

CHAPTER 409—S.F.No. 1869

An act relating to utilities; changing qualifications for members of the public utilities commission; requiring the governor to appoint the chair of the commission; requiring commissioners to file certain information before taking office; prohibiting commissioners and certain employees of the department of public service from engaging in certain activities prior to and after leaving the commission or the department; requiring the commission to adopt rules relating to ex parte communications and a code of conduct; authorizing stipulated settlements in certain cases; prescribing penalties; amending Minnesota Statutes 1984, sections 216A.03, subdivisions 1 and 3; 216A.035; 216B.16, subdivisions 1a and 2; and 237.075, subdivisions 1a and 2; proposing coding for new law in Minnesota Statutes, chapter 216A.

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

Section 1. Minnesota Statutes 1984, section 216A.03, subdivision 1, is amended to read:

Subdivision 1. **MEMBERS.** ~~As of January 1, 1975~~ The public utilities commission shall consist of five members; ~~three of whom shall be the members then serving, who shall continue to serve for the balance of their elective or appointive terms. There shall be two additional commissioners appointed by the governor with the advice and consent of the senate, one for a term expiring December 31, 1975, and one for a term expiring December 31, 1977. Thereafter~~ The terms of all ~~subsequent~~ members of the commission shall be six years and until their successors have been appointed and qualified. Each commissioner shall be appointed by the governor by and with the advice and consent of the senate. Not more than three commissioners shall belong to the same political party. At least one commissioner must have been domiciled at the time of appointment outside the seven-county metropolitan area. If the membership of the commission after July 31, 1986, does not consist of at least one member domiciled at the time of appointment outside the seven-county metropolitan area, the membership shall conform to this requirement following normal attrition of the present commissioners. The governor in his selection of commissioners shall give consideration to persons learned in the law or persons who have engaged in the profession of engineering, public accounting ~~or~~, property and utility valuation, finance, physical or natural sciences, production agriculture, or natural resources as well as being representative of the general public.

For purposes of this subdivision, "seven-county metropolitan area" means Anoka, Carver, Dakota, Hennepin, Ramsey, Scott, and Washington counties.

Sec. 2. Minnesota Statutes 1984, section 216A.03, subdivision 3, is amended to read:

Subd. 3. **CHAIRMAN.** ~~The commission governor shall elect select one of their number the commissioners to serve as the chairman at the meeting of the commission in the second week in January of each year for a term of one year concurrent with that of the governor.~~

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

If a vacancy occurs in the position of chairman, the ~~commission~~ governor shall ~~elect~~ select a new chairman to complete the unexpired term.

Sec. 3. Minnesota Statutes 1984, section 216A.035, is amended to read:

216A.035 CONFLICT OF INTEREST.

(a) No person during his term of membership on the public utilities commission, while acting as executive secretary of the commission, or while employed in a professional capacity by the commission, shall receive any significant portion of his income, other than dividends or other earnings from a mutual fund or trust if these earnings do not constitute a significant portion of the person's income, directly or indirectly from any public utility or other organization subject to regulation by the commission. No person shall be eligible to be appointed as a member of the public utilities commission unless and until he divests himself of any significant interest or abandons any employment with a utility.

(b) No person is eligible to be appointed as a member of the commission if the person has been employed with an entity, or an affiliated company of an entity, that is subject to rate regulation by the commission within one year from the date when the person's term on the commission will begin.

(c) No person who is an employee of the public service department shall participate in any manner in any decision or action of the commission where he has a direct or indirect financial interest. Each commissioner or employee of the public service department who is in the general professional, supervisory, or technical units established in section 179A.10 or who is a professional, supervisory, or technical employee defined as confidential in section 179A.03, subdivision 4, or who is a management classification employee and whose duties are related to public utilities or transportation regulation shall report to the ethical practices board annually before April 15 any interest he has in an industry or business regulated by the commission. Each commissioner shall file a statement of economic interest as required by section 10A.09 with the ethical practices board and the public utilities commission before taking office. The statement of economic interest must state any interest that the commissioner has in an industry or business regulated by the commission.

(d) A professional employee of the commission or department must immediately disclose to the commission or to the director of the department, respectively, any communication, direct or indirect, with a person who is a party to a pending proceeding before the commission regarding future benefits, compensation, or employment to be received from that person.

Sec. 4. [216A.036] EMPLOYMENT RESTRICTIONS.

