

LEGISLATURE OF NEBRASKA

ONE HUNDREDTH LEGISLATURE

SECOND SESSION

LEGISLATIVE BILL 1099

Introduced by Hudkins, 21.

Read first time January 23, 2008

Committee: Natural Resources

A BILL

1 FOR AN ACT relating to electricity; to amend sections 18-2441,
2 70-306, 70-1002.03, 70-1018, 70-1504, and 75-719, Reissue
3 Revised Statutes of Nebraska, and section 75-109.01,
4 Revised Statutes Cumulative Supplement, 2006; to adopt
5 the Electrical Power Plant Siting Act and the Electric
6 Transmission Line Siting Act; to change and eliminate
7 certain powers and duties of the Nebraska Power Review
8 Board and the Public Service Commission; to harmonize
9 provisions; to repeal the original sections; and to
10 outright repeal sections 70-1012, 70-1012.01, 70-1013,
11 70-1014, 70-1014.01, 70-1015, 75-702, 75-703, 75-704,
12 75-705, 75-706, 75-707, 75-715, and 75-718, Reissue
13 Revised Statutes of Nebraska.

14 Be it enacted by the people of the State of Nebraska,

1 Section 1. Sections 1 to 56 of this act shall be known
2 and may be cited as the Electrical Power Plant Siting Act.

3 Sec. 2. (1) The Legislature finds that the present and
4 predicted growth in electrical power demands in this state requires
5 the development of a procedure for the selection and utilization
6 of sites for electrical power plants and the identification
7 of a state position with respect to each proposed site. The
8 Legislature recognizes that the selection of sites and the routing
9 of associated transmission lines will have a significant impact
10 upon the welfare of the population, the location and growth of
11 industry, and the use of the natural resources of the state. The
12 Legislature finds that the efficiency of the permit application
13 and review process at both the state and local level would be
14 improved with the implementation of a process by which a permit
15 application would be centrally coordinated and all permit decisions
16 could be reviewed on the basis of standards and recommendations of
17 the deciding agencies.

18 (2) It is the policy of this state that, while
19 recognizing the pressing need for more electrical power plants,
20 the state shall ensure through available and reasonable methods
21 that the location and operation of electrical power plants will
22 produce minimal adverse effects on human health, the environment,
23 the ecology of the land and its wildlife, and the ecology of state
24 waters and their aquatic life and will not unduly conflict with the
25 goals established by the applicable local comprehensive plans.

1 (3) It is the intent of the Legislature to seek courses
2 of action that will fully balance the increasing demands for
3 electrical power plants with the broad interests of the public.
4 Such action will be based on these premises:

5 (a) To assure the residents of Nebraska that operation
6 safeguards are technically sufficient for their welfare and
7 protection;

8 (b) To effect a reasonable balance between the need for
9 an electrical power plant and the environmental impact resulting
10 from construction and operation of the plant, including air and
11 water quality, fish and wildlife, and the water resources and other
12 natural resources of the state;

13 (c) To meet the need for electrical energy as established
14 pursuant to section 56 of this act; and

15 (d) To assure the residents of Nebraska that renewable
16 energy sources and technologies, as well as conservation measures,
17 are utilized to the extent reasonably available.

18 Sec. 3. For purposes of the Electrical Power Plant Siting
19 Act, the definitions found in sections 4 to 26 of this act apply.

20 Sec. 4. Agency, as the context requires, means an
21 official, officer, commission, authority, council, committee,
22 department, division, bureau, board, section, or other unit or
23 entity of government, including a regional or local governmental
24 entity.

25 Sec. 5. Amendment means a material change in the

1 information provided by the applicant to the application for
2 certification made after the initial application filing.

3 Sec. 6. Applicant means any electric utility which
4 applies for certification pursuant to the Electrical Power Plant
5 Siting Act.

6 Sec. 7. Application means the document required by
7 the board to be filed to initiate a certification review and
8 evaluation, including the initial document filing, amendments, and
9 responses to requests from the board for additional data and
10 information.

11 Sec. 8. Associated facilities means, for the purpose
12 of certification, those facilities which directly support the
13 construction and operation of the electrical power plant such as
14 fuel unloading facilities; pipelines necessary for transporting
15 fuel for the operation of the facility or other fuel transportation
16 facilities; water or wastewater transport pipelines; construction,
17 maintenance, and access roads; and railway lines necessary for
18 transport of construction equipment or fuel for the operation of
19 the facility.

20 Sec. 9. Board means the Nebraska Power Review Board.

21 Sec. 10. Certification means the written order of the
22 board approving an application in whole or with such changes or
23 conditions as the board may deem appropriate.

24 Sec. 11. Completeness means that the application has
25 addressed all applicable portions of the prescribed application

1 format, and that those portions are sufficient in comprehensiveness
2 of data or in quality of information provided to allow the board to
3 determine whether the application provides the reviewing agencies
4 adequate information to prepare the reports required by section 36
5 of this act.

6 Sec. 12. Corridor means the proposed area within which
7 an associated linear facility right-of-way is to be located. The
8 width of the corridor proposed for certification as an associated
9 facility, at the option of the applicant, may be the width of the
10 right-of-way or a wider boundary, not to exceed a width of one
11 mile. The area within the corridor in which a right-of-way may be
12 located may be further restricted by a condition of certification.
13 After all property interests required for the right-of-way have
14 been acquired by the licensee, the boundaries of the area certified
15 shall narrow to only that land within the boundaries of the
16 right-of-way.

17 Sec. 13. Electrical power plant means, for the purpose
18 of certification, any steam or solar electrical generating facility
19 using any processor fuel, including nuclear materials, except
20 that electrical power plant does not include any steam or solar
21 electrical generating facility of less than seventy-five megawatts
22 in capacity unless the applicant for such a facility elects to
23 apply for certification under the Electrical Power Plant Siting
24 Act. Electrical power plant includes associated facilities to be
25 owned by the applicant which are physically connected to the

1 electrical power plant site or which are directly connected to the
2 electrical power plant site by other proposed associated facilities
3 to be owned by the applicant and associated transmission lines
4 to be owned by the applicant which connect the electrical power
5 plant to an existing transmission network or rights-of-way of which
6 the applicant intends to connect. At the applicant's option, this
7 term may include any offsite associated facilities which will not
8 be owned by the applicant; offsite associated facilities which
9 are owned by the applicant but which are not directly connected
10 to the electrical power plant site; any proposed terminal or
11 intermediate substations or substation expansions connected to the
12 associated transmission line; or new transmission lines, upgrades,
13 or improvements of an existing transmission line on any portion
14 of the applicant's electrical transmission system necessary to
15 support the generation injected into the system from the proposed
16 electrical power plant.

17 Sec. 14. Electric utility means a city, village,
18 registered group of municipalities, public power district, public
19 power and irrigation district, electric cooperative, electric
20 membership association, joint entity formed under the Interlocal
21 Cooperation Act, joint public agency formed under the Joint Public
22 Agency Act, agency formed under the Municipal Cooperative Financing
23 Act, and joint operating agency, or any combination thereof,
24 engaged in, or authorized to engage in, the business of generating,
25 transmitting, or distributing electric energy.

1 Sec. 15. Federally delegated or approved permit program
2 means any environmental regulatory program approved by an agency of
3 the federal government so as to authorize the board to administer
4 and issue licenses pursuant to federal law, including, but not
5 limited to, new source review permits, operation permits for
6 major sources of air pollution, and prevention of significant
7 deterioration permits under the Clean Air Act, 42 U.S.C. 7401 et
8 seq., as such sections existed on the effective date of this act,
9 permits under sections 402 and 404 of the Clean Water Act, 33
10 U.S.C. 1251 et seq., as such sections existed on the effective
11 date of this act, and permits under the Resource Conservation and
12 Recovery Act, 42 U.S.C. 6901 et seq., as such sections existed on
13 the effective date of this act.

14 Sec. 16. License means a franchise, permit,
15 certification, registration, charter, comprehensive plan amendment,
16 or similar form of authorization required by law, including permits
17 issued under federally delegated or approved permit programs, but
18 it does not include a license required primarily for revenue
19 purposes when issuance of the license is merely a ministerial act.

20 Sec. 17. Licensee means an applicant that has obtained a
21 certification order for the subject project.

22 Sec. 18. Local government means a city, village, or
23 county in the jurisdiction of which the electrical power plant is
24 proposed to be located.

25 Sec. 19. Modification means any change in the

1 certification order after issuance, including a change in the
2 conditions of certification.

3 Sec. 20. Natural resources district means a natural
4 resources district in the jurisdiction of which the electrical
5 power plant is proposed to be located.

6 Sec. 21. Nonprocedural requirements of agencies means
7 any agency's regulatory requirements established by statute,
8 rule, ordinance, zoning ordinance, land development code, or
9 comprehensive plan, excluding any provisions prescribing forms,
10 fees, procedures, or time limits for the review or processing
11 of information submitted to demonstrate compliance with such
12 regulatory requirements.

13 Sec. 22. Notice of intent means that notice which is
14 filed with the board on behalf of an applicant prior to submission
15 of an application pursuant to the Electrical Power Plant Siting Act
16 and which notifies the board of an intent to file an application.

17 Sec. 23. Preliminary statement of issues means a listing
18 and explanation of those issues within the agency's jurisdiction
19 which are of major concern to the agency in relation to the
20 proposed electrical power plant.

21 Sec. 24. Right-of-way means land necessary for the
22 construction and maintenance of a connected associated linear
23 facility, such as a railroad line, pipeline, or transmission line
24 as owned by or proposed to be certified by the applicant. The
25 typical width of the right-of-way shall be identified in the

1 application. The right-of-way shall be located within the certified
2 corridor and shall be identified by the applicant subsequent
3 to certification in documents filed with the board prior to
4 construction.

5 Sec. 25. Site means any proposed location at which an
6 electrical power plant, or an electrical power plant alteration or
7 addition resulting in an increase in generating capacity, will be
8 located.

9 Sec. 26. Ultimate site capacity means the maximum
10 generating capacity for a site as certified by the board.

11 Sec. 27. The board shall have the following powers and
12 duties for purposes of the Electrical Power Plant Siting Act:

13 (1) To adopt and promulgate rules and regulations to
14 implement the act, including rules and regulations setting forth
15 environmental precautions to be followed in relation to the
16 location, construction, and operation of electrical power plants;

17 (2) To prescribe the form and content of the public
18 notices and the notice of intent and the form, content, and
19 necessary supporting documentation and studies to be prepared
20 by the applicant for electrical power plant site certification
21 applications;

22 (3) To receive applications for electrical power
23 plant site certifications and to determine the completeness and
24 sufficiency thereof;

25 (4) To make, or contract for, studies of electrical power

1 plant site certification applications;

2 (5) To administer the processing of applications for
3 electrical power plant site certifications and to ensure that the
4 applications are processed as expeditiously as possible;

5 (6) To require such fees as allowed by the act;

6 (7) To conduct studies and prepare a project analysis
7 under section 36 of this act;

8 (8) To prescribe the means for monitoring the effects
9 arising from the construction and operation of electrical
10 power plants to assure continued compliance with terms of the
11 certification;

12 (9) To issue final orders after receipt of the hearing
13 officer's order relinquishing jurisdiction;

14 (10) To administer and manage the terms and conditions of
15 the certification order and supporting documents and records for
16 the life of the facility; and

17 (11) To issue emergency orders for facilities licensed
18 under the act.

19 Sec. 28. In processing applications for permits that
20 are associated with applications for electrical power plant
21 certification:

22 (1) The procedural requirements set forth in 40 C.F.R.
23 123.25, as such regulation existed on the effective date of
24 this act, including public notice, public comments, and public
25 hearings, shall be closely coordinated with the certification

1 process established under the Electrical Power Plant Siting Act.
2 In the event of a conflict between the certification process
3 and federally required procedures for permit issuance under the
4 National Pollutant Discharge Elimination System permit program, the
5 applicable federal requirements shall control;

6 (2) If available at the time the board issues its
7 project analysis, the board shall include in its project analysis
8 copies of the Department of Environmental Quality's proposed action
9 pursuant to 40 C.F.R. 124.6, as such regulation existed on the
10 effective date of this act, on any application for a National
11 Pollutant Discharge Elimination System permit; any corresponding
12 comments received from the United States Environmental Protection
13 Agency, the applicant, or the general public; and the Department of
14 Environmental Quality's response to those comments; and

15 (3) The Department of Environmental Quality shall not
16 issue or deny the permit in advance of the issuance of the
17 electrical power plant certification under the act unless required
18 to do so by federal law. When possible, any hearing on a permit
19 shall be conducted in conjunction with the certification hearing
20 held pursuant to the act. The Department of Environmental Quality's
21 actions on a National Pollutant Discharge Elimination System
22 permit shall be based on the record and recommended order of the
23 certification hearing, if the hearing on the National Pollutant
24 Discharge Elimination System permit was conducted in conjunction
25 with the certification hearing, and of any other proceeding

1 held in connection with the application for a National Pollutant
2 Discharge Elimination System permit, timely public comments
3 received with respect to the application, and the provisions of
4 federal law. The Department of Environmental Quality's action
5 on a National Pollutant Discharge Elimination System permit,
6 if issued, shall differ from the actions taken by the board
7 regarding the certification order if federal laws and regulations
8 require different action to be taken to ensure compliance with
9 the Clean Water Act, and implementing regulations as such act and
10 regulations existed on the effective date of this act. Nothing
11 in the Electrical Power Plant Siting Act shall be construed to
12 displace the Department of Environmental Quality's authority as
13 the final permitting entity under the federally approved state
14 National Pollutant Discharge Elimination System program. Nothing in
15 the act shall be construed to authorize the issuance of a state
16 National Pollutant Discharge Elimination System permit which does
17 not conform to the requirements of the federally approved state
18 National Pollutant Discharge Elimination System program.

19 Sec. 29. (1) The Electrical Power Plant Siting Act
20 applies to any electrical power plant, except that the act does not
21 apply to any electrical power plant or steam generating plant of
22 less than seventy-five megawatts in capacity or to any substation
23 to be constructed as part of an associated transmission line unless
24 the applicant has elected to apply for certification of such plant
25 or substation under the act. The act does not apply to any unit

1 capacity expansion of thirty-five megawatts or less of an existing
2 exothermic reaction cogeneration unit that was exempt from the act
3 when it was originally built. This exemption does not apply if the
4 unit uses oil or natural gas for purposes other than unit startup.
5 No construction of any new electrical power plant or expansion in
6 steam generating capacity as measured by an increase in the maximum
7 electrical generator rating of any existing electrical power plant
8 may be undertaken after January 1, 2008, without first obtaining
9 certification in the manner provided in the act, except that the
10 act does not apply to any such electrical power plant which is
11 operating or under construction as of the effective date of this
12 act.

13 (2) Except as provided in the certification, modification
14 of nonnuclear fuels, internal related hardware, including increases
15 in steam turbine efficiency, or operating conditions not in
16 conflict with certification which increase the electrical output of
17 a unit to no greater capacity than the maximum electrical generator
18 rating of the existing generator shall not constitute an alteration
19 or addition to generating capacity which requires certification
20 pursuant to the act.

21 Sec. 30. (1) To expedite the processing of the
22 application which may be filed subsequently, the applicant for a
23 proposed electrical power plant may file a notice of intent to file
24 an application with the board.

25 (2) The board shall adopt and promulgate rules and

1 regulations to establish a procedure by which an applicant, after
2 public notice, may enter into binding written agreements with the
3 board and other affected agencies as to the scope, quantity, and
4 level of information to be provided in the application, as well as
5 the methods to be used in providing such information and the nature
6 of the supporting documents to be included in the application.

7 Sec. 31. (1) The formal date of filing of a certification
8 application and commencement of the certification review process
9 shall be when the applicant submits:

10 (a) Copies of the certification application, in a
11 quantity and format as prescribed by the board, to the board and
12 other agencies identified in subdivision (2)(a) of section 36 of
13 this act; and

14 (b) The application fee established pursuant to section
15 53 of this act to the board.

16 (2) Within seven days after the filing of an application,
17 the board shall provide to the applicant and the hearing
18 officer the names and addresses of any additional agencies or
19 persons entitled to notice and copies of the application and any
20 amendments. Copies of the application shall be distributed within
21 five days by the applicant to these additional agencies. This
22 distribution shall not be a basis for altering the schedule of
23 dates for the certification process.

24 (3) Any amendment to the application made prior to
25 certification shall be disposed of as part of the original

1 certification proceeding. Amendment of the application may be
2 considered good cause for alteration of time limits pursuant to
3 section 39 of this act.

4 (4) Within seven days after the filing of an application,
5 the board shall prepare a proposed schedule of dates for
6 determination of completeness, submission of statements of issues,
7 submittal of final reports, and other significant dates to be
8 followed during the certification process, including dates for
9 filing notices of appearance to be a party pursuant to subsection
10 (3) of section 37 of this act. This schedule shall be timely
11 provided by the board to the applicant, the hearing officer, all
12 agencies identified pursuant to subsection (2) of this section, and
13 all parties. Within seven days after the filing of the proposed
14 schedule, the hearing officer shall issue an order establishing a
15 schedule for the matters addressed in the board's proposed schedule
16 and other appropriate matters, if any.

