

APR 15 2005  
WAYS & MEANS CALENDAR

HOUSE FILE 861  
BY COMMITTEE ON WAYS AND MEANS

(SUCCESSOR TO HSB 182)

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

**A BILL FOR**

1 An Act relating to telecommunications projects and facilities,  
2 including requirements regarding feasibility studies and  
3 reports and requirements regarding financing, and providing an  
4 effective date.

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

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HF 861

1 Section 1. Section 384.96, Code 2005, is amended by adding  
2 the following new unnumbered paragraph:

3 NEW UNNUMBERED PARAGRAPH. The requirements of this section  
4 shall apply to a contract for the operation, management, or  
5 control of a telecommunications facility, as defined in  
6 section 388.1.

7 Sec. 2. Section 388.1, Code 2005, is amended by adding the  
8 following new subsections:

9 NEW SUBSECTION. 1A. "Telecommunications facility" means a  
10 system or network of cable, optical fiber, radio, or other  
11 wireless equipment or technology or any combination thereof,  
12 or other equipment, items, system, infrastructure, or  
13 facilities that are used or intended to be used by a city,  
14 city utility, combined utility system, city enterprise,  
15 combined city enterprise, or nongovernmental entity or person  
16 to provide telecommunications services to residential or  
17 business users. "Telecommunications facility" does not  
18 include a facility of a municipal hospital.

19 NEW SUBSECTION. 1B. "Telecommunications project" means a  
20 project, plan, or proposal for a city, city utility, combined  
21 utility system, city enterprise, or combined city enterprise  
22 to directly or indirectly build, lease, or otherwise acquire,  
23 invest in, maintain, improve, expand, finance, or refinance a  
24 telecommunications facility not owned or operated by the city,  
25 city utility, combined utility system, city enterprise, or  
26 combined city enterprise on or before January 1, 2005.  
27 "Telecommunications project" does not include a project of a  
28 municipal hospital.

29 Sec. 3. Section 388.2, Code 2005, is amended to read as  
30 follows:

31 388.2 SUBMISSION TO VOTERS.

32 1. The proposal of a city to establish, acquire, lease, or  
33 dispose of a city utility, except a sanitary sewage or storm  
34 water drainage system, in order to undertake or to discontinue  
35 the operation of the city utility, or the proposal to

1 establish or dissolve a combined utility system, or the  
2 proposal to establish or discontinue a utility board, is  
3 subject to the approval of the voters of the city, except that  
4 a board may be discontinued by resolution of the council when  
5 the city utility, city utilities, or combined utility system  
6 it administers is disposed of or leased for a period of over  
7 five years.

8 2. The proposal may be submitted to the voters at any city  
9 election by the council on its own motion. Upon receipt of a  
10 valid petition as defined in section 362.4, requesting that a  
11 proposal be submitted to the voters, the council shall submit  
12 the proposal at the next regular city election or a special  
13 election.

14 3. A city, city utility, combined city utility, city  
15 enterprise, or combined city enterprise may not establish,  
16 acquire, or lease the facilities of a telecommunications  
17 project, in whole or in part, without the approval of the  
18 voters of the city.

19 a. Prior to the city election to obtain voter approval,  
20 the city shall prepare a report on the feasibility of the  
21 telecommunications project which shall, at a minimum, address  
22 and disclose all of the following:

23 (1) The costs of establishing, acquiring, or leasing the  
24 facilities of the telecommunications project and an  
25 explanation of how those costs will be paid.

26 (2) Projected operating costs, including losses, for each  
27 of the first five years of operation of the telecommunications  
28 facilities, including costs of necessary upgrades to maintain  
29 continuing technological viability.

30 (3) Projected revenues of the telecommunications project  
31 for each of the first five years of operation.

32 (4) Assumptions used in developing the cost and revenue  
33 projections.

34 (5) Risks associated with the fiscal viability of the  
35 telecommunications project and its operations, including

1 technological, financial, and market risks.

2 (6) The fiscal impact on the city of the capital and other  
3 investment required for the telecommunications project,  
4 including but not limited to the investment required to  
5 construct, maintain, and operate the facilities and to avoid  
6 their technical obsolescence.

7 (7) The impact on the city, utility ratepayers, and  
8 taxpayers if the telecommunications project is not a financial  
9 success, including the impact on the creditworthiness of the  
10 city and the alternatives available to the city if the  
11 telecommunications project is unsuccessful.

