HOUSE FILE NO. 436

FIRST COMMITTEE ENGROSSMENT

January 29, 2007
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The bill was read for the first time and referred to the Committee on Finance

Referred by Chair to Energy Finance and Policy Division.
March 30, 2007
Returned to the Committee on Finance as Amended.

A bill for an act

relating to energy; enacting the Next Generation Energy Act of 2007, the Global Warming Mitigation Act of 2007, and the Community-Based Development Act of 2007; modifying or adding provisions related to state energy policy goals for fossil fuel-use reduction and renewable energy use, energy efficiency, energy conservation improvement, recovery of energy-related utility costs, energy savings, energy audits, electric utility renewable energy obligations of 25 percent by 2025, community-based energy development, the transition to an energy savings requirement for electric and natural gas utilities, addressing climate change, the reliability administrator, the delegation to counties for permitting wind projects under 25 megawatts, reducing greenhouse gas emissions, and allocation of financial penalties against utilities; requiring studies and reports; making technical and clarifying changes; amending Minnesota Statutes 2006, sections 123B.65, subdivision 2; 216B.16, subdivisions 1, 6b; 216B.1612; 216B.1645, by adding subdivisions; 216B.169; 216B.1691, subdivisions 5, as amended, 7, as added; 216B.241; 216C.05; 216C.052; 216C.31; 471.345, subdivision 13; 500.30, subdivision 2; 504B.161, subdivision 1; proposing coding for new law in Minnesota Statutes, chapters 216B; 216F; proposing coding for new law as Minnesota Statutes, chapter 216H; repealing Minnesota Statutes 2006, sections 216B.165; 216C.27; 216C.30, subdivision 5; Laws 2007, chapter 3, section 3; Minnesota Rules, parts 7635.0100; 7635.0110; 7635.0120; 7635.0130; 7635.0140; 7635.0150; 7635.0160; 7635.0170; 7635.0180; 7635.0200; 7635.0210; 7635.0220; 7635.0230; 7635.0240; 7635.0250; 7635.0260; 7635.0300; 7635.0310; 7635.0320; 7635.0330; 7635.0340; 7635.0400; 7635.0410; 7635.0420; 7635.0500; 7635.0510; 7635.0520; 7635.0530; 7635.0600; 7635.0610; 7635.0620; 7635.0630; 7635.0640; 7635.1000; 7635.1010; 7635.1020; 7635.1030; 7655.0100; 7655.0120; 7655.0200; 7655.0210; 7655.0220; 7655.0230; 7655.0240; 7655.0250; 7655.0260; 7655.0270; 7655.0280; 7655.0290; 7655.0300; 7655.0310; 7655.0320; 7655.0330; 7655.0400; 7655.0410; 7655.0420.

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

ARTICLE 1
GENERAL PROVISIONS

Section 1. **TITLE.**

This act may be cited as the Next Generation Energy Act of 2007.

Sec. 2. Minnesota Statutes 2006, section 216C.05, is amended to read:

216C.05 FINDINGS AND PURPOSE.

Subdivision 1. **Energy planning.** The legislature finds and declares that continued growth in demand for energy will cause severe social and economic dislocations, and that the state has a vital interest in providing for: increased efficiency in energy consumption, the development and use of renewable energy resources wherever possible, and the creation of an effective energy forecasting, planning, and education program.

The legislature further finds and declares that the protection of life, safety, and financial security for citizens during an energy crisis is of paramount importance.

Therefore, the legislature finds that it is in the public interest to review, analyze, and encourage those energy programs that will minimize the need for annual increases in fossil fuel consumption by 1990 and the need for additional electrical generating plants, and provide for an optimum combination of energy sources consistent with environmental protection and the protection of citizens.

The legislature intends to monitor, through energy policy planning and implementation, the transition from historic growth in energy demand to a period when demand for traditional fuels becomes stable and the supply of renewable energy resources is readily available and adequately utilized.

Subd. 2. **Energy policy goals.** It is the energy policy of the state of Minnesota that:

(1) the per capita use of fossil fuel as an energy input be reduced by 15 percent by the year 2015, through increased reliance on energy efficiency and renewable energy alternatives; and

(2) 25 percent of the total energy used in the state be derived from renewable energy resources by the year 2025.

ARTICLE 2
ENERGY EFFICIENCY AND CONSERVATION

Section 1. Minnesota Statutes 2006, section 216B.16, subdivision 1, is amended to read:

Subdivision 1. **Notice.** Unless the commission otherwise orders, no public utility shall change a rate which has been duly established under this chapter, except upon 60 days' notice to the commission. The notice shall include statements of facts, expert opinions, substantiating documents, and exhibits, supporting the change requested, and state the change proposed to be made in the rates then in force and the time when the modified rates will go into effect. If the filing utility does not have an approved energy

conservation improvement plan on file with the department, it shall also include in its notice an energy conservation plan pursuant to section 216B.241. A filing utility subject to rate regulation under section 216B.026 shall reference in its notice the energy conservation improvement plans of the generation and transmission cooperative providing energy conservation improvement programs to members of the filing utility pursuant to section 216B.241. The filing utility shall give written notice, as approved by the commission, of the proposed change to the governing body of each municipality and county in the area affected. All proposed changes shall be shown by filing new schedules or shall be plainly indicated upon schedules on file and in force at the time.

Sec. 2. Minnesota Statutes 2006, section 216B.16, subdivision 6b, is amended to read:

Subd. 6b. **Energy conservation improvement.** (a) Except as otherwise provided in this subdivision, all investments and expenses of a public utility as defined in section 216B.241, subdivision 1, paragraph ~~(c)~~ (i), incurred in connection with energy conservation improvements shall be recognized and included by the commission in the determination of just and reasonable rates as if the investments and expenses were directly made or incurred by the utility in furnishing utility service.

(b) ~~After December 31, 1999,~~ Investments and expenses for energy conservation improvements shall not be included by the commission in the determination of (i) just and reasonable electric and gas rates for retail electric and gas service provided to large electric customer facilities that have been exempted by the commissioner of the department pursuant to section 216B.241, subdivision 1a, paragraph (b); or (ii) just and reasonable gas rates for large energy facilities. ~~However, no public utility shall be prevented from recovering its investment in energy conservation improvements from all customers that were made on or before December 31, 1999, in compliance with the requirements of section 216B.241.~~

(c) The commission may permit a public utility to file rate schedules providing for annual recovery of the costs of energy conservation improvements. These rate schedules may be applicable to less than all the customers in a class of retail customers if necessary to reflect the ~~differing minimum spending~~ requirements of section 216B.241~~, subdivision 1a~~. ~~After December 31, 1999,~~. The commission shall allow a public utility, without requiring a general rate filing under this section, to reduce the electric and gas rates applicable to large electric customer facilities that have been exempted by the commissioner of the department pursuant to section 216B.241, subdivision 1a, paragraph (b), and to reduce the gas rate applicable to a large energy facility by an amount that reflects the elimination of energy conservation improvement investments or expenditures for those facilities

~~required on or before December 31, 1999~~. In the event that the commission has set electric or gas rates based on the use of an accounting methodology that results in the cost of conservation improvements being recovered from utility customers over a period of years, the rate reduction may occur in a series of steps to coincide with the recovery of balances due to the utility for conservation improvements made by the utility on or before December 31, ~~1999~~ 2007.

Sec. 3. **[216B.1636] RECOVERY OF ELECTRIC UTILITY INFRASTRUCTURE COSTS.**

Subdivision 1. **Definitions.** (a) "Electric utility" means a public utility as defined in section 216B.02, subdivision 4, that furnishes electric service to retail customers.

(b) "Electric utility infrastructure costs" or "EUIC" means costs for electric utility infrastructure projects that were not included in the electric utility's rate base in its most recent general rate case.

(c) "Electric utility infrastructure projects" means projects that:

(1) replace or modify existing electric utility infrastructure, including utility-owned buildings, if the replacement or modification is shown to conserve energy or use energy more efficiently, consistent with section 216B.241, subdivision 1c; or

(2) conserve energy or use energy more efficiently by using waste heat recovery converted into electricity as defined in section 216B.241, subdivision 1, paragraph (n).

Subd. 2. **Filing.** (a) The commission may approve an electric utility's petition for a rate schedule to recover EUIC under this section. An electric utility may petition the commission to recover a rate of return, income taxes on the rate of return, incremental property taxes, if any, plus incremental depreciation expense associated with EUIC.

(b) The filing is subject to the following:

(1) an electric utility may submit a filing under this section no more than once per year; and

(2) an electric utility must file sufficient information to satisfy the commission regarding the proposed EUIC or be subject to denial by the commission, which information includes, but is not limited to:

(i) the location, description, and costs associated with the project;

(ii) evidence that the electric utility infrastructure project will conserve energy or use energy more efficiently than similar utility facilities currently used by the electric utility;

(iii) the proposed schedule for implementation;

(iv) a description of the costs, and salvage value, if any, associated with the existing infrastructure replaced or modified as a result of the project;

(v) the proposed rate design and an explanation of why the proposed rate design is in the public interest;

(vi) the magnitude and timing of any known future electric utility projects that the utility may seek to recover under this section;

(vii) the magnitude of EUIC in relation to the electric utility's base revenue as approved by the commission in the electric utility's most recent general rate case, exclusive of fuel cost adjustments;

(viii) the magnitude of EUIC in relation to the electric utility's capital expenditures since its most recent general rate case;

(ix) the amount of time since the utility last filed a general rate case and the utility's reasons for seeking recovery outside of a general rate case;

(x) documentation supporting the calculation of the EUIC; and

(xi) a cost and benefit analysis showing that the electric utility infrastructure project is in the public interest.

(c) Upon approval of the proposed projects and associated EUIC rate schedule, the utility may implement the electric utility infrastructure projects.

Subd. 3. **Commission authority; orders.** The commission may issue orders necessary to implement and administer this section.

Sec. 4. **[216B.2401] ENERGY CONSERVATION POLICY GOAL.**

It is the energy policy of the state of Minnesota to achieve annual energy savings equal to 1.5 percent of annual retail energy sales of electricity and natural gas directly through energy conservation improvement programs and rate design, and indirectly through energy codes and appliance standards, programs designed to transform the market or change consumer behavior, efficiency improvements to the utility infrastructure and system, and other efforts to promote energy efficiency and energy conservation.

Sec. 5. Minnesota Statutes 2006, section 216B.241, is amended to read:

216B.241 ENERGY CONSERVATION IMPROVEMENT.

Subdivision 1. **Definitions.** For purposes of this section and section 216B.16, subdivision 6b, the terms defined in this subdivision have the meanings given them.

(a) "Commission" means the Public Utilities Commission.

(b) "Commissioner" means the commissioner of commerce.

(c) "Customer facility" means all buildings, structures, equipment, and installations at a single site.

(d) "Department" means the Department of Commerce.

(e) "Energy conservation" means demand-side management of energy supplies resulting in a net reduction in energy use. Load management that reduces overall energy use is energy conservation.

(f) "Energy conservation improvement" means a project that results in energy efficiency or energy conservation. Energy conservation improvement does not include waste heat recovery converted into electricity or electric utility infrastructure projects approved by the commission under section 216B.1636.

(g) "Energy efficiency" refers to measures or programs, including energy conservation measures or programs, that target consumer behavior, equipment, processes, or devices designed to produce either an absolute decrease in consumption of electric energy or natural gas or a decrease in consumption of electric energy or natural gas on a per unit of production basis without a reduction in the quality or level of service provided to the energy consumer.

~~(g)~~ (h) "Gross annual retail energy sales" means annual electric sales to all retail customers in a utility's or association's Minnesota service territory or natural gas throughput to all retail customers, including natural gas transportation customers, on a utility's distribution system in Minnesota. For purposes of this section, gross annual retail energy sales exclude gas sales to a large energy facility and gas and electric sales to a large electric customer facility exempted by the commissioner under subdivision 1a, paragraph (b).

