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House File 542

Public Utilities. By SCHWENGEL, LOSS, METZ and SCHROEDER.

Passed House, Date .....

Vote: Ayes..... Nays.....

Passed Senate, Date.....

Vote: Ayes..... Nays.....

Approved .....

# A BILL FOR

An Act to provide for the regulation of the issuance of stocks, bonds and other evidences of indebtedness by public utilities by the Iowa State Public Utilities Commission, to provide for court review of commission orders in relation to the same, to provide penalties for failures to comply with the laws or commission orders concerning issuance of said securities and to repeal all laws or parts of laws heretofore made in conflict herewith.

*Be It Enacted by the General Assembly of the State of Iowa:*

- 1 Section 1. Definitions. In this chapter, unless the
- 2 context otherwise requires:
- 3 1. "Public service corporation" means and embraces every
- 4 corporation which is a public utility as defined in Article I,
- 5 Section 2 of the Iowa Public Utilities Act.
- 6 2. "Commission" means the Iowa State Public Utilities
- 7 Commission.
- 8 3. "Securities" means capital stock and evidences of
- 9 indebtedness of a public service corporation, not including,
- 10 however, any obligation falling due one year or less after its
- 11 date and bearing date not later than the day of sale.
- 1 Sec. 2. Power of alienation, state control. The power

2 to create liens or mortgages on corporate property by public  
3 service corporations in this state, or to deed such property in  
4 trust, or to issue capital stock, is a special privilege, the  
5 right of supervision, regulation, restriction and control of  
6 which shall be vested in the state, and such power shall be  
7 exercised according to the provisions of these statutes.

1 Sec. 3. Issue of securities. 1. No securities shall be  
2 issued by any public service corporation until it shall first  
3 have obtained from the commission, and recorded upon its books  
4 a certificate authorizing such issue; and the commission shall  
5 not authorize the issuance of securities for any purposes which  
6 are not proper corporate purposes, or in an amount greater than  
7 is reasonably necessary for such corporate purposes, having in  
8 view the immediate requirements of the corporation and its  
9 prospective requirements over a reasonable period in the  
10 future, and other relevant considerations.

11 2. All securities issued in violation of any of the  
12 provisions of this chapter shall be void.

1 Sec. 4. Consideration for securities. No securities shall  
2 be issued by any public service corporation otherwise than for  
3 money, property or services actually received by it. The amount  
4 of money, and the value of the property or the services to be so  
5 received shall be: a. In case of stock having a par value, not  
6 less than the par value thereof: b. In case of stock having no  
7 par value, not less than the amount specified in the commission's  
8 certificate of authority as the selling price of such stock:

9 c. in case of evidences of indebtedness not issued for  
10 refunding purposes, such sum as the commission may determine  
11 to be a reasonable price, but in any event not less than  
12 seventy-five per cent of their face value; d. in case of  
13 evidences of indebtedness issued for refunding purposes, such  
14 sum as the commission may determine to be reasonable. The  
15 limitations of this section shall not apply to the sale of  
16 evidences of indebtedness of a public service corporation by  
17 way of enforcement of a pledge of such evidences of indebtedness,  
18 made by the corporation pursuant to a certificate of authority  
19 issued by the commission, as security for lawful indebtedness  
20 of the corporation; but in all such cases the instrument of  
21 pledge shall contain a provision to the effect that none of  
22 the pledged securities shall be sold or become the absolute  
23 property of the pledgee, either directly or indirectly,  
24 except at public sale, notice whereof shall be published  
25 once a week for at least three weeks prior thereto in at least  
26 one newspaper of general circulation published in the English  
27 language in the place where such sale shall take place, and  
28 further to the effect that the sale shall not be made below  
29 the price fixed therefor by the commission in its certificate  
30 authorizing the pledging of such securities.

