

1 SEC. 8. There is appropriated the remainder of the state fish and game
 2 protection fund for use by the state conservation commission for the fiscal year
 3 beginning July 1, 1976, and ending June 30, 1977, for capital improvement and
 4 contingencies arising during the fiscal year which are legally payable from the fish
 5 and game protection fund. The remainder is defined as the fish and game
 6 protection fund that is not appropriated by House File one thousand one
 7 hundred forty-one (1141), section two (2), enacted by the Sixty-sixth General
 8 Assembly, 1976 Session. A contingency shall exclude any purpose or project
 9 which was presented to the general assembly by way of a bill and which failed to
 10 become enacted into law. Before any funds shall be allocated, it shall be
 11 determined by the executive council that a contingency exists and that the
 12 proposed allocation shall be for the best interest of the state.

1 SEC. 9. There is appropriated from the general fund of the state for the fiscal
 2 year beginning July 1, 1976 and ending June 30, 1977 to the Iowa development
 3 commission the sum of twenty-four thousand five hundred (24,500) dollars, or so
 4 much thereof as may be necessary, to print the Iowa manufacturer's directory.

1 SEC. 10. All federal grants to and the federal receipts of the agencies
 2 appropriated funds by this Act are appropriated for the purposes set forth in the
 3 federal grants or receipts.

Approved June 20, 1976

CHAPTER 1206

ELECTRIC POWER GENERATORS

H. F. 1470

AN ACT relating to the location and construction of electric power generating facilities and providing penalties.

Be It Enacted by the General Assembly of the State of Iowa:

1 SECTION 1. NEW SECTION. **Definitions.** As used in this Act, unless the
 2 context otherwise requires:

3 1. "Facility" means any electric power generating plant or a combination of
 4 plants at a single site with a total capacity of one hundred megawatts of
 5 electricity or more and those associated transmission lines connecting the
 6 generating plant to either a power transmission system or an interconnected
 7 primary transmission system or both. Transmission lines subject to the provisions
 8 of this Act shall not require a franchise under chapter four hundred eighty-nine
 9 (489) of the Code.

10 2. "Certificate" means a certificate of public convenience, use and necessity
 11 issued pursuant to section six (6) of this Act.

12 3. "Commence to construct" means significant alteration of a site to install
 13 permanent equipment or structures but does not include activities incident to
 14 preliminary engineering, environmental studies or acquisition of a site for a
 15 facility.

16 4. "Agency" means an agency as defined in section seventeen A point two
 17 (17A.2), subsection one (1), of the Code.

18 5. "Regulatory agency" means an agency which issues licenses or permits
 19 required for the construction, operation or maintenance of a facility pursuant to
 20 statutes or rules in effect on the date on which an application for a certificate is

21 accepted by the commission.

22 6. "Commission" means the Iowa state commerce commission.

1 **SEC. 2. NEW SECTION. Certificate required.**

2 1. Commencing January 1, 1977, a person shall not commence to construct a
3 facility except as provided in section nine (9) of this Act unless a certificate for
4 the facility has been issued by the commission. This Act shall not apply to
5 persons who prior to July 1, 1976:

6 a. Have acquired a site for a facility; and,

7 b. Have publicly announced the intention to construct a facility; and,

8 c. Have let contracts for major components of a facility.

9 2. Any significant alteration, as determined by the commission, in the location,
10 construction, maintenance, or operation of a facility whether constructed before
11 or after July 1, 1976 shall require an application for an amendment to a certificate
12 or a certificate, whichever is appropriate. "Significant alteration" shall include but
13 shall not be limited to a change in the type of fuel used by the major electric
14 generating facility.

15 3. Any person required to obtain a certificate or an amendment to a certificate
16 shall construct, operate and maintain the facility according to the terms of the
17 certificate and any amendments to the certificate. A certificate shall only be
18 issued pursuant to this Act.

1 **SEC. 3. NEW SECTION. Application submitted—review.** An application for a
2 certificate or an amendment to a certificate shall be submitted to the commission
3 on such forms as the commission may prescribe. Copies of the application shall
4 be forwarded to regulatory agencies. Regulatory agencies receiving a copy of the
5 application shall conduct a preliminary review of the contents and shall evaluate
6 the application for completeness and compliance with the regulatory agency's
7 permit and licensing requirements within a reasonable amount of time.

1 **SEC. 4. NEW SECTION. Hearing scheduled—notice.**

2 1. The proceeding for the issuance of a certificate or an amendment to a
3 certificate shall be treated in the same manner as a contested case pursuant to the
4 provisions of chapter seventeen A (17A) of the Code. Upon acceptance of an
5 application by the commission, a public hearing shall be scheduled.

6 2. The commission shall serve notice of the proceeding on the following:

7 a. Interested agencies, as determined by the commission, and regulatory
8 agencies.

9 b. County and city zoning authorities from the area in which the proposed site
10 is located.

11 c. Owners of record of real property located within one thousand linear feet of
12 the proposed site.

