

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:

- 1 Delete the title and insert the following:
2 A BILL FOR AN ACT to amend the Indiana Code concerning
3 utilities.
4 Delete everything after the enacting clause and insert the
5 following:
6 SECTION 1. IC 8-1-2-34.5 IS AMENDED TO READ AS
7 FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 34.5. (a) The
8 commission shall establish reasonable rules and regulations to govern
9 the relations between public utilities and any or all classes of their
10 customers. Those rules and regulations shall cover the following
11 subjects:
12 (1) extension of service;
13 (2) extension of credit;
14 (3) deposits, including interest thereon;
15 (4) billing procedures;
16 (5) termination of service;
17 (6) complaints; and
18 (7) information and notice to customers of their rights under the
19 rules.
20 (b) Notwithstanding IC 8-1-2-54, the commission may investigate
21 and enter orders on complaints filed by individual customers arising
22 under this section or IC 8-1-38. The commission may establish an
23 appeals division to act on its own behalf regarding individual customer
24 complaints. The decision of the division shall be binding on all parties
25 to the complaint. The commission shall review decisions of the appeals
26 division upon timely request by an affected party.

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

5 SECTION 2. IC 8-1-38 IS ADDED TO THE INDIANA CODE AS
 6 A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY
 7 1, 2011]:

8 **Chapter 38. Electric Utility Vegetation Management Practices**

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

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

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

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

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

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

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

20 **(A) is an electric cooperative; and**

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

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

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

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

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

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

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

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

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

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

44 **(3) Each affected property owner.**

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

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

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

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

4 (3) A description of the planned vegetation management.

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

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

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

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

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

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

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

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

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

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

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

39 (1) Fallen trees.

40 (2) Trees causing power outages.

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

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

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

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

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

1 includes vegetation management in order to:

- 2 (A) prevent endangerment to life or property; or
 3 (B) ensure the safety, reliability, or power quality of the
 4 utility's electric distribution system;

5 subject to verification by the commission.

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

8 (b) A unit may:

- 9 (1) adopt ordinances that do not conflict with this chapter;
 10 and
 11 (2) establish a board to address, or designate to an existing
 12 board, the issue of vegetation management by utilities within
 13 the unit.

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

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

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

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

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

- 42 (1) Fine the party in an amount not to exceed one million
 43 dollars (\$1,000,000) per incident.
 44 (2) Award damages to the other party. Damages awarded
 45 under this subdivision for damage to or destruction of
 46 property must be based on the fair market value of the
 47 property.

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

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

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

18 SECTION 4. IC 27-7-3-22 IS ADDED TO THE INDIANA CODE
 19 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
 20 1, 2011]: **Sec. 22. A company described in section 3 of this chapter**
 21 **that issues a title insurance policy on a residential property shall,**
 22 **before the time of closing on the purchase of the property, provide**
 23 **written disclosure to the purchaser concerning any restriction on**
 24 **the purchaser's use of the property, including an easement or a**
 25 **right-of-way affecting the property.**

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

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

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

37 (2) **January 1, 2013.**

38 (c) **This SECTION expires January 1, 2013.**

39 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.

LONG, Chairperson