

## SENATE BILL No. 258

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### DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 8-1-32.3.

**Synopsis:** Wireless communications support structures. Provides that, for purposes of the statute concerning the local permitting of support structures for wireless communications services, with respect to the construction, placement, or use of a small cell facility and the associated supporting structure, a permit authority may prohibit the placement of a new utility pole or new wireless support structure in a right-of-way within an area that is designated strictly for underground or buried utilities, if the designation is made before April 15, 2017, and if certain other conditions are met. (Current law provides that the designation concerning underground or buried utilities must be made before May 1, 2017.) Provides that with respect to the construction, placement, or use of a small cell facility and the associated supporting structure in a right-of-way within an area that is: (1) zoned exclusively for residential land use; and (2) designated strictly for underground or buried utilities after April 14, 2017, and before May 1, 2017; a permit authority may not prohibit the placement of a new utility pole or new wireless support structure in a right-of-way within the area. Provides that if a permit authority receives an application for the placement of a new utility pole or a new wireless support structure in a right-of-way within such an area, a group of residents residing within the area and satisfying the statutory standing requirements for filing a complaint with the utility regulatory commission (IURC) may, not later than 30 days after the permit authority's receipt of the application, submit objections to the IURC for an informal determination of whether the placement is in the public interest. Requires the IURC to make its determination not later than 45 days after receipt of the submission.  
(Continued next page)

**Effective:** Upon passage; January 1, 2017 (retroactive).

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## Messmer

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January 3, 2018, read first time and referred to Committee on Utilities.

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## Digest Continued

Provides that if the IURC does not make a determination within the prescribed 45 day period, the placement is considered to be in the public interest. Provides that the time for the permit authority to approve or deny the application is tolled until the IURC makes its determination or for 45 days, whichever occurs earlier. Provides that if a permit authority maintains an Internet web site, the permit authority shall post on its Internet web site notice of any applications the permit authority receives after March 27, 2018, for the construction, placement, or use of a small cell facility on one or more new utility poles or new wireless support structures. Provides that a regulation that: (1) is adopted by a permit authority after April 14, 2017, and before May 1, 2017; and (2) designates an area within the jurisdiction of the permit authority as strictly for underground or buried utilities; is void.



Introduced

Second Regular Session 120th General Assembly (2018)

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 2017 Regular Session of the General Assembly.

## SENATE BILL No. 258

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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 8-1-32.3-15, AS AMENDED BY P.L.261-2017,  
2 SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
3 UPON PASSAGE]: Sec. 15. (a) This chapter applies to permits issued  
4 by a permit authority, under local law and consistent with IC 36-7, for  
5 the following:  
6 (1) Construction of a new wireless support structure.  
7 (2) Substantial modification of a wireless support structure.  
8 (3) Collocation of wireless facilities on an existing structure.  
9 (4) Construction, placement, and use of small cell facilities.  
10 (b) A permit authority may not require an application or a permit  
11 for, or charge fees for, any of the following:  
12 (1) The routine maintenance of wireless facilities.  
13 (2) The replacement of wireless facilities with wireless facilities  
14 that are:  
15 (A) substantially similar to; or



- 1 (B) the same size or smaller than;  
 2 the wireless facilities being replaced.
- 3 (3) The installation, placement, maintenance, or replacement of  
 4 micro wireless facilities that are suspended on cables strung  
 5 between existing utility poles in compliance with applicable codes  
 6 by a communications service provider that is authorized to use the  
 7 public rights-of-way. For purposes of this subdivision, "applicable  
 8 codes" means uniform building, fire, electrical, plumbing, or  
 9 mechanical codes that are:
- 10 (A) adopted by a recognized national code organization; and  
 11 (B) enacted solely to address imminent threats of destruction  
 12 of property or injury to persons;  
 13 including any local amendments to those codes.
- 14 (c) With respect to the construction, placement, or use of a small  
 15 cell facility and the associated supporting structure, a permit authority  
 16 may prohibit the placement of a new utility pole or a new wireless  
 17 support structure in a right-of-way within an area that is designated  
 18 strictly for underground or buried utilities, if all of the following apply:
- 19 (1) The area is designated strictly for underground or buried  
 20 utilities before ~~May 1, 2017~~. **April 15, 2017**.
- 21 (2) The permit authority does all of the following:
- 22 (A) Allows the collocation of small cell facilities on existing:  
 23 (i) utility poles; and  
 24 (ii) wireless support structures;  
 25 within the area.
- 26 (B) Allows the replacement **or improvement** of existing:  
 27 (i) utility poles; and  
 28 (ii) wireless support structures;  
 29 within the area.
- 30 (C) Provides:  
 31 (i) a waiver;  
 32 (ii) a zoning process; or  
 33 (iii) another procedure;  
 34 that addresses requests to install new utility poles or new  
 35 wireless support structures within the area.
- 36 (D) Upon receipt of an application for the construction,  
 37 placement, or use of a small cell facility on one (1) or more  
 38 new utility poles or one (1) or more new wireless support  
 39 structures in an area that is designated strictly for underground  
 40 or buried utilities, posts notice of the application on the permit  
 41 authority's Internet web site, if the permit authority maintains  
 42 an Internet web site. The notice of the application required by



