



February 15, 2021

HOUSE BILL No. 1164

DIGEST OF HB 1164 (Updated February 15, 2021 2:09 pm - DI 101)

Citations Affected: IC 5-22; IC 8-1; IC 8-20; IC 22-5; IC 36-1.

Synopsis: Various utility matters. Exempts a contract for the lease of state property under which no state expenditures are required from provisions: (1) requiring certain disclosures and certifications by a prospective state contractor regarding violations of Indiana telephone solicitation and automated calling statutes; (2) regarding cancellation of public purchasing contracts due to lack of funds; (3) regarding state contractor use of the E-Verify program; and (4) prohibiting state contractor employment of unauthorized aliens. Provides that: (1) rural electric cooperatives; and (2) municipalities providing electric service; shall permit attachments by communications service providers to poles owned or controlled by the cooperatives or municipalities. Provides that any pole attachment rental fee imposed by a rural electric cooperative or a municipality: (1) must be calculated on an annual, per-pole basis; and (2) is considered to provide reasonable compensation and to be nondiscriminatory, just, and reasonable if the fee: (A) is agreed upon by the parties; or (B) is not greater than the fee that would apply if the fee were calculated in accordance with the formula applied by the Federal Communications Commission (FCC). Amends the procedures under which a public utility applies to a municipality or county executive for authorization to occupy and perform work in a public right-of-way controlled by the municipality or county executive, and provides for restrictions on the requirements
(Continued next page)

Effective: July 1, 2021.

Manning

January 7, 2021, read first time and referred to Committee on Utilities, Energy and Telecommunications.
February 15, 2021, amended, reported — Do Pass.

HB 1164—LS 7058/DI 119



Digest Continued

a municipality or county executive may impose for purposes of granting such authority. Provides that the Indiana utility regulatory commission (IURC) may not require a communications service provider to: (1) file a tariff; or (2) report to the IURC any information that is: (A) available to the public on the communications service provider's Internet web site; (B) filed with the FCC; or (C) otherwise available to the public; except as required by the IURC to respond to consumer complaints or information requests from the general assembly. Amends the factors that must exist for a permit authority to prohibit the placement of a new utility pole or wireless support structure for purposes of construction, placement, or use of a small cell facility or structure in an area that is: (1) within a right-of-way; and (2) designated strictly for underground or buried utilities. Provides that a permit authority may not impose: (1) a restriction on maximum height of a wireless support structure, subject to certain federal regulations and state laws; or (2) a requirement regarding minimum separation distances between wireless support structures. Provides that a tariff filed with the IURC by a communications service provider is effective upon filing. Provides that a video service provider is not required to provide the IURC with information describing the provider's programming, including the provider's channel lineups or channel guides. Exempts a political subdivision's disposal of property by sale, exchange, transfer, or lease of the property to a public utility or a communications service provider from certain provisions regarding disposal of property by a political subdivision. Provides an exemption to the public works law for certain work done by the employees of a conservancy district established for the purpose of water or sewage treatment.

HB 1164—LS 7058/DI 119



February 15, 2021

First Regular Session of the 122nd General Assembly (2021)

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 2020 Regular Session of the General Assembly.

HOUSE BILL No. 1164

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 5-22-3-7, AS ADDED BY P.L.222-2005,
2 SECTION 27, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2021]: Sec. 7. (a) This section applies to every use of funds by
4 a governmental body. However, this section does not apply to:
5 (1) a contract in which one (1) party is a political subdivision,
6 including a body corporate and politic created by or authorized by
7 a political subdivision; **or**
8 (2) **a contract for the lease of property owned by the state**
9 **under which no state expenditures are required.**
10 (b) A prospective contractor may not contract with a governmental
11 body unless the prospective contractor includes the following
12 certifications as terms of the contract with the governmental body:
13 (1) The contractor and any principals of the contractor certify
14 that:
15 (A) the contractor, except for de minimis and nonsystematic
16 violations, has not violated the terms of:
17 (i) IC 24-4.7;

HB 1164—LS 7058/DI 119



- 1 (ii) IC 24-5-12; or
 2 (iii) IC 24-5-14;
 3 in the previous three hundred sixty-five (365) days, even if
 4 IC 24-4.7 is preempted by federal law; and
 5 (B) the contractor will not violate the terms of IC 24-4.7 for
 6 the duration of the contract, even if IC 24-4.7 is preempted by
 7 federal law.
- 8 (2) The contractor and any principals of the contractor certify that
 9 an affiliate or principal of the contractor and any agent acting on
 10 behalf of the contractor or on behalf of an affiliate or principal of
 11 the contractor:
- 12 (A) except for de minimis and nonsystematic violations, has
 13 not violated the terms of IC 24-4.7 in the previous three
 14 hundred sixty-five (365) days, even if IC 24-4.7 is preempted
 15 by federal law; and
 16 (B) will not violate the terms of IC 24-4.7 for the duration of
 17 the contract, even if IC 24-4.7 is preempted by federal law.
- 18 (c) If a certification in subsection (b) concerning compliance with
 19 IC 24-4.7, IC 24-5-12, or IC 24-5-14 is materially false or if the
 20 contractor, an affiliate or a principal of the contractor, or an agent
 21 acting on behalf of the contractor or an affiliate or a principal of the
 22 contractor violates the terms of IC 24-4.7, IC 24-5-12, or IC 24-5-14,
 23 even if IC 24-4.7 is preempted by federal law, the attorney general may
 24 bring a civil action in the circuit or superior court of Marion County to:
- 25 (1) void a contract under this section, subject to subsection (d);
 26 and
 27 (2) obtain other proper relief.
- 28 However, a contractor is not liable under this section if the contractor
 29 or an affiliate of the contractor acquires another business entity that
 30 violated the terms of IC 24-4.7, IC 24-5-12, or IC 24-5-14 within the
 31 preceding three hundred sixty-five (365) days before the date of the
 32 acquisition if the acquired business entity ceases violating IC 24-4.7,
 33 IC 24-5-12, or IC 24-5-14, even if IC 24-4.7 is preempted by federal
 34 law, as of the date of the acquisition.
- 35 (d) If:
- 36 (1) the attorney general notifies the contractor, department of
 37 administration, and budget agency in writing of the intention of
 38 the attorney general to void a contract; and
 39 (2) the attorney general does not receive a written objection from
 40 the department of administration or budget agency, sent to both
 41 the attorney general and the contractor, within thirty (30) days of
 42 the notice;



1 a contract between a contractor and a governmental body is voidable
 2 at the election of the attorney general in a civil action brought under
 3 subsection (c). If an objection of the department of administration or
 4 the budget agency is submitted under subdivision (2), the contract that
 5 is the subject of the objection is not voidable at the election of the
 6 attorney general unless the objection is rescinded or withdrawn by the
 7 department of administration or the budget agency.

8 (e) If the attorney general establishes in a civil action that a
 9 contractor is knowingly, intentionally, or recklessly liable under
 10 subsection (c), the contractor is prohibited from entering into a contract
 11 with a governmental body for three hundred sixty-five (365) days after
 12 the date on which the contractor exhausts appellate remedies.

13 (f) In addition to any remedy obtained in a civil action brought
 14 under this section, the attorney general may obtain the following:

15 (1) All money the contractor obtained through each telephone call
 16 made in violation of the terms of IC 24-4.7, IC 24-5-12, or
 17 IC 24-5-14, even if IC 24-4.7 is preempted by federal law.

18 (2) The attorney general's reasonable expenses incurred in:

19 (A) investigation; and

20 (B) maintaining the civil action.

21 SECTION 2. IC 5-22-17-5 IS AMENDED TO READ AS
 22 FOLLOWS [EFFECTIVE JULY 1, 2021]: Sec. 5. **(a) This section**
 23 **does not apply to a contract for the lease of property owned by the**
 24 **state under which no state expenditures are required.**

25 ~~(a)~~ **(b)** When the fiscal body of the governmental body makes a
 26 written determination that funds are not appropriated or otherwise
 27 available to support continuation of performance of a contract, the
 28 contract is considered canceled.

29 ~~(b)~~ **(c)** A determination by the fiscal body that funds are not
 30 appropriated or otherwise available to support continuation of
 31 performance is final and conclusive.

32 SECTION 3. IC 8-1-2-5.5 IS ADDED TO THE INDIANA CODE
 33 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
 34 1, 2021]: Sec. 5.5. **(a) Every:**

35 **(1) corporation organized under IC 8-1-13;**

36 **(2) corporation organized under IC 23-17 that is an electric**
 37 **cooperative and that has at least one (1) member that is a**
 38 **corporation organized under IC 8-1-13; and**

39 **(3) municipality providing electric service;**

40 **shall permit attachments by communications service providers to**
 41 **poles owned or controlled by the corporation or municipality.**

42 **(b) A rate, term, or condition imposed by a corporation or**



1 municipality described in subsection (a) for access to poles owned
2 or controlled by the corporation or municipality:

- 3 (1) must be nondiscriminatory, just, and reasonable; and
4 (2) must not favor the pole owner or an affiliate of the pole
5 owner.

6 (c) Any pole attachment rental fee imposed by a corporation or
7 municipality described in subsection (a) for access to poles owned
8 or controlled by the corporation or municipality:

- 9 (1) must be calculated on an annual, per-pole basis; and
10 (2) is considered to provide reasonable compensation and to
11 be nondiscriminatory, just, and reasonable if the fee:

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

13 (B) is not greater than the fee that would apply if the pole
14 attachment rental fee were calculated in accordance with
15 the formula set forth in 47 U.S.C. 224(d), as applied by the
16 Federal Communications Commission.

