

PREVAILED	Roll Call No. _____
FAILED	Ayes _____
WITHDRAWN	Noes _____
RULED OUT OF ORDER	

HOUSE MOTION _____

MR. SPEAKER:

I move that Engrossed Senate Bill 205 be amended to read as follows:

- 1 Delete the title and insert the following:
- 2 A BILL FOR AN ACT to amend the Indiana Code concerning
- 3 utilities.
- 4 Page 1, between the enacting clause and line 1, begin a new
- 5 paragraph and insert:
- 6 "SECTION 1. IC 8-1.5-3-8, AS AMENDED BY P.L.172-2009,
- 7 SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
- 8 UPON PASSAGE]: Sec. 8. (a) A municipality owning a utility under
- 9 this chapter shall furnish reasonably adequate services and facilities.
- 10 (b) The rates and charges made by a municipality for a service
- 11 rendered or to be rendered, either directly or in connection therewith,
- 12 must be nondiscriminatory, reasonable, and just.
- 13 (c) "Reasonable and just rates and charges for services" means rates
- 14 and charges that produce sufficient revenue to:
- 15 (1) pay all the legal and other necessary expenses incident to the
- 16 operation of the utility, including:
- 17 (A) maintenance costs;
- 18 (B) operating charges;
- 19 (C) upkeep;
- 20 (D) repairs;
- 21 (E) depreciation;
- 22 (F) interest charges on bonds or other obligations, including
- 23 leases; and
- 24 (G) costs associated with the acquisition of utility property

- 1 under IC 8-1.5-2;
- 2 (2) provide a sinking fund for the liquidation of bonds or other
- 3 obligations, including leases;
- 4 (3) provide a debt service reserve for bonds or other obligations,
- 5 including leases, in an amount established by the municipality,
- 6 not to exceed the maximum annual debt service on the bonds or
- 7 obligations or the maximum annual lease rentals;
- 8 (4) provide adequate money for working capital;
- 9 (5) provide adequate money for making extensions and
- 10 replacements to the extent not provided for through depreciation
- 11 in subdivision (1); and
- 12 (6) provide money for the payment of any taxes that may be
- 13 assessed against the utility.
- 14 (d) It is the intent of this section that the rates and charges produce
- 15 an income sufficient to maintain the utility property in a sound physical
- 16 and financial condition to render adequate and efficient service. Rates
- 17 and charges too low to meet these requirements are unlawful.
- 18 (e) The board may recommend to the municipal legislative body
- 19 rates and charges sufficient to include a reasonable return on the utility
- 20 plant of the municipality.
- 21 (f) Rates and charges established under this section are subject to
- 22 the approval of:
- 23 (1) the municipal legislative body by ordinance; and
- 24 (2) the commission, in accordance with the procedures set forth
- 25 in IC 8-1-2.
- 26 The commission shall approve rates and charges that are sufficient, in
- 27 addition to the cash revenue requirements set forth in subsection (c), to
- 28 include a reasonable return on the utility plant of the municipality if the
- 29 legislative body so elects.
- 30 (g) Except for a municipally owned utility taxed under IC 6-1.1-8-3,
- 31 **and subject to section 8.3(n) of this chapter**, the commission shall
- 32 approve rates and charges sufficient to compensate the municipality for
- 33 taxes that would be due the municipality on the utility property were it
- 34 privately owned. These rates and charges in lieu of taxes may be
- 35 transferred to the municipal general fund, if the legislative body so
- 36 elects.
- 37 (h) The commission shall grant a request that an increase in rates
- 38 and charges not be effective until after the occurrence of a future event
- 39 if the legislative body so requests.
- 40 (i) A municipality that acquires and operates a utility under
- 41 IC 8-1.5-2 by exercising the power of eminent domain may not impose
- 42 a special rate, charge, surcharge, or other fee, other than rates and
- 43 charges approved under this section or otherwise authorized by law, on
- 44 the customers of the utility in order to pay for the costs associated with
- 45 acquiring the utility through the exercise of the power of eminent
- 46 domain.

1 SECTION 2. IC 8-1.5-3-8.3, AS ADDED BY P.L.139-2012,
 2 SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 3 UPON PASSAGE]: Sec. 8.3. (a) This section applies to a utility that
 4 provides service to property located outside the corporate boundaries
 5 of the municipality.

6 (b) As used in this section:

7 (1) "utility"; and

8 (2) "works";

9 have the meaning set forth for those terms in section 8.1 of this chapter.

