

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.

SENATE ENROLLED ACT No. 359

AN ACT to amend the Indiana Code concerning utilities.

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

SECTION 1. IC 8-23-5-10, AS ADDED BY P.L.189-2019, SECTION 10, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2021]: Sec. 10. (a) The following definitions apply only throughout this section:

(1) "Communications infrastructure" includes all facilities and equipment used to provide communications service (as defined in IC 8-1-32.5-3), **including fiber conduit**. The term does not include a vertical structure.

(2) **"Dig once program" refers to the dig once broadband corridor program required under subsection (b).**

(3) **"Fiber conduit" means protective conduit of a size and material that is suitable for underground installation of broadband fiber infrastructure.**

~~(4)~~ (4) "Limited access highway" means any roadway that is under the jurisdiction and control of the department and that is one (1) of the following:

- (A) An interstate.
- (B) A toll road, tollway, or toll bridge.
- (C) U.S. 30.
- (D) U.S. 31.

~~(5)~~ (5) "Vertical structure" means a privately owned structure that is more than one hundred (100) feet above ground and that is used

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primarily for providing wireless communications service. The term includes related equipment associated with the structure, including air conditioned equipment shelters and rooms, electronic equipment, and supporting equipment.

(b) **Not later than January 1, 2022**, the department ~~may create a~~ **shall:**

(1) implement a dig once broadband corridor program to manage the location, installation, and maintenance of communications infrastructure **that is** used for the provision of broadband services **and is located** within highway rights-of-way of limited access highways; **and**

(2) adopt policies, procedures, and standards under the dig once program for required installation of fiber conduit by a public or private entity that performs an excavation within a limited access highway right-of-way.

(c) The ~~broadband corridor~~ **dig once** program shall apply only to locations along or within a limited access highway right-of-way. The ~~broadband corridor~~ **dig once** program shall not apply to the placement of communications infrastructure that laterally crosses a roadway under the control of the department.

(d) Except as provided in subsection (e), the department ~~may~~ **shall** impose a fee for **the use of** communications infrastructure **installed and maintained** under subsection (b). The amount of the fee may not be more than the reasonable fair market value of the use of the highway right-of-way within the broadband corridor.

(e) Except for portions of a U.S. route that is a limited access highway under subsection ~~(a)(2)~~; **(a)(4)**, with respect to state routes or U.S. routes, the department may impose only:

(1) a one (1) time permit application fee for the location or installation of communications infrastructure **that is** used for the provision of broadband services **and is** placed along or within a highway right-of-way; **and**

(2) routine right-of-way permit fees to enter the department's rights-of-way for the maintenance of existing facilities.

(f) The department shall not unreasonably discriminate **with respect to the following** among entities requesting access to broadband corridors or other department controlled rights-of-way: ~~for the following:~~

(1) Approving applications, issuing permits, or otherwise establishing terms and conditions for the location, installation, and maintenance of communications infrastructure used for the provision of broadband services.

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(2) Providing access to rights-of-way, infrastructure, utility poles, river and bridge crossings, and other physical assets owned, controlled, or managed by the department.

(3) The type of technology deployed for the provision of broadband services.

However, nothing in this subsection abrogates or limits the department's authority under IC 8-23 to safely and efficiently manage and operate the state highway system and associated highway rights-of-way for the benefit of the traveling public.

(g) The department shall adopt rules under IC 4-22-2, including emergency rules adopted in the manner provided by IC 4-22-2-37.1, to establish the policies, procedures, and standards required under subsection (b) and to otherwise implement this section. Rules or emergency rules adopted by the department under this subsection must take effect not later than January 1, 2022. Notwithstanding IC 4-22-2-37.1(g), an emergency rule adopted by the department under this subsection in the manner provided by IC 4-22-2-37.1 expires on the date a rule that supersedes the emergency rule is adopted by the department under IC 4-22-2-24 through IC 4-22-2-36.



President of the Senate

President Pro Tempore

Speaker of the House of Representatives

Governor of the State of Indiana

Date: _____ Time: _____

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