17 (d) If a communications service provider and a corporation or
18 municipality described in subsection (a) fail to agree upon:

- 19 (1) access to poles owned or controlled by the corporation or
20 municipality; or

- 21 (2) the rates, terms, and conditions for attachment to poles
22 owned or controlled by the corporation or municipality;

23 the communications service provider may apply to the commission
24 for a determination of the matter.

25 (e) Upon receiving a request for a determination under
26 subsection (d), the commission shall:

- 27 (1) proceed to determine whether:

28 (A) the denial of access to one (1) or more poles was
29 unlawful; or

30 (B) the rates, terms, and conditions complained of were not
31 just and reasonable;

32 as applicable; and

- 33 (2) issue an order:

34 (A) directing that access to the poles at issue be permitted;
35 and

36 (B) prescribing for such access such rates, terms,
37 conditions, and compensations that:

38 (i) are reasonable; and

39 (ii) comply with subsections (b) and (c).

40 (f) In any case in which the commission issues an order under
41 subsection (e):

- 42 (1) the access ordered by the commission under subsection



1 (e)(2)(A) shall be permitted by the corporation or
 2 municipality; and
 3 (2) the rates, terms, conditions, and compensations prescribed
 4 by the commission under subsection (e)(2)(B) shall be
 5 observed, followed, and paid by the parties, as applicable;
 6 subject to recourse to the courts upon the complaint of any
 7 interested party as provided in this chapter and in IC 8-1-3. Any
 8 order of the commission under subsection (e) may be revised by the
 9 commission from time to time upon application of any interested
 10 party or upon the commission's own motion.

11 SECTION 4. IC 8-1-2-101 IS AMENDED TO READ AS
 12 FOLLOWS [EFFECTIVE JULY 1, 2021]: Sec. 101. (a) Every
 13 municipal council or county executive shall have power:

14 (1) To determine by ordinance the provisions, not inconsistent
 15 with **subsection (c), other provisions** of this chapter, or
 16 IC 8-1-11.1, upon which a public utility or department of public
 17 utilities created under IC 8-1-11.1 occupies the areas along,
 18 under, upon, and across the streets, highways, or other public
 19 property within such municipality or county. ~~and~~ Such **an**
 20 ordinance or other determination of ~~such a~~ municipality or county
 21 executive shall be in force and prima facie reasonable **if the**
 22 **ordinance or determination complies with subsection (c).**
 23 Upon complaint made by such public utility **or** department of
 24 public utilities, or by any qualified complainant, as provided in
 25 section 54 of this chapter, the commission shall set a hearing, as
 26 provided in sections 54 to 67 of this chapter, and if it shall find
 27 such ordinance or other determination to be unreasonable, such
 28 ordinance or other determination shall be void.

29 (2) To require of any public utility, by ordinance, such additions
 30 and extensions to its physical plant within said municipality or
 31 county as shall be reasonable and necessary in the interest of the
 32 public, and to **reasonably** designate the location and nature of all
 33 such additions and extensions, the time within which they must be
 34 completed, and all conditions under which they must be
 35 constructed, subject to review by the commission as provided in
 36 subdivision (1).

37 (3) To provide for a penalty for noncompliance with the
 38 provisions of any ordinance or resolution adopted pursuant to the
 39 provisions of this section.

40 (4) The power and authority granted in this section shall exist and
 41 be vested in said municipalities or county executives, anything in
 42 this chapter to the contrary notwithstanding.



1 Provided, however, ~~whenever, after that if a public utility or~~
 2 **department of public utilities makes** a request by petition in writing
 3 ~~of any public utility, department of public utilities, and completes any~~
 4 **required permit application, and** the city or other political
 5 subdivision or other body having jurisdiction of the matter ~~shall refuse~~
 6 ~~or fail; refuses or fails,~~ for a period of ~~thirty (30)~~ **twenty-one (21)** days
 7 **or twenty-eight (28) days, as applicable under subsection (c)(5),** to
 8 give or grant to such public utility or department of public utilities
 9 permission and authority to construct, maintain, and operate any
 10 ~~additional construction;~~ equipment or facility **within the public**
 11 **right-of-way as is** reasonably necessary for the transaction of the
 12 business of such public utility or department of public utilities and for
 13 the public convenience or interest, then such public utility or
 14 department of public utilities may file a petition with said commission
 15 for such right and permission. ~~which~~ **The** petition ~~shall~~ **must** state, with
 16 particularity, the ~~construction;~~ equipment or other facility desired to be
 17 constructed and operated, ~~and~~ show a reasonable public necessity
 18 therefor, and ~~also~~ **state** the failure or refusal of such city, political
 19 subdivision, or other body to give or grant such right or permission. ~~and~~
 20 **Upon receipt of the petition,** the commission shall ~~thereupon~~ give
 21 notice of the pendency of such petition, together with a copy thereof,
 22 to such city or other political subdivision or body, and of the time and
 23 place of hearing of the matter set forth in such petition. ~~and such~~ **The**
 24 commission shall have power to hear and determine such matters and
 25 to give or grant such right and permission and to impose such
 26 conditions in relation thereto as the necessity of such public utility or
 27 department of public utilities and the public convenience and interest
 28 may reasonably require, **subject to subsection (c).** Provided, further,
 29 that when the **construction, installation, maintenance, repair,**
 30 relocation, **or operation** by a public utility or department of public
 31 utilities of any of its construction, equipment, or ~~facility located~~
 32 **facilities is requested to be performed** within the corporate limits of
 33 two (2) or more adjoining ~~cities~~ **political subdivisions and** is
 34 reasonably necessary for the public convenience or interest, and any or
 35 either of said ~~cities fail or refuse~~ **political subdivisions fails or refuses**
 36 to give or grant to such public utility or department of public utilities
 37 permission and authority to ~~relocate such construction; equipment; or~~
 38 ~~facility;~~ **perform the requested work, the public utility, the**
 39 **department of public utilities, or** any ~~municipality which~~ **political**
 40 **subdivision that** has given or granted to such public utility or
 41 department of public utilities permission and authority to ~~relocate such~~
 42 ~~construction; equipment; and facility;~~ **the public utility or department**



1 of public utilities perform the work may file a petition with said
 2 commission for such right and permission. ~~to which petition the city or~~
 3 ~~cities failing or~~ **The political subdivision failing or** refusing to give or
 4 grant the ~~same right and permission~~ shall be made a respondent **to the**
 5 **petition**, and such public utility or department of public utilities, if not
 6 the petitioner, shall also be made a respondent. ~~and said The~~
 7 commission shall have power to hear and determine such matter, ~~and~~
 8 to give or grant such right and permission, and to impose such
 9 conditions in relation thereto as the public convenience and interest
 10 may reasonably require, ~~and~~ **subject to subsection (c)**. If said
 11 commission shall give or grant such right and permission, no further
 12 public authority **is required for the public utility or department of**
 13 **public utilities** to ~~make such relocation perform the work~~ as
 14 authorized or to go on any street, alley, road, or highway in said ~~city or~~
 15 ~~cities~~ **political subdivision** necessary to be used therefor. ~~shall be~~
 16 ~~required of said public utility or department of public utilities.~~ All
 17 orders entered before June 30, 1931, by the commission in cases within
 18 the provisions of this section are hereby declared legal and valid.

19 (b) Subject to the commission's authority under subsection (a)(1)
 20 with respect to an ~~unreasonable~~ ordinance or other determination **that**
 21 **is unreasonable or does not comply with subsection (c)**, the
 22 municipality or county executive may operate and maintain the streets,
 23 highways, and other public property in the municipality or county for
 24 the safety of the traveling public, and a municipality or county
 25 executive may manage the public right-of-way or require by ordinance
 26 fair and reasonable compensation on a competitively neutral and
 27 nondiscriminatory basis for occupation of the public right-of-way, ~~on~~
 28 ~~a nondiscriminatory basis~~, including occupation by the municipality or
 29 county executive, if the compensation required is publicly disclosed by
 30 the municipality or county executive. Fair and reasonable
 31 compensation may not exceed the municipality's or county executive's
 32 direct, actual, **documented**, and reasonably incurred costs of managing
 33 the public right-of-way **that are directly** caused by the public utility's
 34 or department of public utilities' occupancy. The management costs,
 35 which the municipality or county executive shall assign individually to
 36 the public utility or department of public utilities creating the
 37 management costs, must be limited to the direct, actual, **documented**,
 38 and reasonably incurred costs a municipality or county incurs in
 39 managing the public right-of-way. As used in this section, the term
 40 "management costs" includes but is not limited to the costs to the
 41 municipality or county of the following:

42 (1) ~~Registering occupants.~~ **Reviewing written requests or**



1 **applications for occupation.**

2 (2) Verifying ~~public right-of-way~~ **that the requested** occupation
3 **is within the public right-of-way.**

4 **(3) Updating municipal or county records to reflect the**
5 **occupation.**

6 ~~(3)~~ **(4) Inspecting** job sites and restoration projects.

7 ~~(4)~~ **(5) Restoring** **Performing restoration** work inadequately
8 performed after providing notice and the opportunity to correct
9 the work.

10 ~~(5)~~ **(6) Administering** a reasonable restoration ordinance that
11 ensures that a public utility or department of public utilities
12 adequately restores the right-of-way as near as is reasonably
13 possible to the right-of-way's original condition.

