HOUSE BILL No. 1148

DIGEST OF INTRODUCED BILL

Citations Affected: IC 8-1-29.1; IC 36-1-3-8.

Synopsis: Local government telecommunications. Prohibits a political subdivision from controlling, owning, or operating facilities for providing cable, telecommunications, and information services unless the political subdivision: (1) conducts an inquiry into the availability of services from other providers in the area; (2) holds a public hearing; and (3) determines the costs and benefits of the proposed facilities. Prohibits a political subdivision that provides services from requiring a nonsubscriber to pay any of the costs of providing the services. Prohibits a political subdivision from providing a subsidy to a person to provide services in an area without first conducting an inquiry into the availability of services in the area. Specifies the procedures that a political subdivision may use in conducting an inquiry into the availability of services. Requires a political subdivision that provides services to comply with antitrust laws. Allows a political subdivision to issue bonds to finance the capital costs of facilities for providing services. Establishes remedies for a person aggrieved by an action of a political subdivision that provides services.

Effective: July 1, 2005.

Lutz J, Koch, Mahern

January 6, 2005, read first time and referred to Committee on Local Government.
HOU$E BILL No. 1148

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

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

SECTION 1. IC 8-1-29.1 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]:

Chapter 29.1. Provision of Cable, Telecommunications, and Information Services by Local Units

Sec. 1. As used in this chapter, "person" means an individual, a corporation, a partnership, a limited liability company, an association, or another entity organized under the laws of any state.

Sec. 2. As used in this section, "political subdivision" has the meaning set forth in IC 36-1-2-13. The term includes any entity:

(1) owned, operated, or controlled by a political subdivision;

or

(2) in which a political subdivision otherwise has an interest, whether direct or indirect.

Sec. 3. (a) As used in this chapter, "services" refers to:

(1) cable service (as defined in 47 U.S.C. 522(6));
(2) telecommunications service (as defined in 47 U.S.C. 153(46)); or
(3) information service (as defined in 47 U.S.C. 153(20)).

(b) The term includes:
(1) advanced services (as defined in 47 CFR 51.5);
(2) broadband service; and
(3) Internet Protocol enabled services;
However classified by the Federal Communications Commission.

Sec. 4. (a) This section does not apply to a political subdivision that provides services in an area in the political subdivision's jurisdiction on June 30, 2005. However, after June 30, 2005, a political subdivision described in this subsection may not:
(1) provide services, or extend any facilities for the provision of services, in an area not served by the political subdivision on June 30, 2005; or
(2) provide additional services in any area served by the political subdivision on June 30, 2005; without complying with this section.

(b) After June 30, 2005, a political subdivision may not, by adopting an ordinance or a resolution or taking any other action, authorize the political subdivision to construct, control, own, operate, or otherwise have an interest in, any facility for providing services in a designated area in the political subdivision's jurisdiction unless the political subdivision does the following:
(1) Determines, after conducting an inquiry under section 6 of this chapter, that there is not a person that:
(A) provides the desired services at the time of the political subdivision's inquiry under section 6 of this chapter; or
(B) intends to provide the desired services not later than nine (9) months after the date of the political subdivision's inquiry under section 6 of this chapter; in the designated area.
(2) Holds a public hearing on the political subdivision's proposal, subject to the requirements of IC 5-14-1.5.
(3) Not less than thirty (30) days before a public hearing under subdivision (2), and subject to subsection (c), prepares and makes available for public inspection a report, including all underlying work papers and related documents, estimating the total costs and benefits of constructing, controlling, owning, operating, or otherwise having an interest in, the proposed facility. A report under this subdivision must include an analysis of the costs and benefits of the political
subdivision's proposal for a three (3) year period beginning on
the date the political subdivision first incurs costs or receives
benefits related to the proposal. Benefits that must be
reported under this subdivision include any revenues to be
derived from the operation of the facility. Costs that must be
reported under this subdivision include:
(A) personnel costs;
(B) costs of acquiring, installing, maintaining, repairing, or
operating any plant or equipment; and
(C) an appropriately allocated part of the costs of any
jointly used personnel, plants, or equipment.
Costs under this subdivision do not include the costs of
providing any subsidy permitted under section 5 of this
chapter.
(c) If a political subdivision complies with subsection (b) and
authorizes the political subdivision to construct, control, own,
operate, or otherwise have an interest in, any facility for providing
services, the political subdivision shall determine the cost of
preparing the report required under subsection (b)(3). As soon as
practicable after the political subdivision receives revenues from
the authorized facility, the political subdivision shall use the
revenues to reimburse the treasury of the political subdivision for
the cost of the report.
Sec. 5. (a) This section does not apply to costs associated with
public, educational, or governmental access facilities (as defined in
47 U.S.C. 522(16)).
(b) A political subdivision that owns, operates, controls, or
otherwise has an interest in facilities for the provision of services
may not require a person that does not subscribe to the services to
pay any of the costs incurred by the political subdivision in
providing the services.
(c) A political subdivision may not provide a subsidy or an
incentive to any person to provide services in a designated area in
the political subdivision's jurisdiction unless the political
subdivision first determines, after conducting an inquiry under
section 6 of this chapter, that there is not a person that:
(1) provides the desired services at the time of the political
subdivision's inquiry under section 6 of this chapter; or
(2) intends to provide the desired services (as defined in
section 6(b) of this chapter) not later than nine (9) months
after the date of the political subdivision's inquiry under
section 6 of this chapter;
in the designated area.

