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State of Minnesota
HOUSE OF REPRESENTATIVES

EIGHTY-SIXTH
SESSION

HOUSE FILE No. **3618**

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The bill was read for the first time and referred to the Committee on Finance

1.1 A bill for an act
1.2 relating to energy; establishing rate schedules for certain renewable energy
1.3 projects; establishing surcharge on electricity consumption; requiring reports;
1.4 proposing coding for new law in Minnesota Statutes, chapter 216B.

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

1.6 Section 1. **[216B.152] CITATION.**

1.7 Sections 216B.152 to 216B.1565 may be referred to as the Energy Security and
1.8 Economic Development Act of 2010.

1.9 Sec. 2. **[216B.1525] DEFINITIONS.**

1.10 Subdivision 1. **Scope.** For purposes of sections 216B.152 to 216B.1565, the
1.11 following terms have the meanings given them.

1.12 Subd. 2. **Capacity.** "Capacity" means the nameplate capacity of a renewable
1.13 electricity generator.

1.14 Subd. 3. **Community-based energy development project or C-BED project.**
1.15 "Community-based energy development project" or "C-BED project" has the meaning
1.16 given in section 216B.1612, subdivision 2, paragraph (g).

1.17 Subd. 4. **Electric utility.** "Electric utility" means a public utility providing electric
1.18 service, or a generation or cooperative electric association that elects to be subject to rate
1.19 regulation by the commission under section 216B.026.

1.20 Subd. 5. **Electrical distribution system.** "Electrical distribution system" means
1.21 that portion of the electric power system over which the Federal Energy Regulatory
1.22 Commission does not have authority to interconnect electric generators that sell electricity
1.23 in intrastate commerce only.

2.1 Subd. 6. **Open field project.** "Open field project" means a photovoltaic device that
2.2 has no physical connection to a building other than electric lines to transport electricity.

2.3 Subd. 7. **Photovoltaic device.** "Photovoltaic device" has the meaning given in
2.4 section 216C.06, subdivision 16.

2.5 Subd. 8. **Qualifying owner.** "Qualifying owner" has the meaning given in section
2.6 216B.1612, subdivision 2, paragraph (c).

2.7 Subd. 9. **Reasonable profit.** "Reasonable profit" means a rate of profit equal to the
2.8 average rate of return on equity approved by the commission in general rate cases for
2.9 elective utilities during the previous 12 months.

2.10 Subd. 10. **Renewable electricity generator.** "Renewable electricity generator"
2.11 means a project:

2.12 (1) that generates electrical energy by means of a wind energy conversion system,
2.13 photovoltaic device, or anaerobic digester; and

2.14 (2) in which one or more qualifying owners has at least a 51 percent ownership
2.15 interest.

2.16 Subd. 11. **Rooftop project.** "Rooftop project" means a project in which a
2.17 photovoltaic device is physically attached to the roof of a building.

2.18 Subd. 12. **Wind energy conversion system or WECS.** "Wind energy conversion
2.19 system" or "WECS" has the meaning given in section 216C.06, subdivision 19.

2.20 **Sec. 3. [216B.153] STANDARD RENEWABLE RATE ESTABLISHED.**

2.21 A standard renewable rate is established to provide opportunities for Minnesotans
2.22 to own and invest in renewable electricity generation by requiring utilities to purchase
2.23 electrical energy at a just and reasonable price from Minnesota-owned renewable
2.24 electricity generation projects connected to the electrical distribution system in accordance
2.25 with the standard terms and rates provided in sections 216B.152 to 216B.1565.

2.26 **Sec. 4. [216B.1535] STANDARD RENEWABLE RATE.**

2.27 Subdivision 1. **Utilities to offer standard renewable rate.** By December 1,
2.28 2010, each public utility providing electric service at retail shall file for commission
2.29 approval a standard renewable rate consistent with this section. Within 90 days of the first
2.30 commission approval order under this section, each cooperative electric association,
2.31 generation and transmission cooperative electric association, and municipal power agency
2.32 shall adopt a standard renewable rate as consistent as possible with this section.

2.33 Subd. 2. **Standard renewable rate objective.** The objective of the standard
2.34 renewable rate is to promote a rate of development of renewable electricity generators

3.1 that will contribute significantly to accomplishing the renewable energy objectives and
3.2 standards in section 216B.1691, subdivisions 2 and 2a.

3.3 Subd. 3. **Application.** The standard renewable rate applies to:

3.4 (1) a wind energy conversion system with a capacity no greater than seven
3.5 megawatts; and

3.6 (2) a photovoltaic system with a capacity no greater than 500 kilowatts.

3.7 Subd. 4. **Standard renewable rate components.** The standard renewable rate
3.8 has two components:

3.9 (1) the utility purchasing the energy shall pay the highest price determined under
3.10 section 216B.164, based on project size; and

3.11 (2) an incentive payment paid from the public benefits surcharge account established
3.12 in section 216B.155 equal to the difference between the standard renewable rate for the
3.13 relevant project type and size determined under this section and the amount in clause (1).

