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SENATE FILE 2368  
BY COMMITTEE ON COMMERCE

(SUCCESSOR TO SSB 2144)

Passed Senate, Date <sup>(P.690)</sup> 3-12-98 Passed House, Date <sup>(P.1383)</sup> 4-8-98  
Vote: Ayes 46 Nays 0 Vote: Ayes 98 Nays 0  
Approved April 23, 1998

A BILL FOR

1 An Act relating to the management of public rights-of-way by  
2 local government units, eliminating the power of cities to  
3 grant franchises to erect, maintain, and operate plants and  
4 systems for telecommunications services within the city, and  
5 providing an effective date.

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

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S.F. 2368

1 Section 1. Section 364.2, subsection 4, paragraph a, Code  
2 1997, is amended to read as follows:

3 a. A city may grant to any person a franchise to erect,  
4 maintain, and operate plants and systems for electric light  
5 and power, heating, ~~telephone~~, telegraph, cable television,  
6 district telegraph and alarm, motor bus, trolley bus, street  
7 railway or other public transit, waterworks, or gasworks,  
8 within the city for a term of not more than twenty-five years.  
9 The franchise may be granted, amended, extended, or renewed  
10 only by an ordinance, but no exclusive franchise shall be  
11 granted, amended, extended, or renewed.

12 Sec. 2. Section 476.29, subsection 6, Code Supplement  
13 1997, is amended to read as follows:

14 6. The certificate and tariffs approved by the board are  
15 the only authority required for the utility to furnish land-  
16 line local telephone service. However, to the extent not  
17 inconsistent with this section, the power to regulate manage  
18 the conditions required and manner of use of the highways,  
19 streets, rights-of-way, and public grounds remains-in is  
20 within the appropriate public authority of the local  
21 government unit as set forth in sections 476.29A through and  
22 including 476.29L.

23 Sec. 3. NEW SECTION. 476.29A PURPOSE.

24 Sections 476.29B through 476.29L set forth the powers of a  
25 local government unit to manage the use of public rights-of-  
26 way by telecommunications rights-of-way users. The general  
27 assembly finds that it is in the state's interest that the use  
28 and management of public rights-of-way be carried on in a  
29 fair, efficient, competitively neutral, and substantially  
30 uniform manner.

31 Sec. 4. NEW SECTION. 476.29B DEFINITIONS.

32 As used in sections 476.29A through 476.29L, unless the  
33 context otherwise requires:

34 1. "City" means a municipal corporation, not including a  
35 county, township, school district, or any special-purpose

1 district or authority. When used in relationship to land  
2 area, "city" includes only the area within the city limits.

3 2. "Excavate" means to move, remove, or compress, or  
4 otherwise displace a structure or earth, rock, or other  
5 material in or on the ground by means of any tools, equipment,  
6 or explosives and includes, but is not limited to, grading,  
7 trenching, tilling, digging, ditching, drilling, augering,  
8 tunneling, scraping, cable or pipe plowing, driving, and  
9 demolition of structures.

10 3. "Local government unit" means a county, city, township,  
11 school district, or any special-purpose district or authority.

12 4. "Manage a public right-of-way" means the activities of  
13 a local government unit relating to the public right-of-way  
14 including the following:

15 a. Requiring registration.

16 b. Requiring construction performance bonds or assurances  
17 and insurance coverage.

18 c. Establishing installation and construction standards.

19 d. Establishing and defining location and relocation  
20 requirements for equipment and facilities.

21 e. Establishing coordination and timing requirements.

22 f. Requiring telecommunications right-of-way users to  
23 submit, for right-of-way projects commenced after the  
24 effective date of this Act, whether initiated by a local  
25 government unit or any telecommunications right-of-way user,  
26 project data reasonably necessary to allow the local  
27 government unit to develop a right-of-way mapping system.

28 g. Requiring telecommunications right-of-way users, upon  
29 request of a local government unit, to submit existing data on  
30 the location of the user's facilities occupying the public  
31 right-of-way within the limits of the local government unit.  
32 The data may be submitted in the form maintained by the user  
33 and in a reasonable time after receipt of the request based on  
34 the amount of data requested.

35 h. Establishing right-of-way permitting requirements for

1 street excavation and obstruction.

2 i. Establishing removal requirements for abandoned  
3 equipment or facilities, if required in conjunction with other  
4 right-of-way repair, excavation, or construction.

5 j. Imposing reasonable penalties for unreasonable delays  
6 in repair, excavation, or construction.

7 5. "Management costs" means the actual cost a local  
8 government unit incurs in managing its public rights-of-way,  
9 and includes such costs, if incurred, associated with  
10 registering applicants; issuing, processing, and verifying  
11 right-of-way permit applications; inspecting job sites and  
12 restoration projects; maintaining, supporting, protecting, or  
13 moving user equipment during public right-of-way work;  
14 determining the adequacy of right-of-way restoration;  
15 restoring work inadequately performed after providing notice  
16 and the opportunity to correct the work; and revoking right-  
17 of-way permits. "Management costs" do not include payment by  
18 a telecommunications right-of-way user for the use of the  
19 public right-of-way, the fees and costs of litigation relating  
20 to the interpretation of section 479.29A, this section, and  
21 sections 479.29C through 479.29M, or any ordinance enacted  
22 under those sections, or the costs and fees incurred by a  
23 local government unit under section 479.29G.

24 6. "Obstruct" means to place a tangible object in a public  
25 right-of-way so as to hinder free and open passage over any  
26 part of the right-of-way.

27 7. "Public right-of-way" means the area on, below, or  
28 above a public roadway, highway, street, bridge, cartway,  
29 bicycle lane, or public sidewalk in which the local government  
30 unit has an interest, including other dedicated rights-of-way  
31 for travel purposes and utility easements. A public right-of-  
32 way does not include the airwaves above a public right-of-way  
33 with regard to cellular or other nonwire telecommunications or  
34 broadcast service.

35 8. "Right-of-way permit" means a permit to perform work in

1 a public right-of-way, whether to repair, excavate, construct,  
2 or obstruct the right-of-way.

3 9. "Telecommunications right-of-way user" means a person  
4 owning or controlling a facility in the public right-of-way,  
5 or seeking to own or control a facility in the public right-  
6 of-way, that is used or is intended to be used for  
7 transporting telecommunications or other voice or data  
8 information. A cable television system and telecommunications  
9 activities related to providing natural gas or electric energy  
10 services, whether provided by a public utility as defined in  
11 section 476.1, a city, a municipal gas or power agency, or a  
12 cooperative electric association, are not telecommunications  
13 right-of-way users for the purposes of section 479.29A, this  
14 section, and sections 479.29C through 479.29M.

15 Sec. 5. NEW SECTION. 476.29C USE AND MANAGEMENT OF  
16 PUBLIC RIGHTS-OF-WAY.

17 A local government unit may manage a public right-of-way  
18 including the location of poles, wires, and other equipment or  
19 facilities on, below, or above the streets, alleys, or other  
20 public grounds so as to prevent any interference with the safe  
21 and convenient use of streets, alleys, and other public  
22 grounds by the public.

23 Sec. 6. NEW SECTION. 476.29D GENERAL MANAGEMENT OF  
24 TELECOMMUNICATIONS RIGHT-OF-WAY USE.

25 1. A telecommunications right-of-way user authorized to do  
26 business in this state under state law or by license of the  
27 federal communications commission may construct, maintain, and  
28 operate conduit, cable, switches, and related appurtenances  
29 and facilities along, across, upon, above, and under any  
30 public right-of-way, subject to this section.

31 2. A local government unit is authorized to manage its  
32 public rights-of-way and to recover its management costs as  
33 provided in this section. Such authority may be exercised at  
34 the option of the local government unit. A local government  
35 unit, by ordinance, may do any of the following:

1 a. Require a telecommunications right-of-way user seeking  
2 to excavate or obstruct a public right-of-way for the purpose  
3 of providing telecommunications services to obtain a right-of-  
4 way permit and impose permit conditions.

5 b. Require a telecommunications right-of-way user using,  
6 occupying, or seeking to use or occupy a public right-of-way  
7 to provide telecommunications services to register with the  
8 local government unit and to provide the local government unit  
9 with the following information:

10 (1) The applicant's name, state one-call registration  
11 number, address, and telephone and facsimile numbers.

12 (2) The name, address, and telephone and facsimile numbers  
13 of the applicant's local representative.

14 (3) A certificate of adequate insurance.

15 (4) Other information required for the efficient  
16 administration of the public right-of-way.

17 c. Require telecommunications right-of-way users to submit  
18 to the local government unit location and placement plans for  
19 construction and major maintenance that provide reasonable  
20 notice to the local government unit of projects that the  
21 telecommunications right-of-way user expects to undertake that  
22 may require excavation and obstruction of public rights-of-  
23 way.

24 3. A local government unit may also require a  
25 telecommunications right-of-way user that is registered with  
26 the local government unit pursuant to subsection 2 to  
27 periodically update the information in its registration  
28 application.

