

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.

SENATE ENROLLED ACT No. 212

AN ACT to amend the Indiana Code concerning utilities.

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

SECTION 1. IC 8-23-2-5, AS AMENDED BY P.L.35-2005, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 5. (a) The department, through the commissioner or the commissioner's designee, shall:

(1) develop, continuously update, and implement:

- (A) long range comprehensive transportation plans;
- (B) work programs; and
- (C) budgets;

to assure the orderly development and maintenance of an efficient statewide system of transportation;

(2) implement the policies, plans, and work programs adopted by the department;

(3) organize by creating, merging, or abolishing divisions;

(4) evaluate and utilize whenever possible improved transportation facility maintenance and construction techniques;

(5) carry out public transportation responsibilities, including:

- (A) developing and recommending public transportation policies, plans, and work programs;
- (B) providing technical assistance and guidance in the area of public transportation to political subdivisions with public transportation responsibilities;
- (C) developing work programs for the utilization of federal

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mass transportation funds;

(D) furnishing data from surveys, plans, specifications, and estimates required to qualify a state agency or political subdivision for federal mass transportation funds;

(E) conducting or participating in any public hearings to qualify urbanized areas for an allocation of federal mass transportation funding;

(F) serving, upon designation of the governor, as the state agency to receive and disburse any state or federal mass transportation funds that are not directly allocated to an urbanized area;

(G) entering into agreements with other states, regional agencies created in other states, and municipalities in other states for the purpose of improving public transportation service to the citizens; and

(H) developing and including in its own proposed transportation plan a specialized transportation services plan for the elderly and persons with disabilities;

(6) provide technical assistance to units of local government with road and street responsibilities;

(7) develop, undertake, and administer the program of research and extension required under IC 8-17-7;

(8) allow public testimony in accordance with section 17 of this chapter whenever the department holds a public hearing (as defined in section 17 of this chapter); and

(9) adopt rules under IC 4-22-2 to reasonably and cost effectively manage the right-of-way of the state highway system by establishing a formal procedure for highway improvement projects that involve the relocation of utility facilities by providing for an exchange of information among the department, utilities, and the department's highway construction contractors.

(b) Rules adopted under subsection (a)(9):

(1) shall not unreasonably affect the cost, or impair the safety or reliability, of a utility service; **and**

(2) must require a utility to provide information concerning all authorized representatives of the utility for purposes of highway improvement projects and improvement projects undertaken by local units of government.

(c) A civil action may be prosecuted by or against the department, a department highway construction contractor, or a utility to recover costs and expenses directly resulting from willful violation of the rules. Nothing in this section or in subsection (a)(9) shall be construed as

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granting authority to the department to adopt rules establishing fines, assessments, or other penalties for or against utilities or the department's highway construction contractors.

(d) Based on information provided by utilities under rules described in subsection (b)(2), the department shall establish and publish on the department's Internet web site a searchable database of authorized representatives of utilities for purposes of improvement projects that involve the relocation of utility facilities. A utility that provides information described in subsection (b)(2) shall:

(1) update the information provided to the department on an annual basis; and

(2) notify the department of any change in the information not more than thirty (30) days after the change occurs.

SECTION 2. [EFFECTIVE UPON PASSAGE] (a) As used in this SECTION, "committee" refers to the regulatory flexibility committee established under IC 8-1-2.6-4.

(b) As used in this SECTION, "improvement project" means a project undertaken by a unit of local government that involves the relocation of a utility's facility.

(c) The general assembly urges the legislative council to assign the committee the task of studying the topic of utility facility relocation in improvement projects, including:

(1) the appropriate management of an improvement project, including preconstruction communications and planning, scheduling, development of work plans, and expectations and obligations of parties to the improvement project;

(2) the appropriateness of applying rules of the Indiana department of transportation concerning utility facility relocation codified at 105 IAC 13 to improvement projects; and

(3) the appropriateness of creating a civil right of action for purposes of improvement projects similar to the civil right of action created at IC 8-23-2-5(c) for highway improvement projects undertaken by the Indiana department of transportation.

(d) If the committee is assigned the topic described in subsection (c), the committee shall issue a final report to the legislative council containing the commission's findings and recommendations, if any, not later than November 1, 2012.

(e) This SECTION expires June 30, 2013.

SECTION 3. An emergency is declared for this act.

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President of the Senate

President Pro Tempore

Speaker of the House of Representatives

Governor of the State of Indiana

Date: _____ Time: _____

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