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# HOUSE BILL No. 1382

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## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 6-8.1-1-1; IC 8-1.

**Synopsis:** Video franchise and satellite service fees. Reduces the maximum franchise fee from 5% to 4% for providers of video service that provide video programming and other programming service through facilities located at least in part in a public right-of-way. Imposes a direct broadcast satellite service fee on direct broadcast satellite service providers at the same percentage rate of gross revenue as the cable service franchise fee rate in effect in a local government unit on December 31, 2010. Permits the fee to be passed through to customers of the provider. Requires a provider to remit the fees quarterly to the department of state revenue (department). Requires a provider to submit a quarterly report to the department indicating a provider's gross revenue and the amount of fees paid with respect to each unit. Requires the department to publish the direct broadcast satellite service fee rates before August 1, 2011. Requires the department to distribute the fees quarterly to each unit.

**Effective:** July 1, 2011; January 1, 2012.

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### Thompson

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January 18, 2011, read first time and referred to Committee on Utilities and Energy.

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Introduced

First Regular Session 117th General Assembly (2011)

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 2010 Regular Session of the General Assembly.

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## HOUSE BILL No. 1382

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A BILL FOR AN ACT to amend the Indiana Code concerning local government and to make an appropriation.

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

1 SECTION 1. IC 6-8.1-1-1, AS AMENDED BY P.L.182-2009(ss),  
2 SECTION 247, IS AMENDED TO READ AS FOLLOWS  
3 [EFFECTIVE JULY 1, 2011]: Sec. 1. "Listed taxes" or "taxes" includes  
4 only the pari-mutuel taxes (IC 4-31-9-3 through IC 4-31-9-5); the  
5 riverboat admissions tax (IC 4-33-12); the riverboat wagering tax  
6 (IC 4-33-13); the slot machine wagering tax (IC 4-35-8); the type II  
7 gambling game excise tax (IC 4-36-9); the gross income tax (IC 6-2.1)  
8 (repealed); the utility receipts and utility services use taxes (IC 6-2.3);  
9 the state gross retail and use taxes (IC 6-2.5); the adjusted gross income  
10 tax (IC 6-3); the supplemental net income tax (IC 6-3-8) (repealed); the  
11 county adjusted gross income tax (IC 6-3.5-1.1); the county option  
12 income tax (IC 6-3.5-6); the county economic development income tax  
13 (IC 6-3.5-7); the auto rental excise tax (IC 6-6-9); the financial  
14 institutions tax (IC 6-5.5); the gasoline tax (IC 6-6-1.1); the alternative  
15 fuel permit fee (IC 6-6-2.1); the special fuel tax (IC 6-6-2.5); the motor  
16 carrier fuel tax (IC 6-6-4.1); a motor fuel tax collected under a  
17 reciprocal agreement under IC 6-8.1-3; the motor vehicle excise tax



1 (IC 6-6-5); the commercial vehicle excise tax (IC 6-6-5.5); the excise  
 2 tax imposed on recreational vehicles and truck campers (IC 6-6-5.1);  
 3 the hazardous waste disposal tax (IC 6-6-6.6); the cigarette tax  
 4 (IC 6-7-1); the beer excise tax (IC 7.1-4-2); the liquor excise tax  
 5 (IC 7.1-4-3); the wine excise tax (IC 7.1-4-4); the hard cider excise tax  
 6 (IC 7.1-4-4.5); the malt excise tax (IC 7.1-4-5); the petroleum  
 7 severance tax (IC 6-8-1); the various innkeeper's taxes (IC 6-9); the  
 8 various food and beverage taxes (IC 6-9); the county admissions tax  
 9 (IC 6-9-13 and IC 6-9-28); **the direct broadcast satellite service**  
 10 **fee (IC 8-1-35)**; the regional transportation improvement income tax  
 11 (IC 8-24-17); the oil inspection fee (IC 16-44-2); the emergency and  
 12 hazardous chemical inventory form fee (IC 6-6-10); the penalties  
 13 assessed for oversize vehicles (IC 9-20-3 and IC 9-30); the fees and  
 14 penalties assessed for overweight vehicles (IC 9-20-4 and IC 9-30); the  
 15 underground storage tank fee (IC 13-23); the solid waste management  
 16 fee (IC 13-20-22); and any other tax or fee that the department is  
 17 required to collect or administer.

