First Regular Session 111th General Assembly (1999)

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 1998 General Assembly.

HOUSE ENROLLED ACT No. 1985

AN ACT to amend the Indiana Code concerning economic development.

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

SECTION 1. IC 4-4-8-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 1. As used in this chapter:

"Department" means the department of commerce.

"Enterprise zone" means an enterprise zone created under IC 4-4-6.1.

"Governing body" means the legislative body of a city, town, or county, an economic development commission, or any board administering the affairs of a special taxing district.

"Industrial development program" means any program designed to aid the growth of industry in Indiana and includes:

(1) the construction of airports, airport facilities, and tourist attractions;

(2) the construction, extension, or completion of sewerlines, waterlines, streets, sidewalks, bridges, roads, highways, ~~and~~ public ways, **and information and high technology infrastructure (as defined in this section);**

(3) the leasing or purchase of property, both real and personal; and

(4) the preparation of surveys, plans, and specifications for the

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construction of publicly owned and operated facilities, utilities, and services.

"Information and high technology infrastructure" includes, but is not limited to, fiber optic cable and other infrastructure that supports high technology growth and the purchase and installation of such fiber optic cable and other infrastructure.

"Minority enterprise small business investment company" means an investment company licensed under 15 U.S.C. 681(D).

"Qualified entity" means a city, town, county, economic development commission, or special taxing district.

"Small business investment company" means an investment company licensed under 15 U.S.C. 691 et seq.

"State corporation" means the state corporation (as defined by IC 6-3.1-5-2).

SECTION 2. IC 4-4-10.9-3.1 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: **Sec. 3.1. "Child care facility" means a:**

(1) child care center licensed under IC 12-17.2-4;
(2) child care home licensed under IC 12-17.2-5; or
(3) child care ministry licensed under IC 12-17.2-6.

SECTION 3. IC 4-4-10.9-3.2 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: **Sec. 3.2. "Child care facility project" includes the acquisition of land, site improvements, infrastructure improvements, buildings or structures, rehabilitation, renovation, and enlargement of buildings and structures, machinery, equipment, working capital, furnishings, or facilities (or any combination of these):**

(1) comprising or being functionally related and subordinate to a child care facility; and
(2) not used or to be used primarily:
(A) for sectarian care;
(B) as a place for devotional activities; or
(C) in connection with any part of the program of a:
(i) church;
(ii) school; or
(iii) department of divinity;

for any religious denomination.

SECTION 4. IC 4-4-10.9-9.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: **Sec. 9.5. "High growth company with**

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high skilled jobs" means a company that satisfies all of the following conditions:

(1) The company:

(A) had at least a fifteen percent (15%) average annual growth in company earnings during the past three (3) years;

(B) is entering a new product or process area; or

(C) is classified in an industry that had at least a fifteen percent (15%) average annual growth in earnings during the past three (3) years.

(2) The company has a substantial number of employees in jobs:

(A) requiring post-secondary education or its equivalent; or

(B) that are in occupational codes classified as high skill by the Bureau of Labor Statistics, United States Department of Labor.

(3) The company has a substantial number of employees that earn at least one hundred fifty percent (150%) of Indiana per capita personal income.

SECTION 5. IC 4-4-10.9-11 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 11. (a) Except as provided in subsection (b), "industrial development project" includes:

(1) the acquisition of land, site improvements, infrastructure improvements, buildings, or structures, rehabilitation, renovation, and enlargement of buildings and structures, machinery, equipment, furnishings, or facilities (or any combination of these), comprising or being functionally related and subordinate to any project (whether manufacturing, commercial, agricultural, environmental, or otherwise) the development or expansion of which serves the public purposes set forth in IC 4-4-11-2; ~~and~~

(2) educational facility projects**; and**

(3) child care facility projects.

(b) For purposes of the industrial development guaranty fund program, "industrial development project" includes the acquisition of land, interests in land, site improvements, infrastructure improvements **(including information and high technology infrastructure (as defined in IC 4-4-8-1)),** buildings, or structures, rehabilitation, renovation, and enlargement of buildings and structures, machinery, equipment, furnishings, or facilities (or any combination of these), comprising or being functionally related and subordinate to any of the following:

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(1) A pollution control facility.
(2) A manufacturing enterprise.
(3) A business service enterprise involved in:
(A) computer and data processing services; or
(B) commercial testing services.
(4) A business enterprise the primary purpose of which is the operation of an education and permanent marketing center for manufacturers and distributors of ~~robotIC~~ **robotic** and flexible automation equipment.
(5) Any other business enterprise, if the use of the guaranty program creates a reasonable probability that the effect on Indiana employment will be creation or retention of at least fifty (50) jobs.
(6) An agricultural enterprise in which:
(A) the enterprise operates pursuant to a producer or growout agreement; and
(B) the output of the enterprise is processed predominantly in Indiana.
(7) A business enterprise that is required by a state, federal, or local regulatory agency to make capital expenditures to remedy a violation of a state or federal law or a local ordinance.
(8) A recycling market development project.
(9) A high growth company with high skilled jobs (as defined in IC 4-4-10.9-9.5).

