

CHAPTER 116H

MINNESOTA ENERGY AGENCY

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NOTE: Provisions of this chapter expire December 31, 1979 unless extended by the legislature. See Laws 1974, Chapter 307, Section 19.

116H.01 FINDINGS AND PURPOSE. The legislature finds and declares that the present rapid growth in demand for energy is in part due to unnecessary energy use; that a continuation of this trend will result in serious depletion of finite quantities of fuels, land and water resources, and threats to the state's environmental quality; that the state must insure consideration of urban expansion, transit systems; economic development, energy conservation and environmental protection in planning for large energy facilities; that there is a need to carry out energy conservation measures; and that energy planning, protection of environmental values, development of Minnesota energy sources, and conservation of energy require expanded authority and technical capability and a unified, coordinated response within state government.

The legislature seeks to encourage thrift in the use of energy, and to maximize use of energy-efficient systems, thereby reducing the rate of growth of energy consumption, prudently conserving energy resources, and assuring statewide environmental protection consistent with an adequate, reliable supply of energy.

[1974 c 307 s 1]

116H.02 DEFINITIONS. Subdivision 1. For the purposes of sections 116H.01 to 116H.15, the following terms shall have the meanings here given them.

Subd. 2. "Agency" means the Minnesota energy agency as provided in sections 116H.01 to 116H.15.

Subd. 3. "Commission" means the legislative commission on energy.

Subd. 4. "Director" means the director of the Minnesota energy agency.

Subd. 5. "Large energy facility" means any electric power generating plant or combination of plants at a single site with a combined capacity of 50,000 kilowatts or more, any interstate high voltage transmission line with a capacity of 200 kilovolts or more and over 100 miles in length, any facility on a single site designed for or capable of storing more than one million gallons of crude petroleum or petroleum fuels or oil or derivatives thereof, any pipeline greater than six inches in diameter and over 50 miles in length used for the transportation of crude petroleum or petroleum fuels or oil or derivatives thereof, any pipeline for transporting natural or synthetic gas at pressures in excess of 200 pounds per square inch and over 50 miles in length, any facility designed for or capable of storing on a single site more than 100,000 gallons of liquified natural gas or synthetic gas, any underground gas storage facility requiring a permit pursuant to section 84.57, any facility designed or capable of serving as a depot for coal transported into this state for use within the state or transshipment from the state and any petroleum refinery.

Subd. 6. "Petroleum supplier" means any petroleum refinery in the state and any entity engaged in transmission or wholesale distribution of more than 100,000 gallons of crude petroleum or petroleum fuels or oil or derivatives thereof annually in this state.

Subd. 7. "Coal supplier" means any entity engaged in this state in the wholesale distribution of coal or transportation into this state of any coal intended for use or distribution in the state or transshipment from the state.

Subd. 8. "Utility" means any entity engaged in this state in the generation, transmission or distribution of electric energy and any entity engaged in this state in the transmission or distribution of natural or synthetic natural gas, including,

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but not limited to a private investor owned utility or a public or municipally owned utility.

Subd. 9. "Construction" means significant physical alteration of a site to install or enlarge a large energy facility, but not including activities incident to preliminary engineering or environmental studies.

[1974 c 307 s 2]

116H.03 CREATION OF AGENCY. Subdivision 1. There is hereby created in the executive branch the Minnesota energy agency.

Subd. 2. The agency shall be under the supervision of the director who shall organize the agency and employ such other officers, agents and employees as are necessary to carry out the functions of the agency. Duties of such officers, agents and employees shall be as specified by the director.

Subd. 3. The director shall be appointed by the governor with the advice and consent of the senate, to a four-year term which shall coincide with the term of the governor and until his successor is duly appointed and qualified. In appointing the director the governor should give due consideration to the listing of names submitted by the commission pursuant to section 116H.04. The director shall serve at the pleasure of the governor.

A vacancy in the office of director shall be filled by the governor and the new appointee shall immediately take office and carry out all duties until the next session of the legislature when his appointment shall be submitted to the senate for confirmation.