17 (5) Copies of changes and amendments to the application
18 shall be timely distributed by the applicant to all agencies and
19 parties who have received a copy of the application.

20 (6) Notice of the filing of the application shall be
21 published in accordance with the requirements of section 44 of this
22 act.

23 Sec. 32. (1) Within seven days after receipt of an
24 application, the board shall designate a hearing officer to conduct
25 the hearings required by the Electrical Power Plant Siting Act. In

1 designating a hearing officer for this purpose, the board shall,
2 whenever practicable, assign a hearing officer who has had prior
3 experience or training in electrical power plant site certification
4 proceedings. After a hearing officer has been appointed, the
5 board shall immediately file a copy of the application and all
6 supporting documents with the hearing officer, who shall docket the
7 application.

8 (2) The hearing officer shall conduct the hearings
9 pursuant to the Administrative Procedure Act and the rules and
10 regulations of the board.

11 Sec. 33. (1)(a) Within thirty days after the filing of
12 an application, affected agencies shall file a statement with the
13 board containing each agency's recommendations on the completeness
14 of the application.

15 (b) Within forty days after the filing of an application,
16 the board shall file a statement with the hearing officer, with the
17 applicant, and with all parties declaring its position with regard
18 to the completeness of the application. The board's statement shall
19 be based upon consultation with the affected agencies.

20 (2) If the board declares the application to be
21 incomplete, the applicant, within fifteen days after the filing of
22 the statement by the board, shall file with the hearing officer,
23 with the board, and with all parties:

24 (a) A withdrawal of the application;

25 (b) A statement agreeing to supply the additional

1 information necessary to make the application complete. Such
2 additional information shall be provided within thirty days
3 after the issuance of the board's statement on completeness of
4 the application. The time schedules under the Electrical Power
5 Plant Siting Act shall not be tolled if the applicant makes the
6 application complete within thirty days after the issuance of the
7 board's statement on completeness of the application. A subsequent
8 finding by the board that the application remains incomplete, based
9 upon the additional information submitted by the applicant or
10 upon the failure of the applicant to timely submit the additional
11 information, tolls the time schedules under the act until the
12 application is determined complete;

13 (c) A statement contesting the board's determination of
14 incompleteness; or

15 (d) A statement agreeing with the board and requesting
16 additional time beyond thirty days to provide the information
17 necessary to make the application complete. If the applicant
18 exercises this option, the time schedules under the act are tolled
19 until the application is determined complete.

20 (3) (a) If the applicant contests the determination by the
21 board that an application is incomplete, the hearing officer shall
22 schedule a hearing on the statement of completeness. The hearing
23 shall be held as expeditiously as possible but not later than
24 twenty-one days after the filing of the statement by the board. The
25 hearing officer shall render a decision within seven days after the

1 hearing.

2 (b) Parties to a hearing on the issue of completeness
3 shall include the applicant, the board, and any agency that has
4 jurisdiction over the matter in dispute.

5 (c) If the hearing officer determines that the
6 application was not complete, the applicant shall withdraw the
7 application or make such additional submittals as necessary to
8 complete it. The time schedules referencing a complete application
9 under the act shall not commence until the application is
10 determined complete.

11 (d) If the hearing officer determines that the
12 application was complete at the time it was declared incomplete,
13 the time schedules referencing a complete application under the act
14 shall commence upon such determination.

15 (4) If the applicant provides additional information
16 to address the issues identified in the determination of
17 incompleteness, each affected agency may submit to the board, no
18 later than fifteen days after the applicant files the additional
19 information, a recommendation on whether the agency believes the
20 application is complete. Within twenty-two days after receipt of
21 the additional information from the applicant submitted under
22 subdivision (2)(b), (2)(d), or (3)(c) of this section, the board
23 shall determine whether the additional information supplied by an
24 applicant makes the application complete. If the board finds that
25 the application is still incomplete, the applicant may exercise any

1 of the options specified in subsection (2) of this section as often
2 as is necessary to resolve the dispute.

3 Sec. 34. (1) A local government may hold one
4 informational public meeting in addition to the hearings
5 specifically authorized by the Electrical Power Plant Siting
6 Act on any matter associated with the electrical power plant
7 proceeding. Such informational public meetings shall be held by
8 the local government within seventy days after the filing of the
9 application. The purpose of an informational public meeting is
10 for the local government to further inform the public about the
11 proposed electrical power plant or associated facilities, obtain
12 comments from the public, and formulate its recommendation with
13 respect to the proposed electrical power plant.

14 (2) Informational public meetings shall be held solely
15 at the option of each local government. It is the intent of the
16 Legislature that local governments attempt to hold such public
17 meetings. Parties to the proceedings under the act shall be
18 encouraged to attend; but no party other than the applicant and
19 the board shall be required to attend such informational public
20 meetings.

21 (3) A local government that intends to conduct an
22 informational public meeting shall provide notice of the meeting to
23 all parties not less than five days prior to the meeting.

24 (4) The failure to hold an informational public meeting
25 or the procedure used for the informational public meeting is not

1 grounds for the alteration of any time limitation under section 39
2 of this act or grounds to deny or condition certification.

3 Sec. 35. (1) The applicant shall include in the
4 application a statement on the consistency of the site or any
5 directly associated facilities with existing land-use plans and
6 zoning ordinances that were in effect on the date the application
7 was filed and a full description of such consistency.

8 (2) Within forty-five days after the filing of the
9 application, each local government shall file a determination
10 with the board, the applicant, the hearing officer, and all
11 parties on the consistency of the site or any directly associated
12 facilities with existing land-use plans and zoning ordinances
13 that were in effect on the date the application was filed,
14 based on the information provided in the application. The local
15 government may issue its determination up to thirty-five days later
16 if the local government has requested additional information on
17 land-use and zoning consistency as part of the local government's
18 statement on completeness of the application submitted pursuant
19 to subdivision (1)(a) of section 33 of this act. Notice of the
20 consistency determination shall be published in accordance with the
21 requirements of section 44 of this act.

22 (3) If the local government issues a determination that
23 the proposed electrical power plant is not consistent or in
24 compliance with local land-use plans and zoning ordinances, the
25 applicant may apply to the local government for the necessary local

1 approval to address the inconsistencies in the local government's
2 determination. If the applicant makes such an application to the
3 local government, the time schedules under the Electrical Power
4 Plant Siting Act shall be tolled until the local government issues
5 its revised determination on land use and zoning or the applicant
6 otherwise withdraws its application to the local government. If
7 the applicant applies to the local government for necessary
8 local land-use or zoning approval, the local government shall
9 issue a revised determination within thirty days following the
10 conclusion of that local proceeding, and the time schedules and
11 notice requirements under the act shall apply to such revised
12 determination.

13 (4) If any substantially affected person wishes to
14 dispute the local government's determination, he or she shall
15 file a petition with the board within twenty-one days after the
16 publication of notice of the local government's determination. If
17 a hearing is requested, subsection (1) of section 37 of this act
18 shall apply.

19 (5) The dates in this section may be altered upon
20 agreement between the applicant, the local government, and the
21 board pursuant to section 39 of this act.

22 (6) If it is determined by the local government that
23 the proposed site or directly associated facility does conform
24 with existing land-use plans and zoning ordinances in effect
25 as of the date of the application and no petition has been

1 filed, the responsible zoning or planning authority shall not
2 thereafter change such land-use plans or zoning ordinances so as
3 to foreclose construction and operation of the proposed site or
4 directly associated facilities unless certification is subsequently
5 denied or withdrawn.

6 Sec. 36. (1) Each affected agency identified in
7 subdivision (2)(a) of this section shall submit a preliminary
8 statement of issues to the board, the applicant, and all parties
9 no later than forty days after the certification application has
10 been determined complete. The failure to raise an issue in this
11 statement shall not preclude the issue from being raised in the
12 agency's report.

13 (2)(a) No later than one hundred days after the
14 certification application has been determined complete, the
15 following agencies shall prepare reports as provided in this
16 section and shall submit them to the board and the applicant:

17 (i) The board shall prepare a report containing
18 recommendations which address the impact upon the public of the
19 proposed electrical power plant, based on the degree to which the
20 electrical power plant is consistent with the applicable portions
21 of any state comprehensive plan, emergency management, and other
22 such matters within its jurisdiction. The board may also comment
23 on the consistency of the proposed electrical power plant with
24 applicable strategic regional policy plans or local comprehensive
25 plans and land development regulations;

1 (ii) The natural resources district shall prepare a
2 report as to matters within its jurisdiction, including, but not
3 limited to, the impact of the proposed electrical power plant on
4 water resources, regional water supply planning, and district-owned
5 lands and works;

6 (iii) Each local government in whose jurisdiction the
7 proposed electrical power plant is to be located shall prepare
8 a report as to the consistency of the proposed electrical power
9 plant with all applicable local ordinances, regulations, standards,
10 or criteria that apply to the proposed electrical power plant,
11 including any applicable local environmental regulations that have
12 been adopted;

13 (iv) The Game and Parks Commission shall prepare a report
14 as to matters within its jurisdiction;

15 (v) Each local public health department shall prepare
16 a report containing recommendations that address the impact upon
17 the public of the proposed electrical power plant, based on the
18 degree to which the electrical power plant is consistent with
19 the applicable provisions of any strategic plan adopted and other
20 matters within its jurisdiction;

21 (vi) The Public Service Commission shall address the
22 impact of the proposed electrical power plant on matters within its
23 jurisdiction;

24 (vii) The Department of Roads shall address the impact
25 of the proposed electrical power plant on matters within its

1 jurisdiction; and

2 (viii) The Department of Aeronautics shall address the
3 impact of the proposed electrical power plant on matters within its
4 jurisdiction.

5 (b) Any other agency, if requested by the board, shall
6 also perform studies or prepare reports as to matters within that
7 agency's jurisdiction which may potentially be affected by the
8 proposed electrical power plant.

9 (3)(a) Each report described in subsection (2) of this
10 section shall contain:

11 (i) A notice of any nonprocedural requirements not
12 specifically listed in the application from which a variance,
13 exemption, exception, or other relief is necessary in order for
14 the proposed electrical power plant to be certified. Failure of
15 such notification by an agency shall be treated as a waiver from
16 nonprocedural requirements of that agency. However, no variance
17 shall be granted from standards or regulations of the board or the
18 Department of Environmental Quality applicable under any federally
19 delegated or approved permit program, except as expressly allowed
20 in such program;

21 (ii) A recommendation for approval or denial of the
22 application; and

23 (iii) Any proposed conditions of certification on matters
24 within the jurisdiction of such agency. For each condition
25 proposed by an agency in its report, the agency shall list the

1 specific statute, rule, or ordinance which authorizes the proposed
2 condition.

3 (b) The agencies shall initiate the activities required
4 by this section no later than fifteen days after the application
5 is distributed. The agencies shall keep the applicant and the board
6 informed as to the progress of the studies and any issues raised
7 thereby.

8 (4)(a) No later than one hundred fifty days after the
9 application is filed, the board shall prepare a report as to the
10 present and future need for electrical generating capacity to be
11 supplied by the proposed electrical power plant. The report shall
12 include the board's determination pursuant to section 56 of this
13 act and may include the board's comments with respect to any other
14 matters within its jurisdiction.

15 (b) Receipt of an affirmative determination of need by
16 the submittal deadline under subdivision (a) of this subsection
17 shall be a condition precedent to issuance of the board's project
18 analysis and conduct of the certification hearing.

19 (5) The board shall prepare a project analysis, which
20 shall be filed with the hearing officer and served on all parties
21 no later than one hundred thirty days after the application is
22 determined complete and which shall include:

23 (a) A statement indicating whether the proposed
24 electrical power plant and proposed ultimate site capacity will
25 be in compliance and consistent with matters within the board's

1 standard jurisdiction, including the rules and regulations of the
2 board, as well as whether the proposed electrical power plant and
3 proposed ultimate site capacity will be in compliance with the
4 nonprocedural requirements of the affected agencies;

5 (b) Copies of the studies and reports required by this
6 section;

7 (c) The comments received by the board from any other
8 agency or person;

9 (d) The recommendation of the board as to the disposition
10 of the application, of variances, exemptions, exceptions, or other
11 relief identified by any party, and of any proposed conditions of
12 certification which the board believes should be imposed; and

13 (e) If available, the recommendation of the board
14 regarding the issuance of any license required pursuant to a
15 federally delegated or approved permit program.

16 (6) Except when good cause is shown, the failure of any
17 agency to submit a preliminary statement of issues or a report, or
18 to submit its preliminary statement of issues or report within the
19 allowed time, shall not be grounds for the alteration of any time
20 limitation in the Electrical Power Plant Siting Act. Neither the
21 failure to submit a preliminary statement of issues or a report nor
22 the inadequacy of the preliminary statement of issues or report are
23 grounds to deny or condition certification.

24 Sec. 37. (1) (a) If a petition for a hearing on land use
25 has been filed pursuant to section 35 of this act, the hearing

1 officer shall conduct a land-use hearing in the county of the
2 proposed site or directly associated facility, as applicable, as
3 expeditiously as possible, but not later than thirty days after
4 the board's receipt of the petition. The place of such hearing
5 shall be as close as possible to the proposed site or directly
6 associated facility. If a petition is filed, the hearing shall
7 be held regardless of the status of the completeness of the
8 application. However, incompleteness of information necessary for a
9 local government to evaluate an application may be claimed by the
10 local government as cause for a statement of inconsistency with
11 existing land-use plans and zoning ordinances under section 35 of
12 this act.

13 (b) Notice of the land-use hearing shall be published in
14 accordance with the requirements of section 44 of this act.

15 (c) The sole issue for determination at the land-use
16 hearing shall be whether or not the proposed site is consistent and
17 in compliance with existing land-use plans and zoning ordinances.
18 If the hearing officer concludes that the proposed site is not
19 consistent or in compliance with existing land-use plans and
20 zoning ordinances, the hearing officer shall receive at the
21 hearing evidence on, and address in the recommended order any
22 changes to or approvals or variances under, the applicable land-use
23 plans or zoning ordinances which will render the proposed site
24 consistent and in compliance with the local land-use plans and
25 zoning ordinances.

1 (d) The hearing officer's recommended order shall be
2 issued within thirty days after completion of the hearing and shall
3 be reviewed by the board within sixty days after receipt of the
4 recommended order by the board.

5 (e) If it is determined by the board that the proposed
6 site does conform with existing land-use plans and zoning
7 ordinances in effect as of the date of the application or as
8 otherwise provided by the Electrical Power Plant Siting Act, the
9 responsible zoning or planning authority shall not thereafter
10 change such land-use plans or zoning ordinances so as to foreclose
11 construction and operation of the proposed electrical power plant
12 on the proposed site or directly associated facilities unless
13 certification is subsequently denied or withdrawn.

14 (f) If it is determined by the board that the proposed
15 site does not conform with existing land-use plans and zoning
16 ordinances, the board may, if it determines after notice and
17 hearing and upon consideration of the recommended order on land-use
18 and zoning issues that it is in the public interest to authorize
19 the use of the land as a site for an electrical power plant,
20 authorize a variance or other necessary approval to the adopted
21 land-use plan and zoning ordinances required to render the proposed
22 site consistent with local land-use plans and zoning ordinances.
23 The board's action shall not be controlled by any other procedural
24 requirements of law. In the event a variance or other approval
25 is denied by the board, it shall be the responsibility of the

1 applicant to make the necessary application for any approvals
2 determined by the board as required to make the proposed site
3 consistent and in compliance with the local land-use plans and
4 zoning ordinances. No further action may be taken on the complete
5 application until the proposed site conforms to the adopted
6 land-use plan or zoning ordinances or the board grants relief
7 as provided under the Electrical Power Plant Siting Act.

8 (2) (a) A certification hearing shall be held by the
9 hearing officer no later than two hundred sixty-five days after
10 the application is filed with the board. The certification hearing
11 shall be held at a location in proximity to the proposed site. At
12 the conclusion of the certification hearing, the hearing officer
13 shall, after consideration of all evidence of record, submit to the
14 board a recommended order no later than forty-five days after the
15 filing of the hearing transcript.

16 (b) Notice of the certification hearing and notice of the
17 deadline for filing of notice of intent to be a party shall be made
18 in accordance with the requirements of section 44 of this act.

19 (3) (a) Parties to the proceeding shall include:

20 (i) The applicant;

21 (ii) The board;

22 (iii) The Game and Parks Commission;

23 (iv) The natural resources district;

24 (v) The local public health department;

25 (vi) The local government;

1 (vii) The Public Service Commission;

2 (viii) The Department of Roads; and

3 (ix) The Department of Aeronautics.

4 (b) Any party listed in subdivision (a) of this
5 subsection other than the board or the applicant may waive its
6 right to participate in these proceedings. If such listed party
7 fails to file a notice of its intent to be a party on or before the
8 ninetieth day prior to the certification hearing, such party shall
9 be deemed to have waived its right to be a party.

