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February 23, 2005

SENATE BILL No. 381

DIGEST OF SB 381 (Updated February 22, 2005 5:30 pm - DI 113)

Citations Affected: IC 4-4; IC 5-21.5 ; IC 8-1; IC 20-12; noncode.

Synopsis: Statewide broadband system. Establishes a coordinating body to determine the feasibility of implementing a statewide broadband network, scheduled to dissolve July 15, 2007. Establishes the Indiana broadband development program, a separate body corporate and politic, to be administered by the Indiana development finance authority. The broadband development program is established to encourage the development of affordable broadband services and networks in underserved areas in Indiana. The broadband development program coordinates the financing of broadband infrastructure development and otherwise facilitates the establishment of broadband service in underserved areas in Indiana.

Effective: Upon passage.

Ford, Jackman

January 11, 2005, read first time and referred to Committee on Economic Development and Technology.
January 31, 2005, reported favorably — Do Pass.
February 3, 2005, read second time, amended, ordered engrossed.
February 4, 2005, engrossed.
February 14, 2005, returned to second reading.
February 22, 2005, reread second time, amended, ordered engrossed.

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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.

SENATE BILL No. 381

A BILL FOR AN ACT to amend the Indiana Code concerning state and local administration and to make an appropriation.

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

1 SECTION 1. IC 4-4-10.9-2.1 IS ADDED TO THE INDIANA
2 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
3 [EFFECTIVE UPON PASSAGE]: **Sec. 2.1. "Broadband development**
4 **program" refers to the Indiana broadband development program**
5 **established by IC 8-1-33-12.**

6 SECTION 2. IC 4-4-10.9-2.2 IS ADDED TO THE INDIANA
7 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
8 [EFFECTIVE UPON PASSAGE]: **Sec. 2.2. "Broadband development**
9 **project" means a project authorized by the broadband**
10 **development program under IC 8-1-33.**

11 SECTION 3. IC 4-4-10.9-11 IS AMENDED TO READ AS
12 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 11. (a) Except as
13 provided in subsection (b), "industrial development project" includes:

14 (1) the acquisition of land, site improvements, infrastructure
15 improvements, buildings, or structures, rehabilitation, renovation,
16 and enlargement of buildings and structures, machinery,
17 equipment, furnishings, or facilities (or any combination of these),

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1 comprising or being functionally related and subordinate to any
2 project (whether manufacturing, commercial, agricultural,
3 environmental, or otherwise) the development or expansion of
4 which serves the public purposes set forth in IC 4-4-11-2;

5 (2) educational facility projects; ~~and~~

6 (3) child care facility projects; **and**

7 **(4) broadband development projects.**

8 (b) For purposes of the industrial development guaranty fund
9 program, "industrial development project" includes the acquisition of
10 land, interests in land, site improvements, infrastructure improvements
11 (including information and high technology infrastructure (as defined
12 in IC 4-4-8-1)), buildings, or structures, rehabilitation, renovation, and
13 enlargement of buildings and structures, machinery, equipment,
14 furnishings, or facilities (or any combination of these), comprising or
15 being functionally related and subordinate to any of the following:

16 (1) A pollution control facility.

17 (2) A manufacturing enterprise.

18 (3) A business service enterprise involved in:

19 (A) computer and data processing services; or

20 (B) commercial testing services.

21 (4) A business enterprise the primary purpose of which is the
22 operation of an education and permanent marketing center for
23 manufacturers and distributors of robotic and flexible automation
24 equipment.

25 (5) Any other business enterprise, if the use of the guaranty
26 program creates a reasonable probability that the effect on Indiana
27 employment will be creation or retention of at least fifty (50) jobs.

28 (6) An agricultural enterprise in which:

29 (A) the enterprise operates pursuant to a producer or growout
30 agreement; and

31 (B) the output of the enterprise is processed predominantly in
32 Indiana.

33 (7) A business enterprise that is required by a state, federal, or
34 local regulatory agency to make capital expenditures to remedy a
35 violation of a state or federal law or a local ordinance.

36 (8) A recycling market development project.

37 (9) A high growth company with high skilled jobs (as defined in
38 IC 4-4-10.9-9.5).

