First Regular Session of the 122nd General Assembly (2021)

HOUSE ENROLLED ACT No. 1164

AN ACT to amend the Indiana Code concerning utilities.

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

SECTION 1. IC 5-22-3-7, AS ADDED BY P.L.222-2005, SECTION 27, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2021]: Sec. 7. (a) This section applies to every use of funds by a governmental body. However, this section does not apply to:

(1) a contract in which one (1) party is a political subdivision, including a body corporate and politic created by or authorized by a political subdivision; **or**

(2) a contract for the lease of property owned by the state under which no state expenditures are required.

(b) A prospective contractor may not contract with a governmental body unless the prospective contractor includes the following certifications as terms of the contract with the governmental body:

(1) The contractor and any principals of the contractor certify that:

(A) the contractor, except for de minimis and nonsystematic violations, has not violated the terms of:

(i) IC 24-4.7;

(ii) IC 24-5-12; or

(iii) IC 24-5-14;

in the previous three hundred sixty-five (365) days, even if IC 24-4.7 is preempted by federal law; and

(B) the contractor will not violate the terms of IC 24-4.7 for the duration of the contract, even if IC 24-4.7 is preempted by federal law.

(2) The contractor and any principals of the contractor certify that an affiliate or principal of the contractor and any agent acting on behalf of the contractor or on behalf of an affiliate or principal of the contractor:

(A) except for de minimis and nonsystematic violations, has not violated the terms of IC 24-4.7 in the previous three hundred sixty-five (365) days, even if IC 24-4.7 is preempted by federal law; and

(B) will not violate the terms of IC 24-4.7 for the duration of the contract, even if IC 24-4.7 is preempted by federal law.

(c) If a certification in subsection (b) concerning compliance with IC 24-4.7, IC 24-5-12, or IC 24-5-14 is materially false or if the contractor, an affiliate or a principal of the contractor, or an agent acting on behalf of the contractor or an affiliate or a principal of the contractor violates the terms of IC 24-4.7, IC 24-5-12, or IC 24-5-14, even if IC 24-4.7 is preempted by federal law, the attorney general may bring a civil action in the circuit or superior court of Marion County to:

(1) void a contract under this section, subject to subsection (d); and

(2) obtain other proper relief.

However, a contractor is not liable under this section if the contractor or an affiliate of the contractor acquires another business entity that violated the terms of IC 24-4.7, IC 24-5-12, or IC 24-5-14 within the preceding three hundred sixty-five (365) days before the date of the acquisition if the acquired business entity ceases violating IC 24-4.7, IC 24-5-12, or IC 24-5-14, even if IC 24-4.7 is preempted by federal law, as of the date of the acquisition.

(d) If:

(1) the attorney general notifies the contractor, department of administration, and budget agency in writing of the intention of the attorney general to void a contract; and

(2) the attorney general does not receive a written objection from the department of administration or budget agency, sent to both the attorney general and the contractor, within thirty (30) days of the notice;

a contract between a contractor and a governmental body is voidable at the election of the attorney general in a civil action brought under subsection (c). If an objection of the department of administration or the budget agency is submitted under subdivision (2), the contract that is the subject of the objection is not voidable at the election of the attorney general unless the objection is rescinded or withdrawn by the department of administration or the budget agency.

(e) If the attorney general establishes in a civil action that a contractor is knowingly, intentionally, or recklessly liable under

subsection (c), the contractor is prohibited from entering into a contract with a governmental body for three hundred sixty-five (365) days after the date on which the contractor exhausts appellate remedies.

(f) In addition to any remedy obtained in a civil action brought under this section, the attorney general may obtain the following:

(1) All money the contractor obtained through each telephone call made in violation of the terms of IC 24-4.7, IC 24-5-12, or IC 24-5-14, even if IC 24-4.7 is preempted by federal law.

(2) The attorney general's reasonable expenses incurred in:

(A) investigation; and

(B) maintaining the civil action.

SECTION 2. IC 5-22-17-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2021]: Sec. 5. **(a) This section does not apply to a contract for the lease of property owned by the state under which no state expenditures are required.**

~~(a)~~ **(b)** When the fiscal body of the governmental body makes a written determination that funds are not appropriated or otherwise available to support continuation of performance of a contract, the contract is considered canceled.

~~(b)~~ **(c)** A determination by the fiscal body that funds are not appropriated or otherwise available to support continuation of performance is final and conclusive.

SECTION 3. IC 8-1-2-5.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2021]: **Sec. 5.5. (a) As used in this section, "attaching entity" means a cable operator (as defined in 47 U.S.C. 522(5)) that seeks an attachment, or has an attachment, to a pole.**

(b) As used in this section, "carrying charge factor", or "ccf", refers to the carrying charge factor, as described in subsection (i)(2)(B)(ii), that is used in calculating a pole attachment rental fee under subsection (i)(2)(B).

(c) As used in this section, "net bare pole cost", or "nbp", refers to the average net cost of a bare pole to the pole owner, as described in subsection (i)(2)(B)(iii), that is used in calculating a pole attachment rental fee under subsection (i)(2)(B).

(d) As used in this section, "pole" refers to an electric distribution pole.

(e) As used in this section, "pole owner" means a:

(1) corporation organized under IC 8-1-13;

(2) corporation organized under IC 23-17 that is an electric cooperative and that has at least one (1) member that is a corporation organized under IC 8-1-13; or

(3) municipality providing electric service;

that owns or controls one (1) or more poles.

(f) As used in this section, "space allocation factor", or "saf", with respect to a pole, means the quotient of:

(1) the space on the pole occupied by an attaching entity; divided by

(2) the usable space on the pole;

as described in subsection (i)(2)(B)(i), that is used in calculating a pole attachment rental fee under subsection (i)(2)(B).

(g) Subject to subsections (h) through (s), a pole owner shall permit attachments by attaching entities to the poles owned or controlled by the pole owner.

(h) A rate, term, or condition imposed by a pole owner for access to poles owned or controlled by the pole owner:

(1) must be nondiscriminatory, just, and reasonable; and

(2) must not favor:

(A) the pole owner or an affiliate of the pole owner; or

(B) any other entity with facilities attached to the pole.

(i) Any pole attachment rental fee imposed by a pole owner for access to poles owned or controlled by the pole owner:

(1) must be calculated on an annual, per-pole basis; and

(2) is considered to provide reasonable compensation and to be nondiscriminatory, just, and reasonable if the fee:

(A) is agreed upon by the parties; or

(B) is not greater than the fee that would apply if the pole attachment rental fee were calculated by multiplying the following factors:

(i) Subject to subsection (j), the percentage of the total usable space that is occupied by the pole attachment.

(ii) The sum of the pole owner's annual administrative, maintenance, and depreciation expenses, plus cost of debt.

(iii) The net bare pole cost.

Expressed mathematically:

(saf) times (ccf) times (nbp)

(j) For purposes of determining the percentage of a pole's usable space that is occupied by a pole attachment under subsection (i)(2)(B)(i):

(1) the usable space is presumed to be sixteen (16) feet, based on an average pole height of forty (40) feet; and

(2) the pole attachment is presumed to occupy two (2) feet of usable space;

resulting in a space allocation factor of twelve and one-half percent (12.5%).

(k) If an attaching entity and a pole owner fail to agree upon:

(1) access to poles owned or controlled by the pole owner; or

(2) the rates, terms, and conditions for attachment to poles

owned or controlled by the pole owner;

the attaching entity may apply to the commission for a determination of the matter.

(l) Upon receiving a request for a determination under subsection (k), the commission shall:

(1) proceed to determine whether:

(A) the denial of access to one (1) or more poles was unlawful; or

(B) the rates, terms, and conditions complained of were not just and reasonable as determined under subsection (i)(2)(B);

as applicable; and

(2) issue an order:

(A) directing that access to the poles at issue be permitted; and

(B) prescribing for such access such rates, terms, conditions, and compensations that:

(i) are reasonable; and

(ii) comply with subsections (h) and (i).

(m) In any case in which the commission issues an order under subsection (l):

(1) the access ordered by the commission under subsection (l)(2)(A) shall be permitted by the pole owner; and

(2) the rates, terms, conditions, and compensations prescribed by the commission under subsection (l)(2)(B) shall be observed, followed, and paid by the parties, as applicable;

subject to recourse to the courts upon the complaint of any interested party as provided in this chapter and in IC 8-1-3. Any order of the commission under subsection (l) may be revised by the commission from time to time upon application of any interested party or upon the commission's own motion.

(n) Any attachment to a pole may only be made with the written permission of the pole owner. If a contract does not exist between a pole owner and an attaching entity at the time an attachment is made, an attaching entity that violates this subsection shall pay a fine of five hundred dollars ($500) for each pole on which an unauthorized attachment is made.

(o) An attachment to a utility pole made without notification to the pole owner and without the pole owner's written authorization, as required by subsection (n), is considered to have been made on:

(1) the date of the most recent survey.

(2) the date that is five (5) years before the date of first discovery of the unauthorized attachment by the pole owner;

whichever date is more recent. However, if the unauthorized pole attachment is discovered by survey, the unauthorized attachment

is considered to have been made on the date of that survey.

(p) A pole owner's acceptance of payment for unauthorized pole attachments does not constitute a waiver of any other rights or remedies under an existing agreement or under any law.

(q) An attaching entity that has been given written permission from a pole owner for an attachment to the pole owner's pole is responsible for transferring the attachment not later than ninety (90) days after receiving written notice from the pole owner to do so. If:

(1) after the expiration of the ninety (90) day period described in this subsection; or

(2) after having been given as much notice as possible, in the case of an emergency;

the attaching entity has failed to rearrange or transfer the attaching entity's system, or an applicable portion of that system, the pole owner may rearrange the system or portion of the system, transfer the system or portion of the system to one (1) or more substituted poles, or relocate the system or portion of the system, and the attaching entity shall reimburse the pole owner for the pole owner's costs in doing so. However, this section does not relieve the attaching entity from maintaining adequate workforces readily at hand to handle the rearrangement, repair, service, or maintenance of the attaching entity's attached system, or any portions of that system, in the event that the condition of the attached system, or any portion of the system, hinders the pole owner's operations.

(r) An attaching entity is primarily responsible for:

(1) scheduling; and

(2) coordinating directly with all other users of a pole;

all relocations required as part of any project of the attaching entity. The pole owner shall assist in coordinating the relocation of the attaching entity's attachments or of other attachments to the pole owner's poles whenever the relocation is caused by any project of the attaching entity. The attaching entity shall indemnify and hold harmless the pole owner from any loss or liability that is incurred or claimed by the attaching entity or the attaching entity's contractor, and that arises from or is related to the failure of the pole owner to timely relocate a pole if that same attaching entity has not timely removed its attachment from the pole owner's pole.

(s) To the extent any provision set forth in this section conflicts with a provision in a contract in effect on July 1, 2021, the provision in the contract controls unless otherwise agreed to by the attaching entity and the pole owner.

SECTION 4. IC 8-1-2.6-4, AS AMENDED BY P.L.53-2014, SECTION 76, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2021]: Sec. 4. (a) As used in this section, "committee" means

the interim study committee on energy, utilities, and telecommunications established by IC 2-5-1.3-4.

(b) ~~Subject to subsection (c),~~ The commission shall, by July 1 of each year, report to the committee in an electronic format under IC 5-14-6 on the following:

(1) The effects of competition and technological change on universal service and on pricing of all telecommunications services offered in Indiana.

(2) The status of competition and technological change in the provision of video service (as defined in IC 8-1-34-14) available to Indiana customers, as including the following information:

(A) The number of multichannel video programming distributors offering video service to Indiana customers.

(B) The technologies used to provide video service to Indiana customers.

(C) The advertised programming and pricing options offered by video service providers to Indiana customers.

(3) Best practices concerning vertical location of underground facilities for purposes of IC 8-1-26. A report under this subdivision must address the viability and economic feasibility of technologies used to vertically locate underground facilities.

(c) In addition to reviewing the commission report prepared under subsection (b), the committee may also issue a report and recommendations to the legislative council by November 1 of each year that is based on a review of the following issues:

(1) The effects of competition and technological change in the telecommunications industry and impact of competition on available subsidies used to maintain universal service.

(2) The status of modernization of the publicly available telecommunications infrastructure in Indiana and the incentives required to further enhance this infrastructure.

(3) The effects on economic development and educational opportunities of the modernization described in subdivision (2).

(4) The current methods of regulating providers, at both the federal and state levels, and the effectiveness of the methods.

(5) The economic and social effectiveness of current telecommunications service pricing.

(6) All other telecommunications issues the committee deems appropriate.

The report and recommendations issued under this subsection to the legislative council must be in an electronic format under IC 5-14-6.

(d) The committee shall, with the approval of the commission, retain the independent consultants the committee considers appropriate to assist the committee in the review and study. The expenses for the

consultants shall be paid by the commission.

~~(c) If the commission requests a communications service provider (as defined in section 13(b) of this chapter) to provide information for the commission to use in preparing a report under this section, the request must be limited to public information provided to the Federal Communications Commission and may be required to be provided only in the form in which it is provided to the Federal Communications Commission. However, the commission may request any public information from a communications service provider (as defined in section 13(b) of this chapter) upon a request from the committee's chairperson that specifically enumerates the public information sought.~~

SECTION 5. IC 8-1-2.6-13, AS AMENDED BY P.L.73-2020, SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2021]: Sec. 13. (a) As used in this section, "communications service" has the meaning set forth in IC 8-1-32.5-3.

(b) As used in this section, "communications service provider" means a person or an entity that offers communications service to customers in Indiana, without regard to the technology or medium used by the person or entity to provide the communications service. The term includes a provider of commercial mobile service (as defined in 47 U.S.C. 332).

(c) Notwithstanding sections 1.2, 1.4, and 1.5 of this chapter, the commission may do the following, except as otherwise provided in this subsection:

(1) Enforce the terms of a settlement agreement approved by the commission before July 29, 2004. The commission's authority under this subdivision continues for the duration of the settlement agreement.

(2) Fulfill the commission's duties under IC 8-1-2.8 concerning the provision of dual party relay services to deaf, hard of hearing, and speech impaired persons in Indiana.

(3) Fulfill the commission's responsibilities under IC 8-1-29 to adopt and enforce rules to ensure that a customer of a telecommunications provider is not:

(A) switched to another telecommunications provider unless the customer authorizes the switch; or

(B) billed for services by a telecommunications provider that without the customer's authorization added the services to the customer's service order.

(4) Fulfill the commission's obligations under:

(A) the federal Telecommunications Act of 1996 (47 U.S.C. 151 et seq.); and

(B) IC 20-20-16;

concerning universal service and access to telecommunications

service and equipment, including the designation of eligible telecommunications carriers under 47 U.S.C. 214.

(5) Perform any of the functions described in section 1.5(b) of this chapter.

(6) Perform the commission's responsibilities under IC 8-1-32.5 to:

(A) issue; and

(B) maintain records of;

certificates of territorial authority for communications service providers offering communications service to customers in Indiana.

(7) Perform the commission's responsibilities under IC 8-1-34 concerning the issuance of certificates of franchise authority to multichannel video programming distributors offering video service to Indiana customers.

(8) **Subject to subsection (f),** require a communications service provider, other than a provider of commercial mobile service (as defined in 47 U.S.C. 332), to report to the commission on an annual basis, or more frequently at the option of the provider, ~~and subject to section 4(c) of this chapter,~~ any information needed by the commission to prepare the commission's report to the interim study committee on energy, utilities, and telecommunications under section 4 of this chapter.

(9) Perform the commission's duties under IC 8-1-32.4 with respect to telecommunications providers of last resort, to the extent of the authority delegated to the commission under federal law to perform those duties.

(10) Collect and maintain from a communications service provider the following information:

(A) The address of the provider's Internet web site.

(B) All toll free telephone numbers and other customer service telephone numbers maintained by the provider for receiving customer inquiries and complaints.

(C) An address and other contact information for the provider, including any telephone number not described in clause (B).

The commission shall make any information submitted by a provider under this subdivision available on the commission's Internet web site. The commission may also make available on the commission's Internet web site contact information for the Federal Communications Commission and the Cellular Telephone Industry Association.

(11) Fulfill the commission's duties under any state or federal law concerning the administration of any universally applicable dialing code for any communications service.

(d) The commission does not have jurisdiction over any of the following with respect to a communications service provider:

(1) Rates and charges for communications service provided by the communications service provider, including the filing of schedules or tariffs setting forth the provider's rates and charges.

(2) Depreciation schedules for any of the classes of property owned by the communications service provider.

(3) Quality of service provided by the communications service provider.

(4) Long term financing arrangements or other obligations of the communications service provider.

(5) Except as provided in subsection (c), any other aspect regulated by the commission under this title before July 1, 2009.

(e) The commission has jurisdiction over a communications service provider only to the extent that jurisdiction is:

(1) expressly granted by state or federal law, including:

(A) a state or federal statute;

(B) a lawful order or regulation of the Federal Communications Commission; or

(C) an order or a ruling of a state or federal court having jurisdiction; or

(2) necessary to administer a federal law for which regulatory responsibility has been delegated to the commission by federal law.

(f) Except as specifically required under state or federal law, or except as required to respond to consumer complaints or information requests from the general assembly, the commission may not require a communications service provider:

(1) to file a tariff; or

(2) except for purposes of a petition or request filed or submitted to the commission by the communications service provider, to report to the commission any information that is:

(A) available to the public on the communications service provider's Internet web site;

(B) filed with the Federal Communications Commission; or

(C) otherwise available to the public in any form or at any level of detail;

including the communications service provider's rates, terms, and conditions of service.

SECTION 6. IC 8-1-32.3-15, AS AMENDED BY P.L.23-2018, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2021]: Sec. 15. (a) This chapter applies to permits issued by a permit authority to a communications service provider, under local law and consistent with IC 36-7, for the following:

(1) Construction of a new wireless support structure.

(2) Substantial modification of a wireless support structure.

(3) Collocation of wireless facilities on an existing structure.

(4) Construction, placement, and use of small cell facilities.

(b) A permit authority may not require an application or a permit for, or charge fees for, any of the following:

(1) The routine maintenance of wireless facilities.

(2) The replacement of wireless facilities with wireless facilities that are:

(A) substantially similar to; or

(B) the same size or smaller than;

the wireless facilities being replaced.

(3) The installation, placement, maintenance, or replacement of micro wireless facilities that are suspended on cables strung between existing utility poles in compliance with applicable codes by a communications service provider that is authorized to use the public rights-of-way. For purposes of this subdivision, "applicable codes" means uniform building, fire, electrical, plumbing, or mechanical codes that are:

(A) adopted by a recognized national code organization; and

(B) enacted solely to address imminent threats of destruction of property or injury to persons;

including any local amendments to those codes.

(c) With respect to the construction, placement, or use of a small cell facility and the associated supporting structure, a permit authority may prohibit the placement of a new utility pole or a new wireless support structure in a right-of-way within an area that is designated strictly for underground or buried utilities, if all of the following apply:

(1) The area is designated strictly for underground or buried utilities before May 1, 2017.

(2) No above ground:

(A) wireless support structure;

(B) utility pole; or

(C) other utility superstructure;

other than light poles or small cell facilities approved as part of a waiver process described in subdivision (3)(C), exists in the area.

~~(2)~~ **(3)** The permit authority does all of the following:

(A) Allows the collocation of small cell facilities on existing:

(i) utility poles; ~~and~~

(ii) light poles; and

~~(ii)~~ **(iii)** wireless support structures;

as a permitted use within the area.

(B) Allows the replacement or improvement of existing:

(i) utility poles; ~~and~~

(ii) light poles; and

~~(ii)~~ **(iii)** wireless support structures;

as a permitted use within the area.

(C) Provides:

(i) a waiver;

(ii) a zoning process; or

(iii) another procedure;

that addresses requests to install new utility poles or new wireless support structures within the area.

(D) Upon receipt of an application for the construction, placement, or use of a small cell facility on one (1) or more new utility poles or one (1) or more new wireless support structures in an area that is designated strictly for underground or buried utilities, posts notice of the application on the permit authority's Internet web site, if the permit authority maintains an Internet web site. The notice of the application required by this clause must include a statement indicating that the application is available to the public upon request.

~~(3)~~ **(4)** The prohibition or other restrictions with respect to the placement of new utility poles or new wireless support structures within the area are applied in a nondiscriminatory manner.

~~(4)~~ **(5)** The area is zoned strictly for residential land use before May 1, 2017.

(d) **With respect to applications for the placement of one (1) or more small cell facilities in an area that is zoned strictly for residential land use, and that is designated strictly for underground or buried utilities,** a permit authority shall allow a neighborhood association or a homeowners association to register with the permit authority to:

(1) receive notice; **and**

(2) request that homeowners within the jurisdiction of the neighborhood association or homeowners association receive notice;

by United States mail **or by electronic mail** of any application filed with the permit authority **for a permitted use described in subsection (c)(3)(A) or (c)(3)(B) or** for the construction, placement, or use of a small cell facility on one (1) or more new utility poles or one (1) or more new wireless support structures in an area **that is designated strictly for underground or buried utilities and that is** within the jurisdiction of the neighborhood association or homeowners association. If the permit authority maintains an Internet web site, the permit authority shall post on the permit authority's Internet web site instructions for how a neighborhood association or homeowners

association may register to receive notice under this subsection. **A permit authority that receives a request under subdivision (2) may agree to provide notice to homeowners regarding a project for which applications described in this subsection have been filed with the permit authority, but not provide notice to homeowners regarding each permit application filed with the permit authority with respect to the project. A permit authority that receives a request under subdivision (2) may agree to provide notice only to certain homeowners. A permit authority may require a neighborhood association, homeowners association, or homeowner to pay the cost of postage associated with the mailed provision of notice to the neighborhood association, homeowners association, or homeowner under this subsection. A permit authority that chooses to provide mailed notice under this subsection at its own cost may choose to pass those costs along to a permit applicant. Any mailing costs passed through to an applicant under this subsection are not in addition to the application fee, and shall not increase the application fee beyond the limit set forth in section 26(a)(3) of this chapter. A permit authority may not pass through to an applicant any costs for notices provided electronically.**

(e) This subsection does not apply to an application for a permitted use described in subsection (c)(3)(A) or (c)(3)(B). With respect to an area that is designated strictly for underground or buried utilities in accordance with subsection (c), to establish the standards that will apply in a waiver, zoning process, or other procedure described in subsection (c)(3)(C), a permit authority may collaborate with a neighborhood association or a homeowners association on the preferred location and reasonable aesthetics of new utility poles or new wireless support structures added within the jurisdiction of the neighborhood association or homeowners association. For purposes of this subsection, a permit authority is considered to have collaborated with a neighborhood association or a homeowners association if the permit authority adopts neighborhood specific guidelines after providing notice and allowing public comment on the proposed guidelines. A permit authority must comply with any guidelines adopted under this subsection with respect to a particular application for a permit if:

(1) the guidelines have been adopted and published before the filing of the application in a manner consistent with this subsection;

(2) subject to subsection (f), compliance with the guidelines is technically feasible and cost-efficient, as determined by the applicant; and

(3) compliance with the guidelines does not result in a prohibition of the applicant's service or an effective

prohibition of the applicant's service.

A permit authority that elects not to collaborate with a neighborhood association or a homeowners association to adopt neighborhood specific guidelines under this subsection is not precluded from using the waiver, zoning process, or other procedure described in subsection (c)(3)(C) with respect to any application to place one (1) or more new utility poles or new wireless support structures within the jurisdiction of the neighborhood association or homeowners association.

