

CHAPTER 390

JOINT ELECTRICAL UTILITIES

Referred to in §376.1, 476.23

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SUBCHAPTER I

JOINT ELECTRICAL UTILITIES

390.1 Definitions.

As used in this chapter, unless the context otherwise requires:

1. “Acquisition” of a joint facility includes the purchase, lease, construction, reconstruction, extension, remodeling, improvement, repair, and equipping of the joint facility.

2. “City” means a municipal corporation, but not including a county, township, school district or special purpose district or authority.

3. “City utility” has the same meaning provided in section 362.2, subsection 6, and includes a “combined utility system”, as defined in section 384.80, which operates facilities for the generation or transmission of electric energy.

4. “Electric cooperative” means a cooperative association which owns and operates property for generating, purchasing, obtaining by exchange or otherwise acquiring, or transmitting electric power and energy.

5. “Governing body” means the public body which by law is charged with the management and control of a city utility as defined in section 384.80, subsection 5.

6. “Joint agreement” means an agreement of participants pursuant to the provisions of this chapter. A joint agreement may be one or more documents, and may be entitled joint agreement, agreement, contract or otherwise.

7. “Joint facility” means all property necessary or useful for generating, purchasing,

obtaining by exchange or otherwise acquiring, or transmitting electric power and energy, which is owned and operated pursuant to a joint agreement.

8. “Or” includes the conjunctive “and” and “and” includes the disjunctive “or”, unless the context clearly indicates otherwise.

9. “Own” and “ownership” in the case of transmission facilities, including substations and associated facilities, may include the right to the use of an amount of the capacity of the facilities, if the joint agreement so provides. “Own” and “ownership” may include a joint facility located in this state or outside this state.

10. “Participant” means a city, electric cooperative or privately owned utility company which is a party to a joint agreement.

[C75, 77, 79, 81, §390.1]

84 Acts, ch 1251, §1; 2012 Acts, ch 1065, §1

Referred to in §23A.2, 352.6, 390.9, 476.22

[T] Subsection 9 amended

390.2 Additional power.

In addition to other powers conferred by the Constitution and laws of this state, any city having established a utility which operates an existing electric generating facility or distribution system may enter into and carry out joint agreements with other participants for the acquisition of ownership of an undivided interest in a joint facility and for the planning, financing, operation and maintenance of the joint facility.

[C75, 77, 79, 81, §390.2]

390.3 Hearing — exception to general statutes.

Before a city may enter into or amend a joint agreement, the governing body shall adopt a proposed form of agreement and give notice and conduct a public hearing on the agreement in the manner provided by sections 73A.1 to 73A.11, which action shall be subject to appeal as provided in chapter 73A.

However, in the performance of a joint agreement, the governing body is not subject to statutes generally applicable to public contracts, including hearings on plans, specifications, form of contracts, costs, notice and competitive bidding required under chapter 26 and section 384.103, unless all parties to the joint agreement are cities located within the state of Iowa.

[C75, 77, 79, 81, §390.3]

84 Acts, ch 1067, §36; 2006 Acts, ch 1017, §38, 42, 43

390.4 Undivided joint interest.

In substance, a joint agreement shall:

1. Provide that each participant shall own an undivided interest in the joint facility, the interest being equal to the percentage of the money furnished, value of property furnished, or services rendered by each participant toward the total cost of the joint facility, and that each participant shall own and control a like percentage of the output of the joint facility.

2. Provide that each participant shall undertake to finance its portion of the cost of planning, acquisition, operation, and maintenance of the joint facility.

3. Provide that each participant in the ownership of the joint facility shall bear all taxes, if any, chargeable to its ownership of the joint facility under statutes now or hereafter in effect.

4. Provide for the planning, financing, acquisition, operation and maintenance of the joint facility, or for any one or more of said purposes, including the cost to be contributed by each participant.

