

CHAPTER 591—S.F.No.2115

[Coded]

An act relating to the establishment of a power plant site and transmission line route selection authority in the environmental quality council; appropriating money; providing penalties.

Be it enacted by the Legislature of the State of Minnesota:

Section 1. **[116C.51] POWER PLANT SITING ACT; CITATION.** This act shall be known as the Minnesota power plant siting act.

Sec. 2. **[116C.52] DEFINITIONS.** Subdivision 1. As used in sections 1 to 18, the terms defined in this section have the meanings given them, unless otherwise provided or indicated by the context.

Subd. 2. "Council" shall mean the Minnesota environmental quality council.

Subd. 3. "High voltage transmission line" shall mean a conductor of electric energy and associated facilities designed for and capable of operation at a nominal voltage of 200 kilovolts or more, except that the council, by regulation, may exempt lines under one mile in length.

Subd. 4. "Large electric power generating plant" shall mean electric power generating equipment and associated facilities designed for or capable of operation at a capacity of 50,000 kilowatts or more.

Subd. 5. "Person" shall mean an individual, partnership, joint venture, private or public corporation, association, firm, public service company, cooperative, political subdivision, municipal corporation, government agency, public utility district, or any other entity, public or private, however organized.

Subd. 6. "Utility" shall mean any entity engaged in this state in the generation, transmission or distribution of electric energy including, but not limited to, a private investor owned utility, cooperatively owned utility, and a public or municipally owned utility.

Subd. 7. Construction shall be deemed to have started or commenced as a result of significant physical alteration of a site or route but not including activities incident to preliminary engineering or environmental studies.

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Sec. 3. [116C.53] **SITING AUTHORITY.** Subdivision 1. **ESTABLISHMENT.** The Minnesota environmental quality council is hereby given the authority to provide for power plant site and transmission line corridor and route selection.

Sec. 4. [116C.54] **ADVANCE FORECASTING.** Every utility which owns or operates, or plans within the next 15 years to own or operate large electric power generating plants or high voltage transmission lines shall develop forecasts as specified in this section. On or before July 1 of each even-numbered year, every such utility shall submit a report of its forecast to the council. Such report may be appropriate portions of a single regional forecast or may be jointly prepared and submitted by two or more utilities and shall contain the following information:

(1) Description of the tentative regional location and general size and type of all large electric power generating plants and high voltage transmission lines to be owned or operated by such utility during the ensuing 15 years or such longer period as the council deems necessary;

(2) Identification of all existing generating plants and transmission lines projected to be removed from service during such 15 year period or upon completion of construction of such large electric power generating plants and high voltage transmission lines;

(3) Statement of the projected demand for electric energy for the ensuing 15 years and the underlying assumptions for this forecast, such information to be as geographically specific as possible where this demand will occur;

(4) Description of the capacity of the electric power system to meet such demands during the ensuing 15 years;

(5) Description of the utility's relationship to other utilities and regional associations, power pools or networks; and

(6) Other relevant information as may be requested by the council.

Sec. 5. [116C.55] **DEVELOPMENT OF POWER PLANT SITING AND TRANSMISSION LINE ROUTING CRITERIA; PUBLIC HEARINGS; INVENTORY.** Subdivision 1. **POLICY.** The legislature hereby declares it to be the policy of the state to site large electric power facilities in an orderly manner compatible with environmental preservation and the efficient use of resources. In accordance with this policy, the environmental quality council shall choose sites that minimize adverse human and environmental impact while insuring continuing electric power system reliability and integrity and insuring that electric energy needs are met and fulfilled in an orderly and timely fashion.

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Subd. 2. INVENTORY CRITERIA; PUBLIC HEARINGS. The council shall promptly initiate a public planning process where all interested persons can participate in developing the criteria and standards to be used by the council in preparing an inventory of potential large electric power generating plant sites and high voltage transmission line corridors and to guide the site suitability evaluation and selection process. The participatory process shall include, but should not be limited to public hearings. Before substantial modifications of the initial criteria and standards are adopted, additional public hearings shall be held. Such criteria and standards shall be promulgated on or before July 1, 1974.

