

# SENATE BILL No. 478

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## DIGEST OF INTRODUCED BILL

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

**Synopsis:** Utility easements. Establishes a framework for resolving disputes between electricity suppliers and property owners regarding attachment or installation of communications infrastructure.

**Effective:** Upon passage.

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January 12, 2017, read first time and referred to Committee on Utilities.

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First Regular Session 120th General Assembly (2017)

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 2016 Regular Session of the General Assembly.

## SENATE BILL No. 478

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

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

- 1 SECTION 1. IC 32-30-16 IS ADDED TO THE INDIANA CODE
- 2 AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE
- 3 UPON PASSAGE]:
- 4 **Chapter 16. Utility Easements**
- 5 **Sec. 1. (a) This chapter applies only to an electricity supplier as**
- 6 **defined in section 6 of this chapter.**
- 7 **(b) This chapter applies to an action by a property owner**
- 8 **against an electricity supplier that:**
- 9 **(1) installs;**
- 10 **(2) permits the installation of; or**
- 11 **(3) intends to install;**
- 12 **communications infrastructure within an existing electric**
- 13 **easement.**
- 14 **(c) This chapter does not apply to:**
- 15 **(1) a negotiation between an electricity supplier and a**
- 16 **property owner for:**
- 17 **(A) a new electric easement; or**



1           **(B) the siting, installation, or attachment of any facilities or**  
2           **infrastructure other than communications infrastructure;**  
3           **(2) an easement for the installation of communications**  
4           **infrastructure without modification to an existing easement;**  
5           **or**  
6           **(3) communications infrastructure that is within an electric**  
7           **easement and that is used only to support the transmission,**  
8           **transformation, or distribution of electricity to consumers.**

9           **(d) This chapter supersedes any conflicting statute or**  
10           **administrative rule, or ordinance, rule, or other policy of a local**  
11           **unit.**

12           **(e) This chapter provides the exclusive remedy to a property**  
13           **owner relating to the prior, contemporaneous, or future**  
14           **attachment or installation of communications infrastructure within**  
15           **an electric easement, without regard to the statutory or common**  
16           **law basis of the property owner's claim for damages or request for**  
17           **relief that would otherwise apply.**

18           **Sec. 2. As used in this chapter, "communications**  
19           **infrastructure" includes all facilities and equipment used to**  
20           **provide communications service. The term includes fiber optic**  
21           **cable and other facilities and equipment that are in use or may be**  
22           **used to provide communications service.**

23           **Sec. 3. As used in this chapter, "communications service" has**  
24           **the meaning set forth in IC 8-1-32.5-3.**

25           **Sec. 4. As used in this chapter, "electric easement" means any**  
26           **recorded or unrecorded easement granted by a property owner to**  
27           **an electricity supplier exclusively for the siting of electric facilities,**  
28           **whether the facilities are above or below ground and regardless of**  
29           **whether the easement is for the exclusive benefit of the electricity**  
30           **supplier or for use in connection with other utility services,**  
31           **regardless of whether the electricity supplier provides the other**  
32           **utility services.**

33           **Sec. 5. As used in this chapter, "electric facilities" means any**  
34           **product, equipment, or technology necessary or useful in the**  
35           **transmission, transformation, or distribution of electricity,**  
36           **including wires, cables, poles, transformers, anchors, guys,**  
37           **grounding systems, insulators, and any other related or ancillary**  
38           **materials.**

39           **Sec. 6. (a) As used in this chapter, "electricity supplier" means:**  
40           **(1) a corporation organized under IC 8-1-13; or**  
41           **(2) a corporation organized under IC 23-17 whose members**  
42           **are primarily organized under IC 8-1-13.**



1           (b) The term includes third parties with whom the electricity  
2 supplier contracts, licenses, or otherwise enters into agreements  
3 with for the installation, service, or maintenance of  
4 communications infrastructure.

5           (c) The term does not include investor owned utilities or  
6 municipal utilities.