10 (c) This subsection applies if a municipal legislative body adopts an
 11 ordinance under section 8.1 of this chapter or under IC 36-9-23-26 that
 12 is in effect on March 31, 2012, and that imposes rates and charges on
 13 users of the works for service to property located outside the corporate
 14 boundaries of the municipality that exceed by more than fifteen percent
 15 (15%), but not more than fifty percent (50%), the rates and charges
 16 imposed on users of the works for service to property located within the
 17 corporate boundaries of the municipality. Not later than September 30,
 18 2012, the municipality may petition the commission to approve the
 19 percentage difference between rates and charges established in the
 20 ordinance for property within and property outside the corporate
 21 boundaries. In the petition, the municipality shall set forth the
 22 following:

23 (1) The date on which the ordinance took effect.

24 (2) The percentage difference between rates and charges imposed
 25 on users of the works for service to property located outside the
 26 corporate boundaries of the municipality and to property located
 27 within the corporate boundaries of the municipality.

28 (3) Whether the works that is the subject of the ordinance is a
 29 water utility works, a wastewater utility works, or both a water
 30 and wastewater utility works.

31 If the commission determines that a petition filed under this subsection
 32 satisfies the requirements of this subsection, the commission shall
 33 approve the petition, including the percentage difference between rates
 34 and charges described in subdivision (2). If the commission determines
 35 that a petition filed under this subsection does not satisfy the
 36 requirements of this subsection, the commission shall disapprove the
 37 petition. However, if the percentage difference imposed in the
 38 ordinance was the subject of an objecting petition that was filed under
 39 section 8.2 of this chapter or under IC 36-9-23-26.1 and sustained on
 40 final judgment or appeal, as applicable, by a court, the percentage
 41 difference is considered approved without the filing of a petition under
 42 this subsection.

43 (d) If a municipality that files, or that is exempt from filing, a
 44 petition under subsection (c) adopts an ordinance under section 8.1 of
 45 this chapter after March 31, 2012, that imposes rates and charges on
 46 users of the works for service to property located outside the corporate

1 boundaries of the municipality that exceed the rates and charges
 2 imposed on users of the works for service to property located within the
 3 corporate boundaries of the municipality by more than the sum of the
 4 percentage difference approved or considered approved by the
 5 commission under subsection (c) plus fifteen percent (15%), either or
 6 both of the following may petition the commission to review and
 7 adjust, if necessary, the rates and charges imposed on users of the
 8 works for service to property located outside the corporate boundaries
 9 of the municipality:

10 (1) The municipality.

11 (2) The lesser of:

12 (A) ten percent (10%) of all; or

13 (B) twenty-five (25);

14 users of the works whose property is located outside the corporate
 15 boundaries of the municipality.

16 A petition filed under this subsection must be filed not more than
 17 fourteen (14) days after the date on which the ordinance referred to in
 18 this subsection is adopted. A petition may not be filed under this
 19 subsection if a petition has already been filed under section 8.2 of this
 20 chapter appealing the same rates and charges.

21 (e) If a municipal legislative body, other than a municipal legislative
 22 body described in subsection (c), adopts an ordinance under section 8.1
 23 of this chapter after March 31, 2012, that imposes rates and charges on
 24 users of the works for service to property located outside the corporate
 25 boundaries of the municipality that exceed the rates and charges
 26 imposed on users of the works for service to property located within the
 27 corporate boundaries of the municipality by more than fifteen percent
 28 (15%), either or both of the following may petition the commission to
 29 review and adjust, if necessary, the rates and charges imposed on users
 30 of the works for service to property located outside the corporate
 31 boundaries of the municipality:

32 (1) The municipality.

33 (2) The lesser of:

34 (A) ten percent (10%) of all; or

35 (B) twenty-five (25);

36 users of the works whose property is located outside the corporate
 37 boundaries of the municipality.

38 A petition must be filed not more than ~~fourteen (14)~~ **forty-five (45)**
 39 days after the date on which the ordinance is adopted. A petition may
 40 not be filed under this subsection if a petition has already been filed
 41 under section 8.2 of this chapter or under IC 36-9-23-26.1 appealing
 42 the same rates and charges.