Subd. 3. INVENTORY OF POTENTIAL LARGE ELECTRIC POWER GENERATING PLANT SITES AND HIGH VOLTAGE TRANSMISSION LINE CORRIDORS. On or before July 1, 1975, the council shall assemble and publish an inventory of potential large electric power generating plant sites and high voltage transmission line corridors. The inventory report of potential large electric power generating plant sites and high voltage transmission line corridors shall set forth the criteria and standards used in developing the potential site and corridor inventory. After completion of its initial inventory of potential sites and corridors, the council shall have a continuing responsibility to evaluate, update and publish its inventory and if, due to changed circumstances or information, a site or corridor is inconsistent with prescribed criteria or does not meet prescribed standards, such site or corridor shall be removed from the inventory of potential sites and corridors.

Sec. 6. [116C.56] FACILITY DEVELOPMENT PLANS. After publication by the council of its initial inventory of potential sites and corridors, and the criteria by which such sites and corridors were selected, every utility which owns or operates or plans within the next five years to start construction, own or operate large electric power generating plants or high voltage transmission lines shall develop and annually submit to the council its plans for facilities to meet and fulfill the expected future demands for electric energy during the period covered by such report. Such plans may be appropriate portions of a single regional plan or may be jointly prepared and submitted by two or more utilities, and shall contain the following information:

(1) Description of the general size and type of all large electric power generating plants and high voltage transmission lines to be owned and operated by such utility;

(2) Identification of all existing generating plants and transmission lines intended to be removed from service upon completion of construction of such large electric power generating plants and high voltage transmission lines;

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(3) Identification of the location of the tentative preferred site and at least one alternative site for all large electric power generating plants, and the tentative preferred corridors and at least one alternative corridor for all high voltage transmission lines on which construction is intended to be commenced, and preliminary indication of the potential impact of the planned plants and lines on existing environmental values, and how potential adverse effects on such values will be avoided or minimized at least detriment to the public and to the total environment. Such site and corridor identification shall be made from the inventory published by the council pursuant to section 5 or from sites or corridors offered by the utility. In the event a utility identifies a plant site or transmission line corridor not contained in the council's inventory of potential sites and corridors, the utility shall set forth the reasons for such identification and shall make an evaluation of such identified sites and corridors using the council's plant siting and routing criteria.

Sec. 7. [116C.57] DESIGNATION OF SITES AND CORRIDORS; APPROVAL OF TRANSMISSION LINE ROUTES AND FACILITY CONSTRUCTION; EMERGENCY CERTIFICATION; RESPONSIBILITIES. Subdivision 1. DESIGNATION OF SITES AND CORRIDORS SUITABLE FOR SPECIFIC FACILITIES; REPORTS. Following publication of the inventory of potential sites for large electric power generating plants or corridors for high voltage transmission lines and the submission of the five year development plans of the utilities, a utility must apply to the council in a form and manner prescribed by the council for designation of a specific site or corridor for a specific size and type of facility. No large electric power generating plant or high voltage transmission line shall be constructed except on a site or route designated by the council pursuant to this act. Following the study, evaluation, and hearings, as provided in this section and sections 8, 9 and 10, on any site or corridor proposed by the utilities and such other sites and corridors as the council deems necessary from the inventory the council shall designate a suitable site or corridor for a specific size and type of facility. This designation by the council shall be made in accordance with the site selection criteria and standards established in section 5 and shall be made in a timely manner in a finding with reasons for such choice, and published no later than one year after the request for designation of a site by the utility or no later than 180 days after the request for designation of a corridor by the utility. The time for designation of a site may be extended for six months by the council for just cause. No site or corridor designation shall be made in violation of the site selection standards established in section 5. The council shall indicate the reasons for any refusal and indicate changes in size or type of facility necessary to allow siting in compliance with the standards. Upon designation of the site or

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corridor, the council shall issue to the utility a certificate of site compatibility.

Subd. 2. APPROVAL OF SPECIFIC HIGH VOLTAGE TRANSMISSION LINE FACILITIES, DESIGNS AND ROUTES WITHIN A DESIGNATED CORRIDOR. No later than two years after the issuance of a certificate of site compatibility the utility shall apply to the council for a permit for the construction of a high voltage transmission line within the approved corridor. Following study, evaluation and hearings on the type, design, routing, right-of-way preparation and facility construction as identified in the utility's application and alternatives to the utility's corridor development proposal as provided in subdivision 4, the council shall issue a permit for the construction of high voltage transmission lines within the designated corridor. This permit issuance by the council shall be made in a timely manner and published no later than 180 days after the application for a permit by the utility.

