

SENATE BILL No. 411

DIGEST OF INTRODUCED BILL

Citations Affected: IC 5-28-28.5; IC 8-1-39.5.

Synopsis: Leasing of broadband capacity infrastructure. Conforms the definition of "broadband services" set forth in the statute governing broadband ready communities with the definition of the term used in the statute governing the awarding of broadband grants for rural areas by state agencies. Requires the Indiana utility regulatory commission (IURC) to establish, before January 1, 2021, a broadband capacity leasing pilot program (program) under which an investor-owned electric utility (eligible utility) may petition the IURC to make available eligible broadband capacity infrastructure for use by eligible broadband service providers in providing eligible broadband service in unserved rural areas in the eligible utility's assigned service area. Provides that in establishing or administering the program, the IURC may collaborate with the office of community and rural affairs, other state agencies, or political subdivisions of the state. For purposes of the program, defines "eligible broadband service" as a terrestrial connection to the Internet providing an actual speed of at least 25 megabits per second downstream and at least three megabits per second upstream, regardless of the technology or medium used. Provides that for purposes of the program, an "unserved rural area": (1) means a rural area in Indiana in which eligible broadband service is not available to all potential customers in the area; and (2) does not include any area in Indiana for which funding has been allocated from certain federal funding programs. Provides that an eligible utility whose petition under the program is approved by the IURC is authorized to: (1) own, manage, or control eligible broadband capacity infrastructure in the eligible utility's assigned service area; (2) lease to eligible
(Continued next page)

Effective: Upon passage.

Koch

January 16, 2020, read first time and referred to Committee on Utilities.



broadband service providers indefeasible rights of use in the infrastructure in unserved rural areas in the eligible utility's assigned service area; and (3) provide access points to allow connection between the eligible utility's infrastructure and an eligible broadband service provider's system. Specifies the following: (1) That an eligible utility may not offer: (A) broadband service; or (B) Internet service provider services; to retail customers in Indiana under the program. (2) That an eligible utility is not prohibited from providing transport of, or capacity for, broadband service or Internet service provider services as a wholesaler or intermediate vendor, as long as an unaffiliated broadband service provider provides the broadband service or Internet service provider services to the retail customer. Provides that an eligible utility that seeks to participate in the program must petition the IURC for approval to participate in the program. Sets forth the information that must be included in a petition. Provides that after notice and hearing, and not more than 120 days after an eligible utility files a petition with the IURC to participate in the program, the IURC shall issue an order on the petition. Provides that if the IURC makes certain findings, the IURC shall approve the petition. Provides that if the IURC approves an eligible utility's petition, the IURC shall authorize the eligible utility to recover the eligible utility's net incremental costs of providing broadband capacity to an eligible broadband service provider as follows: (1) 80% of the approved net incremental costs are recoverable by the eligible utility through a periodic retail rate adjustment mechanism. (2) 20% of the approved net incremental costs must be deferred and recovered by the eligible utility as part of the eligible utility's next general rate case before the IURC. Provides that the program expires on the date that is three years after the date the IURC first issues an order approving a petition under the program. Beginning in 2022, requires the IURC to submit to the interim study committee on energy, utilities, and telecommunications an annual report on the program with respect to the most recent state fiscal year.



Introduced

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

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2019 Regular Session of the General Assembly.

SENATE BILL No. 411

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

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

1 SECTION 1. IC 5-28-28.5-0.5, AS ADDED BY P.L.189-2018,
2 SECTION 47, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 UPON PASSAGE]: Sec. 0.5. As used in this chapter, "broadband
4 services" includes services, including voice, video, and data, that
5 provide capacity for transmission of more than three hundred
6 eighty-four (384) kilobits per second in at least one (1) direction means
7 a connection to the Internet that provides an actual speed of at
8 least twenty-five (25) megabits per second downstream and at least
9 three (3) megabits per second upstream, regardless of the technology
10 or medium used to provide the connection, including wireless, copper
11 wire, fiber optic cable, or coaxial cable. If voice transmission capacity
12 is offered in conjunction with other services using transmission of more
13 than three hundred eighty-four (384) kilobits per second, the voice
14 transmission capacity may be less than three hundred eighty-four (384)
15 kilobits per second. The authority shall annually reconsider the three

