HOUSE FILE 2279
BY COMMITTEE ON COMMERCE

(SUCCESSOR TO HSB 555)

(As Amended and Passed by the House April 19, 2024)
[= New Language by the House

A BILL FOR

An Act relating to public utilities, including energy production, public utility affiliates, and cable and video service.

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

DIVISION I

ENERGY PRODUCTION

Section 1. Section 364.2, subsection 4, Code 2024, is amended by adding the following new paragraph:

NEW PARAGRAPH. *h.* (1) When a person requests a franchise for a merchant line as defined in section 478.6A and that requester possesses a franchise issued by the Iowa utilities board outside of a city, and when the proposed merchant line is more than fifty miles in total length within the state and will be underground within the limits of the city, all of the following apply:

(a) A person shall submit a written franchise request including the proposed terms and conditions of the franchise.

(b) Upon receipt of the franchise request for a merchant line, a city shall conduct a hearing pursuant to this subsection. The city and the person may negotiate the terms of a franchise prior to the approval of an ordinance. A city may not unreasonably refuse to grant a franchise for a merchant line. If the city denies the franchise request, the city shall provide the person with a written denial of the franchise based on substantial evidence in the record demonstrating that the proposed transmission line would have a significant adverse impact on the health or safety of the city's residents or public facilities that would not have been considered by the Iowa utilities board.

(c) If the city has not held the required hearing or has not acted on a request for a franchise for a merchant line within ninety days of the receipt of the request, notwithstanding any other terms of the Code, the franchise is deemed approved by the city. If a request is timely denied, the person may seek a certiorari judicial review by filing a petition either in Polk county district court or in the district court for the county in which the petitioner resides or the principal place of the requester for the merchant line.

(d) This subsection applies to eligible merchant lines for

which a franchise has been granted pursuant to chapter 478 prior to the effective date of this subsection.

(2) This paragraph is repealed effective January 1, 2026.]

Sec. 2. Section 476.42, subsection 1, paragraph a, subparagraph (1), Code 2024, is amended to read as follows:

(1) A solar, wind turbine, electric storage unit, nuclear, waste management, resource recovery, refuse-derived fuel, agricultural crops or residues, or woodburning facility. For purposes of this definition only, "*waste management*" includes a facility using plasma gasification to produce synthetic gas, either as a stand-alone fuel or for blending with natural gas, the output of which is used to generate electricity or steam. For purposes of this definition only, "*plasma gasification*" means the thermal dissociation of carbonaceous material into fragments of compounds in an oxygen-starved environment.

Sec. 3. Section 476.48, subsection 6, Code 2024, is amended by striking the subsection.

Sec. 4. Section 476A.1, subsection 5, Code 2024, is amended to read as follows:

5. "*Facility*" means any electric power generating plant, electric storage unit, or a combination of plants or units at a single site, owned by any person, with a total capacity of twenty-five [or more] megawatts of electricity for plants or twenty-five or more megawatt hours of electricity for electric storage units, and those associated transmission lines connecting the generating plant or electric storage unit to either a power transmission system or an interconnected primary transmission system or both. Transmission lines subject to the provisions of this subchapter shall not require a franchise under chapter 478.

DIVISION II

PUBLIC UTILITY AFFILIATES

Sec. 5. Section 476.74, subsection 5, Code 2024, is amended to read as follows:

5. *Exemption.* The provisions of this section requiring

filing of contracts or agreements with the board shall not apply to transactions with an affiliate where the amount of consideration involved is not in excess of ~~fifty thousand dollars or five percent of the capital equity of the utility, whichever is smaller~~ two hundred fifty thousand dollars. However, regularly recurring payments under a general or continuing arrangement ~~which~~ that aggregate a greater annual amount shall not be broken down into a series of transactions to come within this exemption. In any proceeding involving the rates, charges, or practices of the public utility, the board may exclude from the accounts of the public utility any unreasonable payment or compensation made pursuant to any contract or arrangement ~~which~~ that is not required to be filed under this subsection.

DIVISION III

CABLE OR VIDEO SERVICE

Sec. 6. Section 474.1, subsection 4, Code 2024, is amended to read as follows:

4. As used in this chapter and chapters 475A, 476, 476A, 477A, 477C, 478, 479, 479A, and 479B, *"board"* and *"utilities board"* mean the Iowa utilities board.

Sec. 7. Section 477A.1, Code 2024, is amended by adding the following new subsections:

NEW SUBSECTION. 2A. *"Cable or video service"* includes the terms *"cable service"*, *"cable system"*, and *"video service"*.

NEW SUBSECTION. 4A. *"Competitive cable or video service provider"* includes the terms *"competitive cable service provider"* and *"competitive video service providers"*.

Sec. 8. Section 477A.1, subsection 7, Code 2024, is amended to read as follows:

7. *"Franchise"* means an initial authorization, or renewal of an authorization, issued by the board or a municipality, regardless of whether the authorization is designated as a franchise, permit, license, resolution, contract, certificate, agreement, or otherwise, that authorizes the ~~construction and~~

~~operation of a cable system~~ person to erect, maintain, and operate plants and systems for the provision of a cable or video service provider's network in a public right-of-way.

Sec. 9. Section 477A.1, subsection 9, paragraph a, Code 2024, is amended to read as follows:

a. "Gross revenues" means all consideration of any kind or nature, including but not limited to cash, credits, property, and in-kind contributions, received from subscribers for the provision of cable ~~service over a cable system by a competitive cable service provider or for the provision of~~ or video service by a competitive cable or video service provider within a municipality's jurisdiction. Gross revenues are limited to the following:

(1) Recurring charges for cable ~~service~~ or video service.

(2) Event-based charges for cable ~~service~~ or video service, including but not limited to pay-per-view and video-on-demand charges.

(3) Rental of set-top boxes and other cable ~~service~~ or video service equipment.

(4) Service charges related to the provision of cable ~~service~~ or video service, including but not limited to activation, installation, and repair charges.

(5) Administrative charges related to the provision of cable ~~service~~ or video service, including but not limited to service order and service termination charges.

(6) A pro rata portion of all revenue derived, less refunds, rebates, or discounts, by a cable ~~service provider~~ or ~~a~~ video service provider for advertising over the cable ~~service~~ or video service network to subscribers within the franchise area where the numerator is the number of subscribers within the franchise area, and the denominator is the total number of subscribers reached by such advertising. This subparagraph applies only to municipalities that include this provision in their franchise agreements as of January 1, 2007.

Sec. 10. Section 477A.1, subsection 9, paragraph b,

subparagraphs (2), (4), (5), (6), (7), (8), (9), and (11), Code 2024, are amended to read as follows:

(2) Revenues received by any affiliate or any other person in exchange for supplying goods or services used by the person providing cable ~~service~~ or video service.

(4) Regardless of whether the services are bundled, packaged, or functionally integrated with cable ~~service~~ or video service, any revenues derived by the holder of a certificate of franchise authority from services not classified as cable ~~service~~ or video service, including, without limitation, revenue received from telecommunications services, revenue received from information services, revenue received in connection with home-shopping services, or any other revenues attributed by the competitive cable ~~service provider~~ or ~~competitive~~ video service provider to noncable ~~service~~ or nonvideo service in accordance with the holder's books and records kept in the regular course of business and any applicable rules, regulations, standards, or orders.

(5) Revenues paid by subscribers to home-shopping programmers directly from the sale of merchandise through any home-shopping channel offered as part of the cable ~~services~~ or video services.

(6) Revenues from the sale of cable ~~services~~ or video services for resale in which the purchaser is required to collect the franchise fee from the purchaser's customer.

(7) Revenues from any tax of general applicability imposed upon the competitive cable ~~service provider~~ or ~~competitive~~ video service provider or upon subscribers by a city, state, federal, or any other governmental entity and required to be collected by the competitive cable ~~service provider~~ or ~~competitive~~ video service provider and remitted to the taxing entity, including but not limited to sales or use tax, gross receipts tax, excise tax, utility users tax, public service tax, and communication taxes, and including the franchise fee imposed under section 477A.7.

(8) Revenues forgone from the provision of cable ~~services~~ or video services to public institutions, public schools, or governmental entities at no charge.

(9) Revenues forgone from the competitive cable ~~service provider's~~ or ~~competitive~~ video service provider's provision of free or reduced-cost video service to any person, including, without limitation, any municipality and other public institutions or other institutions.

(11) Revenues from reimbursements by programmers of marketing costs incurred by the competitive cable ~~service provider~~ or ~~competitive~~ video service provider for the introduction or promotion of new programming.

Sec. 11. Section 477A.2, Code 2024, is amended to read as follows:

477A.2 Certificate of franchise authority requirement.

1. After July 1, 2007, a person providing cable ~~service~~ or video service in this state shall not provide such service without a franchise. The franchise may be issued by either the board pursuant to section 477A.3 or by a municipality pursuant to section 364.2.

