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State of Minnesota
HOUSE OF REPRESENTATIVES

EIGHTY-EIGHTH SESSION

H. F. No. 1450

03/11/2013 Authored by Dehn, R.; Hornstein; Allen and Bly
The bill was read for the first time and referred to the Committee on Energy Policy

1.1 A bill for an act
1.2 relating to local government; providing for public utility franchise agreements;
1.3 authorizing municipalities to charge certain public utility fees; amending
1.4 Minnesota Statutes 2012, section 216B.36.

1.5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

1.6 Section 1. Minnesota Statutes 2012, section 216B.36, is amended to read:

1.7 **216B.36 MUNICIPAL REGULATORY AND TAXING POWERS.**

1.8 Subdivision 1. Fees authorized. Any public utility furnishing the utility services
1.9 enumerated in section 216B.02 or occupying streets, highways, or other public property
1.10 within a municipality may be required to obtain a license, permit, right, or franchise
1.11 in accordance with the terms, conditions, and limitations of regulatory acts of the
1.12 municipality, including the placing of distribution lines and facilities underground. Under
1.13 the license, permit, right, or franchise, the utility may be obligated by any municipality to
1.14 pay to the municipality fees to raise revenue or defray increased municipal costs accruing
1.15 as a result of utility operations, or both. The fee may include but is not limited to a sum
1.16 of money based upon gross operating revenues or gross earnings from its operations in
1.17 the municipality so long as the public utility shall continue to operate in the municipality,
1.18 unless upon request of the public utility it is expressly released from the obligation at any
1.19 time by such municipality. Notwithstanding the definition of "public utility" in section
1.20 216B.02, subdivision 4, a municipality may require payment of a fee under this section
1.21 by a cooperative electric association organized under chapter 308A that furnishes utility
1.22 services within the municipality. All existing licenses, permits, franchises, and other
1.23 rights acquired by any public utility or municipality prior to April 11, 1974, including the
1.24 payment of existing franchise fees, shall not be impaired or affected in any respect by the

2.1 passage of this chapter, except with respect to matters of rate and service regulation,
 2.2 service area assignments, securities, and indebtedness that are vested in the jurisdiction
 2.3 of the commission by this chapter. However, in the event that a court of competent
 2.4 jurisdiction determines, or the parties by mutual agreement determine, that an existing
 2.5 license, permit, franchise, or other right has been abrogated or impaired by this chapter, or
 2.6 its execution, the municipality affected shall impose and the public utility shall collect
 2.7 an excise tax on the utility charges which from year to year yields an amount which is
 2.8 reasonably equivalent to that amount of revenue which then would be due as a fee, charges
 2.9 or other thing or service of value to the municipality under the franchise, license, or
 2.10 permit. The authorization shall be over and above taxing limitations including, but not
 2.11 limited to, those of section 477A.016. Franchises granted pursuant to this section shall be
 2.12 exempt from the provisions of chapter 80C. For purposes of this section, a public utility
 2.13 shall include a cooperative electric association.

2.14 **Subd. 2. Franchise agreements; public utility plan and municipal energy goals.**

2.15 (a) Notwithstanding any conflicting provisions of this chapter, unless the municipality
 2.16 affirmatively agrees otherwise, a franchise agreement must include:

2.17 (1) a specific written commitment to energy-efficiency measures to be undertaken
 2.18 by the public utility that will reduce the amount of energy consumed in the municipality.
 2.19 The efficiency measures may be, but are not limited to, transmission/delivery efficiency
 2.20 within the municipality and end-use efficiency. Energy use reductions must not be offset
 2.21 by increased rates or special tariffs designed to recover the amounts lost as a result of the
 2.22 new efficiency measures. Energy use reductions achieved through the efficiency measures
 2.23 taken must be reflected in reduced bills to ratepayers;

2.24 (2) the policies and procedures of the public utility relating to the connection of
 2.25 alternative energy sources within the municipality to the transmission/delivery system of
 2.26 the public utility. These policies and procedures must be designed to make alternative
 2.27 energy connections as simple, timely, and cost-effective as possible;

2.28 (3) a commitment to annually establish and follow a written energy system
 2.29 maintenance schedule for the public utility's infrastructure within the municipality that
 2.30 provides for sufficient measures by the public utility to ensure reasonable reliability within
 2.31 the municipality. The energy system maintenance schedule shall sufficiently anticipate
 2.32 infrastructure demands and improvements within the time frame of the agreement
 2.33 and shall facilitate the connection of alternative energy sources. The energy system
 2.34 maintenance schedule shall be provided to the municipality within one month of execution
 2.35 and acceptance of the franchise and thereafter on an annual basis within one month of
 2.36 each anniversary date of the franchise;

3.1 (4) a specific written commitment to prepare, on an annual basis, a written analysis
3.2 of the relationship between energy use within the municipality and the utility's obligation
3.3 to meet state energy goals; and

3.4 (5) a commitment to make quarterly reports to the municipality on system reliability
3.5 that details service continuity and quality within the municipality, including for electricity,
3.6 a ranking of circuit reliability that identifies the most unreliable circuit or circuits within
3.7 the municipality.

3.8 (b) If a municipality and a public utility do not enter into a franchise agreement, or
3.9 a franchise agreement expires without timely renewal, the municipality may charge the
3.10 public utility fees in-lieu of franchise fees in an amount not to exceed five percent of the
3.11 public utility's total gross revenue from service provided within or to the municipality.

3.12 (c) A municipality or a public utility that believes that the other is not negotiating the
3.13 franchise in good faith may seek injunctive relief in an appropriate district court.

3.14 **EFFECTIVE DATE.** This section is effective for franchise agreements entered into
3.15 after July 1, 2013.