



January 29, 1999

SENATE BILL No. 215

DIGEST OF SB 215 (Updated January 28, 1999 3:14 pm - DI 87)

Citations Affected: IC 36-7.

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 that is: (1) placed, constructed, or substantially modified after May 8, 1999; and (2) for which local approval has not been obtained before May 8, 1999. 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 and to each airport located within five miles of the proposed location of the tower. Provides additional notice
(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.
January 28, 1999, amended, reported favorably — Do Pass.

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Digest Continued

requirements. 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. Provides that Indiana law concerning the regulation of tall structures or a local airspace ordinance, supersede this act in the event of a conflict.

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January 29, 1999

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 **(1) is placed, constructed, or substantially modified after May**
8 **8, 1999; and**
9 **(2) for which local approval has not been obtained before May**
10 **8, 1999.**
11 **Sec. 2. As used in this chapter, "authority" refers to the**
12 **planning and zoning authority of a local unit.**
13 **Sec. 3. As used in this chapter, "commission" refers to the**
14 **Indiana utility regulatory commission.**
15 **Sec. 4. As used in this chapter, "local unit" means a**

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1 municipality or county that exercises planning and zoning powers
2 under IC 36-7-4.

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

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

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

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

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

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

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

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

- 26 (1) A tower or a structure attached to a tower, a building, or
27 other structure that is used for the broadcast of radio or
28 television services.
29 (2) A utility pole.
30 (3) A satellite dish.

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

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

40 Sec. 12. (a) Except as provided in subsection (b) and subject to
41 47 U.S.C. 332(c)(7)(B), a local unit may by ordinance or resolution
42 elect to regulate the placement, construction, and substantial

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1 modification of a telecommunications tower.

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

6 Sec. 13. (a) If a person is required to obtain a permit or other
7 approval from an authority under the local planning and zoning
8 laws to place or construct a telecommunications tower in a location
9 for which a telecommunications tower is not a permitted use under
10 the local planning laws or ordinances then in effect, the person
11 shall provide written notice by certified mail to:

12 (1) each owner of real property as shown on the county
13 auditor's current tax list whose real property is located:

14 (A) contiguous to; or

15 (B) not more than one hundred (100) feet from;

16 the property on which the telecommunications tower is
17 proposed to be located; and

18 (2) each airport that is located within five (5) miles of the
19 proposed location of the tower.

20 (b) The notice under subsection (a) may be given in addition to
21 any other notice required by law.

22 Sec. 14. The notice required under section 13 of this chapter
23 must include the following:

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

26 (2) A description of the real property where the
27 telecommunications tower is proposed to be located sufficient
28 to identify the proposed location.

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

32 (4) Any other information required by the authority and
33 reasonably necessary for the authority's consideration of the
34 application.

35 Sec. 15. (a) The authority may not approve the placement or
36 construction of a telecommunications tower until the person
37 provides proof to the authority that the person provided the notice
38 required under this chapter.

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

41 Sec. 16. If the notice is returned unclaimed or refused, the
42 person shall mail the notice by regular mail. The failure of delivery

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1 of the notice does not invalidate the notice.

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

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

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

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

10 **Sec. 18. (a)** The local unit shall render a decision upon the
11 request for a permit within a reasonable period of time after the
12 request is filed with the local unit as set forth in 47 U.S.C. 332.

13 (b) A person applying for a permit to place, construct, or modify
14 a telecommunications tower may appeal the authority's decision on
15 the permit application to the commission not later than ten (10)
16 days after the date of the authority's decision.

17 (c) The commission shall expedite the appeal and issue a
18 decision not later than ten (10) days after the date the appeal is
19 received by the commission.

20 (d) A person who files an appeal with the commission under this
21 section may appeal the commission's decision by filing an action in
22 a court of competent jurisdiction as set forth in 47 U.S.C. 332.

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

26 **Sec. 20.** If there is a conflict between this chapter and IC 8-21-10
27 or an airspace ordinance of a local unit, IC 8-21-10 or the local
28 airspace ordinance supersede this chapter.

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

32 **Chapter 5.3. Telecommunications Towers in Areas Without**
33 **Planning and Zoning**

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

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

37 (2) A telecommunications tower:

38 (A) that is placed, constructed, or substantially modified
39 after May 8, 1999; and

40 (B) for which local approval has not been obtained before
41 May 8, 1999.

