



Reprinted
February 26, 2019

SENATE BILL No. 517

DIGEST OF SB 517 (Updated February 25, 2019 5:14 pm - DI 101)

Citations Affected: IC 8-20; IC 8-23; noncode.

Synopsis: Utility relocation for road projects. Codifies Indiana department of transportation (INDOT) rules prescribing the administrative process for the relocation of a utility's facilities for a road construction contract. Provides that if a utility authorizes an INDOT contractor to perform required utility relocation work as part of a road improvement project, INDOT shall indemnify the utility for any: (1) damage to the property or facilities of the utility or the utility's customers; (2) loss of utility service to the utility's customers; or (3) interruption of service to the utility's customers; caused by the INDOT contractor's work. Provides that if a utility does not perform the utility's relocation duties imposed by a final work plan within the time set forth in the final work plan, INDOT may: (1) relocate, or cause the relocation of, the utility's facilities; or (2) file a complaint in court for
(Continued next page)

Effective: July 1, 2019.

Head, Merritt, Niezgodski, Crider

January 14, 2019, read first time and referred to Committee on Utilities.
February 21, 2019, amended, reported favorably — Do Pass.
February 25, 2019, read second time, amended, ordered engrossed.

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Digest Continued

an emergency order to compel the utility to relocate the facilities. Provides that if INDOT relocates, or causes the relocation of the facilities, INDOT: (1) may recover from the utility the costs of the relocation; and (2) shall indemnify the utility for any: (A) damage to the property or facilities of the utility or the utility's customers; (B) loss of utility service to the utility's customers; or (C) interruption of service to the utility's customers; caused by INDOT's or an INDOT's contractor's relocation of the facilities. Provides that if INDOT prevails in a court action to compel a utility to relocate the utility's facilities or customer service facilities, the court shall order the utility to: (1) reimburse INDOT for INDOT's reasonable litigation expenses, including court costs and reasonable attorney's fees; and (2) pay to INDOT a civil penalty of not less than \$20,000. Provides that if a utility prevails in a court action to compel the utility to relocate the utility's facilities or customer service facilities, the court shall order INDOT to pay: (1) the costs of any relocation of the utility's facilities in connection with the project; and (2) the reasonable litigation expenses, including court costs and reasonable attorney's fees, incurred by the utility. Provides that these same procedures apply with respect to the relocation of utility customer service facilities in connection with construction projects involving the state highway system. Provides that if a county executive determines that the location of a utility's facilities will interfere with a planned road, highway, or bridge project under the jurisdiction of the county: (1) the county executive may order the utility to relocate the utility's facilities in accordance with the procedures used by INDOT for projects involving the state highway system; and (2) if the county executive elects to use those procedures: (A) the county executive has all of the authority granted to, and the obligations of, INDOT under that statute, to the extent applicable; and (B) the utility has all of the obligations and rights of a utility under that statute, to the extent applicable.



Reprinted
February 26, 2019

First Regular Session of the 121st General Assembly (2019)

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 2018 Regular and Special Session of the General Assembly.

SENATE BILL No. 517

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

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

1 SECTION 1. IC 8-20-1-28 IS AMENDED TO READ AS
2 FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 28. **(a)** Public and
3 municipally owned utilities are authorized to construct, operate, and
4 maintain their poles, facilities, appliances, and fixtures upon, along,
5 under, and across any of the public roads, highways, and waters outside
6 of municipalities, as long as they do not interfere with the ordinary and
7 normal public use of the roadway, as defined in IC 9-13-2-157.
8 However, the utility shall review its plans with the county executive
9 before locating the pole, facility, appliance, or fixture. The utility may
10 trim any tree along the road or highway, but may not cut down and
11 remove the tree without the consent of the abutting property owners,
12 unless the cutting or removal is required by rule or order of the Indiana
13 utility regulatory commission. The utility may not locate a pole where
14 it interferes with the ingress or egress from adjoining land.
15 **(b) If a county executive determines that the location of a**
16 **utility's facilities will interfere with a planned road, highway, or**
17 **bridge construction or improvement project under the jurisdiction**

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1 of the county:

2 (1) the county executive may order the utility to relocate the
3 utility's facilities in accordance with the procedures set forth
4 in IC 8-23-26 with respect to projects involving the state
5 highway system; and

6 (2) if the county executive elects to exercise the authority
7 granted under subdivision (1):

8 (A) the county executive has all of the authority granted to,
9 and the obligations of, the Indiana department of
10 transportation under IC 8-23-26, to the extent applicable,
11 with respect to those road, highway, or bridge construction
12 or improvement projects under the county's jurisdiction;
13 and

14 (B) the utility has all of the obligations and rights of a
15 utility under IC 8-23-26, to the extent applicable, with
16 respect to the road, highway, or bridge construction or
17 improvement projects under the county's jurisdiction.

18 **This subsection does not affect, abrogate, or limit the rights or**
19 **obligations of a county, a municipality, or a utility under**
20 **IC 8-1-2-101.**

21 SECTION 2. IC 8-23-1-19 IS AMENDED TO READ AS
22 FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 19. (a) "Department"
23 refers to the Indiana department of transportation established under
24 IC 8-23-2-1.

25 (b) For purposes of IC 8-23-26, the term includes any agent that
26 is authorized by the Indiana department of transportation, through
27 written or electronic communication, to act on behalf of the
28 Indiana department of transportation.

29 SECTION 3. IC 8-23-2-5, AS AMENDED BY P.L.53-2014,
30 SECTION 85, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
31 JULY 1, 2019]: Sec. 5. (a) The department, through the commissioner
32 or the commissioner's designee, shall:

33 (1) develop, continuously update, and implement:

34 (A) long range comprehensive transportation plans;

35 (B) work programs; and

36 (C) budgets;

37 to assure the orderly development and maintenance of an efficient
38 statewide system of transportation;

39 (2) implement the policies, plans, and work programs adopted by
40 the department;

41 (3) organize by creating, merging, or abolishing divisions;

42 (4) evaluate and utilize whenever possible improved



- 1 transportation facility maintenance and construction techniques;
 2 (5) carry out public transportation responsibilities, including:
 3 (A) developing and recommending public transportation
 4 policies, plans, and work programs;
 5 (B) providing technical assistance and guidance in the area of
 6 public transportation to political subdivisions with public
 7 transportation responsibilities;
 8 (C) developing work programs for the utilization of federal
 9 mass transportation funds;
 10 (D) furnishing data from surveys, plans, specifications, and
 11 estimates required to qualify a state agency or political
 12 subdivision for federal mass transportation funds;
 13 (E) conducting or participating in any public hearings to
 14 qualify urbanized areas for an allocation of federal mass
 15 transportation funding;
 16 (F) serving, upon designation of the governor, as the state
 17 agency to receive and disburse any state or federal mass
 18 transportation funds that are not directly allocated to an
 19 urbanized area;
 20 (G) entering into agreements with other states, regional
 21 agencies created in other states, and municipalities in other
 22 states for the purpose of improving public transportation
 23 service to the citizens; and
 24 (H) developing and including in its own proposed
 25 transportation plan a specialized transportation services plan
 26 for the elderly and persons with disabilities;
 27 (6) provide technical assistance to units of local government with
 28 road and street responsibilities;
 29 (7) develop, undertake, and administer the program of research
 30 and extension required under IC 8-17-7;
 31 (8) allow public testimony in accordance with section 17 of this
 32 chapter whenever the department holds a public hearing (as
 33 defined in section 17 of this chapter); and
 34 (9) ~~adopt rules under IC 4-22-2 to reasonably and cost effectively~~
 35 ~~manage the right-of-way of the state highway system by~~
 36 ~~establishing a formal procedure for highway improvement~~
 37 ~~projects that involve the relocation of utility facilities by~~
 38 ~~providing for an exchange of information among the department,~~
 39 ~~utilities, and the department's highway construction contractors.~~
 40 **under IC 8-23-26.**
 41 (b) Rules adopted under subsection (a)(9):
 42 (1) shall not unreasonably affect the cost, or impair the safety or



1 reliability; of a utility service; and

2 (2) must require a utility to provide information concerning all
3 authorized representatives of the utility for purposes of highway
4 improvement projects and improvement projects undertaken by
5 local units of government.

6 (c) (b) A civil action may be prosecuted by or against the
7 department, a department highway construction contractor, or a utility
8 to recover costs and expenses directly resulting from willful violation
9 of the rules. Nothing in this section or in subsection (a)(9) shall be
10 construed as granting authority to the department to adopt rules
11 establishing fines, assessments, or other penalties for or against utilities
12 or the department's highway construction contractors.