39 **(10) A broadband development project.**

40 SECTION 4. IC 5-21.5 IS ADDED TO THE INDIANA CODE AS
41 A NEW ARTICLE TO READ AS FOLLOWS [EFFECTIVE UPON
42 PASSAGE]:

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1 **ARTICLE 21.5. INDIANA STATEWIDE BROADBAND**
2 **SYSTEM**

3 **Chapter 1. Definitions**

4 **Sec. 1. The definitions in this chapter apply throughout this**
5 **article.**

6 **Sec. 2. "Authorized user" means:**

7 (1) **an authorized user of the intelenet system under**
8 **IC 5-21-1-2, including:**

- 9 **(A) political subdivisions;**
- 10 **(B) instrumentalities of state or local government that**
- 11 **provide public safety or emergency management services;**
- 12 **(C) school corporations;**
- 13 **(D) institutions of higher education; and**
- 14 **(E) community networks;**

15 (2) **an authorized user of the Indiana Telecommunications**
16 **Network administered by the Indiana higher education**
17 **telecommunications system under IC 20-12-12;**

18 (3) **a local hospital authority or corporation, or other publicly**
19 **funded hospital; or**

20 (4) **a certified technology park established under IC 36-7-32.**

21 **Sec. 3. "Coordinating body" refers to the representatives**
22 **designated under IC 5-21.5-2-1 to coordinate the establishment of**
23 **a statewide broadband system.**

24 **Sec. 4. "Holder" means a state agency or other instrumentality**
25 **of state government that holds the contract for the state's**
26 **indefeasible right of use to I-Light.**

27 **Sec. 5. "I-Light" refers to the statewide high speed optical fiber**
28 **network. The term includes the fiber optic networks known at any**
29 **time as I-Light and I-Light 2.**

30 **Sec. 6. "Indefeasible right of use" means a temporary ownership**
31 **right in a fiber optic cable, specified in terms of a certain number**
32 **of channels of a given bandwidth.**

33 **Sec. 7. "Person" means any individual, corporation, limited**
34 **liability company, partnership, firm, association, public or private**
35 **agency, or other organization.**

36 **Sec. 8. "System" refers to a statewide broadband system that:**

- 37 (1) **makes use of the best available technology, as determined**
- 38 **by the coordinating body, including wireless broadband**
- 39 **technology;**
- 40 (2) **allows broadband communications at a speed of at least**
- 41 **twenty (20) megabits per second downstream to a subscriber;**
- 42 **and**

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(3) includes:

(A) a statewide system of wireless broadband access points as described in IC 5-21.5-2-2(b); and

(B) a system of Ethernet ports at nodes distributed throughout the network to allow access to the system by authorized users and persons other than authorized users, as described in IC 5-21.5-2-2(c).

Chapter 2. Establishment of the System; General Administration

Sec. 1. (a) The coordinating body to establish a statewide broadband system comprises seven (7) individuals. The state chief information officer serves as a member of the coordinating body by virtue of the office. The governor shall designate one (1) individual to represent the telecommunications industry. In addition, each of the following entities shall designate one (1) representative:

- (1) The coordinating unit established by IC 20-12-12-3.
- (2) The holder.
- (3) Purdue University.
- (4) Indiana University.
- (5) Ball State University.

(b) The holder may assign to the coordinating body an indefeasible right of use of all or part of the I-Light fiber optic network.

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

Sec. 2. (a) The coordinating body shall determine the feasibility of a statewide broadband system to be made available to authorized users and other persons as provided in section 3 of this chapter.

(b) In developing the system described by this section, the coordinating body may test and deploy a system of wireless broadband access points throughout Indiana. A wireless system established under this subsection must:

- (1) provide bandwidth transmission of at least five (5) megabits per second at each I-Light node; and
- (2) be designed to permit the accommodation of additional capacity and coverage as the communication needs of the system's users may require.

(c) In developing the system described by this section, the coordinating body may provide Ethernet ports at each I-Light node to allow access to the system by authorized users and persons

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1 other than authorized users, as permitted under section 3 of this
2 chapter.

3 Sec. 3. (a) This section applies only if a functioning system is
4 deployed by the coordinating body.

5 (b) The system shall be made available first to authorized users.
6 However, if the coordinating body determines at any time that the
7 system has sufficient capacity to serve other users, the coordinating
8 body shall permit any person to access the system, subject to
9 subsections (c), (d), and (e). A person eligible to access the system
10 under this section includes a commercial:

11 (1) telecommunications provider; or

12 (2) Internet service provider;

13 that meets any qualifications or criteria for access established by
14 the coordinating body under subsection (e).

15 (c) If the coordinating body acts under subsection (b) to permit
16 one (1) or more persons to access capacity on the system that is not
17 needed to meet the broadband needs of authorized users, and it
18 becomes necessary to allocate the available capacity among those
19 persons, the coordinating body shall consider the following for
20 each new person seeking access:

21 (1) Whether the person's allocated capacity on the system will
22 be used by the person to provide broadband service to users:

23 (A) at a competitive rate; and

24 (B) within a reasonable period after the person acquires
25 access to the system;

26 as determined by the coordinating body.

