

House File 2446 - Introduced

HOUSE FILE 2446

BY COMMITTEE ON COMMERCE

(SUCCESSOR TO HSB 591)

A BILL FOR

- 1 An Act relating to matters under the purview of the utilities
- 2 division of the department of commerce, providing fees, and
- 3 making penalties applicable.
- 4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. Section 474.1, subsection 2, Code 2018, is
2 amended to read as follows:

3 2. a. ~~The utilities board shall organize by appointing~~
4 ~~an executive secretary, who shall take the same oath as the~~
5 ~~members. The board shall set the salary of the executive~~
6 ~~secretary within the limits of the pay plan for exempt~~
7 ~~positions provided for in section 8A.413, subsection 3, unless~~
8 ~~otherwise provided by the general assembly. The board may~~
9 ~~employ additional personnel as it finds necessary. Subject to~~
10 ~~confirmation by the senate, the governor shall appoint a member~~
11 ~~as the chairperson of the board. The chairperson shall be the~~
12 ~~administrator of the utilities division. The appointment as~~
13 ~~chairperson shall be for a two-year term which begins and ends~~
14 ~~as provided in section 69.19.~~

15 b. The board shall appoint a chief operating officer to
16 manage the operations of the utilities division as directed
17 by the board. The board shall set the salary of the chief
18 operating officer within the limits of the pay plan for exempt
19 positions provided for in section 8A.413, subsection 3, unless
20 otherwise provided by the general assembly. The board may
21 employ additional personnel as it finds necessary.

22 Sec. 2. Section 474.2, Code 2018, is amended to read as
23 follows:

24 **474.2 Certain persons barred from office.**

25 No person in the employ of any common carrier or other public
26 utility, or owning any bonds, stock or property in any railroad
27 ~~company or other~~ public utility shall be eligible to the office
28 of utilities board member or ~~secretary~~ chief operating officer
29 of the utilities board; and the entering into the employ of any
30 common carrier or other public utility or the acquiring of any
31 stock or other interest in any common carrier or other public
32 utility by such member or ~~secretary~~ chief operating officer
33 after appointment shall disqualify the member or ~~secretary~~
34 chief operating officer to hold the office or perform the
35 duties thereof.

1 Sec. 3. Section 474.8, Code 2018, is amended to read as
2 follows:

3 **474.8 Office — time employed — expenses.**

4 The utilities board shall have an office at the seat
5 of government and each member shall devote the member's
6 whole time to the duties of the office, and the members and
7 secretary, chief operating officer, and other employees shall
8 receive their actual necessary traveling expenses while in
9 the discharge of their official duties away from the general
10 offices.

11 Sec. 4. Section 476.1B, subsection 3, Code 2018, is amended
12 to read as follows:

13 3. Unless otherwise specifically provided by statute, a
14 municipally owned utility providing local exchange services
15 is not subject to regulation by the board under *this chapter*
16 except for regulatory action pertaining to the enforcement of
17 sections 476.11, ~~476.29~~, *476.95*, *476.95A*, *476.96*, *476.100*,
18 *476.101*, and *476.102*.

19 Sec. 5. Section 476.1D, subsection 10, paragraph b, Code
20 2018, is amended to read as follows:

21 *b.* The board shall promptly notify the director of revenue
22 that a long distance telephone company has been classified
23 as a competitive long distance telephone company. Upon such
24 notification by the board, the director of revenue shall assess
25 the property of such competitive long distance telephone
26 company, which property is first assessed for taxation in this
27 state on or after January 1, 1996, in the same manner as all
28 other property assessed as commercial property by the local
29 assessor under *chapters 427, 427A, 427B, 428, and 441*. As used
30 in *this section*, "long distance telephone company" means an
31 entity that provides telephone service and facilities between
32 local exchanges, but does not include a cellular service
33 provider or a local exchange utility ~~holding a certificate~~
34 ~~issued under section 476.29, subsection 12.~~

35 Sec. 6. Section 476.2, subsection 6, Code 2018, is amended

1 by striking the subsection.