10 (c) Upon the filing with the hearing officer of a notice
11 of intent to be a party no later than seventy-five days after the
12 application is filed, the following persons shall also be parties
13 to the proceeding:

14 (i) Any agency not listed in subdivision (a) of this
15 subsection as to matters within its jurisdiction; and

16 (ii) Any domestic nonprofit corporation or association
17 formed, in whole or in part, to promote conservation or natural
18 beauty; to protect the environment, personal health, or other
19 biological values; to preserve historical sites; to promote
20 consumer interests; to represent labor, commercial, or industrial
21 groups; or to promote comprehensive planning or orderly development
22 of the area in which the proposed electrical power plant is to be
23 located.

24 (d) Notwithstanding subdivision (e) of this subsection,
25 failure of an agency described in subdivision (c)(i) of this

1 subsection to file a notice of intent to be a party within the time
2 provided in this section shall constitute a waiver of the right of
3 that agency to participate as a party in the proceeding.

4 (e) Other parties may include any person, including those
5 persons enumerated in subdivision (c) of this subsection who have
6 failed to timely file a notice of intent to be a party, whose
7 substantial interests are affected and being determined by the
8 proceeding, and who timely file a motion to intervene. Intervention
9 pursuant to this subdivision may be granted at the discretion of
10 the hearing officer and upon such conditions as he or she may
11 prescribe any time prior to thirty days before the commencement of
12 the certification hearing.

13 (f) Any agency, including those whose properties or works
14 are being affected pursuant to subsection (4) of section 38 of this
15 act, shall be made a party upon the request of the board or the
16 applicant.

17 (4) (a) The order of presentation at the certification
18 hearing, unless otherwise changed by the hearing officer to ensure
19 the orderly presentation of witnesses and evidence, shall be:

20 (i) The applicant;

21 (ii) The board;

22 (iii) Other state agencies;

23 (iv) Regional agencies, including local public health
24 departments and natural resources districts;

25 (v) Local governments; and

1 (vi) Other parties.

2 (b) When appropriate, any person may be given an
3 opportunity to present oral or written communications to the
4 hearing officer. If the hearing officer proposes to consider such
5 communications, then all parties shall be given an opportunity to
6 cross-examine or challenge or rebut such communications.

7 (5) At the conclusion of the certification hearing, the
8 hearing officer shall, after consideration of all evidence of
9 record, submit to the board a recommended order no later than
10 forty-five days after the filing of the hearing transcript.

11 (6) (a) No earlier than twenty-nine days prior to the
12 conduct of the certification hearing, the board or the applicant
13 may request that the hearing officer cancel the certification
14 hearing and relinquish jurisdiction to the board if all parties to
15 the proceeding stipulate that there are no disputed issues of fact
16 or law to be raised at the certification hearing and if sufficient
17 time remains for the applicant and the board to publish public
18 notices of the cancellation of the hearing at least three days
19 prior to the scheduled date of the hearing.

20 (b) The hearing officer shall issue an order granting or
21 denying the request within five days after receipt of the request.

22 (c) If the hearing officer grants the request, the board
23 and the applicant shall publish notices of the cancellation of the
24 certification hearing in accordance with section 44 of this act.

25 (d) (i) If the hearing officer grants the request, the

1 board shall prepare and issue a final order in accordance with
2 subdivision (1)(a) of section 38 of this act.

3 (ii) Parties may submit proposed recommended orders to
4 the board no later than ten days after the hearing officer issues
5 an order relinquishing jurisdiction.

6 (7) The applicant shall pay those expenses and costs
7 associated with the conduct of the hearings and the recording and
8 transcription of the proceedings.

9 (8) In issuing permits under the federally approved
10 new source review or prevention of significant deterioration
11 permit program, the board shall observe the procedures specified
12 under the federally approved state implementation plan, including
13 public notice, public comment, public hearing, and notice of
14 applications and amendments to federal, state, and local agencies,
15 to assure that all such permits issued in coordination with the
16 certification of an electrical power plant under the Electrical
17 Power Plant Siting Act are federally enforceable and are issued
18 after opportunity for informed public participation regarding the
19 terms and conditions thereof. When possible, any hearing on a
20 federally approved or delegated program permit such as new source
21 review, prevention of significant deterioration permit, or National
22 Pollutant Discharge Elimination System permit shall be conducted
23 in conjunction with the certification hearing held under the act.
24 It is the intent of the Legislature that the review, processing,
25 and issuance of such federally delegated or approved permits be

1 closely coordinated with the certification process established
2 under the act. In the event of a conflict between the certification
3 process and federally required procedures, the applicable federal
4 requirements shall control.

5 Sec. 38. (1)(a) If the hearing officer has granted a
6 request to cancel the certification hearing and has relinquished
7 jurisdiction to the board under subsection (6) of section 37 of
8 this act, within forty days thereafter, the board shall act upon
9 the application by written order in accordance with the Electrical
10 Power Plant Siting Act and the stipulation of the parties in
11 requesting cancellation of the certification hearing.

12 (b) If the hearing officer has not granted a request
13 to cancel the certification hearing under subsection (6) of
14 section 37 of this act, within sixty days after receipt of the
15 hearing officer's recommended order, the board shall act upon the
16 application by written order, approving or denying certification,
17 in accordance with the Electrical Power Plant Siting Act, and
18 stating the reasons for issuance or denial. If certification is
19 denied, the board shall set forth in writing the action the
20 applicant would have to take to secure the board's approval of the
21 application.

22 (2) The issues that may be raised in any hearing
23 before the board shall be limited to those matters raised in
24 the certification proceeding before the hearing officer or raised
25 in the recommended order. All parties, or their representatives,

1 or persons who appear before the board shall be subject to
2 the provisions of section 84-914 with respect to ex parte
3 communications.

4 (3) In determining whether an application should be
5 approved in whole, approved with modifications or conditions, or
6 denied, the board, shall consider whether, and the extent to which,
7 the location of the electrical power plant and directly associated
8 facilities and their construction and operation will:

9 (a) Provide reasonable assurance that operational
10 safeguards are technically sufficient for the public welfare and
11 protection;

12 (b) Comply with applicable nonprocedural requirements of
13 agencies;

14 (c) Be consistent with applicable local government
15 comprehensive plans and land development regulations;

16 (d) Meet the electrical energy needs of the state in an
17 orderly and timely fashion;

18 (e) Effect a reasonable balance between the need for the
19 facility as established pursuant to section 56 of this act and
20 the impacts upon air and water quality, fish and wildlife, water
21 resources, and other natural resources of the state resulting from
22 the construction and operation of the facility;

23 (f) Minimize, through the use of reasonable and available
24 methods, the adverse effects on human health, the environment, and
25 the ecology of the land and its wildlife and the ecology of state

1 waters and their aquatic life; and

2 (g) Serve and protect the broad interests of the public.

3 (4) The board's action on a federally required new
4 source review or prevention of significant deterioration permit
5 shall differ from the actions taken by the board regarding the
6 certification if the federally approved state implementation plan
7 requires such a different action to be taken by the Department
8 of Environmental Quality. Nothing in the Electrical Power Plant
9 Siting Act shall be construed to displace the Department of
10 Environmental Quality's authority as the final permitting entity
11 under the federally approved permit program. Nothing in the act
12 shall be construed to authorize the issuance of a new source
13 review or prevention of significant deterioration permit which does
14 not conform to the requirements of the federally approved state
15 implementation plan.

16 (5) In regard to the properties and works of any agency
17 which is a party to the certification hearing, the board shall
18 have the authority to decide issues relating to the use, the
19 connection thereto, or the crossing thereof, for the electrical
20 power plant and directly associated facilities and to direct any
21 such agency to execute, within thirty days after the entry of
22 certification, the necessary license or easement for such use,
23 connection, or crossing, subject only to the conditions set forth
24 in such certification.

25 (6) The issuance or denial of the certification by the

1 board shall be the final administrative action required as to that
2 application.

3 Sec. 39. Any time limitation in the Electrical Power
4 Plant Siting Act may be altered by the hearing officer upon
5 stipulation between the board and the applicant, unless objected to
6 by any party within five days after notice, or for good cause shown
7 by any party.

8 Sec. 40. (1) If any provision of the Electrical Power
9 Plant Siting Act is in conflict with any other provision,
10 limitation, or restriction under any law, rule, regulation, or
11 ordinance of this state or any political subdivision or agency, the
12 act shall govern and control, and such law, rule, regulation, or
13 ordinance shall be deemed superseded for the purposes of the act.

14 (2) The state hereby preempts the regulation and
15 certification of electrical power plant sites and electrical power
16 plants.

17 (3) The board may adopt and promulgate rules and
18 regulations to carry out its duties under the act and to provide
19 an efficient, simplified, centrally coordinated, one-stop licensing
20 process.

21 Sec. 41. (1) Subject to the conditions set forth in
22 the certification, any certification shall constitute the sole
23 license of the state and any agency as to the approval of the
24 site and the construction and operation of the proposed electrical
25 power plant, except for the issuance of licenses required under

1 any federally delegated or approved permit program and except as
2 otherwise provided in subsection (4) of this section.

3 (2)(a) The certification shall authorize the licensee
4 named in the certification to construct and operate the proposed
5 electrical power plant, subject only to the conditions of
6 certification set forth in such certification, and except for
7 the issuance of licenses or permits required under any federally
8 delegated or approved permit program.

9 (b)(i) Except as provided in subsection (4) of
10 this section, the certification may include conditions which
11 constitute variances, exemptions, or exceptions from nonprocedural
12 requirements of the board or any agency which were expressly
13 considered during the proceeding, including, but not limited to,
14 any site-specific criteria, standards, or limitations under local
15 land-use and zoning approvals which affect the proposed electrical
16 power plant or its site, unless waived by the agency, and which
17 otherwise would be applicable to the construction and operation of
18 the proposed electrical power plant.

19 (ii) No variance, exemption, exception, or other relief
20 shall be granted from a state statute, rule, or regulation for the
21 protection of endangered or threatened species or aquatic preserves
22 or for the disposal of hazardous waste, except to the extent
23 authorized by the applicable statute, rule, or regulation or except
24 upon a finding in the certification order that the public interests
25 set forth in subsection (3) of section 38 of this act in certifying

1 the electrical power plant at the site proposed by the applicant
2 overrides the public interest protected by the statute, rule, or
3 regulation from which relief is sought.

4 (3) The certification and any order on land use and
5 zoning issued under the Electrical Power Plant Siting Act shall be
6 in lieu of any license, permit, certificate, or similar document
7 required by any state, regional, or local agency, except for
8 permits issued pursuant to any federally delegated or approved
9 permit program or 33 U.S.C. 1341, as such section existed on the
10 effective date of this act.

11 (4) The act shall not affect in any way the ratemaking
12 powers of the board. The act shall not in any way affect the right
13 of any local government to charge appropriate fees or require that
14 construction be in compliance with applicable building construction
15 codes.

16 (5)(a) An electrical power plant certified pursuant
17 to the act shall comply with rules and regulations adopted
18 and promulgated by the board subsequent to the issuance of
19 the certification which prescribe new or stricter criteria, to
20 the extent that the rules are applicable to electrical power
21 plants. Except when express variances, exceptions, exemptions, or
22 other relief have been granted, subsequently adopted rules and
23 regulations which prescribe new or stricter criteria shall operate
24 as automatic modifications to certifications.

25 (b) Upon written notification to the board, any holder of

1 a certification issued pursuant to the act may choose to operate
2 the certified electrical power plant in compliance with any rule
3 or regulation subsequently adopted by the board which prescribes
4 criteria more lenient than the criteria required by the terms and
5 conditions in the certification which are not site-specific.

6 (c) No term or condition of certification shall be
7 interpreted to preclude the postcertification exercise by any
8 party of whatever procedural rights it may have, including those
9 related to rulemaking proceedings. This subsection shall apply to
10 previously issued certifications.

11 (6) No term or condition of a site certification shall
12 be interpreted to supersede or control the provisions of a final
13 operation permit for a major source of air pollution issued by
14 the Department of Environmental Quality under sections 81-1505 to
15 81-1505.06 to a facility certified under the act.

16 Sec. 42. (1) Within sixty days after certification of
17 a directly associated linear facility pursuant to the Electrical
18 Power Plant Siting Act, the applicant shall file, with the board
19 and the county clerk for each county through which the corridor
20 will pass, a notice of the certified route.

21 (2) The notice shall consist of maps or aerial
22 photographs in the scale of one to twenty-four thousand which
23 clearly show the location of the certified route and shall
24 state that the certification of the corridor will result in the
25 acquisition of rights-of-way within the corridor. Each county clerk

1 shall record the filing in the official record of the county
2 for the duration of the certification or until such time as the
3 applicant certifies to the board and the county clerk that all
4 lands required for the transmission line rights-of-way within
5 the corridor have been acquired within such county, whichever is
6 sooner.

7 Sec. 43. (1) If, subsequent to certification by the
8 board, a licensee proposes any material change to the application
9 and revisions or amendments thereto, as certified, the licensee
10 shall submit a written request for amendment and a description of
11 the proposed change to the application to the board. Within thirty
12 days after the receipt of the request for the amendment, the board
13 shall determine whether the proposed change to the application
14 requires a modification of the conditions of certification.

15 (2) If the board concludes that the change would not
16 require a modification of the conditions of certification, the
17 board shall provide written notification of the approval of the
18 proposed amendment to the licensee, all agencies, and all other
19 parties.

20 (3) If the board concludes that the change would require
21 a modification of the conditions of certification, the board shall
22 provide written notification to the licensee that the proposed
23 change to the application requires a request for modification.

24 (4) Postcertification submittals filed by the licensee
25 with one or more agencies are for the purpose of monitoring for

1 compliance with the issued certification and shall be reviewed
2 by the agencies on an expedited and priority basis because
3 each facility certified under the Electrical Power Plant Siting
4 Act is a critical infrastructure facility. In no event shall a
5 postcertification review be completed in more than ninety days
6 after complete information is submitted to the reviewing agencies.

7 Sec. 44. (1) The following notices are to be published by
8 the applicant:

9 (a) Notice of the filing of a notice of intent under
10 section 30 of this act, which shall be published within twenty-one
11 days after the filing of the notice. The notice shall be published
12 as specified by subsection (2) of this section, except that
13 the newspaper notice shall be one-fourth of a page in size in
14 a standard-size newspaper or one-half of a page in size in a
15 tabloid-size newspaper;

16 (b) Notice of filing of the application, which shall
17 include a description of the proceedings required by the Electrical
18 Power Plant Siting Act, within twenty-one days after the date
19 of the application filing. Such notice shall give notice of the
20 provisions of subsections (1) and (2) of section 41 of this act;

21 (c) Notice of the land-use determination made pursuant to
22 subsection (1) of section 35 of this act within twenty-one days
23 after the determination is filed;

24 (d) Notice of land-use hearing, which shall be published
25 as specified in subsection (2) of this section, no later than

1 fifteen days before the hearing;

2 (e) Notice of the certification hearing and notice of the
3 deadline for filing notice of intent to be a party, which shall be
4 published as specified in subsection (2) of this section, at least
5 sixty-five days before the date set for the certification hearing;

6 (f) Notice of the cancellation of the certification
7 hearing, if applicable, no later than three days before the date of
8 the originally scheduled certification hearing;

9 (g) Notice of the modification when required by the
10 board, based on whether the requested modification of certification
11 will significantly increase impacts to the environment or the
12 public. Such notice shall be published as specified under
13 subsection (2) of this section:

14 (i) Within twenty-one days after receipt of a request for
15 modification. The newspaper notice shall be of a size as directed
16 by the board commensurate with the scope of the modification; and

17 (ii) If a hearing is to be conducted in response to the
18 request for modification, then notice shall be published no later
19 than thirty days before the hearing;

20 (h) Notice of a supplemental application, which shall be
21 published as specified in subdivision (b) of this subsection and
22 subsection (2) of this section; and

23 (i) Notice of existing site certification pursuant to
24 section 52 of this act. Notices shall be published as specified
25 in subdivision (b) of this subsection and subsection (2) of this

1 section.

2 (2) Notices provided by the applicant shall be published
3 in newspapers of general circulation within the county or counties
4 in which the proposed electrical power plant will be located. The
5 newspaper notices shall be at least one-half of a page in size in a
6 standard-size newspaper or a full page in a tabloid-size newspaper.
7 These notices shall include a map generally depicting the project
8 and all associated facilities corridors. A newspaper of general
9 circulation shall be the newspaper which has the largest daily
10 circulation in that county and has its principal office in that
11 county. If the newspaper with the largest daily circulation has its
12 principal office outside the county, the notices shall appear in
13 both the newspaper having the largest circulation in that county
14 and in a newspaper authorized to publish legal notices in that
15 county.

16 (3) All notices published by the applicant shall be paid
17 for by the applicant and shall be in addition to the application
18 fee.

