

Sec. 47. **PERSONNEL NAME CHANGE.**

Those individuals serving as salaried examiners of an appeal tribunal shall be referees as of the effective date of section 30 without change in the terms and conditions of their employment. They have the same authority to decide matters pending before them as did an appeal tribunal chairman.

Sec. 48. **REPEALER.**

Minnesota Statutes 1982, section, 268.06, subdivision 32 is repealed.

Sec. 49. **EFFECTIVE DATE.**

Section 19 is effective retroactively to July 4, 1982. Section 18 is effective retroactively to October 1, 1982. Any wage credits disallowed for benefit purposes due to the operation of the stricken clause (4) shall be reinstated and eligibility for regular benefits shall be extended from October 1, 1982, until the claimant is reemployed or the final approval of this act whichever is earlier. Section 2 is effective retroactively to January 1, 1983. Sections 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 14, 15, 16, 17, 20, 21, 22, 23, 24, 26, 27, 28, 32, 35, 36, 39, 40, 41, 42, 43, 44, and 48 are effective the day following final enactment. Sections 1, 13, 25, 28, 30, 31, 33, 34, 37, 38, 45, 46, and 47 are effective August 1, 1983.

Approved June 14, 1983

**CHAPTER 373 — S.F.No. 1012**

*An act relating to waste management; amending the Waste Management Act of 1980; providing for the evaluation of bedrock disposal of hazardous waste; changing various definitions; adding definitions; altering various provisions, procedures, and requirements relating to the duties and authorities of the waste management board, pollution control agency, metropolitan agencies, counties, and waste management districts; changing various dates and deadlines; altering environmental review procedures for waste facilities; providing criminal and civil penalties for violations; requiring various reports from the pollution control agency; authorizing issuance of bonds by Washington and Ramsey counties for a solid waste facility; providing additional solid waste management authority to the city of Austin; amending Minnesota Statutes 1982, sections 115.071, subdivisions 2 and 3, and by adding subdivisions; 115A.03, subdivision 10, and by adding a subdivision; 115A.05, subdivisions 2 and 3; 115A.06, subdivision 4; 115A.08, subdivisions 4, 5, 5a, and 6; 115A.10; 115A.11, subdivisions 1 and 2; 115A.21; 115A.22, subdivisions 1, 3, 4, 6, and 7; 115A.24, subdivision 1; 115A.25, subdivisions 1, 2, 3, and by adding subdivisions; 115A.26; 115A.27, subdivision 2; 115A.28, subdivisions 1, 2, and 3; 115A.30; 115A.54, subdivision 2; 115A.67; 115A.70, subdivision 3, and by adding a subdivision; 116.06, subdivision 13, and by adding a subdivision; 116.07, subdivision 4, and by adding a subdivision; 473.149, subdivisions 2b, 2c, 2d, 2e, and 4; 473.153, subdivisions 2, 5, 6, 6b,*

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*and by adding subdivisions; 473.803, subdivisions 1a and 1b; 473.811, subdivision 1a; 473.823, subdivision 6; 473.831; 473.833, subdivisions 2a, 3, 7, and by adding a subdivision; amending Laws 1980, chapter 449, section 3; proposing new law coded in chapters 115A and 473; repealing Minnesota Statutes 1982, sections 115A.23; 115A.27, subdivision 1; 116.07, subdivision 4c; and 116.41, subdivisions 1 and 1a.*

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. Minnesota Statutes 1982, section 115.071, subdivision 2, is amended to read:

Subd. 2. **CRIMINAL PENALTIES.** (a) **VIOLATIONS OF LAWS; ORDERS; PERMITS.** (1) Except as provided in sections 2 and 3, any person who willfully or negligently violates any provision of chapters 115 or 116, or any standard, regulation, variance, order, stipulation agreement, schedule of compliance or permit issued or adopted by the agency thereunder, which violation is not included in clause (2), shall upon conviction be guilty of a misdemeanor.

(2) Any person who willfully or negligently violates any effluent standard and limitation or water quality standard adopted by the agency, any National Pollutant Discharge Elimination System permit or any term or condition thereof, any duty to permit or carry out any recording, reporting, monitoring, sampling, information entry, access, copying, or other inspection or investigation requirement as provided under applicable provisions of this chapter and, with respect to the pollution of waters of the state, chapter 116, or any National Pollutant Discharge Elimination System filing requirement, shall upon conviction be punished by a fine of not less than \$2,500 in the event of a willful violation or not less than \$300 in the event of a negligent violation. In any case the penalty shall not be more than \$25,000 per day of violation or by imprisonment for not more than one year, or both. If the conviction is for conduct committed after a first conviction of such person under this subdivision, punishment shall be by fine of not more than \$50,000 per day of violation, or by imprisonment for not more than two years, or both.

(b) **INFORMATION AND MONITORING.** Any person who knowingly makes any false statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under this chapter and, with respect to the pollution of the waters of the state, chapter 116, or standards, regulations, orders, stipulation agreements, schedule of compliance or permits pursuant hereto, or who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required to be maintained under this chapter and, with respect to the pollution of waters of the state, chapter 116, or standards, regulations, variances, orders, stipulation agreements, schedules of compliance, or permits pursuant thereto, shall upon conviction, be punished by a fine of not more than \$10,000 per day of violation, or by imprisonment for not more than six months, or both.

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(c) **DUTY OF LAW ENFORCEMENT OFFICIALS.** It shall be the duty of all county attorneys, sheriffs and other peace officers, and other officers having authority in the enforcement of the general criminal laws to take all action to the extent of their authority, respectively, that may be necessary or proper for the enforcement of said provisions, regulations, standards, orders, stipulation agreements, variances, schedule of compliance, or permits.

Sec. 2. Minnesota Statutes 1982, section 115.071, is amended by adding a subdivision to read:

Subd. 2a. HAZARDOUS WASTE; CRIMINAL PENALTIES. A person shall be punished by a fine of not more than \$25,000 per day of violation or by imprisonment of not more than one year, or both, upon conviction of any of the following offenses:

(a) willfully or negligently violating any provision relating to hazardous waste of chapter 115 or 116, or any standard, rule, variance, order, stipulation agreement, schedule of compliance, permit, or term or condition of a permit issued or adopted by the agency under such a provision;

(b) willfully or negligently violating any duty to permit or carry out any recording, reporting, monitoring, sampling, information entry, access, copying or other inspection or investigation requirement as provided under any provision relating to hazardous waste of chapter 115 or 116, or any standard, rule, variance, order, stipulation agreement, schedule of compliance or permit issued or adopted by the agency under such a provision; or

(c) knowingly making any false material statement, representation or certification in any application, label, manifest, record, report, plan, permit or other document, or knowingly destroying, altering, or concealing any document, filed or required to be maintained with respect to hazardous waste under any provision of chapter 115 or 116, or under any standard, rule, order, stipulation agreement, schedule of compliance or permit issued or adopted by the agency under such a provision.

If the conviction is for conduct committed after a first conviction of the person under this subdivision, punishment shall be by a fine of not more than \$50,000 per day of violation or by imprisonment of not more than two years, or both.

Sec. 3. Minnesota Statutes 1982, section 115.071, is amended by adding a subdivision to read:

Subd. 2b. HAZARDOUS WASTE; UNLAWFUL DISPOSAL; CRIMINAL PENALTIES. Any person who knowingly, or with reason to know, disposes of hazardous waste in a manner contrary to any provision of chapter 115 or 116, or any standard or rule adopted in accordance with those chapters relating to disposal, is guilty of a felony. Punishment shall be by a fine of not

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more than \$25,000 per day of violation or by imprisonment for not more than five years, or both.

For the purposes of this subdivision, the terms defined in this clause have the meanings given them.

(a) "Disposal" has the meaning given it in section 115A.03, subdivision 9.

(b) "Hazardous waste" has the meaning given it in section 116.06, subdivision 13.

Sec. 4. Minnesota Statutes 1982, section 115.071, subdivision 3, is amended to read:

Subd. 3. **CIVIL PENALTIES.** Any person who violates any provision of chapters 115 or 116, except any provisions of chapter 116 relating to air and land pollution caused by agricultural operations which do not involve National Pollutant Discharge Elimination System permits, or of (1) any effluent standards and limitations or water quality standards, (2) any ~~National Pollutant Discharge Elimination System~~ permit or term or condition thereof, (3) any National Pollutant Discharge Elimination System filing requirements, (4) any duty to permit or carry out inspection, entry or monitoring activities, or (5) any rules, ~~regulations~~, stipulation agreements, variances, schedules of compliance, or orders issued by the agency, shall forfeit and pay to the state a penalty, in an amount to be determined by the court, of not more than \$10,000 per day of violation except that if the violation relates to hazardous waste the person shall forfeit and pay to the state a penalty, in an amount to be determined by the court, of not more than \$25,000 per day of violation.

In addition, in the discretion of the court, the defendant may be required to:

(a) forfeit and pay to the state a sum which will adequately compensate the state for the reasonable value of cleanup and other expenses directly resulting from unauthorized discharge of pollutants, whether or not accidental;

(b) forfeit and pay to the state an additional sum to constitute just compensation for any loss or destruction to wildlife, fish or other aquatic life and for other actual damages to the state caused by an unauthorized discharge of pollutants.

As a defense to any of said damages, the defendant may prove that the violation was caused solely by (1) an act of God, (2) an act of war, (3) negligence on the part of the state of Minnesota, or (4) an act or failure to act which constitutes sabotage or vandalism, or any combination of the foregoing clauses.

The civil penalties and damages provided for in this subdivision may be recovered by a civil action brought by the attorney general in the name of the state.

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Sec. 5. Minnesota Statutes 1982, section 115A.03, subdivision 10, is amended to read:

Subd. 10. "Disposal facility" means a waste facility permitted by the agency that is designed or operated for the purpose of disposing of waste on or in the land, together with any appurtenant facilities needed to process waste for disposal or transfer to another waste facility.

Sec. 6. Minnesota Statutes 1982, section 115A.03, is amended by adding a subdivision to read:

Subd. 28a. "Retrievable storage" means a method of disposal whereby wastes are placed in a facility established pursuant to sections 115A.18 to 115A.30 for an indeterminate period in a manner designed to allow the removal of the waste at a later time.

Sec. 7. Minnesota Statutes 1982, section 115A.05, subdivision 2, is amended to read:

Subd. 2. **PERMANENT MEMBERS.** Eight of the permanent members of the board shall be appointed by the governor, with the advice and consent of the senate, to represent diverse areas and interests within the state. One member shall be appointed from each congressional district in accordance with boundaries existing on January 1, 1980. The term of office and compensation of the eight members thus appointed, and the manner of removal and filling of vacancies, shall be as provided in section 15.0575, except that the initial term of all members shall be four years extend until 90 days after the board makes the decisions required by section 115A.28 and the rate of compensation shall be \$50 per day spent on board activities. The ninth permanent member of the board shall be the chairperson who shall be appointed by the governor with the advice and consent of the senate. The chairperson shall serve at the pleasure of the governor for a term coterminous with that of the governor, except that the initial term of the chairperson shall be four years extend until 90 days after the board makes the decisions required by section 115A.28. The chairperson shall be the executive and operating officer of the board and shall determine the time and place of meetings, preside at meetings, appoint all board officers and hire and supervise all employees subject to the approval of the board, carry out the policy decisions of the board, and perform all other duties and functions assigned to him by the board or by law. No permanent member of the board shall hold other elected or appointed public office.

Sec. 8. Minnesota Statutes 1982, section 115A.05, subdivision 3, is amended to read:

Subd. 3. **TEMPORARY MEMBERS.** ~~For the purposes of each project review conducted by the board under sections 115A.18 to 115A.30 and 115A.32 to 115A.39 and for the purpose of preparing and adopting the hazardous waste management plan under section 115A.11 and making decisions on the elements of~~

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the certification of need for disposal required under sections 115A.18 to 115A.30, six Local representatives shall be added to the board as temporary voting members, as provided in sections 17; 115A.22, subdivision 4 $\frac{1}{2}$ ; and 115A.34. The provisions of section 15.0575, subdivisions 3 and 4 relating to compensation, removal, and vacancy shall apply to temporary members except that the rate of compensation shall be \$50 per day spent on board activities and that appointments by the governor to fill vacancies shall take effect in the same manner as the original appointment.