2 Sec. 7. Section 476.6, subsection 21, Code 2018, is amended
3 by striking the subsection.

4 Sec. 8. Section 476.10, subsection 1, paragraph a, Code
5 2018, is amended to read as follows:

6 a. In order to carry out the duties imposed upon it by law,
7 the board may, at its discretion, allocate and charge directly
8 the expenses attributable to its duties to the person bringing
9 a proceeding before the board, ~~or~~ to persons participating in
10 matters before the board, or to persons subject to inspection
11 by the board. The board shall ascertain the certified expenses
12 incurred and directly chargeable by the consumer advocate
13 division of the department of justice in the performance of
14 its duties. The board and the consumer advocate separately
15 may decide not to charge expenses to persons who, without
16 expanding the scope of the proceeding or matter, intervene in
17 good faith in a board proceeding initiated by a person subject
18 to the board's jurisdiction, the consumer advocate, or the
19 board on its own motion. For assessments in any proceedings or
20 matters before the board, the board and the consumer advocate
21 separately may consider the financial resources of the person,
22 the impact of assessment on participation by intervenors, the
23 nature of the proceeding or matter, and the contribution of
24 a person's participation to the public interest. The board
25 may present a bill for expenses under **this subsection** to the
26 person, either at the conclusion of a proceeding or matter,
27 or from time to time during its progress. Presentation of a
28 bill for expenses under **this subsection** constitutes notice of
29 direct assessment and request for payment in accordance with
30 this section.

31 Sec. 9. Section 476.51, subsection 5, Code 2018, is amended
32 to read as follows:

33 5. Civil penalties collected pursuant to **this section** from
34 utilities providing water, electric, or gas service shall be
35 forwarded by the ~~executive secretary~~ chief operating officer

1 of the board to the treasurer of state to be credited to the
 2 general fund of the state and to be used only for the low
 3 income home energy assistance program and the weatherization
 4 assistance program administered by the division of community
 5 action agencies of the department of human rights. Civil
 6 penalties collected pursuant to [this section](#) from utilities
 7 providing telecommunications service shall be forwarded to
 8 the treasurer of state to be credited to the department of
 9 commerce revolving fund created in [section 546.12](#) to be used
 10 only for consumer education programs administered by the board.
 11 Penalties paid by a rate-regulated public utility pursuant to
 12 this section shall be excluded from the utility's costs when
 13 determining the utility's revenue requirement, and shall not be
 14 included either directly or indirectly in the utility's rates
 15 or charges to customers.

16 Sec. 10. Section 476.53, subsection 3, paragraph c,
 17 subparagraph (2), Code 2018, is amended to read as follows:

18 (2) The rate-regulated public utility has demonstrated to
 19 the board that the public utility has considered other sources
 20 for long-term electric supply and that the facility or lease is
 21 reasonable when compared to other feasible alternative sources
 22 of supply. ~~The rate-regulated public utility may satisfy the~~
 23 ~~requirements of this subparagraph through a competitive bidding~~
 24 ~~process, under rules adopted by the board, that demonstrate~~
 25 ~~the facility or lease is a reasonable alternative to meet its~~
 26 ~~electric supply needs.~~

27 Sec. 11. Section 476.103, subsection 4, paragraph c, Code
 28 2018, is amended to read as follows:

29 c. A civil penalty collected pursuant to [this subsection](#)
 30 shall be forwarded by the ~~executive secretary~~ chief operating
 31 officer of the board to the treasurer of state to be credited
 32 to the department of commerce revolving fund created in section
 33 546.12 and to be used only for consumer education programs
 34 administered by the board.

