

reprinted

FILED MAR 07 1989

SENATE FILE **373**
BY COMMITTEE ON ENVIRONMENT
AND ENERGY UTILITIES

(SUCCESSOR TO SSB 302)

Passed Senate, Date 4-13-89 (p.141) Passed House, Date 4-19-89 (p.174)

Vote: Ayes 36 Nays 11 Vote: Ayes 87 Nays 10

Approved 5.2.89

Motion to Reconsider
4-13-89 (p.141) - Withdrawn 4-17-89 (p.186)
A BILL FOR

1 An Act relating to public utilities and their affiliates, with
2 civil penalties applicable.

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

- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22

SF 373

3531 amended

1 Section 1. Section 476.1, Code 1989, is amended by adding
2 the following new unnumbered paragraphs immediately following
3 unnumbered paragraph 2:

4 NEW UNNUMBERED PARAGRAPH. As used in this chapter,
5 "affiliate" means a person, including an individual, corpora-
6 tion, corporate subsidiary, firm, partnership, or incorporated
7 or unincorporated association, whether located within or with-
8 out the state, that directly or indirectly controls, is con-
9 trolled by, or is directly or indirectly under common control
10 with a rate-regulated gas or electric public utility, and that
11 is engaged in the sale, lease, rental, installation,
12 construction, modernization, retrofit, maintenance, or repair
13 of equipment, products, or services. The term "affiliate"
14 specifically includes a public utility holding company or an
15 affiliate of such a holding company.

16 NEW UNNUMBERED PARAGRAPH. As used in this chapter, "emer-
17 gency service" means service performed by a public utility to
18 correct malfunctions or interruptions in the generation,
19 transmission, distribution, or use of natural gas or elec-
20 tricity that, if not corrected, may endanger life or property
21 or otherwise affect public safety. The term "emergency
22 service" specifically includes the lighting or extinguishing
23 of pilot lights.

24 Sec. 2. Section 476.51, Code 1989, is amended to read as
25 follows:

26 476.51 CIVIL PENALTY.

27 A public utility or affiliate which wilfully violates a
28 provision of this chapter, a rule adopted by the board, or a
29 provision of an order lawfully issued by the board, is subject
30 to a civil penalty, which may be levied by the board, of not
31 more than one hundred dollars per violation or one thousand
32 dollars per day of a continuing violation, whichever is
33 greater. Civil penalties collected pursuant to this section
34 shall be forwarded by the executive secretary of the board to
35 the treasurer of state to be credited to the energy research

1 and development fund and to be used only for the low income
2 home energy assistance program and the weatherization
3 assistance program administered by the division of community
4 action agencies of the department of human rights. Penalties
5 paid by a rate-regulated public utility pursuant to this
6 section shall be excluded from the utility's costs when
7 determining the utility's revenue requirement, and shall not
8 be included either directly or indirectly in the utility's
9 rates or charges to customers.

10 Sec. 3. NEW SECTION. 476.70 LEGISLATIVE FINDINGS.

11 The legislature finds and declares it to be the public
12 policy of the state to promote free and open competition in
13 the sale and servicing of energy-related and nonutility
14 products and equipment.

15 The public policy of the state also requires fair and
16 efficient regulation of transactions and dealings between
17 rate-regulated gas and electric public utilities and their
18 affiliates and the prevention of unfair transactions or
19 dealings between rate-regulated gas and electric public
20 utilities and their affiliates.

21 The public policy of the state requires that public utili-
22 ties not engage in the sale or service of products and
23 equipment, including household appliances, the sale of
24 construction services, and the sale of energy efficient
25 modernization or retrofit services, except in circumstances
26 that guard against subsidization by public utilities of
27 affiliates and unfair contracting practices and that otherwise
28 ensure fair competition and a free and open market for
29 products and services unaffected by the special competitive
30 advantage enjoyed by the public utilities.

31 The legislature finds that the best interest of investors
32 and consumers can be protected by the prevention of unfair and
33 inefficient transactions between public utilities and their
34 affiliates. Free and open competition in markets for
35 nonutility services can only be achieved if the market for

1 those goods and services is not distorted or dominated by
2 utilities that, by virtue of their special status as regulated
3 monopolies in the development and distribution of energy, have
4 an unfair competitive advantage in other nonutility
5 enterprises.

6 The legislature also finds that the public interest and the
7 interest of consumers and investors can be protected if all of
8 the following occur:

9 1. Transactions between public utilities and their
10 affiliates are subject to utilities board approval and
11 regulation to assure that reasonable prices are charged and
12 costs properly allocated.

13 2. Public utilities and their affiliates do not engage in
14 unfair business practices.

15 3. Activities and relationships between public utilities
16 and their affiliates do not cause any materially detrimental
17 effect on the public utility's rates for or reliability of
18 public utility service to the public, its cost of capital, or
19 its ability to raise capital.

20 4. The utilities board has access to the books and records
21 of public utilities and affiliates to the extent necessary and
22 relevant for the board to regulate any public utility and its
23 affiliates.

24 Sec. 4. NEW SECTION. 476.71 UTILITIES PROHIBITED FROM
25 CERTAIN ACTIVITIES.

26 1. A public utility shall not engage in the sale, lease,
27 servicing, rental, installation, construction, modernization,
28 retrofit, maintenance, or repair of equipment or products
29 except by an affiliate. However, the utilities board may
30 adopt rules providing for the waiver of this subsection, when
31 there is a lack of competition or other circumstances, when
32 the waiver would not thwart the legislative declaration and
33 policies expressed in section 476.70.

34 2. A public utility shall not grant a subsidy or any un-
35 fair preference or privilege to an affiliate in the transac-

1 tion of business between them.

2 3. A public utility or its agent, employee, or represen-
3 tative shall not refer or steer customers to specific indi-
4 viduals or companies engaged in the sale or servicing of
5 energy-consuming products, equipment, or appliances, including
6 an affiliate.

7 4. A public utility shall not lend money to or guarantee,
8 endorse, or act as a surety on the debts, liabilities, bonds,
9 notes, contracts, or other obligations, or otherwise assist
10 financially, an affiliate.

11 5. A public utility shall not purchase, receive, hold, or
12 otherwise acquire the stock, shares, bonds, debentures, notes,
13 or other securities, or other interest in an affiliate unless
14 the utility pays at least the fair market value for the inter-
15 est acquired.

16 6. A public utility shall not sell, lease, rent, assign,
17 or transfer real or personal property to an affiliate, unless
18 the public utility receives the higher of book value or the
19 current market value for the property sold, leased, rented,
20 assigned, or transferred.

21 7. An acquisition of an asset by the public utility from
22 an affiliate shall be given a book value at no more than the
23 market value of the asset.

24 8. A service provided to an affiliate by a public utility
25 shall be priced at no less than the fully allocated cost of
26 the service, including a five-percent add-on to the labor
27 portion of the cost.

28 9. A public utility shall pay no more than the reasonable
29 market value to an affiliate for any services provided to or
30 on behalf of the public utility.

31 10. A public utility shall not provide an affiliate with
32 public utility data or information, including but not limited
33 to customer lists, confidential utility information, or any
34 information in which the public utility has a protectable
35 interest, unless the information or data is transferred or

1 charged at market value and is made available to third parties
2 under the same terms and conditions that it is available to an
3 affiliate.

4 11. All transactions between a public utility and its af-
5 filiates shall be conducted on an arms-length basis, and the
6 transactions shall not be for less than the current fair
7 market value.

8 12. Public utilities shall maintain records, pursuant to
9 rules specified by the utilities board under section 476.73
10 which detail all transactions between the public utilities and
11 their affiliates, and the records shall identify the nature of
12 each transaction and the terms and conditions applying to each
13 transaction.

14 13. A public utility maintaining an affiliate shall, every
15 three years or upon order of the board, submit to the
16 utilities board and the consumer advocate an independent audit
17 from an auditor selected jointly by the utilities board and
18 the consumer advocate. The cost of the audit shall be paid by
19 the public utility but shall not be included directly or
20 indirectly in its charges or rates to customers.

21 14. This section does not prohibit a public utility from
22 providing emergency service, any service required by law, or
23 any projects or activities required by the utilities board or
24 any energy conservation programs or projects established by
25 the board or by statute. Further, this section does not
26 prohibit construction, maintenance, or repair of utility
27 property necessary for the generation, transmission, or
28 distribution of electricity, gas, or steam provided that such
29 work performed is necessary to protect public safety or to
30 avoid interruption of service.

31 15. This section shall be applicable only to cate-
32 regulated gas or electric public utilities.

33 Sec. 5. NEW SECTION. 476.72 RESTRICTIONS ON PUBLIC
34 UTILITY AFFILIATES.

35 An affiliate shall engage in the sale, lease, rental,

1 installation, maintenance, or repair of energy-consuming
2 equipment, products, or appliances only if in compliance with
3 the following requirements:

4 1. The name of the affiliate shall not resemble the name
5 of the public utility. Neither the utility nor the affiliate
6 shall trade upon, promote, or advertise their affiliated
7 status.

8 2. The affiliate shall not have a place of business at or
9 on premises owned or occupied by the public utility. The
10 affiliate shall not share the use of premises, equipment,
11 inventory, personnel, or other resources of the public
12 utility.

13 3. The affiliate shall not advertise, promote, or market
14 its products or services through mailings of the public util-
15 ity or advertisements in which the public utility's name is
16 set forth.

17 4. The affiliate shall maintain accounts, books, and
18 records separate and distinct from those of the public
19 utility.

20 5. Revenues from the affiliate shall not be provided or
21 disbursed to the public utility unless all costs and expenses
22 involved in operating the affiliate are borne by the affiliate
23 and not by the public utility.

