

MAR 10 2004  
Place On Calendar

HOUSE FILE 2536  
BY COMMITTEE ON COMMERCE,  
REGULATION AND LABOR

(SUCCESSOR TO HSB 645)

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

**A BILL FOR**

1 An Act providing for the sale of Iowa communications network  
2 assets, providing for related technical and substantive  
3 changes, and providing an effective date.

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

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HF 2536

1 Section 1. SALE OF IOWA COMMUNICATIONS NETWORK ASSETS --  
2 FINDINGS AND PURPOSE AND DEFINITIONS.

3 1. FINDINGS AND PURPOSE. The Iowa communications network  
4 is a valuable state telecommunications asset and has provided  
5 fair, reasonable, and predictable access to advanced  
6 telecommunications technology for authorized users for the  
7 past ten years. With over seven hundred seventy video  
8 classrooms located statewide and three thousand one hundred  
9 miles of owned fiber, the more than one thousand two hundred  
10 authorized users are able to equally access state-of-the-art  
11 voice, video, data, and internet services at comparable prices  
12 statewide, regardless of location. At a time when budgets are  
13 strained and there is a shortage in the availability of  
14 educators, it is essential that the educational content  
15 carried over the Iowa communications network be preserved and  
16 enhanced. It is also vital that secure telecommunications  
17 services provided by the Iowa communications network to  
18 homeland security and public defense providers be retained.  
19 The state desires to remain a credible business partner to all  
20 current authorized network users. To ensure that the  
21 utilization of the Iowa communications network resource is  
22 maximized while minimizing further investment by the state to  
23 maintain the infrastructure, it is in the best interest of the  
24 citizens of this state to offer some of the assets of the Iowa  
25 communications network for sale, while retaining ample  
26 capacity to provide authorized users required  
27 telecommunications services now and in the future. Through a  
28 sale of most of the fiberoptic cable and optronics, or light-  
29 passing equipment, and retaining capacity through long-term  
30 infeasible right-of-use agreements, the state would continue  
31 to provide telecommunications services and adequate capacity  
32 into the future. Selling the Iowa communications network  
33 assets using an intermediary professional agent specializing  
34 in telecommunications resources to market the assets will  
35 strengthen the ability of the state to receive a fair price

1 for the assets while allowing an impartial third party using  
2 predetermined sales criteria to determine the most qualified  
3 buyer. By using the sales proceeds to prepay remaining  
4 construction debt and provide revenue for an equipment  
5 replacement fund, state-provided funding for network  
6 maintenance and upgrade will be minimized. Continued  
7 provision of the full array of network services will appear  
8 seamless to current authorized users when the sales process is  
9 completed.

10 2. DEFINITIONS. As used in sections 1 through 6 of this  
11 Act, unless the context otherwise requires:

12 a. "Advanced telecommunications services" means high-  
13 quality voice, data, graphics, and video telecommunications  
14 services using any technology with regard to transmission  
15 media that utilizes high-speed, switched, broadband  
16 telecommunications capability.

17 b. "Authority" means the Iowa communications network sales  
18 authority established to oversee the sale of backbone assets  
19 pursuant to this Act.

20 c. "Authorized user" means a private or public agency, as  
21 defined in section 8D.2, except for a public or private agency  
22 which was required pursuant to section 8D.9, subsection 1, to  
23 certify to the commission not later than July 1, 1994, the  
24 agency's intent to become a part of the network and which did  
25 not provide such certification. Agencies that obtained  
26 legislative approval to join the network after July 1, 1994,  
27 will be treated as a public or private agency for purposes of  
28 this definition and all provisions of chapter 8D.

29 d. "Backbone assets" means the backbone fiber comprising  
30 the five fiber optic rings located outside of the Des Moines  
31 metropolitan area and the optronic equipment associated with  
32 those rings.

33 e. "Capacity" means the information-carrying ability of a  
34 telecommunications facility. The measurement of capacity is  
35 determined by the purpose of the facility.

1 f. "Certificates of participation" means the two issuances  
2 of certificates of participation issued by the state in 1992  
3 and 1993 to fund the construction of the owned fiber and  
4 equipment for Parts I and II of the network as defined in  
5 chapter 8D.

6 g. "Commission" means the Iowa telecommunications and  
7 technology commission as defined in section 8D.2.

8 h. "Indefeasible right of use" means an indefeasible right  
9 to use fiber, including an entire cable or a portion of the  
10 capacity of a cable, or channels of a given bandwidth for a  
11 defined period of time.

12 i. "Iowa communications network hub" means the  
13 telecommunications facility located in the joint forces  
14 headquarters armory, Johnston, Iowa, where the main switching  
15 and maintenance operations of the network take place.

16 j. "Network" means the Iowa communications network.

17 k. "Network operations center" means the maintenance and  
18 network diagnostic equipment that manages the network  
19 infrastructure.

20 l. "Optronics" means the fiberoptic equipment that  
21 activates the fiber and allows light to traverse.

22 m. "Professional agent" means any person having  
23 specialized expertise required in the process of selling the  
24 Iowa communications network including but not limited to  
25 expertise regarding brokerage, contracting, asset valuation,  
26 sales, or negotiation services.

27 n. "Prospective purchaser" means the potential purchaser  
28 of the network that the professional agent recommends to the  
29 authority to purchase the network assets, as provided in  
30 section 3 of this Act.

31 o. "Qualified purchaser" means a prospective purchaser  
32 that has been approved by the governor and qualified in  
33 accordance with the provisions of section 4 of this Act.

34 p. "Right-of-way accommodation agreement" means a twenty-  
35 year agreement between the network and the department of

1 transportation that includes an option to extend the agreement  
2 for an additional ten years, which is definitive with respect  
3 to the use of interstate rights-of-way and gives the  
4 department of transportation the sole right to approve or deny  
5 other users of the sheath, trench, or any of the ducts.

6 q. "Telecommunications facility" means a collection of  
7 fibers which originates at an access point and ends at the  
8 fiberoptic termination connector attached to the electronic  
9 and optronic equipment necessary to transmit voice, video, or  
10 data transmissions across the fiberoptic network.

11 r. "Telecommunications services" means the provision of  
12 any of the following services:

- 13 (1) Local exchange telephone services.
- 14 (2) Long distance telephone services.
- 15 (3) Internet access services.
- 16 (4) Cable television services.

17 Sec. 2. IOWA COMMUNICATIONS NETWORK SALES AUTHORITY  
18 ESTABLISHED.

19 1. AUTHORITY ESTABLISHED -- PURPOSE -- POWERS. An Iowa  
20 communications network sales authority is established with the  
21 sole authority to oversee the sales process regarding transfer  
22 of ownership of the network's backbone assets to a qualified  
23 purchaser pursuant to this Act. Subject to final approval of  
24 the selection of the qualified purchaser and terms of sale by  
25 the governor, the authority's operation shall not be subject  
26 to the jurisdiction or control of any other state agency, and  
27 the authority shall possess full and sole authority over the  
28 Iowa communications network backbone asset sales process.  
29 However, the authority is subject to the general operations  
30 practices and procedures which are generally applicable to  
31 other state agencies during the period of its operation. The  
32 authority shall be in existence from the effective date of  
33 this Act until a qualified purchaser has been approved by the  
34 governor, and all sales agreements necessary to complete the  
35 sale have been negotiated and entered into.

1        2. MEMBERSHIP. Membership of the authority shall consist  
2 of the treasurer of state, the auditor of state, two members  
3 of the Iowa telecommunications and technology commission, and  
4 one member of the Iowa utilities board. Three members of the  
5 authority shall constitute a quorum, and the members shall  
6 elect a chairperson, vice chairperson, secretary, and other  
7 officers as determined necessary. Meetings of the authority  
8 shall be held at the call of the chairperson or when a  
9 majority of the members so requests. The members of the  
10 authority shall not receive compensation by reason of their  
11 membership.

12        Sec. 3. PROFESSIONAL AGENT RETENTION. The authority shall  
13 issue a request for proposals to retain a professional agent  
14 with telecommunications asset sales experience to market and  
15 coordinate the sales process of the backbone assets.

16        The governor, in consultation with the treasurer of state  
17 and the department of management, shall be authorized to  
18 negotiate fair and equitable terms of compensation for the  
19 professional agent. The described backbone assets shall only  
20 be available for a single private vendor, or a consortium  
21 acting as a single private vendor, to purchase and the state  
22 shall retain an indefeasible right of use with respect to  
23 certain amounts of backbone capacity in optical wavelengths  
24 for a negotiated period of seven to twenty-five years, and two  
25 optional renewal periods of ten years each. As part of the  
26 sale, the purchaser shall enter into indefeasible right-of-use  
27 agreements with the state in which the purchaser shall grant  
28 the state an indefeasible right of use with respect to  
29 backbone capacity and optical wavelengths and Part II  
30 facilities and the dark fiber connecting various Part III  
31 aggregation points to network backbone-switching points.  
32 During the term of an indefeasible right-of-use agreement, the  
33 state as holder of the indefeasible right of use will have  
34 complete and total ownership of the fiber or channels  
35 identified in the indefeasible right-of-use agreement, may use

1 the fiber or channels as if they were a physically owned asset  
2 of the state, and the state's interest in the fiber or  
3 channels cannot be annulled or made void by the grantor of the  
4 infeasible right of use or any other party. At the end of  
5 the term of an infeasible right-of-use agreement and any  
6 renewal periods, title to the equipment and fiber assets and  
7 optical wavelength capacities covered by the agreement shall  
8 pass completely to the purchaser. The terms of the sale of  
9 the assets shall also include provisions committing the  
10 commission to purchase field services, including maintenance,  
11 provisioning, and build out, from the purchaser and committing  
12 the commission to pay a monthly fee for fiber maintenance and  
13 field services for the assets that are sold. The request for  
14 proposals shall be issued no later than six months from the  
15 date of enactment of this Act. The request for proposals may  
16 include:

- 17 1. A detailed list of the network assets for sale.
- 18 2. A detailed description of the unfettered and  
19 unrestricted use of specified capacities of optical  
20 wavelengths occupying a portion of the backbone assets.
- 21 3. A procedure to determine the compensation for the  
22 successful professional agent.
- 23 4. Parameters surrounding the sale, to be determined by  
24 the governor, which shall include but not be limited to the  
25 following:
  - 26 a. The amount of time the state would allow the  
27 professional agent to market the assets.
  - 28 b. A provision that the governor or the governor's  
29 designee shall have the ultimate discretion to accept or  
30 reject an offer from a prospective purchaser.
  - 31 c. A detailed framework for the infeasible right-of-use  
32 agreement between the state and the successful purchaser as  
33 well as infeasible right-of-use agreements for Part II  
34 facilities. The infeasible right-of-use agreements and any  
35 other agreements necessary to complete the sale shall clearly

1 provide that the network and the state shall be held harmless  
2 in the event the purchaser suffers a loss of revenue due to a  
3 failure of any assets sold to the purchaser or to a failure of  
4 any portion of the network being shared by the network.

5 d. A detailed process and procedures for routing capacity  
6 from the backbone termination points in public buildings to  
7 sites owned by the purchaser and sharing of alternating  
8 current power, direct current power, and high-voltage  
9 alternating current power needed to operate the purchaser's  
10 equipment and related expenses in the public buildings.

11 e. A detailed framework for the standards required  
12 regarding network maintenance.

13 f. A requirement that the purchaser offer advanced  
14 telecommunications services equitably across the state,  
15 specifically serving areas where those types of services are  
16 not yet available.

17 g. A requirement that the purchaser grant the network the  
18 right to participate in future upgrades of the backbone  
19 electronics statewide in the fiberoptic network outside the  
20 Des Moines metropolitan area.

21 h. The criteria to be used as a basis for determining the  
22 successful purchaser.

23 i. An analysis of a prospective purchaser's financial  
24 stability with particular attention to assessing the  
25 prospective purchaser's potential vulnerability to bankruptcy.

26 j. A requirement that during the negotiations process, the  
27 prospective purchaser shall offer the state reasonable surety  
28 of long-term economic viability. Such surety may include a  
29 requirement of posting bond or some other financial  
30 compensation to guard against the purchaser's inability to  
31 meet the financial terms of the agreement. The purchaser  
32 shall guarantee that the state's indefeasible right-of-use  
33 agreements shall be protected in the case of the bankruptcy of  
34 the purchaser.

35 The authority shall select the professional agent

1 submitting the proposal that provides the best overall value  
2 to the state. The public interest requires that the  
3 authority's ability to enter into a contract with a  
4 professional agent not be delayed; therefore, the decision of  
5 the authority shall be final. Notwithstanding the provisions  
6 of chapter 17A a professional agent not selected by the  
7 authority shall not be entitled to a contested case hearing or  
8 to otherwise challenge the decision of the authority.

9     Sec. 4.   MARKETING OF THE NETWORK ASSETS. Using the  
10 parameters included in the request for proposals, the selected  
11 professional agent shall develop a process to market and sell  
12 the assets designed to maximize the state's proceeds from the  
13 sale. During the marketing period, using the predetermined  
14 parameters, including meeting financial qualifications, the  
15 professional agent shall identify a prospective purchaser and  
16 submit the prospective purchaser to a qualification process  
17 designed to verify the purchaser's ability to adequately  
18 operate and maintain the backbone network. This verification  
19 process shall include the following:

20     1.   Verifying that the purchaser has proven experience  
21 operating a telecommunications network.

22     2.   Verifying that the purchaser has the ability to  
23 purchase the network outright or has the collateral to secure  
24 financing of a loan to purchase the network.

25     3.   Other criteria as established by the general assembly  
26 or the governor.

27     4.   Verifying that the purchaser agrees to the requirement  
28 that other telecommunications companies providing services  
29 since January 2, 2004, be allowed to enter into a buyers  
30 consortium and share in the purchased assets or facilities in  
31 proportion to terms established in the consortium agreement  
32 which shall guarantee or result in equal opportunity for  
33 access by consortium members.

34     5.   Verifying that the purchaser is an entity that agrees  
35 to guarantee equal access to the purchased assets to any

1 telecommunications company that has been providing services to  
2 Iowa customers since January 1, 2004. Such equal access means  
3 that the purchaser shall not do any of the following regarding  
4 a telecommunications company providing services to Iowa  
5 customers since January 1, 2004:

6 a. Discriminate by refusing or delaying access to the  
7 purchased assets.

8 b. Degrade the quality of access or service provided.

9 c. Fail to disclose in a timely manner, upon reasonable  
10 request and pursuant to a protective agreement concerning  
11 proprietary information, all information reasonably necessary  
12 for the design of network interface equipment, network  
13 interface services, or software that will meet the  
14 specifications of the purchaser.

15 d. Unreasonably refuse or delay interconnections or  
16 provide inferior interconnections.

17 e. Discriminate in favor of itself or an affiliate in the  
18 provision and pricing of, or extension of credit for, any  
19 service.

20 6. Any telecommunications company as described in  
21 subsection 5 may file a written complaint at any time with the  
22 utilities board established in chapter 476 requesting the  
23 board to determine compliance by the purchaser with the  
24 provisions of this section or any board rules implementing  
25 this section. Upon the filing of such complaint, the board  
26 may promptly initiate a formal complaint proceeding and give  
27 notice of the proceeding and the opportunity for hearing. The  
28 formal complaint proceeding may be initiated at any time by  
29 the board on its own motion. The board shall render a  
30 decision in the proceeding within ninety days after the date  
31 the written complaint was filed.

32 Upon verification by the professional agent of the  
33 purchaser's ability to adequately operate and maintain the  
34 backbone network, the authority shall make a recommendation  
35 regarding a purchaser and the terms of sale to the governor.

1 The governor shall have the right of final approval of the  
2 purchaser and the terms of sale.

3 If the professional agent is unable to identify a  
4 prospective purchaser able to adequately operate and maintain  
5 the backbone network, the professional agent shall submit a  
6 report to the authority explaining the reasons supporting this  
7 conclusion.

8 Sec. 5. POSTSELECTION PROCEDURES.

9 1. Once the governor has approved a purchaser and the  
10 terms of sale, the authority shall enter into a contract with  
11 the purchaser for sale of the assets. The authority shall  
12 enter into a memorandum of understanding regarding procedures  
13 for operation of the network until the sale is finalized with  
14 the proposed purchaser. The memorandum shall indicate that  
15 the purchaser, in good faith, intends to finalize the purchase  
16 and shall pay a termination penalty if the purchaser does not  
17 finalize the purchase.

18 2. Any outstanding debt or liens upon the network assets,  
19 including the certificates of participation, shall be  
20 discharged out of the state's proceeds of closing, so that the  
21 purchaser receives marketable title to the assets. Prepayment  
22 of the certificates of participation shall be made prior to  
23 closing the sale of assets or as part of closing the sale, and  
24 shall be accomplished in a way that does not jeopardize the  
25 tax-exempt status of the certificates of participation.

26 3. The state and the purchaser shall also negotiate their  
27 relevant interest in right-of-way accommodation agreements and  
28 leases and easements for uses of rights-of-way. The  
29 negotiations may specify that the purchaser shall have the  
30 option of paying the entire sale price in a single lump sum  
31 payment at the time that the sale is finalized, or  
32 alternatively may pay for the backbone assets at the time that  
33 the sale is finalized and make an annual payment for use of  
34 the rights-of-way.

35 4. The purchaser shall immediately establish points of

1 presence near the existing network switching centers and  
2 establish fiber extensions and connectivity between them. The  
3 purchaser shall physically locate in the vicinity of the joint  
4 forces headquarters armory in Johnston, Iowa, and establish  
5 fiber connectivity between the network hub and the vendor's  
6 location. Duplicate racks of backbone core equipment shall be  
7 provided by the purchaser and installed by the network to  
8 carry traffic while the network backbone is transferred to the  
9 purchaser. The purchaser shall purchase the equipment  
10 required in this process for the network and pay any and all  
11 related expenses associated with this conversion effort.

12 5. The authority shall enter into indefeasible right-of-  
13 use agreements with the purchaser in which the purchaser shall  
14 grant the state an indefeasible right of use with respect to  
15 the backbone optical wavelengths and Part II facilities and  
16 the dark fiber connecting various Part III aggregation points  
17 to network backbone-switching points. The indefeasible right-  
18 of-use agreements and any other agreements necessary to  
19 complete the sale shall clearly provide that the network and  
20 the state shall not be held liable in any manner in the event  
21 the purchaser suffers a loss of revenue due to a failure of  
22 any portion of the network being shared by the network.

23 6. The authority shall enter into any other agreements  
24 necessary to complete the sale, including agreements  
25 committing the commission to purchase field services,  
26 including maintenance provisioning, and build out, from the  
27 purchaser and committing the commission to pay a monthly fee  
28 for fiber maintenance and field services for the assets that  
29 are sold. The request for proposals shall be issued no later  
30 than six months from the date of enactment of this Act.

31 Sec. 6. PROGRESS REPORTS. The authority, in consultation  
32 with the governor, shall submit to the general assembly  
33 periodic progress reports at three-month intervals from the  
34 effective date of this Act. The reports shall indicate the  
35 extent of progress, during the reporting period, in issuing

1 the request for proposals; retaining a professional agent;  
2 marketing efforts by the professional agent; identification,  
3 qualification, and selection of a purchaser; and the  
4 postselection process of finalizing the sale, entering into  
5 infeasible right of use agreements, and maintaining the  
6 network.

7 Sec. 7. Section 8D.2, Code Supplement 2003, is amended by  
8 adding the following new subsection:

9 NEW SUBSECTION. 2A. "Infeasible right of use" means an  
10 infeasible right to use fiber, including an entire cable or  
11 a portion of the capacity of a cable, or channels of a given  
12 bandwidth for a defined period of time.

13 Sec. 8. Section 8D.3, subsection 3, paragraph i, Code  
14 Supplement 2003, is amended to read as follows:

15 i. Evaluate existing and projected rates for use of the  
16 system and ensure that rates are sufficient to pay for the  
17 operation and required equipment upgrade and replacement of  
18 the system excluding the cost of construction and lease costs  
19 for Parts I, II, and III. The commission shall establish all  
20 hourly rates to be charged to all authorized users for the use  
21 of the network. A fee established by the commission to be  
22 charged to a hospital licensed pursuant to chapter 135B, a  
23 physician clinic, or the federal government shall be at an  
24 appropriate rate so that, at a minimum, there is no state  
25 subsidy related to the costs of the connection or use of the  
26 network related to such user.

27 Sec. 9. Section 8D.11, subsection 1, Code 2003, is amended  
28 to read as follows:

29 1. The commission may purchase, lease, and improve  
30 property, equipment, and services for telecommunications for  
31 public and private agencies and may dispose of property and  
32 equipment when not necessary for its purposes. ~~However, the~~  
33 ~~commission shall not enter into a contract for the purchase,~~  
34 ~~lease, or improvement of property, equipment, or services for~~  
35 ~~telecommunications pursuant to this subsection in an amount~~

1 ~~greater than one million dollars without prior authorization~~  
2 ~~by a constitutional majority of each house of the general~~  
3 ~~assembly, or approval by the legislative council if the~~  
4 ~~general assembly is not in session.~~ The commission may use  
5 indefeasible right-of-use agreements to acquire and dispose of  
6 property, equipment, and services. The commission shall not  
7 issue any bonding or other long-term financing arrangements as  
8 defined in section 12.30, subsection 1, paragraph "b". Real  
9 or personal property to be purchased by the commission through  
10 the use of a financing agreement shall be done in accordance  
11 with the provisions of section 12.28, ~~provided, however, that~~  
12 ~~the commission shall not purchase property, equipment, or~~  
13 ~~services for telecommunications pursuant to this subsection in~~  
14 ~~an amount greater than one million dollars without prior~~  
15 ~~authorization by a constitutional majority of each house of~~  
16 ~~the general assembly, or approval by the legislative council~~  
17 ~~if the general assembly is not in session.~~

18 Sec. 10. Section 8D.13, subsection 2, Code Supplement  
19 2003, is amended to read as follows:

20 2. For purposes of this section, unless the context  
21 otherwise requires:

22 a. "Part I" means the communications connections between  
23 to central switching and institutions under the control of the  
24 board of regents, nonprofit institutions of higher education  
25 eligible for tuition grants, and the regional switching  
26 centers for the remainder of the network.

27 b. "Part II" means the communications connections between  
28 to the regional switching centers and the secondary switching  
29 centers.

30 c. "Part III" means the communications connection between  
31 to the secondary switching centers and the agencies defined in  
32 section 8D.2, subsections 4 and 5, excluding state agencies,  
33 institutions under the control of the board of regents,  
34 nonprofit institutions of higher education eligible for  
35 tuition grants, and the judicial branch, judicial district

1 departments of correctional services, hospitals and physician  
2 clinics, agencies of the federal government, and post offices.

3 Sec. 11. Section 8D.13, subsection 3, Code Supplement  
4 2003, is amended to read as follows:

5 3. The financing for the procurement costs for the  
6 entirety of Part I except for the communications connections  
7 ~~between to~~ central switching and institutions under the  
8 control of the board of regents, and nonprofit institutions of  
9 higher education eligible for tuition grants, and for the  
10 video, data, and voice capacity for state agencies and for  
11 Part II and Part III, shall be provided by the state. The  
12 financing for the procurement and maintenance costs for Part  
13 ~~III shall be provided by the state. A local school board,  
14 governing authority of a nonpublic school, or an area  
15 education agency board may elect to provide one hundred  
16 percent of the financing for the procurement and maintenance  
17 costs for Part III to become part of the network. The basis  
18 for the amount of state financing is one hundred percent of a  
19 single interactive audio and interactive video connection for  
20 Part III, and such data and voice capacity as is necessary.~~  
21 If a school board, governing authority of a nonpublic school,  
22 or area education agency board elects to provide one hundred  
23 percent of the financing for the leasing costs for Part III,  
24 the school district or area education agency may become part  
25 of the network as soon as the network can reasonably connect  
26 the district or agency. A local school board, governing  
27 authority of a nonpublic school, or an area education agency  
28 board may also elect not to become part of the network.  
29 Construction of Part III, related to a school board, governing  
30 authority of a nonpublic school, or area education agency  
31 board which provides one hundred percent of the financing for  
32 the leasing costs for Part III, may proceed as determined by  
33 the commission and consistent with the purpose of this  
34 chapter.

35 Sec. 12. Section 8D.13, Code Supplement 2003, is amended

1 by adding the following new subsection:

2 NEW SUBSECTION. 3A. If the state sells assets of the  
3 network pursuant to sections 1 through 5 of this Act, and  
4 retains backbone capacity from another telecommunications  
5 provider, publicly owned facilities that house primary and  
6 secondary switching facilities shall provide access to that  
7 provider in the geographical area to the primary and secondary  
8 switching facilities housing the fiberoptics termination  
9 equipment by means of established fiber entry ducts, and to  
10 the building grounding system. The provider's access to the  
11 primary and secondary switching facilities shall be  
12 coordinated through the network's staff.

13 Sec. 13. Section 8D.13, subsection 4, Code Supplement  
14 2003, is amended to read as follows:

15 4. The commission ~~shall develop the requests for proposals~~  
16 may enter into contracts and infeasible right-of-use  
17 agreements that are needed for the Iowa communications network  
18 to function with sufficient capacity to serve the video, data,  
19 and voice requirements of state agencies and for educational  
20 telecommunications applications. ~~The commission shall develop~~  
21 ~~a request for proposals for each of the systems that will make~~  
22 ~~up the network. The commission may develop a request for~~  
23 ~~proposals for each definitive component of the network or the~~  
24 ~~commission may provide in the request for proposals for each~~  
25 ~~such system that separate contracts may be entered into for~~  
26 ~~each definitive component covered by the request for~~  
27 ~~proposals. The requests for proposals~~ contracts entered into  
28 by the commission may be for the purchase, lease-purchase, or  
29 lease of the component parts of the network consistent with  
30 the provisions of this chapter, may require maintenance costs  
31 to be identified, and the resulting contract may provide for  
32 maintenance for parts of the network. The master contract may  
33 provide for electronic classrooms, satellite equipment,  
34 receiving equipment, studio and production equipment, and  
35 other associated equipment as required. The infeasible

1 right-of-use agreements entered into by the commission may be  
2 long-term agreements and may retain the right to use portions  
3 of capacity of any fiberoptic cable that the commission sells  
4 to a third party. The infeasible right-of-use agreements  
5 may include provisions requiring the commission to contribute  
6 to the cost of maintenance and upgrades of the network.  
7 During the term of an infeasible right-of-use agreement, the  
8 state as a party to the infeasible right-of-use agreement  
9 shall have complete and total ownership of the fiber or  
10 channels identified in the infeasible right-of-use  
11 agreement, may use the fiber or channels as if they were a  
12 physically owned asset of the state, and the state's interest  
13 in the fiber or channels cannot be annulled or made void by  
14 the grantor of the infeasible right of use or any other  
15 party. At the end of the term of an infeasible right-of-use  
16 agreement and any renewal periods, title to the equipment and  
17 fiber assets and optical wavelength capacities covered by the  
18 agreement shall pass completely to the purchaser.

19 Sec. 14. Section 8D.13, subsection 5, unnumbered paragraph  
20 1, Code Supplement 2003, is amended to read as follows:

21 The state shall lease all fiberoptic cable facilities or  
22 facilities with DS-3 capacity for Part III connections for  
23 which state funding is provided. The state shall lease all  
24 fiberoptic cable facilities or facilities with DS-3 or DS-1  
25 capacity for the judicial branch, judicial district department  
26 of correctional services, and state agency connections for  
27 which state funding is provided. Such facilities shall be  
28 leased from qualified providers. The state shall not own such  
29 facilities, except for those facilities owned by the state as  
30 of January 1, 1994. Notwithstanding any other provision of  
31 this section, the state may negotiate the acquisition of a  
32 Part III connection following the termination of a lease with  
33 a qualified provider if offered by the vendor for such a Part  
34 III connection, if the commission determines it to be in the  
35 best interest of the network.

1 Sec. 15. Section 8D.13, subsection 6, Code Supplement  
2 2003, is amended by striking the subsection.

3 Sec. 16. Section 8D.13, subsection 11, Code Supplement  
4 2003, is amended to read as follows:

5 11. The fees charged for use of the network ~~and-state~~  
6 ~~communications~~ shall be based on the ongoing operational and  
7 depreciation costs of the network and of providing state  
8 communications only. For the services rendered to state  
9 agencies by the commission, the commission shall prepare a  
10 statement of services rendered and the agencies shall pay in a  
11 manner consistent with procedures established by the  
12 department of administrative services.

13 Sec. 17. Section 8D.13, subsection 12, Code Supplement  
14 2003, is amended to read as follows:

15 12. The commission, on its own or as recommended by an  
16 advisory committee of the commission and approved by the  
17 commission, shall permit a fee to be charged by a receiving  
18 site to the originator of the communication provided on the  
19 network. The fee charged shall be for the purpose of  
20 recovering the operating costs of a receiving site. The fee  
21 charged shall be reduced by an amount received by the  
22 receiving site pursuant to a state appropriation for such  
23 costs, or federal assistance received for such costs. Fees  
24 established under this subsection shall be paid by the  
25 originator of the communication directly to the receiving  
26 site. In the event that an entity requests a receiving site  
27 location in a video classroom facility which is authorized by,  
28 but not funded by, the originator of the communication, the  
29 requesting entity shall be directly billed by the video  
30 classroom facility for operating costs relating to the  
31 communication. For purposes of this section, "operating  
32 costs" include the costs associated with the management or  
33 coordination, operations, utilities, classroom, equipment,  
34 maintenance, and other costs directly related to providing the  
35 receiving site.

1     Sec. 18. Section 8D.14, Code 2003, is amended to read as  
2 follows:

3     8D.14 IOWA COMMUNICATIONS NETWORK FUND.

4     ~~There An Iowa communications network fund~~ is created in the  
5 office of the treasurer of state ~~a-fund-to-be-known-as-the~~  
6 ~~Iowa-communications-network-fund~~ under the control of the Iowa  
7 telecommunications and technology commission. ~~There-shall-be~~  
8 ~~deposited-into-the~~ The fund shall be comprised of Iowa  
9 communications network fund proceeds from bonds issued for  
10 purposes of projects authorized pursuant to section 8D.13,  
11 funds received from leases pursuant to section 8D.11, and  
12 other moneys by law credited to or designated by a person for  
13 deposit into the fund. Interest received by the state as a  
14 result of investing the contents of the fund shall be credited  
15 to the fund for use by the commission.

16     Sec. 19. NEW SECTION. 8D.15 IOWA COMMUNICATIONS NETWORK  
17 EQUIPMENT UPGRADE AND REPLACEMENT TRUST FUND.

18     An Iowa communications network equipment upgrade and  
19 replacement trust fund is established, separate and apart from  
20 all other public moneys or funds of the state, under the  
21 control of the treasurer of state and the department of  
22 management. The fund shall be comprised of the proceeds from  
23 the sale of Iowa communications network assets, including  
24 certain state-owned fiberoptic cable and related equipment  
25 located outside the Des Moines metropolitan area, and the  
26 portion of the fees charged to authorized users for  
27 depreciation. Contents of this fund shall only be used to  
28 replace failed or obsolete network equipment owned by the  
29 state and equipment included in indefeasible right-of-use  
30 agreements in which the network obtains statewide transport  
31 capacity, and shall not be used for any other purpose. The  
32 treasurer of state and the department of management shall  
33 jointly verify an annual estimate by the commission of the  
34 amount needed for equipment replacement pursuant to this  
35 section, and releases of moneys pursuant thereto shall require

1 an annual appropriation by the general assembly to the  
2 commission. The commission may solicit or accept gifts,  
3 including donations and bequests, to be deposited into the  
4 fund for use in accordance with the purposes of the fund.  
5 Interest received by the state as a result of investing the  
6 contents of the fund shall be credited to the fund for use by  
7 the commission.

8 Sec. 20. EFFECTIVE DATE. This Act, being deemed of  
9 immediate importance, takes effect upon enactment.

10

EXPLANATION

11 This bill provides a mechanism for the sale of Iowa  
12 communications network (ICN) assets with specified retained  
13 rights by the state, and provides for related technical and  
14 substantive changes to the provisions of Code chapter 8D.

15 FINDINGS AND PURPOSE. The bill contains a statement of  
16 findings and purpose section relating to legislative intent  
17 regarding the sale, noting that the ICN is a valuable state  
18 telecommunications asset, that it provides equal access to  
19 users of state-of-the-art voice, video, data, and internet  
20 services at comparable prices statewide, and that it is  
21 essential that the educational content it carries, and the  
22 public defense functions it serves, be retained. The bill  
23 provides that in order to ensure that ICN utilization is  
24 maximized while minimizing further investment by the state to  
25 maintain infrastructure, it is in the best interest of the  
26 citizens of the state to offer some ICN assets for sale, while  
27 retaining the capacity to provide services to users. The bill  
28 provides that this would be accomplished through the sale of  
29 most of the fiberoptic cable and optronics, or light-passing  
30 equipment, while retaining capacity through long-term  
31 indefeasible right-of-use agreements, thereby continuing to  
32 provide telecommunications services and adequate capacity into  
33 the future.

34 DEFINITIONS. The bill provides a definitions section.  
35 Included among the defined terms are definitions of

1 "authority" as referring to an Iowa communications network  
2 sales authority established to oversee the sale of the  
3 backbone assets; "indefeasible right of use" (IRU) as an  
4 indefeasible right to use fiber, including an entire cable or  
5 a portion of the capacity of a cable, or channels of a given  
6 bandwidth for a defined period of time; a "professional agent"  
7 as a person having specialized expertise required in the  
8 process of selling the Iowa communications network including  
9 but not limited to expertise regarding brokerage, contracting,  
10 asset valuation, sales, or negotiation services; a  
11 "prospective purchaser" as the potential purchaser of the  
12 network that the professional agent recommends to the  
13 authority to purchase the network assets; and a "qualified  
14 purchaser" as a prospective purchaser that has been approved  
15 by the governor and qualified in accordance with provisions  
16 specified in the bill.

17       AUTHORITY ESTABLISHED. The bill provides that the Iowa  
18 communications network sales authority is the sole authority  
19 to oversee the sales process regarding transfer of ownership  
20 of the network's backbone assets to a qualified purchaser.  
21 The bill provides that subject to final approval of the  
22 selection of the qualified purchaser and the terms of sale by  
23 the governor, the authority's operation shall not be subject  
24 to the jurisdiction or control of any other state agency. The  
25 bill provides, however, that the authority is subject to the  
26 general operations practices applicable to other state  
27 agencies during the period of its operation, and that this  
28 period of operation shall be from the effective date of the  
29 bill until a qualified purchaser has been approved by the  
30 governor, and all sales agreements necessary to complete the  
31 sale have been negotiated and entered into. The bill provides  
32 that membership of the authority shall consist of the  
33 treasurer of state, the auditor of state, two members of the  
34 Iowa telecommunications and technology commission, and one  
35 member of the Iowa utilities board.

1      PROFESSIONAL AGENT RETENTION. The bill provides that the  
2 authority shall issue a request for proposals to retain a  
3 professional agent with telecommunications asset sales  
4 experience to market and coordinate the sales process of the  
5 backbone assets. The bill provides that the governor, in  
6 consultation with the treasurer of state and the department of  
7 management, shall be authorized to negotiate fair and  
8 equitable terms of compensation for the professional agent.  
9 The bill provides that the backbone assets shall only be  
10 available for a single private vendor, or a consortium acting  
11 as a single private vendor, to purchase and that the state  
12 shall retain an indefeasible right of use with respect to  
13 certain amounts of backbone capacity in optical wavelengths  
14 for a negotiated period of seven to 25 years, and two optional  
15 renewal periods of 10 years each. The bill provides that as a  
16 part of the sale, the purchaser shall enter into indefeasible  
17 right-of-use agreements with the state in which the purchaser  
18 shall grant the state an indefeasible right of use with  
19 respect to backbone capacity and optical wavelengths and Part  
20 II facilities and the dark fiber connecting various Part III  
21 aggregation points to network backbone-switching points. The  
22 bill provides that during the term of an indefeasible right-  
23 of-use agreement, the state as the holder will have complete  
24 and total ownership of the fiber or channels identified in the  
25 indefeasible right-of-use agreement, may use the fiber or  
26 channels as if they were a physically owned asset of the  
27 state, and that the state's interest in the fiber or channels  
28 cannot be annulled or made void by the grantor of the  
29 indefeasible right of use or any other party. The bill  
30 provides that at the end of the indefeasible right-of-use  
31 agreement and any renewal periods, title to the equipment and  
32 fiber assets and optical wavelength capacities covered by the  
33 agreement shall pass completely to the purchaser. The bill  
34 provides that the terms of sale shall include provisions  
35 committing the commission to purchase field services,

1 including maintenance, provisioning, and build out, from the  
2 purchaser and committing the commission to pay a monthly fee  
3 for fiber maintenance and field services for the assets that  
4 are sold. The bill provides that the request for proposals  
5 shall be issued no later than six months from the bill's date  
6 of enactment.

7 The bill provides a list of potential subject areas for  
8 incorporation into the request for proposals, including, among  
9 others, a procedure to determine the compensation for the  
10 successful professional agent. The bill provides that the  
11 parameters surrounding the sale, to be determined by the  
12 governor, shall include, but not be limited to, the amount of  
13 time the state would allow the professional agent to market  
14 the assets, a provision that the governor or the governor's  
15 designee shall have ultimate discretion to accept or reject an  
16 offer, and a detailed framework for IRU agreements between the  
17 state and a purchaser, including the provision that the state  
18 shall be held harmless in the event the purchaser suffers a  
19 loss of revenue due to a failure of any assets or any portion  
20 of the network being shared by the network. The bill provides  
21 that the framework shall also include a process and procedures  
22 for routing capacity and sharing of power currents needed to  
23 operate the purchaser's equipment and related expenses, a  
24 framework for the standards required regarding network  
25 maintenance, a requirement that the purchaser offer advanced  
26 telecommunications services equitably across the state and  
27 specifically serving areas where those types of services are  
28 not yet available, a requirement that the purchaser grant the  
29 network the right to participate in future upgrades, purchaser  
30 selection criteria, an analysis of a prospective purchaser's  
31 financial stability, and a requirement that during the  
32 negotiations process, the prospective purchaser shall offer  
33 the state specified reasonable surety of long-term economic  
34 viability and shall guarantee that the state's IRUs shall be  
35 protected in the case of the bankruptcy of the purchaser.

1       SELECTION PROCESS FOR QUALIFIED PURCHASER. The bill  
2 provides that the authority shall select the professional  
3 agent submitting the proposal that provides the best overall  
4 value to the state, and that using the parameters included in  
5 the request for proposals, the selected professional agent  
6 shall develop a process to market and sell the assets designed  
7 to maximize the state's proceeds from the sale. The bill  
8 provides that during the marketing period, using the  
9 predetermined parameters, the professional agent shall  
10 identify a prospective purchaser and submit the prospective  
11 purchaser to a qualification process designed to verify the  
12 purchaser's ability to adequately operate and maintain the  
13 backbone network. The bill provides that the verification  
14 process shall include verifying that the purchaser has proven  
15 experience operating a telecommunications network, has the  
16 ability to purchase the network outright collateral to secure  
17 financing, and additional criteria established by the general  
18 assembly or the governor. The bill also provides that there  
19 shall be verification that the purchaser agrees to the  
20 requirement that other telecommunications companies providing  
21 services since January 2, 2004, be allowed to enter into a  
22 buyers consortium and share in the purchased assets or  
23 facilities in proportion to terms established in the  
24 consortium agreement which shall guarantee or result in equal  
25 opportunity for access by a consortium member, and that the  
26 purchaser is an entity that agrees to guarantee equal access  
27 to the purchased assets to any telecommunications company that  
28 has been providing services to Iowa customers since January 1,  
29 2004. The bill provides that this equal access means that the  
30 purchaser shall not, with regard to a telecommunications  
31 company providing services to Iowa customers since January 1,  
32 2004, discriminate by refusing or delaying access to the  
33 purchased assets; degrade the quality of access or service  
34 provided; fail to disclose all information reasonably  
35 necessary for the design of network interface equipment,

1 network interface services, or software that will meet the  
2 specifications of the purchaser; or unreasonably refuse or  
3 delay interconnections or provide inferior interconnections,  
4 discriminate in favor of itself or an affiliate in the  
5 provision and pricing of, or extension of credit for, any  
6 service. The bill provides that a telecommunications company  
7 entering into a consortium may file a written complaint at any  
8 time with the utilities board established in Code chapter 476  
9 requesting the board to determine compliance by the purchaser  
10 with these provisions.

