

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 2006 Regular Session of the General Assembly.

SENATE ENROLLED ACT No. 502

AN ACT to amend the Indiana Code concerning taxation.

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

SECTION 1. IC 6-2.5-1-11.3 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2008]: **Sec. 11.3. "Ancillary services" means services that are associated with or incidental to the provision of telecommunication services, including the following:**

- (1) Detailed telecommunications billing.**
- (2) Directory assistance.**
- (3) Vertical services.**
- (4) Voice mail services.**

SECTION 2. IC 6-2.5-1-20.3 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2008]: **Sec. 20.3. "Intrastate telecommunications service" means a telecommunications service that originates in a particular state, territory, or possession of the United States and terminates in that same state, territory, or possession.**

SECTION 3. IC 6-2.5-1-22.3 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2008]: **Sec. 22.3. "Prepaid calling service" has the meaning set forth in IC 6-2.5-12-11.**

SECTION 4. IC 6-2.5-1-22.4 IS ADDED TO THE INDIANA

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CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2008]: **Sec. 22.4. "Prepaid wireless calling service" means a telecommunications service that:**

- (1) provides the right to use mobile wireless service as well as other nontelecommunications services, including:**
 - (A) the download of digital products delivered electronically; and**
 - (B) content and ancillary services;**
- (2) must be paid for in advance; and**
- (3) is sold in predetermined units or dollars of which the number declines with use in a known amount.**

SECTION 5. IC 6-2.5-1-27.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2008]: **Sec. 27.5. (a) "Telecommunication services" means electronic transmission, conveyance, or routing of voice, data, audio, video, or any other information or signals to a point, or between or among points.**

(b) The term includes a transmission, conveyance, or routing in which computer processing applications are used to act on the form, code, or protocol of the content for purposes of transmission, conveyance, or routing regardless of whether the service:

- (1) is referred to as voice over Internet protocol services; or**
- (2) is classified by the Federal Communications Commission as enhanced or value added.**

(c) The term does not include the following:

- (1) Data processing and information services that allow data to be generated, acquired, stored, processed, or retrieved and delivered by an electronic transmission to a purchaser whose primary purpose for the underlying transaction is the processed data or information.**
- (2) Installation or maintenance of wiring or equipment on a customer's premises.**
- (3) Tangible personal property.**
- (4) Advertising, including but not limited to directory advertising.**
- (5) Billing and collection services provided to third parties.**
- (6) Internet access service.**
- (7) Radio and television audio and video programming services, regardless of the medium, including the furnishing of transmission, conveyance, and routing of the services by the programming service provider. Radio and television audio and video programming services include cable service as**

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defined in 47 U.S.C. 522(6) and audio and video programming services delivered by commercial mobile radio service providers, as defined in 47 CFR 20.3.

(8) Ancillary services.

(9) Digital products delivered electronically, including the following:

(A) Software.

(B) Music.

(C) Video.

(D) Reading materials.

(E) Ring tones.

SECTION 6. IC 6-2.5-1-29 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2008]: Sec. 29. "Value added nonvoice data service" means a service that otherwise meets the definition of telecommunications services in which computer processing applications are used to act on the form, content, code, or protocol of the information or data primarily for a purpose other than transmission, conveyance, or routing.

SECTION 7. IC 6-2.5-4-6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2008]: Sec. 6. (a) As used in this section, "telecommunication services" means the transmission of messages or information by or using wire, cable, fiber optics, laser, microwave, radio, satellite, or similar facilities. The term does not include value added services in which computer processing applications are used to act on the form, content, code, or protocol of the information for purposes other than transmission.

(b) (a) A person is a retail merchant making a retail transaction when the person:

- (1) furnishes or sells an intrastate telecommunication service; and
- (2) receives gross retail income from billings or statements rendered to customers.

(c) (b) Notwithstanding subsection (b); (a), a person is not a retail merchant making a retail transaction when:

- (1) the person provides, installs, constructs, services, or removes tangible personal property which is used in connection with the furnishing of the telecommunication services described in subsection (a);
- (2) (1) the person furnishes or sells the telecommunication services described in subsection (a) to another person described in this section or in section 5 of this chapter;
- (3) (2) the person furnishes telecommunications services

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described in subsection (a) to another person who is using a prepaid telephone calling card or prepaid telephone authorization number providing prepaid calling services or prepaid wireless calling services in a retail transaction to customers who access the services through the use of an access or authorization number or card as described in section 13 of this chapter; or
~~(4)~~ (3) the person furnishes intrastate mobile telecommunications service (as defined in IC 6-8.1-15-7) to a customer with a place of primary use that is not located in Indiana (as determined under IC 6-8.1-15); or

(4) the person furnishes or sells value added nonvoice data services in a retail transaction to a customer.

