

BILL ANALYSIS

C.S.H.B. 2244
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Local Government Ways & Means
Committee Report (Substituted)

BACKGROUND AND PURPOSE

State law allows municipalities to charge a fee to certain private entities such as electric utility companies for the use of the city's streets and alleys as rights-of-way for the facilities used to deliver their services. Historically, the amount of these fees was negotiated as part of the renewal of the agreement between the city and the company.

The fee was generally calculated as a percentage of the gross receipts collected within the city's boundary by the company. The percentage of gross receipts was usually somewhere between 2 and 4 percent. In 1999, when SB 7 prohibited electric delivery companies in competitive areas from selling electricity to end use customers, a new method of calculating the fees was devised. This methodology was based on kilowatt hour sales.

Over the past 5 years, many cities across the state have seen their revenue needs increase faster than the growth in kilowatt hour sales, thereby putting increasing pressure on local budgets. The calculation uses a factor based on the payment the city received in 1998.

HB 2244 allows a municipality to use a new approach whereby it may, by ordinance, adopt a fee based on a mils per kilowatt hour calculation. The cap is 4.5 mils. which will produce fees that result in a range of 6 percent based on the old gross receipts method.

The bill also has language to protect some existing agreements and it limits the amount that customers must pay for lawyer and consultant fees in rate cases.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

SECTION 1. Amends Section 33.008, Utilities Code, by amending Subsections (b) and (c) and adding Subsection (g-1) as follows:

On the termination, expiration, or extension of a franchise agreement existing on September 1, 2005, a municipality may change the per kilowatt hour charge otherwise prescribed by subsection (b).

On or after September 1, 2007, a municipality may change the per kilowatt hour charge in a franchise agreement existing on September 1, 2007, regardless of the termination or expiration date of the franchise agreement, by providing the affected utility with 90 days written notice of the municipality's intent to increase the per kilowatt hour charge in the existing franchise.

The per kilowatt hour charged adopted under Subdivisions (1) or (2) may not exceed \$0.0045 per kilowatt hour.

The regulatory authority shall allow an electric utility or transmission and distribution utility to adjust the utility's rates or nonbypassable charges to permit the timely recovery of any change in municipal franchise fees.

The utility shall recover the change in municipal franchise fees from the customers residing in the municipality or, if applicable, from the retail electric providers serving those customers.

The provisions of the section may not be construed to interfere with or abrogate the rights or obligations of any party to a franchise agreement in effect on September 1, 2005.

SECTION 2. Amends Section 36.201, Utilities Code as follows:

As permitted by Sections 33.008 and 36.204, the commission may establish a rate or tariff that authorizes an automatic adjustment for changes in costs.

SECTION 3. Amends Section 39.202, Utilities Code as follows:

The commission shall adjust the price to beat as necessary to reflect any change in the nonbypassable charges of a transmission and distribution utility made under Section 33.008.

SECTION 4. Repeals Section 33.008(f), Utilities Code.

SECTION 5. Amends Subsection 33.023, Utilities Code as follows:

An electric utility in a ratemaking proceeding shall reimburse the governing body of the municipality for the reasonable cost of the municipality's rate case expenses except as provided in new Subsection (c). If an electric utility has offered to terminate existing franchise agreements or if the ratemaking proceeding is after September 1, 2007, the electric utility in the ratemaking proceeding shall reimburse the governing body of the municipality for 50% of the reasonable rate case expenses. In a proceeding brought under Section 39.262 that includes a power generation company requesting a true-up of stranded costs, the electric utility shall reimburse the municipality for 100 percent of the reasonable rate case expenses. The subsection does not affect any agreement existing on September 1, 2005 concerning reimbursement of municipal rate case expenses.

SECTION 6. This Act applies only to franchise fees imposed on or after the effective date of the Act.

SECTION 7. The Act takes effect September 1, 2005.

EFFECTIVE DATE

The Act takes effect September 1, 2005.

COMPARISON OF ORIGINAL TO SUBSTITUTE

Principal differences between the committee substitute for HB 2244 and the bill as filed is that the filed bill allows a municipality to change the per kWh franchise charge when a franchise is terminated by mutual agreement, expires or is extended by agreement. The substitute allows a municipality, after Sept. 1, 2007, to make the change without regard to the expiration date of the franchise. The only requirement is that they give the affected utility 90 days notice.

As filed, the bill eliminated the requirement that a utility reimburse a municipality for expenses incurred in a rate case. The substitute changes that to require the utility to reimburse the governing body of the municipality for 50% of the reasonable cost of services.