
ENGROSSED HOUSE BILL No. 1376

DIGEST OF HB 1376 (Updated February 23, 1998 11:21 pm - DI 75)

Citations Affected: IC 8-1; IC 36-7.

Synopsis: Local regulation of public utility facilities. Requires a municipality or county executive to adopt an ordinance to specify the provisions of a public utility's occupation of a public right-of-way. (Currently a municipality may use a contract as well as an ordinance.) Gives county executives the same powers as a municipality with respect to determining the basis upon which a public utility may occupy a public right-of-way. Prohibits a municipality or county executive from unreasonably denying or delaying a public utility's access to public property within the municipality or county. Allows a
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Effective: July 1, 1998.

Bottorff, Yount

(SENATE SPONSORS — MILLS, LEWIS)

January 13, 1998, read first time and referred to Committee on Commerce and Economic Development.

January 27, 1998, amended, reported — Do Pass.

February 2, 1998, read second time, amended, ordered engrossed.

February 3, 1998, engrossed. Read third time, passed. Yeas 83, nays 13.

SENATE ACTION

February 9, 1998, read first time and referred to Committee on Commerce and Consumer Affairs.

February 17, 1998, amended, reported favorably — Do Pass.

February 23, 1998, read second time, amended, ordered engrossed.

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municipality to recover the direct, actual, and reasonably incurred costs of managing a right-of-way. Specifies that the franchise agreements in force between a cable company and a municipality or county are not affected. Allows a municipality or county that exercises or does not exercise planning and zoning powers to regulate the location, erection, construction, reconstruction, change, alteration, removal, or enlargement of a telecommunications tower. Provides that if a person must obtain permission from a local unit to locate, erect or construct a telecommunications tower; the person must provide notice by certified mail to each owner of real property that is contiguous to, or located not more than 100 feet from, the real property where the tower will be located. Requires a notice to a real property owner to contain specified information in addition to any information required by the local unit. Provides that if the notice is returned unclaimed or refused, the person shall mail the notice by regular mail. Provides that the failure of delivery of the notice does not invalidate the notice. Provides that the local unit may charge a reasonable fee for issuance of a permit or other approval for a telecommunications tower.

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~~HEA 3776-LS (3N) (DI) 93+~~



Second Regular Session 110th General Assembly (1998)

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 1997 General Assembly.

HOUSE ENROLLED ACT No. 1376

AN ACT to amend the Indiana Code concerning utilities and transportation.

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

SECTION 1. IC 8-1-2-101 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 101. (a) Every municipal council **or county executive** shall have power:

(a) (1) To determine by ~~contract~~, ordinance ~~or otherwise~~, the quality and character of each kind of product or service to be furnished or rendered by any public utility furnishing any product or service within said municipality and all other terms and conditions **provisions**, not inconsistent with this chapter **or IC 8-1-11.1**, upon which ~~such a public utility may be permitted to occupy or department of public utilities created under IC 8-1-11.1 occupies the areas along, under, upon, and across~~ the streets, highways, or other public property within such municipality **or county**, and such ~~contract~~, ordinance or other determination of such municipality **or county executive** shall be in force and prima facie reasonable. Upon complaint made by such public utility, **department of public utilities**, or by any qualified complainant, as provided in section 54 of this chapter, the commission shall set a hearing, as provided in sections 54 to 67 of this chapter, and if it shall find such ~~contract~~, ordinance or other determination to be unreasonable, such ~~contract~~, ordinance

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or other determination shall be void.

~~(b)~~ **(2)** To require of any public utility, by ordinance, ~~or otherwise,~~ such additions and extensions to its physical plant within said municipality **or county** as shall be reasonable and necessary in the interest of the public, and to designate the location and nature of all such additions and extensions, the time within which they must be completed, and all conditions under which they must be constructed, subject to review by the commission as provided in subdivision ~~(a)~~: **(1)**.

~~(c)~~ **(3)** To provide for a penalty for noncompliance with the provisions of any ordinance or resolution adopted pursuant to the provisions of this section.

~~(d)~~ **(4)** The power and authority granted in this section shall exist and be vested in said municipalities **or county executives**, anything in this chapter to the contrary notwithstanding.