~~(d)~~ (c) Subject to IC 6-2.5-12 and IC 6-8.1-15, and notwithstanding subsections (a) and (b), ~~and (c)~~, if charges for telecommunication services, **ancillary services, Internet access, audio services, or video services that are** not taxable under this article are aggregated with and not separately stated from charges subject to taxation under this article, the charges for nontaxable telecommunication services, **ancillary services, Internet access, audio services, or video services** are subject to taxation unless the service provider can reasonably identify the charges not subject to the tax from the service provider's books and records kept in the regular course of business.

SECTION 8. IC 6-2.5-8-8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2008]: Sec. 8. (a) A person, authorized under subsection (b), who makes a purchase in a transaction which is exempt from the state gross retail and use taxes, may issue an exemption certificate to the seller instead of paying the tax. The person shall issue the certificate on forms and in the manner prescribed by the department. A seller accepting a proper exemption certificate under this section has no duty to collect or remit the state gross retail or use tax on that purchase.

(b) The following are the only persons authorized to issue exemption certificates:

- (1) retail merchants, wholesalers, and manufacturers, who are registered with the department under this chapter;
- (2) organizations which are exempt from the state gross retail tax under IC 6-2.5-5-21, IC 6-2.5-5-25, or IC 6-2.5-5-26 and which are registered with the department under this chapter; and
- (3) other persons who are exempt from the state gross retail tax with respect to any part of their purchases.

(c) The department may also allow a person to issue a blanket exemption certificate to cover exempt purchases over a stated period

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of time. The department may impose conditions on the use of the blanket exemption certificate and restrictions on the kind or category of purchases that are exempt.

(d) A seller that accepts an incomplete exemption certificate under subsection (a) is not relieved of the duty to collect gross retail or use tax on the sale unless the seller obtains:

- (1) a fully completed exemption certificate; or**
- (2) the relevant data to complete the exemption certificate; within ninety (90) days after the sale.**

(e) If a seller has accepted an incomplete exemption certificate under subsection (a) and the department requests that the seller substantiate the exemption, within one hundred twenty (120) days after the department makes the request the seller shall:

- (1) obtain a fully completed exemption certificate; or**
- (2) prove by other means that the transaction was not subject to state gross retail or use tax.**

SECTION 9. IC 6-2.5-11-10, AS AMENDED BY P.L.195-2005, SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2008]: Sec. 10. (a) A certified service provider is the agent of a seller, with whom the certified service provider has contracted, for the collection and remittance of sales and use taxes. As the seller's agent, the certified service provider is liable for sales and use tax due each member state on all sales transactions it processes for the seller except as set out in this section. A seller that contracts with a certified service provider is not liable to the state for sales or use tax due on transactions processed by the certified service provider unless the seller misrepresented the type of items it sells or committed fraud. In the absence of probable cause to believe that the seller has committed fraud or made a material misrepresentation, the seller is not subject to audit on the transactions processed by the certified service provider. A seller is subject to audit for transactions not processed by the certified service provider. The member states acting jointly may perform a system check of the seller and review the seller's procedures to determine if the certified service provider's system is functioning properly and the extent to which the seller's transactions are being processed by the certified service provider.

(b) A person that provides a certified automated system is responsible for the proper functioning of that system and is liable to the state for underpayments of tax attributable to errors in the functioning of the certified automated system. A seller that uses a certified automated system remains responsible and is liable to the state for reporting and remitting tax.

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(c) A seller that has a proprietary system for determining the amount of tax due on transactions and has signed an agreement establishing a performance standard for that system is liable for the failure of the system to meet the performance standard.

(d) A certified service provider or a seller using a certified automated system that obtains a certification from the department is not liable for sales or use tax collection errors that result from reliance on the department's certification. If the department determines that an item or transaction is incorrectly classified as to the taxability of the item or transaction, the department shall notify the certified service provider or the seller using a certified automated system of the incorrect classification. The certified service provider or the seller using a certified automated system must revise the incorrect classification within ten (10) days after receiving notice of the determination from the department. If the classification error is not corrected within ten (10) days after receiving the department's notice, the certified service provider or the seller using a certified automated system is liable for failure to collect the correct amount of sales or use tax due and owing.

