

House File 2307 - Reprinted

HOUSE FILE 2307
BY COMMITTEE ON COMMERCE

(SUCCESSOR TO HSB 530)

(As Amended and Passed by the House March 6, 2018)

A BILL FOR

1 An Act relating to the sale or acquisition of certain
2 utilities.
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. NEW SECTION. 388.2A Procedure for disposal of
2 city utility by sale.

3 1. A proposal to discontinue a city utility and dispose of
4 such utility by sale, whether upon the council's own motion
5 or upon the receipt of a valid petition pursuant to section
6 388.2, subsection 1, paragraph "b", shall not be submitted
7 to the voters of the city pursuant to section 388.2 at any
8 election unless the governing body of the city utility meets
9 the requirements of this section.

10 2. a. (1) The governing body of the city utility shall
11 determine the fair market value of the utility system after
12 obtaining two appraisals of the system's fair market value.
13 One appraisal shall be obtained from an independent appraiser
14 selected by the governing body, and the other appraisal shall
15 be obtained from an independent appraiser approved by the
16 Iowa utilities board. Both appraisals shall be conducted
17 in conformance with the uniform standards of professional
18 appraisal practice or substantially similar standards.

19 (2) Any appraisal obtained pursuant to this paragraph
20 shall consider the depreciated value of the capital assets
21 to be sold, the loss of future revenues to the city utility,
22 including the right to generate surpluses, and the cost of any
23 capital improvements reasonably necessary to provide adequate
24 service and facilities to the city utility's customers.

25 b. After considering the appraisals obtained pursuant to
26 paragraph "a", the governing body shall establish the city
27 utility's fair market value. The fair market value shall be
28 the greater of any of the following:

29 (1) The average of the two appraisals obtained pursuant to
30 paragraph "a".

31 (2) The depreciated value of the capital assets to be sold.

32 (3) The amount necessary to retire all of the city's
33 outstanding revenue and general obligations issued for purposes
34 of the city utility.

35 c. The governing body's determination of a city utility's

1 fair market value pursuant to this subsection shall not be
2 dispositive of the city utility's system price, which shall be
3 subject to negotiation by the governing body.

4 *d.* The governing body shall prepare an inventory of the
5 city utility's real and personal property, and a statement of
6 net position or balance sheet of the city utility, including
7 all assets, liabilities, outstanding revenue and general
8 obligations used to finance the city utility system.

9 *e.* The governing body shall prepare a financial information
10 statement of the city utility that includes current and
11 projected rate schedules for the next five fiscal years, as
12 well as the five most recent fiscal year revenue statements, if
13 such statements exist, and a projection of the city utility's
14 revenue statements for the next five fiscal years.

15 *f.* The governing body shall consider alternatives to
16 disposing of the city utility system by sale, including
17 entering into an agreement pursuant to chapter 28E, or into a
18 finance agreement, purchase agreement, or lease agreement with
19 another entity described in section 476.1, subsection 5.

20 *g.* (1) The governing body shall make available on its
21 internet site, at least sixty days prior to submitting a
22 proposal for election pursuant to section 388.2, a copy of each
23 item listed in paragraphs "a" through "f" of this subsection.

24 (2) If, at the time of posting information pursuant to
25 subparagraph (1), the governing body has received any offers or
26 appraisals of fair market value from any prospective purchasers
27 of the city utility system in connection with a proposal to
28 discontinue the city utility and dispose of such utility by
29 sale, then the governing body shall make available on its
30 internet site each offer and appraisal then in existence.
31 Proprietary information of a rate-regulated public utility
32 under chapter 476 that is exempt from disclosure pursuant to
33 section 22.7 may be withheld from disclosure on the governing
34 body's internet site. The governing body may continue to
35 receive new or revised offers or appraisals thereafter.

1 (3) The governing body shall make a good-faith effort to
2 provide, by regular mail to each property owner of the city and
3 each ratepayer of the city utility, a notice of the proposal to
4 dispose of the city utility by sale, a summary of the proposal,
5 a summary of the information described in subparagraphs (1) and
6 (2), and instructions for locating the information described
7 in subparagraphs (1) and (2) on the governing body's internet
8 site.

9 3. Upon the governing body meeting the requirements
10 of subsection 2, a city council may submit a proposal to
11 discontinue and dispose of a city utility pursuant to section
12 388.2.

