

FILED MAR 17 '03

SENATE FILE 404

BY COMMITTEE ON COMMERCE

Referred to Ways + Means 3/18/03  
(SUCCESSOR TO SSB 1037)

Passed Senate, Date \_\_\_\_\_ Passed House, Date \_\_\_\_\_  
Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_ Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_  
Approved \_\_\_\_\_

**A BILL FOR**

1 An Act relating to provision of telecommunications services by  
2 municipal utilities, including discovery of competitive  
3 information, permitted loans, and making related changes.  
4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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SF 404

1 Section 1. Section 388.9, Code 2003, is amended by adding  
2 the following new subsection:

3 NEW SUBSECTION. 3. The restrictions and limitations  
4 applicable under subsections 1 and 2 to public disclosure,  
5 examination, and copying of competitive information of a city  
6 utility, a combined utility system, a city enterprise, or  
7 combined city enterprise shall not apply when discovery of  
8 such information is sought by a person during civil  
9 litigation. A person seeking to protect the material from  
10 disclosure shall not succeed on the grounds that the  
11 information constitutes a trade secret or other confidential  
12 research, development, or commercial information not to be  
13 disclosed or to be disclosed only in a designated way, or that  
14 the information otherwise falls within the general category of  
15 protection for proprietary information.

16 Sec. 2. Section 388.10, Code 2003, is amended to read as  
17 follows:

18 388.10 CITY OR MUNICIPAL UTILITY PROVIDING LOCAL-EXCHANGE  
19 TELECOMMUNICATIONS SERVICES.

20 1. a. A city providing or that owns or operates a  
21 municipal utility providing ~~local-exchange-services-pursuant~~  
22 ~~to-chapter-476~~ any telecommunications service or the municipal  
23 utility shall not do, directly or indirectly, any of the  
24 following:

25 (1) Use Except for a permitted loan, use general fund  
26 moneys for-the-ongoing-support-or-subsidy or other moneys  
27 derived from tax revenues, directly or indirectly, to finance  
28 or in any way to otherwise support either of the following:

29 (a) The establishment, construction, reconstruction,  
30 upgrade, maintenance, or operation of a telecommunications  
31 system.

32 (b) The provision of any telecommunications service.

33 (2) Provide any city or utility facilities, equipment, or  
34 services to provide a telecommunications systems system or  
35 services any telecommunications service at a cost for such

1 facilities, equipment, or services which that is less than the  
2 reasonable cost of providing such city facilities, equipment,  
3 or services.

4 (3) Provide any other city service, other than a  
5 communications service, to a telecommunications customer at a  
6 cost which is less than would be paid by the same person  
7 receiving such other city service if the person was not a  
8 telecommunications customer.

9 (4) Use Except for a permitted loan, use funds or revenue  
10 generated from electric, gas, water, sewage, or garbage  
11 services provided by the city ~~for the ongoing support of that~~  
12 ~~portion of a system or service used to provide local exchange~~  
13 ~~services~~ or the utility, directly or indirectly, to finance or  
14 in any way to otherwise support either of the following:

15 (a) The establishment, construction, reconstruction,  
16 upgrade, maintenance, or operation of any telecommunications  
17 system.

18 (b) The provision of any telecommunications service.

19 b. For purposes of this section, "telecommunications  
20 unless the context otherwise requires:

21 (1) "Combined utility system" means the same as defined in  
22 section 384.80.

23 (2) "Cost" of any facilities, equipment, services, or  
24 other goods or services shall include all attributable cost  
25 and expenses, whether direct or indirect, fixed or variable,  
26 including without limitation, a fair and equitable allocation  
27 of all of the following:

28 (a) Taxes.

29 (b) The costs of any necessary capital for the  
30 construction or acquisition of the item or the facilities by  
31 which the service is provided.

32 (c) Amortization of any capital that is required to be  
33 repaid.

34 (d) Depreciation.

35 (e) Amortization of capitalized costs.

1 (3) "Permitted loan" means any borrowing or transfer of  
2 moneys or funds from a municipality or a nontelecommunications  
3 municipal utility to a separate telecommunications utility of  
4 the municipality that meets the requirements of paragraphs "c"  
5 through "e".

