

APR 2 2004
Place On Calendar

HOUSE FILE 2570
BY COMMITTEE ON GOVERNMENT
OVERSIGHT

(SUCCESSOR TO HF 2536)

(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:

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

HF 2570

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 indefeasible right-of-use agreements, or through a sale which
31 guarantees the continued provision of telecommunications
32 services by the purchaser, telecommunications services and
33 adequate capacity would continue to be provided into the
34 future. Selling the Iowa communications network assets using
35 an intermediary professional agent specializing in

1 telecommunications resources to market the assets will
2 strengthen the ability of the state to receive a fair price
3 for the assets while allowing an impartial third party using
4 predetermined sales criteria to determine the most qualified
5 buyer. By using the sales proceeds to prepay remaining
6 construction debt and provide revenue for an equipment
7 replacement fund, or by providing for the transition to
8 provision of telecommunications services by the purchaser if
9 the alternative purchase option pursuant to section 5 of this
10 Act is approved by the governor, state-provided funding for
11 network maintenance and upgrade will be minimized. Continued
12 provision of the full array of network services will appear
13 seamless to current authorized users when the sales process is
14 completed.

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

17 a. "Advanced telecommunications services" means high-
18 quality voice, data, graphics, and video telecommunications
19 services using any technology with regard to transmission
20 media that utilizes high-speed, switched, broadband
21 telecommunications capability.

22 b. "Authority" means the Iowa communications network sales
23 authority established to oversee the sale of backbone assets
24 pursuant to this Act.

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

34 d. "Backbone assets" means the backbone fiber comprising
35 the five fiber optic rings located outside of the Des Moines

1 metropolitan area and the optronic equipment associated with
2 those rings.

3 e. "Capacity" means the information-carrying ability of a
4 telecommunications facility. The measurement of capacity is
5 determined by the purpose of the facility.

6 f. "Certificates of participation" means the two issuances
7 of certificates of participation issued by the state in 1992
8 and 1993 to fund the construction of the owned fiber and
9 equipment for Parts I and II of the network as defined in
10 chapter 8D.

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

13 h. "Indefeasible right of use" means an indefeasible right
14 to use fiber, including an entire cable or a portion of the
15 capacity of a cable, or channels of a given bandwidth for a
16 defined period of time. The holder of an indefeasible right
17 of use has a property right to the specified wavelengths in
18 the fiber identified in the indefeasible right-of-use
19 agreement for the period of time defined in the indefeasible
20 right-of-use agreement.

21 i. "Iowa communications network hub" means the
22 telecommunications facility located in the joint forces
23 headquarters armory, Johnston, Iowa, where the main switching
24 and maintenance operations of the network take place.

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

26 k. "Network operations center" means the maintenance and
27 network diagnostic equipment that manages the network
28 infrastructure.

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

31 m. "Professional agent" means any person having
32 specialized expertise required in the process of selling the
33 Iowa communications network including but not limited to
34 expertise regarding brokerage, contracting, asset valuation,
35 sales, or negotiation services.

1 n. "Prospective purchaser" means an entity that the
2 professional agent has identified as a potential purchaser of
3 the network backbone assets.

4 o. "Qualified purchaser" means a prospective purchaser
5 that the professional agent has verified is able to adequately
6 operate and maintain the backbone network and recommended to
7 the authority to purchase the network assets as provided in
8 section 4 of this Act.

9 p. "Right-of-way accommodation agreement" means a twenty-
10 year agreement between the network and the department of
11 transportation that includes an option to extend the agreement
12 for an additional ten years, which is definitive with respect
13 to the use of interstate rights-of-way and gives the
14 department of transportation the sole right to approve or deny
15 other users of the sheath, trench, or any of the ducts.

16 q. "Telecommunications facility" means a collection of
17 fibers which originates at an access point and ends at the
18 fiberoptic termination connector attached to the electronic
19 and optronic equipment necessary to transmit voice, video, or
20 data transmissions across the fiberoptic network.

21 r. "Telecommunications services" means the provision of
22 any of the following services:

- 23 (1) Local exchange telephone services.
- 24 (2) Long distance telephone services.
- 25 (3) Internet access services.
- 26 (4) Cable television services.
- 27 (5) Video services.