24 6. The affiliate shall maintain assets separate and
25 distinct from the assets of the public utility.

26 7. The affiliate shall transact its business in the state
27 separately and independently of a public utility, whether or
28 not the utility is located within or without the state, so as
29 to gain no competitive advantage by virtue of its status as an
30 affiliate.

31 Sec. 6. NEW SECTION. 476.73 JURISDICTION OF BOARD OVER
32 AFFILIATES -- RULES.

33 The utilities board shall have jurisdiction over affiliates
34 of rate-regulated gas and electric public utilities operating
35 within this state to ensure compliance with this division and

1 to the extent necessary to accomplish the objectives and
2 purposes of this division. The utilities board shall adopt
3 rules as necessary to accomplish the objectives and purposes
4 of this division.

5 Sec. 7. NEW SECTION. 476.74 DUTIES OF UTILITIES BOARD TO
6 SUPERVISE UTILITY AND AFFILIATES TRANSACTIONS.

7 The board and consumer advocate shall have the power to do
8 all of the following:

9 1. Review, inspect, and audit books, accounts, and other
10 records kept by an affiliate.

11 2. Investigate the operations of all rate-regulated gas
12 and electric public utilities and their affiliates and their
13 relationship to each other for the purpose of ensuring
14 compliance with this division.

15 3. Select independent auditors as required by this divi-
16 sion.

17 Sec. 8. NEW SECTION. 476.75 SUBSIDIZATION OF AFFILIATES
18 BY UTILITY -- POWER TO INVESTIGATE.

19 A person aggrieved by unfair competition from a public
20 utility affiliate, as defined in section 476.1, may file a
21 complaint before the board which shall set the case for
22 hearing and give notice as it deems appropriate. An aggrieved
23 person who is successful, in whole or in part, in such an
24 action shall receive attorney's fees, expenses, and costs,
25 including but not limited to, expert witness fees, and shall
26 be awarded treble damages suffered by reason of the unfair
27 competition. The fees, expenses, costs, and treble damages
28 shall be paid by the affiliate or by the public utility, as
29 shall be ordered by the board, but the public utility shall
30 not include, either directly or indirectly in its charges to
31 its customers or its rate base, any such fees, expenses,
32 costs, or damages. A public utility shall not include the
33 cost of a successful defense of an affiliate subsidization
34 case in its charges to its customers or in its rate base.

35 Sec. 9. NEW SECTION. 476.76 EXEMPTIONS.

1 This division shall not apply to rural electric
2 cooperatives, municipal utilities, water utilities, and tele-
3 communication companies.

4 Sec. 10. NEW SECTION. 476.77 TITLE.

5 Sections 476.70 through 476.76 and this section shall be a
6 separate division of this chapter and the division shall be
7 known as the "Public Utility Affiliate Regulation Act".

8 EXPLANATION

9 This bill creates a new division of chapter 476 to be known
10 as the "Public Utility Affiliate Regulation Act".

11 The legislative findings are set out in section 3,
12 prohibited acts of rate-regulated gas and electric public
13 utilities are set out in section 4, section 5 places
14 restrictions on public utility affiliates, section 6 gives the
15 utilities board jurisdiction and rule making authority over
16 affiliates of rate-regulated gas and electric public
17 utilities, section 7 gives the utilities board and consumer
18 advocate supervisory and investigatory authority over public
19 utilities and their affiliates, and section 8 relates to
20 administrative review of complaints by persons aggrieved by
21 unfair competition from a public utility affiliate. Section 9
22 provides exemptions from the Public Utility Affiliate
23 Regulation Act for rural electric cooperatives, municipal
24 utilities, water utilities, and telecommunication companies.

25 A public utility or affiliate which violates a provision of
26 chapter 476, a rule adopted by the utilities board, or a
27 provision of an order lawfully issued by the utilities board,
28 is subject to a civil penalty, which may be levied by the
29 utilities board, of not more than one hundred dollars per vio-
30 lation or one thousand dollars per day of a continuing vio-
31 lation, whichever is greater.

32
33
34
35

SENATE FILE 373

S-3581

1 Amend Senate File 373 as follows:

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

3694, 3581/4 4 "Section 1. Section 476.10, unnumbered paragraph
5 1, Code 1989, is amended to read as follows:

6 When the board deems it necessary in order to carry
7 out the duties imposed upon it by this chapter for the
8 purpose of determining rate matters to investigate the
9 books, accounts, practices, and activities of, or make
10 appraisals of the property of any public utility, or
11 to render any engineering or accounting services to
12 any public utility, or to review the operations or
13 annual reports of the public utility under section
14 476.31 or 476.32, or to evaluate a proposal for
15 reorganization under section 476.73, the public
16 utility shall pay the expense reasonably attributable
17 to the investigation, appraisal, service, or review.
18 The board shall ascertain the expenses including
19 certified expenses incurred by the consumer advocate
20 division of the department of justice directly
21 chargeable to the public utility under section 475A.6,
22 and shall render a bill, by certified mail, to the
23 public utility, either at the conclusion of the
24 investigation, appraisal, services, or review, or from
25 time to time during its progress, which bill is notice
26 of the assessment and shall demand payment. The total
27 amount of such expense in any one calendar year, for
28 which any public utility shall become liable, shall
29 not exceed two-tenths of one percent of its gross
30 operating revenues derived from intrastate public
31 utility operations in the last preceding calendar
32 year.

33 Sec. 2. NEW SECTION. 476.67 PURPOSE.

34 It is the intent of the general assembly that a
35 public utility should not directly or indirectly
36 include in regulated rates or charges any costs or
37 expenses of an affiliate engaged in any business other
38 than that of utility business unless the affiliate
39 provides goods or services to the public utility. The
40 costs that are included should be reasonably necessary
41 and appropriate for utility business. It is also the
42 intent of the general assembly that a public utility
43 should only provide nonutility services in a manner
44 that minimizes the possibility of cross-subsidization
45 or unfair competitive advantage.

46 Sec. 3. NEW SECTION. 476.68 DEFINITIONS.

47 As used in this division, unless the context
48 otherwise requires:

49 1. "Public utility" includes only gas or electric
3694-50 rate-regulated public utilities and rate-regulated

S-3581

Page 2

1 telephone utilities providing local exchange

2 telecommunication service.

3638 3 2. "Affiliate" means a party that directly, or
4 indirectly through one or more intermediaries,
5 controls, is controlled by, or is under common control
3A4 6 with a rate-regulated public utility.

7 3. "Control" means the possession, direct or
8 indirect, of the power to direct or cause the
9 direction of the management and policies of an
10 enterprise through ownership, by contract or
11 otherwise.

12 4. "Utility business" means the generation or
13 transmission of electricity or furnishing of gas or
3A4 14 furnishing electricity or furnishing rate-regulated
15 communications services to the public for
16 compensation.

3638 17 5. "Nonutility service" includes the sale, lease,
3682 18 or other conveyance of commercial and residential gas
19 or electric appliances, interior lighting systems and
20 fixtures, or heating, ventilating, or air conditioning
21 systems and component parts or the servicing, repair,
22 or maintenance of such equipment. It does not include
23 emergency service performed by a public utility to
24 correct malfunctions or interruptions in the
25 generation, transmission, distribution, or use of
26 natural gas or electricity that, if not corrected, may
27 endanger life or property or otherwise affect public
28 safety. It does not include the lighting or
29 extinguishing of pilot lights and incidental service
30 and maintenance work necessary to restore and maintain
31 electrical or gas service.

3617-3694 32 Sec. 4. NEW SECTION. 476.69 AFFILIATE RECORDS.

33 1. ACCESS TO RECORDS. Every public utility and
34 affiliate through the public utility shall provide the
35 board with access to books, records, accounts,
36 documents, and other data and information which the
37 board finds necessary to effectively implement and
38 effectuate the provisions of this chapter.

39 2. SEPARATE RECORDS. The board may require
40 affiliates of a public utility to keep separate
41 records and the board may provide for the examination
42 and inspection of the books, accounts, papers, and
43 records, as may be necessary to enforce this chapter.

3615 44 3. ALLOCATION PERMITTED. The board may inquire as
45 to and prescribe, for ratemaking purposes, the
46 allocation of capitalization, earnings, debts, and
47 expenses related to ownership, operation, or
48 management of affiliates.

49 Sec. 5. NEW SECTION. 476.70 AFFILIATE
50 INFORMATION REQUIRED TO BE FILED.

S-3581

Page 3

1 1. GOODS AND SERVICES. All contracts or
2 arrangements providing for the furnishing or receiving
3 of goods and services including but not limited to the
4 furnishing or receiving of management, supervisory,
5 construction, engineering, accounting, legal,
6 financial, marketing, data processing, or similar
7 services made or entered into on or after July 1,
8 1989, between a public utility and any affiliate shall
9 be filed annually with the board.

10 2. SALES, PURCHASES, AND LEASES. All contracts or
11 arrangements for the purchase, sale, lease, or
12 exchange of any property, right, or thing made or
13 entered into on or after July 1, 1989, between a
14 public utility and any affiliate shall be filed
15 annually with the board.

16 3. LOANS. All contracts or arrangements providing
17 for any loan of money or an extension or renewal of
18 any loan of money or any similar transaction made or
19 entered into on or after July 1, 1989, between a
20 public utility and any affiliate, whether as
21 guarantor, endorser, surety, or otherwise, shall be
22 filed annually with the board.