2020

IN 411—LS 7217/DI 101



1 hundred eighty-four (384) kilobits threshold under this section with a
 2 bias toward raising the threshold in a manner consistent with
 3 technological advances:

4 SECTION 2. IC 5-28-28.5-8, AS AMENDED BY P.L.189-2018,
 5 SECTION 48, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 6 UPON PASSAGE]: Sec. 8. (a) As used in this section, "broadband
 7 adoption" refers to an agreement by a customer to subscribe to
 8 broadband services that are:

- 9 (1) offered by a communications service provider; and
- 10 (2) available to the customer.

11 (b) A unit that wishes to be certified as a broadband ready
 12 community must establish a procedure to promote broadband adoption
 13 in the unit after the unit is certified as a broadband ready community.
 14 The procedure must include the following:

- 15 (1) A single point of contact in charge of broadband adoption in
 16 the unit.
- 17 (2) An assurance that each communications service provider that
 18 already provides broadband services in the unit will be notified
 19 that the unit is applying to be a broadband ready community,
 20 **regardless of whether the broadband services provided by the**
 21 **communications service provider meet the speed threshold set**
 22 **forth in section 0.5 of this chapter.**

- 23 (3) An assurance that the unit will work with communications
 24 service providers to promote broadband adoption in the unit.

25 (c) A procedure established under subsection (b) may not do the
 26 following:

- 27 (1) Discriminate among communications service providers with
 28 respect to promoting broadband adoption in the unit.
- 29 (2) Impose a fee on communications service providers to fund
 30 promotion of broadband adoption in the unit.

31 SECTION 3. IC 8-1-39.5 IS ADDED TO THE INDIANA CODE
 32 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE
 33 UPON PASSAGE]:

34 **Chapter 39.5. Leasing of Broadband Capacity Infrastructure by**
 35 **Electric Utilities**

36 **Sec. 1. As used in this chapter, "eligible broadband capacity**
 37 **infrastructure" means any infrastructure (including any**
 38 **equipment, electronics, plant, works, system, lines, facilities, or**
 39 **properties, together with all parts of and appurtenances to the**
 40 **equipment, electronics, plant, works, system, lines, facilities, or**
 41 **properties) that:**

- 42 (1) is used and useful in connection with the provision of



1 eligible broadband service; and

2 (2) is constructed by an eligible utility in connection with a
3 petition approved by the commission under the program
4 established by the commission under section 9 of this chapter.

5 Sec. 2. As used in this chapter, "eligible broadband service"
6 means a terrestrial connection to the Internet that provides an
7 actual speed of at least twenty-five (25) megabits per second
8 downstream and at least three (3) megabits per second upstream,
9 regardless of the technology or medium used to provide the
10 connection.

11 Sec. 3. (a) As used in this chapter, "eligible broadband service
12 provider" means any company, firm, corporation, partnership, or
13 association that:

14 (1) either:

15 (A) has been providing broadband service to at least one
16 hundred (100) residences and businesses in Indiana for at
17 least three (3) consecutive years; or

18 (B) is:

- 19 (i) a corporation organized under IC 8-1-13; or
20 (ii) a corporation organized under IC 23-17 that is an
21 electric cooperative and that has at least one (1) member
22 that is a corporation organized under IC 8-1-13; and

23 (2) either:

24 (A) has demonstrated, in connection with a grant
25 application under IC 4-4-38.5, to the satisfaction of the
26 office:

- 27 (i) financial;
28 (ii) technical; and
29 (iii) operational;

30 capability in operating a broadband network, in
31 accordance with standards for determining such capability
32 in guidelines adopted by the office under
33 IC 4-4-38.5-10(a)(4) for grant applications under
34 IC 4-4-38.5; or

35 (B) demonstrates, in connection with a petition filed with
36 the commission under section 10 of this chapter, to the
37 satisfaction of the office:

- 38 (i) financial;
39 (ii) technical; and
40 (iii) operational;

41 capability in operating a broadband network, in
42 accordance with standards for determining such capability



1 in guidelines adopted by the office under
 2 IC 4-4-38.5-10(a)(4) for grant applications under
 3 IC 4-4-38.5.

