

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WITHDRAWN	Noes _____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

HOUSE MOTION _____

MR. SPEAKER:

I move that Engrossed Senate Bill 349 be amended to read as follows:

- 1 Page 4, between lines 20 and 21, begin a new paragraph and insert:
2 "SECTION 18. IC 8-1.5-3-8.3, AS ADDED BY P.L.139-2012,
3 SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
4 UPON PASSAGE]: Sec. 8.3. (a) This section applies to a utility that
5 provides service to property located outside the corporate boundaries
6 of the municipality.
7 (b) As used in this section:
8 (1) "utility"; and
9 (2) "works";
10 have the meaning set forth for those terms in section 8.1 of this chapter.
11 (c) This subsection applies if a municipal legislative body adopts an
12 ordinance under section 8.1 of this chapter or under IC 36-9-23-26 that
13 is in effect on March 31, 2012, and that imposes rates and charges on
14 users of the works for service to property located outside the corporate
15 boundaries of the municipality that exceed by more than fifteen percent
16 (15%), but not more than fifty percent (50%), the rates and charges
17 imposed on users of the works for service to property located within the
18 corporate boundaries of the municipality. Not later than September 30,
19 2012, the municipality may petition the commission to approve the
20 percentage difference between rates and charges established in the
21 ordinance for property within and property outside the corporate
22 boundaries. In the petition, the municipality shall set forth the
23 following:
24 (1) The date on which the ordinance took effect.

- 1 (2) The percentage difference between rates and charges imposed
 2 on users of the works for service to property located outside the
 3 corporate boundaries of the municipality and to property located
 4 within the corporate boundaries of the municipality.
- 5 (3) Whether the works that is the subject of the ordinance is a
 6 water utility works, a wastewater utility works, or both a water
 7 and wastewater utility works.
- 8 If the commission determines that a petition filed under this subsection
 9 satisfies the requirements of this subsection, the commission shall
 10 approve the petition, including the percentage difference between rates
 11 and charges described in subdivision (2). If the commission determines
 12 that a petition filed under this subsection does not satisfy the
 13 requirements of this subsection, the commission shall disapprove the
 14 petition. However, if the percentage difference imposed in the
 15 ordinance was the subject of an objecting petition that was filed under
 16 section 8.2 of this chapter or under IC 36-9-23-26.1 and sustained on
 17 final judgment or appeal, as applicable, by a court, the percentage
 18 difference is considered approved without the filing of a petition under
 19 this subsection.
- 20 (d) If a municipality that files, or that is exempt from filing, a
 21 petition under subsection (c) adopts an ordinance under section 8.1 of
 22 this chapter after March 31, 2012, that imposes rates and charges on
 23 users of the works for service to property located outside the corporate
 24 boundaries of the municipality that exceed the rates and charges
 25 imposed on users of the works for service to property located within the
 26 corporate boundaries of the municipality by more than the sum of the
 27 percentage difference approved or considered approved by the
 28 commission under subsection (c) plus fifteen percent (15%), either or
 29 both of the following may petition the commission to review and
 30 adjust, if necessary, the rates and charges imposed on users of the
 31 works for service to property located outside the corporate boundaries
 32 of the municipality:
- 33 (1) The municipality.
- 34 (2) The lesser of:
- 35 (A) ten percent (10%) of all; or
- 36 (B) twenty-five (25);
- 37 users of the works whose property is located outside the corporate
 38 boundaries of the municipality.
- 39 A petition filed under this subsection must be filed not more than
 40 fourteen (14) days after the date on which the ordinance referred to in
 41 this subsection is adopted. A petition may not be filed under this
 42 subsection if a petition has already been filed under section 8.2 of this
 43 chapter appealing the same rates and charges.
- 44 (e) If a municipal legislative body, other than a municipal legislative
 45 body described in subsection (c), adopts an ordinance under section 8.1
 46 of this chapter after March 31, 2012, that imposes rates and charges on

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

9 (1) The municipality.

10 (2) The lesser of:

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

12 (B) twenty-five (25);

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

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

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

24 (1) the commission approves or disapproves the petition, or the
 25 petition is dismissed under subsection (g); and

26 (2) if applicable, the commission adjusts the rates and charges
 27 imposed by the ordinance on users of the works whose property
 28 is located outside the corporate boundaries of the municipality.