13 3. Notice of the proceeding in the form provided in section seventeen A point
14 twelve (17A.12), subsection two (2), of the Code shall be published in a
15 newspaper of general circulation in each county in which the proposed site is
16 located once a week for two consecutive weeks with the second publication being
17 at least twenty days prior to the date of the hearing. The commission shall be
18 responsible for publication and delivery of notices required by this section.

19 4. The commission shall conduct the hearing, as described in subsection one (1)
20 of this section, in the county in which the construction of the greater portion of
21 the facility is being proposed.

1 **SEC. 5. NEW SECTION. Proceeding—role of regulatory agencies and local
2 authorities.**

3 1. The commission shall conduct the contested case proceeding. Regulatory
4 agencies which appear on record at the proceeding shall state whether the
5 application meets their permit and licensing requirements. If the application does
6 not meet such requirements, the regulatory agency shall recommend amendments
7 to the application which outline actions necessary to bring the applicant in

8 compliance with the regulatory agency's permit and licensing requirements. The
9 commission shall not issue a certificate for a facility which does not meet the
10 permit and licensing requirements of a regulatory agency.

11 2. If a regulatory agency which received notice pursuant to section four (4) of
12 this Act fails to appear of record in the contested case proceeding, the
13 commission shall conclusively presume that the facility meets the regulatory
14 agency's permit and licensing requirements and the regulatory agency shall
15 immediately issue any license or permit required for the construction, operation
16 or maintenance of the facility.

17 3. City and county zoning authorities designated as parties to the proceeding
18 may appear on record and may state whether the facility meets city, county and
19 airport zoning requirements. The failure of a facility to meet zoning requirements
20 established pursuant to chapters three hundred twenty-nine (329), three hundred
21 fifty-eight A (358A) and four hundred fourteen (414) of the Code shall not
22 preclude the commission from issuing the certificate and to that extent the
23 provisions of this subsection shall supersede the provisions of chapters three
24 hundred twenty-nine (329), three hundred fifty-eight A (358A) and four hundred
25 fourteen (414) of the Code.

1 **SEC. 6. NEW SECTION. Decision—criteria.**

2 The commission shall render a decision on the application in an expeditious
3 manner. A certificate shall be issued to the applicant if the commission finds that:

4 1. The services and operations resulting from the construction of the facility are
5 required by the present or future public convenience, use and necessity; and,

6 2. The applicant is willing to perform such services and construct, maintain,
7 and operate the facility pursuant to the provisions of the certificate and this Act;
8 and,

9 3. The construction, maintenance, and operation of the facility will cause
10 minimum adverse land use, environmental, and aesthetic impact and are
11 consonant with reasonable utilization of air, land and water resources for
12 beneficial purposes considering available technology and the economics of
13 available alternatives.

1 **SEC. 7. NEW SECTION. Issuance of certificate—effect.**

2 1. Issuance of a certificate by the commission:

3 a. Authorizes construction of the facility on the site designated in the certificate
4 according to the terms and conditions stated in the certificate and licenses and
5 permits issued by regulatory agencies during the proceeding; and,

6 b. Gives the applicant the power of eminent domain to the extent and under
7 such conditions as the commission may approve, prescribe and find necessary for
8 the public convenience, use and necessity, proceeding in the manner of works of
9 internal improvement under chapter four hundred seventy-two (472), Code 1975.
10 The burden of proving the necessity for the exercise of the power of eminent
11 domain shall be on the person issued the certificate.

12 2. A certificate may be transferred, subject to the approval of the commission,
13 to a person who agrees to comply with the terms of the certificate including any
14 amendments to the certificate. Certificates shall be transferable by operation of
15 law to any receiver, trustee or similar assignee under a mortgage, deed of trust or
16 similar instrument.

1 **SEC. 8. NEW SECTION. Further approvals prohibited—exception.** Upon
2 issuance of a certificate, notwithstanding any provision of law except statutory
3 requirements relating to the protection of employees engaged in the construction
4 of the facility, a regulatory agency, city or county shall not require any further
5 approval, permit or license for the construction of the facility.

1 **SEC. 9. NEW SECTION. Advance site preparation.** Subsequent to the hearing
2 held pursuant to section five (5) of this Act and in the event of extensive delay in
3 the issuance of a certificate, the commission may permit an applicant having an

4 application docketed for hearing to begin work to prepare the site for
5 construction of the facility. Any activities conducted pursuant to this section shall
6 have no probative value in the commission's decision concerning the actual
7 issuance of a certificate.

1 **SEC. 10. NEW SECTION. Costs of proceeding.** The applicant for a certificate,
2 or an amendment to certificate, shall pay all the costs and expenses incurred by
3 the commission in reaching a decision on the application including the costs of
4 examinations of the site, the hearing, publishing of notice, commission staff
5 salaries, the cost of consultants employed by the commission, and other expenses
6 reasonably attributable to the proceeding.

1 **SEC. 11. NEW SECTION. Single hearing—judicial review.** Notwithstanding
2 the provisions of chapter seventeen A (17A) of the Code:

3 1. Any proceeding or oral presentation held on an application for a certificate
4 or an amendment to a certificate shall be held in lieu of any other proceeding or
5 oral presentation required for a license or permit necessary for the construction,
6 maintenance or operation of a facility.

