



Reprinted
February 28, 2017

SENATE BILL No. 478

DIGEST OF SB 478 (Updated February 27, 2017 5:26 pm - DI 101)

Citations Affected: IC 32-30.

Synopsis: Utility easements. Establishes a framework for resolving disputes between electricity suppliers and property owners regarding the attachment or installation of communications infrastructure within an electric easement. Provides that the procedures apply only to the following: (1) An electricity supplier that is a rural electric membership corporation. (2) A communications service provider, exclusively with respect to a telecommunications easement held by the communications service provider. Specifies that the bill's provisions do not provide the exclusive remedy to a property owner if the terms of: (1) the electric easement; or (2) any contractual or other agreement between the property owner and the electricity supplier; provide otherwise. Requires an electricity supplier that: (1) installs new communications infrastructure; or (2) makes capacity available for communications service through existing communications infrastructure; within an electric easement to provide written notice to the owner of the affected property. Sets forth the required contents of, and methods of delivery for, the notice. Requires an electricity supplier to include provisions in
(Continued next page)

Effective: Upon passage.

**Koch, Merritt, Lanane, Leising,
Charbonneau, Houchin**

January 12, 2017, read first time and referred to Committee on Utilities.
February 20, 2017, amended, reported favorably — Do Pass.
February 27, 2017, read second time, amended, ordered engrossed.

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a communications service member agreement, customer agreement, or other similar agreement to notify property owners who subscribe to communications service from the electricity supplier that by signing the agreement, the property owner consents to the expansion of the electric easement to include the attachment or installation of communications infrastructure. Provides that a property owner may bring a cause of action against an electricity supplier for damages for interference with the use of the property owner's property caused by the attachment or installation of communications infrastructure, not later than two years from the later of: (1) July 1, 2017; or (2) the date upon which the required notice is delivered to the property owner. Provides that to prove damages for the interference with the use of the property owner's property, the property owner shall provide the electricity supplier with an appraisal comparing the value of the property before and after the attachment or installation of communications infrastructure within the easement. Provides that an appraisal obtained by a property owner to prove damages relating to the interference with the use of the property owner's property caused by the attachment or installation of communications infrastructure must take into account any increase in value to the property resulting from the availability of broadband internet service provided through the communications infrastructure. Provides that the acceptance by a property owner of an electricity supplier's payment for damages operates to modify the electric easement to allow for the installation, servicing, maintenance, and use of communications infrastructure within the easement. Provides that a telecommunications easement granted to permit a communications service provider or its predecessor to construct or place any poles, wires, cables, conduit, or other communications service infrastructure must permit the placement of any type of communications service infrastructure or facilities. Provides that when installing, inspecting, or maintaining communications infrastructure within an electric easement involving land: (1) owned by a railroad company; or (2) on which a manufacturing facility is located; an electricity supplier shall make a reasonable, good faith effort to notify the property owner of the installation, inspection, or maintenance. Provides that the bill's provisions do not change or impact: (1) requirements with which an electricity supplier must comply under federal or state law; or (2) an electricity supplier's duties under any reasonable safety and protective requirements imposed by a railroad company; when installing or maintaining communications infrastructure on or within privately owned railroad property or private railroad easements.



Reprinted
February 28, 2017

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 the following:**

6 (1) An electricity supplier (as defined in section 6 of this
7 chapter).

8 (2) A communications service provider (as defined in
9 IC 8-1-32.5-4), exclusively with respect to a
10 telecommunications easement (as defined in section 15(a) of
11 this chapter) held by the communications service provider.

12 (b) This chapter applies to an action by a property owner
13 against an electricity supplier that:

14 (1) installs;

15 (2) permits the installation of; or

16 (3) intends to install;

17 **communications infrastructure within an existing electric**

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easement.

(c) This chapter does not apply to:

(1) a negotiation between an electricity supplier and a property owner for:

(A) a new electric easement; or

(B) the siting, installation, or attachment of any facilities or infrastructure other than communications infrastructure;

(2) an easement that by its terms expressly provides for the installation of communications infrastructure within the easement; or

(3) communications infrastructure that is within an electric easement and that is used only to support the transmission, transformation, or distribution of electricity to consumers.