12 b. (1) The feasibility report shall be reviewed by an  
13 independent investment banking firm experienced in public  
14 finance in the telecommunications industry, which shall  
15 provide a written opinion regarding the reasonableness of  
16 projections and conclusions in the report. The investment  
17 banking firm's opinion and the report shall be available as  
18 public records for public inspection and copying.

19 (2) Not less than sixty days prior to the date of the city  
20 election for voter approval, but after the issuance of the  
21 banking firm's opinion, the city shall hold a public hearing  
22 regarding the feasibility report. Public notice of the  
23 hearing shall be given in the manner directed by section  
24 362.3. Such notice shall inform the public of the  
25 availability of the feasibility report for inspection and  
26 copying.

27 (3) The ballot issue for voter approval of the proposal  
28 shall include, in addition to any other information required  
29 by law, a statement of the maximum costs disclosed pursuant to  
30 paragraph "a", subparagraphs (1) and (2), to establish,  
31 acquire, lease, maintain, or operate the facilities of the  
32 telecommunications project as shown in the feasibility report,  
33 which shall not be exceeded without voter approval in another  
34 election.

35 4. A city which has undertaken a telecommunications

1 project in compliance with subsection 3 may extend the  
2 telecommunications facilities within the city's existing  
3 service area and add functionality to the facilities without  
4 preparing another business plan or obtaining the approval of  
5 voters, provided that the city continues to be in compliance  
6 with all other applicable requirements of subsection 1.

7 5. A proposal for the establishment of a utility board  
8 must specify a board of either three or five members.

9 6. If a majority of those voting for and against the  
10 proposal approves the proposal, the city may proceed as  
11 proposed.

12 7. If a majority of those voting for and against the  
13 proposal does not approve the proposal, the same or a similar  
14 proposal may not be submitted to the voters of the city for at  
15 least four years from the date of the election at which the  
16 proposal was defeated.

17 Sec. 4. Section 388.10, Code 2005, is amended by adding  
18 the following new subsection:

19 NEW SUBSECTION. 1A. a. Notwithstanding any other  
20 provision of this Code, a city, city utility, combined city  
21 utility, city enterprise, or combined city enterprise shall  
22 not, directly or indirectly, finance, refinance, pay the costs  
23 or expenses of, or otherwise fund a telecommunications project  
24 or the operation of a telecommunications facility established  
25 through a telecommunications project, except through use of  
26 the revenues directly earned or to be earned by the  
27 telecommunications project or facility. This subsection shall  
28 not prevent any of the following:

29 (1) The use of otherwise available funds to pay the  
30 reasonable costs of studying the feasibility of a  
31 telecommunications project or conducting an election on a  
32 proposal for a telecommunications project.

33 (2) The sale to nongovernmental investors of revenue bonds  
34 to fund a telecommunications project if principal, interest,  
35 and premium are payable upon maturity or default and are

1 actually paid solely from, and all obligations under the bonds  
2 are secured solely by, the net revenues earned or to be earned  
3 by, the telecommunications project.

4 b. A city, city utility, combined city utility, city  
5 enterprise, or combined city enterprise shall not, directly or  
6 indirectly, finance, refinance, pay the costs or expenses of,  
7 or otherwise fund a telecommunications project or the  
8 operation of a telecommunications facility established through  
9 a telecommunications project through the issuance of revenue  
10 bonds without approval of the voters of the city. The ballot  
11 issue for voter approval shall require approval of at least  
12 sixty percent of those voting and may be held in the same  
13 election required by section 388.2, subsection 3.

14 Sec. 5. EFFECTIVE DATE. This Act, being deemed of  
15 immediate importance, takes effect upon enactment.

16 EXPLANATION

17 This bill relates to the financing of telecommunications  
18 projects and facilities by a city, city utility, combined city  
19 utility, city enterprise, or combined city enterprise.

20 The bill requires cities that contract for the operation,  
21 management, or control of a telecommunications facility to  
22 advertise for sealed bids. The bill provides definitions for  
23 the terms "telecommunications facility", "telecommunications  
24 project", and "telecommunications services".

25 The bill prohibits a city, city utility, or city enterprise  
26 from financing or funding a telecommunications project or  
27 operation of a telecommunications facility established through  
28 a project except through use of the revenues directly earned  
29 or to be earned by the project.

