

JAN 1 0 2005  
LOCAL GOVERNMENT

HOUSE FILE 21  
BY WISE and PETERSEN

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

**A BILL FOR**

1 An Act relating to joint exercise of governmental powers and  
2 related county enterprise authority.

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

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HF 21

1 Section 1. Section 28E.35, Code 2005, is amended to read  
2 as follows:

3 28E.35 DEFINITIONS.

4 As used in this division unless the context otherwise  
5 requires:

6 1. "Community cluster" means a cooperative community unit  
7 established pursuant to this chapter for the joint exercise of  
8 powers by two or more governmental units and for sharing one  
9 or more governmental functions between two or more  
10 governmental units participating in a community cluster.

11 2. "Governing board" means the governing board of a  
12 community cluster appointed pursuant to section 28E.37.

13 ~~2.~~ 3. "Governmental unit" means a city, county, township,  
14 school district, merged area as defined in section 260C.2, or  
15 special taxing district.

16 4. "Shared governmental function" includes, but is not  
17 limited to, joint delivery of services, joint operation of  
18 facilities, joint development of infrastructure, or joint  
19 fostering of economic development.

20 Sec. 2. Section 28E.36, Code 2005, is amended to read as  
21 follows:

22 28E.36 ESTABLISHMENT OF COMMUNITY CLUSTER.

23 Two or more governmental units located in the state may, by  
24 resolution of each governmental unit, establish a community  
25 cluster by-entering-into-an-agreement for the joint exercise  
26 of powers pursuant to this chapter to make more efficient use  
27 of their resources by providing for ~~joint-functions, services,~~  
28 ~~facilities, development-of-infrastructure-and-for-revenue~~  
29 ~~sharing, and-to-foster-economic-development~~ shared  
30 governmental functions between two or more of the governmental  
31 units participating in the community cluster.

32 A community cluster and its governing board shall have all  
33 the rights, powers, duties, privileges, and immunities of a  
34 governmental unit and governmental unit governing body to the  
35 extent that such rights, powers, duties, privileges, and

1 immunities relate to shared governmental functions of the  
2 governmental units participating in the community cluster.  
3 The governing board of a community cluster shall not levy a  
4 tax unless specifically authorized by the governing body of  
5 each participating governmental unit.

6 Sec. 3. Section 28E.37, Code 2005, is amended by striking  
7 the section and inserting in lieu thereof the following:

8 28E.37 COMMUNITY CLUSTER GOVERNING BOARD.

9 The governing body of each governmental unit participating  
10 in a community cluster shall appoint two of its members to a  
11 community cluster governing board. However, an alternative  
12 board composition may be agreed upon by the participating  
13 governmental units. A member of the governing board shall  
14 serve for two years or until the member's term on the  
15 governing body of the governmental unit expires, whichever is  
16 earlier. A vacancy on the governing board shall be filled in  
17 the same manner as the original appointment. A member of the  
18 governing board shall not receive compensation for service on  
19 the governing board.

20 Sec. 4. Section 28E.38, Code 2005, is amended by striking  
21 the section and inserting in lieu thereof the following:

22 28E.38 POWERS AND DUTIES OF GOVERNING BOARD -- EXISTING  
23 BONDED INDEBTEDNESS -- TAXING AUTHORITY.

24 1. The governing board shall identify governmental  
25 functions, services, facilities, development of  
26 infrastructure, or economic development efforts that will be  
27 shared or jointly provided or operated within the community  
28 cluster.

29 2. The governing board shall establish an official name  
30 for the community cluster.

31 3. The governing board may provide for the transfer or  
32 other disposition of property and other rights, claims,  
33 assets, and franchises as they relate to a shared governmental  
34 function within the community cluster. A governmental unit  
35 participating in a community cluster may make donations of

1 property, real or personal, including gratuitous leases, to  
2 the community cluster and the governing board as deemed proper  
3 and appropriate in aiding the community cluster and the  
4 governing board to effectuate their purposes.

