COMMITTEE REPORT

MADAM PRESIDENT:

The Senate Committee on Rules and Legislative Procedure, to which was referred Senate Bill No. 183, 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:

Delete the title and insert the following:

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

Delete everything after the enacting clause and insert the following:

SECTION 1. IC 8-1-2-34.5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 34.5. (a) The commission shall establish reasonable rules and regulations to govern the relations between public utilities and any or all classes of their customers. Those rules and regulations shall cover the following subjects:

(1) extension of service;
(2) extension of credit;
(3) deposits, including interest thereon;
(4) billing procedures;
(5) termination of service;
(6) complaints; and
(7) information and notice to customers of their rights under the rules.

(b) Notwithstanding IC 8-1-2-54, the commission may investigate and enter orders on complaints filed by individual customers arising under this section **or IC 8-1-38.** The commission may establish an appeals division to act on its own behalf regarding individual customer complaints. The decision of the division shall be binding on all parties to the complaint. The commission shall review decisions of the appeals division upon timely request by an affected party.

(c) This section does not invalidate any rule or regulation adopted by the commission before July 1, 1979, to govern the relations between public utilities and their consumers if the rule or regulation is consistent with this section.

SECTION 2. IC 8-1-38 IS ADDED TO THE INDIANA CODE AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]:

Chapter 38. Electric Utility Vegetation Management Practices

Sec. 1. (a) As used in this chapter, "affected property owner" means the record owner of real property on which a utility plans to perform vegetation management.

(b) The term does not include a property owner that is a governmental unit.

Sec. 2. As used in this chapter, "utility" refers to any of the following:

(1) A public utility (as defined in IC 8-1-2-1(a)).

(2) A municipally owned utility (as defined in IC 8-1-2-1(h)).

(3) A corporation organized under IC 8-1-13.

(4) A corporation organized under IC 23-17 that:

(A) is an electric cooperative; and

(B) has at least one (1) member that is a corporation organized under IC 8-1-13.

Sec. 3. As used in this chapter, "vegetation management" means:

(1) the trimming or pruning of one (1) or more trees; or

(2) the cutting down and removal of one (1) or more trees.

Sec. 4. In performing any vegetation management, a utility shall follow:

(1) the American National Standards Institute (ANSI) A300 standards for tree care and maintenance; and

(2) the most current applicable worker safety regulations of the United States Occupational Safety and Health Administration.

Sec. 5. (a) Except as provided in section 6 of this chapter, and subject to subsection (d), a utility shall provide direct written notice to the following not more than ninety (90) days before and not less than twenty-one (21) days before performing vegetation management:

(1) If the vegetation management will be performed in a municipality, the executive officer of the municipality.

(2) If the vegetation management will be performed in an unincorporated area, the executive officer of the county in which the unincorporated area is located.

(3) Each affected property owner.

(b) Direct written notice provided under subsection (a) must include the following:

(1) For notice provided under subsection (a)(1) or (a)(2), a topographical map or legal description of the area in which the planned vegetation management will be performed.

(2) For notice provided under subsection (a)(3), a statement

that copies of the topographical maps or legal descriptions required under subdivision (1) are on file with the executive officer of the county or municipality, as applicable.

(3) A description of the planned vegetation management.

(4) A web site address and a toll free telephone number at which an affected property owner may obtain a written disclosure of all rights, dispute resolution procedures, and other remedies provided by the utility and related to the planned vegetation management.

(5) A statement that an affected property owner may file a complaint about the planned vegetation management activities with the commission.

(6) A toll free telephone number at which an affected property owner may speak directly with a utility representative about the planned vegetation management activities.

(7) Telephone numbers for the commission and the office of utility consumer counselor.

(c) The utility shall publish notice of planned vegetation management as follows:

(1) For vegetation management that will be performed in a municipality, in a newspaper of general circulation published in the municipality.

(2) For vegetation management that will be performed in an unincorporated area, in a newspaper of general circulation published in the county in which the unincorporated area is located.

(d) A utility is not required to provide notice under this section if:

(1) the utility has entered into a written agreement with a county or municipality, as applicable, concerning standards for vegetation management performed within the county or municipality, as applicable; and

(2) the written agreement establishes direct written and published notice requirements to affected property owners and the appropriate executive officer.

Sec. 6. (a) For purposes of subsection (b), an emergency includes the following:

(1) Fallen trees.

(2) Trees causing power outages.