30 The bill provides that a city, city utility, or city  
31 enterprise shall not establish, acquire, or lease  
32 telecommunications facilities of a telecommunications project  
33 without voter approval. A feasibility report must be prepared  
34 concerning the telecommunications project prior to the city  
35 election to obtain voter approval. The feasibility report

1 must contain certain provisions regarding costs, revenues,  
2 risks, and the fiscal impact on the city. The feasibility  
3 report must be reviewed by an independent investment banking  
4 firm. The city shall also hold a public hearing regarding the  
5 feasibility report prior to the city election to obtain voter  
6 approval. The ballot issue shall include a statement of the  
7 maximum cost shown in the feasibility report to establish,  
8 acquire, or lease the facilities of telecommunications  
9 projects. The bill prohibits the city from exceeding the  
10 feasibility report's projected cost without approval by  
11 another city election.

12 The bill provides that a city may extend telecommunications  
13 facilities and add functionality without a business plan or  
14 voter approval if the city maintains compliance with other  
15 requirements. The bill provides that a city shall not finance  
16 a telecommunications project through the issuance of revenue  
17 bonds without voter approval of at least 60 percent of those  
18 voting which may be held in the same election as the voter  
19 approval to establish, acquire, or lease the facilities of a  
20 telecommunications project.

21 The bill is effective upon enactment.

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HOUSE FILE 861

H-1474

1 Amend House File 861 as follows:

2 1. Page 1, line 16, by striking the word "or" and  
3 inserting the following: "users,".

4 2. Page 1, by striking lines 17 and 18 and  
5 inserting the following: "business users, or  
6 governmental users reselling the telecommunications  
7 services. "Telecommunications facility" does not  
8 include facilities dedicated for use by a municipal  
9 agency, health facility, airport, or safety or law  
10 enforcement agency."

11 3. Page 1, line 26, by inserting after the word  
12 "enterprise" the following: ", or approved by voters  
13 pursuant to section 388.2,".

14 4. Page 1, by striking lines 27 and 28 and  
15 inserting the following: ""Telecommunications  
16 project" does not include projects of a municipal  
17 agency, health facility, airport, or safety or law  
18 enforcement agency."

19 5. Page 2, line 19, by striking the word "Prior"  
20 and inserting the following: "Except as provided in  
21 paragraph "c", prior".

22 6. Page 3, line 13, by inserting after the word  
23 "independent" the following: "nationally recognized".

24 7. Page 3, line 14, by striking the words "in the  
25 telecommunications industry".

26 8. Page 3, lines 16 and 17, by striking the words  
27 "investment banking".

28 9. Page 3, line 21, by striking the word  
29 "banking".

30 10. Page 3, by inserting after line 34 the  
31 following:

32 "c. If a private investor, other than a purchaser  
33 of revenue bonds for the project, provides or is  
34 obligated to provide fifty percent or more of the  
35 project's funding, either directly, through a joint  
36 venture, or otherwise, the requirements of subsections  
37 "a" and "b" shall not apply, provided that all risks  
38 attendant to such funding are borne exclusively by the  
39 private investor without financing from, recourse to,  
40 or protection against risk or loss provided by a city  
41 or any other governmental agency or instrumentality."

42 11. Page 4, by striking lines 2 and 3 and  
43 inserting the following: "telecommunications  
44 facilities within the city and up to two miles beyond  
45 the limits of the city and may add services and  
46 functions to the facilities without".

47 12. Page 4, line 6, by striking the figure "1"  
48 and inserting the following: "3, paragraph "b",  
49 subparagraph (3), or subsection 3, paragraph "c"".

50 13. Page 4, by inserting after line 16 the

H-1474

1 following:

2 "8. The provisions of this section shall not apply  
3 to a telecommunications facility owned or operated by  
4 a city, city utility, combined city utility, city  
5 enterprise, or combined city enterprise, or approved  
6 by voters pursuant to section 388.2, on or before  
7 January 1, 2005."

8 14. Page 4, line 31, by inserting after the word  
9 "project" the following: ", if required pursuant to  
10 section 388.2,".

11 15. Page 5, by inserting after line 3 the  
12 following:

13 "(3) Loans of legally available funds from a city,  
14 or another city utility, provided that such loans meet  
15 all of the following requirements:

16 (a) Have a term of not more than ten years and  
17 bear interest at private market rates.

18 (b) The principal and interest on such loans are  
19 paid solely from revenues earned or to be earned by  
20 the telecommunications project with interest payable  
21 quarterly and principal payable in equal annual  
22 installments over the last eight years of the ten-  
23 year term of the loan, or earlier as required by the  
24 telecommunications utility.

25 (c) The city or city utility may not extend,  
26 forgive, or modify the terms of such loans in any  
27 manner that results in the avoidance of the  
28 requirements of this subsection.