23 4. VERIFIED COPIES REQUIRED. Every public utility
24 shall file with the board a verified copy of the
25 contract or arrangement referred to in this section,
26 or a verified summary of the unwritten contract or
27 arrangement, and also of all the contracts and
28 arrangements or a verified summary of the unwritten
29 contracts or arrangements, whether written or
30 unwritten, entered into prior to July 1, 1989, and in
31 force and effect at that time. Any contract or
32 agreement determined by the board to be a confidential
33 record pursuant to section 22.7 shall be returned to
34 the public utility filing the confidential record
35 within sixty days after the contract or agreement is
36 filed.

37 5. EXEMPTION. The provisions of this section
38 requiring filing of contracts or agreements with the
39 board shall not apply to transactions with an
40 affiliate where the amount of consideration involved
41 is not in excess of fifty thousand dollars or five
42 percent of the capital equity of the utility,
43 whichever is smaller. However, regularly recurring
44 payments under a general or continuing arrangement
45 which aggregate a greater annual amount shall not be
46 broken down into a series of transactions to come
47 within this exemption. In any proceeding involving
48 the rates, charges or practices of the public utility,
49 the board may exclude from the accounts of the public
50 utility any unreasonable payment or compensation made

S-3581

Page 4

1 pursuant to any contract or arrangement which is not
2 required to be filed under this subsection.

3 6. CONTINUING JURISDICTION. The board shall have
4 the same jurisdiction over modifications or amendments
5 of contracts or arrangements in this section as it has
6 over the original contracts or arrangements. Any
7 modification or amendment of contracts or arrangements
8 shall also be filed annually with the board.

9 7. SANCTION. For ratemaking purposes, the board
10 may exclude the payment or compensation to an
11 affiliate or adjust the revenue received from an
12 affiliate associated with any contract or arrangement
13 required to be filed with the board if the contract or
14 arrangement is not so filed.

15 8. ALTERNATIVE INFORMATION. The board shall
16 consult with other state and federal regulatory
17 agencies for the purpose of eliminating duplicate or
18 conflicting filing requirements and may adopt rules
19 which provide that comparable information required to
20 be filed with other state or federal regulatory
21 agencies may be accepted by the board in lieu of
22 information required by this section.

23 9. REASONABLENESS REQUIRED. In any proceeding,
24 whether upon the board's own motion or upon
25 application or complaint involving the rates, charges,
26 or practices of any public utility, the board, for
27 ratemaking purposes may exclude from the accounts of
28 the public utility or adjust any payment or
29 compensation related to any transaction with an
30 affiliate for any services rendered or for any
31 property or service furnished or received, as
32 described in this section, under contracts or
33 arrangements with an affiliate unless and upon inquiry
34 the public utility shall establish the reasonableness
35 of the payment or compensation.

36 10. EXEMPTION BY RULE OR WAIVER. The board may
37 adopt rules which exempt any public utility or class
38 of public utility or class of contracts or
39 arrangements from this section or waive the
40 requirements of this section if the board finds that
41 the exemption or waiver is in the public interest.

42 Sec. 6. NEW SECTION. 476.71 AUDITS REQUIRED.

363743 The board may periodically retain a nationally or
44 regionally recognized independent auditing firm to
45 conduct an audit of the transactions between a public
46 utility and its affiliates. An affiliate transaction
47 audit shall not be conducted more frequently than
48 every three years, unless ordered by the board for
49 good cause. The cost of the audit shall be paid by
50 the public utility to the independent auditing firm

S-3581

Page 5

1 and shall be included in its regulated rates and
2 charges, unless otherwise ordered by the board for
3 good cause after providing the public utility the
4 opportunity for a hearing on the board's decision.

34425 Sec. 7. NEW SECTION. 476.72 REORGANIZATION
6 DEFINED.

7 For purposes of this division unless the context
8 otherwise requires, "reorganization" means either of
9 the following:

10 1. The acquisition, sale, lease, or any other
11 disposition, directly or indirectly, including by
12 merger or consolidation, of the whole or any
13 substantial part of a public utility's assets.

14 2. The purchase or other acquisition or sale or
15 other disposition of the controlling capital stock of
16 any public utility, either directly or indirectly.

34427 Sec. 8. NEW SECTION. 476.73 TIME AND STANDARDS
18 FOR REVIEW.

19 1. A reorganization shall not take place if the
20 board disapproves. Prior to reorganization, the
21 applicant shall file with the board a proposal for
22 reorganization with supporting testimony and evidence
23 to establish that the reorganization is not contrary
24 to the interests of the public utility's ratepayers
25 and the public interest.

26 2. A proposal for reorganization shall be deemed
27 to have been approved unless the board disapproves the
28 proposal within forty-five days after its filing.
29 However, the board shall not disapprove a proposal for
30 reorganization without providing for notice and
31 opportunity for hearing. The notice of hearing shall
32 be provided no later than twenty-one days after the
33 proposal for reorganization has been filed.

34 3. In its review of a proposal for reorganization,
35 the board may consider all of the following:

36 a. Whether the board will have reasonable access
37 to books, records, documents, and other information
38 relating to the public utility or any of its
39 affiliates.

40 b. Whether the public utility's ability to attract
41 capital on reasonable terms, including the maintenance
42 of a reasonable capital structure, is impaired.

43 c. Whether the ability of the public utility to
44 provide safe, reasonable, and adequate service is
45 impaired.

46 d. Whether ratepayers are detrimentally affected.

47 e. Whether the public interest is detrimentally
48 affected.

49 4. EXEMPTION BY RULE OR WAIVER. The board may
50 adopt rules which exempt any public utility or class

S-3581

Page 6

1 of public utility or class of reorganization from this
2 section if the board finds that with respect to the
3 public utility or class of public utility or class of
4 reorganization review is not necessary in the public
5 interest. The board may adopt rules necessary to
6 protect the interest of the customers of the exempt
7 public utility. These rules may include, but are not
8 limited to, notification of a proposed sale or
9 transfer of assets or stock. The board may waive the
10 requirements of this section, if the board finds that
11 board review is not necessary in the public interest.

12 Sec. 9. NEW SECTION. 476.74 CROSS-SUBSIDIZATION
13 PROHIBITED.

3694- 14 A rate-regulated gas or electric public utility
15 shall not directly or indirectly include any costs or
16 expenses attributable to providing nonutility service
17 in regulated rates or charges.

18 Sec. 10. NEW SECTION. 476.75 PROVISION OF
19 NONUTILITY SERVICE.

3694- 20 1. A rate-regulated gas or electric public utility
21 providing any nonutility service to its customers
22 shall keep and render to the board separate records of
23 the nonutility service. The board may provide for the
24 examination and inspection of the books, accounts,
25 papers, and records of the nonutility service, as may
26 be necessary, to enforce any provisions of this
27 chapter.

3694- 28 2. The board shall adopt rules which specify the
29 manner and form of the accounts relating to providing
30 nonutility services which the rate-regulated gas or
31 electric utility shall maintain.

3691, 3675 32 Sec. 11. NEW SECTION. 476.76 ADDITIONAL
33 REQUIREMENTS.

3694- 34 A rate-regulated gas or electric public utility
35 which engages in a systematic marketing effort as
36 defined by the board, other than on an incidental or
37 casual basis, to promote the availability of
38 nonutility service from the public utility shall make
39 available on a nondiscriminatory basis to all persons
40 engaged primarily in providing the same competitive
41 nonutility services in that area all of the following
42 services to the same extent utilized by the public
43 utility in connection with its nonutility services:

44 1. Access to and use of the public utility's
45 customer lists.

46 2. Access to and use of the public utility's
47 billing and collection system.

48 3. Access to and use of the public utility's
49 mailing system.

50 Sec. 12. NEW SECTION. 476.77 AUDIT REQUIRED.

S-3581

Page 3637, 3694

1 The board may periodically retain a nationally or
 2 regionally recognized independent auditing firm to
 3 conduct an audit of the nonutility services provided
 4 by a rate-regulated gas or electric public utility
 5 subject to the provisions of section 476.76. A
 6 nonutility service audit shall not be conducted more
 7 frequently than every three years, unless ordered by
 8 the board for good cause. The cost of the audit shall
 9 be paid by the public utility to the independent
 10 auditing firm and shall be included in its regulated
 11 rates and charges, unless otherwise ordered by the
 12 board for good cause after providing the public
 13 utility the opportunity for a hearing on the board's
 14 decision.

15 Sec. 13. NEW SECTION. 476.78 EXEMPTION -- ENERGY
 16 EFFICIENCY.

17 Notwithstanding any language to the contrary,
 18 nothing in this division shall prohibit a public
 19 utility from participating in or conducting energy
 20 efficiency projects or programs established or
 21 approved by the board or required by statute. A
 22 public utility participating in or conducting energy
 23 efficiency projects or programs established or
 24 approved by the board or required by statute shall not
 25 be subject to the provisions of sections 476.76 and
 26 476.77 for those energy efficiency projects or
 27 programs.

28 Sec. 14. NEW SECTION. 476.79 COMPLAINTS.

29 Any person may file a written complaint with the
 30 board requesting the board to determine compliance by
 31 a rate-regulated gas or electric utility with the
 32 provisions of section 476.74, 476.75, or 476.76 or any
 33 validly adopted rules to implement those sections. If
 34 the board determines there is any reasonable ground to
 35 investigate the complaint, the board shall promptly
 36 initiate formal complaint proceedings. The formal
 37 proceeding may be initiated at any time by the board
 38 on its own motion.

