



January 24, 2014

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## SENATE BILL No. 405

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DIGEST OF SB 405 (Updated January 23, 2014 12:26 pm - DI 101)

**Citations Affected:** IC 8-1.

**Synopsis:** Underground utility facilities. Amends the statute concerning the location and protection of underground utility facilities (facilities) during excavation or demolition activities to require, with respect to an excavation or demolition in an unincorporated area, the excavator to submit a separate locate request and notice of the excavation or demolition (notice) to the Indiana Underground Plant Protection Service (association) for at least every 2,640 linear feet (versus every 2,500 linear feet under current law) of proposed excavation or demolition. Provides that a notice expires 20 days after the date the notice is submitted to the association. Provides that if, at the conclusion of the 20 day period, any part of the excavation or demolition is not complete at any part of the site for which the original notice was submitted, the excavator may not continue or resume the excavation or demolition until: (1) the excavator submits to the association a new locate request and notice for that part of the site for which the excavation or demolition is not complete; and (2) each affected utility operator provides facility locate markings for that part of the site for which the new locate request and notice are submitted. Provides that mechanized equipment may be used to perform an excavation within two feet of either side of the outer limits of a facility if: (1) the facility is located or contained in or under pavement; or (2) there is pavement on or over the area extending up to two feet from the outer limits of the facility; notwithstanding the prohibition in existing law on using mechanized equipment when the clearance outside the outer limits of a facility is less than two feet. Provides that information  
(Continued next page)

**Effective:** July 1, 2014.

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### Yoder, Crider, Broden

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January 14, 2014, read first time and referred to Committee on Utilities.  
January 24, 2014, amended, reported favorably — Do Pass.

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Digest Continued

concerning the location of a facility provided by the facility's operator must include the approximate: (1) depth below the surface; or (2) elevation; of the facility, as determined using a method or technology approved by the board of directors of the Indiana Underground Plant Protection Service (association). Provides that if an excavator determines that the exact location of a facility cannot be determined: (1) the excavator may submit a request through the association for the facility's operator to provide onsite assistance in locating the facility; and (2) the operator shall, not later than two full working days after the date the request is made, provide at the site of the excavation or demolition the assistance requested. Makes technical changes.

**SB 405—LS 6620/DI 101**



January 24, 2014

Second Regular Session 118th General Assembly (2014)

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 2013 Regular Session and 2013 First Regular Technical Session of the General Assembly.

## SENATE BILL No. 405

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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 8-1-26-3.5 IS ADDED TO THE INDIANA CODE  
2 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
3 1, 2014]: **Sec. 3.5. As used in this chapter, "communications  
4 service" has the meaning set forth in IC 8-1-32.5-3.**  
5 SECTION 2. IC 8-1-26-9 IS AMENDED TO READ AS FOLLOWS  
6 [EFFECTIVE JULY 1, 2014]: Sec. 9. As used in this chapter,  
7 "mechanized equipment" means equipment operated by means of  
8 mechanical power, including:  
9 (1) trenchers;  
10 (2) bulldozers;  
11 (3) power shovels;  
12 (4) augers;  
13 (5) backhoes;  
14 (6) scrapers;  
15 (7) drills;  
16 (8) cable and pipe plows;

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1 (9) hydroexcavators; and

2 (10) other equipment that may cause damage to underground  
3 facilities.

4 SECTION 3. IC 8-1-26-16, AS AMENDED BY P.L.62-2009,  
5 SECTION 13, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
6 JULY 1, 2014]: Sec. 16. (a) Except as provided in section 19 of this  
7 chapter, before commencing an excavation or demolition operation  
8 described in section 14 of this chapter, each person responsible for the  
9 excavation or demolition shall:

10 (1) serve notice on the association of the person's intent to  
11 excavate or demolish; and

12 (2) perform white lining at the site of the excavation or demolition  
13 if the person responsible for the excavation or demolition is  
14 unable to provide to the association the physical location of the  
15 proposed excavation or demolition by one (1) of the following  
16 means:

17 (A) A street address.