29 (4) Loans from a financial institution if the  
30 principal and interest on such loans are paid solely  
31 from revenues earned or to be earned by the  
32 telecommunications project."

33 16. Page 5, by striking line 12 and inserting the  
34 following: "sixty percent of those voting, unless the  
35 requirements of section 388.2, subsection 3, paragraph  
36 "c", are met in which case the ballot issue shall only  
37 require approval of a majority of those voting and may  
38 be held in the same".

39 17. By renumbering as necessary.

By STRUYK of Pottawattamie

H-1589

1 Amend House File 861 as follows:

2 1. By striking everything after the enacting  
3 clause and inserting the following:

4 "Section 1. Section 388.10, subsection 1,  
5 paragraph a, Code 2005, is amended by adding the  
6 following new subparagraph:

7 NEW SUBPARAGRAPH. (5) (a) Allow  
8 telecommunications services to be provided through a  
9 telecommunications system owned or operated by a city,  
10 city utility, combined city utility, city enterprise,  
11 or combined city enterprise by a provider other than  
12 the city, city utility, combined city utility, city  
13 enterprise, or combined city enterprise, or a private  
14 investor providing or obligated to provide fifty  
15 percent or more of the telecommunications system's  
16 funding, either directly, through a joint venture, or  
17 otherwise, unless all of the following requirements  
18 are satisfied:

19 (i) The proposal is submitted to the voters of the  
20 city for approval pursuant to section 388.2.

21 (ii) At least thirty days prior to the election  
22 for voter approval of the proposal, a full cost  
23 benefit analysis is made available to the voters which  
24 includes but is not limited to the fully anticipated  
25 cost of the provision of such telecommunications  
26 services, the projected public debt, and an  
27 explanation of how the public debt will be financed.

28 (iii) At least twenty days prior to the election  
29 for voter approval of the proposal but after the cost  
30 benefit analysis is made available to the voters, a  
31 public hearing is held regarding the proposal.

32 (iv) Prior to the issuance of public debt for the  
33 proposal, a financing plan for the proposal has been  
34 approved by a majority of the voters of the city.

35 (b) This subparagraph shall not apply to a  
36 telecommunications system owned or operated by a city,  
37 city utility, combined city utility, city enterprise,  
38 or combined city enterprise approved by voters  
39 pursuant to section 388.2 on or before January 1,  
40 2005.

41 Sec. 2. EFFECTIVE DATE. This Act, being deemed of  
42 immediate importance, takes effect upon enactment."

43 2. Title page, by striking lines 1 through 4 and  
44 inserting the following: "An Act relating to the  
45 provision of telecommunications services through a  
46 telecommunications system owned or operated by a city,  
47 city utility, combined city utility, city enterprise,  
48 or combined city enterprise, and providing an  
49 effective date."

By STRUYK of Pottawattamie  
KURTENBACH of Story  
HUSER of Polk

WISE of Lee  
QUIRK of Chickasaw

H-1589 FILED APRIL 28, 2005

HOUSE FILE 861

H-1593

1 Amend the amendment, H-1589, to House File 861 as  
2 follows:

3 1. Page 1, line 6, by striking the word  
4 "subparagraph" and inserting the following:  
5 "subparagraphs".

6 2. Page 1, by inserting after line 40 the  
7 following:

8 "NEW SUBPARAGRAPH. (6) Unfairly discriminate in  
9 pricing in violation of section 551.12.

10 Sec. \_\_\_\_ . NEW SECTION. 551.12 UNFAIR  
11 DISCRIMINATION IN PRICING BY PROVIDERS OF CABLE  
12 TELEVISION SERVICES.

13 1. A provider of cable television services shall  
14 not provide cable television services in a defined  
15 geographic area at a rate less than ninety percent of  
16 the provider's highest published rate charged to  
17 customers in any other area of this state unless any  
18 of the following apply:

19 a. The lower rate is not less than the cost of  
20 providing such cable television services in the area  
21 and the lower rate generates a profit for the provider  
22 of cable television services.

23 b. The lower rate is available to any customer  
24 within the state served by the provider.

25 2. Any aggrieved person or the attorney general  
26 may commence a civil action against a provider of  
27 cable television services for a violation of this  
28 section for actual damages, court costs, and attorney  
29 fees.

30 3. For purposes of this section, "provider of  
31 cable television services" means a cable television  
32 service provider with fifty thousand or more  
33 customers."