39 Sec. 15. Sections 476.67 through 476.79 created
 40 under this Act shall be a separate division of chapter
 41 476."

By MICHAEL E. GRONSTAL
 RICHARD VARN
 PAUL PATE
 MARK R. HAGERLA

JOHN SOORHOLTZ
 PAT DELUHERY
 AL STURGEON
 JIM LIND

S-3581 FILED APRIL 6, 1989

Adopted 4-13-89 (p.1411)

**SENATE FILE 373
FISCAL NOTE**

A fiscal note for **SENATE FILE 373** is hereby submitted pursuant to Joint Rule 17. Data used in developing this fiscal note is available from the Legislative Fiscal Bureau to members of the Legislature upon request.

Senate File 373 gives the Utilities Board jurisdiction and rule making authority over affiliates of rate-regulated gas and electric public utilities. It also establishes restrictions and prohibited acts for rate-regulated gas and electric public utilities. The Utilities Board and the Consumer Advocate are made supervisory and have investigatory authority over the utilities and their affiliates. Civil penalties are provided.

Exemptions are provided for rural electric cooperatives, municipal utilities, water utilities, and telecommunication companies.

FISCAL EFFECT: This Bill will require additional staff and support for both the Utilities Board and the Consumer Advocate. Estimates of the costs to the Utilities Revolving Fund are provided below.

ESTIMATED COSTS

	FY 1990	FY 1991
Utilities Board	\$174,432	\$138,458
FTEs	4.00	3.67
Consumer Advocate	238,774	191,477
FTEs	5.75	5.25

(Source: Consumer Advocate's Office and Utilities Board) (LS8 4149sv, DPW)

FILED MARCH 27, 1989

BY DENNIS PROUTY, FISCAL DIRECTOR

SENATE FILE 373

S-3638

- 1 Amend the amendment, S-3581, to Senate File 373 as
- 2 follows:
- 3 1. Page 2, line 3, by inserting before the word
- 4 "directly" the following: "engages in nonutility
- 5 service and that".
- 6 2. Page 2, line 17, by striking the word
- 7 "includes" and inserting the following: "means".

By JOHN W. JENSEN

S-3638 FILED APRIL 11, 1989

Withdrawn 4-13-89 (p.1409)

SENATE FILE 373

S-3642

- 1 Amend amendment, S-3581, to Senate File 373 as
- 2 follows:
- 3 1. Page 1, by striking lines 4 through 32.
- 4 2. By striking page 5, line 5, through page 6,
- 5 line 11.
- 6 3. By renumbering sections as necessary.

By WALLY E. HORN

S-3642 FILED APRIL 11, 1989

Lost 4-13-89 (p.1409)

SENATE FILE 373

S-3675

- 1 Amend amendment, S-3581, to Senate File 373 as
- 2 follows:
- 3 1. Page 6, by striking lines 32 through 49.
- 4 2. Page 7, line 32, by striking the figures and
- 5 word ", 476.75, or 476.76" and inserting the word and
- 6 figure "or 476.75,".
- 7 3. By renumbering sections as necessary.

By DON E. GETTINGS

H. KAY HEDGE

JACK RIFE

S-3675 FILED APRIL 12, 1989

Withdrawn 4-13-89 (p.1410)

SENATE FILE 373

S-3680

- 1 Amend the amendment, S-3581, to Senate File 373 as
- 2 follows:
- 3 1. Page 6, line 39, by inserting after the word "
- 4 "available" the following: "at reasonable compensation".

By JOE WELSH

S-3680 FILED APRIL 12, 1989

Adopted 4-13-89 (p.1410)

SENATE FILE 373

S-3615

1 Amend the amendment, S-3581, to Senate File 373 as
2 follows:

3 1. Page 2, line 46, by striking the words "capitali-
4 zation, earnings, debts, and".

By CALVIN O. HULTMAN

S-3615 FILED APRIL 10, 1989

lost 4-13-89 (p. 1410)

SENATE FILE 373

S-3617

1 Amend amendment S-3581 to Senate File 373 as
2 follows:

3 1. Page 2, line 31, by inserting after the word
4 "service." the following: "It also does not include
5 street lighting, area lighting, or the construction,
6 maintenance, or repair of transmission or distribution
7 facilities."

By DON E. GETTINGS
H. KAY HEDGE
EUGENE FRAISE

S-3617 FILED APRIL 10, 1989

out of order 4-13-89 (p. 1409)

SENATE FILE 373

S-3637

1 Amend amendment, S-3581, to Senate File 373, as
2 follows:

3 1. Page 4, by striking lines 43 through 46 and
4 inserting the following:
5 "The board may periodically require that an audit
6 of the transactions between a public utility and its
7 affiliates be conducted by the nationally or
8 regionally recognized independent auditing firm
9 regularly retained by the public utility or the
10 affiliate. An affiliate transaction".
11 2. Page 7, line 1, by striking the word "retain"
12 and inserting the following: "require that".
13 3. Page 7, line 2, by striking the word "to" and
14 inserting the following: "regularly retained by the
15 public utility".
16 4. Page 7, line 4, by striking the word "a" and
17 inserting the following: "the".

By WILLIAM DIELEMAN

S-3637 FILED APRIL 11, 1989

lost 4-13-89 (p. 1410)

SENATE FILE 373

S-3682

1 Amend the amendment, S-3581, to Senate File 373 as
2 follows:
3 1. Page 2, by striking lines 22 through 31, and
4 inserting the following: "or maintenance of such
5 equipment."

By MICHAEL E. GRONSTAL
PAUL PATE

S-3682 FILED APRIL 12, 1989

Adopted 4-13-89 (p.1409)

SENATE FILE 373

S-3691

1 Amend amendment, S-3581, to Senate File 373 as
2 follows:
3 1. Page 6, by striking lines 32 through 49.
4 2. Page 7, line 5, by striking the words "subject
5 to the provisions of section 476.76".
6 3. Page 7, line 25, by striking the words and
7 figure "sections 476.76 and" and inserting the word
8 "section".
9 4. Page 7, line 32, by striking the figures and
10 word ", 476.75, or 476.76" and inserting the word and
11 figure "or 476.75,".
12 5. By renumbering sections as necessary.

By DON E. GETTINGS
H. KAY HEDGE

S-3691 FILED APRIL 13, 1989

LOST *4-13-89 (p.1410)*

SENATE FILE 373

S-3694

Amend the amendment, S-3581, to Senate File 373 as follows:

- 3 1. Page 1, by inserting before line 4 the
4 following:
5 "Sec. ____ . Section 476.1B, subsection 1, Code
6 1989, is amended by adding the following new
7 paragraph:
8 NEW PARAGRAPH. j. Affiliates."
9 2. Page 1, line 4, by striking the word and
10 figure "Section 1." and inserting the following:
11 "Sec. ____ ."
12 3. Page 1, line 36, by striking the word
13 "regulated" and inserting the word "its".
14 4. Page 1, by striking line 50 and inserting the
15 following: "public utilities and".
16 5. Page 2, line 6, by striking the word "rate-
17 regulated".
18 6. Page 2, line 14, by striking the word "rate-
19 regulated".
20 7. Page 2, by inserting before line 32 the
21 following:
22 ""Nonutility service" also includes the provision
23 of unregulated services or facilities by a telephone
24 utility providing local exchange telecommunication
25 services."
26 8. Page 5, line 1, by striking the word "regu-
27 lated".
28 9. Page 6, line 14, by striking the words "rate-
29 regulated gas or electric".
30 10. Page 6, line 17, by striking the word
31 "regulated" and inserting the word "its".
32 11. Page 6, line 20, by striking the words "rate-
33 regulated gas or electric".
34 12. Page 6, lines 30 and 31, by striking the
35 words "rate-regulated gas or electric" and inserting
36 the word "public".
37 13. Page 6, line 34, by striking the words "rate-
38 regulated gas or electric".
39 14. Page 7, line 4, by striking the words "rate-
40 regulated gas or electric".
41 15. Page 7, line 10, by striking the word
42 "regulated".
43 16. Page 7, line 31, by striking the words "rate-
44 regulated gas or electric" and inserting the word
45 "public".

By JOE WELSH

S-3694 FILED APRIL 13, 1989

LOST

4-13-89 (pjm09)

SENATE FILE 373
BY COMMITTEE ON ENVIRONMENT
AND ENERGY UTILITIES

(SUCCESSOR TO SSB 302)

(AS AMENDED AND PASSED BY THE SENATE APRIL 13, 1989)

ALL New Language by the Senate

Passed Senate, Date 4/13/89 (p. 141) Passed House, Date 4-19-89 (p. 724)
Vote: Ayes 36 Nays 11 Vote: Ayes 87 Nays 10
Approved 5-2-89 (p. 1851)

A BILL FOR

1 An Act relating to public utilities and their affiliates, with
2 civil penalties applicable.

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

S.F. 373

4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20

1 Section 1. Section 476.10, unnumbered paragraph 1, Code
2 1989, is amended to read as follows:

3 When the board deems it necessary in order to carry out the
4 duties imposed upon it by this chapter for the purpose of
5 determining rate matters to investigate the books, accounts,
6 practices, and activities of, or make appraisals of the
7 property of any public utility, or to render any engineering
8 or accounting services to any public utility, or to review the
9 operations or annual reports of the public utility under
10 section 476.31 or 476.32, or to evaluate a proposal for
11 reorganization under section 476.73, the public utility shall
12 pay the expense reasonably attributable to the investigation,
13 appraisal, service, or review. The board shall ascertain the
14 expenses including certified expenses incurred by the consumer
15 advocate division of the department of justice directly
16 chargeable to the public utility under section 475A.6, and
17 shall render a bill, by certified mail, to the public utility,
18 either at the conclusion of the investigation, appraisal,
19 services, or review, or from time to time during its progress,
20 which bill is notice of the assessment and shall demand
21 payment. The total amount of such expense in any one calendar
22 year, for which any public utility shall become liable, shall
23 not exceed two-tenths of one percent of its gross operating
24 revenues derived from intrastate public utility operations in
25 the last preceding calendar year.

