

House Study Bill 645

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 TLSB 5450HC 80
6 rn/pj/5

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1 1 Section 1. SALE OF IOWA COMMUNICATIONS NETWORK ASSETS ==
1 2 FINDINGS AND PURPOSE AND DEFINITIONS.
1 3 1. FINDINGS AND PURPOSE. The Iowa communications network
1 4 is a valuable state telecommunications asset and has provided
1 5 fair, reasonable, and predictable access to advanced
1 6 telecommunications technology for authorized users for the
1 7 past ten years. With over seven hundred seventy video
1 8 classrooms located statewide and three thousand one hundred
1 9 miles of owned fiber, the more than one thousand two hundred
1 10 authorized users are able to equally access state-of-the-art
1 11 voice, video, data, and internet services at comparable prices
1 12 statewide, regardless of location. At a time when budgets are
1 13 strained and there is a shortage in the availability of
1 14 educators, it is essential that the educational content
1 15 carried over the Iowa communications network be preserved and
1 16 enhanced. It is also vital that secure telecommunications
1 17 services provided by the Iowa communications network to
1 18 homeland security and public defense providers be retained.
1 19 The state desires to remain a credible business partner to all
1 20 current authorized network users. To ensure that the
1 21 utilization of the Iowa communications network resource is
1 22 maximized while minimizing further investment by the state to
1 23 maintain the infrastructure, it is in the best interest of the
1 24 citizens of this state to offer some of the assets of the Iowa
1 25 communications network for sale, while retaining ample
1 26 capacity to provide authorized users required
1 27 telecommunications services now and in the future. Through a
1 28 sale of most of the fiberoptic cable and optronics, or light=
1 29 passing equipment, and retaining capacity through long-term
1 30 infeasible right-of-use agreements, the state would continue
1 31 to provide telecommunications services and adequate capacity
1 32 into the future. Selling the Iowa communications network
1 33 assets using an intermediary investment banker specializing in
1 34 telecommunications resources to market the assets will
1 35 strengthen the ability of the state to receive a fair price
2 1 for the assets while allowing an impartial third party using
2 2 predetermined sales criteria to determine the most qualified
2 3 buyer. By using the sales proceeds to prepay remaining
2 4 construction debt and provide revenue for an equipment
2 5 replacement fund, state-provided funding for network
2 6 maintenance and upgrade will be minimized. Continued
2 7 provision of the full array of network services will appear
2 8 seamless to current authorized users when the sales process is
2 9 completed.
2 10 2. DEFINITIONS. As used in sections 1 through 6 of this
2 11 Act, unless the context otherwise requires:
2 12 a. "Advanced telecommunications services" means high=
2 13 quality voice, data, graphics, and video telecommunications
2 14 services using any technology with regard to transmission
2 15 media that utilizes high-speed, switched, broadband
2 16 telecommunications capability.
2 17 b. "Authorized user" means a private or public agency, as
2 18 defined in section 8D.2, except for a public or private agency
2 19 which was required pursuant to section 8D.9, subsection 1, to
2 20 certify to the commission not later than July 1, 1994, the

2 21 agency's intent to become a part of the network and which did
2 22 not provide such certification. Agencies that obtained
2 23 legislative approval to join the network after July 1, 1994,
2 24 will be treated as a public or private agency for purposes of
2 25 this definition and all provisions of chapter 8D.

2 26 c. "Capacity" means the information-carrying ability of a
2 27 telecommunications facility. The measurement of capacity is
2 28 determined by the purpose of the facility.

2 29 d. "Certificates of participation" means the two issuances
2 30 of certificates of participation issued by the state in 1992
2 31 and 1993 to fund the construction of the owned fiber and
2 32 equipment for Parts I and II of the network as defined in
2 33 chapter 8D.

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

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

3 5 g. "Investment banker" means a financial services firm
3 6 that assists companies and governments in issuing securities,
3 7 assists investors in purchasing securities, manages financial
3 8 assets, trades securities, and provides financial advice.