27 (2) The extent to which the person's allocated capacity on the
28 system will be used to provide broadband service to
29 underserved areas of Indiana.

30 (3) The extent to which allowing the person to access the
31 system will contribute to the broadband service choices
32 available to Indiana residents and businesses.

33 (d) The coordinating body may establish standards or other
34 requirements for access to the system by a person other than an
35 authorized user. However, any standards or requirements
36 established under this subsection must be applied on a uniform and
37 competitively neutral basis.

38 (e) The coordinating body shall provide access to the system
39 under subsection (b) or (c) at a cost that does not exceed the
40 coordinating body's costs to establish, operate, maintain, and
41 administer the system, including any costs of upgrading the system
42 to incorporate the best available technology, as determined by the

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coordinating body.

(f) An authorized user may not sell, lease, or license the authorized user's right to use the system described in this chapter.

SECTION 5. IC 8-1-33 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]:

Chapter 33. Indiana Broadband Development Program

Sec. 1. (a) The general assembly finds that:

(1) certain areas of Indiana are not being adequately served with broadband services;

(2) for the benefit of the people of Indiana and the improvement of their health, welfare, and living conditions, the improvement of the economic and educational welfare of Indiana, and the improvement of its public safety and security, it is essential that broadband infrastructure be expanded to provide broadband services throughout Indiana;

(3) the private sector should be encouraged to continue to invest in the deployment of broadband services and networks and that financing through this program will encourage broadband investment in underserved areas;

(4) economic, technological, and logistical integrated broadband services should be provided throughout Indiana on a nondiscriminatory basis;

(5) the provision of affordable broadband services and networks in underserved areas will:

(A) ensure the long term growth of and the enhancement and delivery of services by the business, educational, medical, commercial, nonprofit, and governmental entities within Indiana; and

(B) benefit residential, commercial, public, governmental, and nonprofit entities within Indiana; and

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

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

(c) It is further declared to be a valid public purpose for the development finance authority to issue bonds and notes, and loan the proceeds of those bonds and notes to the program, so that the

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1 authority may provide for financing or refinancing to broadband
 2 developers and broadband operators serving underserved areas.
 3 Sec. 2. As used in this chapter, "authority" refers to the Indiana
 4 development finance authority established in IC 4-4-11-4.
 5 Sec. 3. As used in this chapter, "broadband developer" means
 6 a person selected by the authority to acquire, construct, develop,
 7 and create any part of the broadband infrastructure.
 8 Sec. 4. As used in this chapter, "broadband development
 9 program" or "program" refers to the Indiana broadband
 10 development program established by section 16 of this chapter.
 11 Sec. 5. As used in this chapter, "broadband infrastructure"
 12 includes all facilities, hardware, and software and other intellectual
 13 property used for and necessary to provide broadband services in
 14 underserved areas of Indiana, including voice, video, and data.
 15 Sec. 6. As used in this chapter, "broadband operator" means a
 16 person selected by the authority to operate any part of the
 17 broadband infrastructure.
 18 Sec. 7. As used in this chapter, "broadband services" includes
 19 services, including voice, video, and data, that provide capacity for
 20 transmission of more than two hundred (200) kilobits per second
 21 in at least one (1) direction regardless of the technology or medium
 22 used, including wireless, copper wire, fiber optic cable, or coaxial
 23 cable. If voice transmission capacity is offered in conjunction with
 24 other services using transmission of more than two hundred (200)
 25 kilobits per second, the voice transmission capacity may be less
 26 than two hundred (200) kilobits per second. The authority shall
 27 annually reconsider the two hundred (200) kilobits threshold in the
 28 definition of the term with a bias toward raising the threshold in a
 29 manner consistent with technological advances.
 30 Sec. 8. As used in this chapter, "development costs" means the
 31 costs associated with the broadband infrastructure that have been
 32 approved by the authority and includes all the following:
 33 (1) The costs for the planning, acquiring, leasing,
 34 constructing, maintaining, and operating of the broadband
 35 infrastructure.
 36 (2) Payments for options to purchase, deposits on contracts of
 37 purchase, and payments for the purchases of properties for
 38 the broadband infrastructure.
 39 (3) Financing, refinancing, acquisition, demolition,
 40 construction, rehabilitation, and site development of new and
 41 existing buildings.
 42 (4) Carrying charges during construction.

