

Senate File 2311

H-8340

1 Amend Senate File 2311, as amended, passed, and reprinted by  
2 the Senate, as follows:

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

5 <Section 1. Section 28F.1, subsection 1, Code 2018, is  
6 amended to read as follows:

7 1. **This chapter** provides a means for the joint financing  
8 by public agencies of works or facilities useful and necessary  
9 for the collection, treatment, purification, and disposal  
10 in a sanitary manner of liquid and solid waste, sewage,  
11 and industrial waste, facilities used for the conversion of  
12 solid waste to energy, gasworks and facilities useful for  
13 the delivery of natural gas service, and also electric power  
14 facilities constructed within the state of Iowa, except that  
15 hydroelectric power facilities may also be located in the  
16 waters and on the dams of or on land adjacent to either side  
17 of the Mississippi or Missouri river bordering the state of  
18 Iowa, water supply systems, swimming pools or golf courses.  
19 This chapter applies to the acquisition, construction,  
20 reconstruction, ownership, operation, repair, extension,  
21 or improvement of such works or facilities, by a separate  
22 administrative or legal entity created pursuant to chapter  
23 28E or **chapter 389**. When the legal entity created under  
24 this chapter is comprised solely of cities, counties, and  
25 sanitary districts established under **chapter 358**, or any  
26 combination thereof or any combination of the foregoing with  
27 other public agencies, the entity shall be both a corporation  
28 and a political subdivision with the name under which it was  
29 organized. The legal entity may sue and be sued, contract,  
30 acquire and hold real and personal property necessary for  
31 corporate purposes, adopt a corporate seal and alter the seal  
32 at pleasure, and execute all the powers conferred in this  
33 chapter.

34 Sec. 2. Section 28F.11, Code 2018, is amended to read as  
35 follows:

1       **28F.11 Eminent domain.**

2       Any public agency participating in an agreement authorizing  
3 the joint exercise of governmental powers pursuant to this  
4 chapter may exercise its power of eminent domain to acquire  
5 interests in property, under provisions of law then in effect  
6 and applicable to the public agency, for the use of the entity  
7 created to carry out the agreement, provided that the power of  
8 eminent domain is not used to acquire interests in property  
9 which is part of a system of facilities in existence, under  
10 construction, or planned, for the generation, transmission  
11 or sale of electric power, or for the transmission,  
12 transportation, or sale of natural gas. In the exercise  
13 of the power of eminent domain, the public agency shall  
14 proceed in the manner provided by [chapter 6B](#). Any interests  
15 in property acquired are acquired for a public purpose, as  
16 defined in [chapter 6A](#), of the condemning public agency, and the  
17 payment of the costs of the acquisition may be made pursuant  
18 to the agreement or to any separate agreement between the  
19 public agency and the entity or the other public agencies  
20 participating in the entity or any of them. Upon payment of  
21 costs, any property acquired is the property of the entity.

22       Sec. 3. Section 476.1, subsection 7, Code 2018, is amended  
23 to read as follows:

24       7. The jurisdiction of the board under [this chapter](#)  
25 shall include efforts designed to promote the use of energy  
26 efficiency strategies by ~~rate or service-regulated~~ gas and  
27 electric utilities required to be rate-regulated.

28       Sec. 4. Section 476.1A, subsections 1, 2, and 4, Code 2018,  
29 are amended to read as follows:

30       1. Electric public utilities having fewer than ten  
31 thousand customers and electric cooperative corporations  
32 and associations are not subject to the ~~rate~~ regulation  
33 authority of the board. ~~Such utilities are subject to all~~  
34 ~~other regulation and enforcement activities of the board,~~  
35 including, except for regulatory action pertaining to all of

1 the following:

2 *a.* Assessment of fees for the support of the division and  
3 the office of consumer advocate, pursuant to section 476.10.

4 *b.* Safety and engineering standards for equipment,  
5 operations, and procedures.

6 *c.* Assigned area of service.

7 *d.* Pilot projects of the board.

8 *e.* Assessment of fees for the support of the Iowa energy  
9 center created in [section 15.120](#) and the center for global and  
10 regional environmental research established by the state board  
11 of regents. This paragraph "e" is repealed July 1, 2022.

12 *f.* Filing alternate energy purchase program plans with the  
13 board, and offering such programs to customers, pursuant to  
14 section 476.47.

15 *g.* Filing energy efficiency plans and energy efficiency  
16 results with the board. The energy efficiency plans as a  
17 whole shall be cost-effective. The board may permit these  
18 utilities to file joint plans. ~~The board shall periodically~~  
19 ~~report the energy efficiency results including energy savings~~  
20 ~~of each of these utilities to the general assembly.~~ The board  
21 may waive all or part of the energy efficiency filing and  
22 review requirements for electric cooperative corporations and  
23 associations and electric public utilities which demonstrate  
24 superior results with existing energy efficiency efforts.

