

# HOUSE BILL No. 1432

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## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 8-1-34-23.

**Synopsis:** Video service franchise fee. Provides that a provider of video service to Indiana customers under: (1) a certificate of franchise authority issued by the utility regulatory commission; or (2) an unexpired local franchise issued by a local unit before July 1, 2006; may not be required to pay a franchise fee to any local unit with respect to any calendar quarter or other reporting period that begins after June 30, 2015.

**Effective:** July 1, 2013.

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January 22, 2013, read first time and referred to Committee on Utilities and Energy.

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First Regular Session 118th General Assembly (2013)

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 2012 Regular Session of the General Assembly.

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# HOUSE BILL No. 1432



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

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

1 SECTION 1. IC 8-1-34-23, AS AMENDED BY P.L.6-2012,  
 2 SECTION 63, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 3 JULY 1, 2013]: Sec. 23. (a) Except as provided in subsection (b), the  
 4 holder of a certificate under this chapter shall, at the end of each  
 5 calendar quarter **that begins before July 1, 2015**, determine under  
 6 subsections (c) and (d) the gross revenue received during that quarter  
 7 from the holder's provision of video service in each unit included in the  
 8 holder's service area under the certificate.  
 9 (b) This subsection applies to a holder or other provider providing  
 10 video service in a unit in which a provider of video service is required  
 11 on June 30, 2006, to pay a franchise fee based on a percentage of gross  
 12 revenues. The holder's or provider's gross revenue shall be determined  
 13 as follows:  
 14 (1) If only one (1) local franchise is in effect on June 30, 2006, the  
 15 holder or provider shall determine gross revenue as the term is  
 16 defined in the local franchise in effect on June 30, 2006.  
 17 (2) If:



- 1 (A) more than one (1) local franchise is in effect on June 30,  
 2 2006; and  
 3 (B) the holder or provider is subject to a local franchise in the  
 4 unit on June 30, 2006;  
 5 the holder or provider shall determine gross revenue as the term  
 6 is defined in the local franchise to which the holder or provider is  
 7 subject on June 30, 2006.  
 8 (3) If:  
 9 (A) more than one (1) local franchise is in effect on June 30,  
 10 2006; and  
 11 (B) the holder is not subject to a local franchise in the unit on  
 12 June 30, 2006;  
 13 the holder shall determine gross revenue as the term is defined in  
 14 the local franchise in effect on June 30, 2006, that is most  
 15 favorable to the unit.  
 16 (c) This subsection does not apply to a holder that is required to  
 17 determine gross revenue under subsection (b). The holder shall include  
 18 the following in determining the gross revenue received during the  
 19 quarter with respect to a particular unit:  
 20 (1) Fees and charges charged to subscribers for video service  
 21 provided by the holder. Fees and charges under this subdivision  
 22 include the following:  
 23 (A) Recurring monthly charges for video service.  
 24 (B) Event based charges for video service, including pay per  
 25 view and video on demand charges.  
 26 (C) Charges for the rental of set top boxes and other  
 27 equipment.  
 28 (D) Service charges related to the provision of video service,  
 29 including activation, installation, repair, and maintenance  
 30 charges.  
 31 (E) Administrative charges related to the provision of video  
 32 service, including service order and service termination  
 33 charges.  
 34 (2) Revenue received by an affiliate of the holder from the  
 35 affiliate's provision of video service, to the extent that treating the  
 36 revenue as revenue of the affiliate, instead of revenue of the  
 37 holder, would have the effect of evading the payment of fees that  
 38 would otherwise be paid to the unit. However, revenue of an  
 39 affiliate may not be considered revenue of the holder if the  
 40 revenue is otherwise subject to fees to be paid to the unit.  
 41 (d) This subsection does not apply to a holder that is required to  
 42 determine gross revenue under subsection (b). The holder shall not

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1 include the following in determining the gross revenue received during  
2 the quarter with respect to a particular unit:

3 (1) Revenue not actually received, regardless of whether it is  
4 billed. Revenue described in this subdivision includes bad debt.

