



January 25, 2022

SENATE BILL No. 146

DIGEST OF SB 146 (Updated January 20, 2022 8:12 pm - DI 101)

Citations Affected: IC 8-1; IC 34-30; IC 35-52.

Synopsis: Attachments to electric distribution poles. Amends the statute concerning attachments of equipment by cable operators (attaching entities) to electric distribution poles owned or controlled by rural electric cooperatives or by municipalities providing electric service (pole owners) as follows: (1) Specifies that a pole owner's duty under the law to permit attachments to the pole owner's poles is subject to the terms of a written agreement between the pole owner and the attaching entity. (2) Provides that the written agreement between the attaching entity and the pole owner must establish the process by which the attaching entity may apply for access to the pole owner's poles. (3) Sets forth: (A) a time frame for the pole owner to respond to the attaching entity's application based on the number of poles included in the application; and (B) a pole owner's duty to do one of the following within that time frame: (i) Approve the application and authorize the attaching entity to make the attachments without the need for any make ready work. (ii) Submit to the attaching entity an invoice setting forth all necessary make ready work, the estimated make ready costs, and the estimated make ready completion date. (iii) Reject all or part of the attaching entity's application based on certain concerns that cannot be resolved by make ready work. (4) Specifies that an attaching entity must have the pole owner's written permission specifically authorizing an attachment for each pole on which the attaching entity seeks to place an attachment. (5) Provides that if the attaching entity violates this requirement, the attaching entity shall pay to the pole owner accrued rental fees for each pole on which an unauthorized attachment is made, (Continued next page)

Effective: Upon passage.

Koch

January 4, 2022, read first time and referred to Committee on Utilities.
January 24, 2022, amended, reported favorably — Do Pass.

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Digest Continued

dating back to the date the attachment is considered to have been made under existing law, plus a \$500 penalty for each pole on which an unauthorized attachment is made. (6) Provides that before January 1, 2023, if a contract granting the pole owner's written permission for an attachment to a particular pole does not exist at the time an attachment is made, the attaching entity shall pay to the pole owner accrued rental fees for each pole on which an attachment is made without a contract authorizing the attachment on that pole, dating back to the date the attachment is considered to have been made under existing law, plus any penalty that may be prescribed for such an attachment under any existing contract between the pole owner and the attaching entity. (7) Provides that if, after December 31, 2022, the attaching entity has not paid all accrued rental fees for such attachments made before January 1, 2023, the attaching entity shall, in addition to the accrued rental fees that remain outstanding, be liable for the \$500 fine that otherwise applies for each pole on which such an attachment was made before January 1, 2023, and for which the attaching entity has not paid all accrued rental fees. (8) Changes from 90 days (under current law) to 60 days the amount of time by which an attaching entity is responsible for transferring an authorized attachment after receiving written notice from the pole owner to do so. Makes a corresponding change in the amount of time after which the pole owner may rearrange, transfer, or relocate the attaching entity's system (or portion of the system) after the attaching entity has failed to do so. (9) Provides that the pole owner is immune from civil liability for the pole owner's actions in rearranging, transferring, or relocating the attaching entity's system, as long as the pole owner exercises reasonable care in taking such actions, and unless the pole owner's actions constitute gross negligence or willful or wanton misconduct. (10) Creates the offense of unlawful pole attachment, a Class C misdemeanor, for the knowing and intentional attachment to a pole without the pole owner's written permission specifically authorizing the attachment.



January 25, 2022

Second Regular Session of the 122nd General Assembly (2022)

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 2021 Regular Session of the General Assembly.

SENATE BILL No. 146

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 8-1-2-5.5, AS AMENDED BY THE TECHNICAL
2 CORRECTIONS BILL OF THE 2022 GENERAL ASSEMBLY, IS
3 AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON
4 PASSAGE]: Sec. 5.5. (a) As used in this section, "attaching entity"
5 means a cable operator (as defined in 47 U.S.C. 522(5)) that seeks an
6 attachment, or has an attachment, to a pole.
7 (b) As used in this section, "carrying charge factor", or "ccf", refers
8 to the carrying charge factor, as described in subsection (i)(2)(B)(ii),
9 that is used in calculating a pole attachment rental fee under subsection
10 (i)(2)(B).
11 (c) As used in this section, "net bare pole cost", or "nbp", refers to
12 the average net cost of a bare pole to the pole owner, as described in
13 subsection (i)(2)(B)(iii), that is used in calculating a pole attachment
14 rental fee under subsection (i)(2)(B).
15 (d) As used in this section, "pole" refers to an electric distribution
16 pole.
17 (e) As used in this section, "pole owner" means a:

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1 (1) corporation organized under IC 8-1-13;
 2 (2) corporation organized under IC 23-17 that is an electric
 3 cooperative and that has at least one (1) member that is a
 4 corporation organized under IC 8-1-13; or
 5 (3) municipality providing electric service;
 6 that owns or controls one (1) or more poles.

