

Senate File 2317 - Introduced

SENATE FILE 2317
BY COMMITTEE ON COMMERCE

(SUCCESSOR TO SSB 3164)

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 476.11, unnumbered paragraph 2, Code 2018,
32 is amended to read as follows:

33 The board may resolve complaints, upon notice and
34 hearing, that a utility, ~~operating under [section 476.29](#),~~
35 telecommunications provider has failed to provide just,

1 reasonable, and nondiscriminatory arrangements for
2 interconnection of its telecommunications services with another
3 telecommunications provider.

4 Sec. 10. Section 476.51, subsection 5, Code 2018, is amended
5 to read as follows:

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

24 Sec. 11. Section 476.53, subsection 3, paragraph c,
25 subparagraph (2), Code 2018, is amended to read as follows:

26 (2) The rate-regulated public utility has demonstrated to
27 the board that the public utility has considered other sources
28 for long-term electric supply and that the facility or lease is
29 reasonable when compared to other feasible alternative sources
30 of supply. ~~The rate-regulated public utility may satisfy the~~
31 ~~requirements of this subparagraph through a competitive bidding~~
32 ~~process, under rules adopted by the board, that demonstrate~~
33 ~~the facility or lease is a reasonable alternative to meet its~~
34 ~~electric supply needs.~~

35 Sec. 12. NEW SECTION. 476.95A Annual registration for

1 **telecommunications service providers.**

2 1. A telecommunications service provider offering
3 communications service telephone numbers to retail customers in
4 this state shall register annually with the board.

5 2. An applicant shall complete an application for
6 registration on a form provided by the board. The form shall
7 include contact information, the approximate number of service
8 lines provided in the state, and any other information deemed
9 necessary by the board.

10 3. Within five business days of the receipt of a completed
11 application for registration, the board shall issue a
12 nonexclusive acknowledgment of compliance with this section.
13 The acknowledgment shall authorize the registrant to obtain
14 telephone numbers, interconnect with other telecommunications
15 services providers, cross railroad rights-of-way pursuant to
16 section 476.27, and provide telecommunications services in this
17 state. An acknowledgment may be transferred by filing a new
18 or updated registration form.

19 4. A registrant shall submit to the board corrections
20 to the information supplied in the registration form
21 within a reasonable time after a change in circumstances,
22 which circumstances would be required to be reported in an
23 application for registration form.

24 5. Failure to file and maintain an annual registration
25 pursuant to this section is a violation of this chapter and
26 shall subject a telecommunications services provider to a civil
27 penalty pursuant to section 476.51.

28 Sec. 13. Section 476.101, subsections 1, 4, and 7, Code
29 2018, are amended to read as follows:

30 1. A certificate of public convenience and necessity to
31 provide local telephone service shall not be interpreted as
32 conveying a monopoly, exclusive privilege, or franchise. A
33 competitive local exchange service provider shall not be
34 subject to the requirements of **this chapter**, except that a
35 competitive local exchange service provider shall ~~obtain a~~

1 ~~certificate of public convenience and necessity pursuant to~~
2 ~~section 476.29~~ register annually with the board pursuant to
3 section 476.95A, notify affected customers prior to any rate
4 increase, file reports, information, and pay assessments
5 pursuant to section 476.2, subsection 4, and sections 476.9,
6 476.10, 476.16, 476.102, and 477C.7, and shall be subject to
7 the board's authority with respect to adequacy of service,
8 interconnection, discontinuation of service, civil penalties,
9 and complaints. If, after notice and opportunity for hearing,
10 the board determines that a competitive local exchange service
11 provider possesses market power in its local exchange market
12 or markets, the board may apply such other provisions of this
13 chapter to a competitive local exchange service provider as it
14 deems appropriate.

15 4. Except as provided under ~~section 476.29, subsection 2,~~
16 and in this section, the board shall not impose or allow a
17 local exchange carrier to impose restrictions on the resale
18 of local exchange services, functions, or capabilities. The
19 board may prohibit residential service from being resold as a
20 different class of service.

21 7. In a proceeding associated with ~~the granting of~~
22 ~~a certificate under section 476.29~~, approving maps for
23 competitive local exchange providers provided for in this
24 section, or in resolving a complaint filed pursuant to
25 subsection 5 and proceedings under 47 U.S.C. §251 - 254,
26 the board shall allocate the costs and expenses of the
27 proceedings to persons identified as parties in the proceeding
28 who are engaged in or who seek to engage in providing
29 telecommunications services or other persons identified as
30 participants in the proceeding. The funds received for the
31 costs and the expenses shall be remitted to the treasurer of
32 state for deposit in the department of commerce revolving fund
33 created in section 546.12 as provided in section 476.10.

34 Sec. 14. Section 476.103, subsection 4, paragraph c, Code
35 2018, is amended to read as follows:

1 c. A civil penalty collected pursuant to this subsection
2 shall be forwarded by the ~~executive secretary~~ chief operating
3 officer of the board to the treasurer of state to be credited
4 to the department of commerce revolving fund created in section
5 546.12 and to be used only for consumer education programs
6 administered by the board.

