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HOUSE FILE No. 3669

FIRST COMMITTEE ENGROSSMENT

March 3, 2008

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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 5, 2008

Returned to the Committee on Finance as Amended.

1.1 A bill for an act
1.2 relating to energy; creating program for government energy improvement
1.3 investments; appropriating money; amending Minnesota Statutes 2006, section
1.4 216C.09; Minnesota Statutes 2007 Supplement, section 216B.241, by adding a
1.5 subdivision; proposing coding for new law in Minnesota Statutes, chapters 16B;
1.6 216C; repealing Laws 2007, chapter 57, article 2, section 30.

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

1.8 Section 1. **[16B.321] DEFINITIONS.**

1.9 **Subdivision 1. Scope.** For the purpose of this section and section 16B.322, the terms
1.10 defined in this section have the meanings given them.

1.11 **Subd. 2. Energy improvement project.** "Energy improvement project" means:

1.12 (1) a project to improve energy efficiency in a building or facility, including the

1.13 design, acquisition, installation, construction, and commissioning of equipment or

1.14 improvements to a building or facility, and training of building or facility staff necessary

1.15 to properly operate and maintain the equipment or improvements; or

1.16 (2) a project to design, acquire, install, construct, and commission equipment or

1.17 products to be used in gathering, processing, generating, transmitting, or distributing

1.18 solar, wind, geothermal, biomass, or other alternative energy sources for use in heating,

1.19 cooling, or providing electricity for a building or facility owned or operated by a state

1.20 agency and training of building or facility staff necessary to properly operate and maintain

1.21 the equipment or improvements.

1.22 **Subd. 3. Energy project study.** "Energy project study" means a technical and

1.23 financial study of one or more energy improvement projects, including:

1.24 (1) an analysis of historical energy consumption and cost data;

2.1 (2) a description of existing equipment, structural elements, operating characteristics,
2.2 and other conditions affecting energy use;

2.3 (3) a description of the proposed energy improvement projects;

2.4 (4) a detailed budget for the proposed project; and

2.5 (5) calculations sufficient to demonstrate the expected energy and operational cost
2.6 savings and reduction in fossil-fuel use.

2.7 Subd. 4. **Financing agreement.** "Financing agreement" means a tax-exempt
2.8 lease-purchase agreement entered into by the commissioner of administration and a
2.9 financial institution under a standard project financing agreement offered under section
2.10 16B.322, subdivision 4.

2.11 Subd. 5. **State agency.** "State agency" means any state officer, employee, board,
2.12 commission, authority, department, or other agency of the executive branch of state
2.13 government.

2.14 **Sec. 2. [16B.322] ENERGY IMPROVEMENT FINANCING PROGRAM FOR**
2.15 **STATE GOVERNMENT.**

2.16 Subdivision 1. **Commissioner's authority and duties; state agency authority.** The
2.17 commissioner shall administer this section. A state agency may enter into contracts for the
2.18 purposes of this section with the commissioner and participating financial institutions. All
2.19 technical services and construction contracts must be executed through the appropriate
2.20 procurement procedure in chapters 16B, 16C, and other applicable law.

2.21 Subd. 2. **Program eligibility; voluntary program participation; targeted**
2.22 **technical services.** A state agency may elect to participate in the program. The
2.23 commissioner may prioritize and target technical services offered under subdivision 3 to
2.24 state agencies with state buildings or facilities that the commissioner determines offer the
2.25 greatest potential to improve energy efficiency or reduce use of fossil-fuel energy.

2.26 Subd. 3. **Target technical services.** The commissioner may require full or
2.27 partial reimbursement of costs for technical services provided to a state agency, subject
2.28 to terms and conditions specified and agreed to by contract prior to the delivery of
2.29 technical services. The commissioner of commerce may transfer up to \$1,000,000 of the
2.30 appropriation in Laws 1988, chapter 686, article 1, section 38, to the commissioner of
2.31 administration for the purposes of this section.