SECTION 6. IC 4-4-11-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 2. (a) The legislature makes the following findings of fact:

(1) That there currently exists in certain areas of the state critical conditions of unemployment or environmental pollution, including water pollution, air pollution, sewage and solid waste, radioactive waste, thermal pollution, radiation contamination, and noise pollution, and that these conditions may well exist, from time to time, in other areas of the state.
(2) That in some areas of the state such conditions are chronic and of long standing and that without remedial measures they may become so in other areas of the state.
(3) That economic insecurity due to unemployment or environmental pollution is a menace to the health, safety, morals, and general welfare of not only the people of the affected areas but of the people of the entire state.
(4) That involuntary unemployment and its resulting burden of indigency falls with crushing force upon the unemployed worker and ultimately upon the state in the form of public assistance and

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unemployment compensation.

(5) That security against unemployment and the resulting spread of indigency and economic stagnation in the areas affected can best be provided by:

(A) the promotion, attraction, stimulation, rehabilitation, and revitalization of industrial development projects, rural development projects, mining operations, and agricultural operations that involve the processing of agricultural products;

(B) the promotion and stimulation of international exports; and

(C) the education, both formal and informal, of people of all ages throughout the state by the promotion, attraction, construction, renovation, rehabilitation, and revitalization of educational facility projects.

(6) That the present and prospective health, safety, morals, right to gainful employment, and general welfare of the people of the state require as a public purpose the abatement or control of pollution, the promotion of increased educational enrichment (including cultural, intellectual, scientific, or artistic opportunities) for people of all ages through new, expanded, or revitalized educational facility projects, and the promotion of employment creation or retention through development of new and expanded industrial development projects, rural development projects, mining operations, and agricultural operations that involve the processing of agricultural products.

(7) That there is a need to stimulate a larger flow of private investment funds from commercial banks, investment bankers, insurance companies, other financial institutions, and individuals into such industrial development projects, rural development projects, mining operations, international exports, and agricultural operations that involve the processing of agricultural products in the state.

(8) That the authority can encourage the making of loans or leases for creation or expansion of industrial development projects, rural development projects, mining operations, international exports, and agricultural operations that involve the processing of agricultural products, thus putting a larger portion of the private capital available in Indiana for investment to use in the general economic development of the state.

(9) That the issuance of bonds of the authority to create a financing pool for industrial development projects promoting a substantial likelihood of opportunities for:

(A) gainful employment;

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(B) business opportunities;

(C) educational enrichment (including cultural, intellectual, scientific, or artistic opportunities);

(D) the abatement, reduction, or prevention of pollution; ~~or~~

(E) the removal or treatment of any substances in materials being processed that otherwise would cause pollution when used; **or**

(F) increased options for and availability of child care;

will improve the health, safety, morals, and general welfare of the people of the state and constitutes a public purpose for which the authority shall exist and operate.

(10) That the issuance of bonds of the authority to create a funding source for the making of guaranteed participating loans will promote and encourage an expanding international exports market and international exports sales and will promote the general welfare of all of the people of Indiana by assisting Indiana businesses through stimulation of the expansion of international exports sales for Indiana products and services, especially those of small and medium-sized businesses, by providing financial assistance through the authority.

(b) The Indiana development finance authority shall exist and operate for the public purposes of:

(1) promoting opportunities for gainful employment and business opportunities by the promotion and development of industrial development projects, rural development projects, mining operations, international exports, and agricultural operations that involve the processing of agricultural products, in any areas of the state;

(2) promoting the educational enrichment (including cultural, intellectual, scientific, or artistic opportunities) of all the people of the state by the promotion and development of educational facility projects;

(3) promoting affordable farm credit and agricultural loan financing at interest rates that are consistent with the needs of borrowers for farming and agricultural enterprises; ~~and~~

(4) preventing and remediating environmental pollution, including water pollution, air pollution, sewage and solid waste disposal, radioactive waste, thermal pollution, radiation contamination, and noise pollution affecting the health and well being of the people of the state by the promotion and development of industrial development projects; **and**

(5) promoting affordable and accessible child care for the

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people of the state by the promotion and development of child care facilities.