6 (4) "Support" means to provide financial support in any  
7 form, whether temporary or permanent, including but not  
8 limited to transfers of money or other assets, purchases of  
9 securities, capital contributions or other investments, loans  
10 or other extensions of credit, leases, payment of money,  
11 guarantees, pledges, or hypothecations or property or  
12 indemnities or other arrangements by which there is recourse  
13 to the revenues or other assets of the city or municipal  
14 utility other than any revenues derived solely from the  
15 operations of a telecommunications service or assets of the  
16 related telecommunications system.

17 (5) "Telecommunications system" means ~~only-that-portion-of~~  
18 ~~a-system-or-facilities-which-is-used-to-provide-local-exchange~~  
19 ~~services~~ a system that provides any telecommunications  
20 service.

21 (6) "Telecommunications service" means the provision of  
22 any of the following services:

- 23 (a) Cable television service.
- 24 (b) Internet service.
- 25 (c) Local exchange telephone service.
- 26 (d) Long distance telephone service.
- 27 (e) Retail data transmission.

28 c. (1) A permitted loan may not be made to or within a  
29 combined utility system that provides any telecommunications  
30 service.

31 (2) The amount of a permitted loan shall not exceed the  
32 lesser of any amount approved in a public referendum or the  
33 cost of initial construction of the physical  
34 telecommunications system plus an allowance for working  
35 capital not to exceed the highest three months of revenue from

1 recurring monthly customer charges reasonably forecast to  
2 occur during the first twelve months of operation of the  
3 telecommunications system.

4     (3) The annual rate of interest charges on a permitted  
5 loan shall not be less than the rate established by the  
6 federal communications commission, from time to time, as the  
7 presumptively reasonable cost of capital rate used to compute  
8 regulated service rates for the provision of cable television  
9 services or, if no such rate exists, then the interest rate  
10 shall be no less than the prevailing prime interest rate plus  
11 five hundred basis points. Interest payments shall be  
12 remitted in full to the lender no less frequently than  
13 annually. The principal of a permitted loan shall be repaid  
14 no less frequently than in annual installments, beginning not  
15 later than three years after the first draw of loan proceeds  
16 and the principal shall be fully repaid within fifteen years  
17 of the date of the first draw of loan proceeds. Annual  
18 principal payments shall be in amounts not less than the  
19 outstanding principal amount divided by the number of annual  
20 payments to be made. The lending agreement for a permitted  
21 loan shall contain loan covenants and nonfinancial terms and  
22 conditions no more favorable than those typically found in a  
23 comparable senior loan financing made in the cable or  
24 telecommunications industries.

25     (4) In the event that a municipality or its utility should  
26 default on any payment, material covenant, or other term or  
27 condition of a permitted loan, the municipality or its utility  
28 shall promptly publish a public notice of the default and have  
29 sixty days to cure the default. A repeated default of the  
30 same requirement, covenant, or other term or condition shall  
31 not be subject to cure. The municipality or municipal utility  
32 shall not waive a default or noncompliance. If the default is  
33 not cured within the prescribed time, the municipality or its  
34 utility shall sell or cease operation of the  
35 telecommunications systems no later than twelve months

1 following the default.

2 d. This section shall not apply to a municipality or its  
3 utility with respect to the provision of cable television  
4 services within municipal boundaries if either of the  
5 following circumstances exist within the municipality:

6 (1) A private provider of cable television services does  
7 not offer cable television service in the municipality.

8 (2) A private provider of cable television services offers  
9 cable television service within the municipality, but the  
10 provider has not begun offering internet access within the  
11 municipality by October 1, 2004, at a speed equal to the  
12 minimum requirements for advanced telecommunications services  
13 as determined by the federal communications commission.

14 e. This section shall not restrict any of the following  
15 actions:

16 (1) The procurement of telecommunications service by a  
17 municipality or its utility to the extent the  
18 telecommunications services are to be used solely for the  
19 internal operations of the municipality or its utility and  
20 such services will not be made available for resale or to the  
21 general public.