Sec. 9. Minnesota Statutes 1982, section 115A.06, subdivision 4, is amended to read:

Subd. 4. **ACQUISITION OF SITES FOR HAZARDOUS WASTE FACILITIES.** The board may direct the commissioner of administration to acquire by purchase, lease, condemnation, gift, or grant, any permanent or temporary right, title, and interest in and to real property, including positive and negative easements and water, air, and development rights, for sites and buffer areas surrounding sites for hazardous waste facilities approved by the board pursuant to sections 115A.18 to 115A.30 and 115A.32 to 115A.39. The board may also direct the commissioner of administration to acquire by purchase, lease, gift, or grant, development rights for sites and buffer areas surrounding sites for all or part of the period that the development ~~moratorium~~ limitations imposed by section 115A.21, subdivision 3, is are in effect. Money for the acquisition of any real property and interest in real property pursuant to this subdivision shall come from the issuance of state waste management bonds in accordance with sections 115A.57 to 115A.59. The property shall be leased in accordance with terms determined by the board to the owner and operator of the hazardous waste facility located thereon at a rate sufficient to pay debt service on the bonds which provided funds used to acquire the property and to evaluate the eligibility of the property for inclusion in the inventory under section 115A.09 or candidacy under sections 115A.18 to 115A.30. Any local government unit and the commissioners of transportation, natural resources, and administration may convey or allow the use of any property for such sites and areas, subject to the rights of the holders of any bonds issued with respect thereto, with or without compensation and without an election or approval by any other government agency. Land owned by the state may be exchanged for land not owned by the state for the purpose of providing a site and buffer area for a commercial hazardous waste facility, in accordance with the provisions of section 94.341 to 94.347 and other law. The commissioner of administration may hold the property for the purposes for which it was acquired, and may lease, rent, or dispose of the property so far as not needed for such purposes, upon the terms and in the manner the commissioner deems advisable. The right to acquire lands and property rights by condemnation shall be exercised in accordance with chapter 117. The commissioner of administration may take possession of any property for which condemnation proceedings have been commenced at any time after the issuance of a court order appointing commissioners for its condemnation. Where the property is acquired

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through eminent domain proceedings, the land owner's compensation shall be the fair market value of the property. Where the property is acquired by means other than through eminent domain proceedings, as by direct purchase or gift, the land owner's compensation shall be determined by the agreement of the parties involved. An award of compensation in a condemnation proceeding shall not be increased or decreased by reason of any increase or decrease in the value of the property caused by its designation in the inventory of preferred areas under section 115A.09 or as a candidate site under sections 115A.18 to 115A.30 or its selection as a site or buffer area.

Sec. 10. Minnesota Statutes 1982, section 115A.08, subdivision 4, is amended to read:

Subd. 4. **REPORT ON HAZARDOUS WASTE MANAGEMENT; DRAFT MANAGEMENT PLAN AND CERTIFICATION OF NEED.** By ~~August 15, 1982~~ November 1, 1983, the board through its chairperson shall issue a report to the legislative commission on hazardous waste management. The report shall include at least:

(a) an evaluation of alternative disposal facilities, disposal facility technologies, and disposal facility design and operating specifications ~~and an explanation of the preliminary design and operating specifications for disposal facilities selected for consideration under section 115A.23;~~

(b) an evaluation of prospects, strategies, and methods for developing commercial hazardous waste disposal facilities of various types, sizes, and functions;

(c) an evaluation of all feasible and prudent alternatives to disposal, including waste reduction, separation, pretreatment, processing, and resource recovery, and the potential of the alternatives to reduce the need for and practice of disposal;

(d) an evaluation of feasible and prudent disposal abatement objectives, along with a description of hazardous waste management methods and technologies, private and government actions, facilities and services, development schedules, revenue-raising measures, and levels of public and private expenditure and effort necessary to the achievement of those objectives;

(e) an evaluation of implementation strategies, including at least:

(1) waste reduction, on-site processing, and off-site management by generators;

(2) changes and improvements in regulation, licensing, permitting, and enforcement;

(3) government tax and financing programs to encourage proper waste management;

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(4) institutional alternatives, such as generator associations, cooperatives, franchises, public ownership, and flow control districts;

(5) promotion of private investment;

(6) interstate cooperation;

(f) an evaluation of the possibilities for negotiating long-term contracts with other states or with facilities in other states for disposal or processing of hazardous waste from Minnesota.

The report shall analyze the environmental, social, and economic effects of the alternatives and methods by which unavoidable adverse effects could be mitigated.

~~The report shall include a draft hazardous waste management plan, based on the analysis in the report and proposed for adoption pursuant to section 115A.11, and a draft certificate or certificates of need proposed for issuance under section 115A.24.~~

Sec. 11. Minnesota Statutes 1982, section 115A.08, subdivision 5, is amended to read:

Subd. 5. **REPORT ON MITIGATION OF LOCAL EFFECTS OF HAZARDOUS WASTE FACILITIES.** ~~By August 15, 1982~~ With the report required by subdivision 4, the board through its chairperson shall issue a report and make recommendations ~~to the legislative commission~~ on methods of mitigating and compensating for the local risks, costs, and other adverse effects of various types of hazardous waste facilities and on methods of financing mitigation and compensation measures. The methods of mitigating and compensating to be considered shall include but not be limited to the following: payment outside of levy limitations in lieu of taxes for all property taken off the tax rolls; preference in reviews of applications for federal funds conducted by the metropolitan council and regional development commissions; payment of all costs to service the facilities including the cost of roads, monitoring, inspection, enforcement, police and fire, and litter clean up costs; payment for buffer zone amenities and improvement; local control over buffer zone design; a guarantee against any and all liability that may occur.

Sec. 12. Minnesota Statutes 1982, section 115A.08, subdivision 5a, is amended to read:

Subd. 5a. **REPORT ON ASSURANCE OF SECURITY OF HAZARDOUS WASTE FACILITIES.** With the report required by subdivision 5, the board through its chairperson shall issue a report and make recommendations ~~to the legislative commission~~ on methods of assuring the security of commercial hazardous waste facilities. The report and recommendations shall be based on the need to assure: effective monitoring and enforcement during operation; effective containment, control, and corrective action in any emergency situation; financial

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responsibility of the owner and operator throughout the operating life of the facility, using performance bonds, insurance, escrow accounts, or other means; proper closure; financial responsibility after closure; and perpetual post-closure monitoring and maintenance. The report shall include recommendations on the source of funds, including operator contributions, fee surcharges, taxes, and other sources; the amount of funds; effective protection and guarantee of funds; administration; regulatory and permit requirements; the role of local authorities; and other similar matters.

Sec. 13. Minnesota Statutes 1982, section 115A.08, subdivision 6, is amended to read:

**Subd. 6. PREPARATION OF HAZARDOUS WASTE REPORTS; PROCEDURES; PUBLIC INVOLVEMENT.** By January 1, 1981, the board through its chairperson shall submit a proposed scope of work and work program for the hazardous waste reports required by subdivisions 4 and 5 to the legislative commission for review. During the preparation of the proposed scope of work and work plan and the reports, the board and the chairperson on behalf of the board shall encourage public debate and discussion of the issues relating to the reports. ~~The board and the chairperson on behalf~~ Representatives of the board, including at least one permanent member, shall meet with local officials and sponsor at least one public meeting in areas of the state affected by the inventory of preferred processing facility areas prepared pursuant to section 115A.09. The board and the chairperson on behalf of the board shall follow the procedures set out in section 115A.22, for consulting with citizens in areas affected by the selection of candidate sites for disposal facilities. To assist it in preparing the reports, the plan, and the certification of need required by subdivisions 4 ~~and 5~~ to 5a and sections 115A.11 and 115A.24, the board through its chairperson shall make grants to each local project review committee established for a candidate site for disposal identified under sections 115A.18 to 115A.30. The grants may be used by the committee to employ staff, pay administrative expenses, or contract with affected units of government or qualified consultants. The board and the chairperson on behalf of the board shall request recommendations from the private waste management industry, the board's advisory councils, affected regional development commissions, and the metropolitan council and shall consult with them on the board's intended disposition of the recommendations. The reports of the board shall summarize the comments received and the board's response to the comments. Copies of the reports must be submitted to the legislative commission on waste management.

Sec. 14. Minnesota Statutes 1982, section 115A.10, is amended to read:

**115A.10 DUTIES OF THE BOARD; HAZARDOUS WASTE FACILITIES; ENCOURAGEMENT OF PRIVATE ENTERPRISE.**

The board and the chairperson on behalf of the board shall encourage the development and operation of hazardous waste facilities by private enterprise to

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the extent practicable and consistent with the purposes of sections 115A.01 to 115A.72 and the board's hazardous waste management plan adopted pursuant to section 115A.11. In preparing the reports under section 115A.08 and the inventory of processing facility sites under section 115A.09, in adopting the management plan, and in its actions and decisions under sections 115A.18 to 115A.30 and 115A.32 to 115A.39, the board and the chairperson on behalf of the board shall solicit the active participation of private waste management firms and shall so conduct its activities as to encourage private permit applications for facilities needed in the state. The board shall promulgate rules for accepting, and evaluating, and selecting applications for permits for the construction and operation of facilities at sites preferred or selected by the board pursuant to section 115A.09 or sections 115A.18 to 115A.30. The rules shall include standards and procedures for making determinations on the minimum qualifications, including technical competence and financial capability, of permit applicants. The rules shall include standards and procedures for soliciting and accepting bids or permit applications and for selecting developers and operators of hazardous waste disposal facilities at sites chosen by the board pursuant to sections 115A.18 to 115A.30, which shall include a preference for qualified permit applicants who control a site chosen by the board.

Sec. 15. Minnesota Statutes 1982, section 115A.11, subdivision 1, is amended to read:

Subdivision 1. **CONTENTS.** ~~By December 15, 1982,~~ The board shall adopt a hazardous waste management plan. In developing and implementing the plan, the highest priority of the board shall be placed upon alternatives to land disposal of hazardous wastes including: technologies to modify industrial processes or introduce new processes which will reduce or eliminate hazardous waste generation; recycling, re-use, and recovery methods to reduce or eliminate hazardous waste disposal; and conversion and treatment technologies to reduce the degree of environmental risk from hazardous waste. The board shall also consider technologies for retrievable storage of hazardous wastes for later recycling, re-use, recovery, conversion, or treatment.

The plan shall include at least the following elements:

(a) an estimate of the types and volumes of hazardous waste which will be generated in the state through the year 2000;

(b) specific and quantifiable objectives for reducing to the greatest feasible and prudent extent the need for and practice of disposal, through waste reduction, pretreatment, retrievable storage, processing, and resource recovery;

(c) a description of the minimum disposal capacity and capability needed to be developed within the state for use through the year 2000, based on the achievement of the objectives under clause (b);

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(d) a description of implementation strategies required to develop the needed disposal capacity under clause (c) and to achieve the objectives under clause (b), including: the necessary private and government actions; development schedules for facilities, services, and regulations; revenue-raising and financing measures; levels of public and private effort and expenditure; legal and institutional changes; and other similar matters.

The plan shall provide for the orderly development of hazardous waste management sites and facilities to protect the health and safety of rural and urban communities. In preparing the plan the board shall consider its impact upon agriculture and natural resources.

The plan shall require the establishment in the state of at least one commercial retrievable storage or disposal facility and shall recommend and encourage methods and procedures that will insure the establishment of at least one facility for the recycling, re-use, recovery, conversion, treatment, destruction, transfer, or storage of hazardous waste. The board may make the implementation of elements of the plan contingent on actions of the legislature which have been recommended in the draft plan and certification of need and considered in the reports submitted pursuant to section 115A.08.

Sec. 16. Minnesota Statutes 1982, section 115A.11, subdivision 2, is amended to read:

Subd. 2. **PROCEDURE.** The plan shall be based upon the reports prepared pursuant to section 115A.08. The plan, the certificate of need issued under section 115A.24, and the procedures for hearings on the draft plan and draft certificate of need, shall not be subject to the rule-making or contested case provisions of chapter 14. By July 1, 1983, the chairman of the board shall report to the legislative commission on waste management about the hearing to be held pursuant to this subdivision. The chairman shall describe the board's plans and procedures for the hearing, the provisions for encouraging public participation in the hearing, and the board's plans for preparing the required report to the legislature fully and accurately summarizing the results of the hearing, the objections raised to the board's draft plan and certification, and the board's response to the testimony received. The legislative commission shall hold a hearing to receive public comment on the board's proposed hearing procedures and thereafter shall make any recommendations it deems appropriate for changes in the board's procedures. Following the submission of the report on hazardous management required under section 115A.08, subdivision 4, By November 1, 1983, the board through its chairperson shall issue a draft hazardous waste management plan proposed for adoption pursuant to this section, and a draft certificate or certificates of need proposed for issuance under section 115A.24. The draft plan and certificates must include an explanation of the basis of the findings, conclusions, and recommendations contained therein. The board shall hold a public hearing on the draft plan and draft certificate or certificates of need

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contained in the report within 30 days of their issuance. Notices of the draft plan and the draft certificate or certificates and notice of the hearing shall be published in the state register and newspapers of general circulation in the state. The notices must indicate how copies of the draft plan and draft certificate or certificates of need may be obtained. The board shall make the draft plan and draft certificate or certificates of need available for public review and comment at least 21 days before the hearing. The hearing shall be ordered by the chairperson of the board and shall be conducted by the state office of administrative hearings in a manner consistent with the completion of the proceedings in the time allowed by this section. The hearing officer shall not issue a report but shall preside at the hearing to ensure that the hearing is conducted in a fair, orderly, and expeditious manner and in accordance with the hearing procedures of the board. A majority of the permanent members of the board shall attend the hearing. In connection with the hearing, the chairperson of the board shall provide copies of the studies and reports on which the draft plan and certification of need are based and shall make an affirmative presentation showing the need for and reasonableness of the draft plan and certification of need present an explanation of the basis of the findings, conclusions, and recommendations in the draft plan and certification of need.