35 Sec. 12. Section 478.29, subsection 1, Code 2018, is amended

1 to read as follows:

2 1. A person who violates a provision of **this chapter** is
3 subject to a civil penalty, which may be levied by the board,
4 of not more than one hundred dollars per violation or one
5 thousand dollars per day of a continuing violation, whichever
6 is greater. Civil penalties collected pursuant to this
7 section shall be forwarded by the ~~executive secretary~~ chief
8 operating officer of the board to the treasurer of state to be
9 credited to the general fund of the state and appropriated to
10 the division of community action agencies of the department
11 of human rights for purposes of the low income home energy
12 assistance program and the weatherization assistance program.

13 Sec. 13. Section 479.14, Code 2018, is amended to read as
14 follows:

15 **479.14 Inspection fee.**

16 ~~A pipeline company shall pay an annual inspection fee of~~
17 ~~fifty cents per mile of pipeline or fraction thereof for~~
18 ~~each inch of diameter of the pipeline located in the state,~~
19 ~~the inspection fee to be paid to the board for the calendar~~
20 ~~year in advance between January 1 and February 1 of each year~~
21 The board may, in accordance with section 476.10, charge a
22 pipeline company with an annual inspection fee that is directly
23 attributable to the costs of conducting annual inspections
24 pursuant to this chapter.

25 Sec. 14. Section 479.31, subsection 1, Code 2018, is amended
26 to read as follows:

27 1. A person who violates **this chapter** or any rule or order
28 issued pursuant to **this chapter** shall be subject to a civil
29 penalty levied by the board not to exceed one hundred thousand
30 dollars for each violation. Each day that the violation
31 continues shall constitute a separate offense. However, the
32 maximum civil penalty shall not exceed one million dollars for
33 any related series of violations. Civil penalties collected
34 pursuant to **this section** shall be forwarded by the ~~executive~~
35 ~~secretary~~ chief operating officer of the board to the treasurer

1 of state to be credited to the general fund of the state and
2 appropriated to the division of community action agencies
3 of the department of human rights for purposes of the low
4 income home energy assistance program and the weatherization
5 assistance program.

6 Sec. 15. Section 479.46, subsection 6, Code 2018, is amended
7 to read as follows:

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

25 Sec. 16. Section 479B.4, unnumbered paragraph 5, Code 2018,
26 is amended to read as follows:

27 The notice shall set forth the following: the name of the
28 applicant, the applicant's principal place of business, the
29 general description and purpose of the proposed project, the
30 general nature of the right-of-way desired, a map showing the
31 route or location of the proposed project, that the landowner
32 has a right to be present at the meeting and to file objections
33 with the board, and a designation of the time and place of the
34 meeting. The notice shall be ~~sent by restricted certified~~
35 ~~mail and shall be published once in a newspaper of general~~

1 ~~circulation in the county not less than thirty days before~~
2 ~~the date set for the meeting~~ served by certified mail with
3 return receipt requested not less than thirty days previous
4 to the time set for the meeting, and shall be published once
5 in a newspaper of general circulation in the county. The
6 publication shall be considered notice to landowners whose
7 residence is not known and to each person in possession of or
8 residing on the property provided a good faith effort to notify
9 can be demonstrated by the pipeline company.

10 Sec. 17. Section 479B.21, subsection 1, Code 2018, is
11 amended to read as follows:

12 1. A person who violates this chapter or any rule or
13 order issued pursuant to this chapter shall be subject to a
14 civil penalty levied by the board in an amount not to exceed
15 one thousand dollars for each violation. Each day that the
16 violation continues shall constitute a separate offense.
17 However, the maximum civil penalty shall not exceed two hundred
18 thousand dollars for any related series of violations. Civil
19 penalties collected pursuant to this section shall be forwarded
20 by the ~~executive secretary~~ chief operating officer of the board
21 to the treasurer of state to be credited to the general fund
22 of the state and appropriated to the division of community
23 action agencies of the department of human rights for purposes
24 of the low income home energy assistance program and the
25 weatherization assistance program.

