

This Document can be made available
in alternative formats upon request

HOUSE FILE NO. 3109

SECOND COMMITTEE ENGROSSMENT

February 22, 2010

Authored by Kalin, Bly, Sailer, Hilty, Jackson and others
The bill was read for the first time and referred to the Committee on Finance

February 25, 2010

By motion, recalled and re-referred to the Committee on State and Local Government Operations Reform, Technology and Elections

March 8, 2010

Committee Recommendation and Adoption of Report:
To Pass as Amended and re-referred to the Committee on Finance

Referred by Chair to Energy Finance and Policy Division.

March 24, 2010

Returned to the Committee on Finance as Amended.

1.1 A bill for an act
1.2 relating to local government; authorizing local governments to finance energy
1.3 improvements for property owners to install energy efficient or renewable energy
1.4 improvements; providing for repayment as a special assessment; authorizing
1.5 issuance of revenue bonds; amending Minnesota Statutes 2008, sections
1.6 429.021, subdivision 1; 429.101, subdivision 1; proposing coding for new law
1.7 in Minnesota Statutes, chapter 216C.

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

1.9 Section 1. **[216C.435] DEFINITIONS.**

1.10 Subdivision 1. **Scope.** For the purposes of this section and section 216C.436, the
1.11 terms defined in this section have the meanings given them.

1.12 Subd. 2. **City.** "City" means a home rule charter or statutory city.

1.13 Subd. 3. **Local government.** "Local government" means a city, county, or town.

1.14 Subd. 4. **Energy audit.** "Energy audit" means a formal evaluation of the energy
1.15 consumption of a building by a certified energy auditor, whose certification is approved by
1.16 the commissioner, for the purpose of identifying appropriate energy improvements that
1.17 could be made to the building and including an estimate of the length of time a specific
1.18 energy improvement will take to repay its purchase and installation costs, based on the
1.19 amount of energy saved and estimated future energy prices.

1.20 Subd. 5. **Energy improvement.** "Energy improvement" means:

1.21 (1) any renovation or retrofitting of a building to improve energy efficiency that
1.22 is permanently affixed to the property and that results in a net reduction in energy
1.23 consumption without altering the principal source of energy;

1.24 (2) permanent installation of new or upgraded electrical circuits to enable electrical
1.25 vehicle charging; or

2.1 (3) a renewable energy system attached to, installed within, or proximate to a
2.2 building that generates electrical or thermal energy from a renewable energy source.

2.3 Subd. 6. **Qualifying real property.** "Qualifying real property" means a
2.4 single-family or multifamily residential dwelling, or a commercial or industrial building,
2.5 that the city has determined, after review of an energy audit or renewable energy system
2.6 feasibility study, can be benefited by installation of energy improvements.

2.7 Subd. 7. **Renewable energy.** "Renewable energy" means energy produced by
2.8 means of solar thermal, solar photovoltaic, wind, or geothermal resources.

2.9 Subd. 8. **Renewable energy system feasibility study.** "Renewable energy system
2.10 feasibility study" means a written study, conducted by a contractor trained to perform that
2.11 analysis, for the purpose of determining the feasibility of installing a renewable energy
2.12 system in a building, including an estimate of the length of time a specific renewable
2.13 energy system will take to repay its purchase and installation costs, based on the amount of
2.14 energy saved and estimated future energy prices. For a geothermal energy improvement,
2.15 the feasibility study must calculate net savings in terms of nongeothermal energy and costs.

2.16 Subd. 9. **Solar thermal.** "Solar thermal" has the meaning given to "qualifying solar
2.17 thermal project" in section 216B.2411, subdivision 2, paragraph (e).

2.18 Subd. 10. **Solar photovoltaic.** "Solar photovoltaic" has the meaning given in
2.19 section 216C.06, subdivision 16, and must meet the requirements of section 216C.25.

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

2.21 Sec. 2. **[216C.436] VOLUNTARY ENERGY IMPROVEMENTS FINANCING**
2.22 **PROGRAM FOR LOCAL GOVERNMENTS.**

2.23 Subdivision 1. **Program authority.** A local government may establish a program
2.24 to finance energy improvements to enable owners of qualifying real property to pay for
2.25 cost-effective energy improvements to the qualifying real property with the net proceeds
2.26 and interest earnings of revenue bonds authorized in this section. A local government may
2.27 limit the number of qualifying real properties for which a property owner may receive
2.28 program financing.

