

SENATE MOTION

MADAM PRESIDENT:

I move that Senate Bill 381 be amended to read as follows:

- 1 Page 1, between the enacting clause and line 1, begin a new
2 paragraph and insert:
3 "SECTION 1. IC 4-4-10.9-2.1 IS ADDED TO THE INDIANA
4 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
5 [EFFECTIVE UPON PASSAGE]: **Sec. 2.1. "Broadband**
6 **development program" refers to the Indiana broadband**
7 **development program established by IC 8-1-33-12.**
8 SECTION 2. IC 4-4-10.9-2.2 IS ADDED TO THE INDIANA
9 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
10 [EFFECTIVE UPON PASSAGE]: **Sec. 2.2. "Broadband**
11 **development project" means a project authorized by the**
12 **broadband development program under IC 8-1-33.**
13 SECTION 3. IC 4-4-10.9-11 IS AMENDED TO READ AS
14 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 11. (a) Except as
15 provided in subsection (b), "industrial development project" includes:
16 (1) the acquisition of land, site improvements, infrastructure
17 improvements, buildings, or structures, rehabilitation, renovation,
18 and enlargement of buildings and structures, machinery,
19 equipment, furnishings, or facilities (or any combination of these),
20 comprising or being functionally related and subordinate to any
21 project (whether manufacturing, commercial, agricultural,
22 environmental, or otherwise) the development or expansion of
23 which serves the public purposes set forth in IC 4-4-11-2;
24 (2) educational facility projects; ~~and~~
25 (3) child care facility projects; **and**
26 **(4) broadband development projects.**
27 (b) For purposes of the industrial development guaranty fund
28 program, "industrial development project" includes the acquisition of
29 land, interests in land, site improvements, infrastructure improvements
30 (including information and high technology infrastructure (as defined
31 in IC 4-4-8-1)), buildings, or structures, rehabilitation, renovation, and
32 enlargement of buildings and structures, machinery, equipment,

1 furnishings, or facilities (or any combination of these), comprising or
2 being functionally related and subordinate to any of the following:

- 3 (1) A pollution control facility.
4 (2) A manufacturing enterprise.
5 (3) A business service enterprise involved in:
6 (A) computer and data processing services; or
7 (B) commercial testing services.
8 (4) A business enterprise the primary purpose of which is the
9 operation of an education and permanent marketing center for
10 manufacturers and distributors of robotic and flexible automation
11 equipment.
12 (5) Any other business enterprise, if the use of the guaranty
13 program creates a reasonable probability that the effect on Indiana
14 employment will be creation or retention of at least fifty (50) jobs.
15 (6) An agricultural enterprise in which:
16 (A) the enterprise operates pursuant to a producer or growout
17 agreement; and
18 (B) the output of the enterprise is processed predominantly in
19 Indiana.
20 (7) A business enterprise that is required by a state, federal, or
21 local regulatory agency to make capital expenditures to remedy a
22 violation of a state or federal law or a local ordinance.
23 (8) A recycling market development project.
24 (9) A high growth company with high skilled jobs (as defined in
25 IC 4-4-10.9-9.5).
26 **(10) A broadband development project."**

27 Page 2, line 31, delete "required by" and insert "**described in**".

28 Page 2, line 32, delete "each I-Light node" and insert "**nodes**
29 **distributed throughout the network**".

30 Page 2, line 34, "required by" and insert "**described in**".

31 Page 2, line 39, delete "four (4)" and insert "**seven (7)**".

32 Page 2, line 39, after "individuals." insert "**The state chief**
33 **information officer serves as a member of the coordinating body by**
34 **virtue of the office.**".

35 Page 3, delete line 1.

36 Page 3, line 2, delete "(2)" and insert "**(1)**".

37 Page 3, line 3, delete "(3)" and insert "**(2)**".

38 Page 3, between lines 3 and 4, begin a new line double block
39 indented and insert:

40 **"(3) Purdue University.**

41 **(4) Indiana University.**

42 **(5) Ball State University."**

43 Page 3, between lines 6 and 7, begin a new paragraph and insert:

44 **"(c) The coordinating body shall cease operation and be**
45 **dissolved on July 15, 2007."**