The director may appoint a deputy who shall serve at his pleasure. The salaries of the director and the deputy shall be fixed by the governor until otherwise expressly provided for by law. The deputy may be authorized by the director to perform every duty, power and responsibility imposed on the director unless expressly forbidden by law. The director and his deputy shall serve in the unclassified service and shall be members of the Minnesota state retirement system.

[1974 c 307 s 3]

116H.04 CREATION OF COMMISSION; DUTIES. Subdivision 1. There is hereby created a legislative commission on energy.

The commission shall be composed of three members from the senate, to be appointed by the committee on committees, three members from the house, to be appointed by the speaker and three public members to be appointed by the governor, no more than two to be of the same political party.

Subd. 2. The director of the office of legislative research shall serve as executive secretary of the commission. The commission shall utilize the office of legislative research and employ and specify the duties of such other officers, agents and employees as are necessary to carry out its functions.

Subd. 3. The commission shall:

(a) Submit to the governor a listing of ten persons whom it recommends for appointment as director;

(b) Review and evaluate policies adopted by the agency;

(c) Coordinate with the director of the agency and assist him in determining energy policies;

(d) Assist the director in eliminating duplication in effort among governmental departments and agencies involved in energy activities;

(e) Assist the director in charging governmental departments with specific information gathering goals and report such goals to the legislature and governor;

(f) Consult with the director and the agency on all matters regarding energy conservation;

(g) Routinely advise the director and the agency regarding the exercise of their other duties under sections 116H.01 to 116H.15;

(h) Continuously evaluate the energy policies of the state;

(i) Review and comment upon the other activities of the agency;

(j) Re-evaluate the report of the agency submitted pursuant to section 116H.10;

(k) Recommend to the governor and the legislature any future energy legislation which it considers necessary or desirable;

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(l) Submit an annual report of its activities to the governor and the legislature; and

(m) Include in its report to the 1975 legislative session and to the governor its assessment of the scope of the energy shortage in Minnesota and of the need for creating a permanent independent agency on energy.

Subd. 4. The commission shall expire on July 1, 1975 unless renewed by the legislature.

[1974 c 307 s 4]

116H.05 CONFLICT OF INTEREST. No person shall be eligible to continue in office as director unless he has within six months after being appointed divested himself of any interest except fully vested pension rights in any utility, coal or petroleum supplier, or manufacturer of any major component of a large energy facility doing business within or outside this state.

No person who is an employee of the agency shall participate in any manner in any decision or action of the agency where he has a direct or indirect financial interest.

[1974 c 307 s 5]

116H.06 JURISDICTION. The agency has sole authority and responsibility for the administration of sections 116H.01 to 116H.15. Other laws notwithstanding, the authority granted the agency shall supersede the authority given any other agency whenever overlapping, duplication or additional administrative or legal procedures might occur in the administration of sections 116H.01 to 116H.15. The director shall consult with other state departments or agencies in matters related to energy and shall contract with them to provide appropriate services to effectuate the purposes of sections 116H.01 to 116H.15. Any other department, agency or official of this state or political subdivision thereof which would in any way affect the administration or enforcement of sections 116H.01 to 116H.15 shall cooperate and coordinate all such activities with the agency to assure orderly and efficient administration and enforcement of sections 116H.01 to 116H.15.

The director shall designate a liaison officer from the agency whose duty shall be to insure the maximum possible consistency in procedures and to eliminate duplication between the division and the other agencies that may be involved in energy. The commissioner of administration shall, if and to the extent he deems it efficient and beneficial, transfer to the agency, pursuant to sections 16.125, 16.13 and 16.135, the functions, employees or work of any agency of the state if such functions or work relate to or if such employees are engaged in matters which fall within the jurisdiction of the agency pursuant to sections 116H.01 to 116H.15.

