

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WITHDRAWN	Noes _____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

HOUSE MOTION _____

MR. SPEAKER:

I move that House Bill 1107 be amended to read as follows:

- 1 Page 5, after line 11, begin a new paragraph and insert:
- 2 "SECTION 4. IC 36-9-23-25, AS AMENDED BY P.L.114-2008,
- 3 SECTION 29, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
- 4 JULY 1, 2010]: Sec. 25. (a) Subject to section 37 of this chapter, the
- 5 municipal legislative body shall, by ordinance, establish just and
- 6 equitable fees for the services rendered by the sewage works, and
- 7 provide the dates on which the fees are due.
- 8 (b) Just and equitable fees are the fees required to maintain the
- 9 sewage works in the sound physical and financial condition necessary
- 10 to render adequate and efficient service. The fees must be sufficient to:
- 11 (1) pay all expenses incidental to the operation of the works,
- 12 including legal expenses, maintenance costs, operating charges,
- 13 repairs, lease rentals, and interest charges on bonds or other
- 14 obligations;
- 15 (2) provide the sinking fund required by section 21 of this
- 16 chapter;
- 17 (3) provide adequate money to be used as working capital; and
- 18 (4) provide adequate money for improving and replacing the
- 19 works.
- 20 Fees established after notice and hearing under this chapter are
- 21 presumed to be just and equitable.
- 22 (c) The fees are payable by the owner of each lot, parcel of real
- 23 property, or building that:
- 24 (1) is connected with the sewage works by or through any part of

1 the municipal sewer system; or

2 (2) uses or is served by the works.

3 Unless the municipal legislative body finds otherwise, the works are
4 considered to benefit every lot, parcel of real property, or building
5 connected or to be connected with the municipal sewer system as a
6 result of construction work under the contract, and the fees shall be
7 billed and collected accordingly.

8 (d) The municipal legislative body may use one (1) or more of the
9 following factors to establish the fees:

10 (1) A flat charge for each sewer connection.

11 (2) The amount of water used on the property.

12 (3) The number and size of water outlets on the property.

13 (4) The amount, strength, or character of sewage discharged into
14 the sewers.

15 (5) The size of sewer connections.

16 (6) Whether the property has been or will be required to pay
17 separately for any part of the sewage works.

18 (7) Whether the property, although vacant or unimproved, is
19 benefited by a local or lateral sewer because of the availability of
20 that sewer. However, the owner must have been notified, by
21 recorded covenants and restrictions or deed restrictions in the
22 chain of title of his property, that a fee or assessment for sewer
23 availability may be charged, and the fee may reflect only the
24 capital cost of the sewer and not the cost of operation and
25 maintenance of the sewage works.

26 (8) The cost of collecting, treating, and disposing of garbage in a
27 sanitary manner, including equipment and wages.

28 (9) The amount of money sufficient to compensate the
29 municipality for the property taxes that would be paid on the
30 sewage works if the sewage works were privately owned.

31 (10) Any other factors the legislative body considers necessary.

32 Fees collected under subdivision (8) may be spent for that purpose only
33 after compliance with all provisions of the ordinance authorizing the
34 issuance of the revenue bonds for the sewage works. The board may
35 transfer fees collected in lieu of taxes under subdivision (9) to the
36 general fund of the municipality.

37 (e) The municipal legislative body may exercise reasonable
38 discretion in adopting different schedules of fees, or making
39 classifications in schedules of fees, based on variations in:

40 (1) the costs, including capital expenditures, of furnishing
41 services to various classes of users or to various locations; or

42 (2) the number of users in various locations.