Within 15 days following the hearing the director of the agency shall issue a hazardous waste pollution control report. The report must be submitted to the legislative commission. The report must be based on existing and proposed federal and state pollution control rules and available information and expertise on the character, nature, and degree of hazard of the types and categories of hazardous waste identified in the plan. The report must:

(a) assess the pollution control problems and risks associated with each type and category of hazardous waste identified by the draft certification of need as eligible for disposal, before or after pretreatment, at a facility or facilities of the type and design selected by the board, and identify design and pretreatment alternatives or other methods for dealing with those problems and risks;

(b) identify at least one specific alternative technology for dealing with each waste which the report recommends should not be certified for disposal, and assess the pollution control problems and risks associated with the alternatives;

(c) assess the pollution control problems and risks associated with each standard and criteria contained in the plan and certification for determining the eligibility or ineligibility of waste for disposal;

(d) assess the pollution control programs and risks associated with the processing and other alternatives to disposal which are recommended in the plan for specific types or categories of hazardous waste, and identify methods for dealing with those problems and risks.

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Within 30 days following the hearing, the board shall revise the draft plan and the draft certificate or certificates of need as it deems appropriate, shall make a written response to the testimony received at the hearing and to the agency's report explaining its disposition of any recommendations made with respect to the plan and certification, and shall finally adopt a plan in accordance with this section and issue a certificate or certificates of need in accordance with section 115A.24 submit to the legislative commission the revised draft plan and certification of need, together with a report on the testimony received, the board's response, and the results of the hearing process.

**Sec. 17. [115A.201] BEDROCK DISPOSAL.**

**Subdivision 1. EVALUATION OF TECHNOLOGY; STUDY AREAS.** The board shall evaluate the feasibility of bedrock disposal of hazardous waste. If the board determines that bedrock disposal is or may be a feasible disposal technology, the board shall identify bedrock study areas of up to four square miles in size for further evaluation.

**Subd. 2. PARTICIPATION BY AFFECTED LOCALITIES.** A plan review committee shall be established for each study area and a temporary board member shall be appointed as provided in this subdivision, to participate in the preparation of the draft plan and certification of need to be issued under section 115A.11 and adopted under sections 115A.11 and 115A.24. Within 30 days following the identification of a bedrock study area by the board, the governor shall appoint the chair and members of a plan review committee, ensuring a balanced representation of all parties with a legitimate and direct interest in the review of the plan and certification of need. The plan review committee shall be eligible for technical assistance and grants pursuant to section 115A.08, subdivision 6, to assist it in participating in the plan and certification of need. Within 30 days following the appointment of a plan review committee, the committee shall select a temporary board member to be added to the board. Temporary board members may be members of the local plan review committee, and they shall be residents of the county in which the study area is primarily located. Temporary board members shall serve for terms lasting so long as the location the member represents is a study area. Temporary board members shall not participate or vote in decisions affecting the selection and certification of sites under this section and section 115A.21.

**Subd. 3. CANDIDATE SITES.** If the board determines that candidate sites are to be selected in the bedrock study areas, the candidate sites must be proposed and selected as provided in section 115A.21, subdivisions 1 and 2a.

Sec. 18. Minnesota Statutes 1982, section 115A.21, is amended to read:

**115A.21 CANDIDATE SITES.**

**Subdivision 1. SELECTION.** By March 15, 1982, The board shall select ~~six~~ at least four locations in the state, no more than one site per county, as

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candidate sites for commercial disposal facilities for hazardous waste. Candidate sites selected by the board before February 1, 1983, and additional candidate sites selected pursuant to this section, must be reviewed pursuant to sections 115A.22 to 115A.30. No location shall be selected as a candidate site unless the agency certifies its intrinsic suitability for the use intended pursuant to subdivision 2a.

Subd. 2. SEARCH PROCEDURE. The board shall consult with the agency and the private waste management industry in selecting candidate sites. Any sites proposed in applications for permits for disposal facilities being reviewed by the agency may be included by the board as candidate sites, provided the agency certifies the intrinsic suitability of the sites. The agency shall suspend its review of any permit application being reviewed by the board for inclusion as a candidate site until the site is eliminated from consideration as a candidate site.

Subd. 2. PROCEDURE. As soon as practicable, the board through its chairperson shall publish a request soliciting proposals and permit applications for hazardous waste disposal facilities from potential developers and operators of such facilities. Notice of the request shall be published in the state register and newspapers of general circulation in the state and shall be transmitted to all regional development commissions, the metropolitan council, and all counties in the state. The board may select conceptual design and operating specifications for a variety of hazardous waste disposal facilities in sufficient detail and extent in the judgment of the board to assist the evaluation of sites and the selection of candidate sites. By November 1, 1980, the board through its chairperson shall notify each regional development commission, or the metropolitan council, and each local government unit within whose jurisdiction the board intends to search for candidate sites. The notification shall explain the selection of the jurisdiction as a search area; shall summarize any conceptual specifications and the evaluation factors, criteria, standards, and procedures the board intends to use in selecting candidate sites; and shall describe the relationship of the candidate site selection process to the other review procedures under sections 115A.18 to 115A.30 and the hazardous waste reports and plans required under sections 115A.04 to 115A.15. The notification shall request recommendations and suggestions from each such commission, the metropolitan council, and local government unit on the criteria, standards, and procedures the board should use in selecting candidate sites within the time allowed. The board through its chairperson shall make a written response to any recommendations, explaining its disposition of the recommendations. No action of the board may be held invalid by reason of the board's failure to notify any of the entities listed in this subdivision.

Subd. 2a. INTRINSIC SUITABILITY CERTIFICATION. The board shall provide to the agency data relating to the intrinsic suitability of the sites a site to be proposed as a candidate sites site as soon as available but no later than November 1, 1981. By November 15, 1981, the board shall propose at least six locations as candidate sites, and. The director of the agency shall issue a notice

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indicating which of these sites whether the director recommends that the proposed sites should be certified as intrinsically suitable. The board through its chairperson and the director shall publish notice of hearings on the board's proposal and the director's recommendations. Notice shall be published in the state register and newspapers of general circulation in the state and shall be sent by mail to all regional development commissions, or the metropolitan council, and to local government units containing a proposed candidate site. The hearings shall be conducted by the state office of administrative hearings in a manner consistent with the completion of the proceedings and the hearing examiner's report to the agency and board in the time allowed by this section. The hearing shall afford all interested persons an opportunity to testify and present evidence on the subject of the hearing. The subject of the hearing shall be limited to information submitted by the board and additional information on the proposed sites which is relevant to the board's decision on candidate sites and the agency's decision on intrinsic suitability. The rulemaking and contested case procedures of chapter 14 shall not apply to this hearing. The hearing examiner may consolidate hearings. The report of the hearing examiner shall contain findings of fact, conclusions, and recommendations on the subject of the hearing. The agency shall make a final determination as to the intrinsic suitability of each proposed site and shall certify sites accordingly by ~~March 1, 1982~~. No action of the board or agency shall may be held invalid by reason of the board's or agency's failure to notify any of the entities listed in this subdivision.

Subd. 3. **MORATORIUM DEVELOPMENT LIMITATIONS.** In order to permit the comparative evaluation of sites and buffer areas and the participation of affected localities in decisions about the use of sites and buffer areas, a moratorium is hereby imposed as provided in this subdivision on all development within each proposed or candidate site identified pursuant to this section development in each candidate site and in a buffer area identified by the board surrounding and at least equal in area to the site shall be limited to development consistent with the development plans, land use classifications, and zoning and other official controls applying to the property on February 1, 1983. No development inconsistent with the plans, use classification, controls, and zoning requirements; no transfers or change of use of public land; and no conditional uses may be permitted. The moratorium on candidate sites and buffer areas development limitations shall extend until the board chooses a final candidate site or final candidate sites pursuant to this article. The moratorium on the final sites and buffer areas shall extend until six months following final action of the board pursuant to sections 115A.18 to 115A.30. No development shall be allowed to occur within a proposed site or buffer area during the period of the moratorium without the approval of the board section 115A.28. No plan, land use classification, official control, or zoning of any political subdivision shall permit or be amended to permit development which has not been approved by the board inconsistent with the requirements of this section, nor shall any political subdivision sanction or approve any subdivision, permit, license, or other autho-

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rization which would allow development to occur which has not been approved by the board. The board shall not approve actions which would jeopardize the availability of a candidate site for use as a hazardous waste facility. The board may establish guidelines for reviewing requests for approval under this subdivision. The guidelines shall not be subject to the rule-making provisions of chapter 14. Requests for approval shall be submitted in writing to the chairperson of the board and shall be deemed to be approved by the board unless the chairperson otherwise notifies the submitter in writing within 15 days inconsistent with the requirements of this section.

Sec. 19. Minnesota Statutes 1982, section 115A.22, subdivision 1, is amended to read:

Subdivision 1. **GENERAL.** In order systematically to involve those who would be affected most directly by disposal facilities in all decisions leading to their establishment, the board's decisions on reports referred to in subdivision 7, the preliminary specifications plan adopted under section ~~115A.23~~ 115A.11, and the certification of need required under section 115A.24 shall not be made until after the establishment of local project review committees for each candidate site, with representation on the board, pursuant to this section.

Sec. 20. Minnesota Statutes 1982, section 115A.22, subdivision 3, is amended to read:

Subd. 3. **MEMBERSHIP ON LOCAL COMMITTEES.** By April 15, 1982 Within 60 days following the selection of a candidate site under section 115A.21, the governor shall appoint the chairperson and members of each the local project review committee, ensuring a balanced representation of all parties with a legitimate and direct interest in the outcome of the project review. The governor shall consult particularly with affected local units of government before selecting members. Members may be added to the local committee from time to time by the governor.

Sec. 21. Minnesota Statutes 1982, section 115A.22, subdivision 4, is amended to read:

Subd. 4. **APPOINTMENT OF TEMPORARY BOARD MEMBERS.** By May 15, 1982, each Within 30 days following the appointment of a local project review committee, the local committee shall select a temporary board member to be added to the board for the purposes of the reports, to be issued under section 115A.08, the plan to be adopted under section 115A.11, and the need certifications, and review of candidate sites conducted under sections 115A.18 to 115A.30. Temporary board members shall not participate or vote in decisions affecting the selection and certification of sites under sections 17 and 115A.21. If a local committee fails to appoint a temporary board member within 45 days after the appointment of the committee the time permitted by this subdivision, the governor shall appoint a temporary board member to represent

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the committee on the board. Temporary board members may be members of the local project review committee, and they shall be residents of the county where the candidate site is located. Temporary board members shall serve for terms lasting until the board has taken final action pursuant to section 115A.28 and as long as the location the member represents is a candidate site or, in the case of members representing the site or sites finally chosen for the facility, until the commencement of the operation of the facility at that site.

Sec. 22. Minnesota Statutes 1982, section 115A.22, subdivision 6, is amended to read:

Subd. 6. **TECHNICAL ASSISTANCE; GRANTS.** To assist local project review committees to participate in the certification of need and the review process preparation of environmental impact statements and permit applications, the board through its chairperson shall make grants to the committees to be used to employ staff, pay administrative expenses, or contract with affected units of government or qualified consultants. The board through its chairperson shall ensure the delivery to the committees of technical information and assistance by appropriate state agencies.

