

Ways & Means Calendar To Pass 4/22/91 (p. 1437)

APR 11 1991

WAYS & MEANS CALENDAR

HOUSE FILE 689

BY COMMITTEE ON WAYS AND MEANS

(SUCCESSOR TO HF 659)

Passed House, Date 4/17/91 (p. 1363) Passed Senate, Date 4/24/91 (p. 1466)

Vote: Ayes 93 Nays 0 Vote: Ayes 48 Nays 0

Approved May 10, 1991 (p. 2461)

A BILL FOR

1 An Act relating to the establishment of joint water utilities and  
2 their tax status.

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

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HF 689

1 Section 1. Section 28F.1, unnumbered paragraph 1, Code  
2 1991, is amended to read as follows:

3 This chapter provides a means for the joint financing by  
4 public agencies of works or facilities useful and necessary  
5 for the collection, treatment, purification, and disposal in a  
6 sanitary manner of liquid and solid waste, sewage, and  
7 industrial waste, facilities used for the conversion of solid  
8 waste to energy, and also electric power facilities  
9 constructed within the state of Iowa except that hydroelectric  
10 power facilities may also be located in the waters and on the  
11 dams of or on land adjacent to either side of the Mississippi  
12 or Missouri river bordering the state of Iowa, water supply  
13 systems, swimming pools or golf courses. This chapter applies  
14 to the acquisition, construction, reconstruction, ownership,  
15 operation, repair, extension, or improvement of such works or  
16 facilities, by a separate administrative or legal entity  
17 created pursuant to chapter 28E or chapter 388A. When the  
18 legal entity created under this chapter is comprised solely of  
19 cities, counties, and sanitary districts established under  
20 chapter 358, or any combination thereof or any combination of  
21 the foregoing with other public agencies, the entity shall be  
22 both a corporation and a political subdivision with the name  
23 under which it was organized. The legal entity may sue and be  
24 sued, contract, acquire and hold real and personal property  
25 necessary for corporate purposes, adopt a corporate seal and  
26 alter the seal at pleasure, and execute all the powers  
27 conferred in this chapter.

28 Sec. 2. NEW SECTION. 388A.1 DEFINITIONS.

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

31 1. "Joint water utility" means a water utility established  
32 by two or more cities which owns or operates or proposes to  
33 finance the purchase or construction of all or part of a water  
34 supply system or the capacity or use of a water supply system  
35 pursuant to this chapter. A water supply system includes all

1 land, easements, rights-of-way, fixtures, equipment,  
2 accessories, improvements, appurtenances, and other property  
3 necessary or useful for the operation of the system.

4 2. "Joint water utility board" means the board of trustees  
5 established to operate a joint water utility.

6 3. "Project" means any works or facilities useful or  
7 necessary for the operation of a joint water utility.

8 Sec. 3. NEW SECTION. 388A.2 SUBMISSION TO VOTERS.

9 A joint water utility may be established by two or more  
10 cities. A proposal to establish a joint water utility or to  
11 join an existing joint water utility may be submitted to the  
12 voters of a city by the city council upon its own motion, or  
13 upon receipt of a valid petition pursuant to section 362.4.  
14 If the proposal is to establish a joint water utility, the  
15 proposal shall be submitted to the voters of each city  
16 proposing to establish the joint water utility. If a majority  
17 of the electorate in each of at least two cities approves the  
18 proposal, the cities approving the proposal may establish a  
19 joint water utility.

20 If the proposal is to join an existing joint water utility,  
21 the proposal must first be submitted to the joint water  
22 utility board for its approval. If the proposal is approved  
23 by the board, the proposal shall be submitted to the  
24 electorate of the city wishing to join. The proposal must  
25 receive a majority affirmative vote for passage.

26 Sec. 4. NEW SECTION. 388A.3 POWERS AND DUTIES.

27 Upon adoption of a proposal to establish a joint water  
28 utility, the member cities shall establish a joint water  
29 utility board, consisting of at least five members. The  
30 mayors of the participating cities shall appoint the members,  
31 subject to the approval of the city councils, and at least one  
32 member shall be appointed from each participating city. The  
33 board shall be responsible for the planning and operation of a  
34 joint water utility, subject to the provisions of this  
35 chapter.