3.14 Subd. 5. **Standard renewable rate terms.** An electric utility shall enter into a
3.15 power purchase agreement with the qualifying owners of a renewable electricity generator
3.16 connected to the electrical distribution system to purchase all of the electricity produced
3.17 by the renewable electricity generator. The term of the power purchase agreement must
3.18 not be less than 20 years from the date of commissioning of the renewable electricity
3.19 generator. The rates of the power purchase agreement must be the rates established by
3.20 the commission under subdivision 7 or 8. The standard renewable rates established under
3.21 this section must remain constant over the entire term of a power purchase agreement,
3.22 except as provided for in subdivision 6.

3.23 Subd. 6. **Standard renewable rate; interim values.** Until the commission
3.24 determines the final standard renewable rates under subdivision 7, the interim standard
3.25 renewable rates are:

3.26 (1) for wind energy conversion systems during the first five years following
3.27 commissioning of a project, \$..... per kilowatt-hour;

3.28 (2) for wind energy conversion systems during years six through 20 following
3.29 commissioning of a project:

3.30 (i) whose capacity is 40 kilowatts or less, \$..... per kilowatt-hour;

3.31 (ii) whose capacity exceeds 40 kilowatts but is no greater than 100 kilowatts, \$.....
3.32 per kilowatt-hour;

3.33 (iii) whose capacity exceeds 100 kilowatts but is no greater than 1,000 kilowatts,
3.34 \$..... per kilowatt-hour; and

3.35 (iv) whose capacity exceeds 1,000 kilowatts but is no greater than seven megawatts,
3.36 \$..... per kilowatt-hour;

- 4.1 (3) for open field or rooftop solar photovoltaic devices:
- 4.2 (i) whose capacity is five kilowatts or less, \$..... per kilowatt-hour;
- 4.3 (ii) whose capacity exceeds five kilowatts but is no greater than ten kilowatts, \$.....
- 4.4 per kilowatt-hour;
- 4.5 (iii) whose capacity exceeds ten kilowatts but is no greater than 100 kilowatts,
- 4.6 \$..... per kilowatt-hour; and
- 4.7 (iv) whose capacity exceeds 100 kilowatts but is less than 500 kilowatts, \$.....
- 4.8 per kilowatt-hour.

4.9 Subd. 7. **Standard renewable rate; final values.** (a) By October 1, 2010, the

4.10 commission shall determine a final standard rate for each project type and size listed

4.11 in subdivision 6. The commission shall review each interim standard renewable rate

4.12 established in subdivision 6 to determine if it is a reasonable approximation of the rate

4.13 that would be established by applying the criteria in this subdivision. If the commission

4.14 so determines, it shall approve the interim standard renewable rate as a final standard

4.15 renewable rate. Otherwise, the commission shall calculate the final standard renewable

4.16 rate by applying the criteria in paragraph (b).

4.17 (b) The commission shall calculate a final standard renewable rate by first

4.18 determining, for each project type and size listed in subdivision 6:

- 4.19 (1) the cost of generation, based on economic analysis;
- 4.20 (2) the amount of federal, state, and utility subsidies, including grants, tax credits,
- 4.21 and rebates, that a renewable electricity generator is likely to obtain for such projects,
- 4.22 but excluding tradeable renewable energy credits, a tax under chapter 272, or financial
- 4.23 incentives available to businesses that do not generate electricity from renewable sources;
- 4.24 (3) a reasonable profit; and
- 4.25 (4) any adjustment the commission determines is the minimum amount necessary to
- 4.26 ensure that the objective in subdivision 2 is met.

4.27 (c) The commission shall calculate the standard renewable rate by adding the

4.28 amounts in paragraph (b), clauses (1), (3), and (4), and subtracting the amount in

4.29 paragraph (b), clause (2), from the total.

4.30 (d) The commission shall not approve a standard rate exceeding \$..... per

4.31 kilowatt-hour.

4.32 Subd. 8. **Standard renewable rate review and adjustment.** (a) Beginning

4.33 February 1, 2013, and annually thereafter, the commission shall review the standard

4.34 renewable rate and, if it determines that the standard renewable rate is not a reasonable

4.35 approximation of the rate that would be calculated under subdivision 7, paragraph (b),

4.36 using the most recent available data, or is not efficacious in achieving the objectives

5.1 described in subdivision 2, may adjust the standard renewable rate. In determining
5.2 whether the standard renewable rate should be adjusted, the commission shall consider:

5.3 (1) the rate of penetration of wind, photovoltaic devices, and anaerobic digester
5.4 facilities in Minnesota's electricity generation sector, as compared with the state's
5.5 renewable energy goals enumerated in section 216B.1691, subdivision 2a;

5.6 (2) whether the implementation of a standard obligation has been modified by the
5.7 commission under section 216B.1691, subdivision 2b; and

5.8 (3) the account balance in the public benefits surcharge account established under
5.9 section 216B.155.

