



COMMITTEE REPORT

MADAM PRESIDENT:

The Senate Committee on Utilities, to which was referred House Bill No. 1164, 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:

- 1 Page 3, line 34, delete "Every:" and insert "As used in this section,
2 "attaching entity" means a communications service provider that
3 seeks an attachment, or has an attachment, to a pole.
4 (b) As used in this section, "carrying charge factor", or "ccf",
5 refers to the carrying charge factor, as described in subsection
6 (i)(2)(B)(ii), that is used in calculating a pole attachment rental fee
7 under subsection (i)(2)(B).
8 (c) As used in this section, "net bare pole cost", or "nbp", refers
9 to the net cost of a bare pole to the pole owner, as described in
10 subsection (i)(2)(B)(iii), that is used in calculating a pole
11 attachment rental fee under subsection (i)(2)(B).
12 (d) As used in this section, "pole" refers to an electric
13 distribution pole.
14 (e) As used in this section, "pole owner" means a:
15 (1) corporation organized under IC 8-1-13;
16 (2) corporation organized under IC 23-17 that is an electric
17 cooperative and that has at least one (1) member that is a
18 corporation organized under IC 8-1-13; or
19 (3) municipality providing electric service;
20 that owns or controls one (1) or more poles.

1 (f) As used in this section, "space allocation factor", or "saf",
2 with respect to a pole, means the quotient of:

3 (1) the space on the pole occupied by an attaching entity;
4 divided by

5 (2) the usable space on the pole;

6 as described in subsection (i)(2)(B)(i), that is used in calculating a
7 pole attachment rental fee under subsection (i)(2)(B).

8 (g) Subject to subsections (h) through (s), a pole owner shall
9 permit attachments by attaching entities to the poles owned or
10 controlled by the pole owner.

11 (h) A rate, term, or condition imposed by a pole owner for
12 access to poles owned or controlled by the pole owner:

13 (1) must be nondiscriminatory, just, and reasonable; and

14 (2) must not favor the pole owner or an affiliate of the pole
15 owner.

16 (i) Any pole attachment rental fee imposed by a pole owner for
17 access to poles owned or controlled by the pole owner:

18 (1) must be calculated on an annual, per-pole basis; and

19 (2) is considered to provide reasonable compensation and to
20 be nondiscriminatory, just, and reasonable if the fee:

21 (A) is agreed upon by the parties; or

22 (B) is not greater than the fee that would apply if the pole
23 attachment rental fee were calculated by multiplying the
24 following factors:

25 (i) Subject to subsection (j), the percentage of the total
26 usable space that is occupied by the pole attachment.

27 (ii) The sum of the pole owner's annual administrative,
28 maintenance, and depreciation expenses, plus cost of
29 debt, based on the average net cost of a bare pole.

30 (iii) The net bare pole cost.

31 Expressed mathematically:

32 (saf) times (ccf) times (nbp)

33 (j) For purposes of determining the percentage of a pole's usable
34 space that is occupied by a pole attachment under subsection
35 (i)(2)(B)(i):

36 (1) the usable space is presumed to be sixteen (16) feet, based
37 on an average pole height of forty (40) feet; and

38 (2) the pole attachment is presumed to occupy two (2) feet of
39 usable space;

40 resulting in a space allocation factor of twelve and one-half percent
41 (12.5%).

42 (k) If an attaching entity and a pole owner fail to agree upon:

1 **(1) access to poles owned or controlled by the pole owner; or**
 2 **(2) the rates, terms, and conditions for attachment to poles**
 3 **owned or controlled by the pole owner;**
 4 **the attaching entity may apply to the commission for a**
 5 **determination of the matter.**

6 **(l) Upon receiving a request for a determination under**
 7 **subsection (k), the commission shall:**

8 **(1) proceed to determine whether:**

9 **(A) the denial of access to one (1) or more poles was**
 10 **unlawful; or**

11 **(B) the rates, terms, and conditions complained of were not**
 12 **just and reasonable as determined under subsection**
 13 **(i)(2)(B);**

14 **as applicable; and**

15 **(2) issue an order:**

16 **(A) directing that access to the poles at issue be permitted;**
 17 **and**

18 **(B) prescribing for such access such rates, terms,**
 19 **conditions, and compensations that:**