26 Sec. 2. NEW SECTION. 476.67 PURPOSE.

27 It is the intent of the general assembly that a public
28 utility should not directly or indirectly include in regulated
29 rates or charges any costs or expenses of an affiliate engaged
30 in any business other than that of utility business unless the
31 affiliate provides goods or services to the public utility.
32 The costs that are included should be reasonably necessary and
33 appropriate for utility business. It is also the intent of
34 the general assembly that a public utility should only provide
35 nonutility services in a manner that minimizes the possibility

1 of cross-subsidization or unfair competitive advantage.

2 Sec. 3. NEW SECTION. 476.68 DEFINITIONS.

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

5 1. "Public utility" includes only gas or electric rate-
6 regulated public utilities and rate-regulated telephone
7 utilities providing local exchange telecommunication service.

8 2. "Affiliate" means a party that directly, or indirectly
9 through one or more intermediaries, controls, is controlled
10 by, or is under common control with a rate-regulated public
11 utility.

12 3. "Control" means the possession, direct or indirect, of
13 the power to direct or cause the direction of the management
14 and policies of an enterprise through ownership, by contract
15 or otherwise.

16 4. "Utility business" means the generation or transmission
17 of electricity or furnishing of gas or furnishing electricity
18 or furnishing rate-regulated communications services to the
19 public for compensation.

20 5. "Nonutility service" includes the sale, lease, or other
21 conveyance of commercial and residential gas or electric
22 appliances, interior lighting systems and fixtures, or
23 heating, ventilating, or air conditioning systems and
24 component parts or the servicing, repair, or maintenance of
25 such equipment.

26 Sec. 4. NEW SECTION. 476.69 AFFILIATE RECORDS.

27 1. ACCESS TO RECORDS. Every public utility and affiliate
28 through the public utility shall provide the board with access
29 to books, records, accounts, documents, and other data and
30 information which the board finds necessary to effectively
31 implement and effectuate the provisions of this chapter.

32 2. SEPARATE RECORDS. The board may require affiliates of
33 a public utility to keep separate records and the board may
34 provide for the examination and inspection of the books,
35 accounts, papers, and records, as may be necessary to enforce

1 this chapter.

2 3. ALLOCATION PERMITTED. The board may inquire as to and
3 prescribe, for ratemaking purposes, the allocation of
4 capitalization, earnings, debts, and expenses related to
5 ownership, operation, or management of affiliates.

6 Sec. 5. NEW SECTION. 476.70 AFFILIATE INFORMATION
7 REQUIRED TO BE FILED.

8 1. GOODS AND SERVICES. All contracts or arrangements
9 providing for the furnishing or receiving of goods and
10 services including but not limited to the furnishing or
11 receiving of management, supervisory, construction,
12 engineering, accounting, legal, financial, marketing, data
13 processing, or similar services made or entered into on or
14 after July 1, 1989, between a public utility and any affiliate
15 shall be filed annually with the board.

16 2. SALES, PURCHASES, AND LEASES. All contracts or
17 arrangements for the purchase, sale, lease, or exchange of any
18 property, right, or thing made or entered into on or after
19 July 1, 1989, between a public utility and any affiliate shall
20 be filed annually with the board.

21 3. LOANS. All contracts or arrangements providing for any
22 loan of money or an extension or renewal of any loan of money
23 or any similar transaction made or entered into on or after
24 July 1, 1989, between a public utility and any affiliate,
25 whether as guarantor, endorser, surety, or otherwise, shall be
26 filed annually with the board.

27 4. VERIFIED COPIES REQUIRED. Every public utility shall
28 file with the board a verified copy of the contract or
29 arrangement referred to in this section, or a verified summary
30 of the unwritten contract or arrangement, and also of all the
31 contracts and arrangements or a verified summary of the
32 unwritten contracts or arrangements, whether written or
33 unwritten, entered into prior to July 1, 1989, and in force
34 and effect at that time. Any contract or agreement determined
35 by the board to be a confidential record pursuant to section

1 22.7 shall be returned to the public utility filing the
2 confidential record within sixty days after the contract or
3 agreement is filed.

4 5. EXEMPTION. The provisions of this section requiring
5 filing of contracts or agreements with the board shall not
6 apply to transactions with an affiliate where the amount of
7 consideration involved is not in excess of fifty thousand
8 dollars or five percent of the capital equity of the utility,
9 whichever is smaller. However, regularly recurring payments
10 under a general or continuing arrangement which aggregate a
11 greater annual amount shall not be broken down into a series
12 of transactions to come within this exemption. In any
13 proceeding involving the rates, charges or practices of the
14 public utility, the board may exclude from the accounts of the
15 public utility any unreasonable payment or compensation made
16 pursuant to any contract or arrangement which is not required
17 to be filed under this subsection.

18 6. CONTINUING JURISDICTION. The board shall have the same
19 jurisdiction over modifications or amendments of contracts or
20 arrangements in this section as it has over the original
21 contracts or arrangements. Any modification or amendment of
22 contracts or arrangements shall also be filed annually with
23 the board.

24 7. SANCTION. For ratemaking purposes, the board may
25 exclude the payment or compensation to an affiliate or adjust
26 the revenue received from an affiliate associated with any
27 contract or arrangement required to be filed with the board if
28 the contract or arrangement is not so filed.

29 8. ALTERNATIVE INFORMATION. The board shall consult with
30 other state and federal regulatory agencies for the purpose of
31 eliminating duplicate or conflicting filing requirements and
32 may adopt rules which provide that comparable information
33 required to be filed with other state or federal regulatory
34 agencies may be accepted by the board in lieu of information
35 required by this section.

1 9. REASONABLENESS REQUIRED. In any proceeding, whether
2 upon the board's own motion or upon application or complaint
3 involving the rates, charges, or practices of any public
4 utility, the board, for ratemaking purposes may exclude from
5 the accounts of the public utility or adjust any payment or
6 compensation related to any transaction with an affiliate for
7 any services rendered or for any property or service furnished
8 or received, as described in this section, under contracts or
9 arrangements with an affiliate unless and upon inquiry the
10 public utility shall establish the reasonableness of the
11 payment or compensation.

12 10. EXEMPTION BY RULE OR WAIVER. The board may adopt
13 rules which exempt any public utility or class of public
14 utility or class of contracts or arrangements from this
15 section or waive the requirements of this section if the board
16 finds that the exemption or waiver is in the public interest.

17 Sec. 6. NEW SECTION. 476.71 AUDITS REQUIRED.

18 The board may periodically retain a nationally or
19 regionally recognized independent auditing firm to conduct an
20 audit of the transactions between a public utility and its
21 affiliates. An affiliate transaction audit shall not be
22 conducted more frequently than every three years, unless
23 ordered by the board for good cause. The cost of the audit
24 shall be paid by the public utility to the independent
25 auditing firm and shall be included in its regulated rates and
26 charges, unless otherwise ordered by the board for good cause
27 after providing the public utility the opportunity for a
28 hearing on the board's decision.

29 Sec. 7. NEW SECTION. 476.72 REORGANIZATION DEFINED.

30 For purposes of this division unless the context otherwise
31 requires, "reorganization" means either of the following:

32 1. The acquisition, sale, lease, or any other disposition,
33 directly or indirectly, including by merger or consolidation,
34 of the whole or any substantial part of a public utility's
35 assets.

1 2. The purchase or other acquisition or sale or other
2 disposition of the controlling capital stock of any public
3 utility, either directly or indirectly.

4 Sec. 8. NEW SECTION. 476.73 TIME AND STANDARDS FOR
5 REVIEW.

6 1. A reorganization shall not take place if the board
7 disapproves. Prior to reorganization, the applicant shall
8 file with the board a proposal for reorganization with
9 supporting testimony and evidence to establish that the
10 reorganization is not contrary to the interests of the public
11 utility's ratepayers and the public interest.

12 2. A proposal for reorganization shall be deemed to have
13 been approved unless the board disapproves the proposal within
14 forty-five days after its filing. However, the board shall
15 not disapprove a proposal for reorganization without providing
16 for notice and opportunity for hearing. The notice of hearing
17 shall be provided no later than twenty-one days after the
18 proposal for reorganization has been filed.

19 3. In its review of a proposal for reorganization, the
20 board may consider all of the following:

21 a. Whether the board will have reasonable access to books,
22 records, documents, and other information relating to the
23 public utility or any of its affiliates.

24 b. Whether the public utility's ability to attract capital
25 on reasonable terms, including the maintenance of a reasonable
26 capital structure, is impaired.

27 c. Whether the ability of the public utility to provide
28 safe, reasonable, and adequate service is impaired.

29 d. Whether ratepayers are detrimentally affected.

30 e. Whether the public interest is detrimentally affected.

31 4. EXEMPTION BY RULE OR WAIVER. The board may adopt rules
32 which exempt any public utility or class of public utility or
33 class of reorganization from this section if the board finds
34 that with respect to the public utility or class of public
35 utility or class of reorganization review is not necessary in

1 the public interest. The board may adopt rules necessary to
2 protect the interest of the customers of the exempt public
3 utility. These rules may include, but are not limited to,
4 notification of a proposed sale or transfer of assets or
5 stock. The board may waive the requirements of this section,
6 if the board finds that board review is not necessary in the
7 public interest.

8 Sec. 9. NEW SECTION. 476.74 CROSS-SUBSIDIZATION
9 PROHIBITED.

10 A rate-regulated gas or electric public utility shall not
11 directly or indirectly include any costs or expenses
12 attributable to providing nonutility service in regulated
13 rates or charges.