28 Sec. 2. IOWA COMMUNICATIONS NETWORK SALES AUTHORITY
29 ESTABLISHED.

30 1. AUTHORITY ESTABLISHED -- PURPOSE -- POWERS. An Iowa
31 communications network sales authority is established with the
32 sole authority to oversee the sales process regarding transfer
33 of ownership of the network's backbone assets to a qualified
34 purchaser pursuant to this Act. Subject to final approval of
35 the selection of the qualified purchaser and terms of sale by

1 the governor, the authority's operation shall not be subject
2 to the jurisdiction or control of any other state agency, and
3 the authority shall possess full and sole authority over the
4 Iowa communications network backbone asset sales process.
5 However, the authority is subject to the general operations
6 practices and procedures which are generally applicable to
7 other state agencies during the period of its operation. The
8 authority shall be in existence from the effective date of
9 this Act until a qualified purchaser has been approved by the
10 governor, and all sales agreements necessary to complete the
11 sale have been negotiated and entered into.

12 2. MEMBERSHIP. Membership of the authority shall consist
13 of the treasurer of state, the auditor of state, two members
14 of the Iowa telecommunications and technology commission, and
15 one member of the Iowa utilities board. Three members of the
16 authority shall constitute a quorum, and the members shall
17 elect a chairperson, vice chairperson, secretary, and other
18 officers as determined necessary. Meetings of the authority
19 shall be held at the call of the chairperson or when a
20 majority of the members so requests. The members of the
21 authority shall not receive compensation by reason of their
22 membership.

23 Sec. 3. PROFESSIONAL AGENT RETENTION. The authority shall
24 issue a request for proposals to retain a professional agent
25 with telecommunications asset sales experience to market and
26 coordinate the sales process of the backbone assets.

27 The governor, in consultation with the treasurer of state
28 and the department of management, shall be authorized to
29 negotiate fair and equitable terms of compensation for the
30 professional agent. The described backbone assets shall only
31 be available for a single private purchaser, or a consortium
32 acting as a single private purchaser, to purchase and the
33 state, unless the alternative purchase option pursuant to
34 section 5 of this Act is proposed and approved, shall retain
35 an indefeasible right of use with respect to certain amounts

1 of backbone capacity in optical wavelengths for a negotiated
2 period of seven to twenty-five years, and two optional renewal
3 periods of ten years each. As part of the sale, unless the
4 alternative purchase option pursuant to section 5 of this Act
5 is proposed and approved, the purchaser shall enter into
6 indefeasible right-of-use agreements with the state in which
7 the purchaser shall grant the state an indefeasible right of
8 use with respect to backbone capacity and optical wavelengths
9 and Part II facilities and the dark fiber connecting various
10 Part III aggregation points to network backbone-switching
11 points. During the term of an indefeasible right-of-use
12 agreement, the state as holder of the indefeasible right of
13 use will have complete and total ownership of the fiber or
14 channels identified in the indefeasible right-of-use
15 agreement, may use the fiber or channels as if they were a
16 physically owned asset of the state, and the state's interest
17 in the fiber or channels cannot be annulled or made void by
18 the grantor of the indefeasible right of use or any other
19 party. At the end of the term of an indefeasible right-of-use
20 agreement and any renewal periods, title to the equipment and
21 fiber assets and optical wavelength capacities covered by the
22 agreement shall pass completely to the purchaser. The terms
23 of the sale of the assets shall also include provisions
24 committing the commission to purchase field services,
25 including maintenance, provisioning, and build out, from the
26 purchaser and committing the commission to pay a monthly fee
27 for fiber maintenance and field services for the assets that
28 are sold. The request for proposals shall be issued no later
29 than six months from the date of enactment of this Act. The
30 request for proposals may include:

- 31 1. A detailed list of the network assets for sale.
- 32 2. A detailed description of the unfettered and
33 unrestricted use of specified capacities of optical
34 wavelengths occupying a portion of the backbone assets.
- 35 3. A procedure to determine the compensation for the

1 successful professional agent.

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

5 a. The amount of time the state would allow the
6 professional agent to market the assets.

7 b. A provision that the governor or the governor's
8 designee shall have the ultimate discretion to accept or
9 reject an offer from a qualified purchaser.

10 c. A detailed framework for the indefeasible right-of-use
11 agreement between the state and the successful purchaser as
12 well as indefeasible right-of-use agreements for Part II
13 facilities, unless the alternative purchase option pursuant to
14 section 5 of this Act is proposed and approved. The
15 indefeasible right-of-use agreements and any other agreements
16 necessary to complete the sale shall clearly provide that the
17 network and the state shall be held harmless in the event the
18 purchaser suffers a loss of revenue due to a failure of any
19 assets sold to the purchaser or to a failure of any portion of
20 the network being shared by the network.

