## Senate Study Bill 3153 - Introduced

SENATE/HOUSE FILE

BY (PROPOSED IOWA

TELECOMMUNICATIONS AND

TECHNOLOGY COMMISSION BILL)

## 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:

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- 1 Section 1. 2009 Iowa Acts, chapter 173, section 13,
- 2 subsection 5, is amended by adding the following new paragraph:
- 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.

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- 1 Sec. 2. APPLICABILITY. This Act shall apply to requests
- 2 for confidentiality submitted to the board on or after the
- 3 effective date of this Act.
- 4 Sec. 3. EFFECTIVE UPON ENACTMENT. This Act, being deemed of
- 5 immediate importance, takes effect upon enactment.
- 6 EXPLANATION
- 7 This bill relates to the confidentiality of information
- 8 included in applications for broadband technology project
- 9 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. The
- 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. If
- 35 confidential details are withheld from a request for records,

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- 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.