body  
20 and reasonably necessary for the legislative body's  
21 consideration of the application.

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

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

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

30           **Sec. 18.** (a) A person applying for a permit to place, construct,  
31 or modify a telecommunications tower may appeal the legislative  
32 body's decision on the permit application to the commission not  
33 later than ten (10) days after the date of the legislative body's  
34 decision.

35           (b) The commission shall expedite the appeal and issue a  
36 decision not later than ten (10) days after receiving the appeal.

37           **Sec. 19.** This chapter does not affect a person's right to appeal  
38 a decision of the legislative body to a court as set forth in 47 U.S.C.  
39 332 (c)(7)(B).

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

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