21 d. A detailed process and procedures for routing capacity
22 from the backbone termination points in public buildings to
23 sites owned by the purchaser and sharing of alternating
24 current power, direct current power, and high-voltage
25 alternating current power needed to operate the purchaser's
26 equipment and related expenses in the public buildings.

27 e. A detailed framework for the standards required
28 regarding network maintenance.

29 f. A requirement that the purchaser offer advanced
30 telecommunications services equitably across the state,
31 specifically serving areas where those types of services are
32 not yet available.

33 g. A requirement that the purchaser grant the network the
34 right to participate in future upgrades of the backbone
35 electronics statewide in the fiberoptic network outside the

1 Des Moines metropolitan area.

2 h. The criteria to be used as a basis for determining the
3 successful purchaser.

4 i. An analysis of a prospective purchaser's financial
5 stability with particular attention to assessing the
6 prospective purchaser's potential vulnerability to bankruptcy.

7 j. A requirement that during the negotiations process, the
8 prospective purchaser shall offer the state reasonable surety
9 of long-term economic viability. Such surety may include a
10 requirement of posting bond or some other financial
11 compensation to guard against the purchaser's inability to
12 meet the financial terms of the agreement. The purchaser
13 shall guarantee that the state's indefeasible right-of-use
14 agreements shall be protected in the case of the bankruptcy of
15 the purchaser.

16 The authority shall select the professional agent
17 submitting the proposal that provides the best overall value
18 to the state. The public interest requires that the
19 authority's ability to enter into a contract with a
20 professional agent not be delayed; therefore, the decision of
21 the authority shall be final. Notwithstanding the provisions
22 of chapter 17A a professional agent not selected by the
23 authority shall not be entitled to a contested case hearing or
24 to otherwise challenge the decision of the authority.

25 **Sec. 4. MARKETING OF THE NETWORK ASSETS.** Using the
26 parameters included in the request for proposals, the selected
27 professional agent shall develop a process to market and sell
28 the assets designed to maximize the state's proceeds from the
29 sale. During the marketing period, using the predetermined
30 parameters, including meeting financial qualifications, the
31 professional agent shall identify a prospective purchaser and
32 submit the prospective purchaser to a qualification process
33 designed to verify the purchaser's ability to adequately
34 operate and maintain the backbone network. This verification
35 process shall include the following:

1 1. Verifying that the purchaser has proven experience
2 operating a telecommunications network.
3 2. Verifying that the purchaser has the ability to
4 purchase the backbone assets outright or has the collateral to
5 secure financing of a loan to purchase the backbone assets.
6 3. Verifying that the purchaser is aware of its
7 obligations pursuant to chapter 476. In any complaint
8 proceeding initiated by the Iowa utilities board, upon receipt
9 of a written complaint by the purchaser, the board shall
10 render a decision within ninety days of the filing of the
11 complaint. The board, for good cause shown, may extend the
12 deadline for decision. Such extensions may not exceed an
13 additional ninety days unless the parties agree to a longer
14 extension.

15 Upon verification by the professional agent of the
16 purchaser's ability to adequately operate and maintain the
17 backbone network, the authority shall make a recommendation
18 regarding a purchaser and the terms of sale to the governor.
19 The governor shall have the right of final approval of the
20 purchaser and the terms of sale, with the concurrence of the
21 legislative council.

22 If the professional agent is unable to identify a qualified
23 purchaser able to adequately operate and maintain the backbone
24 network, the professional agent shall submit a report to the
25 authority explaining the reasons supporting this conclusion.

26 Sec. 5. TERMS OF SALE -- ALTERNATIVE PURCHASE OPTION.

27 1. As an alternative to the sale of backbone assets with
28 the retention by the state of an indefeasible right-of-use, a
29 prospective purchaser may submit an offer to purchase which
30 includes the provision by the purchaser of all
31 telecommunications services to authorized users, except for
32 authorized users based in Polk county. An offer to purchase
33 pursuant to this option shall be subject to the following
34 terms and conditions:

35 a. Telecommunications services shall be provided by the

1 purchaser to all existing authorized users served by the
2 purchaser, and the transition from the provision of such
3 services by the state to provision by the purchaser shall
4 appear seamless to authorized users. Existing authorized
5 users shall not be required to continue purchasing
6 telecommunications services after a sale pursuant to this
7 section.

8 b. The purchaser may increase or decrease the price of the
9 telecommunications services offered to authorized users only
10 to the extent that any annual increase in any price does not
11 exceed the most recent annual change in the gross domestic
12 product price index as published by the federal government.