2. *a.* A person providing cable ~~service~~ or video service under a franchise agreement with a municipality prior to July 1, 2007, is not subject to this section with respect to such municipality until the franchise agreement expires or is converted pursuant to subsection 6.

b. Upon expiration of a franchise, a person may choose to renegotiate a franchise agreement with a municipality or may choose to obtain a certificate of franchise authority under this chapter. An application for a certificate of franchise authority pursuant to this subsection may be filed within sixty days prior to the expiration of a municipal franchise agreement. A certificate of franchise authority obtained pursuant to an application filed prior to the expiration of a municipal franchise agreement shall take effect upon the expiration date of the municipal franchise agreement.

c. A municipal utility that provides cable ~~service~~ or video service in this state is not subject to this section and shall not be required to obtain a certificate of franchise authority pursuant to this chapter in the municipality in which the provision of cable ~~service~~ or video service by that municipality was originally approved.

3. For purposes of this section, a person providing cable ~~service~~ or video service is deemed to have executed a franchise agreement to provide cable ~~service~~ or video service with a specific municipality if an affiliate or predecessor of the person providing cable ~~service~~ or video service has or had executed an unexpired franchise agreement with that municipality as of May 29, 2007.

4. A competitive cable ~~service provider~~ or ~~competitive~~ video service provider shall provide at least thirty days' notice to each municipality with authority to grant a franchise in the service area, and to the incumbent cable or video provider, in which the competitive cable ~~service provider~~ or ~~competitive~~ video service provider is granted authority to provide service under a certificate of franchise authority that the competitive cable ~~service provider~~ or ~~competitive~~ video service provider will offer cable ~~services~~ or video services within the jurisdiction of the municipality, and shall not provide service without having provided such thirty days' notice. A copy of the notice shall be filed with the board on the date that the notice is provided. All notices required by this subsection shall be sent by certified mail.

5. As used in this section, *"affiliate"* includes but is not limited to a person that directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with a person receiving, obtaining, or operating under a franchise agreement with a municipality to provide cable ~~service~~ or video service through merger, sale, assignment, restructuring, or any other type of transaction.

6. If a competitive cable ~~service provider~~ or ~~a competitive~~

video service provider applies for a certificate of franchise authority to operate within a municipality, the incumbent cable provider may, at its discretion, apply for a certificate of franchise authority for that same municipality. Such application shall be automatically granted on the same day as a competitive cable ~~service provider~~ or ~~competitive~~ video service provider files a thirty days' notice of offering service as required pursuant to subsection 4. The franchise agreement with the municipality is terminated on the date the board issues the certificate of franchise authority to an incumbent cable provider. The terms and conditions of the certificate of franchise authority shall be the same as the terms and conditions of a competitive cable ~~service provider~~ or ~~a competitive~~ video service provider pursuant to this chapter and shall replace the terms and conditions of the franchise agreement previously granted by the municipality.

Sec. 12. Section 477A.3, subsection 1, paragraphs a, c, d, and f, Code 2024, are amended to read as follows:

a. That the applicant has filed or will timely file with the federal communications commission all forms required by the commission in advance of offering cable ~~service~~ or video service in this state.

c. That the applicant agrees to comply with all applicable state laws and nondiscriminatory municipal ordinances and regulations regarding the use and occupation of a public right-of-way in the delivery of the cable ~~service~~ or video service, to the extent consistent with this chapter, including the police powers of the municipalities in which the service is delivered.

d. A description of the service area to be served and the municipalities to be served by the applicant, which may include certain designations of unincorporated areas. This description shall be updated by the applicant prior to the expansion of cable ~~service~~ or video service to a previously undesignated service area and, upon such expansion, notice shall be given to

the board of the service area to be served by the applicant.

f. Documentation that the applicant possesses sufficient managerial, technical, and financial capability to provide the cable ~~service~~ or video service proposed in the service area.

Sec. 13. Section 477A.3, subsection 1, paragraph g, Code 2024, is amended by striking the paragraph.

Sec. 14. Section 477A.3, subsections 5 and 9, Code 2024, are amended to read as follows:

5. The certificate of franchise authority issued by the board shall contain all of the following:

a. A grant of authority to provide cable ~~service~~ or video service in the service area designated in the application.

b. A grant of authority to use and occupy the public right-of-way ~~in the delivery~~ for the purpose of erecting, maintaining, and operating plants and systems for the provision of cable ~~service~~ or video service, subject to the laws of this state, including the police powers of the municipalities in which the service is delivered.

c. A statement that the grant of authority provided by the certificate is subject to the lawful operation of the cable ~~service~~ or video service by the applicant or the applicant's successor.

d. A statement that the franchise is for a term of ~~ten~~ twenty-five years, is renewable under the terms of this section, and is nonexclusive.