~~(d)~~ (e) The department shall allow any monetary allowances that are provided by the member states to sellers or certified service providers in exchange for collecting the sales and use taxes as provided in article VI of the agreement.

SECTION 10. IC 6-2.5-11-11 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2008]: **Sec. 11. (a) This section applies only to transactions occurring after December 31, 2008.**

(b) A purchaser is relieved from liability for penalties imposed under IC 6-8.1-10-2.1 for failure to pay the amount of tax due if any of the following occurs:

(1) A purchaser's seller or certified service provider relied on erroneous data provided by the department regarding any of the following:

- (A) Tax rates.**
- (B) Boundaries.**
- (C) Taxing jurisdiction assignments.**
- (D) The taxability matrix.**

(2) A purchaser with a direct pay permit relied on erroneous data provided by the department regarding any of the following:

- (A) Tax rates.**
- (B) Boundaries.**

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(C) Taxing jurisdiction assignments.

(D) The taxability matrix.

(3) A purchaser relied on erroneous data in the taxability matrix provided by the department.

(c) The department shall relieve a purchaser from liability for tax and interest for having failed to pay the correct amount of sales or use tax in the circumstances described in subsection (b); however, the relief is limited to tax and interest attributable to the department's erroneous classification in the taxability matrix of terms:

- (1) included as taxable or exempt;
- (2) included in the sales price;
- (3) excluded from the sales price;
- (4) included in a definition; or
- (5) excluded from a definition.

SECTION 11. IC 6-2.5-11-12 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2008]: **Sec. 12. (a) The department shall review software submitted to the governing board for certification as a certified automated system. The review is to determine that the program adequately classifies product based exemptions granted under IC 6-2.5-5. Upon satisfactory completion of the review, the department shall certify to the governing board the department's acceptance of the classifications made by the system.**

(b) The governing board and the member states are not responsible for classification of an item or a transaction within the product based exemptions certified by the department. The relief from liability provided in this section is not available to a certified service provider or Model 2 seller that has incorrectly classified an item or a transaction into a product based exemption certified by the department. This subsection does not apply to the individual listing of items or transactions within a product definition approved by the governing board or the member states.

(c) If the department determines that an item or a transaction is incorrectly classified as to the taxability of the item or transaction, the department shall notify the certified service provider or Model 2 seller of the incorrect classification. The certified service provider or Model 2 seller must revise the classification within ten (10) days after receiving notice of the determination from the department. If the classification error is not corrected within ten (10) days after receiving the department's notice, the certified service provider or Model 2 seller is liable for

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failure to collect the correct amount of sales or use tax due and owing.

SECTION 12. IC 6-2.5-12-10 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2008]: Sec. 10. As used in this chapter, "post paid calling service" means the telecommunications service obtained by making a payment on a call by call basis either through the use of a credit card or payment mechanism such as a bank card, travel card, credit card, or debit card, or by charge made to a telephone number that is not associated with the origination or termination of the telecommunications service. A post paid calling service includes a telecommunications service, **except a prepaid wireless calling service**, that would be a prepaid calling service except it is not exclusively a telecommunications service.

SECTION 13. IC 6-2.5-12-11.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2008]: **Sec. 11.5. As used in this chapter, "prepaid wireless calling service" means a telecommunications service that provides the right to use mobile wireless service as well as other nontelecommunications services, including the download of content, digital products delivered electronically, and ancillary services, which:**

- (1) must be paid for in advance; and**
- (2) are sold in predetermined units or dollars, the balance of which declines with use in a known amount.**

SECTION 14. IC 6-2.5-12-16 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2008]: Sec. 16. The sale of the following telecommunications services shall be sourced to each level of taxing jurisdiction as follows:

- (1) A sale of mobile telecommunications services, other than air to ground radiotelephone service and prepaid calling service, is sourced to the customer's place of primary use as required by the Mobile Telecommunications Sourcing Act and IC 6-8.1-15.
- (2) A sale of post paid calling service is sourced to the origination point of the telecommunications signal as first identified by either:
 - (A) the seller's telecommunications system; or
 - (B) information received by the seller from its service provider, where the system used to transport such signals is not that of the seller.
- (3) A sale of prepaid calling service **or a sale of prepaid wireless calling service** is sourced in the following manner:
 - (A) When the service is received by the purchaser at a

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business location of the seller, the sale is sourced to that business location.