(i) "Investments and expenses of a public utility" includes the investments and expenses incurred by a public utility in connection with an energy conservation improvement, including but not limited to:

(1) the differential in interest cost between the market rate and the rate charged on a no-interest or below-market interest loan made by a public utility to a customer for the purchase or installation of an energy conservation improvement;

(2) the difference between the utility's cost of purchase or installation of energy conservation improvements and any price charged by a public utility to a customer for such improvements.

~~(h)~~ (j) "Large electric customer facility" means a customer facility that imposes a peak electrical demand on an electric utility's system of not less than 20,000 kilowatts, measured in the same way as the utility that serves the customer facility measures electrical demand for billing purposes, and for which electric services are provided at retail on a single bill by a utility operating in the state.

~~(i)~~ (k) "Large energy facility" has the meaning given it in section 216B.2421, subdivision 2, clause (1).

(l) "Load management" means an activity, service, or technology to change the timing or the efficiency of a customer's use of energy that allows a utility or a customer to respond to wholesale market fluctuations or to reduce ~~the overall~~ peak demand for energy or capacity.

(m) "Low-income programs" means energy conservation improvement programs that directly serve the needs of low-income persons, including low-income renters.

(n) "Waste heat recovery converted into electricity" means an energy recovery process that converts otherwise lost energy from the heat of exhaust stacks or pipes used for engines or manufacturing or industrial processes, or the reduction of high pressure in water or gas pipelines.

Subd. 1a. **Investment, expenditure, and contribution; public utility.** (a) For purposes of this subdivision and subdivision 2, "public utility" has the meaning given it in section 216B.02, subdivision 4. Each public utility shall spend and invest for energy conservation improvements under this subdivision and subdivision 2 the following amounts:

(1) for a utility that furnishes gas service, 0.5 percent of its gross operating revenues from service provided in the state;

(2) for a utility that furnishes electric service, 1.5 percent of its gross operating revenues from service provided in the state; and

(3) for a utility that furnishes electric service and that operates a nuclear-powered electric generating plant within the state, two percent of its gross operating revenues from service provided in the state.

For purposes of this paragraph (a), "gross operating revenues" do not include revenues from large electric customer facilities exempted by the commissioner under paragraph (b).

(b) The owner of a large electric customer facility may petition the commissioner to exempt both electric and gas utilities serving the large energy customer facility from the investment and expenditure requirements of paragraph (a) with respect to retail revenues attributable to the facility. At a minimum, the petition must be supported by evidence relating to competitive or economic pressures on the customer and a showing by the customer of reasonable efforts to identify, evaluate, and implement cost-effective conservation improvements at the facility. If a petition is filed on or before October 1 of any year, the order of the commissioner to exempt revenues attributable to the facility can be effective no earlier than January 1 of the following year. The commissioner shall not grant an exemption if the commissioner determines that granting the exemption is contrary to the public interest. The commissioner may, after investigation, rescind any

exemption granted under this paragraph upon a determination that ~~cost-effective~~ the customer is not continuing to make reasonable efforts to identify, evaluate, and implement energy conservation improvements ~~are available~~ at the large electric customer facility. ~~For the purposes of this paragraph, "cost-effective" means that the projected total cost of the energy conservation improvement at the large electric customer facility is less than the projected present value of the energy and demand savings resulting from the energy conservation improvement.~~ For the purposes of investigations by the commissioner under this paragraph, the owner of any large electric customer facility shall, upon request, provide the commissioner with updated information comparable to that originally supplied in or with the owner's original petition under this paragraph.

(c) The commissioner may require investments or spending greater than the amounts required under this subdivision for a public utility whose most recent advance forecast required under section 216B.2422 or 216C.17 projects a peak demand deficit of 100 megawatts or greater within five years under midrange forecast assumptions.

(d) A public utility or owner of a large electric customer facility may appeal a decision of the commissioner under paragraph (b) or (c) to the commission under subdivision 2. In reviewing a decision of the commissioner under paragraph (b) or (c), the commission shall rescind the decision if it finds that the required investments or spending will:

(1) not result in cost-effective energy conservation improvements; or

(2) otherwise not be in the public interest.

~~(e) Each utility shall determine what portion of the amount it sets aside for conservation improvement will be used for conservation improvements under subdivision 2 and what portion it will contribute to the energy and conservation account established in subdivision 2a. A public utility may propose to the commissioner to designate that all or a portion of funds contributed to the account established in subdivision 2a be used for research and development projects that can best be implemented on a statewide basis. Contributions must be remitted to the commissioner by February 1 of each year. Nothing in this subdivision prohibits a public utility from spending or investing for energy conservation improvement more than required in this subdivision.~~

Subd. 1b. **Conservation improvement by cooperative association or municipality.** (a) This subdivision applies to:

(1) a cooperative electric association that provides retail service to its members;

(2) a municipality that provides electric service to retail customers; and

(3) a municipality with ~~gross operating revenues in excess of $5,000,000 from sales of~~ more than 1,000,000,000 cubic feet in annual throughput sales to natural gas to retail customers.

(b) Each cooperative electric association and municipality subject to this subdivision shall spend and invest for energy conservation improvements under this subdivision the following amounts:

(1) for a municipality, 0.5 percent of its gross operating revenues from the sale of gas and 1.5 percent of its gross operating revenues from the sale of electricity, excluding gross operating revenues from electric and gas service provided in the state to large electric customer facilities; and

(2) for a cooperative electric association, 1.5 percent of its gross operating revenues from service provided in the state, excluding gross operating revenues from service provided in the state to large electric customer facilities indirectly through a distribution cooperative electric association.

(c) Each municipality and cooperative electric association subject to this subdivision shall identify and implement energy conservation improvement spending and investments that are appropriate for the municipality or association, except that a municipality or association may not spend or invest for energy conservation improvements that directly benefit a large energy facility or a large electric customer facility for which the commissioner has issued an exemption under subdivision 1a, paragraph (b).

(d) Each municipality and cooperative electric association subject to this subdivision may spend and invest annually up to ten percent of the total amount required to be spent and invested on energy conservation improvements under this subdivision on research and development projects that meet the definition of energy conservation improvement in subdivision 1 and that are funded directly by the municipality or cooperative electric association.

(e) Load-management activities ~~that do not reduce energy use but that increase the efficiency of the electric system~~ may be used to meet 50 percent of the conservation investment and spending requirements of this subdivision.

(f) A generation and transmission cooperative electric association that provides energy services to cooperative electric associations that provide electric service at retail to consumers may invest in energy conservation improvements on behalf of the associations it serves and may fulfill the conservation, spending, reporting, and energy savings goals on an aggregate basis. A municipal power agency or other not-for-profit entity that provides energy service to municipal utilities that provide electric service at retail may invest in energy conservation improvements on behalf of the municipal utilities it serves and may

fulfill the conservation, spending, reporting, and energy savings goals on an aggregate basis, under an agreement between the municipal power agency or not-for-profit entity and each municipal utility for funding the investments.

(g) ~~At least every four years, on a schedule determined by the commissioner, each municipality or cooperative shall file an overview of its conservation improvement plan with the commissioner. With this overview,~~ Each municipality or cooperative shall file energy conservation improvement plans by June 1 on a schedule determined by order of the commissioner, but at least every three years. Plans received by June 1 must be approved or approved as modified by the commissioner by December 1 of the same year. The municipality or cooperative shall ~~also~~ provide an evaluation to the commissioner detailing its energy conservation improvement spending and investments for the previous period. The evaluation must briefly describe each conservation program and must specify the energy savings or increased efficiency in the use of energy within the service territory of the utility or association that is the result of the spending and investments. The evaluation must analyze the cost-effectiveness of the utility's or association's conservation programs, using a list of baseline energy and capacity savings assumptions developed in consultation with the department. The commissioner shall review each evaluation and make recommendations, where appropriate, to the municipality or association to increase the effectiveness of conservation improvement activities. ~~Up to three percent of a utility's conservation spending obligation under this section may be used for program pre-evaluation, testing, and monitoring and program evaluation. The overview and evaluation filed by a municipality with less than 60,000,000 kilowatt-hours in annual retail sales of electric service may consist of a letter from the governing board of the municipal utility to the department providing the amount of annual conservation spending required of that municipality and certifying that the required amount has been spent on conservation programs pursuant to this subdivision.~~

~~(h) The commissioner shall also review each evaluation for whether a portion of the money spent on residential conservation improvement programs is devoted to programs that directly address the needs of renters and low-income persons unless an insufficient number of appropriate programs are available. For the purposes of this subdivision and subdivision 2, "low-income" means an income at or below 50 percent of the state median income.~~

~~(i) As part of its spending for conservation improvement, a municipality or association may contribute to the energy and conservation account. A municipality or association may propose to the commissioner to designate that all or a portion of funds contributed to the account be used for research and development projects that can best~~

~~be implemented on a statewide basis. Any amount contributed must be remitted to the commissioner by February 1 of each year.~~

~~(i)~~ (h) A municipality may spend up to 50 percent of its required spending under this section to refurbish an existing district heating or cooling system~~. This paragraph expires~~ until July 1, 2007. From July 1, 2007, through June 30, 2011, expenditures made to refurbish a district heating or cooling system are considered to be load-management activities under paragraph (e). This paragraph expires July 1, 2011.

(i) The commissioner shall consider and may require a utility, association, or other entity providing energy efficiency and conservation services under this section to undertake a program suggested by an outside source, including a political subdivision, nonprofit corporation, or community organization.

Subd. 1c. **Energy-saving goals.** (a) The commissioner shall establish energy-saving goals for energy conservation improvement expenditures and shall evaluate an energy conservation improvement program on how well it meets the goals set.

(b) Each individual utility and association shall have an annual energy-savings goal equivalent to 1.5 percent of gross annual retail energy sales unless modified by the commissioner under paragraph (d). The savings goals must be calculated based on the most recent three-year weather normalized average.

(c) The commissioner must adopt a filing schedule that is designed to have all utilities and associations operating under an energy savings plan by calendar year 2010.

(d) In its energy conservation improvement plan filing, a utility or association may request the commissioner to adjust its annual energy savings percentage goal based on its historical conservation investment experience, customer class makeup, load growth, a conservation potential study, or other factors the commissioner determines warrants an adjustment. The commissioner may not approve a plan that provides for an annual energy savings goal of less than one percent of gross annual retail energy sales from energy conservation improvements. A utility or association may include in its energy conservation plan energy savings from an electric utility infrastructure project or waste heat recovery converted into electricity project approved by the commission under section 216B.1636 that may count as energy savings in addition to the minimum energy savings goal of at least one percent for energy conservation improvements. Electric utility infrastructure projects must result in increased energy efficiency greater than that which would have occurred through normal maintenance activity.

(e) An energy savings goal is not satisfied by attaining the revenue expenditure requirements of subdivisions 1a and 1b, but can only be satisfied by meeting the energy savings goal established in this subdivision.

(f) An association or utility is not required to make energy conservation investments to attain the energy savings goals of this subdivision that are not cost-effective even if the investment is necessary to attain the energy savings goals. For the purpose of this paragraph, in determining cost-effectiveness, the commissioner shall consider the costs and benefits to ratepayers, the utility, participants, and society. In addition, the commissioner shall consider the rate at which an association or municipal utility is increasing its energy savings and its expenditures on energy conservation.

(g) On an annual basis, the commissioner shall produce and make publicly available a report on the annual energy savings and estimated carbon dioxide reductions achieved by the energy conservation improvement programs for the two most recent years for which data is available. The commissioner shall report on program performance both in the aggregate and for each entity filing an energy conservation improvement plan for approval or review by the commissioner.

(h) By January 15, 2010, the commissioner shall report to the legislature whether the spending requirements under subdivisions 1a and 1b are necessary to achieve the energy savings goals established in this subdivision.

Subd. 1d. ~~**Cooperative conservation investment increase phase-in**~~ **Technical assistance.** ~~The increase in required conservation improvement expenditures by a cooperative electric association that results from the amendments in Laws 2001, chapter 212, article 8, section 6, to subdivision 1b, paragraph (a), clause (1), must be phased in as follows:~~

~~(1) at least 25 percent shall be effective in year 2002;~~

~~(2) at least 50 percent shall be effective in year 2003;~~

~~(3) at least 75 percent shall be effective in year 2004; and~~

~~(4) all of the increase shall be effective in year 2005 and thereafter.~~

The commissioner shall evaluate energy conservation improvement programs on the basis of cost-effectiveness and the reliability of the technologies employed. The commissioner shall, by order, establish, maintain, and update energy savings assumptions that must be used when filing energy conservation improvement programs. The commissioner shall establish an inventory of the most effective energy conservation programs, techniques, and technologies, and encourage all Minnesota utilities to implement them, where appropriate, in their service territories. The commissioner shall describe these programs in sufficient detail to provide a utility reasonable guidance concerning implementation. The commissioner shall prioritize the opportunities in order of potential energy savings and in order of cost-effectiveness. The commissioner may contract with a third party to carry out any of the commissioner's duties under

this subdivision, and to obtain technical assistance to evaluate the effectiveness of any conservation improvement program. The commissioner may assess up to $800,000 annually until June 30, 2009, and $450,000 annually thereafter for the purposes of this subdivision. The assessments must be deposited into the energy and conservation account created under subdivision 2a. An assessment made under this subdivision is not subject to the cap on assessments provided by section 216B.62, or any other law.

Subd. 1e. **Applied research and development grants.** The commissioner may, by order, approve and make grants for applied research and development projects of general applicability that identify new technologies or strategies to maximize energy savings, improve the effectiveness of energy conservation programs, or document the carbon dioxide reductions from energy conservation programs. When approving projects, the commissioner shall consider proposals and comments from utilities and other interested parties. The commissioner may assess up to $3,600,000 annually for the purposes of this subdivision. The assessments must be deposited into the energy and conservation account created under subdivision 2a. An assessment made under this subdivision is not subject to the cap on assessments provided by section 216B.62, or any other law.

Subd. 1f. **Facilities energy efficiency.** (a) The Department of Administration and the Department of Commerce shall maintain and, as needed, revise the sustainable building design guidelines developed under section 16B.325.

(b) The Department of Administration and the Department of Commerce shall maintain and update the benchmarking tool developed under Laws 2001, chapter 212, article 1, section 3, so that all public buildings can use the benchmarking tool to maintain energy use information for the purposes of establishing energy efficiency benchmarks, tracking building performance, and measuring the results of energy efficiency and conservation improvements.

(c) The commissioner shall require that utilities include in their conservation improvement plans programs that facilitate professional engineering verification to qualify a building as Energy Star-labeled or as Leadership in Energy and Environmental Design (LEED) certified. The state goal is to achieve certification of 1,000 commercial buildings as Energy Star-labeled, and 100 commercial buildings as LEED-certified by December 31, 2010.

(d) The commissioner may assess up to $500,000 annually for the purposes of this subdivision. The assessments must be deposited into the energy and conservation account created under subdivision 2a. An assessment made under this subdivision is not subject to the cap on assessments provided by section 216B.62, or any other law.

Subd. 2. **Programs.** (a) The commissioner may require public utilities to make investments and expenditures in energy conservation improvements, explicitly setting forth the interest rates, prices, and terms under which the improvements must be offered to the customers. The required programs must cover no more than a ~~four-year~~ three-year period. Public utilities shall file conservation improvement plans by June 1, on a schedule determined by order of the commissioner, but at least every ~~four~~ three years. Plans received by a public utility by June 1 must be approved or approved as modified by the commissioner by December 1 of that same year. ~~The commissioner shall give special consideration and encouragement to programs that bring about significant net savings through the use of energy-efficient lighting.~~ The commissioner shall evaluate the program on the basis of cost-effectiveness and the reliability of technologies employed. The commissioner's order must provide to the extent practicable for a free choice, by consumers participating in the program, of the device, method, material, or project constituting the energy conservation improvement and for a free choice of the seller, installer, or contractor of the energy conservation improvement, provided that the device, method, material, or project seller, installer, or contractor is duly licensed, certified, approved, or qualified, including under the residential conservation services program, where applicable.

(b) The commissioner may require a utility to make an energy conservation improvement investment or expenditure whenever the commissioner finds that the improvement will result in energy savings at a total cost to the utility less than the cost to the utility to produce or purchase an equivalent amount of new supply of energy. The commissioner shall nevertheless ensure that every public utility operate one or more programs under periodic review by the department.

(c) Each public utility subject to subdivision 1a may spend and invest annually up to ten percent of the total amount required to be spent and invested on energy conservation improvements under this section by the utility on research and development projects that meet the definition of energy conservation improvement in subdivision 1 and that are funded directly by the public utility.

(d) A public utility may not spend for or invest in energy conservation improvements that directly benefit a large energy facility or a large electric customer facility for which the commissioner has issued an exemption pursuant to subdivision 1a, paragraph (b). The commissioner shall consider and may require a utility to undertake a program suggested by an outside source, including a political subdivision ~~or~~, a nonprofit corporation, or community organization.

~~(e) The commissioner may, by order, establish a list of programs that may be offered as energy conservation improvements by a public utility, municipal utility,~~

~~cooperative electric association, or other entity providing conservation services pursuant to this section. The list of programs may include rebates for high-efficiency appliances, rebates or subsidies for high-efficiency lamps, small business energy audits, and building recommissioning. The commissioner may, by order, change this list to add or subtract programs as the commissioner determines is necessary to promote efficient and effective conservation programs.~~

~~(f) The commissioner shall ensure that a portion of the money spent on residential conservation improvement programs is devoted to programs that directly address the needs of renters and low-income persons, in proportion to the amount the utility has historically spent on such programs based on the most recent three-year average relative to the utility's total conservation spending under this section, unless an insufficient number of appropriate programs are available.~~

~~(g)~~ (e) A utility, a political subdivision, or a nonprofit or community organization that has suggested a program, the attorney general acting on behalf of consumers and small business interests, or a utility customer that has suggested a program and is not represented by the attorney general under section 8.33 may petition the commission to modify or revoke a department decision under this section, and the commission may do so if it determines that the program is not cost-effective, does not adequately address the residential conservation improvement needs of low-income persons, has a long-range negative effect on one or more classes of customers, or is otherwise not in the public interest. The commission shall reject a petition that, on its face, fails to make a reasonable argument that a program is not in the public interest.

~~(h)~~ (f) The commissioner may order a public utility to include, with the filing of the utility's proposed conservation improvement plan under paragraph (a), the results of an independent audit of the utility's conservation improvement programs and expenditures performed by the department or an auditor with experience in the provision of energy conservation and energy efficiency services approved by the commissioner and chosen by the utility. The audit must specify the energy savings or increased efficiency in the use of energy within the service territory of the utility that is the result of the spending and investments. The audit must evaluate the cost-effectiveness of the utility's conservation programs.

~~(i) Up to three percent of a utility's conservation spending obligation under this section may be used for program pre-evaluation, testing, and monitoring and program audit and evaluation.~~

Subd. 2a. **Energy and conservation account.** The energy and conservation account is established in the special revenue fund in the state treasury. The commissioner

must deposit money ~~contributed under subdivisions 1a and 1b~~ assessed or contributed under subdivisions 1d, 1e, 1f, and 7 in the energy and conservation account in the ~~general~~ special revenue fund. Money in the account is appropriated to the department for ~~programs designed to meet the energy conservation needs of low-income persons and to make energy conservation improvements in areas not adequately served under subdivision 2, including research and development projects included in the definition of energy conservation improvement in subdivision 1~~ the purposes of subdivisions 1d, 1e, 1f, and 7. Interest on money in the account accrues to the account. ~~Using information collected under section 216C.02, subdivision 1, paragraph (b), the commissioner must, to the extent possible, allocate enough money to programs for low-income persons to assure that their needs are being adequately addressed. The commissioner must request the commissioner of finance to transfer money from the account to the commissioner of education for an energy conservation program for low-income persons. In establishing programs, the commissioner must consult political subdivisions and nonprofit and community organizations, especially organizations engaged in providing energy and weatherization assistance to low-income persons. At least one program must address the need for energy conservation improvements in areas in which a high percentage of residents use fuel oil or propane to fuel their source of home heating. The commissioner may contract with a political subdivision, a nonprofit or community organization, a public utility, a municipality, or a cooperative electric association to implement its programs. The commissioner may provide grants to any person to conduct research and development projects in accordance with this section.~~

Subd. 2b. **Recovery of expenses.** The commission shall allow a utility to recover expenses resulting from a conservation improvement program required by the department and contributions and assessments to the energy and conservation account, unless the recovery would be inconsistent with a financial incentive proposal approved by the commission. The commission shall allow a cooperative electric association subject to rate regulation under section 216B.026, to recover expenses resulting from energy conservation improvement programs, load management programs, and assessments and contributions to the energy and conservation account unless the recovery would be inconsistent with a financial incentive proposal approved by the commission. In addition, a utility may file annually, or the Public Utilities Commission may require the utility to file, and the commission may approve, rate schedules containing provisions for the automatic adjustment of charges for utility service in direct relation to changes in the expenses of the utility for real and personal property taxes, fees, and permits, the amounts of which the utility cannot control. A public utility is eligible to file for adjustment for real

and personal property taxes, fees, and permits under this subdivision only if, in the year previous to the year in which it files for adjustment, it has spent or invested at least 1.75 percent of its gross revenues from provision of electric service, excluding gross operating revenues from electric service provided in the state to large electric customer facilities for which the commissioner has issued an exemption under subdivision 1a, paragraph (b), and 0.6 percent of its gross revenues from provision of gas service, excluding gross operating revenues from gas services provided in the state to large electric customer facilities for which the commissioner has issued an exemption under subdivision 1a, paragraph (b), for that year for energy conservation improvements under this section.

Subd. 2c. **Performance incentives.** By December 31, 2008, the commission shall review any incentive plan for energy conservation improvement it has approved under section 216B.16, subdivision 6c, and adjust the utility performance incentives to recognize making progress toward and meeting the energy savings goals established in subdivision 1c.

Subd. 3. **Ownership of energy conservation improvement.** An energy conservation improvement made to or installed in a building in accordance with this section, except systems owned by the utility and designed to turn off, limit, or vary the delivery of energy, are the exclusive property of the owner of the building except to the extent that the improvement is subjected to a security interest in favor of the utility in case of a loan to the building owner. The utility has no liability for loss, damage or injury caused directly or indirectly by an energy conservation improvement except for negligence by the utility in purchase, installation, or modification of the product.

Subd. 4. **Federal law prohibitions.** If investments by public utilities in energy conservation improvements are in any manner prohibited or restricted by federal law and there is a provision under which the prohibition or restriction may be waived, then the commission, the governor, or any other necessary state agency or officer shall take all necessary and appropriate steps to secure a waiver with respect to those public utility investments in energy conservation improvements included in this section.

Subd. 5. **Efficient lighting program.** (a) Each public utility, cooperative electric association, and municipal utility that provides electric service to retail customers shall include as part of its conservation improvement activities a program to strongly encourage the use of fluorescent and high-intensity discharge lamps. The program must include at least a public information campaign to encourage use of the lamps and proper management of spent lamps by all customer classifications.

(b) A public utility that provides electric service at retail to 200,000 or more customers shall establish, either directly or through contracts with other persons, including

lamp manufacturers, distributors, wholesalers, and retailers and local government units, a system to collect for delivery to a reclamation or recycling facility spent fluorescent and high-intensity discharge lamps from households and from small businesses as defined in section 645.445 that generate an average of fewer than ten spent lamps per year.

(c) A collection system must include establishing reasonably convenient locations for collecting spent lamps from households and financial incentives sufficient to encourage spent lamp generators to take the lamps to the collection locations. Financial incentives may include coupons for purchase of new fluorescent or high-intensity discharge lamps, a cash back system, or any other financial incentive or group of incentives designed to collect the maximum number of spent lamps from households and small businesses that is reasonably feasible.

(d) A public utility that provides electric service at retail to fewer than 200,000 customers, a cooperative electric association, or a municipal utility that provides electric service at retail to customers may establish a collection system under paragraphs (b) and (c) as part of conservation improvement activities required under this section.

(e) The commissioner of the Pollution Control Agency may not, unless clearly required by federal law, require a public utility, cooperative electric association, or municipality that establishes a household fluorescent and high-intensity discharge lamp collection system under this section to manage the lamps as hazardous waste as long as the lamps are managed to avoid breakage and are delivered to a recycling or reclamation facility that removes mercury and other toxic materials contained in the lamps prior to placement of the lamps in solid waste.

(f) If a public utility, cooperative electric association, or municipal utility contracts with a local government unit to provide a collection system under this subdivision, the contract must provide for payment to the local government unit of all the unit's incremental costs of collecting and managing spent lamps.

(g) All the costs incurred by a public utility, cooperative electric association, or municipal utility for promotion and collection of fluorescent and high-intensity discharge lamps under this subdivision are conservation improvement spending under this section.

Subd. 6. **Renewable energy research.** (a) A public utility that owns a nuclear generation facility in the state shall spend five percent of the total amount that utility is required to spend under this section to support basic and applied research and demonstration activities at the University of Minnesota Initiative for Renewable Energy and the Environment for the development of renewable energy sources and technologies. The utility shall transfer the required amount to the University of Minnesota on or before July 1 of each year and that annual amount shall be deducted from the amount of money the

utility is required to spend under this section. The University of Minnesota shall transfer at least ten percent of these funds to at least one rural campus or experiment station.

(b) Research funded under this subdivision shall include:

(1) development of environmentally sound production, distribution, and use of energy, chemicals, and materials from renewable sources;

(2) processing and utilization of agricultural and forestry plant products and other bio-based, renewable sources as a substitute for fossil-fuel-based energy, chemicals, and materials using a variety of means including biocatalysis, biorefining, and fermentation;

(3) conversion of state wind resources to hydrogen for energy storage and transportation to areas of energy demand;

(4) improvements in scalable hydrogen fuel cell technologies; and

(5) production of hydrogen from bio-based, renewable sources; and sequestration of carbon.

(c) Notwithstanding other law to the contrary, the utility may, but is not required to, spend more than two percent of its gross operating revenues from service provided in this state under this section or section 216B.2411.

(d) This subdivision expires June 30, 2008.

Subd. 7. **Low-income programs.** (a) The commissioner shall ensure that each utility and association provides low-income programs. When approving spending and energy savings goals for low-income programs, the commissioner shall consider historic spending and participation levels, energy savings for low-income programs, and the number of low-income persons residing in the utility's service territory. A utility that furnishes gas service must spend at least 0.2 percent of its gross operating revenue from residential customers in the state on low-income programs. A utility or association that furnishes electric service must spend at least 0.1 percent of its gross operating revenue from residential customers in the state on low-income programs. For a generation and transmission cooperative association, this requirement shall apply to each association's members' aggregate gross operating revenue from sale of electricity to residential customers in the state. Beginning in 2010, a utility or association that furnishes electric service must spend 0.2 percent of its gross operating revenue from residential customers in the state on low-income programs.

(b) To meet the requirements of paragraph (a), a utility or association may contribute funds to the energy and conservation account. An energy conservation improvement plan must state the amount, if any, of low-income energy conservation improvement funds the utility or association will contribute to the energy and conservation account. Contributions must be remitted to the commissioner by February 1 of each year.

(c) The commissioner shall establish low-income programs to utilize funds contributed to the energy and conservation account under paragraph (b). In establishing low-income programs, the commissioner shall consult political subdivisions, utilities, and nonprofit and community organizations, especially organizations engaged in providing energy and weatherization assistance to low-income persons. Money contributed to the energy and conservation account under paragraph (b) must provide programs for low-income persons, including low-income renters, in the service territory of the utility or association providing the funds. The commissioner shall record and report expenditures and energy savings achieved as a result of low-income programs funded through the energy and conservation account in the report required under subdivision 1c, paragraph (g). The commissioner may contract with a political subdivision, nonprofit or community organization, public utility, municipality, or cooperative electric association to implement low-income programs funded through the energy and conservation account.

(d) A utility or association may petition the commissioner to modify its required spending under paragraph (a) if the utility or association and the commissioner have been unable to expend the amount required under paragraph (a) for three consecutive years.

Subd. 8. **Assessment.** The commission or department may assess utilities subject to this section in proportion to their respective gross operating revenue from sales of gas or electric service within the state during the last calendar year to carry out the purposes of subdivisions 1d, 1e, and 1f. Those assessments are not subject to the cap on assessments provided by section 216B.62, or any other law.

Sec. 6. **[216B.2412] DECOUPLING OF ENERGY SALES FROM REVENUES.**

Subdivision 1. **Definition and purpose.** For the purpose of this section, "decoupling" means a regulatory tool designed to separate a utility's revenue from changes in energy sales. The purpose of decoupling is to reduce a utility's disincentive to promote energy efficiency.

Subd. 2. **Decoupling criteria.** The commission shall, by order, establish criteria and standards for decoupling. The commission shall design the criteria and standards to mitigate the impact on public utilities of the energy savings goals under section 216B.241 without adversely affecting utility ratepayers. In designing the criteria, the commission shall consider energy efficiency, weather, and cost of capital, among other factors.

Subd. 3. **Pilot programs.** The commission shall allow one or more rate-regulated utilities to participate in a pilot program to assess the merits of a rate-decoupling strategy to promote energy efficiency and conservation. Each pilot program must utilize the criteria and standards established in subdivision 2 and be designed to determine whether

a rate-decoupling strategy achieves energy savings. On or before a date established by the commission, the commission shall require electric and gas utilities that intend to implement a decoupling program to file a decoupling pilot plan which shall be approved or approved as modified by the commission. A pilot program may not exceed three years in length. Any extension beyond three years can only be approved in a general rate case, unless that decoupling program was previously approved as part of a general rate case. The commission shall report on the programs annually to the chairs of the house of representatives and senate committees with primary jurisdiction over energy policy.

Sec. 7. **REVISOR'S INSTRUCTION.**

The revisor of statutes shall change the reference to "section 216B.241, subdivision 1, paragraph (i)" found in section 216B.2411, subdivision 1, to read "section 216B.241, subdivision 1."

Sec. 8. **EFFECTIVE DATE.**

This article is effective July 1, 2007.

ARTICLE 3
MISCELLANEOUS

Section 1. Minnesota Statutes 2006, section 123B.65, subdivision 2, is amended to read:

Subd. 2. **Energy efficiency contract.** (a) Notwithstanding any law to the contrary, a school district may enter into a guaranteed energy savings contract with a qualified provider to significantly reduce energy or operating costs.

(b) Before entering into a contract under this subdivision, the board shall comply with clauses (1) to (5).

(1) The board must seek proposals from multiple qualified providers by publishing notice of the proposed guaranteed energy savings contract in the board's official newspaper and in other publications if the board determines that additional publication is necessary to notify multiple qualified providers.

(2) The school board must select the qualified provider that best meets the needs of the board. The board must provide public notice of the meeting at which it will select the qualified provider.

(3) The contract between the board and the qualified provider must describe the methods that will be used to calculate the costs of the contract and the operational and energy savings attributable to the contract.

(4) The qualified provider shall issue a report to the board giving a description of all costs of installations, modifications, or remodeling, including costs of design, engineering, installation, maintenance, repairs, or debt service, and giving detailed calculations of the amounts by which energy or operating costs will be reduced and the projected payback schedule in years.

(5) The board must provide published notice of the meeting in which it proposes to award the contract, the names of the parties to the proposed contract, and the contract's purpose.

(c) The board must provide a copy of any contract entered into under paragraph (a) and the report provided under paragraph (b), clause (4), to the commissioner of commerce within 30 days of the effective date of the contract.

Sec. 2. Minnesota Statutes 2006, section 216C.31, is amended to read:

216C.31 ENERGY AUDIT PROGRAMS.

The commissioner shall develop ~~and administer~~ state programs of energy audits of residential and commercial buildings including ~~those required by United States Code, title 42, sections 8211 to 8222 and sections 8281 to 8284. The commissioner shall continue to administer the residential energy audit program as originally established under the provisions of United States Code, title 42, sections 8211 to 8222; through July 1, 1986 irrespective of any prior expiration date provided in United States Code, title 42, section 8216. The commissioner may approve temporary programs if they are likely to result in the installation of as many conservation measures as would have been installed had the utility met the requirements of United States Code, title 42, sections 8211 to 8222. The Consumer Services Division and the attorney general may release information on consumer comments about the operation of the program to the commissioner~~ the training and qualifications necessary for the auditing of residential and commercial buildings under the auspices of a program created under section 216B.2412.

Sec. 3. Minnesota Statutes 2006, section 471.345, subdivision 13, is amended to read:

Subd. 13. **Energy efficiency projects.** The following definitions apply to this subdivision.

(a) "Energy conservation measure" means a training program or facility alteration designed to reduce energy consumption or operating costs and includes:

(1) insulation of the building structure and systems within the building;

(2) storm windows and doors, caulking or weatherstripping, multiglazed windows and doors, heat absorbing or heat reflective glazed and coated window and door

systems, additional glazing, reductions in glass area, and other window and door system modifications that reduce energy consumption;

(3) automatic energy control systems;

(4) heating, ventilating, or air conditioning system modifications or replacements;

(5) replacement or modifications of lighting fixtures to increase the energy efficiency of the lighting system without increasing the overall illumination of a facility, unless an increase in illumination is necessary to conform to the applicable state or local building code for the lighting system after the proposed modifications are made;

(6) energy recovery systems;

(7) cogeneration systems that produce steam or forms of energy such as heat, as well as electricity, for use primarily within a building or complex of buildings;

(8) energy conservation measures that provide long-term operating cost reductions.

(b) "Guaranteed energy savings contract" means a contract for the evaluation and recommendations of energy conservation measures, and for one or more energy conservation measures. The contract must provide that all payments, except obligations on termination of the contract before its expiration, are to be made over time, but not to exceed 15 years from the date of final installation, and the savings are guaranteed to the extent necessary to make payments for the systems.

(c) "Qualified provider" means a person or business experienced in the design, implementation, and installation of energy conservation measures. A qualified provider to whom the contract is awarded shall give a sufficient bond to the municipality for its faithful performance.

Notwithstanding any law to the contrary, a municipality may enter into a guaranteed energy savings contract with a qualified provider to significantly reduce energy or operating costs.

Before entering into a contract under this subdivision, the municipality shall provide published notice of the meeting in which it proposes to award the contract, the names of the parties to the proposed contract, and the contract's purpose.

Before installation of equipment, modification, or remodeling, the qualified provider shall first issue a report, summarizing estimates of all costs of installations, modifications, or remodeling, including costs of design, engineering, installation, maintenance, repairs, or debt service, and estimates of the amounts by which energy or operating costs will be reduced.

A guaranteed energy savings contract that includes a written guarantee that savings will meet or exceed the cost of energy conservation measures is not subject to competitive

bidding requirements of section 471.345 or other law or city charter. The contract is not subject to section 123B.52.

A municipality may enter into a guaranteed energy savings contract with a qualified provider if, after review of the report, it finds that the amount it would spend on the energy conservation measures recommended in the report is not likely to exceed the amount to be saved in energy and operation costs over 15 years from the date of installation if the recommendations in the report were followed, and the qualified provider provides a written guarantee that the energy or operating cost savings will meet or exceed the costs of the system. The guaranteed energy savings contract may provide for payments over a period of time, not to exceed 15 years.

A municipality may enter into an installment payment contract for the purchase and installation of energy conservation measures. The contract must provide for payments of not less than 1/15 of the price to be paid within two years from the date of the first operation, and the remaining costs to be paid monthly, not to exceed a 15-year term from the date of the first operation.

A municipality entering into a guaranteed energy savings contract shall provide a copy of the contract and the report from the qualified provider to the commissioner of commerce within 30 days of the effective date of the contract.

Guaranteed energy savings contracts may extend beyond the fiscal year in which they become effective. The municipality shall include in its annual appropriations measure for each later fiscal year any amounts payable under guaranteed energy savings contracts during the year. Failure of a municipality to make such an appropriation does not affect the validity of the guaranteed energy savings contract or the municipality's obligations under the contracts.

Sec. 4. Minnesota Statutes 2006, section 504B.161, subdivision 1, is amended to read:

Subdivision 1. **Requirements.** (a) In every lease or license of residential premises, the landlord or licensor covenants:

(1) that the premises and all common areas are fit for the use intended by the parties;

(2) to keep the premises in reasonable repair during the term of the lease or license, except when the disrepair has been caused by the willful, malicious, or irresponsible conduct of the tenant or licensee or a person under the direction or control of the tenant or licensee; ~~and~~

(3) to make the premises reasonably energy efficient by installing weatherstripping, caulking, storm windows, and storm doors when any such measure will result in energy procurement cost savings, based on current and projected average residential energy costs

in Minnesota, that will exceed the cost of implementing that measure, including interest, amortized over the ten-year period following the incurring of the cost; and

(4) to maintain the premises in compliance with the applicable health and safety laws of the state, ~~including the weatherstripping, caulking, storm window, and storm door energy efficiency standards for renter-occupied residences prescribed by section 216C.27, subdivisions 1 and 3,~~ and of the local units of government where the premises are located during the term of the lease or license, except when violation of the health and safety laws has been caused by the willful, malicious, or irresponsible conduct of the tenant or licensee or a person under the direction or control of the tenant or licensee.

(b) The parties to a lease or license of residential premises may not waive or modify the covenants imposed by this section.

Sec. 5. **REPEALER.**

Minnesota Statutes 2006, sections 216B.165; 216C.27; and 216C.30, subdivision 5, and Minnesota Rules, parts 7635.0100; 7635.0110; 7635.0120; 7635.0130; 7635.0140; 7635.0150; 7635.0160; 7635.0170; 7635.0180; 7635.0200; 7635.0210; 7635.0220; 7635.0230; 7635.0240; 7635.0250; 7635.0260; 7635.0300; 7635.0310; 7635.0320; 7635.0330; 7635.0340; 7635.0400; 7635.0410; 7635.0420; 7635.0500; 7635.0510; 7635.0520; 7635.0530; 7635.0600; 7635.0610; 7635.0620; 7635.0630; 7635.0640; 7635.1000; 7635.1010; 7635.1020; 7635.1030; 7655.0100; 7655.0120; 7655.0200; 7655.0210; 7655.0220; 7655.0230; 7655.0240; 7655.0250; 7655.0260; 7655.0270; 7655.0280; 7655.0290; 7655.0300; 7655.0310; 7655.0320; 7655.0330; 7655.0400; 7655.0410; and 7655.0420, are repealed, effective July 1, 2007.

Sec. 6. **EFFECTIVE DATE.**

This article is effective July 1, 2007.

ARTICLE 4
COMMUNITY-BASED ENERGY DEVELOPMENT

Section 1. **CITATION.**

This article may be cited as the Community-Based Energy Development Act of 2007.

Sec. 2. Minnesota Statutes 2006, section 216B.1612, is amended to read:

216B.1612 COMMUNITY-BASED ENERGY DEVELOPMENT; TARIFF.

Subdivision 1. **Tariff establishment.** A tariff shall be established to optimize local, regional, and state benefits from ~~wind~~ renewable energy development and to facilitate

widespread development of community-based ~~wind~~ renewable energy projects throughout Minnesota.

Subd. 2. **Definitions.** (a) The terms used in this section have the meanings given them in this subdivision.

(b) "C-BED tariff" or "tariff" means a community-based energy development tariff.

(c) "Qualifying owner" means:

(1) a Minnesota resident;

(2) a limited liability company that is organized under ~~the laws of this state~~ chapter 322B and that is made up of members who are Minnesota residents;

(3) a Minnesota nonprofit organization organized under chapter 317A;

(4) a Minnesota cooperative association organized under chapter 308A or 308B, ~~other than~~ including a rural electric cooperative association or a generation and transmission cooperative on behalf of and at the request of a member distribution utility;

(5) a Minnesota political subdivision or local government ~~other than~~ including, but not limited to, a municipal electric utility or a municipal power agency on behalf of and at the request of a member distribution utility, ~~including, but not limited to,~~ a county, statutory or home rule charter city, town, school district, or public or private higher education institution or any other local or regional governmental organization such as a board, commission, or association; or

(6) a tribal council.

(d) "Net present value rate" means a rate equal to the net present value of the nominal payments to a project divided by the total expected energy production of the project over the life of its power purchase agreement.

(e) "Standard reliability criteria" means:

(1) can be safely integrated into and operated within the utility's grid without causing any adverse or unsafe consequences; and

(2) is consistent with the utility's resource needs as identified in its most recent resource plan submitted under section 216B.2422.

(f) "Renewable" means a technology listed in section 216B.1691, subdivision 1, paragraph (a).

(g) "Community-based energy project" or "C-BED project" means a new ~~wind~~ renewable energy project that:

~~(1) has no single qualifying owner owning more than 15 percent of a C-BED project that consists of more than two turbines; or~~

~~(2) for C-BED projects of one or two turbines, is owned entirely by one or more qualifying owners, with at least 51 percent of the total financial benefits over the life of the project flowing to qualifying owners; and~~

(1) provides that at least 51 percent of the total payments made as a direct result of a power purchase agreement or similar agreement with a utility accrue to:

(i) qualifying owners, in the form of net cash payments under the power purchase agreement that amount to no less than 35 percent made over the term of the power purchase agreement;

(ii) owners of land upon which a project is sited, in the form of easement or lease payments;

(iii) local units of government, in the form of taxes paid under section 272.029; and

(iv) lenders chartered under section 46.044, in the form of interest paid on C-BED project debt financed by a lender;

(2) allows, if the project is a wind energy project consisting of more than two turbines, no single qualifying owner to own more than 15 percent of the project;

(3) allows, if the project is a wind energy project, a public entity listed in paragraph (b), clause (5), except for a municipal utility, to own more than 15 percent of the project; and

~~(3)~~ (4) has a resolution of support adopted by the county board of each county in which the project is to be located, or in the case of a project located within the boundaries of a reservation, the tribal council for that reservation.

Subd. 3. **Tariff rate.** (a) The tariff described in subdivision 4 must have a rate schedule that allows for a ~~rate up to a 2.7 cents per kilowatt-hour~~ net present value rate over the 20-year life of the power purchase agreement. The tariff must provide for a rate that is higher in the first ten years of the power purchase agreement than in the last ten years. The discount rate required to calculate the net present value must be the utility's normal discount rate used for its other business purposes.

(b) The commission shall consider mechanisms to encourage the aggregation of C-BED projects.

(c) The commission shall require that qualifying and nonqualifying owners provide sufficient security to secure performance under the power purchase agreement, and shall prohibit the transfer of the C-BED project to a nonqualifying owner during the initial 20 years of the contract.

Subd. 4. **Utilities to offer tariff.** By December 1, ~~2005~~ 2007, each public utility providing electric service at retail shall file for commission approval a community-based energy development tariff consistent with subdivision 3. Within 90 days of the

first commission approval order under this subdivision, each municipal power agency and generation and transmission cooperative electric association shall adopt a community-based energy development tariff as consistent as possible with subdivision 3.

Subd. 5. **Priority for C-BED projects.** (a) A utility subject to section 216B.1691 that needs to construct new generation, or purchase the output from new generation, as part of its plan to satisfy its good faith objective and standard under that section ~~should~~ must take reasonable steps to determine if one or more C-BED projects are available that meet the utility's cost and reliability requirements, applying standard reliability criteria, to fulfill some or all of the identified need at minimal impact to customer rates.

Nothing in this section shall be construed to obligate a utility to enter into a power purchase agreement under a C-BED tariff developed under this section. A utility whose renewable energy plan has been approved by the commission under section 216B.1645, subdivision 2a, must negotiate in good faith with developers of C-BED projects that meet the specifications of this paragraph and whose aggregated capacity is equal to the capacity of C-BED projects identified in the plan from which the utility intends to purchase energy.

(b) Each utility shall include in its resource plan submitted under section 216B.2422 a description of its efforts to purchase energy from C-BED projects, including a list of the projects under contract and the amount of C-BED energy purchased.

(c) The commission shall consider the efforts and activities of a utility to purchase energy from C-BED projects when evaluating its good faith effort towards meeting the renewable energy objective under section 216B.1691.

(d) A municipal power agency or generation and transmission cooperative shall, when issuing a request for proposals for C-BED projects to satisfy its standard obligation under section 216B.1691, provide notice to its member distribution utilities that they may propose, in partnership with other qualifying owners, a C-BED project for the consideration of the municipal power agency or generation and transmission cooperative.

Subd. 6. **Property owner participation.** To the extent feasible, a developer of a C-BED project must provide, in writing, an opportunity to invest in the C-BED project to each property owner on whose property a high-voltage transmission line is constructed that will transmit the energy generated by the C-BED project to market. This subdivision applies if the property is located and the owner resides in the county where the C-BED project is located.

Subd. 7. **Other C-BED tariff issues.** (a) A community-based project developer and a utility shall negotiate the rate and power purchase agreement terms consistent with the tariff established under subdivision 4.

(b) At the discretion of the developer, a community-based project developer and a utility may negotiate a power purchase agreement with terms different from the tariff established under subdivision 4.

(c) A qualifying owner, or any combination of qualifying owners, may develop a joint venture project with a nonqualifying ~~wind~~ renewable energy project developer. However, the terms of the C-BED tariff may only apply to the portion of the energy production of the total project that is directly proportional to the equity share of the project owned by the qualifying owners.

(d) A project that is operating under a power purchase agreement under a C-BED tariff is not eligible for net energy billing under section 216B.164, subdivision 3, or for production incentives under section 216C.41.

(e) A public utility must receive commission approval of a power purchase agreement for a C-BED tariffed project. The commission shall provide the utility's ratepayers an opportunity to address the reasonableness of the proposed power purchase agreement. Unless a party objects to a contract within 30 days of submission of the contract to the commission the contract is deemed approved.

Subd. 8. **Community energy partnerships.** A utility providing electric service to retail or wholesale customers in Minnesota and an independent power producer may participate, and are encouraged to participate, in a community-based energy project, as owner, equity partner, or provider of technical or financial assistance, subject to the limits specified in this section.

Subd. 9. **C-BED advisory determination.** A developer of a proposed project may request the commissioner of commerce to issue an advisory determination as to whether the proposed project qualifies as a C-BED project under this section. The request must be made on a form and under a procedure approved by the commissioner. A positive advisory determination of the commissioner under this subdivision establishes a rebuttable presumption that the project qualifies as a C-BED project.

Sec. 3. Minnesota Statutes 2006, section 216B.1645, is amended by adding a subdivision to read:

Subd. 2a. **Utility ownership of renewable resources.** (a) A utility may construct, own, and operate generation facilities used to satisfy the requirements of section 216B.1691, notwithstanding any competitive resource acquisition process established under section 216B.2422, subdivision 5.

(b) In lieu of any competitive resource acquisition process, a utility that owns a nuclear generation facility and intends to construct, own, or operate facilities under this

section shall file with the commission on or before March 1, 2008, a renewable energy plan setting forth the manner in which the utility proposes to meet the requirements of section 216B.1691, including a proposed schedule for purchasing renewable energy from C-BED and non-C-BED projects, a proposed schedule of acquisition and construction of generation facilities and their expected in-service dates, and proposed transmission resources associated with the facilities, including a proposed construction schedule and expected in-service date for any transmission sources that need to be constructed to deliver the electricity generated by the facilities. The plan must also contain alternative means of providing the energy generated by the facilities described in the plan, and must compare the costs of delivering energy from these alternative means and from the facilities identified in the plan. The utility shall update the plan as necessary in its filing under section 216B.2422.