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

(e) Except as otherwise provided by the terms of the easement or by the terms of any contractual or other agreement between an electricity supplier and a property owner, this chapter provides the exclusive remedy to a property owner with respect to the attachment or installation of communications infrastructure within an electric easement, regardless of whether the attachment or installation occurs before, contemporaneously with, or after:

(1) the granting of the easement; or

(2) the attachment or installation of electric facilities or of other communications infrastructure within the easement; without regard to the statutory or common law basis of the property owner's claim for damages or request for relief that would otherwise apply.

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

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

Sec. 4. As used in this chapter, "electric easement" means any recorded or unrecorded easement held by an electricity supplier for the siting of electric facilities, regardless of whether the easement is for the exclusive benefit of the electricity supplier or for use in connection with other utility services, regardless of whether the electricity supplier provides the other utility services.



1 **Sec. 5.** As used in this chapter, "electric facilities" means any
 2 product, equipment, or technology necessary or useful in the
 3 transmission, transformation, or distribution of electricity,
 4 including wires, cables, poles, transformers, anchors, guys,
 5 grounding systems, insulators, and any other related or ancillary
 6 materials.

7 **Sec. 6. (a)** As used in this chapter, "electricity supplier" means:

8 (1) a corporation organized under IC 8-1-13; or

9 (2) a corporation organized under IC 23-17 whose members
 10 are primarily organized under IC 8-1-13.

11 **(b)** The term includes third parties with whom the electricity
 12 supplier contracts, licenses, or otherwise enters into agreements
 13 with for the installation, service, or maintenance of
 14 communications infrastructure.

15 **(c)** The term does not include investor owned utilities or
 16 municipal utilities.

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

20 **Sec. 8. (a)** This section applies to an electricity supplier that:

21 (1) installs new communications infrastructure; or

22 (2) makes capacity available for communications service
 23 through existing communications infrastructure;

24 within an electric easement under this chapter.

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

26 (1) that is:

27 (A) mailed; or

28 (B) sent electronically, if the property owner has consented
 29 to receive electronic communications from the electricity
 30 supplier;

31 by the electricity supplier to the property owner; and

32 **(2)** that includes the following information:

33 (A) The name, address, and telephone number of the
 34 electricity supplier, along with a named point of contact
 35 for the electricity supplier.

36 (B) Either:

37 (i) the address and name associated with the impacted
 38 property; or

39 (ii) if the name of the property owner is not known by the
 40 electricity supplier, the address associated with the
 41 affected property, with the letter addressed to "The
 42 property owner of (street address, city, state, and zip



code of the affected property)".

(C) A citation to this chapter.

(D) A statement indicating the electricity supplier's intent to:

(i) install new communications infrastructure; or

(ii) make capacity available for communications service through existing communications infrastructure; as applicable, within the electric easement.

(E) An estimate of when:

(i) installation of new communications infrastructure will occur; or

(ii) communications service will be made available through existing communications infrastructure; as applicable, within the electric easement.

(F) A statement explaining the electricity supplier's right to record a new easement under section 14 of this chapter.

(G) A summary of the property owner's right to obtain an appraisal under section 11 of this chapter and to bring an action under section 12 of this chapter, including:

(i) a statement of the time limit for bringing an action, as set forth in section 10 of this chapter; and

(ii) a statement explaining that the property owner is precluded from exercising the rights that are otherwise available to the property owner under sections 11 and 12 of this chapter if the property owner signs an agreement, a master agreement, or an affidavit described in section 9 of this chapter.

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

(1) install new communications infrastructure; or

(2) make capacity available for communications service through existing communications infrastructure;

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

(d) Delivery of notice under this section occurs on the date upon which the notice is mailed or sent electronically by an electricity supplier to a property owner. An electricity supplier may prove delivery of notice under this section by any official or generally accepted time stamped document, whether maintained in physical form or electronically, including a time stamped electronic



1 message. A court shall accept proof described in this section in a
 2 proceeding under section 12 of this chapter.

