

## SENATE BILL No. 386

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### DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 8-23.

**Synopsis:** Utility facility relocation. Makes changes to the statutes concerning: (1) emergency repairs to the state highway system by the department of transportation; and (2) utility facility relocations necessitated by projects on the state highway system; to allow communications service providers to recover certain costs incurred toward the cost of relocation of utility facilities necessitated by state highway projects.

**Effective:** July 1, 2015.

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## Hershman

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January 12, 2015, read first time and referred to Committee on Utilities.

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First Regular Session 119th General Assembly (2015)

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 2014 Regular Session and 2014 Second Regular Technical Session of the General Assembly.

## SENATE BILL No. 386

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 8-23-1-22.5 IS AMENDED TO READ AS  
2 FOLLOWS [EFFECTIVE JULY 1, 2015]: Sec. 22.5. "Extraordinary  
3 cost" means the cost to a utility to relocate existing facilities that is  
4 ~~either:~~ **any of the following:**

- 5 (1) More than ten percent (10%) of the total operating revenue
- 6 received by the utility during the utility's most recent full fiscal
- 7 year. ~~or~~
- 8 (2) More than fifty percent (50%) of the total estimated cost of a
- 9 proposed highway or bridge construction or improvement project.
- 10 (3) **More than five thousand dollars (\$5,000), in the case of a**
- 11 **utility operating under a certificate of territorial authority**
- 12 **issued under IC 8-1-32.5 if the costs are incurred after June**
- 13 **30, 2015.**

14 SECTION 2. IC 8-23-11-4 IS ADDED TO THE INDIANA CODE  
15 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
16 1, 2015]: **Sec. 4. (a) This section applies to the relocation of a utility**



1 facility necessitated by an emergency determination ordered by the  
2 governor under section 1 of this chapter after June 30, 2015.

3 (b) If an emergency repair under this chapter requires the  
4 relocation of a utility facility, the department shall reimburse the  
5 utility that owns or operates the affected utility facility for the cost  
6 of relocation (as defined in IC 8-1-9-2(b)).

7 SECTION 3. IC 8-23-26-1.2 IS ADDED TO THE INDIANA CODE  
8 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
9 1, 2015]: Sec. 1.2. As used in this chapter, "cost of relocation" has  
10 the meaning set forth in IC 8-1-9-2(b).

11 SECTION 4. IC 8-23-26-5 IS AMENDED TO READ AS  
12 FOLLOWS [EFFECTIVE JULY 1, 2015]: Sec. 5. The department:

13 (1) may, with respect to extraordinary costs incurred by a  
14 utility before July 1, 2015; and

15 (2) shall, with respect to extraordinary costs incurred by a  
16 utility after June 30, 2015;

17 negotiate an agreement with a utility to reimburse the utility for  
18 extraordinary costs of facilities relocation caused by a highway or  
19 bridge construction or improvement project or a combination of  
20 highway or bridge construction or improvement projects.

21 SECTION 5. IC 8-23-26-7 IS AMENDED TO READ AS  
22 FOLLOWS [EFFECTIVE JULY 1, 2015]: Sec. 7. The department shall  
23 reimburse a utility for the costs of an unnecessary relocation of  
24 facilities if after the completion of the relocation of the relocation of  
25 the utility's facilities was specifically requested by the department  
26 and any of the following apply:

27 (1) Within two (2) years after the completion of the relocation  
28 the department has not let a contract for the highway or bridge  
29 construction or improvement or necessitating the relocation, in  
30 the case of a relocation that is completed before July 1, 2015.

31 (2) Within two (2) years after the utility has incurred costs  
32 toward the cost of relocation of the facilities the department  
33 has not let a contract for the highway or bridge construction  
34 or improvement necessitating the relocation, in the case of a  
35 relocation that is not completed before July 1, 2015.

