

# SENATE BILL No. 447

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## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 8-1-26-18.5.

**Synopsis:** Underground utility facilities. Provides that if an operator owning underground utility facilities and meeting other specified criteria has failed: (1) on more than three occasions in any six month period to provide, in the time prescribed by the state's 811 statute for the locating of underground utility facilities, the information or temporary facility markings required under the statute; or (2) to relocate any facilities as requested by a county executive or other local official in connection with a planned road, highway, or bridge construction project; the utility regulatory commission (IURC) may order the operator to appear before the IURC at a public hearing to present evidence and explain why the operator has failed to take the applicable action. Provides that at the hearing, the operator shall have the opportunity to present evidence and the testimony of witnesses as to why the operator has failed to take the action. Provides that if, after the hearing, the IURC determines that there is not a good faith basis for the operator's failure to take the applicable action, the IURC may issue an order placing the operator on probationary status for a period of six months, beginning with the date of the IURC's order. Provides that if at the end of the six month probationary period, the operator has failed: (1) on more than three occasions to provide, in the time prescribed by the state's 811 statute, the information or temporary markings required under the statute with respect to any underground facilities of the operator in a project area; or (2) to relocate any facilities as requested by a county executive or other local official in connection with a planned road, highway, or bridge construction project (if the initial request was made before the start date of the operator's probationary  
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**Effective:** July 1, 2020.

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January 15, 2020, read first time and referred to Committee on Utilities.

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Digest Continued

status); the IURC may require the carrier to post a performance bond in an amount not to exceed \$1,000,000. Provides that the performance bond shall be posted to cover the anticipated costs of the operator's: (1) facility locating activities; or (2) relocation activities requested in connection with a planned county road, highway, or bridge construction project; during the six month period beginning on the day after the date on which the operator's probationary status ends. Provides that if during the six month period for which a performance bond is required, the operator fails to: (1) locate any underground facility of the operator in accordance with the state's 811 statute; or (2) relocate any underground facility of the operator as requested by a county executive or other local official in connection with a planned road, highway, or bridge construction project (if the initial request is made before the start date of the six month period covered by the performance bond); the IURC may order the use of the performance bond in the performance of the applicable action, to be undertaken on behalf of the operator by any lawful agent.



Second Regular Session of the 121st General Assembly (2020)

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 2019 Regular Session of the General Assembly.

# SENATE BILL No. 447



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 8-1-26-18.5 IS ADDED TO THE INDIANA CODE  
2 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
3 1, 2020]: **Sec. 18.5. (a) This section applies to an operator that:**  
4 (1) either alone or in conjunction with one (1) or more  
5 affiliates, has total annual revenue exceeding one billion  
6 dollars (\$1,000,000,000), wherever earned;  
7 (2) has, at any time, underground facilities in an area that is  
8 part of a construction project, or any other project or  
9 operation, that will involve an excavation or demolition  
10 operation described in section 14 of this chapter, including  
11 any planned road, highway, or bridge construction or  
12 improvement project under the jurisdiction of a county;  
13 (3) has been designated by the commission as an eligible  
14 telecommunications carrier (as defined in 170 IAC 7-1.2-2);  
15 and



1           **(4) has failed:**

2           **(A) on more than three (3) occasions to provide, in the time**  
 3           **prescribed by section 18(a) of this chapter, the information**  
 4           **or temporary markings required under section 18 of this**  
 5           **chapter with respect to any underground facilities of the**  
 6           **operator located within a project area; or**

7           **(B) to relocate any facilities as requested by a county**  
 8           **executive or other local official in connection with a**  
 9           **planned road, highway, or bridge construction or**  
 10           **improvement project under the jurisdiction of the county.**

11           **(b) Upon complaint, or upon the commission's own motion, the**  
 12           **commission may order, upon notice, an operator that is subject to**  
 13           **this section to appear before the commission at a public hearing to**  
 14           **present evidence and explain why the operator has failed to take**  
 15           **the action described in subsection (a)(4)(A) or (a)(4)(B), as**  
 16           **applicable.**

17           **(c) At the hearing, the operator that is the subject of the order**  
 18           **shall have the opportunity to present evidence and the testimony**  
 19           **of witnesses as to why the operator has failed to take the action**  
 20           **described in subsection (a)(4)(A) or (a)(4)(B), as applicable.**

21           **(d) If the operator that is the subject of the order fails to appear**  
 22           **at the hearing, the commission may order any lawful enforcement**  
 23           **mechanisms against the operator that the commission may take in**  
 24           **accordance with applicable federal and state law.**

25           **(e) If, after a hearing under this section, the commission**  
 26           **determines that there is not a good faith basis for the operator's**  
 27           **failure to take the action described in subsection (a)(4)(A) or**  
 28           **(a)(4)(B), as applicable, the commission may issue an order placing**  
 29           **the operator on probationary status for a period of six (6) months,**  
 30           **beginning with the date of the commission's order under this**  
 31           **subsection. If, at the end of the six (6) month probationary period**  
 32           **described in this subsection, the operator has failed:**

33           **(1) on more than three (3) occasions to provide, in the time**  
 34           **prescribed by section 18(a) of this chapter, the information or**  
 35           **temporary markings required under section 18 of this chapter**  
 36           **with respect to any underground facilities of the operator**  
 37           **located in a project area; or**

38           **(2) to relocate any facilities as requested by a county executive**  
 39           **or other local official in connection with a planned road,**  
 40           **highway, or bridge construction or improvement project**  
 41           **under the jurisdiction of the county, if the initial request was**  
 42           **made before the start date of the operator's probationary**



1 status;  
 2 the commission may require the operator to post a performance  
 3 bond in an amount determined by the commission, but not to  
 4 exceed one million dollars (\$1,000,000). The performance bond  
 5 shall be posted to cover the anticipated costs of the operator's  
 6 facility locating activities under this chapter, or of the operator's  
 7 relocation activities requested in connection with a planned project  
 8 described in subdivision (2), during the six (6) month period  
 9 beginning on the day after the date on which the operator's  
 10 probationary status ends.

11 (f) If, at any time during the six (6) month period for which a  
 12 performance bond is required under subsection (e), the operator  
 13 fails to:

14 (1) provide, in the time prescribed by section 18(a) of this  
 15 chapter, the information or temporary markings required  
 16 under section 18 of this chapter with respect to any  
 17 underground facilities of the operator located in a project  
 18 area; or

19 (2) relocate any underground facility of the operator as  
 20 requested by a county executive or other local official in  
 21 connection with a planned road, highway, or bridge  
 22 construction or improvement project under the jurisdiction  
 23 of the county, if the initial request is made before the start  
 24 date of the six (6) month period covered by the performance  
 25 bond;

26 the commission may order the use of the performance bond in the  
 27 performance of an action described in subdivision (1) or (2), to be  
 28 undertaken on behalf of the operator by any lawful agent.

29 (g) The commission, at the commission's discretion, may, after  
 30 notice and hearing, order that a performance bond required under  
 31 subsection (e) be renewed for one (1) or more additional periods,  
 32 the length of which may be determined by the commission.

33 (h) The commission is authorized under IC 8-1-2.6-13(e)(1)(A)  
 34 to take any action set forth in this section with respect to an  
 35 operator described in subsection (a), notwithstanding  
 36 IC 8-1-2.6-13.

