

First Regular Session of the 121st General Assembly (2019)

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 2018 Regular and Special Session of the General Assembly.

SENATE ENROLLED ACT No. 460

AN ACT to amend the Indiana Code concerning utilities.

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

SECTION 1. IC 4-4-9.7-9, AS AMENDED BY P.L.177-2018, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 9. (a) The rural economic development fund is established for the purpose of enhancing and developing rural communities. The fund shall be administered by the office.

(b) The expenses of administering the fund shall be paid from the money in the fund.

(c) Notwithstanding IC 5-13, the treasurer of state shall invest the money in the fund not currently needed to meet the obligations of the fund under IC 5-10.3-5. The treasurer of state may contract with investment management professionals, investment advisers, and legal counsel to assist in the management of the fund and may pay the state expenses incurred under those contracts.

(d) Money in the fund at the end of a state fiscal year does not revert to the state general fund.

(e) Money in the fund may be used for the following purposes:

- (1) To create, assess, and assist a pilot project to enhance the economic and community development in a rural area.
- (2) To establish a local revolving loan fund for:
 - (A) an industrial;
 - (B) a commercial;

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(C) an agricultural; or

(D) a tourist;

venture.

(3) To provide a loan for an economic development project in a rural area.

(4) To provide technical assistance to a rural organization.

(5) To assist in the development and creation of a rural cooperative.

(6) To address rural workforce development challenges.

(7) To assist in addressing telecommunications needs in a rural area. ~~including the awarding of grants under IC 4-4-38.~~

(8) To provide funding for rural economic development projects concerning the following issues:

(A) Infrastructure, including water, wastewater, and storm water infrastructure needs.

(B) Housing.

(C) Health care.

(D) Local planning.

(E) Land use.

(F) Other rural economic development issues, as determined by the office.

(9) To provide funding for the establishment of new regional rural development groups and the operation of existing regional rural development groups.

(f) Expenditures from the fund are subject to appropriation by the general assembly and approval by the office.

SECTION 2. IC 4-4-38-0.1 IS ADDED TO THE INDIANA CODE AS A **NEW SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 0.1. This chapter applies only to grants awarded from the fund before August 1, 2019.**

SECTION 3. IC 4-4-38-0.3 IS ADDED TO THE INDIANA CODE AS A **NEW SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 0.3. As used in this chapter, "fund" refers to the rural broadband fund established by IC 4-4-38.5-11.**

SECTION 4. IC 4-4-38-7, AS ADDED BY P.L.215-2018(ss), SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 7. (a) Subject to:

(1) subsection (b); **and**

(2) section 8 of this chapter; **and**

~~(3) IC 4-4-9.7-9(f);~~

the office shall establish procedures for awarding grants from the ~~rural economic development fund established by IC 4-4-9.7-9~~ to qualified

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broadband providers for qualified broadband project expenses incurred in connection with qualified broadband projects.

(b) In awarding grants under this chapter, the office shall establish the following priorities:

(1) First, extending the deployment of qualified broadband service to areas in which:

- (A) Internet connections are unavailable; or
- (B) the only available Internet connections provide capacity for transmission at an actual speed of less than ten (10) megabits per second downstream.

(2) Second, extending the deployment of high speed Internet service to areas in which the only available Internet connections provide capacity for transmission at an actual speed of:

- (A) not less than ten (10) megabits; and
- (B) not more than twenty-five (25) megabits; per second downstream.

(c) Subject to section 11 of this chapter, the office shall publish on the office's Internet web site all grant applications received by the office under this chapter. For each grant application received, the office shall establish a period of at least thirty (30) days from the date the application is published on the office's Internet web site under this subsection, during which time the office will accept comments or objections concerning the application. The office shall consider all comments or objections received under this subsection in making a determination as to whether to award a grant to an applicant under this chapter.

