

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 ENROLLED ACT No. 478

AN ACT to amend the Indiana Code concerning property.

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

SECTION 1. IC 32-30-16 IS ADDED TO THE INDIANA CODE AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]:

Chapter 16. Utility Easements

Sec. 1. (a) This chapter applies only to an electricity supplier (as defined in section 6 of this chapter).

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

- (1) installs;**
- (2) permits the installation of; or**
- (3) intends to install;**

communications infrastructure within an existing electric easement.

(c) This chapter does not apply to the following:

- (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.**



(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.

(4) Any physical damage to property that occurs during the installation, maintenance, or servicing of communications infrastructure under this chapter.

(5) Property owned by a railroad company.

(6) The installation of new poles, towers, or other structures that are required for the exclusive support of communications infrastructure that is intended to provide communications service.

(7) The attachment or installation of communications infrastructure on underground or buried electric facilities within an electric easement.

(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 on above ground electric facilities 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 wires, cable, and other similar facilities used to provide communications service. The term includes fiber optic cable and any requisite or useful ancillary equipment that is 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.

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

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

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

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

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

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

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 sent by first class mail 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.**

(H) Subject to subsections (f) and (g), a written plan for making broadband Internet service available within the electricity supplier's electric service territory, including the following information, to the extent the information is available to and known by the electricity supplier:

- (i) A description of the proposed area or areas in which the broadband Internet service is to be made available.**
- (ii) A map of the proposed area or areas identified under item (i).**
- (iii) A proposed timetable for making broadband Internet service available in the area or areas identified under item (i).**
- (iv) A statement as to whether the electricity supplier, an affiliated entity, or a third party would provide the broadband Internet service to be made available.**
- (v) The anticipated costs to the electricity supplier's members of any infrastructure necessitated by the plan.**



(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 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 by the electricity supplier. 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.

(f) This section does not require an electricity supplier, an affiliated entity of an electricity supplier, or a communications service provider to disclose confidential and proprietary business plans and other confidential information.

(g) The failure of an electricity supplier to:

- (1) make broadband Internet service available in any area identified in the plan required by subsection (b)(2)(H);**
- (2) meet the proposed timetable for making broadband Internet service available in any area identified in the plan required by subsection (b)(2)(H);**
- (3) accurately estimate the costs to the electricity supplier's members of any infrastructure necessitated by the plan**



required by subsection (b)(2)(H); or

(4) otherwise take any actions described in, or related to, the plan required by subsection (b)(2)(H);

does not create any liability with respect to the electricity supplier beyond that which would otherwise apply under applicable law and, except as provided in section 1(c) of this chapter, does not preclude the electricity supplier from using the procedures set forth in 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 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 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 a decrease in value of the property owner's real 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 a decrease in value of the property owner's real 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 of the property owner's real property 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 subsection.

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 owner's real 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 owner's real 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 real 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) 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 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. 16. When installing communications infrastructure under this chapter, an electricity supplier shall comply with all applicable rules and standards included in the National Electric Safety Code most recently adopted by the state.

Sec. 17. (a) This section:

- (1) applies only to an electricity supplier that uses the procedures set forth in this chapter; and
- (2) does not apply to:
 - (A) an electricity supplier;
 - (B) a subsidiary of an electricity supplier; or
 - (C) any other affiliated entity of an electricity supplier; that does not use the procedures set forth in this chapter.

(b) An electricity supplier described in subsection (a)(1) shall,



either acting by itself or in conjunction with one (1) or more other entities:

- (1) form a separate legal entity; or
- (2) maintain a separate accounting system;

with respect to the provision of broadband Internet service that is made available by the electricity supplier, alone or in conjunction with one (1) or more other legal entities, within all or any part of the electricity supplier's electric service territory in accordance with this chapter.

(c) An entity that provides broadband Internet service under subsection (b), whether that entity is a separate legal entity formed under subsection (b)(1) or an electricity supplier acting alone or in conjunction with one or more other legal entities, shall cause to be performed an annual audit of the entity's financial records concerning only the provision of broadband Internet service by the entity. A summary of the audit results required under this subsection shall be made available to a member of the electricity supplier described in subsection (a)(1) upon request. An entity that provides broadband Internet service under this chapter, including any affiliated electricity supplier of the electricity supplier described in subsection (a)(1), has discretion in choosing an allocation method for recording any:

- (1) expenses;
- (2) income;
- (3) assets;
- (4) liabilities; or
- (5) other financial items;

including those related to electric facilities that are or may be used for the provision of broadband Internet service in accordance with this chapter.

(d) This section may not be construed to require an electricity supplier or an entity that provides broadband Internet service under subsection (b) to disclose to any person, member, or entity any confidential or proprietary information that is not otherwise available in the public domain.

SECTION 2. [EFFECTIVE JULY 1, 2017] (a) As used in this SECTION, "commission" refers to the Indiana utility regulatory commission created by IC 8-1-1-2.

(b) As used in this SECTION, "committee" refers to the interim study committee on energy, utilities, and telecommunications established by IC 2-5-1.3-4(8).

(c) As used in this SECTION, "electricity supplier" means:



- (1) a corporation organized under IC 8-1-13; or**
- (2) a corporation organized under IC 23-17 whose members are primarily organized under IC 8-1-13.**

(d) As used in this SECTION, "legislative council" refers to the legislative council established by IC 2-5-1.1-1.

(e) The legislative council is urged to assign to the committee during the 2017 legislative interim the topic of rental rates and other fees for the attachment of communications service facilities on utility poles that are owned or controlled by electricity suppliers.

(f) If the topic described in subsection (e) is assigned to the committee, the committee may:

- (1) consider, as part of its study:**
 - (A) the range of rental rates charged by electricity suppliers in Indiana for the attachment of communications service facilities on utility poles owned or controlled by the electricity suppliers;**
 - (B) the various formulas used by electricity suppliers in Indiana to determine rental rates for the attachment of communications service facilities on utility poles owned or controlled by the electricity suppliers;**
 - (C) the role and jurisdiction of the commission with respect to the rental rates charged by electricity suppliers for the attachment of communications service facilities on utility poles owned or controlled by the electricity suppliers;**
 - (D) whether the rental rates and other fees charged by electricity suppliers in Indiana for the attachment of communications service facilities on utility poles owned or controlled by the electricity suppliers create a barrier to:**
 - (i) the deployment of broadband Internet infrastructure; and**
 - (ii) the provision of broadband Internet service; in rural areas in Indiana; and**
 - (E) any other matter that the committee considers appropriate with respect to rental rates and other fees for the attachment of communications service facilities on utility poles that are owned or controlled by electricity suppliers; and**
- (2) request information from:**
 - (A) electricity suppliers and customers;**
 - (B) communications service providers and customers;**



- (C) the commission;**
 - (D) local government officials and representatives; and**
 - (E) any experts, stakeholders, or other interested parties;**
- concerning the issues set forth in subdivision (1).**

(g) If the topic described in subsection (e) is assigned to the committee, the committee shall issue a final report to the legislative council containing the committee's findings and recommendations, including any recommended legislation concerning the topic described in subsection (e) or the specific issues described in subsection (f)(1), in an electronic format under IC 5-14-6 not later than November 1, 2017.

(h) This SECTION expires December 31, 2017.

SECTION 3. An emergency is declared for this act.



President of the Senate

President Pro Tempore

Speaker of the House of Representatives

Governor of the State of Indiana

Date: _____ Time: _____

