

Adopted	Rejected
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COMMITTEE REPORT

YES:	14
NO:	0

MR. SPEAKER:

*Your Committee on Commerce and Economic Development, to which was referred House Bill 1376, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill **be amended** as follows:*

- 1 Page 1, delete lines 1 through 17.
- 2 Delete page 2.
- 3 Page 3, delete lines 1 through 20.
- 4 Page 3, line 23, after "council" insert "**or county executive**".
- 5 Page 3, line 24, strike "or otherwise,".
- 6 Page 3, line 27, strike "terms and".
- 7 Page 3, line 28, strike "conditions" and insert "**provisions**".
- 8 Page 3, line 29, strike "may be permitted to occupy" and insert
- 9 "**occupies**".
- 10 Page 3, line 31, after "municipality" insert "**or county**".
- 11 Page 3, line 32, after "municipality" insert "**or county executive**".
- 12 Page 3, line 39, strike "or otherwise".
- 13 Page 3, line 41, after "municipality" insert "**or county**".
- 14 Page 4, line 9, after "municipalities" insert "**or county**
- 15 **executives**".

1 Page 5, delete lines 11 through 38, begin a new paragraph and
2 insert:

3 **"(b) Subject to the commission's authority under subsection**
4 **(a)(1) with respect to an unreasonable ordinance or other**
5 **determination, the municipality or county executive may operate**
6 **and maintain the streets, highways, and other public property in**
7 **the municipality or county for the safety of the traveling public. A**
8 **municipality or county executive may manage the public**
9 **right-of-way or require by ordinance fair and reasonable**
10 **compensation on a competitively neutral and nondiscriminatory**
11 **basis for occupation of the public right-of-way on a**
12 **nondiscriminatory basis, including occupation by the municipality**
13 **or county executive, if the compensation required is publicly**
14 **disclosed by the municipality or county executive. Fair and**
15 **reasonable compensation may not exceed the municipality or**
16 **county executive's direct, actual, and reasonably incurred costs of**
17 **managing the public right-of-way caused by the public utility's**
18 **occupancy. The management costs, which the municipality or**
19 **county executive shall assign individually to the public utility**
20 **creating the management costs, must be limited to the direct,**
21 **actual, and reasonably incurred costs a municipality or county**
22 **incurs in managing the public right-of-way. As used in this section,**
23 **"direct, actual, and reasonably incurred costs" refers to the costs**
24 **to the municipality or county of the following:**

- 25 **(1) Registering occupants.**
26 **(2) Verifying public right-of-way occupation.**
27 **(3) Inspecting job sites and restoration projects.**
28 **(4) Restoring work inadequately performed after providing**
29 **notice and the opportunity to correct the work.**
30 **(5) Administering a reasonable restoration ordinance that**
31 **ensures that a public utility adequately restores the**
32 **right-of-way as near as is reasonably possible to the**
33 **right-of-way's original condition.**

34 **Management costs do not include payment by a public utility for**
35 **the occupation of the public right-of-way or the fees and costs of**
36 **litigation relating to the interpretation of this section or an**
37 **ordinance adopted under this section. As used in this section, the**
38 **term "public right-of-way" does not include the airwaves above the**

1 **streets, highways, or other public property within the municipality**
 2 **or county as those airwaves are used for cellular or other nonwire**
 3 **telecommunications or broadcast service."**

4 Page 5, line 39, after "municipality" insert "**or county executive**".

5 Page 5, line 39, delete "deny or".

6 Page 5, line 41, after "municipality" insert "**or county**".

7 Page 5, line 42, delete "municipality's" and insert "**municipality**
 8 **or county executive's**".

9 Page 5, line 42, delete "review and".

10 Page 6, line 1, delete "approve" and insert "**advance notification**
 11 **of and review of**".

12 Page 6, line 1, delete "access to and ongoing use" and insert
 13 "**occupation**".

14 Page 6, line 2, after "municipality" insert "**or county**".

15 Page 6, line 3, delete "health,".

16 Page 6, line 3, delete ", and welfare".

17 Page 6, after line 3, begin a new paragraph and insert:

18 "SECTION 3. IC 8-23-6-6 IS AMENDED TO READ AS
 19 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 6. (a) An opening
 20 may not be made in:

21 (1) a highway in the state highway system;

22 (2) the right-of-way of a state highway; or

23 (3) the roadway of a street of a city or town over which a state
 24 highway is routed and which the department is required to
 25 maintain;

26 and a structure or obstruction may not be placed in a highway or
 27 roadway of a state highway without the consent of the department. A
 28 highway or roadway may not be dug up for laying or placing a pipe,
 29 sewer, pole, wire, conduit, track, or railway or for any other purpose,
 30 and trees may not be removed from the right-of-way of a state highway
 31 without the written permit of the department, and then only in
 32 accordance with the rules of the department. The work shall be done
 33 under the supervision and to the satisfaction of the department, and the
 34 entire expense of restoring the highway or street in as good condition
 35 as before shall be paid by the person to whom the permit is given.

36 (b) The department may require, before the granting of a permit,
 37 that a sufficient bond be given, or cash deposit made, to insure the
 38 restoration of the highway or street. **Except as provided in subsection**

1 (c), in granting a permit, the department may designate the place in the
 2 street, highway, or right-of-way thereof where the pipe, sewer, pole,
 3 wire, conduit, track, railway, or other device or thing may be
 4 constructed.

5 (c) In the case of construction of facilities to provide water to
 6 property that borders a United States highway within a two mile
 7 radius of a city having a population of more than eight thousand
 8 (8,000) and over which the city has zoning and planning authority
 9 in a county having a population of more than twenty-seven
 10 thousand five hundred (27,500) but less than twenty-seven
 11 thousand six hundred (27,600), the department may not designate
 12 the place in a street, highway, or a street or highway right-of-way
 13 where a pipe, sewer, pole, wire, conduit, track, railway, or another
 14 device or thing may be constructed if an applicant for a permit
 15 proposes an alternative place that:

16 (1) would reduce the cost of the project; and

17 (2) does not endanger the public health or safety.

18 (d) Whenever an alternative place in a street, highway, or a
 19 street or highway right-of-way where a pipe, sewer, pole, wire,
 20 conduit, track, railway, or another device or thing may be
 21 constructed is selected under subsection (c), the work must be done
 22 under the supervision and to the satisfaction of the department.
 23 The entire expense of restoring the highway or street to a condition
 24 that is as good as the condition of the street or highway before
 25 construction begins must be paid by the person to whom the permit
 26 is given.

27 ~~(e)~~ (e) A person who violates this section commits a Class C
 28 infraction.

29 SECTION 4. [EFFECTIVE UPON PASSAGE] **The Indiana**
 30 **department of transportation shall adopt rules under IC 4-22-2 to**
 31 **implement IC 8-23-6-6, as amended by this act.**

32 SECTION 5. **An emergency is declared for this act."**

33 Renumber all SECTIONS consecutively.

(Reference is to HB 1376 as introduced.)

and when so amended that said bill do pass.

Representative Bottorff