

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

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 2020 Regular Session of the General Assembly.

## SENATE ENROLLED ACT No. 352

---

AN ACT to amend the Indiana Code concerning utilities.

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

SECTION 1. IC 4-4-38.5-1.6 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 1.6. As used in this chapter, "challenge" means notice that:**

- (1) is provided to the office by an eligible broadband service provider under the process established by the office under section 8.5 of this chapter; and**
- (2) asserts that minimum broadband Internet is already deployed at a specific address with respect to which another eligible broadband service provider has submitted a letter of intent under the process established by the office under section 8.5 of this chapter.**

SECTION 2. IC 4-4-38.5-1.7 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 1.7. As used in this chapter, "deployed" means, with respect to the availability of minimum broadband Internet at a location, that an eligible broadband service provider:**

- (1) currently has minimum broadband Internet at the location; or**

SEA 352 — Concur



**(2) could provide minimum broadband Internet to a customer that requests minimum broadband Internet at the location:**

**(A) not later than ten (10) days after the customer requests minimum broadband Internet at the location; and**

**(B) without:**

**(i) an extraordinary commitment of resources; or**

**(ii) construction charges or fees exceeding an ordinary service activation fee.**

**Minimum broadband Internet is considered to be deployed at a location regardless of whether any person or entity subscribes to minimum broadband Internet at the location.**

SECTION 3. IC 4-4-38.5-5.6 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 5.6. As used in this chapter, "minimum broadband Internet" means a terrestrial connection to the Internet that provides an actual speed of at least twenty-five (25) megabits per second downstream and at least three (3) megabits per second upstream, regardless of the technology or medium used to provide the connection.**

SECTION 4. IC 4-4-38.5-8.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 8.5. (a) The office shall establish a process to be used before each formal request for the submission of grant applications by the office under this chapter. The process established by the office under this section must do the following:**

**(1) Invite any prospective grant applicant to submit a letter of intent identifying all addresses and census blocks that the applicant intends to include in an application filed as part of the immediately forthcoming request for the submission of grant applications by the office.**

**(2) Provide that the office will make all addresses and census blocks submitted in letters of intent under subdivision (1) publicly available for a period of time, to be determined by the office, during which eligible broadband service providers will have the opportunity to challenge a listed address or census block.**

**(3) Provide that upon receiving a challenge from an eligible broadband service provider under subdivision (2), the office will:**

**(A) review all information received from the eligible broadband service provider and determine whether**



**minimum broadband Internet:**

- (i) is deployed; or**
- (ii) will be deployed within eighteen (18) months;**

**to the challenged address or census block; and**

**(B) determine whether the eligible broadband service provider's challenge is valid or invalid based on the office's review under clause (A).**

**(4) Provide that if the office finds a challenge to an address or a census block to be invalid under subdivision (3), the office will do the following:**

**(A) Provide to all eligible broadband service providers that challenged the address or census block timely written notice that:**

- (i) indicates the office has determined the challenge to be invalid; and**
- (ii) sets forth the reasons for the office's determination with such specificity as will enable each eligible broadband service provider that challenged the address or census block to review each reason and provide additional information to the office to support the eligible broadband service provider's challenge.**

**(B) Allow an eligible broadband service provider that receives notice under clause (A) a period of time, to be determined by the office, to provide further information to the office to support the eligible broadband service provider's challenge.**

**(C) Find an eligible broadband service provider's challenge valid if the office determines, based on additional information submitted under clause (B), that minimum broadband Internet:**

- (i) is deployed; or**
- (ii) will be deployed within eighteen (18) months;**

**to the challenged address or census block.**

**(5) Provide that after the completion of the challenge process described in subdivisions (2) through (4), the office will notify prospective grant applicants that submitted a letter of intent under subdivision (1) of the census blocks and addresses that were not the subject of a valid challenge under subdivisions (2) through (4).**

**(b) Upon issuing a request for the submission of grant applications under this chapter, the office shall publish the results of the challenge process established under subsection (a).**



**(c) The process established by the office under this section with respect to:**

- (1) letters of intent; and**
- (2) challenges;**

**by prospective grant applicants must precede and remain distinct from the procedures set forth in section 9(g) of the chapter with respect to actual grant applications.**

SECTION 5. IC 8-23-2-5, AS AMENDED BY P.L.53-2014, SECTION 85, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: 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 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) **subject to section 6.5 of this chapter**, 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 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 data base 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.

(e) Not later than August 1 of each year, the department, through the commissioner or the commissioner's designee, shall prepare for the interim study committee on roads and transportation a report that includes updates on the following:

- (1) Transportation and infrastructure funding.
- (2) Public-private agreements under IC 8-15.5.
- (3) Public-private partnerships under IC 8-15.7.
- (4) Reports and supplements prepared under IC 8-23-12.
- (5) Programs and projects conducted in cooperation with Purdue University under IC 8-23-9-56.
- (6) Any other information requested by the study committee.

The report must be submitted in an electronic format under IC 5-14-6.