14 ~~(6)~~ **(7) Management** costs associated with the implementation of
15 an ordinance adopted under this section.

16 However, as used in this section, direct, actual, **documented**, and
17 reasonably incurred management costs do not include rents, franchise
18 fees, or any other payment by a public utility or department of public
19 utilities for occupation of the public right-of-way, **or any costs**
20 **incurred by the municipality or county that are not directly**
21 **associated with the public utility's or department of public utilities'**
22 **occupation of the public right-of-way.** As used in this section, the
23 term "public right-of-way" does not include the airwaves above the
24 streets, highways, or other public property within the municipality or
25 county as those airwaves are used for cellular or other nonwire
26 telecommunications or broadcast service.

27 (c) A municipality or county executive may not unreasonably delay
28 a public utility's or department of public utilities' access to or use of a
29 street, highway, or other public property within the municipality or
30 county. However, subsection (a)(1) and this subsection do not limit a
31 municipality or county executive's right to advance notification of and
32 review of a public utility's or department of public utilities' occupation
33 of a street, highway, or other public property within the municipality or
34 county to ensure and protect the safety of the public, **subject to the**
35 **following:**

36 **(1) A municipality or county executive may require a utility**
37 **that is not subject to the commission's jurisdiction to carry**
38 **liability insurance covering the work to be performed or the**
39 **occupation of the public right-of-way in an amount not**
40 **greater than the cost of returning the public right-of-way to**
41 **a condition equivalent to the public right-of-way's condition**
42 **before the performance of the work. However, the**



1 municipality or county executive may not require such a
 2 utility to provide proof of liability insurance more than once
 3 in a calendar year, or in a calendar year in which the utility
 4 does not apply for a permit from the municipality or county
 5 executive under this section.

6 (2) A municipality or county executive may not require a
 7 public utility or department of public utilities to submit more
 8 than one (1) drawing or site plan showing:

9 (A) the location of the facilities or equipment to be
 10 installed, maintained, or operated;

11 (B) the size of and materials comprising the facilities or
 12 equipment to be installed;

13 (C) the length of the installation; and

14 (D) the number of road cuts, road bores, or bridge or other
 15 structural attachments required for the installation,
 16 maintenance, or operation of the equipment or facilities.

17 (3) A municipality or county executive may not require a
 18 public utility or department of public utilities to submit more
 19 than one (1) notice, request, or application packet for the
 20 work to be performed or the occupation of the public
 21 right-of-way. If the notice, request, or application requires the
 22 review of more than one (1) department, board, or other
 23 entity within the municipality or county, the municipality or
 24 county executive must coordinate the review among the
 25 departments, boards, or other entities before issuing a
 26 determination.

27 (4) A municipality or county executive may charge only one
 28 (1) fee for compensation under subsection (b), regardless of
 29 the number of departments, boards, or other entities that
 30 must review the request or application.

31 (5) A municipality or county executive must issue a
 32 determination regarding an application or request for
 33 occupation of the right-of-way not later than:

34 (A) twenty-one (21) days after the date of the application
 35 or request; or

36 (B) twenty-eight (28) days after the date of the application
 37 or request if the municipality or county executive provides
 38 written notice to the applicant of the extension and the
 39 reason for the extension.

40 The municipality's or county executive's determination under
 41 this subdivision must include confirmation that the requested
 42 occupation is within the public right-of-way of the



1 municipality or county. If a municipality or county executive
 2 fails to issue a determination regarding an application or
 3 request for occupation of the right-of-way in the time
 4 required under clause (A) or clause (B), as applicable, the
 5 application or request is considered approved. However, if the
 6 applicant requires additional time to cure defects in the
 7 applicant's application or request, or if the review of the
 8 application or request by the municipality or county executive
 9 is otherwise delayed by the applicant, the time period
 10 described in clause (A) or clause (B) within which the
 11 municipality or county executive must issue a determination
 12 is extended for a corresponding amount of time.

13 (6) Municipalities and county executives shall, to the extent
 14 practicable, establish notice, request, and application
 15 procedures and forms that are uniform, reasonable, and brief.
 16 To the extent such procedures and forms are prescribed by
 17 law or regulation, or by an entity formed to represent the
 18 interests of Indiana municipalities or counties, municipalities
 19 and counties shall use such procedures and forms as
 20 prescribed. A municipality or county executive must
 21 electronically receive and process notices, requests, and
 22 applications for public utilities' and departments of public
 23 utilities' occupation of the right-of-way.

24 (7) Municipalities and county executives shall, to the extent
 25 practicable, work collaboratively with utilities to ensure that
 26 the public right-of-way is returned to its original condition
 27 within a reasonable amount of time.

28 (d) This section may not be construed to entitle a municipality
 29 or county executive the right to advance notification and review of
 30 work by a public utility or department of public utilities:

31 (1) that is performed on existing equipment or facilities
 32 located within the public right-of-way; and

33 (2) that:

34 (A) does not require ground disturbance activities;

35 (B) does not affect traffic flow; or

36 (C) is required due to a bona fide emergency that threatens
 37 injury to persons, loss of property, or loss or disturbance
 38 of utility service.

39 For purposes of this subsection, "ground disturbance activities"
 40 means any work, operation, or activity that results in a disturbance
 41 of the earth, including excavating, digging, trenching, cultivating,
 42 drilling, tunneling, boring, backfilling, blasting, topsoil stripping,



1 **clearing, or grading. The term does not include maintenance or**
 2 **other minor work, such as checking or inspecting handholes,**
 3 **manholes, or other facilities.**

4 ~~(d)~~ (e) Nothing in this section may be construed to:

5 (1) affect franchise agreements between a cable company and a
 6 municipality or county; **or**

7 **(2) modify the service area rights of a utility under any other**
 8 **law.**

9 SECTION 5. IC 8-1-2.6-4, AS AMENDED BY P.L.53-2014,
 10 SECTION 76, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 11 JULY 1, 2021]: Sec. 4. (a) As used in this section, "committee" means
 12 the interim study committee on energy, utilities, and
 13 telecommunications established by IC 2-5-1.3-4.

14 (b) ~~Subject to subsection (e),~~ The commission shall, by July 1 of
 15 each year, report to the committee in an electronic format under
 16 IC 5-14-6 on the following:

17 (1) The effects of competition and technological change on
 18 universal service and on pricing of all telecommunications
 19 services offered in Indiana.

20 (2) The status of competition and technological change in the
 21 provision of video service (as defined in IC 8-1-34-14) available
 22 to Indiana customers, as including the following information:

23 (A) The number of multichannel video programming
 24 distributors offering video service to Indiana customers.

25 (B) The technologies used to provide video service to Indiana
 26 customers.

27 (C) The advertised programming and pricing options offered
 28 by video service providers to Indiana customers.

29 (3) Best practices concerning vertical location of underground
 30 facilities for purposes of IC 8-1-26. A report under this
 31 subdivision must address the viability and economic feasibility of
 32 technologies used to vertically locate underground facilities.

33 (c) In addition to reviewing the commission report prepared under
 34 subsection (b), the committee may also issue a report and
 35 recommendations to the legislative council by November 1 of each year
 36 that is based on a review of the following issues:

37 (1) The effects of competition and technological change in the
 38 telecommunications industry and impact of competition on
 39 available subsidies used to maintain universal service.

40 (2) The status of modernization of the publicly available
 41 telecommunications infrastructure in Indiana and the incentives
 42 required to further enhance this infrastructure.



1 (3) The effects on economic development and educational
2 opportunities of the modernization described in subdivision (2).

3 (4) The current methods of regulating providers, at both the
4 federal and state levels, and the effectiveness of the methods.

5 (5) The economic and social effectiveness of current
6 telecommunications service pricing.

7 (6) All other telecommunications issues the committee deems
8 appropriate.

9 The report and recommendations issued under this subsection to the
10 legislative council must be in an electronic format under IC 5-14-6.

11 (d) The committee shall, with the approval of the commission, retain
12 the independent consultants the committee considers appropriate to
13 assist the committee in the review and study. The expenses for the
14 consultants shall be paid by the commission.

15 (e) ~~If the commission requests a communications service provider
16 (as defined in section 13(b) of this chapter) to provide information for
17 the commission to use in preparing a report under this section, the
18 request must be limited to public information provided to the Federal
19 Communications Commission and may be required to be provided only
20 in the form in which it is provided to the Federal Communications
21 Commission. However, the commission may request any public
22 information from a communications service provider (as defined in
23 section 13(b) of this chapter) upon a request from the committee's
24 chairperson that specifically enumerates the public information sought.~~

25 SECTION 6. IC 8-1-2.6-13, AS AMENDED BY P.L.73-2020,
26 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
27 JULY 1, 2021]: Sec. 13. (a) As used in this section, "communications
28 service" has the meaning set forth in IC 8-1-32.5-3.

29 (b) As used in this section, "communications service provider"
30 means a person or an entity that offers communications service to
31 customers in Indiana, without regard to the technology or medium used
32 by the person or entity to provide the communications service. The
33 term includes a provider of commercial mobile service (as defined in
34 47 U.S.C. 332).

35 (c) Notwithstanding sections 1.2, 1.4, and 1.5 of this chapter, the
36 commission may do the following, except as otherwise provided in this
37 subsection:

38 (1) Enforce the terms of a settlement agreement approved by the
39 commission before July 29, 2004. The commission's authority
40 under this subdivision continues for the duration of the settlement
41 agreement.