46 Page 3, line 7, delete "establish" and insert "**determine the**
47 **feasibility of**".

48 Page 3, line 10, delete "required" and insert "**described**".

- 1 Page 3, line 11, delete "shall" and insert "**may**".
- 2 Page 3, line 19, delete "required" and insert "**described**".
- 3 Page 3, line 20, delete "shall" and insert "**may**".
- 4 Page 3, line 24, delete "The system shall be made available first to
5 authorized" and insert "**This section applies only if a functioning
6 system is deployed by the coordinating body.**".
- 7 Page 3, line 25, before "users." begin a new paragraph and insert:
8 **(b) "The system shall be made available first to authorized"**.
- 9 Page 3, line 28, delete "(b), (c), and (d)." and insert "**(c), (d), and
10 (e).**".
- 11 Page 3, line 33, delete "(d)." and insert "**(e).**".
- 12 Page 3, line 34, delete "(b)" and insert "**(c)**".
- 13 Page 3, line 34, delete "(a)" and insert "**(b)**".
- 14 Page 4, line 10, delete "(c)" and insert "**(d)**".
- 15 Page 4, line 15, delete "(d)" and insert "**(e)**".
- 16 Page 4, line 16, delete "(a) or (b)" and insert "**(b) or (c)**".
- 17 Page 4, between lines 20 and 21, begin a new paragraph and insert:
18 **"(f) An authorized user may not sell, lease, or license the
19 authorized user's right to use the system described in this chapter.**
- 20 SECTION 16. IC 8-1-33 IS ADDED TO THE INDIANA CODE
21 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE
22 UPON PASSAGE]:
- 23 **Chapter 33. Indiana Broadband Development Program**
- 24 **Sec. 1. (a) The general assembly finds that:**
- 25 **(1) certain areas of Indiana are not being adequately served
26 with broadband services;**
- 27 **(2) for the benefit of the people of Indiana and the
28 improvement of their health, welfare, and living conditions,
29 the improvement of the economic and educational welfare of
30 Indiana, and the improvement of its public safety and
31 security, it is essential that broadband infrastructure be
32 expanded to provide broadband services throughout Indiana;**
- 33 **(3) the private sector should be encouraged to continue to
34 invest in the deployment of broadband services and networks
35 and that financing through this program will encourage
36 broadband investment in underserved areas;**
- 37 **(4) economic, technological, and logistical integrated
38 broadband services should be provided throughout Indiana
39 on a nondiscriminatory basis;**
- 40 **(5) the provision of affordable broadband services and
41 networks in underserved areas will:**
- 42 **(A) ensure the long term growth of and the enhancement
43 and delivery of services by the business, educational,
44 medical, commercial, nonprofit, and governmental entities
45 within Indiana; and**
- 46 **(B) benefit residential, commercial, public, governmental,
47 and nonprofit entities within Indiana; and**

1 **(6) the program created and powers conferred by this chapter**
2 **constitute a necessary program and serve a necessary public**
3 **purpose.**

4 **(b) To increase the speed and availability at which affordable**
5 **broadband services become available in underserved areas in**
6 **Indiana, it is declared to be a valid public purpose to assist in the**
7 **financing and refinancing of the development of a statewide**
8 **broadband infrastructure.**

9 **(c) It is further declared to be a valid public purpose for the**
10 **development finance authority to issue bonds and notes, and loan**
11 **the proceeds of those bonds and notes to the program, so that the**
12 **authority may provide for financing or refinancing to broadband**
13 **developers and broadband operators serving underserved areas.**

14 **Sec. 2. As used in this chapter, "authority" refers to the Indiana**
15 **development finance authority established in IC 4-4-11-4.**

16 **Sec. 3. As used in this chapter, "broadband developer" means**
17 **a person selected by the authority to acquire, construct, develop,**
18 **and create any part of the broadband infrastructure.**

19 **Sec. 4. As used in this chapter, "broadband development**
20 **program" or "program" refers to the Indiana broadband**
21 **development program established by section 16 of this chapter.**

22 **Sec. 5. As used in this chapter, "broadband infrastructure"**
23 **includes all facilities, hardware, and software and other intellectual**
24 **property used for and necessary to provide broadband services in**
25 **underserved areas of Indiana, including voice, video, and data.**

26 **Sec. 6. As used in this chapter, "broadband operator" means a**
27 **person selected by the authority to operate any part of the**
28 **broadband infrastructure.**

29 **Sec. 7. As used in this chapter, "broadband services" includes**
30 **services, including voice, video, and data, that provide capacity for**
31 **transmission of more than two hundred (200) kilobits per second**
32 **in at least one (1) direction regardless of the technology or medium**
33 **used, including wireless, copper wire, fiber optic cable, or coaxial**
34 **cable. If voice transmission capacity is offered in conjunction with**
35 **other services using transmission of more than two hundred (200)**
36 **kilobits per second, the voice transmission capacity may be less**
37 **than two hundred (200) kilobits per second. The authority shall**
38 **annually reconsider the two hundred (200) kilobits threshold in the**
39 **definition of the term with a bias toward raising the threshold in a**
40 **manner consistent with technological advances.**