5. Provide for a uniform method of determining and allocating operation and maintenance expenses of the joint facility.

6. Provide that a participant may be liable only for its own acts with regard to the joint facility, or as principal for the acts of the manager in proportion to its percentage of ownership, and shall not be jointly or severally liable for the acts, omissions or obligations of other participants.

7. Provide that the undivided interest of a participant in the joint facility may not be charged directly or indirectly with a debt or obligation of another participant or be subject to any lien as a result thereof.

8. Provide for the management and operation of the affairs of the joint facility, and the indemnification of the manager, which may include a provision that the joint facility shall be managed and operated by one or more of the participants.

9. Provide that no participant may withdraw from the joint agreement during its duration so long as obligations payable in whole or in part from revenues derived from the operation of the joint facility, and issued by a city, are outstanding, unless prior consent is first granted by each of the other participants either in the joint agreement or otherwise.

10. Provide for the method to be employed in accomplishing the partial or complete termination of the agreement and for disposing of property and assets upon partial or complete termination. The provisions of the joint agreement for disposition of the joint facilities shall not be subject to the statutes limiting or prescribing procedure for the sale of city-owned properties.

11. Provide for the duration of the agreement. An agreement authorized by this chapter shall not be limited as to period of existence, except as may be limited by the terms of the agreement itself.

12. Include other provisions as the parties may deem necessary or appropriate with respect to the conduct of the participants, the operation or ownership of the joint facility, or the settlement of disputes.

[C75, 77, 79, 81, §390.4]

390.5 Financing.

A city may finance its share of the cost of a joint facility by the use of any method of financing available for city utilities under the statutes of this state, for the financing of electric generation or transmission facilities to be owned by a city in their entirety, including but not limited to the provisions of chapters 397 and 407, Code 1973, and sections 384.23 to 384.36 and sections 384.80 to 384.94 as applicable. Revenues derived by a city utility from its share of ownership or operation of a joint facility shall be deemed to be revenues of the city utility for all purposes including the issuance and payment of bonds secured by or payable from the revenues of a city utility. A joint agreement shall be deemed payable from revenues or revenue bonds of a city utility in the absence of provision to the contrary or a referendum approving the issuance of general obligation bonds.

[C75, 77, 79, 81, §390.5]

390.6 Construction.

This chapter being necessary for the public health, public safety and general welfare, shall be liberally construed to effectuate its purposes. This chapter shall be construed as providing a separate and independent method for accomplishing its purposes, and except as provided or necessarily implied shall not be construed as subject to or an amendment of any other law. In particular, without limiting the generality of the foregoing, no restrictions or requirements contained in this chapter shall be construed as applying to bonds issued pursuant to the provisions of chapter 419. Nothing contained in this chapter shall be construed to limit the powers and authority of privately owned utility companies or electric cooperatives under any other law.

[C75, 77, 79, 81, §390.6]

390.7 Construction of amendments.

The provisions of 1975 Iowa Acts, ch. 199, are retroactive in application to all joint agreements entered into and executed prior to July 1, 1975, under this chapter, on behalf of cities which, on the date of executing the agreements, operated existing electric generating or distribution facilities. However, all such joint agreements which complied with the provisions of this chapter prior to amendment by 1975 Iowa Acts, ch. 199, are also in full force and effect according to their terms, and are not rendered invalid in any respect by any provision of 1975 Iowa Acts, ch. 199.

[C77, 79, 81, §390.7]

390.8 Equity investment in independent transmission company.

In addition to the powers conferred upon a city elsewhere in this chapter, any city operating a city electric utility on January 1, 2003, may enter into agreements with and acquire equity interests in independent transmission companies or similar independent transmission entities in which they are participating that are approved by the federal energy regulatory commission. The purpose of such equity investments shall be to mitigate expenses incurred by the city electric utility due to its procurement of electric transmission service or to otherwise facilitate investment in transmission facilities and shall not be for general city or city utility investment purposes.

2003 Acts, ch 116, §1

390.8A Transmission facility ownership.