29 Sec. 7. NEW SECTION. 476.29E RESTORATION OF RIGHT-OF-  
30 WAY.

31 1. A telecommunications right-of-way user, after an  
32 excavation of a public right-of-way, shall provide for  
33 restoration of the right-of-way and surrounding areas,  
34 including the pavement and its foundation, in substantially  
35 the same condition that existed before the excavation. Local

1 government units that choose to perform their own surface  
2 restoration required as a result of the excavation may require  
3 telecommunications right-of-way users to reimburse the  
4 reasonable costs of restoration of the surface to  
5 substantially the same condition that existed before the  
6 excavation. Restoration of the public right-of-way must be  
7 completed within the dates specified in the right-of-way  
8 permit, unless the permittee obtains a waiver or a new or  
9 amended right-of-way permit.

10 2. If a telecommunications right-of-way user elects not to  
11 restore the public right-of-way, a local government unit may  
12 restore the public right-of-way and recover the reasonable  
13 costs associated with restoration of the public right-of-way.

14 Sec. 8. NEW SECTION. 476.29F PERMIT DENIAL OR  
15 REVOCATION.

16 1. A local government unit may deny the application of a  
17 telecommunications right-of-way user for a right-of-way permit  
18 for either of the following:

19 a. Failure of such user to comply with sections 476.29A  
20 through 476.29E, this section, and sections 476.29G through  
21 476.29K.

22 b. Upon a determination by the local government unit that  
23 the denial is necessary to protect the public health, safety,  
24 or welfare, or when necessary to protect the public right-of-  
25 way and its current use.

26 2. Denial of a permit must be made in writing within  
27 thirty days of submission of the application stating with  
28 particularity the reasons for such denial. A permit  
29 application not acted upon within thirty days is deemed  
30 approved.

31 3. A local government unit may revoke a right-of-way  
32 permit granted to a telecommunications right-of-way user, with  
33 or without fee refund, in the event of a substantial breach of  
34 the terms and conditions of the permit, a violation of  
35 sections 476.29A through 476.29E, this section, and sections

1 476.29G through 476.29K, or an ordinance or rule adopted  
2 pursuant to such sections. A revocation must be made in  
3 writing stating with particularity the reason for such  
4 revocation. A substantial breach or violation by a permittee  
5 includes, but is not limited to, the following:

6 a. A material violation of the right-of-way permit.

7 b. Evasion or attempt to evade a material provision of the  
8 right-of-way permit.

9 c. A material misrepresentation of fact in the right-of-  
10 way permit application.

11 d. Failure to complete work in a timely manner, unless a  
12 permit extension is obtained or unless the failure to complete  
13 work is due to reasons beyond the permittee's control.

14 e. Failure to correct, in a timely manner, work that does  
15 not conform to applicable standards, conditions, or codes,  
16 upon inspection and notification by the local government unit  
17 of the faulty condition.

18 f. The perpetration or attempt to perpetrate any fraud or  
19 deceit upon the local government unit or its citizens.

20 4. A local government unit shall not deny an application  
21 for a right-of-way permit for failure to include a project in  
22 a plan submitted to the local government unit under section  
23 476.29D, subsection 2, when the telecommunications right-of-  
24 way user has used commercially reasonable efforts to  
25 anticipate and plan for the project.

26 5. A local government unit shall not unreasonably withhold  
27 approval of an application for a right-of-way permit, or  
28 unreasonably revoke a permit.

29 Sec. 9. NEW SECTION. 476.29G APPEAL.

30 1. A telecommunications right-of-way user that has been  
31 denied registration, denied a right-of-way permit, that has  
32 had its right-of-way permit revoked, or that believes that the  
33 fees imposed on such user by the local government unit do not  
34 conform to the requirements of section 476.29H, may request,  
35 in writing, that such denial, revocation, or fee imposition be

1 reviewed by the governing body of the local government unit.  
2 The governing body of the local government unit shall act on a  
3 timely written request at its next regularly scheduled  
4 meeting. A decision by the governing body affirming the  
5 denial, revocation, or fee imposition must be in writing and  
6 supported by written findings establishing the reasonableness  
7 of the decision.

8 2. Upon affirmation by the governing body of the denial,  
9 revocation, or fee imposition, the telecommunications right-  
10 of-way user may have the matter finally resolved by binding  
11 arbitration. Binding arbitration must be before an arbitrator  
12 agreed to by both the local government unit and the  
13 telecommunications right-of-way user. If the parties are  
14 unable to agree on an arbitrator, the matter shall be resolved  
15 by a three-person arbitration panel made up of one arbitrator  
16 selected by the local government unit, one arbitrator selected  
17 by the telecommunications right-of-way user, and one  
18 arbitrator selected by the other two arbitrators. The cost  
19 and expense of a single arbitrator shall be borne equally by  
20 the local government unit and the telecommunications right-of-  
21 way user. If a three-person arbitration panel is selected,  
22 each party shall bear the expense of its own arbitrator and  
23 the parties shall jointly and equally bear the cost and  
24 expense of the third arbitrator, and of the arbitration. Each  
25 party to the arbitration shall pay its own costs,  
26 disbursements, and attorney fees.

27 Sec. 10. NEW SECTION. 476.29H FEES.

28 1. A local government unit may recover its management  
29 costs by imposing a fee for registration, a fee for a right-  
30 of-way permit, or, when appropriate, a fee applicable to a  
31 particular telecommunications right-of-way user when that user  
32 causes the local government unit to incur costs as a result of  
33 actions or inactions of that user. A local government unit  
34 shall not recover from a telecommunications right-of-way user  
35 costs caused by another entity's activity in the right-of-way.

1 2. Fees, or other right-of-way obligations, imposed by a  
2 local government unit on a telecommunications right-of-way  
3 user under this section must comply with all of the following:

4 a. The fees or obligations shall be based on the actual  
5 costs incurred by the local government unit in managing the  
6 public rights-of-way.

7 b. The fees or obligations shall be based on an allocation  
8 among all users of the public rights-of-way, including the  
9 local government unit itself, which shall reflect the  
10 proportionate costs imposed by the local government unit on  
11 each of the various types of uses of the public rights-of-way.

12 c. The fees or obligations shall be imposed on a  
13 competitively neutral basis.

14 d. The fees or obligations shall be imposed in a manner so  
15 that above-ground uses of public rights-of-way do not bear  
16 costs incurred by the local government unit to regulate  
17 underground uses of public rights-of-way.

18 Sec. 11. NEW SECTION. 476.29I ADDITIONAL RIGHTS-OF-WAY  
19 PROVISIONS.

20 1. The rights, duties, and obligations regarding the use  
21 of the public rights-of-way imposed by a local government unit  
22 shall apply in the same manner to the local government unit.

23 2. In managing the public rights-of-way and in imposing  
24 fees, a local government unit shall not do any of the  
25 following:

26 a. Unlawfully discriminate among telecommunications or  
27 other right-of-way users.

28 b. Grant a preference to any telecommunications right-of-  
29 way user.

30 c. Create or erect an unreasonable requirement for entry  
31 to the public rights-of-way by telecommunications right-of-way  
32 users.

33 d. Require a telecommunications right-of-way user to  
34 obtain a franchise or pay for the use of the right-of-way.

35 3. A telecommunications right-of-way user need not apply

1 for or obtain right-of-way permits for facilities that are  
2 located in public rights-of-way on the effective date of this  
3 Act for which the user has obtained the required consent of  
4 the local government unit, or that are otherwise lawfully  
5 occupying the public right-of-way. However, the  
6 telecommunications right-of-way user may be required to  
7 register and to obtain a right-of-way permit for an excavation  
8 or obstruction of existing facilities within the public right-  
9 of-way after the effective date of this Act.

10 4. An existing franchise agreement between a  
11 telecommunications right-of-way user and a local government  
12 shall prevail over any subsequently adopted ordinance,  
13 provided however that a franchise shall not be applied in a  
14 discriminatory manner.

15 5. Data and documents exchanged between a local government  
16 unit and a telecommunications right-of-way user are subject to  
17 the terms of chapter 22. A local government unit not  
18 complying with this section is subject to the penalties set  
19 forth in section 22.6.

20 6. A local government unit shall not collect a fee imposed  
21 under this section through in-kind services by a  
22 telecommunications right-of-way user, or require in-kind  
23 services as a condition of consent to use the local government  
24 unit's public right-of-way.

25 Sec. 12. NEW SECTION. 476.29J UNIFORM STATEWIDE RIGHT-  
26 OF-WAY STANDARDS.

27 1. The utilities board, within six months of the effective  
28 date of this Act, shall adopt statewide right-of-way use  
29 standards to ensure the safe and convenient use of public  
30 rights-of-way in this state, and for the purposes of achieving  
31 substantial statewide uniformity in construction standards  
32 where appropriate, providing competitive neutrality among  
33 telecommunications right-of-way users, and permitting  
34 efficient use of technology. Such standards shall provide for  
35 both of the following:

1 a. The terms and conditions of right-of-way construction,  
2 excavation, maintenance, and repair.

