

## CHAPTER 196—H.F.No. 1370

*An act relating to excavation notification; requiring notice of underground facilities in drawings for bid specifications; amending Minnesota Statutes 1996, section 216D.04, by adding a subdivision.*

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

Section 1. Minnesota Statutes 1996, section 216D.04, is amended by adding a subdivision to read:

Subd. 1a. PLANS FOR EXCAVATION. (a) Any person, prior to soliciting bids or entering into a contract for excavation, shall provide a proposed excavation request to the notification center to obtain from the affected operators of underground facilities the type, size, and general location of underground facilities. Affected operators shall provide the information within 15 working days. An operator who provides information to a person who is not a unit of government may indicate any portions of the information which are proprietary and may require the person to provide appropriate confidentiality protection. The information obtained from affected operators must be submitted with the final drawing used for the bid or contract. This information must be obtained not more than 90 days before completion of the final drawing used for the bid or contract.

(b) This subdivision does not apply to bids and contracts for: (1) routine maintenance of underground facilities or installation, maintenance, or repair of service lines; (2) excavation for operators of underground facilities performed on a unit of work or similar basis; or (3) excavation for home construction and projects by homeowners.

(c) This subdivision does not affect the obligation to provide a notice of excavation as required under subdivision 1.

Presented to the governor May 19, 1997

Signed by the governor May 20, 1997, 10:20 a.m.

## CHAPTER 197—H.F.No. 379

*An act relating to commerce; regulating securities; authorizing small corporate offering registrations; proposing coding for new law in Minnesota Statutes, chapter 80A.*

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

Section 1. **[80A.115] SMALL CORPORATE OFFERING REGISTRATION.**

Subdivision 1. FILING REQUIREMENTS. A security meeting the conditions set forth in this section may be registered by filing a small corporate offering registration form otherwise known as a form U-7 adopted by the North American Securities Administrators Association as a uniform state securities registration form.

Subd. 2. AVAILABILITY. Registration under this section is available only to the issuer of the securities and not to an affiliate of that issuer or to any other person for resale

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of the issuer's securities. The issuer must be a corporation organized under the laws of one of the states or possessions of the United States. Registration under this section is not available to any of the following issuers:

(1) an issuer that engages in or proposes to engage in the business of petroleum exploration or production or mining or other extractive industries;

(2) an investment company, including a mutual fund;

(3) an issuer subject to the reporting requirements of section 13 or 15(d) of the Securities Exchange Act of 1934;

(4) a direct participation program;

(5) a development stage company that either has no specific business plan or purpose or has indicated that its business plan is to engage in a merger or acquisition with an unidentified company or companies or other entity or person; and

(6) an issuer seeking to register a debt offering unless the commissioner finds that the issuer has demonstrated a reasonable ability to service the debt.

**Subd. 3. DISQUALIFICATION.** (a) An issuer is disqualified from registration under this section if the issuer or any of its officers, directors, ten-percent stockholders, promoters, or any selling agents of the securities to be offered, or any officer, director, or partner of the selling agent:

(1) has filed a registration statement that is the subject of a currently effective registration stop order entered under a federal or state securities law within five years before the filing of the small corporate offering registration application;

(2) has been convicted within five years before the filing of the small corporate offering registration application of a felony or misdemeanor in connection with the offer, purchase, or sale of a security or a felony involving fraud or deceit, including, but not limited to, forgery, embezzlement, obtaining money under false pretenses, larceny, or conspiracy to defraud;

(3) is currently subject to a state administrative enforcement order or judgment entered by a state securities administrator or the securities and exchange commission within five years before the filing of the small corporate offering registration application, or is subject to a federal or state administrative enforcement order or judgment in which fraud or deceit, including, but not limited to, making untrue statements of material facts or omitting to state material facts, was found and the order or judgment was entered within five years before the filing of the small corporate offering registration application;

(4) is currently subject to an order, judgment, or decree of a court of competent jurisdiction temporarily restraining or enjoining, or is subject to an order, judgment, or decree of a court of competent jurisdiction, permanently restraining or enjoining the party from engaging in or continuing any conduct or practice in connection with the purchase or sale of any security or involving the making of a false filing with a state or with the securities and exchange commission entered within five years before the filing of the small corporate offering registration application; or

(5) is subject to a state's administrative enforcement order, or judgment that prohibits, denies, or revokes the use of an exemption for registration in connection with this offer, purchase, or sale of securities.