43 (f) The filing of a petition with the commission under subsection (d)
 44 or (e) stays the ordinance adopted under section 8.1 of this chapter or
 45 under IC 36-9-23-26. The rates and charges in effect before the
 46 adoption of the ordinance remain in effect until:

- 1 (1) the commission approves or disapproves the petition, or the
 2 petition is dismissed under subsection (g); and
 3 (2) if applicable, the commission adjusts the rates and charges
 4 imposed by the ordinance on users of the works whose property
 5 is located outside the corporate boundaries of the municipality.
- 6 (g) The commission shall prescribe the form and manner in which
 7 a petition must be filed under subsection (d) or (e). The burden of proof
 8 to demonstrate that the proposed rates and charges are
 9 nondiscriminatory, reasonable, and just is on the municipality,
 10 regardless of who petitions the commission. If the commission fails to
 11 approve or disapprove a petition within one hundred twenty (120) days
 12 after the petition is filed in the form and manner prescribed by the
 13 commission, the petition is dismissed, and the ordinance adopted under
 14 section 8.1 of this chapter or under IC 36-9-23-26 takes effect. A
 15 petition is automatically disapproved if the petitioner has filed a
 16 petition under section 8.2 of this chapter or under IC 36-9-23-26.1 with
 17 respect to the same rate ordinance.
- 18 (h) For purposes of determining whether the percentage difference
 19 between rates and charges imposed on users of the works for service to
 20 property located outside the corporate boundaries of the municipality
 21 and the rates and charges imposed on users of the works for service to
 22 property located within the corporate boundaries of the municipality is
 23 nondiscriminatory, reasonable, and just under section 8 of this chapter,
 24 the commission:
- 25 (1) may consider the benefit and expense to all users of the works
 26 of extending the works outside the corporate boundaries of the
 27 municipality; and
 28 (2) may not consider any connection fees or capital surcharges
 29 imposed on users of the works for service to property that is
 30 located outside the corporate boundaries of the municipality that
 31 are specifically designated to pay for the costs associated with
 32 main extensions to the users of the works.
- 33 (i) If the commission determines that the percentage difference
 34 between the rates and charges imposed on users of the works for
 35 service to property located outside the corporate boundaries of the
 36 municipality and the rates and charges imposed on users of the works
 37 for service to property located within the corporate boundaries of the
 38 municipality is not nondiscriminatory, reasonable, and just under
 39 section 8 of this chapter, the commission may:
- 40 (1) establish nondiscriminatory, reasonable, and just rates and
 41 charges for users of the works for service to property located
 42 outside the corporate boundaries of the municipality; and
 43 (2) order the municipal legislative body to adopt an ordinance
 44 imposing the nondiscriminatory, reasonable, and just rates and
 45 charges.
- 46 However, with respect to rates and charges imposed in an ordinance

1 that was the subject of an objecting petition filed under section 8.2 of
 2 this chapter or under IC 36-9-23-26.1 and sustained on final judgment
 3 or appeal, as applicable, by a court, the commission may not establish
 4 rates and charges such that the percentage difference between rates and
 5 charges established by the commission is less than the percentage
 6 difference between rates and charges imposed in the ordinance.

7 (j) This section does not:

8 (1) authorize the commission to review or revise rates and charges
 9 imposed on users of the works for service to property located
 10 within the corporate boundaries of the municipality; or

11 (2) otherwise return or subject a utility to the jurisdiction of the
 12 commission for the approval of rates and charges.

13 (k) The commission may adopt rules under IC 4-22-2 to implement
 14 this section.

15 (l) The commission may not impose a fee with respect to
 16 proceedings under this section.

17 **(m) Subject to subsection (h)(2), for purposes of this section,**
 18 **"rates and charges" are those charges made by a municipality for**
 19 **a service rendered or to be rendered by the municipality's utility,**
 20 **either directly or in connection with that service, as described in**
 21 **section 8(b) of this chapter, regardless of whether the rates and**
 22 **charges:**

23 (1) are:

24 (A) imposed through a compact fee or any similar
 25 arrangement; or

26 (B) referred to as a compact fee or by any other term;
 27 by the municipality or the utility; or

28 (2) are based, in whole or in part, on the assessed value of the
 29 property served by the utility.

30 (n) A municipality may not require an existing user of the works
 31 to enter into an agreement that:

32 (1) is for service to the user's property located outside the
 33 corporate boundaries of the municipality; and

34 (2) implements a payment in lieu of taxes as a condition for
 35 the continuation of service to the property, regardless of
 36 whether the payment in lieu of taxes is based on the assessed
 37 value of the property."

- 1 Page 2, after line 16, begin a new paragraph and insert:
- 2 "SECTION 5. **An emergency is declared for this act.**".
- 3 Renumber all SECTIONS consecutively.
(Reference is to ESB 205 as printed April 2, 2013.)

Representative Wesco