

# Senate Study Bill 1037

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

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:  
7 TLSB 1757SC 80  
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1 1 Section 1. Section 388.9, subsection 2, Code 2003, is  
2 amended to read as follows:

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

1 20 b. This subsection shall not apply to financial statements  
1 21 or records, whether audited or unaudited, showing or relating  
1 22 to the financial information as of any historical date or for  
1 23 any historical period which are public records available under  
1 24 the terms and conditions of chapter 22.

1 25 c. A public record not subject to examination or copying  
1 26 under this subsection shall be available for public  
1 27 examination and copying at that point in time when public  
1 28 disclosure would no longer harm the competitive position of  
1 29 the city utility, combined utility system, city enterprise, or  
1 30 combined city enterprise.

1 31 Sec. 2. Section 388.10, Code 2003, is amended to read as  
1 32 follows:

1 33 388.10 CITY OR MUNICIPAL UTILITY PROVIDING LOCAL EXCHANGE  
1 34 TELECOMMUNICATIONS SERVICES.

1 35 1. a. A city providing or that owns or operates a  
2 1 municipal utility providing local exchange services pursuant  
2 2 to chapter 476 any telecommunications service or the municipal  
2 3 utility shall not do, directly or indirectly, any of the  
2 4 following:

2 5 (1) Use general fund moneys for the ongoing support or  
2 6 subsidy or other moneys derived from tax revenues, directly or  
2 7 indirectly, to finance or in any way to otherwise support  
2 8 either of the following:

2 9 (a) The establishment, construction, reconstruction,  
2 10 upgrade, maintenance, or operation of a telecommunications  
2 11 system.

2 12 (b) The provision of any telecommunications service.

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

2 19 (3) Provide any other city service, other than a

2 20 communications service, to a telecommunications customer at a  
2 21 cost which is less than would be paid by the same person  
2 22 receiving such other city service if the person was not a  
2 23 telecommunications customer.

2 24 (4) Use funds or revenue generated from electric, gas,  
2 25 water, sewage, or garbage services provided by the city ~~for~~  
2 26 ~~the ongoing support of that portion of a system or service~~  
2 27 ~~used to provide local exchange services or the utility,~~  
2 28 ~~directly or indirectly, to finance or in any way to otherwise~~  
2 29 ~~support either of the following:~~

2 30 (a) ~~The establishment, construction, reconstruction,~~  
2 31 ~~upgrade, maintenance, or operation of any telecommunications~~  
2 32 ~~system.~~

2 33 (b) ~~The provision of any telecommunications service.~~

2 34 b. For purposes of this section, ~~"telecommunications~~  
2 35 ~~unless the context otherwise requires:~~

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

3 6 (a) ~~Taxes.~~

3 7 (b) ~~The costs of any necessary capital for the~~  
3 8 ~~construction or acquisition of the item or the facilities by~~  
3 9 ~~which the service is provided.~~

3 10 (c) ~~Amortization of any capital that is required to be~~  
3 11 ~~repaid.~~

3 12 (d) ~~Depreciation.~~

3 13 (e) ~~Amortization of capitalized costs.~~

3 14 (2) ~~"Support" means to provide financial support in any~~  
3 15 ~~form, whether temporary or permanent, including but not~~  
3 16 ~~limited to transfers of money or other assets, purchases of~~  
3 17 ~~securities, capital contributions or other investments, loans~~  
3 18 ~~or other extensions of credit, leases, payment of money,~~  
3 19 ~~guarantees, pledges, or hypothecations or property or~~  
3 20 ~~indemnities or other arrangements by which there is recourse~~  
3 21 ~~to the revenues or other assets of the city or municipal~~  
3 22 ~~utility other than any revenues derived solely from the~~  
3 23 ~~operations of a telecommunications service or assets of the~~  
3 24 ~~related telecommunications system.~~

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

3 29 (4) ~~"Telecommunications service" means the provision of~~  
3 30 ~~any of the following services:~~

3 31 (a) ~~Cable television service.~~

3 32 (b) ~~Internet service.~~

3 33 (c) ~~Local exchange telephone service.~~

3 34 (d) ~~Long distance telephone service.~~

3 35 (e) ~~Retail data transmission.~~

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

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

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

4 23 c. ~~Be subject to all requirements of the city which that~~  
4 24 ~~would apply to any other provider of local exchange~~  
4 25 ~~telecommunications services in the same manner as such~~  
4 26 ~~requirements would apply to such other provider.~~

4 27 3. This section shall not prohibit the marketing or  
4 28 ~~bundling of other products or services, in addition to local~~  
4 29 ~~exchange by the municipal utility as well as any~~  
4 30 ~~telecommunications services. However, a city shall include on~~

4 31 a billing statement sent to a person receiving services from  
4 32 the city, a separate charge for each individual service  
4 33 provided to the person, such as electricity, local exchange,  
4 34 or internet access. This subsection does not prohibit the  
4 35 city from also including on the billing statement a total  
5 1 amount to be paid by the person.

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

5 4 2. MUNICIPAL AND MILITARY PROPERTY. The property of a  
5 5 county, township, city, school corporation, levee district,  
5 6 drainage district, or the Iowa national guard, when devoted to  
5 7 public use and not held for pecuniary profit, except property  
5 8 of a municipally owned electric utility held under joint  
5 9 ownership and property of an electric power facility financed  
5 10 under chapter 28F or 476A that shall be subject to taxation  
5 11 under chapter 437A and facilities of a municipal utility or a  
5 12 city that are used for the provision of local exchange

~~5 13 services pursuant to chapter 476, but only to the extent such~~  
~~5 14 facilities are used to provide such services,~~  
5 15 telecommunications services as defined in section 388.10 which  
5 16 shall be subject to taxation under chapter 433, except that  
5 17 section 433.11 shall not apply, and subject to taxation under  
5 18 chapter 441, as applicable. The exemption for property owned

5 19 by a city or county also applies to property which is operated  
5 20 by a city or county as a library, art gallery or museum,  
5 21 conservatory, botanical garden or display, observatory or  
5 22 science museum, or as a location for holding athletic  
5 23 contests, sports or entertainment events, expositions,  
5 24 meetings or conventions, or leased from the city or county for  
5 25 any such purposes, or leased from the city or county by the  
5 26 Iowa national guard or by a federal agency for the benefit of  
5 27 the Iowa national guard when devoted for public use and not  
5 28 for pecuniary profit. Food and beverages may be served at the  
5 29 events or locations without affecting the exemptions, provided  
5 30 the city has approved the serving of food and beverages on the  
5 31 property if the property is owned by the city or the county  
5 32 has approved the serving of food and beverages on the property  
5 33 if the property is owned by the county.

5 34 EXPLANATION

5 35 This bill pertains to municipal utility systems, primarily  
6 1 under Code chapter 388.

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

6 9 The bill also amends Code section 388.10 to provide that a  
6 10 city utility is prohibited from using general fund tax  
6 11 revenues to maintain or operate telecommunications systems or  
6 12 services, and from using revenues generated from a utility  
6 13 service such as electric, gas, or water to pay for the  
6 14 maintenance or operation of telecommunications service. The  
6 15 bill also defines "cost", "support", "telecommunications  
6 16 service", and "telecommunications system".

6 17 The bill also changes language that requires a city that  
6 18 owns a municipal utility providing telecommunications services  
6 19 to perform certain activities, consistent with other changes  
6 20 in the bill.

6 21 The bill also amends Code section 427.1 to make similar  
6 22 language changes, and adds a reference to assessment and  
6 23 valuation of property pursuant to Code chapter 441.

6 24 LSB 1757SC 80

6 25 jj/sh/8