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- 1 **(5) Purchases of hardware, software, facilities, or other**
- 2 **expenses related to the broadband infrastructure.**
- 3 **(6) Legal, organizational, and marketing expenses, project**
- 4 **manager and clerical staff salaries, office rent, and other**
- 5 **incidental expenses.**
- 6 **(7) Payment of fees for preliminary feasibility studies and**
- 7 **advances for planning, engineering, and architectural work.**
- 8 **(8) Any other costs and expenses necessary for the acquisition,**
- 9 **construction, maintenance, and operation of all or part of the**
- 10 **broadband infrastructure.**

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

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

21 **Sec. 11. (a) As used in this chapter, "relevant services" refers to:**
 22 **(1) cable service (as defined in 47 U.S.C. 522(6));**
 23 **(2) telecommunications service (as defined in 47 U.S.C.**
 24 **153(46)); and**
 25 **(3) information service (as defined in 47 U.S.C. 153(20)).**
 26 **(b) The term includes:**
 27 **(1) advanced services (as defined in 47 CFR 51.5);**
 28 **(2) broadband service; and**
 29 **(3) Internet Protocol enabled services;**

30 **however classified by the Federal Communications Commission.**

31 **Sec. 12. As used in this chapter, "political subdivision" has the**
 32 **meaning set forth in IC 36-1-2-13. The term includes any entity:**
 33 **(1) owned, operated, or controlled by a political subdivision;**
 34 **or**
 35 **(2) in which a political subdivision otherwise has an interest,**
 36 **whether direct or indirect.**

37 **Sec. 13. As used in this chapter, "underserved area" means an**
 38 **area within Indiana that the authority determines does not have a**
 39 **person that:**
 40 **(1) provides broadband service in the area at the time of the**
 41 **authority's inquiry under this section; or**
 42 **(2) intends to provide broadband service not later than three**

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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
- 19 of 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
- 27 provides 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:

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- 1 (1) ensure the long term growth of and the enhancement and
- 2 delivery of services by the business, educational, medical,
- 3 commercial, nonprofit, and governmental entities in
- 4 underserved areas in Indiana; and
- 5 (2) benefit residential, commercial, public, governmental, and
- 6 nonprofit entities in underserved areas in Indiana.

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

15 **(b) The Indiana development finance authority shall administer**
 16 **the broadband development program.**

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

- 18 **(1) Request the development finance authority to issue bonds**
 19 **or notes and loan the proceeds to the authority to provide**
 20 **funds to enable the authority to participate in financing and**
 21 **refinancing the expansion of broadband infrastructure**
 22 **services to underserved residential, commercial, public,**
 23 **governmental, and nonprofit customers in Indiana to enhance**
 24 **the delivery of services by the business, educational, medical,**
 25 **commercial, nonprofit, and governmental entities in Indiana.**
- 26 **(2) Request the development finance authority to issue bonds**
 27 **or notes and loan the proceeds to the authority to enable the**
 28 **making of loans to broadband developers and broadband**
 29 **operators serving or proposing to serve underserved areas.**
- 30 **(3) Authorize the imposition and collection of rents, charges,**
 31 **and fees for the services furnished by the broadband**
 32 **infrastructure in conjunction with financing entered into by**
 33 **the authority.**
- 34 **(4) Assist broadband developers and operators with all other**
 35 **matters necessary for the acquisition, construction,**
 36 **maintenance, and operation of the broadband infrastructure.**
- 37 **(5) Continuously evaluate all types of technologies to**
 38 **encourage the widest deployment of broadband services in**
 39 **underserved areas and broadband infrastructure in Indiana.**
- 40 **(6) Make broadband services to authorized users (as defined**
 41 **in IC 5-21.5-1-2) located in underserved areas a priority**
 42 **under authority financing programs.**

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1 (7) Ensure that the financing and refinancing of the
2 development of broadband services under this chapter
3 includes provisions ensuring that small businesses and each
4 region of Indiana will have an equal opportunity to receive
5 financing and refinancing.

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

9 (1) To borrow money from the development finance authority
10 for the purposes described in section 17(1) and 17(2) of this
11 chapter.

12 (2) To invest any money of the authority at the authority's
13 discretion, in any obligations determined proper by the
14 authority, and name and use depositories for its money.

15 (3) To receive and distribute state or local funding, including
16 grants, loans, and appropriations.

17 (4) To make loans to broadband developers and broadband
18 operators that will acquire, construct, maintain, and operate
19 all or part of the broadband infrastructure.

20 (5) To provide operating assistance to make broadband
21 services more affordable to broadband developers, broadband
22 operators, and broadband customers in underserved areas, in
23 conjunction with broadband infrastructure financed by the
24 authority.

25 (6) To impose and collect charges, fees, or rentals for the
26 services furnished by those parts of the broadband
27 infrastructure financed by the authority under this chapter.