1           this clause must include a statement indicating that the  
 2           application is available to the public upon request.  
 3           (3) The prohibition or other restrictions with respect to the  
 4           placement of new utility poles or new wireless support structures  
 5           within the area are applied in a nondiscriminatory manner.  
 6           **(d) As used in this subsection, "commission" refers to the**  
 7           **Indiana utility regulatory commission created by IC 8-1-1-2. With**  
 8           **respect to the construction, placement, or use of a small cell facility**  
 9           **and the associated supporting structure in a right-of-way within an**  
 10          **area that is:**  
 11           **(1) zoned exclusively for residential land use; and**  
 12           **(2) designated strictly for underground or buried utilities**  
 13           **after April 14, 2017, and before May 1, 2017;**  
 14          **a permit authority may not prohibit the placement of a new utility**  
 15          **pole or a new wireless support structure in a right-of-way within**  
 16          **the area. If a permit authority receives an application for the**  
 17          **placement of a new utility pole or a new wireless support structure**  
 18          **in a right-of-way within an area described in this subsection, a**  
 19          **group of residents residing within the area and satisfying the**  
 20          **standing requirements of IC 8-1-2-54 may, not later than thirty**  
 21          **(30) days after the permit authority's receipt of the application,**  
 22          **submit objections to the commission for an informal determination**  
 23          **of whether the placement is in the public interest. The commission**  
 24          **shall make its determination not later than forty-five (45) days**  
 25          **after receipt of the submission. If the commission does not make a**  
 26          **determination within the forty-five (45) day period prescribed by**  
 27          **this subsection, the placement is considered to be in the public**  
 28          **interest. The time period set forth in section 22(f) of this chapter is**  
 29          **tolled until the commission makes a determination under this**  
 30          **subsection or for forty-five (45) days, whichever occurs earlier. The**  
 31          **commission may adopt publicly available guidelines that are not**  
 32          **inconsistent with this chapter for the commission's use in making**  
 33          **determinations under this subsection.**  
 34          ~~(d)~~ **(e) If a permit authority maintains an Internet web site, the**  
 35          **permit authority shall post on the permit authority's Internet web**  
 36          **site notice of any applications the permit authority receives after**  
 37          **March 27, 2018, for the construction, placement, or use of a small**  
 38          **cell facility on one (1) or more new utility poles or one (1) or more**  
 39          **new wireless support structures. A permit authority shall also allow**  
 40          **a neighborhood association or a homeowners association to register**  
 41          **with the permit authority to receive notice by United States mail of any**  
 42          **application filed with the permit authority for the construction,**



1 placement, or use of a small cell facility on one (1) or more new utility  
 2 poles or one (1) or more new wireless support structures in an area  
 3 within the jurisdiction of the neighborhood association or homeowners  
 4 association. If the permit authority maintains an Internet web site, the  
 5 permit authority shall post on the permit authority's Internet web site  
 6 instructions for how a neighborhood association or homeowners  
 7 association may register to receive notice under this subsection.

8 ~~(e)~~ **(f)** Subject to section 26(b) of this chapter, with respect to the  
 9 construction, placement, or use of a small cell facility and the  
 10 associated supporting structure within an area:

- 11 (1) designated as a historic preservation district under IC 36-7-11;
- 12 (2) designated as a historic preservation area under IC 36-7-11.1;
- 13 or
- 14 (3) that is subject to the jurisdiction of the Meridian Street  
 15 preservation commission under IC 36-7-11.2;

16 a permit authority may apply any generally applicable procedures that  
 17 require applicants to obtain a certificate of appropriateness.

18 ~~(f)~~ **(g)** An applicant for the placement of a small cell facility and an  
 19 associated supporting structure shall comply with applicable:

- 20 (1) Federal Communications Commission requirements; and
- 21 (2) industry standards;

22 for identifying the owner's name and contact information.

23 SECTION 2. IC 8-1-32.3-15.1 IS ADDED TO THE INDIANA  
 24 CODE AS A NEW SECTION TO READ AS FOLLOWS  
 25 [EFFECTIVE JANUARY 1, 2017 (RETROACTIVE)]: **Sec. 15.1. (a)**

26 **As used in this section, "regulation" refers to any ordinance,**  
 27 **resolution, or regulation, including any:**

- 28 (1) **land use ordinance, resolution, or regulation; or**
- 29 (2) **general or specific planning ordinance, resolution, or**  
 30 **regulation;**

31 **adopted by a permit authority.**

32 **(b) Except as provided in section 15(d) of this chapter, a**  
 33 **regulation that:**

- 34 (1) **is adopted by a permit authority after April 14, 2017, and**  
 35 **before May 1, 2017; and**
- 36 (2) **designates an area within the jurisdiction of the permit**  
 37 **authority as strictly for underground or buried utilities;**

38 **is void.**

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

