

# Senate Study Bill 3285

SENATE FILE \_\_\_\_\_  
BY (PROPOSED COMMITTEE ON  
APPROPRIATIONS BILL BY  
CHAIRPERSON DVORSKY)

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

## A BILL FOR

1 An Act relating to energy independence initiatives, specifying  
2 procedures applicable to Iowa power fund applications,  
3 authorizing allocations from the fund, authorizing increased  
4 allocations for administrative costs, and providing an  
5 effective date and applicability provision.

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

7 TLSB 6604SC 82

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1 1 Section 1. Section 22.7, Code Supplement 2007, is amended  
1 2 by adding the following new subsection:  
1 3 NEW SUBSECTION. 60. Information possessed by the office  
1 4 of energy independence, the Iowa power fund board, or the due  
1 5 diligence committee associated with the office and the board,  
1 6 relating to a prospective applicant with which the office,  
1 7 board, or committee is currently negotiating, or an award  
1 8 recipient, to the extent authorized pursuant to section 469.6,  
1 9 subsection 6.

1 10 Sec. 2. Section 469.6, subsection 5, paragraph d, Code  
1 11 Supplement 2007, is amended to read as follows:

1 12 d. Direct moneys from the fund to be used to purchase  
1 13 private or public technical assistance needed to conduct due  
1 14 diligence activities, to facilitate a technical, scientific,  
1 15 or financial review relating to an application for financial  
1 16 assistance to the extent not financed by the applicant and if  
1 17 recommended by the due diligence committee, and to develop an  
1 18 Iowa energy independence plan, pursuant to section 469.10,  
1 19 subsection 3A. Other than applicant financing of a technical,  
1 20 scientific, or financial review of an application for  
1 21 financial assistance if agreed to by an applicant and the due  
1 22 diligence committee, an application fee shall not be imposed.

1 23 Sec. 3. Section 469.6, Code Supplement 2007, is amended by  
1 24 adding the following new subsection:

1 25 NEW SUBSECTION. 6. a. In establishing guidelines,  
1 26 procedures, and policies for the awarding of financial  
1 27 assistance, the board shall give due regard to the  
1 28 confidentiality of certain information disclosed during the  
1 29 financial assistance application process and the contract  
1 30 administration process.  
1 31 b. All information contained in an application for  
1 32 financial assistance submitted to the board shall remain  
1 33 confidential while the board is reviewing the application,  
1 34 processing requests for confidentiality, negotiating with the  
1 35 applicant, and preparing the application for consideration by  
2 1 the board. After the board has considered a request for  
2 2 confidentiality, any information not deemed confidential by  
2 3 the board shall be made publicly available. Any information  
2 4 deemed confidential by the board shall also be kept  
2 5 confidential by the office and board during administration of  
2 6 a contract executed pursuant to a successful application.  
2 7 c. The board shall consider the written request of an  
2 8 applicant or award recipient to keep confidential certain  
2 9 details of an application, a contract, or the materials  
2 10 submitted in support of an application or a contract. If the  
2 11 request includes a sufficient explanation as to why the public  
2 12 disclosure of such details would give an unfair advantage to  
2 13 competitors, the board may keep certain details confidential.  
2 14 If the board elects to keep certain details confidential, the  
2 15 board shall release only the nonconfidential details in

2 16 response to a request for records pursuant to chapter 22. If  
2 17 confidential details are withheld from a request for records  
2 18 pursuant to chapter 22, the board shall release an explanation  
2 19 of why the information was deemed confidential and a summary  
2 20 of the nature of the information withheld. In considering  
2 21 requests for confidential treatment, the board shall narrowly  
2 22 construe the provisions of this paragraph and paragraphs "a",  
2 23 "b", "d", and "e" in order to appropriately balance an  
2 24 applicant's need for confidentiality against the public's  
2 25 right to information about the board's activities.

2 26 d. If a request for confidentiality is denied by the  
2 27 board, an applicant may withdraw an application and any  
2 28 supporting materials, and the board shall not retain any  
2 29 copies of the application. Upon notice that an application  
2 30 has been withdrawn, the board shall not release a copy in  
2 31 response to a request for records pursuant to chapter 22.

2 32 e. The board shall adopt by rule a process for considering  
2 33 requests to keep information confidential pursuant to this  
2 34 paragraph and paragraphs "a" through "d". The board may adopt  
2 35 emergency rules pursuant to chapter 17A. The rules shall  
3 1 include a reasonable period of time for keeping information  
3 2 confidential. At the end of such period of time, the board  
3 3 may reevaluate its decision to keep information confidential.  
3 4 When reevaluating a decision to keep information confidential,  
3 5 the board shall use the same standard used to make the initial  
3 6 decision. The rules shall also include criteria for guiding  
3 7 the board's decisions about the confidential treatment of  
3 8 applicant information. The criteria may include, but are not  
3 9 limited to the following:

3 10 (1) The nature and extent of competition in the  
3 11 applicant's industry sector.