9. The certificate of franchise authority issued by the board may be terminated by a person providing cable ~~service~~ or video service by submitting written notice to the board and any affected municipality. Neither the board nor an affected municipality shall have authority to review or require approval of such termination.

Sec. 15. Section 477A.3, subsection 6, paragraph a, Code 2024, is amended to read as follows:

a. If the holder of a certificate of franchise authority fails to commence operation of a cable ~~system~~ or video service

network within twelve months from the date the application is granted, the board may determine that the applicant is not in compliance with the certificate of franchise authority and may revoke the certificate.

Sec. 16. Section 477A.3, subsection 7, paragraph a, Code 2024, is amended to read as follows:

a. In the event that an applicant granted a certificate of franchise authority subsequently ceases to engage in construction or operation of a cable ~~system~~ or video service network and is no longer providing service, the applicant shall notify the municipality, the board, and the incumbent cable provider on the date that construction or service is terminated.

Sec. 17. Section 477A.4, Code 2024, is amended to read as follows:

477A.4 Applicability to federal law.

To the extent required by applicable law, a certificate of franchise authority issued under this chapter shall constitute a "franchise" for the purposes of 47 U.S.C. §541(b)(1). To the extent required for the purposes of 47 U.S.C. §521 – 561, only the state of Iowa shall constitute the exclusive franchising authority for competitive cable ~~service providers~~ and ~~competitive~~ video service providers in this state.

Sec. 18. Section 477A.6, subsections 1 and 2, Code 2024, are amended to read as follows:

1. Not later than one hundred eighty days after a request by a municipality in which a competitive cable ~~service provider~~ or ~~a competitive~~ video service provider is providing cable ~~service~~ or video service, the holder of the certificate of authority for that municipality shall designate a sufficient amount of capacity on the certificate holder's communications network to allow the provision of a comparable number of public, educational, and governmental channels that the incumbent cable provider in the municipality has activated and provided in the municipality under the terms of a franchise agreement with a

municipality prior to July 1, 2007. If no such channels are active, the municipality may request a maximum of three public, educational, and governmental channels for a municipality with a population of at least fifty thousand, and a maximum of two public, educational, and governmental channels for a municipality with a population of less than fifty thousand.

a. The public, educational, and governmental content to be provided pursuant to this section and the operation of the public, educational, and governmental channels shall be the responsibility of the municipality receiving the benefit of such capacity. The holder of a certificate of franchise authority shall be responsible only for the transmission of such content, subject to technological restraints.

b. The municipality receiving capacity under this section shall ensure that all transmissions, content, or programming to be transmitted by the holder of the certificate of franchise authority are provided or submitted to the competitive cable ~~service provider~~ or ~~competitive~~ video service provider in a manner or form that is capable of being accepted and transmitted by the competitive cable ~~service provider~~ or ~~competitive~~ video service provider, without requirement for additional alteration or change in the content, over the particular network of the competitive cable ~~service provider~~ or ~~competitive~~ video service provider, which is compatible with the technology or protocol utilized by the competitive cable ~~service provider~~ or ~~competitive~~ video service provider to deliver services. At its election the municipality may reasonably request any cable ~~service provider~~ or video service provider to make any necessary change to the form of any programming, furnished for transmission, which shall be charged to the municipality, not to exceed the provider's incremental costs. The municipality shall have up to twelve months to reimburse the cable ~~service provider~~ or video service provider. The provision of such transmissions, content, or programming to the competitive cable ~~service provider~~ or ~~competitive~~ video

service provider shall constitute authorization for such holder to carry such transmissions, content, or programming, at the holder's option, beyond the jurisdictional boundaries stipulated in any franchise agreement.

2. Where technically feasible, a competitive cable ~~service provider~~ or ~~competitive~~ video service provider that is a holder of a certificate of franchise authority and an incumbent cable provider shall use reasonable efforts to interconnect the cable or video communications network systems of the certificate holder and incumbent cable provider for the purpose of providing public, educational, and governmental programming. Interconnection may be accomplished by direct cable, microwave link, satellite, or other reasonable method of connection. A holder of a certificate of franchise authority and an incumbent cable provider shall negotiate in good faith and an incumbent cable provider shall not withhold interconnection of public, educational, or governmental channels.