19 (4) The board shall arrange for publication of the
20 following notices in the manner specified by the Administrative
21 Procedure Act and provide copies of those notices to any persons
22 who have requested to be placed on the mailing list of the board
23 for this purpose:

24 (a) Notice of the filing of the notice of intent within
25 fifteen days after receipt of the notice;

1 (b) Notice of the filing of the application no later than
2 twenty-one days after the application filing;

3 (c) Notice of the land-use determination made pursuant to
4 subsection (1) of section 35 of this act within twenty-one days
5 after the determination is filed;

6 (d) Notice of the land-use hearing before the hearing
7 officer, if applicable, no later than fifteen days before the
8 hearing;

9 (e) Notice of the land-use hearing before the board, if
10 applicable;

11 (f) Notice of the certification hearing at least
12 forty-five days before the date set for the certification hearing;

13 (g) Notice of the cancellation of the certification
14 hearing, if applicable, no later than three days prior to the date
15 of the originally scheduled certification hearing;

16 (h) Notice of the hearing before the board, if
17 applicable; and

18 (i) Notice of stipulations, proposed agency action, or
19 petitions for modification.

20 Sec. 45. Any certification may be revoked or suspended:

21 (1) For any material false statement in the application
22 or in the supplemental or additional statements of fact or studies
23 required of the applicant when a true answer would have warranted
24 the board's refusal to recommend a certification in the first
25 instance;

1 (2) For failure to comply with the terms or conditions of
2 the certification; and

3 (3) For violation of the Electrical Power Plant Siting
4 Act or the rules, regulations, or orders issued under the act.

5 Sec. 46. Proceedings under the Electrical Power Plant
6 Siting Act shall be subject to judicial review as provided in
7 the Administrative Procedure Act. When possible, separate appeals
8 of the certification order issued by the board and of any permit
9 issued pursuant to a federally delegated or approved permit program
10 may be consolidated for purposes of judicial review.

11 Sec. 47. Failure to obtain a certification, to comply
12 with the conditions of a certification, or to comply with the
13 Electrical Power Plant Siting Act shall constitute a violation of
14 the act.

15 Sec. 48. The board shall make available for public
16 inspection and copying during regular office hours, at the expense
17 of any person requesting copies, any information filed or submitted
18 pursuant to the Electrical Power Plant Siting Act.

19 Sec. 49. A certification may be modified after issuance
20 in any one of the following ways:

21 (1)(a) The board may modify specific conditions of a
22 site certification which are inconsistent with the terms of any
23 federally delegated or approved permit for the certified electrical
24 power plant; and

25 (b) Such modification may be made without further notice

1 if the matter has been previously noticed under the requirements
2 for any federally delegated or approved permit program;

3 (2) (a) The licensee may file a petition for modification
4 with the board or the board may initiate the modification upon its
5 own initiative.

6 (b) A petition for modification shall set forth:

7 (i) The proposed modification;

8 (ii) The factual reasons asserted for the modification;

9 and

10 (iii) The anticipated environmental effects of the
11 proposed modification.

12 (c) The board may modify the terms and conditions of the
13 certification if no party to the certification hearing objects in
14 writing to such modification within forty-five days after notice by
15 mail to such party's last address of record, and if no other person
16 whose substantial interests will be affected by the modification
17 objects in writing within thirty days after issuance of public
18 notice;

19 (d) If objections are raised or the board denies the
20 request, the applicant or board may file a request for a hearing on
21 the modification with the board; and

22 (e) Requests referred to the hearing officer shall be
23 disposed of in the same manner as an application, but with time
24 periods established by the hearing officer commensurate with the
25 significance of the modification requested; and

1 (3) As required by subsection (5) of section 41 of this
2 act.

3 Sec. 50. Any agreement or modification under section 49
4 of this act shall be in accordance with the Electrical Power Plant
5 Siting Act. No modification to a certification shall be granted
6 that constitutes a variance from standards or regulations of the
7 Department of Environmental Quality applicable under any federally
8 delegated or approved permit program, except as expressly allowed
9 in such program.

10 Sec. 51. (1)(a) Supplemental applications may be
11 submitted for certification of the construction and operation of
12 electrical power plants to be located at sites which have been
13 previously certified for an ultimate site capacity pursuant to
14 the Electrical Power Plant Siting Act. Supplemental applications
15 shall be limited to electrical power plants using the fuel
16 type previously certified for that site. Such applications shall
17 include all new directly associated facilities that support the
18 construction and operation of the electrical power plant.

19 (b) The review shall use the same procedural steps and
20 notices as for an initial application.

21 (c) The time limits for the processing of a complete
22 supplemental application shall be designated by the board
23 commensurate with the scope of the supplemental application, but
24 shall not exceed any time limitation governing the review of
25 initial applications for site certification pursuant to the act.

1 It is the intent of the Legislature to provide shorter time
2 limitations for the processing of supplemental applications for
3 electrical power plants to be constructed and operated at sites
4 which have been previously certified for an ultimate site capacity.

5 (d) Any time limitation in the act or in rules and
6 regulations adopted and promulgated pursuant to the act may be
7 altered pursuant to section 39 of this act.

8 (2) The land-use and zoning consistency determination of
9 section 35 of this act shall not be applicable to the processing of
10 supplemental applications pursuant to this section if:

11 (a) The previously certified ultimate site capacity is
12 not exceeded; and

13 (b) The lands required for the construction or operation
14 of the electrical power plant which is the subject of the
15 supplemental application are within the boundaries of the
16 previously certified site.

17 Sec. 52. (1) An electric utility that owns or operates
18 an existing electrical power plant may apply for certification
19 of an existing electrical power plant and its site in order to
20 obtain all agency licenses necessary to ensure compliance with
21 federal or state environmental laws, rules, and regulations using
22 the centrally coordinated, one-stop licensing process established
23 by the Electrical Power Plant Siting Act. An application for site
24 certification under this section shall be in the form prescribed by
25 the board. Applications shall be reviewed and processed using the

1 same procedural steps and notices as for an application for a new
2 facility, except that a determination of need by the board is not
3 required.

4 (2) An application for certification under this section
5 shall include:

6 (a) A description of the site and existing electrical
7 power plant installations;

8 (b) A description of all proposed changes or alterations
9 to the site or electrical power plant, including all new associated
10 facilities that are the subject of the application;

11 (c) A description of the environmental and other impacts
12 caused by the existing utilization of the site and directly
13 associated facilities, and the operation of the electrical power
14 plant that is the subject of the application, and of the
15 environmental and other benefits, if any, to be realized as a
16 result of the proposed changes or alterations if certification
17 is approved and such other information as is necessary for
18 the reviewing agencies to evaluate the proposed changes and the
19 expected impacts;

20 (d) The justification for the proposed changes or
21 alterations; and

22 (e) Copies of all existing permits, licenses, and
23 compliance plans authorizing utilization of the site and directly
24 associated facilities or operation of the electrical power plant
25 that is the subject of the application.

1 (3) The land-use and zoning determination requirements of
2 section 35 of this act do not apply to an application under this
3 section if the applicant does not propose to expand the boundaries
4 of the existing site. If the applicant proposes to expand the
5 boundaries of the existing site to accommodate portions of the
6 plant or associated facilities, a land-use and zoning determination
7 shall be made as specified in section 35 of this act, but the sole
8 issue for determination is whether the proposed site expansion is
9 consistent and in compliance with the existing land-use plans and
10 zoning ordinances.

11 (4) In considering whether an application submitted under
12 this section should be approved in whole, approved with appropriate
13 conditions, or denied, the board shall consider whether and to the
14 extent to which the proposed changes to the electrical power plant
15 and its continued operation under certification will:

16 (a) Comply with subsection (3) of section 38 of this act;
17 and

18 (b) Result in environmental or other benefits compared
19 to current utilization of the site and operation of the electrical
20 power plant if the proposed changes or alterations are undertaken.

21 (5) An applicant's failure to receive approval for
22 certification of an existing site or an electrical power plant
23 under this section is without prejudice to continued operation of
24 the electrical power plant or site under existing agency licenses.

25 Sec. 53. (1) The board shall charge the applicant the

1 fees established in this section, as appropriate, which shall be
2 remitted to the State Treasurer for credit to the Electrical Power
3 Plant Siting Cash Fund.

4 (2) A fee for a notice of intent pursuant to section 30
5 of this act, in the amount of two thousand five hundred dollars,
6 shall be submitted to the board at the time of filing of a notice
7 of intent. The fee shall be used and disbursed in the same manner
8 as the application fee.

9 (3) An application fee shall be charged, not to exceed
10 two hundred thousand dollars. The board shall adopt and promulgate
11 rules and regulations to establish the fee on a sliding scale
12 related to the size, type, ultimate site capacity, or increase in
13 electrical generating capacity proposed by the application.

14 (4) (a) Sixty percent of the application fee shall be used
15 by the board to cover any costs associated with coordinating the
16 review of and acting upon the application, to cover any field
17 services associated with monitoring construction and operation
18 of the facility, and to cover the costs of the public notices
19 published by the board.

20 (b) The following percentages of the application fee
21 shall be used by the board for administrative costs:

22 (i) Five percent to compensate for expenses from the
23 initial exercise of duties associated with the filing of an
24 application;

25 (ii) An additional five percent if a land-use hearing is

1 held pursuant to section 37 of this act; and

2 (iii) An additional ten percent if a certification
3 hearing is held pursuant to section 37 of this act.

4 (c)(i) Upon written request with proper itemized
5 accounting within ninety days after final agency action by the
6 board or the withdrawal of the application, the agencies that
7 prepared reports pursuant to section 36 of this act or participated
8 in a hearing pursuant to section 37 of this act may submit a
9 written request to the board for reimbursement of expenses incurred
10 during the certification proceedings. The request shall contain
11 an accounting of expenses incurred, which may include time spent
12 reviewing the application, preparation of any studies required
13 of the agencies by the Electrical Power Plant Siting Act, agency
14 travel and per diem to attend any hearing held pursuant to the
15 act, and any agency or local government provision of notice of
16 public meetings or hearings required as a result of the application
17 for certification. The board shall review the request and verify
18 that the expenses are valid. Valid expenses shall be reimbursed,
19 except that if the amount of funds available for reimbursement
20 is insufficient to provide for full compensation to the agencies
21 requesting reimbursement, reimbursement shall be on a prorated
22 basis.

23 (ii) If the application review is held in abeyance
24 for more than one year, the agencies may submit a request for
25 reimbursement.

1 (d) If any funds are remaining from the application
2 fee, they shall be credited to the Electrical Power Plant Siting
3 Cash Fund, except that if application is withdrawn, the remaining
4 funds shall be refunded to the applicant within ninety days after
5 withdrawal.

6 (5) (a) A modification fee shall be charged, not to exceed
7 thirty thousand dollars. The board shall adopt and promulgate rules
8 and regulations to establish a fee based on the equipment redesign,
9 change in site size or type, increase in generating capacity
10 proposed, or change in an associated linear facility location.

11 (b) The fee shall be submitted to the board with a
12 petition for modification pursuant to section 49 of this act. The
13 fee shall be established, disbursed, and processed in the same
14 manner as the application fee.

15 (6) A supplemental application fee shall be charged, not
16 to exceed seventy-five thousand dollars, to cover all reasonable
17 expenses and costs of the review, processing, and proceedings of a
18 supplemental application. The fee shall be established, disbursed,
19 and processed in the same manner as the application fee.

20 (7) An existing site certification fee shall be charged,
21 not to exceed two hundred thousand dollars, to cover all reasonable
22 costs and expenses of the review processing and proceedings for
23 certification of an existing power plant site under section 52 of
24 this act. The fee shall be established, disbursed, and processed in
25 the same manner as the application fee.

1 Sec. 54. The Electrical Power Plant Siting Cash Fund is
2 created. The fund shall consist of fees credited pursuant to the
3 Electrical Power Plant Siting Act. The board shall use the fund
4 as provided in the act. Any unexpended balance in the fund at the
5 close of any biennium shall, when reappropriated, be available for
6 the uses and purposes of the fund for the succeeding biennium;
7 otherwise it shall lapse into the General Fund. Any money in the
8 Electrical Power Plant Siting Cash Fund available for investment
9 shall be invested by the state investment officer pursuant to
10 the Nebraska Capital Expansion Act and the Nebraska State Funds
11 Investment Act.

12 Sec. 55. Any application for electrical power plant
13 certification filed pursuant to the Electrical Power Plant Siting
14 Act shall be processed under the law applicable at the time the
15 application was filed, except that the provisions relating to
16 cancellation of the certification hearing under subsection (6) of
17 section 37 of this act, the provisions relating to the final
18 disposition of the application and issuance of the written order
19 under subdivision (1)(a) of section 38 of this act, and notice of
20 the cancellation of the certification hearing under section 44 of
21 this act may apply to any application for electrical power plant
22 certification.

23 Sec. 56. (1) On request by an applicant or on its own
24 motion, the board shall begin a proceeding to determine the need
25 for an electrical power plant subject to the Electrical Power Plant

1 Siting Act.

2 (2) The applicant shall publish a notice of the
3 proceeding in a newspaper of general circulation in each county
4 in which the proposed electrical power plant will be located.
5 The notice shall be at least one-fourth of a page and published
6 at least twenty-one days prior to the scheduled date for the
7 proceeding. The board shall publish notice of the proceeding in
8 the manner specified by the Administrative Procedure Act at least
9 twenty-one days prior to the scheduled date for the proceeding.

10 (3) The board shall be the sole forum for the
11 determination of this matter, which accordingly shall not be raised
12 in any other forum or in the review of proceedings in such other
13 forum. In making its determination, the board shall take into
14 account the need for electric system reliability and integrity,
15 the need for adequate electricity at a reasonable cost, the need
16 for fuel diversity and supply reliability, whether the proposed
17 plant is the most cost-effective alternative available, and whether
18 renewable energy sources and technologies, as well as conservation
19 measures, are utilized to the extent reasonably available. The
20 board shall also expressly consider the conservation measures taken
21 by or reasonably available to the applicant or its members which
22 might mitigate the need for the proposed plant and other matters
23 within its jurisdiction which it deems relevant. The board's
24 determination of need for an electrical power plant shall create a
25 presumption of public need and necessity and shall serve as the

1 board's report required by subsection (4) of section 36 of this
2 act. An order entered pursuant to this section constitutes final
3 agency action.

4 (4) (a) In making its determination regarding a proposed
5 electrical power plant using nuclear materials or synthesis gas
6 produced by integrated gasification combined cycle power plant as
7 fuel, the board shall hold a hearing within ninety days after the
8 filing of the petition to determine need and shall issue an order
9 granting or denying the petition within one hundred thirty-five
10 days after the date of the filing of the petition. The board shall
11 be the sole forum for the determination of this matter and the
12 issues addressed in the petition, which accordingly shall not be
13 reviewed in any other forum, or in the review of proceedings in
14 such other forum. In making its determination to either grant or
15 deny the petition, the board shall consider the need for electric
16 system reliability and integrity, including fuel diversity, the
17 need for base-load generating capacity, the need for adequate
18 electricity at a reasonable cost, and whether renewable energy
19 sources and technologies, as well as conservation measures, are
20 utilized to the extent reasonably available.

21 (b) The applicant's petition shall include:

22 (i) A description of the need for the generation
23 capacity;

24 (ii) A description of how the proposed nuclear or
25 integrated gasification combined cycle power plant will enhance

1 the reliability of electric power production within the state by
2 improving the balance of power plant fuel diversity and reducing
3 Nebraska's dependence on fuel oil and natural gas;

4 (iii) A description of and a nonbinding estimate of the
5 cost of the nuclear or integrated gasification combined cycle power
6 plant;

7 (iv) The annualized base revenue requirement for the
8 first twelve months of operation of the nuclear or integrated
9 gasification combined cycle power plant; and

10 (v) Information on whether there were any discussions
11 with any electric utilities regarding ownership of a portion of the
12 nuclear or integrated gasification combined cycle power plant by
13 such electric utilities.

14 (c) In making its determination, the board shall take
15 into account matters within its jurisdiction, which it deems
16 relevant, including whether the nuclear or integrated gasification
17 combined cycle power plant will:

18 (i) Provide needed base-load capacity;

19 (ii) Enhance the reliability of electric power production
20 within the state by improving the balance of power plant fuel
21 diversity and reducing Nebraska's dependence on fuel oil and
22 natural gas; and

23 (iii) Provide the most cost-effective source of power,
24 taking into account the need to improve the balance of fuel
25 diversity, reduce Nebraska's dependence on fuel oil and natural

1 gas, reduce air emission compliance costs, and contribute to the
2 long-term stability and reliability of the electric grid.

3 (d) The board's determination of need for a nuclear or
4 integrated gasification combined cycle power plant shall create a
5 presumption of public need and necessity and shall serve as the
6 board's report required by subdivision (4)(a) of section 36 of this
7 act. An order entered pursuant to this section constitutes final
8 agency action. Any petition for reconsideration of a final order on
9 a petition for need determination shall be filed within five days
10 after the date of such order. The board's final order, including
11 any order on reconsideration, shall be reviewable on appeal in the
12 Supreme Court. Inasmuch as delay in the determination of need will
13 delay siting of a nuclear or integrated gasification combined cycle
14 power plant or diminish the opportunity for savings to customers
15 under the federal Energy Policy Act of 2005, the Supreme Court
16 shall proceed to hear and determine the action as expeditiously
17 as practicable and give the action precedence over matters not
18 accorded similar precedence by law.