(f) In demonstrating that compliance with guidelines adopted by a permit authority under subsection (e) is not technically feasible under subsection (e)(2), a permit applicant may not be required to submit information about the need for a small cell facility or the associated wireless support structure, including:

(1) information about additional wireless coverage or capacity, or increased wireless speeds;

(2) propagation maps or telecommunications traffic studies; or

(3) information about the permit applicant's business decisions with respect to:

(A) service;

(B) customer demand; or

(C) quality of service;

to or from a particular area or site.

~~(e)~~ **(g)** Subject to section 26(b) of this chapter, with respect to the construction, placement, or use of a small cell facility and the associated supporting structure within an area:

(1) designated as a historic preservation district under IC 36-7-11;

(2) designated as a historic preservation area under IC 36-7-11.1; or

(3) that is subject to the jurisdiction of the Meridian Street preservation commission under IC 36-7-11.2;

a permit authority may apply any generally applicable procedures that require applicants to obtain a certificate of appropriateness.

~~(f)~~ **(h)** An applicant for the placement of a small cell facility and an associated supporting structure shall comply with applicable:

(1) Federal Communications Commission requirements; and

(2) industry standards;

for identifying the owner's name and contact information.

~~(g)~~ **(i)** A resolution, ordinance, or other regulation:

(1) adopted by a permit authority after April 14, 2017, and before May 2, 2017; and

(2) that designates an area within the jurisdiction of the permit authority as strictly for underground or buried utilities;

applies only to communications service providers and those geographic

areas that are zoned residential and where all existing utility infrastructure is already buried.

(j) Nothing in this section extends the time periods set forth in section 20 of this section.

SECTION 7. IC 8-1-32.3-17, AS ADDED BY P.L.145-2015, SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2021]: Sec. 17. (a) A permit authority may not discriminate among communications service providers or public utilities with respect to the following:

(1) Approving applications, issuing permits, or otherwise establishing terms and conditions for construction of wireless or wireline communications facilities.

(2) Authorizing or approving tax incentives for wireless or wireline communications facilities.

(3) Providing access to rights-of-way, infrastructure, utility poles, river and bridge crossings, and other physical assets owned or controlled by the permit authority.

(b) A permit authority may not impose a fall zone requirement that:

(1) applies to a wireless support structure; and

(2) is larger than the area within which the wireless support structure is designed to collapse, as set forth in the applicant's engineering certification for the wireless support structure.

However, a permit authority may impose a fall zone requirement that is larger than the area described in subdivision (2) if the permit authority provides evidence that the applicant's engineering certification is flawed. The permit authority's evidence must include a study performed and certified by a professional engineer.

(c) Except as described in section 26(a) of this chapter with respect to small cell facilities, and subject to the restrictions under 14 CFR Part 77, 47 CFR Part 17, and IC 8-21-10, a permit authority may not impose:

(1) a restriction on the maximum height of a wireless support structure; or

(2) a requirement regarding minimum separation distances between wireless support structures.

SECTION 8. IC 8-1-32.5-11, AS ADDED BY P.L.27-2006, SECTION 55, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2021]: Sec. 11. (a) The commission may not require a communications service provider to file a tariff in connection with, or as a condition of receiving, a certificate of territorial authority under this chapter.

(b) This subsection does not apply to a provider of commercial mobile service (as defined in 47 U.S.C. 332). The commission may require, in connection with the issuance of a certificate under this

chapter, the communications service provider to provide advance notice to the provider's Indiana customers if the provider will do any of the following:

(1) Increase the rates and charges for any communications service that the provider offers in any of the provider's service areas in Indiana.

(2) Offer new communications service in any of the provider's service areas in Indiana.

(3) Cease to offer any communications service that the provider offers in any of the provider's service areas in Indiana.

The commission shall prescribe any customer notification requirements under this subsection in a rule of general application adopted under IC 4-22-2.

(c) A tariff filed with the commission by a communications service provider is effective upon filing.

SECTION 9. IC 8-1-32.5-14, AS AMENDED BY P.L.189-2019, SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2021]: Sec. 14. A communications service provider that holds a certificate issued under this chapter:

(1) is exempt from local franchises and related fees to the same extent as a communications service provider that holds a certificate of territorial authority or an indeterminate permit issued under IC 8-1-2 before July 1, 2009;

(2) may access public rights-of-way to the same extent as a public utility (as defined in IC 8-1-2-1(a)): ~~other than~~

(A) including a public right-of-way under the control of a county or municipality as provided in IC 8-1-2-101; but

(B) not including rights-of-way, property, or projects that are the subject of a public-private agreement under IC 8-15.5 or IC 8-15.7 or communications systems infrastructure, including all infrastructure used for wireless communications, owned by or under the jurisdiction of the Indiana finance authority or the state or any of its agencies, departments, boards, commissions, authorities, or instrumentalities; and

(3) shall be designated as a public utility solely as that term is used in 23 CFR 710.403(e)(2).