34 3. Page 1, line 48, by inserting after the word  
35 "enterprise," the following: "and through prohibiting  
36 discrimination in pricing,".

37 4. By renumbering as necessary.

By MAY of Dickinson KRESSIG of Black Hawk  
FREEMAN of Buena Vista MERTZ of Kossuth  
JOCHUM of Dubuque

H-1593 FILED APRIL 28, 2005

HOUSE FILE 861

H-1623

1 Amend the amendment, H-1589, to House File 861 as  
2 follows:  
3 1. Page 1, lines 12 and 13, by inserting after  
4 the words "utility, city enterprise," the following:  
5 "an entity created pursuant to chapter 28E or 28F  
6 whose members are utility providers,".  
7 2. Page 1, line 16, by striking the word  
8 "funding," and inserting the following: "capital,  
9 including initial operating capital,".  
10 3. Page 1, line 36, by inserting after the word  
11 "system" the following: "established on or before  
12 January 1, 2005, that is".  
13 4. Page 1, by striking lines 38 through 40, and  
14 inserting the following: "or combined city  
15 enterprise."

By JOCHUM of Dubuque

H-1623 FILED APRIL 29, 2005  
LOST

HOUSE FILE 861

H-1624

1 Amend the amendment, H-1589, to House File 861, as  
2 follows:  
3 1. Page 1, line 32, by striking the words "public  
4 debt" and inserting the following: "general  
5 obligations bonds".

By JOCHUM of Dubuque

H-1624 FILED APRIL 29, 2005  
LOST

HOUSE FILE 861  
BY COMMITTEE ON WAYS AND MEANS

(SUCCESSOR TO HSB 182)

(As Amended and Passed by the House April 29, 2005)

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

**A BILL FOR**

1 An Act relating to the provision of telecommunications services  
2 through a telecommunications system owned or operated by a  
3 city, city utility, combined city utility, city enterprise, or  
4 combined city enterprise, and providing an effective date.

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

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7 All New Language  
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HF 861

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1 Section 1. Section 388.10, subsection 1, paragraph a, Code  
2 2005, is amended by adding the following new subparagraph:

3 NEW SUBPARAGRAPH. (5) (a) Allow telecommunications  
4 services to be provided through a telecommunications system  
5 owned or operated by a city, city utility, combined city  
6 utility, city enterprise, or combined city enterprise by a  
7 provider other than the city, city utility, combined city  
8 utility, city enterprise, or combined city enterprise, or a  
9 private investor providing or obligated to provide fifty  
10 percent or more of the telecommunications system's funding,  
11 either directly, through a joint venture, or otherwise, unless  
12 all of the following requirements are satisfied:

13 (i) The proposal is submitted to the voters of the city  
14 for approval pursuant to section 388.2.

15 (ii) At least thirty days prior to the election for voter  
16 approval of the proposal, a full cost benefit analysis is made  
17 available to the voters which includes but is not limited to  
18 the fully anticipated cost of the provision of such  
19 telecommunications services, the projected public debt, and an  
20 explanation of how the public debt will be financed.

21 (iii) At least twenty days prior to the election for voter  
22 approval of the proposal but after the cost benefit analysis  
23 is made available to the voters, a public hearing is held  
24 regarding the proposal.

25 (iv) Prior to the issuance of public debt for the  
26 proposal, a financing plan for the proposal has been approved  
27 by a majority of the voters of the city.

28 (b) This subparagraph shall not apply to a  
29 telecommunications system owned or operated by a city, city  
30 utility, combined city utility, city enterprise, or combined  
31 city enterprise approved by voters pursuant to section 388.2  
32 on or before January 1, 2005.

33 Sec. 2. EFFECTIVE DATE. This Act, being deemed of  
34 immediate importance, takes effect upon enactment.

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HSB 182  
WAYS AND MEANS By  
St 0861

HOUSE FILE \_\_\_\_\_  
BY (PROPOSED COMMITTEE ON  
WAYS AND MEANS BILL BY  
CHAIRPERSON VAN FOSSEN)

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

**A BILL FOR**

1 An Act relating to the financing by cities of telecommunications  
2 projects and facilities, including requirements regarding  
3 feasibility studies and reports, requiring sealed bids and  
4 city voter approval, prohibiting financing for an amount above  
5 projected costs, and increasing the minimum voter approval  
6 rate for such projects, and providing effective and  
7 retroactive applicability dates.