SECTION 7. IC 4-4-11-17 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 17. (a) The authority may enter into negotiations with one (1) or more persons concerning the terms and conditions of financing agreements for industrial development projects. The authority shall consider whether a proposed industrial development project may have an adverse competitive effect on similar industrial development projects already constructed or operating in the local governmental unit where the industrial development project will be located. Preliminary expenses in connection with negotiations under this section may be paid from:

(1) money furnished by the proposed user or developer;

(2) money made available by the state or federal government, or by any of their departments or agencies; or

(3) money of the authority, exclusive of the industrial development project guaranty fund.

(b) The authority shall prepare a report that:

(1) briefly describes the proposed industrial development project;

(2) estimates the number and expense of public works or services that would be made necessary or desirable by the proposed industrial development project, including public ways, schools, water, sewers, street lights, and fire protection;

(3) estimates the total costs of the proposed industrial development project;

(4) for an industrial development project that is not exclusively either a pollution control facility or an educational facility project, estimates the number of jobs and the payroll to be created or saved by the project;

(5) for pollution control facilities, describes the facilities and how they will abate, reduce, or prevent pollution; ~~and~~

(6) for educational facility projects, describes the facilities and how the facilities promote the educational enrichment (including cultural, intellectual, scientific, or artistic opportunities) of the people of the state; **and**

(7) for child care facility projects, describes the facilities and how the facilities promote accessibility to and increased options for child care for the people of the state.

The report shall be submitted to the executive director or chairman of the plan commission, if any, having jurisdiction over the industrial development project and, if the number of new jobs estimated exceeds one hundred (100), to the superintendent of the school corporation

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where the industrial development project will be located. The executive director or chairman of the plan commission and the school superintendent may formulate their written comments concerning the report and transmit their comments, if any, to the authority within five (5) days from the receipt of the report.

(c) The authority shall hold a public hearing, which may be conducted by the authority, or any officer, member, or agent designated thereby, on the proposed financing agreement for the industrial development project, after giving notice by publication in one (1) newspaper of general circulation in the city, town, or county where the industrial development project is to be located at least ten (10) days in advance of this public hearing.

(d) If the authority finds that the industrial development project will be of benefit to the health, safety, morals, and general welfare of the area where the industrial development project is to be located, and complies with the purposes and provisions of this chapter, it may by resolution approve the proposed financing agreement. This resolution may also authorize the issuance of bonds payable solely from revenues and receipts derived from the financing agreement or from payments made under an agreement to guarantee obligations of the developer, a user, a related person, or the authority by a developer, a user, a related person thereto, or the authority pursuant to the industrial development project guaranty fund. The bonds are not in any respect a general obligation of the state, nor are they payable in any manner from revenues raised by taxation.

(e) A financing agreement approved under this section must provide for payments in an amount sufficient to pay the principal of, premium, if any, and interest on the bonds authorized for the financing of the industrial development project. However, interest payments for the anticipated construction period, plus a period of not more than one (1) year, may be funded in the bond issue. The term of a financing agreement may not exceed fifty (50) years from the date of any bonds issued under the financing agreement. However, a financing agreement does not terminate after fifty (50) years if a default under that financing agreement remains uncured, unless the termination is authorized by the terms of the financing agreement. If the authority retains an interest in the industrial development project, the financing agreement must require the user or the developer to pay all costs of maintenance, repair, taxes, assessments, insurance premiums, trustee's fees, and any other expenses relating to the industrial development projects, so that the authority will not incur any expenses on account of the industrial development projects other than those that are covered by the payments

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provided for in the financing agreement.

SECTION 8. IC 4-4-11-17.5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 17.5. (a) In addition to all other authority granted to the authority under this chapter, including the authority to borrow money and to issue bonds to finance directly or indirectly the acquisition or development of industrial development projects undertaken or initiated by the authority, the authority may initiate programs for financing industrial development projects for developers and users in Indiana through the issuance of bonds under this chapter. In furtherance of this objective, the authority may do any of the following:

(1) Establish eligibility standards for developers and users, without complying with IC 4-22-2. However, these standards have the force of law if the standards are adopted after a public hearing for which notice has been given by publication under IC 5-3-1.

(2) Contract with any entity securing the payment of bonds issued under this chapter and authorizing the entity to approve the developers and users that can finance or refinance industrial development projects with proceeds from the bond issue secured by that entity.