SECTION 5. IC 4-4-38-10, AS ADDED BY P.L.177-2018, SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 10. (a) Not later than August 1 of each **calendar year ending before January 1, 2021**, the office shall submit to the general assembly a report on the office's activities under this chapter during the most recent state fiscal year, including the following:

- (1) The number, amounts, and recipients of grants awarded under this chapter.
- (2) The status of any funded qualified broadband projects.
- (3) Expenses incurred and funds spent by the office in administering this chapter.
- (4) A list of the entities, if any, that the office collaborated with in administering this chapter.
- (5) An accounting of funds in the **rural economic development fund established by IC 4-4-9.7-9**, including funds awarded as



grants under this chapter.

(6) The number of locations in Indiana to which broadband infrastructure has been deployed with the use of grant funds under this chapter, including address-level information for newly connected locations.

(7) The overall progress of the deployment of broadband infrastructure for the provision of qualified broadband service in unserved areas in Indiana.

A report to the general assembly under this subsection must be in an electronic format under IC 5-14-6.

(b) Every three (3) years, beginning in 2021, the state board of accounts shall conduct an audit of the awarding of grants under this chapter during the most recent three (3) state fiscal years. A report of an audit conducted under this subsection shall be submitted to the general assembly in an electronic format under IC 5-14-6 not later than December 31 of the calendar year that includes the end of the third state fiscal year covered by the audit.

SECTION 6. IC 4-4-38-12 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 12. Before August 1, 2019, the office may award grants under this chapter from the fund to qualified broadband service providers for qualified broadband project expenses incurred in connection with qualified broadband projects.**

SECTION 7. IC 4-4-38.5 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]:

Chapter 38.5. Broadband Grants for Rural Areas

Sec. 1. This chapter applies to grants awarded from the fund after July 31, 2019.

Sec. 2. As used in this chapter, "eligible broadband project" means a project for the deployment of broadband infrastructure for the provision of eligible broadband service, regardless of the delivery technology, in rural areas in Indiana.

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

Sec. 4. As used in this chapter, "eligible broadband service provider" means any company, firm, corporation, partnership, or association that:



(1) either:

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

(B) is:

(i) a corporation organized under IC 8-1-13; or

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

(2) has demonstrated, to the satisfaction of the office:

(A) financial;

(B) technical; and

(C) operational;

capability in building and operating a broadband network, according to standards for determining such capability in guidelines adopted by the office under section 10 of this chapter.

Sec. 5. As used in this chapter, "fund" refers to the rural broadband fund established by section 11 of this chapter.

Sec. 6. As used in this chapter, "office" refers to the office of community and rural affairs established by IC 4-4-9.7-4.

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

(1) an unincorporated area; or

(2) a small municipality, as defined by the office in guidelines adopted under section 10 of this chapter;

in Indiana.

Sec. 8. As used in this chapter, "state agency" means an authority, a board, a branch, a commission, a committee, a department, a division, or another instrumentality of the executive, including the administrative, department of state government.

Sec. 9. (a) The office shall establish procedures for the awarding of grants from the fund after July 31, 2019, by state agencies to eligible broadband service providers for eligible broadband projects.

(b) The procedures established under this section must establish the following priorities for the awarding of grants under this chapter:

(1) First, extending the deployment of eligible broadband service to areas in which:

(A) Internet connections are unavailable; or

(B) the only available connections to the Internet are at actual speeds of less than ten (10) megabits per second



downstream.

(2) Second, extending the deployment of eligible broadband service to areas in which the only available connections to the Internet are at actual speeds of:

(A) not less than ten (10) megabits; and

(B) not more than twenty-five (25) megabits;
per second downstream.

(3) Projects for areas described in subdivision (2) shall not be funded before projects described in subdivision (1).

(c) The procedures established under this section may not permit the awarding of a grant from the fund for any proposed broadband project in an area in which eligible broadband service is available.

(d) The procedures established under this section may not permit the office to award a grant from the fund for any project in a rural area for which funding has been allocated from the federal Connect America Fund or from any other similar federal funding program the express purpose of which is to provide broadband service to rural or unserved areas.

(e) The procedures established under this section must establish a system of priorities for awarding grants under this chapter, weighted as determined by the office in guidelines adopted under section 10 of this chapter, that gives preference to eligible broadband projects that meet the following criteria:

(1) Projects that will provide eligible broadband service to unincorporated areas in Indiana.