19 (e) After a petition for determination of need for a
20 nuclear or integrated gasification combined cycle power plant has
21 been granted, the right of a utility to recover any costs incurred
22 prior to commercial operation, including, but not limited to, costs
23 associated with the siting, design, licensing, or construction of
24 the plant, shall not be subject to challenge unless and only to the
25 extent the board finds, based on a preponderance of the evidence

1 adduced at a hearing before the board under section 84-914,
2 the certain costs were imprudently incurred. Proceeding with the
3 construction of the nuclear or integrated gasification combined
4 cycle power plant following an order by the board approving the
5 need for the nuclear or integrated gasification combined cycle
6 power plant under the Electrical Power Plant Siting Act shall
7 not constitute or be evidence of imprudence. Imprudence shall not
8 include any cost increases due to events beyond the utility's
9 control. Further, a utility's right to recover costs associated
10 with a nuclear or integrated gasification combined cycle power
11 plant may not be raised in any other forum or in the review of
12 proceedings in such other forum. Costs incurred prior to commercial
13 operation may be recovered.

14 Sec. 57. Sections 57 to 102 of this act shall be known
15 and may be cited as the Electric Transmission Line Siting Act.

16 Sec. 58. (1) It is the intent of the Legislature to
17 establish a centralized and coordinated licensing process for
18 the location of electric transmission line corridors and the
19 construction, operation, and maintenance of electric transmission
20 lines, which are critical infrastructure facilities. This process
21 necessarily involves several broad interests of the public
22 addressed through the subject matter jurisdiction of several
23 agencies.

24 (2) The Legislature recognizes that electric transmission
25 lines will have an effect upon the reliability of the electric

1 power system, the environment, land use, and the welfare of
2 the population. Recognizing the need to ensure electric power
3 system reliability and integrity, and in order to meet electric
4 energy needs in an orderly and timely fashion, the centralized
5 and coordinated licensing process established by the Electric
6 Transmission Line Siting Act is intended to further the goal of
7 ensuring through available and reasonable methods that the location
8 of transmission line corridors and the construction, operation, and
9 maintenance of electric transmission lines produce minimal adverse
10 effects on the environment and public health, safety, and welfare.

11 (3) It is the intent of the Legislature to fully balance
12 the need for transmission lines with the broad interests of the
13 public in order to effect a reasonable balance between the need for
14 transmission lines as a means of providing reliable, economical,
15 and efficient electric energy and the impact on the public and the
16 environment resulting from the location of the transmission line
17 corridor and the construction, operation, and maintenance of the
18 transmission lines.

19 (4) It is the intent of the Legislature that the
20 provisions of the Administrative Procedure Act apply to the
21 Electric Transmission Line Siting Act and to proceedings under
22 it except as otherwise expressly exempted by other provisions of
23 the act.

24 Sec. 59. For purposes of the Electric Transmission Line
25 Siting Act, the definitions found in sections 60 to 78 of this act

1 apply.

2 Sec. 60. Agency, as the context requires, means an
3 official, officer, commission, authority, council, committee,
4 department, division, bureau, board, section, or other unit or
5 entity of government, including a regional or local governmental
6 entity.

7 Sec. 61. Amendment means a material change in information
8 provided by the applicant to the application for certification made
9 after the initial application filing.

10 Sec. 62. Applicant means any electric utility that
11 applies for certification under the Electric Transmission Line
12 Siting Act.

13 Sec. 63. Application means the documents required by the
14 board to be filed to initiate and support a certification review
15 and evaluation, including the initial document filing, amendments,
16 and responses to requests from the board for additional data
17 and information. An electric utility may file a comprehensive
18 application encompassing all or a part of one or more proposed
19 transmission lines.

20 Sec. 64. Board means the Nebraska Power Review Board.

21 Sec. 65. Certification means the approval by the board
22 of the license for a corridor proper for certification and the
23 construction, operation, and maintenance of transmission lines
24 within the corridor with the changes or conditions as the board
25 deems appropriate. Certification shall be evidenced by a written

1 order of the board.

2 Sec. 66. Completeness means that the application has
3 addressed all applicable portions of the prescribed application
4 format and that those portions are sufficient in comprehensiveness
5 of data or in quality of information provided to allow the board to
6 determine whether the application provides the reviewing agencies
7 adequate information to prepare the reports required by section 84
8 of this act.

9 Sec. 67. Corridor means the proposed area within which
10 a transmission line right-of-way, including maintenance and access
11 roads, is to be located. The width of the corridor proposed
12 for certification by an applicant or other party, at the option
13 of the applicant, may be the width of the transmission line
14 right-of-way, or a wider boundary, not to exceed a width of one
15 mile. The area within the corridor in which a right-of-way may be
16 located may be further restricted by a condition of certification.
17 After all property interests required for the transmission line
18 right-of-way and maintenance and access roads have been acquired by
19 the applicant, the boundaries of the area certified shall narrow
20 to only that land within the boundaries of the transmission line
21 right-of-way. The corridors proper for certification shall be those
22 addressed in the application, in amendments to the application
23 filed under section 88 of this act, and in notices of acceptance
24 of proposed alternate corridors filed by an applicant and the
25 board pursuant to section 86 of this act for which the required

1 information for the preparation of agency supplemental reports was
2 filed.

3 Sec. 68. Electric utility means a city, village,
4 registered group of municipalities, public power district, public
5 power and irrigation district, electric cooperative, electric
6 membership association, joint entity formed under the Interlocal
7 Cooperation Act, joint public agency formed under the Joint Public
8 Agency Act, agency formed under the Municipal Cooperative Financing
9 Act, and joint operating agency, or any combination thereof,
10 engaged in, or authorized to engage in, the business of generating,
11 transmitting, or distributing electric energy.

12 Sec. 69. License means a franchise, permit,
13 certification, registration, charter, comprehensive plan amendment,
14 development order, or permit, or similar form of authorization
15 required by law, but it does not include a license required
16 primarily for revenue purposes when issuance of the license is
17 merely a ministerial act.

18 Sec. 70. Licensee means an applicant that has obtained a
19 certification order for the subject project.

20 Sec. 71. Local government means a city, village, or
21 county in the jurisdiction of which the project is proposed to be
22 located.

23 Sec. 72. Maintenance and access roads means roads
24 constructed within the transmission line right-of-way. Nothing in
25 the Electric Transmission Line Siting Act prohibits an applicant

1 from constructing a road to support construction, operation,
2 or maintenance of the transmission line that lies outside the
3 transmission line right-of-way.

4 Sec. 73. Modification means any change in the
5 certification order after issuance, including a change in the
6 conditions of certification.

7 Sec. 74. Natural resources district means the natural
8 resources district in the jurisdiction of which the project is
9 proposed to be located.

10 Sec. 75. Nonprocedural requirements of agencies means
11 any agency's regulatory requirements established by statute,
12 rule, ordinance, or comprehensive plan, excluding any provisions
13 prescribing forms, fees, procedures, or time limits for the review
14 or processing of information submitted to demonstrate compliance
15 with such regulatory requirements.

16 Sec. 76. Preliminary statement of issues means a listing
17 and explanation of those issues within the agency's jurisdiction
18 which are of major concern to the agency in relation to the
19 proposed electric transmission line corridor.

20 Sec. 77. Transmission line or electric transmission line
21 means structures, maintenance and access roads, and all other
22 facilities that need to be constructed, operated, or maintained
23 for the purpose of conveying electric power extending from, but
24 not including, an existing or proposed substation or power plant
25 to, but not including, an existing or proposed transmission network

1 or rights-of-way or substation to which the applicant intends to
2 connect which defines the end of the proposed project and which
3 is designed to operate at two hundred thirty kilovolts or more.
4 The transmission line may include, at the applicant's option,
5 any proposed terminal or intermediate substations or substation
6 expansions necessary to serve the transmission line.

7 Sec. 78. Transmission line right-of-way means land
8 necessary for the construction, operation, and maintenance of a
9 transmission line. The typical width of the right-of-way shall be
10 identified in the application. The right-of-way shall be located
11 within the certified corridor and shall be identified by the
12 applicant in documents filed with the board before construction.

13 Sec. 79. The board has the following powers and duties
14 under the Electric Transmission Line Siting Act:

15 (1) To adopt and promulgate rules and regulations to
16 administer and implement the act;

17 (2) To prescribe the form and content of the public
18 notices and the form, content, and necessary supporting
19 documentation, and any required studies, for certification
20 applications. All data and studies shall be related to the
21 jurisdiction of the agencies relevant to the application;

22 (3) To receive applications for transmission line and
23 corridor certifications and initially determine the completeness
24 thereof;

25 (4) To make or contract for studies of certification

1 applications. All studies shall be related to the jurisdiction of
2 the agencies relevant to the application. For studies in areas
3 outside the jurisdiction of the board and in the jurisdiction of
4 another agency, the board may initiate such studies, but only with
5 the consent of the agency;

6 (5) To administer the processing of applications
7 for certification and ensure that the applications, including
8 postcertification reviews, are processed on an expeditious and
9 priority basis;

10 (6) To collect and process such fees as allowed by the
11 act;

12 (7) To prepare a report and project analysis as required
13 by section 84 of this act;

14 (8) To prescribe the means for monitoring the effects
15 arising from the location of the transmission line corridor and the
16 construction, operation, and maintenance of the transmission lines
17 to assure continued compliance with the terms of the certification;

18 (9) To make a determination of acceptability of any
19 alternate corridor proposed for consideration under section 86 of
20 this act;

21 (10) To set requirements that reasonably protect the
22 public health and welfare from the electric and magnetic fields of
23 transmission lines for which an application is filed under the act;

24 (11) To present rebuttal evidence on any issue properly
25 raised at the certification hearing;

1 (12) To issue final orders after receipt of the hearing
2 officer's order relinquishing jurisdiction pursuant to subsection
3 (6) of section 85 of this act;

4 (13) To administer and manage the terms and conditions of
5 the certification order and supporting documents and records for
6 the life of the transmission lines; and

7 (14) To issue emergency orders for facilities licensed
8 under the act.

9 Sec. 80. (1) The Electric Transmission Line Siting Act
10 applies to each transmission line except a transmission line
11 certified under the Electrical Power Plant Siting Act.

12 (2) Except as provided in subsection (1) of this section,
13 construction of a transmission line may not be undertaken without
14 first obtaining certification under the Electric Transmission Line
15 Siting Act, but the act does not apply to:

16 (a) Transmission line development in which all
17 construction is being performed within the legal boundaries of
18 an established rights-of-way. Established rights-of-way include
19 rights-of-way established at any time for roads, highways,
20 railroads, gas, water, oil, electricity, or sewage and any other
21 public purpose rights-of-way. If an established transmission
22 line right-of-way is used to qualify for this exemption, the
23 transmission line right-of-way must have been established at
24 least five years before notice of the start of construction under
25 subsection (4) of this section of the proposed transmission line;

1 and

2 (b) Unless the applicant has applied for certification
3 under the act, transmission lines that are less than fifteen miles
4 in length or are located in a single county within the state and
5 are not in excess of seventy kilovolts.

6 (3) The exemption of a transmission line under the act
7 does not constitute an exemption for the transmission line from
8 other applicable permitting processes under other provisions of law
9 or local government ordinances.

10 (4) An electric utility shall notify the board in
11 writing, before the start of construction, of its intent to
12 construct a transmission line exempted under this section. The
13 notice is only for information purposes, and action by the board is
14 not required pursuant to the notice. This notice may be included in
15 any submittal filed with the board before the start of construction
16 demonstrating that a new transmission line complies with the
17 applicable electric and magnetic field standards.

18 Sec. 81. (1)(a) Within seven days after receipt of an
19 application, whether complete or not, the board shall designate a
20 hearing officer to conduct the hearings required by the Electric
21 Transmission Line Siting Act.

22 (b) The executive director of the board shall designate
23 a hearing officer to conduct the hearings required by the act
24 within seven days after receipt of the request from the board.
25 Whenever practicable, the executive director shall assign a hearing

1 officer who has had prior experience or training in this type of
2 certification proceeding.

3 (c) Upon being advised that a hearing officer has been
4 designated, the board shall immediately file a copy of the
5 application and all supporting documents with the hearing officer
6 who shall docket the application.

7 (2) The hearing officer shall conduct the hearings
8 pursuant to the Administrative Procedure Act and the rules and
9 regulations adopted and promulgated by the board.

10 Sec. 82. (1)(a) The formal date of the filing of the
11 application for certification and commencement of the review
12 process for certification shall be when the applicant submits:

13 (i) Copies of the certification application, in a
14 quantity and format as prescribed by the board, to the board and
15 other agencies identified in subsection (2) of section 84 of this
16 act; and

17 (ii) The application fee established pursuant to section
18 99 of this act to the board.

19 (b) The board shall provide to the applicant and the
20 hearing officer the names and addresses of any additional agencies
21 or persons entitled to notice and copies of the application
22 and amendments, if any, within seven days after receiving the
23 application for certification and the application fees.

24 (c) In the application, the starting point and ending
25 point of a transmission line must be specifically defined by the

1 applicant.

2 (2) Within fifteen days after the formal date of the
3 application filing, the board shall prepare a proposed schedule of
4 dates for determination of completeness, submission of statements
5 of issues, submittal of final reports, and other significant dates
6 to be followed during the certification process, including dates
7 for filing notices of appearances to be a party under subsection
8 (2) of section 85 of this act. This schedule shall be provided by
9 the board to the applicant, the hearing officer, and the agencies
10 identified under subsection (1) of this section. Within seven days
11 after the filing of this proposed schedule, the hearing officer
12 shall issue an order establishing a schedule for the matters
13 addressed in the board's proposed schedule and other appropriate
14 matters, if any.

15 (3) Copies of changes and amendments to the application
16 shall be timely distributed by the applicant to all agencies and
17 parties who have received a copy of the application.

18 (4) Notice of the filing of the application shall be made
19 in accordance with the requirements of section 98 of this act.

20 Sec. 83. (1)(a) Within thirty days after distribution of
21 an application, the affected agencies shall file a statement with
22 the board containing the recommendations of each agency concerning
23 the completeness of the application for certification.

24 (b) Within seven days after receipt of the completeness
25 statements of each agency, the board shall file a statement with

1 the hearing officer, with the applicant, and with all parties
2 declaring its position with regard to the completeness of the
3 application. The statement of the board shall be based upon its
4 consultation with the affected agencies.

5 (2) If the board declares the application to be
6 incomplete, the applicant, within fourteen days after the filing of
7 the statement by the board, shall file with the hearing officer,
8 with all parties, and with the board:

9 (a) A withdrawal of the application;

10 (b) Additional information necessary to make the
11 application complete. After the board first determines the
12 application to be incomplete, the time schedules under the Electric
13 Transmission Line Siting Act are not tolled if the applicant
14 makes the application complete within the fourteen-day period.
15 A subsequent finding by the board that the application remains
16 incomplete tolls the time schedules under the act until the
17 application is determined complete;

18 (c) A statement contesting the board's determination of
19 incompleteness; or

20 (d) A statement agreeing with the board and requesting
21 additional time to provide the information necessary to make the
22 application complete. If the applicant exercises this option, the
23 time schedules under the act are tolled until the application is
24 determined complete.

25 (3) (a) If the applicant contests the determination by the

1 board that an application is incomplete, the hearing officer shall
2 schedule a hearing on the statement of completeness. The hearing
3 shall be held as expeditiously as possible, but not later than
4 twenty-one days after the filing of the statement by the board. The
5 hearing officer shall render a decision within seven days after the
6 hearing.

7 (b) Parties to a hearing on the issue of completeness
8 shall include the applicant, the board, and any agency that has
9 jurisdiction over the matter in dispute. Any substantially affected
10 person who wishes to become a party to the hearing on the issue of
11 completeness must file a motion no later than ten days before the
12 date of the hearing.

13 (c) If the hearing officer determines that the
14 application was not complete, the applicant shall withdraw the
15 application or make such additional submittals as necessary to
16 complete it. The time schedules referencing a complete application
17 under the act do not commence until the application is determined
18 complete.

19 (d) If the hearing officer determines that the
20 application was complete at the time it was declared incomplete,
21 the time schedules referencing a complete application under the act
22 shall commence upon such determination.

23 (4) If the applicant provides additional information
24 to address the issues identified in the determination of
25 incompleteness, each affected agency may submit to the board,

1 no later than fourteen days after the applicant files the
2 additional information, a recommendation on whether the agency
3 believes the application is complete. Within twenty-one days after
4 receipt of the additional information from the applicant submitted
5 under subdivision (2)(b), (2)(d), or (3)(c) of this section and
6 considering the recommendations of the affected agencies, the board
7 shall determine whether the additional information supplied by an
8 applicant makes the application complete. If the board finds that
9 the application is still incomplete, the applicant may exercise any
10 of the options specified in subsection (2) of this section as often
11 as is necessary to resolve the dispute.

12 Sec. 84. (1) Each affected agency that is required to
13 file a report in accordance with this section shall submit a
14 preliminary statement of issues to the board and all parties
15 no later than fifty days after the filing of the application.
16 Such statements of issues shall be made available to each local
17 government for use as information for public meetings held under
18 section 87 of this act. The failure to raise an issue in this
19 preliminary statement of issues does not preclude the issue from
20 being raised in the agency's report.