7           Sec. 7. As used in this chapter, "property owner" means a  
8 person with a recorded fee simple interest in land upon which an  
9 electric easement is located.

10           Sec. 8. (a) Unless the terms of an electric easement prohibit  
11 attachment or installation of communications infrastructure within  
12 the electric easement, an electricity supplier may:

13           (1) install, place, bury, reconstruct, upgrade, relocate, remove,  
14 inspect, patrol, repair, maintain, operate, and use electric  
15 facilities within the electric easement, whether the facilities  
16 are above or below ground, to transform, transmit, and  
17 distribute electric energy and to provide communications  
18 service; or

19           (2) grant a license or a permit to a third party to attach  
20 communications infrastructure or electric facilities to the  
21 electricity supplier's electric facilities located within an  
22 existing electric easement.

23           (b) A property owner that suffers damages as a result of the acts  
24 of an electricity supplier may bring a cause of action under this  
25 chapter.

26           (c) The acceptance by a property owner of payment for damages  
27 under this chapter operates to modify the electric easement to  
28 allow for the installation, servicing, maintenance, and use of  
29 communications infrastructure within the easement. The electricity  
30 supplier has one (1) year from the property owner's acceptance of  
31 payment for damages to properly record the modification to the  
32 electric easement.

33           (d) Upon a property owner's acceptance of payment for  
34 damages as described in subsection (c), or upon the expiration of  
35 the statute of limitations set forth in section 9 of this chapter, an  
36 electricity supplier may petition a court with jurisdiction to amend  
37 property records to reflect the modified electric easement, and the  
38 court may order the property record amended to reflect the  
39 modified electric easement.

40           Sec. 9. A property owner may bring a cause of action against an  
41 electricity supplier under this chapter not later than two (2) years  
42 from the later of:



1           (1) July 1, 2017; or

2           (2) the date upon which communications infrastructure is first  
3           installed in an electric easement.

4           **Sec. 10. (a) If a property owner suffers damages from the acts**  
5           **of an electricity supplier as described in section 8 of this chapter,**  
6           **the electricity supplier shall pay:**

7           (1) five cents (\$0.05) per linear foot of fiber optic or other  
8           similar linear communications infrastructure installed within  
9           an electric easement; and

10          (2) five dollars (\$5) per cellular or wireless device, including  
11          any requisite ancillary supplies and equipment, installed on  
12          electric facilities within the electric easement.

13          (b) The electricity supplier shall make a good faith effort to  
14          ascertain the distance of property owned by each impacted  
15          property owner for the calculation of damages under subsection  
16          (a)(1), related to the installation of communications infrastructure  
17          in an electric easement. An electricity supplier may prove the  
18          distance of each impacted property through the use of recorded  
19          plats, fence lines, and other commonly used property boundary  
20          markers. However, no liability accrues to the electricity supplier  
21          for its failure to use one (1) property boundary marker instead of  
22          another.

23          (c) An electricity supplier is not required to obtain a land survey  
24          for the installation of communications infrastructure in an electric  
25          easement. However, a property owner may obtain a land survey by  
26          a licensed land surveyor, at the property owner's expense and  
27          without reimbursement by the electricity supplier, to prove  
28          additional impacted land owned by the property owner. If a  
29          property owner's survey shows additional impacted property for  
30          which the property owner was not compensated, the electricity  
31          supplier shall compensate the property owner at the rate specified  
32          in subsection (a)(1), unless the electricity supplier contests the  
33          results of the land survey, in which case the electricity supplier  
34          may obtain a land survey from a licensed land surveyor to rebut  
35          the results of the property owner's survey subject to section 12 of  
36          this chapter.

