

# HOUSE BILL No. 1429

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## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 32-30-16.

**Synopsis:** Communications infrastructure in utility easement. Provides that if an electricity supplier provides a property owner with notice of the electricity supplier's intent to: (1) install new communications infrastructure; or (2) allow: (A) an affiliated entity of the electricity supplier; or (B) a communications service provider; to install new communications infrastructure; within an electric easement on the property, the property owner shall allow the electricity supplier, affiliated entity, or communications service provider to access the electric easement for purposes of the attachment or installation of communications infrastructure within the electric easement. Provides that a property owner is not entitled to damages for a decrease in the value of the property caused by an electricity supplier's use of an electric easement on the property for communications infrastructure if an appraisal of the property cannot determine a value for the property due to a lack of comparable properties.

**Effective:** July 1, 2023.

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## Prescott

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January 17, 2023, read first time and referred to Committee on Utilities, Energy and Telecommunications.

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First Regular Session of the 123rd General Assembly (2023)

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 2022 Regular Session of the General Assembly.

## HOUSE BILL No. 1429

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 32-30-16-3.1 IS ADDED TO THE INDIANA  
2 CODE AS A **NEW** SECTION TO READ AS FOLLOWS  
3 [EFFECTIVE JULY 1, 2023]: **Sec. 3.1. As used in this chapter,**  
4 **"communications service provider" has the meaning set forth in**  
5 **IC 8-1-32.5-4.**

6 SECTION 2. IC 32-30-16-8, AS ADDED BY P.L.236-2017,  
7 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
8 JULY 1, 2023]: Sec. 8. (a) This section applies to an electricity supplier  
9 that:

- 10 (1) installs new communications infrastructure; ~~or~~
- 11 (2) makes capacity available for communications service through
- 12 existing communications infrastructure; ~~or~~
- 13 (3) **allows a communications service provider to install new**
- 14 **communications infrastructure;**

15 within an electric easement under this chapter.

16 (b) As used in this section, "notice" means a written letter:

- 17 (1) that is sent by first class mail by the electricity supplier to the



- 1 property owner; and  
 2 (2) that includes the following information:  
 3 (A) The name, address, and telephone number of the  
 4 electricity supplier, along with a named point of contact for the  
 5 electricity supplier.  
 6 (B) Either:  
 7 (i) the address and name associated with the impacted  
 8 property; or  
 9 (ii) if the name of the property owner is not known by the  
 10 electricity supplier, the address associated with the affected  
 11 property, with the letter addressed to "The property owner of  
 12 (street address, city, state, and ZIP code of the affected  
 13 property)".  
 14 (C) A citation to this chapter.  
 15 (D) A statement indicating the electricity supplier's intent to:  
 16 (i) install new communications infrastructure; ~~or~~  
 17 (ii) make capacity available for communications service  
 18 through existing communications infrastructure; ~~or~~  
 19 **(iii) allow a communications service provider to install**  
 20 **new communications infrastructure;**  
 21 as applicable, within the electric easement.  
 22 (E) An estimate of when:  
 23 (i) installation of new communications infrastructure will  
 24 occur; or  
 25 (ii) communications service will be made available through  
 26 existing communications infrastructure;  
 27 as applicable, within the electric easement.  
 28 (F) A statement explaining the electricity supplier's right to  
 29 record a new easement under section 14 of this chapter.  
 30 (G) A summary of the property owner's right to obtain an  
 31 appraisal under section 11 of this chapter and to bring an  
 32 action under section 12 of this chapter, including:  
 33 (i) a statement of the time limit for bringing an action, as set  
 34 forth in section 10 of this chapter; and  
 35 (ii) a statement explaining that the property owner is  
 36 precluded from exercising the rights that are otherwise  
 37 available to the property owner under sections 11 and 12 of  
 38 this chapter if the property owner signs an agreement, a  
 39 master agreement, or an affidavit described in section 9 of  
 40 this chapter.  
 41 (H) Subject to subsections (f) and (g), a written plan for  
 42 making broadband Internet service available within the



1 electricity supplier's electric service territory, including the  
 2 following information, to the extent the information is  
 3 available to and known by the electricity supplier:

4 (i) A description of the proposed area or areas in which the  
 5 broadband Internet service is to be made available.

6 (ii) A map of the proposed area or areas identified under  
 7 item (i).

8 (iii) A proposed timetable for making broadband Internet  
 9 service available in the area or areas identified under item  
 10 (i).

11 (iv) A statement as to whether the electricity supplier, an  
 12 affiliated entity **of the electricity supplier**, or a third party  
 13 **communications service provider** would provide the  
 14 broadband Internet service to be made available.

15 **(v) If a third party communications service provider**  
 16 **would provide the broadband Internet service to be**  
 17 **made available, the name of the third party**  
 18 **communications service provider.**

19 ~~(v)~~ **(vi)** The anticipated costs to the electricity supplier's  
 20 members of any infrastructure necessitated by the plan.