[1974 c 307 s 6]

116H.07 DUTIES. Subdivision 1. It shall be the duty of the director to:

(a) Manage the agency as the central repository within the state government for the collection of data on energy;

(b) Prepare and adopt an emergency allocation plan specifying actions to be taken in the event of an impending serious shortage of energy, or a threat to public health, safety, or welfare;

(c) Undertake a continuing assessment of trends in the consumption of all forms of energy and analyze the social, economic, and environmental consequences of these trends;

(d) Carry out energy conservation measures as specified by the legislature and recommend to the governor and the legislature additional energy policies and conservation measures as required to meet the objectives of sections 116H.01 to 116H.15;

(e) Collect and analyze data relating to present and future demands and resources for all sources of energy, and specify energy needs for the state and various service areas as a basis for planning large energy facilities;

(f) Require certificate of need for construction of large energy facilities;

(g) Evaluate policies governing the establishment of rates and prices for energy as related to energy conservation, and other goals and policies of sections 116H.01 to 116H.15, and make recommendations for changes in energy pricing policies and rate schedules;

(h) Study the impact and relationship of the state energy policies to international, national, and regional energy policies;

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(i) Design a state program for the conservation of energy; this program shall include but not be limited to, general commercial, industrial, and residential areas; such program shall also provide for the evaluation of energy systems as they relate to lighting, heating, refrigeration, air conditioning, building design and operation, and appliance manufacturing and operation;

(j) Inform and educate the public about the ways in which persons can conserve energy;

(k) Dispense funds made available for the purpose of research studies and projects of professional and civic orientation, which are related to either energy conservation or the development of alternative energy technologies which conserve nonrenewable energy resources while creating minimum environmental impact;

(l) Charge other governmental departments and agencies involved in energy related activities with specific information gathering goals and require that those goals be met.

[1974 c 307 s 7]

116H.08 POWERS. The director may:

(a) Adopt rules and regulations, pursuant to chapter 15 necessary to carry out the purposes of sections 116H.01 to 116H.15;

(b) Make all contracts pursuant to sections 116H.01 to 116H.15 and do all things necessary to cooperate with the United States government, and to qualify for, accept and disburse any private grant intended for the administration of sections 116H.01 to 116H.15. Notwithstanding any other law the agency is designated the state agency to apply for, receive and accept federal funds made available to the state for the purposes of sections 116H.01 to 116H.15.

(c) Contract for professional services if such work or services cannot be satisfactorily performed by employees of the agency or by any other state agency;

(d) Enter into interstate compacts to jointly carry out such research and planning with other states or the federal government where appropriate;

(e) Distribute informational material at no cost to the public upon reasonable request.

[1974 c 307 s 8]

116H.09 ENERGY EMERGENCY ALLOCATION PLAN. Subdivision 1. Within nine months after March 29, 1974, the director shall prepare and issue an emergency conservation and allocation plan in the manner set forth in subdivision 2. Such plan shall provide a variety of strategies and staged conservation measures to reduce energy use and in the event of an energy supply emergency, shall establish guidelines and criteria for allocation of fuels to priority users. The plan shall contain alternative conservation actions and allocation plans to reasonably meet various foreseeable shortage circumstances and allow a choice of appropriate responses. The plan shall be consistent with requirements of federal emergency energy conservation and allocation laws and regulations and shall:

(a) Give priority to individuals, institutions, agriculture and businesses which demonstrate they have engaged in energy-saving measures and shall include provisions to insure that:

(1) Immediate allocations to individuals, institutions, agriculture and businesses be based on needs at energy conservation levels;

(2) Successive allocations to individuals, institutions, agriculture and businesses be based on needs after implementation of required action to increase energy conservation;

(3) Needs of individuals and institutions are adjusted to insure the health and welfare of the young, old and infirm;

(b) Insure maintenance of reasonable job safety conditions and avoid environmental sacrifices;

(c) Establish procedures for fair and equitable review of complaints and requests for special exemptions regarding emergency conservation measures or allocations.

