

JUN 9 1975

HOUSE FILE 908

BY COMMITTEE ON WAYS AND MEANS

Passed House, Date 6-10-75 (2306) Passed Senate, Date 6-13-75 (2048)

Vote: Ayes 84 Nays 0 Vote: Ayes 46 Nays 0

Approved 7-8

A BILL FOR

1 An Act to amend chapter three hundred ninety (390) of the
 2 Code relating to the authority of cities to participate
 3 in and finance jointly-owned facilities for the genera-
 4 tion, acquisition, or transmission of electric energy,
 5 making its provisions retroactive and providing for
 6 the validity of contracts executed under said chapter.

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

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H-4145

1 Amend House File 908, page 1, lines 9 and 10, by
 2 striking the words "forty (384.40)" and inserting
 3 in lieu thereof the words "eighty (384.80)".

H-4145 FILED, ADOPTED (2306)
JUNE 10, 1975

BY SCHROEDER of Pottawattamie

1 Section 1. Section three hundred ninety point one (390.1),
2 subsections six (6) and seven (7), Code 1975, are amended
3 to read as follows:

4 6. "Participant" means a city utility, electric co-
5 operative or privately owned utility company which is a party
6 to a joint agreement.

7 7. "Governing body" means the public body which by law
8 is charged with the management and control of a city utility
9 as defined in section three hundred eighty-four point forty
10 (384.40), subsection four (4), of the Code.

11 Sec. 2. Section three hundred ninety point two (390.2),
12 Code 1975, is amended to read as follows:

13 390.2 ADDITIONAL POWER. In addition to other powers
14 conferred by the Constitution and laws of this state, any
15 city having established a utility which operates an existing
16 electric generating facility or distribution system may enter
17 into and carry out joint agreements with other participants
18 for the acquisition of ownership of an undivided interest
19 in a joint facility and for the planning, financing, operation
20 and maintenance of the joint facility.

21 Sec. 3. Section three hundred ninety point three (390.3),
22 Code 1975, is amended to read as follows:

23 390.3 HEARING--EXCEPTION TO GENERAL STATUTES. Before
24 a city utility may enter into or amend a joint agreement,
25 ~~its~~ the governing body shall adopt a proposed form of agreement
26 and give notice and conduct a public hearing on the agreement
27 in the manner provided by sections 23.1 to 23.11, which action
28 shall be subject to appeal as provided in chapter 23.

29 However, in the performance of a joint agreement, the
30 governing body shall not be subject to statutes generally
31 applicable to public contracts, including hearings on plans,
32 specifications, form of contracts, costs, notice and
33 competitive bidding required under chapter 23 or chapter 397
34 of the 1973 Code or sections 384.95 to 384.103, unless all
35 parties to the joint agreement are ~~city-utilities~~ cities

1 located within the state of Iowa.

2 Sec. 4. Section three hundred ninety point four (390.4),
3 unnumbered paragraph one (1), and subsections six (6), eight
4 (8), and nine (9), Code 1975, are amended to read as follows:

5 A In substance, a joint agreement shall:

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

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

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

23 Sec. 5. Section three hundred ninety point five (390.5),
24 Code 1975, is amended to read as follows:

25 390.5 FINANCING. A city ~~utility~~ may finance its share
26 of the cost of a joint facility by the use of any method of
27 financing available ~~to~~ for city utilities under the statutes
28 of this state, for the financing of electric generation or
29 transmission facilities to be owned by a city ~~utility~~ in their
30 entirety, including but not limited to the provisions of
31 chapters 397 and 407, Code 1973, and sections 384.23 to 384.36
32 and sections 384.80 to 384.94 as applicable. Revenues derived
33 by a city utility from its share of ownership or operation
34 of a joint facility shall be deemed to be revenues of the
35 city utility for all purposes including the issuance and

1 payment of bonds secured by or payable from the revenues of
2 a city utility. A joint agreement shall be deemed payable
3 from revenues or revenue bonds of a city utility in the absence
4 of provision to the contrary or a referendum approving the
5 issuance of general obligation bonds.

6 Sec. 6. The provisions of this Act are retroactive in
7 application to all joint agreements entered into and executed
8 prior to July 1, 1975, under chapter three hundred ninety
9 (390) of the Code, on behalf of cities which, on the date
10 of executing the agreements, operated existing electric
11 generating or distribution facilities. However, all such
12 joint agreements which complied with the provisions of chapter
13 three hundred ninety (390) of the Code prior to amendment
14 by this Act are also in full force and effect according to
15 their terms, and are not rendered invalid in any respect by
16 any provision of this Act.

17 EXPLANATION

18 The bill makes technical amendments to Chapter 390 to
19 clarify that the powers to form joint electrical utilities
20 are given to cities, rather than city utilities which are
21 not municipal corporations. It clarifies the provisions
22 relating to owners, managers, and payment of costs. The bill
23 also legalizes existing contracts executed in accordance with
24 the provisions of Chapter 390 and this bill.

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