(d) This section does not prevent a person from receiving any incentives or tax credits for which the person otherwise qualifies under IC 6-1.1-12.1, IC 6-3.1-4, IC 6-3.1-9, IC 6-3.1-11, IC 6-3.1-13, IC 6-3.1-24, or IC 6-3.1-26.

Sec. 6. (a) As used in this section, "designated area" refers to an area that is:

(1) within the jurisdiction of a political subdivision; and
(2) designated by a political subdivision under section 4(b) or 5(c) of this chapter to receive desired services.

(b) As used in this section, "desired services" refers to any services that a political subdivision seeks to make available in the designated area under section 4(b) or 5(c) of this chapter.

(c) A political subdivision may conduct the inquiry required under section 4(b)(1) or 5(c) of this chapter by sending by certified mail a written request to each person that provides services in any area in the jurisdiction of the political subdivision. A written request under this subsection must inquire as to whether the person:

(1) provides the desired services; or
(2) intends to provide the desired services not later than nine (9) months after the date of the political subdivision's written request under this subsection;

in the designated area.

(d) The political subdivision may determine that there is not a person that provides or intends to provide the desired services in the designated area if the political subdivision's inquiry under subsection (c) results in any of the following:

(1) The political subdivision does not receive a written response to any of the requests sent under subsection (c) within sixty (60) days of the date the requests were postmarked.

(2) The political subdivision:

(A) receives one (1) or more responses to a request under subsection (c) that indicates that the persons responding provide the desired services in the designated area at the time of the request; and

(B) determines that no person responding actually provides the desired services in the designated area.

(3) The political subdivision:

(A) receives one (1) or more responses to a request under subsection (c) that indicates that the persons responding...
intend to provide the desired services in the designated area not later than nine (9) months after the date of the political subdivision's written request under subsection (c); and

(B) determines, after the appropriate amount of time, that no person responding actually provided the desired services in the designated area not later than nine (9) months after the date of the political subdivision's written request under subsection (c).

Sec. 7. A political subdivision that:

(1) provides services; or

(2) owns, operates, controls, or otherwise has an interest in facilities for the provision of services;

as permitted under this chapter, shall comply with any applicable state or federal antitrust laws.

Sec. 8. (a) The legislative body of a political subdivision may adopt a resolution for the issuance of bonds, at one (1) time or periodically, to finance the capital costs of facilities for the provision of services as permitted by this chapter. The resolution authorizing the bonds must:

(1) describe the purpose for which the indebtedness is to be created; and

(2) specify the total dollar amount of the bonds to be issued.

(b) Bonds issued under this section shall be secured by and paid for solely out of the revenues generated by the political subdivision in providing services as permitted under this chapter.