(2) Projects for which the applicant commits to providing more than fifty percent (50%) of the cost to deploy the proposed broadband infrastructure. When multiple applicants apply for a grant to provide eligible broadband service to the same rural area, the office may establish a preference for approving applications with a greater funding contribution by the applicant.

(3) Projects that involve an agreement between the applicant and one (1) or more other parties that would permit the applicant to use existing facilities or infrastructure owned or controlled by an unrelated third party to enable the applicant to offer eligible broadband service to locations in a rural area.

(f) The procedures established under this section must prohibit a state agency, in awarding any grant from the fund, from discriminating between different types of technology used to provide eligible broadband service in connection with proposed



eligible broadband projects.

(g) The procedures established under this section must, subject to section 14 of this chapter, require the office to publish on the office's Internet web site all grant applications received by the office under this chapter. For each grant application received, the office shall establish a period of at least thirty (30) days from the date the application is published on the office's Internet web site under this subsection, during which time the office will accept comments or objections concerning the application. The office shall consider all comments or objections received under this subsection in making a determination as to whether to award a grant to an applicant under this chapter.

Sec. 10. (a) The office shall adopt guidelines to implement this chapter, including guidelines governing the following:

(1) The form and content of requests to provide eligible broadband service to a rural area.

(2) The form and content of applications for grants under this chapter.

(3) A competitive bidding process or a process for requests for proposals for eligible broadband projects.

(4) Standards for determining whether a broadband service provider has demonstrated:

(A) financial;

(B) technical; and

(C) operational;

capability in building and operating a broadband network, as necessary to qualify as an eligible broadband service provider for purposes of this chapter.

(5) Standards establishing population parameters or another appropriate metric for defining a community that qualifies as a small municipality for purposes of section 7(2) of this chapter.

(6) Standards for determining the types and categories of expenses that are:

(A) directly related to an eligible broadband project; and

(B) eligible to receive funding under this chapter.

(7) Standards for assigning weight to the funding priorities set forth in section 9(e) of this chapter.

(b) In adopting the guidelines described in subsection (a) or in otherwise administering this chapter, the office may collaborate with other state agencies or with political subdivisions of the state.

Sec. 11. (a) The rural broadband fund is established for the



purpose of awarding grants under:

- (1) this chapter after July 31, 2019; and**
- (2) IC 4-4-38 before August 1, 2019.**
- (b) The office shall administer the fund.**
- (c) The fund consists of:**
 - (1) money appropriated by the general assembly;**
 - (2) money received by the office from federal grants or programs for broadband infrastructure; and**
 - (3) donations, gifts, and money received from any other source, including transfers from other funds or accounts.**
- (d) The treasurer of state shall invest the money in the fund not currently needed to meet the obligations of the fund in the same manner as other public funds may be invested.**
- (e) Money in the fund at the end of a state fiscal year does not revert to the state general fund but remains in the fund to be used exclusively for the purposes of this chapter and IC 4-4-38.**

Sec. 12. (a) After July 31, 2019, a state agency may award grants under this chapter from the fund to eligible broadband service providers for eligible broadband projects, in accordance with:

- (1) the procedures established by the office under section 9 of this chapter; and**
- (2) the guidelines adopted by the office under section 10 of this chapter.**
- (b) Once funds have been released from the fund in accordance with this chapter, all authority and ownership of the eligible broadband infrastructure vests with the eligible broadband service provider that built the infrastructure. The office may not allow for the transfer of eligible broadband assets paid for with funds under this chapter to any entity other than an eligible broadband service provider.**
- (c) The office shall sign a grant agreement with an eligible broadband service provider awarded a grant under this chapter for an eligible broadband project. A grant agreement required under this subsection must:**
 - (1) outline a start date and end date for completion of the eligible broadband project; and**
 - (2) condition the release of any grant funds awarded under this chapter on the progressive completion of the eligible broadband project.**

Sec. 13. (a) Beginning in 2020, not later than August 1 of each year, the office shall submit to the general assembly a report on the awarding of grants under this chapter during the most recent state



fiscal year, including the following:

- (1) The number, amounts, and recipients of grants awarded under this chapter, along with the state agency awarding each grant.
- (2) The status of any funded eligible broadband projects.
- (3) Expenses incurred and funds spent by the office in administering this chapter.
- (4) A list of the entities, if any, that the office collaborated with in administering this chapter.
- (5) An accounting of money in the fund, including funds awarded as grants under this chapter.
- (6) The number of locations in rural areas to which broadband infrastructure has been deployed with the use of grant funds under this chapter, including address-level information for newly connected locations.
- (7) The overall progress of the deployment of broadband infrastructure for the provision of eligible broadband service in rural areas in Indiana.

