House File 2405 - Introduced

HOUSE FILE 2405
BY COMMITTEE ON COMMERCE

(SUCCESSOR TO HSB 628)

A BILL FOR

- 1 An Act relating to the confidentiality of information disclosed
- 2 pursuant to applications for broadband technology project
- 3 grants, and projects undertaken pursuant thereto, and
- 4 including effective date and applicability provisions.
- 5 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

- 1 Section 1. 2009 Iowa Acts, chapter 173, section 13,
- 2 subsection 5, is amended by adding the following new paragraph:
- 3 NEW PARAGRAPH. e. (1) In establishing the competitive
- 4 process as provided in paragraph c, subparagraph (2), the
- 5 governance board shall give due regard to the confidentiality
- 6 of certain information disclosed during the application process
- 7 and completion of the project for which funding is disbursed.
- 8 (2) All information contained in an application for a grant
- 9 submitted to the governance board shall remain confidential
- 10 while the governance board is engaged in any of the following:
- 11 (a) Reviewing the application.
- 12 (b) Processing a request for confidentiality.
- 13 (c) Negotiating with the applicant.
- 14 (d) Preparing the application for consideration by the
- 15 governance board.
- 16 (3) The governance board may release certain information
- 17 in an application to a third party for technical review. If
- 18 the governance board releases such information to a third
- 19 party, the governance board shall ensure that the third party
- 20 protects the information from public disclosure. After the
- 21 governance board has considered a request for confidentiality,
- 22 any information not deemed confidential by the governance
- 23 board shall be made publicly available. Any information
- 24 deemed confidential by the governance board shall also be kept
- 25 confidential during and following the completion of the project
- 26 for which funding was disbursed by the governance board.
- 27 (4) The governance board shall consider the written request
- 28 of an applicant or grant recipient to keep confidential
- 29 certain details of an application, a project, or the materials
- 30 submitted in support of an application or project. If the
- 31 request includes a sufficient explanation as to why public
- 32 disclosure of such details would give an unfair advantage to
- 33 competitors, the governance board shall keep such details
- 34 confidential. If the governance board elects to keep certain
- 35 details confidential, the governance board shall release only

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- 1 the nonconfidential details in response to a request for
- 2 records pursuant to chapter 22. If confidential details are
- 3 withheld from a request for records pursuant to chapter 22,
- 4 the governance board shall release an explanation of why the
- 5 information was deemed confidential and a summary of the nature
- 6 of the information withheld and the reasons for withholding
- 7 it. In considering requests for confidential treatment, the
- 8 governance board shall narrowly construe the provisions of this
- 9 subsection in order to appropriately balance an applicant's
- 10 need for confidentiality against the public's right to
- 11 information about the governance board's activities.
- 12 (5) If a request for confidentiality is denied by the
- 13 governance board, an applicant may withdraw an application and
- 14 any supporting materials, and the governance board shall not
- 15 retain any copies of the application or supporting materials.
- 16 Upon notice that an application has been withdrawn, the
- 17 governance board shall not release a copy of the application
- 18 or of any supporting materials in response to a request for
- 19 records pursuant to chapter 22.
- 20 (6) Rules shall be adopted by the telecommunications and
- 21 technology commission, in consultation with the utilities board
- 22 and the economic development board, establishing a process for
- 23 considering requests to keep information confidential pursuant
- 24 to this subsection. The commission may adopt emergency
- 25 rules pursuant to chapter 17A to implement this subsection.
- 26 The rules shall include criteria for guiding the governance
- 27 board's decisions about the confidential treatment of applicant
- 28 information. The criteria may include but are not limited to
- 29 the following:
- 30 (a) The nature and extent of competition in the applicant's
- 31 industry sector or service territory.
- 32 (b) The likelihood of adverse financial impact to the
- 33 applicant if the information were to be released.
- 34 (c) Any other factor the governance board reasonably
- 35 considers relevant.

Sec. 2. APPLICABILITY. This Act shall apply to requests
for confidentiality submitted to the board on or after the
defective date of this Act.
Sec. 3. EFFECTIVE UPON ENACTMENT. This Act, being deemed of
immediate importance, takes effect upon enactment.
EXPLANATION
This bill relates to the confidentiality of information
included in applications for broadband technology project
grants, and projects undertaken pursuant thereto. The grants

10 were established and funded in legislation enacted during the

11 2009 Legislative Session of the general assembly. 12 The bill provides that all information contained in a 13 broadband technology grant application and submitted to the 14 governance board established to administer such grants shall 15 remain confidential while the board reviews the application, 16 processes a request for confidentiality, negotiates with the 17 applicant, and prepares the application for consideration. 18 bill authorizes the board to release certain information in the 19 application to a third party for technical review, provided the 20 board ensures that the third party protects the information 21 from public disclosure. After the board has considered 22 a request for confidentiality, the bill provides that any 23 information not deemed confidential shall be made publicly 24 available, and that any information deemed confidential shall 25 remain so during and following the completion of the project. 26 The bill states that the board shall consider the written 27 request of an applicant or grant recipient to keep confidential 28 certain details of an application, a project, or the materials 29 submitted in support thereof. The bill provides that if the 30 request includes a sufficient explanation as to why public 31 disclosure of such details would give an unfair advantage 32 to competitors, confidentiality will be conferred, and 33 only nonconfidential details will be released in response 34 to a request for records pursuant to Code chapter 22.

35 confidential details are withheld from a request for records,

- 1 the bill provides that the board shall release a summary of the
- 2 nature of the information withheld and a statement explaining
- 3 the reasons the information was deemed confidential. In
- 4 considering requests for confidentiality, the bill directs
- 5 the board to narrowly construe the bill's provisions to
- 6 appropriately balance an applicant's need for confidentiality
- 7 against the public's right to information.
- 8 The bill allows an applicant to withdraw an application and
- 9 supporting materials in the event a request for confidentiality
- 10 is denied, and prohibits the board from retaining any copies of
- 11 the application or supporting materials. Upon notice that an
- 12 application has been withdrawn, the bill prohibits the board
- 13 from releasing a copy of the application or of any supporting
- 14 materials in response to a request for records pursuant to Code
- 15 chapter 22.
- 16 The board directs the commission, in consultation with
- 17 the Iowa utilities board and the economic development
- 18 board, to adopt administrative rules regarding requests for
- 19 confidentiality, which shall include criteria for guiding the
- 20 governance board's decisions about the confidentiality of
- 21 applicant information.
- 22 The bill is applicable to requests for confidentiality in
- 23 relation to applications that have been submitted to the board
- 24 and are in process on the bill's effective date. The bill
- 25 takes effect upon enactment.