3 (e) If:

4 (1) installation of new communications infrastructure does
 5 not occur; or

6 (2) communications service is not made available through
 7 existing communications infrastructure;

8 within the electric easement within one hundred eighty (180) days
 9 after notice under this section is delivered, as determined under
 10 subsection (d), the electricity supplier shall resend notice under this
 11 section to the property owner, and the time period set forth in
 12 section 10 of this chapter restarts based on the date the subsequent
 13 notice is delivered, as determined under subsection (d). A property
 14 owner's exclusive remedy for an electricity supplier's failure to
 15 provide notice as required under this section is the resetting of the
 16 time period set forth in section 10 of this chapter.

17 Sec. 9. (a) An electricity supplier that makes communications
 18 service available to a property owner through communications
 19 infrastructure that is installed or will be installed within an electric
 20 easement shall include in any:

21 (1) member agreement;

22 (2) customer agreement; or

23 (3) other similar agreement;

24 related to the communications service a provision notifying a
 25 property owner that takes or will take communications service
 26 from the electricity supplier, or from any related or affiliated
 27 entity, that by signing the agreement for communications service,
 28 the property owner expressly consents to the expansion of the
 29 electric easement that the electricity supplier has with the property
 30 owner to include communications infrastructure.

31 (b) Subject to subsection (c), the agreement that includes the
 32 notice described in subsection (a) must:

33 (1) be signed by the property owner or the property owner's
 34 designated agent; and

35 (2) include a statement that anyone other than the property
 36 owner or the property owner's designated agent may be:

37 (A) subject to penalties for perjury; and

38 (B) liable for any just compensation provided for by law;
 39 for signing the agreement without the consent of the property
 40 owner or the property owner's designated agent.

41 (c) In the case of tenant occupied property, the owner of the
 42 property that is leased or rented, or the owner's designated agent,



1 may sign a master agreement that:

- 2 (1) includes the statement described in subsection (b)(2); and
 3 (2) gives consent to the electricity supplier to expand an
 4 electric easement on the property owner's property to include
 5 communications infrastructure for all units on the property
 6 owner's property.

7 A tenant may not sign a master agreement under this subsection on
 8 behalf of the property owner. However, a tenant may provide to
 9 the electricity supplier a notarized affidavit that is signed by the
 10 property owner or the property owner's designated agent and that
 11 gives consent to the expansion of an electric easement to include
 12 communications infrastructure on the property owner's property.
 13 This subsection may not be interpreted as imposing on the
 14 property owner any duty, liability, or other obligation that may
 15 exist between the electricity supplier and the tenant customer with
 16 respect to the provision of communications service.

17 (d) Upon signing:

- 18 (1) an agreement under subsection (a) to take communications
 19 service from the electricity supplier, or from any related or
 20 affiliated entity; or
 21 (2) a master agreement or a notarized affidavit under
 22 subsection (c) that gives consent to the expansion of an electric
 23 easement to include communications infrastructure for all
 24 units or for a particular unit on the property owner's
 25 property, as applicable;

26 the property owner is not entitled to any additional compensation
 27 for the expansion of the electric easement to include
 28 communications infrastructure, other than the value of being
 29 provided access to any communications service that the electricity
 30 supplier may offer and to which the property owner may elect to
 31 subscribe.

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

- 35 (1) electric service; or
 36 (2) communications service;

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

40 Sec. 10. Subject to sections 8(e) and 13 of this chapter, and
 41 except as provided by section 9 of this chapter, a property owner
 42 may bring a cause of action under section 12 of this chapter against



an electricity supplier for damages relating to the interference with the use of the property owner's property caused by the attachment or installation of communications infrastructure within the electric easement, not later than two (2) years from the later of:

(1) July 1, 2017; or

(2) the date upon which the notice under section 8 of this chapter is delivered to the property owner, as determined under section 8(d) of this chapter.

Sec. 11. (a) In order to prove damages relating to the interference with the use of the property owner's property caused by the attachment or installation of communications infrastructure within the electric easement, a property owner shall, at the property owner's expense and without reimbursement from the electricity supplier, provide the electricity supplier with an appraisal comparing the value of the property before and after the attachment or installation of communications infrastructure within the electric easement. The appraisal must:

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

(2) be conducted within the period specified in section 10 of this chapter; and

(3) take into account any increase in value to the property resulting from the availability of broadband Internet service provided through the communications infrastructure.