13 4. If a proposal to discontinue and dispose of a city
14 utility is to be submitted to voters following the receipt
15 of a valid petition pursuant to section 388.2, subsection 1,
16 paragraph "b", the council shall submit the proposal at the next
17 general election, regular city election, or a special election
18 called for that purpose, within one hundred twenty days after
19 the governing body of the city utility meets the requirements
20 of subsection 2.

21 5. A proposal to discontinue and dispose of a city utility
22 by sale that is approved by the voters pursuant to section
23 388.2, subsection 2, paragraph "a", shall not require the
24 governing body or any purchasing entity to finalize a sale of
25 the city utility.

26 6. No action may be brought which questions the legality of
27 the election or the city and governing body's compliance with
28 this section, except as provided in section 57.1, within twenty
29 days of the canvass of votes for the election by the county
30 board of supervisors.

31 Sec. 2. Section 476.72, subsection 4, Code 2018, is amended
32 to read as follows:

33 4. "*Public utility*" means a ~~gas or electric~~ rate-regulated
34 public utility providing electric, gas, water, sanitary sewage,
35 or storm water drainage service, or any combination thereof.

1 Sec. 3. NEW SECTION. **476.84 Water, sanitary sewer, and**
2 **storm water utilities — acquisitions — advance ratemaking.**

3 1. This section applies to the acquisition of water,
4 sanitary sewer, and storm water utilities by rate-regulated
5 public utilities. This section does not apply to the
6 acquisition of such utilities by non-rate-regulated entities
7 described in section 476.1, subsection 5.

8 2. *a.* A public utility shall not acquire, in whole or in
9 part, a water, sanitary sewer, or storm water utility with a
10 fair market value of five hundred thousand dollars or more
11 from a non-rate-regulated entity described in section 476.1,
12 subsection 5, unless the board first approves the acquisition.
13 In addition, if the utility to be acquired is a city utility,
14 then the public utility shall not acquire the city utility
15 until the city has first met the requirements of section
16 388.2A.

17 *b.* If a water, sanitary sewer, or storm water utility that
18 is the subject of an acquisition meets the requirements of
19 paragraph "a", then the acquiring public utility may apply to
20 the board, prior to the completion of the acquisition, for
21 advance approval of a proposed initial tariff for providing
22 service to customers of the acquired utility.

23 *c.* As part of its review of the proposed acquisition,
24 the board shall specify in advance, by order issued after a
25 contested case proceeding, the ratemaking principles that will
26 apply when the costs of the acquired utility are included in
27 regulated rates. The lesser of the sale price or the fair
28 market value of the acquired utility as established pursuant
29 to section 388.2A, subsection 2, shall be used in determining
30 the applicable ratemaking principles. In determining the
31 applicable ratemaking principles, the board shall not be
32 limited to traditional ratemaking principles or traditional
33 cost recovery mechanisms. Among the principles and mechanisms
34 the board may consider, the board has the authority to approve
35 ratemaking principles that provide for reasonable restrictions

1 upon the ability of the public utility to seek an increase
2 in specified regulated rates for a period of time after the
3 acquisition takes place.

4 *d.* In determining the applicable ratemaking principles,
5 the board shall find that the proposed acquisition will result
6 in just and reasonable rates to all customers of the public
7 utility, including but not limited to existing customers of the
8 public utility. In making this finding, the board may consider
9 any factor it reasonably concludes may affect future rates,
10 including but not limited to the price paid for the acquired
11 utility and the projected cost of reasonable and prudent
12 changes to the acquired utility in order to provide adequate
13 services and facilities to customers. The board shall consider
14 whether there are ratemaking principles that will result in
15 just and reasonable rates to all customers in determining
16 whether to approve or disapprove a proposed acquisition.

17 *e.* Upon the approval of a proposal for acquisition by
18 board order, the parties subject to the acquisition shall
19 have the option of either proceeding with such acquisition or
20 not, subject to any termination provisions contained in the
21 acquisition agreement.

22 *f.* Notwithstanding any provision of this chapter to the
23 contrary, the ratemaking principles established by the board
24 pursuant to this section shall be binding with regard to the
25 acquired utility in any subsequent rate proceeding.