1 Sec. 5. Securities. 1. Application to Issue. Any public  
2 service corporation desiring to issue securities shall file with  
3 the commission an application verified by its president or  
4 vice-president and its secretary or assistant secretary (or by

5 the signers of its articles of organization if it has not yet  
6 elected officers), setting forth: 1. The amount and character  
7 of the proposed securities; 2. the purposes for which they are  
8 to be issued; 3. the terms on which they are to be issued,  
9 including a detailed description and a detailed statement of  
10 the value of any property or services that are to be received  
11 in full or partial payment therefor, and of any property or  
12 services already received by the corporation, the cost of which  
13 is to be reimbursed to the corporation by the proceeds of such  
14 securities; and 4. a statement of the assets and liabilities  
15 of the corporation as of the most recent available date,  
16 together with such further financial information as the  
17 commission may require.

18 2. Hearings and Inquiries. In order to determine whether  
19 the proposed issue complies with the provisions of this chapter,  
20 the commission may make such inquiry or investigation, hold such  
21 hearings, and examine such witnesses, books, papers, documents  
22 or contracts, as it may deem material. It shall determine the  
23 value of any property or services for which the securities, in  
24 whole or in part, are to be issued. It may also make a  
25 valuation, in detail, of all property of the corporation and  
26 may determine the full amount of its liabilities if deemed  
27 pertinent.

28 3. Valuation of Franchises. In determining the value of  
29 property under this chapter, no franchise to be a corporation  
30 and no franchise or privilege granted to a corporation shall

31 be appraised at more than the sum paid therefor to the state  
32 or municipality granting the same.

33 4. Classes Proportionate. The amount of securities of  
34 each class which any public service corporation may issue shall  
35 bear a reasonable proportion to each other and to the value of  
36 the property, due consideration being given to the nature of  
37 the business of the corporation, its credit and prospects, the  
38 possibility that the value of the property may change from time  
39 to time, the effect which such issue will have upon the  
40 management and operation of the corporation by reason of the  
41 relative amount of financial interest which the various classes  
42 of stockholders will have in the corporation, and other  
43 considerations deemed relevant by the commission.

1 Sec. 6. Certificate of authority, impounding securities.

2 1. Upon the conclusion of its investigation, if the commission  
3 shall find that the proposed issue complies with the provisions  
4 of this chapter and that the financial condition, plan of  
5 operation and proposed undertakings of the corporation are  
6 such as to afford reasonable protection to purchasers of the  
7 securities to be issued, it shall issue to the corporation a  
8 certificate of authority stating: 1. The amount of securities  
9 reasonably necessary and the character of the same; 2. the  
10 purposes for which they are to be issued in such detail as the  
11 commission may deem necessary; and 3. the terms on which they  
12 are to be sold or otherwise disposed of, including a description  
13 and a determination of the value of any property or services to

14 be received in partial or full payment therefor; and the  
15 corporation shall not issue the securities on any other terms  
16 or for any other purposes than that stated in such certificate.  
17 If any portion of the securities authorized by the certificate  
18 are evidences of indebtedness which are to be pledged to secure  
19 lawful obligations of the applicant, the commission in its  
20 certificate shall state the minimum price at which such  
21 securities may be sold in the event of any enforcement of the  
22 pledge. If the purpose of the issue is, in whole or in part,  
23 to provide funds for properties to be constructed or acquired,  
24 the commission may, if it finds that the public interest so  
25 requires, require the applicant to impound the proceeds of such  
26 securities, or furnish suitable bonds to guarantee the completion  
27 of such project, under such conditions as the commission shall  
28 find to be reasonable and shall specify in the certificate.

29 2. The commission may attach to the issuance of any  
30 certificate under this chapter such terms, conditions or  
31 requirements as in its judgment are reasonably necessary to  
32 protect the public interest. Any public service corporation  
33 dissatisfied with any of the terms or conditions so imposed by  
34 the commission in such certificate of authority shall be limited  
35 in its remedy to an action to modify or set aside the commission  
36 order authorizing a certificate of authority, as provided by  
37 section eight (8) hereof. Any public service corporation issuing  
38 securities pursuant to any certificate of authority, not having  
39 brought any such action to set aside such order shall be deemed

40 thereby to have waived any and all objections to the terms,  
41 conditions and requirements contained in such certificate of  
42 authority:

1     Sec. 7. Securities accounted for. The commission may by  
2 provision inserted in its certificate of authority require  
3 issuers to account for the disposition of all securities  
4 requiring its approval. If the securities are issued for money,  
5 it may require the issuer to report the price at which the  
6 securities were issued, the amount of securities so issued, and  
7 the amount of cash which has been received; if they are issued  
8 for the refunding or discharge of securities or other  
9 indebtedness it may require the issuer to report the amount of  
10 securities issued for such purpose, the price at which issued,  
11 and the amount and nature of securities or other indebtedness  
12 refunded or discharged by such issuance; if they are issued for  
13 the acquisition of property or services it may require the  
14 issuer to report the amount of securities issued for such  
15 purpose, the price at which issued, and information regarding  
16 the property or services for which such securities were issued.