2.32 Subd. 4. **Financing agreement.** The commissioner shall solicit proposals from
2.33 private financial institutions and may enter into a financing agreement with one or more
2.34 financial institutions. The term of the financing agreement must not exceed 15 years
2.35 from the date of final completion of the energy improvement project. The financing

3.1 agreement is assignable to the state agency operating or managing the state building or
3.2 facility improved by the energy improvement project. The proceeds from the financing
3.3 agreement are appropriated to the commissioner and may be used for the purposes of
3.4 this section and are available until spent.

3.5 Subd. 5. **Qualifying energy improvement projects.** The commissioner may
3.6 approve an energy improvement project and enter into a financing agreement if the
3.7 commissioner determines that:

3.8 (1) the project and financing agreement have been approved by the governing body
3.9 or head of the state agency that operates or manages the state building or facility to be
3.10 improved;

3.11 (2) the project is technically and economically feasible;

3.12 (3) the state agency that operates or manages the state building or facility has made
3.13 adequate provision for the operation and maintenance of the project;

3.14 (4) if an energy efficiency improvement, the project has a substantial likelihood to
3.15 result in a positive cash flow in each year the financing agreement is in effect; and

3.16 (5) if a renewable energy improvement, the project has a substantial likelihood to
3.17 reduce use of fossil-fuel energy.

3.18 Subd. 6. **Program costs.** Program costs incurred by the commissioner or a state
3.19 agency that are not reimbursed or paid directly under a financing agreement may be paid
3.20 with funds made available to the commissioner under section 216C.43, subdivision 10.

3.21 Sec. 3. Minnesota Statutes 2007 Supplement, section 216B.241, is amended by adding
3.22 a subdivision to read:

3.23 Subd. 9. **Coordination with utility conservation improvement programs.** The
3.24 contractor selected by the commissioner in subdivision 2 shall ensure that the local
3.25 government makes use of all applicable conservation improvement programs provided
3.26 by utilities providing electric or natural gas service. Consistent with direction from the
3.27 commissioner, a utility may count the savings resulting from its energy improvement
3.28 projects under sections 16B.322 and 216C.43 towards the utility's energy-saving goal
3.29 under section 216B.241, subdivision 1c.

3.30 Sec. 4. Minnesota Statutes 2006, section 216C.09, is amended to read:

3.31 **216C.09 COMMISSIONER DUTIES.**

3.32 (a) The commissioner shall:

3.33 (1) manage the department as the central repository within the state government for
3.34 the collection of data on energy;

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

4.4 (3) undertake a continuing assessment of trends in the consumption of all forms of
4.5 energy and analyze the social, economic, and environmental consequences of these trends;

4.6 (4) carry out energy conservation measures as specified by the legislature and
4.7 recommend to the governor and the legislature additional energy policies and conservation
4.8 measures as required to meet the objectives of sections 216C.05 to 216C.30;

4.9 (5) collect and analyze data relating to present and future demands and resources
4.10 for all sources of energy;

4.11 (6) evaluate policies governing the establishment of rates and prices for energy
4.12 as related to energy conservation, and other goals and policies of sections 216C.05 to
4.13 216C.30, and make recommendations for changes in energy pricing policies and rate
4.14 schedules;

4.15 (7) study the impact and relationship of the state energy policies to international,
4.16 national, and regional energy policies;

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

4.22 (9) inform and educate the public about the sources and uses of energy and the
4.23 ways in which persons can conserve energy;

4.24 (10) dispense funds made available for the purpose of research studies and projects
4.25 of professional and civic orientation, which are related to either energy conservation,
4.26 resource recovery, or the development of alternative energy technologies which conserve
4.27 nonrenewable energy resources while creating minimum environmental impact;

4.28 (11) charge other governmental departments and agencies involved in energy-related
4.29 activities with specific information gathering goals and require that those goals be met;

4.30 (12) design a comprehensive program for the development of indigenous energy
4.31 resources. The program shall include, but not be limited to, providing technical,
4.32 informational, educational, and financial services and materials to persons, businesses,
4.33 municipalities, and organizations involved in the development of solar, wind, hydropower,
4.34 peat, fiber fuels, biomass, and other alternative energy resources. The program shall be
4.35 evaluated by the alternative energy technical activity; and

5.1 (13) dispense loans, grants, or other financial aid from money received from
 5.2 litigation or settlement of alleged violations of federal petroleum-pricing regulations
 5.3 made available to the department for that purpose. ~~The commissioner shall adopt rules~~
 5.4 ~~under chapter 14 for this purpose.~~

5.5 (b) Further, the commissioner may participate fully in hearings before the
 5.6 Public Utilities Commission on matters pertaining to rate design, cost allocation,
 5.7 efficient resource utilization, utility conservation investments, small power production,
 5.8 cogeneration, and other rate issues. The commissioner shall support the policies stated in
 5.9 section 216C.05 and shall prepare and defend testimony proposed to encourage energy
 5.10 conservation improvements as defined in section 216B.241.

