

SENATE BILL No. 526

DIGEST OF INTRODUCED BILL

Citations Affected: IC 4-11.5; IC 5-28-28.5-0.5; IC 8-1-29.5-7.

Synopsis: Use of state funds for broadband projects. Defines a "qualified broadband project" as a project for the deployment of broadband infrastructure to provide broadband service for connections to the Internet at specified speeds, regardless of the delivery technology, in unserved areas in Indiana. Defines an "unserved area" as a geographic area of Indiana in which there is not at least one provider of terrestrial broadband service at the designated speeds. Provides that after June 30, 2019, the following apply with respect to grants made by state agencies (awarding agencies) for broadband infrastructure: (1) An awarding agency may not award a new state broadband grant unless the grant is for a qualified broadband project. (2) An awarding agency may allocate or release state funds for a state broadband grant awarded to a recipient before July 1, 2019, subject to certain conditions. (3) In awarding a new state broadband grant, an awarding agency must either: (A) evaluate all grant applications and determine all grant recipients and award amounts in accordance with the criteria set forth in the statute authorizing the office of community and rural affairs (office) to award broadband grants for qualified broadband service in unserved areas; or (B) submit all grant applications received to the office for: (i) evaluation; and (ii) the determination of grant recipients and award amounts, or the recommendation of grant recipients and award amounts; in accordance with the criteria set forth in the statute. Sets forth requirements for: (1) an awarding agency that elects to perform its own evaluations and determinations with respect to the agency's state broadband grants; and (2) an agency that elects to submit its grant applications to the office
(Continued next page)

Effective: July 1, 2019.

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January 14, 2019, read first time and referred to Committee on Utilities.



Digest Continued

for: (A) evaluation; and (B) the determination or recommendation of grant recipients and award amounts. Makes a conforming amendment to the definition of "broadband services" set forth in the statute concerning the broadband ready communities development center.



Introduced

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 BILL No. 526



A BILL FOR AN ACT to amend the Indiana Code concerning state offices and administration.

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

1 SECTION 1. IC 4-11.5 IS ADDED TO THE INDIANA CODE AS
 2 A **NEW** ARTICLE TO READ AS FOLLOWS [EFFECTIVE JULY 1,
 3 2019]:
 4 **ARTICLE 11.5. USE OF STATE FUNDS FOR BROADBAND**
 5 **PROJECTS**
 6 **Chapter 1. Application**
 7 **Sec. 1. This article applies to:**
 8 (1) a state broadband grant; or
 9 (2) any part or installment of a state broadband grant;
 10 awarded or funded after June 30, 2019.
 11 **Sec. 2. This article does not apply to:**
 12 (1) any project undertaken by a state agency, whether
 13 internally or through the use of a contractor, to install,
 14 upgrade, or repair any broadband infrastructure, technology,
 15 or equipment that is used to provide broadband service for



1 the state agency's operations; or

2 (2) any appropriation, allocation, payment, or promised
3 payment of state funding for a project described in
4 subdivision (1).

5 **Chapter 2. Definitions**

6 **Sec. 1. The definitions set forth in this chapter apply throughout**
7 **this article.**

8 **Sec. 2. "Awarding agency" means a state agency with primary**
9 **responsibility for:**

10 (1) determining the recipients of; and

11 (2) allocating or awarding funds in connection with;
12 a state broadband grant.

13 **Sec. 3. "Broadband project" means a project for the**
14 **deployment of broadband infrastructure for the provision of**
15 **broadband service in Indiana.**

16 **Sec. 4. "Office" refers to the office of community and rural**
17 **affairs established by IC 4-4-9.7-4.**

18 **Sec. 5. "Qualified broadband project" means a project for the**
19 **deployment of broadband infrastructure for the provision of**
20 **qualified broadband service, regardless of the delivery technology,**
21 **in unserved areas in Indiana.**

22 **Sec. 6. "Qualified broadband service" means a connection to the**
23 **Internet that provides capacity for transmission at an actual speed**
24 **of at least ten (10) megabits per second downstream and at least**
25 **one (1) megabit per second upstream, regardless of the technology**
26 **or medium used to provide the connection.**

27 **Sec. 7. (a) "State agency" means an authority, a board, a**
28 **branch, a commission, a committee, a department, a division, or**
29 **another instrumentality of the executive, including the**
30 **administrative, department of state government. The term includes**
31 **the following:**

32 (1) A state elected official's office.

33 (2) A state educational institution.

34 (3) A body corporate and politic of the state created by state
35 statute.

36 (b) The term does not include a political subdivision or an
37 instrumentality of a political subdivision.