3 9 h. "Iowa communications network hub" means the
3 10 telecommunications facility located in the joint forces
3 11 headquarters armory, Johnston, Iowa, where the main switching
3 12 and maintenance operations of the network take place.

3 13 i. "Network" means the Iowa communications network.

3 14 j. "Network operations center" means the maintenance and
3 15 network diagnostic equipment that manages the network
3 16 infrastructure.

3 17 k. "Optronics" means the fiberoptic equipment that
3 18 activates the fiber and allows light to traverse.

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

3 23 m. "Qualified purchaser" means a prospective purchaser
3 24 that has been approved by the governor and qualified in
3 25 accordance with the provisions of section 4 of this Act.

3 26 o. "Right-of-way accommodation agreement" means a twenty=
3 27 year agreement between the network and the department of
3 28 transportation that includes an option to extend the agreement
3 29 for an additional ten years, which is definitive with respect
3 30 to the use of interstate rights-of-way and gives the
3 31 department of transportation the sole right to approve or deny
3 32 other users of the sheath, trench, or any of the ducts.

3 33 p. "Telecommunications facility" means a collection of
3 34 fibers which originates at an access point and ends at the
3 35 fiberoptic termination connector attached to the electronic
4 1 and optronic equipment necessary to transmit voice, video, or
4 2 data transmissions across the fiberoptic network.

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

4 11 The governor, in consultation with the treasurer of state
4 12 and the department of management, shall be authorized to
4 13 negotiate fair and equitable terms of compensation for the
4 14 investment banker. The described backbone assets shall only
4 15 be available for a single private vendor to purchase and the
4 16 state shall retain an indefeasible right of use with respect
4 17 to certain amounts of backbone capacity in optical wavelengths
4 18 for a negotiated period of years, which shall not be less than
4 19 twenty-five years and two optional renewal periods of ten
4 20 years. As part of the sale, the purchaser shall enter into
4 21 indefeasible right-of-use agreements with the state in which
4 22 the purchaser shall grant the state an indefeasible right of
4 23 use with respect to backbone capacity and optical wavelengths
4 24 and Part II facilities and the dark fiber connecting various
4 25 Part III aggregation points to network backbone-switching
4 26 points. During the term of an indefeasible right-of-use
4 27 agreement, the state as holder of the indefeasible right of
4 28 use will have complete and total ownership of the fiber or
4 29 channels identified in the indefeasible right-of-use
4 30 agreement, may use the fiber or channels as if they were a
4 31 physically owned asset of the state, and the state's interest

4 32 in the fiber or channels cannot be annulled or made void by
4 33 the grantor of the indefeasible right of use or any other
4 34 party. At the end of the term of an indefeasible right-of-use
4 35 agreement and any renewal periods, title to the equipment and
5 1 fiber assets and optical wavelength capacities covered by the
5 2 agreement shall pass completely to the purchaser. The terms
5 3 of the sale of the assets shall also include provisions
5 4 committing the commission to purchase field services,
5 5 including maintenance, provisioning, and build out, from the
5 6 purchaser and committing the commission to pay a monthly fee
5 7 for fiber maintenance and field services for the assets that
5 8 are sold. The request for proposals shall be issued no later
5 9 than six months from the date of enactment of this Act. The
5 10 request for proposals may include:

5 11 1. A detailed list of the network assets for sale.

5 12 2. A detailed description of the unfettered and
5 13 unrestricted use of specified capacities of optical
5 14 wavelengths occupying a portion of the fiber backbone asset
5 15 relating to the five fiberoptic rings located outside the Des
5 16 Moines metropolitan area.

5 17 3. A procedure to determine the compensation for the
5 18 successful investment banker.

5 19 4. Parameters surrounding the sale, to be determined by
5 20 the governor, which shall include but not be limited to the
5 21 following:

5 22 a. The amount of time the state would allow the investment
5 23 banker to market the assets.

5 24 b. A provision that the governor or the governor's
5 25 designee shall have the ultimate discretion to accept or
5 26 reject an offer from a prospective purchaser.