1 A joint water utility is a political subdivision and an  
2 instrumentality of municipal government. The statutory  
3 powers, duties, and limitations conferred upon a city utility  
4 apply to a joint water utility, except that title to property  
5 of a joint water utility may be held in the name of the joint  
6 water utility. The joint water utility board shall have all  
7 powers and authority of a city with respect to property which  
8 is held by the joint water utility. A joint water utility  
9 shall have the power of eminent domain, including the powers  
10 conferred upon a city in chapters 471 and 472, for the  
11 purposes of constructing and operating a joint water utility.

12 The joint water utility board may purchase or construct all  
13 or part of any water supply system, and may finance the  
14 purchase or construction. The board may also contract to sell  
15 all or part of the joint water utility's water supply,  
16 including any surplus, to a public or private agency, or an  
17 entity created to carry out an agreement authorizing the joint  
18 exercise of any of the governmental powers enumerated in  
19 section 28F.1. The board may contract for the purchase, from  
20 any source, of all or a portion of the water supply  
21 requirements of the joint water facility. A contract may  
22 include provisions for the payment for capacity or output of a  
23 facility whether the facility is completed or operating, and  
24 for establishing the rights and obligations of the parties to  
25 the contract in the event of a default by any of the parties.

26 Payments made by a joint water utility pursuant to a  
27 contract shall constitute operating expenses of the joint  
28 water utility and shall be payable from the revenues derived  
29 from the operation of the joint water utility.

30 Sec. 5. NEW SECTION. 388A.4 FINANCING.

31 A joint water utility may finance projects pursuant to  
32 chapter 28F. A city may finance its share of the cost of a  
33 project by the use of any method of financing available for  
34 city utilities, including but not limited to sections 384.23  
35 through 384.36 and sections 384.80 through 384.94.

1 If a project is financed by a joint water utility, revenues  
2 derived from the project shall be deemed to be revenues of the  
3 joint water utility for all purposes including the issuance  
4 and payment of bonds secured by or payable from the revenues  
5 of the joint water utility. If a project is financed by  
6 member cities of a joint water utility, the revenues derived  
7 from the project shall be deemed to be revenues of the city or  
8 city utility for all purposes including the issuance and  
9 payment of bonds secured by or payable from the revenues of  
10 the city or city utility.

11 Sec. 6. NEW SECTION. 388A.5 CONSTRUCTION.

12 This chapter being necessary for the public health, public  
13 safety, and general welfare, shall be liberally construed to  
14 effectuate its purposes. This chapter shall be construed as  
15 providing a separate and independent method for accomplishing  
16 its purposes, and shall take precedence over any contrary  
17 provision of the law.

18 Sec. 7. Section 422.43, subsection 1, Code 1991, is  
19 amended to read as follows:

20 1. There is imposed a tax of four percent upon the gross  
21 receipts from all sales of tangible personal property,  
22 consisting of goods, wares, or merchandise, except as  
23 otherwise provided in this division, sold at retail in the  
24 state to consumers or users; a like rate of tax upon the gross  
25 receipts from the sales, furnishing or service of gas,  
26 electricity, water, heat, and communication service, including  
27 the gross receipts from such sales by any municipal  
28 corporation or joint water utility furnishing gas,  
29 electricity, water, heat, and communication service to the  
30 public in its proprietary capacity, except as otherwise  
31 provided in this division, when sold at retail in the state to  
32 consumers or users; a like rate of tax upon the gross receipts  
33 from all sales of tickets or admissions to places of  
34 amusement, fairs, and athletic events except those of  
35 elementary and secondary educational institutions; and a like

1 rate of tax upon that part of private club membership fees or  
2 charges paid for the privilege of participating in any  
3 athletic sports provided club members.

4 Sec. 8. Section 427.1, Code 1991, is amended by adding the  
5 following new subsection:

6 NEW SUBSECTION. 42. JOINT WATER UTILITIES. The property  
7 of a joint water utility established under chapter 388A, when  
8 devoted to public use and not held for pecuniary profit.