38 **Sec. 8. "State broadband grant" means any:**

39 (1) award;

40 (2) appropriation;

41 (3) allocation;

42 (4) payment; or



1 **(5) promise of payment;**
 2 **of state funding, from whatever source, for a broadband project or**
 3 **any part or phase of a broadband project.**

4 **Sec. 9. "Unserved area" means a geographic area of Indiana,**
 5 **identified at the census block level, in which there is not at least one**
 6 **(1) provider of terrestrial broadband service offering a connection**
 7 **to the Internet that provides capacity for transmission at an actual**
 8 **speed of at least ten (10) megabits per second downstream and at**
 9 **least one (1) megabit per second upstream.**

10 **Chapter 3. State Broadband Grants after June 30, 2019**

11 **Sec. 1. (a) Except as provided in subsection (c), after June 30,**
 12 **2019, the following apply:**

13 **(1) An awarding agency may not award a new state**
 14 **broadband grant unless the grant is for a qualified broadband**
 15 **project.**

16 **(2) An awarding agency may allocate or release state funds in**
 17 **connection with a state broadband grant that is not for a**
 18 **qualified broadband project if the state broadband grant was**
 19 **awarded to one (1) or more recipients before July 1, 2019.**
 20 **However, upon fulfilling the awarding agency's obligations to**
 21 **a grant recipient under the terms of a state broadband grant**
 22 **described in this subdivision, the awarding agency may not**
 23 **award a new state broadband grant to the same recipient or**
 24 **to any other recipient unless the new state broadband grant**
 25 **is for a qualified broadband project.**

26 **(3) Subject to sections 3 and 4 of this chapter, in awarding a**
 27 **new state broadband grant, an awarding agency must do one**
 28 **(1) of the following:**

29 **(A) Evaluate all grant applications received in connection**
 30 **with the state broadband grant, and determine all grant**
 31 **recipients and amounts awarded, in accordance with the**
 32 **required considerations and funding priorities for**
 33 **qualified broadband projects set forth in IC 4-4-38 and in**
 34 **guidelines adopted by the office to implement IC 4-4-38,**
 35 **including:**

36 **(i) the priorities for awarding grants set forth in**
 37 **IC 4-4-38-7(b);**

38 **(ii) the considerations for evaluating proposed qualified**
 39 **broadband projects set forth in IC 4-4-38-8(a); and**

40 **(iii) the conditions for awarding grants for qualified**
 41 **broadband projects set forth in IC 4-4-38-8(b).**

42 **(B) Submit all grant applications received in connection**



1 with the state broadband grant to the office for:

2 (i) the evaluation of the applications in accordance with
3 the required considerations and funding priorities for
4 qualified broadband projects set forth in IC 4-4-38 and
5 in guidelines adopted by the office to implement
6 IC 4-4-38; and

7 (ii) at the election of the awarding agency, either the
8 office's determination of grant recipients and award
9 amounts for the awarding agency's state broadband
10 grant, or the office's recommendation to the awarding
11 agency with respect to grant recipients and award
12 amounts for the awarding agency's state broadband
13 grant.

14 (b) Notwithstanding subsection (a) and IC 4-4-38-7(a), a person
15 that applies for a state broadband grant after June 30, 2019, is not
16 required to be a qualified broadband provider (as defined in
17 IC 4-4-38-4) if:

18 (1) the state broadband grant for which the person applies is
19 a grant other than a grant:

20 (A) offered, evaluated, and awarded by the office under
21 IC 4-4-38; and

22 (B) for which funds are awarded from the rural economic
23 development fund established by IC 4-4-9.7-9, in
24 accordance with IC 4-4-38-7(a); and

25 (2) the awarding agency for the state broadband grant for
26 which the person applies does not require applicants to be
27 qualified broadband providers (as defined in IC 4-4-38-4).

28 (c) A requirement or prohibition set forth in subsection (a) does
29 not apply to a state agency that awards state broadband grants as
30 part of a federal grant program, to the extent that the requirement
31 or prohibition is prohibited under, or in conflict with:

32 (1) the conditions of the federal grant program; or

33 (2) federal law.

34 Sec. 2. An awarding agency may adopt for the awarding
35 agency's own use in awarding state broadband grants the form and
36 content of applications for grants under IC 4-4-38, as prescribed
37 by the office under IC 4-4-38-9(a)(2).

38 Sec. 3. (a) This section applies to an awarding agency that elects
39 under section 1(a)(3)(A) of this chapter to evaluate grant
40 applications received, and determine grant recipients and amounts
41 awarded, in accordance with the required considerations and
42 funding priorities for qualified broadband projects set forth in



1 IC 4-4-38 and in guidelines adopted by the office to implement
2 IC 4-4-38.

3 (b) An awarding agency described in subsection (a) shall do the
4 following:

5 (1) In accordance with IC 4-4-38-7(c):

6 (A) publish on the awarding agency's Internet web site all
7 grant applications received by the awarding agency;

8 (B) establish a period of at least thirty (30) days from the
9 date an application is published on the awarding agency's
10 Internet web site, during which time the awarding agency
11 will accept comments or objections concerning the
12 application; and

13 (C) in making a determination as to whether to award a
14 state broadband grant to an applicant, consider all
15 comments or objections received during the period
16 described in clause (B).