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

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1 Section 1. Section 68B.3, Code 2005, is amended by adding  
2 the following new subsection:

3 NEW SUBSECTION. 3. A person providing services to an  
4 agency or political subdivision of the state regarding a  
5 feasibility study for or assisting in the establishment of  
6 terms of procurement or contract specifications for a  
7 telecommunications project as defined in section 384.80 shall  
8 not be awarded the resulting procurement or contract for the  
9 telecommunications project, regardless of whether the award is  
10 made through competitive bidding. This subsection shall apply  
11 to officers, directors, agents, and employees of the person,  
12 and to any entity in which such persons are officers or  
13 directors or have an ownership or controlling interest in the  
14 entity.

15 Sec. 2. Section 384.80, Code 2005, is amended by adding  
16 the following new subsections:

17 NEW SUBSECTION. 15. "Telecommunications facility" means a  
18 system or network of cable, optical fiber, radio, or other  
19 wireless equipment or technology or any combination thereof,  
20 or other equipment, items, system, infrastructure, or  
21 facilities that are used or capable of being used by a city,  
22 city utility, combined utility system, city enterprise,  
23 combined city enterprise, or nongovernmental entity or person  
24 providing telecommunications services.

25 NEW SUBSECTION. 16. "Telecommunications project" means a  
26 project, plan, or proposal for a city, city utility, combined  
27 utility system, city enterprise, or combined city enterprise  
28 to directly or indirectly build, lease, or otherwise acquire,  
29 invest in, maintain, improve, expand, finance, or refinance a  
30 telecommunications facility not owned or operated by the city,  
31 city utility, combined utility system, city enterprise, or  
32 combined city enterprise on or after January 1, 2005.

33 NEW SUBSECTION. 17. "Telecommunications services" means  
34 the same as defined in section 388.10.

35 Sec. 3. Section 384.82, subsection 1, Code 2005, is

1 amended to read as follows:

2 1. a. A city may carry out projects, borrow money, and  
3 issue revenue bonds and pledge orders to pay all or part of  
4 the cost of projects, such revenue bonds and pledge orders to  
5 be payable solely and only out of the net revenues of the city  
6 utility, combined utility system, city enterprise, or combined  
7 city enterprise involved in the project. The cost of a  
8 project includes the construction contracts, interest upon the  
9 revenue bonds and pledge orders during the period or estimated  
10 period of construction and for twelve months thereafter, or  
11 for twelve months after the acquisition date, such reserve  
12 funds as the governing body may deem advisable in connection  
13 with the project and the issuance of revenue bonds and pledge  
14 orders, and the costs of engineering, architectural, technical  
15 and legal services, preliminary reports, surveys, property  
16 valuations, estimates, plans, specifications, notices,  
17 acquisition of real and personal property, consequential  
18 damages or costs, easements, rights of way, supervision,  
19 inspection, testing, publications, printing and sale of bonds  
20 and provisions for contingencies. A city may sell revenue  
21 bonds or pledge orders at public or private sale in the manner  
22 prescribed by chapter 75 and may deliver revenue bonds and  
23 pledge orders to the contractors, sellers, and other persons  
24 furnishing materials and services constituting a part of the  
25 cost of the project in payment therefor.

26 b. A city may deliver its revenue bonds to the federal  
27 government or any agency thereof which has loaned the city  
28 money for sanitary or solid waste projects, water projects or  
29 other projects for which the government has a loan program.

30 c. Notwithstanding any other provision of law, a city,  
31 city utility, combined city utility, city enterprise, or  
32 combined city enterprise shall not, in whole or in part,  
33 finance, refinance, pay the costs or expenses of, or otherwise  
34 fund a telecommunications project or the operation of a  
35 telecommunications facility established through a

1 telecommunications project, directly or indirectly, through  
2 issuance or assumption of debt, liability, or obligation, or  
3 secure or otherwise become contingently liable for a  
4 telecommunications project or facility except through use of  
5 the revenues directly earned or to be earned by the  
6 telecommunications project or facility. This paragraph shall  
7 not prevent any of the following:

8     (1) The use of otherwise available funds to pay the  
9 reasonable costs of studying the feasibility of a  
10 telecommunications project or conducting an election on a  
11 proposal for a telecommunications project.

12     (2) The sale to nongovernmental investors of revenue bonds  
13 to fund a telecommunications project if principal, interest,  
14 and premium are payable upon maturity or default and are  
15 actually paid solely from, and all obligations under the bonds  
16 are secured solely by, the net revenues earned or to be earned  
17 by the telecommunications project.