22 (2) The procurement of feasibility studies related to the  
23 provision of telecommunications services by a municipality or  
24 its utility.

25 (3) Funding from any source the costs of litigation when a  
26 competing utility is a party to the litigation.

27 f. (1) This section shall not affect the validity of  
28 borrowings or loans outstanding as of December 31, 2002, that  
29 complied with and continue to comply with the provisions of  
30 this section that were in effect on December 31, 2002, which  
31 loans shall also be known as "grandfathered loans".

32 (2) In the event a grandfathered loan is extended in term,  
33 increased in amount, or modified in any substantive manner,  
34 all of the terms and conditions of the grandfathered loan  
35 shall comply fully with the requirements of a permitted loan.

1     (3) A municipality or municipal utility shall not waive  
2 compliance with any requirement of a grandfathered loan.

3     2. A city providing or that owns or operates a municipal  
4 utility providing ~~local-exchange-services-pursuant-to-chapter~~  
5 476 telecommunications service, whether or not pursuant to  
6 chapter 476, or the municipal utility shall do the following:

7     a. Prepare and maintain records which record the full cost  
8 accounting of providing ~~local-exchange~~ telecommunications  
9 service. The records shall show the amount, and source, and  
10 cost of capital for initial construction or acquisition of the  
11 ~~local-exchange~~ telecommunications system or facilities. This  
12 section shall not prohibit a municipal utility from utilizing  
13 capital from any lawful source, provided that the reasonable  
14 cost of such capital is accounted for as a cost of providing  
15 the service and no violation of subsection 1, paragraph "a",  
16 subparagraph (1) or (4), would result.

17     b. Adopt rates for the provision of ~~local-exchange~~  
18 services telecommunications service that reflect the actual  
19 cost of providing the-~~local-exchange~~ telecommunications  
20 service. However, this paragraph shall not prohibit the  
21 municipal utility from establishing market-based prices for  
22 competitive ~~local-exchange-services~~ telecommunications  
23 services, provided that no violation of subsection 1,  
24 paragraph "a", subparagraph (1) or (4), would result.

25     c. Be subject to all requirements of the city which that  
26 would apply to any other provider of ~~local-exchange~~  
27 telecommunications services in the same manner as such  
28 requirements would apply to such other provider.

29     3. This section shall not prohibit the marketing or  
30 bundling of other products or services, in-addition-to-local  
31 exchange by the municipal utility as well as any  
32 telecommunications services. However, a city shall include on  
33 a billing statement sent to a person receiving services from  
34 the city, a separate charge for each individual service  
35 provided to the person, such as electricity, local exchange,

1 or internet access. This subsection does not prohibit the  
2 city from also including on the billing statement a total  
3 amount to be paid by the person.

4 Sec. 3. Section 427.1, subsection 2, Code 2003, is amended  
5 to read as follows:

6 2. MUNICIPAL AND MILITARY PROPERTY. The property of a  
7 county, township, city, school corporation, levee district,  
8 drainage district, or the Iowa national guard, when devoted to  
9 public use and not held for pecuniary profit, except property  
10 of a municipally owned electric utility held under joint  
11 ownership and property of an electric power facility financed  
12 under chapter 28F or 476A that shall be subject to taxation  
13 under chapter 437A and facilities of a municipal utility or a  
14 city that are used for the provision of local-exchange  
15 ~~services-pursuant-to-chapter-476, but only to the extent such~~  
16 ~~facilities-are-used-to-provide-such-services,~~  
17 telecommunications services as defined in section 388.10 which  
18 shall be subject to taxation under chapter 433, except that  
19 section 433.11 shall not apply, and subject to taxation under  
20 chapter 441, as applicable. However, notwithstanding anything  
21 in this subsection to the contrary, the electric lines of a  
22 municipally owned electric utility are subject to property  
23 taxation to the extent such electric lines are used to provide  
24 telecommunications services. The exemption for property owned  
25 by a city or county also applies to property which is operated  
26 by a city or county as a library, art gallery or museum,  
27 conservatory, botanical garden or display, observatory or  
28 science museum, or as a location for holding athletic  
29 contests, sports or entertainment events, expositions,  
30 meetings or conventions, or leased from the city or county for  
31 any such purposes, or leased from the city or county by the  
32 Iowa national guard or by a federal agency for the benefit of  
33 the Iowa national guard when devoted for public use and not  
34 for pecuniary profit. Food and beverages may be served at the  
35 events or locations without affecting the exemptions, provided

1 the city has approved the serving of food and beverages on the  
2 property if the property is owned by the city or the county  
3 has approved the serving of food and beverages on the property  
4 if the property is owned by the county.

