

Senate Study Bill 1146 - Introduced

SENATE FILE _____
BY (PROPOSED COMMITTEE ON
AGRICULTURE BILL BY
CHAIRPERSON ZUMBACH)

A BILL FOR

1 An Act providing for the creation of regional water authorities
2 and regional water authority boards to assume the powers,
3 duties, assets, and liabilities of certain water utilities,
4 and including effective date provisions.
5 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. NEW SECTION. 388.12 Water utility discontinuance
2 — transfers and transition provisions.

3 1. On or before January 1, 2018, the board of a water
4 utility shall be discontinued and its powers and duties, and
5 the assets and liabilities of the water utility, shall be
6 separately transferred to each city in which the utility's main
7 water production is located that has a population greater than
8 thirty-nine thousand, as determined by the most recent federal
9 decennial census. The board of the water utility shall by
10 resolution provide for the equitable transfer of the assets,
11 and equitable transfer and assumption of the liabilities and
12 powers and duties, under this subsection to allow for the
13 continued provision of water services to customers. Each
14 transfer shall be completed upon the agreement, by resolution,
15 of each city council for each city receiving a transfer and
16 assuming liabilities and powers and duties as provided in this
17 section.

18 2. a. If a city council under subsection 1 cannot agree
19 on such transfers and assumptions with the associated water
20 utility board, the matters on which they differ shall be
21 decided by disinterested arbitrators, one selected by the
22 board, one selected by the city council failing to agree to the
23 transfers and assumptions, and one selected by the mayor of the
24 city who appointed the members of the board.

25 b. The decision of the arbitrators shall be made in writing
26 and filed with the board, and a party to the proceedings may
27 appeal the decision to the district court by serving notice
28 on the board within twenty days after the decision is filed.
29 The appeal shall be tried in equity and a decree entered
30 determining the entire matter.

31 3. Following the discontinuance of the board, the city
32 manager employed by the city council that set the compensation
33 of the members of the board shall designate the administrator
34 of a department or administrative division of that city to be
35 the manager of the water supply system until the establishment

1 or designation of a regional water authority pursuant to
2 section 389.6, subject to the approval of the city council.
3 The administrator designated under this subsection shall not be
4 considered a civil service employee under section 400.17 and
5 shall serve under the control and direction of the city manager
6 of that city. The administrator may be terminated at will,
7 subject to any contract in place on the effective date of this
8 Act.

9 4. On and after the effective date of this Act, a water
10 utility and any city receiving powers, duties, assets, or
11 liabilities under this section shall not, related to the water
12 supply system:

13 a. Lease, sell, or otherwise dispose of any real property or
14 acquire any new real property or debt obligations.

15 b. Issue revenue bonds or assume any other form of
16 obligations payable from the revenues of the water utility.

17 c. Expend moneys for any purpose other than ongoing
18 operations or capital expenditures below the amount of one
19 hundred thousand dollars, unless an emergency affecting public
20 safety requires an emergency capital repair, in which case a
21 vote of at least three-fourths of all the members of the city
22 council shall be required to approve the emergency expenditure.

23 5. On and after the effective date of this Act, a water
24 utility and any city receiving powers, duties, assets, or
25 liabilities under this section are prohibited from expending
26 any moneys or staff time to plan, design, or construct any new
27 water plant or other water-producing facility.

28 6. For the purposes of this section, "*water utility*" means
29 a city utility that provides water services, that is located in
30 a federally designated standard metropolitan statistical area
31 that has a population greater than five hundred thousand, as
32 shown by the most recent federal decennial census, and that is
33 located entirely within the state.

34 Sec. 2. Section 389.1, Code 2017, is amended to read as
35 follows:

1 **389.1 Definitions.**

2 As used in this chapter subchapter, unless the context
3 otherwise requires:

4 1. "*Joint water utility*" means a water utility established
5 by two or more cities which owns or operates or proposes to
6 finance the purchase or construction of all or part of a
7 water supply system or the capacity or use of a water supply
8 system pursuant to this chapter subchapter. A water supply
9 system includes all land, easements, rights-of-way, fixtures,
10 equipment, accessories, improvements, appurtenances, and other
11 property necessary or useful for the operation of the system.

12 2. "*Joint water utility board*" means the board of trustees
13 established to operate a joint water utility.