(b) If an electricity supplier disputes an appraisal provided by the property owner under subsection (a), the electricity supplier may:

(1) not later than thirty (30) days after the date of the electricity supplier's receipt of the property owner's appraisal, send to the property owner by certified mail a notice stating that the electricity supplier disputes the property owner's appraisal; and

(2) not later than ninety (90) days from the date on which the notice of the dispute is sent by certified mail to the property owner under subdivision (1):

(A) obtain at the electricity supplier's expense an appraisal by a real estate appraiser licensed under IC 25-34.1-3-8; and

(B) send a copy of the appraisal by certified mail to the property owner.

A property owner shall make reasonable accommodations for the electricity supplier to perform an appraisal under this subsection.



1 If a property owner fails to make such reasonable accommodations
 2 available within the ninety (90) day period described in subdivision
 3 (2), the electricity supplier may not be found liable for any asserted
 4 reduction in property value as a result of the installation of
 5 communications infrastructure within the electric easement.

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

10 (d) If the electricity supplier:

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

13 (2) does not receive a written response within thirty (30)
 14 calendar days after the appraisal is sent by the electricity
 15 supplier under subsection (c);

16 the electricity supplier shall consider its appraisal accepted by the
 17 property owner and shall remit payment in accordance with the
 18 appraisal to the property owner not later than sixty (60) days after
 19 the expiration of the thirty (30) day period described in this
 20 section.

21 Sec. 12. (a) Subject to section 13 of this chapter, if:

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

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

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

32 (b) If damages are assessed for the electricity supplier's use of
 33 the electric easement for communications infrastructure, the
 34 electricity supplier shall, not later than sixty (60) days after the
 35 assessment, deposit with the court or pay to the property owner the
 36 amount assessed, including costs as determined by the court.

37 Sec. 13. (a) The amount of damages payable to a property owner
 38 for the use of an electric easement by an electricity supplier for
 39 communications infrastructure is limited to an amount sufficient
 40 to compensate the property owner for the reduction in value of the
 41 property due to the increased interference, if any, with the owner's
 42 use of the property caused by the attachment or installation of



communications infrastructure within the electric easement. Evidence of revenues, profits, or any other fees derived by an electricity supplier from installing communications infrastructure in an existing easement, or evidence of the revenues, profits, or any other fees derived from the operation of such equipment, is not admissible for any purpose in any proceeding under this chapter.

(b) If an appraisal performed under this chapter proves no reduction in value to the property owner's property, the property owner is not entitled to damages.

Sec. 14. The acceptance by a property owner of payment for damages as a result of any acts of an electricity supplier under this chapter operates to modify the electric easement to allow for the installation, servicing, maintenance, and use of communications infrastructure within the easement.

Sec. 15. (a) As used in this section, "telecommunications easement" means any recorded or unrecorded easement granted by a body corporate and politic that is an instrumentality of the state, or by the body corporate and politic's predecessor, to a communications service provider or the communications service provider's predecessor for the siting of communications infrastructure for the provision of telegraph, telephone, or communications service, whether the facilities are above or below ground and regardless of whether the easement is for the exclusive benefit of the communications service provider or the communications service provider's predecessor.

(b) A telecommunications easement granted to permit a communications service provider or the communications service provider's predecessor to construct or place any poles, wires, cables, conduit, or other communications service infrastructure shall permit the placement of any type of communications service infrastructure or facilities, including fiber optic cable, coaxial cable, or any other technology.

Sec. 16. (a) This section applies only to an electric easement that:

- (1) is located outside a public right-of-way;
- (2) does not expressly allow for the installation of communications infrastructure within the easement; and
- (3) involves land:
 - (A) owned by a railroad company; or
 - (B) on which a manufacturing facility is located.

(b) When installing, inspecting, or maintaining communications infrastructure within an electric easement described in subsection



(a), an electricity supplier shall make a reasonable, good faith effort to notify the property owner of the installation, inspection, or maintenance of the communications infrastructure. With respect to the installation of communications infrastructure within an electric easement described in subsection (a), the electricity supplier shall provide the property owner with the notice required under section 8 of this chapter.