(3) Trees on fire due to contact with overhead lines.

(4) Other hazards with potential to cause damage to or harm the public or property.

(b) A utility is exempt from the requirements of section 5 of this chapter if:

(1) in response to an emergency, the commission acts under IC 8-1-2-113 to temporarily alter, suspend, or amend any rules adopted by the commission under this chapter; or

(2) the utility determines that an emergency exists that requires the utility to undertake immediate action that

includes vegetation management in order to:

(A) prevent endangerment to life or property; or

(B) ensure the safety, reliability, or power quality of the utility's electric distribution system;

subject to verification by the commission.

Sec. 7. (a) As used in this section, "unit" has the meaning set forth in IC 36-1-2-23.

(b) A unit may:

(1) adopt ordinances that do not conflict with this chapter; and

(2) establish a board to address, or designate to an existing board, the issue of vegetation management by utilities within the unit.

A decision issued by a board described in subdivision (2) is appealable to the commission and shall be heard under IC 8-1-2-34.5(b).

(c) If a utility that performs vegetation management incurs costs in complying with an ordinance adopted by a unit under subsection (b)(1) that are greater than any costs the utility would have incurred in complying only with the requirement of this chapter, the utility may seek to recover the difference in costs from the unit by filing an application with the unit in the form prescribed by the unit. The utility may not perform additional nonemergency vegetation management in the unit until the unit has approved, modified, or denied the application. The utility may appeal the modification or denial of an application to the commission. An appeal under this subsection shall be heard under IC 8-1-2-34.5(b).

Sec. 8. (a) An affected property owner or a utility may file a complaint with the commission to investigate and resolve a dispute arising under this chapter, including a dispute related to the utility's entry onto property to which the utility does not possess an easement to perform vegetation management. The commission shall conduct a hearing under IC 8-1-2-34.5(b).

(b) A party may seek review by the commission of a decision issued by the appeals division under IC 8-1-2-34.5(b) for a complaint filed under this section. A decision by the commission under this subsection is final.

(c) If the commission determines that a party has acted in bad faith or otherwise failed to comply with this chapter, the commission may do the following:

(1) Fine the party in an amount not to exceed one million dollars ($1,000,000) per incident.

(2) Award damages to the other party. Damages awarded under this subdivision for damage to or destruction of property must be based on the fair market value of the property.

(d) The commission shall stay any vegetation management that is the subject of a complaint filed under this section during the pendency of the complaint.

Sec. 9. The commission may adopt rules under IC 4-22-2 to implement this chapter.

SECTION 3. IC 8-20-1-28 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 28. Public and municipally owned utilities are authorized to construct, operate, and maintain their poles, facilities, appliances, and fixtures upon, along, under, and across any of the public roads, highways, and waters outside of municipalities, as long as they do not interfere with the ordinary and normal public use of the roadway, as defined in IC 9-13-2-157. However, the utility shall review its plans with the county executive before locating the pole, facility, appliance, or fixture. **Subject to IC 8-1-38,** the utility may trim any tree along the road or highway, but may not cut down and remove the tree without the consent of the abutting property owners, unless the cutting or removal is required by rule or order of the Indiana utility regulatory commission. The utility may not locate a pole where it interferes with the ingress or egress from adjoining land.

SECTION 4. IC 27-7-3-22 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: **Sec. 22. A company described in section 3 of this chapter that issues a title insurance policy on a residential property shall, before the time of closing on the purchase of the property, provide written disclosure to the purchaser concerning any restriction on the purchaser's use of the property, including an easement or a right-of-way affecting the property.**

SECTION 5. [EFFECTIVE UPON PASSAGE] **(a) As used in this SECTION, "commission" refers to the Indiana utility regulatory commission created by IC 8-1-1-2.**

(b) The commission may adopt any rules necessary to implement IC 8-1-38, as added by this act, in the same manner as emergency rules are adopted under IC 4-22-2-37.1. Any rules adopted under this SECTION must be adopted not later than September 1, 2010. A rule adopted under this SECTION expires on the earlier of the following:

(1) The date a final rule is adopted by the commission under IC 4-22-2.

(2) January 1, 2013.

(c) This SECTION expires January 1, 2013.

SECTION 6. **An emergency is declared for this act.**

(Reference is to SB 183 as introduced.)

and when so amended that said bill be reassigned to the Senate Committee on Utilities and Technology.

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LONG, Chairperson