36 (3) Within ten (10) years after the completion of:

37 (A) the relocation of facilities; or

38 (B) the installation of new facilities;

39 necessitated by the highway or bridge construction or  
40 improvement the department alters the department's plan of  
41 construction for the highway or bridge construction or  
42 improvement in a manner that would cause the utility to relocate



1 the utility's facilities for the same highway or bridge construction  
2 or improvement project.

3 SECTION 6. IC 8-23-26-8 IS AMENDED TO READ AS  
4 FOLLOWS [EFFECTIVE JULY 1, 2015]: Sec. 8. (a) The  
5 reimbursement paid under section 7 of this chapter is limited to the cost  
6 of relocation (~~as defined in IC 8-1-9-2~~) to the utility.

7 (b) The department may reimburse a utility for an unnecessary  
8 relocation under section 7 **only of this chapter** if the relocation of the  
9 utility's facilities was **not** specifically requested by the department **but**  
10 **was necessitated by a state highway project subject to this chapter.**

11 SECTION 7. IC 8-23-26-9 IS AMENDED TO READ AS  
12 FOLLOWS [EFFECTIVE JULY 1, 2015]: Sec. 9. The commissioner  
13 must approve a reimbursement paid under section 7 **or 8(b)** of this  
14 chapter.

15 SECTION 8. IC 8-23-26-12 IS AMENDED TO READ AS  
16 FOLLOWS [EFFECTIVE JULY 1, 2015]: Sec. 12. The following  
17 apply to a highway or bridge construction or improvement project that  
18 requires the relocation of customer service facilities located in a  
19 highway, street, or road:

20 (1) If the utility does not own the customer service facilities, the  
21 department is responsible for the cost of the relocation of those  
22 facilities.

23 (2) If the utility owns the customer service facilities the cost of  
24 relocation is the responsibility of **the following:**

25 **(A) Except as otherwise provided in clause (B),** the utility or  
26 the customer, as determined by the operating rules of the  
27 utility or by a contract between the utility and the customer.

28 **(B) In the case of a utility operating under a certificate of**  
29 **territorial authority issued under IC 8-1-32.5, and for costs**  
30 **toward the cost of relocation that are incurred by the**  
31 **utility after June 30, 2015, the department.**

32 SECTION 9. IC 8-23-26-14 IS AMENDED TO READ AS  
33 FOLLOWS [EFFECTIVE JULY 1, 2015]: Sec. 14. (a) **Except for a**  
34 **relocation of customer service facilities described in section 12(1)**  
35 **or 12(2)(B) of this chapter,** if the department causes the relocation of  
36 customer service facilities under section 13 of this chapter, the  
37 department may recover the costs of the relocation from the utility.

38 (b) A utility shall reimburse the department for costs that are  
39 allowable under section ~~12(2)~~ **12(2)(A)** of this chapter and that the  
40 department determines are not extraordinary costs incurred under  
41 section 13 of this chapter upon the presentation of an invoice of the  
42 costs from the department.



1 SECTION 10. IC 8-23-26-15 IS AMENDED TO READ AS  
2 FOLLOWS [EFFECTIVE JULY 1, 2015]: Sec. 15. (a) This section  
3 does not apply to a relocation included in the national system of  
4 interstate highways if the placement of the facilities was made solely  
5 to cross the highway.

6 (b) Whenever a utility locates new facilities on a highway included  
7 in the national system of interstate highways after June 30, 1991, **the**  
8 **following apply:**

9 (1) The utility shall bear the cost of ~~all~~ future relocations and  
10 adjustments of ~~the those~~ facilities caused by highway or bridge  
11 construction or improvements **if the relocation or adjustment of**  
12 **the facilities is completed more than ten (10) years after the**  
13 **completion of the installation of the facilities on the highway**  
14 **included in the national system of interstate highways.**

15 (2) The department shall reimburse the utility for the cost of  
16 future relocations and adjustments of those facilities caused  
17 by highway or bridge construction or improvements if the  
18 relocation or adjustment of the facilities is completed in ten  
19 (10) or fewer years after the completion of the installation of  
20 the facilities on the highway included in the national system of  
21 interstate highways.