5 (2) Revenue received by an affiliate or any other person in  
6 exchange for supplying goods and services used by the holder to  
7 provide video service under the holder's certificate.

8 (3) Refunds, rebates, or discounts made to subscribers,  
9 advertisers, the unit, or other providers leasing access to the  
10 holder's facilities.

11 (4) Revenue from providing service other than video service,  
12 including revenue from providing:

13 (A) telecommunications service (as defined in 47 U.S.C.  
14 153(46));

15 (B) information service (as defined in 47 U.S.C. 153(20)),  
16 other than video service; or

17 (C) any other service not classified as cable service or video  
18 programming by the Federal Communications Commission.

19 (5) Any fee imposed on the holder under this chapter that is  
20 passed through to and paid by subscribers, including the franchise  
21 fee:

22 (A) imposed under section 24 of this chapter for the quarter  
23 immediately preceding the quarter for which gross revenue is  
24 being computed; and

25 (B) passed through to and paid by subscribers during the  
26 quarter for which gross revenue is being computed.

27 (6) Revenue from the sale of video service for resale in which the  
28 purchaser collects a franchise fee under:

29 (A) this chapter; or

30 (B) a local franchise agreement in effect on July 1, 2006;  
31 from the purchaser's customers. This subdivision does not limit  
32 the authority of a unit, or the commission on behalf of a unit, to  
33 impose a tax, fee, or other assessment upon the purchaser under  
34 47 U.S.C. 542(h).

35 (7) Any tax of general applicability:

36 (A) imposed on the holder or on subscribers by a federal, state,  
37 or local governmental entity; and

38 (B) required to be collected by the holder and remitted to the  
39 taxing entity;

40 including the state gross retail and use taxes (IC 6-2.5) and the  
41 utility receipts tax (IC 6-2.3).

42 (8) Any forgone revenue from providing free or reduced cost

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1 cable video service to any person, including:

2 (A) employees of the holder;

3 (B) the unit; or

4 (C) public institutions, public schools, or other governmental  
5 entities, as required or permitted by this chapter or by federal  
6 law.

7 However, any revenue that the holder chooses to forgo in  
8 exchange for goods or services through a trade or barter  
9 arrangement shall be included in gross revenue.

10 (9) Revenue from the sale of:

11 (A) capital assets; or

12 (B) surplus equipment that is not used by the purchaser to  
13 receive video service from the holder.

14 (10) Reimbursements that:

15 (A) are made by programmers to the holder for marketing  
16 costs incurred by the holder for the introduction of new  
17 programming; and

18 (B) exceed the actual costs incurred by the holder.

19 (11) Late payment fees collected from customers.

20 (12) Charges, other than those described in subsection (c)(1), that  
21 are aggregated or bundled with charges described in subsection  
22 (c)(1) on a customer's bill, if the holder can reasonably identify  
23 the charges on the books and records by the holder in the regular  
24 course of business.

25 (e) If, under the terms of the holder's certificate, the holder provides  
26 video service to any unincorporated area in Indiana, the holder shall  
27 calculate the holder's gross income received from each unincorporated  
28 area served in accordance with:

29 (1) subsection (b); or

30 (2) subsections (c) and (d);

31 whichever is applicable.

32 (f) If a unit served by the holder under a certificate annexes any  
33 territory after the certificate is issued or renewed under this chapter, the  
34 holder shall:

35 (1) include in the calculation of gross revenue for the annexing  
36 unit any revenue generated by the holder from providing video  
37 service to the annexed territory; and

38 (2) subtract from the calculation of gross revenue for any unit or  
39 unincorporated area:

40 (A) of which the annexed territory was formerly a part; and

41 (B) served by the holder before the effective date of the  
42 annexation;

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1           the amount of gross revenue determined under subdivision (1);  
2           beginning with the calculation of gross revenue for the calendar quarter  
3           in which the annexation becomes effective. The holder shall notify the  
4           commission of the new boundaries of the affected service areas as  
5           required under section 20(a)(7) of this chapter.

6           **(g) This section expires January 1, 2016.**

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