(c) The failure of an electricity supplier to comply with the notification requirement set forth in subsection (b) does not:

(1) create any liability with respect to the electricity supplier beyond that which would otherwise apply under applicable law; or

(2) create for the property owner a duty of care beyond what is owed by the property owner under IC 34-31-11.

Sec. 17. This chapter shall not be interpreted as changing or otherwise impacting:

(1) any requirements with which an electricity supplier must comply under federal or state law when installing communications infrastructure on or within privately owned railroad property or on or within a private railroad easement, regardless of whether the property or easement is in the public right-of-way; or

(2) an electricity supplier's duties under any reasonable safety and protective requirements that are imposed by a railroad company, to the extent the requirements are applicable to an electricity supplier when installing or maintaining communications infrastructure on or within privately owned railroad property or on or within a private railroad easement.

SECTION 2. An emergency is declared for this act.



COMMITTEE REPORT

Madam President: The Senate Committee on Utilities, to which was referred Senate Bill No. 478, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 1, line 5, delete **"This chapter applies only to an electricity supplier as"** and insert **"This chapter applies only to the following:**

(1) An electricity supplier (as defined in section 6 of this chapter).

(2) A communications service provider (as defined in IC 8-1-32.5-4), exclusively with respect to a telecommunications easement (as defined in section 13(a) of this chapter) held by the communications service provider."

Page 1, delete line 6.

Page 2, line 3, after "easement" insert **"that provides"**.

Page 2, line 4, delete "an" and insert **"the"**.

Page 2, line 10, delete "ordinance," and insert **"any conflicting ordinance,"**.

Page 2, line 12, delete **"This chapter provides the exclusive remedy to a property"** and insert **"Except as otherwise provided by the terms of the easement or by the terms of any contractual or other agreement between an electricity supplier and a property owner, this chapter provides the exclusive remedy to a property owner with respect to the attachment or installation of communications infrastructure within an electric easement, regardless of whether the attachment or installation occurs before, contemporaneously with, or after:**

(1) the granting of the easement; or

(2) the attachment or installation of electric facilities or of other communications infrastructure within the easement; without regard to the statutory or common law basis of the property owner's claim for damages or request for relief that would otherwise apply."

Page 2, delete lines 13 through 17.

Page 2, line 26, delete "granted by a property owner to" and insert **"held by"**.

Page 2, line 27, delete "exclusively".

Page 2, line 28, delete "whether the facilities are above or below ground and".

Page 3, line 10, delete "Unless the terms of an electric easement prohibit" and insert **"Unless prohibited by the terms of an electric**



easement or by the terms of any contractual or other agreement between an electricity supplier and a property owner, an electricity supplier may:

- (1) install, place, reconstruct, upgrade, relocate, remove, inspect, patrol, repair, maintain, operate, and use electric facilities within the electric easement to provide communications service; or
- (2) grant a license or a permit to a third party to attach communications infrastructure or electric facilities to the electricity supplier's electric facilities located within an existing electric easement."

Page 3, delete lines 11 through 22.

Page 3, line 23, delete "A property owner that suffers damages as a result of the acts" and insert **"Subject to section 12(b) of this chapter, a property owner that suffers damages as a result of any acts of an electricity supplier under subsection (a) may bring a cause of action under this chapter."**

Page 3, delete lines 24 through 25.

Page 3, line 31, delete "properly".

Page 3, line 32, delete "easement." and insert **"easement in accordance with subsection (d)."**

Page 4, delete lines 4 through 41.

Page 4, line 42, delete "12." and insert **"10."**

Page 5, line 8, delete "must be:" and insert **"must:**

- (1) be performed by a real estate appraiser licensed under IC 25-34.1-3-8;**
- (2) be conducted within the period specified in section 9 of this chapter; and**
- (3) take into account any increase in value to the property resulting from the availability of broadband Internet service provided through the communications infrastructure.**

(b) If an electricity supplier disputes an appraisal provided by the property owner under subsection (a), the electricity supplier may:

- (1) not later than thirty (30) days after the date of the electricity supplier's receipt of the property owner's appraisal, send to the property owner by certified mail a notice stating that the electricity supplier disputes the property owner's appraisal; and**
- (2) not later than ninety (90) days from the date on which the notice of the dispute is sent by certified mail to the property owner under subdivision (1):**



- (A) obtain at the electricity supplier's expense an appraisal by a real estate appraiser licensed under IC 25-34.1-3-8; and
- (B) send a copy of the appraisal by certified mail to the property owner.