20 **(i) are reasonable; and**

21 **(ii) comply with subsections (h) and (i).**

22 **(m) In any case in which the commission issues an order under**
 23 **subsection (l):**

24 **(1) the access ordered by the commission under subsection**
 25 **(l)(2)(A) shall be permitted by the pole owner; and**

26 **(2) the rates, terms, conditions, and compensations prescribed**
 27 **by the commission under subsection (l)(2)(B) shall be**
 28 **observed, followed, and paid by the parties, as applicable;**

29 **subject to recourse to the courts upon the complaint of any**
 30 **interested party as provided in this chapter and in IC 8-1-3. Any**
 31 **order of the commission under subsection (l) may be revised by the**
 32 **commission from time to time upon application of any interested**
 33 **party or upon the commission's own motion.**

34 **(n) Any attachment to a pole may only be made with the written**
 35 **permission of the pole owner. If a contract does not exist between**
 36 **a pole owner and an attaching entity, an attaching entity that**
 37 **violates this subsection shall pay a fine of five hundred dollars**
 38 **(\$500) for each pole on which an unauthorized attachment is made.**

39 **(o) An attachment to a utility pole made without notification to**
 40 **the pole owner and without the pole owner's written authorization,**
 41 **as required by subsection (n), is considered to have been made on:**

42 **(1) the date of the most recent survey.**

1 (2) the date that is five (5) years before the date of first
2 discovery of the unauthorized attachment by the pole owner;
3 whichever date is more recent. However, if the unauthorized pole
4 attachment is discovered by survey, the unauthorized attachment
5 is considered to have been made on the date of that survey.

6 (p) A pole owner's acceptance of payment for unauthorized pole
7 attachments does not constitute a waiver of any other rights or
8 remedies under an existing agreement or under any law.

9 (q) An attaching entity that has been given written permission
10 from a pole owner for an attachment to the pole owner's pole is
11 responsible for transferring the attachment not later than ninety
12 (90) days after receiving written notice from the pole owner to do
13 so. If:

14 (1) after the expiration of the ninety (90) day period described
15 in this subsection; or

16 (2) after having been given as much notice as possible, in the
17 case of an emergency;

18 the attaching entity has failed to rearrange or transfer the
19 attaching entity's system, or an applicable portion of that system,
20 the pole owner may rearrange the system or portion of the system,
21 transfer the system or portion of the system to one (1) or more
22 substituted poles, or relocate the system or portion of the system,
23 and the attaching entity shall reimburse the pole owner for the pole
24 owner's costs in doing so. However, this section does not relieve the
25 attaching entity from maintaining adequate workforces readily at
26 hand to handle the rearrangement, repair, service, or maintenance
27 of the attaching entity's attached system, or any portions of that
28 system, in the event that the condition of the attached system, or
29 any portion of the system, hinders the pole owner's operations.

30 (r) An attaching entity is primarily responsible for:

31 (1) scheduling; and

32 (2) coordinating directly with all other users of a pole;

33 all relocations required as part of any project of the attaching
34 entity. The pole owner shall assist in coordinating the relocation of
35 the attaching entity's attachments or of other attachments to the
36 pole owner's poles whenever the relocation is caused by any project
37 of the attaching entity. The attaching entity shall indemnify and
38 hold harmless the pole owner from any loss or liability that is
39 incurred or claimed by the attaching entity or the attaching entity's
40 contractor, and that arises from or is related to the failure of the
41 pole owner to timely relocate a pole if that same attaching entity
42 has not timely removed its attachment from the pole owner's pole.

1 **(s) To the extent any provision set forth in this section conflicts**
 2 **with a provision in a contract in effect on July 1, 2021, the**
 3 **provision in the contract controls unless otherwise agreed to by the**
 4 **attaching entity and the pole owner."**

5 Page 3, delete lines 35 through 42.

6 Delete pages 4 through 10.

7 Page 11, delete lines 1 through 8.

8 Page 15, line 13, delete "terms" and insert "**terms**".

9 Page 16, line 12, delete "poles," and insert "**poles or small cell**
 10 **facilities approved as part of a waiver process described in**
 11 **subdivision (3)(C),"**

12 Page 17, line 12, after "mail" insert "**or by electronic mail**".

13 Page 17, line 12, after "authority" insert "**for a permitted use**
 14 **described in subsection (c)(3)(A) or (c)(3)(B) or"**.