Subd. 3. EMERGENCY CERTIFICATION. Any utility whose electric power system requires the immediate construction of a large electric power generating plant or high voltage transmission line may make application to the council for an emergency certificate of site compatibility or permit for the construction of high voltage transmission lines, which certificate or permit shall be issued in a timely manner and published no later than 180 days of the application and upon a finding by the council that a demonstrable emergency exists which requires such immediate construction, and that adherence to the procedures and time schedules set forth in sections 4, 5, 6 and 7 hereof would jeopardize such utility's electric power system. A public hearing shall be held within 90 days of the application. The council shall, after notice and hearing, promulgate regulations setting forth the criteria for emergency certification.

Subd. 4. RESPONSIBILITIES, PROCEDURES, CONSIDERATIONS IN DESIGNATING SITES AND CORRIDORS; APPROVAL OF TRANSMISSION LINE FACILITY CONSTRUCTION. To facilitate the study, research, evaluation and designation of sites and corridors for large electric power generating plants and high voltage transmission lines and the approval of specific transmission line facilities and their routes the council shall be guided by, but not limited to, the following responsibilities, procedures, and considerations:

(1) Evaluation of research and investigations relating to the effects on land, water and air resources of large electric power generating plants and high voltage transmission line corridors and routes and the effects of water and air discharges from such plants on public health and welfare, vegetation, animals, materials and aesthetic values, including base line studies, predictive modeling,

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and monitoring of the water and air mass at proposed sites and sites of operating large electric power generating plants, evaluation of new or improved methods for minimizing adverse impacts of water and air discharges and other matters pertaining, to the effects of power plants on the water and air environment;

(2) Environmental evaluation of large electric power generating plant sites and high voltage transmission line corridors and routes proposed for future development and expansion and their relationship to the land, water, air and human resources of the state;

(3) Evaluation of the effects of new electric power generation and transmission technologies and systems related to power plants designed to minimize adverse environmental effects;

(4) Evaluation of the potential for beneficial uses of waste energy from proposed large electric power generating plants;

(5) Analysis of the direct and indirect economic impact of proposed large electric power generating plants and high voltage transmission lines;

(6) Evaluation of adverse direct and indirect environmental effects which cannot be avoided should the proposed site and transmission line corridor or route be accepted;

(7) Evaluation of alternatives to the proposed site and transmission line corridors and routes;

(8) Evaluation of irreversible and irretrievable commitments of resources should the proposed site and transmission line corridor or route be approved;

(9) Where appropriate, consideration of problems raised by other state and federal agencies and local entities.

(10) Where rules and regulations of the council as set forth in this act are substantially similar to existing rules and regulations of a federal agency to which the utility in the state is subject, the federal rules and regulations shall be applied by the council.

Sec. 8. [116C.58] **PUBLIC HEARINGS; NOTICE.** The council shall hold an annual public hearing at a time and place prescribed by regulation in order to afford interested persons an opportunity to be heard regarding its inventory of potential sites and corridors and any other aspects of the council's activities and duties or the policies set forth in this act. The council shall hold at least one public hearing in each county where a site or route is being considered for designation pursuant to section 7 as suitable for construction of a large electric power generating plant or a high

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voltage transmission line. Notice of public hearings shall be given by the council at least ten days in advance but no earlier than 45 days prior to such hearings. Notice shall be by publication in a legal newspaper of general circulation in the county in which the public hearing is to be held and by mailed notice to chief executives of the regional councils, county and the incorporated municipalities therein.

Sec. 9. **[116C.59] PUBLIC PARTICIPATION.** Subdivision 1. **ADVISORY COMMITTEE.** The council shall appoint one or more advisory committees to assist it in carrying out its duties. Committees appointed to evaluate plant sites or transmission line corridors considered for designation shall be comprised of as many persons as may be designated by the council, but shall include a majority of public representatives; at least one representative from each of the following: A public or municipally owned utility, a private investor owned utility and a cooperatively owned utility; one representative from the regional council and one from each county and municipal corporation in which a large electric power generating plant site and high voltage transmission line corridor are proposed to be located. Reimbursement for expenses incurred shall be made pursuant to the rules governing state employees.

Subd. 2. **OTHER PUBLIC PARTICIPATION.** The council shall adopt broad spectrum citizen participation as a principal of operation. The form of public participation shall not be limited to public hearings and advisory committees and shall be consistent with the council's rules, regulations and guidelines as provided for in section 16 of this act.

Sec. 10. **[116C.60] PUBLIC MEETINGS; TRANSCRIPT OF PROCEEDINGS; WRITTEN RECORDS.** Meetings of the council, including hearings, shall be open to the public. Minutes shall be kept of council meetings and a complete record of public hearings shall be kept. All books, records, files, and correspondence of the council shall be available for public inspection at any reasonable time. The council shall also be subject to section 471.705.