A property owner shall make reasonable accommodations for the electricity supplier to perform an appraisal under this subsection. If a property owner fails to make such reasonable accommodations available within the ninety (90) day period described in subdivision (2), the electricity supplier may not be found liable for any asserted reduction in property value as a result of the installation of communications infrastructure within the electric easement."

Page 5, delete lines 9 through 25.

Page 5, line 35, delete "supplier;" and insert "supplier under subsection (c);".

Page 5, line 41, delete "13." and insert "11."

Page 6, line 13, delete "entitled to damages not exceeding the statutory damages" and insert "not entitled to damages."

Page 6, delete line 14.

Page 6, line 15, delete "14." and insert "12."

Page 6, line 16, delete "easement," and insert "easement for communications infrastructure,".

Page 6, between lines 30 and 31, begin a new paragraph and insert:

"Sec. 13. (a) As used in this section, "telecommunications easement" means any recorded or unrecorded easement granted by a body corporate and politic that is an instrumentality of the state, or by the body corporate and politic's predecessor, to a communications service provider or the communications service provider's predecessor for the siting of communications infrastructure for the provision of telegraph, telephone, or communications service, whether the facilities are above or below ground and regardless of whether the easement is for the exclusive benefit of the communications service provider or the communications service provider's predecessor.

(b) A telecommunications easement granted to permit a communications service provider or the communications service provider's predecessor to construct or place any poles, wires, cables, conduit, or other communications service infrastructure



shall permit the placement of any type of communications service infrastructure or facilities, including fiber optic cable, coaxial cable, or any other technology."

and when so amended that said bill do pass.

(Reference is to SB 478 as introduced.)

MERRITT, Chairperson

Committee Vote: Yeas 7, Nays 3.

SENATE MOTION

Madam President: I move that Senate Bill 478 be amended to read as follows:

Page 1, line 10, delete "13(a)" and insert **"15(a)"**.

Page 2, line 8, after "that" insert **"by its terms expressly"**.

Page 2, line 9, delete "without modification to the" and insert **"within the easement; or"**.

Page 2, delete line 10.

Page 3, delete lines 20 through 42, begin a new paragraph and insert:

"Sec. 8. (a) This section applies to an electricity supplier that:

(1) installs new communications infrastructure; or

(2) makes capacity available for communications service through existing communications infrastructure;

within an electric easement under this chapter.

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

(1) that is:

(A) mailed; or

(B) sent electronically, if the property owner has consented to receive electronic communications from the electricity supplier;

by the electricity supplier to the property owner; and

(2) that includes the following information:

(A) The name, address, and telephone number of the electricity supplier, along with a named point of contact for the electricity supplier.

(B) Either:

(i) the address and name associated with the impacted property; or

(ii) if the name of the property owner is not known by the



electricity supplier, the address associated with the affected property, with the letter addressed to "The property owner of (street address, city, state, and zip code of the affected property)".

(C) A citation to this chapter.

(D) A statement indicating the electricity supplier's intent to:

- (i) install new communications infrastructure; or
- (ii) make capacity available for communications service through existing communications infrastructure;

as applicable, within the electric easement.

(E) An estimate of when:

- (i) installation of new communications infrastructure will occur; or
- (ii) communications service will be made available through existing communications infrastructure;

as applicable, within the electric easement.

(F) A statement explaining the electricity supplier's right to record a new easement under section 14 of this chapter.

(G) A summary of the property owner's right to obtain an appraisal under section 11 of this chapter and to bring an action under section 12 of this chapter, including:

- (i) a statement of the time limit for bringing an action, as set forth in section 10 of this chapter; and
- (ii) a statement explaining that the property owner is precluded from exercising the rights that are otherwise available to the property owner under sections 11 and 12 of this chapter if the property owner signs an agreement, a master agreement, or an affidavit described in section 9 of this chapter.

