

Senate File 506 - Introduced

SENATE FILE 506
BY COMMITTEE ON GOVERNMENT
OVERSIGHT

(SUCCESSOR TO SSB 1276)

A BILL FOR

1 An Act relating to the construction, erection, maintenance,
2 or operation of electric transmission lines and hazardous
3 liquid pipelines, and including effective date and
4 applicability provisions.

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

1 Section 1. Section 478.4, Code 2015, is amended to read as
2 follows:

3 **478.4 Franchise — hearing.**

4 The utilities board shall consider the petition and any
5 objections filed to it in the manner provided. It shall
6 examine the proposed route or cause any engineer selected
7 by it to do so. If a hearing is held on the petition it may
8 hear testimony as may aid it in determining the propriety of
9 granting the franchise. It may grant the franchise in whole or
10 in part upon the terms, conditions, and restrictions, and with
11 the modifications as to location and route as may seem to it
12 just and proper. Before granting the franchise, the utilities
13 board shall make a finding that the proposed line or lines are
14 necessary to serve a public use and represents a reasonable
15 relationship to an overall plan of transmitting electricity in
16 the public interest. In addition, if the petitioner is not
17 a public utility, as defined in section 476.1, subsection 3,
18 paragraph "a", section 476.1A, or section 476.1B, or an electric
19 transmission owner providing electric service directly to a
20 public utility or to consumers located in this state, before
21 granting the franchise the utilities board shall make a finding
22 that the proposed line or lines are recommended in the most
23 recent annual report prepared pursuant to section 473.15. A
24 franchise shall not become effective until the petitioners
25 shall pay, or file an agreement to pay, all costs and expenses
26 of the franchise proceeding, whether or not objections are
27 filed, including costs of inspections or examinations of the
28 route, hearing, salaries, publishing of notice, and any other
29 expenses reasonably attributable to it. The funds received
30 for the costs and the expenses of the franchise proceeding
31 shall be remitted to the treasurer of state for deposit in the
32 department of commerce revolving fund created in section 546.12
33 as provided in section 476.10.

34 Sec. 2. Section 478.6, Code 2015, is amended by adding the
35 following new unnumbered paragraph:

1 NEW UNNUMBERED PARAGRAPH. If the petitioner is not a
2 public utility, as defined in section 476.1, subsection 3,
3 paragraph "a", section 476.1A, or section 476.1B, or an electric
4 transmission owner providing electric service directly to a
5 public utility or to consumers located in this state, before
6 the petitioner is vested with the power of condemnation the
7 utilities board shall require the petitioner to obtain through
8 voluntary easements seventy-five percent or more of the
9 land needed for the construction, erection, maintenance, and
10 operation of the transmission lines, wires, and cables.

11 Sec. 3. Section 478.15, Code 2015, is amended by adding the
12 following new unnumbered paragraph:

13 NEW UNNUMBERED PARAGRAPH. If a person, company, or
14 corporation having secured a franchise as provided in this
15 chapter is vested with the right of eminent domain, and the
16 person, company, or corporation is not a public utility as
17 defined in section 476.1, subsection 3, paragraph "a", section
18 476.1A, or section 476.1B, or an electric transmission owner
19 providing electric service directly to a public utility or
20 to consumers located in this state, the board may order the
21 person, company, or corporation to pay reasonable attorney fees
22 to ensure a private owner of land access to legal counsel.
23 Upon the conclusion of eminent domain proceedings, the person,
24 company, or corporation shall pay all costs of the assessment
25 made by the commissioners and reasonable attorney fees and
26 costs, including the reasonable cost of one appraisal, incurred
27 by the private owner of land if the award of the commissioners
28 or the court on appeal exceeds one hundred percent of the
29 final offer of the person, company, or corporation prior to
30 condemnation, notwithstanding section 6B.33 or any other
31 provision to the contrary.

32 Sec. 4. Section 478.33, Code 2015, is amended to read as
33 follows:

34 **478.33 Cancellation — complaint procedures.**

35 1. A person seeking to acquire an easement or other property

1 interest for the construction, maintenance or operation of an
2 electric transmission line shall:

3 ~~1.~~ a. Allow the landowner or a person serving in a
4 fiduciary capacity in the landowner's behalf to cancel any
5 agreement granting an easement or other interest by certified
6 mail with return requested to the company's principal place
7 of business if received by the company within seven days,
8 excluding Saturday and Sunday, of the date of the contract
9 and inform the landowner or such fiduciary in writing of the
10 right to cancel prior to the signing of the agreement by the
11 landowner or such fiduciary.

12 ~~2.~~ b. Provide the landowner or a person serving in a
13 fiduciary capacity in the landowner's behalf with a form in
14 duplicate for the notice of cancellation.

15 ~~3.~~ c. Not record any agreement until after the period for
16 cancellation has expired.

17 ~~4.~~ d. Not include in the agreement any waiver of the right
18 to cancel in accordance with this section. The landowner or
19 a person serving in a fiduciary capacity in the landowner's
20 behalf may exercise the right of cancellation only once for
21 each transmission line project.

