
HOUSE BILL No. 1148

DIGEST OF INTRODUCED BILL

Citations Affected: IC 8-1-29.1; IC 36-1-3-8.

Synopsis: Local government telecommunications. Prohibits a political subdivision from controlling, owning, or operating facilities for providing cable, telecommunications, and information services unless the political subdivision: (1) conducts an inquiry into the availability of services from other providers in the area; (2) holds a public hearing; and (3) determines the costs and benefits of the proposed facilities. Prohibits a political subdivision that provides services from requiring a nonsubscriber to pay any of the costs of providing the services. Prohibits a political subdivision from providing a subsidy to a person to provide services in an area without first conducting an inquiry into the availability of services in the area. Specifies the procedures that a political subdivision may use in conducting an inquiry into the availability of services. Requires a political subdivision that provides services to comply with antitrust laws. Allows a political subdivision to issue bonds to finance the capital costs of facilities for providing services. Establishes remedies for a person aggrieved by an action of a political subdivision that provides services.

Effective: July 1, 2005.

Lutz J, Koch, Mahern

January 6, 2005, read first time and referred to Committee on Local Government.

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First Regular Session 114th General Assembly (2005)

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 2004 Regular Session of the General Assembly.

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HOUSE BILL No. 1148



A BILL FOR AN ACT to amend the Indiana Code concerning utilities and transportation.

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

1 SECTION 1. IC 8-1-29.1 IS ADDED TO THE INDIANA CODE
 2 AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE
 3 JULY 1, 2005]:
 4 **Chapter 29.1. Provision of Cable, Telecommunications, and**
 5 **Information Services by Local Units**
 6 **Sec. 1. As used in this chapter, "person" means an individual, a**
 7 **corporation, a partnership, a limited liability company, a**
 8 **association, or another entity organized under the laws of any**
 9 **state.**
 10 **Sec. 2. As used in this section, "political subdivision" has the**
 11 **meaning set forth in IC 36-1-2-13. The term includes any entity:**
 12 **(1) owned, operated, or controlled by a political subdivision;**
 13 **or**
 14 **(2) in which a political subdivision otherwise has an interest,**
 15 **whether direct or indirect.**
 16 **Sec. 3. (a) As used in this chapter, "services" refers to:**
 17 **(1) cable service (as defined in 47 U.S.C. 522(6));**



1 (2) telecommunications service (as defined in 47 U.S.C.
 2 153(46)); or
 3 (3) information service (as defined in 47 U.S.C. 153(20)).
 4 (b) The term includes:
 5 (1) advanced services (as defined in 47 CFR 51.5);
 6 (2) broadband service; and
 7 (3) Internet Protocol enabled services;
 8 however classified by the Federal Communications Commission.
 9 Sec. 4. (a) This section does not apply to a political subdivision
 10 that provides services in an area in the political subdivision's
 11 jurisdiction on June 30, 2005. However, after June 30, 2005, a
 12 political subdivision described in this subsection may not:
 13 (1) provide services, or extend any facilities for the provision
 14 of services, in an area not served by the political subdivision
 15 on June 30, 2005; or
 16 (2) provide additional services in any area served by the
 17 political subdivision on June 30, 2005;
 18 without complying with this section.
 19 (b) After June 30, 2005, a political subdivision may not, by
 20 adopting an ordinance or a resolution or taking any other action,
 21 authorize the political subdivision to construct, control, own,
 22 operate, or otherwise have an interest in, any facility for providing
 23 services in a designated area in the political subdivision's
 24 jurisdiction unless the political subdivision does the following:
 25 (1) Determines, after conducting an inquiry under section 6 of
 26 this chapter, that there is not a person that:
 27 (A) provides the desired services at the time of the political
 28 subdivision's inquiry under section 6 of this chapter; or
 29 (B) intends to provide the desired services not later than
 30 nine (9) months after the date of the political subdivision's
 31 inquiry under section 6 of this chapter;
 32 in the designated area.
 33 (2) Holds a public hearing on the political subdivision's
 34 proposal, subject to the requirements of IC 5-14-1.5.
 35 (3) Not less than thirty (30) days before a public hearing
 36 under subdivision (2), and subject to subsection (c), prepares
 37 and makes available for public inspection a report, including
 38 all underlying work papers and related documents, estimating
 39 the total costs and benefits of constructing, controlling,
 40 owning, operating, or otherwise having an interest in, the
 41 proposed facility. A report under this subdivision must
 42 include an analysis of the costs and benefits of the political

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1 subdivision's proposal for a three (3) year period beginning on
2 the date the political subdivision first incurs costs or receives
3 benefits related to the proposal. Benefits that must be
4 reported under this subdivision include any revenues to be
5 derived from the operation of the facility. Costs that must be
6 reported under this subdivision include:

- 7 (A) personnel costs;
- 8 (B) costs of acquiring, installing, maintaining, repairing, or
9 operating any plant or equipment; and
- 10 (C) an appropriately allocated part of the costs of any
11 jointly used personnel, plants, or equipment.