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

- (1) install new communications infrastructure; or
- (2) make capacity available for communications service through existing communications infrastructure;

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

(d) Delivery of notice under this section occurs on the date upon which the notice is mailed or sent electronically by an electricity supplier to a property owner. An electricity supplier may prove



delivery of notice under this section by any official or generally accepted time stamped document, whether maintained in physical form or electronically, including a time stamped electronic message. A court shall accept proof described in this section in a proceeding under section 12 of this chapter.

(e) If:

- (1) installation of new communications infrastructure does not occur; or
- (2) communications service is not made available through existing communications infrastructure;

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

Sec. 9. (a) An electricity supplier that makes communications service available to a property owner through communications infrastructure that is installed or will be installed within an electric easement shall include in any:

- (1) member agreement;
- (2) customer agreement; or
- (3) other similar agreement;

related to the communications service a provision notifying a property owner that takes or will take communications service from the electricity supplier, or from any related or affiliated entity, that by signing the agreement for communications service, the property owner expressly consents to the expansion of the electric easement that the electricity supplier has with the property owner to include communications infrastructure.

(b) Subject to subsection (c), the agreement that includes the notice described in subsection (a) must:

- (1) be signed by the property owner or the property owner's designated agent; and
- (2) include a statement that anyone other than the property owner or the property owner's designated agent may be:
 - (A) subject to penalties for perjury; and
 - (B) liable for any just compensation provided for by law; for signing the agreement without the consent of the property



owner or the property owner's designated agent.

(c) In the case of tenant occupied property, the owner of the property that is leased or rented, or the owner's designated agent, may sign a master agreement that:

- (1) includes the statement described in subsection (b)(2); and
- (2) gives consent to the electricity supplier to expand an electric easement on the property owner's property to include communications infrastructure for all units on the property owner's property.

A tenant may not sign a master agreement under this subsection on behalf of the property owner. However, a tenant may provide to the electricity supplier a notarized affidavit that is signed by the property owner or the property owner's designated agent and that gives consent to the expansion of an electric easement to include communications infrastructure on the property owner's property. This subsection may not be interpreted as imposing on the property owner any duty, liability, or other obligation that may exist between the electricity supplier and the tenant customer with respect to the provision of communications service.

(d) Upon signing:

- (1) an agreement under subsection (a) to take communications service from the electricity supplier, or from any related or affiliated entity; or
- (2) a master agreement or a notarized affidavit under subsection (c) that gives consent to the expansion of an electric easement to include communications infrastructure for all units or for a particular unit on the property owner's property, as applicable;

the property owner is not entitled to any additional compensation for the expansion of the electric easement to include communications infrastructure, other than the value of being provided access to any communications service that the electricity supplier may offer and to which the property owner may elect to subscribe.

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

- (1) electric service; or
- (2) communications service;

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



Sec. 10. Subject to sections 8(e) and 13 of this chapter, and except as provided by section 9 of this chapter, a property owner may bring a cause of action under section 12 of this chapter against an electricity supplier for damages relating to the interference with the use of the property owner's property caused by the attachment or installation of communications infrastructure within the electric easement, not later than two (2) years from the later of:

- (1) July 1, 2017; or
- (2) the date upon which the notice under section 8 of this chapter is delivered to the property owner, as determined under section 8(d) of this chapter.

Sec. 11. (a) In order to prove damages relating to the interference with the use of the property owner's property caused by the attachment or installation of communications infrastructure within the electric easement, a property owner shall, at the property owner's expense and without reimbursement from the electricity supplier, provide the electricity supplier with an appraisal comparing the value of the property before and after the attachment or installation of communications infrastructure within the electric easement. The appraisal must:

- (1) be performed by a real estate appraiser licensed under IC 25-34.1-3-8;
- (2) be conducted within the period specified in section 10 of this chapter; and
- (3) take into account any increase in value to the property resulting from the availability of broadband Internet service provided through the communications infrastructure.