(B) When the service is not received by the purchaser at a business location of the seller, the sale is sourced to the location where receipt by the purchaser (or the purchaser's donee, designated as such by the purchaser) occurs, including the location indicated by instructions for delivery to the purchaser (or donee), known to the seller.

(C) When clauses (A) and (B) do not apply, the sale is sourced to the location indicated by an address for the purchaser that is available from the business records of the seller that are maintained in the ordinary course of the seller's business when use of this address does not constitute bad faith.

(D) When clauses (A) through (C) do not apply, the sale is sourced to the location indicated by an address for the purchaser obtained during the consummation of the sale, including the address of a purchaser's payment instrument, if no other address is available, when use of this address does not constitute bad faith.

(E) When clauses (A) through (D) do not apply, including the circumstance in which the seller is without sufficient information to apply the previous clauses, the location will be determined by either:

- (i) the address from which tangible personal property was shipped, from which any digital good or computer software delivered electronically was first available for transmission by the seller, or from which the service was provided (disregarding for these purposes any location that merely provided the digital transfer of the product sold); or
- (ii) in the case of a sale of mobile telecommunications service that is a prepaid telecommunications service, the location associated with the mobile telephone number.

(4) A sale of a private communications service is sourced as follows:

(A) Service for a separate charge related to a customer channel termination point is sourced to each level of jurisdiction in which such customer channel termination point is located.

(B) Service where all customer termination points are located entirely within one (1) jurisdiction or level of jurisdiction is sourced in such jurisdiction in which the customer channel termination points are located.

(C) Service for segments of a channel between two (2)

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customer channel termination points located in different jurisdictions and which segments of channel are separately charged is sourced fifty percent (50%) in each level of jurisdiction in which the customer channel termination points are located.

(D) Service for segments of a channel located in more than one (1) jurisdiction or level of jurisdiction and which segments are not separately billed is sourced in each jurisdiction based on the percentage determined by dividing the number of customer channel termination points in such jurisdiction by the total number of customer channel termination points.

SECTION 15. IC 6-2.5-13-1, AS AMENDED BY P.L.153-2006, SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2008]: Sec. 1. (a) As used in this section, the terms "receive" and "receipt" mean:

- (1) taking possession of tangible personal property;
- (2) making first use of services; or
- (3) taking possession or making first use of digital goods;

whichever comes first. The terms "receive" and "receipt" do not include possession by a shipping company on behalf of the purchaser.

(b) This section:

- (1) applies regardless of the characterization of a product as tangible personal property, a digital good, or a service;
- (2) applies only to the determination of a seller's obligation to pay or collect and remit a sales or use tax with respect to the seller's retail sale of a product; and
- (3) does not affect the obligation of a purchaser or lessee to remit tax on the use of the product to the taxing jurisdictions of that use.

(c) This section does not apply to sales or use taxes levied on the following:

- (1) The retail sale or transfer of watercraft, modular homes, manufactured homes, or mobile homes. These items must be sourced according to the requirements of this article.
- (2) The retail sale, excluding lease or rental, of motor vehicles, trailers, semitrailers, or aircraft that do not qualify as transportation equipment, as defined in subsection (g). The retail sale of these items shall be sourced according to the requirements of this article, and the lease or rental of these items must be sourced according to subsection (f).
- (3) Telecommunications services, ~~as set forth in IC 6-2.5-12;~~ **ancillary services, and Internet access service** shall be sourced in accordance with IC 6-2.5-12.

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(d) The retail sale, excluding lease or rental, of a product shall be sourced as follows:

(1) When the product is received by the purchaser at a business location of the seller, the sale is sourced to that business location.

(2) When the product is not received by the purchaser at a business location of the seller, the sale is sourced to the location where receipt by the purchaser (or the purchaser's donee, designated as such by the purchaser) occurs, including the location indicated by instructions for delivery to the purchaser (or donee), known to the seller.

(3) When subdivisions (1) and (2) do not apply, the sale is sourced to the location indicated by an address for the purchaser that is available from the business records of the seller that are maintained in the ordinary course of the seller's business when use of this address does not constitute bad faith.

(4) When subdivisions (1), (2), and (3) do not apply, the sale is sourced to the location indicated by an address for the purchaser obtained during the consummation of the sale, including the address of a purchaser's payment instrument, if no other address is available, when use of this address does not constitute bad faith.