5 27 c. A detailed framework for the indefeasible right-of-use
5 28 agreement between the state and the successful purchaser as
5 29 well as indefeasible right-of-use agreements for Part II
5 30 facilities. The indefeasible right-of-use agreements and any
5 31 other agreements necessary to complete the sale shall clearly
5 32 provide that the network and the state shall be held harmless
5 33 in the event the purchaser suffers a loss of revenue due to a
5 34 failure of any assets sold to the purchaser or to a failure of
5 35 any portion of the network being shared by the network.

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

6 7 e. A detailed framework for the standards required
6 8 regarding network maintenance.

6 9 f. A requirement that the purchaser offer advanced
6 10 telecommunications services equitably across the state,
6 11 specifically serving areas where those types of services are
6 12 not yet available.

6 13 g. A requirement that the purchaser grant the network the
6 14 right to participate in future upgrades of the backbone
6 15 electronics statewide in the fiberoptic network outside the
6 16 Des Moines metropolitan area.

6 17 h. The criteria to be used as a basis for determining the
6 18 successful purchaser.

6 19 i. An analysis of a prospective purchaser's financial
6 20 stability with particular attention to assessing the
6 21 prospective purchaser's potential vulnerability to bankruptcy.

6 22 The commission, in consultation with the treasurer of
6 23 state, shall select the investment banker submitting the
6 24 proposal that provides the best overall value to the state.
6 25 The public interest requires that the commission's ability to
6 26 enter into a contract with an investment banker not be
6 27 delayed; therefore, the decision of the commission, in
6 28 consultation with the treasurer of state, shall be final.
6 29 Notwithstanding the provisions of chapter 17A or the
6 30 commission's administrative rules, an investment banker not
6 31 selected by the commission shall not be entitled to a
6 32 contested case hearing or to otherwise challenge the decision
6 33 of the commission.

6 34 Sec. 3. MARKETING OF THE NETWORK ASSETS. Using the
6 35 parameters included in the request for proposals, the selected
7 1 investment banker shall develop a process to market and sell
7 2 the assets designed to maximize the state's proceeds from the
7 3 sale. At the conclusion of the marketing period, using the
7 4 predetermined parameters, including meeting financial
7 5 qualifications, the investment banker shall either recommend a
7 6 prospective purchaser of the network assets to the commission
7 7 and the treasurer of state or report to the commission and the

7 8 treasurer of state that the investment banker was unable to
7 9 identify a prospective purchaser. If the investment banker is
7 10 unable to identify a prospective purchaser, the report shall
7 11 include an explanation of the reasons supporting this
7 12 conclusion. The commission, in consultation with the
7 13 treasurer of state, shall make a recommendation regarding a
7 14 purchaser and the terms of sale to the governor. The governor
7 15 shall have the right of final approval of the purchaser and
7 16 the terms of sale, subject to verification of the purchaser's
7 17 ability to adequately operate and maintain the backbone
7 18 network.

7 19 Sec. 4. QUALIFICATION OF PURCHASER. Once the governor has
7 20 approved a purchaser and the terms of sale, the investment
7 21 banker shall verify the purchaser's ability to adequately
7 22 operate and maintain the backbone network. This verification
7 23 shall include the following:

7 24 1. Verifying that the purchaser has proven experience
7 25 operating a telecommunications network.

7 26 2. Verifying that the purchaser has the ability to
7 27 purchase the network outright or has the collateral to secure
7 28 financing of a loan.

7 29 3. Other criteria as established by the general assembly
7 30 or the governor.

7 31 Upon verification by the investment banker of the
7 32 purchaser's ability to adequately operate and maintain the
7 33 backbone network, the commission shall enter into a contract
7 34 with the purchaser for sale of the assets.

7 35 Sec. 5. POSTSELECTION PROCEDURES.