25 2. However, [sections 476.20](#), [subsections 1 through 4](#),  
26 [476.21](#), ~~[476.41 through 476.44](#)~~, [476.51](#), [476.56](#), [476.62](#), and  
27 [476.66](#) and [chapters 476A](#) and [478](#), to the extent applicable,  
28 apply to such electric utilities.

29 4. The board of directors or the membership of an electric  
30 cooperative corporation or association otherwise exempt  
31 from rate regulation may elect to have the cooperative's  
32 rates regulated by the board. The board shall adopt rules  
33 prescribing the manner in which the board of directors or the  
34 membership of an electric cooperative may so elect. If the  
35 board of directors or the membership of an electric cooperative

1 has elected to have the cooperative's rates regulated by the  
2 board, after two years have elapsed from the effective date of  
3 such election the board of directors or the membership of the  
4 electric cooperative may elect to exempt the cooperative from  
5 the rate regulation authority of the board, provided, however,  
6 that if the membership elected to have the cooperative's rates  
7 regulated by the board, only the membership may elect to exempt  
8 the cooperative from the rate regulation authority of the  
9 board.

10 Sec. 5. Section 476.1B, subsection 1, paragraph f, Code  
11 2018, is amended by striking the paragraph.

12 Sec. 6. Section 476.2, subsection 6, Code 2018, is amended  
13 by striking the subsection.

14 Sec. 7. Section 476.4, subsection 1, Code 2018, is amended  
15 to read as follows:

16 1. Every public utility shall file with the board tariffs  
17 showing the rates and charges for its public utility services  
18 and the rules and regulations under which such services were  
19 furnished, on April 1, 1963, which rates and charges shall be  
20 subject to investigation by the board as provided in section  
21 476.3, and upon such investigation the burden of establishing  
22 the reasonableness of such rates and charges shall be upon the  
23 public utility filing the same. These filings shall be made  
24 under such rules as the board may prescribe within such time  
25 and in such form as the board may designate. In prescribing  
26 rules and regulations with respect to the form of tariffs  
27 and any other regulations, the board shall, in the case of  
28 public utilities subject to regulation by any federal agency,  
29 give due regard to any corresponding rules and regulations of  
30 such federal agency, to the end that unnecessary duplication  
31 of effort and expense may be avoided so far as reasonably  
32 possible. Each public utility shall keep copies of its tariffs  
33 open to public inspection under such rules as the board may  
34 prescribe.

35 Sec. 8. Section 476.6, subsections 8 and 13, Code 2018, are

1 amended to read as follows:

2 8. *Automatic adjustments permitted.*

3 a. This chapter does not prohibit a public utility from  
4 making provision for the automatic adjustment of rates and  
5 charges for public utility service provided that a schedule  
6 showing the automatic adjustment of rates and charges is first  
7 filed with the board.

8 b. A public utility may automatically adjust rates and  
9 charges to recover costs related to transmission incurred by  
10 or charged to the public utility consistent with a tariff or  
11 agreement that is subject to the jurisdiction of the federal  
12 energy regulatory commission, provided that a schedule showing  
13 the automatic adjustment of rates and charges is first filed  
14 with the board. The board shall adopt rules regarding the  
15 reporting of transmission expenses and transmission-related  
16 activity pursuant to this paragraph.

17 13. *Energy efficiency plans.* Electric and gas public  
18 utilities shall offer energy efficiency programs to their  
19 customers through energy efficiency plans. An energy  
20 efficiency plan as a whole shall be cost-effective. In  
21 determining the cost-effectiveness of an energy efficiency  
22 plan, the board shall apply the societal test, total resource  
23 cost test, utility cost test, rate-payer impact test, and  
24 participant test. Energy efficiency programs for qualified  
25 low-income persons and for tree planting programs, educational  
26 programs, and assessments of consumers' needs for information  
27 to make effective choices regarding energy use and energy  
28 efficiency need not be cost-effective and shall not be  
29 considered in determining cost-effectiveness of plans as a  
30 whole. The energy efficiency programs in the plans may be  
31 provided by the utility or by a contractor or agent of the  
32 utility. Programs offered pursuant to this subsection by gas  
33 and electric utilities that are required to be rate-regulated  
34 shall require board approval.

