



February 12, 2021

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## SENATE BILL No. 359

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DIGEST OF SB 359 (Updated February 11, 2021 11:34 am - DI 119)

**Citations Affected:** IC 8-23; IC 36-7.

**Synopsis:** Broadband projects. Requires the Indiana department of transportation (INDOT) to create a broadband corridor program ("dig once program") to manage the location, installation, and maintenance of communications infrastructure used for the provision of broadband services within the rights-of-way of limited access highways. Requires INDOT to adopt polices, procedures, and standards under the dig once program for required installation of fiber conduit by a public or private entity that performs an excavation within a limited access highway right-of-way. Permits a unit of local government to finance broadband projects through the issuance of taxable or tax exempt bonds to be repaid by a broadband provider under the terms of a financing agreement. Provides that a broadband project must make broadband services available to all known addresses and public streets in a geographic area that includes at least one census tract. Requires the fiscal body of a unit to: (1) hold a public hearing to approve a financing agreement; and (2) adopt an ordinance if the financing agreement is approved. Requires a broadband provider to pledge the fees for services generated from a broadband project as its primary source of funds for payment under a financing agreement. Provides the purposes for which bonds may be used for a broadband project. Allows adjacent units to establish a broadband authority for broadband projects that would provide broadband services to each unit.

**Effective:** July 1, 2021.

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**Baldwin, Garten, Koch, Brown L,  
Walker K, Sandlin, Houchin, Bassler**

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January 11, 2021, read first time and referred to Committee on Utilities.  
February 11, 2021, amended, reported favorably — Do Pass; reassigned to Committee on Tax and Fiscal Policy.

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SB 359—LS 7016/DI 137





February 12, 2021

First Regular Session of the 122nd General Assembly (2021)

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 2020 Regular Session of the General Assembly.

## SENATE BILL No. 359

A BILL FOR AN ACT to amend the Indiana Code concerning local government.

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

- 1 SECTION 1. IC 8-23-5-10, AS ADDED BY P.L.189-2019,  
2 SECTION 10, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
3 JULY 1, 2021]: Sec. 10. (a) The following definitions apply only  
4 throughout this section:  
5 (1) "Communications infrastructure" includes all facilities and  
6 equipment used to provide communications service (as defined in  
7 IC 8-1-32.5-3), **including fiber conduit**. The term does not  
8 include a vertical structure.  
9 (2) "**Dig once program**" refers to the **dig once broadband**  
10 **corridor program required under subsection (b)**.  
11 (3) "**Fiber conduit**" means **protective conduit of a size and**  
12 **material that is suitable for underground installation of**  
13 **broadband fiber infrastructure**.  
14 (2) (4) "Limited access highway" means any roadway that is  
15 under the jurisdiction and control of the department and that is  
16 one (1) of the following:  
17 (A) An interstate.

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- 1 (B) A toll road, tollway, or toll bridge.  
 2 (C) U.S. 30.  
 3 (D) U.S. 31.
- 4 (3) (5) "Vertical structure" means a privately owned structure that  
 5 is more than one hundred (100) feet above ground and that is used  
 6 primarily for providing wireless communications service. The  
 7 term includes related equipment associated with the structure,  
 8 including air conditioned equipment shelters and rooms,  
 9 electronic equipment, and supporting equipment.
- 10 (b) **Not later than January 1, 2022**, the department ~~may create a~~  
 11 **shall:**
- 12 (1) **implement a dig once** broadband corridor program to manage  
 13 the location, installation, and maintenance of communications  
 14 infrastructure used for the provision of broadband services within  
 15 highway rights-of-way of limited access highways; **and**
- 16 (2) **adopt policies, procedures, and standards under the dig**  
 17 **once program for required installation of fiber conduit by a**  
 18 **public or private entity that performs an excavation within a**  
 19 **limited access highway right-of-way.**
- 20 (c) The ~~broadband corridor dig once~~ program shall apply only to  
 21 locations along or within a limited access highway right-of-way. The  
 22 ~~broadband corridor dig once~~ program shall not apply to the placement  
 23 of communications infrastructure that laterally crosses a roadway under  
 24 the control of the department.
- 25 (d) Except as provided in subsection (e), the department ~~may shall~~  
 26 impose a fee for **the use of** communications infrastructure **installed**  
 27 **and maintained** under subsection (b). The amount of the fee may not  
 28 be more than the reasonable fair market value of the use of the highway  
 29 right-of-way within the broadband corridor.
- 30 (e) Except for portions of a U.S. route that is a limited access  
 31 highway under subsection (a)(2), with respect to state routes or U.S.  
 32 routes, the department may impose only:
- 33 (1) a one (1) time permit application fee for the location or  
 34 installation of communications infrastructure used for the  
 35 provision of broadband services placed along or within a highway  
 36 right-of-way; and
- 37 (2) routine right-of-way permit fees to enter the department's  
 38 rights-of-way for the maintenance of existing facilities.
- 39 (f) The department shall not unreasonably discriminate among  
 40 entities requesting access to broadband corridors or other department  
 41 controlled rights-of-way for the following:
- 42 (1) Approving applications, issuing permits, or otherwise



