

# SENATE MOTION

**MR. PRESIDENT:**

**I move** that Engrossed House Bill 1181 be amended to read as follows:

1           Page 1, between the enacting clause and line 1, begin a new  
2 paragraph and insert:  
3           "SECTION 1. IC 8-1-1-5 IS AMENDED TO READ AS FOLLOWS  
4 [EFFECTIVE JULY 1, 2001]: Sec. 5. (a) The commission shall in all  
5 controversial proceedings heard by it be an impartial fact-finding body  
6 and shall make its orders in such cases upon the facts impartially found  
7 by it. The commission shall in no such proceeding, during the hearing,  
8 act in the role either of a proponent or opponent on any issue to be  
9 decided by it. All evidence given in any such proceeding shall be  
10 offered on behalf of the respective parties to, or appearing in, the  
11 proceeding and not in the name or behalf of the commission itself.  
12           (b) Any report, audit, examination, or analysis prepared by the  
13 commission staff at the request or direction of the commission may be  
14 made a part of the record of the proceeding, subject to  
15 cross-examination by any party of the person who performed or  
16 directed the preparation of the report, audit, examination or analysis.  
17           (c) If in any such proceeding the public interest is not otherwise  
18 adequately represented by counsel, in the opinion of the commission,  
19 ~~it shall be the duty~~ of the utility consumer counselor **shall**, if requested  
20 by the commission, ~~to~~ make adequate preparation for the presentation  
21 of the interests of the public in ~~such the~~ proceeding and ~~he the utility~~  
22 **consumer counselor** shall at the hearing represent the public interests  
23 ~~therein~~ involved **in the proceeding**.  
24           (d) However, nothing in this section prevents the commission from  
25 instituting, prosecuting, hearing, or determining any investigation or  
26 proceeding which it is authorized to do, or make, on its own motion by  
27 any law with the administration of which it is charged.  
28           (e) ~~Except as otherwise provided in this chapter, no member or~~  
29 ~~employee of the commission assigned to make findings of fact and~~  
30 ~~conclusions of law in a formally docketed evidentiary proceeding may~~  
31 ~~communicate in connection with any issue of fact or law disputed in~~

1 that proceeding with any party or his representative, except on notice  
 2 and with opportunity for all parties to participate. Any of the following  
 3 with decision making responsibility in a docketed proceeding may  
 4 communicate with a party or the party's representative concerning  
 5 any issue of fact or law disputed in that proceeding:

- 6 (1) A commissioner.
- 7 (2) An administrative law judge.
- 8 (3) A staff employee.
- 9 (4) An agent of the commission.

10 The party or the party's representative must report the  
 11 communication, as required by subsection (g), whether the  
 12 communication is initiated by the party, the party's representative,  
 13 a commissioner, an administrative law judge, a staff employee, or  
 14 an agent.

15 (f) A report, an audit, an examination, a memorandum, a  
 16 recommendation, or an analysis that:

- 17 (1) is prepared by the commission's staff or an agent of the  
 18 commission;
- 19 (2) is communicated to the commission or an administrative  
 20 law judge;
- 21 (3) concerns any issue of fact or law in connection with a  
 22 docketed proceeding; and
- 23 (4) is not otherwise made part of the record of the proceeding  
 24 under subsection (b);

25 must be reported as required in subsection (g) and served on all  
 26 parties to the proceeding not later than ten (10) days before a final  
 27 order is issued in the proceeding.

28 (g) The report of a communication required to be reported  
 29 under subsection (e) or (f) must be made by filing a "Notice of Ex  
 30 Parte Communication" with the secretary of the commission and  
 31 provided at the same time to the assigned administrative law judge.  
 32 The notice must satisfy all of the following:

- 33 (1) Be filed not later than three (3) working days after the  
 34 communication occurs.
- 35 (2) Include all of the following:
  - 36 (A) The date, time, and location of the communication.
  - 37 (B) Whether the communication was oral, written, or a  
 38 combination of oral and written.
  - 39 (C) The identity of:
    - 40 (i) all individuals involved in the communication; and
    - 41 (ii) all other individuals present during the  
 42 communication.
  - 43 (D) A description of the communication with a summary of  
 44 its content.
  - 45 (E) A copy of any written material or text used during the  
 46 communication.

47 (h) A person who violates this section commits a Class C  
 48 infraction."

- 1      Renumber all SECTIONS consecutively.  
         (Reference is to EHB 1181 as printed April 6, 2001.)

---

Senator SERVER