

SENATE BILL No. 396

DIGEST OF INTRODUCED BILL

Citations Affected: IC 6-3.1-34; IC 8-1.

Synopsis: Telecommunications service. Provides a nonrefundable income tax credit for making investments in relocating telecommunication infrastructure in conjunction with a transportation project. Provides that, to receive the tax credit, a taxpayer must apply to and receive approval from the Indiana economic development corporation. Requires that the infrastructure relocation must meet the requirements of the Indiana department of transportation. Requires the taxpayer to remain the telecommunications provider of last resort in the area where the infrastructure relocation investment is made. Specifies that the credit is 50% of the investment made. Allows any excess credit to be carried over to subsequent taxable years. Removes provisions requiring physical connections to furnish telephone service between public utilities. Amends the definition of "basic telecommunications service". Limits the authority of the utility regulatory commission (commission) with respect to interconnection, resale of telecommunications service, and unbundled access to the authority delegated to the commission under federal law. Repeals a provision authorizing the commission to establish certain rates charged by incumbent local exchange carriers to payphone service providers.

Effective: July 1, 2014; January 1, 2015.

Hershman

January 14, 2014, read first time and referred to Committee on Commerce, Economic Development & Technology.



Second Regular Session 118th General Assembly (2014)

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 2013 Regular Session and 2013 First Regular Technical Session of the General Assembly.

SENATE BILL No. 396

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 6-3.1-34 IS ADDED TO THE INDIANA CODE
2 AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE
3 JANUARY 1, 2015]:
4 **Chapter 34. Telecommunication Infrastructure Relocation Tax**
5 **Credit**
6 **Sec. 1. This chapter applies to taxable years beginning after**
7 **December 31, 2014.**
8 **Sec. 2. As used in this chapter, "IEDC" means the Indiana**
9 **economic development corporation.**
10 **Sec. 3. As used in this chapter, "improvement project" means**
11 **the construction, reconstruction, rehabilitation, and process**
12 **incidental to the building, fabricating, or betterment of any of the**
13 **following with respect to the relocation of telecommunication**
14 **infrastructure:**
15 (1) A state, United States, or interstate route.
16 (2) A project within a state park or other roadway the



- 1 department of transportation is required by statute to build
2 and maintain.
- 3 (3) A local road project administered by the department of
4 transportation.
- 5 (4) A project on the state highway system administered by a
6 local authority.
- 7 Sec. 4. As used in this chapter, "pass through entity" means:
8 (1) a partnership;
9 (2) a limited liability company; or
10 (3) a limited liability partnership.
- 11 Sec. 5. As used in this chapter, "state tax liability" means a
12 taxpayer's total tax liability that is incurred under IC 6-3-1
13 through IC 6-3-7 (the adjustment gross income tax), as computed
14 after the application of the credits that, under IC 6-3.1-1-2, are to
15 be applied before the credit provided by this chapter.
- 16 Sec. 6. As used in this chapter, "tax credit" refers to a tax credit
17 granted by this chapter against state tax liability.
- 18 Sec. 7. As used in this chapter, "taxpayer" means a person,
19 corporation, partnership, or other entity that has a state tax
20 liability.
- 21 Sec. 8. (a) A taxpayer desiring to claim a credit under this
22 chapter must apply to the IEDC to have an investment designated
23 as a qualified infrastructure relocation investment that meets the
24 requirements for the tax credit provided by this chapter. An
25 application submitted under this subsection must include the
26 information the department and the IEDC may prescribe.
- 27 (b) For an infrastructure relocation investment to be designated
28 as a qualified infrastructure relocation investment, the IEDC must
29 find that the infrastructure relocation investment is for activities
30 that are part of an improvement project, including the following
31 activities with respect to telecommunication infrastructure:
32 (1) Abandoning.
33 (2) Altering.
34 (3) Deactivating.
35 (4) Installing.
36 (5) Maintaining.
37 (6) Modifying.
38 (7) Moving.
39 (8) Removing.
40 (9) Supporting.
- 41 (c) Within thirty (30) days after receipt of an application
42 submitted under subsection (a), the IEDC shall grant or deny the



1 application in full or in part. If the IEDC denies any part of the
 2 application, the IEDC shall inform the taxpayer of the grounds for
 3 the denial. If the taxpayer's investment meets the requirements of
 4 this chapter, the IEDC shall certify the proposed investment as a
 5 qualified infrastructure relocation investment that is eligible for
 6 tax credits under this chapter. The IEDC shall provide written
 7 notice of the certification to the department. The notice must
 8 include the names of those taxpayers eligible to use the credits and
 9 their respective credit amounts.