Sec. 23. Minnesota Statutes 1982, section 115A.22, subdivision 7, is amended to read:

Subd. 7. **HAZARDOUS WASTE MANAGEMENT REPORTS.** The chairperson and the board shall prepare and submit the hazardous waste management reports required by section 115A.08, subdivisions 4 and 5 to 5a, in consultation with the local project review committees. The chairperson and the board shall request recommendations from the local committees and shall consult with the committees on the board's intended disposition of the recommendations. The reports of the board shall summarize the recommendations of the committees and the board's response to the recommendations. Before submitting the reports, the board shall hold at least one public meeting in each county in which a candidate site is located. A majority of the permanent members shall be present at each meeting. Notice of the meeting shall be published in a newspaper or newspapers of general circulation in the area for two successive weeks ending at least 15 days before the date of the meeting. The notice shall describe the proposed facilities, the proposed location, the purpose of the board's report to the legislature, and the subsequent and related activities of the board.

Sec. 24. Minnesota Statutes 1982, section 115A.24, subdivision 1, is amended to read:

Subdivision 1. **CERTIFICATE.** Except as provided in subdivision 2, ~~by December 15, 1982,~~ on the basis of and consistent with its hazardous waste management plan adopted under section 115A.11, the board shall issue a certificate or certificates of need for disposal facilities for hazardous wastes in the state. The certificate or certificates shall indicate the types and volumes of waste

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for which disposal facilities are and will be needed through the year 2000 and the number, types, sizes, general design and operating specifications capacity, and function or use of the disposal facilities needed in the state. Before finally adopting the certificate of need the board shall submit it to the agency for a revision of the hazardous waste pollution control report required under section 115A.11, subdivision 2. The board shall certify need only to the extent that the board has determined that there are no feasible and prudent alternatives including waste reduction, separation, pretreatment, processing, and resource recovery which would minimize adverse impact upon air, water, land and all other natural resources, provided that the board shall require the establishment of at least one commercial disposal facility in the state. Economic considerations alone shall not justify certification nor the rejection of alternatives. Alternatives that are speculative and conjectural shall not be deemed to be feasible and prudent. The board shall consider all technologies being developed in other countries as well as in the United States when it considers the alternatives to hazardous waste disposal. The certificate or certificates shall not be subject to the provisions of chapter 14 but shall be the final determination required on the matters decided by the certificate or certificates and shall have the force and effect of law. The certificate or certificates shall not be amended for five years except as provided in section 36. ~~The board and the permitting agencies,~~ In reviewing and selecting sites, completing and determining the adequacy of environmental impact statements, and issuing approvals and permits for waste disposal facilities described in the certificate or certificates of need, ~~shall not reconsider matters determined in the certification shall not be reconsidered except as otherwise provided in section 36.~~ The board and the permitting agencies shall be required to make a final decision approving the establishment of facilities consistent with the certification. ~~The board and the permitting agencies shall be required to make a final decision approving the establishment of at least one commercial disposal facility for hazardous waste in the state except as otherwise provided in section 36.~~

**Sec. 25. [115A.241] PARTICIPATION BY FACILITY DEVELOPERS AND OPERATORS.**

The board shall solicit the participation of private developers and operators of waste facilities in the evaluation of hazardous waste disposal sites and facility specifications. To qualify for consideration as a developer or operator, a person shall submit a letter of intent to the board within 90 days following the publication of the board's draft plan pursuant to section 115A.08, subdivision 4. To qualify for selection as a developer or operator, a person shall submit operability reports to the board at least 60 days before the board's hearings under section 115A.27. The letters of intent and reports shall be in the form and contain the information deemed appropriate by the board.

Sec. 26. Minnesota Statutes 1982, section 115A.25, subdivision 1, is amended to read:

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**115A.25 AGENCY; ENVIRONMENTAL REVIEW PROCEDURES.**

Subdivision 1. **ENVIRONMENTAL IMPACT STATEMENT.** An A phased environmental impact statement meeting the requirements of chapter 116D shall be completed by the board and the agency on disposal facilities at each candidate site. The statement shall be finally accepted or rejected within 120 days following the issuance of a certificate or certificates of need under section 115A.24. The statement must be prepared and reviewed in accordance with chapter 116D and the rules issued pursuant thereto, except as otherwise required by this section and sections 115A.11, 115A.24, 115A.28, and 115A.30. The board and agency shall follow the procedures in subdivisions 2 and 3 in lieu of the scoping requirements of chapter 116D and rules issued pursuant thereto. The statement shall be completed in two phases as provided in sections 27 and 28.

Sec. 27. Minnesota Statutes 1982, section 115A.25, is amended by adding a subdivision to read:

Subd. 1a. PHASE I. Phase I of the statement shall be completed by the board on the environmental effects of the board's decision on sites and facility specifications under section 115A.28. Phase I of the statement shall not address or reconsider alternative sites or facility numbers, types, capacity, function, and use which have been eliminated from consideration by the board's decisions under sections 115A.21 and 115A.24. The determination of the adequacy of phase I of the statement is exclusively the authority of the board. The governor shall establish an interagency advisory group to comment on the scope of phase I of the statement, to review drafts, and to provide technical assistance in the preparation and review of phase I of the statement. The advisory group shall include representatives of the agency, the departments of natural resources, health, agriculture, energy, planning and development, and transportation, and the Minnesota geological survey. In order to obtain the staff assistance necessary to prepare the statement, the chairperson of the board may request reassignment of personnel pursuant to section 16.21 and may arrange to have other agencies prepare parts of the statement pursuant to section 16.135.

Sec. 28. Minnesota Statutes 1982, section 115A.25, is amended by adding a subdivision to read:

Subd. 1b. PHASE II. Phase II of the statement shall be completed by the agency as a supplement to phase I specifically for the purpose of examining the environmental effects of the permitting decisions required to be made by the permitting agencies under section 36. In preparing, reviewing, and determining the adequacy of phase II of the statement, the agency shall not repeat or duplicate the research and analysis contained in phase I of the statement, unless the agency determines that the information available is not adequate or that additional information is necessary to examine the environmental effects of the permitting decisions. Phase II of the statement shall not address or reconsider

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alternative sites and facility numbers, types, capacity, function, and use which have been eliminated from consideration by the board's decisions under sections 115A.21, 115A.24, and 115A.28. The determination of adequacy of phase II of the statement must be made by the agency within 180 days following submission of the preliminary permit application or applications under section 36. The determination of the adequacy of phase II of the statement is exclusively the authority of the agency.

Sec. 29. Minnesota Statutes 1982, section 115A.25, subdivision 2, is amended to read:

Subd. 2. **PUBLIC DISCLOSURE.** Before commencing preparation of a phase of the environmental impact statement, the board or agency shall issue a document summarizing and making full disclosure of the intended objectives and contents of the environmental impact statement and the environmental review. Announcement of the disclosure shall be published in the state register, the environmental quality board monitor, and appropriate newspapers of general distribution. The disclosure shall:

(a) identify the candidate sites;

(b) summarize ~~preliminary design and operating facility~~ specifications and indicate where and when the specifications are available for inspection;

(c) describe as fully as possible the object of the review, including the significant actions, issues, alternatives, types of impacts, and compensation and mitigation measures expected to be addressed in the statement; the depth of the analysis expected; and subjects which the statement will not address in depth because they have been disposed of previously or because they are believed to be insignificant or remote and speculative;

(d) identify, by reference and brief summary, any related planning activities and environmental reviews which have been, are being, or will be conducted, and the substantive, chronological, and procedural relationship between the proposed review and the other activities and reviews;

(e) identify the membership and address of the local project review committees and the names of the local representatives on the board;

(f) summarize the comments and suggestions received from the public pursuant to subdivision 3 and the board's or agency's response.

Sec. 30. Minnesota Statutes 1982, section 115A.25, subdivision 3, is amended to read:

Subd. 3. **PUBLIC PARTICIPATION PROCEDURES.** The public disclosure document shall be issued following diligent effort to involve the public in determining the objective and contents of the environmental impact statement. At least one public meeting shall be held in each county with a candidate site.

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The advice of the board, facility developers, state agencies, the local project review committees, and local units of government shall be actively solicited. The board or agency may engage the state hearing examiner to conduct meetings and make recommendations concerning the review. Each local project review committee shall present to the board or agency a written report summarizing local concerns and attitudes about the proposed action and the specific issues which the local communities and residents wish to see addressed in the environmental review.

Sec. 31. Minnesota Statutes 1982, section 115A.26, is amended to read:

**115A.26 AGENCIES; REPORT ON PERMIT CONDITIONS AND APPLICATION REQUIREMENTS.**

Within ~~60~~ 30 days following the board's determination of the adequacy of the final phase I of the environmental impact statement, and after consulting with the board, facility developers, affected local government units, and the local project review committees, the chief executive officer of each permitting state agency shall issue a notice of intent to issue permits indicating, to the board draft reports on permit conditions and permit application requirements at each candidate site. The reports must indicate, to the extent possible based on existing information, the probable terms, conditions, and requirements of agency approval for all permits needed at each candidate site for the establishment of the facilities described in the board's certification of need permits, including the types and categories of waste eligible for disposal with or without pretreatment, and the probable supplementary documentation that will be required for phase II of the environmental impact statement under section 115A.25 and for permit applications under section 36. The reports may be revised following the hearings under section 115A.27 as the chief executive officer deems necessary. The agency decisions shall reports must be consistent with the establishment of facilities in accordance with the certification of need.

Sec. 32. Minnesota Statutes 1982, section 115A.27, subdivision 2, is amended to read:

Subd. 2. **BOARD HEARINGS.** Within 90 ~~120~~ days following the issuance of agency notice of intent under section 115A.26 board's determination of the adequacy of phase I of the environmental impact statement under section 115A.25, the board shall conduct a hearing in each county containing a candidate site, for the purpose of receiving testimony on the sites and facilities to be established decisions required under section 115A.28. The hearings shall be ordered by the chairperson of the board and shall be conducted concurrently with any agency hearing regarding the site held pursuant to subdivision 1. The subject of the board hearing shall not extend to matters previously decided in the board's decision on sites under section 115A.21 and the certificate of need issued under section 115A.24. The hearing shall be conducted for the board by the state office of administrative hearings in a manner determined by the hearing

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examiner to be consistent with the completion of the proceedings in the time allowed. The proceedings shall and the hearing procedures are not be deemed a subject to the rule-making or contested case under provisions of chapter 14. The hearing officer shall not issue a report but shall preside at the hearings to ensure that the hearings are conducted in a fair, orderly, and expeditious manner and in accordance with the hearing procedures of the board. A majority of the permanent members of the board shall be present at the hearing.

Sec. 33. Minnesota Statutes 1982, section 115A.28, subdivision 1, is amended to read:

**115A.28 FINAL ACTION DECISION.**

Subdivision 1. **DECISION OF BOARD.** Within 60 days following final agency decisions on permits pursuant to sections 115A.26 and 115A.27, subdivision 1 the conclusion of the hearings under section 115A.27, subdivision 2, and after consulting with private facility developers, the agency permitting agencies, affected local government units, and the local project review committees, the board shall finally select the site or sites for the facilities and shall submit or cause to be submitted final permit applications and the developer and operator of the facility and shall prescribe further specifications on the number, type, capacity, function, and use of the facilities as the board deems appropriate, consistent with the board's certification of need issued under section 115A.24. If the chairperson of the board determines that an agency notice of intent report on permit conditions and application requirements has been substantially revised following hearings held pursuant to section 115A.27, subdivision 1 2, the chairperson shall may delay the decision for 30 days and may order a public hearing to receive further testimony on the sites and facilities to be established. The proceeding shall be conducted as provided in section 115A.27, subdivision 2, except that hearings shall not be separately held in the affected counties and the issues relating to all agency notices reports shall be considered at one hearing. The board's decision and final permit applications shall embody all terms, conditions, and requirements of the permitting agencies, provided that the board may: (a) finally resolve any conflicts between state agencies regarding permit terms, conditions, and requirements, and (b) require more stringent terms, conditions, and requirements respecting the facility as may be consistent with the certification of need and the agency rules and permit conditions. The board's resolution of conflicts under clause (a) shall be in favor of the more stringent terms, conditions, and requirements. The board's decision and the permit applications shall provide for the establishment of facilities consistent with the board's certification of need.