5 4. The governing board may provide for the transfer,  
6 reorganization, abolition, adjustment, and absorption or  
7 merger of existing boards, existing subordinate service  
8 districts, local improvement districts, and agencies of the  
9 participating governmental units to the extent they relate to  
10 a shared governmental function within the community cluster.  
11 The authority provided in this subsection does not include the  
12 authority to merge or consolidate local governments as an  
13 alternative form of county government or an alternative form  
14 of city government.

15 5. The governing board may determine the boundaries of the  
16 service areas within the community cluster and shall provide  
17 for administration of the provision of services in each of the  
18 designated service areas.

19 6. The governing board may employ and fix the compensation  
20 of administrative, technical, professional, and clerical  
21 assistance as necessary to administer a shared governmental  
22 function.

23 7. a. The governing board may adopt budgets for shared  
24 governmental functions within the community cluster and may  
25 levy property taxes to the extent the taxing authority of a  
26 participating governmental unit is transferred to the  
27 community cluster by the governing body of that participating  
28 governmental unit to fund a shared governmental function. The  
29 governing board in its budget shall allocate the revenue  
30 obligation of each governmental unit participating in the  
31 community cluster, subject to the approval of the governing  
32 body of each participating governmental unit. The governing  
33 board shall follow the same procedures for adoption of a  
34 budget as if the community cluster were a city and the  
35 governing board a city council.

1 b. The governing board shall provide for the transfer of  
2 all or portions of the taxing authority of governmental units  
3 that are participating in the community cluster to the  
4 governing board of the community cluster to fund a shared  
5 governmental function, subject to the approval of the  
6 governing body of each participating governmental unit. The  
7 maximum rates of taxes authorized to be levied by a  
8 governmental unit participating in a community cluster shall  
9 be reduced by an amount equal to that portion of the levy  
10 rates transferred to the authority of the governing board.

11 c. In lieu of transferring property taxing authority to a  
12 governing board, a governmental unit participating in a  
13 community cluster may meet its revenue obligations to the  
14 community cluster by transferring other sources of revenue  
15 authorized to be collected by the governmental unit.

16 8. The governing board may accept donations,  
17 contributions, grants, or gifts from individuals,  
18 associations, municipal and private corporations, and the  
19 United States, or any agency or instrumentality of the United  
20 States, and may enter into agreements in connection therewith.

21 9. The governing board may issue bonded indebtedness to  
22 the extent authorized in section 28E.39.

23 10. By December 1 of each year, the governing board shall  
24 provide a report relating to shared governmental functions and  
25 administration of the community cluster to the governing body  
26 of each governmental unit participating in the community  
27 cluster.

28 Sec. 5. Section 28E.39, Code 2005, is amended by striking  
29 the section and inserting in lieu thereof the following:

30 28E.39 ISSUANCE OF BONDS -- APPROVAL BY ELECTORATE.

31 1. The governing board may propose the expenditure of  
32 funds, the issuance of revenue bonds, entering into a lease-  
33 purchase agreement, or the issuance of general obligation  
34 bonds for the following:

35 a. Acquisition of a construction site and construction of

1 a building or facility for common public use by two or more  
2 governmental units participating in the community cluster.

3 b. Purchase of an existing building or facility for public  
4 use, or conversion of a building or facility previously owned  
5 and maintained by a governmental unit for public use by two or  
6 more governmental units participating in the community  
7 cluster.

8 c. Equipping or furnishing a new or existing building or  
9 facility for public use by two or more governmental units  
10 participating in the community cluster.

11 d. Operation, maintenance, or improvement of a building or  
12 facility for public use by two or more governmental units  
13 participating in the community cluster.

14 e. Any other aspect of construction, acquisition,  
15 furnishing, operation, or maintenance of a building or  
16 facility for public use by two or more governmental units  
17 participating in the community cluster, such other aspect  
18 having been proposed by the governing board and not otherwise  
19 prohibited by law.