10 Sec. 9. (a) A taxpayer is entitled to a credit against the
 11 taxpayer's state tax liability if the following conditions are met:

12 (1) The taxpayer receives a certification from the Indiana
 13 department of transportation that the infrastructure
 14 relocation is completed in compliance with the requirements
 15 for the infrastructure relocation.

16 (2) The taxpayer receives a certification from the Indiana
 17 utility regulatory commission that the taxpayer is not relieved
 18 from the taxpayer's obligations as provider of last resort
 19 under IC 8-1-32.4-13 by the commission in the area where the
 20 infrastructure relocation investment is made.

21 (3) The infrastructure relocation investment has been
 22 certified by the IEDC as a qualified infrastructure relocation
 23 investment.

24 (b) The amount of the credit is:

25 (1) the amount of the qualified infrastructure relocation
 26 investment made by the taxpayer during the taxable year;
 27 multiplied by

28 (2) fifty percent (50%).

29 (c) If the amount of the tax credit for a taxpayer in a taxable
 30 year exceeds the taxpayer's state tax liability for that taxable year,
 31 the taxpayer may carry the excess over to the following taxable
 32 years. The amount of the credit carryover from a taxable year shall
 33 be reduced to the extent that the carryover is used by the taxpayer
 34 to obtain a credit under this chapter for any subsequent year.

35 (d) A taxpayer is not entitled to a carry back or refund of any
 36 unused credit.

37 Sec. 10. If a taxpayer is a pass through entity that does not have
 38 state tax liability against which a tax credit may be applied, a
 39 shareholder, partner, fiduciary, or member of the pass through
 40 entity is entitled to a tax credit equal to:

41 (1) the tax credit that the pass through entity would be
 42 entitled to for the taxable year if the pass through entity were



1 a taxpayer; multiplied by
 2 (2) the percentage of the pass through entity's distributive
 3 income to which the shareholder, partner, fiduciary, or
 4 member is entitled.

5 **Sec. 11. To receive a tax credit, a taxpayer must claim the credit**
 6 **on the taxpayer's annual state tax return or returns in the manner**
 7 **prescribed by the department. The claim must include at least the**
 8 **following:**

9 (1) The certification from the Indiana department of
 10 transportation of compliant completion of the infrastructure
 11 relocation.

12 (2) The certification from the Indiana utility regulatory
 13 commission that the taxpayer is not relieved from the
 14 taxpayer's obligations as provider of last resort under
 15 IC 8-1-32.4-13 by the commission in the area where the
 16 infrastructure relocation investment is made.

17 (3) The approval from the IEDC of the amount of the
 18 infrastructure relocation investment that is designated as a
 19 qualified infrastructure relocation investment.

20 The taxpayer shall maintain the records required by the
 21 department for the period specified by the department to
 22 substantiate the taxpayer's eligibility for a tax credit.

23 **Sec. 12. The department may adopt rules under IC 4-22-2,**
 24 **including emergency rules in the manner provided in**
 25 **IC 4-22-2-37.1, to implement this chapter.**

26 SECTION 2. IC 8-1-2-5 IS AMENDED TO READ AS FOLLOWS
 27 [EFFECTIVE JULY 1, 2014]: Sec. 5. (a) Every public utility, and every
 28 municipality, and every person, association, limited liability company,
 29 or corporation having tracks, conduits, subways, poles, or other
 30 equipment on, over, or under any street or highway shall for a
 31 reasonable compensation, permit the use of the same by any other
 32 public utility or by a municipality owning or operating a utility,
 33 whenever public convenience and necessity require such use, and such
 34 use will not result in irreparable injury to the owner or other users of
 35 such equipment, nor in any substantial detriment to the service to be
 36 rendered by such owners or other users. Every public utility for the
 37 conveyance of telephone messages shall permit a physical connection
 38 or connections to be made, and telephone service to be furnished,
 39 before any telephone system operated by it, and the telephone toll line
 40 operated by another such public utility or between its toll line and the
 41 telephone system of another such public utility, or between its toll line
 42 and the toll line of another such public utility, or between its telephone