Sec. 34. Minnesota Statutes 1982, section 115A.28, subdivision 2, is amended to read:

Subd. 2. **BOARD'S DECISION PARAMOUNT.** The board's decision under subdivision 1 shall be final and shall supersede and preempt requirements

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of state agencies and political subdivisions and the requirements of sections 473H.02 to 473H.17; except that a facility established pursuant to the decision shall be subject to these terms, conditions, and requirements in permits of state or federal permitting agencies embodied in the board's decision, the terms of lease determined by the board under section 115A.06, subdivision 4, and any requirements imposed pursuant to subdivision 3. ~~The permitting agencies shall issue permits within 60 days following and in accordance with the board's final decision, and all permits shall conform to the terms, conditions, and requirements of the board's decision.~~ Except as otherwise provided in this section, no charter provision, ordinance, regulation, permit, or other requirement of any state agency or political subdivision shall prevent or restrict the establishment, operation, expansion, continuance, or closure of a facility in accordance with the final decision and leases of the board and permits issued pursuant thereto by state or federal permitting agencies.

Sec. 35. Minnesota Statutes 1982, section 115A.28, subdivision 3, is amended to read:

Subd. 3. **LOCAL REQUIREMENTS.** A political subdivision may impose reasonable requirements respecting the construction, inspection, operation, monitoring, and maintenance of a facility. Any such requirements shall be subject to review by the agency board to determine their reasonableness and consistency with the establishment and use of a facility in accordance with the final decision and lease of the board and by the agency to determine their reasonableness and consistency with permits issued pursuant thereto of state and federal permitting agencies. The board or agency may approve, disapprove, suspend, modify, or reverse any such requirements. The decision of the board or agency shall be final.

Sec. 36. **[115A.291] PERMITS.**

Research and analysis necessary to the permit applications and permit decisions required under this chapter, and the supporting environmental study, must commence immediately following the board's decision under section 115A.28. Within 180 days following its final decision under section 115A.28, the board shall submit or cause to be submitted a preliminary application for permits for a facility or facilities consistent with its decision under section 115A.28. Following review by the permitting agencies and within 60 days following the agency's determination of the adequacy of phase II of the environmental impact statement, the board shall revise the application, or cause it to be revised, in accordance with the recommendations of the permitting agencies. In preparing its revised permit application, the board may amend its certification of need issued under section 115A.24 or its facility specifications under section 115A.28, if the board finds and determines, based upon the recommendations of the permitting agencies, that: (a) the amendments are necessary to secure permits for the construction and operation of the proposed facility at the proposed site, and

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(b) the recommendations and amendments are the result of new information or rules produced after the board's decisions under sections 115A.24 and 115A.28. Within 210 days following the submission of the revised permit application, the permitting agencies shall issue the necessary permits unless the pollution control agency determines that the facility or facilities proposed for permitting present environmental problems which cannot be addressed through the imposition of permit conditions.

Sec. 37. Minnesota Statutes 1982, section 115A.30, is amended to read:

**115A.30 JUDICIAL REVIEW.**

Any civil action maintained by or against the agency or board under sections 115A.18 to 115A.30 shall be brought in the county where the board is located and shall take precedence over all other matters of a civil nature and be expedited to the maximum extent possible. Any person aggrieved by a ~~final~~ decision of the board ~~authorizing facilities or an agency~~ under sections 115A.18 to 115A.30 may appeal therefrom within 30 days following all final decisions on the issuance of permits. Any appeal shall be conducted as a review of the administrative record as provided in chapter 14 sections 14.63 to 14.70. No civil action shall be maintained pursuant to section 116B.03 with respect to conduct taken by a person pursuant to any environmental quality standard, limitation, regulation, rule, order, license, stipulation agreement or permit issued by the board under sections 115A.18 to 115A.30. Notwithstanding any provision of chapter 116B to the contrary, in any action brought under that chapter with respect to any decision or conduct undertaken by any person or the board or agency pursuant to sections 115A.18 to 115A.30 after the period for appeal under this section has lapsed, the plaintiff shall have the burden of proving that the evidence required under section 116B.10 was not reasonably available within the time provided for appeal. The trial court shall, upon motion of any prevailing non-governmental party, award costs, disbursements, reasonable attorney's fees, and reasonable expert witness fees, if the court finds the action hereunder was commenced or defended in bad faith or was frivolous.

Sec. 38. Minnesota Statutes 1982, section 115A.54, subdivision 2, is amended to read:

Subd. 2. **ADMINISTRATION; ASSURANCE OF FUNDS.** The board shall provide technical and financial assistance for the acquisition and betterment of the facilities and transfer stations from revenues derived from the issuance of bonds authorized by section 115A.58. Facilities for the incineration of solid waste without resource recovery are not eligible for assistance. Of money appropriated for the purposes of the demonstration program, at least 70 percent shall be distributed as loans, and the remainder shall be distributed as grants. An individual project may receive assistance totaling up to 100 percent of the capital cost of the project and grants up to 50 percent of the capital cost of the project. No grant or loan shall be disbursed to any recipient until the board has

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determined the total estimated capital cost of the project and ascertained that financing of the cost is assured by funds provided by the state, by an agency of the federal government within the amount of funds then appropriated to that agency and allocated by it to projects within the state, by any person, or by the appropriation of proceeds of bonds or other funds of the recipient to a fund for the construction of the project.

Sec. 39. Minnesota Statutes 1982, section 115A.67, is amended to read:

**115A.67 ORGANIZATION OF DISTRICT.**

The governing body of each county wholly or partly within the district shall appoint two persons to serve on the first board of directors of the district, except that in the case of a district having territory within only two counties each county may appoint three persons. At least one person appointed by each county shall be an elected official of a local government unit having territory within the district. The first chairperson of the board of directors shall be appointed from outside the first board of directors by the chairperson of the waste management board ~~and shall be a local elected official within the district.~~ The first chairperson shall serve for a term of two years. Thereafter the chairperson shall be elected from outside the board of directors by majority vote of the board of directors. Members of the board of directors shall be residents of the district. The first meeting of the board of directors shall be held at the call of the chairperson, after notice, for the purpose of proposing the bylaws, electing officers and for any other business that comes before the meeting. The bylaws of the district, and amendments thereto, shall be adopted by a majority vote of the board of directors unless the certificate of incorporation requires a greater vote. The bylaws shall state:

- (a) the manner and time of calling regular meetings of the representatives and the board of directors, not less than once annually;
- (b) the title, manner of selection, and term of office of officers of the district;
- (c) the term of office of members of the board of directors, the manner of their removal, and the manner of filling vacancies on the board of directors;
- (d) the powers and duties of the board of directors consistent with the order and articles of incorporation establishing the district;
- (e) the definition of a quorum for meetings of the board of directors, which shall be not less than a majority of the members;
- (f) the compensation and reimbursement for expenses for members of the board of directors, which shall not exceed that provided for in section 15.0575, subdivision 3; and

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(g) such other provisions for regulating the affairs of the district as the board of directors shall determine to be necessary.

Sec. 40. Minnesota Statutes 1982, section 115A.70, subdivision 3, is amended to read:

Subd. 3. **EXEMPTION.** ~~The district shall not designate and require use of facilities for materials which are being separated from solid waste and recovered for reuse or recycling by the generator, by a private person under contract with the generator or by a licensed solid waste collector. The district shall not designate and require use of facilities for materials which are being delivered to another resource recovery facility~~ The designation may not apply to or include:

(a) materials which are separated from solid waste and recovered for reuse in their original form or for use in manufacturing processes; or

(b) materials other than those described in clause (a) which are being used at another resource recovery facility unless the district finds and determines that the required use is consistent with criteria and standards concerning displacement of existing facilities and with the evaluation of resource recovery designation which are required in the solid waste management plan of the district.

Sec. 41. Minnesota Statutes 1982, section 115A.70, is amended by adding a subdivision to read:

Subd. 7. **RELATIONSHIP TO COUNTY DESIGNATION PROCEDURES.** A district need not repeat the designation procedures set out in subdivision 4 to the extent that these procedures have been completed by each county having territory in the district or by a joint powers board composed of each county having territory in the district. A district need not submit the designation for review pursuant to subdivision 2 if the designation has already been approved under section 115A.071 following submission by each county having territory in the district or by a joint powers board composed of each county having territory in the district.

Sec. 42. Minnesota Statutes 1982, section 116.06, is amended by adding a subdivision to read:

Subd. 9i. "Sludge" means any solid, semi-solid, or liquid waste generated from a municipal, commercial, or industrial waste water treatment plant, water supply treatment plant, or air contaminant treatment facility, or any other waste having similar characteristics and effects.

Sec. 43. Minnesota Statutes 1982, section 116.06, subdivision 13, is amended to read:

Subd. 13. "Hazardous waste" means any refuse, sludge, or discarded other waste material or combinations of refuse, sludge or discarded other waste

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materials in solid, semi-solid, liquid, or ~~contained~~ gaseous form which ~~cannot be handled by routine waste management techniques because they of its quantity, concentration, or chemical, physical, or infectious characteristics may (a) cause or significantly contribute to an increase in mortality or an increase in serious irreversible, or incapacitating reversible illness; or (b) pose a substantial present or potential hazard to human health or other living organisms because of their chemical, biological, or physical properties the environment when improperly treated, stored, transported, or disposed of, or otherwise managed.~~ Categories of hazardous waste materials include, but are not limited to: explosives, flammables, oxidizers, poisons, irritants, and corrosives. Hazardous waste does not include sewage sludge and source, special nuclear, or by-product material as defined by the Atomic Energy Act of 1954, as amended.

Sec. 44. Minnesota Statutes 1982, section 116.07, subdivision 4, is amended to read:

Subd. 4. **RULES AND STANDARDS.** Pursuant and subject to the provisions of chapter 14, and the provisions hereof, the pollution control agency may adopt, amend and rescind rules and standards having the force of law relating to any purpose within the provisions of Laws 1969, Chapter 1046, for the prevention, abatement, or control of air pollution. Any such rule or standard may be of general application throughout the state, or may be limited as to times, places, circumstances, or conditions in order to make due allowance for variations therein. Without limitation, rules or standards may relate to sources or emissions of air contamination or air pollution, to the quality or composition of such emissions, or to the quality of or composition of the ambient air or outdoor atmosphere or to any other matter relevant to the prevention, abatement, or control of air pollution.

Pursuant and subject to the provisions of chapter 14, and the provisions hereof, the pollution control agency may adopt, amend, and rescind rules and standards having the force of law relating to any purpose within the provisions of Laws 1969, Chapter 1046, for the collection, transportation, storage, processing, and disposal of solid waste and the prevention, abatement, or control of water, air, and land pollution which may be related thereto, and the deposit in or on land of any other material that may tend to cause pollution. The agency shall adopt such rules and standards for sewage sludge, addressing the intrinsic suitability of land, the volume and rate of application of sewage sludge of various degrees of intrinsic hazard, design of facilities, and operation of facilities and sites. The agency shall promulgate temporary rules for sewage sludge pursuant to sections 14.29 to 14.36. Notwithstanding the provisions of sections 14.29 to 14.36, the temporary rules shall be effective until permanent rules are promulgated or March 1, 1982, whichever is earlier. Any such rule or standard may be of general application throughout the state or may be limited as to times, places, circumstances, or conditions in order to make due allowance for variations therein. Without limitation, rules or standards may relate to collection, transpor-

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tation, processing, disposal, equipment, location, procedures, methods, systems or techniques or to any other matter relevant to the prevention, abatement or control of water, air, and land pollution which may be advised through the control of collection, transportation, processing, and disposal of solid waste and sewage sludge, and the deposit in or on land of any other material that may tend to cause pollution. By January 1, 1983, the rules for the management of sewage sludge shall include an analysis of the sewage sludge determined by the commissioner of agriculture to be necessary to meet the soil amendment labeling requirements of section 17.716.

Pursuant and subject to the provisions of chapter 14, and the provisions hereof, the pollution control agency may adopt, amend and rescind rules and standards having the force of law relating to any purpose within the provisions of Laws 1971, Chapter 727, for the prevention, abatement, or control of noise pollution. Any such rule or standard may be of general application throughout the state, or may be limited as to times, places, circumstances or conditions in order to make due allowances for variations therein. Without limitation, rules or standards may relate to sources or emissions of noise or noise pollution, to the quality or composition of noises in the natural environment, or to any other matter relevant to the prevention, abatement, or control of noise pollution.

As to any matters subject to this chapter, local units of government may set emission regulations with respect to stationary sources which are more stringent than those set by the pollution control agency.

Pursuant to chapter 14, the pollution control agency may adopt, amend, and rescind rules and standards having the force of law relating to any purpose within the provisions of this chapter for generators of hazardous waste, the management, identification, labeling, classification, storage, collection, treatment, transportation, processing, and disposal of hazardous waste and the location of hazardous waste facilities. A rule or standard may be of general application throughout the state or may be limited as to time, places, circumstances, or conditions. ~~The public utilities commission, in cooperation with the pollution control agency, shall set standards for the transportation of hazardous waste in accordance with chapter 221.~~ In implementing its hazardous waste rules, the pollution control agency shall give high priority to providing planning and technical assistance to hazardous waste generators. The agency shall assist generators in investigating the availability and feasibility of both interim and long term hazardous waste management methods. The methods shall include waste reduction, waste separation, waste processing, resource recovery, and temporary storage.