42 (2) Fulfill the commission's duties under IC 8-1-2.8 concerning



- 1 the provision of dual party relay services to deaf, hard of hearing,
 2 and speech impaired persons in Indiana.
- 3 (3) Fulfill the commission's responsibilities under IC 8-1-29 to
 4 adopt and enforce rules to ensure that a customer of a
 5 telecommunications provider is not:
- 6 (A) switched to another telecommunications provider unless
 7 the customer authorizes the switch; or
- 8 (B) billed for services by a telecommunications provider that
 9 without the customer's authorization added the services to the
 10 customer's service order.
- 11 (4) Fulfill the commission's obligations under:
- 12 (A) the federal Telecommunications Act of 1996 (47 U.S.C.
 13 151 et seq.); and
- 14 (B) IC 20-20-16;
- 15 concerning universal service and access to telecommunications
 16 service and equipment, including the designation of eligible
 17 telecommunications carriers under 47 U.S.C. 214.
- 18 (5) Perform any of the functions described in section 1.5(b) of this
 19 chapter.
- 20 (6) Perform the commission's responsibilities under IC 8-1-32.5
 21 to:
- 22 (A) issue; and
- 23 (B) maintain records of;
- 24 certificates of territorial authority for communications service
 25 providers offering communications service to customers in
 26 Indiana.
- 27 (7) Perform the commission's responsibilities under IC 8-1-34
 28 concerning the issuance of certificates of franchise authority to
 29 multichannel video programming distributors offering video
 30 service to Indiana customers.
- 31 (8) **Subject to subsection (f)**, require a communications service
 32 provider, other than a provider of commercial mobile service (as
 33 defined in 47 U.S.C. 332), to report to the commission on an
 34 annual basis, or more frequently at the option of the provider, ~~and~~
 35 ~~subject to section 4(e) of this chapter~~, any information needed by
 36 the commission to prepare the commission's report to the interim
 37 study committee on energy, utilities, and telecommunications
 38 under section 4 of this chapter.
- 39 (9) Perform the commission's duties under IC 8-1-32.4 with
 40 respect to telecommunications providers of last resort, to the
 41 extent of the authority delegated to the commission under federal
 42 law to perform those duties.



- 1 (10) Collect and maintain from a communications service
 2 provider the following information:
 3 (A) The address of the provider's Internet web site.
 4 (B) All toll free telephone numbers and other customer service
 5 telephone numbers maintained by the provider for receiving
 6 customer inquiries and complaints.
 7 (C) An address and other contact information for the provider,
 8 including any telephone number not described in clause (B).
 9 The commission shall make any information submitted by a
 10 provider under this subdivision available on the commission's
 11 Internet web site. The commission may also make available on the
 12 commission's Internet web site contact information for the Federal
 13 Communications Commission and the Cellular Telephone
 14 Industry Association.
- 15 (11) Fulfill the commission's duties under any state or federal law
 16 concerning the administration of any universally applicable
 17 dialing code for any communications service.
- 18 (d) The commission does not have jurisdiction over any of the
 19 following with respect to a communications service provider:
 20 (1) Rates and charges for communications service provided by the
 21 communications service provider, including the filing of
 22 schedules or tariffs setting forth the provider's rates and charges.
 23 (2) Depreciation schedules for any of the classes of property
 24 owned by the communications service provider.
 25 (3) Quality of service provided by the communications service
 26 provider.
 27 (4) Long term financing arrangements or other obligations of the
 28 communications service provider.
 29 (5) Except as provided in subsection (c), any other aspect
 30 regulated by the commission under this title before July 1, 2009.
- 31 (e) The commission has jurisdiction over a communications service
 32 provider only to the extent that jurisdiction is:
 33 (1) expressly granted by state or federal law, including:
 34 (A) a state or federal statute;
 35 (B) a lawful order or regulation of the Federal
 36 Communications Commission; or
 37 (C) an order or a ruling of a state or federal court having
 38 jurisdiction; or
 39 (2) necessary to administer a federal law for which regulatory
 40 responsibility has been delegated to the commission by federal
 41 law.
- 42 (f) **Except as specifically required under state or federal law, or**



1 **except as required to respond to consumer complaints or**
 2 **information requests from the general assembly, the commission**
 3 **may not require a communications service provider:**

4 **(1) to file a tariff; or**

5 **(2) except for purposes of a petition or request filed or**
 6 **submitted to the commission by the communications service**
 7 **provider, to report to the commission any information that is:**

8 **(A) available to the public on the communications service**
 9 **provider's Internet web site;**

10 **(B) filed with the Federal Communications Commission; or**

11 **(C) otherwise available to the public in any form or at any**
 12 **level of detail;**

13 **including the communications service provider's rates, terms**
 14 **and conditions of service.**

15 SECTION 7. IC 8-1-32.3-15, AS AMENDED BY P.L.23-2018,
 16 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 17 JULY 1, 2021]: Sec. 15. (a) This chapter applies to permits issued by
 18 a permit authority to a communications service provider, under local
 19 law and consistent with IC 36-7, for the following:

20 (1) Construction of a new wireless support structure.

21 (2) Substantial modification of a wireless support structure.

22 (3) Collocation of wireless facilities on an existing structure.

23 (4) Construction, placement, and use of small cell facilities.

24 (b) A permit authority may not require an application or a permit
 25 for, or charge fees for, any of the following:

26 (1) The routine maintenance of wireless facilities.

27 (2) The replacement of wireless facilities with wireless facilities
 28 that are:

29 (A) substantially similar to; or

30 (B) the same size or smaller than;

31 the wireless facilities being replaced.

32 (3) The installation, placement, maintenance, or replacement of
 33 micro wireless facilities that are suspended on cables strung
 34 between existing utility poles in compliance with applicable codes
 35 by a communications service provider that is authorized to use the
 36 public rights-of-way. For purposes of this subdivision, "applicable
 37 codes" means uniform building, fire, electrical, plumbing, or
 38 mechanical codes that are:

39 (A) adopted by a recognized national code organization; and

40 (B) enacted solely to address imminent threats of destruction
 41 of property or injury to persons;

42 including any local amendments to those codes.



- 1 (c) With respect to the construction, placement, or use of a small
 2 cell facility and the associated supporting structure, a permit authority
 3 may prohibit the placement of a new utility pole or a new wireless
 4 support structure in a right-of-way within an area that is designated
 5 strictly for underground or buried utilities, if all of the following apply:
 6 (1) The area is designated strictly for underground or buried
 7 utilities before May 1, 2017.
 8 **(2) No above ground:**
 9 **(A) wireless support structure;**
 10 **(B) utility pole; or**
 11 **(C) other utility superstructure;**
 12 **other than light poles, exists in the area.**
 13 ~~(2)~~ **(3)** The permit authority does all of the following:
 14 (A) Allows the collocation of small cell facilities on existing:
 15 (i) utility poles; ~~and~~
 16 **(ii) light poles; and**
 17 ~~(ii)~~ **(iii)** wireless support structures;
 18 **as a permitted use** within the area.
 19 (B) Allows the replacement or improvement of existing:
 20 (i) utility poles; ~~and~~
 21 **(ii) light poles; and**
 22 ~~(ii)~~ **(iii)** wireless support structures;
 23 **as a permitted use** within the area.
 24 (C) Provides:
 25 (i) a waiver;
 26 (ii) a zoning process; or
 27 (iii) another procedure;
 28 that addresses requests to install new utility poles or new
 29 wireless support structures within the area.
 30 (D) Upon receipt of an application for the construction,
 31 placement, or use of a small cell facility on one (1) or more
 32 new utility poles or one (1) or more new wireless support
 33 structures in an area that is designated strictly for underground
 34 or buried utilities, posts notice of the application on the permit
 35 authority's Internet web site, if the permit authority maintains
 36 an Internet web site. The notice of the application required by
 37 this clause must include a statement indicating that the
 38 application is available to the public upon request.
 39 ~~(3)~~ **(4)** The prohibition or other restrictions with respect to the
 40 placement of new utility poles or new wireless support structures
 41 within the area are applied in a nondiscriminatory manner.
 42 ~~(4)~~ **(5)** The area is zoned strictly for residential land use before



1 May 1, 2017.

2 (d) **With respect to applications for the placement of one (1) or**
 3 **more small cell facilities in an area that is zoned strictly for**
 4 **residential land use, and that is designated strictly for underground**
 5 **or buried utilities,** a permit authority shall allow a neighborhood
 6 association or a homeowners association to register with the permit
 7 authority to:

8 (1) receive notice; and

9 (2) **request that homeowners within the jurisdiction of the**
 10 **neighborhood association or homeowners association receive**
 11 **notice;**

12 by United States mail of any application filed with the permit authority
 13 for the construction, placement, or use of a small cell facility on one (1)
 14 or more new utility poles or one (1) or more new wireless support
 15 structures in an area **that is designated strictly for underground or**
 16 **buried utilities and that is** within the jurisdiction of the neighborhood
 17 association or homeowners association. If the permit authority
 18 maintains an Internet web site, the permit authority shall post on the
 19 permit authority's Internet web site instructions for how a neighborhood
 20 association or homeowners association may register to receive notice
 21 under this subsection. **A permit authority that receives a request**
 22 **under subdivision (2) may agree to provide notice to homeowners**
 23 **regarding a project for which applications described in this**
 24 **subsection have been filed with the permit authority, but not**
 25 **provide notice to homeowners regarding each permit application**
 26 **filed with the permit authority with respect to the project. A**
 27 **permit authority that receives a request under subdivision (2) may**
 28 **agree to provide notice only to certain homeowners. A permit**
 29 **authority may require a neighborhood association, homeowners**
 30 **association, or homeowner to pay the cost of postage associated**
 31 **with the provision of notice to the neighborhood association,**
 32 **homeowners association, or homeowner under this subsection. A**
 33 **permit authority that provides notice under this subsection at its**
 34 **own cost may not pass those costs along to a permit applicant. To**
 35 **the extent technically feasible, a permit authority shall collaborate**
 36 **with a neighborhood association or homeowners association on the**
 37 **location and aesthetics of new utility poles added within the**
 38 **jurisdiction of the neighborhood association or homeowners**
 39 **association.**