14 3. "*Project*" means any works or facilities useful or
15 necessary for the operation of a joint water utility.

16 Sec. 3. Section 389.3, subsection 1, Code 2017, is amended
17 to read as follows:

18 1. Upon adoption of a proposal to establish a joint water
19 utility, the member cities shall establish a joint water
20 utility board, consisting of at least five members. The
21 mayors of the participating cities shall appoint the members,
22 subject to the approval of the city councils, and at least one
23 member shall be appointed from each participating city. The
24 board shall be responsible for the planning and operation of a
25 joint water utility, subject to the provisions of this ~~chapter~~
26 subchapter.

27 Sec. 4. Section 389.5, Code 2017, is amended to read as
28 follows:

29 **389.5 Construction.**

30 This ~~chapter~~ subchapter being necessary for the public
31 health, public safety, and general welfare, shall be liberally
32 construed to effectuate its purposes. This ~~chapter~~ subchapter
33 shall be construed as providing a separate and independent
34 method for accomplishing its purposes, and shall take
35 precedence over any contrary provision of the law.

1 Sec. 5. NEW SECTION. 389.6 Regional water authority —
2 established.

3 1. On or before January 1, 2020, each receiving city
4 shall enter into an agreement under chapter 28E, approved by
5 the city council of each city, to establish or designate a
6 regional water authority that shall provide water services, as
7 previously provided by the discontinued water utilities.

8 2. a. The agreement under this section shall provide
9 for the creation of a regional water authority board. The
10 agreement shall provide for staggered six-year terms of the
11 board's members, and provide the board with the authority to
12 set the compensation for the board members by resolution.

13 b. The agreement shall provide that the members of the
14 regional water authority board shall be appointed as the
15 negotiated chapter 28E agreement provides, utilizing the
16 following criteria for determining the composition and
17 proportional representation of each receiving city on the
18 board:

19 (1) Population of each receiving city.

20 (2) Total value of water production facilities located
21 within a receiving city, if any.

22 (3) Total value of water distribution facilities located
23 within a receiving city's water supply system.

24 (4) If the receiving cities cannot agree on the composition
25 of and the proportional representation on the regional water
26 authority board, the matters on which they differ shall be
27 decided by disinterested arbitrators utilizing the criteria
28 provided in subparagraphs (1) through (3), one selected by each
29 of the receiving cities and an additional arbitrator selected
30 by those arbitrators if the number of arbitrators selected by
31 receiving cities results in an even number of arbitrators.

32 c. The decision of the arbitrators shall be made in writing
33 and filed with each receiving city, and a receiving city
34 subject to the proceedings may appeal the decision to the
35 district court by serving notice on the other receiving cities

1 within twenty days after the decision is filed. The appeal
2 shall be tried in equity and a decree entered determining the
3 entire matter.

4 *d.* Population determinations under this subsection shall be
5 as determined by the most recent federal decennial census.

6 3. The agreement shall provide for the transfer of assets
7 and liabilities from each city under subsection 1 to the
8 regional water authority.

9 4. The agreement shall provide the regional water authority
10 board with the same powers and duties of a city utility under
11 chapter 388, and may provide the regional water authority board
12 with additional powers and duties.

13 5. The agreement shall provide that other cities that are
14 not receiving cities may join the regional water authority
15 under terms specified in the agreement creating the regional
16 water authority, with proportional representation based
17 upon the criteria identified in section 389.6, subsection 2,
18 paragraph "b".

19 6. A regional water authority shall not expend any moneys or
20 staff time to plan, design, or construct any new water plant or
21 other water-producing facility before July 1, 2018.

22 7. For the purposes of this section, "receiving city" means
23 a city receiving powers and duties and assuming assets and
24 liabilities under section 388.12.

25 Sec. 6. CODE EDITOR. The Code editor shall codify sections
26 389.1 through 389.5 as subchapter I, and section 389.6 as
27 enacted by this Act as subchapter II of chapter 389.

28 Sec. 7. EFFECTIVE UPON ENACTMENT. This Act, being deemed of
29 immediate importance, takes effect upon enactment.

30 EXPLANATION

31 The inclusion of this explanation does not constitute agreement with
32 the explanation's substance by the members of the general assembly.