29 (g) The commission shall prescribe the form and manner in which
 30 a petition must be filed under subsection (d) or (e). The burden of proof
 31 to demonstrate that the proposed rates and charges are
 32 nondiscriminatory, reasonable, and just is on the municipality,
 33 regardless of who petitions the commission. If the commission fails to
 34 approve or disapprove a petition within one hundred twenty (120) days
 35 after the petition is filed in the form and manner prescribed by the
 36 commission, the petition is dismissed, and the ordinance adopted under
 37 section 8.1 of this chapter or under IC 36-9-23-26 takes effect. A
 38 petition is automatically disapproved if the petitioner has filed a
 39 petition under section 8.2 of this chapter or under IC 36-9-23-26.1 with
 40 respect to the same rate ordinance.

41 (h) For purposes of determining whether the percentage difference
 42 between rates and charges imposed on users of the works for service to
 43 property located outside the corporate boundaries of the municipality
 44 and the rates and charges imposed on users of the works for service to
 45 property located within the corporate boundaries of the municipality is
 46 nondiscriminatory, reasonable, and just under section 8 of this chapter,

- 1 the commission:
- 2 (1) may consider the benefit and expense to all users of the works
- 3 of extending the works outside the corporate boundaries of the
- 4 municipality; ~~and~~
- 5 (2) may not consider any connection fees or capital surcharges
- 6 imposed on users of the works for service to property that is
- 7 located outside the corporate boundaries of the municipality that
- 8 are specifically designated to pay for the costs associated with
- 9 main extensions to the users of the works; **and**
- 10 **(3) may consider whether the municipality has:**
- 11 **(A) imposed rates and charges described in subsection**
- 12 **(m)(1) or (m)(2); or**
- 13 **(B) structured rates and charges in any other manner that**
- 14 **is designed to evade, or has the effect of evading, the**
- 15 **applicability of this section.**
- 16 (i) If the commission determines that the percentage difference
- 17 between the rates and charges imposed on users of the works for
- 18 service to property located outside the corporate boundaries of the
- 19 municipality and the rates and charges imposed on users of the works
- 20 for service to property located within the corporate boundaries of the
- 21 municipality is not nondiscriminatory, reasonable, and just under
- 22 section 8 of this chapter, the commission may:
- 23 (1) establish nondiscriminatory, reasonable, and just rates and
- 24 charges for users of the works for service to property located
- 25 outside the corporate boundaries of the municipality; and
- 26 (2) order the municipal legislative body to adopt an ordinance
- 27 imposing the nondiscriminatory, reasonable, and just rates and
- 28 charges.
- 29 However, with respect to rates and charges imposed in an ordinance
- 30 that was the subject of an objecting petition filed under section 8.2 of
- 31 this chapter or under IC 36-9-23-26.1 and sustained on final judgment
- 32 or appeal, as applicable, by a court, the commission may not establish
- 33 rates and charges such that the percentage difference between rates and
- 34 charges established by the commission is less than the percentage
- 35 difference between rates and charges imposed in the ordinance.
- 36 (j) This section does not:
- 37 (1) authorize the commission to review or revise rates and charges
- 38 imposed on users of the works for service to property located
- 39 within the corporate boundaries of the municipality; or
- 40 (2) otherwise return or subject a utility to the jurisdiction of the
- 41 commission for the approval of rates and charges.
- 42 (k) The commission may adopt rules under IC 4-22-2 to implement
- 43 this section.
- 44 (l) The commission may not impose a fee with respect to
- 45 proceedings under this section.
- 46 **(m) Subject to subsection (h)(2), for purposes of this section,**

1 **"rates and charges" are those charges made by a municipality for**
2 **a service rendered or to be rendered by the municipality's utility,**
3 **either directly or in connection with that service, as described in**
4 **section 8(b) of this chapter, regardless of whether the rates and**
5 **charges:**
6 **(1) are:**
7 **(A) imposed through a compact fee or any similar**
8 **arrangement; or**
9 **(B) referred to as a compact fee or by any other term;**
10 **by the municipality or the utility; or**
11 **(2) are based, in whole or in part, on the assessed value of the**
12 **property served by utility."**

13 Renumber all SECTIONS consecutively.
 (Reference is to ESB 349 as printed March 26, 2013.)

Representative Wesco