SECTION 6. IC 8-23-2-6, AS AMENDED BY P.L.108-2019, SECTION 157, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 6. (a) The department, through the commissioner or the commissioner's designee, may do the following:

- (1) **Subject to section 6.5 of this chapter**, acquire by purchase, gift, or condemnation, sell, abandon, own in fee or a lesser interest, hold, or lease property in the name of the state, or otherwise dispose of or encumber property to carry out its responsibilities.
- (2) Contract with persons outside the department to do those things that in the commissioner's opinion cannot be adequately or efficiently performed by the department.
- (3) Enter into:
  - (A) a contract with the Indiana finance authority under IC 8-9.5-8-7; or
  - (B) a lease with the Indiana finance authority under IC 8-9.5-8-8;

for the construction, reconstruction, improvement, maintenance, repair, or operation of toll road projects under IC 8-15-2 and toll bridges under IC 8-16-1.

- (4) Enter into a contract with a contractor, operator, or design builder or construction manager as constructor for, or with any adviser, consultant, attorney, accountant, engineer, architect, or other person or entity in connection with, the construction, reconstruction, improvement, maintenance, repair, or operation of a railroad project, as defined in IC 8-5-15-1, in accordance with an authorization provided to the department by the board of trustees of a commuter transportation district under



IC 8-5-15-5(a)(21).

(5) Sue and be sued, including, with the approval of the attorney general, the compromise of any claims of the department.

(6) Hire attorneys.

(7) Perform all functions pertaining to the acquisition of property for transportation purposes, including the compromise of any claims for compensation.

(8) Hold investigations and hearings concerning matters covered by orders and rules of the department.

(9) Execute all documents and instruments necessary to carry out its responsibilities.

(10) Make contracts and expenditures, perform acts, enter into agreements, and make rules, orders, and findings that are necessary to comply with all laws, rules, orders, findings, interpretations, and regulations promulgated by the federal government in order to:

(A) qualify the department for; and

(B) receive;

federal government funding on a full or participating basis.

(11) Adopt rules under IC 4-22-2 to carry out its responsibilities, including emergency rules in the manner provided under IC 4-22-2-37.1.

(12) Establish regional offices.

(13) Adopt a seal.

(14) Perform all actions necessary to carry out the department's responsibilities.

(15) Order a utility to relocate the utility's facilities and coordinate the relocation of customer service facilities if:

(A) the facilities are located in a highway, street, or road; and

(B) the department determines that the facilities will interfere with a planned highway or bridge construction or improvement project funded by the department.

(16) Reimburse a utility:

(A) in whole or in part for extraordinary costs of relocation of facilities;

(B) in whole for unnecessary relocations;

(C) in accordance with IC 8-23-26-12 and IC 8-23-26-13;

(D) in whole for relocations covered by IC 8-1-9; and

(E) to the extent that a relocation is a taking of property without just compensation.

(17) Provide state matching funds and undertake any surface transportation project eligible for funding under federal law.



However, money from the state highway fund and the state highway road construction and improvement fund may not be used to provide operating subsidies to support a public transportation system or a commuter transportation system.

(18) Upon request, evaluate, negotiate, and enter into:

(A) a supplemental funding agreement with a regional development authority under IC 36-9-43; or

(B) an interlocal agreement with a regional development authority for purposes of IC 36-9-43.

(b) In the performance of contracts and leases with the Indiana finance authority, the department has authority under IC 8-15-2, in the case of toll road projects and IC 8-16-1, in the case of toll bridges necessary to carry out the terms and conditions of those contracts and leases.

(c) The department shall:

(1) classify as confidential any estimate of cost prepared in conjunction with analyzing competitive bids for projects until a bid below the estimate of cost is read at the bid opening;

(2) classify as confidential that part of the parcel files that contain appraisal and relocation documents prepared by the department's land acquisition division; and

(3) classify as confidential records that are the product of systems designed to detect collusion in state procurement and contracting that, if made public, could impede detection of collusive behavior in securing state contracts.

This subsection does not apply to parcel files of public agencies or affect IC 8-23-7-10.

(d) In the case of a regional development authority that undertakes a regional transportation infrastructure project under IC 36-9-43, the department shall cooperate with the regional development authority.

SECTION 7. IC 8-23-2-6.5 IS ADDED TO THE INDIANA CODE AS A **NEW SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 6.5. The department may require a private entity to agree, as a condition of the department leasing a right-of-way to the private entity, that facilities constructed or installed by the private entity in or under the right-of-way, which if removed would:**

**(1) cause irreparable soil disturbance; or**

**(2) have a detrimental effect on the department's facilities or on the facilities of other utilities co-located in the right-of-way;**

**will be considered abandoned without additional consideration**





upon notice to the department. The private entity shall notify in writing the department of any abandonment not later than sixty (60) days after abandonment. Upon being abandoned under this section, a facility may no longer be used for any purpose by any public or private entity.

SECTION 8. [EFFECTIVE UPON PASSAGE] (a) The definitions in IC 4-4-38.5, as amended by this act, apply throughout this SECTION.

(b) Not later than July 1, 2021, the office shall amend the guidelines adopted by the office under IC 4-4-38.5-10 to the extent necessary to establish the process set forth in IC 4-4-38.5-8.5, as added by this act, with respect to:

- (1) letters of intent; and
- (2) challenges;

by prospective grant applicants under IC 4-4-38.5, as amended by this act.

(c) This SECTION expires January 1, 2022.

SECTION 9. An emergency is declared for this act.



---

President of the Senate

---

President Pro Tempore

---

Speaker of the House of Representatives

---

Governor of the State of Indiana

Date: \_\_\_\_\_ Time: \_\_\_\_\_

**SEA 352 — Concur**