13 c. The purchaser shall agree to provide telecommunications
14 services to the authorized users that the purchaser serves for
15 a minimum of seven years following the date of purchase, and
16 may submit an offer which provides for such services for
17 fifteen or twenty-five years.

18 d. The purchaser shall guarantee that telecommunications
19 services shall continue to be provided at a level of
20 technological advancement and reliability at least equivalent
21 to that provided by the state prior to the date of purchase,
22 and shall accommodate the needs of authorized users regarding
23 upgrades, changes, and network maintenance to the same extent
24 as provided by the state prior to the date of purchase. The
25 Iowa utilities board shall possess service regulation
26 authority regarding telecommunications services provided by
27 the purchaser.

28 e. A purchaser submitting an offer pursuant to this
29 section shall be subject to qualification and verification
30 pursuant to section 4 of this Act. An offer may be submitted
31 by a prospective purchaser which would provide for the
32 retention of an indefeasible right-of-use by the state as
33 provided in this Act, for the purchase of backbone assets with
34 provision of telecommunications services by the purchaser
35 pursuant to this section, or which offers both purchasing

1 options with alternative purchase prices for the options.

2 2. In the event that the governor approves a purchase
3 offer incorporating an alternative purchase option pursuant to
4 this section, with the concurrence of the legislative council,
5 the department of management, in consultation with the
6 authority and the executive director of the commission, shall
7 propose rules and submit a recommendation to the general
8 assembly specifying all procedures necessary for the
9 transition of responsibility for the provision of
10 telecommunications services to the purchaser and a proposed
11 timeline for the transition.

12 3. Proceeds from a sale of the backbone assets pursuant to
13 the alternative purchase option as provided in this section
14 shall be deposited in the general fund of the state.

15 Sec. 6. POSTSELECTION PROCEDURES.

16 1. Once the governor has approved a purchaser and the
17 terms of sale, the authority shall enter into a contract with
18 the purchaser for sale of the assets. The authority shall
19 enter into a memorandum of understanding regarding procedures
20 for operation of the network until the sale is finalized with
21 the proposed purchaser. The memorandum shall indicate that
22 the purchaser, in good faith, intends to finalize the purchase
23 and shall pay a termination penalty if the purchaser does not
24 finalize the purchase.

25 2. Any outstanding debt or liens upon the network assets,
26 including the certificates of participation, shall be
27 discharged out of the state's proceeds of closing, so that the
28 purchaser receives marketable title to the assets. Prepayment
29 of the certificates of participation shall be made prior to
30 closing the sale of assets or as part of closing the sale, and
31 shall be accomplished in a way that does not jeopardize the
32 tax-exempt status of the certificates of participation.

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

1 way fee charged by the department of transportation shall be
2 no more favorable than provided for the use of the rights-of-
3 way by any other telecommunications utility.

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

16 5. The authority shall enter into indefeasible right-of-
17 use agreements with the purchaser, unless the alternative
18 purchase option pursuant to section 5 of this Act is approved,
19 in which the purchaser shall grant the state an indefeasible
20 right of use with respect to the backbone optical wavelengths
21 and Part II facilities and the dark fiber connecting various
22 Part III aggregation points to network backbone-switching
23 points. The indefeasible right-of-use agreements and any
24 other agreements necessary to complete the sale shall clearly
25 provide that the network and the state shall not be held
26 liable in any manner in the event the purchaser suffers a loss
27 of revenue due to a failure of any portion of the network
28 being shared by the network.

29 6. The authority shall enter into any other agreements
30 necessary to complete the sale. Unless the alternative
31 purchase option pursuant to section 5 of this Act is approved,
32 these agreements shall include agreements committing the
33 commission to purchase field services, including maintenance
34 provisioning, and build out, from the purchaser and committing
35 the commission to pay a monthly fee for fiber maintenance and

1 field services for the assets that are sold.

2 Sec. 7. PROGRESS REPORTS. The authority, in consultation
3 with the governor, shall submit to the general assembly
4 periodic progress reports at three-month intervals from the
5 effective date of this Act. The reports shall indicate the
6 extent of progress, during the reporting period, in issuing
7 the request for proposals; retaining a professional agent;
8 marketing efforts by the professional agent; identification,
9 qualification, and selection of a purchaser; and the
10 postselection process of finalizing the sale, entering into
11 infeasible right-of-use agreements and maintaining the
12 network, or providing for the transition of the provision of
13 telecommunications services provided by the purchaser if the
14 alternative purchase option pursuant to section 5 of this Act
15 is approved.