41 **Sec. 8. As used in this chapter, "development costs" means the**
42 **costs associated with the broadband infrastructure that have been**
43 **approved by the authority and includes all the following:**

44 **(1) The costs for the planning, acquiring, leasing, constructing,**
45 **maintaining, and operating of the broadband infrastructure.**

46 **(2) Payments for options to purchase, deposits on contracts of**
47 **purchase, and payments for the purchases of properties for**

- 1 the broadband infrastructure.
- 2 (3) Financing, refinancing, acquisition, demolition,
- 3 construction, rehabilitation, and site development of new and
- 4 existing buildings.
- 5 (4) Carrying charges during construction.
- 6 (5) Purchases of hardware, software, facilities, or other
- 7 expenses related to the broadband infrastructure.
- 8 (6) Legal, organizational, and marketing expenses, project
- 9 manager and clerical staff salaries, office rent, and other
- 10 incidental expenses.
- 11 (7) Payment of fees for preliminary feasibility studies and
- 12 advances for planning, engineering, and architectural work.
- 13 (8) Any other costs and expenses necessary for the acquisition,
- 14 construction, maintenance, and operation of all or part of the
- 15 broadband infrastructure.

16 **Sec. 9.** As used in this chapter, "development finance authority"
 17 refers to the Indiana development finance authority established by
 18 IC 4-4-11-4.

19 **Sec. 10.** As used in this chapter, "person" means an individual,
 20 a corporation, a limited or general partnership, a joint venture, a
 21 limited liability company, or a governmental entity, including a
 22 body corporate and politic, political subdivision, municipal
 23 corporation, school, college, university, hospital, health care
 24 facility, library, or nonprofit organization. The term does not
 25 include the state.

26 **Sec. 11. (a)** As used in this chapter, "relevant services" refers to:

- 27 (1) cable service (as defined in 47 U.S.C. 522(6));
- 28 (2) telecommunications service (as defined in 47 U.S.C.
- 29 153(46)); and
- 30 (3) information service (as defined in 47 U.S.C. 153(20)).

31 **(b)** The term includes:

- 32 (1) advanced services (as defined in 47 CFR 51.5);
- 33 (2) broadband service; and
- 34 (3) Internet Protocol enabled services;

35 however classified by the Federal Communications Commission.

36 **Sec. 12.** As used in this chapter, "political subdivision" has the
 37 meaning set forth in IC 36-1-2-13. The term includes any entity:

- 38 (1) owned, operated, or controlled by a political subdivision;
- 39 or
- 40 (2) in which a political subdivision otherwise has an interest,
 41 whether direct or indirect.

42 **Sec. 13.** As used in this chapter, "underserved area" means an
 43 area within Indiana that the authority determines does not have a
 44 person that:

- 45 (1) provides broadband service in the area at the time of the
 46 authority's inquiry under this section; or
- 47 (2) intends to provide broadband service not later than three

1 **(3) months after the date of the authority's inquiry under**
 2 **section 14 of this chapter.**

3 **Sec. 14. (a) The authority shall conduct an inquiry to determine**
 4 **underserved areas within Indiana. The authority shall send a**
 5 **written request by certified mail to each person that provides a**
 6 **relevant service in the proposed broadband service area. A written**
 7 **request under this subsection must inquire as to whether the**
 8 **person:**

- 9 **(1) provides broadband service; or**
 10 **(2) intends to provide broadband service not later than three**
 11 **(3) months after the date of the authority's written request**
 12 **under this subsection;**

13 **in the proposed broadband service area.**

14 **(b) The authority may determine that there is not a person that**
 15 **provides or intends to provide broadband service in the proposed**
 16 **broadband service area if the authority's inquiry under subsection**
 17 **(a) results in any of the following:**

18 **(1) The authority does not receive a written response to any of**
 19 **the requests sent under subsection (a) within sixty (60) days**
 20 **after the date the requests were postmarked.**

21 **(2) The authority:**
 22 **(A) receives one (1) or more responses to a request under**
 23 **subsection (a) that indicate that the persons responding**
 24 **provide broadband service in the proposed broadband**
 25 **service area at the time of the request; and**
 26 **(B) determines that no person responding actually provides**
 27 **broadband service in the designated area.**