28 (7) To set construction, operation, and financing standards for
29 the broadband infrastructure in connection with authority
30 financing and to provide for inspections to determine
31 compliance with those standards.

32 (8) To investigate, evaluate, and assess the current broadband
33 infrastructure and the future broadband infrastructure needs
34 of Indiana and to encourage and participate in aggregation
35 strategies for the broadband services of all public entities and
36 nonprofit corporations in Indiana to maximize the
37 interconnectivity and efficiencies of the broadband
38 infrastructure.

39 (b) As part of an application for financing under this chapter,
40 a broadband developer or broadband operator must file with the
41 authority a participation plan for small and minority owned
42 businesses and a communitywide outreach plan to educate the

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1 public with respect to the availability of broadband services. The
2 authority may not approve an application unless a plan is
3 submitted under this subsection.

4 Sec. 19. The development finance authority may exercise any of
5 its powers to assist the authority in the accomplishment of the
6 purposes of this chapter, including the power to borrow money,
7 issue bonds and notes, and loan the proceeds to the authority to
8 permit the authority to:

- 9 (1) finance or refinance part or all of the development costs of
- 10 the broadband infrastructure;
- 11 (2) refinance existing debt for technology that constitutes part
- 12 of or is related to the broadband infrastructure;
- 13 (3) make loans to persons for development costs;
- 14 (4) make loans to enable persons to make purchases related to
- 15 the broadband infrastructure;
- 16 (5) make loans to persons to refinance existing debt incurred
- 17 by persons in connection with the acquisition or development
- 18 of technology that constitutes a part of or is related to the
- 19 broadband infrastructure; and
- 20 (6) make other expenditures necessary to carry out the
- 21 authority's duties under this chapter, including the payment
- 22 of the authority's operating expenses.

23 Sec. 20. (a) The authority, as administrator of the broadband
24 development program, may negotiate one (1) or more loans from
25 the development finance authority upon any terms and conditions
26 the authority considers appropriate, necessary, or desirable to
27 carry out the purposes of this chapter.

28 (b) A loan under this section must be evidenced by a note of the
29 authority, executed by the chairperson and attested to by the
30 executive director.

31 Sec. 21. All property of the broadband development program is
32 public property devoted to an essential public and governmental
33 function and purpose and is exempt from all taxes and special
34 assessments, direct or indirect, of the state or a political subdivision
35 of the state. All notes and bonds issued under this chapter are
36 issued by a body corporate and politic of the state, but not a state
37 agency, and for an essential public and governmental purpose, and
38 the notes and bonds, the interest thereon, the proceeds received by
39 the holder from the sale of the notes and bonds to the extent of the
40 holder's cost of acquisition proceeds received upon redemption
41 before maturity, and proceeds received at maturity and the receipt
42 of the interest and proceeds are exempt from taxation in the state

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1 **for all purposes except the financial institutions tax imposed under**
2 **IC 6-5.5 or a state inheritance tax imposed under IC 6-4.1**

3 SECTION 6. IC 20-12-12-6 IS AMENDED TO READ AS
4 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 6. (a) A special and
5 distinct fund is hereby created to be known as the higher education
6 statewide telecommunications fund. Expenditures from the fund may
7 be made only for the following:

8 (1) Payments by the universities for the use of a
9 telecommunications system or the lease, purchase, rental, or
10 production of a videotape program as provided in this chapter.

11 (2) Studies regarding the possibilities of extending the use of the
12 telecommunications system described in section 1(a) of this
13 chapter to other colleges and universities in Indiana and of
14 extending the use of the system for post-high school and other
15 educational uses.

16 (3) The expenses of coordinating, planning, and supervising the
17 use of the telecommunications system, and the videotape
18 program.

19 (4) Equipment for the originating and receiving of instructional
20 communication and educational information by means of the
21 telecommunications system and the videotape program.

22 **(b) The statewide broadband account is established within the**
23 **fund to pay the costs of the coordinating body established under**
24 **IC 5-21.5-2-1 to establish, operate, maintain, and administer a**
25 **statewide broadband system under IC 5-21.5. Costs under this**
26 **subdivision include any costs of upgrading the system to**
27 **incorporate the best available technology, as determined by the**
28 **coordinating body. The account consists of fees or charges collected**
29 **by the coordinating body for providing access to the system by**
30 **authorized users or other persons, to the extent permitted under**
31 **IC 5-21.5-2-3(d). Money in the account is continuously**
32 **appropriated for the purposes of this subsection. Money in the**
33 **account at the end of a state fiscal year does not revert to the fund.**