14 Sec. 10. NEW SECTION. 476.75 PROVISION OF NONUTILITY
15 SERVICE.

16 1. A rate-regulated gas or electric public utility
17 providing any nonutility service to its customers shall keep
18 and render to the board separate records of the nonutility
19 service. The board may provide for the examination and
20 inspection of the books, accounts, papers, and records of the
21 nonutility service, as may be necessary, to enforce any
22 provisions of this chapter.

23 2. The board shall adopt rules which specify the manner
24 and form of the accounts relating to providing nonutility
25 services which the rate-regulated gas or electric utility
26 shall maintain.

27 Sec. 11. NEW SECTION. 476.76 ADDITIONAL REQUIREMENTS.

28 A rate-regulated gas or electric public utility which
29 engages in a systematic marketing effort as defined by the
30 board, other than on an incidental or casual basis, to promote
31 the availability of nonutility service from the public utility
32 shall make available at reasonable compensation on a
33 nondiscriminatory basis to all persons engaged primarily in
34 providing the same competitive nonutility services in that
35 area all of the following services to the same extent utilized

1 by the public utility in connection with its nonutility
2 services:

3 1. Access to and use of the public utility's customer
4 lists.

5 2. Access to and use of the public utility's billing and
6 collection system.

7 3. Access to and use of the public utility's mailing
8 system.

9 Sec. 12. NEW SECTION. 476.77 AUDIT REQUIRED.

10 The board may periodically retain a nationally or
11 regionally recognized independent auditing firm to conduct an
12 audit of the nonutility services provided by a rate-regulated
13 gas or electric public utility subject to the provisions of
14 section 476.76. A nonutility service audit shall not be
15 conducted more frequently than every three years, unless
16 ordered by the board for good cause. The cost of the audit
17 shall be paid by the public utility to the independent
18 auditing firm and shall be included in its regulated rates and
19 charges, unless otherwise ordered by the board for good cause
20 after providing the public utility the opportunity for a
21 hearing on the board's decision.

22 Sec. 13. NEW SECTION. 476.78 EXEMPTION -- ENERGY
23 EFFICIENCY.

24 Notwithstanding any language to the contrary, nothing in
25 this division shall prohibit a public utility from
26 participating in or conducting energy efficiency projects or
27 programs established or approved by the board or required by
28 statute. A public utility participating in or conducting
29 energy efficiency projects or programs established or approved
30 by the board or required by statute shall not be subject to
31 the provisions of sections 476.76 and 476.77 for those energy
32 efficiency projects or programs.

33 Sec. 14. NEW SECTION. 476.79 COMPLAINTS.

34 Any person may file a written complaint with the board
35 requesting the board to determine compliance by a rate-

1 regulated gas or electric utility with the provisions of
2 section 476.74, 476.75, or 476.76 or any validly adopted rules
3 to implement those sections. If the board determines there is
4 any reasonable ground to investigate the complaint, the board
5 shall promptly initiate formal complaint proceedings. The
6 formal proceeding may be initiated at any time by the board on
7 its own motion.

8 Sec. 15. Sections 476.67 through 476.79 created under this
9 Act shall be a separate division of chapter 476.

10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35

VARN, CH.
GRONSTAL
SOORHOLTZ

SSB 302
ENVIRONMENT &
ENERGY UTILITIES
SENATE FILE 313
BY (PROPOSED COMMITTEE ON
ENVIRONMENT AND ENERGY
UTILITIES BILL)

Passed Senate, Date _____ Passed House, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act relating to public utilities and their affiliates, with
2 civil penalties applicable.

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

4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23

1 Section 1. Section 476.1, Code 1989, is amended by adding
2 the following new unnumbered paragraphs immediately following
3 unnumbered paragraph 2:

4 NEW UNNUMBERED PARAGRAPH. As used in this chapter,
5 "affiliate" means a person, including an individual, corpora-
6 tion, corporate subsidiary, firm, partnership, or incorporated
7 or unincorporated association, whether located within or with-
8 out the state, that directly or indirectly controls, is con-
9 trolled by, or is directly or indirectly under common control
10 with a rate-regulated gas or electric public utility, and that
11 is engaged in the sale, lease, rental, installation,
12 construction, modernization, retrofit, maintenance, or repair
13 of equipment, products, or services. The term "affiliate"
14 specifically includes a public utility holding company or an
15 affiliate of such a holding company.

16 NEW UNNUMBERED PARAGRAPH. As used in this chapter, "emer-
17 gency service" means service performed by a public utility to
18 correct malfunctions or interruptions in the generation,
19 transmission, distribution, or use of natural gas or elec-
20 tricity that, if not corrected, may endanger life or property
21 or otherwise affect public safety. The term "emergency
22 service" specifically includes the lighting or extinguishing
23 of pilot lights.

24 Sec. 2. Section 476.51, Code 1989, is amended to read as
25 follows:

26 476.51 CIVIL PENALTY.

27 A public utility or affiliate which ~~willfully~~ violates a
28 provision of this chapter, a rule adopted by the board, or a
29 provision of an order lawfully issued by the board, is subject
30 to a civil penalty, which may be levied by the board, of not
31 more than one hundred dollars per violation or one thousand
32 dollars per day of a continuing violation, whichever is
33 greater. Civil penalties collected pursuant to this section
34 shall be forwarded by the executive secretary of the board to
35 the treasurer of state to be credited to the energy research

1 and development fund and to be used only for the low income
2 home energy assistance program and the weatherization
3 assistance program administered by the division of community
4 action agencies of the department of human rights. Penalties
5 paid by a rate-regulated public utility pursuant to this
6 section shall be excluded from the utility's costs when
7 determining the utility's revenue requirement, and shall not
8 be included either directly or indirectly in the utility's
9 rates or charges to customers.

10 Sec. 3. NEW SECTION. 476.70 LEGISLATIVE FINDINGS.

11 The legislature finds and declares it to be the public
12 policy of the state to promote free and open competition in
13 the sale and servicing of energy-related and nonutility
14 products and equipment.

15 The public policy of the state also requires fair and
16 efficient regulation of transactions and dealings between
17 rate-regulated gas and electric public utilities and their
18 affiliates and the prevention of unfair transactions or
19 dealings between rate-regulated gas and electric public
20 utilities and their affiliates.

21 The public policy of the state requires that public utili-
22 ties not engage in the sale or service of products and
23 equipment, including household appliances, the sale of
24 construction services, and the sale of energy efficient
25 modernization or retrofit services, except in circumstances
26 that guard against subsidization by public utilities of
27 affiliates and unfair contracting practices and that otherwise
28 ensure fair competition and a free and open market for
29 products and services unaffected by the special competitive
30 advantage enjoyed by the public utilities.

31 The legislature finds that the best interest of investors
32 and consumers can be protected by the prevention of unfair and
33 inefficient transactions between public utilities and their
34 affiliates. Free and open competition in markets for
35 nonutility services can only be achieved if the market for

1 those goods and services is not distorted or dominated by
2 utilities that, by virtue of their special status as regulated
3 monopolies in the development and distribution of energy, have
4 an unfair competitive advantage in other nonutility
5 enterprises.

6 The legislature also finds that the public interest and the
7 interest of consumers and investors can be protected if all of
8 the following occur:

9 1. Transactions between public utilities and their
10 affiliates are subject to utilities board approval and
11 regulation to assure that reasonable prices are charged and
12 costs properly allocated.

13 2. Public utilities and their affiliates do not engage in
14 unfair business practices.

15 3. Activities and relationships between public utilities
16 and their affiliates do not cause any materially detrimental
17 effect on the public utility's rates for or reliability of
18 public utility service to the public, its cost of capital, or
19 its ability to raise capital.

20 4. The utilities board has access to the books and records
21 of public utilities and affiliates to the extent necessary and
22 relevant for the board to regulate any public utility and its
23 affiliates.

24 Sec. 4. NEW SECTION. 476.71 UTILITIES PROHIBITED FROM
25 CERTAIN ACTIVITIES.

26 1. A public utility shall not engage in the sale, lease,
27 servicing, rental, installation, construction, modernization,
28 retrofit, maintenance, or repair of equipment or products
29 except by an affiliate. However, the utilities board may
30 adopt rules providing for the waiver of this subsection, when
31 there is a lack of competition or other circumstances, when
32 the waiver would not thwart the legislative declaration and
33 policies expressed in section 476.70.

34 2. A public utility shall not grant a subsidy or any un-
35 fair preference or privilege to an affiliate in the transac-

1 tion of business between them.

2 3. A public utility or its agent, employee, or represen-
3 tative shall not refer or steer customers to specific indi-
4 viduals or companies engaged in the sale or servicing of
5 energy-consuming products, equipment, or appliances, including
6 an affiliate.

7 4. A public utility shall not lend money to or guarantee,
8 endorse, or act as a surety on the debts, liabilities, bonds,
9 notes, contracts, or other obligations, or otherwise assist
10 financially, an affiliate.

11 5. A public utility shall not purchase, receive, hold, or
12 otherwise acquire the stock, shares, bonds, debentures, notes,
13 or other securities, or other interest in an affiliate unless
14 the utility pays at least the fair market value for the inter-
15 est acquired.

16 6. A public utility shall not sell, lease, rent, assign,
17 or transfer real or personal property to an affiliate, unless
18 the public utility receives the higher of book value or the
19 current market value for the property sold, leased, rented,
20 assigned, or transferred.

21 7. An acquisition of an asset by the public utility from
22 an affiliate shall be given a book value at no more than the
23 market value of the asset.