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

18 NEW SUBSECTION. 2A. "Infeasible right of use" means an
19 infeasible 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. 9. 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. 10. Section 8D.9, subsection 2, Code Supplement 2003,
2 is amended by striking the subsection.

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

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

29 Sec. 12. Section 8D.13, subsection 2, Code Supplement
30 2003, is amended to read as follows:

31 2. For purposes of this section, unless the context
32 otherwise requires:

33 a. "Part I" means the communications connections **between**
34 to central switching and institutions under the control of the
35 board of regents, nonprofit institutions of higher education

1 eligible for tuition grants, and the regional switching
2 centers for the remainder of the network.

3 b. "Part II" means the communications connections **between**
4 to the regional switching centers and the secondary switching
5 centers.

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

14 Sec. 13. Section 8D.13, subsection 3, Code Supplement
15 2003, is amended to read as follows:

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

32 If a school board, governing authority of a nonpublic school,
33 or area education agency board elects to provide one hundred
34 percent of the financing for the leasing costs for Part III,
35 the school district or area education agency may become part

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

11 Sec. 14. Section 8D.13, Code Supplement 2003, is amended
12 by adding the following new subsection:

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

24 Sec. 15. Section 8D.13, subsection 4, Code Supplement
25 2003, is amended to read as follows:

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

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

30 Sec. 16. Section 8D.13, subsection 5, unnumbered paragraph
31 1, Code Supplement 2003, is amended to read as follows:

32 The state shall lease all fiberoptic cable facilities or
33 facilities with DS-3 capacity for Part III connections for
34 which state funding is provided. The state shall lease all
35 fiberoptic cable facilities or facilities with DS-3 or DS-1

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

12 Sec. 17. Section 8D.13, subsection 6, Code Supplement
13 2003, is amended by striking the subsection.

14 Sec. 18. Section 8D.13, subsection 11, Code Supplement
15 2003, is amended to read as follows:

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

24 Sec. 19. Section 8D.13, subsection 12, Code Supplement
25 2003, is amended to read as follows:

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

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

12 Sec. 20. Section 8D.14, Code 2003, is amended to read as
13 follows:

14 8D.14 IOWA COMMUNICATIONS NETWORK FUND.

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

27 Sec. 21. NEW SECTION. 8D.15 IOWA COMMUNICATIONS NETWORK
28 EQUIPMENT UPGRADE AND REPLACEMENT TRUST FUND.

29 An Iowa communications network equipment upgrade and
30 replacement trust fund is established, separate and apart from
31 all other public moneys or funds of the state, under the
32 control of the treasurer of state and the department of
33 management. The fund shall be comprised of the proceeds from
34 the sale of Iowa communications network assets, including
35 certain state-owned fiberoptic cable and related equipment

1 located outside the Des Moines metropolitan area, and the
2 portion of the fees charged to authorized users for
3 depreciation. Contents of this fund shall only be used to
4 replace failed or obsolete network equipment owned by the
5 state, equipment included in infeasible right-of-use
6 agreements in which the network obtains statewide transport
7 capacity, and failed or obsolete endpoint equipment, and shall
8 not be used for any other purpose. The treasurer of state and
9 the department of management shall jointly verify an annual
10 estimate by the commission of the amount needed for equipment
11 replacement pursuant to this section, and releases of moneys
12 pursuant thereto, except funds to replace failed equipment,
13 shall require an annual appropriation by the general assembly
14 to the commission. The commission may solicit or accept
15 gifts, including donations and bequests, to be deposited into
16 the fund for use in accordance with the purposes of the fund.
17 Interest received by the state as a result of investing the
18 contents of the fund shall be credited to the fund for use by
19 the commission. If the alternative purchase option pursuant
20 to section 5 of this Act is utilized, the Iowa communications
21 network equipment upgrade and replacement trust fund shall not
22 be established and the proceeds from the sale shall be
23 deposited as provided in section 5 of this Act.

24 Sec. 22. Section 21.5, subsection 1, paragraph j, Code
25 2003, is amended to read as follows:

26 j. To discuss the purchase or sale of particular real
27 estate or other state-owned assets only where premature
28 disclosure could be reasonably expected to increase the price
29 the governmental body would have to pay for that the property
30 or decrease the proceeds the governmental body may receive for
31 sale of the property. The minutes and the tape recording of a
32 session closed under this paragraph shall be available for
33 public examination when the transaction discussed is
34 completed.

35 Sec. 23. EFFECTIVE DATE. This Act, being deemed of

1 immediate importance, takes effect upon enactment.