28 **(3) The authority:**
 29 **(A) receives one (1) or more responses to a request under**
 30 **subsection (a) that indicate that the persons responding**
 31 **intend to provide broadband service in the proposed**
 32 **broadband service area not later than three (3) months**
 33 **after the date of the authority's written request under**
 34 **subsection (a); and**

35 **(B) determines, after the appropriate amount of time, that**
 36 **no person responding actually provided broadband service**
 37 **in the proposed broadband service area not later than**
 38 **three (3) months after the date of the authority's written**
 39 **request under subsection (a).**

40 **Sec. 15. The Indiana broadband development program is**
 41 **established in order to encourage the provision of affordable**
 42 **broadband services and networks that will:**

43 **(1) ensure the long term growth of and the enhancement and**
 44 **delivery of services by the business, educational, medical,**
 45 **commercial, nonprofit, and governmental entities in**
 46 **underserved areas in Indiana; and**

47 **(2) benefit residential, commercial, public, governmental, and**

1 **nonprofit entities in underserved areas in Indiana.**

2 **Sec. 16. (a) The Indiana broadband development program is**
3 **established as a separate body corporate and politic, constituting**
4 **an instrumentality of the state, but not a state agency, for the**
5 **public purposes set forth in this chapter. The program is separate**
6 **and apart from the state in its corporate and sovereign capacity,**
7 **and though separate from the state, the exercise by the authority**
8 **of its powers constitutes an essential governmental, public, and**
9 **corporate function.**

10 **(b) The Indiana development finance authority shall administer**
11 **the broadband development program.**

12 **Sec. 17. The program may do the following:**

13 **(1) Request the development finance authority to issue bonds**
14 **or notes and loan the proceeds to the authority to provide**
15 **funds to enable the authority to participate in financing and**
16 **refinancing the expansion of broadband infrastructure**
17 **services to underserved residential, commercial, public,**
18 **governmental, and nonprofit customers in Indiana to enhance**
19 **the delivery of services by the business, educational, medical,**
20 **commercial, nonprofit, and governmental entities in Indiana.**

21 **(2) Request the development finance authority to issue bonds**
22 **or notes and loan the proceeds to the authority to enable the**
23 **making of loans to broadband developers and broadband**
24 **operators serving or proposing to serve underserved areas.**

25 **(3) Authorize the imposition and collection of rents, charges,**
26 **and fees for the services furnished by the broadband**
27 **infrastructure in conjunction with financing entered into by**
28 **the authority.**

29 **(4) Assist broadband developers and operators with all other**
30 **matters necessary for the acquisition, construction,**
31 **maintenance, and operation of the broadband infrastructure.**

32 **(5) Continuously evaluate all types of technologies to**
33 **encourage the widest deployment of broadband services in**
34 **underserved areas and broadband infrastructure in Indiana.**

35 **(6) Make broadband services to authorized users (as defined**
36 **in IC 5-21.5-1-2) located in underserved areas a priority under**
37 **authority financing programs.**

38 **(7) Ensure that the financing and refinancing of the**
39 **development of broadband services under this chapter**
40 **includes provisions ensuring that small businesses and each**
41 **region of Indiana will have an equal opportunity to receive**
42 **financing and refinancing.**

43 **Sec. 18. (a) The powers of the authority under this chapter**
44 **include all those necessary to carry out and effectuate the purposes**
45 **of this chapter, including the following:**

46 **(1) To borrow money from the development finance authority**
47 **for the purposes described in section 17(1) and 17(2) of this**