18 SECTION 2. IC 8-1-34-24, AS ADDED BY P.L.27-2006,  
 19 SECTION 58, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 20 JANUARY 1, 2012]: Sec. 24. (a) Subject to subsection (e), not later  
 21 than forty-five (45) days after the end of each calendar quarter, the  
 22 holder shall pay to each unit included in the holder's service area under  
 23 a certificate issued under this chapter a franchise fee equal to:

24 (1) the amount of gross revenue received from providing video  
 25 service in the unit during the most recent calendar quarter, as  
 26 determined under section 23 of this chapter; multiplied by

27 (2) a percentage equal to one (1) of the following:

28 (A) If a local franchise has never been in effect in the unit  
 29 before July 1, 2006, ~~five four percent (5%)~~: **(4%)**.

30 (B) If no local franchise is in effect in the unit on July 1, 2006,  
 31 but one (1) or more local franchises have been in effect in the  
 32 unit before July 1, 2006:

33 **(i) except as provided in item (ii), the percentage of gross**  
 34 **revenue paid by the holder of the most recent local franchise**  
 35 **in effect in the unit, ~~unless but not to exceed four percent~~**  
 36 **(4%); or**

37 **(ii) if the unit elects to impose a different percentage, the**  
 38 **percentage designated by the unit, which may not exceed**  
 39 **~~five four percent (5%)~~: (4%).**

40 (C) If there is one (1) local franchise in effect in the unit on  
 41 July 1, 2006:

42 **(i) except as provided in item (ii), the percentage of gross**

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1 revenue paid by the holder of that local franchise as a  
 2 franchise fee to the unit, ~~unless which may not exceed four~~  
 3 **percent (4%); or**  
 4 **(ii) if the unit elects to impose a different percentage, the**  
 5 **percentage designated by the unit, which may not exceed**  
 6 **five four percent (5%): (4%).**

7 Upon the expiration of a local franchise described in this  
 8 clause, the percentage shall be determined by the unit but may  
 9 not exceed ~~five four percent (5%): (4%)~~.

10 (D) If there is more than one (1) local franchise in effect with  
 11 respect to the unit on July 1, 2006, a percentage determined by  
 12 the unit, which may not exceed the greater of:

- 13 (i) ~~five four percent (5%); (4%)~~; or
- 14 (ii) the percentage paid by a holder of any local franchise in  
 15 effect in the unit on July 1, 2006.

16 **Upon the expiration of a local franchise described in this**  
 17 **clause, the percentage shall be determined by the unit,**  
 18 **which may not exceed four percent (4%).**

19 (b) If the holder provides video service to an unincorporated area in  
 20 Indiana, as described in section 23(e) of this chapter, the holder shall:

- 21 (1) calculate the franchise fee with respect to the unincorporated  
 22 area in accordance with subsection (a); and
- 23 (2) remit the franchise fee to the county in which the  
 24 unincorporated area is located.

25 If an unincorporated area served by the provider is located in one (1)  
 26 or more contiguous counties, the provider shall remit part of the  
 27 franchise fee calculated under subdivision (1) to each county having  
 28 territory in the unincorporated area served. The part of the franchise fee  
 29 remitted to a county must bear the same proportion to the total  
 30 franchise fee for the area, as calculated under subdivision (1), that the  
 31 number of subscribers in the county bears to the total number of  
 32 subscribers in the unincorporated area served.

33 (c) With each payment of a franchise fee to a unit under this section,  
 34 the holder shall include a statement explaining the basis for the  
 35 calculation of the franchise fee. A unit may review the books and  
 36 records of:

- 37 (1) the holder; or
- 38 (2) an affiliate of the holder, if appropriate;

39 to the extent necessary to ensure the holder's compliance with section  
 40 23 of this chapter in calculating the gross revenue upon which the  
 41 remitted franchise fee is based. Each party shall bear the party's own  
 42 costs of an examination under this subsection. If the holder and the unit

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1 cannot agree on the amount of gross revenue on which the franchise fee  
2 should be based, either party may petition the commission to determine  
3 the amount of gross revenue on which the franchise fee should be  
4 based. A determination of the commission under this subsection is  
5 final, subject to the right of direct appeal by either party.