7 Sec. 15. Section 477A.3, subsection 1, paragraph f, Code
8 2018, is amended to read as follows:

9 f. Documentation that the applicant possesses sufficient
10 managerial, technical, and financial capability to provide
11 the cable service or video service proposed in the service
12 area. ~~An applicant or its subsidiary which has been issued~~
13 ~~a certificate of public convenience and necessity to provide~~
14 ~~telephone service pursuant to section 476.29 shall be exempt~~
15 ~~from the provisions of this paragraph.~~

16 Sec. 16. Section 477C.7, Code 2018, is amended to read as
17 follows:

18 **477C.7 Funding.**

19 1. The board shall impose an annual assessment to fund the
20 programs described in this chapter upon all telecommunications
21 carriers providing service in the state, including but not
22 limited to wireless, wireline, and alternative operator
23 service providers, at a rate of three cents per month for each
24 communications service telephone number provided in this state.

25 ~~2. The total assessment shall be allocated as follows:~~

26 ~~a. Wireless communications service providers shall be~~
27 ~~assessed three cents per month for each wireless communications~~
28 ~~service number provided in this state.~~

29 ~~b. (1) The remainder of the assessment shall be allocated~~
30 ~~one-half to local exchange telephone utilities and one-half to~~
31 ~~the following:~~

32 ~~(a) Interexchange carriers.~~

33 ~~(b) Centralized equal access providers.~~

34 ~~(c) Alternative operator services companies.~~

35 ~~(2) The assessment shall be allocated proportionally based~~

1 ~~upon revenues from all intrastate regulated, deregulated, and~~
2 ~~exempt telephone services under sections 476.1 and 476.1D.~~

3 ~~3.~~ 2. The telecommunications carriers shall remit the
4 assessed amounts quarterly to a special fund, as defined
5 under section 8.2, subsection 9. The moneys in the fund are
6 appropriated solely to plan, establish, administer, and promote
7 the relay service and equipment distribution programs.

8 ~~4.~~ 3. The telecommunications carriers subject to
9 assessment shall provide the information requested by the board
10 necessary for implementation of the assessment.

11 ~~5.~~ ~~The local exchange telephone utilities shall not recover~~
12 ~~from intrastate access charges any portion of such utilities~~
13 ~~assessment imposed under this section.~~

14 Sec. 17. Section 478.29, subsection 1, Code 2018, is amended
15 to read as follows:

16 1. A person who violates a provision of this chapter is
17 subject to a civil penalty, which may be levied by the board,
18 of not more than one hundred dollars per violation or one
19 thousand dollars per day of a continuing violation, whichever
20 is greater. Civil penalties collected pursuant to this
21 section shall be forwarded by the ~~executive secretary~~ chief
22 operating officer of the board to the treasurer of state to be
23 credited to the general fund of the state and appropriated to
24 the division of community action agencies of the department
25 of human rights for purposes of the low income home energy
26 assistance program and the weatherization assistance program.

27 Sec. 18. Section 479.14, Code 2018, is amended to read as
28 follows:

29 **479.14 Inspection fee.**

30 ~~A pipeline company shall pay an annual inspection fee of~~
31 ~~fifty cents per mile of pipeline or fraction thereof for~~
32 ~~each inch of diameter of the pipeline located in the state,~~
33 ~~the inspection fee to be paid to the board for the calendar~~
34 ~~year in advance between January 1 and February 1 of each year~~
35 The board may, in accordance with section 476.10, charge a

1 pipeline company with an annual inspection fee that is directly
2 attributable to the costs of conducting annual inspections
3 pursuant to this chapter.

4 Sec. 19. Section 479.31, subsection 1, Code 2018, is amended
5 to read as follows:

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

20 Sec. 20. Section 479.46, subsection 6, Code 2018, is amended
21 to read as follows:

22 6. The pipeline company shall pay all costs of the
23 assessment made by the commissioners and reasonable attorney
24 fees and costs incurred by the landowner as determined by the
25 commissioners if the award of the commissioners exceeds one
26 hundred ten percent of the final offer of the pipeline company
27 prior to the determination of damages; ~~if the award does not~~
28 ~~exceed one hundred ten percent, the landowners shall pay the~~
29 ~~fees and costs incurred by the pipeline company.~~ The pipeline
30 company shall file with the sheriff an affidavit setting forth
31 the most recent offer made to the landowner. Commissioners
32 shall receive a per diem of fifty dollars and actual and
33 necessary expenses incurred in the performance of their
34 official duties. The pipeline company shall also pay all costs
35 occasioned by the appeal, including reasonable attorney fees

1 to be taxed by the court, unless on the trial of the appeal the
2 same or a lesser amount of damages is awarded than was allowed
3 by the commission from which the appeal was taken.