22 2. Any complaint that a petitioner that is not a public
23 utility, as defined in section 476.1, subsection 3, paragraph
24 "a", section 476.1A, or section 476.1B, or an electric
25 transmission owner providing electric service directly to a
26 public utility or to consumers located in this state, has
27 violated this section shall be subject to the investigation
28 provisions of section 476.3, subsection 1.

29 Sec. 5. Section 479B.9, Code 2015, is amended to read as
30 follows:

31 **479B.9 Final order — condition.**

32 The board may grant a permit in whole or in part upon
33 terms, conditions, and restrictions as to location and route
34 as it determines to be just and proper. A permit shall not be
35 granted to a pipeline company unless the board determines that

1 the proposed services will promote the public convenience and
2 necessity. In addition, if the pipeline company is seeking
3 a permit for a pipeline for crude oil, before granting the
4 franchise the board shall make a finding that the proposed
5 line or lines are recommended in the most recent annual report
6 prepared pursuant to section 473.15.

7 Sec. 6. Section 479B.13, Code 2015, is amended to read as
8 follows:

9 **479B.13 Financial condition of permittee — bond.**

10 Before a permit is granted under this chapter the applicant
11 must satisfy the board that the applicant has property within
12 this state other than pipelines or underground storage
13 facilities, subject to execution of a value in excess of two
14 hundred fifty thousand dollars, or the applicant must file
15 and maintain with the board a surety bond in the penal sum of
16 two hundred fifty thousand dollars with surety approved by
17 the board, conditioned that the applicant will pay any and
18 all damages legally recovered against it growing out of the
19 construction, maintenance, or operation of its pipeline or
20 underground storage facilities in this state. If the applicant
21 is seeking a permit for a pipeline for crude oil, the value of
22 the property or amount of the surety bond shall be five hundred
23 thousand dollars or more for each county through which the
24 proposed pipeline would be built, as determined by the board.

25 When the pipeline company deposits with the board security
26 satisfactory to the board as a guaranty for the payment of the
27 damages, or furnishes to the board satisfactory proofs of its
28 solvency and financial ability to pay the damages, the pipeline
29 company is relieved of the provisions requiring bond.

30 Sec. 7. Section 479B.16, Code 2015, is amended to read as
31 follows:

32 **479B.16 Eminent domain.**

33 1. A pipeline company granted a pipeline permit shall
34 be vested with the right of eminent domain, to the extent
35 necessary and as prescribed and approved by the board, not

1 exceeding seventy-five feet in width for right-of-way and
2 not exceeding one acre in any one location in addition to
3 right-of-way for the location of pumps, pressure apparatus,
4 or other stations or equipment necessary to the proper
5 operation of its pipeline. The board may grant additional
6 eminent domain rights where the pipeline company has presented
7 sufficient evidence to adequately demonstrate that a greater
8 area is required for the proper construction, operation, and
9 maintenance of the pipeline or for the location of pumps,
10 pressure apparatus, or other stations or equipment necessary to
11 the proper operation of its pipeline.

12 2. A pipeline company granted a permit for underground
13 storage of hazardous liquid shall be vested with the right of
14 eminent domain to the extent necessary and as prescribed and
15 approved by the board in order to appropriate for its use for
16 the underground storage of hazardous liquid any subsurface
17 stratum or formation in any land which the board shall have
18 found to be suitable and in the public interest for the
19 underground storage of hazardous liquid, and may appropriate
20 other interests in property, as may be required adequately to
21 examine, prepare, maintain, and operate the underground storage
22 facilities.

23 3. If the pipeline company is seeking a permit for a
24 pipeline for crude oil, before the pipeline company shall be
25 vested with the power of condemnation the board shall require
26 the pipeline company to obtain through voluntary easements
27 seventy-five percent or more of the land needed for the
28 construction, operation, and maintenance of the pipeline and
29 stations or equipment for the proper operation of the pipeline.

30 4. If a pipeline company vested with the right of eminent
31 domain is constructing a pipeline for crude oil, the board may
32 order the pipeline company to pay reasonable attorney fees to
33 ensure a private owner of land access to legal counsel. Upon
34 the conclusion of eminent domain proceedings, the pipeline
35 company shall pay all costs of the assessment made by the

1 commissioners and reasonable attorney fees and costs, including
2 the reasonable cost of one appraisal, incurred by the private
3 owner of land if the award of the commissioners or the court on
4 appeal exceeds one hundred percent of the final offer of the
5 pipeline company prior to condemnation, notwithstanding section
6 6B.33 and section 479B.30, subsection 6, or any other provision
7 to the contrary.

8 5. This chapter does not authorize the construction of
9 a pipeline longitudinally on, over, or under any railroad
10 right-of-way or public highway, or at other than an approximate
11 right angle to a railroad track or public highway without
12 the consent of the railroad company, the state department of
13 transportation, or the county board of supervisors, and this
14 chapter does not authorize or give the right of condemnation or
15 eminent domain for such purposes.