9 Sec. 9. Section 476.1, unnumbered paragraph 5, Code 1991,  
10 is amended to read as follows:

11 This chapter does not apply to waterworks having less than  
12 two thousand customers, municipally owned waterworks, joint  
13 water utilities established pursuant to chapter 388A, rural  
14 water districts incorporated and organized pursuant to  
15 chapters 357A and 504A, cooperative water associations  
16 incorporated and organized pursuant to chapter 499, or to a  
17 person furnishing electricity to five or fewer customers  
18 either by secondary line or from an alternate energy  
19 production facility or small hydro facility, from electricity  
20 that is produced primarily for the person's own use.

21 EXPLANATION

22 This bill provides that two or more cities may establish a  
23 joint water utility to operate a municipal water supply  
24 system. The joint water utility is created upon affirmative  
25 majority vote of the electorate in at least two of the cities  
26 considering a proposal.

27 The bill provides that a joint water utility board,  
28 consisting of at least five members, be appointed by the  
29 mayors of the participating cities subject to the approval of  
30 the city councils. The board shall be responsible for the  
31 planning and operation of the utility and shall have authority  
32 to contract with other entities, to enter into joint financing  
33 agreements under chapter 28F, and to finance projects.

34 Property owned by a joint water utility is exempt from  
35 property taxation, but sales of water are subject to the state

1 sales tax.

2 The bill also provides that a joint water utility is exempt  
3 from regulation by the department of commerce.

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HOUSE FILE 689

AN ACT

RELATING TO THE ESTABLISHMENT OF JOINT WATER UTILITIES AND  
THEIR TAX STATUS.

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

Section 1. Section 28F.1, unnumbered paragraph 1, Code 1991, is amended to read as follows:

This chapter provides a means for the joint financing by public agencies of works or facilities useful and necessary for the collection, treatment, purification, and disposal in a sanitary manner of liquid and solid waste, sewage, and industrial waste, facilities used for the conversion of solid waste to energy, and also electric power facilities constructed within the state of Iowa except that hydroelectric power facilities may also be located in the waters and on the dams of or on land adjacent to either side of the Mississippi or Missouri river bordering the state of Iowa, water supply systems, swimming pools or golf courses. This chapter applies to the acquisition, construction, reconstruction, ownership, operation, repair, extension, or improvement of such works or facilities, by a separate administrative or legal entity created pursuant to chapter 28E or chapter 388A. When the

legal entity created under this chapter is comprised solely of cities, counties, and sanitary districts established under chapter 328, or any combination thereof or any combination of the foregoing with other public agencies, the entity shall be both a corporation and a political subdivision with the name under which it was organized. The legal entity may sue and be sued, contract, acquire and hold real and personal property necessary for corporate purposes, adopt a corporate seal and alter the seal at pleasure, and execute all the powers conferred in this chapter.

Sec. 2. NEW SECTION. 388A.1 DEFINITIONS.

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

1. "Joint water utility" means a water utility established by two or more cities which owns or operates or proposes to finance the purchase or construction of all or part of a water supply system or the capacity or use of a water supply system pursuant to this chapter. A water supply system includes all land, easements, rights-of-way, fixtures, equipment, accessories, improvements, appurtenances, and other property necessary or useful for the operation of the system.
2. "Joint water utility board" means the board of trustees established to operate a joint water utility.
3. "Project" means any works or facilities useful or necessary for the operation of a joint water utility.

Sec. 3. NEW SECTION. 388A.2 SUBMISSION TO VOTERS.

A joint water utility may be established by two or more cities. A proposal to establish a joint water utility or to join an existing joint water utility may be submitted to the voters of a city by the city council upon its own motion, or upon receipt of a valid petition pursuant to section 362.4. If the proposal is to establish a joint water utility, the proposal shall be submitted to the voters of each city proposing to establish the joint water utility. If a majority of the electorate in each of at least two cities approves the



proposal, the cities approving the proposal may establish a joint water utility.

If the proposal is to join an existing joint water utility, the proposal must first be submitted to the joint water utility board for its approval. If the proposal is approved by the board, the proposal shall be submitted to the electorate of the city wishing to join. The proposal must receive a majority affirmative vote for passage.

Sec. 4. NEW SECTION. 388A.3 POWERS AND DUTIES.