In addition to the powers conferred upon a city or electric power agency elsewhere in this chapter, a city or electric power agency may acquire ownership interest in a transmission facility, including ownership of the capacity of such facility, within this state or in any other state for the purpose of participating with other utilities in transmission to be operated by a regional transmission organization or an independent transmission operator approved by the federal energy regulatory commission. For purposes of this section, “*electric power agency*” means the same as defined in section 390.9.

2012 Acts, ch 1065, §2

[T] NEW section

SUBCHAPTER II

ELECTRIC POWER AGENCIES

390.9 Definitions.

For purposes of this subchapter, unless the context otherwise requires:

1. “*Electric power agency*” means an entity financing or acquiring an electric power facility pursuant to this chapter, chapter 28E, or chapter 28F. An electric power agency may be organized as a nonprofit corporation, limited liability company, or as a separate administrative or legal entity pursuant to chapter 28E. When the electric power agency is comprised solely of cities or solely of cities and other political subdivisions, the electric power agency shall be a political subdivision of the state with the name under which it was organized, and shall have all the powers of a city or city utility under this chapter.

2. “*Facility*”, “*joint facility*”, “*electric power facility*”, or “*project*” means an electric power generating plant, or transmission line or system, including a joint facility as defined in section 390.1, subsection 7.

3. “*Public bond or obligation*” means an obligation as defined in section 76.14.

2010 Acts, ch 1018, §5

Referred to in §12C.1, 390.8A, 476.1B

390.10 Electric power agency — general authority.

In addition to other powers conferred upon an electric power agency by chapter 28F or other applicable law, an electric power agency may enter into and carry out joint agreements with other participants for the acquisition of ownership of a joint facility and for the planning, financing, operation, and maintenance of the joint facility, as provided in this subchapter.

2001 Acts, 1st Ex, ch 4, §18, 36

CS2001, §476A.21

2010 Acts, ch 1018, §8

C2011, §390.10

390.11 Electric power agency — authority — conflicting provisions.

1. In addition to any powers conferred upon an electric power agency under chapter 28F or other applicable law, an electric power agency may exercise all other powers reasonably necessary or appropriate for or incidental to the effectuation of the electric power agency’s

authorized purposes, including without limitation the powers enumerated in chapters 6A and 6B for purposes of constructing or acquiring an electric power facility.

2. An electric power agency, in connection with its property and affairs, and in connection with property within its control, may exercise any and all powers that might be exercised by a natural person or a private corporation in connection with similar property and affairs.

3. The enumeration of specified powers and functions of an electric power agency in this subchapter is not a limitation of the powers of an electric power agency, but the procedures prescribed for exercising the powers and functions enumerated in this subchapter control and govern in the event of any conflict with any other provision of law.

4. The authority conferred pursuant to this subchapter applies to electric power agencies, notwithstanding any contrary provisions of section 28F.1.

2001 Acts, 1st Ex, ch 4, §19, 36

CS2001, §476A.22

2010 Acts, ch 1018, §9

C2011, §390.11

[P] Eminent domain and eminent domain procedures; chapters 6A and 6B

390.12 Issuance of public bonds or obligations — purposes — limitations.

1. An electric power agency may from time to time issue its public bonds or obligations in such principal amounts as the electric power agency deems necessary to provide sufficient funds to carry out any of its purposes and powers, including but not limited to any of the following:

a. The acquisition or construction of any project to be owned or leased by the electric power agency, or the acquisition of any interest in such project or any right to the capacity of such project, including the acquisition, construction, or acquisition of any interest in an electric power generating plant to be constructed in this state, or the acquisition, construction, or acquisition of any interest in a transmission line or system.

b. The funding or refunding of the principal of, or interest or redemption premiums on, any public bonds or obligations issued by the electric power agency whether or not the public bonds or obligations or interest to be funded or refunded have become due.

c. The establishment or increase of reserves to secure or to pay the public bonds or obligations or interest on the public bonds or obligations.

d. The payment of all other costs or expenses of the electric power agency incident to and necessary to carry out its purposes and powers.