5 Sec. 4. APPLICABILITY. A municipal utility shall not be  
6 subject to this Act if it engages exclusively in the provision  
7 of wholesale services under an open-access tariff without  
8 facility-based competition.

9 EXPLANATION

10 This bill pertains to municipal utility systems, primarily  
11 under Code chapter 388.

12 The bill amends Code section 388.9 to provide that certain  
13 competitive business information of a city utility or city  
14 enterprise that otherwise may be withheld from public  
15 disclosure may not be shielded from disclosure in litigation  
16 on the basis of the provisions of Code section 388.9, or that  
17 the information constitutes a trade secret or other  
18 confidential research, development, or commercial information  
19 not to be disclosed.

20 The bill also amends Code section 388.10 to provide that a  
21 city utility is prohibited from using general fund tax  
22 revenues, except for permitted loans, to maintain or operate  
23 telecommunications systems or services, and from using  
24 revenues generated from a utility service such as electric,  
25 gas, or water to pay for the maintenance or operation of  
26 telecommunications service. The bill details the use of  
27 permitted loans, provides for grandfathering of loans in  
28 effect prior to December 31, 2002, and includes exceptions for  
29 municipal utilities where no cable television services are  
30 offered by private providers, or private providers have not  
31 begun offering broadband services by October 1, 2004. The  
32 bill also defines "combined utility system", "cost",  
33 "support", "permitted loan", "telecommunications service", and  
34 "telecommunications system".

35 The bill also changes language that requires a city that

1 owns a municipal utility providing telecommunications services  
2 to perform certain activities, consistent with other changes  
3 in the bill.

4 The bill also amends Code section 427.1 to make similar  
5 language changes and provide for a property tax on electric  
6 lines of a municipal utility that are used to provide  
7 telecommunications services, and adds a reference to  
8 assessment and valuation of property pursuant to Code chapter  
9 441.

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### **Description**

House File 404, as amended and passed by the House, authorizes a sentencing court to protect victims of any public offense, their immediate family members, people residing with the victim, and any witnesses to the offense if the court finds that the presence of or contact with the defendant poses a threat to the victim. The no-contact order is available at the time of sentencing. Under HF 404, as amended and passed by the House, a victim filing an affidavit within 90 days before the no-contact order expires may extend the no-contact order. If the court finds the defendant continues to pose a threat, it may grant the extension for an additional five years. The number of modifications extending the no-contact order is not limited. People who violate no-contact orders are subject to summary contempt proceedings.

### **Assumptions**

1. Charge, conviction, and sentencing patterns and trends will not change over the projection period.
2. Prisoner length of stay, revocation rates, and other corrections' practices and policies will not change over the projection period.
3. The law will become effective July 1, 2003. A lag of six months is assumed, from the effective date of the change in the law to the date of first entry of affected offenders into the correctional system.
4. The analysis is based on information obtained from the Justice Data Warehouse, which includes statewide court and Community-Based Corrections (CBC) information. Conviction and penalty information is based on FY 2002 data.
5. There is no readily available data with which to predict the number of no-contact orders that will be issued under HF 404 as amended and passed by the House. In certain cases, no-contact orders may already be in effect.
6. There is no readily available data with which to predict the number of no-contact orders that will be issued under HF 404, as amended and passed by the House, and subsequently violated. Approximately 7.0% of no-contact orders issued for domestic abuse defendants are violated. It may be reasonable to assume a similar violation rate for these cases.
7. The marginal cost per day for county jails ranges from \$15 to \$25 per offender. The average length of stay in jail for violating a no-contact order is 32 days.
8. Court costs per case are approximately \$116. These costs include the time of a District Court Judge, Clerk of Court staff, a court attendant, and a court reporter.
9. The median cost per proceeding for indigent defense summary contempt is \$250.

