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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
03/09/2017 Adoption of Report: Amended and re-referred to the Committee on Taxes

1.1 A bill for an act
1.2 relating to local government; providing for notice and referendum on whether a
1.3 municipality may use public utility license, permit, rights, or franchise fees to raise
1.4 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. Five-year renewal; reverse referendum. (a) A municipality may impose a
2.16 fee under subdivision 1 to raise revenue beyond what is needed to defray increased municipal
2.17 costs due to utility operations for up to a five-year period, following the procedures in this
2.18 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) Following publication and before imposing the fee, the municipality must provide
3.4 an opportunity at its next regular meeting for public comment relating to the issue. No
3.5 sooner than 90 days after the public comment opportunity, the municipality may proceed
3.6 with imposing the fee, unless a petition is filed as provided in paragraph (e).

3.7 (e) Within 90 days after the meeting held by the municipality at which public comment
3.8 was accepted, a petition requesting a referendum may be filed with the chief clerical officer
3.9 of the municipality. The petition must be signed by at least five percent of the registered
3.10 voters in the municipality. The petition must meet the requirements of the secretary of state,
3.11 as provided in section 204B.071, and any rules adopted to implement that section. If the
3.12 petition is sufficient, the question of whether the municipality may impose a fee that raises
3.13 revenue as provided in subdivision 1 must be placed on the ballot at the next general election.
3.14 If a majority of the voters voting on the question votes in favor of using the fee to raise
3.15 revenue, the municipality may proceed with imposing the fee.

3.16 (f) If a license, permit, right, or franchise agreement is entered into or renewed before
3.17 August 1, 2017, and by its terms and the ordinance authorizing it, will be in effect after
3.18 August 1, 2022, the municipality must follow the procedures in this subdivision to provide
3.19 notice, a public hearing, and opportunity for a petition for a referendum by August 1, 2022.

3.20 (g) Except as provided in paragraph (f), this subdivision applies to a license, permit,
3.21 right, or franchise agreement entered into or renewed on or after August 1, 2017.

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