7 2. The decision of the commission shall be considered a single agency action.
8 The agency action shall be subject to judicial review in the manner provided in
9 chapter seventeen A (17A) of the Code.

10 3. Only parties to the proceeding before the commission may seek judicial
11 review of the final order of the commission.

1 **SEC. 12. NEW SECTION. Rules.** The commission shall adopt rules pursuant
2 to chapter seventeen A (17A) of the Code necessary to implement the provisions
3 of this Act including but not limited to the promulgation of facility siting criteria,
4 the form for an application for a certificate and an amendment to a certificate,
5 the description of information to be furnished by the applicant, the determination
6 of what constitutes a significant alteration to a facility, and the establishment of
7 minimum guidelines for public participation in the proceeding.

1 **SEC. 13. NEW SECTION. Staff assistance—federal preemption.**

2 1. The commission may request staff assistance from other federal, state and
3 local agencies, pursuant to chapter twenty-eight D (28D) of the Code, to assist in
4 discharging the responsibilities assigned to the commission pursuant to this Act.
5 The commission may exercise the powers and responsibilities assigned to the
6 commission under this Act jointly with other governmental agencies pursuant to
7 chapter twenty-eight E (28E) of the Code.

8 2. This Act shall not apply to any facility over which an agency of the federal
9 government has exclusive jurisdiction. When concurrent jurisdiction exists with
10 certain powers reserved to the state, the state shall exercise those powers with
11 respect to facilities operating within this state to the full extent permitted by the
12 Constitution and the laws of the United States.

1 **SEC. 14. NEW SECTION. Penalties.**

2 1. Any person who commences to construct a facility as provided in this Act
3 without having first obtained a certificate, or who constructs, operates or
4 maintains any facility other than in compliance with a certificate issued by the
5 commission or a certificate amended pursuant to this Act, or who causes any of
6 these acts to occur, shall be liable for a civil penalty of not more than ten
7 thousand dollars for each violation or for each day of continuing violation. Civil
8 penalties collected pursuant to this subsection shall be forwarded by the clerk of
9 court to the treasurer of state for deposit in the general fund of the state.

10 2. The district court shall have exclusive jurisdiction to grant restraining orders
11 and temporary or permanent injunctive relief as may be necessary to obtain
12 compliance with this Act.

13 3. Persons convicted of violating any provision of this Act shall be guilty of a
14 misdemeanor and shall be fined not more than one hundred dollars or be
15 imprisoned for not more than thirty days.

1 SEC. 15. Section four hundred eighty-nine point fifteen (489.15), unnumbered
2 paragraph one (1), Code 1975, is amended to read as follows:

3 Any person, company, or corporation having secured a franchise as provided in
4 this chapter, shall thereupon be vested with the right of eminent domain to such
5 extent as the commission may approve, prescribe and find to be necessary for
6 public use, not exceeding one hundred feet in width for right of way and not
7 exceeding one hundred sixty acres in any one location, in addition to right of
8 way, for the location of ~~electric power generating plants and~~ electric substations
9 to carry out the purposes of said franchise; provided however, that where two
10 hundred K V lines or higher voltage lines are to be constructed, the person,
11 company, or corporation may apply to the commerce commission for a wider
12 right of way not to exceed two hundred feet, and the commission may for good
13 cause extend the width of such right of way for such lines to the person,
14 company, or corporation applying for the same. The burden of proving the
15 necessity for public use shall be on the person, company or corporation seeking
16 the franchise. A homestead site, cemetery, orchard or schoolhouse location shall
17 not be condemned for the purpose of erecting an ~~electric power generating plant~~
18 ~~or~~ electric substation. If agreement cannot be made with the private owner of
19 lands as to damages caused by the construction of said transmission line, ~~electric~~
20 ~~power generating plants~~ or electric substations, the same proceedings shall be
21 taken as provided for taking private property for works of internal improvement.

1 SEC. 16. Section four hundred ninety A point twenty-seven (490A.27), Code
2 1975, is repealed.

Approved May 20, 1976

CHAPTER 1207

BUSINESS CORPORATIONS

S. F. 524

AN ACT relating to business corporations.

Be It Enacted by the General Assembly of the State of Iowa:

1 SECTION 1. Section four hundred ninety-six A point two (496A.2), Code 1975,
2 is amended by adding the following new subsection:

3 NEW SUBSECTION. "Nonadmitted organization" means any corporation, bank,
4 trust company, mutual savings bank, savings and loan association, national
5 banking association or insurance company which is organized under the laws of
6 another state and which is not entitled under this chapter to procure a certificate
7 of authority to transact business in this state.

1 SEC. 2. Section four hundred ninety-six A point twenty-five (496A.25), Code
2 1975, is amended to read as follows:

3 **496A.25 Shareholders' pre-emptive rights.** Except to the extent limited or
4 denied by this section or by the articles of incorporation, shareholders shall have
5 a pre-emptive right to acquire unissued ~~or treasury~~ shares ~~of or~~ securities
6 convertible into such shares or carrying a right to subscribe to or acquire shares.

7 Unless otherwise provided in the articles of incorporation:

8 1. No pre-emptive right shall exist: