

House File 2446 - Enrolled

House File 2446

AN ACT

RELATING TO MATTERS UNDER THE PURVIEW OF THE UTILITIES DIVISION
OF THE DEPARTMENT OF COMMERCE, PROVIDING FEES, AND MAKING
PENALTIES APPLICABLE.

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

Section 1. Section 474.1, subsection 2, Code 2018, is amended to read as follows:

2. a. ~~The utilities board shall organize by appointing an executive secretary, who shall take the same oath as the members. The board shall set the salary of the executive secretary within the limits of the pay plan for exempt positions provided for in section 8A.413, subsection 3, unless otherwise provided by the general assembly. The board may employ additional personnel as it finds necessary. Subject to confirmation by the senate, the governor shall appoint a member~~

as the chairperson of the board. The chairperson shall be the administrator of the utilities division. The appointment as chairperson shall be for a two-year term which begins and ends as provided in [section 69.19](#).

b. The board shall appoint a chief operating officer to manage the operations of the utilities division as directed by the board. The board shall set the salary of the chief operating officer within the limits of the pay plan for exempt positions provided for in section 8A.413, subsection 3, unless otherwise provided by the general assembly. The board may employ additional personnel as it finds necessary.

Sec. 2. Section 474.2, Code 2018, is amended to read as follows:

474.2 Certain persons barred from office.

No person in the employ of any common carrier or other public utility, or owning any bonds, stock or property in any ~~railroad company or other~~ public utility shall be eligible to the office of utilities board member or ~~secretary~~ chief operating officer of the utilities board; and the entering into the employ of any common carrier or other public utility or the acquiring of any stock or other interest in any common carrier or other public utility by such member or ~~secretary~~ chief operating officer after appointment shall disqualify the member or ~~secretary~~ chief operating officer to hold the office or perform the duties thereof.

Sec. 3. Section 474.8, Code 2018, is amended to read as follows:

474.8 Office — time employed — expenses.

The utilities board shall have an office at the seat of government and each member shall devote the member's whole time to the duties of the office, and the members ~~and secretary,~~ chief operating officer, and other employees shall receive their actual necessary traveling expenses while in the discharge of their official duties away from the general offices.

Sec. 4. Section 476.1, subsections 4 and 6, Code 2018, are amended by striking the subsections.

Sec. 5. Section 476.1B, subsection 3, Code 2018, is amended to read as follows:

3. Unless otherwise specifically provided by statute, a municipally owned utility providing local exchange services is not subject to regulation by the board under [this chapter](#) except for regulatory action pertaining to the enforcement of sections ~~476.11, 476.29, 476.95, 476.96,~~ 476.95A, 476.95B, 476.100, 476.101, and 476.102.

Sec. 6. Section 476.1D, subsection 4, Code 2018, is amended to read as follows:

4. Upon deregulation, all investment, revenues, and expenses associated with the service or facility shall be removed from the telephone utility's regulated operations and shall not be considered by the board in setting rates for the telephone utility unless they continue to affect the utility's regulated operations. If the board considers investment, revenues, and expenses associated with unregulated services or facilities in setting rates for the telephone utility, the board shall not use any profits or costs from such unregulated services or facilities to determine the rates for regulated services or facilities. ~~This section does not preclude the board from considering the investment, revenues, and expenses associated with the sale of classified directory advertising by a telephone utility in determining rates for the telephone utility.~~

Sec. 7. Section 476.1D, subsection 10, Code 2018, is amended by striking the subsection.

Sec. 8. Section 476.2, subsection 6, Code 2018, is amended by striking the subsection.

Sec. 9. Section 476.6, subsection 2, Code 2018, is amended to read as follows:

2. *Written notice of increase.* All public utilities, except those exempted from rate regulation by section 476.1 and telecommunications service providers registered pursuant to section 476.95A, shall give written notice of a proposed increase of any rate or charge to all affected customers served by the public utility no more than sixty-two days prior to and prior to the time the application for the increase is filed with the board. Public utilities exempted from rate regulation by section 476.1, except telecommunications service providers registered pursuant to section 476.95A, shall give

written notice of a proposed increase of any rate or charge to all affected customers served by the public utility at least thirty days prior to the effective date of the increase. If the public utility is subject to rate regulation, the notice to affected customers shall also state that the customer has a right to file a written objection to the rate increase and that the affected customers may request the board to hold a public hearing to determine if the rate increase should be allowed. The board shall prescribe the manner and method that the written notice to each affected customer of the public utility shall be served.