SECTION 10. IC 8-1-34-16, AS AMENDED BY P.L.53-2014, SECTION 81, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2021]: Sec. 16. (a) Except as provided in section 21 of this chapter, after June 30, 2006:

(1) the commission is the sole franchising authority (as defined in 47 U.S.C. 522(10)) for the provision of video service in Indiana; and

(2) a unit may not:

(A) require a provider to obtain a separate franchise;

(B) impose any fee, gross receipt tax, licensing requirement, rate regulation, or build-out requirement on a provider;

(C) regulate a holder or provider; or

(D) establish, fund, or otherwise designate an agency, a board, or another subordinate entity to monitor, supervise, evaluate, or regulate the holder or provider;

except as authorized by this chapter.

(b) Except as provided in section 21 of this chapter, a person who seeks to provide video service in Indiana after June 30, 2006, shall file with the commission an application for a franchise. The application shall be made on a form prescribed by the commission and must include the following:

(1) A sworn affidavit, signed by an officer or another person authorized to bind the applicant, that affirms the following:

(A) That the applicant has filed or will timely file with the Federal Communications Commission all forms required by the Federal Communications Commission before offering video service in Indiana.

(B) That the applicant agrees to comply with all federal and state statutes, rules, and regulations applicable to the operation of the applicant's video service system.

(C) That the applicant agrees to:

(i) comply with any local ordinance or regulation governing the use of public rights-of-way in the delivery of video service; and

(ii) recognize the police powers of a unit to enforce the ordinance or regulation.

(D) If the applicant will terminate an existing local franchise under section 21 of this chapter, that the applicant agrees to perform any obligations owed to any private person, as required by section 22 of this chapter.

(2) The applicant's legal name and any name under which the applicant does or will do business in Indiana, as authorized by the secretary of state.

(3) The address and telephone number of the applicant's principal place of business, along with contact information for the person responsible for ongoing communications with the commission.

(4) The names and titles of the applicant's principal officers.

(5) The legal name, address, and telephone number of the applicant's parent company, if any.

(6) A description of each service area in Indiana to be served by the applicant. A service area described under this subdivision may include an unincorporated area in Indiana.

(7) The expected date for the deployment of video service in each of the areas identified in subdivision (6).

(8) A list of other states in which the applicant provides video service.

(9) If the applicant will terminate an existing local franchise under section 21(b) of this chapter, a copy of the written notice sent to the municipality under section 21(c) of this chapter.

(10) Any other information the commission considers necessary to:

(A) monitor the provision of video service to Indiana customers; and

(B) prepare, under IC 8-1-2.6-4, the commission's annual report to the interim study committee on energy, utilities, and telecommunications established by IC 2-5-1.3-4 in an electronic format under IC 5-14-6.

(c) This section does not empower the commission to require:

(1) an applicant to disclose confidential and proprietary business plans and other confidential information without adequate protection of the information; or

(2) a provider to disclose more frequently than in each odd numbered year information regarding the areas in which an applicant has deployed, or plans to deploy, video services.

The commission shall exercise all necessary caution to avoid disclosure of confidential information supplied under this section.

(d) The commission may charge a fee for filing an application under this section. Any fee charged by the commission under this subsection may not exceed the commission's actual costs to process and review the application under section 17 of this chapter.

(e) Nothing in this title may be construed to require an applicant or a provider to disclose information that identifies by census block, street address, or other similar level of specificity the areas in which the applicant or provider has deployed, or plans to deploy, video service in Indiana. The commission may not disclose, publish, or report by census block, street address, or other similar level of specificity any information identifying the areas in Indiana in which an applicant or a provider has deployed, or plans to deploy, video service.

(f) Nothing in this title may be construed to require an applicant or provider to provide the commission with information describing the applicant's or provider's programming, including the applicant's or provider's channel lineups or channel guides.

SECTION 11. IC 8-20-1-28 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2021]: 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, **and the county executive shall comply with IC 8-1-2-101.** 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 12. IC 22-5-1.7-6, AS AMENDED BY P.L.28-2013, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2021]: Sec. 6. **(a)** As used in this chapter, "public contract for services" means any type of written agreement between a state agency or political subdivision and a contractor for the procurement of services.

(b) The term does not include a contract for the lease of property owned by the state under which no state expenditures are required.

SECTION 13. IC 36-1-11-1, AS AMENDED BY P.L.270-2019, SECTION 24, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2021]: Sec. 1. (a) Except as provided in subsection (b), this chapter applies to the disposal of property by:

(1) political subdivisions; and

(2) agencies of political subdivisions.

(b) This chapter does not apply to the following:

(1) The disposal of property under an urban homesteading program under IC 36-7-17 or IC 36-7-17.1.

(2) The lease of school buildings under IC 20-47.

(3) The sale of land to a lessor in a lease-purchase contract under IC 36-1-10.

(4) The disposal of property by a redevelopment commission established under IC 36-7.

(5) The leasing of property by a board of aviation commissioners established under IC 8-22-2 or an airport authority established under IC 8-22-3.

(6) The disposal of a municipally owned utility under IC 8-1.5.

