

APR 5 1973

HOUSE FILE 609

Place On Calendar

S - Ways - Means 4/18, Pass 4/14

BY COMMITTEE ON WAYS AND MEANS

House File 609
Schwengels, Chairman
Potter
Rodgers

Passed House, Date 4-11-73 (815) Passed Senate, Date 6-19-73 (1868)

Vote: Ayes 85 Nays 7 Vote: Ayes 37 Nays 0

Approved June 29, 1973

*Motion to reconsider 4-11
Motion withdrawn 4-16*

A BILL FOR

1 An Act to amend Title fifteen (XV) of the Code to provide
2 authority for municipally-owned utilities to participate
3 with other utilities and electric cooperatives in the
4 acquiring and financing of jointly-owned facilities for
5 the generation, acquisition or transmission of electric
6 energy.

7 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25

1 Section 1. Title fifteen (XV), Code 1973, is amended by
2 adding sections two (2) through seven (7) of this Act as a
3 new chapter.

4 Sec. 2. NEW SECTION. As used in this Act, unless the
5 context otherwise requires:

6 1. "City" means a municipal corporation including a town,
7 but not including a county, township, school district or
8 special purpose district or authority.

9 2. "City utility" has the same meaning provided in sec-
10 tion two (2), subsection twenty-two (22), of the City Code
11 of Iowa, contained in Acts of the Sixty-fourth General As-
12 sembly, 1972 Session, chapter one thousand eighty-eight (1088),
13 and includes a "combined utility system", as defined in section
14 one hundred sixty-one (161) of the City Code of Iowa, which
15 operates facilities for the generation or transmission of
16 electric energy.

17 3. "Joint facility" means all property necessary or use-
18 ful for generating, purchasing, obtaining by exchange or
19 otherwise acquiring, or transmitting electric power and energy,
20 which is owned and operated pursuant to a joint agreement.

21 4. "Joint agreement" means an agreement of participants
22 pursuant to the provisions of this Act. A joint agreement
23 may be one or more documents, and may be entitled joint agree-
24 ment, agreement, contract or otherwise.

25 5. "Electric cooperative" means a cooperative association
26 which owns and operates property for generating, purchasing,
27 obtaining by exchange or otherwise acquiring, or transmit-
28 ting electric power and energy.

29 6. "Participant" means a city utility, electric coopera-
30 tive or privately-owned utility company which is a party to
31 a joint agreement.

32 7. "Governing body" means the public body which by law
33 is charged with the management and control of a city utility.

34 8. "Or" includes the conjunctive "and" and "and" includes
35 the disjunctive "or", unless the context clearly indicates

1 otherwise.

2 9. "Acquisition" of a joint facility includes the pur-
3 chase, lease, construction, reconstruction, extension, re-
4 modeling, improvement, repair, and equipping of the joint
5 facility.

6 Sec. 3. NEW SECTION. In addition to other powers con-
7 ferred by the constitution and laws of this state, any city
8 utility which operates an existing electric generating facility
9 or distribution system may enter into and carry out joint
10 agreements with other participants for the acquisition of
11 ownership of an undivided interest in a joint facility and
12 for the planning, financing, operation and maintenance of
13 the joint facility.

14 Sec. 4. NEW SECTION. Before a city utility may enter
15 into or amend a joint agreement, its governing body shall
16 adopt a proposed form of agreement and give notice and con-
17 duct a public hearing on the agreement in the manner pro-
18 vided by sections twenty-three point one (23.1) through twenty-
19 three point eleven (23.11) of the Code, which action shall
20 be subject to appeal as provided in chapter twenty-three (23)
21 of the Code.

22 However, in the performance of a joint agreement, the gov-
23 erning body shall not be subject to statutes generally ap-
24 plicable to public contracts, including hearings on plans,
25 specifications, form of contracts, costs, notice and competi-
26 tive bidding required under chapters twenty-three (23) or
27 three hundred ninety-seven (397) of the Code or part six (6)
28 of division seven (VII) of the City Code of Iowa, unless all
29 parties to the joint agreement are city utilities located
30 within the state of Iowa.

31 Sec. 5. NEW SECTION. A joint agreement shall:

32 1. Provide that each participant shall own an undivided
33 interest in the joint facility, the interest being equal to
34 the percentage of the money furnished, value of property
35 furnished, or services rendered by each participant toward

1 the total cost of the joint facility, and that each participant
2 shall own and control a like percentage of the output of the
3 joint facility.

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

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

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

15 5. Provide for a uniform method of determining and al-
16 locating operation and maintenance expenses of the joint
17 facility.