3 b. The terms and conditions under which telecommunications  
4 facilities and equipment are placed in the public right-of-  
5 way.

6 2. The board, upon complaint by an aggrieved  
7 telecommunications right-of-way user, shall review a decision  
8 or requirement by a local government unit that is alleged to  
9 violate a statewide right-of-way standard.

10 3. A local government unit shall not adopt or enforce an  
11 ordinance or other requirement that exceeds or conflicts with  
12 a statewide right-of-way standard adopted by the board.

13 Sec. 13. NEW SECTION. 476.29K WIRES CROSSING OR  
14 PARALLELING UTILITY LINES OR CROSSING RAILROAD RIGHT-OF-WAY.

15 1. The board shall adopt reasonable rules covering the  
16 nature, location, and character of the construction to be used  
17 for, and the maintenance and operation of, telephone,  
18 telegraph, electric light, power or other electric wires of  
19 any kind, or any natural gas pipelines, where such wires or  
20 pipelines cross or parallel the lines of any railroad,  
21 interurban railway, or any other public utility or similar  
22 public service corporation. The board shall formulate and  
23 adopt rules covering each class of construction, maintenance,  
24 and operation of such wires or pipelines under various  
25 conditions. The board, upon the complaint of any person,  
26 railroad, interurban railway, municipal utility, cooperative  
27 electric association, other public utility, or local  
28 government unit claiming to be injuriously affected or  
29 subjected to hazard by any such new or existing crossing or  
30 paralleling lines, after a hearing, shall make such orders and  
31 prescribe such terms and conditions for the construction,  
32 maintenance, and operation of the lines as may be just and  
33 reasonable.

34 2. The board, upon request of any local government unit,  
35 municipal utility, electric cooperative association, or public

1 utility, shall determine the just and reasonable charge which  
2 a railroad, or owner of an abandoned railroad right-of-way,  
3 can prescribe for a new or existing crossing of a railroad  
4 right-of-way by a telephone, electric, or gas line, based on  
5 the diminution in value caused by the crossing of the right-  
6 of-way by the telephone, electric, or gas line. This section  
7 shall not be construed to eliminate the right of a local  
8 government unit, public utility, municipal utility, or  
9 electric cooperative association to have any of the foregoing  
10 issues determined pursuant to an eminent domain proceeding  
11 commenced under chapter 6A. Unless the railroad, or owner of  
12 an abandoned railroad right-of-way, asserts in writing that  
13 the proposed crossing is a serious threat to the safe  
14 operations of the railroad or to the current use of the  
15 railroad right-of-way, a crossing may be constructed following  
16 a filing of the requested action with the board, pending  
17 review of the requested action by the board.

18 The board shall assess the cost of reviewing the requested  
19 action, and of determining a just and reasonable charge,  
20 equally among the parties.

21 Sec. 14. NEW SECTION. 476.29L TELECOMMUNICATIONS COMPANY  
22 PROVIDING CABLE SERVICE.

23 A telecommunications company that provides cable television  
24 services, with respect to providing cable television services  
25 in this state, is subject to the same franchise requirements,  
26 procedures, and fees, and public, educational, and government  
27 access requirements as a cable television company.

28 Sec. 15. ADVISORY TASK FORCE -- UNIFORM STATEWIDE RIGHT-  
29 OF-WAY STANDARDS. The utilities board in the department of  
30 commerce shall convene an advisory task force consisting of  
31 engineering and other experts representing, in equal  
32 proportions, local government units and affected  
33 telecommunications right-of-way users. The task force shall  
34 develop and make recommendations to the board regarding the  
35 uniform statewide right-of-way standards required under

1 section 476.29J. Additionally, the advisory task force shall  
2 develop and make recommendations to the board regarding the  
3 indemnification of local government units by  
4 telecommunications right-of-way users and other liability  
5 conditions, and the recommended terms of a model ordinance or  
6 ordinances managing the use of public rights-of-way under the  
7 jurisdiction of local government units. A model ordinance  
8 developed pursuant to this section is advisory, and is not  
9 binding on local government units. The advisory task force  
10 shall complete its work and provide its recommendations to the  
11 board as ordered by the board.

12 Sec. 16. EFFECTIVE DATE. This Act, being deemed of  
13 immediate importance, takes effect upon enactment.

14 EXPLANATION

15 This bill amends provisions relating to a city's authority  
16 to grant a franchise to erect, maintain, and operate plants  
17 and systems for telephone service, and establishes provisions  
18 relating to the management of public rights-of-way.

19 Code section 364.2 is amended to eliminate the authority of  
20 a city to grant a franchise to erect, maintain, and operate a  
21 telephone plant and system.

22 Code section 476.29 currently provides that the power to  
23 regulate the conditions required and manner of use of the  
24 highways, streets, rights-of-way, and public grounds remains  
25 in the appropriate public authority. The section is amended  
26 to provide that such conditions and use are to be managed by  
27 the appropriate public authority of a local government unit as  
28 set forth in new Code sections 476.29A through 476.29L.

29 New Code section 476.29A establishes the purpose of  
30 sections 476.29B through 476.29L, which is to set forth the  
31 powers of a local government unit to manage the use of public  
32 rights-of-way by telecommunications rights-of-way users.

33 New Code section 476.29B establishes definitions of key  
34 terms used in new Code sections 476.29B through 476.29L.

35 New Code section 476.29C authorizes a local government unit

1 to manage a public right-of-way so as to prevent interference  
2 with the safe and convenient use of streets, alleys, and other  
3 public grounds by the public.

4 New Code section 476.29D sets forth the authority to manage  
5 such rights-of-way, which is optional at the option of the  
6 local government unit, and also lists specific acts which the  
7 local government unit may do in exercising such management  
8 authority.

9 New Code section 476.29E provides that a telecommunications  
10 right-of-way user, after excavation, is required to restore  
11 the right-of-way and surrounding areas to substantially the  
12 same condition as existed prior to the excavation.

13 New Code section 476.29F establishes grounds for the denial  
14 or revocation of a telecommunications right-of-way user's  
15 right-of-way permit.

16 New Code section 476.29G establishes a local appeal process  
17 for a telecommunications right-of-way user that has been  
18 denied registration, denied a right-of-way permit, had such  
19 permit revoked, or who asserts that such user has been  
20 assessed for an improper fee related to the use of the right-  
21 of-way.

22 New Code section 476.29H authorizes a local government unit  
23 to impose various fees for the purpose of recovering its  
24 management costs.

25 New Code section 476.29I provides for miscellaneous  
26 provisions related to the rights, duties, and obligations  
27 associated with the use of public rights-of-way.

28 New Code section 476.29J provides that the utilities board  
29 is to adopt by rule statewide right-of-way use standards for  
30 the purpose of achieving substantial statewide uniformity  
31 regarding the management of public rights-of-way.

32 New Code section 476.29K provides that the utilities board  
33 is to adopt reasonable rules covering the nature, location,  
34 and character of the construction to be used for, and the  
35 maintenance and operation of, telephone, telegraph, electric

1 light, power or other electric wires of any kind, or any  
2 natural gas pipelines, where such wires or pipelines cross or  
3 parallel the lines of any railroad, interurban railway, or any  
4 other public utility or similar public service corporation.

5 New Code section 476.29L provides that a telecommunications  
6 company that provides cable television services, with respect  
7 to providing cable television services in this state, is  
8 subject to the same franchise requirements, procedures, and  
9 fees, and public, educational, and government access  
10 requirements as a cable television company.

11 Section 15 directs the utilities board to convene an  
12 advisory task force consisting of engineering and other  
13 experts representing, in equal proportions, local government  
14 units and affected telecommunications right-of-way users, to  
15 develop and make recommendations to the board regarding the  
16 uniform statewide right-of-way standards required under new  
17 Code section 476.29J.

18 The bill is effective upon enactment.

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## SENATE FILE 2368

S-5199

1 Amend Senate File 2368 as follows:

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

4 "Section 1. Section 364.2, subsection 4, paragraph  
5 a, Code 1997, is amended to read as follows:

6 a. A city may grant to any person a franchise to  
7 erect, maintain, and operate plants and systems for  
8 electric light and power, heating, ~~telephone,~~  
9 telegraph, cable television, district telegraph and  
10 alarm, motor bus, trolley bus, street railway or other  
11 public transit, waterworks, or gasworks, within the  
12 city for a term of not more than twenty-five years.  
13 The franchise may be granted, amended, extended, or  
14 renewed only by an ordinance, but no exclusive  
15 franchise shall be granted, amended, extended, or  
16 renewed.

17 Sec. 2. Section 476.6, Code 1997, is amended by  
18 adding the following new subsection:

19 NEW SUBSECTION. 22. A public utility which is  
20 assessed management costs by a local government  
21 pursuant to chapter 480A is entitled to recover those  
22 costs. If the public utility serves customers within  
23 the boundaries of the local government imposing the  
24 management costs, such costs shall be recovered  
25 exclusively from those customers.