1 establishing terms and conditions for the location, installation,  
 2 and maintenance of communications infrastructure used for the  
 3 provision of broadband services.

4 (2) Providing access to rights-of-way, infrastructure, utility poles,  
 5 river and bridge crossings, and other physical assets owned,  
 6 controlled, or managed by the department.

7 (3) The type of technology deployed for the provision of  
 8 broadband services.

9 However, nothing in this subsection abrogates or limits the  
 10 department's authority under IC 8-23 to safely and efficiently manage  
 11 and operate the state highway system and associated highway  
 12 rights-of-way for the benefit of the traveling public.

13 **(g) The department shall adopt rules under IC 4-22-2, including**  
 14 **emergency rules adopted in the manner provided by**  
 15 **IC 4-22-2-37.1, to establish the policies, procedures, and standards**  
 16 **required under subsection (b) and to otherwise implement this**  
 17 **section. Rules or emergency rules adopted by the department**  
 18 **under this subsection must take effect not later than January 1,**  
 19 **2022. Notwithstanding IC 4-22-2-37.1(g), an emergency rule**  
 20 **adopted by the department under this subsection in the manner**  
 21 **provided by IC 4-22-2-37.1 expires on the date a rule that**  
 22 **supersedes the emergency rule is adopted by the department under**  
 23 **IC 4-22-2-24 through IC 4-22-2-36.**

24 SECTION 2. IC 36-7-12.5 IS ADDED TO THE INDIANA CODE  
 25 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE  
 26 JULY 1, 2021]:

27 **Chapter 12.5. Broadband Projects**

28 **Sec. 1. As used in this chapter, "broadband project" means a**  
 29 **project for the deployment of broadband infrastructure for the**  
 30 **provision of broadband services.**

31 **Sec. 2. As used in this chapter, "broadband provider" means a**  
 32 **company, firm, partnership, corporation, or association that, at the**  
 33 **time of entering into a financing agreement with a unit under this**  
 34 **chapter:**

35 **(1) has been providing broadband services to at least one**  
 36 **hundred (100) residences or businesses for at least three (3)**  
 37 **consecutive years; and**

38 **(2) has demonstrated, to the satisfaction of the unit, the**  
 39 **financial, technical, and operational capabilities to build and**  
 40 **operate a broadband network.**

41 **Sec. 3. As used in this chapter, "broadband services" means**  
 42 **services, including video, voice, and data, that:**



1 (1) provide capacity for transmission of not less than ten (10)  
2 gigabits per second in both directions; and

3 (2) use fiber optic cable or a next generation nonwireless  
4 technology.

5 Sec. 4. As used in this chapter, "financing agreement" means an  
6 agreement between a unit and a broadband provider concerning  
7 payments made by the broadband provider to the unit in exchange  
8 for the unit providing financing assistance for a broadband  
9 project.

10 Sec. 5. As used in this chapter, "unit" means a county, city, or  
11 town.

12 Sec. 6. (a) The financing of broadband projects serves a public  
13 purpose and will be of benefit to the general welfare of a unit  
14 proposing to issue bonds for the financing of a broadband project.  
15 The availability of broadband services to a unit's residents will  
16 increase opportunities in business and education.

17 (b) A broadband project for which bonds may be issued under  
18 this chapter must make broadband services available to all known  
19 addresses and public streets within a geographic area that  
20 encompasses at least one (1) census tract.