(3) Lease to a developer or user industrial development projects upon terms and conditions that the authority considers proper and, with respect to the lease:

(A) charge and collect rents;

(B) terminate the lease upon the failure of the lessee to comply with any of its obligations under the lease or otherwise as the lease provides; and

(C) include in the lease provisions that the lessee has the option to renew the term of the lease for such periods and at such rents as may be determined by the authority or to purchase any or all of the industrial development projects to which the lease applies.

(4) Lend money, upon such terms and conditions as the authority considers proper, to a developer or user under an installment purchase contract or loan agreement to:

(A) finance, reimburse, or refinance the cost of an industrial development project; and

(B) take back a secured or unsecured promissory note evidencing such a loan or a security interest in the industrial development project financed or refinanced with the loan.

(5) Sell or otherwise dispose of any unneeded or obsolete industrial development project under terms and conditions

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determined by the authority.

(6) Maintain, repair, replace, and otherwise improve or cause to be maintained, repaired, replaced, and otherwise improved any industrial development project owned by the authority.

(7) Require any type of security that the authority considers reasonable and necessary.

(8) Obtain or aid in obtaining property insurance on all industrial development projects owned or financed, or accept payment if any industrial development project property is damaged or destroyed.

(9) Enter into any agreement, contract, or other instrument with respect to any insurance, guarantee, letter of credit, or other form of credit enhancement, accepting payment in such manner and form as provided in the instrument if a developer or user defaults, and assign any such insurance, guarantee, letter of credit, or other form of credit enhancement as security for bonds issued by the authority.

(10) Finance for eligible developers and users in connection with their industrial development projects:

(A) the cost of their industrial development projects; and

(B) in the case of a program funded from the proceeds of taxable bonds, working capital associated with the operation of such industrial development projects;

in amounts determined to be appropriate by the authority.

(11) Issue bonds to fund a program for financing multiple, identified or unidentified industrial development projects if the authority finds that issuance of the bonds will be of benefit to the health, safety, morals, or general welfare of the state and complies with the purposes and provisions of this chapter by promoting a substantial likelihood for:

(A) creating opportunities for gainful employment;

(B) creating business opportunities;

(C) educational enrichment (including cultural, intellectual, scientific, or artistic opportunities);

(D) the abatement, reduction, or prevention of pollution; ~~or~~

(E) the removal or treatment of any substances in materials being processed that would otherwise cause pollution when used; **or**

(F) promoting affordable and accessible child care.

The authority may by resolution approve the proposed taxable bond issue. **The authority may use appropriations to create a debt service reserve fund for the purpose of allowing the authority to**

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issue pooled bonds, either tax-exempt or taxable, for the construction or renovation of licensed child care facilities (or child care facilities that are in the process of being licensed) under the authority's industrial development project section.

(b) As each unidentified industrial development project is identified for possible funding from a program under subsection (a)(11), the requirements of sections 17(a), 17(b), 17(c), and 17(e) of this chapter shall be complied with as a condition precedent to entering into a financing agreement for the funding of the industrial development project.

(c) Bonds issued to fund a program under this section are not in any respect a general obligation of the state, nor are they payable in any manner from revenues raised by taxation.

(d) Any resolution adopted to authorize the issuance of taxable bonds to fund a program under subsection (a)(11) may provide that the bonds are payable solely from:

(1) revenues and receipts derived from the various financing agreements; or

(2) the payments made under any other agreements to secure the obligations of the developers, users, related persons, or the authority.

(e) The obligations described in subsection (d)(2) may be secured under the agreement by the authority under the industrial development project guaranty fund or by the developers, users, or related persons.

SECTION 9. IC 4-4-12-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 1. (a) As used in this chapter, "director" means the lieutenant governor, who is also the director of the department of commerce.

(b) As used in this chapter, "eligible entity" means:

(1) a city;

(2) a town;

(3) a county;

(4) a special taxing district;

(5) an economic development commission established under IC 36-7-12;

(6) a nonprofit corporation;

(7) a corporation established under IC 23-7-1.1 (before its repeal on August 1, 1991) or IC 23-17 for the purpose of distributing water for domestic and industrial use;

(8) a regional water, sewage, or solid waste district;

(9) a conservancy district that includes in its purpose the distribution of domestic water or the collection and treatment of

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waste; or

(10) the Indiana development finance authority established under IC 4-4-11.

(c) As used in this chapter, "industrial development program" means any program designed to aid economic development in Indiana, and includes:

(1) the construction of airports, airport facilities, and tourist attractions;

(2) the construction, extension, or completion of:

(A) sanitary sewerlines, storm sewers, and other related drainage facilities;

(B) waterlines;

(C) roads and streets;

(D) sidewalks; ~~and~~

(E) rail spurs and sidings; **and**

(F) information and high technology infrastructure (as defined in IC 4-4-8-1);

(3) the leasing, purchase, construction, repair, and rehabilitation of property, both real and personal; and

(4) the preparation of surveys, plans, and specifications for the construction of publicly owned and operated facilities, utilities, and services.