15 Page 17, line 31, after "with the" insert "**mailed**".

16 Page 17, line 33, delete "provides" and insert "**chooses to provide**
 17 **mailed**".

18 Page 17, line 34, delete "not pass those costs along to a permit
 19 applicant. To" and insert "**choose to pass those costs along to a**
 20 **permit applicant. Any mailing costs passed through to an applicant**
 21 **under this subsection are in addition to, and shall not increase, the**
 22 **application fee beyond the limit set forth in section 26(a)(3) of this**
 23 **chapter. A permit authority may not pass through to an applicant**
 24 **any costs for notices provided electronically.**

25 **(e) This subsection does not apply to an application for a**
 26 **permitted use described in subsection (c)(3)(A) or (c)(3)(B). With**
 27 **respect to an area that is designated strictly for underground or**
 28 **buried utilities in accordance with subsection (c), to establish the**
 29 **standards that will apply in a waiver, zoning process, or other**
 30 **procedure described in subsection (c)(3)(C), a permit authority**
 31 **may collaborate with a neighborhood association or a homeowners**
 32 **association on the preferred location and reasonable aesthetics of**
 33 **new utility poles or new wireless support structures added within**
 34 **the jurisdiction of the neighborhood association or homeowners**
 35 **association. For purposes of this subsection, a permit authority is**
 36 **considered to have collaborated with a neighborhood association**
 37 **or a homeowners association if the permit authority adopts**
 38 **neighborhood specific guidelines after providing notice and**
 39 **allowing public comment on the proposed guidelines. A permit**
 40 **authority must comply with any guidelines adopted under this**
 41 **subsection with respect to a particular application for a permit if:**

42 **(1) the guidelines have been adopted and published before the**

- 1 **filing of the application in a manner consistent with this**
 2 **subsection;**
 3 **(2) subject to subsection (f), compliance with the guidelines is**
 4 **technically feasible and cost-efficient, as determined by the**
 5 **applicant; and**
 6 **(3) compliance with the guidelines does not result in a**
 7 **prohibition of the applicant's service or an effective**
 8 **prohibition of the applicant's service.**

9 **A permit authority that elects not to collaborate with a**
 10 **neighborhood association or a homeowners association to adopt**
 11 **neighborhood specific guidelines under this subsection is not**
 12 **precluded from using the waiver, zoning process, or other**
 13 **procedure described in subsection (c)(3)(C) with respect to any**
 14 **application to place one (1) or more new utility poles or new**
 15 **wireless support structures within the jurisdiction of the**
 16 **neighborhood association or homeowners association.**

17 **(f) In demonstrating that compliance with guidelines adopted by**
 18 **a permit authority under subsection (e) is not technically feasible**
 19 **under subsection (e)(2), a permit applicant may not be required to**
 20 **submit information about the need for a small cell facility or the**
 21 **associated wireless support structure, including:**

- 22 **(1) information about additional wireless coverage or**
 23 **capacity, or increased wireless speeds;**
 24 **(2) propagation maps or telecommunications traffic studies;**
 25 **or**
 26 **(3) information about the permit applicant's business**
 27 **decisions with respect to:**

- 28 **(A) service;**
 29 **(B) customer demand; or**
 30 **(C) quality of service;**

31 **to or from a particular area or site."**

32 Page 17, delete lines 35 through 39.

33 Page 17, line 40, strike "(e)" and insert "(g)".

34 Page 18, line 8, strike "(f)" and insert "(h)".

35 Page 18, line 13, strike "(g)" and insert "(i)".

36 Page 18, between lines 20 and 21, begin a new paragraph and insert:

- 1 **"(j) Nothing in this section extends the time periods set forth in**
- 2 **section 20 of this section."**
- 3 Renumber all SECTIONS consecutively.
 (Reference is to HB 1164 as printed February 15, 2021.)

and when so amended that said bill do pass .

Committee Vote: Yeas 7, Nays 3.

Senator Koch, Chairperson