21 (c) An electricity supplier shall provide notice to a property owner  
 22 upon whose property the electricity supplier will:

23 (1) install new communications infrastructure; ~~or~~

24 (2) make capacity available for communications service through  
 25 existing communications infrastructure; **or**

26 **(3) allow a communications service provider to install new**  
 27 **communications infrastructure;**

28 within an electric easement under this chapter. An electricity supplier's  
 29 provision of a notice that substantially conforms to the requirements set  
 30 forth in subsection (b) constitutes the provision of notice for purposes  
 31 of this section.

32 (d) Delivery of notice under this section occurs on the date upon  
 33 which the notice is mailed by an electricity supplier to a property  
 34 owner. An electricity supplier may prove delivery of notice under this  
 35 section by any official or generally accepted time stamped document,  
 36 whether maintained in physical form or electronically by the electricity  
 37 supplier. A court shall accept proof described in this section in a  
 38 proceeding under section 12 of this chapter.

39 (e) If:

40 (1) installation of new communications infrastructure does not  
 41 occur; or

42 (2) communications service is not made available through



1 existing communications infrastructure;  
 2 within the electric easement within one hundred eighty (180) days after  
 3 notice under this section is delivered, as determined under subsection  
 4 (d), the electricity supplier shall resend notice under this section to the  
 5 property owner, and the time period set forth in section 10 of this  
 6 chapter restarts based on the date the subsequent notice is delivered, as  
 7 determined under subsection (d). A property owner's exclusive remedy  
 8 for an electricity supplier's failure to provide notice as required under  
 9 this section is the resetting of the time period set forth in section 10 of  
 10 this chapter.

11 (f) This section does not require an electricity supplier, an affiliated  
 12 entity of an electricity supplier, or a communications service provider  
 13 to disclose confidential and proprietary business plans and other  
 14 confidential information.

15 (g) The failure of:

16 **(1) an electricity supplier, an affiliated entity of an electricity**  
 17 **supplier, or a communications service provider to:**

18 ~~(1)~~ **(A)** make broadband Internet service available in any area  
 19 identified in the plan required by subsection (b)(2)(H); **or**

20 ~~(2)~~ **(B)** meet the proposed timetable for making broadband  
 21 Internet service available in any area identified in the plan  
 22 required by subsection (b)(2)(H); **or**

23 **(2) an electricity supplier to:**

24 ~~(3)~~ **(A)** accurately estimate the costs to the electricity supplier's  
 25 members of any infrastructure necessitated by the plan  
 26 required by subsection (b)(2)(H); **or**

27 ~~(4)~~ **(B)** otherwise take any actions described in, or related to,  
 28 the plan required by subsection (b)(2)(H);

29 does not create any liability with respect to the electricity supplier,  
 30 **affiliated entity of the electricity supplier, or communications**  
 31 **service provider** beyond that which would otherwise apply under  
 32 applicable law and, except as provided in section 1(c) of this chapter,  
 33 does not preclude the electricity supplier from using the procedures set  
 34 forth in this chapter.

35 SECTION 3. IC 32-30-16-9, AS ADDED BY P.L.236-2017,  
 36 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 37 JULY 1, 2023]: Sec. 9. (a) An electricity supplier, **an affiliated entity**  
 38 **of an electricity supplier, or a communications service provider**  
 39 that makes communications service available to a property owner  
 40 through communications infrastructure that is installed or will be  
 41 installed within an electric easement shall include in any:

42 (1) member agreement;



- 1 (2) customer agreement; or  
 2 (3) other similar agreement;  
 3 related to the communications service a provision notifying a property  
 4 owner that takes or will take communications service from the  
 5 electricity supplier, ~~or from any~~ affiliated entity **of an electricity**  
 6 **supplier, or communications service provider** that by signing the  
 7 agreement for communications service, the property owner expressly  
 8 consents to the expansion of the electric easement that the electricity  
 9 supplier has with the property owner to include communications  
 10 infrastructure.
- 11 (b) Subject to subsection (c), the agreement that includes the notice  
 12 described in subsection (a) must:
- 13 (1) be signed by the property owner or the property owner's  
 14 designated agent; and  
 15 (2) include a statement that anyone other than the property owner  
 16 or the property owner's designated agent may be:
- 17 (A) subject to penalties for perjury; and  
 18 (B) liable for any just compensation provided for by law;  
 19 for signing the agreement without the consent of the property  
 20 owner or the property owner's designated agent.
- 21 (c) In the case of tenant occupied property, the owner of the  
 22 property that is leased or rented, or the owner's designated agent, may  
 23 sign a master agreement that:
- 24 (1) includes the statement described in subsection (b)(2); and  
 25 (2) gives consent to the electricity supplier to expand an electric  
 26 easement on the property owner's property to include  
 27 communications infrastructure for all units on the property  
 28 owner's property.
- 29 A tenant may not sign a master agreement under this subsection on  
 30 behalf of the property owner. However, a tenant may provide to the  
 31 electricity supplier a notarized affidavit that is signed by the property  
 32 owner or the property owner's designated agent and that gives consent  
 33 to the expansion of an electric easement to include communications  
 34 infrastructure on the property owner's property. This subsection may  
 35 not be interpreted as imposing on the property owner any duty, liability,  
 36 or other obligation that may exist between the electricity supplier and  
 37 the tenant customer with respect to the provision of communications  
 38 service.
- 39 (d) Upon signing:
- 40 (1) an agreement under subsection (a) to take communications  
 41 service from the electricity supplier, ~~or from any~~ affiliated entity  
 42 **of the electricity supplier, or communications service**