(b) If an electricity supplier disputes an appraisal provided by the property owner under subsection (a), the electricity supplier may:

- (1) not later than thirty (30) days after the date of the electricity supplier's receipt of the property owner's appraisal, send to the property owner by certified mail a notice stating that the electricity supplier disputes the property owner's appraisal; and
- (2) not later than ninety (90) days from the date on which the notice of the dispute is sent by certified mail to the property owner under subdivision (1):
 - (A) obtain at the electricity supplier's expense an appraisal by a real estate appraiser licensed under IC 25-34.1-3-8; and
 - (B) send a copy of the appraisal by certified mail to the



property owner.

A property owner shall make reasonable accommodations for the electricity supplier to perform an appraisal under this subsection. If a property owner fails to make such reasonable accommodations available within the ninety (90) day period described in subdivision (2), the electricity supplier may not be found liable for any asserted reduction in property value as a result of the installation of communications infrastructure within the electric easement.

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

(d) If the electricity supplier:

- (1) receives a written response from the property owner accepting the electricity supplier's appraisal; or**
- (2) does not receive a written response within thirty (30) calendar days after the appraisal is sent by the electricity supplier under subsection (c);**

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

Sec. 12. (a) Subject to section 13 of this chapter, if:

- (1) the electricity supplier receives written notice from a property owner timely rejecting the electricity supplier's appraisal; and**
- (2) the electricity supplier and property owner are unable to reach an agreement concerning damages;**

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

(b) If damages are assessed for the electricity supplier's use of the electric easement for communications infrastructure, the electricity supplier shall, not later than sixty (60) days after the assessment, deposit with the court or pay to the property owner the amount assessed, including costs as determined by the court.

Sec. 13. (a) The amount of damages payable to a property owner for the use of an electric easement by an electricity supplier for communications infrastructure is limited to an amount sufficient



to compensate the property owner for the reduction in value of the property due to the increased interference, if any, with the owner's use of the property caused by the attachment or installation of communications infrastructure within the electric easement. Evidence of revenues, profits, or any other fees derived by an electricity supplier from installing communications infrastructure in an existing easement, or evidence of the revenues, profits, or any other fees derived from the operation of such equipment, is not admissible for any purpose in any proceeding under this chapter.

(b) If an appraisal performed under this chapter proves no reduction in value to the property owner's property, the property owner is not entitled to damages.

Sec. 14. The acceptance by a property owner of payment for damages as a result of any acts of an electricity supplier under this chapter operates to modify the electric easement to allow for the installation, servicing, maintenance, and use of communications infrastructure within the easement."

Delete pages 4 through 5.

Page 6, delete lines 1 through 14.

Page 6, line 15, delete "13." and insert "15."

Page 6, between lines 32 and 33, begin a new paragraph and insert:

"Sec. 16. (a) This section applies only to an electric easement that:

- (1) is located outside a public right-of-way;**
- (2) does not expressly allow for the installation of communications infrastructure within the easement; and**
- (3) involves land:**
 - (A) owned by a railroad company; or**
 - (B) on which a manufacturing facility is located.**

(b) When installing, inspecting, or maintaining communications infrastructure within an electric easement described in subsection (a), an electricity supplier shall make a reasonable, good faith effort to notify the property owner of the installation, inspection, or maintenance of the communications infrastructure. With respect to the installation of communications infrastructure within an electric easement described in subsection (a), the electricity supplier shall provide the property owner with the notice required under section 8 of this chapter.

(c) The failure of an electricity supplier to comply with the notification requirement set forth in subsection (b) does not:

- (1) create any liability with respect to the electricity supplier beyond that which would otherwise apply under applicable**



law; or

(2) create for the property owner a duty of care beyond what is owed by the property owner under IC 34-31-11.

Sec. 17. This chapter shall not be interpreted as changing or otherwise impacting:

(1) any requirements with which an electricity supplier must comply under federal or state law when installing communications infrastructure on or within privately owned railroad property or on or within a private railroad easement, regardless of whether the property or easement is in the public right-of-way; or

(2) an electricity supplier's duties under any reasonable safety and protective requirements that are imposed by a railroad company, to the extent the requirements are applicable to an electricity supplier when installing or maintaining communications infrastructure on or within privately owned railroad property or on or within a private railroad easement."

(Reference is to SB 478 as printed February 21, 2017.)

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