

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WITHDRAWN	Noes _____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

1 including leases, in an amount established by the municipality,
2 not to exceed the maximum annual debt service on the bonds or
3 obligations or the maximum annual lease rentals;

4 (4) provide adequate money for working capital;

5 (5) provide adequate money for making extensions and
6 replacements to the extent not provided for through depreciation
7 in subdivision (1); and

8 (6) provide money for the payment of any taxes that may be
9 assessed against the utility.

10 (d) It is the intent of this section that the rates and charges produce
11 an income sufficient to maintain the utility property in a sound physical
12 and financial condition to render adequate and efficient service. Rates
13 and charges too low to meet these requirements are unlawful.

14 (e) The board may recommend to the municipal legislative body
15 rates and charges sufficient to include a reasonable return on the utility
16 plant of the municipality.

17 (f) Rates and charges established under this section are subject to
18 the approval of:

19 (1) the municipal legislative body by ordinance; and

20 (2) the commission, in accordance with the procedures set forth
21 in IC 8-1-2.

22 The commission shall approve rates and charges that are sufficient, in
23 addition to the cash revenue requirements set forth in subsection (c), to
24 include a reasonable return on the utility plant of the municipality if the
25 legislative body so elects.

26 (g) Except for a municipally owned utility taxed under IC 6-1.1-8-3,
27 **and subject to section 8.3(n) of this chapter**, the commission shall
28 approve rates and charges sufficient to compensate the municipality for
29 taxes that would be due the municipality on the utility property were it
30 privately owned. These rates and charges in lieu of taxes may be
31 transferred to the municipal general fund, if the legislative body so
32 elects.

33 (h) The commission shall grant a request that an increase in rates
34 and charges not be effective until after the occurrence of a future event
35 if the legislative body so requests.

36 (i) A municipality that acquires and operates a utility under
37 IC 8-1.5-2 by exercising the power of eminent domain may not impose
38 a special rate, charge, surcharge, or other fee, other than rates and
39 charges approved under this section or otherwise authorized by law, on
40 the customers of the utility in order to pay for the costs associated with
41 acquiring the utility through the exercise of the power of eminent
42 domain.

43 SECTION 19. IC 8-1.5-3-8.3, AS ADDED BY P.L.139-2012,
44 SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
45 UPON PASSAGE]: Sec. 8.3. (a) This section applies to a utility that
46 provides service to property located outside the corporate boundaries

1 of the municipality.
2 (b) As used in this section:
3 (1) "utility"; and
4 (2) "works";
5 have the meaning set forth for those terms in section 8.1 of this chapter.
6 (c) This subsection applies if a municipal legislative body adopts an
7 ordinance under section 8.1 of this chapter or under IC 36-9-23-26 that
8 is in effect on March 31, 2012, and that imposes rates and charges on
9 users of the works for service to property located outside the corporate
10 boundaries of the municipality that exceed by more than fifteen percent
11 (15%), but not more than fifty percent (50%), the rates and charges
12 imposed on users of the works for service to property located within the
13 corporate boundaries of the municipality. Not later than September 30,
14 2012, the municipality may petition the commission to approve the
15 percentage difference between rates and charges established in the
16 ordinance for property within and property outside the corporate
17 boundaries. In the petition, the municipality shall set forth the
18 following:
19 (1) The date on which the ordinance took effect.
20 (2) The percentage difference between rates and charges imposed
21 on users of the works for service to property located outside the
22 corporate boundaries of the municipality and to property located
23 within the corporate boundaries of the municipality.
24 (3) Whether the works that is the subject of the ordinance is a
25 water utility works, a wastewater utility works, or both a water
26 and wastewater utility works.
27 If the commission determines that a petition filed under this subsection
28 satisfies the requirements of this subsection, the commission shall
29 approve the petition, including the percentage difference between rates
30 and charges described in subdivision (2). If the commission determines
31 that a petition filed under this subsection does not satisfy the
32 requirements of this subsection, the commission shall disapprove the
33 petition. However, if the percentage difference imposed in the
34 ordinance was the subject of an objecting petition that was filed under
35 section 8.2 of this chapter or under IC 36-9-23-26.1 and sustained on
36 final judgment or appeal, as applicable, by a court, the percentage
37 difference is considered approved without the filing of a petition under
38 this subsection.
39 (d) If a municipality that files, or that is exempt from filing, a
40 petition under subsection (c) adopts an ordinance under section 8.1 of
41 this chapter after March 31, 2012, that imposes rates and charges on
42 users of the works for service to property located outside the corporate
43 boundaries of the municipality that exceed the rates and charges
44 imposed on users of the works for service to property located within the
45 corporate boundaries of the municipality by more than the sum of the
46 percentage difference approved or considered approved by the

1 commission under subsection (c) plus fifteen percent (15%), either or
 2 both of the following may petition the commission to review and
 3 adjust, if necessary, the rates and charges imposed on users of the
 4 works for service to property located outside the corporate boundaries
 5 of the municipality:

6 (1) The municipality.

7 (2) The lesser of:

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

9 (B) twenty-five (25);

10 users of the works whose property is located outside the corporate
 11 boundaries of the municipality.

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

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

28 (1) The municipality.

29 (2) The lesser of:

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

31 (B) twenty-five (25);

32 users of the works whose property is located outside the corporate
 33 boundaries of the municipality.

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

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

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

45 (2) if applicable, the commission adjusts the rates and charges
 46 imposed by the ordinance on users of the works whose property

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

1 charges established by the commission is less than the percentage
2 difference between rates and charges imposed in the ordinance.

3 (j) This section does not:

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

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

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

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

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

19 (1) are:

20 (A) imposed through a compact fee or any similar
21 arrangement; or

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

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

26 (n) A municipality may not require a user of the works to enter
27 into an agreement that:

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

30 (2) implements a payment in lieu of taxes as a condition for
31 the continuation of service to the property, regardless of
32 whether the payment in lieu of taxes is based on the assessed
33 value of the property.".

34 Renumber all SECTIONS consecutively.

(Reference is to ESB 349 as printed March 26, 2013.)

Representative Wesco