

HOUSE BILL No. 1376

DIGEST OF INTRODUCED BILL

Citations Affected: IC 8-1-2-1; IC 8-1-2-101.

Synopsis: Public utility access to public right-of-way. Adds conveyance of telecommunications messages as a function performed by a public utility. Eliminates the power of a municipality to use a contract as a means by which the municipality may define the terms and conditions upon which a public utility is permitted to occupy public property within the municipality. Prohibits a municipality from unreasonably denying or delaying a public utility's access to public property within the municipality.

Effective: July 1, 1998.

Bottorff

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

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Introduced

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 *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 1997 General Assembly.

HOUSE BILL No. 1376

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

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

1 SECTION 1. IC 8-1-2-1, AS AMENDED BY P.L.91-1995,
2 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 1998]: Sec. 1. (a) "Public utility", as used in this chapter,
4 means every corporation, company, partnership, limited liability
5 company, individual, association of individuals, their lessees, trustees,
6 or receivers appointed by a court, that may own, operate, manage, or
7 control any plant or equipment within the state for the:
8 (1) conveyance of telegraph, ~~or~~ telephone, **or**
9 **telecommunications** messages;
10 (2) production, transmission, delivery, or furnishing of heat, light,
11 water, or power; or
12 (3) collection, treatment, purification, and disposal in a sanitary
13 manner of liquid and solid waste, sewage, night soil, and
14 industrial waste.
15 The term does not include a municipality that may acquire, own, or
16 operate any of the foregoing facilities.
17 (b) "Municipal council", as used in this chapter, means the



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1 legislative body of any town or city in Indiana wherein the property of
2 the public utility or any part thereof is located.

3 (c) "Municipality", as used in this chapter, means any city or town
4 of Indiana.

5 (d) "Rate", as used in this chapter, means every individual or joint
6 rate, fare, toll, charge, rental, or other compensation of any utility or
7 any two (2) or more such individual or joint rates, fares, tolls, charges,
8 rentals, or other compensation of any utility or any schedule or tariff
9 thereof, but nothing in this subsection shall give the commission any
10 control, jurisdiction, or authority over the rate charged by a municipally
11 owned utility except as in this chapter expressly provided.

12 (e) "Service" is used in this chapter in its broadest and most
13 inclusive sense and includes not only the use or accommodation
14 afforded consumers or patrons but also any product or commodity
15 furnished by any public or other utility and the plant, equipment,
16 apparatus, appliances, property, and facility employed by any public or
17 other utility in performing any service or in furnishing any product or
18 commodity and devoted to the purposes in which such public or other
19 utility is engaged and to the use and accommodation of the public.

20 (f) "Commission", as used in this chapter, means the commission
21 created by IC 8-1-1-2.

22 (g) "Utility", as used in this chapter, means every plant or equipment
23 within the state used for:

- 24 (1) the conveyance of telegraph and telephone messages;
- 25 (2) the production, transmission, delivery, or furnishing of heat,
26 light, water, or power, either directly or indirectly to the public;
- 27 or
- 28 (3) collection, treatment, purification, and disposal in a sanitary
29 manner of liquid and solid waste, sewage, night soil, and
30 industrial waste.

31 The term does not include a municipality that may acquire, own, or
32 operate facilities for the collection, treatment, purification, and disposal
33 in a sanitary manner of liquid and solid waste, sewage, night soil, and
34 industrial waste. A warehouse owned or operated by any person, firm,
35 limited liability company, or corporation engaged in the business of
36 operating a warehouse business for the storage of used household
37 goods is not a public utility within the meaning of this chapter.

38 (h) "Municipally owned utility", as used in this chapter, includes
39 every utility owned or operated by a municipality.

40 (i) "Indeterminate permit", as used in this chapter, means every
41 grant, directly or indirectly from the state, to any corporation, company,
42 partnership, limited liability company, individual, association of

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1 individuals, their lessees, trustees, or receivers appointed by a court, of
 2 power, right, or privilege to own, operate, manage, or control any plant
 3 or equipment, or any part of a plant or equipment, within this state, for
 4 the:

5 (1) production, transmission, delivery, or furnishing of heat, light,
 6 water, or power, either directly or indirectly to or for the public;

7 (2) collection, treatment, purification, and disposal in a sanitary
 8 manner of liquid and solid waste, sewage, night soil, and
 9 industrial waste; or

10 (3) furnishing of facilities for the transmission of intelligence by
 11 electricity between points within this state;

12 which shall continue in force until such time as the municipality shall
 13 exercise its right to purchase, condemn, or otherwise acquire the
 14 property of such public utility, as provided in this chapter, or until it
 15 shall be otherwise terminated according to law.