4 (b) The term does not include the following:

- 5 (1) A governmental entity or agency.
 6 (2) A body corporate and politic, or a private, nonprofit
 7 government related corporation.
 8 (3) A broadband service provider that is an affiliate of an
 9 eligible utility that seeks to make available eligible broadband
 10 capacity infrastructure to that broadband service provider
 11 under the program established by the commission under
 12 section 9 of this chapter.

13 Sec. 4. As used in this chapter, "eligible utility" means a public
 14 utility (as defined in IC 8-1-2-1(a)) that:

- 15 (1) is an investor-owned utility; and
 16 (2) provides retail electric service to Indiana customers.

17 Sec. 5. As used in this chapter, "office" refers to the office of
 18 community and rural affairs established by IC 4-4-9.7-4.

19 Sec. 6. As used in this chapter, "program" refers to the
 20 broadband capacity leasing pilot program established by the
 21 commission under section 9 of this chapter.

22 Sec. 7. As used in this chapter, "rural area" means:

- 23 (1) an unincorporated area; or
 24 (2) a small municipality, as defined by the office in guidelines
 25 adopted under IC 4-4-38.5-10(a)(5);

26 in Indiana.

27 Sec. 8. (a) As used in this chapter, "unserved rural area" means
 28 a rural area in which eligible broadband service is not available to
 29 all potential customers in the area.

30 (b) The term does not include any area in Indiana for which
 31 funding has been allocated from the federal Connect America Fund
 32 or from any other similar federal funding program, the express
 33 purpose of which is to provide broadband service to rural or
 34 unserved areas.

35 Sec. 9. (a) Subject to subsection (e), before January 1, 2021, the
 36 commission shall adopt rules under IC 4-22-2 to establish the
 37 broadband capacity leasing pilot program under which an eligible
 38 utility may file one (1) or more petitions to construct and make
 39 available eligible broadband capacity infrastructure for use by
 40 eligible broadband service providers in providing eligible
 41 broadband service in unserved rural areas within the eligible
 42 utility's assigned service area under IC 8-1-2.3. An eligible utility



1 may not file a petition with the commission under the program
 2 with respect to any pole attachment or collocation agreement by
 3 which an eligible utility makes available to a broadband service
 4 provider for use in providing broadband service any existing
 5 infrastructure that is:

- 6 (1) owned by the eligible utility; and
 7 (2) not specifically constructed for the purpose of making the
 8 infrastructure available for use by the broadband service
 9 provider for use in providing broadband service.

10 (b) Subject to section 12 of this chapter, an eligible utility whose
 11 petition under section 10 of this chapter is approved by the
 12 commission is authorized, either directly or through an affiliate, to:

- 13 (1) own, manage, or control eligible broadband capacity
 14 infrastructure in the eligible utility's assigned service area
 15 under IC 8-1-2.3;
 16 (2) lease to eligible broadband service providers indefeasible
 17 rights of use in the eligible utility's eligible broadband
 18 capacity infrastructure in unserved rural areas within the
 19 eligible utility's assigned service area under IC 8-1-2.3; and
 20 (3) provide access points that are:

21 (A) within the eligible utility's assigned service area under
 22 IC 8-1-2.3; or

23 (B) outside the eligible utility's assigned service area under
 24 IC 8-1-2.3 and attached to or part of a facility that:

25 (i) is owned by the eligible utility before the date of the
 26 eligible utility's petition under section 10 of this chapter;
 27 and

28 (ii) is not constructed or acquired in connection with the
 29 eligible utility's petition under section 10 of this chapter;

30 to allow connection between the eligible utility's eligible
 31 broadband capacity infrastructure and an eligible broadband
 32 service provider's system.