21 (2)(a) The following agencies shall prepare reports as
22 provided in this section and shall submit them to the board and
23 the applicant no later than ninety days after the filing of the
24 application:

25 (i) The board shall prepare a report as to the impact

1 of each proposed transmission line or corridor as it relates to
2 matters within its jurisdiction;

3 (ii) Each natural resources district in the jurisdiction
4 of which a proposed transmission line or corridor is to be located
5 shall prepare a report as to the impact on water resources and
6 other matters within its jurisdiction;

7 (iii) The Game and Parks Commission shall prepare a
8 report as to the impact of each proposed transmission line or
9 corridor on fish and wildlife resources and other matters within
10 its jurisdiction;

11 (iv) Each local government shall prepare a report as
12 to the impact of each proposed transmission line or corridor on
13 matters within its jurisdiction, including the consistency of
14 the proposed transmission line or corridor with all applicable
15 local ordinances, regulations, standards, or criteria that
16 apply to the proposed transmission line or corridor, including
17 local comprehensive plans, zoning regulations, land development
18 regulations, and any applicable local environmental regulations.
19 A change by the responsible local government or local agency in
20 local comprehensive plans, zoning ordinances, or other regulations
21 made after the date required for the filing of the local
22 government's report required by this section is not applicable to
23 the certification of the proposed transmission line or corridor
24 unless the certification is denied or the application is withdrawn;

25 (v) Each local public health department shall prepare

1 a report containing recommendations that address the impact upon
2 the public of the proposed electrical power plant, based on the
3 degree to which the electrical power plant is consistent with
4 the applicable provisions of any strategic plan adopted and other
5 matters within its jurisdiction;

6 (vi) The Public Service Commission shall prepare a report
7 as to the impact of the proposed transmission line or corridor on
8 matters within its jurisdiction;

9 (vii) The Department of Roads shall prepare a report as
10 to the impact of the proposed transmission line or corridor on
11 matters within its jurisdiction;

12 (viii) The Department of Aeronautics shall prepare a
13 report as to the impact of the proposed transmission line or
14 corridor on matters within its jurisdiction; and

15 (ix) Any other agency, if requested by the board, shall
16 also perform studies or prepare reports as to subjects within the
17 jurisdiction of the agency which may potentially be affected by the
18 proposed transmission line.

19 (b) Each report shall contain:

20 (i) A notice of any nonprocedural requirements not
21 specifically listed in the application from which a variance,
22 exemption, exception, or other relief is necessary in order for the
23 proposed corridor to be certified. Failure to include the notice
24 shall be treated as a waiver from the nonprocedural requirements of
25 that agency;

1 (ii) A recommendation for approval or denial of the
2 application; and

3 (iii) The proposed conditions of certification on matters
4 within the jurisdiction of each agency. For each condition proposed
5 by an agency, the agency shall list the specific statute, rule, or
6 ordinance, as applicable, which authorizes the proposed condition.

7 (c) Each reviewing agency shall initiate the activities
8 required by this section no later than fifteen days after the
9 application is filed. Each agency shall keep the applicant and the
10 board informed as to the progress of its studies and any issues
11 raised thereby.

12 (d) When an agency whose agency head is a collegial body,
13 such as a commission, board, or council, is required to submit a
14 report pursuant to this section and is required by its own internal
15 procedures to have the report reviewed by its agency head prior to
16 finalization, the agency may submit to the board a draft version
17 of the report by the deadline indicated in subdivision (a) of this
18 subsection and shall submit a final version of the report after
19 review by the agency head, no later than fifteen days after the
20 deadline indicated in subdivision (a) of this subsection.

21 (e) Receipt of an affirmative determination of need from
22 the board by the submittal deadline for agency reports under
23 subdivision (a) of this subsection is a condition precedent to
24 further processing of the application.

25 (3) The board shall prepare a project analysis containing

1 a compilation of agency reports and summaries of the material
2 contained therein which shall be filed with the hearing officer and
3 served on all parties no later than one hundred fifteen days after
4 the application is filed and which shall include:

5 (a) A statement indicating whether the proposed electric
6 transmission line will be in compliance with the rules and
7 regulations of the board and affected agencies;

8 (b) The studies and reports required by this section and
9 section 101 of this act;

10 (c) Comments received from any other agency or person;
11 and

12 (d) The recommendation of the board as to the disposition
13 of the application, of variances, exemptions, exceptions, or other
14 relief identified by any party, and of any proposed conditions of
15 certification which the board believes should be imposed.

16 (4) The failure of any agency to submit a preliminary
17 statement of issues or a report, or to submit its preliminary
18 statement of issues or report within the allowed time, is not
19 grounds for the alteration of any time limitation under section
20 89 of this act. The failure to submit a preliminary statement
21 of issues or a report, or the inadequacy of the preliminary
22 statement of issues or report, is not grounds to deny or condition
23 certification.

24 Sec. 85. (1) (a) No later than one hundred forty-five days
25 after the application is filed, the hearing officer shall conduct

1 a certification hearing at a central location in proximity to the
2 proposed transmission line or corridor.

3 (b) Notice of the certification hearing and other public
4 hearings provided for in this section and notice of the deadline
5 for filing of notice of intent to be a party shall be made in
6 accordance with the requirements of section 98 of this act.

7 (2) (a) Parties to the proceeding shall be:

8 (i) The applicant;

9 (ii) The board;

10 (iii) The local public health department;

11 (iv) The Game and Parks Commission;

12 (v) The Public Service Commission;

13 (vi) The Department of Roads;

14 (vii) The Department of Aeronautics;

15 (viii) Each natural resources district in the
16 jurisdiction of which the proposed transmission line or corridor
17 is to be located; and

18 (ix) The local government.

19 (b) Any party listed in subdivision (a) of this
20 subsection, other than the board or the applicant, may waive its
21 right to participate in these proceedings. If any listed party
22 fails to file a notice of its intent to be a party on or before the
23 thirtieth day before the certification hearing, the party is deemed
24 to have waived its right to be a party unless its participation
25 would not prejudice the rights of any party to the proceeding.

1 (c) Upon the filing with the hearing officer of a notice
2 of intent to be a party by an agency, corporation, or association
3 described in subdivision (c)(i) or (ii) of this subsection or a
4 petition for intervention by a person described in subdivision
5 (c)(iii) of this subsection no later than thirty days before the
6 date set for the certification hearing, the following shall also be
7 parties to the proceeding:

8 (i) Any agency not listed in subdivision (a) of this
9 subsection as to matters within its jurisdiction;

10 (ii) Any domestic nonprofit corporation or association
11 formed, in whole or in part, to promote conservation of natural
12 beauty; to protect the environment, personal health, or other
13 biological values; to preserve historical sites; to promote
14 consumer interests; to represent labor, commercial, or industrial
15 groups; or to promote comprehensive planning or orderly development
16 of the area in which the proposed transmission line or corridor
17 is to be located; and

18 (iii) Any person whose substantial interests are affected
19 and being determined by the proceeding.

20 (d) Any agency whose properties or works may be affected
21 shall be made a party upon the request of the agency or any part
22 to this proceeding.

23 (3)(a) The order of presentation at the certification
24 hearing, unless otherwise changed by the hearing officer to ensure
25 the orderly presentation of witnesses and evidence, shall be:

- 1 (i) The applicant;
2 (ii) The board;
3 (iii) State agencies;
4 (iv) Regional agencies, including local public health
5 districts and natural resources districts;
6 (v) Local governments; and
7 (vi) Other parties.

8 (b) When appropriate, any person may be given an
9 opportunity to present oral or written communications to the
10 hearing officer. If the hearing officer proposes to consider
11 such communications, all parties shall be given an opportunity to
12 cross-examine, challenge, or rebut the communications.

13 (4) (a) One public hearing at which members of the public
14 who are not parties to the certification hearing may testify shall
15 be held within the boundaries of each county, at the option of any
16 local government.

17 (b) A local government shall notify the hearing officer
18 and all parties not later than twenty-one days after the
19 application has been determined complete as to whether the local
20 government wishes to have a public hearing. If a filing for an
21 alternate corridor is accepted for consideration under subsection
22 (1) of section 86 of this act by the board and the applicant, any
23 newly affected local government shall notify the hearing officer
24 and all parties not later than ten days after the data concerning
25 the alternate corridor has been determined complete as to whether

1 the local government wishes to have such a public hearing. The
2 local government is responsible for providing the location of the
3 public hearing if held separately from the certification hearing.

4 (c) Within five days after notification, the hearing
5 officer shall determine the date of the public hearing, which shall
6 be held before or during the certification hearing. If two or more
7 local governments within one county request a public hearing, the
8 hearing shall be consolidated so that only one public hearing is
9 held in any county. The location of a consolidated hearing shall be
10 determined by the hearing officer.

11 (d) If a local government does not request a public
12 hearing within twenty-one days after the application has been
13 determined complete, persons residing within the jurisdiction of
14 the local government may testify during that portion of the
15 certification hearing at which public testimony is heard.

16 (5) At the conclusion of the certification hearing, the
17 hearing officer shall, after consideration of all evidence of
18 record, issue a recommended order disposing of the application
19 no later than forty-five days after the transcript of the
20 certification hearing and the public hearing is filed with the
21 board.

22 (6)(a) No later than twenty-five days before the
23 certification hearing, the board or the applicant may request that
24 the hearing officer cancel the certification hearing and relinquish
25 jurisdiction to the board if all parties to the proceeding

1 stipulate that there are no disputed issues of material fact to be
2 raised at the certification hearing.

3 (b) The hearing officer shall issue an order granting or
4 denying the request within five days.

5 (c) If the hearing officer grants the request, the board
6 and the applicant shall publish notices of the cancellation of the
7 certification hearing in accordance with section 98 of this act.

8 (d) (i) If the hearing officer grants the request, the
9 board shall prepare and issue a final order in accordance with
10 subdivision (1) (a) of section 90 of this act.

11 (ii) Parties may submit proposed final orders to the
12 board no later than ten days after the hearing officer issues an
13 order relinquishing jurisdiction.

14 (7) The applicant shall pay those expenses and costs
15 associated with the conduct of the hearing and the recording and
16 transcription of the proceedings.

17 Sec. 86. (1) (a) No later than forty-five days before the
18 originally scheduled certification hearing, any party may propose
19 alternate transmission line corridor routes for consideration under
20 the Electric Transmission Line Siting Act.

21 (b) A notice of a proposed alternate corridor shall
22 be filed with the hearing officer, all parties, and any local
23 governments in whose jurisdiction the alternate corridor is
24 proposed. The filing shall include the most recent United States
25 Geological Survey quadrangle maps specifically delineating the

1 corridor boundaries, a description of the proposed corridor, and
2 a statement of the reasons the proposed alternate corridor should
3 be certified.

4 (c)(i) Within seven days after receipt of the notice,
5 the applicant and the board shall file with the hearing officer
6 and all parties a notice of acceptance or rejection of a proposed
7 alternate corridor for consideration. If the alternate corridor is
8 rejected by the applicant or the board, the certification hearing
9 and the public hearings shall be held as scheduled. If both the
10 applicant and the board accept a proposed alternate corridor for
11 consideration, the certification hearing and the public hearings
12 shall be rescheduled, if necessary.

13 (ii) If rescheduled, the certification hearing shall be
14 held no more than ninety days after the previously scheduled
15 certification hearing, unless the data submitted under subdivision
16 (e) of this subsection is determined to be incomplete, in which
17 case the rescheduled certification hearing shall be held no
18 more than one hundred five days after the previously scheduled
19 certification hearing. If additional time is needed due to the
20 alternate corridor crossing a local government jurisdiction that
21 was not previously affected, the remainder of the schedule listed
22 in this subsection shall be appropriately adjusted by the hearing
23 officer to allow that local government to prepare a report pursuant
24 to subdivision (2)(a)(iv) of section 84 of this act.

25 (d) Notice of the filing of the alternate corridor, of

1 the revised time schedules, of the deadline for newly affected
2 persons and agencies to file notice of intent to become a party,
3 of the rescheduled hearing date, and of the proceedings shall be
4 published in accordance with section 98 of this act.

5 (e) Within twenty-one days after acceptance of an
6 alternate corridor by the board and the applicant, the party
7 proposing an alternate corridor shall have the burden of providing
8 all data to the agencies listed in subsection (2) of section 84 of
9 this act and newly affected agencies necessary for the preparation
10 of a supplementary report on the proposed alternate corridor.

11 (f)(i) Reviewing agencies shall advise the board of any
12 issues concerning completeness no later than fifteen days after
13 the submittal of the data required by subdivision (e) of this
14 subsection. Within twenty-two days after receipt of the data, the
15 board shall issue a determination of completeness.

16 (ii) If the board determines that the data required by
17 subdivision (e) of this subsection is not complete, the party
18 proposing the alternate corridor shall file such additional data to
19 correct the incompleteness. This additional data must be submitted
20 within fourteen days after the determination by the board.

21 (iii) If the board, within fourteen days after receiving
22 the additional data, determines that the data remains incomplete,
23 the incompleteness of the data is deemed a withdrawal of the
24 proposed alternate corridor. The board may make its determination
25 based on recommendations made by other affected agencies.

1 (g) The agencies listed in subsection (2) of section
2 84 of this act and any newly affected agencies shall file
3 supplementary reports with the applicant and the board which
4 address the proposed alternate corridors no later than twenty-four
5 days after the data submitted pursuant to subdivision (e) or (f) of
6 this subsection is determined to be complete.

7 (h) The agency reports on alternate corridors shall
8 include all information required by subsection (2) of section 84 of
9 this act.

10 (i) When an agency whose agency head is a collegial body,
11 such as a commission, board, or council, is required to submit a
12 report pursuant to this section and is required by its own internal
13 procedures to have the report reviewed by its agency head prior to
14 finalization, the agency may submit to the board a draft version
15 of the report by the deadline indicated in subdivision (g) of this
16 subsection and shall submit a final version of the report after
17 review by the agency head no later than seven days after the
18 deadline indicated in subdivision (g) of this subsection.

19 (j) The board shall file with the hearing officer, the
20 applicant, and all parties a project analysis consistent with
21 subsection (3) of section 84 of this act no more than sixteen
22 days after submittal of agency reports on the proposed alternate
23 corridor.

24 (2) If the original certification hearing date is
25 rescheduled, the rescheduling shall not provide the opportunity for

1 parties to file additional alternate corridors to the applicant's
2 proposed corridor or any accepted alternate corridor. However,
3 an amendment to the application which changes the alignment of
4 the applicant's proposed corridor shall require rescheduling of
5 the certification hearing, if necessary, so as to allow time for
6 a party to file alternate corridors to the realigned proposed
7 corridor for which the application has been amended. Any alternate
8 corridor proposal shall have the same starting and ending points as
9 the realigned portion of the corridor proposed by the applicant's
10 amendment, except that the hearing officer for good cause shown
11 may authorize another starting or ending point in the area of the
12 applicant's amended corridor.

13 (3)(a) Notwithstanding the rejection of a proposed
14 alternate corridor by the applicant or the board, any party may
15 present evidence at the certification hearing to show that a
16 corridor proper for certification does not satisfy the criteria
17 listed in section 90 of this act or that a rejected alternate
18 corridor would meet the criteria set forth in section 90 of this
19 act. Evidence may not be admitted at the certification hearing
20 on any alternate corridor unless the alternate corridor was
21 proposed by the filing of a notice at least forty-five days before
22 the originally scheduled certification hearing pursuant to this
23 section. Rejected alternate corridors shall be considered by the
24 board as provided in subsections (4) and (5) of section 90 of this
25 act.

1 (b) The party proposing an alternate corridor has the
2 burden to prove that the alternate corridor can be certified at
3 the certification hearing. The Electric Transmission Line Siting
4 Act does not require an applicant or agency that is not proposing
5 the alternate corridor to submit data in support of the alternate
6 corridor.

7 (4) If an alternate corridor is accepted by the applicant
8 and the board pursuant to a notice of acceptance as provided in
9 this section and the corridor is ultimately determined to be the
10 corridor that would meet the criteria set forth in subsections (4)
11 and (5) of section 90 of this act, the board shall certify that
12 corridor.

13 Sec. 87. (1) A local government whose jurisdiction is to
14 be crossed by a proposed corridor may hold one informational public
15 meeting in addition to the hearings specifically authorized by the
16 Electric Transmission Line Siting Act on any matter associated with
17 the transmission line proceeding. The informational public meeting
18 may be conducted by the local government and shall be held no later
19 than fifty-five days after the application is filed. The purpose
20 of an informational public meeting is for the local government to
21 further inform the public about the transmission line proposed,
22 obtain comments from the public, and formulate its recommendation
23 with respect to the proposed transmission line.

24 (2) Informational public meetings shall be held solely
25 at the option of each local government. It is the intent of the

1 Legislature that local governments attempt to hold such public
2 meetings. Parties to the proceedings under the act shall be
3 encouraged to attend; but a party other than the applicant and the
4 board is not required to attend the informational public meetings.

5 (3) A local government that intends to conduct an
6 informational public meeting shall provide notice of the meeting,
7 with notice sent to all parties listed in subdivision (2)(a) of
8 section 85 of this act, not less than five days before the meeting.

9 (4) The failure to hold an informational public meeting
10 or the procedure used for the informational public meeting is not
11 grounds for the alteration of any time limitation under section 89
12 of this act or grounds to deny or condition certification.

