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State of Minnesota

HOUSE OF REPRESENTATIVES

NINETIETH SESSION

H. F. No. 1146

02/13/2017 Authored by Vogel, Pelowski, Drazkowski, Loonan, Hertaus and others
The bill was read for the first time and referred to the Committee on Government Operations and Elections Policy

1.1 A bill for an act
1.2 relating to local government; providing for biennial notice and referendum on
1.3 whether a municipality may use public utility license, permit, rights, or franchise
1.4 fees to raise revenue; amending Minnesota Statutes 2016, section 216B.36.

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

1.6 Section 1. Minnesota Statutes 2016, section 216B.36, is amended to read:

1.7 216B.36 MUNICIPAL REGULATORY AND TAXING POWERS.

1.8 Subdivision 1. Municipal authority to regulate public utilities. Any public utility
1.9 furnishing the utility services enumerated in section 216B.02 or occupying streets, highways,
1.10 or other public property within a municipality may be required to obtain a license, permit,
1.11 right, or franchise in accordance with the terms, conditions, and limitations of regulatory
1.12 acts of the municipality, including the placing of distribution lines and facilities underground.
1.13 Under the license, permit, right, or franchise, the utility may be obligated by any municipality
1.14 to pay to the municipality fees to raise revenue or defray increased municipal costs accruing
1.15 as a result of utility operations, or both. A fee that raises revenue under a license, permit,
1.16 right, or franchise agreement entered into or renewed on or after August 1, 2017, is subject
1.17 to the requirements of subdivision 2. The fee may include but is not limited to a sum of
1.18 money based upon gross operating revenues or gross earnings from its operations in the
1.19 municipality so long as the public utility shall continue to operate in the municipality, unless
1.20 upon request of the public utility it is expressly released from the obligation at any time by
1.21 such municipality. Notwithstanding the definition of "public utility" in section 216B.02,
1.22 subdivision 4, a municipality may require payment of a fee under this section by a cooperative
1.23 electric association organized under chapter 308A that furnishes utility services within the
1.24 municipality. All existing licenses, permits, franchises, and other rights acquired by any

2.1 public utility or municipality prior to April 11, 1974, including the payment of existing
2.2 franchise fees, shall not be impaired or affected in any respect by the passage of this chapter,
2.3 except with respect to matters of rate and service regulation, service area assignments,
2.4 securities, and indebtedness that are vested in the jurisdiction of the commission by this
2.5 chapter. However, in the event that a court of competent jurisdiction determines, or the
2.6 parties by mutual agreement determine, that an existing license, permit, franchise, or other
2.7 right has been abrogated or impaired by this chapter, or its execution, the municipality
2.8 affected shall impose and the public utility shall collect an excise tax on the utility charges
2.9 which from year to year yields an amount which is reasonably equivalent to that amount of
2.10 revenue which then would be due as a fee, charges or other thing or service of value to the
2.11 municipality under the franchise, license, or permit. The authorization shall be over and
2.12 above taxing limitations including, but not limited to, those of section 477A.016. Franchises
2.13 granted pursuant to this section shall be exempt from the provisions of chapter 80C. For
2.14 purposes of this section, a public utility shall include a cooperative electric association.

2.15 Subd. 2. Biennial referendum on fees to raise revenues. (a) A municipality may impose
2.16 a fee under subdivision 1 to raise revenue beyond what is needed to defray increased
2.17 municipal costs due to utility operations for a two-year period if approved by the voters at
2.18 the municipal general election, following the procedures in this subdivision.

2.19 (b) The municipality must include in its ordinance or license, permit, or franchise
2.20 agreement with the public utility what constitutes a cost to the city.

2.21 (c) The municipality must identify in its ordinance or license, permit, or franchise
2.22 agreement the uses of the portion of the fee that is for purposes other than to defray city
2.23 costs. The municipality must publish a notice that explains:

2.24 (1) the fee and its intended uses;

2.25 (2) that the public utility is likely to pass the fee on to customers and how much that
2.26 may increase customers' utility bills;

2.27 (3) that alternatives to the revenue-raising portion of the fee are to raise the revenue
2.28 from another source available to the municipality or forego planned uses of the revenue;
2.29 and

2.30 (4) what revenue raised from another source will cost those paying it.

2.31 The notice must be published at least once each week for two consecutive weeks in the
2.32 official publication of the municipality and must remain posted on the municipality's Web
2.33 site throughout the notice period. The notice must also be sent to all affected ratepayers by

3.1 either first class mail by the municipality or by including the notice in the affected ratepayers'
3.2 billings.

3.3 (d) The municipality may not impose the portion of the fee to raise revenue unless
3.4 approved by the voters at the municipal general election. If a majority of the voters voting
3.5 on the question votes in favor of using the fee to raise revenue, the municipality may proceed
3.6 with imposing the fee. The municipality must establish separate accounts for the portion of
3.7 the fee that is to defray city costs and the portion that is to be used for other purposes.

3.8 (e) This subdivision applies to a license, permit, right, or franchise agreement entered
3.9 into or renewed on or after August 1, 2017.

3.10 (f) In order to continue in effect after December 31, 2022, a license, permit, right, or
3.11 franchise agreement that is entered into or renewed before August 1, 2017, and which by
3.12 its terms will be in effect after August 1, 2022, must be approved by the voters in a
3.13 referendum held at the 2022 general election and every two years after that, following the
3.14 procedures in this section.

3.15 **EFFECTIVE DATE.** This section is effective the day following final enactment.