### **Correctional Impact**

There is no readily available data with which to predict the correctional impact of HF 404 as amended and passed by the House. To the extent no-contact orders that are issued under the Bill are subsequently violated, there will be an impact on county jails. That impact is expected to be minimal.

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**Fiscal Impact**

Due to insufficient information, the fiscal impact of HF 404, as amended and passed by the House, cannot be determined. The State's cost for issuing a no-contact order, and providing counsel for the defendant upon violating the order, is approximately \$366, including the costs of court staff time and indigent defense.

The average county cost for holding one no-contact order violator in jail is approximately \$640. There will be an impact on local law enforcement for enforcing no-contact orders. That cost cannot be determined due to insufficient data.

**Sources**

Department of Human Rights, Criminal and Juvenile Justice Planning Division  
Judicial Branch  
State Public Defender's Office

\_\_\_\_\_  
/s/ Dennis C Prouty

March 25, 2003

SENATE FILE 404

S-3202

1 Amend Senate File 404 as follows:

2 1. Page 1, by striking lines 1 through 15, and  
3 inserting the following:

4 "Sec. \_\_\_\_ . Section 388.9, subsection 2, Code 2003,  
5 is amended by adding the following new unnumbered  
6 paragraph:

7 NEW UNNUMBERED PARAGRAPH. This subsection shall  
8 not apply to a financial audit or complete financial  
9 statement required pursuant to section 388.10."

10 2. Page 2, line 13, by striking the words  
11 "directly or indirectly,".

12 3. Page 3, by striking lines 7 through 12, and  
13 inserting the following: "form, whether temporary or  
14 permanent, or other arrangements by which there is  
15 recourse".

16 4. Page 3, lines 31 and 32, by striking the words  
17 "exceed the lesser of any" and inserting the  
18 following: "be greater than either the".

19 5. Page 3, line 33, by striking the words  
20 "initial construction" and inserting the following:  
21 "construction or upgrade".

22 6. By striking page 3, line 35 through page 4,  
23 line 3, and inserting the following: "capital."

24 7. Page 4, by striking lines 5 through 11, and  
25 inserting the following: "loan shall not be less than  
26 the rate for public obligations determined in  
27 accordance with section 74A.6, subsection 3, for  
28 obligations described in section 74A.3, subsection 2,  
29 which are to be paid from revenue derived from the  
30 operations of a publicly owned enterprise. Interest  
31 payments shall be".

32 8. Page 4, line 16, by striking the word  
33 "fifteen" and inserting the following: "twenty".

34 9. By striking page 4, line 28 through page 5,  
35 line 1, and inserting the following: "shall have its  
36 default reviewed in a public hearing before the city  
37 council. The city council may choose whether to cure  
38 the default, and shall adopt a resolution of intent on  
39 its proposal and call a public hearing. Notice of the  
40 time and place of the public hearing and the proposed  
41 action shall be published as provided in section  
42 362.3. The council, at the same or a subsequent  
43 meeting, may pass the resolution. Within thirty days,  
44 a petition may be filed with the clerk in the manner  
45 provided in section 362.4, requesting that the  
46 question be submitted to the registered voters of the  
47 city. Upon receipt of a petition requesting an  
48 election, the council shall direct the county  
49 commissioner of elections to call a special election  
50 on the question, or shall adopt a resolution

S-3202

1 abandoning its prior position, and indicating other  
2 intent, if any. Notice of an election shall be given  
3 by publication as required in section 49.53. An  
4 additional public hearing is required if the council  
5 chooses new proposed action. However, the default  
6 must be resolved in some manner by the council or the  
7 voters."

8 10. Page 6, by inserting after line 2, the  
9 following:

10 "g. This section shall not affect the ability of a  
11 telecommunications utility to utilize vehicles, tools,  
12 personnel, or office facilities of another utility,  
13 provided that the telecommunications utility pays for  
14 the pro rata actual cost of such vehicles, tools,  
15 personnel, or office facilities based on actual  
16 usage."