26 Sec. 3. NEW SECTION. 480A.1 PURPOSE.

27 The general assembly finds that it is in the public  
28 interest to define the right of local governments to  
29 charge public utilities for the location and operation  
30 of public utility facilities in local government  
31 rights-of-way.

32 Sec. 4. NEW SECTION. 480A.2 DEFINITIONS.

33 As used in this chapter, unless the context  
34 otherwise requires:

35 1. "Local government" means a county, city,  
36 township, school district, or any special-purpose  
37 district or authority.

38 2. "Management costs" means the reasonable costs a  
39 local government actually incurs in managing public  
40 rights-of-way.

41 3. "Public right-of-way" means the area on, below,  
42 or above a public roadway, highway, street, bridge,  
43 cartway, bicycle lane, or public sidewalk in which the  
44 local government has an interest, including other  
45 dedicated rights-of-way for travel purposes and  
46 utility easements. A public right-of-way does not  
47 include the airwaves above a public right-of-way with  
48 regard to cellular or other nonwire telecommunications  
49 or broadcasts service.

50 4. "Public utility" means a person owning or

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SENATE CLIP SHEET

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Page 2

1 operating a facility used for  
2 by piped distribution systems,  
3 communications services not in  
4 systems, or water by piped dis-  
5 public for compensation. 480A.3  
6 Sec. 5. NEW SECTION.

7 A local government shall not re-  
8 public utility for the use of its  
9 than a fee for its management of  
10 government may recover from a public  
11 those management costs caused by  
12 activity in the right-of-way. 480A.4  
13 competition in this section shall be  
14 government's neutral costs cannot be  
15 only one entity, those costs shall  
16 all users of the public rights-of-way  
17 local government itself. The allocation  
18 proportionately of incurred by the local  
19 government as a result of the various  
20 franchise fee as permitted by the  
21 Sec. 6. NEW SECTION.

22 A local government shall not prohibit  
23 this utility, in lieu of section 480A.6.  
24 public utility, require a fee imposed  
25 services as a condition of the use of  
26 government's public right-of-way. 480A.5  
27 Sec. 7. NEW SECTION.

28 1. A public utility that is denied  
29 government shall be reviewed by the  
30 denied a public right-of-way user, or  
31 way permit such requirements of this  
32 imposed on writing that local governing  
33 conform in the act with governing body  
34 request for the denial, that has its  
35 fee imposition be reviewed by the  
36 the local government, or fee imposition  
37 written request. A decision by the  
38 affirming shall be reviewed by the  
39 government shall be reviewed by the  
40 written request. The governing body  
41 must be in the denial, that has its  
42 establishing the reasonableness of the  
43 denial, Upon affirmation of the  
44 utility may do either of the following:

45 2. With the consent of the governing  
46 a. the matter finally resolved by  
47 utility arbitration must be before an  
48 Binding arbitration must be before an  
49 agreed to by both the local government  
50 S-5199

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Page 3

1 utility. If the parties are unable to agree on an  
 2 arbitrator, the matter shall be resolved by a three-  
 3 person arbitration panel made up of one arbitrator  
 4 selected by the local government, one arbitrator  
 5 selected by the public utility, and one arbitrator  
 6 selected by the other two arbitrators. The cost and  
 7 expense of a single arbitrator shall be borne equally  
 8 by the local government and the public utility. If a  
 9 three-person arbitration panel is selected, each party  
 10 shall bear the expense of its own arbitrator and the  
 11 parties shall jointly and equally bear the cost and  
 12 expense of the third arbitrator, and of the  
 13 arbitration. Each party to the arbitration shall pay  
 14 its own costs, disbursements, and attorney fees.

15 b. Bring an action in district court to review a  
 16 decision of the governing body made under this  
 17 section.

18 Sec. 8. NEW SECTION. 480A.6 FRANCHISE ORDINANCE  
 19 NOT SUPERSEDED.

20 This chapter does not modify or supersede the  
 21 rights and obligations of a local government and the  
 22 public utility established by the terms of any  
 23 existing or future franchise granted, approved, and  
 24 accepted pursuant to section 364.2, subsection 4. A  
 25 city which collects a city franchise fee pursuant to  
 26 section 364.2, subsection 4, under an existing or  
 27 future franchise, shall not also collect a fee under  
 28 section 480A.3.

29 Sec. 9. EFFECTIVE DATE. This Act applies  
 30 retroactively to January 1, 1998, and supersedes the  
 31 provisions of any ordinances contrary to this Act in  
 32 effect on or after that date."

By NEAL SCHUERER  
 STEVE KING  
 MICHAEL E. GRONSTAL

S-5199 FILED MARCH 11, 1998

*Adopted 3/10/98  
 (p. 689)*

3/13/98 Commerce & Regulation  
3/19/98 Amend/Do Pass  
W/ \$ 8508

H. 3/11/98 UNFINISHED BUSINESS CALENDAR

SENATE FILE 2368

BY COMMITTEE ON COMMERCE

H. 3/31/98 Referred To: Woych & Meane

(SUCCESSOR TO SSB 2144)

H. 4/3/98 Do Pass

(AS AMENDED AND PASSED BY THE SENATE MARCH 12, 1998)

ALL New Language by the Senate

(P. 1383)

Passed Senate, Date 4-13-98 Passed House, Date 4-8-98

Vote: Ayes 46 Nays 0 Vote: Ayes 98 Nays 0

Approved April 23, 1998

A BILL FOR

1 An Act relating to the management of public rights-of-way by  
2 local government units, eliminating the power of cities to  
3 grant franchises to erect, maintain, and operate plants and  
4 systems for telecommunications services within the city, and  
5 providing an effective date.

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

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S.F. 2368

~~SECTION 1. SECTION 364.2, SUBSECTION 4, PARAGRAPH A, CODE 1997, IS AMENDED TO READ AS FOLLOWS:~~

1 Section 1. Section 364.2, subsection 4, paragraph a, Code  
2 1997, is amended to read as follows:

~~3 a. A city may grant to any person a franchise to erect,  
4 maintain, and operate plants and systems for electric light  
5 and power, heating, telephone, telegraph, cable television,  
6 district telegraph and alarm, motor bus, trolley bus, street  
7 railway or other public transit, waterworks, or gasworks,  
8 within the city for a term of not more than twenty-five years.  
9 The franchise may be granted, amended, extended, or renewed  
10 only by an ordinance, but no exclusive franchise shall be  
11 granted, amended, extended, or renewed.~~

12 Sec. 2. Section 476.5, Code 1997, is amended by adding the  
13 following new subsection:

14 NEW SUBSECTION. 22. A public utility which is assessed  
15 management costs by a local government pursuant to chapter  
16 480A is entitled to recover those costs. If the public  
17 utility serves customers within the boundaries of the local  
18 government imposing the management costs, such costs shall be  
19 recovered exclusively from those customers.

20 Sec. 3. NEW SECTION. 480A.1 PURPOSE.

21 The general assembly finds that it is in the public  
22 interest to define the right of local governments to charge  
23 public utilities for the location and operation of public  
24 utility facilities in local government rights-of-way.

25 Sec. 4. NEW SECTION. 480A.2 DEFINITIONS.

26 As used in this chapter, unless the context otherwise  
27 requires:

28 1. "Local government" means a county, city, township,  
29 school district, or any special-purpose district or authority.

30 2. "Management costs" means the reasonable costs a local  
31 government actually incurs in managing public rights-of-way.

32 3. "Public right-of-way" means the area on, below, or  
33 above a public roadway, highway, street, bridge, cartway,  
34 bicycle lane, or public sidewalk in which the local government  
35 has an interest, including other dedicated rights-of-way for

1 travel purposes and utility easements. A public right-of-way  
2 does not include the airwaves above a public right-of-way with  
3 regard to cellular or other nonwire telecommunications or  
4 broadcasts service.

5 4. "Public utility" means a person owning or operating a  
6 facility used for furnishing natural gas by piped distribution  
7 system, electricity, communications services not including  
8 cable television systems, or water by piped distribution  
9 system, to the public for compensation.

10 Sec. 5. NEW SECTION. 480A.3 FEES.

11 A local government shall not recover any fee from a public  
12 utility for the use of its right-of-way, other than a fee for  
13 its management costs. A local government may recover from a  
14 public utility only those management costs caused by the  
15 public utility's activity in the public right-of-way. A fee  
16 or other obligation under this section shall be imposed on a  
17 competitively neutral basis. When a local government's  
18 management costs cannot be attributed to only one entity,  
19 those costs shall be allocated among all users of the public  
20 rights-of-way, including the local government itself. The  
21 allocation shall reflect proportionately the costs incurred by  
22 the local government as a result of the various types of uses  
23 of the public rights-of-way.

24 This section does not prohibit the collection of a  
25 franchise fee as permitted in section 480A.6.

26 Sec. 6. NEW SECTION. 480A.4 IN-KIND SERVICES.

27 A local government, in lieu of a fee imposed under this  
28 chapter, shall not require in-kind services by a public  
29 utility right-of-way user, or require in-kind services as a  
30 condition of the use of the local government's public right-  
31 of-way.