1 system and the telephone system of another such public utility;
2 whenever public convenience and necessity require such physical
3 connection or connections and such physical connection or connections
4 will not result in irreparable injury to the owner or other users of the
5 facilities of such public utilities; nor in any substantial detriment to the
6 service to be rendered by such public utilities. If any prospective
7 consumers or patrons of any public utility for the production,
8 transmission, delivery, or furnishing of light or power, living in
9 territory outside of cities and towns, and within not to exceed one-half
10 (1/2) mile of the transmission line of such utility, shall agree to and
11 shall construct and install the necessary equipment, in compliance with
12 plans and specifications prescribed by such utility, such public utility
13 shall permit the necessary physical connection or connections to be
14 made and service to be furnished to the person or persons who have
15 constructed and installed such equipment. The term "physical
16 connection", as used in this section, shall mean such number of trunk
17 lines or complete wire circuits and connections as may be required to
18 furnish reasonably adequate telephone service between such public
19 utilities.

20 (b) In case of failure to agree upon such use or the conditions or
21 compensations for such use, or in case of failure to agree upon such
22 physical connection or connections, or the terms and conditions upon
23 which the same shall be made, any public utility or any person,
24 association, limited liability company, or corporation interested may
25 apply to the commission and if after investigation the commission shall
26 ascertain that public convenience and necessity require such use or
27 such physical connections, and that such use or such physical
28 connection or connections would not result in irreparable injury to the
29 owner or other users of such equipment or the facilities of such public
30 utilities, nor in any substantial detriment to the service to be rendered
31 by such owner or other public utilities or other users of such equipment
32 or facilities, it shall by order direct that such use be permitted and
33 prescribe reasonable conditions and compensations for such joint use
34 and that such physical connection or connections be made and
35 determine how and within what time such connection or connections
36 shall be made, and by whom the expense of making and maintaining
37 such connection or connections shall be paid.

38 (c) Such use so ordered shall be permitted, and such physical
39 connection or connections so ordered shall be made and such
40 conditions and compensation so prescribed for such use, and such
41 terms and conditions upon which such physical connection or
42 connections shall be made, as so determined, shall be lawful conditions



1 and compensations for such use, and the lawful terms and conditions
 2 upon which such physical connection or connections shall be made, to
 3 be observed, followed, and paid, subject to recourse to the courts upon
 4 the complaint of any interested party as provided in sections 73 and 74
 5 of this chapter and IC 8-1-3, and such statute so far as applicable shall
 6 apply to any action arising on such complaint so made. Any such order
 7 of the commission may be from time to time revised by the commission
 8 upon application of any interested party or upon its own motion.

9 SECTION 3. IC 8-1-2.6-0.1, AS ADDED BY P.L.27-2006,
 10 SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 11 JULY 1, 2014]: Sec. 0.1. (a) As used in this chapter, "basic
 12 telecommunications service" means stand alone telephone exchange
 13 service (as defined in 47 U.S.C. 153(47)) that:

- 14 (1) is provided to a residential customer through the customer's
- 15 primary line; and
- 16 (2) is:
 - 17 (A) the sole service purchased by the customer;
 - 18 (B) not part of a package of services, a promotion, or a
 - 19 contract; or
 - 20 (C) not otherwise offered at a discounted price.