21 Sec. 7. A unit may finance broadband projects through the  
22 issuance of taxable or tax exempt bonds. A unit may do any of the  
23 following:

24 (1) Contract with any entity securing the payment of bonds  
25 issued under this chapter and authorize the entity to approve  
26 a broadband provider that is able to finance a broadband  
27 project with proceeds from the bond issue secured by that  
28 entity.

29 (2) Enter into any agreement, contract, or other instrument  
30 with respect to any insurance, guarantee, letter of credit, or  
31 other form of credit enhancement, accepting payment in such  
32 manner and form as provided in the instrument if a  
33 broadband provider defaults, and assign any such insurance,  
34 guarantee, letter of credit, or other form of credit  
35 enhancement as security for bonds issued by the unit.

36 (3) Finance for broadband providers the cost of broadband  
37 projects as set forth in section 10 of this chapter.

38 Sec. 8. (a) The fiscal body of the unit proposing to issue bonds  
39 for a broadband project must hold a public hearing on the  
40 proposed funding of the broadband project after giving notice by  
41 publication in the unit in accordance with IC 5-3-1.

42 (b) Upon a finding by the fiscal body of a unit that:



1           (1) the proposed financing will be of benefit to the health or  
2           general welfare of the unit; and

3           (2) the proposed financing complies with this chapter;

4           the fiscal body shall adopt an ordinance approving the financing,  
5           including the form and terms of the financing agreement and the  
6           bonds. The fiscal body may, in its discretion, modify the proposed  
7           financing prior to adopting an ordinance approving the financing  
8           under this subsection.

9           (c) An ordinance adopted under subsection (b) may authorize  
10          the issuance of bonds payable solely from revenues and receipts  
11          derived from the financing agreement or from payments made  
12          under a guaranty agreement by a broadband provider. The bonds  
13          are not in any respect a general obligation of the unit, nor are they  
14          payable in any manner from revenues raised by taxation.

15          Sec. 9. (a) A financing agreement approved under this chapter  
16          must:

17               (1) provide for payments in an amount sufficient to pay the  
18               principal, premium (if any), and interest on the bonds  
19               authorized for and allocable to the financing of the broadband  
20               project; and

21               (2) provide that the broadband provider pledges revenue  
22               generated from fees associated with broadband services  
23               provided as a result of the broadband project as its primary  
24               source of funds for payments.

25          (b) The term of a financing agreement under this chapter may  
26          not exceed twenty-five (25) years from the date of any bonds issued  
27          under the financing agreement. However, a financing agreement  
28          does not terminate after twenty-five (25) years if a default under  
29          the agreement remains uncured, unless the termination is  
30          authorized by the terms of the agreement.

31          (c) A financing agreement and bonds issued under this chapter  
32          must be executed by the executive of the unit approving the  
33          financing. The executive may authorize changes to these documents  
34          without further approval of the fiscal body of the unit if:

35               (1) the changes do not affect the terms of the ordinance under  
36               section 8 of this chapter; and

37               (2) the ordinance under section 8 of this chapter authorizes  
38               the executive to make the changes.

39          Sec. 10. Any money received from bonds issued under this  
40          chapter may be used for the following purposes:

41               (1) The payment of the costs of broadband projects on  
42               account of which the bonds are issued.



1           **(2) Issuance expenses for bonds authorized by this chapter.**  
2           **(3) Funding a reserve fund for payment of the principal,**  
3           **premium (if any), and interest on bonds issued under this**  
4           **chapter.**  
5           **Sec. 11. Adjacent units may establish a broadband authority for**  
6           **broadband projects that would provide broadband services to**  
7           **geographic areas in each unit. A unit may become a member of a**  
8           **broadband authority if the fiscal body of the unit adopts an**  
9           **ordinance authorizing the unit to participate in the broadband**  
10           **authority.**  
11           **Sec. 12. The general assembly covenants that this chapter will**  
12           **not be repealed or amended in a manner that would adversely**  
13           **affect the owner of bonds or other obligations issued under this**  
14           **chapter.**





## COMMITTEE REPORT

Madam President: The Senate Committee on Utilities, to which was referred Senate Bill No. 359, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

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

"SECTION 1. IC 8-23-5-10, AS ADDED BY P.L.189-2019, SECTION 10, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2021]: Sec. 10. (a) The following definitions apply only throughout this section:

(1) "Communications infrastructure" includes all facilities and equipment used to provide communications service (as defined in IC 8-1-32.5-3), **including fiber conduit**. The term does not include a vertical structure.