33 (c) The rules adopted by the commission under this section to
 34 establish the program must:

35 (1) permit an eligible utility to recover the eligible utility's net
 36 incremental costs of providing broadband capacity to eligible
 37 broadband service providers under the program through a
 38 periodic rate adjustment mechanism, as described in section
 39 11 of this chapter;

40 (2) prohibit an eligible utility, in making available eligible
 41 broadband capacity infrastructure for use by eligible
 42 broadband service providers in providing eligible broadband



1 service under the program, from discriminating between
 2 different types of technology used by eligible broadband
 3 service providers to provide such eligible broadband service;
 4 (3) take effect not later than January 1, 2021; and
 5 (4) be consistent with this chapter.

6 (d) Upon the effective date of the rules adopted by the
 7 commission under this section, an eligible utility may petition the
 8 commission under section 10 of this chapter for approval to
 9 participate in the program.

10 (e) In adopting the rules required by this section, the
 11 commission may adopt emergency rules in the manner provided by
 12 IC 4-22-2-37.1. Notwithstanding IC 4-22-2-37.1(g), an emergency
 13 rule adopted by the commission under this section and in the
 14 manner provided by IC 4-22-2-37.1 expires on the date on which
 15 a rule that supersedes the emergency rule is adopted by the
 16 commission under IC 4-22-2-24 through IC 4-22-2-36.

17 (f) In adopting the rules required by this section, or in otherwise
 18 administering the program, the commission may collaborate with
 19 the office, other state agencies, or political subdivisions of the state.

20 **Sec. 10. (a)** An eligible utility that seeks to participate in the
 21 program established by the commission under section 9 of this
 22 chapter must petition the commission, in the manner and on a form
 23 prescribed by the commission, for approval to participate in the
 24 program. The eligible utility shall provide a copy of the petition to
 25 the office of the utility consumer counselor when the petition is
 26 filed with the commission.

27 (b) In a petition filed under this section, an eligible utility must:

- 28 (1) identify the broadband service provider to which the
 29 eligible utility seeks to lease indefeasible rights of use in the
 30 eligible utility's eligible broadband capacity infrastructure;
 31 (2) include proof that the broadband service provider
 32 identified under subdivision (1) qualifies as an eligible
 33 broadband service provider, including a certification from the
 34 office that the office has determined in connection with:

35 (A) a grant application under IC 4-4-38.5; or

36 (B) an independent request made by the eligible utility or
 37 the broadband service provider not earlier than six (6)
 38 months before the date the petition is filed with the
 39 commission under this section;

40 that the broadband service provider has demonstrated
 41 financial, technical, and operational capability in operating a
 42 broadband network, in accordance with standards for



1 determining such capability in guidelines adopted by the
 2 office under IC 4-4-38.5-10(a)(4) for grant applications under
 3 IC 4-4-38.5;

4 (3) identify the rural area within the eligible utility's assigned
 5 service area under IC 8-1-2.3 to be provided with eligible
 6 broadband service by the identified broadband service
 7 provider through the use of the eligible utility's eligible
 8 broadband capacity infrastructure, including proof, in such
 9 form as the commission may require, that the rural area
 10 identified qualifies as an unserved rural area; and

11 (4) include an estimate of the eligible utility's net incremental
 12 costs of providing broadband capacity to the broadband
 13 service provider, as described in section 11 of this chapter.

14 (c) Subject to section 16 of this chapter, upon receiving a
 15 petition under this section, the commission shall publish the
 16 petition on the commission's Internet web site for a period of at
 17 least thirty (30) days, during which time the commission shall
 18 accept comments or objections concerning the petition. The
 19 commission, in making a determination as to whether to approve
 20 the petition under subsection (d), shall consider all comments or
 21 objections received under this subsection.

22 (d) After notice and hearing, and not more than one hundred
 23 twenty (120) days after an eligible utility files a petition with the
 24 commission under subsection (a), the commission shall issue an
 25 order on the petition. Subject to subsection (e), the commission
 26 shall approve the petition if the commission makes the following
 27 findings and determinations, to be set forth in the commission's
 28 order:

29 (1) A finding that the broadband service provider identified
 30 in the eligible utility's petition qualifies as an eligible
 31 broadband service provider, including certification by the
 32 office under subsection (b)(2).