34 ~~(b)~~ (c) The state auditor of state shall pay, as needed, from the fund
35 **and the account established under subsection (b)** amounts to the
36 trustees of Indiana University as agent for the universities **and the**
37 **coordinating body established under IC 5-21.5-2.** The trustees of
38 Indiana University as the agent shall apply the funds to the payment of
39 items as payment becomes due from the higher education statewide
40 telecommunications fund **or the account established under**
41 **subsection (b).**

42 SECTION 7. [EFFECTIVE UPON PASSAGE] (a) **As used in this**

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1 SECTION, "coordinating body" refers to the coordinating body
 2 established under IC 5-21.5-2-1, as added by this act.
 3 (b) As used in this SECTION, "system" refers to the statewide
 4 broadband system described in IC 5-21.5-2-2, as added by this act.
 5 (c) Not later than October 1, 2005, the coordinating body shall
 6 submit the initial report on the feasibility of establishing and
 7 implementing the system to the general assembly in an electronic
 8 format under IC 5-14-6. The report must provide a detailed
 9 analysis of broadband penetration throughout Indiana, specifically
 10 stating all broadband options in use and detailing available:
 11 (1) technologies;
 12 (2) types of service;
 13 (3) areas of service;
 14 (4) costs of service; and
 15 (5) the populations in Indiana to whom the capabilities
 16 described in this subsection are available.
 17 (d) On April 1, 2006, and October 1, 2006, the coordinating
 18 body shall submit reports on the coordinating body's progress in
 19 determining the feasibility of establishing and implementing the
 20 system to the general assembly in an electronic format under
 21 IC 5-14-6.
 22 (e) Not later than July 1, 2007, the coordinating body shall
 23 submit the final report on the feasibility of establishing and
 24 implementing the system to the general assembly in an electronic
 25 format under IC 5-14-6. The report may include a
 26 recommendation on how to structure governance of the system.
 27 (d) This SECTION expires July 15, 2007.
 28 SECTION 8. An emergency is declared for this act.

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COMMITTEE REPORT

Madam President: The Senate Committee on Economic Development and Technology, to which was referred Senate Bill No. 381, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill DO PASS.

(Reference is made to Senate Bill 381 as introduced.)

FORD, Chairperson

Committee Vote: Yeas 8, Nays 3.

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SENATE MOTION

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

Page 2, line 38, delete "The:" and insert "**The coordinating body to establish a statewide broadband system comprises four (4) individuals. The governor shall designate one (1) individual to represent the telecommunications industry. In addition, each of the following entities shall designate one (1) representative:**

- (1) **The intelenet commission established by IC 5-21-2-1.**
- (2) **The coordinating unit established by IC 20-12-12-3.**
- (3) **The holder."**

Page 2, delete lines 39 through 42.

Page 3, delete line 1.

Page 5, line 7, delete "state a" and insert "**a state**".

(Reference is to SB 381 as printed February 1, 2005.)

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SENATE MOTION

Madam President: I move that Senate Bill 381, which is eligible for third reading, be returned to second reading for purposes of amendment.

FORD

SENATE MOTION

Madam President: I move that Senator Jackman be added as coauthor of Engrossed Senate Bill 381.

FORD

SENATE MOTION

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

Page 1, between the enacting clause and line 1, begin a new paragraph and insert:

"SECTION 1. IC 4-4-10.9-2.1 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 2.1. "Broadband development program" refers to the Indiana broadband development program established by IC 8-1-33-12.**

SECTION 2. IC 4-4-10.9-2.2 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 2.2. "Broadband development project" means a project authorized by the broadband development program under IC 8-1-33.**

SECTION 3. IC 4-4-10.9-11 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 11. (a) Except as provided in subsection (b), "industrial development project" includes:

- (1) the acquisition of land, site improvements, infrastructure improvements, buildings, or structures, rehabilitation, renovation, and enlargement of buildings and structures, machinery, equipment, furnishings, or facilities (or any combination of these), comprising or being functionally related and subordinate to any project (whether manufacturing, commercial, agricultural, environmental, or otherwise) the development or expansion of

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which serves the public purposes set forth in IC 4-4-11-2;

(2) educational facility projects; ~~and~~

(3) child care facility projects; **and**

(4) broadband development projects.

(b) For purposes of the industrial development guaranty fund program, "industrial development project" includes the acquisition of land, interests in land, site improvements, infrastructure improvements (including information and high technology infrastructure (as defined in IC 4-4-8-1)), buildings, or structures, rehabilitation, renovation, and enlargement of buildings and structures, machinery, equipment, furnishings, or facilities (or any combination of these), comprising or being functionally related and subordinate to any of the following:

(1) A pollution control facility.

(2) A manufacturing enterprise.