13 (d) Based on information provided by utilities under rules described
14 in subsection (b)(2); the department shall establish and publish on the
15 department's Internet web site a searchable data base of authorized
16 representatives of utilities for purposes of improvement projects that
17 involve the relocation of utility facilities. A utility that provides
18 information described in subsection (b)(2) shall:

19 (1) update the information provided to the department on an
20 annual basis; and

21 (2) notify the department of any change in the information not
22 more than thirty (30) days after the change occurs.

23 (e) (c) Not later than August 1 of each year, the department, through
24 the commissioner or the commissioner's designee, shall prepare for the
25 interim study committee on roads and transportation a report that
26 includes updates on the following:

27 (1) Transportation and infrastructure funding.

28 (2) Public-private agreements under IC 8-15.5.

29 (3) Public-private partnerships under IC 8-15.7.

30 (4) Reports and supplements prepared under IC 8-23-12.

31 (5) Programs and projects conducted in cooperation with Purdue
32 University under IC 8-23-9-56.

33 (6) Any other information requested by the study committee.

34 The report must be submitted in an electronic format under IC 5-14-6.

35 SECTION 4. IC 8-23-9-56, AS AMENDED BY P.L.53-2014,
36 SECTION 86, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
37 JULY 1, 2019]: Sec. 56. (a) The department may cooperate with and
38 assist Purdue University in developing the best methods of improving
39 and maintaining the highways of the state and the respective counties.
40 In so cooperating with Purdue University and for the purpose of
41 developing and disseminating helpful information concerning road
42 construction and improvement and the operation of the highways of the



1 state and the counties, the department may expend money annually
 2 from the funds appropriated to the department's use for the use and
 3 benefit of Purdue University in carrying on programs of highway
 4 research and highway extension at or in connection with Purdue
 5 University and for the annual road school held at Purdue University. In
 6 addition, the money may be increased by federal funds, which may be
 7 made available to the department for the engineering and economic
 8 investigation of projects for future construction and for highway
 9 research necessary in connection therewith.

10 (b) For the purpose of disseminating knowledge of the highway
 11 maintenance methods that are best suited to the various sections of
 12 Indiana, the county and state highway officials, in cooperation with
 13 Purdue University, may hold joint road meetings in the various sections
 14 of Indiana.

15 (c) The aid authorized by this section shall be paid quarterly by the
 16 department to Purdue University upon proper voucher.

17 (d) Not later than August 1 of each year, a representative of Purdue
 18 University shall prepare, in cooperation with the department under
 19 ~~IC 8-23-2-5(c)(5)~~; **IC 8-23-2-5(c)(5)**, for the interim study committee
 20 on roads and transportation a report that includes updates on the
 21 following:

22 (1) Programs or projects conducted under this section.

23 (2) Any other information requested by the study committee.

24 The report must be submitted in an electronic format under IC 5-14-6.

25 SECTION 5. IC 8-23-26-1 IS AMENDED TO READ AS
 26 FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 1. (a) This chapter does
 27 not apply to a project let under IC 8-23-11.

28 (b) This chapter applies only to projects on the state highway system
 29 (as defined in IC 8-23-1-40).

30 **(c) This chapter is not intended to modify the provisions of**
 31 **IC 8-1-26.**

32 SECTION 6. IC 8-23-26-1.1 IS ADDED TO THE INDIANA CODE
 33 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
 34 1, 2019]: **Sec. 1.1. The following definitions apply throughout this**
 35 **chapter:**

36 (1) **"Compensable work" means facility relocation for which**
 37 **the department will reimburse the relocating utility.**

38 (2) **"Department contractor" means a person or entity with**
 39 **which the department enters into a contract for an**
 40 **improvement project.**

41 (3) **"Facility" includes all privately, municipally, publicly, or**
 42 **cooperatively owned systems for supplying any of the**



- 1 following services directly or indirectly to the public:
- 2 (A) Communications.
- 3 (B) Power.
- 4 (C) Light.
- 5 (D) Heat.
- 6 (E) Electricity.
- 7 (F) Gas.
- 8 (G) Water.
- 9 (H) Pipeline.
- 10 (I) Sewer.
- 11 (J) Sewage disposal.
- 12 (K) Drainage.
- 13 (L) A service comparable to a service described in clauses
- 14 (A) through (K).
- 15 The term includes cable television systems.
- 16 (4) "Facility relocation" includes any activity involving a
- 17 facility that is necessary to accommodate an improvement
- 18 project, including the following:
- 19 (A) Abandoning.
- 20 (B) Alteration.
- 21 (C) Deactivation.
- 22 (D) Installation.
- 23 (E) Maintenance.
- 24 (F) Modification.
- 25 (G) Moving.
- 26 (H) Removal.
- 27 (I) Support.
- 28 (5) "Highway" means any roadway:
- 29 (A) that is under the jurisdiction of the department; or
- 30 (B) where an improvement project is planned.
- 31 (6) "Improvement project" means the construction,
- 32 reconstruction, rehabilitation, and process incidental to
- 33 building, fabricating, or bettering any of the following:
- 34 (A) A state, interstate, or United States route.
- 35 (B) Projects within the state parks or other roadways that
- 36 the department is required by statute to build and
- 37 maintain.
- 38 (C) A local project administered by the department.
- 39 (D) A project on the state highway system that is
- 40 administered by a local authority.
- 41 (7) "Mail" includes delivery or transmission of:
- 42 (A) a writing; or



- 1 **(B) an electronic file in a format that is readable by the**
 2 **department;**
 3 **by United States mail, a private carrier, electronic mail, fax,**
 4 **or hand delivery.**
 5 **(8) "Major project" means an improvement project that:**
 6 **(A) due to the scope or complexity of the project, involves**
 7 **a design process of more than twelve (12) months; or**
 8 **(B) is designated by the department as a major project.**
 9 **(9) "Minor project" means an improvement project that:**
 10 **(A) due to the scope or complexity of the project, involves**
 11 **a design process of not more than twelve (12) months; or**
 12 **(B) is designated by the department as a minor project.**
 13 **(10) "Ready for contract date" means a date:**
 14 **(A) established by the department; and**
 15 **(B) subject to revision by the department based on**
 16 **progress of the design;**
 17 **by which all materials will be available for the preparation of**
 18 **contract documents for an improvement project.**
 19 SECTION 7. IC 8-23-26-1.2 IS ADDED TO THE INDIANA CODE
 20 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
 21 1, 2019]: **Sec. 1.2. (a) A utility shall submit the:**
 22 **(1) name;**
 23 **(2) street address;**
 24 **(3) mailing address;**
 25 **(4) phone number;**
 26 **(5) fax number; and**
 27 **(6) email address;**
 28 **of the utility's authorized representative to the department in**
 29 **January of each year.**
 30 **(b) Based on information provided by utilities under subsection**
 31 **(a), the department shall establish and publish on the department's**
 32 **Internet web site a searchable data base of authorized**
 33 **representatives of utilities for purposes of improvement projects**
 34 **that involve the relocation of utility facilities.**
 35 **(c) A utility that provides information to the department under**
 36 **subsection (a) shall notify the department of any change in the**
 37 **information not more than thirty (30) days after the change occurs.**
 38 SECTION 8. IC 8-23-26-1.3 IS ADDED TO THE INDIANA CODE
 39 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
 40 1, 2019]: **Sec. 1.3. (a) If the department determines that the location**
 41 **of a utility's facilities will interfere with a planned highway or**
 42 **bridge construction or improvement project, the commissioner**



1 may order the utility to relocate the utility's facilities. The
 2 department shall make a reasonable effort to identify all facilities
 3 that are located within the geographical limits of an improvement
 4 project by doing at least the following:

- 5 (1) Researching permit files.
- 6 (2) Reviewing map files maintained by the department.
- 7 (3) Investigating field conditions.
- 8 (4) Reviewing information provided by the Indiana
 9 Underground Plant Protection Service or a successor
 10 organization under IC 8-1-26-17.
- 11 (5) Contacting local government offices.

12 (b) The department shall mail an initial notice of the proposed
 13 improvement project to each utility that owns a facility identified
 14 under subsection (a). The notice must include the following:

- 15 (1) The name or route number, or both, of the highway.
- 16 (2) The geographical limits of the improvement project.
- 17 (3) A general description of the work to be done.
- 18 (4) The anticipated date an approved work plan will be
 19 needed.
- 20 (5) The anticipated ready for contract date of the
 21 improvement project.
- 22 (6) The name and contact information of the designer, if
 23 available.
- 24 (7) The department's determination of whether the project is
 25 a major project or a minor project.