13 Sec. 88. (1) Any amendment made to the application before
14 certification shall be sent by the applicant to the hearing officer
15 and to all parties to the proceeding.

16 (2) Any amendment to the application made before
17 certification shall be disposed of as part of the original
18 certification proceeding. Amendment of the application may be
19 considered good cause for alteration of time limits pursuant to
20 section 89 of this act.

21 Sec. 89. (1) Any time limitation in the Electric
22 Transmission Line Siting Act may be altered by the hearing
23 officer upon stipulation between the board and the applicant
24 unless objected to by any party within five days after notice or
25 for good cause shown by any party.

1 (2) A comprehensive application encompassing more than
2 one proposed transmission line may be good cause for alteration of
3 time limits.

4 Sec. 90. (1)(a) If the hearing officer has granted a
5 request to cancel the certification hearing and has relinquished
6 jurisdiction to the board under subsection (6) of section 85 of
7 this act, within forty days thereafter, the executive director
8 of the board shall act upon the application by written order in
9 accordance with the terms of the Electric Transmission Line Siting
10 Act and state the reasons for issuance or denial.

11 (b) If the hearing officer does not grant a request
12 to cancel the certification hearing under subsection (6) of
13 section 85 of this act, within sixty days after receipt of
14 the hearing officer's recommended order, the board shall act upon
15 the application by written order, approving in whole, approving
16 with such conditions as the board deems appropriate, or denying the
17 certification and stating the reasons for issuance or denial.

18 (2) The issues that may be raised in any hearing before
19 the board shall be limited to matters raised in the certification
20 proceeding before the hearing officer or raised in the recommended
21 order of the hearing officer.

22 (3) If certification is denied, the board, or executive
23 director if applicable, shall set forth in writing the action
24 the applicant would have to take to secure the approval of the
25 application.

1 (4) In determining whether an application should be
2 approved in whole, approved with modifications or conditions, or
3 denied, the board, or executive director when applicable, shall
4 consider whether, and the extent to which, the location of the
5 transmission line corridor and the construction, operation, and
6 maintenance of the transmission line will:

7 (a) Ensure electric power system reliability and
8 integrity;

9 (b) Meet the electrical energy needs of the state in an
10 orderly, economical, and timely fashion;

11 (c) Comply with applicable nonprocedural requirements of
12 agencies;

13 (d) Be consistent with applicable provisions of local
14 government comprehensive plans, if any; and

15 (e) Effect a reasonable balance between the need for the
16 transmission line as a means of providing reliable, economically
17 efficient electric energy, as determined by the board under section
18 101 of this act, and the impact upon the public and the environment
19 resulting from the location of the transmission line corridor and
20 the construction, operation, and maintenance of the transmission
21 lines.

22 (5)(a) Any transmission line corridor certified by the
23 board, or executive director if applicable, shall meet the criteria
24 of this section. When more than one transmission line corridor is
25 proper for certification under section 67 of this act and meets

1 the criteria of this section, the board, or executive director if
2 applicable, shall certify the transmission line corridor that has
3 the least adverse impact regarding the criteria in subsection (4)
4 of this section, including costs.

5 (b) If the board, or executive director if applicable,
6 finds that an alternate corridor rejected pursuant to section 86 of
7 this act meets the criteria of subsection (4) of this section and
8 has the least adverse impact regarding the criteria in subsection
9 (4) of this act, including cost, of all corridors that meet the
10 criteria of subsection (4) of this section, the board, or executive
11 director if applicable, shall deny certification or shall allow the
12 applicant to submit an amended application to include the corridor.

13 (c) If the board, or executive director if applicable,
14 finds that two or more of the corridors that comply with subsection
15 (4) of this section have the least adverse impacts regarding the
16 criteria in subsection (4) of this section, including costs, and
17 that the corridors are substantially equal in adverse impacts
18 regarding the criteria in subsection (4) of this section, including
19 costs, the board, or executive director if applicable, shall
20 certify the corridor preferred by the applicant if the corridor is
21 one proper for certification under section 67 of this act.

22 (6) The issuance or denial of the certification is the
23 final administrative action required as to that application.

24 Sec. 91. (1) Subject to the conditions set forth in
25 the certification, certification shall constitute the sole license

1 of the state and any agency as to the approval of the location
2 of transmission line corridors and the construction, operation,
3 and maintenance of transmission lines. The certification is valid
4 for the life of the transmission line if construction on, or
5 condemnation or acquisition of, the right-of-way is commenced
6 within five years after the date of certification or such later
7 date as may be authorized by the board.

8 (2) (a) The certification authorizes the licensee to
9 locate the transmission line corridor and to construct and
10 maintain the transmission lines subject only to the conditions
11 of certification set forth in the certification.

12 (b) The certification may include conditions that
13 constitute variances and exemptions from nonprocedural standards
14 or rules of the board or any other agency which were expressly
15 considered during the certification review unless waived by the
16 agency as provided in section 84 of this act and which otherwise
17 would be applicable to the location of the proposed transmission
18 line corridor or the construction, operation, and maintenance of
19 the transmission lines.

20 (3) (a) The certification shall be in lieu of any license,
21 permit, certificate, or similar document required by any state,
22 regional, or local agency.

23 (b) On certification, any license, easement, or other
24 interest in state lands shall be issued by the appropriate agency
25 as a ministerial act.

1 (4) The Electric Transmission Line Siting Act does not in
2 any way affect the ratemaking powers of the board. The act does
3 not in any way affect the right of any local government to charge
4 appropriate fees or require that construction be in compliance with
5 the National Electrical Safety Code.

6 (5) A term or condition of certification may not be
7 interpreted to preclude the postcertification exercise by any party
8 of whatever procedural rights it may have under the Administrative
9 Procedure Act, including those related to rulemaking proceedings.

10 Sec. 92. (1) Within sixty days after certification of a
11 directly associated transmission line under the Electrical Power
12 Plant Siting Act or a transmission line corridor under the Electric
13 Transmission Line Siting Act, the applicant shall file with the
14 board and with the county clerk for each county through which the
15 corridor will pass a notice of the certified route.

16 (2) The notice shall consist of maps or aerial
17 photographs in the scale of one to twenty-four thousand which
18 clearly show the location of the certified route and shall
19 state that the certification of the corridor will result in the
20 acquisition of rights-of-way within the corridor. Each county clerk
21 shall record the filing in the official record of the county
22 for the duration of the certification or until such time as the
23 applicant certifies to the board and the county clerk that all
24 lands required for the transmission line rights-of-way within the
25 corridor have been acquired within the county, whichever is sooner.

1 (3) The recording of this notice does not constitute a
2 lien, cloud, or encumbrance on real property.

3 Sec. 93. (1) A certification may be modified after
4 issuance in any one of the following ways:

5 (a) The board may delegate to the executive director
6 of the board the authority to modify specific conditions in the
7 certification; or

8 (b) The licensee may file a petition for modification
9 with the board or the board may initiate the modification upon its
10 own initiative.

11 (2) (a) A petition for modification shall set forth:

12 (i) The proposed modification;

13 (ii) The factual reasons asserted for the modification;
14 and

15 (iii) The anticipated additional environmental effects of
16 the proposed modification.

17 (b) The board may modify the terms and conditions of the
18 certification if no party objects in writing to the modification
19 within forty-five days after notice by mail to the last address of
20 record in the certification proceeding and if no other person whose
21 substantial interests will be affected by the modification objects
22 in writing within thirty days after issuance of public notice.

23 (c) If objections are raised or the board denies the
24 proposed modification, the licensee may file a request for hearing
25 on the modification with the board.

1 (d) A request for hearing referred to a hearing officer
2 shall be disposed of in the same manner as an application but with
3 time periods established by the hearing officer commensurate with
4 the significance of the modification requested.

5 Sec. 94. (1)(a) If, subsequent to certification, a
6 licensee proposes any material change to the application or prior
7 amendments, the licensee shall submit to the board a written
8 request for amendment and description of the proposed change to the
9 application. The board shall, within thirty days after the receipt
10 of the request for the amendment, determine whether the proposed
11 change to the application requires a modification of the conditions
12 of certification.

13 (b) If the board concludes that the change would not
14 require a modification of the conditions of certification, the
15 board shall notify, in writing, the licensee, all agencies, and all
16 parties of the approval of the amendment.

17 (c) If the board concludes that the change would require
18 a modification of the conditions of certification, the board shall
19 notify the licensee that the proposed change to the application
20 requires a request for modification under section 93 of this act.

21 (2) Postcertification submittals filed by a licensee
22 with one or more agencies are for the purpose of monitoring for
23 compliance with the issued certification. Each submittal must be
24 reviewed by each agency on an expedited and priority basis because
25 each facility certified under the Electric Transmission Line

1 Siting Act is a critical infrastructure facility. Postcertification
2 review may not be completed more than ninety days after complete
3 information for a segment of the certified transmission line is
4 submitted to the reviewing agencies.

5 Sec. 95. Any certification may be revoked or suspended:

6 (1) For any material false statement in the application
7 or in the supplemental or additional statements of fact or studies
8 required of the applicant when a true answer would have warranted
9 the board's refusal to recommend a certification in the first
10 instance;

11 (2) For failure to comply with the terms or conditions of
12 the certification; or

13 (3) For violation of the Electric Transmission Line
14 Siting Act or rules, regulations, or orders issued under the act.

15 Sec. 96. Failure to obtain a certification, or to comply
16 with the conditions thereof, or to comply with the Electric
17 Transmission Line Siting Act shall constitute a violation of the
18 act.

19 Sec. 97. (1) If any provision of the Electric
20 Transmission Line Siting Act is in conflict with any other
21 provision, limitation, or restriction under any law, rule,
22 regulation, or ordinance of this state or any political
23 subdivision, municipality, or agency, the act shall control and
24 such law, rule, regulation, or ordinance shall be deemed superseded
25 for the purposes of the act.

1 (2) The state hereby preempts the certification of
2 transmission lines and transmission line corridors.

3 (3) The board may adopt and promulgate rules and
4 regulations to carry out its duties under the act and to provide an
5 efficient, centrally coordinated, one-stop licensing process.

6 Sec. 98. (1) (a) The applicant shall arrange for the
7 publication of the notices specified in subdivision (b) of this
8 subsection which comply with the following:

9 (i) The notices shall be published in newspapers of
10 general circulation within counties crossed by the transmission
11 line corridors proper for certification. The required newspaper
12 notices for filing of an application and for the certification
13 hearing shall be one-half of a page in size in a standard-size
14 newspaper or a full page in a tabloid-size newspaper and published
15 in a section of the newspaper other than the section for legal
16 notices. These two notices shall include a map generally depicting
17 all transmission corridors proper for certification. A newspaper of
18 general circulation shall be the newspaper within a county crossed
19 by a transmission line corridor proper for certification which
20 newspaper has the largest daily circulation in that county and
21 has its principal office in that county. If the newspaper having
22 the largest daily circulation has its principal office outside the
23 county, the notices shall appear in both the newspaper having the
24 largest circulation in that county and in a newspaper authorized to
25 publish legal notices in that county;

1 (ii) The board shall adopt and promulgate rules and
2 regulations specifying the content of the newspaper notices; and

3 (iii) All notices published by the applicant shall be
4 paid for by the applicant and shall be in addition to the
5 application fee.

6 (b) Public notices that must be published under this
7 section include:

8 (i) The notice of the filing of an application, which
9 must include a description of the proceedings required by the
10 Electric Transmission Line Siting Act. The notice shall describe
11 the provisions of subsections (1) and (2) of section 91 of this act
12 and give the date by which notice of intent to be a party or a
13 petition to intervene in accordance with subsection (2) of section
14 85 of this act must be filed. This notice shall be published no
15 more than twenty-one days after the application is filed;

16 (ii) The notice of the certification hearing and any
17 other public hearing permitted under section 85 of this act. The
18 notice shall include the date by which a person wishing to appear
19 as a party must file the notice to do so. The notice of the
20 certification hearing shall be published at least sixty-five days
21 before the date set for the certification hearing;

22 (iii) The notice of the cancellation of the certification
23 hearing, if applicable. The notice shall be published at
24 least three days before the date of the originally scheduled
25 certification hearing; and

1 (iv) The notice of the filing of a proposal to modify
2 the certification submitted under section 93 of this act if the
3 board determines that the modification would require relocation
4 or expansion of the transmission line right-of-way or a certified
5 substation.

6 (2) The proponent of an alternate corridor shall arrange
7 for the publication of the filing of the proposal for an alternate
8 corridor, the revised time schedules, the date by which newly
9 affected persons or agencies may file the notice of intent to
10 become a party, and the date of the rescheduled hearing. A notice
11 listed in this subsection shall be published in a newspaper
12 of general circulation within the county or counties crossed
13 by the proposed alternate corridor and comply with the content
14 requirements set forth in subdivision (1)(a) of this section. The
15 notice shall be published not less than fifty days before the
16 rescheduled certification hearing.

17 (3) The board shall arrange for the publication of the
18 following:

19 (a) The notice of the filing of an application and the
20 date by which a person intending to become a party must file a
21 petition to intervene or a notice of intent to be a party. The
22 notice shall be published no later than twenty-one days after the
23 application has been filed;

24 (b) The notice of any administrative hearing for
25 certification, if applicable. The notice shall be published not

1 less than sixty-five days before the date set for a hearing,
2 except that notice for a rescheduled certification hearing after
3 acceptance of an alternative corridor shall be published not less
4 than fifty days before the date set for the hearing;

5 (c) The notice of the cancellation of a certification
6 hearing, if applicable. The notice shall be published not later
7 than seven days before the date of the originally scheduled
8 certification hearing;

9 (d) The notice of the hearing before the board, if
10 applicable; and

11 (e) The notice of stipulations, proposed agency action,
12 or a petition for modification.

13 Sec. 99. (1) The board shall charge the applicant the
14 fees established under this section, as appropriate, which shall
15 be remitted to the State Treasurer for credit to the Electric
16 Transmission Line Siting Cash Fund.

17 (2)(a) The application fee shall be one hundred thousand
18 dollars, plus seven hundred fifty dollars per mile for each
19 mile of corridor in which the transmission line right-of-way is
20 proposed to be located within an existing electric transmission
21 line right-of-way or within any existing right-of-way for any
22 road, highway, railroad, or other aboveground linear facility,
23 or one thousand dollars per mile for each mile of electric
24 transmission line corridor proposed to be located outside the
25 existing right-of-way.

1 (b) Sixty percent of the application fee shall be used
2 by the board to cover any costs associated with coordinating the
3 review of and acting upon the application and any costs for field
4 services associated with monitoring construction and operation of
5 the electric transmission line facility.

6 (c) The following percentages of the application fee
7 shall be used by the board for administrative costs:

8 (i) Five percent to compensate for expenses from the
9 initial exercise of duties associated with the filing of an
10 application; and

11 (ii) An additional ten percent if an administrative
12 hearing is held under section 85 of this act.

13 (d) (i) Upon written request with proper itemized
14 accounting within ninety days after final agency action by the
15 board or the withdrawal of the application, the agencies that
16 prepared reports under section 84 or 86 of this act or participated
17 in a hearing under section 85 or 86 of this act may submit a
18 written request to the board for reimbursement of expenses incurred
19 during the certification proceedings. The request shall contain
20 an accounting of expenses incurred, which may include time spent
21 reviewing the application, preparation of any studies required
22 of the agencies by the Electric Transmission Line Siting Act,
23 agency travel and per diem to attend any hearing held under the
24 act, and the local government providing additional notice of the
25 informational public meeting. The board shall review the request

1 and verify whether a claimed expense is valid. Valid expenses shall
2 be reimbursed, except that if the amount of funds available for
3 reimbursement is insufficient to provide for full compensation to
4 the agencies, reimbursement shall be on a prorated basis.

5 (ii) If the application review is held in abeyance
6 for more than one year, the agencies may submit a request for
7 reimbursement.

8 (e) If any funds are remaining from the application
9 fee, they shall be credited to the Electric Transmission Line
10 Siting Cash Fund, except that if the application is withdrawn, the
11 remaining funds shall be refunded to the applicant within ninety
12 days after withdrawal.

13 (3) (a) If no corridor alignment change is proposed by the
14 amendment, no amendment fee shall be charged.

15 (b) If a corridor alignment change under section 88 of
16 this act is proposed by the applicant, an additional fee of a
17 minimum of two thousand dollars and seven hundred fifty dollars per
18 mile shall be submitted to the board for use in accordance with the
19 act.

20 (c) If an amendment is required to address issues,
21 including alternate corridors under section 86 of this act, raised
22 by the board or other parties, no fee for the amendment shall be
23 charged.

24 (4) (a) If no corridor alignment change is proposed by the
25 licensee, the modification fee shall be four thousand dollars.

1 (b) If a corridor alignment change is proposed by the
2 licensee, the modification fee shall be one thousand dollars for
3 each mile of realignment plus an amount not to exceed ten thousand
4 dollars. The board shall adopt and promulgate rules and regulations
5 to establish the fee on a sliding scale based on the load-carrying
6 capability and configuration of the transmission line for use in
7 accordance with subsection (1) of this section.