Sec. 10. Section 476.6, subsection 21, Code 2018, is amended by striking the subsection.

Sec. 11. Section 476.9, subsections 1, 2, and 3, Code 2018, are amended to read as follows:

1. Every public utility, except telecommunications service providers registered pursuant to section 476.95A, shall keep and render to the board in the manner and form prescribed by the board uniform accounts of all business transacted.

2. Every public utility engaged directly or indirectly in any other business than that of the production, transmission, or furnishing of heat, light, water, ~~or~~ power, or the collection and treatment of sanitary sewage or storm water, ~~or the furnishing of communications services to~~ for the public shall, if required by the board, keep and render separately to the board in like manner and form the accounts of all such other business, in which case all the provisions of this chapter shall apply to the books, accounts, papers and records of such other business and all profits and losses may be taken into consideration by the board if deemed relevant to the general fiscal condition of the public utility.

3. Every public utility, except telecommunications service providers registered pursuant to section 476.95A, is required to keep and render its books, accounts, papers and records accurately and faithfully in the manner and form prescribed by the board, and to comply with all directions of the board relating to such books, accounts, papers and records.

Sec. 12. Section 476.10, subsection 1, paragraph a, Code 2018, is amended to read as follows:

a. In order to carry out the duties imposed upon it by law, the board may, at its discretion, allocate and charge directly the expenses attributable to its duties to the person bringing a proceeding before the board, ~~or~~ or to persons participating in matters before the board, or to persons subject to inspection by the board. The board shall ascertain the certified expenses incurred and directly chargeable by the consumer advocate division of the department of justice in the performance of its duties. The board and the consumer advocate separately may decide not to charge expenses to persons who, without expanding the scope of the proceeding or matter, intervene in good faith in a board proceeding initiated by a person subject to the board's jurisdiction, the consumer advocate, or the board on its own motion. For assessments in any proceedings or matters before the board, the board and the consumer advocate separately may consider the financial resources of the person, the impact of assessment on participation by intervenors, the nature of the proceeding or matter, and the contribution of a person's participation to the public interest. The board may present a bill for expenses under [this subsection](#) to the person, either at the conclusion of a proceeding or matter, or from time to time during its progress. Presentation of a bill for expenses under [this subsection](#) constitutes notice of direct assessment and request for payment in accordance with this section.

Sec. 13. Section 476.20, Code 2018, is amended by adding the following new subsection:

NEW SUBSECTION. 6. This section shall not apply to telecommunications service providers registered pursuant to section 476.95A.

Sec. 14. Section 476.51, subsection 5, Code 2018, is amended to read as follows:

5. Civil penalties collected pursuant to [this section](#) from utilities providing water, electric, or gas service shall be forwarded by the ~~executive secretary~~ chief operating officer of the board to the treasurer of state to be credited to the general fund of the state and to be used only for the low income home energy assistance program and the weatherization assistance program administered by the division of community

action agencies of the department of human rights. Civil penalties collected pursuant to [this section](#) from utilities providing telecommunications service shall be forwarded to the treasurer of state to be credited to the department of commerce revolving fund created in [section 546.12](#) to be used only for consumer education programs administered by the board. Penalties paid by a rate-regulated public utility pursuant to this section shall be excluded from the utility's costs when determining the utility's revenue requirement, and shall not be included either directly or indirectly in the utility's rates or charges to customers.

Sec. 15. Section 476.53, subsection 3, paragraph c, subparagraph (2), Code 2018, is amended to read as follows:

(2) The rate-regulated public utility has demonstrated to the board that the public utility has considered other sources for long-term electric supply and that the facility or lease is reasonable when compared to other feasible alternative sources of supply. ~~The rate-regulated public utility may satisfy the requirements of this subparagraph through a competitive bidding process, under rules adopted by the board, that demonstrate the facility or lease is a reasonable alternative to meet its electric supply needs.~~

Sec. 16. Section 476.54, Code 2018, is amended to read as follows:

476.54 Delayed payment charges.

A public utility shall not apply delayed payment charges on a customer's account if the scheduled payment was made by the customer within twenty days from the date the billing was sent to the customer. Delayed payment charges on a customer's account shall not exceed one and one-half percent per month of the past-due amount. This section shall not apply to telecommunications service providers registered pursuant to section 476.95A.