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

8 9 2. Any outstanding debt or liens upon the network assets,
8 10 including the certificates of participation, shall be
8 11 discharged out of the state's proceeds of closing, so that the
8 12 purchaser receives marketable title to the assets. Prepayment
8 13 of the certificates of participation shall be made prior to
8 14 closing the sale of assets or as part of closing the sale, and
8 15 shall be accomplished in a way that does not jeopardize the
8 16 tax-exempt status of the certificates of participation.

8 17 3. The state and the purchaser shall also negotiate their
8 18 relevant interest in right-of-way accommodation agreements and
8 19 leases and easements for uses of rights-of-way.

8 20 4. The purchaser shall immediately establish points of
8 21 presence near the existing network switching centers and
8 22 establish fiber extensions and connectivity between them. The
8 23 purchaser shall physically locate in the vicinity of the joint
8 24 forces headquarters armory in Johnston, Iowa, and establish
8 25 fiber connectivity between the network hub and the vendor's
8 26 location. Duplicate racks of backbone core equipment shall be
8 27 provided by the purchaser and installed by the network to
8 28 carry traffic while the network backbone is transferred to the
8 29 purchaser. The purchaser shall purchase the equipment
8 30 required in this process for the network and pay any and all
8 31 related expenses associated with this conversion effort.

8 32 5. The commission shall enter into indefeasible right-of=
8 33 use agreements with the purchaser in which the purchaser shall
8 34 grant the state an indefeasible right of use with respect to
8 35 the backbone optical wavelengths and Part II facilities and
9 1 the dark fiber connecting various Part III aggregation points
9 2 to network backbone-switching points. The indefeasible right=
9 3 of-use agreements and any other agreements necessary to
9 4 complete the sale shall clearly provide that the network and
9 5 the state shall not be held liable in any manner in the event
9 6 the purchaser suffers a loss of revenue due to a failure of
9 7 any portion of the network being shared by the network.

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

9 16 Sec. 6. Section 8D.2, Code Supplement 2003, is amended by
9 17 adding the following new subsection:

9 18 NEW SUBSECTION. 2A. "Indefeasible right of use" means an

9 19 infeasible right to use fiber, including an entire cable or
9 20 a portion of the capacity of a cable, or channels of a given
9 21 bandwidth for a defined period of time.

9 22 Sec. 7. Section 8D.3, subsection 3, paragraph i, Code
9 23 Supplement 2003, is amended to read as follows:

9 24 i. Evaluate existing and projected rates for use of the
9 25 system and ensure that rates are sufficient to pay for the
9 26 operation and required equipment upgrade and replacement of
9 27 the system excluding the cost of construction and lease costs
9 28 for Parts I, II, and III. The commission shall establish all
9 29 hourly rates to be charged to all authorized users for the use
9 30 of the network. A fee established by the commission to be
9 31 charged to a hospital licensed pursuant to chapter 135B, a
9 32 physician clinic, or the federal government shall be at an
9 33 appropriate rate so that, at a minimum, there is no state
9 34 subsidy related to the costs of the connection or use of the
9 35 network related to such user.

10 1 Sec. 8. Section 8D.11, subsection 1, Code 2003, is amended
10 2 to read as follows:

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

10 27 Sec. 9. Section 8D.13, subsection 2, Code Supplement 2003,
10 28 is amended to read as follows:

10 29 2. For purposes of this section, unless the context
10 30 otherwise requires:

10 31 a. "Part I" means the communications connections ~~between~~
10 32 ~~to~~ central switching and institutions under the control of the
10 33 board of regents, nonprofit institutions of higher education
10 34 eligible for tuition grants, and the regional switching
10 35 centers for the remainder of the network.

11 1 b. "Part II" means the communications connections ~~between~~
11 2 ~~to~~ the regional switching centers and the secondary switching
11 3 centers.