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

9 (1) the space on the pole occupied by an attaching entity; divided
 10 by
 11 (2) the usable space on the pole;
 12 as described in subsection (i)(2)(B)(i), that is used in calculating a pole
 13 attachment rental fee under subsection (i)(2)(B).

14 (g) Subject to subsections (h) through ~~(s)~~; **(t), and subject to the**
 15 **terms of a written agreement between the pole owner and the**
 16 **attaching entity**, a pole owner shall permit attachments by attaching
 17 entities to the poles owned or controlled by the pole owner. **The**
 18 **written agreement between the attaching entity and the pole owner**
 19 **must establish the process by which the attaching entity may apply**
 20 **for access to poles owned by the pole owner. Unless otherwise**
 21 **agreed to by the parties, the process must provide that not later**
 22 **than sixty (60) days after the pole owner's receipt of a complete**
 23 **application for attachments to not more than one hundred (100)**
 24 **poles, or not later than ninety (90) days after the pole owner's**
 25 **receipt of a complete application for attachments to more than one**
 26 **hundred (100) poles, the pole owner shall do one (1) of the**
 27 **following:**

28 (1) **Approve the application and authorize the attaching entity**
 29 **to make the requested attachments without the need for any**
 30 **make ready work.**

31 (2) **Submit to the attaching entity an invoice setting forth:**
 32 (A) **all necessary work to prepare the poles for the**
 33 **attaching entity's proposed attachments;**
 34 (B) **the estimated make ready costs; and**
 35 (C) **the estimated make ready completion date.**

36 **If, after receiving an invoice under this subdivision, the**
 37 **attaching entity pays the estimated make ready costs and**
 38 **requests the pole owner to proceed with the make ready work,**
 39 **the pole owner shall undertake reasonable efforts to complete**
 40 **the make ready work by the estimated make ready completion**
 41 **date.**

42 (3) **Reject all or part of the attaching entity's application**



1 based on concerns relating to:

2 (A) property access;

3 (B) capacity;

4 (C) safety;

5 (D) reliability; or

6 (E) engineering;

7 and that cannot be resolved by make ready work.

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

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

11 (2) must not favor:

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

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

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

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

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

19 (A) is agreed upon by the parties; or

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

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

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

27 (iii) The net bare pole cost.

28 Expressed mathematically:

29 (saf) times (ccf) times (nbp)

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

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

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

37 resulting in a space allocation factor of twelve and one-half percent
38 (12.5%).

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

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

41 (2) the rates, terms, and conditions for attachment to poles owned
42 or controlled by the pole owner;



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

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

5 (1) proceed to determine whether:

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

7 or

8 (B) the rates, terms, and conditions complained of were not

9 just and reasonable as determined under subsection (i)(2)(B);

10 as applicable; and

11 (2) issue an order:

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

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

15 (i) are reasonable; and

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

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

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

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

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

29 (n) ~~Any~~ **An** attachment to a pole may only be made with the written
30 permission of the pole owner. **An attaching entity must have the pole
31 owner's written permission specifically authorizing an attachment
32 for each pole on which the attaching entity seeks to place an
33 attachment. If a contract granting the pole owner's written
34 permission for an attachment on a particular pole does not exist
35 between a pole owner and an attaching entity at the time the
36 attachment is made, the attaching entity violates this subsection
37 and shall pay to the pole owner:**

38 (1) **accrued rental fees for each pole on which an unauthorized
39 attachment is made, dating back to the date the attachment is
40 considered to have been made under subsection (o); and**

41 (2) **except as otherwise provided in this subsection with
42 respect to an authorized attachment that is made before**