11 The bill provides that after verification by the  
12 professional agent of the purchaser's ability to adequately  
13 operate and maintain the backbone network is given, the  
14 authority shall make a recommendation regarding a purchaser  
15 and the terms of sale to the governor, and that the governor  
16 has the right of final approval of the purchaser and the terms  
17 of sale. The bill provides that if the professional agent is  
18 unable to identify a prospective purchaser able to adequately  
19 operate and maintain the backbone network, the professional  
20 agent shall submit a report to the authority explaining the  
21 reasons supporting this conclusion.

22 NETWORK OPERATION PENDING SALE. The bill provides that the  
23 authority shall enter into a memorandum of understanding  
24 regarding procedures for operation of the network until the  
25 sale is finalized with the prospective purchaser, which shall  
26 include a provision that the purchaser in good faith intends  
27 to finalize the purchase and shall pay a termination penalty  
28 if the purchase is not finalized.

29 ADDITIONAL CONDITIONS OF SALE. The bill provides than any  
30 outstanding debt or liens upon the network assets shall be  
31 discharged out of the state's proceeds so that the purchaser  
32 receives marketable title to the assets, and that prepayment  
33 of certificates of participation, defined in the bill, shall  
34 be made prior to closing the sale of assets or as part of  
35 closing the sale, and accomplished in a manner not

1 jeopardizing the certificate's tax-exempt status. The bill  
2 provides that the state and the purchaser shall negotiate  
3 their relevant interest in rights-of-way and leases and  
4 easements for uses of rights-of-way, that the purchaser shall  
5 have the option of paying the entire sale price in a single  
6 lump sum payment at the time that the sale is finalized or  
7 alternatively may pay for the backbone assets at the time that  
8 the sale is finalized and make an annual payment for use of  
9 the rights-of-way, and that the purchaser shall immediately  
10 establish points of presence near the existing network  
11 switching centers and establish fiber extensions and  
12 connectivity between them. The bill provides that the  
13 purchaser shall physically locate in the vicinity of the joint  
14 forces headquarters armory in Johnston, Iowa, and establish  
15 fiber connectivity between the ICN hub and the vendor's  
16 location, and that duplicate racks of backbone core equipment  
17 shall be provided by the purchaser and installed by the  
18 network to carry traffic while the network backbone is  
19 transferred to the purchaser. The bill provides that the  
20 purchaser shall purchase the equipment required in this  
21 process for the network and pay any and all related expenses  
22 associated with the conversion effort. The bill provides that  
23 the authority, in consultation with the treasurer of state and  
24 the governor, shall submit to the general assembly periodic  
25 progress reports at three-month intervals from the effective  
26 date of the bill indicating progress in issuing the request  
27 for proposals; retaining a professional agent; marketing  
28 efforts by the professional agent; identification,  
29 qualification, and selection of a purchaser; and the  
30 postselection process of finalizing the sale, entering into  
31 indefeasible right-of-use agreements, and maintaining the  
32 network.

33 CODE CHAPTER 8D AMENDMENTS. The bill provides for a  
34 conforming definition and references to IRUs in Code chapter  
35 8D and conforming terminology changes and provisions regarding

1 changes in ownership of the network.

2 LEGISLATIVE AUTHORIZATION ELIMINATED. The bill deletes a  
3 provision that prohibited the commission from entering into a  
4 contract for the purchase, lease, or improvement of property,  
5 equipment, or services for telecommunications in an amount  
6 greater than \$1 million without prior authorization by a  
7 constitutional majority of each house of the general assembly,  
8 or approval by the legislative council if the general assembly  
9 is not in session. The bill also deletes outdated language  
10 regarding a local school board, governing authority of a  
11 nonpublic school, or area education agency board elections to  
12 provide financing costs for Part III of the network.

13 NETWORK ACQUISITIONS, DISPOSAL, AND ACCESS. The bill adds  
14 a provision that the commission may use IRU agreements to  
15 acquire and dispose of property, equipment, and services. The  
16 bill provides that if the state sells assets of the network  
17 pursuant to the procedure specified in the bill and retains  
18 backbone capacity from another telecommunications provider,  
19 publicly owned facilities that house primary and secondary  
20 switching facilities shall provide access to that provider in  
21 the geographic area to the primary and secondary switching  
22 facilities housing the fiberoptics termination equipment in  
23 established fiber entry ducts, and to the building grounding  
24 system. The bill provides that the provider's access to the  
25 primary and secondary switching facilities will be coordinated  
26 through the network's staff. The bill provides that the state  
27 may negotiate the acquisition of a Part III connection  
28 following the termination of a lease with a qualified provider  
29 if offered by the vendor for such a Part III connection if the  
30 commission determines it to be in the best interest of the  
31 network.

32 NETWORK COSTS AND BILLINGS. The bill provides that in  
33 situations where an entity requests a receiving site location  
34 in a video classroom facility which is authorized by, but not  
35 funded by, the originator of the communication, the requesting

1 entity shall be directly billed by the video classroom  
2 facility for operating costs relating to the communication.  
3 The bill also provides for the inclusion of depreciation costs  
4 in the determination of rates for use of the system. The bill  
5 deletes outdated language which had required reports relating  
6 to the impact of changing technology on potential costs and  
7 capabilities of the system, and relating to a department of  
8 education study of new techniques in distant teaching.

9 IOWA COMMUNICATIONS NETWORK FUND INTEREST AND UPGRADE AND  
10 REPLACEMENT TRUST FUND. The bill further provides for the  
11 retention of interest received by the state from the Iowa  
12 communications network fund established in Code section 8D.14,  
13 and for the establishment of an Iowa communications network  
14 equipment upgrade and replacement trust fund. The bill  
15 provides that the new trust fund shall be separate and apart  
16 from all other public moneys or funds of the state, and shall  
17 be under the control of the treasurer of state and the  
18 department of management. The bill provides that the trust  
19 fund will be comprised of the proceeds from the sale of ICN  
20 assets, including certain state-owned fiberoptic cable and  
21 related equipment located outside the Des Moines metropolitan  
22 area, and the portion of the fees charged to authorized users  
23 for depreciation. The bill provides that contents of the fund  
24 shall only be used to replace failed or obsolete network  
25 equipment owned by the state and equipment included in IRU  
26 agreements in which the network obtains statewide transport  
27 capacity. The bill provides that the treasurer of state and  
28 the department of management shall jointly verify an annual  
29 estimate by the commission of the amount needed for equipment  
30 replacement pursuant to new Code section 8D.15, and that  
31 releases of moneys pursuant to the estimate shall require an  
32 annual appropriation by the general assembly to the  
33 commission. The bill provides that the commission may solicit  
34 or accept gifts, including donations and bequests, to be  
35 deposited into the fund for use in accordance with the

1 purposes of the fund, and that interest received by the state  
2 as a result of investing the contents of the fund shall be  
3 credited to the fund for use by the commission.

4 The bill takes effect upon enactment.

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**HOUSE FILE 2536****H-8289**

1 Amend House File 2536 as follows:

2 1. Page 5, by inserting after line 11 the  
3 following:

4 "Sec. \_\_\_\_ . SALE OF ASSETS -- AUTHORITY PLAN. The  
5 authority shall establish a plan for the sale of the  
6 backbone assets conditioned upon the continued use of  
7 the network by school districts, community colleges,  
8 libraries, area education agencies, and state  
9 agencies. Sale of the backbone assets shall be  
10 conditioned upon a written assurance by the purchaser  
11 or purchasers that the fees charged for network usage  
12 by these entities shall not be increased for a ten-  
13 year period and any fee increases after the ten-year  
14 period has elapsed shall be reasonable and affordable.  
15 The terms of the sale of the assets shall expressly  
16 provide that the authority is not authorized to enter  
17 into a contract in which the sale of the backbone  
18 assets will result in any loss of federal funds due to  
19 the common carrier status of the network."

20 2. Page 12, by inserting after line 26 the  
21 following:

22 "Sec. \_\_\_\_ . Section 8D.9, subsection 2, Code  
23 Supplement 2003, is amended by striking the  
24 subsection."

25 3. By renumbering as necessary.

**By** KURTENBACH of Story

SANDS of Louisa

HORBACH of Tama

QUIRK of Chickasaw

**H-8289** FILED MARCH 22, 2004

**HOUSE FILE 2536****H-8290**

- 1 Amend House File 2536 as follows:
- 2 1. Page 3, line 32, by inserting after the word
- 3 "the" the following: "general assembly and the".
- 4 2. Page 4, line 25, by inserting after the word
- 5 "the" the following: "general assembly and the".
- 6 3. Page 4, line 33, by inserting after the word
- 7 "the" the following: "general assembly and the".
- 8 4. Page 6, lines 23 and 24, by striking the words
- 9 "to be determined by the governor,".
- 10 5. Page 6, by striking lines 28 through 30.
- 11 6. Page 9, line 35, by inserting after the word
- 12 "the" the following: "general assembly and the".
- 13 7. Page 10, line 1, by inserting after the word
- 14 "The" the following: "general assembly and the".
- 15 8. Page 10, by inserting after line 2 the
- 16 following: "The authority shall not enter into any
- 17 contract for the sale of the backbone assets without
- 18 the prior authorization of a constitutional majority
- 19 of the members of the senate and the house of
- 20 representatives, and the approval of the governor."
- 21 9. Page 10, line 9, by striking the words
- 22 "governor has" and inserting the following: "general
- 23 assembly and the governor have".
- 24 10. By renumbering as necessary.

By KURTENBACH of Story

SANDS of Louisa

HORBACH of Tama

QUIRK of Chickasaw

**H-8290** FILED MARCH 22, 2004

**HOUSE FILE 2536****H-8291**

- 1 Amend House File 2536 as follows:
- 2 1. Page 3, by striking line 27 and inserting the  
3 following:
- 4 "n. "Prospective purchaser or purchasers" means  
5 the potential purchaser or purchasers".
- 6 2. Page 3, by striking line 31 and inserting the  
7 following:
- 8 "o. "Qualified purchaser or purchasers" means a  
9 prospective purchaser or purchasers".
- 10 3. Page 3, line 32, by striking the word "has"  
11 and inserting the following: "have".
- 12 4. Page 4, line 23, by inserting after the word  
13 "purchaser" the following: "or purchasers".
- 14 5. Page 4, line 24, by inserting after the word  
15 "purchaser" the following: "or purchasers".
- 16 6. Page 4, line 33, by striking the word "has"  
17 and inserting the following: "or purchasers have".
- 18 7. Page 5, by inserting after line 11, the  
19 following:
- 20 "Sec. 101. SALE OF BACKBONE ASSETS -- INITIAL  
21 RIGHT TO SUBMIT OFFER. An incumbent local exchange  
22 utility shall have a right of first refusal or initial  
23 right to submit an offer with regard to any Part II  
24 section of the network backbone that terminates within  
25 the utility's service territory. An incumbent local  
26 exchange utility shall have ninety days from the date  
27 of issuance of a request for proposals pursuant to  
28 section 3 of this Act to notify the authority of the  
29 utility's intention to submit a purchase offer. A  
30 purchase offer submitted pursuant to this section  
31 shall be subject to the approval of the authority,  
32 after the verification process as provided for in  
33 section 4 of this Act. In the event that the ninety-  
34 day period elapses without an offer submitted by an  
35 incumbent local exchange utility, or an offer is not  
36 approved, the authority shall proceed with selection  
37 of a professional agent pursuant to section 3 of this  
38 Act. All incumbent local exchange utilities  
39 submitting approved offers shall share the Part I dark  
40 fiber capacity, provide access to authorized users of  
41 the network, and provide for the associated costs of  
42 maintenance of the Part I section of the network  
43 backbone."
- 44 8. Page 5, by striking lines 19 through 21 and  
45 inserting the following: "professional agent. The  
46 described backbone assets shall be available for a  
47 single private purchaser, more than one purchaser, or  
48 a consortium of purchasers, to purchase and the  
49 state".
- 50 9. Page 5, line 26, by inserting after the word

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Page 2

- 1 "purchaser" the following: "or purchasers".  
2 10. Page 5, line 27, by inserting after the word  
3 "purchaser" the following: "or purchasers".  
4 11. Page 6, line 8, by inserting after the word  
5 "purchaser" the following: "or purchasers".  
6 12. Page 6, line 11, by inserting after the word  
7 "purchaser" the following: "or purchasers".  
8 13. Page 6, line 32, by inserting after the word  
9 "purchaser" the following: "or purchasers".  
10 14. Page 7, line 2, by striking the word  
11 "suffers" and inserting the following: "or purchasers  
12 suffer".  
13 15. Page 7, line 3, by inserting after the word  
14 "purchaser" the following: "or purchasers".  
15 16. Page 7, line 7, by inserting after the word  
16 "purchaser" the following: "or purchasers".  
17 17. Page 7, line 9, by inserting after the word  
18 "purchaser's" the following: "or purchasers".  
19 18. Page 7, line 17, by inserting after the word  
20 "purchaser" the following: "or purchasers".  
21 19. Page 7, line 22, by inserting after the word  
22 "purchaser" the following: "or purchasers".  
23 20. Page 7, line 27, by inserting after the word  
24 "purchaser" the following: "or purchasers".  
25 21. Page 7, line 30, by striking the word "the"  
26 and inserting the following: "a".  
27 22. Page 7, line 31, by inserting after the word  
28 "purchaser" the following: "or purchasers".  
29 23. Page 7, line 34, by inserting after the word  
30 "purchaser" the following: "or purchasers".  
31 24. Page 8, line 15, by inserting after the word  
32 "purchaser" the following: "or purchasers".  
33 25. Page 8, line 16, by inserting after the word  
34 "purchaser" the following: "or purchasers".  
35 26. Page 8, line 17, by striking the word "the"  
36 and inserting the following: "a".  
37 27. Page 8, line 20, by striking the word "has"  
38 and inserting the following: "or purchasers have".  
39 28. Page 8, line 22, by striking the word "has"  
40 and inserting the following: "or purchasers have".  
41 29. Page 8, line 27, by striking the word  
42 "agrees" and inserting the following: "or purchasers  
43 agree".  
44 30. Page 8, by striking line 34 and inserting the  
45 following:  
46 "5. Verifying that the purchaser or purchasers are  
47 entities that agree".  
48 31. Page 9, line 3, by inserting after the word  
49 "purchaser" the following: "or purchasers".  
50 32. Page 9, line 14, by inserting after the word