(c) The commission shall approve the plan unless it determines, after public hearing and comment, that the plan:

(1) imposes excessive costs on ratepayers;

(2) does not reasonably allocate resources among utility-owned generation facilities, energy purchased from C-BED and non-C-BED projects, and generation facilities selected in a competitive selection process under section 216B.2422, subdivision 5; or

(3) does not maximize benefits to Minnesota citizens, as required by section 216B.1691, subdivision 9.

Nothing in this section prohibits a utility from seeking and securing approval from the commission to implement projects prior to submission of the plan required under this section.

Sec. 4. Minnesota Statutes 2006, section 216B.1645, is amended by adding a subdivision to read:

Subd. 2b. **Cost recovery for owned renewable facilities.** (a) A utility may petition the commission to approve a rate schedule that provides for the automatic adjustment of charges to recover prudently incurred investments, expenses, or costs associated with facilities constructed, owned, or operated by a utility to satisfy the requirements of section 216B.1691, provided those facilities were previously approved by the commission under section 216B.2422 or 216B.243. The commission may approve, or approve as modified, a rate schedule that:

(1) allows a utility to recover directly from customers on a timely basis the costs of qualifying renewable energy projects, including:

(i) return on investment;

(ii) depreciation;

(iii) ongoing operation and maintenance costs;

(iv) taxes; and

(v) costs of transmission and other ancillary expenses directly allocable to transmitting electricity generated from a project meeting the specifications of this paragraph;

(2) provides a current return on construction work in progress, provided that recovery of these costs from Minnesota ratepayers is not sought through any other mechanism;

(3) allows recovery of other expenses incurred that are directly related to a renewable energy project, provided that the utility demonstrates to the commission's satisfaction that the expenses improve project economics, ensure project implementation, or facilitate coordination with the development of transmission necessary to transport energy produced by the project to market;

(4) allocates recoverable costs appropriately between wholesale and retail customers;

(5) terminates recovery when costs have been fully recovered or have otherwise been reflected in a utility's rates.

(b) A petition filed under this subdivision must include:

(1) a description of the facilities for which costs are to be recovered;

(2) an implementation schedule for the facilities;

(3) the utility's costs for the facilities;

(4) a description of the utility's efforts to ensure that costs of the facilities are reasonable and were prudently incurred; and

(5) a description of the benefits of the project in promoting the development of renewable energy in a manner consistent with this chapter.

Sec. 5. **[216B.1681] CURTAILMENT PAYMENTS.**

The commission shall, by September 1, 2007, initiate a review of curtailment payments for wind energy projects to assess whether utilities are unduly discriminating among project ownership structures in regard to the contractual availability of curtailment payments.

Sec. 6. Minnesota Statutes 2006, section 216B.169, is amended to read:

216B.169 ~~RENEWABLE AND HIGH-EFFICIENCY ENERGY RATE OPTIONS~~ COMMUNITY-BASED ENERGY DEVELOPMENT GREEN PRICING OPTION.

Subdivision 1. **Definitions.** For the purposes of this section, the following terms have the meanings given them.

(a) "Utility" means a public utility, municipal utility, or cooperative electric association providing electric service at retail to Minnesota consumers.

(b) ~~"Renewable energy" has the meaning given in section 216B.2422, subdivision 1, paragraph (c)~~ "Eligible energy technology" has the meaning given in section 216B.1691, subdivision 1.

(c) ~~"High-efficiency, low-emissions, distributed generation" means a distributed generation facility of no more than ten megawatts of interconnected capacity that is certified by the commissioner under subdivision 3 as a high-efficiency, low-emissions facility~~ "Community-based energy development project" or "C-BED project" has the meaning given in section 216B.1612, subdivision 2, paragraph (g).

Subd. 2. ~~**Renewable and high-efficiency energy rate options**~~ **C-BED green pricing programs.** (a) Each utility shall offer its customers, and shall advertise the offer at least ~~annually~~ quarterly, one or more options that allow a customer to determine that a certain amount of the electricity generated or purchased on behalf of the customer is ~~renewable energy or~~ energy generated by ~~high-efficiency, low-emissions, distributed generation such as fuel cells and microturbines fueled by a renewable fuel~~ a community-based energy development project or is provided through the purchase of renewable energy credits from a C-BED project.

(b) Each public utility shall file an implementation plan within 90 days of July 1, ~~2001~~ 2007, to implement paragraph (a).

(c) Rates charged to customers must be calculated using the utility's cost of acquiring the energy for the customer and must:

(1) reflect the difference between the cost of generating or purchasing the ~~renewable~~ C-BED energy or credits and the cost of generating or purchasing the same amount of ~~nonrenewable~~ energy or credits from non-C-BED sources; and

(2) be distributed on a per kilowatt-hour basis among all customers who choose to participate in the program.

(d) Implementation of these rate options may reflect a reasonable amount of lead time necessary to arrange acquisition of the energy. The utility ~~may~~ must acquire the energy demanded by customers, in whole or in part, through procuring or generating ~~the renewable~~ C-BED energy directly, or through the purchase of credits ~~from a provider that has received certification of eligible power supply pursuant to subdivision 3~~ issued under the program established by the commission under section 216B.1691, subdivision 4, if available. If a utility is not able to arrange an adequate supply of ~~renewable or~~

~~high-efficiency~~ C-BED energy or credits to meet its customers' demand under this section, the utility must file a report with the commission detailing its efforts and reasons for its failure.

Subd. 3. **Certification ~~and tradeable credits~~.** ~~(a)~~ The commissioner shall certify a power supply or supplies as eligible to satisfy customer requirements under this section upon finding:

(1) the power supply ~~is renewable energy or energy generated by high-efficiency, low-emissions, distributed generation~~ meets the requirements of section 216B.1612; and

(2) the sales arrangements of energy from the supplies are such that the power supply is only sold once to retail consumers.

~~(b) To facilitate compliance with this section, the commission may, by order, establish a program for tradeable credits for eligible power supplies.~~

Subd. 4. **C-BED logo.** (a) The commissioner of commerce shall design or contract for the design of a logo that qualifying entities may affix to their products and to advertising for their products that contains the words "100% Minnesota Renewable Energy." The logo may also contain a standardized pictorial representation or design.

(b) The commissioner of commerce shall certify in writing that an entity is authorized to use the logo if the commissioner determines that all the electricity consumed by an applicant is purchased directly, or by purchasing credits from a C-BED project. The commissioner of commerce shall develop forms and procedures to govern the application and certification processes and the use of the logo by an entity that receives certification. No person may use the logo without certification from the commissioner. For the purposes of this subdivision, "qualifying entity" means a person or entity that has received certification from the commissioner of commerce granting the entity authority to use the C-BED logo in the manner prescribed by the commissioner.

Sec. 7. Minnesota Statutes 2006, section 216C.052, is amended to read:

216C.052 RELIABILITY ADMINISTRATOR.

Subdivision 1. **Responsibilities.** (a) There is established the position of reliability administrator in the ~~Public Utilities Commission~~ Department of Commerce. The administrator shall act as a source of independent expertise and a technical advisor to the commissioner, the commission and the public on issues related to the reliability of the electric system. In conducting its work, the administrator shall provide assistance to the ~~commission~~ commissioner in administering and implementing the ~~commission's~~ department's duties under sections 216B.1612, 216B.1691, 216B.2422, 216B.2425, and

216B.243; chapters 216E, 216F, and 216G; and rules associated with those provisions~~.~~ ~~Subject to resource constraints, the reliability administrator may also~~ and shall also:

(1) model and monitor the use and operation of the energy infrastructure in the state, including generation facilities, transmission lines, natural gas pipelines, and other energy infrastructure;

(2) develop and present to the commission and parties technical analyses of proposed infrastructure projects, and provide technical advice to the commission;

(3) present independent, factual, expert, and technical information on infrastructure proposals and reliability issues at public meetings hosted by the task force, the Environmental Quality Board, the department, or the commission.

(b) Upon request and subject to resource constraints, the administrator shall provide technical assistance regarding matters unrelated to applications for infrastructure improvements to the task force, the department, or the commission.

(c) The administrator may not advocate for any particular outcome in a commission proceeding, but may give technical advice to the commission as to the impact on the reliability of the energy system of a particular project or projects.

Subd. 2. **Administrative issues.** (a) The ~~commission~~ commissioner may select the administrator ~~who shall serve for a four-year term~~. The administrator must demonstrate technical training, expertise, or experience in energy reliability issues, and may not have been a party or a participant in a commission energy proceeding for at least one year prior to selection by the ~~commission~~ commissioner. The ~~commission~~ commissioner shall oversee and direct the work of the administrator, annually review the expenses of the administrator, and annually approve the budget of the administrator. ~~Pursuant to commission approval,~~ The administrator may hire staff and may contract for technical expertise in performing duties when existing state resources are required for other state responsibilities or when special expertise is required. The salary of the administrator is governed by section 15A.0815, subdivision 2.

(b) Costs relating to a specific proceeding, analysis, or project are not general administrative costs. For purposes of this section, "energy utility" means public utilities, generation and transmission cooperative electric associations, and municipal power agencies providing natural gas or electric service in the state.

(c) The ~~commission~~ Department of Commerce shall pay:

(1) the general administrative costs of the administrator, not to exceed $1,000,000 in a fiscal year, and shall assess energy utilities for those administrative costs. These costs must be consistent with the budget approved by the ~~commission~~ commissioner under paragraph (a). The ~~commission~~ department shall apportion the costs among all energy

utilities in proportion to their respective gross operating revenues from sales of gas or electric service within the state during the last calendar year, and shall then render a bill to each utility on a regular basis; and

(2) costs relating to a specific proceeding analysis or project and shall render a bill to the specific energy utility or utilities participating in the proceeding, analysis, or project directly, either at the conclusion of a particular proceeding, analysis, or project, or from time to time during the course of the proceeding, analysis, or project.

(d) For purposes of administrative efficiency, the ~~commission~~ department shall assess energy utilities and issue bills in accordance with the billing and assessment procedures provided in section 216B.62, to the extent that these procedures do not conflict with this subdivision. The amount of the bills rendered by the ~~commission~~ department under paragraph (c) must be paid by the energy utility into an account in the special revenue fund in the state treasury within 30 days from the date of billing and is appropriated to the ~~commission~~ department for the purposes provided in this section. The commission shall approve or approve as modified a rate schedule providing for the automatic adjustment of charges to recover amounts paid by utilities under this section. All amounts assessed under this section are in addition to amounts appropriated to the commission and the department by other law.

Subd. 3. **Assessment and appropriation.** In addition to the amount noted in subdivision 2, the ~~commission~~ commissioner may assess utilities, using the mechanism specified in that subdivision, up to an additional $500,000 annually through June 30, 2008. The amounts assessed under this subdivision are appropriated to the ~~commission~~ commissioner, and some or all of the amounts assessed may be transferred to the commissioner of administration, for the purposes specified in section 16B.325 and Laws 2001, chapter 212, article 1, section 3, as needed to implement those sections.

Subd. 4. **Expiration.** Subdivisions 1 and 2 expire June 30, ~~2007~~ 2012. Subdivision 3 expires June 30, 2008.

Sec. 8. **[216F.011] SIZE DETERMINATION.**

(a) The total size of a combination of wind energy conversion systems for the purpose of determining jurisdictional siting authority under sections 216F.01 to 216F.07 must be determined according to this section. The nameplate capacity of one wind energy conversion system must be combined with the nameplate capacity of any other wind energy conversion system that:

(1) is located within five miles of the wind energy conversion system;

(2) is constructed within the same 12-month period as the wind energy conversion system; and

(3) exhibits characteristics of being a single development, including but not limited to ownership structure, an umbrella sales arrangement, shared interconnection, revenue sharing arrangements, and common debt or equity financing.

(b) The commissioner shall prepare and make available the necessary forms and guidance for project developers to make a request for determination. Upon written request of a project developer, the commissioner of commerce shall provide a written determination under this section within 30 days of receipt of the request and information necessary to make a determination. In the case of a dispute, the chair of the Public Utilities Commission shall determine the total size of the system and shall draw all reasonable inferences in favor of combining the systems.