17 11. Page 6, by striking line 29, and inserting  
18 the following:

19 "d. Annually cause to be prepared a certificate of  
20 compliance with this section. If the annual financial  
21 statements of the municipal utility are audited, then  
22 the certificate of compliance shall be prepared by the  
23 auditor. If the annual financial statements of the  
24 municipal utility are not audited, then the  
25 certificate of compliance shall be prepared and signed  
26 by an officer of the municipal utility.

27 e. Nothing in this subsection shall prohibit the  
28 provision of discounted rates for telecommunications  
29 services for low-income, elderly, and disabled  
30 persons.

31 3. In the event that any third party believes that  
32 a municipality or municipal utility may not be in full  
33 compliance with this section, the third party may  
34 submit a written request to the auditor of state to  
35 audit the compliance of the municipality or municipal  
36 utility with this section. Upon receipt of written  
37 request, the auditor of state shall have full access  
38 to all of the municipality's and the municipal  
39 utility's records and shall conduct the audit timely,  
40 and issue a written report to both the municipality or  
41 municipal utility and to the third party requesting  
42 the audit. If the audit finds full compliance with  
43 all provisions of this section, the third party shall  
44 pay the reasonable actual costs of the audit. In all  
45 other circumstances, the municipality or municipal  
46 utility shall pay all actual costs of the audit.

47 ~~3.~~ 4. This section shall not prohibit the  
48 marketing or".

49 12. By renumbering, redesignating, and correcting  
50 internal references as necessary.

By BOB BRUNKHORST

SSB 1037

SENATE FILE Commerce  
BY (PROPOSED COMMITTEE ON  
COMMERCE BILL BY  
CHAIRPERSON ANGELO)

S  
SF / HF 404

Larson  
Brunkhorst  
McCoy

Passed Senate, Date \_\_\_\_\_ Passed House, Date \_\_\_\_\_  
Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_ Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_  
Approved \_\_\_\_\_

A BILL FOR

1 An Act relating to provision of telecommunications services by  
2 municipal utilities, including the burden of proof for  
3 disclosure of business information, and limiting cross-  
4 subsidization of telecommunications systems and services from  
5 other funding sources.

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

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1 Section 1. Section 388.9, subsection 2, Code 2003, is  
2 amended to read as follows:

3 2. a. Notwithstanding section 22.2, subsection 1, public  
4 records of a city utility or combined utility system, or a  
5 city enterprise or combined city enterprise as defined in  
6 section 384.80, which shall not be examined or copied as of  
7 right, include proprietary information, records of customer  
8 names and accounts, records associated with marketing or  
9 pricing strategies, preliminary working papers, and  
10 spreadsheet scenarios, ~~and cost data~~, if the competitive  
11 position of the city utility, combined utility system, city  
12 enterprise, or combined city enterprise would be harmed by  
13 public disclosure not required of a potential or actual  
14 competitor, and if no public purpose would be served by such  
15 disclosure. The city utility, combined utility system, city  
16 enterprise, or combined city enterprise shall have the burden  
17 of establishing that harm would result from public disclosure  
18 and that no public purpose would be served by disclosure in  
19 any court or administrative action regarding disclosure.

20 b. This subsection shall not apply to financial statements  
21 or records, whether audited or unaudited, showing or relating  
22 to the financial information as of any historical date or for  
23 any historical period which are public records available under  
24 the terms and conditions of chapter 22.

25 c. A public record not subject to examination or copying  
26 under this subsection shall be available for public  
27 examination and copying at that point in time when public  
28 disclosure would no longer harm the competitive position of  
29 the city utility, combined utility system, city enterprise, or  
30 combined city enterprise.

31 Sec. 2. Section 388.10, Code 2003, is amended to read as  
32 follows:

33 388.10 CITY OR MUNICIPAL UTILITY PROVIDING LOCAL-EXCHANGE  
34 TELECOMMUNICATIONS SERVICES.