32 Sec. 7. NEW SECTION. 480A.5 ARBITRATION.

33 1. A public utility that is denied registration, denied a  
34 right-of-way permit, that has its right-of-way permit revoked,  
35 or that believes that the fees imposed on such user by the

1 local government do not conform to the requirements of this  
2 chapter may request in writing that such denial, revocation,  
3 or fee imposition be reviewed by the governing body of the  
4 local government. The governing body of the local government  
5 shall act within sixty days on a timely written request. A  
6 decision by the governing body affirming the denial,  
7 revocation, or fee imposition must be in writing and supported  
8 by written findings establishing the reasonableness of the  
9 decision.

10 2. Upon affirmation by the governing body of the denial,  
11 revocation, or fee imposition, the public utility may do  
12 either of the following:

13 a. With the consent of the governing body, have the matter  
14 finally resolved by binding arbitration. Binding arbitration  
15 must be before an arbitrator agreed to by both the local  
16 government and the public utility. If the parties are unable  
17 to agree on an arbitrator, the matter shall be resolved by a  
18 three-person arbitration panel made up of one arbitrator  
19 selected by the local government, one arbitrator selected by  
20 the public utility, and one arbitrator selected by the other  
21 two arbitrators. The cost and expense of a single arbitrator  
22 shall be borne equally by the local government and the public  
23 utility. If a three-person arbitration panel is selected,  
24 each party shall bear the expense of its own arbitrator and  
25 the parties shall jointly and equally bear the cost and  
26 expense of the third arbitrator, and of the arbitration. Each  
27 party to the arbitration shall pay its own costs,  
28 disbursements, and attorney fees.

29 b. Bring an action in district court to review a decision  
30 of the governing body made under this section.

31 Sec. 8. NEW SECTION. 480A.6 FRANCHISE ORDINANCE NOT  
32 SUPERSEDED.

33 This chapter does not modify or supersede the rights and  
34 obligations of a local government and the public utility  
35 established by the terms of any existing or future franchise

1 granted, approved, and accepted pursuant to section 364.2,  
2 subsection 4. A city which collects a city franchise fee  
3 pursuant to section 364.2, subsection 4, under an existing or  
4 future franchise, shall not also collect a fee under section  
5 480A.3.

6 Sec. 9. EFFECTIVE DATE. This Act applies retroactively to  
7 January 1, 1998, and supersedes the provisions of any  
8 ordinances contrary to this Act in effect on or after that  
9 date.

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SENATE FILE 2368

H-8508

- 1 Amend Senate File 2368 as amended, passed, and
- 2 reprinted by the Senate, as follows:
- 3 1. Page 4, line 2, by inserting after the word
- 4 "fee" the following: "from an entity".
- 5 2. Page 4, line 4, by inserting after the word
- 6 "fee" the following: "from that entity".

By COMMITTEE ON COMMERCE AND REGULATION  
METCALF of Polk, Chairperson

H-8508 FILED MARCH 19, 1998

*adopted 3/31/98*  
*(p. 1081)*

SENATE FILE 2368

H-8557

- 1 Amend Senate File 2368, as amended, passed, and
- 2 reprinted by the Senate, as follows:
- 3 1. Page 2, line 4, by inserting after the word
- 4 "service" the following: "or utility poles owned by a
- 5 local government or a municipal utility".

By BRADLEY of Clinton

H-8557 FILED MARCH 23, 1998

*adopted 3/31/98*  
*(p. 1081)*

HOUSE AMENDMENT TO  
SENATE FILE 2368

S-5579

- 1 Amend Senate File 2368, as amended, passed, and
- 2 reprinted by the Senate, as follows:
- 3 1. Page 2, line 4, by inserting after the word
- 4 "service" the following: "or utility poles owned by a
- 5 local government or a municipal utility".
- 6 2. Page 4, line 2, by inserting after the word
- 7 "fee" the following: "from an entity".
- 8 3. Page 4, line 4, by inserting after the word
- 9 "fee" the following: "from that entity".
- 10 4. By renumbering, relettering, or redesignating
- 11 and correcting internal references as necessary.

RECEIVED FROM THE HOUSE

S-5579 FILED APRIL 8, 1998

*Senate Concurred*  
*4-13-98 (p. 1190)*

Schuerer  
King  
McCoy

SSB 2144

Commerce

Succeeded By

SENATE FILE SF/HF 2368

BY (PROPOSED COMMITTEE ON  
COMMERCE BILL BY  
CHAIRPERSON JENSEN)

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

A BILL FOR

1 An Act relating to the management of public rights-of-way by  
2 local government units, eliminating the power of cities to  
3 grant franchises to erect, maintain, and operate plants and  
4 systems for telecommunications services within the city, and  
5 providing an effective date.

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

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1 Section 1. Section 364.2, subsection 4, paragraph a, Code  
2 1997, is amended to read as follows:

3 4. a. A city may grant to any person a franchise to  
4 erect, maintain, and operate plants and systems for electric  
5 light and power, heating, telephone, telegraph, cable  
6 television, district telegraph and alarm, motor bus, trolley  
7 bus, street railway or other public transit, waterworks, or  
8 gasworks, within the city for a term of not more than twenty-  
9 five years. The franchise may be granted, amended, extended,  
10 or renewed only by an ordinance, but no exclusive franchise  
11 shall be granted, amended, extended, or renewed.

12 Sec. 2. Section 476.29, subsection 6, Code Supplement  
13 1997, is amended to read as follows:

14 6. The certificate and tariffs approved by the board are  
15 the only authority required for the utility to furnish land-  
16 line local telephone service. However, to the extent not  
17 inconsistent with this section, the power to regulate manage  
18 the conditions required and manner of use of the highways,  
19 streets, rights-of-way, and public grounds ~~remains-in is~~  
20 within the appropriate public authority of the local  
21 government unit as set forth in sections 476.29A through and  
22 including 476.29L.

23 Sec. 3. NEW SECTION. 476.29A PURPOSE.

24 Sections 476.29B through 476.29L set forth the powers of a  
25 local government unit to manage the use of public rights-of-  
26 way by telecommunications rights-of-way users. The general  
27 assembly finds that it is in the state's interest that the use  
28 and management of public rights-of-way be carried on in a  
29 fair, efficient, competitively neutral, and substantially  
30 uniform manner.

31 Sec. 4. NEW SECTION. 476.29B DEFINITIONS.

32 As used in sections 476.29A through 476.29L, unless the  
33 context otherwise requires:

34 1. "City" means a municipal corporation, not including a  
35 county, township, school district, or any special-purpose

1 district or authority. When used in relationship to land  
2 area, "city" includes only the area within the city limits.

3 2. "Excavate" means to move, remove, or compress, or  
4 otherwise displace a structure or earth, rock, or other  
5 material in or on the ground by means of any tools, equipment,  
6 or explosives and includes, but is not limited to, grading,  
7 trenching, tilling, digging, ditching, drilling, augering,  
8 tunneling, scraping, cable or pipe plowing, driving, and  
9 demolition of structures.

10 3. "Local government unit" means a county, city, township,  
11 school district, or any special-purpose district or authority.

12 4. "Manage a public right-of-way" means the activities of  
13 a local government unit relating to the public right-of-way  
14 including the following:

15 a. Requiring registration.

16 b. Requiring construction performance bonds or assurances  
17 and insurance coverage.

18 c. Establishing installation and construction standards.

19 d. Establishing and defining location and relocation  
20 requirements for equipment and facilities.

21 e. Establishing coordination and timing requirements.

22 f. Requiring telecommunications right-of-way users to  
23 submit, for right-of-way projects commenced after the  
24 effective date of this Act, whether initiated by a local  
25 government unit or any telecommunications right-of-way user,  
26 project data reasonably necessary to allow the local  
27 government unit to develop a right-of-way mapping system.

28 g. Requiring telecommunications right-of-way users, upon  
29 request of a local government unit, to submit existing data on  
30 the location of the user's facilities occupying the public  
31 right-of-way within the limits of the local government unit.  
32 The data may be submitted in the form maintained by the user  
33 and in a reasonable time after receipt of the request based on  
34 the amount of data requested.

35 h. Establishing right-of-way permitting requirements for

1 street excavation and obstruction.

2 i. Establishing removal requirements for abandoned  
3 equipment or facilities, if required in conjunction with other  
4 right-of-way repair, excavation, or construction.

5 j. Imposing reasonable penalties for unreasonable delays  
6 in repair, excavation, or construction.