26 The department shall inform the utility of the latest anticipated
 27 dates with each notice.

28 (c) Not later than thirty (30) days after a utility receives notice
 29 under subsection (b), the utility shall respond to the department
 30 with a written:

- 31 (1) description of the type and location of the utility's facilities
 32 within the geographical limits of the proposed improvement
 33 project; or
- 34 (2) statement that the utility has no facilities within the
 35 geographical limits of the improvement project.

36 (d) Following the thirty (30) day period under subsection (c), the
 37 department may request through the Indiana Underground Plant
 38 Protection Service that the utility locate the utility's facilities that
 39 are within the geographical limits of the proposed improvement
 40 project in accordance with IC 8-1-26. The department and the
 41 utility may agree on a mutually acceptable format or schedule for
 42 the exchange of this information. The department shall measure



1 and record the locations of the field markings.

2 (e) The department shall:

3 (1) create one (1) or more plan sheets that:

4 (A) identify the locations of all facilities that are within the
5 right-of-way or geographical limits of the improvement
6 project; and

7 (B) list the utilities that own the facilities identified under
8 clause (A); and

9 (2) mail a copy of the plan sheets to each utility listed under
10 subdivision (1).

11 (f) A utility shall do the following not later than thirty (30) days
12 after receiving plan sheets under subsection (e):

13 (1) Review the accuracy of the plan as to the location of the
14 utility's existing facilities.

15 (2) Declare in writing to the department whether the
16 information is accurate or inaccurate.

17 (3) Detail in writing to the department any inaccuracies in the
18 information.

19 If a utility fails to respond as required under this subsection, the
20 department shall consider the plan sheets accurate as to the
21 utility's information.

22 (g) The department shall mail preliminary project plans to a
23 utility in conjunction with the mailing of plan sheets to the utility
24 under subsection (e) or as a separate mailing.

25 (h) After receiving preliminary project plans under subsection
26 (g), a utility shall do the following:

27 (1) Review the preliminary project plans.

28 (2) Declare in writing to the department whether there are
29 conflicts between the utility's facilities and the improvement
30 project.

31 (3) Detail in writing to the department any conflicts between
32 the utility's facilities and the proposed improvement project.

33 (i) A utility shall provide a response to the department under
34 subsection (h) not later than:

35 (1) thirty (30) days after the utility receives preliminary
36 project plans for a minor project; and

37 (2) sixty (60) days after the utility receives preliminary project
38 plans for a major project.

39 The department shall consider a utility's failure to provide a
40 response as required under this subsection to be an indication that
41 no conflict exists between the utility's facilities and the
42 improvement project.



1 (j) If a utility's response under subsection (h) identifies conflicts
 2 between the utility's facilities and the improvement project, the
 3 utility may recommend design changes for the improvement
 4 project to minimize utility costs or delays. The department shall
 5 review the recommended changes and implement the changes as
 6 the department considers appropriate.

7 SECTION 9. IC 8-23-26-1.4 IS ADDED TO THE INDIANA CODE
 8 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
 9 1, 2019]: Sec. 1.4. (a) After completion of the process under section
 10 1.3 of this chapter, the department shall proceed with development
 11 of final project plans for the improvement project.

12 (b) The department shall mail a copy of the preliminary final
 13 project plans for the improvement project to each utility to which
 14 the department provided preliminary project plans under section
 15 1.3 of this chapter. Plans provided under this subsection may be
 16 incomplete, but must contain sufficient detail to allow the utility to
 17 prepare a preliminary work plan under subsection (c).

18 (c) A utility shall use preliminary final project plans received by
 19 the utility under subsection (b) to develop the utility's work plan.
 20 Except as provided in subsection (d), the utility shall submit the
 21 work plan to the department not later than:

- 22 (1) sixty (60) days after the utility receives preliminary final
 23 project plans for a minor project; or
 24 (2) one hundred twenty (120) days after the utility receives
 25 preliminary final project plans for a major project.

26 The utility shall submit a work plan to the department under this
 27 subsection regardless of whether the improvement project requires
 28 any facility owned by the utility to be relocated.

29 (d) If a utility or the department determines there is a potential
 30 for conflict between the work plans of one (1) or more utilities
 31 under subsection (c), the department shall schedule a meeting with
 32 the utilities for the purpose of coordinating the utilities' work
 33 plans. The department:

- 34 (1) shall extend the time within which a utility is required to
 35 submit the utility's work plan under subsection (c) by not
 36 more than thirty (30) days if the utility is required to
 37 coordinate with another utility under this subsection; and
 38 (2) may extend the time within which a utility is required to
 39 submit the utility's work plan under subsection (c) by more
 40 than thirty (30) days, but not more than one hundred twenty
 41 (120) days, for unusually complex or extensive facility
 42 relocations.



1 (e) A work plan submitted by a utility under this section must
2 include the following:

3 (1) A narrative description of the facility relocation that will
4 be required.

5 (2) A statement of whether the facility relocation is dependent
6 on:

7 (A) work to be done by another utility, the department, or
8 a department contractor; or

9 (B) the acquisition of additional right-of-way;
10 with a description of the necessary work or acquisition.

11 (3) A statement of whether the utility is willing to allow a
12 department contractor to perform the required work under
13 subdivision (2) as part of the improvement project contract.
14 However, if the utility allows a department contractor to
15 perform the required work, the department shall indemnify
16 the utility for any:

17 (A) damage to the property or facilities of the utility or the
18 utility's customers;

19 (B) loss of the utility's service to the utility's customers; or

20 (C) interruption of the utility's service to the utility's
21 customers;

22 caused by the department contractor's work.

23 (4) The:

24 (A) earliest date on which the utility could begin to
25 implement the work plan; and

26 (B) number of days needed to complete the required work.

27 (5) The expected lead time, in days, needed by the utility to:

28 (A) obtain any required permits;

29 (B) obtain materials;

30 (C) schedule work crews; and

31 (D) obtain any necessary additional right-of-way.

32 (6) A drawing of sufficient detail and scale to show the
33 proposed location of the facility relocation.

34 (7) With respect to compensable work, a cost estimate for the
35 facility relocation, including appropriate credits for
36 betterments and documentation of easements and
37 compensable land rights.

38 (f) The department shall review a work plan submitted under
39 this section to ensure:

40 (1) that the work plan is compatible with:

41 (A) department permit requirements;

42 (B) the project plans;



- 1 (C) the construction schedule; and
 2 (D) other utility relocation work plans; and
 3 (2) that the work plan has a reasonable:
 4 (A) relocation scheme; and
 5 (B) cost for compensable work.
- 6 (g) If the work plan submitted by a utility under this section is
 7 not compatible or reasonable as described in subsection (f), the
 8 department shall notify the utility by mail as soon as practicable.
- 9 (h) Not later than thirty (30) days after a utility receives a notice
 10 under subsection (g), the utility shall submit a revised work plan to
 11 the department. The department shall review the revised work
 12 plan and, if the revised work plan is not compatible or reasonable
 13 as described in subsection (f), prepare an alternative work plan
 14 and submit the alternative work plan to the utility.
- 15 (i) Not later than thirty (30) days after a utility receives an
 16 alternative work plan under subsection (h), the utility may:
 17 (1) accept the alternative work plan; or
 18 (2) submit to the department a written request for specific
 19 changes to the alternative work plan.
- 20 The department shall review any requested changes to an
 21 alternative work plan submitted under this subsection.
- 22 (j) The department shall adopt a final work plan that takes into
 23 consideration the interests of:
 24 (1) the public;
 25 (2) the utility that is subject to the work plan; and
 26 (3) any department contractor with which the department
 27 contracts for the improvement project;
 28 to ensure safety and reliability of the utility's facility and the
 29 highway and avoid the imposition of unnecessary and unreasonable
 30 costs.
- 31 (k) The final work plan adopted by the department under
 32 subsection (j) is:
 33 (1) the approved work plan; and
 34 (2) considered a final agency action, subject to appeal under
 35 IC 4-21.5-3.
- 36 (l) The department shall execute a highway utility agreement, if
 37 required, at the time the department adopts a final work plan
 38 under subsection (j).
- 39 (m) The department shall, as soon as practicable after a final
 40 work plan is adopted under subsection (j), mail notice of the
 41 adoption to any utility whose facility is located within the
 42 geographical limits of the improvement project.