4 Sec. 21. Section 479B.4, unnumbered paragraph 5, Code 2018,
5 is amended to read as follows:

6 The notice shall set forth the following: the name of the
7 applicant, the applicant's principal place of business, the
8 general description and purpose of the proposed project, the
9 general nature of the right-of-way desired, a map showing the
10 route or location of the proposed project, that the landowner
11 has a right to be present at the meeting and to file objections
12 with the board, and a designation of the time and place of the
13 meeting. The notice shall be ~~sent by restricted certified~~
14 ~~mail and shall be published once in a newspaper of general~~
15 ~~circulation in the county not less than thirty days before~~
16 ~~the date set for the meeting~~ served by certified mail with
17 return receipt requested not less than thirty days previous
18 to the time set for the meeting, and shall be published once
19 in a newspaper of general circulation in the county. The
20 publication shall be considered notice to landowners whose
21 residence is not known and to each person in possession of or
22 residing on the property provided a good faith effort to notify
23 can be demonstrated by the pipeline company.

24 Sec. 22. Section 479B.21, subsection 1, Code 2018, is
25 amended to read as follows:

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

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

5 Sec. 23. Section 479B.30, subsection 6, Code 2018, is
6 amended to read as follows:

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

24 Sec. 24. Section 714H.4, subsection 1, paragraph d, Code
25 2018, is amended to read as follows:

26 *d.* The provision of local exchange carrier telephone service
27 ~~pursuant to a certificate issued under [section 476.29](#).~~

28 EXPLANATION

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

31 This bill modifies various provisions relating to the
32 utilities division of the department of commerce.

33 Current law requires the Iowa utilities board to appoint an
34 executive secretary, whose salary is set by the board and who
35 takes the same oath as board members. The bill requires the

1 board to appoint a chief operating officer (COO) instead of
2 an executive secretary. The bill specifies that the role of
3 the COO is to manage the operations of the utilities division
4 as directed by the board. The bill provides that the board
5 shall set the salary of the COO within the limits of the
6 law and authorizes the board to employ additional personnel
7 as necessary. The bill replaces references to "executive
8 secretary" with "COO" in the Code.

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

12 The bill removes or replaces references in the Code to
13 repealed Code section 476.29, which required telecommunications
14 service providers to obtain certification from the board.

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

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

22 Current law allows the board to allocate and charge expenses
23 attributable to its duties to a person bringing a proceeding
24 before the board or participating in matters before the board.
25 The bill allows the board to also allocate and charge expenses
26 attributable to its duties to a person subject to inspection
27 by the board.

28 Current law requires the board to specify certain ratemaking
29 principles that will apply to certain electric generating and
30 transmission facilities. In doing so the board must find
31 that a public utility has demonstrated to the board, through
32 a competitive bidding process under rules adopted by the
33 board, that its facility or lease is reasonable. The bill
34 removes the requirement that a public utility demonstrate the
35 reasonableness of its facility or lease through a competitive

1 bidding process under rules adopted by the board.

2 The bill requires telecommunications services providers
3 offering communications service telephone numbers to retail
4 customers in the state to register annually with the board.
5 An applicant must complete an application for registration
6 on a form provided by the board, which shall include contact
7 information, the approximate number of service lines provided
8 in the state, and any other information deemed necessary by
9 the board. The board must issue a nonexclusive acknowledgment
10 of compliance within five business days of the receipt of a
11 completed application of registration. Such acknowledgment
12 shall authorize the registrant to obtain telephone numbers,
13 interconnect with other telecommunications providers, cross
14 railroad rights-of-way, and provide telecommunications services
15 in the state. An acknowledgment is transferrable by filing a
16 new or updated registration board. A registrant shall submit
17 corrections to the registration form within a reasonable time
18 after a change in circumstances if such information would be
19 required to be reported in an application. Failure to file and
20 maintain an annual registration subjects a telecommunications
21 services provider to a civil penalty under Code section 476.51.

22 Current law requires the board to impose an annual
23 assessment upon all telecommunications carriers in the state
24 to fund dual party relay service programs, with the assessment
25 rate depending on the type of telecommunications carrier. The
26 bill applies the same assessment rate to all telecommunications
27 carriers providing service in the state, including but not
28 limited to wireless, wireline, and alternative operator service
29 providers, at a rate of three cents for each communications
30 service telephone number provided in the state.

31 Current law requires pipeline companies doing business in
32 the state to pay the board an annual inspection fee of 50
33 cents for each mile of pipeline located in the state. The
34 bill removes this set fee and instead allows the board to
35 charge pipeline companies with annual inspection fees that are

1 directly attributable to the costs of conducting inspections.
2 Current law allows a landowner to petition the county
3 board of supervisors to appoint a compensation commission to
4 determine damages arising from the construction of certain
5 pipelines if the landowner and pipeline company are unable to
6 agree on damages. If the compensation commission's assessment
7 of damages exceeds 110 percent of the pipeline company's final
8 offer prior to the assessment, the pipeline company must pay
9 all costs of the assessment, including costs incurred by the
10 landowner; if the assessment does not exceed 110 percent of
11 the pipeline company's final offer prior to the assessment,
12 the landowner must pay the costs incurred by the pipeline
13 company. The bill removes provisions requiring a landowner to
14 pay the costs incurred by a pipeline company if a compensation
15 commission's assessment of damages does not exceed 110 percent
16 of the pipeline company's final offer prior to such assessment.