7 5. "Management costs" means the actual cost a local  
8 government unit incurs in managing its public rights-of-way,  
9 and includes such costs, if incurred, associated with  
10 registering applicants; issuing, processing, and verifying  
11 right-of-way permit applications; inspecting job sites and  
12 restoration projects; maintaining, supporting, protecting, or  
13 moving user equipment during public right-of-way work;  
14 determining the adequacy of right-of-way restoration;  
15 restoring work inadequately performed after providing notice  
16 and the opportunity to correct the work; and revoking right-  
17 of-way permits. "Management costs" do not include payment by  
18 a telecommunications right-of-way user for the use of the  
19 public right-of-way, the fees and costs of litigation relating  
20 to the interpretation of section 479.29A, this section, and  
21 sections 479.29C through 479.29M, or any ordinance enacted  
22 under those sections, or the costs and fees incurred by a  
23 local government unit under section 479.29G.

24 6. "Obstruct" means to place a tangible object in a public  
25 right-of-way so as to hinder free and open passage over any  
26 part of the right-of-way.

27 7. "Public right-of-way" means the area on, below, or  
28 above a public roadway, highway, street, bridge, cartway,  
29 bicycle lane, or public sidewalk in which the local government  
30 unit has an interest, including other dedicated rights-of-way  
31 for travel purposes and utility easements. A public right-of-  
32 way does not include the airwaves above a public right-of-way  
33 with regard to cellular or other nonwire telecommunications or  
34 broadcast service.

35 8. "Right-of-way permit" means a permit to perform work in

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1 a public right-of-way, whether to repair, excavate, construct,  
2 or obstruct the right-of-way.

3 9. "Telecommunications right-of-way user" means a person  
4 owning or controlling a facility in the public right-of-way,  
5 or seeking to own or control a facility in the public right-  
6 of-way, that is used or is intended to be used for  
7 transporting telecommunications or other voice or data  
8 information. A cable television system and telecommunications  
9 activities related to providing natural gas or electric energy  
10 services, whether provided by a public utility as defined in  
11 section 476.1, a city, a municipal gas or power agency, or a  
12 cooperative electric association, are not telecommunications  
13 right-of-way users for the purposes of section 479.29A, this  
14 section, and sections 479.29C through 479.29M.

15 Sec. 5. NEW SECTION. 476.29C USE AND MANAGEMENT OF  
16 PUBLIC RIGHTS-OF-WAY.

17 A local government unit may manage a public right-of-way  
18 including the location of poles, wires, and other equipment or  
19 facilities on, below, or above the streets, alleys, or other  
20 public grounds so as to prevent any interference with the safe  
21 and convenient use of streets, alleys, and other public  
22 grounds by the public.

23 Sec. 6. NEW SECTION. 476.29D GENERAL MANAGEMENT OF  
24 TELECOMMUNICATIONS RIGHT-OF-WAY USE.

25 1. A telecommunications right-of-way user authorized to do  
26 business in this state under state law or by license of the  
27 federal communications commission may construct, maintain, and  
28 operate conduit, cable, switches, and related appurtenances  
29 and facilities along, across, upon, above, and under any  
30 public right-of-way, subject to this section.

31 2. A local government unit is authorized to manage its  
32 public rights-of-way and to recover its management costs as  
33 provided in this section. Such authority may be exercised at  
34 the option of the local government unit. A local government  
35 unit, by ordinance, may do any of the following:

1 a. Require a telecommunications right-of-way user seeking  
2 to excavate or obstruct a public right-of-way for the purpose  
3 of providing telecommunications services to obtain a right-of-  
4 way permit and impose permit conditions.

5 b. Require a telecommunications right-of-way user using,  
6 occupying, or seeking to use or occupy a public right-of-way  
7 to provide telecommunications services to register with the  
8 local government unit and to provide the local government unit  
9 with the following information:

10 (1) The applicant's name, state one-call registration  
11 number, address, and telephone and facsimile numbers.

12 (2) The name, address, and telephone and facsimile numbers  
13 of the applicant's local representative.

14 (3) A certificate of adequate insurance.

15 (4) Other information required for the efficient  
16 administration of the public right-of-way.

17 c. Require telecommunications right-of-way users to submit  
18 to the local government unit location and placement plans for  
19 construction and major maintenance that provide reasonable  
20 notice to the local government unit of projects that the  
21 telecommunications right-of-way user expects to undertake that  
22 may require excavation and obstruction of public rights-of-  
23 way.

24 3. A local government unit may also require a  
25 telecommunications right-of-way user that is registered with  
26 the local government unit pursuant to subsection 2 to  
27 periodically update the information in its registration  
28 application.

29 Sec. 7. NEW SECTION. 476.29E RESTORATION OF RIGHT-OF-  
30 WAY.

31 1. A telecommunications right-of-way user, after an  
32 excavation of a public right-of-way, shall provide for  
33 restoration of the right-of-way and surrounding areas,  
34 including the pavement and its foundation, in substantially  
35 the same condition that existed before the excavation. Local

1 government units that choose to perform their own surface  
 2 restoration required as a result of the excavation may require  
 3 telecommunications right-of-way users to reimburse the  
 4 reasonable costs of restoration of the surface to  
 5 substantially the same condition that existed before the  
 6 excavation. Restoration of the public right-of-way must be  
 7 completed within the dates specified in the right-of-way  
 8 permit, unless the permittee obtains a waiver or a new or  
 9 amended right-of-way permit.

10 2. If a telecommunications right-of-way user elects not to  
 11 restore the public right-of-way, a local government unit may  
 12 restore the public right-of-way and recover the reasonable  
 13 costs associated with restoration of the public right-of-way.

14 Sec. 8. NEW SECTION. 476.29F PERMIT DENIAL OR  
 15 REVOCATION.

16 1. A local government unit may deny the application of a  
 17 telecommunications right-of-way user for a right-of-way permit  
 18 for either of the following:

19 a. Failure of such user to comply with sections 476.29A  
 20 through 476.29E, this section, and sections 476.29G through  
 21 476.29K.

22 b. Upon a determination by the local government unit that  
 23 the denial is necessary to protect the public health, safety,  
 24 or welfare, or when necessary to protect the public right-of-  
 25 way and its current use.

26 2. Denial of a permit must be made in writing within  
 27 thirty days of submission of the application stating with  
 28 particularity the reasons for such denial. A permit  
 29 application not acted upon within thirty days is deemed  
 30 approved.

31 3. A local government unit may revoke a right-of-way  
 32 permit granted to a telecommunications right-of-way user, with  
 33 or without fee refund, in the event of a substantial breach of  
 34 the terms and conditions of the permit, a violation of  
 35 sections 476.29A through 476.29E, this section, and sections

1 476.29G through 476.29K, or an ordinance or rule adopted  
2 pursuant to such sections. A revocation must be made in  
3 writing stating with particularity the reason for such  
4 revocation. A substantial breach or violation by a permittee  
5 includes, but is not limited to, the following:

6 a. A material violation of the right-of-way permit.

7 b. Evasion or attempt to evade a material provision of the  
8 right-of-way permit.

9 c. A material misrepresentation of fact in the right-of-  
10 way permit application.

11 d. Failure to complete work in a timely manner, unless a  
12 permit extension is obtained or unless the failure to complete  
13 work is due to reasons beyond the permittee's control.

14 e. Failure to correct, in a timely manner, work that does  
15 not conform to applicable standards, conditions, or codes,  
16 upon inspection and notification by the local government unit  
17 of the faulty condition.

18 f. The perpetration or attempt to perpetrate any fraud or  
19 deceit upon the local government unit or its citizens.

20 4. A local government unit shall not deny an application  
21 for a right-of-way permit for failure to include a project in  
22 a plan submitted to the local government unit under section  
23 476.29D, subsection 2, when the telecommunications right-of-  
24 way user has used commercially reasonable efforts to  
25 anticipate and plan for the project.

26 5. A local government unit shall not unreasonably withhold  
27 approval of an application for a right-of-way permit, or  
28 unreasonably revoke a permit.

29 Sec. 9. NEW SECTION. 476.29G APPEAL.

30 1. A telecommunications right-of-way user that has been  
31 denied registration, denied a right-of-way permit, that has  
32 had its right-of-way permit revoked, or that believes that the  
33 fees imposed on such user by the local government unit do not  
34 conform to the requirements of section 476.29H, may request,  
35 in writing, that such denial, revocation, or fee imposition be

1 reviewed by the governing body of the local government unit.  
 2 The governing body of the local government unit shall act on a  
 3 timely written request at its next regularly scheduled  
 4 meeting. A decision by the governing body affirming the  
 5 denial, revocation, or fee imposition must be in writing and  
 6 supported by written findings establishing the reasonableness  
 7 of the decision.

8 2. Upon affirmation by the governing body of the denial,  
 9 revocation, or fee imposition, the telecommunications right-  
 10 of-way user may have the matter finally resolved by binding  
 11 arbitration. Binding arbitration must be before an arbitrator  
 12 agreed to by both the local government unit and the  
 13 telecommunications right-of-way user. If the parties are  
 14 unable to agree on an arbitrator, the matter shall be resolved  
 15 by a three-person arbitration panel made up of one arbitrator  
 16 selected by the local government unit, one arbitrator selected  
 17 by the telecommunications right-of-way user, and one  
 18 arbitrator selected by the other two arbitrators. The cost  
 19 and expense of a single arbitrator shall be borne equally by  
 20 the local government unit and the telecommunications right-of-  
 21 way user. If a three-person arbitration panel is selected,  
 22 each party shall bear the expense of its own arbitrator and  
 23 the parties shall jointly and equally bear the cost and  
 24 expense of the third arbitrator, and of the arbitration. Each  
 25 party to the arbitration shall pay its own costs,  
 26 disbursements, and attorney fees.