(a) A person who serves as (1) a commissioner of the public utilities commission, (2) director of the department of public service, or (3) deputy director of the department, shall not, while employed with or within one year after leaving the commission, or department, accept employment with, receive compensation directly or indirectly from, or enter into a contractual relationship with an entity, or an affiliated company of an entity, that is subject to rate regulation by the commission.

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(b) An entity or an affiliated company of an entity that is subject to rate regulation by the commission, or a person acting on behalf of the entity, shall not negotiate or offer to employ or compensate a commissioner, the director, or the deputy director, while the person is so employed or within one year after the person leaves that employment.

(c) For the purposes of this section, "affiliated company" means a company that controls, is controlled by, or is under common control with an entity subject to rate regulation by the commission.

(d) A person who violates this section is subject to a civil penalty not to exceed \$10,000 for each violation. The attorney general may bring an action in district court to collect the penalties provided in this section.

Sec. 5. [216A.037] RULES.

Subdivision 1. EX PARTE COMMUNICATIONS. The commission shall adopt rules under chapter 14 prescribing permissible and impermissible ex parte communications.

The ex parte rules may prohibit only ex parte communications by commission members with a party relating to:

- (1) a material issue during a pending contested case proceeding;
- (2) a material issue in a rulemaking proceeding after the beginning of commission deliberations;
- (3) a material issue in a disputed formal petition; and
- (4) any other communication impermissible by law.

A contested case is pending from the time the commission refers the matter to the office of administrative hearings until the commission has issued its final order, and the time to petition for reconsideration has expired or the commission has issued an order finally disposing an application for reconsideration, whichever is later.

Subd. 2. COMMUNICATIONS PROHIBITED. A commissioner shall not communicate, directly or indirectly, with a person or entity who is a party to a pending proceeding before the commission regarding past or future benefits or compensation to be received from that person or entity. The commission may dismiss a proceeding if an applicant, petitioner, or complainant violates this subdivision.

Subd. 3. CODE OF CONDUCT. Except as limited by subdivision 1, the commission shall adopt rules prescribing a code of conduct for commissioners and employees of the commission. The code of conduct must include standards to preserve the quasi-judicial function of the commission.

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The commission shall adopt emergency rules to implement this subdivision.

Sec. 6. Minnesota Statutes 1984, section 216B.16, subdivision 1a, is amended to read:

Subd. 1a. **SETTLEMENT BARRED.** When a public utility proposes changes in general rates that would increase general rates paid by consumers by more than \$500,000 annually, the commission shall ~~not~~ may approve the change until after requiring the office of administrative hearings to conduct without a contested case hearing ~~on~~; at a minimum, the appropriate rate base, expense and revenue levels for the test year, and the rate of return. If the formal parties to the contested case choose not to cross-examine the testimony presented, it shall be the duty of the commission and its staff to make inquiry of the witnesses presented to ensure that the testimony is well reasoned and constitutes substantial evidence. After a report of the examiner has been issued, the commission may proceed to take action on the proposed rates consistent with the provisions of this section. The commission shall not accept any stipulation that is not agreed to by if applicant and all intervening parties agree to a stipulated settlement of the case and the settlement is supported by substantial evidence. The commission shall accept or reject the settlement in its entirety and, at any time until its final order is issued in the case, may require the office of administrative hearings to conduct a contested case hearing.

Sec. 7. Minnesota Statutes 1984, section 216B.16, subdivision 2, is amended to read:

Subd. 2. **SUSPENSION OF RATES; HEARING.** Whenever there is filed with the commission a schedule modifying or resulting in a change in any rates then in force as provided in subdivision 1, the commission may suspend the operation of the schedule by filing with the schedule of rates and delivering to the affected utility a statement in writing of its reasons for the suspension at any time before the rates become effective. The suspension shall not be for a longer period than ten months beyond the initial filing date. During the suspension the commission shall determine whether all questions of the reasonableness of the rates requested raised by persons deemed interested or by the administrative division of the department of public service can be resolved to the satisfaction of the commission. If the commission finds that all significant issues raised have not been resolved to its satisfaction, or upon petition by ten percent of the affected customers or 250 affected customers, whichever is less, it shall refer the matter to the office of administrative hearings with instructions for a public hearing as a contested case pursuant to chapter 14, except as otherwise provided in this section. The commission may order that the issues presented by the proposed rate changes be bifurcated into two separate hearings as follows: (1) determination of the utility's revenue requirements and (2) determination of the rate design. Upon issuance of both hearing examiner reports, the issues shall again be joined for consideration and final determination by the commission. All prehearing discovery activities of state agency intervenors shall be consolidated and conducted by the department of public service. If the commission

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does not make a final determination concerning a schedule of rates within ten months after the initial filing date, the schedule shall be deemed to have been approved by the commission; except if a settlement has been submitted to and rejected by the commission, the schedule is deemed to have been approved 12 months after the initial filing. For the purposes of this section, "final determination" means the initial decision of the commission and not any order which may be entered by the commission in response to a petition for rehearing or other further relief. The commission may further suspend rates until it determines all those petitions.