1     Sec. 8. Court review. Any public service corporation  
2 which is dissatisfied with any order, determination or denial  
3 made by the commission under the provisions of this chapter,  
4 may commence and prosecute an action in the district court for  
5 Polk County against the commission to vacate and set aside  
6 said order, determination or denial, on the ground that the  
7 same is unreasonable or unlawful.

1     Sec. 9. Penalties. 1. Any public service corporation,  
2     or any agent, director or officer thereof, who shall directly  
3     or indirectly, issue or cause to be issued, any securities for  
4     whose issuance a certificate is required contrary to the  
5     provisions of this chapter, or who shall apply the proceeds  
6     from the sale thereof to any purpose other than that specified  
7     in the certificate of the commission, shall forfeit to the state  
8     not less than five hundred dollars (\$500.00) nor more than ten  
9     thousand dollars (\$10,000.00) for each offense.

10    2. Every director, president, secretary, or other official  
11    or agent of any public service corporation, who shall practice  
12    fraud or knowingly make any false statement to secure a  
13    certificate of authority to issue any security, or issue  
14    under a certificate so obtained and with knowledge of such  
15    fraud, or false statement, or negotiate, or cause to be  
16    negotiated, any security, in violation of this chapter, shall  
17    be punished by a fine of not less than five hundred dollars  
18    (\$500.00) or by imprisonment in the state prison not less than  
19    one (1) nor more than ten (10) years, or by both fine and  
20    imprisonment.

1     Sec. 10. Fees for authority to issue securities, expenses.

2     1. Each public service corporation on filing an application for  
3     authority to issue any securities to which this chapter is  
4     applicable shall pay with such application, prior to the  
5     issuance of a certificate, a fee of one dollar (\$1.00) per  
6     thousand (1,000) for each thousand dollars (\$1,000) par value

7 of each authorized issue of securities, but in no case less  
8 than ten dollars (\$10.00) for any issue. If any such securities  
9 shall have no par value, the price at which such securities  
10 are issued or sold shall be deemed the par value for the  
11 purposes of computing the fee payable under this section.

12 2. Whenever the commission deems it necessary to make an  
13 investigation of the books, accounts and practices or to make  
14 an appraisal of the property of any public service corporation  
15 which has filed an application for authority to issue any  
16 securities to which this chapter is applicable, such public  
17 service corporation shall pay all expenses reasonably  
18 attributable to such special investigation, or to such an  
19 appraisal of the property.

1 Sec. 11. Impaired capital. Whenever the commission shall  
2 find that the capital of any public service corporation is  
3 impaired it may, after investigation and hearing, issue an  
4 order directing such public utility to cease paying dividends  
5 on its common stock until such impairment has been made good.

1 Sec. 12. Judicial sale of corporation, reorganization.  
2 Whenever the rights, powers, privileges and franchises of any  
3 domestic public service corporation shall be sold at judicial  
4 sale or pursuant to the foreclosure of a mortgage, the  
5 purchasers shall, within sixty days after such date, organize  
6 a new corporation pursuant to the laws respecting corporations  
7 for similar purposes, and shall convey to such corporation  
8 the rights, privileges and franchises which the former corporation

9 had, or was entitled to have, at the time of such sale, and such  
10 as are provided by the statutes applicable thereto. The  
11 amount of securities which may be issued by the new corporation  
12 for the purpose of acquiring the property of the former  
13 corporation shall be determined in accordance with sections  
14 four (4), five (5), and six (6) hereof. •