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

11 12 Sec. 10. Section 8D.13, subsection 3, Code Supplement
11 13 2003, is amended to read as follows:

11 14 3. The financing for the procurement costs for the
11 15 entirety of Part I except for the communications connections
11 16 ~~between~~ ~~to~~ central switching and institutions under the
11 17 control of the board of regents, and nonprofit institutions of
11 18 higher education eligible for tuition grants, and for the
11 19 video, data, and voice capacity for state agencies and for
11 20 Part II and Part III, shall be provided by the state. The
11 21 financing for the procurement and maintenance costs for Part
11 22 III shall be provided by the state. ~~A local school board,~~
~~11 23 governing authority of a nonpublic school, or an area~~
~~11 24 education agency board may elect to provide one hundred~~
~~11 25 percent of the financing for the procurement and maintenance~~
~~11 26 costs for Part III to become part of the network. The basis~~
~~11 27 for the amount of state financing is one hundred percent of a~~
~~11 28 single interactive audio and interactive video connection for~~
~~11 29 Part III, and such data and voice capacity as is necessary.~~

11 30 If a school board, governing authority of a nonpublic school,
11 31 or area education agency board elects to provide one hundred
11 32 percent of the financing for the leasing costs for Part III,
11 33 the school district or area education agency may become part
11 34 of the network as soon as the network can reasonably connect
11 35 the district or agency. A local school board, governing
12 1 authority of a nonpublic school, or an area education agency
12 2 board may also elect not to become part of the network.
12 3 Construction of Part III, related to a school board, governing
12 4 authority of a nonpublic school, or area education agency
12 5 board which provides one hundred percent of the financing for
12 6 the leasing costs for Part III, may proceed as determined by
12 7 the commission and consistent with the purpose of this
12 8 chapter.

12 9 Sec. 11. Section 8D.13, Code Supplement 2003, is amended
12 10 by adding the following new subsection:

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

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

12 24 4. The commission ~~shall develop the requests for proposals~~
12 25 ~~may enter into contracts and indefeasible right-of-use~~
12 26 ~~agreements~~ that are needed for the Iowa communications network
12 27 ~~to function~~ with sufficient capacity to serve the video, data,
12 28 and voice requirements of state agencies and for educational
12 29 telecommunications applications. ~~The commission shall develop~~
12 30 ~~a request for proposals for each of the systems that will make~~
12 31 ~~up the network. The commission may develop a request for~~
12 32 ~~proposals for each definitive component of the network or the~~
12 33 ~~commission may provide in the request for proposals for each~~
12 34 ~~such system that separate contracts may be entered into for~~
12 35 ~~each definitive component covered by the request for~~
13 1 ~~proposals. The requests for proposals contracts entered into~~
13 2 ~~by the commission may be for the purchase, lease-purchase, or~~
13 3 ~~lease of the component parts of the network consistent with~~
13 4 ~~the provisions of this chapter, may require maintenance costs~~
13 5 ~~to be identified, and the resulting contract may provide for~~
13 6 ~~maintenance for parts of the network. The master contract may~~
13 7 ~~provide for electronic classrooms, satellite equipment,~~
13 8 ~~receiving equipment, studio and production equipment, and~~
13 9 ~~other associated equipment as required. The indefeasible~~
13 10 ~~right-of-use agreements entered into by the commission may be~~
13 11 ~~long-term agreements and may retain the right to use portions~~
13 12 ~~of capacity of any fiberoptic cable that the commission sells~~
13 13 ~~to a third party. The indefeasible right-of-use agreements~~
13 14 ~~may include provisions requiring the commission to contribute~~
13 15 ~~to the cost of maintenance and upgrades of the network.~~
13 16 ~~During the term of an indefeasible right-of-use agreement, the~~
13 17 ~~state as a party to the indefeasible right-of-use agreement~~
13 18 ~~shall have complete and total ownership of the fiber or~~
13 19 ~~channels identified in the indefeasible right-of-use~~
13 20 ~~agreement, may use the fiber or channels as if they were a~~
13 21 ~~physically owned asset of the state, and the state's interest~~
13 22 ~~in the fiber or channels cannot be annulled or made void by~~
13 23 ~~the grantor of the indefeasible right of use or any other~~
13 24 ~~party. At the end of the term of an indefeasible right-of-use~~
13 25 ~~agreement and any renewal periods, title to the equipment and~~
13 26 ~~fiber assets and optical wavelength capacities covered by the~~
13 27 ~~agreement shall pass completely to the purchaser.~~