The pollution control agency shall give highest priority in the consideration of permits to authorize disposal of diseased shade trees by open burning at designated sites to evidence concerning economic costs of transportation and disposal of diseased shade trees by alternative methods.

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Sec. 45. Minnesota Statutes 1982, section 116.07, is amended by adding a subdivision to read:

**Subd. 4e. HAZARDOUS WASTE PROCESSING FACILITIES; AGREEMENTS; FINANCIAL RESPONSIBILITY.** When the agency issues a permit for a facility for the processing of hazardous waste, the agency may approve as a condition of the permit an agreement by which the permittee indemnifies the generators of hazardous waste accepted by the facility for part or all of any liability which may accrue to the generators as a result of a release or threatened release of a hazardous waste from the facility. The agency may approve an agreement under this subdivision only if the agency determines that the permittee has demonstrated financial responsibility to carry out the agreement during the term of the permit. If a generator of hazardous waste accepted by a permitted processing facility is held liable for costs or damages arising out of a release of a hazardous waste from the facility, and the permittee is subject to an agreement approved under this subdivision, the generator is liable to the extent that the costs or damages were not paid under this agreement.

Sec. 46. Minnesota Statutes 1982, section 473.149, subdivision 2b, is amended to read:

**Subd. 2b. INVENTORY OF SOLID WASTE DISPOSAL SITES.** By February 1, 1982 ~~September 1, 1983~~, the council shall adopt by resolution an inventory of eligible solid waste disposal sites and buffer areas within the metropolitan area. The council's inventory shall be composed of the sites and buffer areas proposed by the counties and reviewed and approved by the council pursuant to section 473.803, subdivision 1a. If a county does not have an approved inventory of the required number of sites by June 1, 1983, the council shall adopt the required inventory for the county, following begin investigations by the council and public hearings as the council deems appropriate in order to adopt the required inventory for the county by September 1, 1983. The council's inventory shall satisfy all requirements and standards described in section 473.803, subdivision 1a, for sites and buffer areas proposed by counties. For sites and buffer areas included in the council's inventory, the moratorium development limitation imposed under section 473.803 59, subdivision 1a 1, shall extend until October 1, 1983 90 days following the selection of sites pursuant to section 473.833, subdivision 3.

Sec. 47. Minnesota Statutes 1982, section 473.149, subdivision 2c, is amended to read:

**Subd. 2c. REPORT ON LOCAL EFFECTS OF SOLID WASTE DISPOSAL FACILITIES; REPORT TO LEGISLATURE.** By August 15, 1982 November 1, 1983, the council shall report to the legislative commission on methods of mitigating and compensating for the local risks, costs, and other adverse effects of solid waste disposal facilities and on methods of financing mitigation and compensation measures. The methods of mitigating and compen-

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sating to be considered shall include but not be limited to the following: compensation to landowners for damages resulting from the selection of a site for the inventory of sites or for development as a facility, payment outside of levy limitations in lieu of taxes for all property taken off the tax rolls; preference for the city or town containing a facility in federal A-95 reviews conducted by the council; payment of all costs to service the facilities including the costs of roads, monitoring, inspection, enforcement, police and fire, and litter clean up costs; payment for buffer zone amenities and improvements; city or town control over buffer zone design; elimination of the tipping charge for solid waste collected in the city or town; a guarantee against any and all liability that may occur; payment for reclamation of closed sites to local design specifications.

Sec. 48. Minnesota Statutes 1982, section 473.149, subdivision 2d, is amended to read:

Subd. 2d. **LAND DISPOSAL ABATEMENT PLAN.** By January 1, 1983 1984, after considering county land disposal abatement proposals submitted pursuant to section 473.803, subdivision 1b, the council shall amend its policy plan to include specific and quantifiable objectives for abating the land disposal of mixed municipal solid waste. The plan shall include a reduced estimate, based on the council's abatement objectives, of the added solid waste disposal capacity needed in appropriate sectors of the metropolitan area, stated in annual increments through the year 1990 and thereafter in five year increments through the year 2000. The objectives in the plan shall be based upon standards for county resource recovery and waste reduction and separation programs and activities. The plan shall include standards and procedures to be used by the council in determining that metropolitan counties have not implemented the council's land disposal abatement plan and have not met the standards for county abatement programs and activities. The council shall report to the legislative commission on its abatement plan and on legislation that may be required to implement the plan.

Sec. 49. Minnesota Statutes 1982, section 473.149, subdivision 2e, is amended to read:

Subd. 2e. **SOLID WASTE DISPOSAL FACILITIES DEVELOPMENT SCHEDULE.** By January 1, 1983 1984, after requesting and considering recommendations from the counties, cities, and towns, the council as part of its policy plan shall determine the number and capacity of sites to be acquired within each metropolitan county for solid waste disposal facilities in accordance with section 473.833. The council shall adopt a schedule for development of disposal facilities by each ~~such~~ county through the year 2000. The schedule shall be based upon the council's reduced estimate of the disposal capacity needed because of the council's land disposal abatement plan. The council may make the implementation of elements of the schedule contingent on actions of the counties in adopting and implementing county abatement plans pursuant to section

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473.803, subdivision 1b; and the council shall review the development schedule at least every two years and shall revise the development schedule as it deems appropriate based on the progress made in the adoption and implementation of the council and county abatement plans. The schedule may include procedures to be used by counties in selecting sites for acquisition pursuant to section 473.833. The schedule shall include standards and procedures for council certification of need pursuant to section 473.823. The schedule shall include a facility closure schedule and plans for post-closure management and disposition, for the use of property after acquisition and before facility development, and for the disposition of property and development rights, as defined in section 473.833, no longer needed for disposal facilities. The schedule shall also include a closure schedule and plans for post-closure management for facilities in existence ~~prior to January 1, 1983~~ before the adoption of the development schedule.

Sec. 50. Minnesota Statutes 1982, section 473.149, subdivision 4, is amended to read:

Subd. 4. **ADVISORY COMMITTEE.** The council shall establish an advisory committee to aid in the preparation of the policy plan, the performance of the council's responsibilities under subdivisions 2 to 2e, the review of county master plans and reports and applications for permits for waste facilities, under sections 473.151 and 473.801 to 473.823 and sections 473.827, 473.831 and 473.833, and other duties determined by the council. The committee shall consist of one-third citizen representatives, one-third representatives from metropolitan counties and municipalities, and one-third representatives from private waste management firms. ~~From October 1, 1981 to January 1, 1983 at least the date that the council adopts the inventory under subdivision 2b to the date that the council adopts a development schedule under subdivision 2e,~~ for the purpose only of participating in the preparation of the legislative report required by subdivision 2c and, the land disposal abatement plan required by subdivision 2d, and the development schedule required by subdivision 2e, additional members shall be included on the advisory committee sufficient to assure that at least one-third of the members of the committee are residents of cities or towns containing eligible solid waste disposal sites included in the council's disposal site inventory, and that counties containing three sites have at least two additional members and counties containing one or two sites have at least one additional member. A representative from the pollution control agency, one from the waste management board established under section 115A.04, and one from the Minnesota health department shall serve as ex officio members of the committee.

Sec. 51. Minnesota Statutes 1982, section 473.153, subdivision 2, is amended to read:

Subd. 2. **CANDIDATE SITE SELECTION.** ~~By December 15, 1981,~~ The council shall select ~~six~~ candidate sites for the disposal of the commission's sewage sludge and solid waste, together with appropriate surrounding buffer

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areas. The council shall select at least four candidate sites by September 1, 1983. The council shall evaluate sites for candidacy on the basis of at least the following factors: local land use and land use controls, the protection of agriculture and natural resources, existing and future development patterns, transportation facilities, distance from the points of generation, and the intrinsic suitability of sites compared with other potential sites. Notwithstanding any plan, charter provision, law, ordinance, regulation, or other requirement of the council, counties, or local units of government, no land shall be excluded from consideration for candidacy except land determined by the agency to be intrinsically unsuitable. No site shall be selected for candidacy unless the agency certifies its intrinsic suitability for the use intended, based on preliminary environmental analysis and on-site surveys and investigations conducted by the council. The council shall provide to the agency data relating to the intrinsic suitability of the sites to be proposed as candidate sites as soon as available ~~but no later than August 15, 1981.~~ By September 1, 1981, The council shall propose at least six locations as candidate sites and the director of the agency shall issue a notice indicating which of those sites the director recommends be certified as intrinsically suitable. The director shall publish notice of a consolidated hearing on the recommendation. Notice shall be published in the state register and newspapers of general circulation in the metropolitan area and shall be sent by mail to local government units containing a proposed candidate site. The hearing shall be conducted by the state office of administrative hearings in a manner consistent with the completion of the proceedings and the hearing examiner's report to the agency in the time allowed by this section. The hearing shall afford all interested persons an opportunity to testify and present evidence on the subject of the hearing. The subject of the hearing shall be limited to information submitted by the council and additional information on the proposed sites which is relevant to the agency's decision on intrinsic suitability. The rulemaking and contested case procedures of chapter 14 shall not apply to this hearing. The report of the hearing examiner shall contain findings of fact, conclusions, and recommendations on the subject of the hearing. The agency shall make a final determination as to the intrinsic suitability of each proposed site and shall certify them accordingly ~~by December 1, 1981~~ within 90 days of the council's proposal of a site. The agency shall not be required to promulgate rules pursuant to chapter 14 on criteria and standards to govern its certification of intrinsic suitability under this section. No action of the agency shall be held invalid by reason of the agency's failure to notify any of the entities listed in this subdivision. In selecting candidate sites, the council shall prefer land which is capable of being returned to its existing use or the use anticipated in a plan of a metropolitan agency, county, or local unit of government use after closure of a disposal facility.

Sec. 52. Minnesota Statutes 1982, section 473.153, subdivision 5, is amended to read:

Subd. 5. **ENVIRONMENTAL AND PERMIT REVIEW.** An environmental impact statement ~~meeting the requirements of chapter 116D~~ shall must be

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completed on each candidate site, provided that the environmental effects of the council's decisions required by subdivision 6. The statement shall must be finally accepted or rejected within 280 days of the selection of candidate sites. Within 90 days following the acceptance of the statement, the agency shall indicate the conditions and terms of approval of all permits needed at each candidate site prepared and reviewed in accordance with chapter 116D and the rules issued pursuant thereto, except as otherwise required by this section. The statement must not address or reconsider alternatives eliminated from consideration pursuant to subdivisions 1 and 2 and must not address the matters to be decided by the council pursuant to subdivision 6b.

Sec. 53. Minnesota Statutes 1982, section 473.153, is amended by adding a subdivision to read:

Subd. 5a. AGENCIES; REPORT ON PERMIT CONDITIONS AND APPLICATION REQUIREMENTS. Within 30 days following the council's determination of adequacy pursuant to subdivision 5, the chief executive officer of each permitting state agency shall issue to the council reports on permit conditions and permit application requirements at each candidate site. The reports must indicate, to the extent possible based on existing information, the probable terms, conditions, and requirements of permits and the probable supplementary documentation that will be required for permit applications. The reports must be consistent with the establishment of facilities in accordance with the requirements of this section, must not address or reconsider alternatives eliminated from consideration under subdivisions 1 and 2, and must not address the matters to be decided by the council pursuant to subdivision 6b.

Sec. 54. Minnesota Statutes 1982, section 473.153, subdivision 6, is amended to read:

Subd. 6. COUNCIL SITE SELECTION. Within 90 days following the agency's decision on permit conditions and terms determination of adequacy, the council shall select at least one of the candidate sites for acquisition and development by the commission. Before its selection the council shall consult with the advisory committee and affected counties, cities, and towns.

Sec. 55. Minnesota Statutes 1982, section 473.153, subdivision 6b, is amended to read:

Subd. 6b. CERTIFICATION OF NEED. No new facility for disposing of sludge, ash, and other waste generated by the commission shall be permitted in the metropolitan area without a certification of need issued by the council indicating the council's determination:

(a) that the disposal of waste with concentrations of hazardous materials is necessary; and

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(b) that the additional ash disposal capacity planned for the facility is needed.