43 **However, fees established under this section may be subject to**
44 **review by the utility regulatory commission under section 26.2 of**
45 **this chapter.**

46 SECTION 5. IC 36-9-23-26, AS AMENDED BY P.L.114-2008,

1 SECTION 30, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
2 JULY 1, 2010]: Sec. 26. (a) After the introduction of the ordinance
3 establishing fees under section 25 of this chapter, but before it is finally
4 adopted, the municipal legislative body shall hold a public hearing at
5 which users of the sewage works, owners of property served or to be
6 served by the works, and other interested persons may be heard
7 concerning the proposed fees. Notice of the hearing, setting forth the
8 proposed schedule of fees, shall be:

- 9 (1) published in accordance with IC 5-3-1;
10 (2) mailed to owners of vacant or unimproved property if the
11 ordinance includes a fee for sewer availability to vacant or
12 unimproved property; and
13 (3) mailed to users of the sewage works located outside the
14 municipality's corporate boundaries.

15 The notice may be mailed in any form so long as the notice of the
16 hearing is conspicuous. The hearing may be adjourned from time to
17 time. **If the municipal sewer utility has been taken out of the
18 jurisdiction of the utility regulatory commission for the approval
19 of rates and charges, a notice mailed under subdivision (3) must
20 include a statement that, following adoption of the ordinance, users
21 of the sewage works located outside the municipality's corporate
22 boundaries may petition the utility regulatory commission under
23 section 26.2 of this chapter to review and adjust the fees, rates, and
24 charges imposed on the users.**

25 (b) After the hearing, the municipal legislative body shall adopt the
26 ordinance establishing the fees, either as originally introduced or as
27 modified. A copy of the schedule of fees adopted shall be kept on file
28 and available for public inspection in the offices of the board and the
29 municipal clerk. **The ordinance must state in plain language the
30 percentage difference between the fees imposed on:**

- 31 **(1) users of the sewage works located outside the corporate
32 boundaries of the municipality; and
33 (2) users of the sewage works located within the corporate
34 boundaries of the municipality.**

35 (c) Subject to section 37 of this chapter, the fees established for any
36 class of users or property shall be extended to cover any additional
37 property that is subsequently served and falls within the same class,
38 without any hearing or notice.

39 (d) The municipal legislative body may change or readjust the fees
40 in the same manner by which they were established.

41 (e) Fees collected under this chapter are considered revenues of the
42 sewage works.

43 SECTION 6. IC 36-9-23-26.1 IS AMENDED TO READ AS
44 FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 26.1. (a) Owners of
45 property connected or to be connected to and served by the sewage
46 works authorized under this chapter may file a written petition

- 1 objecting to the rates and charges of the sewage works so long as:
 2 (1) the petition contains the names and addresses of the
 3 petitioners;
 4 (2) the petitioners attended the public hearing provided under
 5 section 26 of this chapter;
 6 (3) the written petition is filed with the municipal legislative body
 7 within five (5) days after the ordinance establishing the rates and
 8 charges is adopted under section 26 of this chapter; ~~and~~
 9 (4) the written petition states specifically the ground or grounds
 10 of objection; ~~and~~
 11 **(5) if applicable, the petitioners have not filed a petition with**
 12 **the utility regulatory commission under section 26.2 of this**
 13 **chapter appealing the same rates and charges of the sewage**
 14 **works.**

15 (b) Unless the objecting petition is abandoned, the municipal clerk
 16 shall file in the office of the clerk of the circuit or superior court of the
 17 county a copy of the rate ordinance or ordinances together with the
 18 petition. The court shall then set the matter for hearing at the earliest
 19 date possible, which must be within twenty (20) days after the filing of
 20 the petition with the court. The court shall send notice of the hearing
 21 by certified mail to the municipality and to the first signer of the
 22 petition at the address shown on the petition. All interested parties shall
 23 appear in the court without further notice, and the municipality may not
 24 conduct any further proceedings concerning the rates and charges until
 25 the matters presented by the petition have been heard and determined
 26 by the court.

27 (c) At the discretion and upon direction of the court, the petitioners
 28 shall file with the petition a bond in the sum and with the security fixed
 29 by the court. The bond must be conditioned on the petitioners' payment
 30 of all or part of the costs of the hearing and any damages awarded to
 31 the municipality if the petition is denied, as ordered by the court.