Sec. 19. Section 477A.7, subsections 1 and 3, Code 2024, are amended to read as follows:

1. *a.* In any service area in which a competitive cable ~~service provider~~ or ~~a competitive~~ video service provider holding a certificate of franchise authority offers or provides cable ~~service~~ or video service, the competitive cable ~~service provider~~ or ~~competitive~~ video service provider shall calculate and pay a franchise fee to the municipality with authority to grant a certificate of franchise authority in that service area upon the municipality's written request. If the municipality makes such a request, the franchise fee shall be due and paid to the municipality on a quarterly basis, not later than forty-five days after the close of the quarter, and shall be calculated as a percentage of gross revenues. The municipality shall not demand any additional franchise fees from the competitive cable ~~service provider~~ or ~~competitive~~ video service provider, and shall not demand the use of any other calculation method for the franchise fee.

b. All cable ~~service providers~~ and video service providers shall pay a franchise fee at the same percent of gross revenues as had been assessed on the incumbent cable provider by the municipality as of January 1, 2007, and such percentage shall continue to apply for the period of the remaining term of the existing franchise agreement with the municipality. Upon expiration of the period of the remaining term of the agreement with the incumbent cable service provider, a municipality may request an increase in the franchise fee up to five percent of gross revenues.

c. A provider who is both a competitive cable ~~service provider~~ and a ~~competitive~~ video service provider shall be subject to and only be required to pay one franchise fee to a municipality under this subsection regardless of whether the provider provides both cable service and video service.

d. At the request of a municipality and not more than once per year, an independent auditor may perform reasonable audits of the competitive cable ~~service provider's~~ or ~~competitive~~ video service provider's calculation of the franchise fee under this subsection. The municipality shall bear the costs of any audit requested pursuant to this subsection, unless the audit discloses that the competitive cable ~~service provider~~ or ~~competitive~~ video service provider has underpaid franchise fees by more than five percent, in which case the competitive cable ~~service provider~~ or ~~competitive~~ video service provider shall pay all of the reasonable and actual costs of the audit.

e. A competitive cable ~~service provider~~ or ~~competitive~~ video service provider may identify and collect the amount of the franchise fee as a separate line item on the regular bill of each subscriber.

3. *a.* If an incumbent cable provider is required by a franchise agreement as of January 1, 2007, to provide institutional network capacity to a municipality for use by the municipality for noncommercial purposes, the incumbent cable provider and any subsequent holder of a certificate of

franchise authority shall provide support only for the existing institutional network on a pro rata basis per customer. Any financial support provided for an institutional network shall be limited to ongoing maintenance and support of the existing institutional network. This subsection shall be applicable only to a cable ~~service provider's~~ or video service provider's first certificate of franchise authority issued under this chapter, and shall not apply to any subsequent renewals. For the purposes of this subsection, maintenance and support shall only include the reasonable incremental cost of moves, changes, and restoring connectivity of the fiber or coaxial cable lines up to a demarcation point at the building.

b. For purposes of this subsection, the number of customers of a cable ~~service provider~~ or video service provider shall be determined based on the relative number of subscribers in that municipality at the end of the prior calendar year as reported to the municipality by all incumbent cable providers and holders of a certificate of franchise authority. Any records showing the number of subscribers shall be considered confidential records pursuant to section 22.7. The incumbent cable provider shall provide to the municipality, on an annual basis, the maintenance and support costs of the institutional network, subject to an independent audit. A municipality acting under this subsection shall notify and present a bill to competitive cable ~~service providers~~ or ~~competitive~~ video service providers for the amount of such support on an annual basis, beginning one year after issuance of the certificate of franchise authority. The annual institutional network support shall be due and paid by the providers to the municipality in four quarterly payments, not later than forty-five days after the close of each quarter. The municipality shall reimburse the incumbent cable provider for the amounts received from competitive cable ~~service providers~~ or ~~competitive~~ video service providers.

c. This subsection shall not apply if the incumbent

cable service provider is a municipal utility providing telecommunications services under section 388.10.

Sec. 20. Section 477A.10, subsection 2, Code 2024, is amended to read as follows:

2. A competitive cable ~~service provider~~ or ~~competitive~~ video service provider holding a certificate of franchise authority shall not deny access to any group of potential residential subscribers because of the income of residents in the local area in which such group resides.

Sec. 21. Section 477A.10, subsection 3, paragraph a, subparagraph (3), Code 2024, is amended to read as follows:

(3) These dwelling units do not have cable or video service available from another cable ~~service provider~~ or video service provider.

Sec. 22. Section 477A.10, subsection 3, paragraph b, Code 2024, is amended to read as follows:

b. This subsection shall be applicable only after the first date on which the video service provider operating under a certificate of franchise authority is providing cable ~~service~~ or video service to more than fifty percent of all cable and video subscribers receiving cable or video service from the holders of certificates of franchise authority and any other providers of cable or video services operating under franchise agreements with a municipality.