18     Sec. 4. Section 384.89, Code 2005, is amended to read as  
19 follows:

20     384.89   TRANSFER OF SURPLUS.

21     The governing body of a city utility, combined utility  
22 system, city enterprise, or combined city enterprise which has  
23 on hand surplus funds, after making all deposits into all  
24 funds required by the terms, covenants, conditions, and  
25 provisions of outstanding revenue bonds, pledge orders, and  
26 other obligations which are payable from the revenues of the  
27 city utility, combined utility system, city enterprise, or  
28 combined city enterprise and after complying with all of the  
29 requirements, terms, covenants, conditions and provisions of  
30 the proceedings and resolutions pursuant to which revenue  
31 bonds, pledge orders, and other obligations are issued, may  
32 transfer such surplus funds to any other fund of the city in  
33 accordance with any rules promulgated by the city finance  
34 committee created in section 384.13 if the transfer is also  
35 approved by the city council, provided that no transfer may be

1 made if-it for use by a city utility to finance, in whole or  
2 in part, telecommunications services or if such transfer  
3 violates section 384.82, subsection 1, paragraph "c", or  
4 conflicts with any of the requirements, terms, covenants,  
5 conditions or provisions of any resolution authorizing the  
6 issuance of revenue bonds, pledge orders, or other obligations  
7 which are payable from the revenues of the city utility,  
8 combined utility system, city enterprise, or combined city  
9 enterprise which are then outstanding.

10 Sec. 5. Section 384.90, Code 2005, is amended to read as  
11 follows:

12 384.90 PART PAYMENT FROM OTHER BONDS AND OTHER SOURCES.

13 This division does not prohibit or prevent a city from  
14 using funds derived from the issuance of general obligation  
15 bonds, the levy of special assessments and the issuance of  
16 special assessment bonds, and any other source which may be  
17 properly used for such purpose, to pay a part of the cost of a  
18 project, except as limited in section 384.82, subsection 1,  
19 paragraph "c".

20 Sec. 6. Section 384.96, Code 2005, is amended by adding  
21 the following new unnumbered paragraph:

22 NEW UNNUMBERED PARAGRAPH. The requirements of this section  
23 shall apply to a contract for the operation, management, or  
24 control of a telecommunications facility, as defined in  
25 section 384.80.

26 Sec. 7. Section 388.1, Code 2005, is amended by adding the  
27 following new subsections:

28 NEW SUBSECTION. 1A. "Telecommunications facility" means  
29 the same as defined in section 384.80.

30 NEW SUBSECTION. 1B. "Telecommunications project" means  
31 the same as defined in section 384.80.

32 Sec. 8. Section 388.2, Code 2005, is amended to read as  
33 follows:

34 388.2 SUBMISSION TO VOTERS.

35 1. The proposal of a city to establish, acquire, lease, or

1 dispose of a city utility, except a sanitary sewage or storm  
2 water drainage system, in order to undertake or to discontinue  
3 the operation of the city utility, or the proposal to  
4 establish or dissolve a combined utility system, or the  
5 proposal to establish or discontinue a utility board, is  
6 subject to the approval of the voters of the city, except that  
7 a board may be discontinued by resolution of the council when  
8 the city utility, city utilities, or combined utility system  
9 it administers is disposed of or leased for a period of over  
10 five years.

11 2. The proposal may be submitted to the voters at any city  
12 election by the council on its own motion. Upon receipt of a  
13 valid petition as defined in section 362.4, requesting that a  
14 proposal be submitted to the voters, the council shall submit  
15 the proposal at the next regular city election.

16 3. A city, city utility, combined city utility, city  
17 enterprise, or combined city enterprise may not establish,  
18 acquire, or lease the facilities of a telecommunications  
19 project, in whole or in part, without the approval of the  
20 voters of the city.

21 a. Prior to the city election to obtain voter approval,  
22 the city shall prepare a report on the feasibility of the  
23 telecommunications project which shall, at a minimum, address  
24 and disclose all of the following:

25 (1) The costs of establishing, acquiring, or leasing the  
26 facilities of the telecommunications project and an  
27 explanation of how those costs will be paid.

28 (2) Projected operating costs, including losses, for each  
29 of the first five years of operation of the telecommunications  
30 facilities, including costs of necessary upgrades to maintain  
31 continuing technological viability.

32 (3) Projected revenues of the telecommunications project  
33 for each of the first five years of operation.

34 (4) Assumptions used in developing the cost and revenue  
35 projections.