(c) An application to a county for a permit for a wind energy conversion system is not complete without a jurisdictional determination made under this section.

Sec. 9. **[216F.08] PERMIT AUTHORITY; ASSUMPTION BY COUNTIES.**

Subdivision 1. **Definition.** For the purposes of this subdivision, the term "processing" means:

(1) the distribution to applicants of application and determination forms provided by the commission;

(2) the receipt and examination of completed application forms, and the certification, in writing, to the commission either that the LWECS for which a permit was issued by the county will comply with applicable rules and standards or, if the facility will not comply, the respects in which a variance is required for the issuance of a permit; and

(3) rendering to applicants, upon request, assistance for the proper completion of an application.

Subd. 2. **Counties; processing applications for LWECS site permits.** (a) Any Minnesota county board may, by resolution and upon written notice to the Public Utilities Commission, assume responsibility for processing applications for permits required under this chapter for LWECS with a combined nameplate capacity of less than 25,000 kilowatts. The responsibility for permit application processing, if assumed by a county, may be delegated by the county board to an appropriate county officer or employee. Processing by a county must be done in accordance with procedures and processes established under chapter 394.

(b) A county board that exercises its option under paragraph (a) and assumes responsibility for processing applications for permits for LWECS within its borders

is responsible for issuing, denying, modifying, imposing conditions upon, or revoking permits under this section or rules adopted pursuant to it. The action of the county board with regard to a permit application is final, subject to appeal as provided in section 394.27.

(c) In adopting and enforcing rules or standards under this subdivision, the commission shall cooperate closely with counties and other governmental agencies.

(d) The commission shall work with counties and wind developers to notify and educate stakeholders with regard to rules or standards under this section at the time the rules or standards are being developed and adopted and at least every two years thereafter.

(e) The commission shall, by order, establish general permit standards governing site permits for LWECS under this section. These general permit standards must apply both to permits issued by counties and to permits issued by the commission directly for LWECS with a combined nameplate capacity of less than 25,000 kilowatts. The order must contain minimum standards necessary to ensure the protection of human health and safety and wind resources on adjacent land and must be consistent with the general provisions of wind permits issued by the commission in the five years prior to enactment of this provision.

(f) The commission and the commissioner of commerce shall provide technical assistance to a county with respect to the processing of LWECS site permit applications by the county.

(g) A county may adopt by ordinance standards for LWECS that are more stringent than standards in commission rules or in the commission's permit standards. The commission, in considering a permit for LWECS in a county that has adopted more stringent standards, shall incorporate and apply those more stringent standards, unless the commission finds there is good cause not to do so.

Sec. 10. Minnesota Statutes 2006, section 500.30, subdivision 2, is amended to read:

Subd. 2. **Like any conveyance.** Any property owner may grant a solar or wind easement in the same manner and with the same effect as a conveyance of an interest in real property. The easements shall be created in writing and shall be filed, duly recorded, and indexed in the office of the recorder of the county in which the easement is granted. No duly recorded easement shall be unenforceable on account of lack of privity of estate or privity of contract; such easements shall run with the land or lands benefited and burdened and shall constitute a perpetual easement, except that an easement may terminate upon the conditions stated therein or pursuant to the provisions of section 500.20. A wind easement or lease of wind rights shall also terminate after five years from the date the easement is created or lease is entered into, if a wind energy project on the property to which the easement or lease applies does not begin commercial operation within the five-year period.

EFFECTIVE DATE. This section is effective the day following final enactment, and applies to wind easements created and wind rights leases entered into on and after the effective date of this section.

Sec. 11. **STATEWIDE STUDY OF DISPERSED GENERATION POTENTIAL.**

Subdivision 1. **Definition.** "Dispersed generation" means an electric generation project with a generating capacity between ten and 40 megawatts that utilizes an eligible energy technology, as defined in Minnesota Statutes, section 216B.1691, subdivision 1, paragraph (a).

Subd. 2. **Study participants.** Each electric utility subject to Minnesota Statutes, section 216B.1691, must participate collaboratively in conducting a two-phase study of the potential for dispersed generation projects that can be developed in Minnesota.

Subd. 3. **First phase study content; report.** In the first phase of the study, participants must analyze the impacts of the addition of a total of 600 megawatts of new dispersed generation projects distributed among the following Minnesota electric transmission planning zones: the Northeast zone, the Northwest zone, the Southeast zone, the Southwest zone, and the West-Central zone. Study participants must use a generally accepted 2010 year transmission system model including all transmission facilities expected to be operating in 2010. The study must take into consideration regional projected load growth, planned changes in the bulk transmission network, and the long-range transmission conceptual plan being developed under Laws 2007, chapter 3, section 2. In determining locations for the installation of dispersed generation projects that consist of wind energy conversion systems, the study should consider, at a minimum, wind resource availability, existing and contracted wind projects, and current dispersed generation projects in the Midwest Independent System Operator interconnection queue. The study must analyze the impacts of individual projects and all projects in aggregate on the transmission system, and identify specific modifications to the transmission system necessary to remedy any problems caused by the installation of dispersed generation projects, including cost estimates for the modifications. The study must analyze the additional dispersed generation projects connected at the lowest voltage level transmission that exists in the vicinity of the projected generation sites. A preliminary analysis to identify transmission system problems must be conducted with the projects installed at initially selected locations. The technical review committee may, after reviewing the locations selected for installation, recommend moving the installation sites to new locations to reduce undesirable transmission system impacts. The commissioner of

commerce must submit a report containing the findings and recommendations of the first phase of the study to the commission no later than June 15, 2008.

Subd. 4. **Second phase study content; report.** In the second phase of the study, participants must analyze the impacts of an additional total of 600 megawatts of dispersed generation projects installed among the five transmission planning zones, or a higher total capacity amount if agreed to by both the utilities and the technical review committee. The utilities must employ an analysis method similar to that used in the first phase of the study, and must use the most recent information available, including information developed in the first phase. The second phase of the study must use a generally accepted 2013 year transmission system model including all transmission facilities that are expected to be in service at that time. The commissioner of commerce must submit a report containing the findings and recommendations of the second phase of the study to the commission no later than September 15, 2009.

Subd. 5. **Technical review committee.** Prior to the start of the first phase of the study, the commissioner of commerce shall appoint a technical review committee consisting of between ten and 15 individuals with experience and expertise in electric transmission system engineering, renewable energy generation technology, and dispersed generation project development, including representatives from the federal Department of Energy, the Midwest Independent System Operator, and stakeholder interests. The technical review committee must oversee both phases of the study, and must:

(1) make recommendations to the utilities regarding the proposed methods and assumptions to be used in the technical study;

(2) in conjunction with the appropriate utilities, hold public meetings on each phase of the study in each electricity transmission planning zone prior to the beginning of each phase of study, after the impact analysis is completed, and when a draft final report is available; and

(3) review the initial and final drafts of the study and make recommendations for improvement, including with respect to problems associated with the interconnections among utility systems that may be amenable to solution through cooperation between the utilities in each zone. During each phase of the study, the technical review committee may recommend that the installation of dispersed generation projects be moved to new locations that cause fewer undesirable transmission system impacts.

Sec. 12. **TRANSFERRING RELIABILITY ADMINISTRATOR RESPONSIBILITIES.**

All responsibilities, as defined in Minnesota Statutes, section 15.039, subdivision 1, held by the Public Utilities Commission relating to the reliability administrator under Minnesota Statutes, section 216C.052, are transferred to the Minnesota Department of Commerce under Minnesota Statutes, section 15.039.

Sec. 13. **TRANSMISSION AUTHORITY AND INTERCONNECTION EVALUATIONS.**

The reliability administrator shall, in consultation with interested stakeholders:

(1) review the structures, powers, and duties for constructing, owning, maintaining, and operating transmission facilities of state transmission authorities established in Kansas, North Dakota, South Dakota, and Wyoming, and evaluate whether the existence of a similar organization in Minnesota would have the potential to increase the reliability and efficiency of the electrical grid in the state; hasten the development of needed transmission lines; accelerate the development of renewable energy projects, especially in rural areas of the state; and reduce delivered energy costs to Minnesota ratepayers; and

(2) assess the potential for and barriers to interconnecting dispersed generation projects to locations on the electric grid where a generator interconnection would not be subject to the interconnection rules of the Federal Energy Regulatory Commission or the Midwest Independent System Operator.

No technical or engineering analyses are necessary in order to complete these duties. The reliability administrator must report its findings and any recommendations to the chairs of the senate and house of representatives committees with jurisdiction over energy policy by February 15, 2008.

Sec. 14. **REPEALER.**

Laws 2007, chapter 3, section 3, is repealed.

ARTICLE 5
GLOBAL WARMING MITIGATION

Section 1. **[216H.001] FINDINGS; CITATION.**

(a) The legislature finds that the state has a vital interest in preventing or mitigating harms associated with global warming and in reducing Minnesota's greenhouse gas emissions. The legislature recognizes that substantial reductions in emissions of greenhouse gases are necessary to avoid dangerous climate changes in the future. The legislature finds that taking steps to reduce Minnesota's greenhouse gas emissions today and planning for long-term reductions will reduce the need for more disruptive emission

reductions later, and that to achieve the purposes of this act, all emissions associated with electricity generated or consumed within the state must be subject to the state's emissions-reduction goals. The legislature further finds that Minnesota's economy will benefit by showing leadership in the transition away from climate-damaging technologies and toward renewable power, biofuels, and energy efficiency. The legislature recognizes that achieving these ends will only occur by close cooperation with other states and may require the state to enter into binding agreements with other units of government.

(b) This chapter may be referred to as the Global Warming Mitigation Act of 2007.

Sec. 2. **[216H.01] DEFINITIONS.**

Subdivision 1. **Scope.** For the purposes of this chapter, the terms defined in this section have the meanings given them.

Subd. 2. **Allowance.** "Allowance" means limited authorization from a state regulatory agency to emit up to one ton of carbon dioxide or carbon dioxide equivalent into the atmosphere. This limited authorization does not constitute a property right.

Subd. 3. **Cap and trade system.** "Cap and trade system" means a regulatory system that imposes a limit on the aggregate air pollutant emissions of a group of sources, requires those subject to the cap to own an allowance for each ton of the air pollutant emitted, and allows for market-based trading of those allowances.

Subd. 4. **Carbon dioxide equivalent.** "Carbon dioxide equivalent" means the quantity of a given greenhouse gas multiplied by its global warming potential.

Subd. 5. **Global warming potential.** "Global warming potential" means a measure of the radiative efficiency or heat-absorbing ability of a particular gas relative to that of carbon dioxide after taking into account the decay rate of each gas, that is, the amount removed from the atmosphere over a given number of years, relative to that of carbon dioxide.

Subd. 6. **Greenhouse gas emissions source.** "Greenhouse gas emissions source" means any anthropogenic physical unit or process that releases greenhouse gases into the atmosphere.

Subd. 7. **Greenhouse gases.** "Greenhouse gases" include carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride or any other chemical that is determined by the Pollution Control Agency to contribute comparably to global climate change and that is emitted by anthropogenic sources.

Subd. 8. **New large energy facility.** "New large energy facility" means a large energy facility, as defined in section 216B.2421, subdivision 2, clauses (1) to (8), that is not in operation as of January 1, 2007, but does not include a facility that (1) uses

natural gas as a primary fuel, (2) is designed to provide peaking, emergency backup, or contingency services, (3) uses a simple cycle turbine technology, (4) is capable of achieving full load operations within 45 minutes of startup, and (5) has received a certificate of need under section 216B.243.

Subd. 9. **Person.** "Person" has the meaning given in section 216E.01.