18 (B) A legal description of the location.

19 (C) A highway location using highway mile markers or cross  
20 streets.

21 The notice required under subdivision (1) must be received at least two  
22 (2) full working days but not more than twenty (20) calendar days  
23 before the commencement of the work. Upon receiving the notice, the  
24 association immediately shall notify each operator that has  
25 underground facilities located in the proposed area of excavation or  
26 demolition. A person responsible for excavation or demolition may  
27 commence work before the elapse of two (2) full working days if all  
28 affected operators have notified the person that the location of all the  
29 affected operators' facilities have been marked or that the affected  
30 operators have no facilities in the location of the proposed excavation  
31 or demolition.

32 (b) A county recorder who receives an inquiry from a person  
33 seeking to provide notice of an excavation or a demolition under this  
34 section shall refer the person to the association. After receiving a notice  
35 under this section, the association shall provide notice of the proposed  
36 excavation or demolition to each member operator that has  
37 underground facilities located in the proposed area of excavation or  
38 demolition.

39 (c) A person responsible for demolition must give an operator a  
40 reasonable amount of time, as mutually determined by the operator, the  
41 person responsible for demolition, and the project owner, to remove or  
42 protect the operator's facilities before demolition of the structure is



- 1 commenced.
- 2 (d) The notice required by subsection (a) must contain the following
- 3 information:
- 4 (1) The name, address, and telephone number of the person
- 5 serving the notice, and, if different, the person responsible for the
- 6 excavation or demolition.
- 7 (2) The starting date, anticipated duration, and type of excavation
- 8 or demolition operation to be conducted.
- 9 (3) The location of the proposed excavation or demolition.
- 10 (4) Whether or not explosives or blasting are to be used.
- 11 (5) The approximate depth of excavation.
- 12 (6) Whether the person responsible for the proposed excavation
- 13 or demolition intends to perform white lining at the site of the
- 14 proposed excavation or demolition.
- 15 (e) The person responsible for the excavation or demolition shall
- 16 submit a separate locate request along with the notice provided under
- 17 subsection (d)(3) to the association as follows:
- 18 (1) Within an incorporated area, for each one thousand five
- 19 hundred (1,500) linear feet of proposed excavation or demolition.
- 20 (2) In an unincorporated area, for **at least** each two thousand ~~five~~
- 21 **six hundred (2,500) forty (2,640)** linear feet of proposed
- 22 excavation or demolition.
- 23 (f) **A notice provided under this section by a person responsible**
- 24 **for an excavation or demolition expires twenty (20) days after the**
- 25 **date the notice is submitted to the association under subsection (a),**
- 26 **as determined in the manner specified in section 17(d) of this**
- 27 **chapter. If, at the conclusion of the twenty (20) day period**
- 28 **described in this subsection, any part of the excavation or**
- 29 **demolition is not complete at any part of the site for which the**
- 30 **original notice was submitted, the person responsible for the**
- 31 **excavation or demolition may not continue or resume the**
- 32 **excavation or demolition at any part of the site for which the**
- 33 **original notice was submitted until:**
- 34 (1) **the person responsible for the excavation or demolition**
- 35 **submits to the association a new locate request, along with a**
- 36 **notice that complies with subsection (d), with respect to that**
- 37 **part of the site for which the excavation or demolition is not**
- 38 **complete; and**
- 39 (2) **each affected operator provides facility locate markings in**
- 40 **compliance with section 18 of this chapter for that part of the**
- 41 **site for which the new locate request and notice are submitted**
- 42 **under subdivision (1).**



1           ~~(f)~~ (g) The association shall maintain an adequate record of the  
 2 notice required by this section for seven (7) years to document  
 3 compliance with this chapter. A copy of the record shall be furnished  
 4 to the person giving notice to excavate or demolish upon written  
 5 request.