(5) When none of the previous rules of subdivision (1), (2), (3), or (4) apply, including the circumstance in which the seller is without sufficient information to apply the previous rules, then the location will be determined by the address from which tangible personal property was shipped, from which the digital good or the computer software delivered electronically was first available for transmission by the seller, or from which the service was provided (disregarding for these purposes any location that merely provided the digital transfer of the product sold).

(e) The lease or rental of tangible personal property, other than property identified in subsection (f) or (g), shall be sourced as follows:

(1) For a lease or rental that requires recurring periodic payments, the first periodic payment is sourced the same as a retail sale in accordance with the provisions of subsection (d). Periodic payments made subsequent to the first payment are sourced to the primary property location for each period covered by the payment. The primary property location shall be as indicated by an address for the property provided by the lessee that is available to the lessor from its records maintained in the ordinary course of business, when use of this address does not constitute bad faith. The property location shall not be altered by intermittent use at

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different locations, such as use of business property that accompanies employees on business trips and service calls.

(2) For a lease or rental that does not require recurring periodic payments, the payment is sourced the same as a retail sale in accordance with the provisions of subsection (d).

This subsection does not affect the imposition or computation of sales or use tax on leases or rentals based on a lump sum or an accelerated basis, or on the acquisition of property for lease.

(f) The lease or rental of motor vehicles, trailers, semitrailers, or aircraft that do not qualify as transportation equipment, as defined in subsection (g), shall be sourced as follows:

(1) For a lease or rental that requires recurring periodic payments, each periodic payment is sourced to the primary property location. The primary property location shall be as indicated by an address for the property provided by the lessee that is available to the lessor from its records maintained in the ordinary course of business, when use of this address does not constitute bad faith. This location shall not be altered by intermittent use at different locations.

(2) For a lease or rental that does not require recurring periodic payments, the payment is sourced the same as a retail sale in accordance with the provisions of subsection (d).

This subsection does not affect the imposition or computation of sales or use tax on leases or rentals based on a lump sum or accelerated basis, or on the acquisition of property for lease.

(g) The retail sale, including lease or rental, of transportation equipment shall be sourced the same as a retail sale in accordance with the provisions of subsection (d), notwithstanding the exclusion of lease or rental in subsection (d). As used in this subsection, "transportation equipment" means any of the following:

(1) Locomotives and railcars that are used for the carriage of persons or property in interstate commerce.

(2) Trucks and truck-tractors with a gross vehicle weight rating (GVWR) of ten thousand one (10,001) pounds or greater, trailers, semitrailers, or passenger buses that are:

- (A) registered through the International Registration Plan; and
- (B) operated under authority of a carrier authorized and certificated by the U.S. Department of Transportation or another federal authority to engage in the carriage of persons or property in interstate commerce.

(3) Aircraft that are operated by air carriers authorized and certificated by the U.S. Department of Transportation or another

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federal or a foreign authority to engage in the carriage of persons or property in interstate or foreign commerce.

(4) Containers designed for use on and component parts attached or secured on the items set forth in subdivisions (1) through (3).

(h) This subsection applies to retail sales of floral products that occur before January 1, 2008. Notwithstanding subsection (d), a retail sale of floral products in which a florist or floral business:

- (1) takes a floral order from a purchaser; and
- (2) transmits the floral order by telegraph, telephone, or other means of communication to another florist or floral business for delivery;

is sourced to the location of the florist or floral business that originally takes the floral order from the purchaser.

SECTION 16. IC 6-2.5-13-2 IS REPEALED [EFFECTIVE UPON PASSAGE].

SECTION 17. [EFFECTIVE JULY 1, 2007] (a) As used in this SECTION, "associate member" has the meaning set forth in bylaw 13(c) of the bylaws of the Multistate Tax Commission, as amended through October 17, 2002.

(b) As used in this SECTION, "biennium" means a period consisting of two (2) consecutive state fiscal years beginning on July 1 of an odd-numbered year.

(c) As used in this SECTION, "department" refers to the department of state revenue established by IC 6-8.1-2-1.

(d) The governor and the commissioner of the department shall take the steps necessary for Indiana to become an associate member of the Multistate Tax Commission (444 North Capital Street, NW, Suite 425, Washington, DC 20001).

(e) For a biennium beginning after January 1, 2009, the department shall make a separate request for the cost of membership in the Multistate Tax Commission as part of the department's biennial budget request.

SECTION 18. An emergency is declared for this act.

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President of the Senate

President Pro Tempore

Speaker of the House of Representatives

Governor of the State of Indiana

Date: _____ Time: _____

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