(3) A business service enterprise involved in:

(A) computer and data processing services; or

(B) commercial testing services.

(4) A business enterprise the primary purpose of which is the operation of an education and permanent marketing center for manufacturers and distributors of robotic and flexible automation equipment.

(5) Any other business enterprise, if the use of the guaranty program creates a reasonable probability that the effect on Indiana employment will be creation or retention of at least fifty (50) jobs.

(6) An agricultural enterprise in which:

(A) the enterprise operates pursuant to a producer or growout agreement; and

(B) the output of the enterprise is processed predominantly in Indiana.

(7) A business enterprise that is required by a state, federal, or local regulatory agency to make capital expenditures to remedy a violation of a state or federal law or a local ordinance.

(8) A recycling market development project.

(9) A high growth company with high skilled jobs (as defined in IC 4-4-10.9-9.5).

(10) A broadband development project."

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

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

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

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

Page 2, line 39, after "individuals." insert "**The state chief**

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information officer serves as a member of the coordinating body by virtue of the office."

Page 3, delete line 1.

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

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

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

"(3) Purdue University.

(4) Indiana University.

(5) Ball State University."

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

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

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

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

Page 3, line 11, delete "shall" and insert **"may"**.

Page 3, line 19, delete "required" and insert **"described"**.

Page 3, line 20, delete "shall" and insert **"may"**.

Page 3, line 24, delete "The system shall be made available first to authorized" and insert **"This section applies only if a functioning system is deployed by the coordinating body."**

Page 3, line 25, before "users." begin a new paragraph and insert:

(b) "The system shall be made available first to authorized".

Page 3, line 28, delete "(b), (c), and (d)." and insert **"(c), (d), and (e)."**

Page 3, line 33, delete "(d)." and insert **"(e)."**

Page 3, line 34, delete "(b)" and insert **"(c)"**.

Page 3, line 34, delete "(a)" and insert **"(b)"**.

Page 4, line 10, delete "(c)" and insert **"(d)"**.

Page 4, line 15, delete "(d)" and insert **"(e)"**.

Page 4, line 16, delete "(a) or (b)" and insert **"(b) or (c)"**.

Page 4, between lines 20 and 21, begin a new paragraph and insert:

"(f) An authorized user may not sell, lease, or license the authorized user's right to use the system described in this chapter.

SECTION 16. IC 8-1-33 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]:

Chapter 33. Indiana Broadband Development Program

Sec. 1. (a) The general assembly finds that:

- (1) certain areas of Indiana are not being adequately served with broadband services;**

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(2) for the benefit of the people of Indiana and the improvement of their health, welfare, and living conditions, the improvement of the economic and educational welfare of Indiana, and the improvement of its public safety and security, it is essential that broadband infrastructure be expanded to provide broadband services throughout Indiana;

(3) the private sector should be encouraged to continue to invest in the deployment of broadband services and networks and that financing through this program will encourage broadband investment in underserved areas;

(4) economic, technological, and logistical integrated broadband services should be provided throughout Indiana on a nondiscriminatory basis;

(5) the provision of affordable broadband services and networks in underserved areas will:

(A) ensure the long term growth of and the enhancement and delivery of services by the business, educational, medical, commercial, nonprofit, and governmental entities within Indiana; and

(B) benefit residential, commercial, public, governmental, and nonprofit entities within Indiana; and

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

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

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

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

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

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

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

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

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

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

- (1) The costs for the planning, acquiring, leasing, constructing, maintaining, and operating of the broadband infrastructure.**
- (2) Payments for options to purchase, deposits on contracts of purchase, and payments for the purchases of properties for the broadband infrastructure.**
- (3) Financing, refinancing, acquisition, demolition, construction, rehabilitation, and site development of new and existing buildings.**
- (4) Carrying charges during construction.**
- (5) Purchases of hardware, software, facilities, or other expenses related to the broadband infrastructure.**
- (6) Legal, organizational, and marketing expenses, project manager and clerical staff salaries, office rent, and other incidental expenses.**
- (7) Payment of fees for preliminary feasibility studies and advances for planning, engineering, and architectural work.**
- (8) Any other costs and expenses necessary for the acquisition, construction, maintenance, and operation of all or part of the broadband infrastructure.**

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

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

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

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

(b) The term includes:

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

however classified by the Federal Communications Commission.

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

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

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

- (1) provides broadband service in the area at the time of the authority's inquiry under this section; or
- (2) intends to provide broadband service not later than three (3) months after the date of the authority's inquiry under section 14 of this chapter.

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

- (1) provides broadband service; or
- (2) intends to provide broadband service not later than three

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(3) months after the date of the authority’s written request under this subsection; in the proposed broadband service area.