33 (2) A finding that the rural area proposed to be provided with
 34 eligible broadband service by the broadband service provider
 35 through the use of the eligible utility's eligible broadband
 36 capacity infrastructure qualifies as an unserved rural area.

37 (3) A determination of the best estimate of the eligible utility's
 38 net incremental costs of providing broadband capacity to the
 39 eligible broadband service provider, as described in section 11
 40 of this chapter.

41 (4) A finding that the estimated costs are justified by
 42 incremental benefits to the eligible utility's customers



1 **attributable to the eligible utility's provision of broadband**
 2 **capacity for use by the eligible broadband service provider in**
 3 **providing eligible broadband service to the unserved rural**
 4 **area in the eligible utility's assigned service area under**
 5 **IC 8-1-2.3.**

6 **(5) A finding that the public convenience and necessity will be**
 7 **served by the eligible utility's provision of broadband capacity**
 8 **for use by the eligible broadband service provider in**
 9 **providing eligible broadband service to the unserved rural**
 10 **area in the eligible utility's assigned service area under**
 11 **IC 8-1-2.3.**

12 **(e) An order of the commission approving an eligible utility's**
 13 **petition under this section must be conditioned upon the following:**

14 **(1) The eligible utility obtaining all rights-of-way, easements,**
 15 **or real property rights necessary to lease broadband capacity**
 16 **to the eligible broadband service provider.**

17 **(2) The eligible broadband service provider obtaining all**
 18 **rights-of-way, easements, or real property rights from the**
 19 **point of access to the eligible utility's eligible broadband**
 20 **capacity infrastructure necessary to provide eligible**
 21 **broadband service to end-use customers.**

22 **(3) The requirement that construction of the eligible**
 23 **broadband capacity infrastructure identified in the petition**
 24 **and approved by the commission must be commenced not**
 25 **later than three (3) years after the date of the commission's**
 26 **order approving the petition. If the eligible utility fails to**
 27 **commence construction within the three (3) year period set**
 28 **forth in this subdivision, the eligible utility may resubmit the**
 29 **petition to the commission for approval.**

30 **Sec. 11. (a) This section applies if the commission approves an**
 31 **eligible utility's petition under section 10 of this chapter, including**
 32 **the eligible utility's estimated net incremental costs of providing**
 33 **broadband capacity to an eligible broadband service provider. For**
 34 **purposes of this section, an eligible utility's net incremental costs**
 35 **of providing broadband capacity to an eligible broadband service**
 36 **provider:**

37 **(1) include capital, maintenance, depreciation, tax, and**
 38 **financing costs; and**

39 **(2) do not include any revenue generated from leasing eligible**
 40 **broadband capacity infrastructure to the eligible broadband**
 41 **service provider in connection with providing such capacity.**

42 **(b) The commission shall authorize the eligible utility to recover**



1 the eligible utility's net incremental costs of providing broadband
2 capacity to an eligible broadband service provider as follows:

3 (1) Eighty percent (80%) of the approved net incremental
4 costs shall be recovered by the eligible utility through a
5 periodic retail rate adjustment mechanism that allows the
6 timely recovery of the approved costs. The commission shall
7 adjust the eligible utility's authorized net operating income to
8 reflect any approved earnings for purposes of
9 IC 8-1-2-42(d)(3) and IC 8-1-2-42(g)(3).

10 (2) Twenty percent (20%) of the approved net incremental
11 costs, including depreciation, allowance for funds used during
12 construction, and post in service carrying costs, shall be
13 deferred and recovered by the eligible utility as part of the
14 next general rate case filed by the eligible utility with the
15 commission.

16 Sec. 12. An eligible utility, or an affiliate of an eligible utility,
17 may not offer broadband service or Internet service provider
18 services to retail customers in Indiana under this chapter or under
19 the program established by commission under this chapter.
20 However, this chapter does not prohibit an eligible utility, or an
21 affiliate of an eligible utility, from providing transport of, or
22 capacity for, broadband service or Internet service provider
23 services as a wholesaler or intermediate vendor, as long as an
24 unaffiliated broadband service provider provides the broadband
25 service or Internet service provider services to the retail customer.