26 Sec. 18. Section 479B.30, subsection 6, Code 2018, is
27 amended to read as follows:

28 6. The pipeline company shall pay all costs of the
29 assessment made by the commissioners and reasonable attorney
30 fees and costs incurred by the landowner as determined by the
31 commissioners if the award of the commissioners exceeds one
32 hundred ten percent of the final offer of the pipeline company
33 prior to the determination of damages; ~~if the award does not~~
34 ~~exceed one hundred ten percent, the landowners shall pay the~~
35 ~~fees and costs incurred by the pipeline company.~~ The pipeline

1 company shall file with the sheriff an affidavit setting forth
2 the most recent offer made to the landowner. Commissioners
3 shall receive a per diem of fifty dollars and actual and
4 necessary expenses incurred in the performance of their
5 official duties. The pipeline company shall also pay all costs
6 occasioned by the appeal, including reasonable attorney fees
7 to be taxed by the court, unless on the trial of the appeal the
8 same or a lesser amount of damages is awarded than was allowed
9 by the commission from which the appeal was taken.

10 EXPLANATION

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

13 This bill modifies various provisions relating to the
14 utilities division of the department of commerce.

15 Current law requires the Iowa utilities board to appoint an
16 executive secretary, whose salary is set by the board and who
17 takes the same oath as board members. The bill requires the
18 board to appoint a chief operating officer (COO) instead of
19 an executive secretary. The bill specifies that the role of
20 the COO is to manage the operations of the utilities division
21 as directed by the board. The bill provides that the board
22 shall set the salary of the COO within the limits of the
23 law and authorizes the board to employ additional personnel
24 as necessary. The bill replaces references to "executive
25 secretary" with "COO" in the Code.

26 Current law disqualifies a person owning any bonds, stock,
27 or property in any railroad company from holding office in the
28 utilities board. The bill removes this disqualification.

29 The bill removes the requirement for the board to provide
30 the general assembly with a report on certain energy efficiency
31 planning efforts to be completed by January 1, 1998.

32 The bill strikes Code section 476.6(21), which provides
33 cost recovery for certain rate-regulated public utilities for
34 undertaking analyses of and preparations for the possible
35 construction of nuclear generating facilities in the state.

1 Current law allows the board to allocate and charge expenses
2 attributable to its duties to a person bringing a proceeding
3 before the board or participating in matters before the board.
4 The bill allows the board to also allocate and charge expenses
5 attributable to its duties to a person subject to inspection
6 by the board.

7 Current law requires the board to specify certain ratemaking
8 principles that will apply to certain electric generating and
9 transmission facilities. In doing so the board must find
10 that a public utility has demonstrated to the board, through
11 a competitive bidding process under rules adopted by the
12 board, that its facility or lease is reasonable. The bill
13 removes the requirement that a public utility demonstrate the
14 reasonableness of its facility or lease through a competitive
15 bidding process under rules adopted by the board.

16 Current law requires pipeline companies doing business in
17 the state to pay the board an annual inspection fee of 50
18 cents for each mile of pipeline located in the state. The
19 bill removes this set fee and instead allows the board to
20 charge pipeline companies with annual inspection fees that are
21 directly attributable to the costs of conducting inspections.

22 Current law allows a landowner to petition the county
23 board of supervisors to appoint a compensation commission to
24 determine damages arising from the construction of certain
25 pipelines if the landowner and pipeline company are unable to
26 agree on damages. If the compensation commission's assessment
27 of damages exceeds 110 percent of the pipeline company's final
28 offer prior to the assessment, the pipeline company must pay
29 all costs of the assessment, including costs incurred by the
30 landowner; if the assessment does not exceed 110 percent of
31 the pipeline company's final offer prior to the assessment,
32 the landowner must pay the costs incurred by the pipeline
33 company. The bill removes provisions requiring a landowner to
34 pay the costs incurred by a pipeline company if a compensation
35 commission's assessment of damages does not exceed 110 percent

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1 of the pipeline company's final offer prior to such assessment.