21 (b) The term includes ~~at a minimum, the following:~~

- 22 ~~(1) Voice grade access to the public switched telephone network~~
- 23 ~~with minimum bandwidth of three hundred (300) to three~~
- 24 ~~thousand (3,000) hertz;~~
- 25 ~~(2) Dual tone multifrequency signaling and single party service;~~
- 26 ~~(3) Access to:~~
 - 27 ~~(A) emergency services, including access to 911 and enhanced~~
 - 28 ~~911 if provided by the local government having jurisdiction in~~
 - 29 ~~the service area;~~
 - 30 ~~(B) operator services;~~
 - 31 ~~(C) local directory assistance;~~
 - 32 ~~(D) telephone relay services; and~~
 - 33 ~~(E) interexchange service.~~

34 ~~(4) Toll limitation services for qualifying low income customers;~~

35 ~~(e) The term does not include a functionally equivalent service~~
 36 ~~provided by a person or an entity described in IC 8-1-2-1.1. **supported**~~
 37 ~~**services described in 47 CFR 54.101.**~~

38 SECTION 4. IC 8-1-2.6-1.5, AS AMENDED BY P.L.256-2013,
 39 SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 40 JULY 1, 2014]: Sec. 1.5. (a) In acting to impose any requirements or
 41 set any prices concerning:

- 42 (1) interconnection with the facilities and equipment of providers



1 for purposes of 47 U.S.C. 251(c)(2);

2 (2) the resale of telecommunications service for purposes of 47
3 U.S.C. 251(c)(4); or

4 (3) the unbundled access of one (1) provider to the network
5 elements of another provider for purposes of 47 U.S.C. 251(c)(3);
6 the commission shall not exceed the authority delegated to the
7 commission under federal laws and regulations with respect to those
8 actions. ~~This subsection does not affect the commission's authority~~
9 ~~under IC 8-1-2-5.~~

10 (b) Subject to any regulations adopted by the Federal
11 Communications Commission, this section does not affect:

12 (1) the commission's authority to mediate a dispute between
13 providers under 47 U.S.C. 252(a);

14 (2) the commission's authority to arbitrate a dispute between
15 providers under 47 U.S.C. 252(b);

16 (3) the commission's authority to approve an interconnection
17 agreement under 47 U.S.C. 252(e), including the authority to
18 establish service quality metrics and liquidated damages;

19 (4) the commission's authority to review and approve a provider's
20 statement of terms and conditions under 47 U.S.C. 252(f);

21 (5) a provider's ability to file a complaint with the commission to
22 have a dispute decided by the commission:

23 (A) after notice and hearing; and

24 (B) in accordance with this article; or

25 (6) the commission's authority to resolve an interconnection
26 dispute between providers under the expedited procedures set
27 forth in 170 IAC 7-7.

28 (c) If a provider's rates and charges for intrastate switched or special
29 access service are:

30 (1) at issue in a dispute that the commission is authorized to
31 mediate, arbitrate, or otherwise determine under state or federal
32 law; or

33 (2) included in an interconnection agreement or a statement of
34 terms and conditions that the commission is authorized to review
35 or approve under state or federal law;

36 the commission shall consider the provider's rates and charges for
37 intrastate switched or special access service to be just and reasonable
38 if the intrastate rates and charges mirror the provider's interstate rates
39 and charges for switched or special access service.

40 (d) If the commission requires a provider to file a tariff for intrastate
41 switched access service, special access service, or any other service,
42 the filing of the tariff with the commission serves as the public notice



1 of the filing of the tariff. The commission shall provide the public with
 2 notice of tariff filings through the commission's Internet web site or
 3 other electronic means.

4 SECTION 5. IC 8-1-2.6-2, AS AMENDED BY P.L.27-2006,
 5 SECTION 19, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 6 JULY 1, 2014]: Sec. 2. (a) This section applies to rules and orders that:

7 (1) concern telecommunications service or providers of
 8 telecommunications service; and

9 (2) may be adopted or issued by the commission under the
 10 authority of state or federal law.