Sec. 8. Minnesota Statutes 1984, section 237.075, subdivision 1a, is amended to read:

Subd. 1a. **SETTLEMENT BARRED.** When a telephone company proposes changes in general rates that would increase general rates paid by consumers by more than \$500,000 annually, the commission shall not ~~may~~ approve the change until after requiring the office of administrative hearings to conduct without a contested case hearing on; at a minimum, the appropriate rate base, expense and revenue levels for the test year, and the rate of return. If the formal parties to the contested case choose not to cross-examine the testimony presented, it shall be the duty of the commission and its staff to make inquiry of the witnesses presented to ensure that the testimony is well reasoned and constitutes substantial evidence. After a report of the examiner has been issued, the commission may proceed to take action on the proposed rates consistent with the provisions of this section. The commission shall not accept any stipulation that is not agreed to by if applicant and all intervening parties agree to a stipulated settlement of the case and the settlement is supported by substantial evidence. The commission shall accept or reject the settlement in its entirety and, at any time until its final order is issued in the case, may require the office of administrative hearings to conduct a contested case hearing.

Sec. 9. Minnesota Statutes 1984, section 237.075, subdivision 2, is amended to read:

Subd. 2. **SUSPENSION OF RATES; HEARING.** Whenever there is filed with the commission as provided in subdivision 1 a schedule modifying or resulting in a change in any rate then in force, the commission may suspend the operation of the schedule by filing with the schedule of rates and delivering to the affected telephone company a statement in writing of its reasons for the suspension at any time before the rates become effective. The suspension shall not be for a longer period than ten months beyond the initial filing date. During the suspension the commission shall determine whether all questions of the reasonableness of the rates requested raised by persons deemed interested or by the administrative division of the department of public service can be resolved to the satisfaction of the commission. If the commission finds that all significant issues raised have not been resolved to its satisfaction, or upon petition by ten percent of the affected customers or 250 affected customers, whichever is less, it shall refer the matter to the office of administrative hearings with instructions

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for a public hearing as a contested case pursuant to chapter 14, except as otherwise provided in this section. The commission may order that the issues presented by the proposed rate changes be bifurcated into two separate hearings as follows: (1) determination of the telephone company's revenue requirements and (2) determination of the rate design. Upon issuance of both administrative law judge reports, the issues shall again be joined for consideration and final determination by the commission. All prehearing discovery activities of state agency intervenors shall be consolidated and conducted by the department of public service. If the commission does not make a final determination concerning a schedule of rates within ten months after the initial filing date, the schedule shall be deemed to have been approved by the commission; except if a settlement has been submitted to and rejected by the commission, the schedule is deemed to have been approved 12 months after the initial filing. For the purposes of this section, "final determination" means the initial decision of the commission and not any order which may be entered by the commission in response to a petition for rehearing or other further relief. The commission may further suspend rates until it determines all those petitions.

Sec. 10. **EFFECTIVE DATE.**

Sections 1 and 3, paragraphs (b), (c), and (d), and sections 4 and 5 are effective the day following final enactment. Section 3, paragraph (a), is effective July 1, 1986. Section 2 is effective January 1, 1987.

Approved March 24, 1986

CHAPTER 410—S.F.No. 1880

An act relating to veterans; establishing a veterans' cemetery; proposing coding for new law in Minnesota Statutes, chapter 197.

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

Section 1. **[197.235] VETERANS' CEMETERY.**

Subdivision 1. ACQUISITION. The department of veterans affairs shall acquire a site in this state to be used to establish a cemetery for the interment of veterans of the United States armed forces and for qualified family members of eligible veterans. The approval of the governing body of the county in which the proposed site is to be located must be obtained prior to any acquisition of land for this purpose. The department may receive any land granted to the state or any of its political subdivisions for this purpose.

Subd. 2. OPERATION AND MAINTENANCE. The department of veterans affairs shall supervise and control the veterans' cemetery established under this section. The department may contract for the maintenance and operation

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