The council shall certify need only to the extent that there are no feasible and prudent methods of reducing the concentrations of hazardous materials in the waste and no feasible and prudent alternatives to the ash disposal facility, including large-scale composting and co-composting of sludge, which would minimize adverse impact upon natural resources. Methods and alternatives that are speculative or conjectural shall not be deemed to be feasible and prudent. Economic considerations alone shall not justify the certification of need or the rejection of methods or alternatives, including large-scale composting and co-composting of sludge as an alternative to incineration. In its certification the council shall not consider alternatives which have been eliminated from consideration by the selection of sites pursuant to subdivisions 2 and 6.

Sec. 56. Minnesota Statutes 1982, section 473.153, is amended by adding a subdivision to read:

Subd. 6c. CERTIFICATION OF NEED; RESTRICTION. No certification of need may be issued by the council pursuant to subdivision 6b until the report required by this subdivision is submitted to the legislative commission on waste management. The council shall submit the report by January 1, 1984. The report shall evaluate the potential of large-scale sewage sludge composting and co-composting to reduce the need for sewage sludge incineration, sewage sludge ash disposal, and mixed municipal solid waste land disposal; recommend institutional arrangements necessary for the implementation of large-scale sewage sludge composting and co-composting; and compare the costs and benefits of composting and co-composting with the costs, including costs already incurred, and the benefits of incineration.

Sec. 57. Minnesota Statutes 1982, section 473.803, subdivision 1a, is amended to read:

Subd. 1a. PROPOSED INVENTORY OF DISPOSAL SITES. By October 15, 1981, each county shall adopt, by resolution of its governing body, an inventory of four proposed sites in the county suitable for mixed municipal solid waste disposal facilities ~~and one proposed site in the county suitable for the disposal of demolition debris~~ and shall submit the inventory to the council for approval or disapproval. The council shall evaluate and approve or disapprove each proposed site in accordance with the standards set out in this subdivision. Except as otherwise provided in this subdivision, each site shall satisfy the standards and criteria in federal and state regulations and the council's policy plan for solid waste management. In proposing and approving sites for the inventory, the counties and the council shall prefer land which is capable of being returned to its existing use or the use anticipated in a plan of a metropolitan agency, county, or local unit of government use after closure of a disposal facility. Each site shall contain no less than 80 acres and no more than 250 acres. Each

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proposed site shall be surrounded by a buffer area at least equal to the area of the site. No site shall be adopted by a county or the council as part of an inventory unless the agency certifies its intrinsic suitability for the use intended, based on preliminary environmental analysis and on site surveys and investigations conducted by the county. Notwithstanding any plan, charter provision, law, ordinance, regulation, or other requirement of any state agency or political subdivision, no land shall be excluded from consideration for inclusion in the inventory except land determined by the agency to be intrinsically unsuitable. Each county shall provide to the agency data relating to the intrinsic suitability of the sites to be proposed for the inventory as soon as available ~~but no later than June 15, 1981~~. By July 1, 1981 each county shall propose at least the number of sites required for the inventory, and the director of the agency shall issue a notice indicating which of those sites the director recommends be certified as intrinsically suitable. Notice of hearings on the director's recommendation shall be published in the state register and newspapers of general circulation in the metropolitan area and shall be sent by mail to the metropolitan council and local government units containing a proposed inventory site. A hearing shall be held in each metropolitan county and shall be conducted by the state office of administrative hearings in a manner consistent with the completion of the proceedings and the hearing examiner's report to the agency in the time allowed by this section. The hearing shall afford all interested persons an opportunity to testify and present evidence on the subject of the hearing. The subject of the hearing shall be limited to information submitted by the county and additional information on the proposed sites which is relevant to the agency's decision on intrinsic suitability. The rulemaking and contested case procedures of chapter 14 shall not apply to this hearing. The report of the hearing examiner shall contain findings of fact, conclusions, and recommendations on the subject of the hearing. The agency shall make a final determination as to the intrinsic suitability of each proposed site and shall certify them accordingly ~~by October 1, 1981~~ within 90 days of the county's proposal of a site. The agency shall not be required to promulgate rules pursuant to chapter 15 on criteria and standards to govern its certification of intrinsic suitability under this section. No action of the agency shall be held invalid by reason of the agency's failure to notify any of the entities listed in this subdivision. The council shall evaluate each site with respect to local land use and land use controls, the protection of agriculture and natural resources, existing and future development patterns, transportation facilities and other services and facilities appropriate to land disposal facilities, the quality of other potential sites, and patterns of generation of solid waste. The council shall notify a county of any site proposed by the county which the council disapproves and shall allow the county 60 days to propose an alternative site. If the county fails to propose an alternative acceptable to the council in the time allowed, the council shall propose a site acceptable to it for inclusion in the inventory of sites in that county. If in the council's judgment a county does not contain the requisite number of satisfactory sites, the council may reduce the number of sites required of that county.

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In order to permit the comparative evaluation of sites and the participation of affected localities in decisions about the use of sites, a moratorium is hereby imposed as provided in this subdivision on development within the area of each site and buffer area proposed by a county, pending the council's adoption of an inventory pursuant to section 473.149, subdivision 2b. For sites and buffer areas included in the council's inventory, the moratorium shall extend until October 1, 1983, except that the council may at any time, with the approval of the county in which the site is located, abrogate the application of the moratorium to a specific site or sites or buffer areas. No development shall be allowed to occur within the area of a site or buffer area during the period of the moratorium without the approval of the council. No county, city, or town land use control shall permit development which has not been approved by the council, nor shall any county, city, or town sanction or approve any subdivision, permit, license, or other authorization which would allow development to occur which has not been approved by the council. The council shall not approve actions which would jeopardize the availability of a site for use as a solid waste facility. The council may establish guidelines for reviewing requests for approval under this subdivision. Requests for approval shall be submitted in writing to the chairman of the council and shall be deemed to be approved by the council unless the chairman otherwise notifies the submitter in writing within 15 days.

Sec. 58. Minnesota Statutes 1982, section 473.803, subdivision 1b, is amended to read:

Subd. 1b. **LAND DISPOSAL ABATEMENT.** By April 1, 1982, after considering the council's disposal abatement report submitted to the counties pursuant to section 473.149, subdivision 2a, each county shall submit to the council a proposal to reduce to the greatest feasible and prudent extent the need for and practice of land disposal of mixed municipal solid waste. The proposal shall address at least waste reduction, separation, and resource recovery. The proposal shall include objectives, immediately and over specified time periods, for reducing the land disposal of mixed municipal solid waste generated within the county. The proposal shall describe specific functions to be performed and activities to be undertaken by the county and cities and towns within the county to achieve the objectives and shall describe the estimated cost, proposed manner of financing, and timing of the functions and activities. The proposal shall include alternatives which could be used to achieve the objectives if the proposed functions and activities are not established. ~~By June 1, 1983,~~ Each county shall revise its master plan to include a land disposal abatement element to implement the council's land disposal abatement plan adopted under section 473.149, subdivision 2d, and shall submit the revised plan to the council for review under subdivision 2 within nine months after the adoption of the council's abatement plan. The proposal and master plan revision required by this subdivision shall be prepared in consultation with cities and towns within the county, particularly the cities and towns in which a solid waste disposal facility is or may be located pursuant to the county master plan.

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**Sec. 59. [473.806] INVENTORY OF DISPOSAL SITES; DEVELOPMENT LIMITATIONS.**

Subdivision 1. COUNCIL APPROVAL REQUIRED. In order to permit the comparative evaluation of sites and the participation of affected localities in decisions about the use of sites, a metropolitan development limitation is hereby imposed as provided in this subdivision on development within the area of each site and buffer area proposed by a county pursuant to section 473.803, subdivision 1a, pending the council's adoption of an inventory pursuant to section 473.149, subdivision 2b. For sites and buffer areas included in the council's inventory, the limitation shall extend until 90 days following the selection of sites pursuant to section 473.833, subdivision 3, except that the council may at any time, with the approval of the county in which the site is located, abrogate the application of the limitation to a specific site or sites or buffer areas. No development shall be allowed to occur within the area of a site or buffer area during the period of the metropolitan development limitation without the approval of the council. No county, city, or town land use control shall permit development which has not been approved by the council, nor shall any county, city, or town sanction or approve any subdivision, permit, license, or other authorization which would allow development to occur which has not been approved by the council. The council shall not approve actions which would jeopardize the availability of a site for use as a solid waste facility. The council may establish guidelines for reviewing requests for approval under this subdivision. Requests for approval shall be submitted in writing to the chairman of the council and shall be deemed to be approved by the council unless the chairman otherwise notifies the submitter in writing within 15 days.

Subd. 2. ACQUISITION OF TEMPORARY DEVELOPMENT RIGHTS. If pursuant to subdivision 1 the council refuses to approve development which is permitted by local development plans, land use classification, and zoning and other official controls applying to the property on February 1, 1983, the land owner may elect to have the county purchase temporary development rights to the property for the period extending from the date when the council approved the site which affects the property for inclusion in the metropolitan inventory of sites until July 1, 1985. The election must be made within 30 days of the council's decision to refuse to approve development. The council shall provide funds, from the proceeds of the bonds issued pursuant to section 473.831, for the county to purchase the temporary development rights. The land owner's compensation shall be determined by the agreement of the owner, the county, and the council. If the parties cannot agree within 60 days of the owner's election, the county shall acquire the temporary development rights through eminent domain proceedings, and the land owner's compensation shall be the fair market value of the temporary development rights.

Sec. 60. Minnesota Statutes 1982, section 473.811, subdivision 1a, is amended to read:

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Subd. 1a. **RIGHT OF ACCESS.** Whenever the county or county site selection authority deems it necessary to the evaluation of a waste facility for enforcement purposes or to the evaluation of a site or buffer area for inclusion in the inventory of disposal sites pursuant to section 473.149, subdivision 2b, and section 473.803, subdivision 1a, or for selection or final acquisition under section 473.833, or for the accomplishment of any other purpose under sections 473.149, 473.153, and 473.801 to 473.834, the county, county site selection authority or any member, employee, or agent thereof, when authorized by it, may enter upon any property, public or private, for the purpose of obtaining information or conducting surveys or investigations, provided that the entrance and activity is undertaken after reasonable notice and during normal business hours and provided that compensation is made for any damage to the property caused by the entrance and activity.

Sec. 61. Minnesota Statutes 1982, section 473.823, subdivision 6, is amended to read:

Subd. 6. **COUNCIL; CERTIFICATION OF NEED.** No new mixed municipal solid waste disposal facility shall be permitted in the metropolitan area without a certificate of need issued by the council indicating the council's determination that the additional disposal capacity planned for the facility is needed in the metropolitan area. The council shall amend its policy plan, adopted pursuant to section 473.149, to include standards and procedures for certifying need. The standards and procedures shall be based on the council's disposal abatement plan adopted pursuant to section 473.149, subdivision 2d, and the abatement master plans of counties adopted pursuant to section 473.803, subdivision 1b. The council shall certify need only to the extent that there are no feasible and prudent alternatives to the disposal facility, including waste reduction, source separation and resource recovery which would minimize adverse impact upon natural resources. Alternatives that are speculative or conjectural shall not be deemed to be feasible and prudent. Economic considerations alone shall not justify the certification of need or the rejection of alternatives. In its certification the council shall not consider alternatives which have been eliminated from consideration by the adoption of the inventory pursuant to section 473.149, subdivision 2b, or the selection of sites under section 473.833, subdivision 3.

Sec. 62. Minnesota Statutes 1982, section 473.831, is amended to read:

**473.831 DEBT OBLIGATIONS; SOLID WASTE DISPOSAL.**

Subdivision 1. **GENERAL OBLIGATION BONDS.** The council may by resolution authorize the issuance of general obligation bonds of the council to provide funds for the environmental analysis and acquisition of permanent or temporary right, title, or interest in real property, including easements and development rights, for sites and surrounding buffer areas for development as solid waste disposal facilities pursuant to this section and section 473.833 and to

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provide funds for refunding obligations issued under this section. The bonds shall be sold, issued, and secured in the manner provided in chapter 475 for general obligation bonds, and the council shall have the same power and duties as a municipality and its governing body in issuing bonds under chapter 475, except as otherwise provided in this chapter. No election shall be required, and the net debt limitations in chapter 475 shall not apply. The council shall have the power levy ad valorem taxes for debt service of the council's solid waste bonds upon all taxable property within the metropolitan area, without limitation of rate or amount and without affecting the amount or rate of taxes which may be levied by the council for other purposes or by any local government unit in the area. Each of the county auditors shall annually assess and extend upon the tax rolls in his county the portion of the taxes levied by the council in each year which is certified to him by the council. The principal amount of bonds issued pursuant to this section shall not exceed \$15,000,000.