2 EXPLANATION

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

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

26 The bill also provides an alternative process involving a
27 sale to a purchaser which guarantees the continued provision
28 of telecommunications services by the purchaser.

29 DEFINITIONS. The bill provides a definitions section.
30 Included among the defined terms are definitions of
31 "authority" as referring to an Iowa communications network
32 sales authority established to oversee the sale of the
33 backbone assets; "indefeasible right of use" (IRU) as an
34 indefeasible right to use fiber, including an entire cable or
35 a portion of the capacity of a cable, or channels of a given

1 bandwidth for a defined period of time; a "professional agent"
2 as a person having specialized expertise required in the
3 process of selling the Iowa communications network including
4 but not limited to expertise regarding brokerage, contracting,
5 asset valuation, sales, or negotiation services; a
6 "prospective purchaser" as an entity that the professional
7 agent has identified as a potential purchaser of the network
8 backbone assets; and a "qualified purchaser" as a prospective
9 purchaser that the professional agent has verified is able to
10 adequately operate and maintain the backbone network and
11 recommended to the authority to purchase the network assets.

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

31 PROFESSIONAL AGENT RETENTION. The bill provides that the
32 authority shall issue a request for proposals to retain a
33 professional agent with telecommunications asset sales
34 experience to market and coordinate the sales process of the
35 backbone assets. The bill provides that the governor, in

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

1 are sold, unless the alternative purchase option is proposed
2 and approved. The bill provides that the request for
3 proposals shall be issued no later than six months from the
4 bill's date of enactment.

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

35 SELECTION PROCESS FOR QUALIFIED PURCHASER. The bill

1 provides that the authority shall select the professional
2 agent submitting the proposal that provides the best overall
3 value to the state, and that using the parameters included in
4 the request for proposals, the selected professional agent
5 shall develop a process to market and sell the assets designed
6 to maximize the state's proceeds from the sale. The bill
7 provides that during the marketing period, using the
8 predetermined parameters, the professional agent shall
9 identify a prospective purchaser and submit the prospective
10 purchaser to a qualification process designed to verify the
11 purchaser's ability to adequately operate and maintain the
12 backbone network. The bill provides that the verification
13 process shall include verifying that the purchaser has proven
14 experience operating a telecommunications network, and has the
15 ability to purchase the backbone assets outright or has the
16 collateral to secure financing. The bill also provides that
17 there shall be verification that the purchaser is aware of its
18 obligations pursuant to chapter 476, and specifies time frames
19 for decisions by the Iowa utilities board in response to
20 written complaints by purchasers.

21 The bill provides that after verification by the
22 professional agent of the purchaser's ability to adequately
23 operate and maintain the backbone network is given, the
24 authority shall make a recommendation regarding a purchaser
25 and the terms of sale to the governor, and that the governor
26 has the right of final approval of the purchaser and the terms
27 of sale, with the concurrence of the legislative council. The
28 bill provides that if the professional agent is unable to
29 identify a qualified purchaser able to adequately operate and
30 maintain the backbone network, the professional agent shall
31 submit a report to the authority explaining the reasons
32 supporting this conclusion.

33 The bill provides that as an alternative to the sale of
34 backbone assets with the retention by the state of an IRU
35 agreement, a prospective purchaser may submit an offer to

1 purchase which includes the provision of all
2 telecommunications services to authorized users, except
3 authorized users based in Polk county, by the purchaser. The
4 bill provides that existing authorized users shall not be
5 required to continue purchasing telecommunications services
6 from the purchaser, and that the purchaser may change the
7 price of services offered only to the extent that any annual
8 increase in price does not exceed the most recent annual
9 change in the gross domestic product price index as published
10 by the federal government. The bill provides that the
11 purchaser shall provide telecommunications services pursuant
12 to this alternative for a minimum of seven years, and may
13 submit an offer which provides for such services for 15 or 25
14 years. The bill provides that the Iowa utilities board shall
15 possess services regulation authority regarding
16 telecommunications services provided by the purchaser, and
17 that the qualification and verification process shall apply.
18 The bill provides that a purchaser may submit an offer
19 providing for retention by the state of an IRU, or based upon
20 this alternative purchase option, or may submit offers
21 involving both purchase options. The bill provides that if
22 the governor approves a purchase offer incorporating the
23 alternative purchase option, with the concurrence of the
24 legislative council, the department of management, in
25 consultation with the authority and the executive director of
26 the Iowa telecommunications and technology commission, shall
27 propose rules and submit a recommendation to the general
28 assembly specifying procedures and a time line necessary for
29 the transition of responsibility for the provision of
30 telecommunications services to the purchaser. The bill
31 provides that proceeds from the sale pursuant to the
32 alternative purchase option would be deposited into the
33 general fund of the state.