Sec. 17. Section 476.95, Code 2018, is amended by striking the section and inserting in lieu thereof the following:

476.95 Internet protocol-enabled service and voice over internet protocol service — regulation.

1. For purposes of this section:

a. *"Internet protocol-enabled service"* means any service,

capability, functionality, or application that uses internet protocol or any successor protocol and enables an end user to send or receive voice, data, or video communications in internet protocol format or a successor format.

b. "Political subdivision" means the same as defined in section 145A.2.

c. "Voice over internet protocol service" means an internet protocol-enabled service that facilitates real-time, two-way voice communication that originates from, or terminates at, a user's location and permits the user to receive a call that originates from the public switched telephone network and to terminate a call on the public switched telephone network.

2. Notwithstanding any other provision of law to the contrary, a department, agency, board, or political subdivision of the state shall not regulate, by rule, order, or other means directly or indirectly, the entry, rates, terms, or conditions for internet protocol-enabled service or voice over internet protocol service.

3. This section shall not be construed to affect, modify, limit, or expand any of the following:

a. The authority of the attorney general to take any action pursuant to chapter 537 or section 714.16.

b. The application or enforcement of any law that is intended to have general application to the conduct of business in this state.

c. Any entity's obligation under section 251 or 252 of the federal Telecommunications Act of 1996.

d. Any authority of the board over wholesale telecommunications services, rates, agreements, interconnection, providers, or tariffs.

e. Any authority of the board to address or affect the resolution of a dispute regarding intercarrier compensation.

f. Any authority of the board, in accordance with state and federal law, to assess voice over internet protocol service for any of the following:

(1) Surcharges for 911 emergency services under section 34A.7.

(2) Assessments for dual party relay service under section 477C.7.

(3) Direct costs under section 476.10 and a share of remainder assessments that reflect the service's lesser degree of regulation.

g. Any authority of the board to regulate internet protocol-enabled service or voice over internet protocol service pursuant to section 476.91.

Sec. 18. NEW SECTION. 476.95A Annual registration for telecommunications service providers.

1. A provider of telecommunications service, as defined in section 476.103, offering telephone numbers to retail customers in this state shall register annually with the board.

2. An applicant shall complete an application for registration on a form provided by the board. The form shall include contact information, the approximate number of service lines provided in the state, and any other information deemed necessary by the board.

3. Within five business days of the receipt of a completed application for registration, the board shall issue a nonexclusive acknowledgment of compliance with this section. The acknowledgment shall authorize the registrant to obtain telephone numbers, interconnect with other telecommunications service providers, cross railroad rights-of-way pursuant to section 476.27, and provide telecommunications service in this state. An acknowledgment may be transferred by filing a new or updated registration form.

4. A registrant shall submit to the board corrections to the information supplied in the registration form within a reasonable time after a change in circumstances, which circumstances would be required to be reported in an application for registration form.

5. Refusal to file and maintain an annual registration pursuant to this section is a violation of this chapter and may subject a telecommunications service provider to a civil penalty pursuant to section 476.51.

6. Notwithstanding this subsection, the board shall continue to recognize the validity of, and the rights conferred upon, a certificate of public convenience and necessity issued to a telecommunications service provider by the board prior to July 1, 2018.

Sec. 19. NEW SECTION. **476.95B** **Applicability of authority.**

1. The board may exercise any powers reserved or delegated to the state by the federal Telecommunications Act of 1996 or any other federal law, rule, or order thereunder, and may hear and resolve any dispute arising thereunder, including but not limited to intercarrier compensation, interconnection, and number portability.

2. In proceedings under 47 U.S.C. §251-254, the board shall allocate the costs and expenses of the proceedings to persons identified as parties in the proceeding who are engaged in or who seek to engage in providing telecommunications service or other persons identified as participants in the proceeding. The funds received for the costs and the expenses shall be remitted to the treasurer of state for deposit in the department of commerce revolving fund created in section 546.12 as provided in section 476.10.