SECTION 10. IC 4-4-26-25 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 25. The lender shall determine the premium charges payable to the reserve fund by the lender and the borrower in connection with a loan filed for enrollment. The premium paid by the borrower may not be less than one and one-half percent (1.5%) or greater than three and one-half percent (3.5%) of the amount of the loan. The premium paid by the lender must be equal to the amount of the premium paid by the borrower. The lender may recover the cost of the lender's premium payment from the borrower in any manner on which the lender and borrower agree. When enrolling a loan, the authority must transfer into the reserve fund from the account premium amounts determined as follows:

(1) If the amount of a loan, plus the amount of loans previously enrolled by the lender, is less than two million dollars ($2,000,000), the premium amount transferred must be equal to one hundred fifty percent (150%) of the combined premiums paid into the reserve fund by the borrower and the lender for each enrolled loan.

(2) If, before the enrollment of the loan, the amount of loans previously enrolled by the lender is equal to or greater than two

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million dollars ($2,000,000), the premium amount transferred must be equal to the combined premiums paid into the reserve fund by the borrower and the lender for each enrolled loan.

(3) If the aggregate amount of all loans previously enrolled by the lender is less than two million dollars ($2,000,000), but the enrollment of a loan will cause the aggregate amount of all enrolled loans made by the lender to exceed two million dollars ($2,000,000), the authority shall transfer into the reserve fund an amount equal to a percentage of the combined premiums paid into the reserve fund by the lender and the borrower. The percentage is determined as follows:

STEP ONE: Multiply by one hundred fifty (150) that part of the loan that when added to the aggregate amount of all loans previously enrolled by the lender totals two million dollars ($2,000,000).

STEP TWO: Multiply the remaining balance of the loan by one hundred (100).

STEP THREE: Add the STEP ONE product to the STEP TWO product.

STEP FOUR: Divide the STEP THREE sum by the total amount of the loan.

The authority may transfer two (2) times the amount determined under this section to the reserve fund if the borrower is a disadvantaged business enterprise (as defined in IC 5-16-6.5-1). **The authority may transfer three (3) times the amount determined under this section to the reserve fund if the borrower is a high growth company with high skilled jobs (as defined in IC 4-4-10.9-9.5). The authority may transfer to the reserve fund three (3) times the amount determined under this section if the borrower is a child care facility.** Unless money is paid out of the reserve fund according to the specific terms of this chapter, all money paid into the reserve account by the lender shall remain in that account.

SECTION 11. IC 4-23-5.5-15 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 15. (a) The Indiana energy efficiency loan fund is established for the purpose of assisting Indiana industries **and governing bodies (as defined in IC 36-1-12.5-1.5)** in undertaking energy efficiency projects. The fund shall be administered by the board.

(b) Sources of money for the fund consist of the following:

(1) Appropriations from the general assembly.

(2) Repayment proceeds, including interest, of loans made from the fund.

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(3) Donations, gifts, and money received from any other source, including transfers from other funds or accounts.

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

(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. Interest that accrues from these investments shall be deposited in the fund.

(e) The board shall establish:

(1) amounts, terms, and interest rates for loans under this section; and

(2) criteria for awarding loans under this section.

(f) A person, business, **governing body,** or manufacturer that wants a loan from the fund must file an application in the manner prescribed by the board.

SECTION 12. IC 36-1-12.5-1.5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 1.5. As used in this chapter, "governing body" means **the following:**

(1) With respect to school corporations, the governing body (as defined in IC 20-10.1-1-5). ~~and~~

(2) With respect to a public library, the library board (as defined in IC 20-14-1-2).

(3) With respect to a library described in IC 20-14-7-6, the trustees of the library.

~~(2)~~ **(4)** With respect to other political subdivisions, the legislative body (as defined in IC 36-1-2-9).

SECTION 13. [EFFECTIVE UPON PASSAGE] **(a) The regulatory flexibility committee established by IC 8-1-2.6-4 shall:**

(1) review and study the scope, mission, programs, budget, and cost structure of all state agencies' telecommunications systems and services, as compared with the same or similar services provided by privately owned telecommunications service companies; and

(2) report the results of its review and study to the legislative council by November 1, 1999.

(b) This SECTION expires December 31, 1999.

SECTION 14. **An emergency is declared for this act.**

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