5.11 Sec. 5. **[216C.42] DEFINITIONS.**

5.12 Subdivision 1. **Scope.** For the purpose of this section and section 216C.43, the terms
 5.13 defined in this section have the meanings given them.

5.14 Subd. 2. **Energy improvement project.** "Energy improvement project" means
 5.15 a project to improve energy efficiency in a building or facility, including the design,
 5.16 acquisition, installation, and commissioning of equipment or improvements to a building
 5.17 or facility, and training of building or facility staff necessary to properly operate and
 5.18 maintain the equipment or improvements.

5.19 Subd. 3. **Energy project study.** "Energy project study" means a technical and
 5.20 financial study of one or more energy improvement projects, including:

- 5.21 (1) an analysis of historical energy consumption and cost data;
 5.22 (2) a description of existing equipment, structural elements, operating characteristics,
 5.23 and other conditions affecting energy use;
 5.24 (3) a description of the proposed energy improvement projects;
 5.25 (4) a detailed budget for the proposed project; and
 5.26 (5) calculations sufficient to demonstrate the expected energy savings.

5.27 Subd. 4. **Financing agreement.** "Financing agreement" means a tax-exempt
 5.28 lease-purchase agreement entered into by a local government and a financial institution
 5.29 under a standard project financing agreement offered under section 216C.43, subdivision 6.

5.30 Subd. 5. **Guarantee.** "Guarantee" means a positive budget impact guarantee under
 5.31 section 216C.43, subdivision 7.

5.32 Subd. 6. **Local government.** "Local government" means a Minnesota county,
 5.33 statutory or home rule charter city, town, school district, or any combination of those units
 5.34 operating under an agreement to exercise powers jointly.

6.1 Subd. 7. **Program.** "Program" means the energy improvement financing program
6.2 for local governments authorized by section 216C.43.

6.3 Sec. 6. **[216C.43] ENERGY IMPROVEMENT FINANCING PROGRAM FOR**
6.4 **LOCAL GOVERNMENT.**

6.5 Subdivision 1. **Commissioner's authority and duties; local government**
6.6 **authority.** The commissioner shall administer this section. A local government may
6.7 enter into contracts for the purposes of this section with the commissioner, the primary
6.8 contractor, other contracted technical service providers, and participating financial
6.9 institutions.

6.10 Subd. 2. **Program eligibility; voluntary program participation; targeted**
6.11 **technical services.** A local government may elect to participate in the program. The
6.12 commissioner may prioritize and target technical services offered under subdivision
6.13 5 to public entities that the commissioner determines offer the greatest potential for
6.14 cost-effective energy improvement projects.

6.15 Subd. 3. **Primary contractor for technical, financial, and program management**
6.16 **services.** The commissioner may enter into a contract for the delivery of technical
6.17 services, financial management, marketing, and administrative services necessary for
6.18 implementation of the program.

6.19 Subd. 4. **Targeted technical services.** The commissioner shall offer technical
6.20 services to targeted public entities to conduct energy project studies. The commissioner
6.21 may contract with one or more qualified technical service providers to conduct energy
6.22 project studies for targeted public entities. The commissioner may require full or partial
6.23 reimbursement of costs for technical services provided to a local government, subject to
6.24 terms and conditions specified and agreed to by contract prior to the delivery of technical
6.25 services. A local government may independently procure technical services to conduct
6.26 an energy project study, but the energy project study must be reviewed and approved by
6.27 the commissioner to qualify an energy improvement project for a financing agreement
6.28 under subdivision 6 or a guarantee under subdivision 7.