2. Notwithstanding anything in this subchapter or chapter 28F to the contrary, a facility shall not be financed with the proceeds of public bonds or obligations, the interest on which is exempt from federal income tax, unless the public issuer of such public bonds or obligations covenants that the issuer shall comply with the requirements or limitations imposed by the Internal Revenue Code or other applicable federal law to preserve the tax exemption of interest payable on the bonds or obligations.

3. a. Notwithstanding anything in this subchapter or chapter 28F to the contrary, an electric power generating facility shall not be financed under this subchapter unless all of the following conditions are satisfied:

(1) The portion of the electric power generating facility financed by the electric power agency is not designed to serve the electric power requirements of retail customers of members that are municipal electric utilities established in the state after January 1, 2001.

(2) The electric power agency annually files with the utilities board, in a manner to be determined by the utilities board, information regarding sales from the electric power generating facility in sufficient detail to determine compliance with these provisions.

b. The utilities board shall report to the general assembly if any of the provisions are being violated.

2001 Acts, 1st Ex, ch 4, §20, 36

CS2001, §476A.23

2003 Acts, ch 44, §78, 79; 2010 Acts, ch 1018, §10

C2011, §390.12

2011 Acts, ch 25, §143

390.13 Public bonds or obligations authorized by resolution of board of directors — terms.

1. The board of directors of an electric power agency, by resolution, may authorize the issuance of public bonds or obligations of the electric power agency.

2. The public bonds or obligations may be issued in one or more series under the resolution or under a trust indenture or other security agreement.

3. The resolution, trust indenture, or other security agreement, with respect to such public bonds or obligations, shall provide for all of the following:

a. The date on the public bonds or obligations.

b. The time of maturity.

c. The rate of interest.

d. The denomination.

e. The form, either coupon or registered.

f. The conversion, registration, and exchange privileges.

g. The rank or priority.

h. The manner of execution.

i. The medium of payment, including the place of payment, either within or outside of the state.

j. The terms of redemption, either with or without premium.

k. Such other terms and conditions as set forth by the board in the resolution, trust indenture, or other security agreement.

4. Public bonds or obligations authorized by the board of directors shall not be subject to any restriction under other law with respect to the amount, maturity, interest rate, or other terms of obligation of a public agency or private person.

5. Chapter 75 shall not apply to public bonds or obligations authorized by the board of directors as provided in this section.

2001 Acts, 1st Ex, ch 4, §21, 36

CS2001, §476A.24

2010 Acts, ch 1018, §11

C2011, §390.13

390.14 Public bonds or obligations payable solely from agency revenues or funds.

1. The principal of and interest on any public bonds or obligations issued by an electric power agency shall be payable solely from the revenues or funds pledged or available for their payment as authorized in this subchapter.

2. Each public bond or obligation shall contain all of the following terms:

a. That the principal of or interest on such public bonds or obligations is payable solely from revenues or funds of the electric power agency.

b. That neither the state or a political subdivision of the state other than the electric power agency, nor a public agency that is a member of the electric power agency is obligated to pay the principal or interest on such public bonds or obligations.

c. That neither the full faith and credit nor the taxing power of the state, of any political subdivision of the state, or of any such public agency is pledged to the payment of the principal of or the interest on the public bonds or obligations.

2001 Acts, 1st Ex, ch 4, §22, 36

CS2001, §476A.25

2010 Acts, ch 1018, §12

C2011, §390.14

390.15 Public bonds or obligations — types — sources for payment — security.

1. Except as otherwise expressly provided by this subchapter or by the electric power agency, every issue of public bonds or obligations of the electric power agency shall be payable out of any revenues or funds of the electric power agency, subject only to any agreements with the holders of particular public bonds or obligations pledging any particular revenues or funds.

2. An electric power agency may issue types of public bonds or obligations as it may

determine, including public bonds or obligations as to which the principal and interest are payable exclusively from the revenues from one or more projects, or from an interest in such project or projects, or a right to capacity of such project or projects, or from any revenue-producing contract made by the electric power agency with any person, or from its revenues generally.