Sec. 11. **[116C.61] LOCAL REGULATION; STATE PERMITS; STATE AGENCY PARTICIPATION.** Subdivision 1. **REGIONAL, COUNTY AND LOCAL ORDINANCES, RULES, REGULATIONS; PRIMARY RESPONSIBILITY AND REGULATION OF SITE DESIGNATION, IMPROVEMENT AND USE.** To assure the paramount and controlling effect of the provisions herein over other state agencies, regional, county and local governments, and special purpose government districts, the issuance of a certificate of site compatibility or transmission line construction permit and subsequent purchase and use of such site or route locations for large electric power generating plant and high voltage transmission line purposes shall be the sole site approval required to be obtained

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by the utility. Such certificate or permit shall supersede and preempt all zoning, building, or land use rules, regulations, or ordinances promulgated by regional, county, local and special purpose government.

Subd. 2. **FACILITY LICENSING.** Notwithstanding anything herein to the contrary, utilities shall obtain state permits that may be required to construct and operate large electric power generating plants and high voltage transmission lines. A state agency in processing a utility's facility permit application shall be bound to the decisions of the council, with respect to the site designation for the large electric power generating plant or the corridor or route designation for the high voltage transmission line, and with respect to other matters for which authority has been granted to the council by this act.

Subd. 3. **STATE AGENCY PARTICIPATION.** State agencies authorized to issue permits required for construction or operation of large electric power generating plants or high voltage transmission lines shall participate in and present the position of the agency at public hearings and all other activities of the council on specific site, corridor or route designations of the council, which position shall clearly state whether the site, corridor, or route being considered for designation or permit approval for a certain size and type of facility will be in compliance with state agency standards, regulations or policies. No site or route shall be designated which violates state agency regulations.

Sec. 12. **[116C.62] IMPROVEMENT OF ACQUIRED LARGE ELECTRIC POWER GENERATING PLANT SITES AND HIGH VOLTAGE TRANSMISSION LINE ROUTE LOCATIONS.** Utilities which have acquired a power plant site or transmission line route in accordance with this act may proceed to construct or improve such site or route for the intended purposes at any time, subject to section 11, subdivision 2, provided that if such construction and improvement commences more than four years after a certificate or permit for the site or route has been issued then the utility must certify to the council that such site or route continues to meet the conditions upon which the certificate of site compatibility or transmission line construction permit was issued.

Sec. 13. **[116C.63] EMINENT DOMAIN POWERS; RIGHT OF CONDEMNATION.** Nothing herein shall abrogate or invalidate the right of eminent domain vested in utilities by statute or common law existing as of the effective date of this act. Such right of eminent domain shall continue to exist for utilities and may be used according to law to accomplish any of the purposes and objectives of this act.

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Sec. 14. **[116C.64] FAILURE TO ACT.** In the event the council fails to designate in a timely manner large electric power generating plant sites and high voltage transmission line corridors or routes as provided for herein, any affected utility may seek an order of the district court requiring the council to designate a site, corridor, or route.

Sec. 15. **[116C.65] JUDICIAL REVIEW.** Any utility, party or person aggrieved by the issuance of a certificate or emergency certificate of site compatibility or transmission line construction permit from the council or a certification of continuing suitability filed by a utility with the council or by a final order in accordance with any rules and regulations promulgated by the council, may appeal therefrom to any district court where such large electric power generating plant or high voltage transmission line is to be located. Such appeal shall be made and perfected within 60 days after the issuance of the certificate or permit by the council or certification filed with the council or the filing of any final order by the council. The notice of appeal to the district court shall be filed with the clerk of the district court and a copy thereof mailed to the council and affected utility. Any utility, party or person aggrieved by a final order or judgment rendered on appeal to the district court may appeal therefrom to the supreme court in the manner provided in civil actions.

Sec. 16. **[116C.66] RULES AND REGULATIONS.** The council, in order to give effect to the purposes of this act, shall adopt rules and regulations consistent with this act, including promulgation of plant siting and transmission line routing criteria, the description of the information to be furnished by the utilities, establishment of minimum guidelines for public participation in the development, revision, and enforcement of any regulation, plan or program established by the council. Minnesota Statutes, Chapter 15, shall apply to the appeal of rules and regulations adopted by the council to the same extent as it applies to review of rules and regulations adopted by any other agency of state government.

