

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WITHDRAWN	Noes _____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

HOUSE MOTION _____

MR. SPEAKER:

I move that Engrossed Senate Bill 385 be amended to read as follows:

- 1 Page 2, line 35, after "IC 8-1.5-3" delete "," and insert ",".
- 2 Page 3, between lines 8 and 9, begin a new paragraph and insert:
- 3 "SECTION 3. IC 8-1.5-3-8.3, AS ADDED BY P.L.139-2012,
- 4 SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
- 5 UPON PASSAGE]: Sec. 8.3. (a) This section applies to a utility that
- 6 provides service to property located outside the corporate boundaries
- 7 of the municipality.
- 8 (b) As used in this section:
- 9 (1) "utility"; and
- 10 (2) "works";
- 11 have the meaning set forth for those terms in section 8.1 of this chapter.
- 12 (c) This subsection applies if a municipal legislative body adopts an
- 13 ordinance under section 8.1 of this chapter or under IC 36-9-23-26 that
- 14 is in effect on March 31, 2012, and that imposes rates and charges on
- 15 users of the works for service to property located outside the corporate
- 16 boundaries of the municipality that exceed by more than fifteen percent
- 17 (15%), but not more than fifty percent (50%), the rates and charges
- 18 imposed on users of the works for service to property located within the
- 19 corporate boundaries of the municipality. Not later than September 30,
- 20 2012, the municipality may petition the commission to approve the
- 21 percentage difference between rates and charges established in the
- 22 ordinance for property within and property outside the corporate
- 23 boundaries. In the petition, the municipality shall set forth the
- 24 following:

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

2 (2) The percentage difference between rates and charges imposed
3 on users of the works for service to property located outside the
4 corporate boundaries of the municipality and to property located
5 within the corporate boundaries of the municipality.

6 (3) Whether the works that is the subject of the ordinance is a
7 water utility works, a wastewater utility works, or both a water
8 and wastewater utility works.

9 If the commission determines that a petition filed under this subsection
10 satisfies the requirements of this subsection, the commission shall
11 approve the petition, including the percentage difference between rates
12 and charges described in subdivision (2). If the commission determines
13 that a petition filed under this subsection does not satisfy the
14 requirements of this subsection, the commission shall disapprove the
15 petition. However, if the percentage difference imposed in the
16 ordinance was the subject of an objecting petition that was filed under
17 section 8.2 of this chapter or under IC 36-9-23-26.1 and sustained on
18 final judgment or appeal, as applicable, by a court, the percentage
19 difference is considered approved without the filing of a petition under
20 this subsection.

21 (d) If a municipality that files, or that is exempt from filing, a
22 petition under subsection (c) adopts an ordinance under section 8.1 of
23 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 the sum of the
28 percentage difference approved or considered approved by the
29 commission under subsection (c) plus fifteen percent (15%), either or
30 both of the following may petition the commission to review and
31 adjust, if necessary, the rates and charges imposed on users of the
32 works for service to property located outside the corporate boundaries
33 of the municipality:

34 (1) The municipality.

35 (2) The lesser of:

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

37 (B) twenty-five (25);

38 users of the works whose property is located outside the corporate
39 boundaries of the municipality.

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

45 (e) If a municipal legislative body, other than a municipal legislative
46 body described in subsection (c), adopts an ordinance under section 8.1

1 of this chapter after March 31, 2012, that imposes rates and charges on
2 users of the works for service to property located outside the corporate
3 boundaries of the municipality that exceed the rates and charges
4 imposed on users of the works for service to property located within the
5 corporate boundaries of the municipality by more than fifteen percent
6 (15%), either or both of the following may petition the commission to
7 review and adjust, if necessary, the rates and charges imposed on users
8 of the works for service to property located outside the corporate
9 boundaries 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 must be filed not more than ~~fourteen (14)~~ **forty-five (45)**
17 days after the date on which the ordinance is adopted. A petition may
18 not be filed under this subsection if a petition has already been filed
19 under section 8.2 of this chapter or under IC 36-9-23-26.1 appealing
20 the same rates and charges.

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

- 25 (1) the commission approves or disapproves the petition, or the
- 26 petition is dismissed under subsection (g); and
- 27 (2) if applicable, the commission adjusts the rates and charges
- 28 imposed by the ordinance on users of the works whose property
- 29 is located outside the corporate boundaries of the municipality.

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

42 (h) For purposes of determining whether the percentage difference
43 between rates and charges imposed on users of the works for service to
44 property located outside the corporate boundaries of the municipality
45 and the rates and charges imposed on users of the works for service to
46 property located within the corporate boundaries of the municipality is

1 nondiscriminatory, reasonable, and just under section 8 of this chapter,
2 the commission:

3 (1) may consider the benefit and expense to all users of the works
4 of extending the works outside the corporate boundaries of the
5 municipality; and

6 (2) may not consider any connection fees or capital surcharges
7 imposed on users of the works for service to property that is
8 located outside the corporate boundaries of the municipality that
9 are specifically designated to pay for the costs associated with
10 main extensions to the users of the works.

11 (i) If the commission determines that the percentage difference
12 between the rates and charges imposed on users of the works for
13 service to property located outside the corporate boundaries of the
14 municipality and the rates and charges imposed on users of the works
15 for service to property located within the corporate boundaries of the
16 municipality is not nondiscriminatory, reasonable, and just under
17 section 8 of this chapter, the commission may:

18 (1) establish nondiscriminatory, reasonable, and just rates and
19 charges for users of the works for service to property located
20 outside the corporate boundaries of the municipality; and

21 (2) order the municipal legislative body to adopt an ordinance
22 imposing the nondiscriminatory, reasonable, and just rates and
23 charges.

24 However, with respect to rates and charges imposed in an ordinance
25 that was the subject of an objecting petition filed under section 8.2 of
26 this chapter or under IC 36-9-23-26.1 and sustained on final judgment
27 or appeal, as applicable, by a court, the commission may not establish
28 rates and charges such that the percentage difference between rates and
29 charges established by the commission is less than the percentage
30 difference between rates and charges imposed in the ordinance.

31 (j) This section does not:

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

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

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

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

41 **(m) Subject to subsection (h)(2), for purposes of this section,**
42 **"rates and charges" are those charges made by a municipality for**
43 **a service rendered or to be rendered by the municipality's utility,**
44 **either directly or in connection with that service, as described in**
45 **section 8(b) of this chapter, regardless of whether the rates and**
46 **charges:**

- 1 **(1) are:**
- 2 **(A) imposed through a compact fee or any similar**
- 3 **arrangement; or**
- 4 **(B) referred to as a compact fee or by any other term;**
- 5 **by the municipality or the utility; or**
- 6 **(2) are based, in whole or in part, on the assessed value of the**
- 7 **property served by the utility."**

8 Renumber all SECTIONS consecutively.
(Reference is to ESB 385 as printed April 5, 2013.)

Representative Wesco