Subd. 10. **Statewide greenhouse gas emissions.** "Statewide greenhouse gas emissions" means the total annual emissions of greenhouse gases within the state and all emissions of greenhouse gases from the generation of electricity imported from outside the state and consumed in Minnesota. Emissions associated with transmission and distribution line losses are included in this definition. Statewide emissions are expressed in tons of carbon dioxide equivalent. Carbon dioxide that is injected into geological formations to prevent its release to the atmosphere in compliance with applicable laws, and emissions associated with the combustion of fuels other than coal, petroleum, and natural gas are not counted as contributing to statewide greenhouse gas emissions.

Subd. 11. **Statewide power sector carbon dioxide emissions.** "Statewide power sector carbon dioxide emissions" means the total annual emissions of carbon dioxide from the generation of electricity within the state and all emissions of carbon dioxide from the generation of electricity imported from outside the state and consumed in Minnesota. Emissions associated with transmission and distribution line losses are included in this definition. Carbon dioxide that is injected into geological formations to prevent its release to the atmosphere in compliance with applicable laws, and emissions associated with the combustion of fuels other than coal, petroleum, and natural gas are not counted as contributing to statewide power sector carbon dioxide emissions.

Sec. 3. **[216H.02] GREENHOUSE GAS EMISSIONS-REDUCTION GOALS.**

It is the state's goal to reduce statewide greenhouse gas emissions to a level at least 15 percent below 2005 emission levels by 2015, to a level at least 30 percent below 2005 emission levels by 2025, and to a level at least 80 percent below 2005 emission levels by 2050.

Sec. 4. **[216H.04] GREENHOUSE GAS EMISSIONS-REDUCTION PLAN.**

Subdivision 1. **Plan for achieving reductions.** (a) By February 1, 2008, the commissioners of the Pollution Control Agency and the Department of Commerce shall submit a plan to the chairs of the senate and house of representatives committees with jurisdiction over energy and environmental policy that contains recommendations on how best to achieve the statewide greenhouse gas emissions-reduction goals established under

section 216H.02. The plan must also identify how best to reduce statewide greenhouse gas emissions to a level at least 45 percent below 2005 levels by 2025. The plan must identify, develop, and integrate a full range of greenhouse gas emissions-reduction activities across all economic sectors, regions, and energy uses in the state, and estimate the costs and benefits of each action. The plan must:

(1) estimate statewide greenhouse gas emissions for 2005 and make projections of statewide greenhouse gas emissions for 2015, 2025, and 2050;

(2) estimate the statewide greenhouse gas emissions reductions anticipated from implementation of existing state policies;

(3) include a cap and trade system as described in subdivision 3;

(4) recommend additional policies to achieve statewide greenhouse gas emissions-reduction goals;

(5) include provisions that will ensure that existing policies are evaluated, and that at least every five years any policy changes needed to achieve the statewide greenhouse gas emissions-reduction goals are developed and recommended for legislative action;

(6) recommend a system to require the reporting of statewide greenhouse gas emissions, identifying which facilities must report, how emission estimates should be made, and other reporting requirements that will ensure the collection of emissions information needed to reliably document statewide greenhouse gas emission levels and implement the plan; and

(7) evaluate the option of exempting a project from the prohibitions contained in section 216H.05, subdivision 1, if the project contributes a specified fee per ton of carbon dioxide emissions emitted annually by the project, the proceeds of which would be used to fund permanent, quantifiable, verifiable, and enforceable reductions in greenhouse gas emissions that would not otherwise have occurred.

(b) In formulating the plan, the commissioners shall consider the broadest possible set of mechanisms to reduce emissions, including, but not limited to, expanding the electric sector cap and trade system established under subdivision 3 to include emissions sources other than electricity generation and greenhouse gases other than carbon dioxide; scheduling reductions of the emissions cap; imposing greenhouse gas taxes, fines, and other penalties; adopting emissions-reduction performance standards for sources of greenhouse gases; establishing financial or other incentives to promote activities that will reduce greenhouse gases; and enhancing existing policies that have the effect of lowering greenhouse gas emissions.

Subd. 2. **Planning process.** The plan required under subdivision 1 must be developed through a structured, broadly inclusive stakeholder-based review of potential

policies and initiatives that can be implemented in Minnesota to reduce greenhouse gas emissions. The stakeholder-based review process must be conducted by a nationally recognized independent expert entity. The commissioner of commerce shall coordinate executive branch participation with this stakeholder process.

Subd. 3. **Cap and trade system.** (a) The plan must include a cap and trade system incorporating, at a minimum, statewide power sector carbon dioxide emissions. The cap and trade plan must:

(1) set an emissions cap at an initial level to prevent significant increases in statewide greenhouse gas emissions above current levels, with a schedule for lowering the cap periodically to help meet the state's emissions-reduction targets;

(2) maximize Minnesota's ability to enter into allowance trading relationships with other states that have established or are in the process of establishing a cap and trade system regulating greenhouse gas emissions;

(3) evaluate the feasibility of implementing a cap and trade system that does not encompass the entire United States, and identify the impacts on the efficiency and effectiveness of the cap and trade system if restricted to Minnesota alone, if expanded to include surrounding midwestern states, and if Minnesota were to join other emerging regional systems with states that are planning to implement a cap and trade system;

(4) evaluate whether and to what extent a party subject to the cap should receive credit for offsetting emissions by implementing projects that reduce greenhouse gas emissions from sources not subject to the cap or absorb and sequester greenhouse gases from the atmosphere;

(5) include methods to ensure that all emissions reductions associated with projects listed in clause (4) are permanent, quantifiable, verifiable, enforceable, and would not have otherwise occurred;

(6) be designed to ensure that the proceeds from auctioning allowances are used to benefit the public, including to help meet the state's emissions-reduction goals in the most efficient and least disruptive way;

(7) estimate likely allowance prices under various scenarios, including the impact on allowance prices of constructing additional power plants subject to the cap and trade system;

(8) recommend ways to minimize any rate impacts on energy consumers;

(9) suggest procedures to award appropriate credit to entities that have voluntarily reduced their greenhouse gas emissions prior to implementation of the cap and trade system;

(10) ensure to the extent practicable that emissions reductions made in this state do not cause emissions increases outside the state;

(11) identify technologies and industries likely to thrive in a carbon-constrained future;

(12) maximize economic development in rural areas from the development of renewable energy sources and proven terrestrial sequestration practices; and

(13) suggest methods to calculate carbon dioxide emissions associated with electricity imported from outside the state.

Subd. 4. **Regional activities.** It shall be an executive branch responsibility to work with other states in the midwest region to develop and implement a regional approach to reducing greenhouse gas emissions from activities in the region, including consulting on expanding the cap and trade system described in subdivision 3. The commissioner of commerce shall coordinate Minnesota's regional activities under this subdivision and report to the legislative committees in the senate and house of representatives with jurisdiction over energy and environmental policy by February 1, 2008, and February 1, 2009, on the progress made and recommendations for further action.

Sec. 5. **[216H.05] NO LONG-TERM INCREASE FROM POWER PLANTS.**

Subdivision 1. **Long-term increased emissions from power plants prohibited.** Until the cap and trade system described in section 216H.04, subdivision 3, is fully implemented, and except as allowed in subdivision 2, no person shall:

(1) construct within the state a new large energy facility that would contribute to statewide power sector carbon dioxide emissions;

(2) import or commit to import from outside the state power from a new large energy facility that would contribute to statewide power sector carbon dioxide emissions; or

(3) enter into a new long-term power purchase agreement that would increase statewide power sector carbon dioxide emissions. For purposes of this section, a long-term power purchase agreement means an agreement to purchase 50 megawatts of capacity or more for a term exceeding five years. This prohibition does not apply to an agreement in effect as of January 1, 2007, nor to the renewal of such an agreement.

Subd. 2. **Exception for facilities that offset emissions.** (a) The prohibitions in subdivision 1 do not apply if the project proponent demonstrates to the Public Utilities Commission's satisfaction that it will offset the new contribution to statewide power sector carbon dioxide emissions with a carbon dioxide reduction project identified in paragraph (b) and in compliance with paragraph (c).

(b) A project proponent may offset the new contribution to statewide power sector carbon dioxide emissions in either, or a combination of both, of the following ways:

(1) by reducing an existing facility's contribution to statewide power sector carbon dioxide emissions in an amount equal to or greater than the proposed new contribution to statewide power sector carbon dioxide emissions; or

(2) by purchasing carbon dioxide allowances from a state or group of states that has a mandatory carbon dioxide cap and trade system in place that produces verifiable emissions reductions.

(c) The Public Utilities Commission shall not find that a proposed carbon dioxide reduction project identified in paragraph (b) acceptably offsets a new contribution to statewide power sector carbon dioxide emissions unless the proposed offsets are permanent, quantifiable, verifiable, enforceable, and would not have otherwise occurred. Emissions that have been offset under this subdivision and emissions exempted under subdivision 3 continue to be subject to the requirements of the cap and trade system described in section 216H.04, subdivision 3, when implemented.

Subd. 3. **Exception for new steel production facility.** The prohibitions in subdivision 1 do not apply to increases in statewide power sector carbon dioxide emissions from that portion of a new large energy facility or new long-term power purchase agreement that supplies electricity to a new steel production project located in a taconite tax relief area that has applied for an air quality permit from the Pollution Control Agency prior to January 1, 2007, provided that the commission determines that the new steel production project is designed to meet the highest energy efficiency standards in its industry.

Subd. 4. **Enforcement.** Whenever the commission or department determines that any person is violating or about to violate this section, it shall refer the matter to the attorney general who shall take appropriate legal action. This section may be enforced by the attorney general on the same basis as a law listed in section 8.31, subdivision 1.

Sec. 6. **[216H.06] GREENHOUSE GAS EMISSIONS CONSIDERATION IN RESOURCE PLANNING.**

By January 1, 2008, the Public Utilities Commission shall establish an estimate of the likely range of costs of future carbon dioxide regulation on electricity generation. The estimate, which may be made in a commission order, must be used in all electricity generation resource acquisition proceedings. The estimates, and annual updates, must be made following informal proceedings that allow interested parties to submit comments.

Sec. 7. **[216H.07] ENFORCEABILITY.**

In addition to any other remedies provided by law, the failure to carry out any requirement established by or pursuant to this chapter shall be treated as a violation of an environmental standard and is enforceable under chapter 116B.

ARTICLE 6
RENEWABLE ENERGY STANDARDS

Section 1. Minnesota Statutes 2006, section 216B.1691, subdivision 5, as amended by Laws 2007, chapter 3, section 1, subdivision 5, is amended to read:

Subd. 5. **Technology based on fuel combustion.** (a) Electricity produced by fuel combustion through fuel blending or co-firing under paragraph (b) may only count toward a utility's objectives or standards if the generation facility:

(1) was constructed in compliance with new source performance standards promulgated under the federal Clean Air Act for a generation facility of that type; or

(2) employs the maximum achievable or best available control technology available for a generation facility of that type.

(b) An eligible energy technology may blend or co-fire a fuel listed in subdivision 1, paragraph (a), clause ~~(1)~~ (5), with other fuels in the generation facility, but only the percentage of electricity that is attributable to a fuel listed in that clause can be counted toward an electric utility's renewable energy objectives.

Sec. 2. Minnesota Statutes 2006, section 216B.1691, subdivision 7, as added by Laws 2007, chapter 3, section 1, subdivision 7, is amended to read:

Subd. 7. **Compliance.** The commission must regularly investigate whether an electric utility is in compliance with its good-faith objective under subdivision 2 and standard obligation under subdivision 2a. If the commission finds noncompliance, it may order the electric utility to construct facilities, purchase energy generated by eligible energy technology, purchase renewable energy credits, or engage in other activities to achieve compliance. If an electric utility fails to comply with an order under this subdivision, the commission may impose a financial penalty on the electric utility in an amount not to exceed the estimated cost of the electric utility to achieve compliance. The penalty may not exceed the lesser of the cost of constructing facilities or purchasing credits. The commission must deposit financial penalties imposed under this subdivision in the energy and conservation account established in the special revenue fund under section 216B.241, subdivision 2a. This subdivision is in addition to and does not limit any other authority of the commission to enforce this section.