2.29 Subd. 2. **Program requirements.** A financing program must:

2.30 (1) impose requirements and conditions on financing arrangements to ensure timely
2.31 repayment;

2.32 (2) require an energy audit or renewable energy system feasibility study to be
2.33 conducted on the qualifying real property and reviewed by the local government prior to
2.34 approval of the financing;

3.1 (3) require the inspection of all installations and performance verification of at least
3.2 ten percent of the energy improvements financed by the program;

3.3 (4) require that all cost-effective energy improvements be made to a qualifying
3.4 real property prior to, or in conjunction with, an applicant's repayment of financing for
3.5 energy improvements for that property;

3.6 (5) have energy improvements financed by the program performed by licensed
3.7 contractors as required by chapter 326B or other law or ordinance;

3.8 (6) require disclosures to borrowers by the local government of the risks involved in
3.9 borrowing, including the risk of foreclosure if a tax delinquency results from a default;

3.10 (7) provide financing only to those who demonstrate an ability to repay;

3.11 (8) not provide financing for a qualifying real property in which the owner is not
3.12 current on mortgage or real property tax payments;

3.13 (9) require a petition by all owners of the qualifying real property requesting
3.14 collections of repayments as a special assessment under section 429.101;

3.15 (10) provide that payments and assessments are not accelerated due to a default and
3.16 that a tax delinquency exists only for assessments not paid when due; and

3.17 (11) require that liability for special assessments related to the financing runs with
3.18 the qualifying real property.

3.19 Subd. 3. **Retail and end use prohibited.** Energy generated by an energy
3.20 improvement may not be sold, transmitted, or distributed at retail and may not provide for
3.21 end use of the electrical energy for an off-site facility. On-site generation is allowed to the
3.22 extent provided for in section 216B.1611.

3.23 This section does not modify the exclusive service territories or exclusive right to
3.24 serve as provided in sections 216B.37 to 216B.43.

3.25 Subd. 4. **Financing terms.** Financing provided under this section must have:

3.26 (1) a term not to exceed the weighted average of the useful life of the energy
3.27 improvements installed, as determined by the local government, but in no event may
3.28 a term exceed 20 years;

3.29 (2) a principal amount not to exceed the lesser of ten percent of the assessed value
3.30 of the real property on which the improvements are to be installed or the actual cost of
3.31 installing the energy improvements, including the costs of necessary equipment, materials,
3.32 and labor, the costs of each related energy audit or renewable energy system feasibility
3.33 study, and the cost of verification of installation; and

3.34 (3) an interest rate sufficient to pay the financing costs of the program, including the
3.35 issuance of bonds and any financing delinquencies.

4.1 Subd. 5. **Coordination with other programs.** A financing program must include
4.2 cooperation and coordination with the conservation improvement activities of the utility
4.3 servicing the qualifying real property and other public and private energy improvement
4.4 programs.

4.5 Subd. 6. **Certificate of participation.** Upon completion of a project, a local
4.6 government shall provide a borrower with a certificate stating participation in the program
4.7 and what energy improvements have been made with financing program proceeds.

4.8 Subd. 7. **Repayment.** A local government financing an energy improvement
4.9 under this section must:

4.10 (1) secure payment with a lien against the benefited qualifying real property; and

4.11 (2) collect repayments as a special assessment as provided for in section 429.101
4.12 or by charter.

4.13 Subd. 8. **Bond issuance; repayment.** (a) A local government may issue revenue
4.14 bonds as provided in chapter 475 for the purposes of this section.

4.15 (b) The bonds must be payable as to both principal and interest solely from the
4.16 revenues from the assessments established in subdivision 7.

4.17 (c) No holder of bonds issued under this subdivision may compel any exercise of the
4.18 taxing power of the local government that issued the bonds to pay principal or interest on
4.19 the bonds. Bonds issued under this subdivision are not a debt or obligation of the local
4.20 government that issued them, nor is the payment of the bonds enforceable out of any
4.21 money other than the revenue pledged to the payment of the bonds.

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

4.23 Sec. 3. Minnesota Statutes 2008, section 429.021, subdivision 1, is amended to read:

4.24 Subdivision 1. **Improvements authorized.** The council of a municipality shall have
4.25 power to make the following improvements:

4.26 (1) To acquire, open, and widen any street, and to improve the same by constructing,
4.27 reconstructing, and maintaining sidewalks, pavement, gutters, curbs, and vehicle parking
4.28 strips of any material, or by grading, graveling, oiling, or otherwise improving the same,
4.29 including the beautification thereof and including storm sewers or other street drainage
4.30 and connections from sewer, water, or similar mains to curb lines.

4.31 (2) To acquire, develop, construct, reconstruct, extend, and maintain storm and
4.32 sanitary sewers and systems, including outlets, holding areas and ponds, treatment plants,
4.33 pumps, lift stations, service connections, and other appurtenances of a sewer system,
4.34 within and without the corporate limits.

4.35 (3) To construct, reconstruct, extend, and maintain steam heating mains.

5.1 (4) To install, replace, extend, and maintain street lights and street lighting systems
5.2 and special lighting systems.

5.3 (5) To acquire, improve, construct, reconstruct, extend, and maintain water works
5.4 systems, including mains, valves, hydrants, service connections, wells, pumps, reservoirs,
5.5 tanks, treatment plants, and other appurtenances of a water works system, within and
5.6 without the corporate limits.