3. Any public bonds or obligations may be additionally secured by a pledge of any grant, subsidy, or contribution from any public agency or other person, or a pledge of any income or revenues, funds, or moneys of the electric power agency from any other source.

2001 Acts, 1st Ex, ch 4, §23, 36

CS2001, §476A.26

2010 Acts, ch 1018, §13

C2011, §390.15

390.16 Public bonds or obligations and rates for debt service not subject to state approval.

Public bonds or obligations of an electric power agency may be issued under this subchapter, and rents, rates, and charges may be established in the same manner as provided in section 28F.5 and pledged for the security of public bonds or obligations and interest and redemption premiums on such public bonds or obligations, without obtaining the consent of any department, division, commission, board, bureau, or agency of the state and without any other proceeding or the happening of any other condition or occurrence, except as specifically required by this subchapter.

2001 Acts, 1st Ex, ch 4, §24, 36

CS2001, §476A.27

2010 Acts, ch 1018, §14

C2011, §390.16

390.17 Public bonds or obligations to be negotiable.

All public bonds or obligations of an electric power agency shall be negotiable within the meaning and for all of the purposes of the uniform commercial code, chapter 554, subject only to the registration requirement of section 76.10.

2001 Acts, 1st Ex, ch 4, §25, 36

CS2001, §476A.28

2010 Acts, ch 1018, §15

C2011, §390.17

390.18 Validity of public bonds or obligations at delivery — temporary bonds.

1. Any public bonds or obligations may be issued and delivered, notwithstanding that one or more of the officers executing them shall have ceased to hold office at the time when the public bonds or obligations are actually delivered.

2. Pending preparation of definitive bonds or obligations, an electric power agency may issue temporary bonds or obligations that shall be exchanged for the definitive bonds or obligations upon their issuance.

2001 Acts, 1st Ex, ch 4, §26, 36

CS2001, §476A.29

2010 Acts, ch 1018, §16

C2011, §390.18

390.19 Public or private sale of bonds and obligations.

Public bonds or obligations of an electric power agency may be sold at public or private sale for a price and in a manner determined by the electric power agency.

2001 Acts, 1st Ex, ch 4, §27, 36

CS2001, §476A.30

2010 Acts, ch 1018, §17

C2011, §390.19

390.20 Public bonds or obligations as suitable investments for governmental units, financial institutions, and fiduciaries.

The following persons may legally invest any debt service funds, money, or other funds belonging to such person or within such person's control in any public bonds or obligations issued pursuant to this subchapter:

1. A bank, trust company, savings association, or investment company.
2. An insurance company, insurance association, or any other person carrying on an insurance business.

3. An executor, administrator, conservator, trustee, or other fiduciary.

4. Any other person authorized to invest in bonds or obligations of the state.

2001 Acts, 1st Ex, ch 4, §28, 36

CS2001, §476A.31

2010 Acts, ch 1018, §18

C2011, §390.20

2012 Acts, ch 1017, §77

[P] Investment of public funds; §12B.10

[P] Insurance companies; §511.8, 515.35

[P] Banks; §524.901

[P] Investments by fiduciaries; §636.23

[T] Subsection 1 amended

390.21 Resolution, trust indenture, or security agreement constitutes contract — provisions.

The resolution, trust indenture, or other security agreement under which any public bonds or obligations are issued shall constitute a contract with the holders of the public bonds or obligations, and may contain provisions, among others, prescribing any of the following terms:

1. The terms and provisions of the public bonds or obligations.

2. The mortgage or pledge of and the grant of a security interest in any real or personal property and all or any part of the revenue from any project or any revenue producing contract made by the electric power agency with any person to secure the payment of public bonds or obligations, subject to any agreements with the holders of public bonds or obligations which might then exist.

3. The custody, collection, securing, investment, and payment of any revenues, assets, money, funds, or property with respect to which the electric power agency may have any rights or interest.