6 (d) A franchise fee owed by a holder to a unit under this section may  
7 be passed through to, and collected from, the holder's subscribers in the  
8 unit. To the extent allowed under 43 U.S.C. 542(c), the holder may  
9 identify as a separate line item on each regular bill issued to a  
10 subscriber:

11 (1) the amount of the total bill assessed as a franchise fee under  
12 this section; and

13 (2) the identity of the unit to which the franchise fee is paid.

14 (e) A holder that elects under section 21(b)(1) of this chapter to  
15 continue providing video service under a local franchise is not required  
16 to pay the franchise fee prescribed under this section, but shall pay any  
17 franchise fee imposed under the terms of the local franchise.

18 SECTION 3. IC 8-1-35 IS ADDED TO THE INDIANA CODE AS  
19 A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY  
20 1, 2011]:

21 **Chapter 35. Direct Broadcast Satellite Service Fee**

22 **Sec. 1. As used in this chapter, "department" means the**  
23 **department of state revenue.**

24 **Sec. 2. (a) As used in this chapter, "direct broadcast satellite**  
25 **service" means distributing or broadcasting video programming**  
26 **or services by satellite directly to receiving equipment located at an**  
27 **end user subscriber's or an end user customer's premises.**

28 **(b) The term includes but is not limited to the following:**

29 **(1) Renting receiving or recording equipment used by a**  
30 **subscriber or customer to obtain or use the service.**

31 **(2) Providing premium channels.**

32 **(3) Installing or repairing receiving or recording equipment**  
33 **used by a subscriber or customer to obtain or use the service.**

34 **(4) Providing music or other audio services or channels.**

35 **(5) Any other service provided in connection with the**  
36 **provision of direct broadcast satellite service.**

37 **Sec. 3. As used in this chapter, "direct broadcast satellite service**  
38 **provider" means any person that is transmitting, broadcasting, or**  
39 **otherwise providing direct broadcast satellite service to**  
40 **subscribers in Indiana.**

41 **Sec. 4. (a) As used in this chapter, "gross revenue" means all**  
42 **consideration of any kind or nature, including cash, credits,**

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property, and in kind contributions received by a direct broadcast satellite service provider or an affiliate of the provider.

(b) For purposes of subsection (a), gross revenue includes the following fees and charges to subscribers for direct broadcast satellite service:

- (1) Recurring monthly charges for direct broadcast satellite service.
- (2) Event based charges for direct broadcast satellite service, including pay per view and video on demand charges.
- (3) Charges for the rental of equipment related to providing direct broadcast satellite service.
- (4) Service charges related to providing direct broadcast satellite service, including activation, installation, repair, and maintenance charges.
- (5) Administrative charges related to providing direct broadcast satellite service, including service order and service termination charges.
- (6) Any other fee or charge that would be included in gross revenue as determined under IC 8-1-34-23, regardless of whether the direct broadcast satellite service provider, or an affiliate of the provider, is subject to IC 8-1-34.

(c) For purposes of subsection (a), gross revenue does not include the following received by a direct broadcast satellite service provider or an affiliate of the provider:

- (1) Revenue not actually received, regardless of whether it is billed, including bad debts.
- (2) Revenue received by an affiliate or any other person in exchange for supplying goods and services used by a direct broadcast satellite service provider.
- (3) Refunds, rebates, or discounts made to a subscriber, advertiser, or other person.
- (4) Revenue from a service other than direct broadcast satellite service, including:
  - (A) telecommunications service (as defined in 47 U.S.C. 153(46));
  - (B) information service (as defined in 47 U.S.C. 153(20));
  - or
  - (C) any other service that is not direct broadcast satellite service.
- (5) The tax imposed under IC 6-2.5-4-11.
- (6) Any tax of general applicability imposed on a direct broadcast satellite service provider, or a purchaser of direct

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broadcast satellite service, by a federal, state, or local governmental entity and required to be collected by a person and remitted to the taxing entity, including the state gross retail and use taxes (IC 6-2.5) and the utility receipts tax (IC 6-2.3).