1 SECTION 10. IC 8-23-26-1.5 IS ADDED TO THE INDIANA
 2 CODE AS A NEW SECTION TO READ AS FOLLOWS
 3 [EFFECTIVE JULY 1, 2019]: **Sec. 1.5. (a) If, before the letting date**
 4 **of an improvement project, the project plan adopted for the**
 5 **improvement project under section 1.4 of this chapter is revised**
 6 **such that additional facility relocation is found to be necessary with**
 7 **respect to a utility's facility:**

8 (1) the department shall:

9 (A) provide the revised project plan to the utility under
 10 section 1.4 of this chapter; and

11 (B) identify to the utility the revisions in the project plan;
 12 and

13 (2) the utility shall submit a revised work plan to the
 14 department under section 1.4 of this chapter, except that the
 15 utility must submit the revised work plan to the department
 16 not more than sixty (60) days after the utility receives the
 17 revised project plan under subdivision (1).

18 (b) If, after the letting date of an improvement project,
 19 additional facility relocation is found to be necessary with respect
 20 to a utility's facility, the department shall request that the utility
 21 prepare an expedited work plan as soon as practicable for
 22 submission to the department.

23 (c) A utility may submit a new work plan for consideration by
 24 the department not earlier than one (1) year after the department
 25 adopts a final work plan under section 1.4 of this chapter. The
 26 department shall consider the new work plan, but may require the
 27 utility to proceed with the previously approved work plan.

28 SECTION 11. IC 8-23-26-1.6 IS ADDED TO THE INDIANA
 29 CODE AS A NEW SECTION TO READ AS FOLLOWS
 30 [EFFECTIVE JULY 1, 2019]: **Sec. 1.6. (a) The department shall**
 31 **notify a utility by mail not later than thirty (30) days before the**
 32 **utility is required to begin the implementation of a work plan**
 33 **adopted under section 1.4 of this chapter. The utility shall**
 34 **acknowledge the notification by mail not later than fifteen (15)**
 35 **days after the utility receives the notification.**

36 (b) The department shall include a:

37 (1) reference to; or

38 (2) copy of;

39 each approved work plan in the contract for the improvement
 40 project.

41 (c) If an approved work plan is dependent on work by a
 42 department contractor, the department contractor shall do the



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following:

(1) Provide to the department and the utility a good faith notice not later than fifteen (15) days before the department contractor's work is expected to be complete.

(2) Provide a follow-up notice to the department and the utility not later than five (5) days before the contractor's work will be complete.

(d) The utility shall notify the department and the department contractor (if the department contractor has been identified to the utility):

(1) at least five (5) days before the utility begins work within the right-of-way; and

(2) when the work is complete.

(e) A utility may provide the notice under subsection (d) verbally. However:

(1) notice provided under subsection (d)(1) must be confirmed in writing at least five (5) days before the utility begins work; and

(2) notice provided under subsection (d)(2) must be confirmed in writing at least five (5) days before the utility completes the work.

(f) If the improvement project involves more than one (1) utility and the work plans of the utilities must be performed sequentially, the department shall designate the sequence in which each utility must perform the utility's work. Upon each utility's completion of work, the department shall promptly, after receiving a notice of the completion from the utility under subsection (d), notify the next utility in the sequence that the utility may begin its work.

SECTION 12. IC 8-23-26-1.7 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 1.7. (a) Except as provided in subsection (b), a utility, the department, and a department contractor shall perform the duties imposed by:

(1) this chapter;

(2) a work plan adopted under this chapter; and

(3) a contract entered into under this chapter;

within the time frames specified in this chapter, in the work plan, and in the contract.

(b) A utility's failure to meet the schedule imposed by an approved work plan may be excused under circumstances that include the following:

(1) Effects of the following on the facility relocation:



- 1 **(A) Significantly differing site conditions.**
 2 **(B) Unexpected effects caused by other utilities.**
 3 **(C) Other unforeseen circumstances that could not have**
 4 **been reasonably anticipated through due diligence.**
 5 **(D) A force majeure event.**
 6 **(2) Occurrence of severe weather or other factors beyond the**
 7 **control of the utility that directly affect the approved work**
 8 **plan.**
 9 **(3) The final project plans differ substantially from the plans**
 10 **provided to the utility under section 1.4 of this chapter.**
 11 **(4) A facility that was not previously identified as being within**
 12 **the improvement project limits is discovered during the**
 13 **process required by IC 8-1-26, and the utility that owns the**
 14 **facility can show the following:**
 15 **(A) The facility was installed after the date the department**
 16 **identified affected facilities under section 1.3 of this**
 17 **chapter.**
 18 **(B) A proper permit was obtained from the department for**
 19 **the installation of the facility.**
 20 **(c) If an approved work plan requires adjustment due to the**
 21 **occurrence of one (1) or more circumstances under subsection (b),**
 22 **the department and the utility shall proceed as directed in section**
 23 **1.5(b) of this chapter.**
 24 **(d) Subject to sections 1.4(k), 1.5, and 4 of this chapter and**
 25 **subsection (b), if a utility does not perform the duties imposed by**
 26 **a final work plan adopted under section 1.4(j) of this chapter**
 27 **within the time frame set forth in the final work plan, the**
 28 **department may relocate, or cause the relocation of, the utility's**
 29 **facilities in accordance with subsection (e), or may file a complaint**
 30 **for an emergency order to compel the utility to relocate the**
 31 **facilities in accordance with subsection (f).**
 32 **(e) If the department relocates, or causes the relocation of, the**
 33 **utility's facilities as authorized under subsection (d), the**
 34 **department may recover from the utility the costs of the relocation.**
 35 **Upon the presentation of an invoice of the costs of the relocation**
 36 **from the department, the utility shall reimburse the department**
 37 **for the costs of the relocation that are not extraordinary costs**
 38 **incurred by the department in relocating, or causing the relocation**
 39 **of, the facilities. However, if the department relocates, or causes**
 40 **the relocation of, the utility's facilities as authorized under**
 41 **subsection (d), the department shall indemnify the utility for any:**
 42 **(1) damage to the property or facilities of the utility or the**



1 utility's customers;
 2 (2) loss of the utility's service to the utility's customers; or
 3 (3) interruption of the utility's service to the utility's
 4 customers;
 5 caused by the department's, or by a department contractor's,
 6 relocation of the utility's facilities.

7 (f) If the department seeks an emergency order to compel the
 8 utility to relocate the utility's facilities as authorized under
 9 subsection (d), the department shall file a complaint for the order
 10 in the circuit or superior court of the county containing the
 11 majority of the facilities to be relocated. Except with respect to a
 12 utility that is subject to regulation by the Indiana utility regulatory
 13 commission, if the department prevails in an action under this
 14 subsection, the court shall order the utility to:

15 (1) reimburse the department for reasonable litigation
 16 expenses, including:

- 17 (A) court costs; and
- 18 (B) reasonable attorney's fees;
 19 incurred by the department in the action; and
- 20 (2) pay to the department a civil penalty of not less than
 21 twenty thousand dollars (\$20,000).

22 (g) If the utility prevails in an action under subsection (f), the
 23 court shall order the department to pay:

- 24 (1) the costs of any relocation of the utility's facilities in
 25 connection with the project; and
- 26 (2) the reasonable litigation expenses, including:
 27 (A) court costs; and
 28 (B) reasonable attorney's fees;
 29 incurred by the utility in the action.

30 SECTION 13. IC 8-23-26-1.8 IS ADDED TO THE INDIANA
 31 CODE AS A NEW SECTION TO READ AS FOLLOWS
 32 [EFFECTIVE JULY 1, 2019]: **Sec. 1.8. Notwithstanding sections 1.2**
 33 **through 1.7 of this chapter, the department may require a utility**
 34 **to comply with a reasonable:**

- 35 (1) shortened process; or
- 36 (2) expedited schedule;

37 **if the shortened process or expedited schedule is necessitated by an**
 38 **emergency that could affect public safety or the structural or**
 39 **functional integrity of a highway.**

40 SECTION 14. IC 8-23-26-1.9 IS ADDED TO THE INDIANA
 41 CODE AS A NEW SECTION TO READ AS FOLLOWS
 42 [EFFECTIVE JULY 1, 2019]: **Sec. 1.9. A civil action may be**



1 **prosecuted by or against a utility, the department, or a department**
 2 **contractor to recover costs and expenses directly resulting from a**
 3 **willful violation of sections 1.2 through 1.7 of this chapter.**

4 SECTION 15. IC 8-23-26-2 IS REPEALED [EFFECTIVE JULY 1,
 5 2019]. Sec. 2: If the department determines that the location of a
 6 utility's facilities will interfere with a planned highway or bridge
 7 construction or improvement project, the commissioner may order the
 8 utility to relocate the utility's facilities. An order issued under this
 9 section may not take effect less than six (6) months after the date the
 10 department requests, in writing, that the utility provide a facilities
 11 relocation plan.