26 Sec. 13. (a) The provision of eligible broadband capacity
27 infrastructure by an eligible utility in an unserved rural area in the
28 eligible utility's assigned service area under IC 8-1-2.3 under the
29 program, including any business activity related to the
30 construction or leasing of eligible broadband capacity
31 infrastructure, is exempt from any rules or uniform system of
32 accounts adopted and prescribed for the eligible utility by the
33 commission with respect to the functional separation of eligible
34 utilities' generation, transmission, and distribution systems.

35 (b) An eligible utility participating in the program may engage
36 in such coordination between and among the eligible utility's
37 various corporate divisions as is necessary to provide eligible
38 broadband capacity infrastructure in an unserved rural area in the
39 eligible utility's assigned service area under IC 8-1-2.3 under the
40 program.

41 Sec. 14. (a) Subject to subsection (b), the program established by
42 the commission under this chapter expires on the date that is three



1 (3) years after the date the commission first issues an order
2 approving a petition under the program.

3 (b) The commission may not issue an order approving a petition
4 under the program on or after the date that is three (3) years after
5 the date of the commission's first order approving a petition under
6 the program, as described in subsection (a). However, upon
7 termination of the program under this section, an eligible utility
8 that is providing eligible broadband capacity infrastructure in an
9 unserved rural area in the eligible utility's assigned service area
10 under IC 8-1-2.3 under the program shall continue:

11 (1) to provide such eligible broadband capacity infrastructure
12 under the terms of the existing lease as of the date of the
13 program's termination; and

14 (2) to recover the eligible utility's net incremental costs of
15 providing the eligible broadband capacity infrastructure until
16 such time as the eligible utility has recovered the net
17 incremental costs.

18 Sec. 15. (a) As used in this section, "committee" means the
19 interim study committee on energy, utilities, and
20 telecommunications established by IC 2-5-1.3-4.

21 (b) Subject to section 16 of this chapter, beginning in 2022, not
22 later than August 1 of each year, the commission shall submit to
23 the committee a report on the program established by the
24 commission under this chapter, including the following information
25 with respect to the most recent state fiscal year:

26 (1) The number of petitions received under the program.

27 (2) The number of petitions approved by the commission
28 under the program.

29 (3) The number of petitions denied by the commission under
30 the program.

31 (4) The number of petitions pending under the program, as of
32 the last day of the most recent state fiscal year.

33 (5) The number of existing leases under the program, as of the
34 last day of the most recent state fiscal year.

35 (6) An identification of the rural areas in which eligible
36 broadband capacity infrastructure is being leased to eligible
37 broadband service providers under the program, as of the last
38 day of the most recent state fiscal year.

39 (7) To the extent available, data on the number of subscribers
40 to eligible broadband service made available through eligible
41 broadband capacity infrastructure leased by eligible
42 broadband service providers under the program, as of the last



1 day of the most recent state fiscal year.
2 **(8) The technologies used by eligible broadband service**
3 **providers to provide eligible broadband service to rural areas**
4 **under the program.**
5 **(9) The overall progress of the deployment of broadband**
6 **infrastructure for the provision of eligible broadband service**
7 **in rural areas, and the program's contribution, if any, to such**
8 **progress.**
9 **(10) Expenses incurred and funds spent by the commission in**
10 **administering the program.**
11 **(11) A list of the entities, if any, that the commission**
12 **collaborated with in administering the program.**
13 **A report to the committee under this section must be in an**
14 **electronic format under IC 5-14-6.**
15 **Sec. 16. The commission, the office, and any state agency or**
16 **political subdivision with which the commission cooperates or**
17 **consults in administering the program:**
18 **(1) shall not disclose information designated as confidential or**
19 **proprietary business information by an eligible utility or by**
20 **an eligible broadband service provider in connection with the**
21 **program; and**
22 **(2) shall execute appropriate nondisclosure agreements to**
23 **prevent the disclosure of confidential or proprietary business**
24 **information.**
25 **SECTION 4. An emergency is declared for this act.**