27 Sec. 10. NEW SECTION. 476.29H FEES.

28 1. A local government unit may recover its management  
 29 costs by imposing a fee for registration, a fee for a right-  
 30 of-way permit, or, when appropriate, a fee applicable to a  
 31 particular telecommunications right-of-way user when that user  
 32 causes the local government unit to incur costs as a result of  
 33 actions or inactions of that user. A local government unit  
 34 shall not recover from a telecommunications right-of-way user  
 35 costs caused by another entity's activity in the right-of-way.

1 2. Fees, or other right-of-way obligations, imposed by a  
2 local government unit on a telecommunications right-of-way  
3 user under this section must comply with all of the following:

4 a. The fees or obligations shall be based on the actual  
5 costs incurred by the local government unit in managing the  
6 public rights-of-way.

7 b. The fees or obligations shall be based on an allocation  
8 among all users of the public rights-of-way, including the  
9 local government unit itself, which shall reflect the  
10 proportionate costs imposed by the local government unit on  
11 each of the various types of uses of the public rights-of-way.

12 c. The fees or obligations shall be imposed on a  
13 competitively neutral basis.

14 d. The fees or obligations shall be imposed in a manner so  
15 that above-ground uses of public rights-of-way do not bear  
16 costs incurred by the local government unit to regulate  
17 underground uses of public rights-of-way.

18 Sec. 11. NEW SECTION. 476.29I ADDITIONAL RIGHTS-OF-WAY  
19 PROVISIONS.

20 1. The rights, duties, and obligations regarding the use  
21 of the public rights-of-way imposed by a local government unit  
22 shall apply in the same manner to the local government unit.

23 2. In managing the public rights-of-way and in imposing  
24 fees, a local government unit shall not do any of the  
25 following:

26 a. Unlawfully discriminate among telecommunications or  
27 other right-of-way users.

28 b. Grant a preference to any telecommunications right-of-  
29 way user.

30 c. Create or erect an unreasonable requirement for entry  
31 to the public rights-of-way by telecommunications right-of-way  
32 users.

33 d. Require a telecommunications right-of-way user to  
34 obtain a franchise or pay for the use of the right-of-way.

35 3. A telecommunications right-of-way user need not apply

1 for or obtain right-of-way permits for facilities that are  
 2 located in public rights-of-way on the effective date of this  
 3 Act for which the user has obtained the required consent of  
 4 the local government unit, or that are otherwise lawfully  
 5 occupying the public right-of-way. However, the  
 6 telecommunications right-of-way user may be required to  
 7 register and to obtain a right-of-way permit for an excavation  
 8 or obstruction of existing facilities within the public right-  
 9 of-way after the effective date of this Act.

10 4. An existing franchise agreement between a  
 11 telecommunications right-of-way user and a local government  
 12 shall prevail over any subsequently adopted ordinance,  
 13 provided however that a franchise shall not be applied in a  
 14 discriminatory manner.

15 5. Data and documents exchanged between a local government  
 16 unit and a telecommunications right-of-way user are subject to  
 17 the terms of chapter 22. A local government unit not  
 18 complying with this section is subject to the penalties set  
 19 forth in section 22.6.

20 6. A local government unit shall not collect a fee imposed  
 21 under this section through in-kind services by a  
 22 telecommunications right-of-way user, or require in-kind  
 23 services as a condition of consent to use the local government  
 24 unit's public right-of-way.

25 Sec. 12. NEW SECTION. 476.29J UNIFORM STATEWIDE RIGHT-  
 26 OF-WAY STANDARDS.

27 1. The utilities board, within six months of the effective  
 28 date of this Act, shall adopt statewide right-of-way use  
 29 standards to ensure the safe and convenient use of public  
 30 rights-of-way in this state, and for the purposes of achieving  
 31 substantial statewide uniformity in construction standards  
 32 where appropriate, providing competitive neutrality among  
 33 telecommunications right-of-way users, and permitting  
 34 efficient use of technology. Such standards shall provide for  
 35 both of the following:

1 a. The terms and conditions of right-of-way construction,  
2 excavation, maintenance, and repair.

3 b. The terms and conditions under which telecommunications  
4 facilities and equipment are placed in the public right-of-  
5 way.

6 2. The board, upon complaint by an aggrieved  
7 telecommunications right-of-way user, shall review a decision  
8 or requirement by a local government unit that is alleged to  
9 violate a statewide right-of-way standard.

10 3. A local government unit shall not adopt or enforce an  
11 ordinance or other requirement that exceeds or conflicts with  
12 a statewide right-of-way standard adopted by the board.

13 Sec. 13. NEW SECTION. 476.29K WIRES CROSSING OR  
14 PARALLELING UTILITY LINES OR CROSSING RAILROAD RIGHT-OF-WAY.

15 1. The board shall adopt reasonable rules covering the  
16 nature, location, and character of the construction to be used  
17 for, and the maintenance and operation of, telephone,  
18 telegraph, electric light, power or other electric wires of  
19 any kind, or any natural gas pipelines, where such wires or  
20 pipelines cross or parallel the lines of any railroad,  
21 interurban railway, or any other public utility or similar  
22 public service corporation. The board shall formulate and  
23 adopt rules covering each class of construction, maintenance,  
24 and operation of such wires or pipelines under various  
25 conditions. The board, upon the complaint of any person,  
26 railroad, interurban railway, municipal utility, cooperative  
27 electric association, other public utility, or local  
28 government unit claiming to be injuriously affected or  
29 subjected to hazard by any such new or existing crossing or  
30 paralleling lines, after a hearing, shall make such orders and  
31 prescribe such terms and conditions for the construction,  
32 maintenance, and operation of the lines as may be just and  
33 reasonable.

34 2. The board, upon request of any local government unit,  
35 municipal utility, electric cooperative association, or public

1 utility, shall determine the just and reasonable charge which  
 2 a railroad, or owner of an abandoned railroad right-of-way,  
 3 can prescribe for a new or existing crossing of a railroad  
 4 right-of-way by a telephone, electric, or gas line, based on  
 5 the diminution in value caused by the crossing of the right-  
 6 of-way by the telephone, electric, or gas line. This section  
 7 shall not be construed to eliminate the right of a local  
 8 government unit, public utility, municipal utility, or  
 9 electric cooperative association to have any of the foregoing  
 10 issues determined pursuant to an eminent domain proceeding  
 11 commenced under chapter 6A. Unless the railroad, or owner of  
 12 an abandoned railroad right-of-way, asserts in writing that  
 13 the proposed crossing is a serious threat to the safe  
 14 operations of the railroad or to the current use of the  
 15 railroad right-of-way, a crossing may be constructed following  
 16 a filing of the requested action with the board, pending  
 17 review of the requested action by the board.

18 The board shall assess the cost of reviewing the requested  
 19 action, and of determining a just and reasonable charge,  
 20 equally among the parties.

21 Sec. 14. NEW SECTION. 476.29L TELECOMMUNICATIONS COMPANY  
 22 PROVIDING CABLE SERVICE.

23 A telecommunications company that provides cable television  
 24 services, with respect to providing cable television services  
 25 in this state, is subject to the same franchise requirements,  
 26 procedures, and fees, and public, educational, and government  
 27 access requirements as a cable television company.

28 Sec. 15. ADVISORY TASK FORCE -- UNIFORM STATEWIDE RIGHT-  
 29 OF-WAY STANDARDS. The utilities board in the department of  
 30 commerce shall convene an advisory task force consisting of  
 31 engineering and other experts representing, in equal  
 32 proportions, local government units and affected  
 33 telecommunications right-of-way users. The task force shall  
 34 develop and make recommendations to the board regarding the  
 35 uniform statewide right-of-way standards required under

1 section 476.29J. Additionally, the advisory task force shall  
2 develop and make recommendations to the board regarding the  
3 indemnification of local government units by  
4 telecommunications right-of-way users and other liability  
5 conditions, and the recommended terms of a model ordinance or  
6 ordinances managing the use of public rights-of-way under the  
7 jurisdiction of local government units. A model ordinance  
8 developed pursuant to this section is advisory, and is not  
9 binding on local government units. The advisory task force  
10 shall complete its work and provide its recommendations to the  
11 board as ordered by the board.

12 Sec. 16. EFFECTIVE DATE. This Act, being deemed of  
13 immediate importance, takes effect upon enactment.

14 EXPLANATION

15 This bill amends provisions relating to a city's authority  
16 to grant a franchise to erect, maintain, and operate plants  
17 and systems for telephone service, and establishes provisions  
18 relating to the management of public rights-of-way.