12 SECTION 16. IC 8-23-26-3 IS REPEALED [EFFECTIVE JULY 1,
 13 2019]. Sec. 3: The department shall give notice under IC 4-21.5-3-6 to
 14 the utility of the commissioner's order to relocate the utility's facilities.

15 SECTION 17. IC 8-23-26-4 IS AMENDED TO READ AS
 16 FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 4. A utility that
 17 receives notice of an order under section 3 **1.3(a)** of this chapter may
 18 appeal the order under IC 4-21.5-3 for the following reasons:

- 19 (1) The utility disputes the necessity of the relocation.
- 20 (2) The utility determines that the utility cannot relocate the
 21 utility's facilities for any reason.

22 SECTION 18. IC 8-23-26-13 IS AMENDED TO READ AS
 23 FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 13. If a utility does not
 24 carry out the utility's responsibilities under section 10 of this chapter
 25 within six (6) months after the department has requested, in writing, a
 26 facilities relocation plan, **the time frame set forth in the final work**
 27 **plan adopted under section 1.4(j) of this chapter, the department**
 28 **may cause the relocation of the customer service facilities to occur in**
 29 **accordance with the procedures set forth in section 1.7(d) through**
 30 **section 1.7(g) of this chapter. However, if the department relocates,**
 31 **or causes the relocation of, the utility's customer service facilities**
 32 **under this section, the department shall indemnify the utility for**
 33 **any:**

- 34 (1) **damage to the property or facilities of the utility or the**
 35 **utility's customers;**
- 36 (2) **loss of the utility's service to the utility's customers; or**
- 37 (3) **interruption of the utility's service to the utility's**
 38 **customers;**

39 **caused by the department's, or by a department contractor's,**
 40 **relocation of the utility's customer service facilities.**

41 SECTION 19. IC 8-23-26-14 IS REPEALED [EFFECTIVE JULY
 42 1, 2019]. Sec. 14: (a) If the department causes the relocation of



1 customer service facilities under section 13 of this chapter; the
2 department may recover the costs of the relocation from the utility.
3 (b) A utility shall reimburse the department for costs that are
4 allowable under section 12(2) of this chapter and that the department
5 determines are not extraordinary costs incurred under section 13 of this
6 chapter upon the presentation of an invoice of the costs from the
7 department.
8 SECTION 20. [EFFECTIVE JULY 1, 2019] (a) **105 IAC 13 is void.**
9 **The publisher of the Indiana Administrative Code and Indiana**
10 **Register shall remove 105 IAC 13 from the Indiana Administrative**
11 **Code.**
12 (b) **This SECTION expires December 31, 2019.**



COMMITTEE REPORT

Madam President: The Senate Committee on Utilities, to which was referred Senate Bill No. 517, 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, between the enacting clause and line 1, begin a new paragraph and insert:

"SECTION 1. IC 8-1-9-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 2. When used in this chapter, the term:

(a) "Utility" shall include all privately, municipally, publicly, or cooperatively owned systems for supplying communications, power, light, heat, electricity, gas, water, pipeline, sewer, sewage disposal, drain, or like service, directly or indirectly, to the public. **The term includes cable television systems.**

(b) "Cost of relocation" shall include the entire amount paid by a utility properly attributable to such relocation, after deducting therefrom any increase in the value of the new facility and any salvage value derived from the old facility.

(c) "Highway" when used in this chapter shall mean only those routes which are included within the national system of interstate and defense highways."

Page 2, between lines 19 and 20, begin a new paragraph and insert:

"SECTION 3. IC 8-23-1-19 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 19. (a) "Department" refers to the Indiana department of transportation established under IC 8-23-2-1.

(b) For purposes of IC 8-23-26, the term includes any agent that is authorized by the Indiana department of transportation, through written or electronic communication, to act on behalf of the Indiana department of transportation.

SECTION 4. IC 8-23-2-5, AS AMENDED BY P.L.53-2014, SECTION 85, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 5. (a) The department, through the commissioner or the commissioner's designee, shall:

(1) develop, continuously update, and implement:

- (A) long range comprehensive transportation plans;
- (B) work programs; and
- (C) budgets;

to assure the orderly development and maintenance of an efficient statewide system of transportation;



- (2) implement the policies, plans, and work programs adopted by the department;
- (3) organize by creating, merging, or abolishing divisions;
- (4) evaluate and utilize whenever possible improved transportation facility maintenance and construction techniques;
- (5) carry out public transportation responsibilities, including:
 - (A) developing and recommending public transportation policies, plans, and work programs;
 - (B) providing technical assistance and guidance in the area of public transportation to political subdivisions with public transportation responsibilities;
 - (C) developing work programs for the utilization of federal mass transportation funds;
 - (D) furnishing data from surveys, plans, specifications, and estimates required to qualify a state agency or political subdivision for federal mass transportation funds;
 - (E) conducting or participating in any public hearings to qualify urbanized areas for an allocation of federal mass transportation funding;
 - (F) serving, upon designation of the governor, as the state agency to receive and disburse any state or federal mass transportation funds that are not directly allocated to an urbanized area;
 - (G) entering into agreements with other states, regional agencies created in other states, and municipalities in other states for the purpose of improving public transportation service to the citizens; and
 - (H) developing and including in its own proposed transportation plan a specialized transportation services plan for the elderly and persons with disabilities;
- (6) provide technical assistance to units of local government with road and street responsibilities;
- (7) develop, undertake, and administer the program of research and extension required under IC 8-17-7;
- (8) allow public testimony in accordance with section 17 of this chapter whenever the department holds a public hearing (as defined in section 17 of this chapter); and
- (9) ~~adopt rules under IC 4-22-2 to reasonably and cost effectively manage the right-of-way of the state highway system by establishing a formal procedure for highway improvement projects that involve the relocation of utility facilities by providing for an exchange of information among the department;~~



utilities; and the department's highway construction contractors: **under IC 8-23-26.**

(b) Rules adopted under subsection (a)(9):

(1) shall not unreasonably affect the cost; or impair the safety or reliability; of a utility service; and

(2) must require a utility to provide information concerning all authorized representatives of the utility for purposes of highway improvement projects and improvement projects undertaken by local units of government.

(c) (b) A civil action may be prosecuted by or against the department; a department highway construction contractor; or a utility to recover costs and expenses directly resulting from willful violation of the rules. Nothing in this section or in subsection (a)(9) shall be construed as granting authority to the department to adopt rules establishing fines, assessments, or other penalties for or against utilities or the department's highway construction contractors.

(d) Based on information provided by utilities under rules described in subsection (b)(2), the department shall establish and publish on the department's Internet web site a searchable data base of authorized representatives of utilities for purposes of improvement projects that involve the relocation of utility facilities. A utility that provides information described in subsection (b)(2) shall:

(1) update the information provided to the department on an annual basis; and

(2) notify the department of any change in the information not more than thirty (30) days after the change occurs.

(e) (c) Not later than August 1 of each year, the department, through the commissioner or the commissioner's designee, shall prepare for the interim study committee on roads and transportation a report that includes updates on the following:

(1) Transportation and infrastructure funding.

(2) Public-private agreements under IC 8-15.5.

(3) Public-private partnerships under IC 8-15.7.

(4) Reports and supplements prepared under IC 8-23-12.

(5) Programs and projects conducted in cooperation with Purdue University under IC 8-23-9-56.

(6) Any other information requested by the study committee.

The report must be submitted in an electronic format under IC 5-14-6.

SECTION 5. IC 8-23-9-56, AS AMENDED BY P.L.53-2014, SECTION 86, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 56. (a) The department may cooperate with and assist Purdue University in developing the best methods of improving



and maintaining the highways of the state and the respective counties. In so cooperating with Purdue University and for the purpose of developing and disseminating helpful information concerning road construction and improvement and the operation of the highways of the state and the counties, the department may expend money annually from the funds appropriated to the department's use for the use and benefit of Purdue University in carrying on programs of highway research and highway extension at or in connection with Purdue University and for the annual road school held at Purdue University. In addition, the money may be increased by federal funds, which may be made available to the department for the engineering and economic investigation of projects for future construction and for highway research necessary in connection therewith.

(b) For the purpose of disseminating knowledge of the highway maintenance methods that are best suited to the various sections of Indiana, the county and state highway officials, in cooperation with Purdue University, may hold joint road meetings in the various sections of Indiana.

(c) The aid authorized by this section shall be paid quarterly by the department to Purdue University upon proper voucher.