12 Costs under this subdivision do not include the costs of
13 providing any subsidy permitted under section 5 of this
14 chapter.

15 (c) If a political subdivision complies with subsection (b) and
16 authorizes the political subdivision to construct, control, own,
17 operate, or otherwise have an interest in, any facility for providing
18 services, the political subdivision shall determine the cost of
19 preparing the report required under subsection (b)(3). As soon as
20 practicable after the political subdivision receives revenues from
21 the authorized facility, the political subdivision shall use the
22 revenues to reimburse the treasury of the political subdivision for
23 the cost of the report.

24 Sec. 5. (a) This section does not apply to costs associated with
25 public, educational, or governmental access facilities (as defined in
26 47 U.S.C. 522(16)).

27 (b) A political subdivision that owns, operates, controls, or
28 otherwise has an interest in facilities for the provision of services
29 may not require a person that does not subscribe to the services to
30 pay any of the costs incurred by the political subdivision in
31 providing the services.

32 (c) A political subdivision may not provide a subsidy or an
33 incentive to any person to provide services in a designated area in
34 the political subdivision's jurisdiction unless the political
35 subdivision first determines, after conducting an inquiry under
36 section 6 of this chapter, that there is not a person that:

- 37 (1) provides the desired services at the time of the political
38 subdivision's inquiry under section 6 of this chapter; or
- 39 (2) intends to provide the desired services (as defined in
40 section 6(b) of this chapter) not later than nine (9) months
41 after the date of the political subdivision's inquiry under
42 section 6 of this chapter;

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in the designated area.

(d) This section does not prevent a person from receiving any incentives or tax credits for which the person otherwise qualifies under IC 6-1.1-12.1, IC 6-3.1-4, IC 6-3.1-9, IC 6-3.1-11, IC 6-3.1-13, IC 6-3.1-24, or IC 6-3.1-26.

Sec. 6. (a) As used in this section, "designated area" refers to an area that is:

- (1) within the jurisdiction of a political subdivision; and
- (2) designated by a political subdivision under section 4(b) or 5(c) of this chapter to receive desired services.

(b) As used in this section, "desired services" refers to any services that a political subdivision seeks to make available in the designated area under section 4(b) or 5(c) of this chapter.

(c) A political subdivision may conduct the inquiry required under section 4(b)(1) or 5(c) of this chapter by sending by certified mail a written request to each person that provides services in any area in the jurisdiction of the political subdivision. A written request under this subsection must inquire as to whether the person:

- (1) provides the desired services; or
- (2) intends to provide the desired services not later than nine (9) months after the date of the political subdivision's written request under this subsection;

in the designated area.

(d) The political subdivision may determine that there is not a person that provides or intends to provide the desired services in the designated area if the political subdivision's inquiry under subsection (c) results in any of the following:

- (1) The political subdivision does not receive a written response to any of the requests sent under subsection (c) within sixty (60) days of the date the requests were postmarked.
- (2) The political subdivision:
 - (A) receives one (1) or more responses to a request under subsection (c) that indicates that the persons responding provide the desired services in the designated area at the time of the request; and
 - (B) determines that no person responding actually provides the desired services in the designated area.
- (3) The political subdivision:
 - (A) receives one (1) or more responses to a request under subsection (c) that indicates that the persons responding

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1 intend to provide the desired services in the designated
 2 area not later than nine (9) months after the date of the
 3 political subdivision's written request under subsection (c);
 4 and
 5 (B) determines, after the appropriate amount of time, that
 6 no person responding actually provided the desired
 7 services in the designated area not later than nine (9)
 8 months after the date of the political subdivision's written
 9 request under subsection (c).

10 Sec. 7. A political subdivision that:

- 11 (1) provides services; or
 - 12 (2) owns, operates, controls, or otherwise has an interest in
 - 13 facilities for the provision of services;
- 14 as permitted under this chapter, shall comply with any applicable
 15 state or federal antitrust laws.

16 Sec. 8. (a) The legislative body of a political subdivision may
 17 adopt a resolution for the issuance of bonds, at one (1) time or
 18 periodically, to finance the capital costs of facilities for the
 19 provision of services as permitted by this chapter. The resolution
 20 authorizing the bonds must:

- 21 (1) describe the purpose for which the indebtedness is to be
- 22 created; and
- 23 (2) specify the total dollar amount of the bonds to be issued.

24 (b) Bonds issued under this section shall be secured by and paid
 25 for solely out of the revenues generated by the political subdivision
 26 in providing services as permitted under this chapter.