35 Sec. 9. Section 476.6, subsection 15, paragraphs a and b,

1 Code 2018, are amended to read as follows:

2     *a.* Gas and electric utilities required to be rate-regulated  
3 under *this chapter* shall file energy efficiency plans and  
4 demand response plans with the board as provided in paragraph  
5 "e". An energy efficiency plan and budget or a demand response  
6 plan and budget shall include a range of energy efficiency  
7 or demand response programs, tailored to the needs of all  
8 customer classes, including residential, commercial, and  
9 industrial customers, for energy efficiency or demand response  
10 opportunities. The plans shall include programs for qualified  
11 low-income persons including a cooperative program with any  
12 community action agency within the utility's service area to  
13 implement countywide or communitywide energy efficiency or  
14 demand response programs for qualified low-income persons.  
15 Rate-regulated gas and electric utilities shall utilize  
16 Iowa agencies and Iowa contractors to the maximum extent  
17 cost-effective in their energy efficiency plans and demand  
18 response plans filed with the board. A gas or electric utility  
19 shall limit any administrative costs associated with the  
20 adoption of an energy efficiency plan or demand response plan  
21 pursuant to this subsection to ten percent or less of the total  
22 costs associated with such plan.

23     *b.* (1) A gas and electric utility required to be  
24 rate-regulated under *this chapter* shall assess potential energy  
25 and capacity savings available from actual and projected  
26 customer usage by applying commercially available technology  
27 and improved operating practices to energy-using equipment  
28 and buildings. The utility shall submit the assessment to  
29 the board. Upon receipt of the assessment, the board shall  
30 consult with the economic development authority to develop  
31 specific capacity and energy savings ~~performance standards~~  
32 goals for each utility. Such goals, except as provided for in  
33 subsection 13, shall only include cost-effective plans. The  
34 utility shall submit an energy efficiency plan which shall  
35 include economically achievable programs designed to attain

1 these energy and capacity ~~performance standards~~ goals. The  
2 board shall periodically report the energy efficiency results  
3 including energy savings of each utility to the general  
4 assembly.

5 (2) For purposes of this paragraph, "cost-effective" means  
6 the total resource cost test result for a plan is greater  
7 than one. In applying the total resource cost test, benefits  
8 to be considered include avoided capacity and energy costs  
9 and federal tax credits, and costs to be considered include  
10 incremental costs of equipment, operation, and maintenance,  
11 utility costs, and administration costs.

12 Sec. 10. Section 476.6, subsection 15, paragraphs c and d,  
13 Code 2018, are amended by striking the paragraphs.

14 Sec. 11. Section 476.6, subsection 15, paragraphs e, f, and  
15 g, Code 2018, are amended to read as follows:

16 e. (1) The board shall conduct contested case proceedings  
17 for review of energy efficiency plans, demand response plans,  
18 and budgets filed by gas and electric utilities required to be  
19 rate-regulated under [this chapter](#).

20 (2) (a) Notwithstanding the goals developed pursuant  
21 to paragraph "b", the board shall not require a gas utility  
22 to adopt an energy efficiency plan that results in projected  
23 cumulative average annual costs that exceed one and one-half  
24 percent of the gas utility's expected annual rate revenue from  
25 retail customers in the state.

26 (b) Notwithstanding the goals developed pursuant to  
27 paragraph "b", the board shall not require an electric utility  
28 to adopt an energy efficiency plan that results in projected  
29 cumulative average annual costs that exceed two percent of the  
30 electric utility's expected annual rate revenue from retail  
31 customers in the state.

32 (c) Notwithstanding the goals developed pursuant to  
33 paragraph "b", the board shall not require an electric utility  
34 to adopt a demand response plan that results in projected  
35 cumulative average annual costs that exceed two percent of the

1 electric utility's expected annual rate revenue from retail  
2 customers in the state.

3 (3) (a) Each gas or electric utility required to be  
4 rate-regulated under this chapter shall file an energy  
5 efficiency plan or a demand response plan, or both, with the  
6 board no later than October 31, 2018, which plan shall meet  
7 the requirements of this subsection. Prior to the approval of  
8 any plan filed pursuant to this subsection, a gas or electric  
9 utility required to be rate-regulated shall continue to follow  
10 the requirements of any plan approved by the board prior to the  
11 effective date of this Act.

12 (b) The board may approve, reject, or modify the plans and  
13 budgets submitted pursuant to this subsection. Notwithstanding  
14 the provisions of section 17A.19, subsection 5, in an  
15 application for judicial review of the board's decision  
16 concerning a utility's energy efficiency plan or budget, the  
17 reviewing court shall not order a stay.