1 (5) Risks associated with the fiscal viability of the  
2 telecommunications project and its operations, including  
3 technological, financial, and market risks.

4 (6) The fiscal impact on the city of the capital and other  
5 investment required for the telecommunications project,  
6 including but not limited to the investment required to  
7 construct, maintain, and operate the facilities and to avoid  
8 their technical obsolescence.

9 (7) The impact on the city, utility ratepayers, and  
10 taxpayers if the telecommunications project is not a financial  
11 success, including the impact on the creditworthiness of the  
12 city and the alternatives available to the city if the  
13 telecommunications project is unsuccessful.

14 b. The feasibility report shall be reviewed by an  
15 independent investment banking firm experienced in public  
16 finance in the telecommunications industry, which shall  
17 provide a written opinion regarding the reasonableness of  
18 projections and conclusions in the report. The investment  
19 banking firm's opinion and the report shall be available as  
20 public records for public inspection and copying.

21 c. Not less than sixty days prior to the date of the city  
22 election for voter approval, but before the issuance of the  
23 banking firm's opinion, the city shall hold a public hearing  
24 regarding the feasibility report. Public notice of the  
25 hearing shall be given in the manner directed by section  
26 362.3. Such notice shall inform the public of the  
27 availability of the feasibility report for inspection and  
28 copying.

29 d. The ballot issue for voter approval of the proposal  
30 shall include, in addition to any other information required  
31 by law, a statement of the maximum costs disclosed pursuant to  
32 paragraph "a", subparagraphs (1) and (2), to establish,  
33 acquire, lease, maintain, or operate the facilities of the  
34 telecommunications project as shown in the feasibility report,  
35 which shall not be exceeded without voter approval in another

1 election.

2 4. A proposal for the establishment of a utility board  
3 must specify a board of either three or five members.

4 5. If a majority of those voting for and against the  
5 proposal approves the proposal, the city may proceed as  
6 proposed, except that a proposal for a telecommunications  
7 project shall require approval of sixty percent of those  
8 voting.

9 6. If ~~a-majority~~ the required affirmative vote of those  
10 voting for and against the proposal does not approve the  
11 proposal, the same or a similar proposal may not be submitted  
12 to the voters of the city for at least four years from the  
13 date of the election at which the proposal was defeated.

14 Sec. 9. EFFECTIVE AND RETROACTIVE APPLICABILITY DATES.  
15 This Act, being deemed of immediate importance, takes effect  
16 upon enactment, and is retroactively applicable to January 1,  
17 2005, and is applicable on and after that date.

18 EXPLANATION

19 This bill relates to the financing of telecommunications  
20 projects and facilities by a city, city utility, combined city  
21 utility, city enterprise, or combined city enterprise.

22 The bill restricts persons providing services related to a  
23 feasibility study for a telecommunications project from being  
24 awarded a contract related to the telecommunications project.

25 The bill provides definitions for the terms  
26 "telecommunications facility", "telecommunications project",  
27 and "telecommunications services".

28 The bill prohibits a city, city utility, or city enterprise  
29 from financing or funding a telecommunications project or  
30 operation of a telecommunications facility established through  
31 a project except through use of the revenues directly earned  
32 or to be earned by the project. The bill prohibits a city,  
33 city utility, or city enterprise from transferring surplus  
34 funds to finance telecommunications services or a  
35 telecommunications project. The bill provides that the

1 provision requiring sealed bids applies to contracts regarding  
2 a telecommunications facility.

3 The bill provides that a city, city utility, or city  
4 enterprise shall not establish, acquire, or lease  
5 telecommunications facilities of a telecommunications project  
6 without voter approval. A feasibility report must be prepared  
7 concerning the telecommunications project prior to the city  
8 election to obtain voter approval. The feasibility report  
9 must contain certain provisions regarding costs, revenues,  
10 risks, and the fiscal impact on the city. The feasibility  
11 report must be reviewed by an independent investment banking  
12 firm. The city shall also hold a public hearing regarding the  
13 feasibility report prior to the city election to obtain voter  
14 approval. The ballot issue shall include a statement of the  
15 maximum cost shown in the feasibility report to establish,  
16 acquire, or lease the facilities of telecommunications  
17 projects. The bill prohibits the city from exceeding the  
18 feasibility report's projected cost without approval by  
19 another city election. The bill provides that at least 60  
20 percent of voters must approve the proposal for a  
21 telecommunications project rather than a simple majority as  
22 required for other proposals needing city voter approval.

23 The bill is retroactively applicable to January 1, 2005.

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