Provided, however, whenever, after a request by petition in writing of any public utility, **department of public utilities**, the city, or other political subdivision or other body, having jurisdiction of the matter, shall refuse or fail, for a period of thirty (30) days, to give or grant to such public utility **or department of public utilities** permission and authority to construct, maintain, and operate any additional construction, equipment, or facility, reasonably necessary for the transaction of the business of such public utility **or department of public utilities** and for the public convenience or interest, then such public utility **or department of public utilities** may file a petition with said commission for such right and permission, which petition shall state, with particularity, the construction, equipment, or other facility desired to be constructed and operated, and show a reasonable public necessity therefor, and also the failure or refusal of such city, political subdivision, or other body to give or grant such right or permission; and the commission shall thereupon give notice of the pendency of such petition, together with a copy thereof, to such city or other political subdivision or body, and of the time and place of hearing of the matter set forth in such petition; and such commission shall have power to hear and determine such matters and to give or grant such right and permission and to impose such conditions in relation thereto as the necessity of such public utility **or department of public utilities** and the public convenience and interest may reasonably require. Provided, further, that when the relocation by a public utility **or department of public utilities** of any of its construction, equipment, or facility located within the corporate limits of two (2) or more adjoining cities is reasonably necessary for the public convenience or

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interest, and any or either of said cities fail or refuse to give or grant to such public utility **or department of public utilities** permission and authority to relocate such construction, equipment, or facility, any municipality which has given or granted to such public utility **or department of public utilities** permission and authority to relocate such construction, equipment, and facility, ~~or said the~~ public utility **or department of public utilities** may file a petition with said commission for such right and permission to which petition the city or cities failing or refusing to give or grant the same shall be made a respondent, and such public utility **or department of public utilities** if not the petitioner shall also be made a respondent, and said commission shall have power to hear and determine such matter and to give or grant such right and permission and to impose such conditions in relation thereto as the public convenience and interest may reasonably require; and if said commission shall give or grant such right and permission, no further public authority to make such relocation as authorized or to go on any street, alley, road, or highway in said city or cities necessary to be used therefor shall be required of said public utility **or department of public utilities**. All orders entered before June 30, 1931, by the commission in cases within the provisions of this section are hereby declared legal and valid.

(b) Subject to the commission's authority under subsection (a)(1) with respect to an unreasonable ordinance or other determination, the municipality or county executive may operate and maintain the streets, highways, and other public property in the municipality or county for the safety of the traveling public, and a municipality or county executive may manage the public right-of-way or require by ordinance fair and reasonable compensation on a competitively neutral and nondiscriminatory basis for occupation of the public right-of-way on a nondiscriminatory basis, including occupation by the municipality or county executive, if the compensation required is publicly disclosed by the municipality or county executive. Fair and reasonable compensation may not exceed the municipality's or county executive's direct, actual, and reasonably incurred costs of managing the public right-of-way caused by the public utility's or department of public utilities' occupancy. The management costs, which the municipality or county executive shall assign individually to the public utility or department of public utilities creating the management costs, must be limited to the direct, actual, and reasonably incurred costs a municipality or county incurs in managing the public right-of-way. As used in this section,



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the term "management costs" includes but is not limited to the costs to the municipality or county of the following:

- (1) Registering occupants.
- (2) Verifying public right-of-way occupation.
- (3) Inspecting job sites and restoration projects.
- (4) Restoring work inadequately performed after providing notice and the opportunity to correct the work.
- (5) Administering a reasonable restoration ordinance that ensures that a public utility or department of public utilities adequately restores the right-of-way as near as is reasonably possible to the right-of-way's original condition.
- (6) Management costs associated with the implementation of an ordinance adopted under this section.

However, as used in this section, direct, actual, and reasonably incurred management costs do not include rents, franchise fees, or any other payment by a public utility or department of public utilities for occupation of the public right-of-way. As used in this section, the term "public right-of-way" does not include the airwaves above the streets, highways, or other public property within the municipality or county as those airwaves are used for cellular or other nonwire telecommunications or broadcast service.

(c) A municipality or county executive may not unreasonably delay a public utility's or department of public utilities' access to or use of a street, highway, or other public property within the municipality or county. However, subsection (a)(1) and this subsection do not limit a municipality or county executive's right to advance notification of and review of a public utility's or department of public utilities' occupation of a street, highway, or other public property within the municipality or county to ensure and protect the safety of the public.

(d) Nothing in this section may be construed to affect franchise agreements between a cable company and a municipality or county.

SECTION 2. An emergency is declared for this act.



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