24 8. A service provided to an affiliate by a public utility
25 shall be priced at no less than the fully allocated cost of
26 the service, including a five-percent add-on to the labor
27 portion of the cost.

28 9. A public utility shall pay no more than the reasonable
29 market value to an affiliate for any services provided to or
30 on behalf of the public utility.

31 10. A public utility shall not provide an affiliate with
32 public utility data or information, including but not limited
33 to customer lists, confidential utility information, or any
34 information in which the public utility has a protectable
35 interest, unless the information or data is transferred or

1 charged at market value and is made available to third parties
2 under the same terms and conditions that it is available to an
3 affiliate.

4 11. All transactions between a public utility and its af-
5 filiates shall be conducted on an arms-length basis, and the
6 transactions shall not be for less than the current fair
7 market value.

8 12. Public utilities shall maintain records, pursuant to
9 rules specified by the utilities board under section 476.73
10 which detail all transactions between the public utilities and
11 their affiliates, and the records shall identify the nature of
12 each transaction and the terms and conditions applying to each
13 transaction.

14 13. A public utility maintaining an affiliate shall, every
15 three years or upon order of the board, submit to the
16 utilities board and the consumer advocate an independent audit
17 from an auditor selected jointly by the utilities board and
18 the consumer advocate. The cost of the audit shall be paid by
19 the public utility but shall not be included directly or
20 indirectly in its charges or rates to customers.

21 14. This section does not prohibit a public utility from
22 providing emergency service, any service required by law, or
23 any projects or activities required by the utilities board or
24 any energy conservation programs or projects established by
25 the board or by statute. Further, this section does not
26 prohibit construction, maintenance, or repair of utility
27 property necessary for the generation, transmission, or
28 distribution of electricity, gas, or steam provided that such
29 work performed is necessary to protect public safety or to
30 avoid interruption of service.

31 15. This section shall be applicable only to rate-
32 regulated gas or electric public utilities.

33 Sec. 5. NEW SECTION. 476.72 RESTRICTIONS ON PUBLIC
34 UTILITY AFFILIATES.

35 An affiliate shall engage in the sale, lease, rental,

1 installation, maintenance, or repair of energy-consuming
2 equipment, products, or appliances only if in compliance with
3 the following requirements:

4 1. The name of the affiliate shall not resemble the name
5 of the public utility. Neither the utility nor the affiliate
6 shall trade upon, promote, or advertise their affiliated
7 status.

8 2. The affiliate shall not have a place of business at or
9 on premises owned or occupied by the public utility. The
10 affiliate shall not share the use of premises, equipment,
11 inventory, personnel, or other resources of the public
12 utility.

13 3. The affiliate shall not advertise, promote, or market
14 its products or services through mailings of the public util-
15 ity or advertisements in which the public utility's name is
16 set forth.

17 4. The affiliate shall maintain accounts, books, and
18 records separate and distinct from those of the public
19 utility.

20 5. Revenues from the affiliate shall not be provided or
21 disbursed to the public utility unless all costs and expenses
22 involved in operating the affiliate are borne by the affiliate
23 and not by the public utility.

24 6. The affiliate shall maintain assets separate and
25 distinct from the assets of the public utility.

26 7. The affiliate shall transact its business in the state
27 separately and independently of a public utility, whether or
28 not the utility is located within or without the state, so as
29 to gain no competitive advantage by virtue of its status as an
30 affiliate.

31 Sec. 6. NEW SECTION. 476.73 JURISDICTION OF BOARD OVER
32 AFFILIATES -- RULES.

33 The utilities board shall have jurisdiction over affiliates
34 of rate-regulated gas and electric public utilities operating
35 within this state to ensure compliance with this division and

1 to the extent necessary to accomplish the objectives and
2 purposes of this division. The utilities board shall adopt
3 rules as necessary to accomplish the objectives and purposes
4 of this division.

5 Sec. 7. NEW SECTION. 476.74 DUTIES OF UTILITIES BOARD TO
6 SUPERVISE UTILITY AND AFFILIATES TRANSACTIONS.

7 The board and consumer advocate shall have the power to do
8 all of the following:

9 1. Review, inspect, and audit books, accounts, and other
10 records kept by an affiliate.

11 2. Investigate the operations of all rate-regulated gas
12 and electric public utilities and their affiliates and their
13 relationship to each other for the purpose of ensuring
14 compliance with this division.

15 3. Select independent auditors as required by this divi-
16 sion.

17 Sec. 8. NEW SECTION. 476.75 SUBSIDIZATION OF AFFILIATES
18 BY UTILITY -- POWER TO INVESTIGATE.

19 A person aggrieved by unfair competition from a public
20 utility affiliate, as defined in section 476.1, may file a
21 complaint before the board which shall set the case for
22 hearing and give notice as it deems appropriate. An aggrieved
23 person who is successful, in whole or in part, in such an
24 action shall receive attorney's fees, expenses, and costs,
25 including but not limited to, expert witness fees, and shall
26 be awarded treble damages suffered by reason of the unfair
27 competition. The fees, expenses, costs, and treble damages
28 shall be paid by the affiliate or by the public utility, as
29 shall be ordered by the board, but the public utility shall
30 not include, either directly or indirectly in its charges to
31 its customers or its rate base, any such fees, expenses,
32 costs, or damages. A public utility shall not include the
33 cost of a successful defense of an affiliate subsidization
34 case in its charges to its customers or in its rate base.

35 Sec. 9. NEW SECTION. 476.76 EXEMPTIONS.

1 This division shall not apply to rural electric
2 cooperatives, municipal utilities, water utilities, and tele-
3 communication companies.

4 Sec. 10. NEW SECTION. 476.77 TITLE.

5 Sections 476.70 through 476.76 and this section shall be a
6 separate division of this chapter and the division shall be
7 known as the "Public Utility Affiliate Regulation Act".

8 EXPLANATION

9 This bill creates a new division of chapter 476 to be known
10 as the "Public Utility Affiliate Regulation Act".

11 The legislative findings are set out in section 3,
12 prohibited acts of rate-regulated gas and electric public
13 utilities are set out in section 4, section 5 places
14 restrictions on public utility affiliates, section 6 gives the
15 utilities board jurisdiction and rule making authority over
16 affiliates of rate-regulated gas and electric public
17 utilities, section 7 gives the utilities board and consumer
18 advocate supervisory and investigatory authority over public
19 utilities and their affiliates, and section 8 relates to
20 administrative review of complaints by persons aggrieved by
21 unfair competition from a public utility affiliate. Section 9
22 provides exemptions from the Public Utility Affiliate
23 Regulation Act for rural electric cooperatives, municipal
24 utilities, water utilities, and telecommunication companies.

25 A public utility or affiliate which violates a provision of
26 chapter 476, a rule adopted by the utilities board, or a
27 provision of an order lawfully issued by the utilities board,
28 is subject to a civil penalty, which may be levied by the
29 utilities board, of not more than one hundred dollars per vio-
30 lation or one thousand dollars per day of a continuing vio-
31 lation, whichever is greater.

32
33
34
35

SENATE FILE 373

AN ACT

RELATING TO PUBLIC UTILITIES AND THEIR AFFILIATES, WITH CIVIL PENALTIES APPLICABLE.

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

Section 1. Section 476.10, unnumbered paragraph 1, Code 1989, is amended to read as follows:

When the board deems it necessary in order to carry out the duties imposed upon it by this chapter for the purpose of determining rate matters to investigate the books, accounts, practices, and activities of, or make appraisals of the property of any public utility, or to render any engineering or accounting services to any public utility, or to review the operations or annual reports of the public utility under section 476.31 or 476.32, or to evaluate a proposal for reorganization under section 476.73, the public utility shall pay the expense reasonably attributable to the investigation, appraisal, service, or review. The board shall ascertain the expenses including certified expenses incurred by the consumer advocate division of the department of justice directly chargeable to the public utility under section 475A.6, and shall render a bill, by certified mail, to the public utility, either at the conclusion of the investigation, appraisal, services, or review, or from time to time during its progress, which bill is notice of the assessment and shall demand payment. The total amount of such expense in any one calendar year, for which any public utility shall become liable, shall not exceed two-tenths of one percent of its gross operating revenues derived from intrastate public utility operations in the last preceding calendar year.

Sec. 2. NEW SECTION. 476.67 PURPOSE.

It is the intent of the general assembly that a public utility should not directly or indirectly include in regulated rates or charges any costs or expenses of an affiliate engaged in any business other than that of utility business unless the affiliate provides goods or services to the public utility. The costs that are included should be reasonably necessary and appropriate for utility business. It is also the intent of the general assembly that a public utility should only provide nonutility services in a manner that minimizes the possibility of cross-subsidization or unfair competitive advantage.

Sec. 3. NEW SECTION. 476.68 DEFINITIONS.

As used in this division, unless the context otherwise requires:

1. "Public utility" includes only gas or electric rate-regulated public utilities and rate-regulated telephone utilities providing local exchange telecommunication service.
2. "Affiliate" means a party that directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with a rate-regulated public utility.
3. "Control" means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of an enterprise through ownership, by contract or otherwise.
4. "Utility business" means the generation or transmission of electricity or furnishing of gas or furnishing electricity or furnishing rate-regulated communications services to the public for compensation.
5. "Nonutility service" includes the sale, lease, or other conveyance of commercial and residential gas or electric appliances, interior lighting systems and fixtures, or heating, ventilating, or air conditioning systems and component parts or the servicing, repair, or maintenance of such equipment.

Sec. 4. NEW SECTION. 476.69 AFFILIATE RECORDS.

1. ACCESS TO RECORDS. Every public utility and affiliate through the public utility shall provide the board with access to books, records, accounts, documents, and other data and information which the board finds necessary to effectively implement and effectuate the provisions of this chapter.

