

SUBJECT: Rates charged to state agencies by gas utilities or city-owned utilities

COMMITTEE: Energy Resources — favorable, without amendment

VOTE: 7 ayes — R. Lewis, Hawley, Crabb, Merritt, West, Williams, Woolley
0 nays
2 absent — Driver, Wilson

SENATE VOTE: On final passage, Local and Uncontested Calendar, May 6 — 30-0

WITNESSES: No public hearing

BACKGROUND: Under Utilities Code, sec. 104.202, a natural gas utility or city-owned utility may not charge a state agency an amount representing a gross receipts assessment, regulatory assessment, or similar expense of the utility. However, the utility may recover such expenses from other customers if the expenses are reasonable.

DIGEST: SB 1883 would provide that a gross receipts assessment, regulatory assessment, or similar expense that cannot be charged by a utility to a state agency does not include a payment made by a gas utility or city-owned utility to a city under a contract, franchise, or other agreement.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house.

SUPPORTERS SAY: Franchise fees are fees charged by cities to gas utilities for the use of public right-of-way for pipeline construction. SB 1883 would clear up current confusion about whether gas utilities may include the costs of municipal franchise fees in the rates they charge to state agencies. Municipal franchise fees would not be included in the expenses that gas utilities are prohibited from charging to state agencies, and utilities could charge these fees to state agencies.

In 1993, the 73rd Legislature enacted SB 83 by Parker, providing that rates charged to state agencies may not include gross receipts assessments,

regulatory assessments, or similar expenses to the utility. The original version of the bill included municipal franchise fees among the expenses that could not be charged, but the law finally enacted did not. This has resulted in confusion about the Legislature's intent in this matter, and some utilities now charge these fees to state agencies while others do not.

The problem has been exacerbated by a company that has a contract to conduct energy audits for state agencies. Because this company stands to profit if it can reduce costs for state agencies, it has tried to prevent utilities from passing along franchise fees in their rates to state agencies.

Barring utilities from passing on the costs of franchise fees to state agencies would mean that utilities would have to recover those costs from other customers. This is not only unfair but would contradict Utilities Code, sec. 104.005. It also would be questionable and a possible violation of the constitutional doctrine of equal protection under the law to require one class of customers served by the utility to pay for services provided to another.

If SB 1883 is not enacted and utilities stop including franchise fees in their rates to state agencies for fear of litigation, the citizens of small towns that have large state agency facilities, like state hospitals or prisons, might have to absorb a large tax burden.

It would be burdensome and expensive for utilities to have to calculate a different rate structure for state agencies. Service to agencies varies so widely that there would practically have to be a different rate for each agency.

A franchise fee is not an assessment or tax on the state. Although it might be seen as a form of tax on the utility, it becomes an expense incurred by the utility to serve the state. In general, taxes are levied on revenues, while franchise fees are part of the utility's expenses.

**OPPONENTS
SAY:**

The state should not allow utilities to include municipal franchise fees in the rates they charge to state agencies. Franchise fees are an assessment or tax and, as such, should properly be included in the definition of expenses that utilities may not charge state agencies. A municipal franchise fee is a kind of

tax that a utility includes in its rates. The state should not be paying a rate that includes a tax, however indirectly it is applied.