35 1. a. A city providing or that owns or operates a

1 municipal utility providing ~~local-exchange-services-pursuant~~  
2 ~~to-chapter-476~~ any telecommunications service or the municipal  
3 utility shall not do, directly or indirectly, any of the  
4 following:

5 (1) Use general fund moneys ~~for-the-ongoing-support-or~~  
6 subsidy or other moneys derived from tax revenues, directly or  
7 indirectly, to finance or in any way to otherwise support  
8 either of the following:

9 (a) The establishment, construction, reconstruction,  
10 upgrade, maintenance, or operation of a telecommunications  
11 system.

12 (b) The provision of any telecommunications service.

13 (2) Provide any city or utility facilities, equipment, or  
14 services to provide a telecommunications systems system or  
15 services any telecommunications service at a cost for such  
16 facilities, equipment, or services which that is less than the  
17 reasonable cost of providing such city facilities, equipment,  
18 or services.

19 (3) Provide any other city service, other than a  
20 communications service, to a telecommunications customer at a  
21 cost which is less than would be paid by the same person  
22 receiving such other city service if the person was not a  
23 telecommunications customer.

24 (4) Use funds or revenue generated from electric, gas,  
25 water, sewage, or garbage services provided by the city ~~for~~  
26 ~~the-ongoing-support-of-that-portion-of-a-system-or-service~~  
27 used-to-provide-local-exchange-services or the utility,  
28 directly or indirectly, to finance or in any way to otherwise  
29 support either of the following:

30 (a) The establishment, construction, reconstruction,  
31 upgrade, maintenance, or operation of any telecommunications  
32 system.

33 (b) The provision of any telecommunications service.

34 b. For purposes of this section, "telecommunications  
35 unless the context otherwise requires:

1 (1) "Cost" of any facilities, equipment, services, or  
2 other goods or services shall include all attributable cost  
3 and expenses, whether direct or indirect, fixed or variable,  
4 including without limitation, a fair and equitable allocation  
5 of all of the following:

6 (a) Taxes.

7 (b) The costs of any necessary capital for the  
8 construction or acquisition of the item or the facilities by  
9 which the service is provided.

10 (c) Amortization of any capital that is required to be  
11 repaid.

12 (d) Depreciation.

13 (e) Amortization of capitalized costs.

14 (2) "Support" means to provide financial support in any  
15 form, whether temporary or permanent, including but not  
16 limited to transfers of money or other assets, purchases of  
17 securities, capital contributions or other investments, loans  
18 or other extensions of credit, leases, payment of money,  
19 guarantees, pledges, or hypothecations or property or  
20 indemnities or other arrangements by which there is recourse  
21 to the revenues or other assets of the city or municipal  
22 utility other than any revenues derived solely from the  
23 operations of a telecommunications service or assets of the  
24 related telecommunications system.

25 (3) "Telecommunications system" means ~~only-that-portion-of~~  
26 ~~a-system-or-facilities-which-is-used-to-provide-local-exchange~~  
27 ~~services~~ a system that provides any telecommunications  
28 service.

29 (4) "Telecommunications service" means the provision of  
30 any of the following services:

31 (a) Cable television service.

32 (b) Internet service.

33 (c) Local exchange telephone service.

34 (d) Long distance telephone service.

35 (e) Retail data transmission..

1 2. A city providing or that owns or operates a municipal  
2 utility providing ~~local-exchange-services-pursuant-to-chapter~~  
3 ~~476~~ telecommunications service, whether or not pursuant to  
4 chapter 476, or the municipal utility shall do the following:

5 a. Prepare and maintain records which record the full cost  
6 accounting of providing ~~local-exchange~~ telecommunications  
7 service. The records shall show the amount, and source, and  
8 cost of capital for initial construction or acquisition of the  
9 ~~local-exchange~~ telecommunications system or facilities. This  
10 section shall not prohibit a municipal utility from utilizing  
11 capital from any lawful source, provided that the reasonable  
12 cost of such capital is accounted for as a cost of providing  
13 the service and no violation of subsection 1, paragraph "a",  
14 subparagraph (1) or (4), would result.