18 6. Provide that a participant shall be liable only for
19 its own acts with regard to the joint facility and shall not
20 be jointly or severally liable for the acts, omissions or
21 obligations of other participants.

22 7. Provide that the undivided interest of a participant
23 in the joint facility may not be charged directly or indi-
24 rectly with a debt or obligation of another participant or
25 be subject to any lien as a result thereof.

26 8. Provide for the management and operation of the af-
27 fairs of the joint facility, which may include a provision
28 that the joint facility shall be managed and operated by one
29 or more of the participants.

30 9. Provide that no participant may withdraw from the joint
31 agreement so long as obligations payable in whole or in part
32 from revenues derived from the operation of the joint facility,
33 and issued by a city utility, are outstanding, unless prior
34 consent is first granted by each of the other participants.

35 10. Provide for the method to be employed in accomplish-

1 ing the partial or complete termination of the agreement and
2 for disposing of property and assets upon partial or com-
3 plete termination. The provisions of the joint agreement
4 for disposition of the joint facilities shall not be subject
5 to the statutes limiting or prescribing procedure for the
6 sale of city-owned properties.

7 11. Provide for the duration of the agreement. An agree-
8 ment authorized by this Act shall not be limited as to period
9 of existence, except as may be limited by the terms of the
10 agreement itself.

11 12. Include other provisions as the parties may deem nec-
12 essary or appropriate with respect to the conduct of the
13 participants, the operation or ownership of the joint facility,
14 or the settlement of disputes.

15 Sec. 6. NEW SECTION. A city utility may finance its share
16 of the cost of a joint facility by the use of any method of
17 financing available to city utilities under the statutes of
18 this state, for the financing of electric generation or
19 transmission facilities to be owned by a city utility in their
20 entirety, including but not limited to the provisions of
21 chapters three hundred ninety-seven (397) and four hundred
22 seven (407) of the Code, and parts three (3) and five (5)
23 of division seven (VII) of the City Code of Iowa as applicable.
24 Revenues derived by a city utility from its share of ownership
25 or operation of a joint facility shall be deemed to be revenues
26 of the city utility for all purposes including the issuance
27 and payment of bonds secured by or payable from the revenues
28 of a city utility.

29 Sec. 7. NEW SECTION. This Act being necessary for the
30 public health, public safety and general welfare, shall be
31 liberally construed to effectuate its purposes. This Act
32 shall be construed as providing a separate and independent
33 method for accomplishing its purposes, and except as provided
34 or necessarily implied shall not be construed as subject to
35 or an amendment of any other law. In particular, without

1 limiting the generality of the foregoing, no restrictions
2 or requirements contained in this Act shall be construed as
3 applying to bonds issued pursuant to the provisions of chap-
4 ter four hundred nineteen (419) of the Code. Nothing con-
5 tained in this Act shall be construed to limit the powers
6 and authority of privately-owned utility companies or elec-
7 tric cooperatives under any other law.

8 EXPLANATION

9 This bill will permit municipally-owned utilities to join
10 with other utilities in the ownership and operation of joint
11 facilities for the transmission or generation of electric
12 energy. Any number of electric utilities, municipally owned,
13 privately-owned or rural electric cooperatives, may join
14 together by agreement in order to obtain for their customers
15 the economies of large scale facilities under this bill.
16 Each municipally-owned participant utility would be authorized
17 to separately finance its interest in the joint facility.

18 This bill clarifies the powers of municipal utilities to
19 participate in joint projects and finance their share of the
20 cost and will open the way for municipal utilities to
21 participate in jointly-owned facilities in accordance with
22 the existing practice of privately-owned utilities, electric
23 cooperatives and municipal utilities in other states.

24 The complexities of modern society and the attendant
25 technological advancements require the cooperation of such
26 bodies and the undertaking of joint action projects in order
27 to provide the services and facilities required by their
28 citizens. This bill, by providing for the financing of such
29 joint undertakings, will permit municipal utilities to operate
30 in the most economical manner and will preserve and improve
31 the environmental quality of the natural resources of this
32 state. This bill will to that extent promote the public
33 health, public safety, and general welfare of the citizens
34 of Iowa.

35 Currently, local units of government must obtain specific

1 legislation to authorize financing of joint agreements or
2 contracts. This bill will eliminate the necessity for specific
3 authorization by the legislature for the financing of each
4 joint-action project such as is presently required.

- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28
- 29
- 30
- 31
- 32
- 33
- 34
- 35