18 (c) The board shall approve, reject, or modify a plan filed  
19 pursuant to this subsection no later than March 31, 2019. If  
20 the board fails to approve, reject, or modify a plan filed by a  
21 gas or electric utility on or before such date, any plan filed  
22 by the gas or electric utility that was approved by the board  
23 prior to the effective date of this Act shall be terminated.  
24 The board shall not require a gas or electric utility to  
25 implement an energy efficiency plan or demand response plan  
26 that does not meet the requirements of this subsection.

27 (4) Whenever a request to modify an approved plan or budget  
28 is filed subsequently by the office of consumer advocate or a  
29 gas or electric utility required to be rate-regulated under  
30 this chapter, the board shall promptly initiate a formal  
31 proceeding if the board determines that any reasonable ground  
32 exists for investigating the request. The formal proceeding  
33 may be initiated at any time by the board on its own motion.  
34 Implementation of board-approved plans or budgets shall  
35 be considered continuous in nature and shall be subject to



1 investigation at any time by the board or the office of the  
2 consumer advocate.

3 *f.* Notice to customers of a contested case proceeding for  
4 review of energy efficiency plans, demand response plans, and  
5 budgets shall be in a manner prescribed by the board.

6 *g.* (1) A gas or electric utility required to be  
7 rate-regulated under this chapter may recover, through an  
8 automatic adjustment mechanism filed pursuant to subsection 8,  
9 over a period not to exceed the term of the plan, the costs of  
10 an energy efficiency plan or demand response plan approved by  
11 the board, ~~including amounts for a plan approved prior to July~~  
12 ~~1, 1996,~~ in a contested case proceeding conducted pursuant to  
13 paragraph "e". The board shall ensure that costs are recovered  
14 from all customers on a reasonably comparable basis, including  
15 customers who utilize alternate energy production facilities  
16 as defined in section 476.42.

17 (2) The board shall periodically conduct a contested case  
18 proceeding to evaluate the reasonableness and prudence of the  
19 utility's implementation of an approved energy efficiency  
20 or demand response plan and budget. If a utility is not  
21 taking all reasonable actions to cost-effectively implement  
22 an approved ~~energy efficiency~~ plan, the board shall not allow  
23 the utility to recover from customers costs in excess of those  
24 costs that would be incurred under reasonable and prudent  
25 implementation and shall not allow the utility to recover  
26 future costs at a level other than what the board determines  
27 to be reasonable and prudent. If the result of a contested  
28 case proceeding is a judgment against a utility, that utility's  
29 future level of cost recovery shall be reduced by the amount by  
30 which the programs were found to be imprudently conducted.

31 (3) The Beginning January 1, 2019, a gas or electric utility  
32 shall not represent energy efficiency or demand response in  
33 customer billings as a separate cost or expense unless the  
34 board otherwise approves.

35 Sec. 12. Section 476.6, subsection 17, Code 2018, is amended

1 by striking the subsection.

2 Sec. 13. Section 476.6, Code 2018, is amended by adding the  
3 following new subsection:

4 NEW SUBSECTION. 22. *Preapproval of cost recovery for natural*  
5 *gas extensions — rules.* The board may adopt rules which  
6 provide for a preapproval process for cost recovery for natural  
7 gas extensions.

8 Sec. 14. Section 476.20, subsection 5, paragraph a,  
9 unnumbered paragraph 1, Code 2018, is amended to read as  
10 follows:

11 The board shall establish rules which shall be uniform with  
12 respect to all public utilities furnishing gas or electricity  
13 relating to deposits which may be required by the public  
14 utility for the initiation or reinstatement of service. This  
15 subsection shall not apply to municipally owned utilities,  
16 which shall be governed by the provisions of [section 384.84](#)  
17 with respect to deposits and payment plans for delinquent  
18 amounts owed. Municipally owned utilities and electric  
19 utilities that are not required to be rate-regulated shall not  
20 be subject to the board's rules in regards to deposits and  
21 payment plans for delinquent amounts owed and repayment of past  
22 due debt. Municipally owned utilities and electric utilities  
23 that are not required to be rate-regulated shall be subject to  
24 the board's rules in regards to payment plans made prior to the  
25 disconnection of services.

26 Sec. 15. Section 476.21, Code 2018, is amended to read as  
27 follows:

28 **476.21 Discrimination prohibited.**

29 A ~~municipality,~~ corporation or cooperative association  
30 providing electrical or gas service shall not consider the  
31 use of renewable energy sources by a customer as a basis for  
32 establishing discriminatory rates or charges for any service  
33 or commodity sold to the customer or discontinue services or  
34 subject the customer to any other prejudice or disadvantage  
35 based on the customer's use or intended use of renewable energy

1 sources. As used in [this section](#), “renewable energy sources”  
2 includes but is not limited to solar heating, wind power and  
3 the conversion of urban and agricultural organic wastes into  
4 methane gas and liquid fuels.