Subd. 2. **USE OF PROCEEDS.** The proceeds of bonds issued under subdivision 1 shall be used pursuant to ~~section 473.833~~, by the council, for the purposes provided in subdivision 1 and to make grants to metropolitan counties to pay the cost of the environmental review of sites, the acquisition of development rights for all or part of the period that the development limitation imposed by section 473.806 is in effect, and the acquisition of all property or interests in property for solid waste disposal sites and surrounding buffer areas required to be acquired by the county, pursuant to section 473.833, by the council's policy plan and development schedule adopted pursuant to section 473.149, subdivision 2e. If the council is required by law or regulation to prepare environmental analyses on one or more solid waste disposal sites and surrounding buffer areas, the council may use the proceeds of the bonds issued under subdivision 1 to contract for consultant services in the preparation of such analyses only upon a finding that equivalent expertise is not available among its own staff.

Sec. 63. Minnesota Statutes 1982, section 473.833, subdivision 2a, is amended to read:

Subd. 2a. **ENVIRONMENTAL ANALYSIS IMPACT STATEMENT.** By January 1, 1983, Each metropolitan county shall complete an analysis comparing environmental impact statement on the environmental effects of solid waste disposal facilities at the sites in the county which are included in the metropolitan inventory of solid waste disposal sites adopted by the metropolitan council pursuant to section 473.149, subdivision 2b the decision required by subdivision 3. The analysis statement shall be in detail sufficient, in the judgment of the county board, to inform adequately the county site selection authority established under subdivision 3 of the environmental effects of facilities at sites within the county and to assure that facilities at the sites can reasonably be expected to qualify for permits in accordance with the rules of the agency prepared and reviewed in accordance with chapter 116D and the rules issued pursuant thereto, except as otherwise required by section 473.149 and this

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section. The determination of adequacy must be made within one year following the council's adoption of the facilities development schedule pursuant to section 473.149, subdivision 2e. The statement must be consistent with the establishment of facilities in accordance with the requirements of the council's development schedule, must not address or reconsider alternatives eliminated from consideration under sections 473.149, 473.803, subdivisions 1, 1a, and 1b, and this section, and must not address matters to be determined by the council under section 473.823, subdivision 6. The statement must address matters respecting permitting under section 473.823 only to the extent deemed necessary for the siting decision required by subdivision 3 of this section. The pollution control agency and the council shall assist and advise counties in the scoping decision and the preparation notice.

Sec. 64. Minnesota Statutes 1982, section 473.833, is amended by adding a subdivision to read:

**Subd. 2b. AGENCIES; COUNCIL; REPORT ON PERMIT CONDITIONS AND APPLICATION REQUIREMENTS.** Within 30 days following the county's determination of adequacy under subdivision 2a, the chief executive officer of the metropolitan council and each permitting state agency shall issue to the county reports on permit conditions and permit application requirements at each site in the county. The reports must indicate, to the extent possible based on existing information, the probable terms, conditions, and requirements of permits and the probable supplementary documentation and environmental review that will be required for permit applications pursuant to chapter 116 and section 473.823. A report may recommend that a site should be dropped from consideration because of information in the environmental impact statement showing that the site is environmentally unsuitable for land disposal and unlikely to qualify for permits. The reports must be consistent with the establishment of facilities in accordance with the requirements of the council's development schedule adopted under section 473.149, subdivision 2e, must not address or reconsider alternatives eliminated from consideration under sections 473.149, 473.803, subdivisions 1, 1a, and 1b, and this section, and must not address matters to be determined by the council under section 473.823, subdivision 6.

Sec. 65. Minnesota Statutes 1982, section 473.833, subdivision 3, is amended to read:

**Subd. 3. COUNTY SITE SELECTION AUTHORITIES.** Each metropolitan county shall establish a site selection authority. By June 1, 1983 Within 90 days following the county's determination of adequacy under subdivision 2a, each site selection authority shall select specific sites within the county from the council's disposal site inventory, in accordance with the procedures established by the council under section 473.149, subdivision 2e, and in a number and capacity equal to that required by the council to be acquired by the county. Each site selection authority shall be composed of the county board, plus one member

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appointed by the governing body of each city or town within the county containing a site in the council's disposal site inventory or the majority of the land contained within such a site. If the number of members on the site selection authority who reside in a city or town containing all or part of a site or buffer area is equal to or greater than the number of members who do not, the chairman of the county board shall appoint to the authority an additional member or members, residing within the county but not within a city or town containing all or part of a site or buffer area, sufficient to assure a majority of one on the authority of members residing in cities and towns not containing all or any part of a site or buffer area. The chairman of the county board shall be the chairman of the site selection authority. If a site selection authority has not selected the requisite number and capacity of sites in accordance with the council's standards, criteria, and procedures by June 1, 1983 within the time allowed by this subdivision, the council shall make the selection.

Sec. 66. Minnesota Statutes 1982, section 473.833, subdivision 7, is amended to read:

Subd. 7. **FAILURE OF COUNTIES TO ACQUIRE; REPORT TO LEGISLATURE.** If any county fails to identify property for acquisition or if ~~any county~~ refuses to proceed with environmental analysis and acquisition, as required by this section and the council's disposal facility development schedule adopted pursuant to section 473.149, subdivision 2e, the council shall prepare and recommend ~~to the legislature, no later than January 1, 1984, legislation to transfer solid waste management authority and responsibility in the metropolitan area from the counties to the waste control commission or a new metropolitan commission established for that purpose.~~

Sec. 67. **SLUDGE INCINERATION.**

The metropolitan waste control commission established by section 473.503 may not acquire or expand additional incineration facilities, or plan or undertake studies for such acquisition and expansion, until the report required by section 56 is submitted.

Sec. 68. **COUNTY FINANCING OF FACILITIES.**

The counties of Washington and Ramsey, separately or jointly, may, by resolution, authorize the issuance of bonds or other obligations, including initial obligations in an amount not to exceed an aggregate amount of \$4,000,000 issued to finance solely preliminary costs such as site acquisition and preparations and legal, engineering, financial, and planning services, to provide funds to acquire or better solid waste and related facilities, including transmission facilities and property or property rights for a solid waste or related facility, or to refund any outstanding obligations issued for that purpose.

Any later formation of a solid waste management district under Minnesota Statutes, chapter 115A, or contemplated sale or lease of any of the facilities or

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their work product to a private person, after the county or solid waste management district has incurred the costs of the facilities or work product, shall not restrict or limit the use of the proceeds of the bonds or other obligations.

The county may pledge to the payment of the obligations and the interest on them,

(a) its full faith, credit, and taxing powers;

(b) the proceeds of any designated tax levies;

(c) the gross or net revenues or charges to be derived from any facility operated by or for the county;

(d) the proceeds of any anticipating refunding obligations, state or federal loan or grant, or any sale of the facilities or their work product;

(e) any other funds of the county; or

(f) any combination of the foregoing.

Taxes levied for the payment of the obligations and interest shall not reduce the amounts of other taxes which the county is authorized by law to levy.

The proceeds of the bonds may be used in part to establish a reserve as further security for the payment of the principal and interest when due and to pay the cost of interest accruing on the obligations before six months after the date the facilities are first placed in service.

Revenue bonds issued pursuant to this section may be sold at public or private sale upon the conditions the county board shall determine, but any bonds to which the full faith and credit and taxing powers of the county are pledged shall be sold in accordance with Minnesota Statutes, chapter 475. No election shall be required to authorize the issuance of the obligations, and the debt limitations of chapter 475 or other law shall not apply to the obligations. The obligations may mature at a time or times, and in amounts, as the county board determines.

The county may covenant to refund, to the extent necessary, any temporary obligations with a term of no more than four years, in which event the tax which would otherwise be required by section 475.61, subdivision 1, need not be required. The interest rate on temporary obligations may be fixed at the time of sale or be adjusted from time to time based on an index related to the cost of borrowing, and the price at which the temporary obligations may be sold may be at any amount determined most favorable by the county board, but the resulting composite interest rate may not exceed the rate permitted under section 475.55.

Except as provided in this section, the obligations shall be issued and sold in accordance with chapter 475.

#### Sec. 69. DISTRICT FORMATION.

Changes or additions are indicated by underline, deletions by ~~strikeout~~.

Notwithstanding any contrary provisions of Minnesota Statutes, section 115A.63, subdivision 3, or other law, Ramsey and Washington counties, before establishing a waste management district solely within their boundaries, need not demonstrate that they are unable to fulfill the purposes of a district through joint action under Minnesota Statutes, section 471.59.

**Sec. 70. POWERS ADDITIONAL AND SUPPLEMENTAL.**

The powers conferred by sections 68 and 69 are in addition and supplemental to the powers conferred by any other law or charter. Insofar as any other law or charter is inconsistent with sections 68 and 69, the provisions of sections 68 and 69 control as to facilities authorized under those sections.

Sec. 71. Laws 1980, chapter 449, section 3, is amended to read:

Sec. 3. The city, by resolution of the city council, may borrow for the payment of capital costs of the system, may establish and collect from all public and private persons, including persons operating waste collection and delivery services, charges for the use and or availability of the facilities of the system, and. The city may establish charges, and may levy special assessments upon properties deemed to be specially benefited by particular facilities, in the same manner and to the same extent and with the same force and effect as provided in the case of sewage treatment and disposal systems in Minnesota Statutes, Sections 115.46 and 444.075, and Chapter 429, as far as practicable. Charges for availability of facilities may be established on any equitable basis including the cost of furnishing the facilities. An election shall not be required upon the issuance of general obligation bonds or the incurring of any lease or purchase obligation for this purpose except as provided in section 4, and the bonds or other obligations shall not be included in computing the net debt of the city within the meaning of Minnesota Statutes, Chapter 475, but all special assessments levied for improvements to the system and all net revenues derived from charges for the use and availability of the system, in excess of current operating costs, shall be pledged for the payment of the bonds or obligations and interest, and the city council shall endeavor to establish and collect charges sufficient to provide net revenues, with collections of special assessments, at least equal to the total debt service.

**Sec. 72. REPEALER.**

Minnesota Statutes 1982, sections 115A.23; 115A.27, subdivision 1; 116.07, subdivision 4c; and 116.41, subdivisions 1 and 1a, are repealed.

**Sec. 73. APPLICATION.**

Sections 46 to 67 are effective in the counties of Anoka, Carver, Dakota, Hennepin, Ramsey, Scott, and Washington. Section 71 is effective in the city of Austin in Mower County.

**Sec. 74. EFFECTIVE DATE.**

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Sections 1 to 67, 72, and 73 are effective the day following final enactment. Sections 68 to 70 are effective the day after compliance with Minnesota Statutes, section 645.021, subdivision 3, by the governing bodies of both Ramsey and Washington counties. Section 71 is effective the day after compliance with Minnesota Statutes, section 645.021, subdivision 3, by the governing body of the city of Austin.

Approved June 14, 1983

### CHAPTER 374 — S.F.No. 1097

*An act relating to agriculture; making certain changes in the grain buyers act; providing additional protection to grain producers selling on cash sales and voluntary extensions of credit; setting license fees and bonding requirements; requiring filing of financial statements; retaining certain bonding requirements for public grain warehouses; changing the place of filing of farm product liens; imposing a penalty; appropriating money; amending Minnesota Statutes 1982, sections 223.16, subdivisions 1, 4, 7, 11, and by adding subdivisions; 223.17; 223.18; 223.19; 232.22, subdivisions 4 and 7; and 336.9-401; Laws 1982, chapter 635, section 9; proposing new law coded in Minnesota Statutes, chapter 223; repealing Minnesota Statutes 1982, section 223.16, subdivision 8.*

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. Minnesota Statutes 1982, section 223.16, subdivision 1, is amended to read:

Subdivision 1. **APPLICABILITY.** For the purpose of sections 223.15 to 223.19 and sections 13 to 15, the terms defined in this section have the meanings given them.

Sec. 2. Minnesota Statutes 1982, section 223.16, is amended by adding a subdivision to read:

Subd. 2a. CASH SALE. “Cash sale” means:

(a) a sale for which payment is tendered to the seller not later than the close of business on the next business day after the sale, either in cash or by check, or by mailing or wiring funds to the seller’s account in the amount of at least 80 percent of the value of the grain at delivery; or

(b) a sale of a shipment of grain which is part of a multiple shipment sale, for which a scale ticket clearly marked “CASH” has been received by the seller before completion of the entire sale, and for which payment is tendered in cash or by check not later than ten days after the sale of that shipment, except that when the entire sale is completed, payment is tendered in cash or by check not later

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