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Page 3

- 1 "purchaser" the following: "or purchasers".  
2 33. Page 9, line 23, by inserting after the word  
3 "purchaser" the following: "or purchasers".  
4 34. Page 9, line 33, by inserting after the word  
5 "purchaser's" the following: "or purchasers".  
6 35. Page 9, line 35, by inserting after the word  
7 "purchaser" the following: "or purchasers".  
8 36. Page 10, line 2, by inserting after the word  
9 "purchaser" the following: "or purchasers".  
10 37. Page 10, line 4, by inserting after the word  
11 "purchaser" the following: "or purchasers".  
12 38. Page 10, line 9, by inserting after the word  
13 "purchaser" the following: "or purchasers".  
14 39. Page 10, line 11, by inserting after the word  
15 "purchaser" the following: "or purchasers".  
16 40. Page 10, line 14, by inserting after the word  
17 "purchaser" the following: "or purchasers".  
18 41. Page 10, line 15, by striking the words  
19 "purchaser, in good faith, intends" and inserting the  
20 following: "purchaser or purchasers, in good faith,  
21 intend".  
22 42. Page 10, line 16, by striking the word "does"  
23 and inserting the following: "or purchasers do".  
24 43. Page 10, line 21, by striking the word  
25 "receives" and inserting the following: "or  
26 purchasers receive".  
27 44. Page 10, line 29, by inserting after the word  
28 "purchaser" the following: "or purchasers".  
29 45. Page 10, line 35, by inserting after the word  
30 "purchaser" the following: "or purchasers".  
31 46. Page 11, line 3, by inserting after the word  
32 "purchaser" the following: "or purchasers".  
33 47. Page 11, line 5, by striking the word  
34 "vendor's" and inserting the following: "purchaser's  
35 or purchasers".  
36 48. Page 11, line 6, by inserting after the word  
37 "location" the following: "or locations".  
38 49. Page 11, line 7, by inserting after the word  
39 "purchaser" the following: "or purchasers".  
40 50. Page 11, line 9, by striking the words  
41 "purchaser. The purchaser" and inserting the  
42 following: "purchaser or purchasers. The purchaser  
43 or purchasers".  
44 51. Page 11, line 13, by inserting after the word  
45 "purchaser" the following: "or purchasers"  
46 52. Page 11, line 13, by inserting before the  
47 word "shall" the following: "or purchasers".  
48 53. Page 11, line 21, by striking the word  
49 "suffers" and inserting the following: "or purchasers  
50 suffer".

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- 1 54. Page 11, line 27, by inserting after the word
- 2 "purchaser" the following: "or purchasers".
- 3 55. Page 12, line 3, by inserting after the word
- 4 "purchaser" the following: "or purchasers".
- 5 56. Page 16, line 18, by inserting after the word
- 6 "purchaser" the following: "or purchasers".
- 7 57. By renumbering and relettering as necessary.

By KURTENBACH of Story

SANDS of Louisa

HORBACH of Tama

QUIRK of Chickasaw

**H-8291** FILED MARCH 22, 2004**HOUSE FILE 2536****H-8292**

- 1 Amend House File 2536 as follows:
- 2 1. Page 2, by striking lines 12 through 16.
- 3 2. Page 4, by striking lines 11 through 16.
- 4 3. Page 5, line 15, by inserting after the word
- 5 "assets" the following: ", subject to the provisions
- 6 of section 101 of this Act."
- 7 4. Page 5, line 31, by inserting after the word
- 8 "points." the following: "All Part III leases shall
- 9 be maintained by the state and are not transferable to
- 10 a purchaser or purchasers."
- 11 5. Page 7, by striking lines 13 through 16 and
- 12 inserting the following:
- 13 "f. A requirement that the purchase offer shall
- 14 not be for less than the current cost of the network
- 15 infrastructure and its installation."
- 16 6. Page 9, line 20, by inserting after the figure
- 17 "6." the following: "The purchaser or purchasers
- 18 shall be subject to the provisions of chapter 476."
- 19 7. Page 10, by striking lines 26 through 28 and
- 20 inserting the following:
- 21 "3. The contract for the sale of the assets shall
- 22 provide for a fee for the use of a right-of-way in
- 23 terms no more favorable than provided for the use of
- 24 the right-of-way by any other telecommunications
- 25 utility. The".
- 26 8. Page 16, by striking lines 30 through 35 and
- 27 inserting the following: "of January 1, 1994."
- 28 9. By renumbering, redesignating, and correcting
- 29 internal references as necessary.

By KURTENBACH of Story

HORBACH of Tama

SANDS of Louisa

**H-8292** FILED MARCH 22, 2004

**HOUSE FILE 2536****H-8293**

1 Amend House File 2536 as follows:

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

4 "Section 1. IOWA COMMUNICATIONS NETWORK -- INTERIM  
5 STUDY.

6 1. The legislative council shall establish an  
7 interim study committee to evaluate a sale of the Iowa  
8 communications network, or a portion of the network's  
9 assets. The study shall include a review of legal and  
10 practical issues that may affect whether the sale of  
11 the network, or a portion of the network's assets,  
12 should be approved or rejected, or that may affect the  
13 terms under which a sale or partial sale should be  
14 completed. Issues to be included in the study shall  
15 include all of the following:

16 a. The impact of a sale or partial sale of the  
17 network on existing authorized users.

18 b. The impact of a sale or partial sale of the  
19 network on existing telecommunications providers, and  
20 on the development of the competitive local exchange  
21 market.

22 c. The impact of a sale or partial sale of the  
23 network to a single provider on the state's continued  
24 use of the bandwidth at an affordable price.

25 d. The effect of a sale or partial sale of the  
26 network on Part III leases.

27 e. The protection of state interests including the  
28 assurance of affordable access to the network for  
29 public entities.

30 f. The necessity of compliance with applicable  
31 state laws.

32 g. Issues relating to the use of public rights-of-  
33 way by potential buyers of the network, or a portion  
34 of the network.

35 h. The impact of a sale or partial sale of the  
36 network on Iowa businesses and citizens.

37 i. Providing for a long-term lease of sufficient  
38 capacity to meet the needs of existing and future  
39 educational users of the network identified in chapter  
40 8D.

41 j. A review of whether a sale or partial sale of  
42 the network should be completed pursuant to a request  
43 for proposals or by some other manner of sale.

44 k. A review of the impact of federal  
45 communications commission policy pertaining to common  
46 carriage status of the network and the potential loss  
47 of universal service funds for kindergarten through  
48 grade twelve schools based on a sale or partial sale  
49 of the network, and recommendations on the manner in  
50 which the network should be sold to avoid an adverse

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1 impact on the state, educational users, and the  
2 network.

3 1. The anticipated future requirements of the  
4 state for use of the network to address the state's  
5 technological needs.

6 m. A review of the cost implications to the state  
7 if federal funds are lost due to a sale, or partial  
8 sale, of the network.

9 n. Consideration of sales criteria including,  
10 among others, whether the network, or a portion of the  
11 network, should be sold to a single purchaser,  
12 multiple purchasers, or to a consortium of purchasers;  
13 and whether or not to establish a minimum sale price.

14 o. A review of the necessity for continuation of  
15 the Iowa telecommunications and technology commission  
16 and the Iowa communications network operations center  
17 in the event that the network, or a portion of the  
18 network, is sold.

19 p. A review, in consultation with the utilities  
20 division of the department of commerce, of the legal  
21 and practical issues involved in, and the merits of, a  
22 possible conversion of the network into a public  
23 utility.

24 q. A review of the existing agreements between the  
25 state, the network, the federal emergency management  
26 administration, and the department of defense, and the  
27 impact of a sale or partial sale of the network on its  
28 use during times of emergency or national disaster.

29 r. Other relevant issues as identified by  
30 committee members.

31 2. The committee shall consult with other state  
32 agencies, appropriate federal agencies, and private  
33 associations and vendors in completing its evaluation  
34 of a sale or partial sale of the network.

35 3. The interim committee shall be composed of ten  
36 voting members, representing both political parties  
37 and both houses of the general assembly. Five members  
38 shall be members of the senate, three of whom shall be  
39 appointed by the majority leader of the senate and two  
40 of whom shall be appointed by the minority leader of  
41 the senate. Five members shall be members of the  
42 house of representatives, appointed by the speaker of  
43 the house, three of whom shall be of the majority  
44 party and two of whom shall be of the minority party.  
45 Nonvoting members shall be appointed by the  
46 legislative council, in consultation with the  
47 governor, and shall include, but not be limited to,  
48 individuals representing the Iowa telecommunications  
49 and technology commission, an independent telephone  
50 company, a rate-regulated telephone company, the Iowa

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1 national guard, private industry, the state board of  
2 regents universities, the kindergarten through grade  
3 twelve public education system, community colleges,  
4 private colleges, the Iowa utilities board, the Iowa  
5 department of corrections, the emergency management  
6 division of the Iowa department of public defense, and  
7 a representative from the medical field.

8 4. The committee shall complete its evaluation and  
9 submit a written report of its recommendations to the  
10 members of the general assembly by December 1, 2004."

11 2. Title page, by striking lines 1 through 3 and  
12 inserting the following: "An Act relating to the  
13 establishment of a committee to conduct an evaluation  
14 of the issues relating to the sale, or partial sale,  
15 of the Iowa communications network."

**By** HORBACH of Tama  
SANDS of Louisa

QUIRK of Chickasaw  
PETERSEN of Polk

**H-8293** FILED MARCH 22, 2004

**Fiscal Services Division  
Legislative Services Agency  
Fiscal Note**

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HF 2536 - Sale of ICN Network (LSB 5450 HV)

Analyst: Jennifer Acton (Phone: (515) 281-7846) (jennifer.acton@legis.state.ia.us)

Fiscal Note Version - New

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**Description**

HF 2536 provides for the sale of the Iowa Communications Network (ICN) assets, provides for related technical and substantive changes, and provides for an effective date.

**Assumptions**

1. There are 770 video classrooms connected to the Network.
2. There are 3,100 miles of State-owned fiber.
3. There are more than 1,200 authorized users.
4. The annual operations budget for the ICN is approximately \$35.0 million.
5. Through a sale of most of the backbone fiberoptic cable and optronics, or light-passing equipment, the State retains capacity through long-term infeasible right-of-use agreements. The State would continue to provide adequate telecommunications services to the authorized users.
6. The infeasible right-of-use agreement would allow the State to have use of the backbone capacity, optical wavelengths, Part II facilities, and the dark fiber connecting various Part III aggregation points to the Network backbone-switching points. The agreement will be for a negotiated period of seven to twenty-five years, and two optional renewal periods of ten years each. At the end of the infeasible right-of-use agreement and extensions, the wavelength capacities covered by the agreement will pass completely to the purchaser. The Commission can use infeasible right-of-use agreements to acquire and dispose of property, equipment, and services.
7. An intermediary professional agent will be used for the sale of the Iowa Communications Network assets.
8. The Governor, in consultation with the Treasurer of State and the Department of Management, will negotiate the fair terms of compensation for the professional agent.
9. The sale proceeds will be used to prepay any remaining construction debt and to provide a source of funds for an equipment replacement trust fund.
10. A sales authority consisting of the Treasurer of State, the Auditor of State, two members of the Iowa Telecommunications and Technology Commission, and one member of the Iowa Utilities Board will oversee the sale of the ICN process.
11. Currently, there is \$13.8 million in escrow and a FY 2004 appropriation of \$12.9 million available to retire the debt. The amount needed for FY 2005 to apply to the debt is \$10.0 million. As of January 31, 2004, the present value of the Certificates of Participation is \$36.7 million.
12. The FY 2004 cost to maintain the entire Network is \$9.2 million.
13. The Department of Transportation currently charges the ICN an annual right-of-way occupancy fee of \$1.00 predicated on the restriction that the ICN is used solely for governmental purposes. The purchaser would have to negotiate right-of-way fees with the Department of Transportation.
14. Fees charged for the use of the Network will be based on the ongoing operational and depreciation costs of the Network and of providing State communications only.
15. The terms of the sale of assets will also include the purchase of field services including maintenance, provisioning, and build out, from the purchaser and committing the commission to pay a monthly fee for fiber maintenance and field services for the assets sold.