(c) A political subdivision shall not pay the origination, financing, or other carrying costs associated with the issuance of bonds under this section from the political subdivision's general fund or other enterprise funds.

(d) Bonds issued under this section must contain a statement, on the face of each bond, that the political subdivision issuing the bond is not obligated to pay the principal or interest on the bond except as provided in this section.

Sec. 9. (a) A person that:

(1) is affected by a political subdivision's alleged violation of this chapter; and

(2) seeks:

(A) compensation from the political subdivision for the alleged violation; or

(B) equitable relief, including a restraining order or an injunction, from the alleged violation;
may not file a court action unless the person first files a written complaint with the political subdivision in accordance with this section.

(b) A political subdivision that:
   (1) provides services; or
   (2) owns, operates, controls, or otherwise has an interest in facilities for the provision of services;

as permitted under this chapter, shall adopt an ordinance establishing a procedure for the filing and resolution of complaints concerning the political subdivision's provision of services or facilities.

(c) The procedure established by a political subdivision under subsection (b) must:
   (1) permit any person to file a complaint concerning the political subdivision's provision of services or facilities, including a:
      (A) subscriber of services provided by the political subdivision; or
      (B) person that provides, or has provided a notice of intention to provide, any services in an area in the political subdivision's jurisdiction;
   (2) establish an expedited process that requires the political subdivision to:
      (A) hold a hearing on the complaint, unless the parties to the proceeding waive the right to a hearing; and
      (B) issue a final decision on the matter; not later than forty-five (45) days after the complaint is filed;
   (3) stay any proposal approved by the political subdivision under section 4 of this chapter pending:
      (A) the political subdivision's resolution of a complaint concerning the proposal; and
      (B) the completion of any subsequent court proceeding concerning the proposal; and
   (4) provide that the political subdivision's failure to issue a decision within the time allowed under subdivision (2) is considered an adverse decision for purposes of appeal.

(d) A person aggrieved by a political subdivision's resolution of a complaint under this section may, regardless of the amount in controversy, appeal the political subdivision’s decision in a court having jurisdiction. The court shall consider the matter de novo.

(e) The party prevailing in any action filed under this section is entitled to recover the costs of the complaint and action, including
reasonable attorney's fees as determined by the court.

SECTION 2. IC 36-1-3-8 IS AMENDED TO READ AS FOLLOWS
[EFFECTIVE JULY 1, 2005]: Sec. 8. (a) Subject to subsection (b), a
unit does not have the following:

1. The power to condition or limit its civil liability, except as
   expressly granted by statute.
2. The power to prescribe the law governing civil actions
   between private persons.
3. The power to impose duties on another political subdivision,
   except as expressly granted by statute.
4. The power to impose a tax, except as expressly granted by
   statute.
5. The power to impose a license fee greater than that reasonably
   related to the administrative cost of exercising a regulatory power.
6. The power to impose a service charge or user fee greater than
   that reasonably related to reasonable and just rates and charges
   for services.
7. The power to regulate conduct that is regulated by a state
   agency, except as expressly granted by statute.
8. The power to prescribe a penalty for conduct constituting a
   crime or infraction under statute.
9. The power to prescribe a penalty of imprisonment for an
   ordinance violation.
10. The power to prescribe a penalty of a fine as follows:
    (A) More than ten thousand dollars ($10,000) for the violation
        of an ordinance or a regulation concerning air emissions
        adopted by a county that has received approval to establish an
        air program under IC 13-17-12-6.
    (B) More than two thousand five hundred dollars ($2,500) for
        any other ordinance violation.
11. The power to invest money, except as expressly granted by
    statute.
12. The power to order or conduct an election, except as
    expressly granted by statute.
13. The power to:
    (A) provide any services described in IC 8-1-29.1-3; or
    (B) construct, control, own, operate, or otherwise have an
        interest in any facility for providing any services described
        in IC 8-1-29.1-3;
        in an area in the political subdivision's jurisdiction, except as
        provided in IC 8-1-29.1.
    (b) A township does not have the following, except as expressly

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granted by statute:

1. The power to require a license or impose a license fee.
2. The power to impose a service charge or user fee.
3. The power to prescribe a penalty.