4. The rates or charges for electric energy sold by, or services rendered by, the electric power agency, the amount to be raised by the rates or charges, and the use and disposition of any or all revenue.

5. The creation of reserves or debt service funds and the regulation and disposition of such reserves or funds.

6. The purposes to which the proceeds from the sale of any public bonds or obligations to be issued may be applied, and the pledge of the proceeds to secure the payment of the public bonds or obligations.

7. Limitations on the issuance of any additional public bonds or obligations, the terms upon which additional public bonds or obligations may be issued and secured, and the refunding of outstanding public bonds or obligations.

8. The rank or priority of any public bonds or obligations with respect to any lien or security.

9. The creation of special funds or moneys to be held for operating expenses, payment, or redemption of public bonds or obligations, reserves or other purposes, and the use and disposition of moneys held in these funds.

10. The procedure by which the terms of any contract with or for the benefit of the holders of public bonds or obligations may be amended or abrogated, the amount of public bonds or obligations the holders of which must consent to such amendment or abrogation, and the manner in which consent may be given.

11. The definition of the acts or omissions to act that constitute a default in the duties

of the electric power agency to holders of its public bonds or obligations, and the rights and remedies of the holders in the event of default including, if the electric power agency so determines, the right to accelerate the date of the maturation of the public bonds or obligations or the right to appoint a receiver or receivers of the property or revenues subject to the lien of the resolution, trust indenture, or other security agreement.

12. Any other or additional agreements with or for the benefit of the holders of public bonds or obligations or any covenants or restrictions necessary or desirable to safeguard the interests of the holders.

13. The custody of any of the electric power agency's property or investments, the safekeeping of such property or investments, the insurance to be carried on such property or investments, and the use and disposition of insurance proceeds.

14. The vesting in a trustee or trustees, within or outside the state, of such property, rights, powers, and duties as the electric power agency may determine; or the limiting or abrogating of the rights of the holders of any public bonds or obligations to appoint a trustee, or the limiting of the rights, powers, and duties of such trustee.

15. The appointment of and the establishment of the duties and obligations of any paying agent or other fiduciary within or outside the state.

2001 Acts, 1st Ex, ch 4, §29, 36

CS2001, §476A.32

2010 Acts, ch 1018, §19

C2011, §390.21

390.22 Mortgage or trust deed to secure bonds.

For the security of public bonds or obligations issued or to be issued by an electric power agency, the electric power agency may mortgage or execute deeds of trust of the whole or any part of its property.

2001 Acts, 1st Ex, ch 4, §30, 36

CS2001, §476A.33

2010 Acts, ch 1018, §20

C2011, §390.22

390.23 No personal liability on public bonds or obligations.

An official, director, member of an electric power agency, or any person executing public bonds or obligations shall not be liable personally on the public bonds or obligations or be subject to any personal liability or accountability by reason of the issuance of such public bonds or obligations.

2001 Acts, 1st Ex, ch 4, §31, 36

CS2001, §476A.34

2010 Acts, ch 1018, §21

C2011, §390.23

390.24 Repurchase of securities.

An electric power agency may purchase public bonds or obligations out of any funds available for such purchase, and hold, pledge, cancel, or resell the public bonds or obligations, subject to and in accordance with any agreements with the holders.

2001 Acts, 1st Ex, ch 4, §32, 36

CS2001, §476A.35

2010 Acts, ch 1018, §22

C2011, §390.24

390.25 Pledge of revenue as security.

An electric power agency may pledge its rates, rents, and other revenues, or any part of such rates, rents, and revenues, as security for the repayment, with interest and redemption premiums, if any, of the moneys borrowed by the electric power agency or advanced to the

electric power agency for any of its authorized purposes and as security for the payment of moneys due and owed by the electric power agency under any contract.

2001 Acts, 1st Ex, ch 4, §33, 36

CS2001, §476A.36

2010 Acts, ch 1018, §23

C2011, §390.25