16. The Commission can permit a fee to be charged by the receiving site to the originator of the communication provided on the Network. The fee charged will be for the purpose of recovering the operating costs of a receiving site.
17. The Iowa Communications Network Fund will be comprised of the proceeds from the bonds issued, funds received from leases, and other moneys by law credited to or designated by a person for deposit into the Fund. Interest received by the State as a result of investing the contents of the Fund shall be credited to the Fund for use by the Commission.
18. The Iowa Communications Network Equipment Upgrade and Replacement Trust Fund is established separate and apart from all other public moneys or funds of the State under the control of the Treasurer of State and the Department of Management. The Fund will be comprised of the proceeds from the sale of the Iowa Communications Network assets, including certain State-owned fiberoptic cable and related equipment located outside the Des Moines metropolitan area, and the portion of the fees charged to authorized users for depreciation.
19. The General Assembly will make an annual appropriation to the Commission for equipment replacement based on an annual recommendation from the Treasurer of State and the Department of Management.
20. The Commission can also solicit or accept gifts, including donation and bequests, to be deposited into the Iowa Communications Network Equipment Upgrade and Replacement Fund. Interest received by the State as a result of investing the contents of the Fund will be credited to the Fund for use by the Commission.
21. House File 2536 takes effect upon enactment.

### **Fiscal Impact**

The fiscal impact of HF 2536 cannot be determined due to insufficient information. The fee paid to the professional agent is unknown. Also, the purchase price of the ICN is unknown and will be negotiated with the purchaser at the time of the sale.

The annual operating budget is approximately \$35.0 million and the cost to maintain the Network is approximately \$9.4 million. Currently, there is \$13.8 million in escrow and a FY 2004 appropriation of \$12.9 million available to retire the debt. The amount needed for FY 2005 to apply to the debt is \$10.0 million. As of January 31, 2004, the present value of the Certificates of Participation is \$36.7 million.

### **Source**

Iowa Communications Network

Dennis C Prouty

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March 15, 2004

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The fiscal note and correctional impact statement for this bill was prepared pursuant to Joint Rule 17 and pursuant to Section 2.56, Code of Iowa. Data used in developing this fiscal note and correctional impact statement are available from the Fiscal Services Division, Legislative Services Agency to members of the Legislature upon request.

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WATTS, CH  
JEWKINS  
DIX  
QUIRK  
JACOBY

Suc led By HSB 645  
ST 02536 COMMERCE, REGULATION & LABOR

HOUSE FILE \_\_\_\_\_  
BY (PROPOSED COMMITTEE ON  
COMMERCE, REGULATION AND  
LABOR BILL BY  
CHAIRPERSON JENKINS)

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

A BILL FOR

1 An Act providing for the sale of Iowa communications network  
2 assets, providing for related technical and substantive  
3 changes, and providing an effective date.

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

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1 Section 1. SALE OF IOWA COMMUNICATIONS NETWORK ASSETS --  
2 FINDINGS AND PURPOSE AND DEFINITIONS.

3 1. FINDINGS AND PURPOSE. The Iowa communications network  
4 is a valuable state telecommunications asset and has provided  
5 fair, reasonable, and predictable access to advanced  
6 telecommunications technology for authorized users for the  
7 past ten years. With over seven hundred seventy video  
8 classrooms located statewide and three thousand one hundred  
9 miles of owned fiber, the more than one thousand two hundred  
10 authorized users are able to equally access state-of-the-art  
11 voice, video, data, and internet services at comparable prices  
12 statewide, regardless of location. At a time when budgets are  
13 strained and there is a shortage in the availability of  
14 educators, it is essential that the educational content  
15 carried over the Iowa communications network be preserved and  
16 enhanced. It is also vital that secure telecommunications  
17 services provided by the Iowa communications network to  
18 homeland security and public defense providers be retained.  
19 The state desires to remain a credible business partner to all  
20 current authorized network users. To ensure that the  
21 utilization of the Iowa communications network resource is  
22 maximized while minimizing further investment by the state to  
23 maintain the infrastructure, it is in the best interest of the  
24 citizens of this state to offer some of the assets of the Iowa  
25 communications network for sale, while retaining ample  
26 capacity to provide authorized users required  
27 telecommunications services now and in the future. Through a  
28 sale of most of the fiberoptic cable and optronics, or light-  
29 passing equipment, and retaining capacity through long-term  
30 infeasible right-of-use agreements, the state would continue  
31 to provide telecommunications services and adequate capacity  
32 into the future. Selling the Iowa communications network  
33 assets using an intermediary investment banker specializing in  
34 telecommunications resources to market the assets will  
35 strengthen the ability of the state to receive a fair price

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1 for the assets while allowing an impartial third party using  
2 predetermined sales criteria to determine the most qualified  
3 buyer. By using the sales proceeds to prepay remaining  
4 construction debt and provide revenue for an equipment  
5 replacement fund, state-provided funding for network  
6 maintenance and upgrade will be minimized. Continued  
7 provision of the full array of network services will appear  
8 seamless to current authorized users when the sales process is  
9 completed.

10 2. DEFINITIONS. As used in sections 1 through 6 of this  
11 Act, unless the context otherwise requires:

12 a. "Advanced telecommunications services" means high-  
13 quality voice, data, graphics, and video telecommunications  
14 services using any technology with regard to transmission  
15 media that utilizes high-speed, switched, broadband  
16 telecommunications capability.

17 b. "Authorized user" means a private or public agency, as  
18 defined in section 8D.2, except for a public or private agency  
19 which was required pursuant to section 8D.9, subsection 1, to  
20 certify to the commission not later than July 1, 1994, the  
21 agency's intent to become a part of the network and which did  
22 not provide such certification. Agencies that obtained  
23 legislative approval to join the network after July 1, 1994,  
24 will be treated as a public or private agency for purposes of  
25 this definition and all provisions of chapter 8D.

26 c. "Capacity" means the information-carrying ability of a  
27 telecommunications facility. The measurement of capacity is  
28 determined by the purpose of the facility.

29 d. "Certificates of participation" means the two issuances  
30 of certificates of participation issued by the state in 1992  
31 and 1993 to fund the construction of the owned fiber and  
32 equipment for Parts I and II of the network as defined in  
33 chapter 8D.

34 e. "Commission" means the Iowa telecommunications and  
35 technology commission as defined in section 8D.2.

1 f. "Indefeasible right of use" means an indefeasible right  
2 to use fiber, including an entire cable or a portion of the  
3 capacity of a cable, or channels of a given bandwidth for a  
4 defined period of time.

5 g. "Investment banker" means a financial services firm  
6 that assists companies and governments in issuing securities,  
7 assists investors in purchasing securities, manages financial  
8 assets, trades securities, and provides financial advice.

9 h. "Iowa communications network hub" means the  
10 telecommunications facility located in the joint forces  
11 headquarters armory, Johnston, Iowa, where the main switching  
12 and maintenance operations of the network take place.

13 i. "Network" means the Iowa communications network.

14 j. "Network operations center" means the maintenance and  
15 network diagnostic equipment that manages the network  
16 infrastructure.

17 k. "Optronics" means the fiberoptic equipment that  
18 activates the fiber and allows light to traverse.

19 l. "Prospective purchaser" means the potential purchaser  
20 of the network that the investment banker recommends to the  
21 state to purchase the network assets, as provided in section 3  
22 of this Act.

23 m. "Qualified purchaser" means a prospective purchaser  
24 that has been approved by the governor and qualified in  
25 accordance with the provisions of section 4 of this Act.

26 o. "Right-of-way accommodation agreement" means a twenty-  
27 year agreement between the network and the department of  
28 transportation that includes an option to extend the agreement  
29 for an additional ten years, which is definitive with respect  
30 to the use of interstate rights-of-way and gives the  
31 department of transportation the sole right to approve or deny  
32 other users of the sheath, trench, or any of the ducts.

33 p. "Telecommunications facility" means a collection of  
34 fibers which originates at an access point and ends at the  
35 fiberoptic termination connector attached to the electronic

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1 and optronic equipment necessary to transmit voice, video, or  
2 data transmissions across the fiberoptic network.

3     Sec. 2. INVESTMENT BANKER RETENTION. The commission, in  
4 collaboration with the treasurer of state, shall issue a  
5 request for proposals to retain an investment banker with  
6 telecommunications asset sales experience to market and  
7 coordinate the sales process of the backbone fiber comprising  
8 the five fiberoptic rings located outside the Des Moines  
9 metropolitan area and the optronic equipment associated with  
10 these backbone rings.

11     The governor, in consultation with the treasurer of state  
12 and the department of management, shall be authorized to  
13 negotiate fair and equitable terms of compensation for the  
14 investment banker. The described backbone assets shall only  
15 be available for a single private vendor to purchase and the  
16 state shall retain an indefeasible right of use with respect  
17 to certain amounts of backbone capacity in optical wavelengths  
18 for a negotiated period of years, which shall not be less than  
19 twenty-five years and two optional renewal periods of ten  
20 years. As part of the sale, the purchaser shall enter into  
21 indefeasible right-of-use agreements with the state in which  
22 the purchaser shall grant the state an indefeasible right of  
23 use with respect to backbone capacity and optical wavelengths  
24 and Part II facilities and the dark fiber connecting various  
25 Part III aggregation points to network backbone-switching  
26 points. During the term of an indefeasible right-of-use  
27 agreement, the state as holder of the indefeasible right of  
28 use will have complete and total ownership of the fiber or  
29 channels identified in the indefeasible right-of-use  
30 agreement, may use the fiber or channels as if they were a  
31 physically owned asset of the state, and the state's interest  
32 in the fiber or channels cannot be annulled or made void by  
33 the grantor of the indefeasible right of use or any other  
34 party. At the end of the term of an indefeasible right-of-use  
35 agreement and any renewal periods, title to the equipment and

1 fiber assets and optical wavelength capacities covered by the  
2 agreement shall pass completely to the purchaser. The terms  
3 of the sale of the assets shall also include provisions  
4 committing the commission to purchase field services,  
5 including maintenance, provisioning, and build out, from the  
6 purchaser and committing the commission to pay a monthly fee  
7 for fiber maintenance and field services for the assets that  
8 are sold. The request for proposals shall be issued no later  
9 than six months from the date of enactment of this Act. The  
10 request for proposals may include:

11 1. A detailed list of the network assets for sale.

12 2. A detailed description of the unfettered and  
13 unrestricted use of specified capacities of optical  
14 wavelengths occupying a portion of the fiber backbone asset  
15 relating to the five fiberoptic rings located outside the Des  
16 Moines metropolitan area.

17 3. A procedure to determine the compensation for the  
18 successful investment banker.

19 4. Parameters surrounding the sale, to be determined by  
20 the governor, which shall include but not be limited to the  
21 following:

22 a. The amount of time the state would allow the investment  
23 banker to market the assets.

24 b. A provision that the governor or the governor's  
25 designee shall have the ultimate discretion to accept or  
26 reject an offer from a prospective purchaser.

27 c. A detailed framework for the indefeasible right-of-use  
28 agreement between the state and the successful purchaser as  
29 well as indefeasible right-of-use agreements for Part II  
30 facilities. The indefeasible right-of-use agreements and any  
31 other agreements necessary to complete the sale shall clearly  
32 provide that the network and the state shall be held harmless  
33 in the event the purchaser suffers a loss of revenue due to a  
34 failure of any assets sold to the purchaser or to a failure of  
35 any portion of the network being shared by the network.

1 d. A detailed process and procedures for routing capacity  
2 from the backbone termination points in public buildings to  
3 sites owned by the purchaser and sharing of alternating  
4 current power, direct current power, and high-voltage  
5 alternating current power needed to operate the purchaser's  
6 equipment and related expenses in the public buildings.

7 e. A detailed framework for the standards required  
8 regarding network maintenance.

9 f. A requirement that the purchaser offer advanced  
10 telecommunications services equitably across the state,  
11 specifically serving areas where those types of services are  
12 not yet available.

13 g. A requirement that the purchaser grant the network the  
14 right to participate in future upgrades of the backbone  
15 electronics statewide in the fiberoptic network outside the  
16 Des Moines metropolitan area.

17 h. The criteria to be used as a basis for determining the  
18 successful purchaser.

19 i. An analysis of a prospective purchaser's financial  
20 stability with particular attention to assessing the  
21 prospective purchaser's potential vulnerability to bankruptcy.

22 The commission, in consultation with the treasurer of  
23 state, shall select the investment banker submitting the  
24 proposal that provides the best overall value to the state.  
25 The public interest requires that the commission's ability to  
26 enter into a contract with an investment banker not be  
27 delayed; therefore, the decision of the commission, in  
28 consultation with the treasurer of state, shall be final.  
29 Notwithstanding the provisions of chapter 17A or the  
30 commission's administrative rules, an investment banker not  
31 selected by the commission shall not be entitled to a  
32 contested case hearing or to otherwise challenge the decision  
33 of the commission.

34 Sec. 3. MARKETING OF THE NETWORK ASSETS. Using the  
35 parameters included in the request for proposals, the selected

1 investment banker shall develop a process to market and sell  
2 the assets designed to maximize the state's proceeds from the  
3 sale. At the conclusion of the marketing period, using the  
4 predetermined parameters, including meeting financial  
5 qualifications, the investment banker shall either recommend a  
6 prospective purchaser of the network assets to the commission  
7 and the treasurer of state or report to the commission and the  
8 treasurer of state that the investment banker was unable to  
9 identify a prospective purchaser. If the investment banker is  
10 unable to identify a prospective purchaser, the report shall  
11 include an explanation of the reasons supporting this  
12 conclusion. The commission, in consultation with the  
13 treasurer of state, shall make a recommendation regarding a  
14 purchaser and the terms of sale to the governor. The governor  
15 shall have the right of final approval of the purchaser and  
16 the terms of sale, subject to verification of the purchaser's  
17 ability to adequately operate and maintain the backbone  
18 network.

19 Sec. 4. QUALIFICATION OF PURCHASER. Once the governor has  
20 approved a purchaser and the terms of sale, the investment  
21 banker shall verify the purchaser's ability to adequately  
22 operate and maintain the backbone network. This verification  
23 shall include the following:

24 1. Verifying that the purchaser has proven experience  
25 operating a telecommunications network.