2. SEPARATE RECORDS. The board may require affiliates of a public utility to keep separate records and the board may provide for the examination and inspection of the books, accounts, papers, and records, as may be necessary to enforce this chapter.

3. ALLOCATION PERMITTED. The board may inquire as to and prescribe, for ratemaking purposes, the allocation of capitalization, earnings, debts, and expenses related to ownership, operation, or management of affiliates.

Sec. 5. NEW SECTION. 476.70 AFFILIATE INFORMATION REQUIRED TO BE FILED.

1. GOODS AND SERVICES. All contracts or arrangements providing for the furnishing or receiving of goods and services including but not limited to the furnishing or receiving of management, supervisory, construction, engineering, accounting, legal, financial, marketing, data processing, or similar services made or entered into on or after July 1, 1989, between a public utility and any affiliate shall be filed annually with the board.

2. SALES, PURCHASES, AND LEASES. All contracts or arrangements for the purchase, sale, lease, or exchange of any property, right, or thing made or entered into on or after July 1, 1989, between a public utility and any affiliate shall be filed annually with the board.

3. LOANS. All contracts or arrangements providing for any loan of money or an extension or renewal of any loan of money or any similar transaction made or entered into on or after July 1, 1989, between a public utility and any affiliate, whether as guarantor, endorser, surety, or otherwise, shall be filed annually with the board.

4. VERIFIED COPIES REQUIRED. Every public utility shall file with the board a verified copy of the contract or arrangement referred to in this section, or a verified summary of the unwritten contract or arrangement, and also of all the contracts and arrangements or a verified summary of the unwritten contracts or arrangements, whether written or unwritten, entered into prior to July 1, 1989, and in force and effect at that time. Any contract or agreement determined by the board to be a confidential record pursuant to section 22.7 shall be returned to the public utility filing the confidential record within sixty days after the contract or agreement is filed.

5. EXEMPTION. The provisions of this section requiring filing of contracts or agreements with the board shall not apply to transactions with an affiliate where the amount of consideration involved is not in excess of fifty thousand dollars or five percent of the capital equity of the utility, whichever is smaller. However, regularly recurring payments under a general or continuing arrangement which aggregate a greater annual amount shall not be broken down into a series of transactions to come within this exemption. In any proceeding involving the rates, charges or practices of the public utility, the board may exclude from the accounts of the public utility any unreasonable payment or compensation made pursuant to any contract or arrangement which is not required to be filed under this subsection.

6. CONTINUING JURISDICTION. The board shall have the same jurisdiction over modifications or amendments of contracts or arrangements in this section as it has over the original contracts or arrangements. Any modification or amendment of contracts or arrangements shall also be filed annually with the board.

7. SANCTION. For ratemaking purposes, the board may exclude the payment or compensation to an affiliate or adjust the revenue received from an affiliate associated with any contract or arrangement required to be filed with the board if the contract or arrangement is not so filed.

8. **ALTERNATIVE INFORMATION.** The board shall consult with other state and federal regulatory agencies for the purpose of eliminating duplicate or conflicting filing requirements and may adopt rules which provide that comparable information required to be filed with other state or federal regulatory agencies may be accepted by the board in lieu of information required by this section.

9. **REASONABLENESS REQUIRED.** In any proceeding, whether upon the board's own motion or upon application or complaint involving the rates, charges, or practices of any public utility, the board, for ratemaking purposes may exclude from the accounts of the public utility or adjust any payment or compensation related to any transaction with an affiliate for any services rendered or for any property or service furnished or received, as described in this section, under contracts or arrangements with an affiliate unless and upon inquiry the public utility shall establish the reasonableness of the payment or compensation.

10. **EXEMPTION BY RULE OR WAIVER.** The board may adopt rules which exempt any public utility or class of public utility or class of contracts or arrangements from this section or waive the requirements of this section if the board finds that the exemption or waiver is in the public interest.

Sec. 6. **NEW SECTION. 476.71 AUDITS REQUIRED.**

The board may periodically retain a nationally or regionally recognized independent auditing firm to conduct an audit of the transactions between a public utility and its affiliates. An affiliate transaction audit shall not be conducted more frequently than every three years, unless ordered by the board for good cause. The cost of the audit shall be paid by the public utility to the independent auditing firm and shall be included in its regulated rates and charges, unless otherwise ordered by the board for good cause after providing the public utility the opportunity for a hearing on the board's decision.

Sec. 7. **NEW SECTION. 476.72 REORGANIZATION DEFINED.**

For purposes of this division unless the context otherwise requires, "reorganization" means either of the following:

1. The acquisition, sale, lease, or any other disposition, directly or indirectly, including by merger or consolidation, of the whole or any substantial part of a public utility's assets.

2. The purchase or other acquisition or sale or other disposition of the controlling capital stock of any public utility, either directly or indirectly.

Sec. 8. **NEW SECTION. 476.73 TIME AND STANDARDS FOR REVIEW.**

1. A reorganization shall not take place if the board disapproves. Prior to reorganization, the applicant shall file with the board a proposal for reorganization with supporting testimony and evidence to establish that the reorganization is not contrary to the interests of the public utility's ratepayers and the public interest.

2. A proposal for reorganization shall be deemed to have been approved unless the board disapproves the proposal within forty-five days after its filing. However, the board shall not disapprove a proposal for reorganization without providing for notice and opportunity for hearing. The notice of hearing shall be provided no later than twenty-one days after the proposal for reorganization has been filed.

3. In its review of a proposal for reorganization, the board may consider all of the following:

a. Whether the board will have reasonable access to books, records, documents, and other information relating to the public utility or any of its affiliates.

b. Whether the public utility's ability to attract capital on reasonable terms, including the maintenance of a reasonable capital structure, is impaired.

c. Whether the ability of the public utility to provide safe, reasonable, and adequate service is impaired.

d. Whether ratepayers are detrimentally affected.

e. Whether the public interest is detrimentally affected.

4. EXEMPTION BY RULE OR WAIVER. The board may adopt rules which exempt any public utility or class of public utility or class of reorganization from this section if the board finds that with respect to the public utility or class of public utility or class of reorganization review is not necessary in the public interest. The board may adopt rules necessary to protect the interest of the customers of the exempt public utility. These rules may include, but are not limited to, notification of a proposed sale or transfer of assets or stock. The board may waive the requirements of this section, if the board finds that board review is not necessary in the public interest.

Sec. 9. NEW SECTION. 476.74 CROSS-SUBSIDIZATION PROHIBITED.

A rate-regulated gas or electric public utility shall not directly or indirectly include any costs or expenses attributable to providing nonutility service in regulated rates or charges.

Sec. 10. NEW SECTION. 476.75 PROVISION OF NONUTILITY SERVICE.

1. A rate-regulated gas or electric public utility providing any nonutility service to its customers shall keep and render to the board separate records of the nonutility service. The board may provide for the examination and inspection of the books, accounts, papers, and records of the nonutility service, as may be necessary, to enforce any provisions of this chapter.

2. The board shall adopt rules which specify the manner and form of the accounts relating to providing nonutility services which the rate-regulated gas or electric utility shall maintain.

Sec. 11. NEW SECTION. 476.76 ADDITIONAL REQUIREMENTS.

A rate-regulated gas or electric public utility which engages in a systematic marketing effort as defined by the board, other than on an incidental or casual basis, to promote the availability of nonutility service from the public utility

shall make available at reasonable compensation on a nondiscriminatory basis to all persons engaged primarily in providing the same competitive nonutility services in that area all of the following services to the same extent utilized by the public utility in connection with its nonutility services:

1. Access to and use of the public utility's customer lists.

2. Access to and use of the public utility's billing and collection system.

3. Access to and use of the public utility's mailing system.

Sec. 12. NEW SECTION. 476.77 AUDIT REQUIRED.

The board may periodically retain a nationally or regionally recognized independent auditing firm to conduct an audit of the nonutility services provided by a rate-regulated gas or electric public utility subject to the provisions of section 476.76. A nonutility service audit shall not be conducted more frequently than every three years, unless ordered by the board for good cause. The cost of the audit shall be paid by the public utility to the independent auditing firm and shall be included in its regulated rates and charges, unless otherwise ordered by the board for good cause after providing the public utility the opportunity for a hearing on the board's decision.

Sec. 13. NEW SECTION. 476.78 EXEMPTION -- ENERGY EFFICIENCY.

Notwithstanding any language to the contrary, nothing in this division shall prohibit a public utility from participating in or conducting energy efficiency projects or programs established or approved by the board or required by statute. A public utility participating in or conducting energy efficiency projects or programs established or approved by the board or required by statute shall not be subject to the provisions of sections 476.76 and 476.77 for those energy efficiency projects or programs.

Sec. 14. NEW SECTION. 476.79 COMPLAINTS.

Any person may file a written complaint with the board requesting the board to determine compliance by a rate-regulated gas or electric utility with the provisions of section 476.74, 476.75, or 476.76 or any validly adopted rules to implement those sections. If the board determines there is any reasonable ground to investigate the complaint, the board shall promptly initiate formal complaint proceedings. The formal proceeding may be initiated at any time by the board on its own motion.

Sec. 15. Sections 476.67 through 476.79 created under this Act shall be a separate division of chapter 476.

JO ANN ZIMMERMAN
President of the Senate

DONALD D. AVENSON
Speaker of the House

I hereby certify that this bill originated in the Senate and is known as Senate File 373, Seventy-third General Assembly.

JOHN F. DWYER
Secretary of the Senate

Approved May 2, 1989

TERRY E. BRANSTAD
Governor