Sec. 20. Section 476.102, subsection 2, paragraph d, Code 2018, is amended to read as follows:

d. The plan should be based on other principles as the board determines are necessary and appropriate for the protection of the public interest, convenience, and necessity and consistent with the purposes of ~~sections 476.95 through 476.101~~ and this section.

Sec. 21. Section 476.103, subsection 4, paragraph c, Code 2018, is amended to read as follows:

c. A civil penalty collected pursuant to this subsection shall be forwarded by the ~~executive secretary~~ chief operating officer of the board to the treasurer of state to be credited to the department of commerce revolving fund created in section 546.12 and to be used only for consumer education programs administered by the board.

Sec. 22. Section 477A.3, subsection 1, paragraph f, Code 2018, is amended to read as follows:

f. Documentation that the applicant possesses sufficient managerial, technical, and financial capability to provide the cable service or video service proposed in the service area. ~~An applicant or its subsidiary which has been issued a certificate of public convenience and necessity to provide telephone service pursuant to section 476.29 shall be exempt~~

~~from the provisions of this paragraph.~~

Sec. 23. Section 477C.7, Code 2018, is amended to read as follows:

477C.7 Funding.

1. The board shall impose an annual assessment to fund the programs described in [this chapter](#) upon all telecommunications wireless carriers and wire-line local exchange carriers providing telecommunications service in the state in the amount of three cents per month for each telecommunications service phone number provided in this state.

~~2. The total assessment shall be allocated as follows:~~

~~a. Wireless communications service providers shall be assessed three cents per month for each wireless communications service number provided in this state.~~

~~b. (1) The remainder of the assessment shall be allocated one-half to local exchange telephone utilities and one-half to the following:~~

~~(a) Interexchange carriers.~~

~~(b) Centralized equal access providers.~~

~~(c) Alternative operator services companies.~~

~~(2) The assessment shall be allocated proportionally based upon revenues from all intrastate regulated, deregulated, and exempt telephone services under [sections 476.1](#) and [476.1D](#).~~

3. 2. The telecommunications carriers entities subject to assessment shall remit the assessed amounts quarterly to a special fund, as defined under [section 8.2, subsection 9](#). The moneys in the fund are appropriated solely to plan, establish, administer, and promote the relay service and equipment distribution programs.

4. 3. The telecommunications carriers entities subject to assessment shall provide the information requested by the board necessary for implementation of the assessment.

5. 4. The Wire-line local exchange telephone utilities carriers shall not recover from intrastate access charges any portion of such utilities assessment imposed under this section.

Sec. 24. Section 478.29, subsection 1, Code 2018, is amended to read as follows:

1. A person who violates a provision of [this chapter](#) is

subject to a civil penalty, which may be levied by the board, of not more than one hundred dollars per violation or one thousand dollars per day of a continuing violation, whichever is greater. Civil penalties collected pursuant to this section shall be forwarded by the ~~executive secretary~~ chief operating officer of the board to the treasurer of state to be credited to the general fund of the state and appropriated to the division of community action agencies of the department of human rights for purposes of the low income home energy assistance program and the weatherization assistance program.

Sec. 25. Section 479.14, Code 2018, is amended to read as follows:

479.14 Inspection fee.

~~A pipeline company shall pay an annual inspection fee of fifty cents per mile of pipeline or fraction thereof for each inch of diameter of the pipeline located in the state, the inspection fee to be paid to the board for the calendar year in advance between January 1 and February 1 of each year. The board may, in accordance with section 476.10, charge a pipeline company with an annual inspection fee that is directly attributable to the costs of conducting annual inspections pursuant to this chapter.~~

Sec. 26. Section 479.31, subsection 1, Code 2018, is amended to read as follows:

1. A person who violates **this chapter** or any rule or order issued pursuant to **this chapter** shall be subject to a civil penalty levied by the board not to exceed one hundred thousand dollars for each violation. Each day that the violation continues shall constitute a separate offense. However, the maximum civil penalty shall not exceed one million dollars for any related series of violations. Civil penalties collected pursuant to **this section** shall be forwarded by the ~~executive secretary~~ chief operating officer of the board to the treasurer of state to be credited to the general fund of the state and appropriated to the division of community action agencies of the department of human rights for purposes of the low income home energy assistance program and the weatherization assistance program.