5 Sec. 16. Section 476.33, subsection 4, Code 2018, is amended  
6 to read as follows:

7 4. The board shall adopt rules that require the board, in  
8 rate regulatory proceedings under [sections 476.3](#) and [476.6](#), to  
9 utilize either a historic test year or a future test year at  
10 the rate-regulated public utility’s discretion.

11 a. For a rate regulatory proceeding utilizing a historic  
12 test year, the rules shall require the board to consider the  
13 use of the most current test period possible in determining  
14 reasonable and just rates, subject only to the availability of  
15 existing and verifiable data respecting costs and revenues, and  
16 in addition, to consider verifiable data that exists within  
17 nine months after the conclusion of the test year, respecting  
18 known and measurable changes in costs not associated with a  
19 different level of revenue, and known and measurable revenues  
20 not associated with a different level of costs, that are to  
21 occur at any time within twelve months after the date of  
22 commencement of the proceedings. Parties proposing adjustments  
23 that are not verifiable at the commencement of the proceedings  
24 shall include projected data related to the adjustments in  
25 their initial substantive filing with the board. For purposes  
26 of [this subsection paragraph](#), a proceeding commences under  
27 section 476.6 upon the filing date of new or changed rates,  
28 charges, schedules, or regulations. ~~This subsection does not~~  
29 ~~limit the authority of the board to consider other evidence in~~  
30 ~~proceedings under [sections 476.3](#) and [476.6](#).~~

31 b. For a rate regulatory proceeding utilizing a future test  
32 year, the rules shall require the board to consider the use  
33 of any twelve-month period beginning no later than the date  
34 on which a proposed rate change is expected to take effect  
35 in determining just and reasonable rates. The rules shall

1 also require the board to conduct a proceeding subsequent to  
2 the effective date of a rate resulting from a rate regulatory  
3 proceeding utilizing a future test year to determine whether  
4 the actual costs are reasonably consistent with those predicted  
5 by the utility. If the actual costs are not reasonably  
6 consistent with those predicted by the utility, the board shall  
7 adjust the rates accordingly. For a rate regulatory proceeding  
8 utilizing a future test year, the board may adopt rules  
9 regarding evidence required, information to support forecasts,  
10 and any reporting obligations. The board may also adopt rules  
11 regarding the conditions under which a public utility that  
12 utilizes a future test year may subsequently utilize a historic  
13 test year. A public utility shall not be precluded from filing  
14 a rate regulatory proceeding utilizing a future test year prior  
15 to the adoption of any rules pursuant to this paragraph.

16 c. This subsection does not limit the authority of the board  
17 to consider other evidence in proceedings under sections 476.3  
18 and 476.6.

19 Sec. 17. Section 476.53, subsection 3, paragraph a,  
20 subparagraph (1), subparagraph division (a), Code 2018, is  
21 amended by adding the following new subparagraph subdivision:

22 NEW SUBPARAGRAPH SUBDIVISION. (v) Repowering of an  
23 alternate energy production facility. For purposes of this  
24 subparagraph subdivision, "repowering" shall mean either the  
25 complete dismantling and replacement of generation equipment at  
26 an existing project site, or the installation of new parts and  
27 equipment to an existing alternate energy production facility  
28 in order to increase energy production, reduce load, increase  
29 service capacity, improve project reliability, or extend the  
30 useful life of the facility.

31 Sec. 18. STUDY OF ELECTRIC VEHICLE INFRASTRUCTURE  
32 SUPPORT. The economic development authority, in collaboration  
33 with the department of transportation and the Iowa utility  
34 industry, shall conduct a study of electric vehicle  
35 infrastructure support for both commercial and noncommercial

1 vehicles and make recommendations to the general assembly  
2 regarding electric vehicle charging infrastructure. The study  
3 shall evaluate the relative costs and benefits associated with  
4 various options for electric vehicle infrastructure support.  
5 The economic development authority shall submit a report to the  
6 general assembly containing the results of the study no later  
7 than June 30, 2019.

8 Sec. 19. EFFECTIVE DATE. The following, being deemed of  
9 immediate importance, takes effect upon enactment:

10 The section of this Act amending section 476.6, subsection  
11 15, paragraphs "e", "f", and "g".>

12 2. Title page, line 2, by striking <utilities> and  
13 inserting <utilities, providing for a study of electric  
14 vehicle infrastructure support, and including effective date  
15 provisions>

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CARLSON of Muscatine