6           ~~(g)~~ (h) A person that:

7           (1) causes damage to a pipeline facility located in an area of  
 8 excavation or demolition;

9           (2) is required to provide notice under this section for the  
 10 excavation or demolition; and

11           (3) fails to provide the notice;

12 may be subject to a civil penalty in an amount recommended by the  
 13 advisory committee and approved by the commission, not to exceed ten  
 14 thousand dollars (\$10,000).

15           ~~(h)~~ (i) A person that:

16           (1) causes damage to a pipeline facility located in an area of  
 17 excavation or demolition;

18           (2) is required to perform white lining under subsection (a)(2);  
 19 and

20           (3) fails to perform white lining before an operator of a pipeline  
 21 facility arrives at the site of the proposed excavation or demolition  
 22 to mark the operator's pipeline facilities;

23 may be subject to a civil penalty in an amount recommended by the  
 24 advisory committee and approved by the commission, not to exceed ten  
 25 thousand dollars (\$10,000).

26           SECTION 4. IC 8-1-26-17, AS AMENDED BY P.L.62-2009,  
 27 SECTION 14, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 28 JULY 1, 2014]: Sec. 17. (a) An operator that has underground facilities  
 29 located in Indiana must be a member of the Indiana Underground Plant  
 30 Protection Service or its successor organization. The articles of  
 31 incorporation or the bylaws of the Indiana Underground Plant  
 32 Protection Service or its successor organization shall do the following:

33           (1) Provide that the board of directors of the Indiana Underground  
 34 Plant Protection Service or its successor organization is composed  
 35 of:

36           (A) five (5) members representing electric utilities other than  
 37 municipal electric utilities, including corporations organized  
 38 or operating under IC 8-1-13 or corporations organized under  
 39 IC 23-17, some of whose members are local district  
 40 corporations (as described in IC 8-1-13-23);

41           (B) five (5) members representing investor owned gas utilities,  
 42 including pipelines;



- 1 (C) five (5) members representing ~~telecommunications~~  
 2 **communications service** providers, at least one (1) of whom  
 3 is a provider of cable television service;  
 4 (D) five (5) members representing water or sewer utilities  
 5 other than municipal water or sewer utilities; and  
 6 (E) five (5) members representing political subdivisions,  
 7 including municipal utilities, which must include ~~the political~~  
 8 ~~subdivision that owns a member representing~~ the largest  
 9 waterworks utility in Indiana **that is owned by:**  
 10 **(i) a political subdivision; or**  
 11 **(ii) a department of public utilities created by**  
 12 **IC 8-1-11.1.**  
 13 (2) Require the affirmative vote of at least sixty percent (60%) of  
 14 each category of members appointed under subdivision (1) to  
 15 approve an increase, a decrease, or any other adjustment to the  
 16 membership dues, rates, tariffs, locate fees, or any other charges  
 17 imposed by the Indiana Underground Plant Protection Service or  
 18 its successor organization.  
 19 (b) The association shall provide for mutual receipt of notice of  
 20 excavation or demolition operations under section 16 of this chapter.  
 21 (c) The association shall:  
 22 (1) annually update the association's base map data, including  
 23 street addresses; and  
 24 (2) make reasonable efforts to reduce incorrect locate requests  
 25 issued to the association's members.  
 26 (d) The association shall develop and implement guidelines to  
 27 provide that, for purposes of providing notice to an operator under  
 28 section 16 of this chapter, the time of receipt of a notice of an intent to  
 29 excavate or demolish is determined as follows:  
 30 (1) For a notice that is received between the hours of 7 a.m. and  
 31 6 p.m. on a working day, at the time of receipt.  
 32 (2) For a notice that is received after 6 p.m. on a working day and  
 33 before 7 a.m. on the following working day, at 7 a.m. on the  
 34 following working day.  
 35 SECTION 5. IC 8-1-26-18, AS AMENDED BY P.L.62-2009,  
 36 SECTION 15, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 37 JULY 1, 2014]: Sec. 18. (a) **Subject to subsection (i)**, each operator  
 38 notified under section 16 of this chapter shall, **in not later than** two (2)  
 39 full working days after receiving the notice of intent provided in  
 40 section 16 of this chapter, supply to the person responsible for the  
 41 excavation or demolition the following information, using maps when  
 42 appropriate:



1 (1) The approximate location and a description of all the  
2 operator's underground facilities that may be damaged as a result  
3 of the excavation or demolition. **Information provided under**  
4 **this subdivision concerning the location of an underground**  
5 **facility must include the approximate:**

6 (A) depth below the surface; or  
7 (B) elevation;  
8 **of the underground facility, as determined using a method or**  
9 **technology approved by the board of directors of the**  
10 **association.**

11 (2) The location and description of all facility markers indicating  
12 the approximate location of the underground facilities.

13 (3) Any other information that would assist that person in locating  
14 and avoiding damage to the underground facilities, including  
15 providing adequate temporary markings indicating the  
16 approximate location of the underground facility and locations  
17 where permanent facility markers do not exist.

18 (b) Facility locate markings must consist of paint, flags, or stakes or  
19 any combination that mark the approximate location of the  
20 underground facilities. The method of marking must be appropriate for  
21 the location of the underground facilities.

22 (c) Color coding of facility locate markings indicating the type of  
23 underground facility must conform to the following color coding:

Facility and Type of Product	Specific Group Identifying Color
(1) Electric power distribution	
and transmission . . . . .	Safety red
(2) Municipal electric systems . . . . .	Safety red
(3) Gas distribution and	
transmission . . . . .	High visibility safety yellow
(4) Oil distribution and	
transmission . . . . .	High visibility safety yellow
(5) Dangerous materials, product	
lines, steam lines . . . . .	High visibility safety yellow
(6) <del>Telephone and telegraph</del> <b>Communications service</b>	
systems . . . . .	Safety alert orange
(7) Cable television . . . . .	Safety alert orange





- 1 (8) Police and fire
- 2 communications ..... Safety alert
- 3 orange
- 4 (9) Water systems ..... Safety precaution
- 5 blue
- 6 (10) Sewer systems ..... Safety green
- 7 (11) Proposed excavation ..... White
- 8 (d) Each operator notified under section 16 of this chapter shall,
- 9 **within not later than** two (2) full working days **of after** receiving the
- 10 notice of intent provided in section 16 of this chapter, make a
- 11 reasonable attempt to provide notification to the person responsible for
- 12 the excavation or demolition if the operator has no facilities in the
- 13 location of the proposed excavation or demolition.
- 14 (e) This section does not apply to an operator making an emergency
- 15 repair to its own underground facility.
- 16 (f) This subsection applies if all of the following occur:
- 17 (1) An operator of a pipeline facility is required to supply
- 18 information, including facility locate markings, under subsection
- 19 (a) to a person responsible for an excavation or demolition.
- 20 (2) The operator of the pipeline facility fails to supply the
- 21 information described in subdivision (1) or provides incorrect
- 22 facility locate markings.
- 23 (3) The operator's pipeline facility is damaged during the
- 24 excavation or demolition for which the operator was required to
- 25 supply the information described in subdivision (1).
- 26 The operator of the pipeline facility may be subject to a civil penalty in
- 27 an amount recommended by the advisory committee and approved by
- 28 the commission, not to exceed one thousand dollars (\$1,000).
- 29 (g) Subsection (f) does not apply to an operator that:
- 30 (1) is repairing its own underground facilities; or
- 31 (2) fails to supply required information or provide facility locate
- 32 markings due to factors beyond the control of the operator.
- 33 (h) A person that knowingly moves, removes, damages, or otherwise
- 34 alters a facility locate marking supplied under this section may be
- 35 subject to a civil penalty in an amount recommended by the advisory
- 36 committee and approved by the commission, not to exceed ten
- 37 thousand dollars (\$10,000). This subsection does not apply to a person
- 38 that moves, removes, damages, or otherwise alters a facility locate
- 39 marking as part of the excavation or demolition for which the facility
- 40 locate markings were supplied.
- 41 (i) **If, after receiving the information required under subsection**
- 42 **(a), the person responsible for the excavation or demolition**



