
SENATE BILL No. 304

DIGEST OF INTRODUCED BILL

Citations Affected: IC 8-1; IC 32-20-4-3; IC 32-21-5-7.

Synopsis: Disclosure of utility easements. Requires a utility to submit data concerning easements in gross of a commercial character to the Indiana utility regulatory commission (IURC) for inclusion in the statewide GIS map. Requires a utility that seeks to perform vegetation management to produce, upon request of a property owner, documentation that authorizes the utility to perform vegetation management on the property. Provides that a utility's failure to file a notice of claim for an easement does not extinguish the easement if the easement is included in the statewide GIS map. Requires the residential sales disclosure form to provide notice to prospective buyers that the easements are included in the map.

Effective: July 1, 2012.

Breaux

January 5, 2012, read first time and referred to Committee on Utilities & Technology.

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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 2011 Regular Session of the General Assembly.

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SENATE BILL No. 304



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

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

- 1 SECTION 1. IC 8-1-2-128 IS ADDED TO THE INDIANA CODE
- 2 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
- 3 1, 2012]: **Sec. 128. (a) For purposes of this section, "utility"**
- 4 **includes the following:**
- 5 (1) **A municipally owned utility (as defined in IC 8-1-2-1(h)).**
- 6 (2) **A corporation organized under IC 8-1-13.**
- 7 (3) **A corporation organized under IC 23-17 that:**
- 8 (A) **is an electric cooperative; and**
- 9 (B) **has at least one (1) member that is a corporation**
- 10 **organized under IC 8-1-13.**
- 11 (b) **For purposes of this section, "easement" refers to an**
- 12 **easement in gross of a commercial character (as defined in**
- 13 **IC 32-23-2-1).**
- 14 (c) **For purposes of this section, "IGIC" refers to the Indiana**
- 15 **Geographic Information Council (as referred to in IC 4-23-7.3-6).**
- 16 (d) **For each easement held by a utility, the utility shall:**
- 17 (1) **generate complete easement data in a manner and format**



1 acceptable to the commission and the IGIC; and
 2 (2) submit in a timely manner the data described in
 3 subdivision (1) to the commission.
 4 For easements created before July 1, 2012, a utility must comply
 5 with this section not later than December 31, 2013.
 6 (e) The commission shall share the easement data submitted
 7 under subsection (d) with the IGIC as a data layer to the statewide
 8 base map (as defined in IC 4-23-7.3-11). Data submitted and shared
 9 under this section is not legally binding or fully representative of
 10 legally recorded easements.
 11 (f) Compliance with this section by a utility that has withdrawn
 12 from or is not otherwise subject to the jurisdiction of the
 13 commission does not confer jurisdiction by the commission over
 14 the utility.
 15 SECTION 2. IC 8-1-38 IS ADDED TO THE INDIANA CODE AS
 16 A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY
 17 1, 2012]:
 18 Chapter 38. Electric Utility Vegetation Management Practices
 19 Sec. 1. (a) As used in this chapter, "affected property owner"
 20 means the record owner of real property on which a utility plans
 21 to perform vegetation management.
 22 (b) The term does not include a property owner that is a
 23 governmental unit.
 24 Sec. 2. As used in this chapter, "utility" refers to any of the
 25 following:
 26 (1) A public utility (as defined in IC 8-1-2-1(a)).
 27 (2) A municipally owned utility (as defined in IC 8-1-2-1(h)).
 28 (3) A corporation organized under IC 8-1-13.
 29 (4) A corporation organized under IC 23-17 that:
 30 (A) is an electric cooperative; and
 31 (B) has at least one (1) member that is a corporation
 32 organized under IC 8-1-13.
 33 Sec. 3. As used in this chapter, "vegetation management"
 34 means:
 35 (1) the trimming or pruning of one (1) or more trees; or
 36 (2) the cutting down and removal of one (1) or more trees.
 37 Sec. 4. A utility shall, upon the request of an affected property
 38 owner, produce the following:
 39 (1) The instrument creating the easement in gross of a
 40 commercial character (as defined in IC 32-23-2-1) that grants
 41 the utility the right to enter the property.
 42 (2) The law, rule, regulation, or other legal instrument that