37          **Sec. 11. If a property owner who has suffered damages under**  
38          **section 8 of this chapter does not accept the statutory damages**  
39          **specified in section 10 of this chapter, the property owner may**  
40          **prove a different amount in damages in the manner prescribed in**  
41          **section 12 of this chapter.**

42          **Sec. 12. (a) In order to prove damages relating to the**



1 interference with the use of the property owner's property caused  
2 by the attachment or installation of communications infrastructure  
3 within the electric easement, a property owner shall, at the  
4 property owner's expense and without reimbursement from the  
5 electricity supplier, provide the electricity supplier with an  
6 appraisal comparing the value of the property before and after the  
7 attachment or installation of communications infrastructure within  
8 the electric easement. The appraisal must be:

9 (1) performed by a real estate appraiser licensed under  
10 IC 25-34.1-3-8; and

11 (2) conducted within the period specified in section 9 of this  
12 chapter.

13 (b) If an electricity supplier disputes an appraisal provided by  
14 the property owner under subsection (a), the electricity supplier  
15 may obtain at the electricity supplier's expense an appraisal by a  
16 real estate appraiser licensed under IC 25-34.1-3-8 not later than  
17 ninety (90) days from the date on which a notice of the dispute is  
18 mailed to the property owner. A property owner shall make  
19 reasonable accommodations for the electricity supplier to perform  
20 an appraisal under this subsection. If a property owner fails to  
21 make such reasonable accommodations available within the ninety  
22 (90) day period, the electricity supplier may not be found liable for  
23 any asserted reduction in property value as a result of the  
24 installation of communications infrastructure within the electric  
25 easement.

26 (c) A property owner may review and either accept or reject, in  
27 writing, the electricity supplier's appraisal not later than thirty  
28 (30) calendar days after it is sent by certified mail from the  
29 electricity supplier to the property owner.

30 (d) If the electricity supplier:

31 (1) receives a written response from the property owner  
32 accepting the electricity supplier's appraisal; or

33 (2) does not receive a written response within thirty (30)  
34 calendar days after the appraisal is sent by the electricity  
35 supplier;

36 the electricity supplier shall consider its appraisal accepted by the  
37 property owner and shall remit payment in accordance with the  
38 appraisal to the property owner not later than sixty (60) days after  
39 the expiration of the thirty (30) day period described in this  
40 section.

41 Sec. 13. (a) The amount of damages payable to a property owner  
42 for the use of an electric easement by an electricity supplier for



1 **communications infrastructure is limited to an amount sufficient**  
2 **to compensate the property owner for the reduction in value of the**  
3 **property due to the increased interference, if any, with the owner's**  
4 **use of the property caused by the attachment or installation of**  
5 **communications infrastructure within the electric easement.**  
6 **Evidence of revenues, profits, or any other fees derived by an**  
7 **electricity supplier from installing communications infrastructure**  
8 **in an existing easement, or evidence of the revenues, profits, or any**  
9 **other fees derived from the operation of such equipment, is not**  
10 **admissible for any purpose in a proceeding under this chapter.**

11 **(b) If an appraisal performed under this chapter proves no**  
12 **reduction in value to the property owner's property, the property**  
13 **owner is entitled to damages not exceeding the statutory damages**  
14 **set forth in section 10 of this chapter.**

15 **Sec. 14. (a) If damages are assessed for the electricity supplier's**  
16 **use of the electric easement, the electricity supplier shall, not later**  
17 **than sixty (60) days after the assessment, deposit with the court or**  
18 **pay to the property owner the amount assessed, including costs as**  
19 **determined by the court.**

20 **(b) If:**

21 **(1) the electricity supplier receives written notice from a**  
22 **property owner timely rejecting the electricity supplier's**  
23 **appraisal; and**

24 **(2) the electricity supplier and property owner are unable to**  
25 **reach an agreement concerning damages;**

26 **the property owner may file an action against the electricity**  
27 **supplier in a court with jurisdiction to determine the reduction in**  
28 **value of the property, if any, as a result of the attachment or**  
29 **installation of communications infrastructure within the electric**  
30 **easement.**

31 **SECTION 2. An emergency is declared for this act.**