26 2. Verifying that the purchaser has the ability to  
27 purchase the network outright or has the collateral to secure  
28 financing of a loan.

29 3. Other criteria as established by the general assembly  
30 or the governor.

31 Upon verification by the investment banker of the  
32 purchaser's ability to adequately operate and maintain the  
33 backbone network, the commission shall enter into a contract  
34 with the purchaser for sale of the assets.

35 Sec. 5. POSTSELECTION PROCEDURES.

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1 1. Once the purchaser has been qualified in accordance  
2 with the provisions of section 4 of this Act, the commission  
3 shall enter into a memorandum of understanding regarding  
4 procedures for operation of the network until the sale is  
5 finalized with the proposed purchaser. The memorandum shall  
6 indicate that the purchaser, in good faith, intends to  
7 finalize the purchase and shall pay a termination penalty if  
8 the purchaser does not finalize the purchase.

9 2. Any outstanding debt or liens upon the network assets,  
10 including the certificates of participation, shall be  
11 discharged out of the state's proceeds of closing, so that the  
12 purchaser receives marketable title to the assets. Prepayment  
13 of the certificates of participation shall be made prior to  
14 closing the sale of assets or as part of closing the sale, and  
15 shall be accomplished in a way that does not jeopardize the  
16 tax-exempt status of the certificates of participation.

17 3. The state and the purchaser shall also negotiate their  
18 relevant interest in right-of-way accommodation agreements and  
19 leases and easements for uses of rights-of-way.

20 4. The purchaser shall immediately establish points of  
21 presence near the existing network switching centers and  
22 establish fiber extensions and connectivity between them. The  
23 purchaser shall physically locate in the vicinity of the joint  
24 forces headquarters armory in Johnston, Iowa, and establish  
25 fiber connectivity between the network hub and the vendor's  
26 location. Duplicate racks of backbone core equipment shall be  
27 provided by the purchaser and installed by the network to  
28 carry traffic while the network backbone is transferred to the  
29 purchaser. The purchaser shall purchase the equipment  
30 required in this process for the network and pay any and all  
31 related expenses associated with this conversion effort.

32 5. The commission shall enter into indefeasible right-of-  
33 use agreements with the purchaser in which the purchaser shall  
34 grant the state an indefeasible right of use with respect to  
35 the backbone optical wavelengths and Part II facilities and

1 the dark fiber connecting various Part III aggregation points  
2 to network backbone-switching points. The indefeasible right-  
3 of-use agreements and any other agreements necessary to  
4 complete the sale shall clearly provide that the network and  
5 the state shall not be held liable in any manner in the event  
6 the purchaser suffers a loss of revenue due to a failure of  
7 any portion of the network being shared by the network.

8 6. The commission shall enter into any other agreements  
9 necessary to complete the sale, including agreements  
10 committing the commission to purchase field services,  
11 including maintenance provisioning, and build out, from the  
12 purchaser and committing the commission to pay a monthly fee  
13 for fiber maintenance and field services for the assets that  
14 are sold. The request for proposals shall be issued no later  
15 than six months from the date of enactment of this Act.

16 Sec. 6. Section 8D.2, Code Supplement 2003, is amended by  
17 adding the following new subsection:

18 NEW SUBSECTION. 2A. "Indefeasible right of use" means an  
19 indefeasible right to use fiber, including an entire cable or  
20 a portion of the capacity of a cable, or channels of a given  
21 bandwidth for a defined period of time.

22 Sec. 7. Section 8D.3, subsection 3, paragraph i, Code  
23 Supplement 2003, is amended to read as follows:

24 i. Evaluate existing and projected rates for use of the  
25 system and ensure that rates are sufficient to pay for the  
26 operation and required equipment upgrade and replacement of  
27 the system excluding the cost of construction and lease costs  
28 for Parts I, II, and III. The commission shall establish all  
29 hourly rates to be charged to all authorized users for the use  
30 of the network. A fee established by the commission to be  
31 charged to a hospital licensed pursuant to chapter 135B, a  
32 physician clinic, or the federal government shall be at an  
33 appropriate rate so that, at a minimum, there is no state  
34 subsidy related to the costs of the connection or use of the  
35 network related to such user.

1     Sec. 8. Section 8D.11, subsection 1, Code 2003, is amended  
2 to read as follows:

3     1. The commission may purchase, lease, and improve  
4 property, equipment, and services for telecommunications for  
5 public and private agencies and may dispose of property and  
6 equipment when not necessary for its purposes. However,~~the~~  
7 ~~commission shall not enter into a contract for the purchase,~~  
8 ~~lease, or improvement of property, equipment, or services for~~  
9 ~~telecommunications pursuant to this subsection in an amount~~  
10 ~~greater than one million dollars without prior authorization~~  
11 ~~by a constitutional majority of each house of the general~~  
12 ~~assembly, or approval by the legislative council if the~~  
13 ~~general assembly is not in session.~~ The commission may use  
14 indefeasible right-of-use agreements to acquire and dispose of  
15 property, equipment, and services. The commission shall not  
16 issue any bonding or other long-term financing arrangements as  
17 defined in section 12.30, subsection 1, paragraph "b". Real  
18 or personal property to be purchased by the commission through  
19 the use of a financing agreement shall be done in accordance  
20 with the provisions of section 12.28 ~~provided, however, that~~  
21 ~~the commission shall not purchase property, equipment, or~~  
22 ~~services for telecommunications pursuant to this subsection in~~  
23 ~~an amount greater than one million dollars without prior~~  
24 ~~authorization by a constitutional majority of each house of~~  
25 ~~the general assembly, or approval by the legislative council~~  
26 ~~if the general assembly is not in session.~~

27     Sec. 9. Section 8D.13, subsection 2, Code Supplement 2003,  
28 is amended to read as follows:

29     2. For purposes of this section, unless the context  
30 otherwise requires:  
31     a. "Part I" means the communications connections **between**  
32 to central switching and institutions under the control of the  
33 board of regents, nonprofit institutions of higher education  
34 eligible for tuition grants, and the regional switching  
35 centers for the remainder of the network.

1 b. "Part II" means the communications connections between  
2 to the regional switching centers and the secondary switching  
3 centers.

4 c. "Part III" means the communications connection between  
5 to the secondary switching centers and the agencies defined in  
6 section 8D.2, subsections 4 and 5, excluding state agencies,  
7 institutions under the control of the board of regents,  
8 nonprofit institutions of higher education eligible for  
9 tuition grants, and the judicial branch, judicial district  
10 departments of correctional services, hospitals and physician  
11 clinics, agencies of the federal government, and post offices.

12 Sec. 10. Section 8D.13, subsection 3, Code Supplement  
13 2003, is amended to read as follows:

14 3. The financing for the procurement costs for the  
15 entirety of Part I except for the communications connections  
16 between to central switching and institutions under the  
17 control of the board of regents, and nonprofit institutions of  
18 higher education eligible for tuition grants, and for the  
19 video, data, and voice capacity for state agencies and for  
20 Part II and Part III, shall be provided by the state. The  
21 financing for the procurement and maintenance costs for Part  
22 III shall be provided by the state. ~~A local school board,~~  
23 ~~governing authority of a nonpublic school, or an area~~  
24 ~~education agency board may elect to provide one hundred~~  
25 ~~percent of the financing for the procurement and maintenance~~  
26 ~~costs for Part III to become part of the network. The basis~~  
27 ~~for the amount of state financing is one hundred percent of a~~  
28 ~~single interactive audio and interactive video connection for~~  
29 ~~Part III, and such data and voice capacity as is necessary.~~  
30 If a school board, governing authority of a nonpublic school,  
31 or area education agency board elects to provide one hundred  
32 percent of the financing for the leasing costs for Part III,  
33 the school district or area education agency may become part  
34 of the network as soon as the network can reasonably connect  
35 the district or agency. A local school board, governing

1 authority of a nonpublic school, or an area education agency  
 2 board may also elect not to become part of the network.  
 3 Construction of Part III, related to a school board, governing  
 4 authority of a nonpublic school, or area education agency  
 5 board which provides one hundred percent of the financing for  
 6 the leasing costs for Part III, may proceed as determined by  
 7 the commission and consistent with the purpose of this  
 8 chapter.

9 Sec. 11. Section 8D.13, Code Supplement 2003, is amended  
 10 by adding the following new subsection:

11 NEW SUBSECTION. 3A. If the state sells assets of the  
 12 network pursuant to sections 1 through 5 of this Act, and  
 13 retains backbone capacity from another telecommunications  
 14 provider, publicly owned facilities that house primary and  
 15 secondary switching facilities shall provide access to that  
 16 provider in the geographical area to the primary and secondary  
 17 switching facilities housing the fiberoptics termination  
 18 equipment by means of established fiber entry ducts, and to  
 19 the building grounding system. The provider's access to the  
 20 primary and secondary switching facilities shall be  
 21 coordinated through the network's staff.

22 Sec. 12. Section 8D.13, subsection 4, Code Supplement  
 23 2003, is amended to read as follows:

24 4. The commission ~~shall develop the requests for proposals~~  
 25 may enter into contracts and indefeasible right-of-use  
 26 agreements that are needed for the Iowa communications network  
 27 to function with sufficient capacity to serve the video, data,  
 28 and voice requirements of state agencies and for educational  
 29 telecommunications applications. ~~The commission shall develop~~  
 30 ~~a request for proposals for each of the systems that will make~~  
 31 ~~up the network. The commission may develop a request for~~  
 32 ~~proposals for each definitive component of the network or the~~  
 33 ~~commission may provide in the request for proposals for each~~  
 34 ~~such system that separate contracts may be entered into for~~  
 35 ~~each definitive component covered by the request for~~

1 ~~proposals.~~ The requests-for-proposals contracts entered into  
2 by the commission may be for the purchase, lease-purchase, or  
3 lease of the component parts of the network consistent with  
4 the provisions of this chapter, may require maintenance costs  
5 to be identified, and the resulting contract may provide for  
6 maintenance for parts of the network. The master contract may  
7 provide for electronic classrooms, satellite equipment,  
8 receiving equipment, studio and production equipment, and  
9 other associated equipment as required. The infeasible  
10 right-of-use agreements entered into by the commission may be  
11 long-term agreements and may retain the right to use portions  
12 of capacity of any fiberoptic cable that the commission sells  
13 to a third party. The infeasible right-of-use agreements  
14 may include provisions requiring the commission to contribute  
15 to the cost of maintenance and upgrades of the network.  
16 During the term of an infeasible right-of-use agreement, the  
17 state as a party to the infeasible right-of-use agreement  
18 shall have complete and total ownership of the fiber or  
19 channels identified in the infeasible right-of-use  
20 agreement, may use the fiber or channels as if they were a  
21 physically owned asset of the state, and the state's interest  
22 in the fiber or channels cannot be annulled or made void by  
23 the grantor of the infeasible right of use or any other  
24 party. At the end of the term of an infeasible right-of-use  
25 agreement and any renewal periods, title to the equipment and  
26 fiber assets and optical wavelength capacities covered by the  
27 agreement shall pass completely to the purchaser.

28 Sec. 13. Section 8D.13, subsection 5, unnumbered paragraph  
29 1, Code Supplement 2003, is amended to read as follows:

30 The state shall lease all fiberoptic cable facilities or  
31 facilities with DS-3 capacity for Part III connections for  
32 which state funding is provided. The state shall lease all  
33 fiberoptic cable facilities or facilities with DS-3 or DS-1  
34 capacity for the judicial branch, judicial district department  
35 of correctional services, and state agency connections for

1 which state funding is provided. Such facilities shall be  
 2 leased from qualified providers. The state shall not own such  
 3 facilities, except for those facilities owned by the state as  
 4 of January 1, 1994. Notwithstanding any other provision of  
 5 this section, the state may negotiate the acquisition of a  
 6 Part III connection following the termination of a lease with  
 7 a qualified provider if offered by the vendor for such a Part  
 8 III connection, if the commission determines it to be in the  
 9 best interest of the network.

10 Sec. 14. Section 8D.13, subsection 6, Code Supplement  
 11 2003, is amended by striking the subsection.

12 Sec. 15. Section 8D.13, subsection 11, Code Supplement  
 13 2003, is amended to read as follows:

14 11. The fees charged for use of the network ~~and-state~~  
 15 ~~communications~~ shall be based on the ongoing operational and  
 16 depreciation costs of the network and of providing state  
 17 communications only. For the services rendered to state  
 18 agencies by the commission, the commission shall prepare a  
 19 statement of services rendered and the agencies shall pay in a  
 20 manner consistent with procedures established by the  
 21 department of administrative services.

22 Sec. 16. Section 8D.13, subsection 12, Code Supplement  
 23 2003, is amended to read as follows:

24 12. The commission, on its own or as recommended by an  
 25 advisory committee of the commission and approved by the  
 26 commission, shall permit a fee to be charged by a receiving  
 27 site to the originator of the communication provided on the  
 28 network. The fee charged shall be for the purpose of  
 29 recovering the operating costs of a receiving site. The fee  
 30 charged shall be reduced by an amount received by the  
 31 receiving site pursuant to a state appropriation for such  
 32 costs, or federal assistance received for such costs. Fees  
 33 established under this subsection shall be paid by the  
 34 originator of the communication directly to the receiving  
 35 site. In the event that an entity requests a receiving site

1 location in a video classroom facility which is authorized by,  
2 but not funded by, the originator of the communication, the  
3 requesting entity shall be directly billed by the video  
4 classroom facility for operating costs relating to the  
5 communication. For purposes of this section, "operating  
6 costs" include the costs associated with the management or  
7 coordination, operations, utilities, classroom, equipment,  
8 maintenance, and other costs directly related to providing the  
9 receiving site.