1 determines that the exact location of an underground facility  
 2 cannot be determined, the person responsible for the excavation or  
 3 demolition may request the operator of the facility to provide  
 4 onsite assistance in locating the underground facility. A person  
 5 that:

- 6 (1) is responsible for the excavation or demolition; and
- 7 (2) makes a request under this subsection;

8 shall submit the request to the association in accordance with  
 9 section 16 of this chapter. Upon receiving notification of the  
 10 request from the association, the operator shall, not later than two  
 11 (2) full working days after the date the request is made (as  
 12 determined in the manner specified in section 17(d) of this  
 13 chapter), provide at the site of the excavation or demolition the  
 14 assistance requested.

15 SECTION 6. IC 8-1-26-20, AS AMENDED BY P.L.62-2009,  
 16 SECTION 17, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 17 JULY 1, 2014]: Sec. 20. (a) In addition to the notice required in section  
 18 16 of this chapter, a person responsible for an excavation or demolition  
 19 operation under section 14 of this chapter shall do all of the following:

- 20 (1) Plan the excavation or demolition to avoid damage to or  
 21 minimize interference with underground facilities in and near the  
 22 construction area.
- 23 (2) Maintain a clearance between an underground facility, as  
 24 marked by the operator, and the cutting edge or point of  
 25 mechanized equipment. The clearance must be not less than two  
 26 (2) feet on either side of the outer limits of the physical plant.  
 27 However, if the clearance is less than two (2) feet, exposure of the  
 28 underground facility may be accomplished as follows:

29 (A) Only by the use of:

- 30 (i) hand excavation;
- 31 (ii) air cutting; or
- 32 (iii) vacuum excavation; or
- 33 (iv) notwithstanding section 9(9) of this chapter,  
 34 hydroexcavators;

35 if the underground facility is not located or contained in or  
 36 under pavement, or if there is no pavement on or over the  
 37 area extending up to two (2) feet from the outer edge of  
 38 either side of the underground facility.

39 (B) By use of:

- 40 (i) any of the methods described in clause (A); or
- 41 (ii) subject to the person's duty under subdivision (1),  
 42 mechanized equipment;



1                   **if the underground facility is located or contained in or**  
2                   **under pavement, or if there is pavement on or over the**  
3                   **area extending up to two (2) feet from the outer edge of**  
4                   **either side of the underground facility.**  
5                   (3) Notify the association if:  
6                   (A) there is evidence of an unmarked pipeline facility in the  
7                   area of the excavation or demolition; or  
8                   (B) the markings indicating the location of an underground  
9                   facility have become illegible.  
10                  (b) A person who:  
11                  (1) violates subsection (a); and  
12                  (2) causes damage to a pipeline facility in the area of the  
13                  excavation or demolition;  
14                  may be subject to a civil penalty in an amount recommended by the  
15                  advisory committee and approved by the commission, not to exceed ten  
16                  thousand dollars (\$10,000).



## COMMITTEE REPORT

Madam President: The Senate Committee on Utilities, to which was referred Senate Bill No. 405, 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, between lines 3 and 4, begin a new paragraph and insert:

"SECTION 3. IC 8-1-26-16, AS AMENDED BY P.L.62-2009, SECTION 13, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 16. (a) Except as provided in section 19 of this chapter, before commencing an excavation or demolition operation described in section 14 of this chapter, each person responsible for the excavation or demolition shall:

- (1) serve notice on the association of the person's intent to excavate or demolish; and
- (2) perform white lining at the site of the excavation or demolition if the person responsible for the excavation or demolition is unable to provide to the association the physical location of the proposed excavation or demolition by one (1) of the following means:
  - (A) A street address.
  - (B) A legal description of the location.
  - (C) A highway location using highway mile markers or cross streets.