Sec. 27. Section 479.46, subsection 6, Code 2018, is amended

to read as follows:

6. The pipeline company shall pay all costs of the assessment made by the commissioners and reasonable attorney fees and costs incurred by the landowner as determined by the commissioners if the award of the commissioners exceeds one hundred ten percent of the final offer of the pipeline company prior to the determination of damages; ~~if the award does not exceed one hundred ten percent, the landowners shall pay the fees and costs incurred by the pipeline company.~~ The pipeline company shall file with the sheriff an affidavit setting forth the most recent offer made to the landowner. Commissioners shall receive a per diem of fifty dollars and actual and necessary expenses incurred in the performance of their official duties. The pipeline company shall also pay all costs occasioned by the appeal, including reasonable attorney fees to be taxed by the court, unless on the trial of the appeal the same or a lesser amount of damages is awarded than was allowed by the commission from which the appeal was taken.

Sec. 28. Section 479B.4, unnumbered paragraph 5, Code 2018, is amended to read as follows:

The notice shall set forth the following: the name of the applicant, the applicant's principal place of business, the general description and purpose of the proposed project, the general nature of the right-of-way desired, a map showing the route or location of the proposed project, that the landowner has a right to be present at the meeting and to file objections with the board, and a designation of the time and place of the meeting. The notice shall be ~~sent by restricted certified mail and shall be published once in a newspaper of general circulation in the county not less than thirty days before the date set for the meeting~~ served by certified mail with return receipt requested not less than thirty days previous to the time set for the meeting, and shall be published once in a newspaper of general circulation in the county. The publication shall be considered notice to landowners whose residence is not known and to each person in possession of or residing on the property provided a good faith effort to notify can be demonstrated by the pipeline company.

Sec. 29. Section 479B.21, subsection 1, Code 2018, is

amended to read as follows:

1. A person who violates [this chapter](#) or any rule or order issued pursuant to [this chapter](#) shall be subject to a civil penalty levied by the board in an amount not to exceed one thousand dollars for each violation. Each day that the violation continues shall constitute a separate offense. However, the maximum civil penalty shall not exceed two hundred thousand dollars for any related series of violations. Civil penalties collected pursuant to [this section](#) shall be forwarded by the ~~executive secretary~~ chief operating officer of the board to the treasurer of state to be credited to the general fund of the state and appropriated to the division of community action agencies of the department of human rights for purposes of the low income home energy assistance program and the weatherization assistance program.

Sec. 30. Section 479B.30, subsection 6, Code 2018, is amended to read as follows:

6. The pipeline company shall pay all costs of the assessment made by the commissioners and reasonable attorney fees and costs incurred by the landowner as determined by the commissioners if the award of the commissioners exceeds one hundred ten percent of the final offer of the pipeline company prior to the determination of damages; ~~if the award does not exceed one hundred ten percent, the landowners shall pay the fees and costs incurred by the pipeline company.~~ The pipeline company shall file with the sheriff an affidavit setting forth the most recent offer made to the landowner. Commissioners shall receive a per diem of fifty dollars and actual and necessary expenses incurred in the performance of their official duties. The pipeline company shall also pay all costs occasioned by the appeal, including reasonable attorney fees to be taxed by the court, unless on the trial of the appeal the same or a lesser amount of damages is awarded than was allowed by the commission from which the appeal was taken.

Sec. 31. Section 714H.4, subsection 1, paragraph d, Code 2018, is amended to read as follows:

d. The provision of local exchange carrier telephone service pursuant to a certificate issued under ~~section 476.29~~.

Sec. 32. REPEAL. Sections 476.11, 476.57, 476.96, and

476.101, Code 2018, are repealed.

LINDA UPMEYER
Speaker of the House

CHARLES SCHNEIDER
President of the Senate

I hereby certify that this bill originated in the House and is known as House File 2446, Eighty-seventh General Assembly.

CARMINE BOAL
Chief Clerk of the House

Approved _____, 2018

KIM REYNOLDS
Governor