Upon adoption of a proposal to establish a joint water utility, the member cities shall establish a joint water utility board, consisting of at least five members. The mayors of the participating cities shall appoint the members, subject to the approval of the city councils, and at least one member shall be appointed from each participating city. The board shall be responsible for the planning and operation of a joint water utility, subject to the provisions of this chapter.

A joint water utility is a political subdivision and an instrumentality of municipal government. The statutory powers, duties, and limitations conferred upon a city utility apply to a joint water utility, except that title to property of a joint water utility may be held in the name of the joint water utility. The joint water utility board shall have all powers and authority of a city with respect to property which is held by the joint water utility. A joint water utility shall have the power of eminent domain, including the powers conferred upon a city in chapters 471 and 472, for the purposes of constructing and operating a joint water utility.

The joint water utility board may purchase or construct all or part of any water supply system, and may finance the purchase or construction. The board may also contract to sell all or part of the joint water utility's water supply, including any surplus, to a public or private agency, or an entity created to carry out an agreement authorizing the joint

exercise of any of the governmental powers enumerated in section 28F.1. The board may contract for the purchase, from any source, of all or a portion of the water supply requirements of the joint water facility. A contract may include provisions for the payment for capacity or output of a facility whether the facility is completed or operating, and for establishing the rights and obligations of the parties to the contract in the event of a default by any of the parties.

Payments made by a joint water utility pursuant to a contract shall constitute operating expenses of the joint water utility and shall be payable from the revenues derived from the operation of the joint water utility.

Sec. 5. NEW SECTION. 388A.4 FINANCING.

A joint water utility may finance projects pursuant to chapter 28F. A city may finance its share of the cost of a project by the use of any method of financing available for city utilities, including but not limited to sections 384.23 through 384.36 and sections 384.80 through 384.94.

If a project is financed by a joint water utility, revenues derived from the project shall be deemed to be revenues of the joint water utility for all purposes including the issuance and payment of bonds secured by or payable from the revenues of the joint water utility. If a project is financed by member cities of a joint water utility, the revenues derived from the project shall be deemed to be revenues of the city or city utility for all purposes including the issuance and payment of bonds secured by or payable from the revenues of the city or city utility.

Sec. 6. NEW SECTION. 388A.5 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 shall take precedence over any contrary provision of the law.

Sec. 7. Section 422.43, subsection 1, Code 1991, is amended to read as follows:

1. There is imposed a tax of four percent upon the gross receipts from all sales of tangible personal property, consisting of goods, wares, or merchandise, except as otherwise provided in this division, sold at retail in the state to consumers or users; a like rate of tax upon the gross receipts from the sales, furnishing or service of gas, electricity, water, heat, and communication service, including the gross receipts from such sales by any municipal corporation or joint water utility furnishing gas, electricity, water, heat, and communication service to the public in its proprietary capacity, except as otherwise provided in this division, when sold at retail in the state to consumers or users; a like rate of tax upon the gross receipts from all sales of tickets or admissions to places of amusement, fairs, and athletic events except those of elementary and secondary educational institutions; and a like rate of tax upon that part of private club membership fees or charges paid for the privilege of participating in any athletic sports provided club members.

Sec. 8. Section 427.1, Code 1991, is amended by adding the following new subsection:

NEW SUBSECTION. 42. JOINT WATER UTILITIES. The property of a joint water utility established under chapter 388A, when devoted to public use and not held for pecuniary profit.

Sec. 9. Section 476.1, unnumbered paragraph 5, Code 1991, is amended to read as follows:

This chapter does not apply to waterworks having less than two thousand customers, municipally owned waterworks, joint water utilities established pursuant to chapter 388A, rural water districts incorporated and organized pursuant to chapters 352A and 304A, cooperative water associations incorporated and organized pursuant to chapter 499, or to a person furnishing electricity to five or fewer customers

either by secondary line or from an alternate energy production facility or small hydro facility, from electricity that is produced primarily for the person's own use.

\_\_\_\_\_  
ROBERT C. ARNOULD  
Speaker of the House

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JOE J. WELSH  
President of the Senate

I hereby certify that this bill originated in the House and is known as House File 689, Seventy-fourth General Assembly.

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JOSEPH O'HERN  
Chief Clerk of the House

Approved *May 10* 1991

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TERRY E. BRANSTAD  
Governor