6.29 Subd. 5. **Participation of technical service providers statewide.** Program
6.30 activities must be implemented to encourage statewide participation of engineers,
6.31 architects, energy auditors, contractors, and other technical service providers. The
6.32 commissioner may provide training on energy project study requirements and procedures
6.33 to technical service providers.

6.34 Subd. 6. **Standard project financing agreement.** The commissioner shall solicit
6.35 proposals from private financial institutions and may enter into a standard project

7.1 financing agreement with one or more financial institutions. A standard project financing
7.2 agreement must specify terms and conditions uniformly available to all participating
7.3 public entities for financing to implement energy improvement projects under this section.
7.4 A local government may choose to finance an energy improvement project by means
7.5 other than a standard project financing agreement, but a guarantee under subdivision 7
7.6 must not be offered unless the commissioner determines that the other financing means
7.7 creates no greater potential obligation under a guarantee than would be created through a
7.8 standard project financing agreement.

7.9 Subd. 7. **Positive budget impact guarantee.** (a) The commissioner shall offer
7.10 a guarantee of positive budget impact for the term of the financing agreement to a
7.11 participating local government for qualifying energy improvement projects. A positive
7.12 budget impact guarantee is an agreement by the commissioner to lend funds to a local
7.13 government in an amount necessary so that the cumulative payments made by the local
7.14 government under a financing agreement minus the amount loaned by the commissioner
7.15 do not exceed the actual energy and operating cost savings attributable to the energy
7.16 improvement project for the term of the guarantee. Funds loaned to a local government
7.17 by the commissioner in fulfillment of a guarantee are repayable only to the extent that
7.18 a positive budget impact is maintained during the term of the guarantee. Terms and
7.19 conditions of a guarantee must be agreed to by contract prior to a local government
7.20 entering into a financing agreement.

7.21 (b) A guarantee contract must include, but is not limited to:

7.22 (1) specification of methods and procedures to measure and verify energy cost
7.23 savings;

7.24 (2) obligations of the local government to operate and maintain the energy
7.25 improvements;

7.26 (3) procedures to modify the guarantee if the local government modifies operating
7.27 characteristics of its building or facility in a manner that adversely affects energy cost
7.28 savings;

7.29 (4) interest charged on the loan, which may not exceed the interest on the related
7.30 financial agreement; and

7.31 (5) procedures for resolution of disputes.

7.32 Subd. 8. **Qualifying energy improvement projects.** A local government may
7.33 submit to the commissioner, on a form prescribed by the commissioner, an application for
7.34 a financing agreement authorization and guarantee for energy improvement projects. The
7.35 commissioner shall approve an energy improvement project for a guarantee and authorize
7.36 eligibility for a financing agreement if the commissioner determines that:

8.1 (1) the application has been approved by the governing body or agency head of the
8.2 local government;

8.3 (2) the project is technically and economically feasible;

8.4 (3) the local government has made adequate provision for the operation and
8.5 maintenance of the project;

8.6 (4) the project has a substantial likelihood to result in a positive cash flow in each
8.7 year the financing agreement is in effect; and

8.8 (5) adequate funds will be available to the commissioner to fulfill the guarantee.

8.9 Subd. 9. **Program costs.** Program costs incurred by the commissioner or a public
8.10 entity that are not direct costs to implement energy improvement projects may be paid
8.11 with program funds appropriated under subdivision 10.

8.12 Subd. 10. **Funding; appropriation; receipts.** Petroleum violation escrow funds
8.13 appropriated to the commissioner by Laws 1988, chapter 686, article 1, section 38, for
8.14 state energy loan programs for schools, hospitals, and public buildings, and reappropriated
8.15 by Laws 2007, chapter 57, article 2, section 30, are appropriated to the commissioner
8.16 for the purposes of this section and are available until spent. The commissioner may
8.17 transfer up to \$1,000,000 of this appropriation to the commissioner of administration for
8.18 the purposes of section 16B.322.

8.19 **Sec. 7. REPEALER.**

8.20 Laws 2007, chapter 57, article 2, section 30, is repealed.

8.21 **EFFECTIVE DATE.** This section is effective the day following final enactment.