(7) Except as provided in sections 5.5 and 5.6 of this chapter, the sale or lease of property by a unit to an Indiana nonprofit corporation organized for educational, literary, scientific, religious, or charitable purposes that is exempt from federal income taxation under Section 501 of the Internal Revenue Code or the sale or reletting of that property by the nonprofit

corporation.

(8) The disposal of surplus property by a hospital established and operated under IC 16-22-1 through IC 16-22-5, IC 16-22-8, IC 16-23-1, or IC 16-24-1.

(9) The sale or lease of property acquired under IC 36-7-13 for industrial development.

(10) The sale, lease, or disposal of property by a local hospital authority under IC 5-1-4.

(11) The sale or other disposition of property by a county or municipality to finance housing under IC 5-20-2.

(12) The disposition of property by a soil and water conservation district under IC 14-32.

(13) The sale, lease, or disposal of property by the health and hospital corporation established and operated under IC 16-22-8.

(14) The disposal of personal property by a library board under IC 36-12-3-5(c).

(15) The sale or disposal of property by the historic preservation commission under IC 36-7-11.1.

(16) The disposal of an interest in property by a housing authority under IC 36-7-18.

(17) The disposal of property under IC 36-9-37-26.

(18) The disposal of property used for park purposes under IC 36-10-7-8.

(19) The disposal of curricular materials that will no longer be used by school corporations under IC 20-26-12.

(20) The disposal of residential structures or improvements by a municipal corporation without consideration to:

(A) a governmental entity; or

(B) a nonprofit corporation that is organized to expand the supply or sustain the existing supply of good quality, affordable housing for residents of Indiana having low or moderate incomes.

(21) The disposal of historic property without consideration to a nonprofit corporation whose charter or articles of incorporation allows the corporation to take action for the preservation of historic property. As used in this subdivision, "historic property" means property that is:

(A) listed on the National Register of Historic Places; or

(B) eligible for listing on the National Register of Historic Places, as determined by the division of historic preservation and archeology of the department of natural resources.

(22) The disposal of real property without consideration to:

(A) a governmental agency; or

(B) a nonprofit corporation that exists for the primary purpose

of enhancing the environment;

when the property is to be used for compliance with a permit or an order issued by a federal or state regulatory agency to mitigate an adverse environmental impact.

(23) The disposal of property to a person under an agreement between the person and a political subdivision or an agency of a political subdivision under IC 5-23.

(24) The disposal of residential real property pursuant to a federal aviation regulation (14 CFR 150) Airport Noise Compatibility Planning Program as approved by the Federal Aviation Administration.

(25) The disposal of property by a political subdivision to a public utility (as defined in IC 8-1-2-1) or to a communications service provider (as defined in IC 8-1-32.5-4).

SECTION 14. IC 36-1-12-1, AS AMENDED BY P.L.91-2017, SECTION 9, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2021]: Sec. 1. (a) Except as provided in this section, this chapter applies to all public work performed or contracted for by:

(1) political subdivisions; and

(2) their agencies;

regardless of whether it is performed on property owned or leased by the political subdivision or agency.

(b) This chapter does not apply to an officer or agent who, on behalf of a municipal utility **or a conservancy district described in IC 14-33-1-1(a)(4) or IC 14-33-1-1(a)(5),** maintains, extends, and installs services of the utility **or district** if the necessary work is done by the employees of the utility **or district.**

(c) This chapter does not apply to hospitals organized or operated under IC 16-22-1 through IC 16-22-5 or IC 16-23-1, unless the public work is financed in whole or in part with cumulative building fund revenue.

(d) This chapter does not apply to tax exempt Indiana nonprofit corporations leasing and operating a city market owned by a political subdivision.

(e) As an alternative to this chapter, the governing body of a political subdivision or its agencies may do the following:

(1) Enter into a design-build contract as permitted under IC 5-30.

(2) Participate in a utility efficiency program or enter into a guaranteed savings contract as permitted under IC 36-1-12.5.

(f) This chapter does not apply to a person that has entered into an operating agreement with a political subdivision or an agency of a political subdivision under IC 5-23.

(g) This chapter does not apply to the extension or installation of

utility infrastructure by a private developer of land if all the following apply:

(1) A municipality will acquire for the municipality's municipally owned utility all of the utility infrastructure that is to be extended or installed.

(2) Not more than fifty percent (50%) of the total construction costs for the utility infrastructure to be extended or installed, including any increased costs that result from any construction specifications that:

(A) are required by the municipality; and

(B) specify a greater service capacity for the utility infrastructure than would otherwise be provided for by the private developer;

will be paid for out of a public fund or out of a special assessment.

(3) The private developer agrees to comply with all local ordinances and engineering standards applicable to the construction, extension, or installation of the utility infrastructure.

Speaker of the House of Representatives

President of the Senate

President Pro Tempore

Governor of the State of Indiana

Date: _____ Time: _____