**(2) "Dig once program" refers to the dig once broadband corridor program required under subsection (b).**

**(3) "Fiber conduit" means protective conduit of a size and material that is suitable for underground installation of broadband fiber infrastructure.**

~~(2)~~ **(4) "Limited access highway" means any roadway that is under the jurisdiction and control of the department and that is one (1) of the following:**

- (A) An interstate.
- (B) A toll road, tollway, or toll bridge.
- (C) U.S. 30.
- (D) U.S. 31.

~~(3)~~ **(5) "Vertical structure" means a privately owned structure that is more than one hundred (100) feet above ground and that is used primarily for providing wireless communications service. The term includes related equipment associated with the structure, including air conditioned equipment shelters and rooms, electronic equipment, and supporting equipment.**

**(b) Not later than January 1, 2022, the department may create a shall:**

**(1) implement a dig once broadband corridor program to manage the location, installation, and maintenance of communications infrastructure used for the provision of broadband services within highway rights-of-way of limited access highways; and**

**(2) adopt polices, procedures, and standards under the dig once program for required installation of fiber conduit by a**



**public or private entity that performs an excavation within a limited access highway right-of-way.**

(c) The ~~broadband corridor dig once~~ program shall apply only to locations along or within a limited access highway right-of-way. The ~~broadband corridor dig once~~ program shall not apply to the placement of communications infrastructure that laterally crosses a roadway under the control of the department.

(d) Except as provided in subsection (e), the department ~~may~~ **shall** impose a fee for **the use of** communications infrastructure **installed and maintained** under subsection (b). The amount of the fee may not be more than the reasonable fair market value of the use of the highway right-of-way within the broadband corridor.

(e) Except for portions of a U.S. route that is a limited access highway under subsection (a)(2), with respect to state routes or U.S. routes, the department may impose only:

(1) a one (1) time permit application fee for the location or installation of communications infrastructure used for the provision of broadband services placed along or within a highway right-of-way; and

(2) routine right-of-way permit fees to enter the department's rights-of-way for the maintenance of existing facilities.

(f) The department shall not unreasonably discriminate among entities requesting access to broadband corridors or other department controlled rights-of-way for the following:

(1) Approving applications, issuing permits, or otherwise establishing terms and conditions for the location, installation, and maintenance of communications infrastructure used for the provision of broadband services.

(2) Providing access to rights-of-way, infrastructure, utility poles, river and bridge crossings, and other physical assets owned, controlled, or managed by the department.

(3) The type of technology deployed for the provision of broadband services.

However, nothing in this subsection abrogates or limits the department's authority under IC 8-23 to safely and efficiently manage and operate the state highway system and associated highway rights-of-way for the benefit of the traveling public.

**(g) The department shall adopt rules under IC 4-22-2, including emergency rules adopted in the manner provided by IC 4-22-2-37.1, to establish the policies, procedures, and standards required under subsection (b) and to otherwise implement this section. Rules or emergency rules adopted by the department**



**under this subsection must take effect not later than January 1, 2022. Notwithstanding IC 4-22-2-37.1(g), an emergency rule adopted by the department under this subsection in the manner provided by IC 4-22-2-37.1 expires on the date a rule that supersedes the emergency rule is adopted by the department under IC 4-22-2-24 through IC 4-22-2-36."**

Page 1, line 13, delete "in Indiana".

Page 4, between lines 6 and 7, begin a new paragraph and insert:

**"Sec. 11. Adjacent units may establish a broadband authority for broadband projects that would provide broadband services to geographic areas in each unit. A unit may become a member of a broadband authority if the fiscal body of the unit adopts an ordinance authorizing the unit to participate in the broadband authority."**

Page 4, line 7, delete "Sec. 11." and insert "Sec. 12."

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass and be reassigned to the Senate Committee on Tax and Fiscal Policy.

(Reference is to SB 359 as introduced.)

KOCH, Chairperson

Committee Vote: Yeas 10, Nays 0.

