

HOUSE BILL No. 1535

DIGEST OF INTRODUCED BILL

Citations Affected: IC 8-1-2-5.5.

Synopsis: Modification of utility facilities. Defines a "facility operator" as a: (1) public utility; or (2) communications service provider; that owns or operates a facility used to provide certain utility services or communications service. Provides that if a person, including a customer of a facility operator, requests or requires the modification of one or more facilities of a facility operator, the facility operator: (1) may not refuse to perform the modification if: (A) the local unit in which the modification will occur supports the request; and (B) the facility operator's access to the facility will not be diminished or hindered as a result of the modification; and (2) may require the person requesting or requiring the modification to pay the cost of the modification. Sets forth certain requirements and conditions that apply to a facility operator's determination of the cost of the modification of a facility. Requires a facility operator to include information about requests for modifications of facilities, including information on the factors the facility operator uses in determining the cost of modifications: (1) in the facility operator's filings with the utility regulatory commission (IURC), in the case of a facility operator other than a communications service provider; and (2) on the facility operator's Internet web site. Requires a facility operator, other than a communications service provider, to make the information available for public inspection in each of the facility operator's offices or stations that are open to the public. Provides that upon: (1) the IURC's own motion; or (2) the complaint of a facility operator, a person requesting or requiring the modification of a facility, or certain other qualified complainants; the IURC may investigate the amounts assessed by a
(Continued next page)

Effective: Upon passage.

DeVon

January 14, 2021, read first time and referred to Committee on Utilities, Energy and Telecommunications.



Digest Continued

facility operator with respect to the modification of a specific facility, or by the facility operator generally for modifications of facilities. Authorizes the IURC to: (1) hold hearings and issue orders in connection with such an investigation; and (2) adopt rules that the IURC considers necessary to implement these provisions.



Introduced

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. 1535

A BILL FOR AN ACT to amend the Indiana Code concerning utilities.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 8-1-2-5.5 IS ADDED TO THE INDIANA CODE
2 AS A **NEW SECTION TO READ AS FOLLOWS [EFFECTIVE**
3 **UPON PASSAGE]: Sec. 5.5. (a) This section applies if a person,**
4 **including a customer of a facility operator:**
5 **(1) requests for the person's convenience; or**
6 **(2) requires by the person's actions;**
7 **the modification of one (1) or more facilities of a facility operator.**
8 **(b) As used in this section, "cost of the modification", with**
9 **respect to the modification of a facility by a facility operator,**
10 **means the facility operator's direct, actual, and reasonably**
11 **incurred costs that are properly attributable to the modification.**
12 **(c) As used in this section, "facility" means a line or system used**
13 **for supplying, conveying, transmitting, or distributing**
14 **communications, information, power, light, heat, electricity, gas,**
15 **water, pipeline, sewer, sewage disposal, or similar services, directly**



- 1 or indirectly, to the public.
- 2 (d) As used in this section, "facility operator" means:
- 3 (1) a public utility (as defined in IC 8-1-2-1(a)); or
- 4 (2) for purposes of this section only, a communications service
- 5 provider (as defined in IC 8-1-32.5-4);
- 6 that owns or operates a facility.
- 7 (e) As used in this section, "local unit" means:
- 8 (1) a local unit of government; or
- 9 (2) any board, commission, department, agency, or governing
- 10 body of a local unit of government.
- 11 (f) As used in this section, "modification", with respect to a
- 12 facility, includes the:
- 13 (1) redesign;
- 14 (2) reengineering;
- 15 (3) relocation;
- 16 (4) removal;
- 17 (5) alteration;
- 18 (6) reinstallation; or
- 19 (7) replacement;
- 20 of the facility, or the taking of any combination of one (1) or more
- 21 of these activities, or similar activities, with respect to the facility.
- 22 (g) If a person requests or requires the modification of one (1)
- 23 or more facilities of a facility operator, as described in subsection
- 24 (a), the facility operator:
- 25 (1) may not refuse to perform the modification if:
- 26 (A) the local unit in which the modification will occur
- 27 supports the request; and
- 28 (B) the facility operator's access to the facility will not be
- 29 diminished or hindered as a result of the modification; and
- 30 (2) subject to subsections (h) and (i), may require the person
- 31 requesting or requiring the modification to make payment to
- 32 the facility operator of the cost of the modification.
- 33 (h) If a facility operator requires the person requesting or
- 34 requiring the modification to pay the facility operator the cost of
- 35 the modification, as described in subsection (g)(2), the following
- 36 apply to the facility operator's determination of the cost of the
- 37 modification:
- 38 (1) The facility operator shall deduct from the amount:
- 39 (A) any increase in the value of:
- 40 (i) the facility after the modification; or
- 41 (ii) the new facility, in the case of a modification
- 42 involving the replacement of a facility; and