16 (j) **"Telecommunications", as used in this chapter, means the**
 17 **transmission, between or among points specified by the user, of**
 18 **information of the user's choosing without change in the form or**
 19 **content of the information sent and received offered by the public**
 20 **utility for a fee, regardless of the facilities used.**

21 SECTION 2. IC 8-1-2-101 IS AMENDED TO READ AS
 22 FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 101. (a) Every
 23 municipal council shall have power:

24 (a) (1) To determine by ~~contract~~, ordinance or otherwise, the
 25 quality and character of each kind of product or service to be
 26 furnished or rendered by any public utility furnishing any product
 27 or service within said municipality and all other terms and
 28 conditions, not inconsistent with this chapter, upon which such
 29 public utility may be permitted to occupy **the areas along, under,**
 30 **upon, and across** the streets, highways, or other public property
 31 within such municipality, and such ~~contract~~, ordinance or other
 32 determination of such municipality shall be in force and prima
 33 facie reasonable. Upon complaint made by such public utility or
 34 by any qualified complainant, as provided in section 54 of this
 35 chapter, the commission shall set a hearing, as provided in
 36 sections 54 to 67 of this chapter, and if it shall find such ~~contract~~,
 37 ordinance or other determination to be unreasonable, such
 38 ~~contract~~, ordinance or other determination shall be void.

39 (b) (2) To require of any public utility, by ordinance or otherwise,
 40 such additions and extensions to its physical plant within said
 41 municipality as shall be reasonable and necessary in the interest
 42 of the public, and to designate the location and nature of all such



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1 additions and extensions, the time within which they must be
 2 completed, and all conditions under which they must be
 3 constructed, subject to review by the commission as provided in
 4 subdivision ~~(a)~~: **(1)**.

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

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

11 Provided, however, whenever, after a request by petition in writing of
 12 any public utility, the city, or other political subdivision or other body,
 13 having jurisdiction of the matter, shall refuse or fail, for a period of
 14 thirty (30) days, to give or grant to such public utility permission and
 15 authority to construct, maintain, and operate any additional
 16 construction, equipment, or facility, reasonably necessary for the
 17 transaction of the business of such public utility and for the public
 18 convenience or interest, then such public utility may file a petition with
 19 said commission for such right and permission, which petition shall
 20 state, with particularity, the construction, equipment, or other facility
 21 desired to be constructed and operated, and show a reasonable public
 22 necessity therefor, and also the failure or refusal of such city, political
 23 subdivision, or other body to give or grant such right or permission;
 24 and the commission shall thereupon give notice of the pendency of
 25 such petition, together with a copy thereof, to such city or other
 26 political subdivision or body, and of the time and place of hearing of
 27 the matter set forth in such petition; and such commission shall have
 28 power to hear and determine such matters and to give or grant such
 29 right and permission and to impose such conditions in relation thereto
 30 as the necessity of such public utility and the public convenience and
 31 interest may reasonably require. Provided, further, that when the
 32 relocation by a public utility of any of its construction, equipment, or
 33 facility located within the corporate limits of two (2) or more adjoining
 34 cities is reasonably necessary for the public convenience or interest,
 35 and any or either of said cities fail or refuse to give or grant to such
 36 public utility permission and authority to relocate such construction,
 37 equipment, or facility, any municipality which has given or granted to
 38 such public utility permission and authority to relocate such
 39 construction, equipment, and facility, or said public utility, may file a
 40 petition with said commission for such right and permission to which
 41 petition the city or cities failing or refusing to give or grant the same
 42 shall be made a respondent, and such public utility if not the petitioner

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1 shall also be made a respondent, and said commission shall have power
 2 to hear and determine such matter and to give or grant such right and
 3 permission and to impose such conditions in relation thereto as the
 4 public convenience and interest may reasonably require; and if said
 5 commission shall give or grant such right and permission, no further
 6 public authority to make such relocation as authorized or to go on any
 7 street, alley, road, or highway in said city or cities necessary to be used
 8 therefor shall be required of said public utility. All orders entered
 9 before June 30, 1931, by the commission in cases within the provisions
 10 of this section are hereby declared legal and valid.

11 **(b) Nothing in this section affects the authority of a municipality**
 12 **to manage the public right-of-way or require fair and reasonable**
 13 **compensation on a competitively neutral and nondiscriminatory**
 14 **basis for use of the public right-of-way on a nondiscriminatory**
 15 **basis if the compensation required is publicly disclosed by the**
 16 **municipality. Fair and reasonable compensation may not exceed**
 17 **the municipality's actual costs of managing the public right-of-way**
 18 **caused by the public utility's occupancy. The management costs,**
 19 **which the municipality shall assign individually to the public utility**
 20 **creating the management costs, must be limited to the actual costs**
 21 **a municipality incurs in managing the public right-of-way. The**
 22 **actual costs may include costs, if incurred, associated with the**
 23 **following:**

- 24 **(1) Registering occupants.**
 25 **(2) Issuing, processing, and verifying public right-of-way**
 26 **permit applications.**
 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) Revoking public right-of-way permits.**

31 **Management costs do not include payment by a public utility for**
 32 **the use of the public right-of-way or the fees and costs of litigation**
 33 **relating to the interpretation of this section or an ordinance**
 34 **adopted under this section. As used in this section, the term "public**
 35 **right-of-way" does not include the airwaves above the streets,**
 36 **highways, or other public property within the municipality as those**
 37 **airwaves are used for cellular or other nonwire**
 38 **telecommunications or broadcast service.**

39 **(c) A municipality may not unreasonably deny or delay a public**
 40 **utility's access to or use of a street, highway, or other public**
 41 **property within the municipality. However, subsection (a)(1) and**
 42 **this subsection do not limit a municipality's right to review and**



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- 1 **approve a public utility's access to and ongoing use of a street,**
- 2 **highway, or other public property within the municipality to**
- 3 **ensure and protect the health, safety, and welfare of the public.**

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