20 2. The proposal shall be forwarded to the governing body  
21 of each governmental unit participating in the community  
22 cluster that is listed in the proposal as being allocated a  
23 portion of the cost for any of the purposes in subsection 1,  
24 paragraphs "a" through "e". The proposal shall specify the  
25 purposes for which the building or facility shall be used, the  
26 estimated cost of the building or facility, the estimated  
27 amount of the cost to be allocated to each of the  
28 participating governmental units, the proportion and method of  
29 allocating the expenses of the operation and maintenance of  
30 the building or facility or improvement, and the disposition  
31 to be made of any revenues to be derived from operation of the  
32 building or facility.

33 3. If a proposal for expenditure of funds, for issuance of  
34 revenue bonds, or for issuance of general obligation bonds  
35 described in the proposal as essential county purpose bonds or

1 essential corporate purpose bonds is approved by the governing  
2 body of each governmental unit named in the proposal, the  
3 governing board may include such expenditures in its budget  
4 for the following fiscal year. If a proposal for issuance of  
5 general obligation bonds described in the proposal as general  
6 county purpose bonds or general corporate purpose bonds or for  
7 entering into a lease-purchase agreement is approved by the  
8 governing body of each governmental unit named in the  
9 proposal, the governing board shall direct the county  
10 commissioner of elections to submit the proposition at a  
11 special election. The special election may be held on the  
12 same day as the general election if the county commissioner  
13 determines that the elections will not conflict. Only those  
14 registered voters living within the governmental units named  
15 in the proposal may vote on the proposition. The proposition  
16 shall be adopted if the vote in favor of the proposition is  
17 equal to at least sixty percent of the vote cast for and  
18 against the proposition in each governmental unit named in the  
19 proposal.

20 4. The governing board when issuing indebtedness pursuant  
21 to this section shall follow the procedures for issuance of  
22 debt as if the governing board were a city council or a county  
23 board of supervisors and the applicable bonding provisions of  
24 chapters 74, 75, 331, and 384 shall apply.

25 5. Indebtedness issued pursuant to this section shall  
26 constitute a debt of the governmental units named in the  
27 proposal in the same proportion that the cost of the project  
28 is allocated to the governmental units and such indebtedness  
29 is subject to any statutory or constitutional limitation on  
30 issuance of debt if the debt would be subject to such  
31 limitation if it were issued by a governmental unit acting  
32 alone.

33 Sec. 6. Section 28E.40, Code 2005, is amended by striking  
34 the section and inserting in lieu thereof the following:  
35 28E.40 JOINING COMMUNITY CLUSTER OR TERMINATING

1 PARTICIPATION.

2 1. A governmental unit, by resolution, may request to join  
3 an existing community cluster. The governing body of the  
4 governmental unit shall forward the resolution to the  
5 governing bodies of each governmental unit participating in  
6 the community cluster. If each of the governing bodies  
7 approves by resolution the request to join the existing  
8 community cluster, the governmental unit is included in the  
9 community cluster and shall appoint two of the members of its  
10 governing body to the governing board of the community  
11 cluster.

12 2. A governmental unit, by resolution, may terminate its  
13 participation in a community cluster. Immediately upon its  
14 adoption by the governing body of the governmental unit  
15 seeking termination of its participation in the community  
16 cluster, the resolution shall be forwarded to the governing  
17 board. The governing board is not empowered to deny  
18 termination but it may set a timetable, not to exceed eighteen  
19 months after adoption of the resolution, for termination to be  
20 fully effective.

21 Sec. 7. Section 331.461, subsection 2, Code 2005, is  
22 amended by adding the following new paragraph:

23 NEW PARAGRAPH. i. Port facilities or port facilities  
24 systems, including without limitation, real and personal  
25 property, water, buildings, improvements, and equipment useful  
26 and suitable for taking care of the needs of commerce and  
27 shipping, and also including without limitation, wharves,  
28 docks, basins, piers, quay walls, warehouses, tunnels, belt  
29 railway facilities, cranes, dock apparatus, and other  
30 machinery necessary for the convenient and economical  
31 accommodation and handling of watercraft of all kinds and of  
32 freight and passengers.

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EXPLANATION

34 This bill expands current statutory provisions relating to  
35 establishment of community clusters. Community clusters are

1 cooperative community units established for the joint exercise  
2 of powers by two or more governmental units.