Sec. 17. **[116C.67] SAVINGS CLAUSE.** The provisions of this act shall not apply to the site for the large electric power generating plant evaluated and recommended by the governor's environmental quality council prior to the date of enactment, and also to high voltage transmission lines, the construction of which will commence prior to July 1, 1974; provided, however, that within 90 days following the date of enactment, the affected utility shall file with the council a written statement identifying such transmission lines, their planned location, and the estimated date for commencement of construction.

Sec. 18. **[116C.68] ENFORCEMENT, PENALTIES.** Subdivision 1. Any person who violates this act or any rule or regulation

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promulgated hereunder, or knowingly submits false information in any report required by this act shall be guilty of a misdemeanor for the first offense and a gross misdemeanor for the second and each subsequent offense. Each day of violation shall constitute a separate offense.

Subd. 2. The provisions of this act or any rules or regulations promulgated hereunder may be enforced by injunction, action to compel performance or other appropriate action in the district court of the county wherein the violation takes place. The attorney general shall bring any action under this subdivision upon the request of the council.

Subd. 3. When the court finds that any person has violated this act, any rule or regulation hereunder, knowingly submitted false information in any report required by this act or has violated any court order issued under this chapter, the court may impose a civil penalty of not more than \$10,000 for each violation. These penalties shall be paid to the general fund in the state treasury.

Sec. 19. **[116C.69] BIENNIAL REPORT; BUDGET; APPROPRIATION; FUNDING.** Subdivision 1. The council shall prepare and submit to the legislature biennially a report of its power plant and transmission siting operations, activities, findings, recommendations, and undertakings. The report shall also contain information on the council's biennial expenditures, its proposed budget for the following biennium, and the amounts paid in certificate and permit application fees pursuant to subdivision 2 and in assessments pursuant to subdivision 3. The proposed budget for the following biennium shall be subject to legislative review.

Subd. 2. Every applicant for a site certificate or transmission line construction permit shall pay to the council a fee in an amount equal to \$500 for each \$1,000,000 of production or transmission line plant investment in the proposed installation as defined in the Federal Power Commission Uniform System of Accounts. The council shall specify the time and manner of payment of the fee. If any single payment requested by the council is in excess of 25 percent of the total estimated fee, the council shall show that such excess is reasonably necessary. The applicant shall pay within 30 days of notification such additional fees as are reasonably necessary for completion of the plant site, transmission line corridor or route evaluation and selection process by the council. In no event shall the total fees required of the applicant under this subdivision exceed an amount equal to 0.001 of said production or transmission line plant investment (\$1,000 for each \$1,000,000) except that the minimum application fee shall not be less than \$5,000. All money received pursuant to this subdivision shall be deposited in the general fund. So much money as is necessary is annually appropriated from the general fund to pay expenses incurred in processing

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applications for certificates or permits in accordance with the provisions of this act and in the event such expenses are less than the fee paid, to refund the excess to the applicant. This annual appropriation shall not exceed the fees to be paid during such period.

Subd. 3. The council shall finance its base line studies, general environmental studies, development of criteria, inventory preparation and all other work, other than specific site, corridor, and route selection, from an assessment made annually by the council against all utilities. Each share shall be determined as follows: (1) the ratio that the annual retail kilowatt-hour sales in the state of each utility bears to the annual total retail kilowatt-hour sales in the state of all such utilities, multiplied by 0.667, plus (2) the ratio that the annual gross revenue from retail kilowatt-hour sales in the state of each utility bears to the annual total gross revenues from retail kilowatt-hour sales in the state of all such utilities, multiplied by 0.333, as determined by the council. Such assessment shall be credited to the general fund and shall be paid to the state treasury within 30 days after receipt of the bill, which shall constitute notice of said assessment and demand of payment thereof. The total amount which may be assessed to the several utilities under authority of this subdivision shall not exceed the annual budget of the council for carrying out the purposes of this subdivision.

Subd. 4. There is hereby appropriated to the environmental quality council from the general fund in the state treasury \$500,000 for the biennium ending June 30, 1975, as the budget for carrying out the provisions of subdivision 3 of this section.

Sec. 20. This act is effective the day following its final enactment.

Approved May 23, 1973.

CHAPTER 592—S.F.No.2167

An act relating to the organization and operation of state government; appropriating money for the conservation and development of the state's natural resources; providing for maintenance of the Minnesota historical society; for county and district agricultural societies; for various stockbreeders', dairymen's, horticultural and poultry associations and societies; for sheriffs' per diem and

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