8 Sec. 100. The Electric Transmission Line Siting Cash Fund
9 is created. The fund shall consist of fees credited pursuant to
10 the Electric Transmission Line Siting Act. The board shall use
11 the fund as provided in the act. Any unexpended balance in the
12 fund at the close of any biennium shall, when reappropriated, be
13 available for the uses and purposes of the fund for the succeeding
14 biennium; otherwise it shall lapse into the General Fund. Any
15 money in the Electric Transmission Line Siting Cash Fund available
16 for investment shall be invested by the state investment officer
17 pursuant to the Nebraska Capital Expansion Act and the Nebraska
18 State Funds Investment Act.

19 Sec. 101. (1)(a) Upon request by an applicant or upon
20 its own motion, the board shall schedule a public hearing, after
21 notice, to determine the need for a transmission line regulated
22 by the Electric Transmission Line Siting Act. The notice shall
23 be published at least twenty-one days before the date set
24 for the hearing and shall be published by the applicant in at
25 least one-fourth of a page size notice in newspapers of general

1 circulation, and by the board in the manner specified in the
2 Administrative Procedure Act, by giving notice to counties in whose
3 jurisdiction the transmission line could be placed, and by giving
4 notice to any persons who have requested to be placed on the
5 mailing list of the board for this purpose. Within twenty-one days
6 after receipt of a request for determination by an applicant, the
7 board shall set a date for the hearing. The hearing shall be held
8 within forty-five days after the filing of the request, and a
9 decision shall be rendered within sixty days after such filing.

10 (b) The board shall be the sole forum in which to
11 determine the need for a transmission line. The need for a
12 transmission line may not be raised or be the subject of review in
13 another proceeding.

14 (c) In the determination of need, the board shall
15 take into account the need for electric system reliability and
16 integrity, the need for abundant, low-cost electrical energy to
17 assure the economic well-being of the residents of this state,
18 the appropriate starting and ending point of the line, and
19 other matters within its jurisdiction deemed relevant to the
20 determination of need. The appropriate starting and ending points
21 of the electric transmission line shall be verified by the board in
22 its determination of need.

23 (d) The determination by the board of the need for the
24 transmission line is binding on all parties to any certification
25 proceeding under the Electric Transmission Line Siting Act and is

1 a condition precedent to the conduct of the certification hearing
2 prescribed therein. An order entered pursuant to this section
3 constitutes final agency action.

4 (2) The board shall have the following powers and duties:

5 (a) To adopt and promulgate rules and regulations to
6 implement this section; and

7 (b) To prescribe the forum, content, and necessary
8 supporting documentation and the required studies for the
9 determination of need.

10 (3) Any time limitation in this section may be altered by
11 the board upon stipulation between the board and the applicant or
12 for good cause shown by any party.

13 Sec. 102. (1) Certification pursuant to the Electric
14 Transmission Line Siting Act shall be admissible as evidence of
15 public need and necessity.

16 (2) No party may rely on this section to request the
17 award of attorney's fees or costs incurred as a result of
18 participation in the certification proceeding.

19 Sec. 103. Section 18-2441, Reissue Revised Statutes of
20 Nebraska, is amended to read:

21 18-2441 The powers of an agency shall include the power:

22 (1) To plan, develop, construct, reconstruct, operate,
23 manage, dispose of, participate in, maintain, repair, extend,
24 improve, or acquire by purchase, gift, lease, or otherwise, one
25 or more projects within or outside this state and act as agent,

1 or designate one or more other persons to act as its agent, in
2 connection with the planning, acquisition, construction, operation,
3 maintenance, repair, extension, or improvement of such project,
4 except that before any power project is constructed by an agency,
5 approval of the power project shall have been obtained from the
6 Nebraska Power Review Board ~~under sections 70-1012 to 70-1016,~~
7 pursuant to the Electric Transmission Line Siting Act or the
8 Electrical Power Plant Siting Act;

9 (2) To produce, acquire, sell, and distribute
10 commodities, including, without limitation, fuels necessary to the
11 ownership, use, operation, or maintenance of one or more projects;

12 (3) To enter into franchises, exchange, interchange,
13 pooling, wheeling, transmission, and other similar agreements;

14 (4) To make and execute contracts and other instruments
15 necessary or convenient to the exercise of the powers of the
16 agency;

17 (5) To employ agents and employees;

18 (6) To contract with any person within or outside this
19 state for the sale or transmission of any service, product, or
20 commodity supplied, transmitted, conveyed, transformed, produced,
21 or generated by any project, or for any interest therein or any
22 right to capacity thereof, on such terms and for such period of
23 time as the agency's board shall determine;

24 (7) To purchase, sell, exchange, produce, generate,
25 transmit, or distribute any service, product, or commodity within

1 and outside the state in such amounts as it shall determine to
2 be necessary and appropriate to make the most effective use of
3 its powers and to meet its responsibilities, and to enter into
4 agreements with any person with respect to such purchase, sale,
5 exchange, production, generation, transmission, or distribution on
6 such terms and for such period of time as the agency's board shall
7 determine;

8 (8) To acquire, own, hold, use, lease, as lessor or
9 lessee, sell, or otherwise dispose of, mortgage, pledge, or grant
10 a security interest in any real or personal property, commodity,
11 product, or service or any interest therein or right thereto;

12 (9) To exercise the power of eminent domain in the manner
13 set forth in Chapter 76, article 7. No real property of the state,
14 any municipality, or any political subdivision of the state, may be
15 so acquired without the consent of the state, such municipality, or
16 such subdivision;

17 (10) To incur debts, liabilities, or obligations
18 including the borrowing of money and the issuance of bonds, secured
19 or unsecured, pursuant to sections 18-2401 to 18-2485;

20 (11) To borrow money or accept contributions, grants, or
21 other financial assistance from a public authority and to comply
22 with such conditions and enter into such contracts, covenants,
23 mortgages, trust indentures, leases, or agreements as may be
24 necessary, convenient, or desirable;

25 (12) To fix, maintain, revise, and collect fees,

1 rates, rents, and charges for functions, services, facilities, or
2 commodities provided by the agency, and it shall be the mandatory
3 duty of each agency to fix, maintain, revise, and collect such
4 fees, rates, rents, and charges as will always be sufficient to pay
5 all operating and maintenance expenses of the agency, to pay for
6 costs of renewals and replacements to a project, to pay interest
7 on and principal of, whether at maturity or upon sinking-fund
8 redemption, any outstanding bonds or other indebtedness of the
9 agency, and to provide, as may be required by a resolution, trust
10 indenture, security instrument, or other agreement of the agency,
11 for any reasonable reserves for any such expenses, costs, or
12 debt service or for any margins or coverages over and above debt
13 service;

14 (13) Subject to any agreements with holders of
15 outstanding bonds, to invest any funds held in reserve or sinking
16 funds, or any funds not required for immediate disbursement,
17 including the proceeds from the sale of any bonds, in such
18 obligations, securities, and other investments as the board shall
19 deem proper;

20 (14) To join and pay dues to organizations, membership in
21 which is deemed by the board to be beneficial to the accomplishment
22 of the agency's purposes; and

23 (15) To exercise any other powers which are deemed
24 necessary and convenient to carry out sections 18-2401 to 18-2485.

25 Sec. 104. Section 70-306, Reissue Revised Statutes of

1 Nebraska, is amended to read:

2 70-306 (1) Any electric wire shall be placed at least
3 eighteen feet above all road crossings. Any electric poles and
4 wires shall be so placed as not to interfere with the public use of
5 such highways, and if practicable, the poles shall be set upon the
6 line of such highways.

7 (2) If any person engaged in distributing, generating,
8 or transmitting electric current for power or other purposes by
9 means of wires seeks to construct an electric wire over and across
10 any railroad tracks, telegraph wires, or rights-of-way of any
11 railroad company in this state and the electric wire intersects and
12 crosses streets, highways, alleys, and other public thoroughfares,
13 or elsewhere, such person and railroad company shall first endeavor
14 to agree by a contract as to the manner and kind of crossing to be
15 constructed. The contract shall at a minimum meet the requirements
16 of sections 75-706 and 75-707 as to terms and conditions of such
17 construction or placement and shall include the compensation, if
18 any, to be awarded as damages. If no contract is reached, the
19 person may proceed to have the same ascertained and determined in
20 the manner set forth in sections 76-704 to 76-724.

21 Sec. 105. Section 70-1002.03, Reissue Revised Statutes of
22 Nebraska, is amended to read:

23 70-1002.03 (1) When any electric generation facility or
24 transmission facility over seventy thousand volts is constructed
25 or acquired, either within or without the State of Nebraska,

1 and the output of the generation or transmission facility would
2 be transmitted over existing transmission facilities of others
3 within this state or transmitted over new transmission facilities
4 to be constructed or acquired within this state or through an
5 interconnection with existing facilities of others within this
6 state, and such transmission of the output would substantially
7 affect the reliability, operation, or safety of the transmission
8 system of a generating power agency or a distribution power agency
9 in this state, as defined in section 70-626.01, the party or
10 parties that would jointly or individually receive the output
11 from such electric generation or transmission facility and the
12 party or parties whose existing transmission system would be so
13 affected shall determine, pursuant to prudent utility practice,
14 what new transmission facilities or interconnection, if any, should
15 be constructed or acquired so that the output of the generation or
16 transmission facility will be transmitted in a reliable and safe
17 manner.

18 (2) As used in this section, prudent utility practice
19 ~~shall mean~~ means any of the practices, methods, and acts at a
20 particular time which, in the exercise of reasonable judgment
21 in the light of the facts, including, but not limited to,
22 the practices, methods, and acts engaged in or approved by
23 a significant portion of the electrical utility industry prior
24 thereto, known at the time the decision was made, would have been
25 expected to accomplish the desired result at the lowest reasonable

1 cost consistent with reliability, safety, and expedition.

2 (3) If the parties determine that new transmission
3 facilities or interconnection are to be required, the parties will
4 determine what new transmission facilities should be constructed or
5 acquired and what interconnection should be provided, utilizing to
6 the fullest extent possible the existing transmission facilities
7 for the maximum benefit of the electric ratepayers of this state.

8 (4) In the event that the parties are unable to agree,
9 before construction begins or the acquisition is finalized, but
10 after having made a reasonable effort to reach agreement, upon
11 any of the terms or conditions of ~~(1)~~ (a) what new transmission
12 facilities are to be constructed or acquired, ~~(2)~~ (b) who shall
13 construct or acquire such new transmission facilities, or ~~(3)~~
14 (c) agreement for the electrical interconnection of transmission
15 facilities, the matter shall be submitted to the Nebraska Power
16 Review Board for hearing and determination, before construction
17 begins or the acquisition is finalized, in accordance with
18 prudent utility practice as defined in this section and the
19 provisions of ~~sections~~ the Electric Transmission Line Siting Act,
20 the Electrical Power Plant Siting Act, or section 70-626.04, and
21 ~~70-1014,~~ utilizing to the fullest extent possible the existing
22 transmission facilities for the maximum benefit of the electric
23 ratepayers of this state. Any determination by such board regarding
24 rates shall be advisory only and not binding upon the parties.
25 Rates, tolls, and charges shall be as provided for in section

1 70-655.

2 Sec. 106. Section 70-1018, Reissue Revised Statutes of
3 Nebraska, is amended to read:

4 70-1018 In the event of any dispute between suppliers
5 concerning rates for service between such suppliers which cannot
6 be settled by negotiations, the dispute shall be submitted to the
7 board. The board may intervene in any such dispute on its own
8 motion. Upon the submission of such dispute or the board's decision
9 to intervene, the board shall set a time and place for hearing
10 thereon and give notice as provided in ~~section 70-1013.~~ ten days'
11 notice by mail to such suppliers as it deems to be affected.

12 Following such hearing the board shall make its recommendations
13 for the settlement of such dispute, which recommendations shall be
14 advisory only.

15 Sec. 107. Section 70-1504, Reissue Revised Statutes of
16 Nebraska, is amended to read:

17 70-1504 In the event of any disagreement arising among
18 the parties to an agreement authorized by sections 70-1501 to
19 70-1505 which cannot be settled by negotiations, the dispute may be
20 submitted to the Nebraska Power Review Board. Upon the submission
21 of any such disagreement to the board, the board shall set a
22 time and place for hearing thereon and give notice as provided in
23 ~~section 70-1013.~~ ten days' notice by mail to such parties as it
24 deems to be affected. Following such hearing, the board shall make
25 its recommendations for the settlement of such disagreement, which

1 recommendations shall be advisory only.

2 Sec. 108. Section 75-719, Reissue Revised Statutes of
3 Nebraska, is amended to read:

4 75-719 An electrical transmission line for which
5 application is required under the Electrical Power Plant Siting
6 Act, the Electric Transmission Line Siting Act, or section 75-710
7 will have complied with all the requirements of the appropriate act
8 or section 75-710, as applicable, when built in accordance with the
9 order and specifications ~~of the commission~~ for the construction of
10 a line giving reasonable protection to existing lines. A separate
11 order and set of specifications shall be issued covering the
12 construction of each transmission line or addition thereto. No
13 application need be made to the commission or to the Nebraska
14 Power Review Board for authority to construct a customer's primary
15 service connection between an existing electric transmission line
16 on either side of a highway and a customer's transformer location.
17 The construction of such a primary service connection shall conform
18 to the requirements of law and the rules and regulations of the
19 commission or the board and shall be used for a customer's service
20 only no part of which shall be along or on a section line, public
21 road, or property owned by another party. A line extension not to
22 exceed one-half mile in length, for which application is required
23 under section 75-710, may be built from an existing electric
24 transmission line prior to obtaining approval of such extension
25 by the commission or the board if all the owners or operators

1 of existing electrical or communication lines, or railroad signal
2 lines located within the respective distances described in section
3 75-710, and the Director of Aeronautics, if required by sections
4 75-713 and 75-714, consent to such construction. The construction
5 of such line extension shall conform to the requirements of
6 law and the rules and regulations of the commission or the
7 board. Within thirty days after the construction of such a line
8 extension, an application shall be made for construction of such
9 extension as required in other cases and shall be referred to as
10 a delayed application. All provisions of law relating to electric
11 transmission line applications, notices, hearings, and orders shall
12 apply to such delayed application. Neither the fact that the line
13 extension has been built nor the consent thereto given by owners of
14 other lines shall affect in any way the conclusion or authority of
15 the commission or the board. If it is finally determined that the
16 application should be denied because the line does not comply with
17 law, the owner shall remove the line extension.

18 Sec. 109. Section 75-109.01, Revised Statutes Cumulative
19 Supplement, 2006, is amended to read:

20 75-109.01 Except as otherwise specifically provided by
21 law, the Public Service Commission shall have jurisdiction, as
22 prescribed, over the following subjects:

23 (1) Common carriers, generally, pursuant to sections
24 75-101 to 75-158;

25 (2) Grain pursuant to the Grain Dealer Act and the Grain

1 Warehouse Act and sections 89-1,104 to 89-1,108;

2 (3) Manufactured homes and recreational vehicles
3 pursuant to the Uniform Standard Code for Manufactured Homes and
4 Recreational Vehicles;

5 (4) Modular housing units pursuant to the Nebraska
6 Uniform Standards for Modular Housing Units Act;

7 (5) Motor carrier registration and safety pursuant to
8 sections 75-301 to 75-322, 75-369.03, 75-370, and 75-371;

9 (6) Pipeline carriers and rights-of-way pursuant to the
10 State Natural Gas Regulation Act and sections 75-501 to 75-503;

11 (7) Railroad carrier safety pursuant to sections 74-918,
12 74-919, 74-1323, and 75-401 to 75-430;

13 (8) Telecommunications carriers pursuant to the
14 Automatic Dialing-Announcing Devices Act, the Emergency Telephone
15 Communications Systems Act, the Enhanced Wireless 911 Services
16 Act, the Intrastate Pay-Per-Call Regulation Act, the Nebraska
17 Telecommunications Regulation Act, the Nebraska Telecommunications
18 Universal Service Fund Act, the Telecommunications Relay System
19 Act, the Telephone Consumer Slamming Prevention Act, and sections
20 86-574 to 86-580;

21 (9) Transmission lines and rights-of-way pursuant to
22 sections 70-301 and ~~75-702~~ 75-708 to 75-724;

23 (10) Water service pursuant to the Water Service
24 Regulation Act; and

25 (11) Jurisdictional utilities governed by the State

1 Natural Gas Regulation Act. If the provisions of Chapter 75
2 are inconsistent with the provisions of the State Natural Gas
3 Regulation Act, the provisions of the State Natural Gas Regulation
4 Act control.

5 Sec. 110. Original sections 18-2441, 70-306, 70-1002.03,
6 70-1018, 70-1504, and 75-719, Reissue Revised Statutes of Nebraska,
7 and section 75-109.01, Revised Statutes Cumulative Supplement,
8 2006, are repealed.

9 Sec. 111. The following sections are outright repealed:
10 Sections 70-1012, 70-1012.01, 70-1013, 70-1014, 70-1014.01,
11 70-1015, 75-702, 75-703, 75-704, 75-705, 75-706, 75-707, 75-715,
12 and 75-718, Reissue Revised Statutes of Nebraska.