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

13 30 The state shall lease all fiberoptic cable facilities or
13 31 facilities with DS=3 capacity for Part III connections for
13 32 which state funding is provided. The state shall lease all
13 33 fiberoptic cable facilities or facilities with DS=3 or DS=1
13 34 capacity for the judicial branch, judicial district department
13 35 of correctional services, and state agency connections for
14 1 which state funding is provided. Such facilities shall be
14 2 leased from qualified providers. The state shall not own such
14 3 facilities, except for those facilities owned by the state as
14 4 of January 1, 1994. Notwithstanding any other provision of
14 5 this section, the state may negotiate the acquisition of a

14 6 Part III connection following the termination of a lease with
14 7 a qualified provider if offered by the vendor for such a Part
14 8 III connection, if the commission determines it to be in the
14 9 best interest of the network.

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

14 12 Sec. 15. Section 8D.13, subsection 11, Code Supplement
14 13 2003, is amended to read as follows:

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

14 22 Sec. 16. Section 8D.13, subsection 12, Code Supplement
14 23 2003, is amended to read as follows:

14 24 12. The commission, on its own or as recommended by an
14 25 advisory committee of the commission and approved by the
14 26 commission, shall permit a fee to be charged by a receiving
14 27 site to the originator of the communication provided on the
14 28 network. The fee charged shall be for the purpose of
14 29 recovering the operating costs of a receiving site. The fee
14 30 charged shall be reduced by an amount received by the
14 31 receiving site pursuant to a state appropriation for such
14 32 costs, or federal assistance received for such costs. Fees
14 33 established under this subsection shall be paid by the
14 34 originator of the communication directly to the receiving
14 35 site. In the event that an entity requests a receiving site

15 1 location in a video classroom facility which is authorized by,
15 2 but not funded by, the originator of the communication, the
15 3 requesting entity shall be directly billed by the video
15 4 classroom facility for operating costs relating to the

15 5 communication. For purposes of this section, "operating
15 6 costs" include the costs associated with the management or
15 7 coordination, operations, utilities, classroom, equipment,
15 8 maintenance, and other costs directly related to providing the
15 9 receiving site.

15 10 Sec. 17. Section 8D.14, Code 2003, is amended to read as
15 11 follows:

15 12 8D.14 IOWA COMMUNICATIONS NETWORK FUND.

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

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

15 27 An Iowa communications network equipment upgrade and
15 28 replacement fund is created in the office of the treasurer of
15 29 state under the control of the Iowa telecommunications and
15 30 technology commission and the department of management. The
15 31 fund shall be comprised of the proceeds from the sale of Iowa
15 32 communications network assets, including certain state-owned
15 33 fiberoptic cable and related equipment located outside the Des
15 34 Moines metropolitan area, and the portion of the fees charged
15 35 to authorized users for depreciation. Contents of this fund
16 1 shall only be used to replace failed or obsolete network
16 2 equipment owned by the state and equipment included in
16 3 indefeasible right-of-use agreements in which the network
16 4 obtains statewide transport capacity. The department of
16 5 management must authorize all releases of moneys from the fund
16 6 to the commission and such authorization shall only be for the
16 7 purposes designated in this section. The commission may
16 8 solicit or accept gifts, including donations and bequests, to
16 9 be deposited into the fund for use in accordance with the
16 10 purposes of the fund. Interest received by the state as a
16 11 result of investing the contents of the fund shall be credited
16 12 to the fund for use by the commission.

16 13 Sec. 19. EFFECTIVE DATE. This Act, being deemed of
16 14 immediate importance, takes effect upon enactment.