- 1 chapter.
- 2 (2) To invest any money of the authority at the authority's
3 discretion, in any obligations determined proper by the
4 authority, and name and use depositories for its money.
- 5 (3) To receive and distribute state or local funding, including
6 grants, loans, and appropriations.
- 7 (4) To make loans to broadband developers and broadband
8 operators that will acquire, construct, maintain, and operate
9 all or part of the broadband infrastructure.
- 10 (5) To provide operating assistance to make broadband
11 services more affordable to broadband developers, broadband
12 operators, and broadband customers in underserved areas, in
13 conjunction with broadband infrastructure financed by the
14 authority.
- 15 (6) To impose and collect charges, fees, or rentals for the
16 services furnished by those parts of the broadband
17 infrastructure financed by the authority under this chapter.
- 18 (7) To set construction, operation, and financing standards for
19 the broadband infrastructure in connection with authority
20 financing and to provide for inspections to determine
21 compliance with those standards.
- 22 (8) To investigate, evaluate, and assess the current broadband
23 infrastructure and the future broadband infrastructure needs
24 of Indiana and to encourage and participate in aggregation
25 strategies for the broadband services of all public entities and
26 nonprofit corporations in Indiana to maximize the
27 interconnectivity and efficiencies of the broadband
28 infrastructure.
- 29 (b) As part of an application for financing under this chapter, a
30 broadband developer or broadband operator must file with the
31 authority a participation plan for small and minority owned
32 businesses and a communitywide outreach plan to educate the
33 public with respect to the availability of broadband services. The
34 authority may not approve an application unless a plan is
35 submitted under this subsection.
- 36 Sec. 19. The development finance authority may exercise any of
37 its powers to assist the authority in the accomplishment of the
38 purposes of this chapter, including the power to borrow money,
39 issue bonds and notes, and loan the proceeds to the authority to
40 permit the authority to:
- 41 (1) finance or refinance part or all of the development costs of
42 the broadband infrastructure;
- 43 (2) refinance existing debt for technology that constitutes part
44 of or is related to the broadband infrastructure;
- 45 (3) make loans to persons for development costs;
- 46 (4) make loans to enable persons to make purchases related to
47 the broadband infrastructure;

1 **(5) make loans to persons to refinance existing debt incurred**
 2 **by persons in connection with the acquisition or development**
 3 **of technology that constitutes a part of or is related to the**
 4 **broadband infrastructure; and**

5 **(6) make other expenditures necessary to carry out the**
 6 **authority's duties under this chapter, including the payment**
 7 **of the authority's operating expenses.**

8 **Sec. 20. (a) The authority, as administrator of the broadband**
 9 **development program, may negotiate one (1) or more loans from**
 10 **the development finance authority upon any terms and conditions**
 11 **the authority considers appropriate, necessary, or desirable to**
 12 **carry out the purposes of this chapter.**

13 **(b) A loan under this section must be evidenced by a note of the**
 14 **authority, executed by the chairperson and attested to by the**
 15 **executive director.**

16 **Sec. 21. All property of the broadband development program is**
 17 **public property devoted to an essential public and governmental**
 18 **function and purpose and is exempt from all taxes and special**
 19 **assessments, direct or indirect, of the state or a political subdivision**
 20 **of the state. All notes and bonds issued under this chapter are**
 21 **issued by a body corporate and politic of the state, but not a state**
 22 **agency, and for an essential public and governmental purpose, and**
 23 **the notes and bonds, the interest thereon, the proceeds received by**
 24 **the holder from the sale of the notes and bonds to the extent of the**
 25 **holder's cost of acquisition proceeds received upon redemption**
 26 **before maturity, and proceeds received at maturity and the receipt**
 27 **of the interest and proceeds are exempt from taxation in the state**
 28 **for all purposes except the financial institutions tax imposed under**
 29 **IC 6-5.5 or a state inheritance tax imposed under IC 6-4.1".**

30 Page 5, line 22, delete "required to be established under" and insert
 31 **"described in".**

32 Page 5, line 25, delete "a report on its progress in" and insert "**the**
 33 **initial report on the feasibility of".**

34 Page 5, line 27, after "IC 5-14-6." insert "**The report must provide**
 35 **a detailed analysis of broadband penetration throughout Indiana,**
 36 **specifically stating all broadband options in use and detailing**
 37 **available:**

38 **(1) technologies;**

39 **(2) types of service;**

40 **(3) areas of service;**

41 **(4) costs of service; and**

42 **(5) the populations in Indiana to whom the capabilities**
 43 **described in this subsection are available.**

44 **(d) On April 1, 2006, and October 1, 2006, the coordinating body**
 45 **shall submit reports on the coordinating body's progress in**
 46 **determining the feasibility of establishing and implementing the**
 47 **system to the general assembly in an electronic format under**

1 **IC 5-14-6.**

2 (e) **Not later than July 1, 2007, the coordinating body shall**
3 **submit the final report on the feasibility of establishing and**
4 **implementing the system to the general assembly in an electronic**
5 **format under IC 5-14-6. The report may include a recommendation**
6 **on how to structure governance of the system."**

7 Page 5, line 28, delete "January 1, 2006." and insert "**July 15,**
8 **2007."**

9 Renumber all SECTIONS consecutively.

(Reference is to SB 381 as reprinted February 4, 2005.)

Senator FORD