A report to the general assembly under this subsection must be in an electronic format under IC 5-14-6.

(b) Every three (3) years, beginning in 2021, the state board of accounts shall conduct an audit of the awarding of grants under:

- (1) IC 4-4-38; and
- (2) this chapter;

as appropriate, during the most recent three (3) state fiscal years. A report of an audit conducted under this subsection shall be submitted to the general assembly in an electronic format under IC 5-14-6 not later than December 31 of the calendar year that includes the end of the third state fiscal year covered by the audit.

Sec. 14. The office, and any state agency or any political subdivision with which the office cooperates or consults in administering this chapter:

- (1) shall not disclose information designated as confidential or proprietary business information by a grant applicant or recipient; and
- (2) shall execute appropriate nondisclosure agreements to prevent the disclosure of confidential or proprietary business information in connection with grants awarded under this chapter.

SECTION 8. IC 8-1-32.5-14, AS AMENDED BY P.L.145-2015, SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 14. A communications service provider that holds



a certificate issued under this chapter:

- (1) is exempt from local franchises and related fees to the same extent as a communications service provider that holds a certificate of territorial authority or an indeterminate permit issued under IC 8-1-2 before July 1, 2009; **and**
- (2) may access public rights-of-way to the same extent as a public utility (as defined in IC 8-1-2-1(a)), other than rights-of-way, property, or projects that are the subject of a public-private agreement under IC 8-15.5 or IC 8-15.7 or communications systems infrastructure, including all infrastructure used for wireless communications, owned by or under the jurisdiction of the Indiana finance authority or the state or any of its agencies, departments, boards, commissions, authorities, or instrumentalities; **and**
- (3) shall be designated as a public utility solely as that term is used in 23 CFR 710.403(e)(2).**

SECTION 9. IC 8-23-2-20 IS ADDED TO THE INDIANA CODE AS A **NEW SECTION TO READ AS FOLLOWS** [EFFECTIVE JANUARY 1, 2019 (RETROACTIVE)]: **Sec. 20. (a) As used in this section, "communications infrastructure" includes all facilities and equipment used to provide communications service (as defined in IC 8-1-32.5-3).**

(b) Except:

- (1) for routine right-of-way permit fees to enter the department's rights-of-way for the maintenance of existing facilities; and**
- (2) as provided for in written agreements the department has entered into with service providers before May 1, 2019;**

the department shall not charge an access rate or any other recurring charge or recurring fee for communications infrastructure that is located before May 1, 2019, in any rights-of-way that are owned or controlled by the department.

SECTION 10. IC 8-23-5-10 IS ADDED TO THE INDIANA CODE AS A **NEW SECTION TO READ AS FOLLOWS** [EFFECTIVE JULY 1, 2019]: **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). The term does not include a vertical structure.**
- (2) "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) "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) The department may create a 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.

(c) The broadband corridor program shall apply only to locations along or within a limited access highway right-of-way. The broadband corridor 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 impose a fee for communications infrastructure 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.

SECTION 11. [EFFECTIVE JULY 1, 2019] (a) As used in this SECTION, "department" refers to the Indiana department of transportation.

(b) Before July 1, 2020, the department shall adopt rules under IC 4-22-2 to amend 105 IAC 13-2-18 to provide that, as used throughout 105 IAC, "utility" has the meaning set forth in 23 CFR 645.105.

(c) This SECTION expires December 31, 2020.

SECTION 12. An emergency is declared for this act.



President of the Senate

President Pro Tempore

Speaker of the House of Representatives

Governor of the State of Indiana

Date: _____ Time: _____

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