33 This bill provides for the creation of a regional water
34 authority and regional water authority board to assume the
35 transfer of powers, duties, assets, and liabilities of a water

1 utility.

2 Under the bill, the boards of certain city water utilities
3 are discontinued. The only utilities impacted under the bill
4 are those that provide water services and that are located
5 in a federally designated standard metropolitan statistical
6 area located entirely within the state and have populations
7 greater than 500,000. The bill requires that the water
8 utility's powers, duties, assets, and liabilities be separately
9 transferred to each city in which the utility's main water
10 production is located that has a population greater than
11 39,000.

12 The board of the water utility is required, by resolution, to
13 provide for the equitable transfer of the assets, and equitable
14 transfer and assumption of the liabilities and powers and
15 duties, of the utility to allow for the continued provision of
16 water services to customers. The transfers are completed upon
17 the agreement, by resolution, of each city council receiving
18 assets, liabilities, or responsibilities under the bill. The
19 bill requires that if a city council cannot agree on such
20 distributions and assumptions with the associated board, the
21 matters on which they differ must be decided by disinterested
22 arbitrators, one selected by the board of the water utility,
23 one selected by the city council that fails to agree to the
24 transfers and assumptions, and one selected by the mayor of the
25 city who appointed the members of the board. The bill provides
26 that the decision of the arbitrators shall be made in writing
27 and filed with the board, and allows a party to the proceedings
28 to appeal the decision to the district court, with the appeal
29 tried in equity and a decree entered determining the entire
30 matter.

31 The bill requires that the city manager employed by the
32 city council that set the compensation of the members of the
33 discontinued water utility designate the administrator of a
34 department or administrative division of that city, meeting
35 certain other qualifications, to be the manager of the water

1 supply system until the establishment or designation of a
2 regional water authority and subject to the approval of the
3 city council.

4 The bill prohibits a water utility and any city receiving
5 powers, duties, assets, or liabilities from the water utility
6 from expending any moneys or staff time to plan, design,
7 or construct any new water plant or other water-producing
8 facility. The bill also prohibits a water utility and certain
9 cities from the following activities related to the water
10 supply system:

11 1. Leasing, selling, or otherwise disposing of any
12 real property or acquiring any new real property or debt
13 obligations.

14 2. Issuing revenue bonds or assuming any other form of
15 obligations payable from the revenues of the water utility.

16 3. Expending moneys for any purpose other than ongoing
17 operations except as otherwise provided in the bill.

18 The bill provides a definition for the term "receiving
19 city", which includes a city receiving powers, duties, assets,
20 or liabilities from the discontinued water utility. The
21 bill requires each receiving city to enter into an agreement
22 under Code chapter 28E before January 1, 2020, to establish
23 or designate a regional water authority that shall provide
24 water services, as previously provided by the discontinued
25 water utility. The Code chapter 28E agreement is required to
26 provide for the creation of a regional water authority board
27 and staggered six-year terms for the board's members. The bill
28 also requires that the Code chapter 28E agreement provide the
29 board with the authority to set the compensation for the board
30 members.

31 The bill requires the agreement to contain provisions for
32 the appointment of members of the regional water authority
33 board. The agreement must contain provisions for the
34 composition of the regional water authority board and for
35 the proportional representation of each receiving city, as

1 specified in the bill. The bill also establishes arbitration
2 and judicial review procedures in the event that receiving
3 cities cannot agree on the composition of and proportional
4 representation on the regional water authority board.

5 The bill requires that the Code chapter 28E agreement
6 provide for the transfer of assets and liabilities of the water
7 supply system to the regional water authority and provide the
8 regional water authority board with the same powers and duties
9 of a city utility under Code chapter 388. The bill authorizes
10 the agreement to provide the regional water authority board
11 with additional powers and duties. The bill also requires
12 that the agreement provide a means for other cities to join
13 the regional water authority, and requires proportional
14 representation of such cities on the regional water authority
15 board.

16 The bill also prohibits a regional water authority from
17 expending any moneys or staff time to plan, design, or
18 construct any new water plant or other water-producing facility
19 before July 1, 2018.

20 All population determinations under the bill are required to
21 be based upon the most recent federal decennial census.

22 The bill takes effect upon enactment.