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

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

(2) The authority:

(A) receives one (1) or more responses to a request under subsection (a) that indicate that the persons responding provide broadband service in the proposed broadband service area at the time of the request; and

(B) determines that no person responding actually provides broadband service in the designated area.

(3) The authority:

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

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

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

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

(2) benefit residential, commercial, public, governmental, and nonprofit entities in underserved areas in Indiana.

Sec. 16. (a) The Indiana broadband development program is established as a separate body corporate and politic, constituting an instrumentality of the state, but not a state agency, for the public purposes set forth in this chapter. The program is separate

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and apart from the state in its corporate and sovereign capacity, and though separate from the state, the exercise by the authority of its powers constitutes an essential governmental, public, and corporate function.

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

Sec. 17. The program may do the following:

- (1) Request the development finance authority to issue bonds or notes and loan the proceeds to the authority to provide funds to enable the authority to participate in financing and refinancing the expansion of broadband infrastructure services to underserved residential, commercial, public, governmental, and nonprofit customers in Indiana to enhance the delivery of services by the business, educational, medical, commercial, nonprofit, and governmental entities in Indiana.
- (2) Request the development finance authority to issue bonds or notes and loan the proceeds to the authority to enable the making of loans to broadband developers and broadband operators serving or proposing to serve underserved areas.
- (3) Authorize the imposition and collection of rents, charges, and fees for the services furnished by the broadband infrastructure in conjunction with financing entered into by the authority.
- (4) Assist broadband developers and operators with all other matters necessary for the acquisition, construction, maintenance, and operation of the broadband infrastructure.
- (5) Continuously evaluate all types of technologies to encourage the widest deployment of broadband services in underserved areas and broadband infrastructure in Indiana.
- (6) Make broadband services to authorized users (as defined in IC 5-21.5-1-2) located in underserved areas a priority under authority financing programs.
- (7) Ensure that the financing and refinancing of the development of broadband services under this chapter includes provisions ensuring that small businesses and each region of Indiana will have an equal opportunity to receive financing and refinancing.

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

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

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chapter.

(2) To invest any money of the authority at the authority's discretion, in any obligations determined proper by the authority, and name and use depositories for its money.

(3) To receive and distribute state or local funding, including grants, loans, and appropriations.

(4) To make loans to broadband developers and broadband operators that will acquire, construct, maintain, and operate all or part of the broadband infrastructure.

(5) To provide operating assistance to make broadband services more affordable to broadband developers, broadband operators, and broadband customers in underserved areas, in conjunction with broadband infrastructure financed by the authority.

(6) To impose and collect charges, fees, or rentals for the services furnished by those parts of the broadband infrastructure financed by the authority under this chapter.

(7) To set construction, operation, and financing standards for the broadband infrastructure in connection with authority financing and to provide for inspections to determine compliance with those standards.

(8) To investigate, evaluate, and assess the current broadband infrastructure and the future broadband infrastructure needs of Indiana and to encourage and participate in aggregation strategies for the broadband services of all public entities and nonprofit corporations in Indiana to maximize the interconnectivity and efficiencies of the broadband infrastructure.

(b) As part of an application for financing under this chapter, a broadband developer or broadband operator must file with the authority a participation plan for small and minority owned businesses and a communitywide outreach plan to educate the public with respect to the availability of broadband services. The authority may not approve an application unless a plan is submitted under this subsection.

Sec. 19. The development finance authority may exercise any of its powers to assist the authority in the accomplishment of the purposes of this chapter, including the power to borrow money, issue bonds and notes, and loan the proceeds to the authority to permit the authority to:

(1) finance or refinance part or all of the development costs of the broadband infrastructure;

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- (2) refinance existing debt for technology that constitutes part of or is related to the broadband infrastructure;
- (3) make loans to persons for development costs;
- (4) make loans to enable persons to make purchases related to the broadband infrastructure;
- (5) make loans to persons to refinance existing debt incurred by persons in connection with the acquisition or development of technology that constitutes a part of or is related to the broadband infrastructure; and
- (6) make other expenditures necessary to carry out the authority's duties under this chapter, including the payment of the authority's operating expenses.

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

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

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

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

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

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

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- (1) technologies;
- (2) types of service;
- (3) areas of service;
- (4) costs of service; and
- (5) the populations in Indiana to whom the capabilities described in this subsection are available.

(d) On April 1, 2006, and October 1, 2006, the coordinating body shall submit reports on the coordinating body's progress in determining the feasibility of establishing and implementing the system to the general assembly in an electronic format under IC 5-14-6.

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

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

Renumber all SECTIONS consecutively.

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

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