11 (b) Rules and orders described in this section:

12 (1) may be adopted or issued only after notice and hearing,
 13 unless:

14 (A) the commission determines in accordance with
 15 IC 8-1-2-113 that an emergency exists that requires the
 16 commission or a provider to take immediate action to:

17 (i) prevent injury to the business or interests of the citizens
 18 of Indiana; or

19 (ii) maintain a provider's financial integrity and ability to
 20 provide adequate basic telecommunications service;

21 (B) the commission is authorized under IC 8-1-2 to adopt a
 22 particular rule or issue a particular order without the necessity
 23 of a hearing; or

24 (C) after receiving notice of the commission's proposed action,
 25 all parties to a proceeding consent to the commission taking
 26 action without a hearing; and

27 (2) must be:

28 (A) consistent with this chapter; and

29 (B) in the public interest, as determined by the commission
 30 under subsection (d).

31 (c) Rules and orders described in this section must promote one (1)
 32 or more of the following:

33 (1) Cost minimization for providers to the extent that a provider's
 34 quality of service and facilities are not diminished.

35 (2) A more accurate evaluation by the commission of a provider's
 36 physical or financial conditions or needs as well as a less costly
 37 regulatory procedure for either the provider, the provider's
 38 customers, or the commission.

39 (3) Consumer access to affordable basic telecommunications
 40 service.

41 (4) Development of depreciation guidelines and procedures that
 42 recognize technological obsolescence.



- 1 (5) Increased provider management efficiency beneficial to
2 customers.
- 3 (6) Regulation consistent with a competitive environment.
- 4 (d) In determining whether the public interest will be served, as
5 required under subsection (b), the commission shall consider:
- 6 (1) whether technological change, competitive forces, or
7 regulation by other state and federal regulatory bodies render the
8 exercise of jurisdiction by the commission unnecessary or
9 wasteful;
- 10 (2) whether the exercise of commission jurisdiction produces
11 tangible benefits to the customers of providers; and
- 12 (3) whether the exercise of commission jurisdiction inhibits a
13 regulated entity from competing with unregulated providers of
14 functionally similar telecommunications services or equipment.
- 15 ~~(e) This section does not affect the commission's authority under~~
16 ~~IC 8-1-2-5.~~
- 17 SECTION 6. IC 8-1-2.6-13, AS AMENDED BY P.L.256-2013,
18 SECTION 10, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
19 JULY 1, 2014]: Sec. 13. (a) As used in this section, "communications
20 service" has the meaning set forth in IC 8-1-32.5-3.
- 21 (b) As used in this section, "communications service provider"
22 means a person or an entity that offers communications service to
23 customers in Indiana, without regard to the technology or medium used
24 by the person or entity to provide the communications service. The
25 term includes a provider of commercial mobile service (as defined in
26 47 U.S.C. 332).
- 27 (c) Notwithstanding sections 1.2, 1.4, and 1.5 of this chapter, the
28 commission may do the following, except as otherwise provided in this
29 subsection:
- 30 (1) Enforce the terms of a settlement agreement approved by the
31 commission before July 29, 2004. The commission's authority
32 under this subdivision continues for the duration of the settlement
33 agreement.
- 34 (2) Fulfill the commission's duties under IC 8-1-2.8 concerning
35 the provision of dual party relay services to deaf, hard of hearing,
36 and speech impaired persons in Indiana.
- 37 (3) Fulfill the commission's duties under IC 8-1-19.5 concerning
38 the administration of the 211 dialing code for communications
39 service used to provide access to human services information and
40 referrals.
- 41 (4) Fulfill the commission's responsibilities under IC 8-1-29 to
42 adopt and enforce rules to ensure that a customer of a



