

**House Study Bill 184 - Introduced**

HOUSE FILE \_\_\_\_\_

BY (PROPOSED COMMITTEE ON  
GOVERNMENT OVERSIGHT BILL  
BY CHAIRPERSON KAUFMANN)

**A BILL FOR**

1 An Act requiring the approval of the general assembly of  
2 certain petitions for franchise involving a request for the  
3 right to exercise eminent domain, and including effective  
4 date and retroactive applicability provisions.

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

1 Section 1. Section 478.1, Code 2015, is amended by adding  
2 the following new subsection:

3 NEW SUBSECTION. 1A. A person seeking approval for a  
4 franchise or extension of a franchise for a project described  
5 in section 478.6A, subsection 1, must receive approval of the  
6 general assembly as provided in section 478.6A.

7 Sec. 2. Section 478.2, subsection 3, paragraph b,  
8 subparagraph (7), Code 2015, is amended to read as follows:

9 (7) A description of the process used by the utilities board  
10 in making a decision on whether to approve a franchise or grant  
11 the right to take property by eminent domain and, if applicable  
12 to the project, a description of the process under section  
13 478.6A for making the decision on whether to grant the right to  
14 take property by eminent domain.

15 Sec. 3. Section 478.3, subsection 1, Code 2015, is amended  
16 by adding the following new paragraph:

17 NEW PARAGRAPH. *Oh.* If the exercise of the right of  
18 eminent domain is to be used, the number of miles to be  
19 constructed and, if the construction involves the extension of  
20 an existing line, the number of miles in length of the existing  
21 transmission line.

22 Sec. 4. Section 478.3, subsection 2, paragraph b, Code 2015,  
23 is amended to read as follows:

24 *b.* The utilities board may waive the proof required for  
25 such allegations which are not applicable to a particular  
26 proposed project. If the petition is subject to section 478.1,  
27 subsection 1A, the utilities board shall submit reasons in  
28 writing for any waiver granted pursuant to this paragraph "b" to  
29 the general assembly, as provided in section 478.6A.

30 Sec. 5. Section 478.4, Code 2015, is amended to read as  
31 follows:

32 **478.4 Franchise — hearing.**

33 1. The utilities board shall consider the petition and  
34 any objections filed to it in the manner provided. It shall  
35 examine the proposed route or cause any engineer selected

1 by it to do so. If a hearing is held on the petition it may  
2 hear testimony as may aid it in determining the propriety  
3 of granting the franchise. ~~It~~ If the petition is subject  
4 to section 478.1, subsection 1A, the testimony shall be  
5 transcribed and submitted to the general assembly, as provided  
6 in section 478.6A. Except as otherwise provided in subsection  
7 2, the utilities board may grant the franchise in whole or in  
8 part upon the terms, conditions, and restrictions, and with  
9 the modifications as to location and route as may seem to it  
10 just and proper. Before granting the franchise, the utilities  
11 board shall make a finding that the proposed line or lines are  
12 necessary to serve a public use and represents a reasonable  
13 relationship to an overall plan of transmitting electricity in  
14 the public interest.

15 2. If the petition is subject to section 478.1, subsection  
16 1A, the utilities board may grant the franchise in part,  
17 pursuant to subsection 1, and subject to the general assembly  
18 granting the right to exercise eminent domain, as provided in  
19 section 478.6A.

20 3. A franchise shall not become effective until the  
21 petitioners shall pay, or file an agreement to pay, all  
22 costs and expenses of the franchise proceeding, whether or  
23 not objections are filed, including costs of inspections or  
24 examinations of the route, hearing, salaries, publishing of  
25 notice, and any other expenses reasonably attributable to  
26 it. The funds received for the costs and the expenses of the  
27 franchise proceeding shall be remitted to the treasurer of  
28 state for deposit in the department of commerce revolving fund  
29 created in section 546.12 as provided in section 476.10.

30 Sec. 6. Section 478.5, Code 2015, is amended to read as  
31 follows:

32 **478.5 Notice — objections filed.**

33 Upon the filing of such petition, including a petition  
34 subject to section 478.1, subsection 1A, the utilities board  
35 shall cause a notice, addressed to the citizens of each county

1 through which the proposed line or lines will extend, to be  
2 published in a newspaper located in each such county for  
3 two consecutive weeks. Said notice shall contain a general  
4 statement of the contents and purpose of the petition, a  
5 general description of the lands and highways to be traversed  
6 by the proposed line or lines, and shall state that any  
7 objections thereto must be filed in writing with the board not  
8 later than twenty days after the date of last publication of  
9 the notice. Any person, company, city or corporation whose  
10 rights may be affected, shall have the right to file written  
11 objections to the proposed improvement or to the granting of  
12 such franchise; such objections shall be filed with the board  
13 not later than twenty days after the date of last publication  
14 and shall state the grounds therefor. The board may allow  
15 objections to be filed later in which event the applicant must  
16 be given reasonable time to meet such late objections.

17 Sec. 7. Section 478.6, Code 2015, is amended to read as  
18 follows:

19 **478.6 Taking under eminent domain.**

20 1. a. Upon the filing of objections or when a petition  
21 involves the taking of property under the right of eminent  
22 domain, including a petition subject to section 478.1,  
23 subsection 1A, the utilities board shall set the matter  
24 for hearing and fix a time and place for the hearing. The  
25 hearing shall be not less than thirty days from the date of  
26 last publication and, where a new proposed transmission line  
27 exceeds one mile in length, shall be held in the county seat  
28 of the county located at the midpoint of the proposed electric  
29 transmission line. Written notice of the time and place of the  
30 hearing shall be served by the board, by ordinary mail, on the  
31 applicant, and those having filed objections. If no objections  
32 are filed and the petition does not involve the taking of  
33 property under the right of eminent domain, the board may grant  
34 a franchise without a hearing; however, the board may conduct a  
35 hearing if the board deems it necessary.