19 Code section 364.2 is amended to eliminate the authority of  
20 a city to grant a franchise to erect, maintain, and operate a  
21 telephone plant and system.

22 Code section 476.29 currently provides that the power to  
23 regulate the conditions required and manner of use of the  
24 highways, streets, rights-of-way, and public grounds remains  
25 in the appropriate public authority. The section is amended  
26 to provide that such conditions and use are to be managed by  
27 the appropriate public authority of a local government unit as  
28 set forth in new Code sections 476.29A through 476.29L.

29 New Code section 476.29A establishes the purpose of  
30 sections 476.29B through 476.29L, which is to set forth the  
31 powers of a local government unit to manage the use of public  
32 rights-of-way by telecommunications rights-of-way users.

33 New Code section 476.29B establishes definitions of key  
34 terms used in new Code sections 476.29B through 476.29L.

35 New Code section 476.29C authorizes a local government unit

1 to manage a public right-of-way so as to prevent interference  
2 with the safe and convenient use of streets, alleys, and other  
3 public grounds by the public.

4 New Code section 476.29D sets forth the authority to manage  
5 such rights-of-way, which is optional at the option of the  
6 local government unit, and also lists specific acts which the  
7 local government unit may do in exercising such management  
8 authority.

9 New Code section 476.29E provides that a telecommunications  
10 right-of-way user, after excavation, is required to restore  
11 the right-of-way and surrounding areas to substantially the  
12 same condition as existed prior to the excavation.

13 New Code section 476.29F establishes grounds for the denial  
14 or revocation of a telecommunications right-of-way user's  
15 right-of-way permit.

16 New Code section 476.29G establishes a local appeal process  
17 for a telecommunications right-of-way user that has been  
18 denied registration, denied a right-of-way permit, had such  
19 permit revoked, or who asserts that such user has been  
20 assessed for an improper fee related to the use of the right-  
21 of-way.

22 New Code section 476.29H authorizes a local government unit  
23 to impose various fees for the purpose of recovering its  
24 management costs.

25 New Code section 476.29I provides for miscellaneous  
26 provisions related to the rights, duties, and obligations  
27 associated with the use of public rights-of-way.

28 New Code section 476.29J provides that the utilities board  
29 is to adopt by rule statewide right-of-way use standards for  
30 the purpose of achieving substantial statewide uniformity  
31 regarding the management of public rights-of-way.

32 New Code section 476.29K provides that the utilities board  
33 is to adopt reasonable rules covering the nature, location,  
34 and character of the construction to be used for, and the  
35 maintenance and operation of, telephone, telegraph, electric

1 light, power or other electric wires of any kind, or any  
2 natural gas pipelines, where such wires or pipelines cross or  
3 parallel the lines of any railroad, interurban railway, or any  
4 other public utility or similar public service corporation.

5 New Code section 476.29L provides that a telecommunications  
6 company that provides cable television services, with respect  
7 to providing cable television services in this state, is  
8 subject to the same franchise requirements, procedures, and  
9 fees, and public, educational, and government access  
10 requirements as a cable television company.

11 Section 15 directs the utilities board to convene an  
12 advisory task force consisting of engineering and other  
13 experts representing, in equal proportions, local government  
14 units and affected telecommunications right-of-way users, to  
15 develop and make recommendations to the board regarding the  
16 uniform statewide right-of-way standards required under new  
17 Code section 476.29J.

18 The bill is effective upon enactment.

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within the city for a term of not more than twenty-five years. The franchise may be granted, amended, extended, or renewed only by an ordinance, but no exclusive franchise shall be granted, amended, extended, or renewed.

Sec. 2. Section 476.6, Code 1997, is amended by adding the following new subsection:

NEW SUBSECTION. 22. A public utility which is assessed management costs by a local government pursuant to chapter 480A is entitled to recover those costs. If the public utility serves customers within the boundaries of the local government imposing the management costs, such costs shall be recovered exclusively from those customers.

Sec. 3. NEW SECTION. 480A.1 PURPOSE.

The general assembly finds that it is in the public interest to define the right of local governments to charge public utilities for the location and operation of public utility facilities in local government rights-of-way.

Sec. 4. NEW SECTION. 480A.2 DEFINITIONS.

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

1. "Local government" means a county, city, township, school district, or any special-purpose district or authority.
2. "Management costs" means the reasonable costs a local government actually incurs in managing public rights-of-way.
3. "Public right-of-way" means the area on, below, or above a public roadway, highway, street, bridge, cartway, bicycle lane, or public sidewalk in which the local government has an interest, including other dedicated rights-of-way for travel purposes and utility easements. A public right-of-way does not include the airwaves above a public right-of-way with regard to cellular or other nonwire telecommunications or broadcasts service or utility poles owned by a local government or a municipal utility.
4. "Public utility" means a person owning or operating a facility used for furnishing natural gas by piped distribution

SENATE FILE 2368

AN ACT

RELATING TO THE MANAGEMENT OF PUBLIC RIGHTS-OF-WAY BY LOCAL GOVERNMENT UNITS, ELIMINATING THE POWER OF CITIES TO GRANT FRANCHISES TO ERECT, MAINTAIN, AND OPERATE PLANTS AND SYSTEMS FOR TELECOMMUNICATIONS SERVICES WITHIN THE CITY, AND PROVIDING AN EFFECTIVE DATE.

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

Section 1. Section 364.2, subsection 4, paragraph a, Code 1997, is amended to read as follows:

a. A city may grant to any person a franchise to erect, maintain, and operate plants and systems for electric light and power, heating, telephone, telegraph, cable television, district telegraph and alarm, motor bus, trolley bus, street railway or other public transit, waterworks, or gasworks,

system, electricity, communications services not including cable television systems, or water by piped distribution system, to the public for compensation.

Sec. 5. NEW SECTION. 480A.3 FEES.

A local government shall not recover any fee from a public utility for the use of its right-of-way, other than a fee for its management costs. A local government may recover from a public utility only those management costs caused by the public utility's activity in the public right-of-way. A fee or other obligation under this section shall be imposed on a competitively neutral basis. When a local government's management costs cannot be attributed to only one entity, those costs shall be allocated among all users of the public rights-of-way, including the local government itself. The allocation shall reflect proportionately the costs incurred by the local government as a result of the various types of uses of the public rights-of-way.

This section does not prohibit the collection of a franchise fee as permitted in section 480A.6.

Sec. 6. NEW SECTION. 480A.4 IN-KIND SERVICES.

A local government, in lieu of a fee imposed under this chapter, shall not require in-kind services by a public utility right-of-way user, or require in-kind services as a condition of the use of the local government's public right-of-way.

Sec. 7. NEW SECTION. 480A.5 ARBITRATION.

1. A public utility that is denied registration, denied a right-of-way permit, that has its right-of-way permit revoked, or that believes that the fees imposed on such user by the local government do not conform to the requirements of this chapter may request in writing that such denial, revocation, or fee imposition be reviewed by the governing body of the local government. The governing body of the local government shall act within sixty days on a timely written request. A decision by the governing body affirming the denial,

revocation, or fee imposition must be in writing and supported by written findings establishing the reasonableness of the decision.

2. Upon affirmation by the governing body of the denial, revocation, or fee imposition, the public utility may do either of the following:

a. With the consent of the governing body, have the matter finally resolved by binding arbitration. Binding arbitration must be before an arbitrator agreed to by both the local government and the public utility. If the parties are unable to agree on an arbitrator, the matter shall be resolved by a three-person arbitration panel made up of one arbitrator selected by the local government, one arbitrator selected by the public utility, and one arbitrator selected by the other two arbitrators. The cost and expense of a single arbitrator shall be borne equally by the local government and the public utility. If a three-person arbitration panel is selected, each party shall bear the expense of its own arbitrator and the parties shall jointly and equally bear the cost and expense of the third arbitrator, and of the arbitration. Each party to the arbitration shall pay its own costs, disbursements, and attorney fees.

b. Bring an action in district court to review a decision of the governing body made under this section.

Sec. 8. NEW SECTION. 480A.6 FRANCHISE ORDINANCE NOT SUPERSEDED.

This chapter does not modify or supersede the rights and obligations of a local government and the public utility established by the terms of any existing or future franchise granted, approved, and accepted pursuant to section 364.2, subsection 4. A city which collects a city franchise fee from an entity pursuant to section 364.2, subsection 4, under an existing or future franchise, shall not also collect a fee from that entity under section 480A.3.

Sec. 9. EFFECTIVE DATE. This Act applies retroactively to January 1, 1998, and supersedes the provisions of any ordinances contrary to this Act in effect on or after that date.

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MARY E. KRAMER  
President of the Senate

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RON J. CORBETT  
Speaker of the House

I hereby certify that this bill originated in the Senate and is known as Senate File 2368, Seventy-seventh General Assembly.

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MARY PAT GUNDERSON  
Secretary of the Senate

Approved April 23, 1998

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TERRY E. BRANSTAD  
Governor