3 Currently, a governmental unit that may participate in a  
4 community cluster is defined as a city, county, or special  
5 taxing district. The bill adds townships, school districts,  
6 and merged areas to the definition of governmental unit. The  
7 bill defines "shared governmental functions" to include joint  
8 delivery of services, joint operation of facilities, joint  
9 development of infrastructure, and joint fostering of economic  
10 development.

11 The bill provides that a community cluster and its  
12 governing board shall have all the rights, powers, duties,  
13 privileges, and immunities, as they relate to shared  
14 governmental functions, as those governmental units  
15 participating in the community cluster. However, the  
16 governing body of a community cluster shall not levy a tax  
17 unless authorized by the governing body of each participating  
18 governmental unit.

19 The bill requires the governing body of each governmental  
20 unit participating in a community cluster to appoint two of  
21 its members to a community cluster governing board unless a  
22 different board membership is agreed upon by the participating  
23 governmental units. The term of a member of the governing  
24 board is two years or until the member's term on the governing  
25 body expires, whichever is earlier.

26 The bill requires the governing board to identify shared  
27 governmental functions of the community cluster. The bill  
28 authorizes the governing board to provide for transfer or  
29 disposition of property; reorganization of existing  
30 administrative boards, agencies, and services districts;  
31 acceptance of donations, contributions, grants, or gifts; and  
32 employment of necessary personnel insofar as all of these  
33 things relate to administration of shared governmental  
34 functions within the community cluster. The bill also  
35 provides that the governing board has the authority to adopt

1 budgets for shared governmental functions. The bill requires  
2 the governing board to provide for the transfer of all or a  
3 portion of the taxing authority of participating governmental  
4 units to fund shared governmental functions. The authority to  
5 transfer taxing authority is subject to the approval of the  
6 governing body of each participating governmental unit. Any  
7 amount of taxing authority transferred shall be subtracted  
8 from the statutory maximum, if any, for that governmental  
9 unit. A participating governmental unit may transfer other  
10 revenues, in lieu of transferring property tax authority, in  
11 order to meet its revenue obligations to the community  
12 cluster. The bill requires the governing board to report  
13 annually to the governing body of each governmental unit  
14 participating in the community cluster.

15 The bill authorizes the governing board to expend funds,  
16 enter into lease-purchase agreements, and issue revenue bonds  
17 or general obligation bonds for acquisition, construction,  
18 improvement, equipping, maintenance, and operation of a  
19 building or facility for common public use by two or more  
20 governmental units participating in the community cluster.  
21 The proposal to expend funds or issue debt for a building or  
22 facility must be approved by the governing body of each  
23 governmental unit named in the proposal as being allocated a  
24 portion of the cost of the building or facility. The bill  
25 provides that the governing board is to proceed as if it were  
26 a city or a county expending the funds or issuing the  
27 indebtedness. This means, among other things, that if the  
28 proposal identifies the bonds as general county purpose or  
29 general corporate purpose bonds, issuance of such bonds must  
30 be approved at an election. Indebtedness that would be  
31 subject to any statutory or constitutional limitation if a  
32 governmental unit had issued the debt acting alone shall be  
33 considered debt of the governmental unit as part of the  
34 community cluster in the same proportion that the costs of the  
35 building or facility were allocated to the governmental unit.

1 The bill allows a governmental unit, by resolution, to  
2 request joining an existing community cluster. The request to  
3 join must be approved by resolution by the governing bodies of  
4 each governmental unit participating in the community cluster.  
5 The bill also allows a governmental unit, by resolution, to  
6 terminate participation in a community cluster. The governing  
7 board may not deny termination, but it may set a timetable,  
8 not to exceed 18 months, for termination to be fully  
9 effective.

10 The bill strikes a section of the Code that required an  
11 election before a community cluster could share property tax  
12 revenues. The bill also strikes a section of the Code  
13 relating to establishment of regional metropolitan service  
14 areas.

15 The bill adds port facilities and port facilities systems  
16 to the definition of county enterprise. Currently, port  
17 facilities and port facilities systems are included in the  
18 definition of city enterprise.

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