1     b. Where a petition seeks the use of the right of eminent  
2 domain over specific parcels of real property, the board shall  
3 prescribe the notice to be served upon the owners of record and  
4 parties in possession of the property over which the use of the  
5 right of eminent domain is sought. The notice shall include  
6 the statement of individual rights required pursuant to section  
7 6B.2A, subsection 1.

8     2. When the board grants a franchise to any person, company,  
9 or corporation for the construction, erection, maintenance,  
10 and operation of transmission lines, wires, and cables for  
11 the transmission of electricity, such person, company, or  
12 corporation shall be vested with the power of condemnation  
13 to such extent as the board, or the general assembly if the  
14 petition is subject to section 478.1, subsection 1A, may  
15 approve and find necessary for public use.

16     Sec. 8. NEW SECTION. **478.6A Taking under eminent domain —**  
17 **legislative approval.**

18     1. If the proposed project for which a petition is filed  
19 under section 478.3 involves a proposal to construct an  
20 electric transmission line exceeding three hundred miles in  
21 length or to construct an extension of an existing line that  
22 would result in the total length of the line exceeding three  
23 hundred miles, and the petition indicates that the right to  
24 exercise eminent domain will be used, the utilities board shall  
25 determine whether the exercise of eminent domain involves the  
26 taking of twenty percent or more of the property necessary for  
27 the construction of the proposed transmission line project. If  
28 the utilities board so finds, the authority of the utilities  
29 board under this chapter in providing notice, conducting a  
30 hearing, and granting a franchise shall be confined to all  
31 aspects of the petition other than the granting of the exercise  
32 of the right of eminent domain.

33     2. Granting of the power of eminent domain for petitions  
34 described in subsection 1 shall be subject to the approval of a  
35 constitutional majority of each house of the general assembly

1 during a regular or special session of the general assembly,  
2 after having been introduced and referred to the senate  
3 and house standing committees on commerce as a concurrent  
4 resolution of necessity finding a public use to be served by  
5 the project. If such approval is obtained, a request for the  
6 right to exercise eminent domain shall be deemed to be granted  
7 by the utilities board.

8 3. If granting of the power of eminent domain is approved  
9 by a constitutional majority of each house of the general  
10 assembly, the utilities board shall issue the franchise in  
11 the manner of section 478.7, and such franchise shall be  
12 subject to regulations and restrictions as the general assembly  
13 prescribes, and to rules, not inconsistent with statutes, as  
14 the board may establish.

15 Sec. 9. Section 478.13, Code 2015, is amended by adding the  
16 following new subsection:

17 NEW SUBSECTION. 6. If a petition for an extension of a  
18 franchise includes a project as described in section 478.6A,  
19 subsection 1, the petition shall be subject to the provisions  
20 of section 478.6A.

21 Sec. 10. EFFECTIVE UPON ENACTMENT. This Act, being deemed  
22 of immediate importance, takes effect upon enactment.

23 Sec. 11. RETROACTIVE APPLICABILITY. This Act applies  
24 retroactively to November 1, 2014, for petitions for a  
25 franchise under chapter 478 received by the board on or after  
26 that date.

27

#### EXPLANATION

28 The inclusion of this explanation does not constitute agreement with  
29 the explanation's substance by the members of the general assembly.

30 This bill requires the approval of the general assembly of  
31 certain petitions for franchise involving a request for the  
32 right to exercise eminent domain.

33 Currently, Code chapter 478 contains general notice and  
34 hearing provisions regarding petitions to erect, maintain,  
35 and operate electric transmission lines for the transmission,

1 distribution, or sale of electric current, including petitions  
2 involving a request for the granting of the right to take  
3 property by eminent domain. The Iowa utilities board is  
4 authorized to grant a petition involving the right to exercise  
5 eminent domain to such extent that the board may approve and  
6 find necessary for public use.

7 The bill restricts utilities board authority to aspects of a  
8 petition for a franchise other than approval of the right to  
9 exercise eminent domain if the petition involves a proposal to  
10 construct an electric transmission line exceeding 300 miles  
11 in length, or to extend an existing line that would result  
12 in total length of the line exceeding 300 miles, and involves  
13 the taking of 20 percent or more of the property necessary  
14 for the construction of the transmission line under the right  
15 of eminent domain. Instead, the bill provides that granting  
16 of the right to exercise eminent domain for such petitions  
17 shall be subject to the approval of a constitutional majority  
18 of both houses of the general assembly during a regular or  
19 special session of a general assembly, after introduction and  
20 referral to the standing committees on commerce as a concurrent  
21 resolution. If such approval is obtained, the bill provides  
22 that a request for the power of eminent domain shall be deemed  
23 to be granted by the board. The bill provides that these  
24 provisions also apply to petitions for an extension of a  
25 franchise.

26 The bill makes corresponding changes to specified provisions  
27 in Code chapter 478. The bill takes effect upon enactment and  
28 applies retroactively to petitions for a franchise received by  
29 the board on or after November 1, 2014.