17 (2) Establish a competitive bidding process or a process for
18 requests for proposals for qualified broadband projects, as
19 described in IC 4-4-38-9(a)(3).

20 (3) Establish processes by which:

21 (A) a broadband provider may challenge the designation
22 of an area as unserved, as described in IC 4-4-38-9(a)(4);
23 and

24 (B) a person may provide evidence that one (1) or more
25 locations within one (1) or more census blocks are
26 unserved areas, as described in IC 4-4-38-9(a)(5).

27 (4) Not later August 1 of each year, submit to the general
28 assembly a report that:

29 (A) describes the awarding agency's activities in evaluating
30 and awarding state broadband grants during the most
31 recent state fiscal year; and

32 (B) includes the information required under
33 IC 4-4-38-10(a), as applicable.

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

36 (c) An awarding agency described in subsection (a) is subject to
37 the following:

38 (1) An audit, to be conducted by the state board of accounts
39 every three (3) years, beginning in 2022, of the awarding of
40 state broadband grants by the awarding agency during the
41 most recent three (3) state fiscal years, as described in
42 IC 4-4-38-10(b). A report of an audit described in this



1 subdivision shall be submitted to the general assembly in an
 2 electronic format under IC 5-14-6 not later than December 31
 3 of the calendar year that includes the end of the third state
 4 fiscal year covered by the audit.

5 (2) The requirements set forth in IC 4-4-38-11 concerning the
 6 nondisclosure of confidential and proprietary business
 7 information submitted in connection with grant applications.

8 **Sec. 4. (a) This section applies if an awarding agency elects**
 9 **under section 1(a)(3)(B) of this chapter to submit all grant**
 10 **applications received in connection with a state broadband grant**
 11 **to the office for:**

12 (1) evaluation; and

13 (2) the determination of grant recipients and award amounts,
 14 or the recommendation of grant recipients and award
 15 amounts;

16 as described in section 1(a)(3)(B) of this chapter.

17 (b) Upon the submission of a grant application from an
 18 awarding agency to the office:

19 (1) the office shall:

20 (A) publish the application on the office's Internet web
 21 site; and

22 (B) establish a period of at least thirty (30) days from the
 23 date the application is published on the office's Internet
 24 web site, during which time the office will accept comments
 25 or objections concerning the application;

26 in accordance with IC 4-4-38-7(c); and

27 (2) the awarding agency shall:

28 (A) provide on the awarding agency's Internet web site a
 29 link to the web page on the office's Internet web site
 30 through which the application and all other applications
 31 submitted in connection with the state broadband grant
 32 can be accessed; and

33 (B) maintain the link on the awarding agency's Internet
 34 web site throughout the period for comments and
 35 objections established by the office under subdivision
 36 (1)(B).

37 **The office or the awarding agency, as applicable according to the**
 38 **awarding agency's election under section 1(a)(3)(B)(ii) of this**
 39 **chapter, shall consider all comments or objections received during**
 40 **the period established by the office under subdivision (1)(B) in**
 41 **making a determination as to whether to award, or recommend the**
 42 **awarding of, a state broadband grant to an applicant.**



1 (c) If the awarding agency elects under section 1(a)(3)(B)(ii) of
 2 this chapter to determine, upon the office's recommendation, grant
 3 recipients and award amounts for the awarding agency's state
 4 broadband grant, the awarding agency is required to determine the
 5 recipients and award amounts in accordance with:

- 6 (1) the priorities for awarding grants set forth in
 7 IC 4-4-38-7(b);
 8 (2) the considerations for evaluating proposed qualified
 9 broadband projects set forth in IC 4-4-38-8(a);
 10 (3) the conditions for awarding grants for qualified
 11 broadband projects set forth in IC 4-4-38-8(b); and
 12 (4) the processes described in:
 13 (A) IC 4-4-38-9(a)(3);
 14 (B) IC 4-4-38-9(a)(4); and
 15 (C) IC 4-4-38-9(a)(5).

16 (d) If the awarding agency elects under section 1(a)(3)(B)(ii) of
 17 this chapter to allow the office to determine grant recipients and
 18 award amounts for the awarding agency's state broadband grant,
 19 the office is required to determine the recipients and award
 20 amounts in accordance with IC 4-4-38 and with the office's
 21 established guidelines under IC 4-4-38-9.