(d) Not later than August 1 of each year, a representative of Purdue University shall prepare, in cooperation with the department under ~~IC 8-23-2-5(c)(5)~~; **IC 8-23-2-5(c)(5)**, for the interim study committee on roads and transportation a report that includes updates on the following:

- (1) Programs or projects conducted under this section.
- (2) Any other information requested by the study committee.

The report must be submitted in an electronic format under IC 5-14-6.

SECTION 6. IC 8-23-26-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 1. (a) This chapter does not apply to a project let under IC 8-23-11.

(b) This chapter applies only to projects on the state highway system (as defined in IC 8-23-1-40).

(c) This chapter is not intended to modify the provisions of IC 8-1-26.

SECTION 7. IC 8-23-26-1.1 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: **Sec. 1.1. The following definitions apply throughout this chapter:**

- (1) "Compensable work" means facility relocation for which the department will reimburse the relocating utility.**
- (2) "Department contractor" means a person or entity with**



which the department enters into a contract for an improvement project.

(3) "Facility" includes all privately, municipally, publicly, or cooperatively owned systems for supplying any of the following services directly or indirectly to the public:

- (A) Communications.
- (B) Power.
- (C) Light.
- (D) Heat.
- (E) Electricity.
- (F) Gas.
- (G) Water.
- (H) Pipeline.
- (I) Sewer.
- (J) Sewage disposal.
- (K) Drainage.
- (L) A service comparable to a service described in clauses (A) through (K).

The term includes cable television systems.

(4) "Facility relocation" includes any activity involving a facility that is necessary to accommodate an improvement project, including the following:

- (A) Abandoning.
- (B) Alteration.
- (C) Deactivation.
- (D) Installation.
- (E) Maintenance.
- (F) Modification.
- (G) Moving.
- (H) Removal.
- (I) Support.

(5) "Highway" means any roadway:

- (A) that is under the jurisdiction of the department; or
- (B) where an improvement project is planned.

(6) "Improvement project" means the construction, reconstruction, rehabilitation, and process incidental to building, fabricating, or bettering any of the following:

- (A) A state, interstate, or United States route.
- (B) Projects within the state parks or other roadways that the department is required by statute to build and maintain.
- (C) A local project administered by the department.



(D) A project on the state highway system that is administered by a local authority.

(7) "Mail" includes delivery or transmission of:

(A) a writing; or

(B) an electronic file in a format that is readable by the department;

by United States mail, a private carrier, electronic mail, fax, or hand delivery.

(8) "Major project" means an improvement project that:

(A) due to the scope or complexity of the project, involves a design process of more than twelve (12) months; or

(B) is designated by the department as a major project.

(9) "Minor project" means an improvement project that:

(A) due to the scope or complexity of the project, involves a design process of not more than twelve (12) months; or

(B) is designated by the department as a minor project.

(10) "Ready for contract date" means a date:

(A) established by the department; and

(B) subject to revision by the department based on progress of the design;

by which all materials will be available for the preparation of contract documents for an improvement project.

SECTION 8. IC 8-23-26-1.2 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 1.2. (a) A utility shall submit the:

(1) name;

(2) street address;

(3) mailing address;

(4) phone number;

(5) fax number; and

(6) email address;

of the utility's authorized representative to the department in January of each year.

(b) Based on information provided by utilities under subsection (a), the department shall establish and publish on the department's Internet web site a searchable data base of authorized representatives of utilities for purposes of improvement projects that involve the relocation of utility facilities.

(c) A utility that provides information to the department under subsection (a) shall notify the department of any change in the information not more than thirty (30) days after the change occurs.

SECTION 9. IC 8-23-26-1.3 IS ADDED TO THE INDIANA CODE



AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 1.3. (a) The department shall make a reasonable effort to identify all facilities that are located within the geographical limits of an improvement project by doing at least the following:

- (1) Researching permit files.
- (2) Reviewing map files maintained by the department.
- (3) Investigating field conditions.
- (4) Reviewing information provided by the Indiana Underground Plant Protection Service or a successor organization under IC 8-1-26-17.
- (5) Contacting local government offices.

(b) The department shall mail an initial notice of the proposed improvement project to each utility that owns a facility identified under subsection (a). The notice must include the following:

- (1) The name or route number, or both, of the highway.
- (2) The geographical limits of the improvement project.
- (3) A general description of the work to be done.
- (4) The anticipated date an approved work plan will be needed.
- (5) The anticipated ready for contract date of the improvement project.
- (6) The name and contact information of the designer, if available.
- (7) The department's determination of whether the project is a major project or a minor project.

The department shall inform the utility of the latest anticipated dates with each notice.

(c) Not later than thirty (30) days after a utility receives notice under subsection (b), the utility shall respond to the department with a written:

- (1) description of the type and location of the utility's facilities within the geographical limits of the proposed improvement project; or
- (2) statement that the utility has no facilities within the geographical limits of the improvement project.

(d) Following the thirty (30) day period under subsection (c), the department may request through the Indiana Underground Plant Protection Service that the utility locate the utility's facilities that are within the geographical limits of the proposed improvement project in accordance with IC 8-1-26. The department and the utility may agree on a mutually acceptable format or schedule for



the exchange of this information. The department shall measure and record the locations of the field markings.

(e) The department shall:

(1) create one (1) or more plan sheets that:

(A) identify the locations of all facilities that are within the right-of-way or geographical limits of the improvement project; and

(B) list the utilities that own the facilities identified under clause (A); and

(2) mail a copy of the plan sheets to each utility listed under subdivision (1).

(f) A utility shall do the following not later than thirty (30) days after receiving plan sheets under subsection (e):

(1) Review the accuracy of the plan as to the location of the utility's existing facilities.

(2) Declare in writing to the department whether the information is accurate or inaccurate.

(3) Detail in writing to the department any inaccuracies in the information.

If a utility fails to respond as required under this subsection, the department shall consider the plan sheets accurate as to the utility's information.

(g) The department shall mail preliminary project plans to a utility in conjunction with the mailing of plan sheets to the utility under subsection (e) or as a separate mailing.

(h) After receiving preliminary project plans under subsection (g), a utility shall do the following:

(1) Review the preliminary project plans.

(2) Declare in writing to the department whether there are conflicts between the utility's facilities and the improvement project.

(3) Detail in writing to the department any conflicts between the utility's facilities and the proposed improvement project.

(i) A utility shall provide a response to the department under subsection (h) not later than:

(1) thirty (30) days after the utility receives preliminary project plans for a minor project; and

(2) sixty (60) days after the utility receives preliminary project plans for a major project.

The department shall consider a utility's failure to provide a response as required under this subsection to be an indication that no conflict exists between the utility's facilities and the



improvement project.

(j) If a utility's response under subsection (h) identifies conflicts between the utility's facilities and the improvement project, the utility may recommend design changes for the improvement project to minimize utility costs or delays. The department shall review the recommended changes and implement the changes as the department considers appropriate.

SECTION 10. IC 8-23-26-1.4 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 1.4. (a) After completion of the process under section 1.3 of this chapter, the department shall proceed with development of final project plans for the improvement project.

(b) The department shall mail a copy of the preliminary final project plans for the improvement project to each utility to which the department provided preliminary project plans under section 1.3 of this chapter. Plans provided under this subsection may be incomplete, but must contain sufficient detail to allow the utility to prepare a preliminary work plan under subsection (c).

(c) A utility shall use preliminary final project plans received by the utility under subsection (b) to develop the utility's work plan. Except as provided in subsection (d), the utility shall submit the work plan to the department not later than:

- (1) sixty (60) days after the utility receives preliminary final project plans for a minor project; or
- (2) one hundred twenty (120) days after the utility receives preliminary final project plans for a major project.

The utility shall submit a work plan to the department under this subsection regardless of whether the improvement project requires any facility owned by the utility to be relocated.

(d) If a utility or the department determines there is a potential for conflict between the work plans of one (1) or more utilities under subsection (c), the department shall schedule a meeting with the utilities for the purpose of coordinating the utilities' work plans. The department:

- (1) shall extend the time within which a utility is required to submit the utility's work plan under subsection (c) by not more than thirty (30) days if the utility is required to coordinate with another utility under this subsection; and
- (2) may extend the time within which a utility is required to submit the utility's work plan under subsection (c) by more than thirty (30) days, but not more than one hundred twenty



(120) days, for unusually complex or extensive facility relocations.

(e) A work plan submitted by a utility under this section must include the following:

(1) A narrative description of the facility relocation that will be required.

(2) A statement of whether the facility relocation is dependent on:

(A) work to be done by another utility, the department, or a department contractor; or

(B) the acquisition of additional right-of-way; with a description of the necessary work or acquisition.