The notice required under subdivision (1) must be received at least two (2) full working days but not more than twenty (20) calendar days before the commencement of the work. Upon receiving the notice, the association immediately shall notify each operator that has underground facilities located in the proposed area of excavation or demolition. A person responsible for excavation or demolition may commence work before the elapse of two (2) full working days if all affected operators have notified the person that the location of all the affected operators' facilities have been marked or that the affected operators have no facilities in the location of the proposed excavation or demolition.

(b) A county recorder who receives an inquiry from a person seeking to provide notice of an excavation or a demolition under this section shall refer the person to the association. After receiving a notice under this section, the association shall provide notice of the proposed excavation or demolition to each member operator that has underground facilities located in the proposed area of excavation or demolition.

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(c) A person responsible for demolition must give an operator a reasonable amount of time, as mutually determined by the operator, the person responsible for demolition, and the project owner, to remove or protect the operator's facilities before demolition of the structure is commenced.

(d) The notice required by subsection (a) must contain the following information:

- (1) The name, address, and telephone number of the person serving the notice, and, if different, the person responsible for the excavation or demolition.
- (2) The starting date, anticipated duration, and type of excavation or demolition operation to be conducted.
- (3) The location of the proposed excavation or demolition.
- (4) Whether or not explosives or blasting are to be used.
- (5) The approximate depth of excavation.
- (6) Whether the person responsible for the proposed excavation or demolition intends to perform white lining at the site of the proposed excavation or demolition.

(e) The person responsible for the excavation or demolition shall submit a separate locate request along with the notice provided under subsection (d)(3) to the association as follows:

- (1) Within an incorporated area, for each one thousand five hundred (1,500) linear feet of proposed excavation or demolition.
- (2) In an unincorporated area, for **at least** each two thousand ~~five~~ **six** hundred ~~(2,500)~~ **forty (2,640)** linear feet of proposed excavation or demolition.

**(f) A notice provided under this section by a person responsible for an excavation or demolition expires twenty (20) days after the date the notice is submitted to the association under subsection (a), as determined in the manner specified in section 17(d) of this chapter. If, at the conclusion of the twenty (20) day period described in this subsection, any part of the excavation or demolition is not complete at any part of the site for which the original notice was submitted, the person responsible for the excavation or demolition may not continue or resume the excavation or demolition at any part of the site for which the original notice was submitted until:**

- (1) the person responsible for the excavation or demolition submits to the association a new locate request, along with a notice that complies with subsection (d), with respect to that part of the site for which the excavation or demolition is not complete; and**



**(2) each affected operator provides facility locate markings in compliance with section 18 of this chapter for that part of the site for which the new locate request and notice are submitted under subdivision (1).**

~~(f)~~ **(g)** The association shall maintain an adequate record of the notice required by this section for seven (7) years to document compliance with this chapter. A copy of the record shall be furnished to the person giving notice to excavate or demolish upon written request.

~~(g)~~ **(h)** A person that:

- (1) causes damage to a pipeline facility located in an area of excavation or demolition;
- (2) is required to provide notice under this section for the excavation or demolition; and
- (3) fails to provide the notice;

may be subject to a civil penalty in an amount recommended by the advisory committee and approved by the commission, not to exceed ten thousand dollars (\$10,000).

~~(h)~~ **(i)** A person that:

- (1) causes damage to a pipeline facility located in an area of excavation or demolition;
- (2) is required to perform white lining under subsection (a)(2); and
- (3) fails to perform white lining before an operator of a pipeline facility arrives at the site of the proposed excavation or demolition to mark the operator's pipeline facilities;

may be subject to a civil penalty in an amount recommended by the advisory committee and approved by the commission, not to exceed ten thousand dollars (\$10,000)."

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to SB 405 as introduced.)

MERRITT, Chairperson

Committee Vote: Yeas 10, Nays 0.