3 12 (2) The likelihood of adverse financial impact to the  
3 13 applicant if the information were to be released.

3 14 (3) The risk that the applicant would locate in another  
3 15 state if the request is denied.

3 16 (4) Any other factor the board reasonably considers  
3 17 relevant.

3 18 Sec. 4. Section 469.10, subsection 1, Code Supplement  
3 19 2007, is amended to read as follows:

3 20 1. There is appropriated from the general fund of the  
3 21 state to the office of energy independence for each fiscal  
3 22 year of the fiscal period beginning July 1, 2008, and ending  
3 23 June 30, 2011, the sum of twenty-five million dollars to be  
3 24 used for awarding grants and making loans from the Iowa power  
3 25 fund, and for all other purposes specified in and consistent  
3 26 with this subchapter.

3 27 Sec. 5. Section 469.10, subsection 2, Code Supplement  
3 28 2007, is amended to read as follows:

3 29 2. Of the moneys appropriated to the office and deposited  
3 30 in the fund, the office shall utilize up to ~~one and~~  
3 31 ~~five-tenths~~ five percent of the amount appropriated from the  
3 32 fund for a fiscal year for administrative costs. From the  
3 33 funds available for administrative costs, the office shall not  
3 34 employ more than four full-time equivalent positions.

3 35 Sec. 6. Section 469.10, Code Supplement 2007, is amended  
4 1 by adding the following new subsection:

4 2 NEW SUBSECTION. 3A. Of the moneys appropriated to the  
4 3 office and deposited in the fund, the board may make  
4 4 allocations for the purchase of private or public technical  
4 5 assistance needed to conduct due diligence activities, to  
4 6 facilitate a technical, scientific, or financial review  
4 7 relating to an application for financial assistance to the  
4 8 extent not financed by the applicant and if recommended by the  
4 9 due diligence committee, and to develop an Iowa energy  
4 10 independence plan, in amounts and in instances as approved by  
4 11 the due diligence committee.

4 12 Sec. 7. 2007 Iowa Acts, chapter 209, section 2, is amended  
4 13 to read as follows:

4 14 SEC. 2. IOWA POWER FUND. There is appropriated from the  
4 15 general fund of the state to the office of energy  
4 16 independence, if enacted by 2007 Iowa Acts, House File 918, or  
4 17 its successor, for the fiscal year beginning July 1, 2006, and  
4 18 ending June 30, 2007, the following amount, or so much thereof  
4 19 as is necessary, to be used for the purposes designated:

4 20 For deposit in the Iowa power fund, if enacted by 2007 Iowa  
4 21 Acts, House File 918, or its successor, to be used for  
4 22 awarding grants and making loans from the Iowa power fund, and  
4 23 for all other purposes specified in and consistent with the  
4 24 provisions of House File 918, or its successor:

4 25 ..... \$ 24,670,000

4 26 1. Of the moneys appropriated to the office and deposited

4 27 in the fund, the office shall utilize up to one and  
4 28 five-tenths percent of the amount appropriated from the fund  
4 29 for administrative purposes.

4 30 2. Of the moneys appropriated to the office and deposited  
4 31 in the fund, there shall be allocated two million five hundred  
4 32 thousand dollars to the department of economic development for  
4 33 deposit into the workforce training and economic development  
4 34 funds of the community colleges created pursuant to section  
4 35 260C.18A. Of the funds so deposited into the workforce  
5 1 training and economic development funds of the community  
5 2 colleges, two million five hundred thousand dollars shall be  
5 3 used each year in the development and expansion of energy  
5 4 industry areas and for the department's north American  
5 5 industrial classification system for targeted industry areas  
5 6 established pursuant to section 260C.18A.

5 7 2A. Of the moneys appropriated to the office and deposited  
5 8 in the fund, the board may allocate moneys for the purchase of  
5 9 private or public technical assistance needed to conduct due  
5 10 diligence activities, to facilitate a technical, scientific,  
5 11 or financial review relating to an application for financial  
5 12 assistance to the extent not financed by the applicant and if  
5 13 recommended by the due diligence committee, and to develop an  
5 14 Iowa energy independence plan.

5 15 3. Notwithstanding section 8.33, amounts appropriated  
5 16 pursuant to this section shall not revert but shall remain  
5 17 available for the purposes designated for the following fiscal  
5 18 year. Notwithstanding section 12C.7, subsection 2, interest  
5 19 or earnings on moneys in the funds shall be credited to the  
5 20 fund.