42 **Sec. 2.** As used in this chapter, "commission" refers to the

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1 **Indiana utility regulatory commission.**

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

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

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

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

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

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

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

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

24 (b) The term includes a microwave tower, cellular telephone and
25 wireless communications tower, tower for the transmission of
26 paging services, and tower for the transmission of personal
27 communications services.

28 (c) The term does not include the following:
29 (1) A tower or structure attached to a tower, a building, or
30 other structure that is used for the broadcast of radio or
31 television services.

32 (2) A utility pole.

33 (3) A satellite dish.

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

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



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1 **Sec. 12. (a) Except as provided in subsection (b) and subject to**
2 **47 U.S.C. 332(c)(7)(B), a local unit may by ordinance or resolution**
3 **elect to regulate the placement, construction, and substantial**
4 **modification of a telecommunications tower.**

5 **(b) This chapter does not confer power on a local unit with**
6 **respect to the maintenance or use of a telecommunications tower**
7 **or a modification that would not substantially increase the tower's**
8 **height.**

9 **Sec. 13. (a) A local unit may require a person to obtain a permit**
10 **from the legislative body before placing, constructing, or modifying**
11 **a telecommunications tower.**

12 **(b) The local unit may collect a reasonable fee for the issuance**
13 **of a permit or other approval under this chapter.**

14 **Sec. 14. (a) A person shall provide written notice that the person**
15 **is applying for a permit from the legislative body to place or**
16 **construct a telecommunications tower. The notice must be sent by**
17 **certified mail to:**

18 **(1) each owner of real property as shown on the county**
19 **auditor's current tax list whose real property is located:**

20 **(A) contiguous to; or**

21 **(B) not more than one hundred (100) feet from;**

22 **the property on which the telecommunications tower is**
23 **proposed to be located; and**

24 **(2) each airport that is located within five (5) miles of the**
25 **proposed location of the tower.**

26 **(b) The notice under subsection (a) may be given in addition to**
27 **any other notice required by law.**

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

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

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

35 **(2) A description of the real property where the**
36 **telecommunications tower is proposed to be located sufficient**
37 **to identify the proposed location.**

38 **(3) A statement that the person is applying for permission**
39 **from the local unit to place or construct the**
40 **telecommunications tower on real property.**

41 **(4) Any other information required by the legislative body**
42 **and reasonably necessary for the legislative body's**



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- 1 consideration of the application.
- 2 **Sec. 16. (a)** The legislative body may not approve a permit until
- 3 the person provides proof to the legislative body that the applicant
- 4 provided the notice required under this chapter.
- 5 **(b)** The legislative body shall determine the form of proof
- 6 required to be submitted to the legislative body under this section.
- 7 **Sec. 17.** If the notice is returned unclaimed or refused, the
- 8 person shall mail the notice by regular mail. The failure of delivery
- 9 of the notice does not invalidate the notice.
- 10 **Sec. 18. (a)** The local unit shall render a decision upon the
- 11 request for a permit within a reasonable period of time after the
- 12 request is filed with the local unit as set forth in 47 U.S.C. 332.
- 13 **(b)** A person applying for a permit to place, construct, or modify
- 14 a telecommunications tower may appeal the legislative body's
- 15 decision on the permit application to the commission not later than
- 16 ten (10) days after the date of the legislative body's decision.
- 17 **(c)** The commission shall expedite the appeal and issue a
- 18 decision not later than ten (10) days after receiving the appeal.
- 19 **(d)** A person who files an appeal with the commission under this
- 20 section may appeal the commission's decision by filing an action in
- 21 a court of competent jurisdiction as set forth in 47 U.S.C. 332.
- 22 **Sec. 19.** This chapter does not affect a person's right to appeal
- 23 a decision of the legislative body to a court as set forth in 47 U.S.C.
- 24 332 (c)(7)(B).
- 25 **Sec. 20.** If there is a conflict between this chapter and IC 8-21-10
- 26 or an airspace ordinance of a local unit, IC 8-21-10 or the local
- 27 airspace ordinance supersede this chapter.
- 28 **SECTION 3.** An emergency is declared for this act.