34 NETWORK OPERATION PENDING SALE. The bill provides that the
35 authority shall enter into a memorandum of understanding

1 regarding procedures for operation of the network until the
2 sale is finalized with the prospective purchaser, which shall
3 include a provision that the purchaser in good faith intends
4 to finalize the purchase and shall pay a termination penalty
5 if the purchase is not finalized.

6 ADDITIONAL CONDITIONS OF SALE. The bill provides than any
7 outstanding debt or liens upon the network assets shall be
8 discharged out of the state's proceeds so that the purchaser
9 receives marketable title to the assets, and that prepayment
10 of certificates of participation, defined in the bill, shall
11 be made prior to closing the sale of assets or as part of
12 closing the sale, and accomplished in a manner not
13 jeopardizing the certificate's tax-exempt status. The bill
14 provides that the state and the purchaser shall negotiate
15 their relevant interest in rights-of-way and leases and
16 easements for uses of rights-of-way, that the right-of-way fee
17 charged by the department of transportation shall be no more
18 favorable than provided for the use of the rights-of-way by
19 any other telecommunications utility, and that the purchaser
20 shall immediately establish points of presence near the
21 existing network switching centers and establish fiber
22 extensions and connectivity between them. The bill provides
23 that the purchaser shall physically locate in the vicinity of
24 the joint forces headquarters armory in Johnston, Iowa, and
25 establish fiber connectivity between the ICN hub and the
26 purchaser's location, and that duplicate racks of backbone
27 core equipment shall be provided by the purchaser and
28 installed by the network to carry traffic while the network
29 backbone is transferred to the purchaser. The bill provides
30 that the purchaser shall purchase the equipment required in
31 this process for the network and pay any and all related
32 expenses associated with the conversion effort. The bill
33 provides that the authority, in consultation with the
34 treasurer of state and the governor, shall submit to the
35 general assembly periodic progress reports at three-month

1 intervals from the effective date of the bill indicating
2 progress in issuing the request for proposals; retaining a
3 professional agent; marketing efforts by the professional
4 agent; identification, qualification, and selection of a
5 purchaser; and the postselection process of finalizing the
6 sale, entering into infeasible right-of-use agreements and
7 maintaining the network, or providing for the transition of
8 the provision of telecommunications services provided by the
9 purchaser if the alternative purchase option is approved.

10 CODE CHAPTER 8D AMENDMENTS. The bill provides for a
11 conforming definition and references to IRUs in Code chapter
12 8D and conforming terminology changes and provisions regarding
13 changes in ownership of the network. The bill also provides
14 for the deletion of Code section 8D.9, subsection 2, which
15 requires a private or public agency which had certified to the
16 Iowa telecommunications and technology commission that the
17 agency is a part of or intended to become a part of the
18 network to use the network for all video, data, and voice
19 requirements of the agency unless a waiver was obtained.

20 LEGISLATIVE AUTHORIZATION ELIMINATED. The bill deletes a
21 provision that prohibited the commission from entering into a
22 contract for the purchase, lease, or improvement of property,
23 equipment, or services for telecommunications in an amount
24 greater than \$1 million without prior authorization by a
25 constitutional majority of each house of the general assembly,
26 or approval by the legislative council if the general assembly
27 is not in session. The bill also deletes outdated language
28 regarding a local school board, governing authority of a
29 nonpublic school, or area education agency board elections to
30 provide financing costs for Part III of the network.

31 NETWORK ACQUISITIONS, DISPOSAL, AND ACCESS. The bill adds
32 a provision that the commission may use IRU agreements to
33 acquire and dispose of property, equipment, and services. The
34 bill provides that if the state sells assets of the network
35 pursuant to the procedure specified in the bill and retains

1 backbone capacity from another telecommunications provider,
2 publicly owned facilities that house primary and secondary
3 switching facilities shall provide access to that provider in
4 the geographic area to the primary and secondary switching
5 facilities housing the fiberoptics termination equipment in
6 established fiber entry ducts, and to the building grounding
7 system. The bill provides that the provider's access to the
8 primary and secondary switching facilities will be coordinated
9 through the network's staff. The bill provides that the state
10 may negotiate the acquisition of a Part III connection
11 following the termination of a lease with a qualified provider
12 if offered by the vendor for such a Part III connection if the
13 commission determines it to be in the best interest of the
14 network.