40 (e) Subject to section 26(b) of this chapter, with respect to the
 41 construction, placement, or use of a small cell facility and the
 42 associated supporting structure within an area:

HB 1164—LS 7058/DI 119



1 (1) designated as a historic preservation district under IC 36-7-11;
 2 (2) designated as a historic preservation area under IC 36-7-11.1;
 3 or
 4 (3) that is subject to the jurisdiction of the Meridian Street
 5 preservation commission under IC 36-7-11.2;
 6 a permit authority may apply any generally applicable procedures that
 7 require applicants to obtain a certificate of appropriateness.
 8 (f) An applicant for the placement of a small cell facility and an
 9 associated supporting structure shall comply with applicable:
 10 (1) Federal Communications Commission requirements; and
 11 (2) industry standards;
 12 for identifying the owner's name and contact information.
 13 (g) A resolution, ordinance, or other regulation:
 14 (1) adopted by a permit authority after April 14, 2017, and before
 15 May 2, 2017; and
 16 (2) that designates an area within the jurisdiction of the permit
 17 authority as strictly for underground or buried utilities;
 18 applies only to communications service providers and those geographic
 19 areas that are zoned residential and where all existing utility
 20 infrastructure is already buried.
 21 SECTION 8. IC 8-1-32.3-17, AS ADDED BY P.L.145-2015,
 22 SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 23 JULY 1, 2021]: Sec. 17. (a) A permit authority may not discriminate
 24 among communications service providers or public utilities with
 25 respect to the following:
 26 (1) Approving applications, issuing permits, or otherwise
 27 establishing terms and conditions for construction of wireless or
 28 wireline communications facilities.
 29 (2) Authorizing or approving tax incentives for wireless or
 30 wireline communications facilities.
 31 (3) Providing access to rights-of-way, infrastructure, utility poles,
 32 river and bridge crossings, and other physical assets owned or
 33 controlled by the permit authority.
 34 (b) A permit authority may not impose a fall zone requirement that:
 35 (1) applies to a wireless support structure; and
 36 (2) is larger than the area within which the wireless support
 37 structure is designed to collapse, as set forth in the applicant's
 38 engineering certification for the wireless support structure.
 39 However, a permit authority may impose a fall zone requirement that
 40 is larger than the area described in subdivision (2) if the permit
 41 authority provides evidence that the applicant's engineering
 42 certification is flawed. The permit authority's evidence must include a



1 study performed and certified by a professional engineer.

2 **(c) Except as described in section 26(a) of this chapter with**
 3 **respect to small cell facilities, and subject to the restrictions under**
 4 **14 CFR Part 77, 47 CFR Part 17, and IC 8-21-10, a permit**
 5 **authority may not impose:**

6 **(1) a restriction on the maximum height of a wireless support**
 7 **structure; or**

8 **(2) a requirement regarding minimum separation distances**
 9 **between wireless support structures.**

10 SECTION 9. IC 8-1-32.5-11, AS ADDED BY P.L.27-2006,
 11 SECTION 55, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 12 JULY 1, 2021]: Sec. 11. (a) The commission may not require a
 13 communications service provider to file a tariff in connection with, or
 14 as a condition of receiving, a certificate of territorial authority under
 15 this chapter.

16 (b) This subsection does not apply to a provider of commercial
 17 mobile service (as defined in 47 U.S.C. 332). The commission may
 18 require, in connection with the issuance of a certificate under this
 19 chapter, the communications service provider to provide advance
 20 notice to the provider's Indiana customers if the provider will do any of
 21 the following:

22 (1) Increase the rates and charges for any communications service
 23 that the provider offers in any of the provider's service areas in
 24 Indiana.

25 (2) Offer new communications service in any of the provider's
 26 service areas in Indiana.

27 (3) Cease to offer any communications service that the provider
 28 offers in any of the provider's service areas in Indiana.

29 The commission shall prescribe any customer notification requirements
 30 under this subsection in a rule of general application adopted under
 31 IC 4-22-2.

32 **(c) A tariff filed with the commission by a communications**
 33 **service provider is effective upon filing.**

34 SECTION 10. IC 8-1-32.5-14, AS AMENDED BY P.L.189-2019,
 35 SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 36 JULY 1, 2021]: Sec. 14. A communications service provider that holds
 37 a certificate issued under this chapter:

38 (1) is exempt from local franchises and related fees to the same
 39 extent as a communications service provider that holds a
 40 certificate of territorial authority or an indeterminate permit
 41 issued under IC 8-1-2 before July 1, 2009;

42 (2) may access public rights-of-way to the same extent as a public



1 utility (as defined in IC 8-1-2-1(a)): ~~other than~~

2 **(A) including a public right-of-way under the control of a**
 3 **county or municipality as provided in IC 8-1-2-101; but**

4 **(B) not including** rights-of-way, property, or projects that are
 5 the subject of a public-private agreement under IC 8-15.5 or
 6 IC 8-15.7 or communications systems infrastructure, including
 7 all infrastructure used for wireless communications, owned by
 8 or under the jurisdiction of the Indiana finance authority or the
 9 state or any of its agencies, departments, boards, commissions,
 10 authorities, or instrumentalities; and

11 (3) shall be designated as a public utility solely as that term is
 12 used in 23 CFR 710.403(e)(2).

13 SECTION 11. IC 8-1-34-16, AS AMENDED BY P.L.53-2014,
 14 SECTION 81, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 15 JULY 1, 2021]: Sec. 16. (a) Except as provided in section 21 of this
 16 chapter, after June 30, 2006:

17 (1) the commission is the sole franchising authority (as defined in
 18 47 U.S.C. 522(10)) for the provision of video service in Indiana;
 19 and

20 (2) a unit may not:

21 (A) require a provider to obtain a separate franchise;

22 (B) impose any fee, gross receipt tax, licensing requirement,
 23 rate regulation, or build-out requirement on a provider;

24 (C) regulate a holder or provider; or

25 (D) establish, fund, or otherwise designate an agency, a board,
 26 or another subordinate entity to monitor, supervise, evaluate,
 27 or regulate the holder or provider;

28 except as authorized by this chapter.

29 (b) Except as provided in section 21 of this chapter, a person who
 30 seeks to provide video service in Indiana after June 30, 2006, shall file
 31 with the commission an application for a franchise. The application
 32 shall be made on a form prescribed by the commission and must
 33 include the following:

34 (1) A sworn affidavit, signed by an officer or another person
 35 authorized to bind the applicant, that affirms the following:

36 (A) That the applicant has filed or will timely file with the
 37 Federal Communications Commission all forms required by
 38 the Federal Communications Commission before offering
 39 video service in Indiana.

40 (B) That the applicant agrees to comply with all federal and
 41 state statutes, rules, and regulations applicable to the operation
 42 of the applicant's video service system.



- 1 (C) That the applicant agrees to:
- 2 (i) comply with any local ordinance or regulation governing
- 3 the use of public rights-of-way in the delivery of video
- 4 service; and
- 5 (ii) recognize the police powers of a unit to enforce the
- 6 ordinance or regulation.
- 7 (D) If the applicant will terminate an existing local franchise
- 8 under section 21 of this chapter, that the applicant agrees to
- 9 perform any obligations owed to any private person, as
- 10 required by section 22 of this chapter.
- 11 (2) The applicant's legal name and any name under which the
- 12 applicant does or will do business in Indiana, as authorized by the
- 13 secretary of state.
- 14 (3) The address and telephone number of the applicant's principal
- 15 place of business, along with contact information for the person
- 16 responsible for ongoing communications with the commission.
- 17 (4) The names and titles of the applicant's principal officers.
- 18 (5) The legal name, address, and telephone number of the
- 19 applicant's parent company, if any.
- 20 (6) A description of each service area in Indiana to be served by
- 21 the applicant. A service area described under this subdivision may
- 22 include an unincorporated area in Indiana.
- 23 (7) The expected date for the deployment of video service in each
- 24 of the areas identified in subdivision (6).
- 25 (8) A list of other states in which the applicant provides video
- 26 service.
- 27 (9) If the applicant will terminate an existing local franchise under
- 28 section 21(b) of this chapter, a copy of the written notice sent to
- 29 the municipality under section 21(c) of this chapter.
- 30 (10) Any other information the commission considers necessary
- 31 to:
- 32 (A) monitor the provision of video service to Indiana
- 33 customers; and
- 34 (B) prepare, under IC 8-1-2.6-4, the commission's annual
- 35 report to the interim study committee on energy, utilities, and
- 36 telecommunications established by IC 2-5-1.3-4 in an
- 37 electronic format under IC 5-14-6.
- 38 (c) This section does not empower the commission to require:
- 39 (1) an applicant to disclose confidential and proprietary business
- 40 plans and other confidential information without adequate
- 41 protection of the information; or
- 42 (2) a provider to disclose more frequently than in each odd



1 numbered year information regarding the areas in which an
 2 applicant has deployed, or plans to deploy, video services.
 3 The commission shall exercise all necessary caution to avoid disclosure
 4 of confidential information supplied under this section.