32 (d) Upon the date fixed in the notice, the court shall, without a jury,
 33 hear the evidence produced. The court may confirm the decision of the
 34 municipal legislative body or sustain the objecting petition. The order
 35 of the court is final and conclusive upon all parties to the proceeding
 36 and parties who might have appeared at the hearing, subject only to the
 37 right of direct appeal. All questions that were presented or might have
 38 been presented are considered to have been adjudicated by the order of
 39 the court, and no collateral attack upon the decision of the municipal
 40 legislative body or order of the court is permitted.

41 (e) If the court sustains the petition, or if it is sustained on appeal,
 42 the municipal legislative body shall set the rates and charges in
 43 accordance with the decision of the court.

44 SECTION 7. IC 36-9-23-26.2 IS ADDED TO THE INDIANA
 45 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
 46 [EFFECTIVE JULY 1, 2010]: **Sec. 26.2. (a) This section applies to a**

- 1 municipally owned sewer utility that:
- 2 (1) has been taken out of the jurisdiction of the utility
3 regulatory commission for the approval of rates and charges;
4 and
- 5 (2) provides sewer service to users located outside the
6 corporate boundaries of the municipality.
- 7 (b) If the municipal legislative body adopts an ordinance under
8 section 25 of this chapter that imposes rates and charges on users
9 of the sewage works located outside the corporate boundaries of
10 the municipality that exceed by more than twenty-five percent
11 (25%) the rates and charges imposed on users of the sewage works
12 located within the corporate boundaries of the municipality, either
13 or both of the following may petition the utility regulatory
14 commission to review and adjust, if necessary, the rates and
15 charges imposed on users of the sewage works located outside the
16 corporate boundaries of the municipality:
- 17 (1) The municipality.
- 18 (2) The lesser of:
- 19 (A) ten percent (10%) of; or
20 (B) twenty-five (25);
21 users of the sewage works located outside the corporate
22 boundaries of the municipality.
- 23 A petition must be filed under this subsection not more than
24 fourteen (14) days after the date on which the ordinance is
25 adopted.
- 26 (c) If a petition is filed with the utility regulatory commission
27 under subsection (b), the ordinance adopted under section 25 of
28 this chapter is stayed and the rates and charges in effect before the
29 adoption of the ordinance remain in effect until the utility
30 regulatory commission:
- 31 (1) approves or disapproves the petition under subsection (d);
32 and
33 (2) if applicable, adjusts the rates and charges imposed by the
34 ordinance.
- 35 (d) The utility regulatory commission shall prescribe the form
36 and manner of a petition filed under subsection (b). If the utility
37 regulatory commission fails to approve or disapprove a petition
38 within one hundred twenty (120) days after the petition is filed in
39 the form and manner prescribed by the commission, the petition is
40 deemed approved. A petition is automatically disapproved if the
41 petitioner has filed a petition under section 26.1 of this chapter
42 with respect to the same rate ordinance.
- 43 (e) If the utility regulatory commission, in response to a petition
44 filed under subsection (b), determines that the rates and charges
45 imposed on users of the sewage works located outside the corporate
46 boundaries of the municipality are not reasonable and just, the
47 utility regulatory commission may:

- 1 **(1) establish reasonable and just rates and charges for users**
 - 2 **of the sewage works located outside the corporate boundaries**
 - 3 **of the municipality; and**
 - 4 **(2) order the municipal legislative body to adopt an ordinance**
 - 5 **imposing the reasonable and just rates and charges.**
 - 6 **(f) This section does not:**
 - 7 **(1) authorize the utility regulatory commission to review or**
 - 8 **revise rates and charges imposed on users of the sewage**
 - 9 **works located within the corporate boundaries of the**
 - 10 **municipality; or**
 - 11 **(2) otherwise return a municipal sewer utility to the**
 - 12 **jurisdiction of the utility regulatory commission for the**
 - 13 **approval of rates and charges.**
 - 14 **(g) The utility regulatory commission may adopt rules under**
 - 15 **IC 4-22-2 to implement this section."**
- (Reference is to HB 1107 as printed January 26, 2010.)

Representative Reske