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1 **authorizes the utility to perform vegetation management on**
2 **the property.**

3 SECTION 3. IC 32-20-4-3 IS AMENDED TO READ AS
4 FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 3. (a) Failure to file the
5 notice required under this chapter does not bar:

6 (1) a lessor or the lessor's successor as a reversioner of the lessor's
7 right to possession on the expiration of any lease; or

8 (2) a lessee or the lessee's successor of the lessee's rights in and
9 to any lease.

10 (b) Failure to file the notice required under this chapter does not bar
11 or extinguish any easement, interest in the nature of an easement, or
12 any rights appurtenant to an easement granted, excepted, or reserved
13 by the instrument creating the easement or interest, including any rights
14 for future use, if:

15 (1) the existence of the easement or interest is evidenced by the
16 location beneath, upon, or above any part of the land described in
17 the instrument of any pipe, valve, road, wire, cable, conduit, duct,
18 sewer, track, pole, tower, or other physical facility and whether or
19 not the existence of the facility is observable; **and**

20 (2) **if the easement is an easement in gross of a commercial**
21 **character (as defined in IC 32-23-2-1), the easement is**
22 **included in a data layer of the statewide base map under**
23 **IC 8-1-2-128.**

24 However, equitable restrictions or servitudes on the use of land are not
25 considered easements or interests in the nature of easements as that
26 phrase is used in this section.

27 SECTION 4. IC 32-21-5-7, AS AMENDED BY P.L.159-2011,
28 SECTION 41, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
29 JULY 1, 2012]: Sec. 7. The Indiana real estate commission established
30 by IC 25-34.1-2-1 shall adopt a specific disclosure form that contains
31 the following:

32 (1) Disclosure by the owner of the known condition of the
33 following:

- 34 (A) The foundation.
- 35 (B) The mechanical systems.
- 36 (C) The roof.
- 37 (D) The structure.
- 38 (E) The water and sewer systems.
- 39 (F) Additions that may require improvements to the sewage
40 disposal system.
- 41 (G) Other areas that the Indiana real estate commission
42 determines are appropriate.

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- 1 (2) Disclosure by the owner of known contamination caused by
- 2 the manufacture of a controlled substance on the property that has
- 3 not been certified as decontaminated by an inspector approved
- 4 under IC 13-14-1-15.
- 5 (3) A notice to the prospective buyer that contains substantially
- 6 the following language:
- 7 "The prospective buyer and the owner may wish to obtain
- 8 professional advice or inspections of the property and provide for
- 9 appropriate provisions in a contract between them concerning any
- 10 advice, inspections, defects, or warranties obtained on the
- 11 property."
- 12 (4) A notice to the prospective buyer that contains substantially
- 13 the following language:
- 14 "The representations in this form are the representations of the
- 15 owner and are not the representations of the agent, if any. This
- 16 information is for disclosure only and is not intended to be a part
- 17 of any contract between the buyer and owner."
- 18 (5) A disclosure by the owner that an airport is located within a
- 19 geographical distance from the property as determined by the
- 20 Indiana real estate commission. The commission may consider the
- 21 differences between an airport serving commercial airlines and an
- 22 airport that does not serve commercial airlines in determining the
- 23 distance to be disclosed.
- 24 **(6) A notice to the prospective buyer that:**
- 25 **(A) easements in gross of a commercial character (as**
- 26 **defined in IC 32-23-2-1) are included as a data layer in the**
- 27 **statewide base map (as defined in IC 4-23-7.3-11)**
- 28 **maintained by the Indiana Geographic Information**
- 29 **Council; and**
- 30 **(B) the easements included in the statewide base map are**
- 31 **not legally binding or fully representative of legally**
- 32 **recorded easements.**

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