5 (d) The commission may charge a fee for filing an application under
 6 this section. Any fee charged by the commission under this subsection
 7 may not exceed the commission's actual costs to process and review the
 8 application under section 17 of this chapter.

9 (e) Nothing in this title may be construed to require an applicant or
 10 a provider to disclose information that identifies by census block, street
 11 address, or other similar level of specificity the areas in which the
 12 applicant or provider has deployed, or plans to deploy, video service in
 13 Indiana. The commission may not disclose, publish, or report by census
 14 block, street address, or other similar level of specificity any
 15 information identifying the areas in Indiana in which an applicant or a
 16 provider has deployed, or plans to deploy, video service.

17 **(f) Nothing in this title may be construed to require an applicant**
 18 **or provider to provide the commission with information describing**
 19 **the applicant's or provider's programming, including the**
 20 **applicant's or provider's channel lineups or channel guides.**

21 SECTION 12. IC 8-20-1-28 IS AMENDED TO READ AS
 22 FOLLOWS [EFFECTIVE JULY 1, 2021]: Sec. 28. Public and
 23 municipally owned utilities are authorized to construct, operate, and
 24 maintain their poles, facilities, appliances, and fixtures upon, along,
 25 under, and across any of the public roads, highways, and waters outside
 26 of municipalities, as long as they do not interfere with the ordinary and
 27 normal public use of the roadway, as defined in IC 9-13-2-157.
 28 However, the utility shall review its plans with the county executive
 29 before locating the pole, facility, appliance, or fixture, **and the county**
 30 **executive shall comply with IC 8-1-2-101.** The utility may trim any
 31 tree along the road or highway, but may not cut down and remove the
 32 tree without the consent of the abutting property owners, unless the
 33 cutting or removal is required by rule or order of the Indiana utility
 34 regulatory commission. The utility may not locate a pole where it
 35 interferes with the ingress or egress from adjoining land.

36 SECTION 13. IC 22-5-1.7-6, AS AMENDED BY P.L.28-2013,
 37 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 38 JULY 1, 2021]: Sec. 6. (a) As used in this chapter, "public contract for
 39 services" means any type of written agreement between a state agency
 40 or political subdivision and a contractor for the procurement of
 41 services.

42 **(b) The term does not include a contract for the lease of**



1 **property owned by the state under which no state expenditures are**
 2 **required.**

3 SECTION 14. IC 36-1-11-1, AS AMENDED BY P.L.270-2019,
 4 SECTION 24, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 5 JULY 1, 2021]: Sec. 1. (a) Except as provided in subsection (b), this
 6 chapter applies to the disposal of property by:

- 7 (1) political subdivisions; and
 8 (2) agencies of political subdivisions.

9 (b) This chapter does not apply to the following:

- 10 (1) The disposal of property under an urban homesteading
 11 program under IC 36-7-17 or IC 36-7-17.1.
 12 (2) The lease of school buildings under IC 20-47.
 13 (3) The sale of land to a lessor in a lease-purchase contract under
 14 IC 36-1-10.
 15 (4) The disposal of property by a redevelopment commission
 16 established under IC 36-7.
 17 (5) The leasing of property by a board of aviation commissioners
 18 established under IC 8-22-2 or an airport authority established
 19 under IC 8-22-3.
 20 (6) The disposal of a municipally owned utility under IC 8-1.5.
 21 (7) Except as provided in sections 5.5 and 5.6 of this chapter, the
 22 sale or lease of property by a unit to an Indiana nonprofit
 23 corporation organized for educational, literary, scientific,
 24 religious, or charitable purposes that is exempt from federal
 25 income taxation under Section 501 of the Internal Revenue Code
 26 or the sale or reletting of that property by the nonprofit
 27 corporation.
 28 (8) The disposal of surplus property by a hospital established and
 29 operated under IC 16-22-1 through IC 16-22-5, IC 16-22-8,
 30 IC 16-23-1, or IC 16-24-1.
 31 (9) The sale or lease of property acquired under IC 36-7-13 for
 32 industrial development.
 33 (10) The sale, lease, or disposal of property by a local hospital
 34 authority under IC 5-1-4.
 35 (11) The sale or other disposition of property by a county or
 36 municipality to finance housing under IC 5-20-2.
 37 (12) The disposition of property by a soil and water conservation
 38 district under IC 14-32.
 39 (13) The sale, lease, or disposal of property by the health and
 40 hospital corporation established and operated under IC 16-22-8.
 41 (14) The disposal of personal property by a library board under
 42 IC 36-12-3-5(c).



- 1 (15) The sale or disposal of property by the historic preservation
 2 commission under IC 36-7-11.1.
 3 (16) The disposal of an interest in property by a housing authority
 4 under IC 36-7-18.
 5 (17) The disposal of property under IC 36-9-37-26.
 6 (18) The disposal of property used for park purposes under
 7 IC 36-10-7-8.
 8 (19) The disposal of curricular materials that will no longer be
 9 used by school corporations under IC 20-26-12.
 10 (20) The disposal of residential structures or improvements by a
 11 municipal corporation without consideration to:
 12 (A) a governmental entity; or
 13 (B) a nonprofit corporation that is organized to expand the
 14 supply or sustain the existing supply of good quality,
 15 affordable housing for residents of Indiana having low or
 16 moderate incomes.
 17 (21) The disposal of historic property without consideration to a
 18 nonprofit corporation whose charter or articles of incorporation
 19 allows the corporation to take action for the preservation of
 20 historic property. As used in this subdivision, "historic property"
 21 means property that is:
 22 (A) listed on the National Register of Historic Places; or
 23 (B) eligible for listing on the National Register of Historic
 24 Places, as determined by the division of historic preservation
 25 and archeology of the department of natural resources.
 26 (22) The disposal of real property without consideration to:
 27 (A) a governmental agency; or
 28 (B) a nonprofit corporation that exists for the primary purpose
 29 of enhancing the environment;
 30 when the property is to be used for compliance with a permit or
 31 an order issued by a federal or state regulatory agency to mitigate
 32 an adverse environmental impact.
 33 (23) The disposal of property to a person under an agreement
 34 between the person and a political subdivision or an agency of a
 35 political subdivision under IC 5-23.
 36 (24) The disposal of residential real property pursuant to a federal
 37 aviation regulation (14 CFR 150) Airport Noise Compatibility
 38 Planning Program as approved by the Federal Aviation
 39 Administration.
 40 **(25) The disposal of property by a political subdivision to a**
 41 **public utility (as defined in IC 8-1-2-1) or to a**
 42 **communications service provider (as defined in**



- 1 **IC 8-1-32.5-4).**
 2 SECTION 15. IC 36-1-12-1, AS AMENDED BY P.L.91-2017,
 3 SECTION 9, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 4 JULY 1, 2021]: Sec. 1. (a) Except as provided in this section, this
 5 chapter applies to all public work performed or contracted for by:
 6 (1) political subdivisions; and
 7 (2) their agencies;
 8 regardless of whether it is performed on property owned or leased by
 9 the political subdivision or agency.
 10 (b) This chapter does not apply to an officer or agent who, on behalf
 11 of a municipal utility **or a conservancy district described in**
 12 **IC 14-33-1-1(a)(4) or IC 14-33-1-1(a)(5)**, maintains, extends, and
 13 installs services of the utility **or district** if the necessary work is done
 14 by the employees of the utility **or district**.
 15 (c) This chapter does not apply to hospitals organized or operated
 16 under IC 16-22-1 through IC 16-22-5 or IC 16-23-1, unless the public
 17 work is financed in whole or in part with cumulative building fund
 18 revenue.
 19 (d) This chapter does not apply to tax exempt Indiana nonprofit
 20 corporations leasing and operating a city market owned by a political
 21 subdivision.
 22 (e) As an alternative to this chapter, the governing body of a
 23 political subdivision or its agencies may do the following:
 24 (1) Enter into a design-build contract as permitted under IC 5-30.
 25 (2) Participate in a utility efficiency program or enter into a
 26 guaranteed savings contract as permitted under IC 36-1-12.5.
 27 (f) This chapter does not apply to a person that has entered into an
 28 operating agreement with a political subdivision or an agency of a
 29 political subdivision under IC 5-23.
 30 (g) This chapter does not apply to the extension or installation of
 31 utility infrastructure by a private developer of land if all the following
 32 apply:
 33 (1) A municipality will acquire for the municipality's municipally
 34 owned utility all of the utility infrastructure that is to be extended
 35 or installed.
 36 (2) Not more than fifty percent (50%) of the total construction
 37 costs for the utility infrastructure to be extended or installed,
 38 including any increased costs that result from any construction
 39 specifications that:
 40 (A) are required by the municipality; and
 41 (B) specify a greater service capacity for the utility
 42 infrastructure than would otherwise be provided for by the



1 private developer;
2 will be paid for out of a public fund or out of a special
3 assessment.
4 (3) The private developer agrees to comply with all local
5 ordinances and engineering standards applicable to the
6 construction, extension, or installation of the utility infrastructure.



COMMITTEE REPORT

Mr. Speaker: Your Committee on Utilities, Energy and Telecommunications, to which was referred House Bill 1164, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 3, delete lines 32 through 42, begin a new paragraph and insert:

"SECTION 3. IC 8-1-2-5.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2021]: **Sec. 5.5. (a) Every:**

- (1) corporation organized under IC 8-1-13;**
- (2) corporation organized under IC 23-17 that is an electric cooperative and that has at least one (1) member that is a corporation organized under IC 8-1-13; and**
- (3) municipality providing electric service;**

shall permit attachments by communications service providers to poles owned or controlled by the corporation or municipality.