1 **provider; or**

2 (2) a master agreement or a notarized affidavit under subsection  
 3 (c) that gives consent to the expansion of an electric easement to  
 4 include communications infrastructure for all units or for a  
 5 particular unit on the property owner's property, as applicable;  
 6 the property owner is not entitled to any additional compensation for  
 7 the expansion of the electric easement to include communications  
 8 infrastructure, other than the value of being provided access to any  
 9 communications service that the electricity supplier, **affiliated entity**  
 10 **of the electricity supplier, or communications service provider** may  
 11 offer and to which the property owner may elect to subscribe.

12 (e) This section may not be interpreted as affecting the terms of any  
 13 member agreement an electricity supplier has with the electricity  
 14 supplier's members with respect to the provision of:

15 (1) electric service; or

16 (2) communications service;

17 within an easement that by its terms expressly provides for the  
 18 installation of communications infrastructure, as described in section  
 19 1(c)(2) of this chapter.

20 SECTION 4. IC 32-30-16-9.5 IS ADDED TO THE INDIANA  
 21 CODE AS A **NEW** SECTION TO READ AS FOLLOWS  
 22 [EFFECTIVE JULY 1, 2023]: **Sec. 9.5. A property owner that is**  
 23 **provided with notice under section 8 of this chapter of an**  
 24 **electricity supplier's intent to:**

25 **(1) install new communications infrastructure; or**

26 **(2) allow:**

27 **(A) an affiliated entity of the electricity supplier; or**

28 **(B) a communications service provider;**

29 **to install new communications infrastructure;**

30 **within an electric easement on the property shall allow the**  
 31 **electricity supplier, affiliated entity of an electricity supplier, or**  
 32 **communications service provider to access the electric easement**  
 33 **for purposes of the attachment or installation of communications**  
 34 **infrastructure within the electric easement.**

35 SECTION 5. IC 32-30-16-13, AS ADDED BY P.L.236-2017,  
 36 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 37 JULY 1, 2023]: Sec. 13. (a) The amount of damages payable to a  
 38 property owner for the use of an electric easement by an electricity  
 39 supplier for communications infrastructure is limited to an amount  
 40 sufficient to compensate the property owner for the reduction in value  
 41 of the property owner's real property caused by the attachment or  
 42 installation of communications infrastructure within the electric



1 easement. Evidence of revenues, profits, or any other fees derived by  
 2 an electricity supplier, **an affiliated entity of an electricity supplier,**  
 3 **or a communications service provider** from ~~installing the~~  
 4 **installation of** communications infrastructure in an existing easement,  
 5 or evidence of the revenues, profits, or any other fees derived from the  
 6 operation of such equipment, is not admissible for any purpose in any  
 7 proceeding under this chapter.

8 (b) If an appraisal performed under this chapter:

9 (1) proves no reduction in value to the property owner's real  
 10 property; or

11 (2) **cannot determine a value for the property owner's real**  
 12 **property due to a lack of comparable properties;**

13 the property owner is not entitled to damages.

14 SECTION 6. IC 32-30-16-14, AS ADDED BY P.L.236-2017,  
 15 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 16 JULY 1, 2023]: Sec. 14. The acceptance by a property owner of  
 17 payment for damages as a result of any acts of an electricity supplier,  
 18 **an affiliated entity of an electricity supplier, or a communications**  
 19 **service provider** under this chapter operates to modify the electric  
 20 easement to allow for the installation, servicing, maintenance, and use  
 21 of communications infrastructure within the easement.

22 SECTION 7. IC 32-30-16-16, AS ADDED BY P.L.236-2017,  
 23 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 24 JULY 1, 2023]: Sec. 16. When installing communications  
 25 infrastructure under this chapter, an electricity supplier, **an affiliated**  
 26 **entity of an electricity supplier, or a communications service**  
 27 **provider** shall comply with all applicable rules and standards included  
 28 in the National Electric Safety Code most recently adopted by the state.