5.7 (6) To acquire, improve and equip parks, open space areas, playgrounds, and
5.8 recreational facilities within or without the corporate limits.

5.9 (7) To plant trees on streets and provide for their trimming, care, and removal.

5.10 (8) To abate nuisances and to drain swamps, marshes, and ponds on public or private
5.11 property and to fill the same.

5.12 (9) To construct, reconstruct, extend, and maintain dikes and other flood control
5.13 works.

5.14 (10) To construct, reconstruct, extend, and maintain retaining walls and area walls.

5.15 (11) To acquire, construct, reconstruct, improve, alter, extend, operate, maintain, and
5.16 promote a pedestrian skyway system. Such improvement may be made upon a petition
5.17 pursuant to section 429.031, subdivision 3.

5.18 (12) To acquire, construct, reconstruct, extend, operate, maintain, and promote
5.19 underground pedestrian concourses.

5.20 (13) To acquire, construct, improve, alter, extend, operate, maintain, and promote
5.21 public malls, plazas or courtyards.

5.22 (14) To construct, reconstruct, extend, and maintain district heating systems.

5.23 (15) To construct, reconstruct, alter, extend, operate, maintain, and promote fire
5.24 protection systems in existing buildings, but only upon a petition pursuant to section
5.25 429.031, subdivision 3.

5.26 (16) To acquire, construct, reconstruct, improve, alter, extend, and maintain highway
5.27 sound barriers.

5.28 (17) To improve, construct, reconstruct, extend, and maintain gas and electric
5.29 distribution facilities owned by a municipal gas or electric utility.

5.30 (18) To purchase, install, and maintain signs, posts, and other markers for addressing
5.31 related to the operation of enhanced 911 telephone service.

5.32 (19) To improve, construct, extend, and maintain facilities for Internet access and
5.33 other communications purposes, if the council finds that:

5.34 (i) the facilities are necessary to make available Internet access or other
5.35 communications services that are not and will not be available through other providers or
5.36 the private market in the reasonably foreseeable future; and

6.1 (ii) the service to be provided by the facilities will not compete with service provided
6.2 by private entities.

6.3 (20) To assess affected property owners for all or a portion of the costs agreed to
6.4 with an electric utility, telecommunications carrier, or cable system operator to bury or
6.5 alter a new or existing distribution system within the public right-of-way that exceeds the
6.6 utility's design and construction standards, or those set by law, tariff, or franchise, but only
6.7 upon petition under section 429.031, subdivision 3.

6.8 (21) To assess affected property owners for repayment of voluntary energy
6.9 improvement financing under section 216C.436, subdivision 7.

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

6.11 Sec. 4. Minnesota Statutes 2008, section 429.101, subdivision 1, is amended to read:

6.12 Subdivision 1. **Ordinances.** (a) In addition to any other method authorized by
6.13 law or charter, the governing body of any municipality may provide for the collection
6.14 of unpaid special charges as a special assessment against the property benefited for all
6.15 or any part of the cost of:

6.16 (1) snow, ice, or rubbish removal from sidewalks;

6.17 (2) weed elimination from streets or private property;

6.18 (3) removal or elimination of public health or safety hazards from private property,
6.19 excluding any structure included under the provisions of sections 463.15 to 463.26;

6.20 (4) installation or repair of water service lines, street sprinkling or other dust
6.21 treatment of streets;

6.22 (5) the trimming and care of trees and the removal of unsound trees from any street;

6.23 (6) the treatment and removal of insect infested or diseased trees on private property,
6.24 the repair of sidewalks and alleys;

6.25 (7) the operation of a street lighting system;

6.26 (8) the operation and maintenance of a fire protection or a pedestrian skyway system;

6.27 (9) inspections relating to a municipal housing maintenance code violation;

6.28 (10) the recovery of any disbursements under section 504B.445, subdivision 4,
6.29 clause (5), including disbursements for payment of utility bills and other services, even if
6.30 provided by a third party, necessary to remedy violations as described in section 504B.445,
6.31 subdivision 4, clause (2); or

6.32 (11) [Repealed, 2004 c 275 s 5]

6.33 (12) the recovery of delinquent vacant building registration fees under a municipal
6.34 program designed to identify and register vacant buildings.

7.1 (b) The council may by ordinance adopt regulations consistent with this section to
7.2 make this authority effective, including, at the option of the council, provisions for placing
7.3 primary responsibility upon the property owner or occupant to do the work personally
7.4 (except in the case of street sprinkling or other dust treatment, alley repair, tree trimming,
7.5 care, and removal, or the operation of a street lighting system) upon notice before the work
7.6 is undertaken, and for collection from the property owner or other person served of the
7.7 charges when due before unpaid charges are made a special assessment.

7.8 (c) A home rule charter city, statutory city, county, or town operating an energy
7.9 improvements financing program under section 216C.436 has the authority granted to a
7.10 municipality under paragraph (a) with respect to energy improvements financed under
7.11 that section.

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