16 15 EXPLANATION

16 16 This bill provides a mechanism for the sale of Iowa

16 17 communications network (ICN) assets with specified retained
16 18 rights by the state, and provides for related technical and
16 19 substantive changes to the provisions of Code chapter 8D.
16 20 FINDINGS AND PURPOSE. The bill contains a statement of
16 21 findings and purpose section relating to legislative intent
16 22 regarding the sale, noting that the ICN is a valuable state
16 23 telecommunications asset, that it provides equal access to
16 24 users of state-of-the-art voice, video, data, and internet
16 25 services at comparable prices statewide, and that it is
16 26 essential that the educational content it carries, and the
16 27 public defense functions it serves, be retained. The bill
16 28 provides that in order to ensure that ICN utilization is
16 29 maximized while minimizing further investment by the state to
16 30 maintain infrastructure, it is in the best interest of the
16 31 citizens of the state to offer some ICN assets for sale, while
16 32 retaining the capacity to provide services to users. The bill
16 33 provides that this would be accomplished through the sale of
16 34 most of the fiberoptic cable and optronics, or light-passing
16 35 equipment, while retaining capacity through long-term
17 1 indefeasible right-of-use agreements, thereby continuing to
17 2 provide telecommunications services and adequate capacity into
17 3 the future.

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

17 19 INVESTMENT BANKER AND CONDITIONS OF SALE. The bill
17 20 provides that the Iowa telecommunications and technology
17 21 commission, in collaboration with the treasurer of state,
17 22 shall issue a request for proposals to retain an investment
17 23 banker with telecommunications asset sales experience to
17 24 market and coordinate the sales process of the backbone fiber
17 25 comprising the five fiberoptic rings located outside the Des
17 26 Moines metropolitan area and the optronic equipment associated
17 27 with the backbone rings. The bill provides that the assets
17 28 shall only be available to a single private vendor to purchase
17 29 and that the state will retain an indefeasible right of use
17 30 with respect to certain amounts of backbone capacity in
17 31 optical wavelengths for a negotiated period of years, which
17 32 shall not be less than 25 years with two optional 10-year
17 33 renewal periods. The bill provides that IRU agreements will
17 34 involve the purchaser granting the state an indefeasible right
17 35 of use with respect to the backbone capacity and optical
18 1 wavelengths and Part II facilities and the dark fiber
18 2 connecting various Part III aggregation points to network
18 3 backbone-switching points. The bill provides that during the
18 4 term of an IRU agreement, the state as holder of the IRU will
18 5 have complete and total ownership of the fiber or channels
18 6 identified in the IRU agreement, may use the fiber or channels
18 7 as if they were a physically owned asset of the state, and the
18 8 state's interest in the fiber or channels cannot be annulled
18 9 or made void by the grantor of the IRU or any other party.
18 10 The bill provides that at the conclusion of the term of the
18 11 IRU agreement and any renewal periods, title to the equipment
18 12 and fiber assets and optical wavelength capacities covered by
18 13 the agreements passes to the purchaser. The bill provides
18 14 that the terms of the sale shall include provisions committing
18 15 the commission to purchase field services, including
18 16 maintenance, provisioning, and build out, from the purchaser
18 17 and committing the commission to pay a monthly fee for fiber
18 18 maintenance and field services for the assets that are sold.
18 19 The bill provides that the request for proposals shall be
18 20 issued no later than six months from the bill's enactment
18 21 date.

18 22 The bill provides a list of potential subject areas for
18 23 incorporation into the request for proposals, including, among
18 24 others, a procedure to determine investment banker
18 25 compensation. The bill provides that the parameters
18 26 surrounding the sale, to be determined by the governor, shall
18 27 include, but not be limited to, the amount of time the state