(3) A statement of whether the utility is willing to allow a department contractor to perform the required work under subdivision (2) as part of the improvement project contract.

(4) The:

(A) earliest date on which the utility could begin to implement the work plan; and

(B) number of days needed to complete the required work.

(5) The expected lead time, in days, needed by the utility to:

(A) obtain any required permits;

(B) obtain materials;

(C) schedule work crews; and

(D) obtain any necessary additional right-of-way.

(6) A drawing of sufficient detail and scale to show the proposed location of the facility relocation.

(7) With respect to compensable work, a cost estimate for the facility relocation, including appropriate credits for betterments and documentation of easements and compensable land rights.

(f) The department shall review a work plan submitted under this section to ensure:

(1) that the work plan is compatible with:

(A) department permit requirements;

(B) the project plans;

(C) the construction schedule; and

(D) other utility relocation work plans; and

(2) that the work plan has a reasonable:

(A) relocation scheme; and

(B) cost for compensable work.

(g) If the work plan submitted by a utility under this section is not compatible or reasonable as described in subsection (f), the



department shall notify the utility by mail as soon as practicable.

(h) Not later than thirty (30) days after a utility receives a notice under subsection (g), the utility shall submit a revised work plan to the department. The department shall review the revised work plan and, if the revised work plan is not compatible or reasonable as described in subsection (f), prepare an alternative work plan and submit the alternative work plan to the utility.

(i) Not later than thirty (30) days after a utility receives an alternative work plan under subsection (h), the utility may:

- (1) accept the alternative work plan; or
- (2) submit to the department a written request for specific changes to the alternative work plan.

The department shall review any requested changes to an alternative work plan submitted under this subsection.

(j) The department shall adopt a final work plan that takes into consideration the interests of:

- (1) the public;
- (2) the utility that is subject to the work plan; and
- (3) any department contractor with which the department contracts for the improvement project;

to ensure safety and reliability of the utility's facility and the highway and avoid the imposition of unnecessary and unreasonable costs.

(k) The final work plan adopted by the department under subsection (j) is:

- (1) the approved work plan; and
- (2) considered a final agency action, subject to appeal under IC 4-21.5-3.

(l) The department shall execute a highway utility agreement, if required, at the time the department adopts a final work plan under subsection (j).

(m) The department shall, as soon as practicable after a final work plan is adopted under subsection (j), mail notice of the adoption to any utility whose facility is located within the geographical limits of the improvement project.

SECTION 11. IC 8-23-26-1.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: **Sec. 1.5. (a) If, before the letting date of an improvement project, the project plan adopted for the improvement project under section 1.4 of this chapter is revised such that additional facility relocation is found to be necessary with respect to a utility's facility:**



(1) the department shall:

(A) provide the revised project plan to the utility under section 1.4 of this chapter; and

(B) identify to the utility the revisions in the project plan; and

(2) the utility shall submit a revised work plan to the department under section 1.4 of this chapter, except that the utility must submit the revised work plan to the department not more than sixty (60) days after the utility receives the revised project plan under subdivision (1).

(b) If, after the letting date of an improvement project, additional facility relocation is found to be necessary with respect to a utility's facility, the department shall request that the utility prepare an expedited work plan as soon as practicable for submission to the department.

(c) A utility may submit a new work plan for consideration by the department not earlier than one (1) year after the department adopts a final work plan under section 1.4 of this chapter. The department shall consider the new work plan, but may require the utility to proceed with the previously approved work plan.

SECTION 12. IC 8-23-26-1.6 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: **Sec. 1.6. (a) The department shall notify a utility by mail not later than thirty (30) days before the utility is required to begin the implementation of a work plan adopted under section 1.4 of this chapter. The utility shall acknowledge the notification by mail not later than fifteen (15) days after the utility receives the notification.**

(b) The department shall include a:

(1) reference to; or

(2) copy of;

each approved work plan in the contract for the improvement project.

(c) If an approved work plan is dependent on work by a department contractor, the department contractor shall do the following:

(1) Provide to the department and the utility a good faith notice not later than fifteen (15) days before the department contractor's work is expected to be complete.

(2) Provide a follow-up notice to the department and the utility not later than five (5) days before the contractor's work will be complete.



(d) The utility shall notify the department and the department contractor (if the department contractor has been identified to the utility):

- (1) at least five (5) days before the utility begins work within the right-of-way; and**
- (2) when the work is complete.**

(e) A utility may provide the notice under subsection (d) verbally. However:

- (1) notice provided under subsection (d)(1) must be confirmed in writing at least five (5) days before the utility begins work; and**
- (2) notice provided under subsection (d)(2) must be confirmed in writing at least five (5) days before the utility completes the work.**

SECTION 13. IC 8-23-26-1.7 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 1.7. (a) Except as provided in subsection (b), a utility, the department, and a department contractor shall perform the duties imposed by:

- (1) this chapter;**
- (2) a work plan adopted under this chapter; and**
- (3) a contract entered into under this chapter;**

within the time frames specified in this chapter, in the work plan, and in the contract.

(b) A utility's failure to meet the schedule imposed by an approved work plan may be excused under circumstances that include the following:

- (1) Effects of the following on the facility relocation:**
 - (A) Significantly differing site conditions.**
 - (B) Unexpected effects caused by other utilities.**
 - (C) Other unforeseen circumstances that could not have been reasonably anticipated through due diligence.**
 - (D) A force majeure event.**
- (2) Occurrence of severe weather or other factors beyond the control of the utility that directly affect the approved work plan.**
- (3) The final project plans differ substantially from the plans provided to the utility under section 1.4 of this chapter.**
- (4) A facility that was not previously identified as being within the improvement project limits is discovered during the process required by IC 8-1-26, and the utility that owns the facility can show the following:**



(A) The facility was installed after the date the department identified affected facilities under section 1.3 of this chapter.

(B) A proper permit was obtained from the department for the installation of the facility.

(c) If an approved work plan requires adjustment due to the occurrence of one (1) or more circumstances under subsection (b), the department and the utility shall proceed as directed in section 1.5(b) of this chapter.

SECTION 14. IC 8-23-26-1.8 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: **Sec. 1.8. Notwithstanding sections 1.2 through 1.7 of this chapter, the department may require a utility to comply with a reasonable:**

- (1) shortened process; or**
- (2) expedited schedule;**

if the shortened process or expedited schedule is necessitated by an emergency that could affect public safety or the structural or functional integrity of a highway.

SECTION 15. IC 8-23-26-1.9 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: **Sec. 1.9. A civil action may be prosecuted by or against a utility, the department, or a department contractor to recover costs and expenses directly resulting from a willful violation of sections 1.2 through 1.7 of this chapter."**

Page 3, line 12, after "relocated." insert **"If the department prevails in an action under this subsection, the court shall order the utility to:**

- (1) reimburse the department for reasonable litigation expenses, including:**
 - (A) court costs; and**
 - (B) reasonable attorney's fees;**
- incurred by the department in the action; and**
- (2) pay to the department a civil penalty of not less than twenty thousand dollars (\$20,000)."**

Page 3, line 42, after "relocated." insert **"If the department prevails in an action under this subsection, the court shall order the utility to:**

- (1) reimburse the department for reasonable litigation expenses, including:**
 - (A) court costs; and**
 - (B) reasonable attorney's fees;**



**incurred by the department in the action; and
(2) pay to the department a civil penalty of not less than
twenty thousand dollars (\$20,000).**

SECTION 16. [EFFECTIVE JULY 1, 2019] **(a) 105 IAC 13 is void.
The publisher of the Indiana Administrative Code and Indiana
Register shall remove 105 IAC 13 from the Indiana Administrative
Code.**

(b) This SECTION expires December 31, 2019."

Re-number all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to SB 517 as introduced.)

MERRITT, Chairperson

Committee Vote: Yeas 10, Nays 0.

SENATE MOTION

Madam President: I move that Senate Bill 517 be amended to read
as follows:

Page 1, delete lines 1 through 15.

Page 2, line 34, after "county" insert ", a municipality,".

Page 8, line 12, after "(a)" insert "**If the department determines
that the location of a utility's facilities will interfere with a planned
highway or bridge construction or improvement project, the
commissioner may order the utility to relocate the utility's
facilities.**".