Subd. 2. Within four months after March 29, 1974, the director shall circulate, in a manner designed to assure widespread public notice, a tentative plan of energy conservation measures and allocation priorities and criteria, and shall solicit, in a

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time, form and manner prescribed by him public comments thereon. Further the director may require all utilities, coal suppliers and petroleum suppliers to comment thereon, as prescribed by him, and to submit suggested emergency conservation measures and allocation criteria. The director may by written order, to the extent he deems appropriate, require joint preparation and submission of such comments and proposals by utilities, coal suppliers and petroleum suppliers. Industry participants in such cooperative planning, acting at the request of the director, shall be deemed thereby to have performed actions permitted by a regulatory body acting under authority of this state within the meaning of section 325.8017, subdivision 2.

Subd. 3. In the process of soliciting public comments on the tentative plan, the director shall hold at least five public meetings in various geographical areas of the state to insure public comment. The final plan shall be based on comments received from the public and utilities, coal suppliers and petroleum suppliers, the independent evaluation and analysis of the director and the guidelines set forth in subdivision 1.

Subd. 4. At least once every five years and whenever construction of a new large energy facility is completed which affects the supply of energy in Minnesota, the director shall review and if necessary revise the emergency conservation and allocation plan.

Subd. 5. Upon a declaration of an energy supply emergency by the executive council or the legislature, the director shall request the division of emergency services to implement and enforce the emergency conservation allocation plan. The executive council and the legislative commission may terminate an energy supply emergency at any time, but no energy supply emergency may continue for longer than 30 days unless renewed by the executive council and the legislative commission. Each renewed energy supply emergency may not continue for longer than 30 days. Each person shall carry out the responsibilities specified in the emergency conservation allocation plan, and violation of any provision of such emergency conservation or allocation requirements shall be deemed a violation of sections 116H.01 to 116H.15 and the rules or regulations promulgated thereunder for purposes of enforcement pursuant to section 116H.15 hereof.

[1974 c 307 s 9; 1974 c 428 s 5]

116H.10 FORECASTS, STATISTICS AND INFORMATION. Subdivision 1. In order to further the purposes of sections 116H.01 to 116H.15, the director shall develop and maintain an effective program of collection, compilation, and analysis of energy statistics. The statistical program shall be developed to insure a central state repository of energy data and so that the state may coordinate and cooperate with other governmental data collection and record keeping programs.

Subd. 2. In addition to supplying such current statistical and short range forecasting information as the director may require, each utility, coal supplier, petroleum supplier and large energy facility in the state shall prepare and transmit to the director by January 1, 1975, and every year thereafter, a report specifying in five, ten, and 20-year forecasts the projected demand for energy within their respective service areas and the facilities necessary to meet the demand.

The report shall be in a form specified by the director and contain all information deemed relevant by the director.

Subd. 3. The director shall, to the maximum extent feasible, provide that forecasts required under this section be consistent with material required by other state and federal agencies in order to prevent unnecessary duplication.

Subd. 4. Reports issued pursuant to this section shall be available for public inspection in the office of the agency during normal business hours.

Subd. 5. The director shall review and evaluate forecasts of energy demands and resources as they relate to the most current population growth and development estimates, statewide and regional land use, transportation, and economic development programs and forecasts.

[1974 c 307 s 10]

116H.11 STATE ENERGY POLICY AND CONSERVATION REPORT. Subdivision 1. Beginning January 1, 1976, and at least every two years thereafter, the director shall transmit to the governor and the legislature a comprehensive report designed to identify emerging trends related to energy supply, demand, conservation, public health and safety factors, and to specify the level of statewide and service area energy need. The report shall include, but not be limited to, all of the following:

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- (a) A final report on the accuracy and acceptability of the energy forecasts received under section 116H.10 and the alternatives to meeting that demand;
- (b) An estimate of statewide and geographical area energy need for the forthcoming five and ten year period which, in the judgment of the director, will reasonably balance requirements of state and service area growth and development, protection of public health and safety, preservation of environmental quality, and conservation of energy resources. Such forecasts established by the director shall serve as the basis for certification of large energy facilities in section 116H.13;
- (c) The anticipated level of statewide and geographical area energy demand for 20 years, which shall serve as the basis for long range action;
- (d) The identification of potential adverse social, economic, or environmental effects caused by a continuation of the present energy demand trends;
- (e) An assessment of the state's energy resources, including examination of the availability of commercially developable and imported fuels;
- (f) The estimated reduction in annual energy consumption resulting from various energy conservation measures;
- (g) The status of the department's ongoing studies;
- (h) A description of the emergency allocation plan;
- (i) Recommendations to the governor and the legislature for administrative and legislative actions to accomplish the purposes of sections 116H.01 to 116H.15.

Subd. 2. Prior to the preparation of a final report, the director shall issue a draft report to the legislative commission on energy, the environmental quality council and any person, upon request, and shall hold a public meeting. Notice of the public meeting shall be provided to each regional development commission.

Subd. 3. The director shall distribute the final report to any person upon request.

[1974 c 307 s 11]

116H.12 ENERGY CONSERVATION. Subdivision 1. After consultation with the director and the commissioner of public safety, the commissioner of highways shall, pursuant to chapter 15, promulgate regulations establishing maximum energy use standards for street, highway and parking lot lighting. Such standards shall be consistent with overall protection of the public health, safety and welfare. No new highway, street or parking lot lighting shall be installed in violation of these regulations and existing lighting levels shall be reduced consistent with the regulations as soon as feasible and practical, consistent with overall energy conservation.

Subd. 2. The director may investigate promotional practices by energy suppliers and, pursuant to chapter 15, may promulgate regulations to limit such practices in order to reduce the rate of growth of energy demand.

Subd. 3. After July 1, 1974, no new natural gas outdoor lighting shall be installed in the state.

Subd. 4. In recognition of the compelling need for energy conservation in order to safeguard the public health, safety and welfare, it is necessary to provide building design and construction standards consistent with the most efficient use of energy. Therefore, the commissioner of administration, in consultation with the director, shall, no later than April 1, 1975, and pursuant to chapter 15, promulgate building design and construction standards regarding heat loss control, illumination and climate control. Such standards shall apply to all new buildings and remodeling affecting heat loss control, illumination and climate control. Such standards shall be economically feasible in that the resultant savings in energy procurement shall exceed the cost of the energy conserving requirements amortized over the life of the building. The standards shall become part of the state building code and be effective six months after promulgation.

Subd. 5. The director, in conjunction with the commissioner of administration, shall conduct studies of the state's purchase and use of supplies, automobiles and equipment having a significant impact on energy use in order to determine the potential for energy conservation. The director may promulgate regulations to insure that energy use and conservation will be considered in state purchasing and, where appropriate, to require certain minimum energy efficiency standards in purchased products and equipment. No state purchasing of equipment or material use shall occur that is not in conformity with these regulations.

Subd. 6. In consultation with the director, the commissioner of highways shall begin an efficiency study of the present traffic flow system within the state. The study shall consider the feasibility of a computer-coordinated traffic system and other measures for increasing the efficiency of present traffic loads.

Subd. 7. The commissioner of administration shall begin a study of expanding the state telecommunication system to reduce travel between all state departments and agencies.

Subd. 8. The tax study commission shall study the feasibility of encouraging car pools and private busing through the use of tax incentives.

Subd. 9. In conjunction with the motor vehicle services division, the director shall study the feasibility of modifying motor vehicle license fees to reflect energy consumption.

[1974 c 307 s 12]

116H.13 CERTIFICATE OF NEED. Subdivision 1. Within six months after the submission of the first biennial report the director shall, pursuant to chapter 15 and sections 116H.01 to 116H.15, promulgate assessment of need criteria to be used in the determination of need for large energy facilities pursuant to this section.

Subd. 2. After promulgation of the assessment of need criteria, no large energy facility shall be sited or constructed in Minnesota without the issuance of a certificate of need by the director pursuant to sections 116H.01 to 116H.15 and consistent with the criteria for assessment of need.