- 1 (B) any salvage value derived from the facility being
2 modified.
- 3 **(2) The facility operator shall take into account:**
- 4 (A) the age and condition of the facility for which the
5 modification is requested or required; and
- 6 (B) the facility operator's planned schedule for the
7 replacement or repair of the facility, if any, in relation to
8 the timing of the requested or required modification of the
9 facility.
- 10 **(3) The cost may not include any upgrade in materials, design,
11 or features of the facility that are not:**
- 12 (A) requested or required by the person requesting or
13 requiring the modification of the facility;
- 14 (B) required by any applicable law, regulation, or code; or
- 15 (C) necessitated by the availability or obsolescence of
16 materials, equipment, components, or technology.
- 17 **(4) To the extent commercially practicable, the cost must be
18 the result of competitively bid engineering, procurement, or
19 construction contracts, as applicable.**
- 20 **(5) Engineering and administrative costs may not exceed a
21 combined total of twenty-five percent (25%) of the total cost
22 of the modification.**
- 23 **(6) The total cost of the modification may not result in any
24 profit to the facility operator.**
- 25 **(i) If a facility operator requires the person requesting or
26 requiring the modification to pay the facility operator the cost of
27 the modification, as described in subsection (g)(2), the following
28 apply, in addition to the requirements set forth in subsection (h):**
- 29 **(1) If the facility operator requires the person requesting or
30 requiring the modification to pay any amount as a deposit or
31 contingency reserve at any time before the modification is
32 complete, the facility operator shall return to the person any
33 unused portion of the amount paid by the person.**
- 34 **(2) The facility operator shall include information about
35 requests for modifications of facilities, including information
36 on the factors the facility operator uses in determining the
37 cost of modifications, as prescribed in subsection (h):**
- 38 **(A) in the facility operator's filings with the commission
39 under section 39 of this chapter, in the case of facility other
40 than a facility operator described in subsection (d)(2); and**
- 41 **(B) on the facility operator's Internet web site.**
- 42 **In the case of a facility operator other than a facility operator**



1 described in subsection (d)(2), the facility operator shall also
 2 make the information required under this subdivision
 3 available for public inspection in each of the facility
 4 operator's offices or stations that are open to the public.

5 (3) Upon:

6 (A) the commission's own motion; or

7 (B) the complaint of:

8 (i) a facility operator;

9 (ii) a person requesting or requiring the modification of
 10 a facility; or

11 (iii) in the case of a complaint against a facility operator
 12 other than a facility operator described in subsection
 13 (d)(2), any qualified complainant under section 54 of this
 14 chapter;

15 the commission may investigate the amounts assessed by a
 16 facility operator with respect to the modification of a specific
 17 facility, or by the facility operator generally for modifications
 18 of facilities. The commission may proceed in the manner
 19 prescribed in this chapter to hold hearings and issue orders in
 20 connection with an investigation under this subdivision.

21 (j) The commission's authority under this section with respect
 22 to a facility operator described in subsection (d)(2) is authorized
 23 under IC 8-1-2.6-13(e)(1)(A), notwithstanding:

24 (1) IC 8-1-2.6-1.1;

25 (2) IC 8-1-2.6-13; or

26 (3) any other statute.

27 (k) The commission shall adopt rules under IC 4-22-2 that the
 28 commission considers necessary to implement this section,
 29 including any necessary amendment to 170 IAC 4-1-28 concerning
 30 customer modification requests. In adopting the rules required by
 31 this subsection, the commission may adopt emergency rules in the
 32 manner provided by IC 4-22-2-37.1. Notwithstanding
 33 IC 4-22-2-37.1(g), an emergency rule adopted by the commission
 34 under this subsection and in the manner provided by
 35 IC 4-22-2-37.1 expires on the date on which a rule that supersedes
 36 the emergency rule is adopted by the commission under
 37 IC 4-22-2-24 through IC 4-22-2-36.

38 SECTION 2. An emergency is declared for this act.