(b) A rate, term, or condition imposed by a corporation or municipality described in subsection (a) for access to poles owned or controlled by the corporation or municipality:

- (1) must be nondiscriminatory, just, and reasonable; and**
- (2) must not favor the pole owner or an affiliate of the pole owner.**

(c) Any pole attachment rental fee imposed by a corporation or municipality described in subsection (a) for access to poles owned or controlled by the corporation or municipality:

- (1) must be calculated on an annual, per-pole basis; and**
- (2) is considered to provide reasonable compensation and to be nondiscriminatory, just, and reasonable if the fee:**

- (A) is agreed upon by the parties; or**
- (B) is not greater than the fee that would apply if the pole attachment rental fee were calculated in accordance with the formula set forth in 47 U.S.C. 224(d), as applied by the Federal Communications Commission.**

(d) If a communications service provider and a corporation or municipality described in subsection (a) fail to agree upon:

- (1) access to poles owned or controlled by the corporation or municipality; or**
- (2) the rates, terms, and conditions for attachment to poles owned or controlled by the corporation or municipality;**

the communications service provider may apply to the commission

HB 1164—LS 7058/DI 119



for a determination of the matter.

(e) Upon receiving a request for a determination under subsection (d), the commission shall:

(1) proceed to determine whether:

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

(B) the rates, terms, and conditions complained of were not just and reasonable;

as applicable; and

(2) issue an order:

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

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

(i) are reasonable; and

(ii) comply with subsections (b) and (c).

(f) In any case in which the commission issues an order under subsection (e):

(1) the access ordered by the commission under subsection (e)(2)(A) shall be permitted by the corporation or municipality; and

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

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

SECTION 4. IC 8-1-2-101 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2021]: Sec. 101. (a) Every municipal council or county executive shall have power:

(1) To determine by ordinance the provisions, not inconsistent with **subsection (c), other provisions** of this chapter, or IC 8-1-11.1, upon which a public utility or department of public utilities created under IC 8-1-11.1 occupies the areas along, under, upon, and across the streets, highways, or other public property within such municipality or county. ~~and~~ Such ~~an~~ ordinance or other determination of ~~such a~~ municipality or county executive shall be in force and prima facie reasonable **if the ordinance or determination complies with subsection (c)**. Upon complaint made by such public utility or department of



public utilities, or by any qualified complainant, as provided in section 54 of this chapter, the commission shall set a hearing, as provided in sections 54 to 67 of this chapter, and if it shall find such ordinance or other determination to be unreasonable, such ordinance or other determination shall be void.

(2) To require of any public utility, by ordinance, such additions and extensions to its physical plant within said municipality or county as shall be reasonable and necessary in the interest of the public, and to **reasonably** designate the location and nature of all such additions and extensions, the time within which they must be completed, and all conditions under which they must be constructed, subject to review by the commission as provided in subdivision (1).

(3) To provide for a penalty for noncompliance with the provisions of any ordinance or resolution adopted pursuant to the provisions of this section.

(4) The power and authority granted in this section shall exist and be vested in said municipalities or county executives, anything in this chapter to the contrary notwithstanding.

Provided, however, ~~whenever, after that if a public utility or department of public utilities makes~~ a request by petition in writing ~~of any public utility, department of public utilities, and completes any required permit application, and~~ the city or other political subdivision or other body having jurisdiction of the matter ~~shall refuse or fail, refuses or fails,~~ for a period of ~~thirty (30) twenty-one (21) days or twenty-eight (28) days, as applicable under subsection (c)(5),~~ to give or grant to such public utility or department of public utilities permission and authority to construct, maintain, and operate any ~~additional construction,~~ equipment or facility **within the public right-of-way as is** reasonably necessary for the transaction of the business of such public utility or department of public utilities and for the public convenience or interest, then such public utility or department of public utilities may file a petition with said commission for such right and permission. ~~which~~ **The** petition ~~shall~~ **must** state, with particularity, the ~~construction,~~ equipment or other facility desired to be constructed and operated, ~~and~~ show a reasonable public necessity therefor, and ~~also~~ **state** the failure or refusal of such city, political subdivision, or other body to give or grant such right or permission. ~~and~~ **Upon receipt of the petition,** the commission shall ~~thereupon~~ give notice of the pendency of such petition, together with a copy thereof, to such city or other political subdivision or body, and of the time and place of hearing of the matter set forth in such petition. ~~and such~~ **The**



commission shall have power to hear and determine such matters and to give or grant such right and permission and to impose such conditions in relation thereto as the necessity of such public utility or department of public utilities and the public convenience and interest may reasonably require, **subject to subsection (c)**. Provided, further, that when the **construction, installation, maintenance, repair, relocation, or operation** by a public utility or department of public utilities of any of its construction, equipment, or ~~facility located~~ **facilities is requested to be performed** within the corporate limits of two (2) or more adjoining ~~cities~~ **political subdivisions** and is reasonably necessary for the public convenience or interest, and any or either of said ~~cities fail or refuse~~ **political subdivisions fails or refuses** to give or grant to such public utility or department of public utilities permission and authority to ~~relocate such construction, equipment, or facility,~~ **perform the requested work, the public utility, the department of public utilities, or** any ~~municipality which~~ **political subdivision** that has given or granted to such public utility or department of public utilities permission and authority to ~~relocate such construction, equipment, and facility,~~ **the public utility or department of public utilities perform the work** may file a petition with said commission for such right and permission. ~~to which petition the city or cities failing or~~ **The political subdivision failing or** refusing to give or grant the ~~same right and permission~~ shall be made a respondent **to the petition**, and such public utility or department of public utilities, if not the petitioner, shall also be made a respondent. ~~and said~~ **The** commission shall have power to hear and determine such matter, ~~and~~ to give or grant such right and permission, and to impose such conditions in relation thereto as the public convenience and interest may reasonably require, ~~and~~ **subject to subsection (c)**. If said commission shall give or grant such right and permission, no further public authority ~~is required for the public utility or department of public utilities to make such relocation~~ **perform the work** as authorized or to go on any street, alley, road, or highway in said ~~city or cities~~ **political subdivision** necessary to be used therefor. ~~shall be required of said public utility or department of public utilities.~~ All orders entered before June 30, 1931, by the commission in cases within the provisions of this section are hereby declared legal and valid.

(b) Subject to the commission's authority under subsection (a)(1) with respect to an ~~unreasonable~~ ordinance or other determination **that is unreasonable or does not comply with subsection (c)**, the municipality or county executive may operate and maintain the streets, highways, and other public property in the municipality or county for



the safety of the traveling public, and a municipality or county executive may manage the public right-of-way or require by ordinance fair and reasonable compensation on a competitively neutral and nondiscriminatory basis for occupation of the public right-of-way, ~~on a nondiscriminatory basis~~, including occupation by the municipality or county executive, if the compensation required is publicly disclosed by the municipality or county executive. Fair and reasonable compensation may not exceed the municipality's or county executive's direct, actual, **documented**, and reasonably incurred costs of managing the public right-of-way **that are directly** caused by the public utility's or department of public utilities' occupancy. The management costs, which the municipality or county executive shall assign individually to the public utility or department of public utilities creating the management costs, must be limited to the direct, actual, **documented**, and reasonably incurred costs a municipality or county incurs in managing the public right-of-way. As used in this section, the term "management costs" includes but is not limited to the costs to the municipality or county of the following:

- (1) ~~Registering occupants.~~ **Reviewing written requests or applications for occupation.**
- (2) ~~Verifying public right-of-way~~ **that the requested occupation is within the public right-of-way.**
- (3) **Updating municipal or county records to reflect the occupation.**
- ~~(3)~~ (4) Inspecting job sites and restoration projects.
- ~~(4)~~ (5) ~~Restoring~~ **Performing restoration** work inadequately performed after providing notice and the opportunity to correct the work.
- ~~(5)~~ (6) Administering a reasonable restoration ordinance that ensures that a public utility or department of public utilities adequately restores the right-of-way as near as is reasonably possible to the right-of-way's original condition.
- ~~(6)~~ (7) Management costs associated with the implementation of an ordinance adopted under this section.

However, as used in this section, direct, actual, **documented**, and reasonably incurred management costs do not include rents, franchise fees, or any other payment by a public utility or department of public utilities for occupation of the public right-of-way, **or any costs incurred by the municipality or county that are not directly associated with the public utility's or department of public utilities' occupation of the public right-of-way.** As used in this section, the term "public right-of-way" does not include the airwaves above the



streets, highways, or other public property within the municipality or county as those airwaves are used for cellular or other nonwire telecommunications or broadcast service.

(c) A municipality or county executive may not unreasonably delay a public utility's or department of public utilities' access to or use of a street, highway, or other public property within the municipality or county. However, subsection (a)(1) and this subsection do not limit a municipality or county executive's right to advance notification of and review of a public utility's or department of public utilities' occupation of a street, highway, or other public property within the municipality or county to ensure and protect the safety of the public, **subject to the following:**

(1) A municipality or county executive may require a utility that is not subject to the commission's jurisdiction to carry liability insurance covering the work to be performed or the occupation of the public right-of-way in an amount not greater than the cost of returning the public right-of-way to a condition equivalent to the public right-of-way's condition before the performance of the work. However, the municipality or county executive may not require such a utility to provide proof of liability insurance more than once in a calendar year, or in a calendar year in which the utility does not apply for a permit from the municipality or county executive under this section.