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Clauses (1) to (4) do not apply if the person subject to the disqualification is duly licensed or registered to conduct securities-related business in the state in which the administrative order or judgment was entered against the person or if the dealer employing the party is licensed or registered in this state and the form BD filed in this state discloses the order, conviction, judgment, or decree relating to the person.

(b) No person disqualified under this subdivision may act in any capacity other than that for which the person is licensed or registered. A disqualification under this subdivision is automatically waived if the state securities administrator or federal agency that created the basis for disqualification determines upon a showing of good cause that it is not necessary under the circumstances to deny the registration.

Subd. 4. **CONDITIONS.** In order to register under this section, all of the following conditions must be satisfied:

(1) the offering price for common stock and the exercise price, if the securities offered are options, warrants, or rights for common stock, and the conversion price if the securities are convertible into common stock must be equal to or greater than \$5 per share; and

(2) the aggregate offering price of the securities offered, within or outside this state, may not exceed \$1,000,000 less the aggregate offering price of all securities sold within the 12 months before the start of and during the offering of the securities under securities and exchange commission Rule 504 in reliance on an exemption under section 3(b) of the Securities Act of 1933. The issuer may not split its common stock, or declare a stock dividend for two years after effectiveness of the registration, except that in connection with a subsequent public offering, the issuer may upon application and consent of the commissioner take this action.

Subd. 5. **CONTENTS OF REGISTRATION FORM.** The small corporate offering registration form (form U-7) must comply with and contain all exhibits required by the Instructions for Use of Form U-7 as adopted by the North American Securities Administrators Association. The registration must include financial statements prepared in accordance with generally accepted accounting principles. An issuer that has not conducted significant operations shall provide statements of receipts and disbursements in lieu of statements of income. Interim financial statements may be unaudited. All other financial statements shall be audited by independent certified public accountants. Financial statements may be unaudited if reviewed by independent certified public accountants in accordance with the accounting and review service standards promulgated by the American Institute of Certified Public Accountants and:

(1) the issuer has not previously sold securities through an offering involving the general solicitation of prospective investors by means of advertising, mass mailings, public meetings, cold call telephone solicitation, or any other method directed toward the public;

(2) the issuer has not been previously required under federal or state securities laws to provide audited financial statements in connection with any sale of its securities; and

(3) the aggregate amount of all previous sales of securities by the issuer, exclusive of debt financing with banks and similar commercial lenders does not exceed \$1,000,000.

Subd. 6. **STOP ORDERS.** The commissioner may in the commissioner's discretion issue a stop order for any of the following additional reasons:

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(1) the issuer's principal place of business is not in this state or in North Dakota, South Dakota, Iowa, or Wisconsin;

(2) at least 50 percent of the issuer's full-time employees are not located in this state or in North Dakota, South Dakota, Iowa, or Wisconsin; or

(3) at least 80 percent of the net proceeds of the offering are not going to be used in connection with the operations of the issuer in this state or in North Dakota, South Dakota, Iowa, or Wisconsin.

Subd. 7. **SUITABILITY.** The commissioner may, in the commissioner's discretion, require investors in a particular offering to meet suitability standards relating to annual gross income, net worth, or other factors to determine the suitability of the investment for the investor.

Subd. 8. **FINANCIAL REPORTING REQUIREMENTS.** The issuer shall deliver to investors on an annual basis financial statements prepared in accordance with generally accepted accounting principles.

Subd. 9. **EFFECTIVE DATE.** A registration statement under this section becomes effective when the commissioner so orders.

**Sec. 2. EFFECTIVE DATE.**

Section 1 is effective the day following final enactment.

Presented to the governor May 19, 1997

Signed by the governor May 20, 1997, 10:22 a.m.

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**CHAPTER 198—H.F.No. 704**

*An act relating to utilities; exempting large electric power generating plant from certificate of need proceeding when selected by public utilities commission from a bidding process to select resources to meet utility's projected energy demand; amending Minnesota Statutes 1996, section 216B.2422, subdivision 5.*

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

Section 1. Minnesota Statutes 1996, section 216B.2422, subdivision 5, is amended to read:

**Subd. 5. BIDDING; EXEMPTION FROM CERTIFICATE OF NEED PROCEEDING.** (a) A utility may select resources to meet its projected energy demand through a bidding process approved or established by the commission. A utility shall use the environmental cost estimates determined under subdivision 3 in evaluating bids submitted in a process established under this subdivision.

(b) Notwithstanding any other provision of this section, if an electric power generating plant, as described in section 216B.2421, subdivision 2, paragraph (a), is selected in a

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