18 28 would allow for marketing by the investment banker, the
18 29 provision that the governor or the governor's designee will
18 30 have ultimate discretion to accept or reject an offer, a
18 31 detailed framework for IRU agreements between the state and a
18 32 purchaser, including the provision that the ICN and the state
18 33 shall be held harmless in the event the purchaser suffers a
18 34 loss of revenue due to a failure of any assets or any portion
18 35 of the network being shared by the network. The bill provides
19 1 that the framework shall also include a process and procedure
19 2 for routing capacity and sharing of power currents needed to
19 3 operate the purchaser's equipment and related expenses, a
19 4 framework for the standards required regarding network
19 5 maintenance, a requirement that the purchaser offer advanced
19 6 telecommunications services equitably across the state and
19 7 specifically serving areas where those types of services are
19 8 not yet available, a requirement that the purchaser grant the
19 9 network the right to participate in future upgrades, purchaser
19 10 selection criteria, and an analysis of prospective purchasers'
19 11 financial stability. The bill provides that the decision
19 12 regarding selection of an investment banker shall be final,
19 13 and that an unsuccessful investment banker shall not be
19 14 entitled to a contested case hearing or to otherwise challenge
19 15 the decision.

19 16 SELECTION PROCESS FOR QUALIFIED PURCHASER. The bill
19 17 provides that the selected investment banker shall develop a
19 18 process to market which is designed to maximize the state's
19 19 proceeds from the sale, and that if the investment banker is
19 20 unable to identify a prospective purchaser, an explanation of
19 21 the reasons supporting this conclusion shall be made. The
19 22 bill provides that the commission, in consultation with the
19 23 treasurer of state, shall make a recommendation regarding a
19 24 purchaser and the terms of sale to the governor, and that the
19 25 governor shall have the right of final approval of the
19 26 purchaser and the terms of sale, subject to verification of
19 27 the purchaser's ability to adequately operate and maintain the
19 28 backbone network. The bill provides that once approval by the
19 29 governor has been obtained, the investment banker shall verify
19 30 the purchaser's ability to adequately operate and maintain the
19 31 backbone network, followed by the commission contracting with
19 32 the purchaser for sale of the assets. The bill provides that
19 33 the governor, in consultation with the treasurer of state and
19 34 the department of management, shall be authorized to negotiate
19 35 fair and equitable terms of compensation for the investment
20 1 banker.

20 2 NETWORK OPERATION PENDING SALE. The bill provides the
20 3 commission shall enter into a memorandum of understanding
20 4 regarding procedures for operation of the network with a
20 5 proposed purchaser until the sale is finalized with the
20 6 proposed purchaser, which shall include a provision that the
20 7 purchaser in good faith intends to finalize the purchase and
20 8 shall pay a termination penalty if the purchase is not
20 9 finalized.

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

20 34 CODE CHAPTER 8D AMENDMENTS. The bill provides for a
20 35 conforming definition and references to IRUs in Code chapter
21 1 8D and conforming terminology changes and provisions regarding
21 2 changes in ownership of the network.

21 3 LEGISLATIVE AUTHORIZATION ELIMINATED. The bill deletes a

21 4 provision that prohibited the commission from entering into a
21 5 contract for the purchase, lease, or improvement of property,
21 6 equipment, or services for telecommunications in an amount
21 7 greater than \$1 million without prior authorization by a
21 8 constitutional majority of each house of the general assembly,
21 9 or approval by the legislative council if the general assembly
21 10 is not in session. The bill also deletes outdated language
21 11 regarding a local school board, governing authority of a
21 12 nonpublic school, or area education agency board elections to
21 13 provide financing costs for Part III of the network.

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

21 33 NETWORK COSTS AND BILLINGS. The bill provides that in
21 34 situations where an entity requests a receiving site location
21 35 in a video classroom facility which is authorized by, but not
22 1 funded by, the originator of the communication, the requesting
22 2 entity shall be directly billed by the video classroom
22 3 facility for operating costs relating to the communication.
22 4 The bill also provides for the inclusion of depreciation costs
22 5 in the determination of rates for use of the system. The bill
22 6 deletes outdated language which had required reports relating
22 7 to the impact of changing technology on potential costs and
22 8 capabilities of the system, and relating to a department of
22 9 education study of new techniques in distant teaching.

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

22 26 The bill takes effect upon enactment.

22 27 LSB 5450HC 80

22 28 rn/pj/5