15 b. Adopt rates for the provision of ~~local-exchange~~  
16 ~~services~~ telecommunications service that reflect the actual  
17 cost of providing ~~the-local-exchange~~ telecommunications  
18 service. However, this paragraph shall not prohibit the  
19 municipal utility from establishing market-based prices for  
20 competitive ~~local-exchange-services~~ telecommunications  
21 services, provided that no violation of subsection 1,  
22 paragraph "a", subparagraph (1) or (4), would result.

23 c. Be subject to all requirements of the city which that  
24 would apply to any other provider of ~~local-exchange~~  
25 telecommunications services in the same manner as such  
26 requirements would apply to such other provider.

27 3. This section shall not prohibit the marketing or  
28 bundling of other products or services, ~~in-addition-to-local~~  
29 ~~exchange~~ by the municipal utility as well as any  
30 telecommunications services. However, a city shall include on  
31 a billing statement sent to a person receiving services from  
32 the city, a separate charge for each individual service  
33 provided to the person, such as electricity, local exchange,  
34 or internet access. This subsection does not prohibit the  
35 city from also including on the billing statement a total

1 amount to be paid by the person.

2 Sec. 3. Section 427.1, subsection 2, Code 2003, is amended  
3 to read as follows:

4 2. MUNICIPAL AND MILITARY PROPERTY. The property of a  
5 county, township, city, school corporation, levee district,  
6 drainage district, or the Iowa national guard, when devoted to  
7 public use and not held for pecuniary profit, except property  
8 of a municipally owned electric utility held under joint  
9 ownership and property of an electric power facility financed  
10 under chapter 28F or 476A that shall be subject to taxation  
11 under chapter 437A and facilities of a municipal utility or a  
12 city that are used for the provision of ~~local-exchange~~  
13 ~~services-pursuant-to-chapter-4767-but-only-to-the-extent-such~~  
14 ~~facilities-are-used-to-provide-such-services,~~  
15 telecommunications services as defined in section 388.10 which  
16 shall be subject to taxation under chapter 433, except that  
17 section 433.11 shall not apply, and subject to taxation under  
18 chapter 441, as applicable. The exemption for property owned  
19 by a city or county also applies to property which is operated  
20 by a city or county as a library, art gallery or museum,  
21 conservatory, botanical garden or display, observatory or  
22 science museum, or as a location for holding athletic  
23 contests, sports or entertainment events, expositions,  
24 meetings or conventions, or leased from the city or county for  
25 any such purposes, or leased from the city or county by the  
26 Iowa national guard or by a federal agency for the benefit of  
27 the Iowa national guard when devoted for public use and not  
28 for pecuniary profit. Food and beverages may be served at the  
29 events or locations without affecting the exemptions, provided  
30 the city has approved the serving of food and beverages on the  
31 property if the property is owned by the city or the county  
32 has approved the serving of food and beverages on the property  
33 if the property is owned by the county.

34

EXPLANATION

35 This bill pertains to municipal utility systems, primarily

1 under Code chapter 388.

2 The bill amends Code section 388.9 to provide that certain  
3 competitive business information of a city utility or city  
4 enterprise may be withheld from public disclosure only after  
5 the city utility or enterprise establishes the burden that  
6 harm would result from public disclosure of the information,  
7 and that no public purpose would be served by the disclosure.  
8 Currently under the Code, no party bears the burden of proof.

9 The bill also amends Code section 388.10 to provide that a  
10 city utility is prohibited from using general fund tax  
11 revenues to maintain or operate telecommunications systems or  
12 services, and from using revenues generated from a utility  
13 service such as electric, gas, or water to pay for the  
14 maintenance or operation of telecommunications service. The  
15 bill also defines "cost", "support", "telecommunications  
16 service", and "telecommunications system".

17 The bill also changes language that requires a city that  
18 owns a municipal utility providing telecommunications services  
19 to perform certain activities, consistent with other changes  
20 in the bill.

21 The bill also amends Code section 427.1 to make similar  
22 language changes, and adds a reference to assessment and  
23 valuation of property pursuant to Code chapter 441.

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