27 (c) A political subdivision shall not pay the origination,
 28 financing, or other carrying costs associated with the issuance of
 29 bonds under this section from the political subdivision's general
 30 fund or other enterprise funds.

31 (d) Bonds issued under this section must contain a statement, on
 32 the face of each bond, that the political subdivision issuing the bond
 33 is not obligated to pay the principal or interest on the bond except
 34 as provided in this section.

35 Sec. 9. (a) A person that:

- 36 (1) is affected by a political subdivision's alleged violation of
- 37 this chapter; and
- 38 (2) seeks:
 - 39 (A) compensation from the political subdivision for the
 - 40 alleged violation; or
 - 41 (B) equitable relief, including a restraining order or an
 - 42 injunction, from the alleged violation;

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1 may not file a court action unless the person first files a written
2 complaint with the political subdivision in accordance with this
3 section.

4 (b) A political subdivision that:

5 (1) provides services; or

6 (2) owns, operates, controls, or otherwise has an interest in
7 facilities for the provision of services;

8 as permitted under this chapter, shall adopt an ordinance
9 establishing a procedure for the filing and resolution of complaints
10 concerning the political subdivision's provision of services or
11 facilities.

12 (c) The procedure established by a political subdivision under
13 subsection (b) must:

14 (1) permit any person to file a complaint concerning the
15 political subdivision's provision of services or facilities,
16 including a:

17 (A) subscriber of services provided by the political
18 subdivision; or

19 (B) person that provides, or has provided a notice of
20 intention to provide, any services in an area in the political
21 subdivision's jurisdiction;

22 (2) establish an expedited process that requires the political
23 subdivision to:

24 (A) hold a hearing on the complaint, unless the parties to
25 the proceeding waive the right to a hearing; and

26 (B) issue a final decision on the matter;

27 not later than forty-five (45) days after the complaint is filed;
28 (3) stay any proposal approved by the political subdivision
29 under section 4 of this chapter pending:

30 (A) the political subdivision's resolution of a complaint
31 concerning the proposal; and

32 (B) the completion of any subsequent court proceeding
33 concerning the proposal; and

34 (4) provide that the political subdivision's failure to issue a
35 decision within the time allowed under subdivision (2) is
36 considered an adverse decision for purposes of appeal.

37 (d) A person aggrieved by a political subdivision's resolution of
38 a complaint under this section may, regardless of the amount in
39 controversy, appeal the political subdivision's decision in a court
40 having jurisdiction. The court shall consider the matter de novo.

41 (e) The party prevailing in any action filed under this section is
42 entitled to recover the costs of the complaint and action, including

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1 **reasonable attorney's fees as determined by the court.**

2 SECTION 2. IC 36-1-3-8 IS AMENDED TO READ AS FOLLOWS
3 [EFFECTIVE JULY 1, 2005]: Sec. 8. (a) Subject to subsection (b), a
4 unit does not have the following:

5 (1) The power to condition or limit its civil liability, except as
6 expressly granted by statute.

7 (2) The power to prescribe the law governing civil actions
8 between private persons.

9 (3) The power to impose duties on another political subdivision,
10 except as expressly granted by statute.

11 (4) The power to impose a tax, except as expressly granted by
12 statute.

13 (5) The power to impose a license fee greater than that reasonably
14 related to the administrative cost of exercising a regulatory power.

15 (6) The power to impose a service charge or user fee greater than
16 that reasonably related to reasonable and just rates and charges
17 for services.

18 (7) The power to regulate conduct that is regulated by a state
19 agency, except as expressly granted by statute.

20 (8) The power to prescribe a penalty for conduct constituting a
21 crime or infraction under statute.

22 (9) The power to prescribe a penalty of imprisonment for an
23 ordinance violation.

24 (10) The power to prescribe a penalty of a fine as follows:

25 (A) More than ten thousand dollars (\$10,000) for the violation
26 of an ordinance or a regulation concerning air emissions
27 adopted by a county that has received approval to establish an
28 air program under IC 13-17-12-6.

29 (B) More than two thousand five hundred dollars (\$2,500) for
30 any other ordinance violation.

31 (11) The power to invest money, except as expressly granted by
32 statute.

33 (12) The power to order or conduct an election, except as
34 expressly granted by statute.

35 **(13) The power to:**

36 **(A) provide any services described in IC 8-1-29.1-3; or**
37 **(B) construct, control, own, operate, or otherwise have an**
38 **interest in any facility for providing any services described**
39 **IC 8-1-29.1-3;**

40 **in an area in the political subdivision's jurisdiction, except as**
41 **provided in IC 8-1-29.1.**

42 (b) A township does not have the following, except as expressly

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- 1 granted by statute:
- 2 (1) The power to require a license or impose a license fee.
- 3 (2) The power to impose a service charge or user fee.
- 4 (3) The power to prescribe a penalty.

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