5 21 Sec. 8. APPLICABILITY. The section of this Act amending  
5 22 section 22.7, relating to an exception to the open records  
5 23 law, and enacting section 469.6, subsection 6, relating to  
5 24 board determination of confidentiality upon a request for  
5 25 records pursuant to chapter 22, shall apply to requests in  
5 26 relation to applications that are in process on the effective  
5 27 date of this Act.

5 28 Sec. 9. EFFECTIVE DATE. This Act, being deemed of  
5 29 immediate importance, takes effect upon enactment.

#### 5 30 EXPLANATION

5 31 This bill relates to energy independence initiatives,  
5 32 specifying procedures applicable to applications for  
5 33 distributions from the Iowa power fund, and modifying  
5 34 provisions regarding authorized allocations from the fund.

5 35 The bill provides with reference to the duties of the Iowa  
6 1 power fund board that the board may direct moneys from the  
6 2 fund to facilitate a technical, scientific, or financial  
6 3 review relating to an application to the extent that such a  
6 4 review is not financed by an applicant and if utilizing the  
6 5 funds for this purpose is recommended by the due diligence  
6 6 committee. The bill states that beyond applicant financing of  
6 7 such a review if agreed to by an applicant and the board, no  
6 8 application fee for fund distribution applications will be  
6 9 imposed. Utilization of fund moneys for this purpose,  
6 10 together with currently authorized expenditures by the board  
6 11 for the purchase of private or public technical assistance  
6 12 needed to conduct due diligence activities and to develop an  
6 13 Iowa energy independence plan, is added as an authorized  
6 14 allocation from amounts appropriated to the fund pursuant to  
6 15 Code section 469.10. More generally, the bill provides that  
6 16 allocations of appropriated amounts may be made for all  
6 17 purposes specified in and consistent with the subchapter of  
6 18 the Code relating to the office of energy independence, the  
6 19 power fund board, the due diligence committee, the power fund,  
6 20 and related provisions.

6 21 The bill accomplishes the foregoing by amending Code  
6 22 section 469.6, relating to the duties of the Iowa power fund  
6 23 board, by amending Code section 469.10, subsection 1,  
6 24 regarding appropriations for the fiscal period beginning July  
6 25 1, 2008, and ending June 30, 2011, and amending the 2007 Iowa  
6 26 Acts for the one-year appropriation beginning July 1, 2006,  
6 27 and ending June 30, 2007.

6 28 The bill also provides an exception from open records law  
6 29 provisions of Code chapter 22, for information possessed by  
6 30 the office of energy independence, the Iowa power fund board,  
6 31 and the due diligence committee associated with the office and  
6 32 the board relating to a prospective applicant with which the  
6 33 office, board, or committee is currently negotiating, or an  
6 34 award recipient, to the extent authorized by the board. In  
6 35 connection with this exception, the bill provides that all  
7 1 information contained in an application for financial  
7 2 assistance submitted to the board shall remain confidential

7 3 while the board is reviewing an application, processing  
7 4 confidentiality requests, negotiating with an applicant, and  
7 5 preparing an application for consideration. The bill further  
7 6 provides that the board shall consider a written request by an  
7 7 applicant or award recipient to keep certain details of an  
7 8 application, contract, or supporting materials confidential,  
7 9 and may honor that request if convinced that public disclosure  
7 10 may give an unfair advantage to competitors. In that event,  
7 11 the board will only make publicly available information not  
7 12 deemed confidential by the board, and shall release an  
7 13 explanation of why certain information is deemed confidential  
7 14 and a summary of the nature of the withheld information. If a  
7 15 request for confidentiality is denied, an applicant may  
7 16 withdraw an application and supporting materials, and the  
7 17 board shall not retain a copy or release any material in  
7 18 response to an open records request. The bill directs the  
7 19 board by rule to develop a process for considering  
7 20 confidentiality requests, confers emergency rulemaking  
7 21 authority on the board, and requires the board to determine a  
7 22 reasonable time frame for maintaining the confidential status  
7 23 of materials deemed such, after which the board may reevaluate  
7 24 the determination of confidentiality. The bill also specifies  
7 25 criteria the board may use in making confidentiality  
7 26 determinations.

7 27 Additionally, the bill increases the amount the office is  
7 28 authorized to utilize for administrative costs from amounts  
7 29 appropriated to the fund for a fiscal year from 1.5 percent to  
7 30 5 percent.

7 31 The bill takes effect upon enactment.

7 32 LSB 6604SC 82

7 33 rn/nh/8