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COMMITTEE REPORT

Mr. President: The Senate Committee on Governmental and Regulatory Affairs, to which was referred Senate Bill No. 215, 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 1, line 6, after "that" insert ":",

Page 1, delete line 7, begin a new line block indented and insert:

**"(1) is placed, constructed, or substantially modified after May 8, 1999; and
(2) for which local approval has not been obtained before May 8, 1999."**

Page 2, line 38, after "may" insert **"by ordinance or resolution elect to"**.

Page 2, line 39, after "and" insert **"substantial"**.

Page 3, line 7, delete "each owner of real" and insert ":",

Page 3, delete lines 8 through 13, begin a new line block indented and insert:

**"(1) each owner of real property as shown on the county auditor's current tax list whose real property is located:
(A) contiguous to; or
(B) not more than one hundred (100) feet from;
the property on which the telecommunications tower is proposed to be located; and
(2) each airport that is located within five (5) miles of the proposed location of the tower."**

Page 3, line 14, delete "The authority may require notice in addition to the notice" and insert **"The notice under subsection (a) may be given in addition to any other notice required by law."**

Page 3, delete line 15.

Page 4, between lines 3 and 4, begin a new paragraph and insert:

"Sec. 18. (a) The local unit shall render a decision upon the request for a permit within a reasonable period of time after the request is filed with the local unit as set forth in 47 U.S.C. 332."

Page 4, line 4, delete "Sec. 18. (a)" and insert **"(b)"**.

Page 4, line 8, delete **"(b)"** and insert **"(c)"**.

Page 4, between lines 10 and 11, begin a new paragraph and insert:

"(d) A person who files an appeal with the commission under this section may appeal the commission's decision by filing an action in a court of competent jurisdiction as set forth in 47 U.S.C. 332."

Page 4, between lines 13 and 14, begin a new paragraph and insert:

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"Sec. 20. If there is a conflict between this chapter and IC 8-21-10 or an airspace ordinance of a local unit, IC 8-21-10 or the local airspace ordinance supersedes this chapter."

Page 4, line 22, delete "that is placed, constructed, or" and insert ":".

Page 4, delete line 23, begin a new line double block indented and insert:

"(A) that is placed, constructed, or substantially modified after May 8, 1999; and

(B) for which local approval has not been obtained before May 8, 1999."

Page 5, line 26, after "may" insert **"by ordinance or resolution elect to"**.

Page 5, line 27, after "and" insert **"substantial"**.

Page 5, line 40, delete "each owner of real property, as shown on the" and insert ":".

Page 5, delete lines 41 through 42, begin a new line block indented and insert:

"(1) each owner of real property as shown on the county auditor's current tax list whose real property is located:

(A) contiguous to; or

(B) not more than one hundred (100) feet from;

the property on which the telecommunications tower is proposed to be located; and

(2) each airport that is located within five (5) miles of the proposed location of the tower."

Page 6, delete lines 1 through 3.

Page 6, line 4, delete "The legislative body may require notice in addition to the" and insert **"The notice under subsection (a) may be given in addition to any other notice required by law."**

Page 6, delete line 5.

Page 6, between lines 29 and 30, begin a new paragraph and insert:

"Sec. 18. (a) The local unit shall render a decision upon the request for a permit within a reasonable period of time after the request is filed with the local unit as set forth in 47 U.S.C. 332."

Page 6, line 30, delete "Sec. 18. (a)" and insert **"(b)"**.

Page 6, line 35, delete **"(b)"** and insert **"(c)"**.

Page 6, between lines 36 and 37, begin a new paragraph and insert:

"(d) A person who files an appeal with the commission under this section may appeal the commission's decision by filing an action in a court of competent jurisdiction as set forth in 47 U.S.C. 332."

Page 6, between lines 39 and 40, begin a new paragraph and insert:



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"Sec. 20. If there is a conflict between this chapter and IC 8-21-10 or an airspace ordinance of a local unit, IC 8-21-10 or the local airspace ordinance supersede this chapter."

and when so amended that said bill do pass.

(Reference is to SB 215 as introduced.)

MERRITT, Chairperson

Committee Vote: Yeas 7, Nays 0.

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