10 Sec. 17. Section 8D.14, Code 2003, is amended to read as  
11 follows:

12 8D.14 IOWA COMMUNICATIONS NETWORK FUND.

13 There An Iowa communications network fund is created in the  
14 office of the treasurer of state ~~a fund to be known as the~~  
15 ~~Iowa communications network fund~~ under the control of the Iowa  
16 telecommunications and technology commission. ~~There shall be~~  
17 ~~deposited into the~~ The fund shall be comprised of Iowa  
18 communications network fund proceeds from bonds issued for  
19 purposes of projects authorized pursuant to section 8D.13,  
20 funds received from leases pursuant to section 8D.11, and  
21 other moneys by law credited to or designated by a person for  
22 deposit into the fund. Interest received by the state as a  
23 result of investing the contents of the fund shall be credited  
24 to the fund for use by the commission.

25 Sec. 18. NEW SECTION. 8D.15 IOWA COMMUNICATIONS NETWORK  
26 EQUIPMENT UPGRADE AND REPLACEMENT FUND.

27 An Iowa communications network equipment upgrade and  
28 replacement fund is created in the office of the treasurer of  
29 state under the control of the Iowa telecommunications and  
30 technology commission and the department of management. The  
31 fund shall be comprised of the proceeds from the sale of Iowa  
32 communications network assets, including certain state-owned  
33 fiberoptic cable and related equipment located outside the Des  
34 Moines metropolitan area, and the portion of the fees charged  
35 to authorized users for depreciation. Contents of this fund

1 shall only be used to replace failed or obsolete network  
 2 equipment owned by the state and equipment included in  
 3 infeasible right-of-use agreements in which the network  
 4 obtains statewide transport capacity. The department of  
 5 management must authorize all releases of moneys from the fund  
 6 to the commission and such authorization shall only be for the  
 7 purposes designated in this section. The commission may  
 8 solicit or accept gifts, including donations and bequests, to  
 9 be deposited into the fund for use in accordance with the  
 10 purposes of the fund. Interest received by the state as a  
 11 result of investing the contents of the fund shall be credited  
 12 to the fund for use by the commission.

13 Sec. 19. EFFECTIVE DATE. This Act, being deemed of  
 14 immediate importance, takes effect upon enactment.

15 EXPLANATION

16 This bill provides a mechanism for the sale of Iowa  
 17 communications network (ICN) assets with specified retained  
 18 rights by the state, and provides for related technical and  
 19 substantive changes to the provisions of Code chapter 8D.

20 FINDINGS AND PURPOSE. The bill contains a statement of  
 21 findings and purpose section relating to legislative intent  
 22 regarding the sale, noting that the ICN is a valuable state  
 23 telecommunications asset, that it provides equal access to  
 24 users of state-of-the-art voice, video, data, and internet  
 25 services at comparable prices statewide, and that it is  
 26 essential that the educational content it carries, and the  
 27 public defense functions it serves, be retained. The bill  
 28 provides that in order to ensure that ICN utilization is  
 29 maximized while minimizing further investment by the state to  
 30 maintain infrastructure, it is in the best interest of the  
 31 citizens of the state to offer some ICN assets for sale, while  
 32 retaining the capacity to provide services to users. The bill  
 33 provides that this would be accomplished through the sale of  
 34 most of the fiberoptic cable and optronics, or light-passing  
 35 equipment, while retaining capacity through long-term

1 infeasible right-of-use agreements, thereby continuing to  
2 provide telecommunications services and adequate capacity into  
3 the future.

4 DEFINITIONS. The bill provides a definitions section.  
5 Included among the defined terms are definitions of  
6 "infeasible right of use" (IRU) as an infeasible right to  
7 use fiber, including an entire cable or a portion of the  
8 capacity of a cable, or channels of a given bandwidth for a  
9 defined period of time; an "investment banker" as a financial  
10 services firm that assists companies and governments in  
11 issuing securities, assists investors in purchasing  
12 securities, manages financial assets, trades securities, and  
13 provides financial advice; a "prospective purchaser" as the  
14 potential purchaser of the network that the investment banker  
15 recommends to the state to purchase the network assets; and a  
16 "qualified purchaser" as a prospective purchaser that has been  
17 approved by the governor and qualified in accordance with  
18 provisions specified in the bill.

19 INVESTMENT BANKER AND CONDITIONS OF SALE. The bill  
20 provides that the Iowa telecommunications and technology  
21 commission, in collaboration with the treasurer of state,  
22 shall issue a request for proposals to retain an investment  
23 banker with telecommunications asset sales experience to  
24 market and coordinate the sales process of the backbone fiber  
25 comprising the five fiberoptic rings located outside the Des  
26 Moines metropolitan area and the optronic equipment associated  
27 with the backbone rings. The bill provides that the assets  
28 shall only be available to a single private vendor to purchase  
29 and that the state will retain an infeasible right of use  
30 with respect to certain amounts of backbone capacity in  
31 optical wavelengths for a negotiated period of years, which  
32 shall not be less than 25 years with two optional 10-year  
33 renewal periods. The bill provides that IRU agreements will  
34 involve the purchaser granting the state an infeasible right  
35 of use with respect to the backbone capacity and optical

1 wavelengths and Part II facilities and the dark fiber  
 2 connecting various Part III aggregation points to network  
 3 backbone-switching points. The bill provides that during the  
 4 term of an IRU agreement, the state as holder of the IRU will  
 5 have complete and total ownership of the fiber or channels  
 6 identified in the IRU agreement, may use the fiber or channels  
 7 as if they were a physically owned asset of the state, and the  
 8 state's interest in the fiber or channels cannot be annulled  
 9 or made void by the grantor of the IRU or any other party.

10 The bill provides that at the conclusion of the term of the  
 11 IRU agreement and any renewal periods, title to the equipment  
 12 and fiber assets and optical wavelength capacities covered by  
 13 the agreements passes to the purchaser. The bill provides  
 14 that the terms of the sale shall include provisions committing  
 15 the commission to purchase field services, including  
 16 maintenance, provisioning, and build out, from the purchaser  
 17 and committing the commission to pay a monthly fee for fiber  
 18 maintenance and field services for the assets that are sold.  
 19 The bill provides that the request for proposals shall be  
 20 issued no later than six months from the bill's enactment  
 21 date.

22 The bill provides a list of potential subject areas for  
 23 incorporation into the request for proposals, including, among  
 24 others, a procedure to determine investment banker  
 25 compensation. The bill provides that the parameters  
 26 surrounding the sale, to be determined by the governor, shall  
 27 include, but not be limited to, the amount of time the state  
 28 would allow for marketing by the investment banker, the  
 29 provision that the governor or the governor's designee will  
 30 have ultimate discretion to accept or reject an offer, a  
 31 detailed framework for IRU agreements between the state and a  
 32 purchaser, including the provision that the ICN and the state  
 33 shall be held harmless in the event the purchaser suffers a  
 34 loss of revenue due to a failure of any assets or any portion  
 35 of the network being shared by the network. The bill provides

1 that the framework shall also include a process and procedure  
2 for routing capacity and sharing of power currents needed to  
3 operate the purchaser's equipment and related expenses, a  
4 framework for the standards required regarding network  
5 maintenance, a requirement that the purchaser offer advanced  
6 telecommunications services equitably across the state and  
7 specifically serving areas where those types of services are  
8 not yet available, a requirement that the purchaser grant the  
9 network the right to participate in future upgrades, purchaser  
10 selection criteria, and an analysis of prospective purchasers'  
11 financial stability. The bill provides that the decision  
12 regarding selection of an investment banker shall be final,  
13 and that an unsuccessful investment banker shall not be  
14 entitled to a contested case hearing or to otherwise challenge  
15 the decision.

16       SELECTION PROCESS FOR QUALIFIED PURCHASER. The bill  
17 provides that the selected investment banker shall develop a  
18 process to market which is designed to maximize the state's  
19 proceeds from the sale, and that if the investment banker is  
20 unable to identify a prospective purchaser, an explanation of  
21 the reasons supporting this conclusion shall be made. The  
22 bill provides that the commission, in consultation with the  
23 treasurer of state, shall make a recommendation regarding a  
24 purchaser and the terms of sale to the governor, and that the  
25 governor shall have the right of final approval of the  
26 purchaser and the terms of sale, subject to verification of  
27 the purchaser's ability to adequately operate and maintain the  
28 backbone network. The bill provides that once approval by the  
29 governor has been obtained, the investment banker shall verify  
30 the purchaser's ability to adequately operate and maintain the  
31 backbone network, followed by the commission contracting with  
32 the purchaser for sale of the assets. The bill provides that  
33 the governor, in consultation with the treasurer of state and  
34 the department of management, shall be authorized to negotiate  
35 fair and equitable terms of compensation for the investment

1 banker.

2 NETWORK OPERATION PENDING SALE. The bill provides the  
3 commission shall enter into a memorandum of understanding  
4 regarding procedures for operation of the network with a  
5 proposed purchaser until the sale is finalized with the  
6 proposed purchaser, which shall include a provision that the  
7 purchaser in good faith intends to finalize the purchase and  
8 shall pay a termination penalty if the purchase is not  
9 finalized.

10 ADDITIONAL CONDITIONS OF SALE. The bill provides that any  
11 outstanding debt or liens upon network assets shall be  
12 discharged out of the state's proceeds so that the purchaser  
13 receives marketable title to the assets, and that prepayment  
14 of certificates of participation, defined in the bill, shall  
15 be made prior to closing the sale of assets or as part of  
16 closing the sale, and accomplished in a manner not  
17 jeopardizing the certificate's tax-exempt status. The bill  
18 provides that the state and the purchaser shall negotiate  
19 their relevant interest in rights-of-way and leases and  
20 easements for uses of rights-of-way, and that the purchaser  
21 shall immediately establish points of presence near the  
22 existing network switching centers and establish fiber  
23 extensions and connectivity between them. The bill provides  
24 that the purchaser shall physically locate in the vicinity of  
25 the joint forces headquarters armory in Johnston, Iowa, and  
26 establish fiber connectivity between the ICN hub and the  
27 vendor's location, and that duplicate racks of backbone core  
28 equipment shall be provided by the purchaser and installed by  
29 the network to carry traffic while the network backbone is  
30 transferred to the purchaser. The bill provides that the  
31 purchaser shall purchase the equipment required in this  
32 process for the network and pay any and all related expenses  
33 associated with the conversion effort.

34 CODE CHAPTER 8D AMENDMENTS. The bill provides for a  
35 conforming definition and references to IRUs in Code chapter

1 8D and conforming terminology changes and provisions regarding  
2 changes in ownership of the network.

3 LEGISLATIVE AUTHORIZATION ELIMINATED. The bill deletes a  
4 provision that prohibited the commission from entering into a  
5 contract for the purchase, lease, or improvement of property,  
6 equipment, or services for telecommunications in an amount  
7 greater than \$1 million without prior authorization by a  
8 constitutional majority of each house of the general assembly,  
9 or approval by the legislative council if the general assembly  
10 is not in session. The bill also deletes outdated language  
11 regarding a local school board, governing authority of a  
12 nonpublic school, or area education agency board elections to  
13 provide financing costs for Part III of the network.

14 NETWORK ACQUISITIONS, DISPOSAL, AND ACCESS. The bill adds  
15 a provision that the commission may use IRU agreements to  
16 acquire and dispose of property, equipment, and services. The  
17 bill provides that if the state sells assets of the network  
18 pursuant to the procedure specified in the bill and retains  
19 backbone capacity from another telecommunications provider,  
20 publicly owned facilities that house primary and secondary  
21 switching facilities shall provide access to that provider in  
22 the geographic area to the primary and secondary switching  
23 facilities housing the fiberoptics termination equipment in  
24 established fiber entry ducts, and to the building grounding  
25 system. The bill provides that the provider's access to the  
26 primary and secondary switching facilities will be coordinated  
27 through the network's staff. The bill provides that the state  
28 may negotiate the acquisition of a Part III connection  
29 following the termination of a lease with a qualified provider  
30 if offered by the vendor for such a Part III connection if the  
31 commission determines it to be in the best interest of the  
32 network.

33 NETWORK COSTS AND BILLINGS. The bill provides that in  
34 situations where an entity requests a receiving site location  
35 in a video classroom facility which is authorized by, but not

1 funded by, the originator of the communication, the requesting  
 2 entity shall be directly billed by the video classroom  
 3 facility for operating costs relating to the communication.  
 4 The bill also provides for the inclusion of depreciation costs  
 5 in the determination of rates for use of the system. The bill  
 6 deletes outdated language which had required reports relating  
 7 to the impact of changing technology on potential costs and  
 8 capabilities of the system, and relating to a department of  
 9 education study of new techniques in distant teaching.

10 IOWA COMMUNICATIONS NETWORK FUND INTEREST AND UPGRADE AND  
 11 REPLACEMENT FUND. The bill further provides for the retention  
 12 of interest received by the state from the Iowa communications  
 13 network fund established in Code section 8D.14, and for the  
 14 establishment of an Iowa communications network equipment  
 15 upgrade and replacement fund. The bill provides that the new  
 16 fund will be comprised of the proceeds from the sale of ICN  
 17 assets, including certain state-owned fiberoptic cable and  
 18 related equipment located outside the Des Moines metropolitan  
 19 area, the portion of the fees charged to authorized users for  
 20 depreciation, and interest received by the state as a result  
 21 of investing the contents of the fund. The bill provides that  
 22 contents of the fund shall only be used to replace failed or  
 23 obsolete network equipment owned by the state and equipment  
 24 included in IRU agreements in which the network obtains  
 25 statewide transport capacity.

26 The bill takes effect upon enactment.

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