(7) Any foregone revenue from providing free or reduced cost direct broadcast satellite service to any person, including employees of the direct broadcast satellite service provider or any governmental entity as required or permitted by federal, state, or local law, except revenue foregone in exchange for the goods or services through a trade or barter arrangement.

(8) Revenue from the sale of capital assets or surplus equipment not used by the purchaser to receive direct broadcast satellite service from the direct broadcast satellite service provider.

(9) Reimbursements made by programmers to the direct broadcast satellite service provider for marketing costs incurred by the direct broadcast satellite service provider for the introduction of new programming that exceed the actual costs incurred by the direct broadcast satellite service provider.

(10) Late payment fees collected from customers.

(11) Charges, other than those charges described in subsection (b), that are aggregated or bundled with charges described in subsection (b) on a customer's bill, if the direct broadcast satellite service provider can reasonably identify the charges in its books and records kept in the regular course of business.

Sec. 5. As used in this chapter, "person" includes an administrator, an assignee, an association, a bank, a bureau, a club, a commissioner, a consignee, a cooperative association, a corporation, an estate, an executor, a fiduciary, a firm, a fraternity, an Indiana political subdivision engaged in private or proprietary activities, an individual, an institution, a joint venture, a limited liability company, a lodge, a national bank, a partnership, a pool, a receiver, a society, a sorority, a syndicate, a trust, or a trustee.

Sec. 6. As used in this chapter, "unit" has the meaning set forth in IC 36-1-2-23.

Sec. 7. (a) Beginning January 1, 2012, a fee, known as the direct broadcast satellite service fee, is imposed upon any direct broadcast satellite service provider for the privilege of selling direct broadcast satellite service in Indiana and based on gross revenue derived each calendar quarter from selling, transmitting,

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1 distributing, or otherwise providing direct broadcast satellite  
2 service in each unit included in the provider's service area.

3 (b) The direct broadcast satellite service fee is imposed at a  
4 percentage equal to the franchise fee percentage authorized under  
5 IC 8-1-34-24 in the unit that is in effect as of December 31, 2010,  
6 and paid to the unit by a holder of a certificate issued under  
7 IC 8-1-34-17. The direct broadcast satellite service fee percentage  
8 must be based on the billing address of the direct broadcast  
9 satellite service subscriber at the time of the sale of the direct  
10 broadcast satellite service. The department shall determine the  
11 franchise fee percentage authorized under IC 8-1-34-24 in each  
12 unit in effect as of December 31, 2010, and paid to each unit by a  
13 holder of a certificate issued under IC 8-1-34-17. The department  
14 of state revenue shall publish a report setting forth the applicable  
15 direct broadcast satellite service fee percentages before August 1,  
16 2011.

17 (c) The direct broadcast satellite service fee is in addition to the  
18 state gross retail tax and use tax imposed by IC 6-2.5.

19 (d) The direct broadcast satellite service fee may be passed  
20 through to, and collected from, the direct broadcast satellite  
21 service provider's customers in Indiana. To the extent allowed  
22 under federal or state law, a direct broadcast satellite service  
23 provider may identify as a separate line item on each regular bill  
24 issued to a customer the amount of the total bill assessed as a direct  
25 broadcast satellite service fee under this section.

26 **Sec. 8. (a)** Each direct broadcast satellite service provider liable  
27 for the direct broadcast satellite service fee shall file a report for  
28 each calendar quarter and pay to the department the fee imposed  
29 by this chapter for each calendar quarter. A direct broadcast  
30 satellite service provider shall file a report for each calendar  
31 quarter with the department and pay the direct broadcast satellite  
32 service fee for that calendar quarter to the department not later  
33 than twenty (20) days after the end of that calendar quarter. The  
34 report must include a summary of gross revenue and fees  
35 categorized by unit. This subsection does not create a liability of  
36 the direct broadcast satellite service provider directly to a unit.

37 (b) The department shall prescribe the form of the direct  
38 broadcast satellite service fee report required under subsection (a).

39 (c) The money received from the fees collected by the  
40 department shall be credited to a special account to make  
41 distributions to each unit before the last business day in January,  
42 April, July, and October, based on the amount of fees received in

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1     **that month for the most recent calendar quarter from each**  
2     **provider that provides direct broadcast satellite service in the unit.**  
3     **The money in each special account is appropriated to make the**  
4     **distributions.**

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