22 (e) Not later August 1 of each year, an awarding agency
 23 described in subsection (a) shall submit to the general assembly a
 24 report that:

- 25 (1) describes the awarding agency's activities in:
 26 (A) evaluating and awarding state broadband grants upon
 27 the recommendations of the office; or
 28 (B) awarding state broadband grants:
 29 (i) to the recipients; and
 30 (ii) in the amounts;
 31 determined by the office;
 32 as applicable, during the most recent state fiscal year; and
 33 (2) includes the information required under IC 4-4-38-10(a),
 34 as applicable.

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

37 (f) An awarding agency described in subsection (a) is subject to
 38 the following:

- 39 (1) An audit, to be conducted by the state board of accounts
 40 every three (3) years, beginning in 2022, of the awarding of
 41 state broadband grants by the awarding agency during the
 42 most recent three (3) state fiscal years, as described in



1 **IC 4-4-38-10(b).** A report of an audit described in this
 2 subdivision shall be submitted to the general assembly in an
 3 electronic format under IC 5-14-6 not later than December 31
 4 of the calendar year that includes the end of the third state
 5 fiscal year covered by the audit.

6 **(2) The requirements set forth in IC 4-4-38-11 concerning the**
 7 **nondisclosure of confidential and proprietary business**
 8 **information submitted in connection with grant applications.**

9 **Sec. 5. This chapter does not affect or apply to a determination**
 10 **as to whether facilities and technologies described in**
 11 **IC 6-1.1-12.5-1(2):**

12 **(1) qualify as eligible infrastructure for purposes of**
 13 **IC 6-1.1-12.5; or**

14 **(2) are exempt from property taxation under IC 6-1.1-12.5.**

15 SECTION 2. IC 5-28-28.5-0.5, AS ADDED BY P.L.189-2018,
 16 SECTION 47, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 17 JULY 1, 2019]: Sec. 0.5. As used in this chapter, "broadband services"
 18 includes services, including voice, video, and data, that provide
 19 capacity for transmission of more than three hundred eighty-four (384)
 20 kilobits per second in at least one (+) direction regardless of the
 21 technology or medium used, including wireless, copper wire, fiber
 22 optic cable, or coaxial cable. If voice transmission capacity is offered
 23 in conjunction with other services using transmission of more than
 24 three hundred eighty-four (384) kilobits per second, the voice
 25 transmission capacity may be less than three hundred eighty-four (384)
 26 kilobits per second. The authority shall annually reconsider the three
 27 hundred eighty-four (384) kilobits threshold under this section with a
 28 bias toward raising the threshold in a manner consistent with
 29 technological advances. **means a connection to the Internet that**
 30 **provides capacity for transmission at an actual speed of at least ten**
 31 **(10) megabits per second downstream and at least one (1) megabit**
 32 **per second upstream, regardless of the technology or medium used**
 33 **to provide the connection.**

34 SECTION 3. IC 8-1-29.5-7, AS AMENDED BY P.L.189-2018,
 35 SECTION 64, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 36 JULY 1, 2019]: Sec. 7. (a) In imposing a civil penalty under section
 37 6(b)(4) of this chapter, the commission may consider the following
 38 factors:

39 (1) The duration and gravity of the offense, including the number
 40 of customers affected.

41 (2) Economic benefits accrued by the provider or certificate
 42 holder as a result of the offense.



- 1 (3) The amount of a civil penalty that will deter future offenses by
 2 the provider or certificate holder.
 3 (4) The market share of the provider or certificate holder in the
 4 affected service areas.
 5 (5) Good faith of the provider or certificate holder in attempting
 6 to remedy the offense after receiving notification of the offense.
 7 (b) If the commission waives a civil penalty for any offense
 8 described in section 6(b)(4) of this chapter, the commission must make
 9 a written finding as to why it is waiving the civil penalty. The
 10 commission may waive a civil penalty under section 6(b)(4) of this
 11 chapter if the commission finds that the offense is the result of any of
 12 the following:
 13 (1) Technological infeasibility.
 14 (2) An act of God.
 15 (3) A defect in, or prohibited use of, customer provided
 16 equipment.
 17 (4) A negligent act of a customer.
 18 (5) An emergency situation.
 19 (6) Unavoidable casualty.
 20 (c) The secretary of the commission shall direct a civil penalty
 21 imposed and collected under section 6(b)(4) of this chapter as follows:
 22 (1) A civil penalty imposed for an offense that directly affects
 23 retail customers must be refunded directly to the customers of the
 24 provider or certificate holder in the form of credits on customer
 25 bills.
 26 (2) A civil penalty imposed for an offense not described in
 27 subdivision (1) must be deposited into an account designated by
 28 the Indiana economic development corporation for use by the
 29 corporation in making loans or grants to broadband developers
 30 and operators, **subject to IC 4-11.5.**