1 **January 1, 2023, a fine of five hundred dollars (\$500) for each**
 2 **pole on which an unauthorized attachment is made.**
 3 **Before January 1, 2023, if a contract granting the pole owner's**
 4 **written permission for an attachment on a particular pole does not**
 5 **exist between a pole owner and an attaching entity at the time an the**
 6 **attachment is made, an the attaching entity that violates this subsection**
 7 **shall pay a fine of five hundred dollars (\$500) to the pole owner**
 8 **accrued rental fees for each pole on which an unauthorized**
 9 **attachment is made without a contract authorizing the attachment**
 10 **on that pole, dating back to the date the attachment is considered**
 11 **to have been made under subsection (o), along with any penalty**
 12 **that may be prescribed for such an attachment under any existing**
 13 **contract between the pole owner and the attaching entity. If the**
 14 **attaching entity has made an attachment to a pole without a**
 15 **contract authorizing the attachment, and the pole owner has not**
 16 **discovered the attachment, through survey or otherwise, the**
 17 **attaching owner shall notify the pole owner of the attachment and**
 18 **shall pay to the pole owner accrued rental fees, dating back to the**
 19 **date the attachment was made, along with any penalty that may be**
 20 **prescribed for such an attachment under any existing contract**
 21 **between the pole owner and the attaching entity. If, after**
 22 **December 31, 2022, the attaching entity has not paid all accrued**
 23 **rental fees for such attachments made before January 1, 2023, the**
 24 **attaching entity shall, in addition to the accrued rental fees that**
 25 **remain outstanding, be liable for the five hundred dollar (\$500)**
 26 **fine that otherwise applies under this subsection for each pole on**
 27 **which such an attachment was made before January 1, 2023, and**
 28 **with respect to which the attaching entity has not paid all accrued**
 29 **rental fees and, in the case of an attachment not discovered by the**
 30 **pole owner, has not provided any notice of the attachment required**
 31 **by this subsection. In all cases, the attaching entity has the burden**
 32 **of proof to establish that an attachment has been made in**
 33 **compliance with this subsection.**

34 (o) An attachment to a utility pole made without notification to the
 35 pole owner and without the pole owner's written authorization, as
 36 required by subsection (n), is considered to have been made on:
 37 (1) the date of the most recent survey; **or**
 38 (2) the date that is five (5) years before the date of first discovery
 39 of the unauthorized attachment by the pole owner;
 40 whichever date is more recent. However, if the unauthorized pole
 41 attachment is discovered by survey, the unauthorized attachment is
 42 considered to have been made on the date of that survey.



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

4 (q) An attaching entity that has been given written permission from
5 a pole owner for an attachment to the pole owner's pole is responsible
6 for transferring the attachment not later than ~~ninety (90)~~ **sixty (60)** days
7 after receiving written notice from the pole owner to do so. If:

8 (1) after the expiration of the ~~ninety (90)~~ **sixty (60)** day period
9 described in this subsection; or

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

12 the attaching entity has failed to rearrange or transfer the attaching
13 entity's system, or an applicable portion of that system, the pole owner
14 may rearrange the system or portion of the system, transfer the system
15 or portion of the system to one (1) or more substituted poles, or relocate
16 the system or portion of the system, and the attaching entity shall
17 reimburse the pole owner for the pole owner's costs in doing so.
18 **However, The pole owner is immune from civil liability for the pole**
19 **owner's actions in rearranging, transferring, or relocating the**
20 **attaching entity's system, or any portion of the attaching entity's**
21 **system, under this section, as long as the pole owner exercises**
22 **reasonable care in taking such actions, and unless the pole owner's**
23 **actions constitute gross negligence or willful or wanton**
24 **misconduct.** This section does not relieve the attaching entity from
25 maintaining adequate workforces readily at hand to handle the
26 rearrangement, repair, service, or maintenance of the attaching entity's
27 attached system, or any portions of that system, in the event that the
28 condition of the attached system, or any portion of the system, hinders
29 the pole owner's operations.

30 (r) An attaching entity is primarily responsible for:

31 (1) scheduling; and

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

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



1 (s) After December 31, 2022, a person who knowingly and
2 intentionally makes an attachment to a pole without the pole
3 owner's written permission specifically authorizing the attachment
4 on the pole commits unlawful pole attachment, a Class C
5 misdemeanor.

6 (s) (t) To the extent any provision set forth in this section conflicts
7 with a provision in a contract in effect on ~~July 1, 2021~~, **March 14,**
8 **2022**, the provision in the contract controls unless otherwise agreed to
9 by the attaching entity and the pole owner.

10 SECTION 2. IC 34-30-2-23.5 IS ADDED TO THE INDIANA
11 CODE AS A NEW SECTION TO READ AS FOLLOWS
12 [EFFECTIVE UPON PASSAGE]: **Sec. 23.5. IC 8-1-2-5.5**
13 **(Concerning the rearranging, transferring, or relocating by the**
14 **owner of an electric distribution pole of a cable operator's**
15 **equipment attached to the pole).**

16 SECTION 3. IC 35-52-8-0.5 IS ADDED TO THE INDIANA CODE
17 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE
18 UPON PASSAGE]: **Sec. 0.5. IC 8-1-2-5.5 defines a crime concerning**
19 **attachment of equipment to electric distribution poles.**

20 SECTION 4. **An emergency is declared for this act.**



COMMITTEE REPORT

Madam President: The Senate Committee on Utilities, to which was referred Senate Bill No. 146, 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:

Page 2, line 14, strike "(s)," and insert "**(t), and subject to the terms of a written agreement between the pole owner and the attaching entity,**".