15 NETWORK COSTS AND BILLINGS. The bill provides that in
16 situations where an entity requests a receiving site location
17 in a video classroom facility which is authorized by, but not
18 funded by, the originator of the communication, the requesting
19 entity shall be directly billed by the video classroom
20 facility for operating costs relating to the communication.
21 The bill also provides for the inclusion of depreciation costs
22 in the determination of rates for use of the system. The bill
23 deletes outdated language which had required reports relating
24 to the impact of changing technology on potential costs and
25 capabilities of the system, and relating to a department of
26 education study of new techniques in distant teaching.

27 IOWA COMMUNICATIONS NETWORK FUND INTEREST AND UPGRADE AND
28 REPLACEMENT TRUST FUND. The bill further provides for the
29 retention of interest received by the state from the Iowa
30 communications network fund established in Code section 8D.14,
31 and for the establishment of an Iowa communications network
32 equipment upgrade and replacement trust fund. The bill
33 provides that the new trust fund shall be separate and apart
34 from all other public moneys or funds of the state, and shall
35 be under the control of the treasurer of state and the

1 department of management. The bill provides that the trust
2 fund will be comprised of the proceeds from the sale of ICN
3 assets, including certain state-owned fiberoptic cable and
4 related equipment located outside the Des Moines metropolitan
5 area, and the portion of the fees charged to authorized users
6 for depreciation. The bill provides that contents of the fund
7 shall only be used to replace failed or obsolete network
8 equipment owned by the state, equipment included in IRU
9 agreements in which the network obtains statewide transport
10 capacity, and failed or obsolete endpoint equipment. The bill
11 provides that the treasurer of state and the department of
12 management shall jointly verify an annual estimate by the
13 commission of the amount needed for equipment replacement
14 pursuant to new Code section 8D.15, and that releases of
15 moneys pursuant to the estimate, except funds to replace
16 failed equipment, shall require an annual appropriation by the
17 general assembly to the commission. The bill provides that
18 the commission may solicit or accept gifts, including
19 donations and bequests, to be deposited into the fund for use
20 in accordance with the purposes of the fund, and that interest
21 received by the state as a result of investing the contents of
22 the fund shall be credited to the fund for use by the
23 commission. The bill provides that the fund shall not be
24 established in the event that the alternative purchase option
25 is approved.

26 The bill modifies provisions providing for closed sessions
27 in Code section 21.5 to include discussions involving the sale
28 of real estate or other state-owned assets where premature
29 disclosure could decrease the proceeds a governmental body may
30 receive for the sale of the property.

31 The bill takes effect upon enactment.

32
33
34
35

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

HF 2570 - Sale of ICN Network (LSB 5450 HZ)

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

Fiscal Note Version - New

Description

HF 2570 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. Two different purchase plans are available under this Bill. They are as follows:
 - A. The first sale option is the indefeasible right-of-use agreement.
 - The sale would include most of the backbone fiberoptic cable and optronics, or light-passing equipment. The indefeasible 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 State would continue to provide adequate telecommunications services to the authorized users.
 - 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 indefeasible right-of-use agreement and extensions, the wavelength capacities covered by the agreement will pass completely to the purchaser.
 - The Commission can use indefeasible right-of-use agreements to acquire and dispose of property, equipment, and services.
 - 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.
 - 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.
 - 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. The Commission can also solicit or accept gifts, including donations and bequests, to be deposited into the Iowa Communications Network Equipment Upgrade and Replacement Fund.
 - B. The second sale option is the alternative sale option listed in Section 401 of the Bill.
 - This sale is where the purchaser could purchase all of the Iowa Communications Network, with the exception of Polk County, as long as the purchaser agrees to continue providing telecommunication services to all current authorized users for a

Source

Iowa Communications Network

Dennis C Prouty

April 7, 2004

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.

WATTS, CH
JENKINS
DIX
QUIRK
JACOBY

Suc. ed By HSB 645
S 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:

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

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

645

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

645

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 infeasible 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 infeasible right-of-use agreements with the state in which
22 the purchaser shall grant the state an infeasible 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 infeasible right-of-use
27 agreement, the state as holder of the infeasible right of
28 use will have complete and total ownership of the fiber or
29 channels identified in the infeasible 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 infeasible right of use or any other
34 party. At the end of the term of an infeasible 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.

645

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 infeasible 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

645

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.

27
 28
 29
 30
 31
 32
 33
 34
 35