(2) A municipality or county executive may not require a public utility or department of public utilities to submit more than one (1) drawing or site plan showing:

(A) the location of the facilities or equipment to be installed, maintained, or operated;

(B) the size of and materials comprising the facilities or equipment to be installed;

(C) the length of the installation; and

(D) the number of road cuts, road bores, or bridge or other structural attachments required for the installation, maintenance, or operation of the equipment or facilities.

(3) A municipality or county executive may not require a public utility or department of public utilities to submit more than one (1) notice, request, or application packet for the work to be performed or the occupation of the public right-of-way. If the notice, request, or application requires the review of more than one (1) department, board, or other entity within the municipality or county, the municipality or



county executive must coordinate the review among the departments, boards, or other entities before issuing a determination.

(4) A municipality or county executive may charge only one (1) fee for compensation under subsection (b), regardless of the number of departments, boards, or other entities that must review the request or application.

(5) A municipality or county executive must issue a determination regarding an application or request for occupation of the right-of-way not later than:

(A) twenty-one (21) days after the date of the application or request; or

(B) twenty-eight (28) days after the date of the application or request if the municipality or county executive provides written notice to the applicant of the extension and the reason for the extension.

The municipality's or county executive's determination under this subdivision must include confirmation that the requested occupation is within the public right-of-way of the municipality or county. If a municipality or county executive fails to issue a determination regarding an application or request for occupation of the right-of-way in the time required under clause (A) or clause (B), as applicable, the application or request is considered approved. However, if the applicant requires additional time to cure defects in the applicant's application or request, or if the review of the application or request by the municipality or county executive is otherwise delayed by the applicant, the time period described in clause (A) or clause (B) within which the municipality or county executive must issue a determination is extended for a corresponding amount of time.

(6) Municipalities and county executives shall, to the extent practicable, establish notice, request, and application procedures and forms that are uniform, reasonable, and brief. To the extent such procedures and forms are prescribed by law or regulation, or by an entity formed to represent the interests of Indiana municipalities or counties, municipalities and counties shall use such procedures and forms as prescribed. A municipality or county executive must electronically receive and process notices, requests, and applications for public utilities' and departments of public utilities' occupation of the right-of-way.



(7) Municipalities and county executives shall, to the extent practicable, work collaboratively with utilities to ensure that the public right-of-way is returned to its original condition within a reasonable amount of time.

(d) This section may not be construed to entitle a municipality or county executive the right to advance notification and review of work by a public utility or department of public utilities:

(1) that is performed on existing equipment or facilities located within the public right-of-way; and

(2) that:

(A) does not require ground disturbance activities;

(B) does not affect traffic flow; or

(C) is required due to a bona fide emergency that threatens injury to persons, loss of property, or loss or disturbance of utility service.

For purposes of this subsection, "ground disturbance activities" means any work, operation, or activity that results in a disturbance of the earth, including excavating, digging, trenching, cultivating, drilling, tunneling, boring, backfilling, blasting, topsoil stripping, clearing, or grading. The term does not include maintenance or other minor work, such as checking or inspecting handholes, manholes, or other facilities.

(d) (e) Nothing in this section may be construed to:

(1) affect franchise agreements between a cable company and a municipality or county; or

(2) modify the service area rights of a utility under any other law."

Delete pages 4 through 11.

Page 12, delete lines 1 through 24.

Page 16, line 16, delete "The" and insert **"Except as specifically required under state or federal law, or except as required to respond to consumer complaints or information requests from the general assembly, the"**.

Page 16, line 19, delete "the communications service" and insert **"a petition or request filed or submitted to the commission by the communications service provider,"**.

Page 16, delete line 20.

Page 16, line 21, delete "under IC 8-1-32.5,".

Page 16, line 29, delete "service, and service availability and maps of" and insert **"service."**

Page 16, delete line 30.

Page 16, delete lines 31 through 42, begin a new paragraph and



insert:

"SECTION 7. IC 8-1-32.3-15, AS AMENDED BY P.L.23-2018, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2021]: Sec. 15. (a) This chapter applies to permits issued by a permit authority to a communications service provider, under local law and consistent with IC 36-7, for the following:

- (1) Construction of a new wireless support structure.
- (2) Substantial modification of a wireless support structure.
- (3) Collocation of wireless facilities on an existing structure.
- (4) Construction, placement, and use of small cell facilities.

(b) A permit authority may not require an application or a permit for, or charge fees for, any of the following:

- (1) The routine maintenance of wireless facilities.
- (2) The replacement of wireless facilities with wireless facilities that are:

- (A) substantially similar to; or
 - (B) the same size or smaller than;
- the wireless facilities being replaced.

- (3) The installation, placement, maintenance, or replacement of micro wireless facilities that are suspended on cables strung between existing utility poles in compliance with applicable codes by a communications service provider that is authorized to use the public rights-of-way. For purposes of this subdivision, "applicable codes" means uniform building, fire, electrical, plumbing, or mechanical codes that are:

- (A) adopted by a recognized national code organization; and
- (B) enacted solely to address imminent threats of destruction of property or injury to persons;

including any local amendments to those codes.

(c) 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 a new wireless support structure in a right-of-way within an area that is designated strictly for underground or buried utilities, if all of the following apply:

- (1) The area is designated strictly for underground or buried utilities before May 1, 2017.

(2) No above ground:

- (A) wireless support structure;**
- (B) utility pole; or**
- (C) other utility superstructure;**

other than light poles, exists in the area.

~~(2)~~ **(3) The permit authority does all of the following:**



(A) Allows the collocation of small cell facilities on existing:

- (i) utility poles; ~~and~~
- (ii) light poles; and**
- ~~(iii)~~ **(iii) wireless support structures;**

as a permitted use within the area.

(B) Allows the replacement or improvement of existing:

- (i) utility poles; ~~and~~
- (ii) light poles; and**
- ~~(iii)~~ **(iii) wireless support structures;**

as a permitted use within the area.

(C) Provides:

- (i) a waiver;
- (ii) a zoning process; or
- (iii) another procedure;

that addresses requests to install new utility poles or new wireless support structures within the area.

(D) Upon receipt of an application for the construction, placement, or use of a small cell facility on one (1) or more new utility poles or one (1) or more new wireless support structures in an area that is designated strictly for underground or buried utilities, posts notice of the application on the permit authority's Internet web site, if the permit authority maintains an Internet web site. The notice of the application required by this clause must include a statement indicating that the application is available to the public upon request.

~~(3)~~ **(4)** The prohibition or other restrictions with respect to the placement of new utility poles or new wireless support structures within the area are applied in a nondiscriminatory manner.

~~(4)~~ **(5)** The area is zoned strictly for residential land use before May 1, 2017.

(d) With respect to applications for the placement of one (1) or more small cell facilities in an area that is zoned strictly for residential land use, and that is designated strictly for underground or buried utilities, a permit authority shall allow a neighborhood association or a homeowners association to register with the permit authority to:

- (1) receive notice; and**
- (2) request that homeowners within the jurisdiction of the neighborhood association or homeowners association receive notice;**

by United States mail of any application filed with the permit authority for the construction, placement, or use of a small cell facility on one (1)



or more new utility poles or one (1) or more new wireless support structures in an area **that is designated strictly for underground or buried utilities and that is** within the jurisdiction of the neighborhood association or homeowners association. If the permit authority maintains an Internet web site, the permit authority shall post on the permit authority's Internet web site instructions for how a neighborhood association or homeowners association may register to receive notice under this subsection. **A permit authority that receives a request under subdivision (2) may agree to provide notice to homeowners regarding a project for which applications described in this subsection have been filed with the permit authority, but not provide notice to homeowners regarding each permit application filed with the permit authority with respect to the project. A permit authority that receives a request under subdivision (2) may agree to provide notice only to certain homeowners. A permit authority may require a neighborhood association, homeowners association, or homeowner to pay the cost of postage associated with the provision of notice to the neighborhood association, homeowners association, or homeowner under this subsection. A permit authority that provides notice under this subsection at its own cost may not pass those costs along to a permit applicant. To the extent technically feasible, a permit authority shall collaborate with a neighborhood association or homeowners association on the location and aesthetics of new utility poles added within the jurisdiction of the neighborhood association or homeowners association.**

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

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

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

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

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

for identifying the owner's name and contact information.

(g) A resolution, ordinance, or other regulation:



(1) adopted by a permit authority after April 14, 2017, and before May 2, 2017; and

(2) that designates an area within the jurisdiction of the permit authority as strictly for underground or buried utilities; applies only to communications service providers and those geographic areas that are zoned residential and where all existing utility infrastructure is already buried."

Delete pages 17 through 18.

Page 19, delete line 1 through 7.

Page 19, line 31, delete "A" and insert **"Except as described in section 26(a) of this chapter with respect to small cell facilities, and subject to the restrictions under 14 CFR Part 77, 47 CFR Part 17, and IC 8-21-10, a"**.

Page 19, line 32, after "on" insert **"the"**.

Page 19, line 34, delete "distance" and insert **"distances"**.

Page 19, delete lines 36 through 42.

Page 20, delete lines 1 through 6.

Page 23, line 16, delete "service," and insert **"programming,"**.

Re-number all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to HB 1164 as introduced.)

SOLIDAY

Committee Vote: yeas 9, nays 4.