Subd. 3. No proposed large energy facility shall be certified for construction unless the applicant has justified its need. In assessing need, the director shall evaluate:

(1) The accuracy of the long range energy demand forecasts on which the necessity for the facility is based;

(2) The effect of existing or possible energy conservation programs under sections 116H.01 to 116H.15 or other federal or state legislation on long term energy demand;

(3) The relationship of the proposed overall state energy needs;

(4) Promotional activities which may have given rise to the demand for this facility;

(5) Socially beneficial uses of the output of this facility, including its uses to protect or enhance environmental quality;

(6) The effects of the facility in inducing future development;

(7) Possible alternatives for satisfying the energy demand including but not limited to potential for increased efficiency of existing energy generation facilities;

(8) The policies, rules and regulations of other state and federal agencies and local governments.

Subd. 4. After promulgation of the criteria for assessment of need, any utility, coal supplier or petroleum supplier shall apply for a certificate of need to construct a new large energy facility. The application shall be on forms and in a manner established by the director. In reviewing each application the director shall hold at least one public hearing pursuant to chapter 15.

Subd. 5. Within six months of the submission of an application, the director shall approve or deny a certificate of need for the facility. Such approval or denial of the certificate shall be accompanied by a statement of the reasons for the decision. Issuance of the certificate may be made contingent upon modifications required by the director.

Subd. 6. Any application for a certificate of need shall be accompanied by a fee not to exceed \$50,000. The director shall establish by regulation pursuant to chapter 15 and sections 116H.01 to 116H.15, a schedule of fees based on the output or capacity of the facility and the difficulty of assessment of need. Funds collected in this manner shall be credited to the general fund of the state treasury.

Subd. 7. Other state agencies authorized to issue permits for siting, construction or operation of large energy facilities shall present their position regarding need and participate in the public hearing process prior to the issuance or denial of a certificate of need. Issuance or denial of certificates of need shall be the sole and exclusive prerogative of the director and said determinations and certificates shall

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be binding upon other state departments and agencies, regional, county and local governments and special purpose government districts except as provided in Laws 1973, Chapter 342 and Chapter 412, Section 4, Subdivision 9.

Subd. 8. This section shall not apply in any case where the director shall determine after being advised by the attorney general that its application has been preempted by federal law.

[1974 c 307 s 13]

116H.14 SUBPOENA POWER. The director shall have the power, for the purposes of sections 116H.01 to 116H.15, to issue subpoenas for production of books, records, correspondence and other information and to require attendance of witnesses. Such subpoenas may be served anywhere in the state by any person authorized to serve processes of courts of record. If a person does not comply with a subpoena, the director may apply to the district court of Ramsey county and the court shall compel obedience to the subpoena by a proper order. A person failing to obey the order is punishable by the court as for contempt.

[1974 c 307 s 14]

116H.15 ENFORCEMENT, PENALTIES. Subdivision 1. Any person who violates sections 116H.01 to 116H.15 or any rule or regulation promulgated hereunder or knowingly submits false information in any report required by sections 116H.01 to 116H.15 shall be guilty of a misdemeanor. Each day of violation shall constitute a separate offense.

Subd. 2. The provisions of sections 116H.01 to 116H.15 or any rules or regulations promulgated hereunder may be enforced by injunction, action to compel performance or other appropriate action in the district court of the county wherein the violation takes place. The attorney general shall bring any action under this subdivision upon the request of the director, and the existence of an adequate remedy at law shall not be a defense to an action brought under this subdivision.

Subd. 3. When the court finds that any person has violated sections 116H.01 to 116H.15 or any rule or regulation thereunder, has knowingly submitted false information in any report required by sections 116H.01 to 116H.15, or has violated any court order issued under sections 116H.01 to 116H.15, the court may impose a civil penalty of not more than \$10,000 for each violation. These penalties shall be paid to the general fund in the state treasury.

[1974 c 307 s 15]