16 Sec. 8. Section 479B.24, Code 2015, is amended to read as
17 follows:

18 **479B.24 Cancellation — complaint procedures.**

19 1. A pipeline company seeking to acquire an easement or
20 other property interest for the construction, maintenance, or
21 operation of a pipeline or underground storage facility shall
22 do all of the following:

23 ~~1-~~ a. Allow the landowner or a person serving in a
24 fiduciary capacity on the landowner's behalf to cancel an
25 agreement granting an easement or other interest by restricted
26 certified mail to the pipeline company's principal place of
27 business if received by the pipeline company within seven days,
28 excluding Saturday and Sunday, of the date of the agreement
29 and inform the landowner or the fiduciary in writing of the
30 right to cancel prior to the signing of the agreement by the
31 landowner or the fiduciary.

32 ~~2-~~ b. Provide the landowner or a person serving in a
33 fiduciary capacity in the landowner's behalf with a form in
34 duplicate for the notice of cancellation.

35 ~~3-~~ c. Not record an agreement until after the period for

1 cancellation has expired.

2 ~~4. d.~~ Not include in the agreement a waiver of the right
3 to cancel in accordance with this section. The landowner or
4 a person serving in a fiduciary capacity in the landowner's
5 behalf may exercise the right of cancellation only once for
6 each pipeline project.

7 2. Any complaint that a pipeline company that is seeking a
8 permit for a pipeline for crude oil has violated this section
9 shall be subject to the investigation provisions of section
10 476.3, subsection 1.

11 Sec. 9. Section 479B.30, subsection 6, Code 2015, is amended
12 to read as follows:

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

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

32 Sec. 11. APPLICABILITY.

33 1. The sections of this Act amending sections 478.4, 478.6,
34 478.15, and 478.33 are applicable to petitions for franchise
35 filed on or after November 1, 2014, that have not been acted

1 upon by the utilities board on the effective date of this Act
2 and to petitions for franchise filed on or after the effective
3 date of this Act.

4 2. The sections of this Act amending sections 479B.9,
5 479B.13, 479B.16, 479B.24, and 479B.30 are applicable to
6 applications for permits filed on or after November 1, 2014,
7 that have not been acted upon by the utilities board on the
8 effective date of this Act and to applications for permits
9 filed on or after the effective date of this Act.

10

EXPLANATION

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The inclusion of this explanation does not constitute agreement with

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the explanation's substance by the members of the general assembly.

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This bill relates to the construction, erection,

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maintenance, or operation of electric transmission lines and

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hazardous liquid pipelines.

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The bill primarily applies to petitioners for an electric

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transmission franchise that are not a public utility as

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defined in Code section 476.1 furnishing gas or electricity

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to the public for compensation, a rural electric cooperative,

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or a municipal utility, and to applicants for a permit to

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construct a pipeline for crude oil. In both cases, in order

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to obtain a franchise or a permit the Iowa utilities board

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is required to make a finding that the proposed transmission

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line or crude oil pipeline is recommended in the most recent

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annual report prepared by the economic development authority

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pursuant to Code section 473.15. That report assesses the

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progress of state agencies in implementing energy management

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improvements, alternative and renewable energy systems, and

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life cycle cost analyses under Code chapter 470, and on the use

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of renewable fuels. The report also provides an assessment of

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the economic and environmental impact of the progress made by

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state agencies related to energy management and alternative and

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renewable energy, along with recommendations on technological

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opportunities and policies necessary for continued improvement

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in these areas.

1 The bill provides that in order to be granted eminent
2 domain authority (power of condemnation), an applicant for a
3 franchise (electric transmission lines) or permit (hazardous
4 liquid pipelines) must obtain through voluntary easements 75
5 percent or more of the land needed, and that if an applicant
6 is vested with the right of eminent domain, the board may
7 order the applicant to pay reasonable attorney fees to ensure
8 a private owner of land access to legal counsel, and upon
9 conclusion of the eminent domain proceedings to pay all costs
10 of the assessment, attorney fees and costs, and the cost of one
11 appraisal if the award exceeds 100 percent of the final offer
12 made by the applicant.

13 Further, in the event of a complaint that an applicant has
14 violated provisions permitting an owner of land to cancel any
15 agreement granting an easement or other interest, the applicant
16 will be subject to the investigation provisions in current law
17 that can lead to a formal proceeding by the Iowa utilities
18 board.

19 Additionally, with reference to an application for a permit
20 for a crude oil pipeline, the surety bond requirement is
21 increased from \$250,000 to \$500,000.

22 Finally, with reference to any applicant under Code
23 chapter 479B (hazardous liquid pipelines), the bill deletes a
24 requirement that a landowner shall pay commissioner assessment
25 costs and reasonable attorney fees and other costs in a
26 proceeding in response to a petition for the determination of
27 construction damages if costs awarded to the landowner do not
28 exceed 110 percent.

29 The bill takes effect upon enactment and is retroactively
30 applicable to November 1, 2014, for petitions for franchise
31 under Code chapter 478 and applications for permits under
32 Code chapter 479B that have not been acted upon by the Iowa
33 utilities board on the effective date of the bill and to
34 petitions and permits filed on or after the bill's effective
35 date.