Page 2, line 16, after "owner." insert "**The written agreement between the attaching entity and the pole owner must establish the process by which the attaching entity may apply for access to poles owned by the pole owner. Unless otherwise agreed to by the parties, the process must provide that not later than sixty (60) days after the pole owner's receipt of a complete application for attachments to not more than one hundred (100) poles, or not later than ninety (90) days after the pole owner's receipt of a complete application for attachments to more than one hundred (100) poles, the pole owner shall do one (1) of the following:**

- (1) Approve the application and authorize the attaching entity to make the requested attachments without the need for any make ready work.**
- (2) Submit to the attaching entity an invoice setting forth:**
 - (A) all necessary work to prepare the poles for the attaching entity's proposed attachments;**
 - (B) the estimated make ready costs; and**
 - (C) the estimated make ready completion date.**

If, after receiving an invoice under this subdivision, the attaching entity pays the estimated make ready costs and requests the pole owner to proceed with the make ready work, the pole owner shall undertake reasonable efforts to complete the make ready work by the estimated make ready completion date.

- (3) Reject all or part of the attaching entity's application based on concerns relating to:**
 - (A) property access;**
 - (B) capacity;**
 - (C) safety;**
 - (D) reliability; or**
 - (E) engineering;**

and that cannot be resolved by make ready work."

Page 3, line 42, after "attachment." insert "**If a contract granting the pole owner's written permission for an attachment on a**



particular pole does not exist between a pole owner and an attaching entity at the time the attachment is made, the attaching entity violates this subsection and shall pay to the pole owner:

- (1) accrued rental fees for each pole on which an unauthorized attachment is made, dating back to the date the attachment is considered to have been made under subsection (o); and
- (2) except as otherwise provided in this subsection with respect to an authorized attachment that is made before January 1, 2023, a fine of five hundred dollars (\$500) for each pole on which an unauthorized attachment is made."

Page 3, line 42, delete "If," begin a new line blocked left and insert: "**Before January 1, 2023**, if".

Page 4, line 3, strike "violates this subsection".

Page 4, line 4, delete "and".

Page 4, line 4, strike "a fine of five hundred dollars (\$500)" and insert "**to the pole owner accrued rental fees**".

Page 4, line 5, strike "unauthorized".

Page 4, line 5, delete "made." and insert "made **without a contract authorizing the attachment on that pole, dating back to the date the attachment is considered to have been made under subsection (o), along with any penalty that may be prescribed for such an attachment under any existing contract between the pole owner and the attaching entity. If the attaching entity has made an attachment to a pole without a contract authorizing the attachment, and the pole owner has not discovered the attachment, through survey or otherwise, the attaching owner shall notify the pole owner of the attachment and shall pay to the pole owner accrued rental fees, dating back to the date the attachment was made, along with any penalty that may be prescribed for such an attachment under any existing contract between the pole owner and the attaching entity. If, after December 31, 2022, the attaching entity has not paid all accrued rental fees for such attachments made before January 1, 2023, the attaching entity shall, in addition to the accrued rental fees that remain outstanding, be liable for the five hundred dollar (\$500) fine that otherwise applies under this subsection for each pole on which such an attachment was made before January 1, 2023, and with respect to which the attaching entity has not paid all accrued rental fees and, in the case of an attachment not discovered by the pole owner, has not provided any notice of the attachment required by this subsection. In all cases, the attaching entity has the burden of proof to establish that an attachment has been made in compliance with this subsection.**".



Page 4, line 20, delete "thirty (30)" and insert "**sixty (60)**".

Page 4, line 22, delete "thirty (30)" and insert "**sixty (60)**".

Page 4, line 32, delete "attaching entity shall indemnify and hold harmless" and insert "**pole owner is immune from civil liability for**".

Page 4, delete line 33.

Page 4, line 34, delete "by the attaching entity and that arises from or is related to".

Page 4, line 37, delete "section." and insert "**section, as long as the pole owner exercises reasonable care in taking such actions, and unless the pole owner's actions constitute gross negligence or willful or wanton misconduct.**".

Page 5, between lines 13 and 14, begin a new paragraph and insert:

"(s) After December 31, 2022, a person who knowingly and intentionally makes an attachment to a pole without the pole owner's written permission specifically authorizing the attachment on the pole commits unlawful pole attachment, a Class C misdemeanor."

Page 5, line 14, strike "(s)" and insert "(t)".

Page 5, between lines 17 and 18, begin a new paragraph and insert:

"SECTION 2. IC 34-30-2-23.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 23.5. IC 8-1-2-5.5 (Concerning the rearranging, transferring, or relocating by the owner of an electric distribution pole of a cable operator's equipment attached to the pole).

SECTION 3. IC 35-52-8-0.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 0.5. IC 8-1-2-5.5 defines a crime concerning attachment of equipment to electric distribution poles."

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to SB 146 as introduced.)

KOCH, Chairperson

Committee Vote: Yeas 8, Nays 0.