- 1 telecommunications provider is not:
- 2 (A) switched to another telecommunications provider unless
- 3 the customer authorizes the switch; or
- 4 (B) billed for services by a telecommunications provider that
- 5 without the customer's authorization added the services to the
- 6 customer's service order.
- 7 (5) Fulfill the commission's obligations under:
- 8 (A) the federal Telecommunications Act of 1996 (47 U.S.C.
- 9 151 et seq.); and
- 10 (B) IC 20-20-16;
- 11 concerning universal service and access to telecommunications
- 12 service and equipment, including the designation of eligible
- 13 telecommunications carriers under 47 U.S.C. 214.
- 14 (6) Perform any of the functions described in section 1.5(b) of this
- 15 chapter.
- 16 (7) Perform the commission's responsibilities under IC 8-1-32.5
- 17 to:
- 18 (A) issue; and
- 19 (B) maintain records of;
- 20 certificates of territorial authority for communications service
- 21 providers offering communications service to customers in
- 22 Indiana.
- 23 (8) Perform the commission's responsibilities under IC 8-1-34
- 24 concerning the issuance of certificates of franchise authority to
- 25 multichannel video programming distributors offering video
- 26 service to Indiana customers.
- 27 (9) Require a communications service provider, other than a
- 28 provider of commercial mobile service (as defined in 47 U.S.C.
- 29 332), to report to the commission on an annual basis, or more
- 30 frequently at the option of the provider, and subject to section 4(f)
- 31 of this chapter, any information needed by the commission to
- 32 prepare the commission's report to the regulatory flexibility
- 33 committee under section 4 of this chapter.
- 34 (10) Perform the commission's duties under IC 8-1-32.4 with
- 35 respect to telecommunications providers of last resort, to the
- 36 extent of the authority delegated to the commission under federal
- 37 law to perform those duties.
- 38 ~~(11) Perform the commission's duties under IC 8-1-2-5 with~~
- 39 ~~respect to interconnection.~~
- 40 ~~(12)~~ **(11)** Collect and maintain from a communications service
- 41 provider the following information:
- 42 (A) The address of the provider's Internet web site.



- 1 (B) All toll free telephone numbers and other customer service
 2 telephone numbers maintained by the provider for receiving
 3 customer inquiries and complaints.
- 4 (C) An address and other contact information for the provider,
 5 including any telephone number not described in clause (B).
 6 The commission shall make any information submitted by a
 7 provider under this subdivision available on the commission's
 8 Internet web site. The commission may also make available on the
 9 commission's Internet web site contact information for the Federal
 10 Communications Commission and the Cellular Telephone
 11 Industry Association.
- 12 ~~(13)~~ (12) Fulfill the commission's duties under any state or federal
 13 law concerning the administration of any universally applicable
 14 dialing code for any communications service.
- 15 (d) The commission does not have jurisdiction over any of the
 16 following with respect to a communications service provider:
 17 (1) Rates and charges for communications service provided by the
 18 communications service provider, including the filing of
 19 schedules or tariffs setting forth the provider's rates and charges.
 20 (2) Depreciation schedules for any of the classes of property
 21 owned by the communications service provider.
 22 (3) Quality of service provided by the communications service
 23 provider.
 24 (4) Long term financing arrangements or other obligations of the
 25 communications service provider.
 26 (5) Except as provided in subsection (c), any other aspect
 27 regulated by the commission under this title before July 1, 2009.
- 28 (e) The commission has jurisdiction over a communications service
 29 provider only to the extent that jurisdiction is:
 30 (1) expressly granted by state or federal law, including:
 31 (A) a state or federal statute;
 32 (B) a lawful order or regulation of the Federal
 33 Communications Commission; or
 34 (C) an order or a ruling of a state or federal court having
 35 jurisdiction; or
 36 (2) necessary to administer a federal law for which regulatory
 37 responsibility has been delegated to the commission by federal
 38 law.
- 39 SECTION 7. IC 8-1-2.6-16 IS REPEALED [EFFECTIVE JULY 1,
 40 2014]. Sec. 16: (a) As used in this section, "payphone service provider"
 41 means an entity, other than an incumbent local exchange carrier, that
 42 owns and operates:



- 1 (1) public or semipublic pay telephones; or
- 2 (2) pay telephones used to provide telephone service in
- 3 correctional institutions:
- 4 (b) Notwithstanding any other statute, the commission shall retain
- 5 jurisdiction to establish just and reasonable rates that may be charged
- 6 by an incumbent local exchange carrier to a payphone service provider.
- 7 Rates established under this section must be:
- 8 (1) based on the costs incurred by the incumbent local exchange
- 9 carrier to provide the service;
- 10 (2) consistent with the requirements of 47 U.S.C. 276;
- 11 (3) nondiscriminatory; and
- 12 (4) consistent with the pricing guidelines for payphone service
- 13 providers established by the Federal Communications
- 14 Commission.