Page 14, between lines 24 and 25, begin a new paragraph and insert:

**"(f) If the improvement project involves more than one (1)
utility and the work plans of the utilities must be performed
sequentially, the department shall designate the sequence in which
each utility must perform the utility's work. Upon each utility's
completion of work, the department shall promptly, after receiving
a notice of the completion from the utility under subsection (d),
notify the next utility in the sequence that the utility may begin its
work."**

Page 15, between lines 19 and 20, begin a new paragraph and insert:

**"(d) Subject to sections 1.4(k), 1.5, and 4 of this chapter and
subsection (b), if a utility does not perform the duties imposed by
a final work plan adopted under section 1.4(j) of this chapter**

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within the time frame set forth in the final work plan, the department may relocate, or cause the relocation of, the utility's facilities in accordance with subsection (e), or may file a complaint for an emergency order to compel the utility to relocate the facilities in accordance with subsection (f).

(e) If the department relocates, or causes the relocation of, the utility's facilities as authorized under subsection (d), the department may recover from the utility the costs of the relocation. Upon the presentation of an invoice of the costs of the relocation from the department, the utility shall reimburse the department for the costs of the relocation that are not extraordinary costs incurred by the department in relocating, or causing the relocation of, the facilities.

(f) If the department seeks an emergency order to compel the utility to relocate the utility's facilities as authorized under subsection (d), the department shall file a complaint for the order in the circuit or superior court of the county CONTAINING the majority of the facilities to be relocated. Except with respect to a utility that is subject to regulation by the Indiana utility regulatory commission, if the department prevails in an action under this subsection, the court shall order the utility to:

(1) reimburse the department for reasonable litigation expenses, including:

(A) court costs; and

(B) reasonable attorney's fees;

incurred by the department in the action; and

(2) pay to the department a civil penalty of not less than twenty thousand dollars (\$20,000).

(g) If the utility prevails in an action under subsection (f), the court shall order the department to pay:

(1) the costs of any relocation of the utility's facilities in connection with the project; and

(2) the reasonable litigation expenses, including:

(A) court costs; and

(B) reasonable attorney's fees;

incurred by the utility in the action."

Page 15, delete lines 36 through 42, begin a new paragraph and insert:

"SECTION 15. IC 8-23-26-2 IS REPEALED [EFFECTIVE JULY 1, 2019]. Sec. 2: If the department determines that the location of a utility's facilities will interfere with a planned highway or bridge construction or improvement project, the commissioner may order the



utility to relocate the utility's facilities. An order issued under this section may not take effect less than six (6) months after the date the department requests, in writing, that the utility provide a facilities relocation plan.

SECTION 16. IC 8-23-26-3 IS REPEALED [EFFECTIVE JULY 1, 2019]. Sec. 3. The department shall give notice under IC 4-21.5-3-6 to the utility of the commissioner's order to relocate the utility's facilities.

SECTION 17. IC 8-23-26-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 4. A utility that receives notice of an order under section 3 **1.3(a)** of this chapter may appeal the order under IC 4-21.5-3 for the following reasons:

- (1) The utility disputes the necessity of the relocation.
- (2) The utility determines that the utility cannot relocate the utility's facilities for any reason."

Delete page 16.

Page 17, delete lines 1 through 33, begin a new paragraph and insert:

"SECTION 19. IC 8-23-26-13 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 13. If a utility does not carry out the utility's responsibilities under section 10 of this chapter within six (6) months after the department has requested, in writing, a facilities relocation plan, **the time frame set forth in the final work plan adopted under section 1.4(j) of this chapter, the department may cause the relocation of the customer service facilities to occur in accordance with the procedures set forth in section 1.7(d) through section 1.7(g) of this chapter.**

SECTION 20. IC 8-23-26-14 IS REPEALED [EFFECTIVE JULY 1, 2019]. Sec. 14. (a) If the department causes the relocation of customer service facilities under section 13 of this chapter, the department may recover the costs of the relocation from the utility.

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

Renumber all SECTIONS consecutively.

(Reference is to SB 517 as printed February 22, 2019.)

HEAD



SENATE MOTION

Madam President: I move that Senate Bill 517 be amended to read as follows:

Page 8, line 12, after "(a)" insert **"If the department determines that the location of a utility's facilities will interfere with a planned highway or bridge construction or improvement project, the commissioner may order the utility to relocate the utility's facilities."**

Page 11, line 25, after "contract." insert **"However, if the utility allows a department contractor to perform the required work, the department shall indemnify the utility for any:**

- (A) damage to the property or facilities of the utility or the utility's customers;**
 - (B) loss of the utility's service to the utility's customers; or**
 - (C) interruption of the utility's service to the utility's customers;**
- caused by the department contractor's work."**

Page 15, between lines 19 and 20, begin a new paragraph and insert:

"(d) Subject to sections 1.4(k), 1.5, and 4 of this chapter and subsection (b), if a utility does not perform the duties imposed by a final work plan adopted under section 1.4(j) of this chapter within the time frame set forth in the final work plan, the department may relocate, or cause the relocation of, the utility's facilities in accordance with subsection (e), or may file a complaint for an emergency order to compel the utility to relocate the facilities in accordance with subsection (f).

(e) If the department relocates, or causes the relocation of, the utility's facilities as authorized under subsection (d), the department may recover from the utility the costs of the relocation. Upon the presentation of an invoice of the costs of the relocation from the department, the utility shall reimburse the department for the costs of the relocation that are not extraordinary costs incurred by the department in relocating, or causing the relocation of, the facilities. However, if the department relocates, or causes the relocation of, the utility's facilities as authorized under subsection (d), the department shall indemnify the utility for any:

- (1) damage to the property or facilities of the utility or the utility's customers;**
- (2) loss of the utility's service to the utility's customers; or**
- (3) interruption of the utility's service to the utility's customers;**

caused by the department's, or by a department contractor's,



relocation of the utility's facilities.

(f) If the department seeks an emergency order to compel the utility to relocate the utility's facilities as authorized under subsection (d), the department shall file a complaint for the order in the circuit or superior court of the county containing the majority of the facilities to be relocated. Except with respect to a utility that is subject to regulation by the Indiana utility regulatory commission, if the department prevails in an action under this subsection, the court shall order the utility to:

(1) reimburse the department for reasonable litigation expenses, including:

(A) court costs; and

(B) reasonable attorney's fees;

incurred by the department in the action; and

(2) pay to the department a civil penalty of not less than twenty thousand dollars (\$20,000).

(g) If the utility prevails in an action under subsection (f), the court shall order the department to pay:

(1) the costs of any relocation of the utility's facilities in connection with the project; and

(2) the reasonable litigation expenses, including:

(A) court costs; and

(B) reasonable attorney's fees;

incurred by the utility in the action."

Page 15, delete lines 36 through 42, begin a new paragraph and insert:

"SECTION 16. IC 8-23-26-2 IS REPEALED [EFFECTIVE JULY 1, 2019]. Sec. 2: If the department determines that the location of a utility's facilities will interfere with a planned highway or bridge construction or improvement project, the commissioner may order the utility to relocate the utility's facilities. An order issued under this section may not take effect less than six (6) months after the date the department requests, in writing, that the utility provide a facilities relocation plan.

SECTION 17. IC 8-23-26-3 IS REPEALED [EFFECTIVE JULY 1, 2019]. Sec. 3: The department shall give notice under IC 4-21.5-3-6 to the utility of the commissioner's order to relocate the utility's facilities.

SECTION 18. IC 8-23-26-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 4. A utility that receives notice of an order under section 3 **1.3(a)** of this chapter may appeal the order under IC 4-21.5-3 for the following reasons:

(1) The utility disputes the necessity of the relocation.



(2) The utility determines that the utility cannot relocate the utility's facilities for any reason."

Delete page 16.

Page 17, delete lines 1 through 33, begin a new paragraph and insert:

"SECTION 19. IC 8-23-26-13 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 13. If a utility does not carry out the utility's responsibilities under section 10 of this chapter within ~~six (6) months after the department has requested, in writing, a facilities relocation plan;~~ **the time frame set forth in the final work plan adopted under section 1.4(j) of this chapter,** the department may cause the relocation of the customer service facilities to occur **in accordance with the procedures set forth in section 1.7(d) through section 1.7(g) of this chapter.** However, if the department relocates, or causes the relocation of, the utility's customer service facilities under this section, the department shall indemnify the utility for any:

- (1) damage to the property or facilities of the utility or the utility's customers;
- (2) loss of the utility's service to the utility's customers; or
- (3) interruption of the utility's service to the utility's customers;

caused by the department's, or by a department contractor's, relocation of the utility's customer service facilities.

SECTION 20. IC 8-23-26-14 IS REPEALED [EFFECTIVE JULY 1, 2019]. Sec. ~~14.~~ (a) If the department causes the relocation of customer service facilities under section 13 of this chapter, the department may recover the costs of the relocation from the utility.

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

Renumber all SECTIONS consecutively.

(Reference is to SB 517 as printed February 22, 2019.)

KOCH