1 Sec. 13. Preferred stock, dividends, preferences, voting  
2 power, classes, interest, certificate, reissue. 1. Any public  
3 service corporation may provide for preferred stock in its  
4 original articles of organization or by amendment or amendments  
5 thereto adopted by the affirmative vote of the holders of not  
6 less than two-thirds of the outstanding stock, and may in such  
7 articles, or by such amendment or amendments thereto, adopted  
8 by the affirmative vote of the holders of two-thirds of the  
9 outstanding stock, provide from time to time for the increase  
10 of the amount of preferred stock, theretofore authorized, and  
11 may provide, with respect to such preferred stock, or any  
12 increase thereof, for the payment of dividends on any such  
13 preferred stock, whenever so authorized, out of the profits  
14 at a specified rate or rates not to exceed eight per centum  
15 per annum, before dividends are paid upon the common stock;  
16 for the accumulation of such dividends on any such preferred  
17 stock; for a preference of any such preferred stock, not,  
18 however, exceeding the par value thereof over the common stock  
19 in the distribution of the corporation assets other than profits  
20 for the redemption of any such preferred stock at not less than

21 par, plus any accumulated and unpaid dividends, if said stock  
22 provides for the accumulation of dividends; and for denying  
23 or restricting the voting power of any such preferred stock;  
24 or for any one or more of said provisions. Such preferred  
25 stock may be issued in one or more classes, in such amounts  
26 for each class, and, with respect to any one or more classes,  
27 with such designation, rights, privileges, limitations,  
28 preferences and voting powers or prohibitions, restrictions  
29 or qualifications and upon such terms as to redemption and as  
30 to rate of dividend, not inconsistent with the provisions  
31 above set forth, as may be expressed in the original articles  
32 of incorporation or in any such amendment thereof, and  
33 the power to increase the preferred stock as above provided  
34 shall apply to any or all of the classes of preferred stock.  
35 Whenever so expressed in the original articles of incorporation  
36 or in any such amendment thereof, the board of directors of  
37 the corporation shall be authorized to provide for the issue  
38 of any such class or classes of preferred stock in series and,  
39 within such limits as may be imposed in such original articles  
40 of incorporation or amendments, not inconsistent with the  
41 provisions above set forth, to determine and fix the terms as  
42 to redemption and as to rate of dividend applicable to any  
43 such series. In providing for the issue of any such preferred  
44 stock, the corporation may further provide that any such  
45 preferred stock shall, in addition to the first dividends  
46 hereinabove provided, also participate with the common

47 stock in further dividends on such terms and in such manner  
48 as may be stated in the original articles of incorporation or  
49 in any such amendment thereof, and the power to increase the  
50 preferred stock as above provided shall apply to any or all of  
51 the classes of preferred stock. •

52 2. Neither preferred nor common stock shall bear interest.  
53 Certificates of preferred stock and common stock shall state on  
54 the face thereof, or on the reverse side of such certificates  
55 with an appropriate reference thereto on the face thereof,  
56 all privileges accorded to and all restrictions imposed on  
57 preferred stock. No change or amendment in relation to any  
58 such preferred stock theretofore issued shall be made, except  
59 by way of amendment to the articles of organization, adopted  
60 by the affirmative vote of the holders of two-thirds of all  
61 outstanding stock, both preferred and common, at a special  
62 meeting called therefor in accordance with the provisions of  
63 the articles of incorporation and the by-laws of such corporation.  
64 But if authorized by the articles to provide for the issue  
65 of preferred stock of any class or classes in series and  
66 subject to any restrictions in the articles contained, the  
67 board of directors may, without action by the stockholders,  
68 change preferred stock of any series owned by the corporation  
69 and held in its treasury, to preferred stock of one or more  
70 other series of the same class and then or theretofore  
71 provided for by the board of directors, as provided in  
72 subsection one (1) of this section.

73 3. Any public service corporation having redeemed or  
74 acquired and canceled any preferred stock may by resolution  
75 of its board of directors give such stock the status of authorized  
76 and unissued shares (within the total authorized amount of the  
77 capital stock of such corporation) provided that a copy of  
78 such resolution duly certified be filed in the office of the  
79 secretary of state within six months after its adoption and  
80 prior to the reissue of any such stock.