5.10 (b) The commission may not approve a standard renewable rate that is less than the
5.11 cost of generating electricity from a renewable electricity generator plus a reasonable
5.12 profit.

5.13 (c) After notice and hearing and upon finding that the objectives in section
5.14 216B.1691 are not likely to be met without extending this standard renewable rate
5.15 to renewable electricity projects connected to the electrical transmission system, the
5.16 commission may require electric utilities to enter into power purchase agreements with
5.17 qualifying owners at rates in accordance with subdivisions 6 to 8 as are necessary to
5.18 achieve those objectives.

5.19 Subd. 9. **Sale to nonqualifying owners limited.** During the term of a power
5.20 purchase agreement entered into under the standard renewable rate established in this
5.21 section, no qualifying owner may voluntarily sell its ownership interest in the renewable
5.22 energy generator unless the sale is to another qualifying owner and is approved by the
5.23 commission. This subdivision does not restrict transfers of interest by means other than
5.24 voluntary sales.

5.25 Subd. 10. **Ownership limit.** A single qualifying or nonqualifying owner receiving
5.26 payments under a standard renewable rate established in this section may own:

5.27 (1) up to 100 percent of a single project for each of the three technologies eligible
5.28 to receive such payments, but may own no more than 15 percent of any other project
5.29 receiving a standard renewable rate under this section; and

5.30 (2) in aggregate, projects or portions of projects with a combined capacity of no
5.31 more than 12 megawatts.

5.32 Subd. 11. **WECS capacity calculation.** For the purposes of this section and section
5.33 216B.1555, the total size of a wind energy conversion system must be determined in the
5.34 same manner as in section 216C.41, subdivision 5, paragraphs (b) and (c).

5.35 Subd. 12. **Interconnection.** (a) The standard renewable rate in this section must
5.36 provide that electric utilities will interconnect renewable energy generators to the electrical

6.1 distribution system under the jurisdiction of the commission to the maximum extent of
6.2 state jurisdiction allowed under federal law.

6.3 (b) The commission shall consult with the Federal Energy Regulatory Commission,
6.4 the Midwest Independent Transmission System Operator Incorporated, and other
6.5 appropriate entities to establish an interconnection request review procedure to promptly
6.6 and efficiently determine whether or not the commission may interconnect a renewable
6.7 energy generator that requests interconnection under state authority.

6.8 (c) The commission shall issue orders necessary to establish interconnection
6.9 standard renewable rates for the standardized, cost-effective, timely, reliable, and safe
6.10 interconnection of renewable electricity generators under state authority.

6.11 (d) The commission shall establish standard interconnection contracts and
6.12 interconnection schedules.

6.13 (e) An electric utility's costs associated with the interconnection of renewable
6.14 electricity generators, including direct interconnection costs, distribution system
6.15 enhancements, and electric utility compliance costs, are recoverable as provided in section
6.16 216B.154.

6.17 Subd. 13. **Standard contract.** The commission shall approve a standard contract to
6.18 be used in all power purchase agreements under the standard renewable rate established
6.19 under this section. The contract must include the price paid for each kilowatt-hour
6.20 generated, a method to adjust the price for inflation, and the duration of the contract.

6.21 **Sec. 5. [216B.154] COST RECOVERY.**

6.22 The commission shall require an electric utility to file rate schedules containing
6.23 provisions for the automatic adjustment of charges for electric utility service in direct
6.24 relation to the cost of electricity purchased from renewable electricity generators under
6.25 the standard renewable rate established under sections 216B.152 to 216B.1565 and all
6.26 other costs required to comply with the standard renewable rate established under section
6.27 216B.1535.

6.28 **Sec. 6. [216B.1545] INFORMATION REQUIRED.**

6.29 (a) By March 1, 2012, and each year thereafter, a utility that has filed a standard
6.30 renewable rate established in this section with the commission shall report to the
6.31 commission, for the previous calendar year, the following quantities:

6.32 (1) the total number of kilowatt-hours purchased under contracts utilizing the
6.33 standard renewable rate established under section 216B.1535;

7.1 (2) the total revenues paid by the utility for electricity purchased under contracts
 7.2 utilizing the standard renewable rate established under section 216B.1535; and
 7.3 (3) the total number of kilowatt-hours sold to Minnesota retail customers.

7.4 (b) Upon request, renewable energy generators, qualifying owners that own all or
 7.5 part of a renewable energy generator, and electric utilities shall provide the commission
 7.6 any information that may be relevant to the commission performing its duties under
 7.7 sections 216B.152 to 216B.1565, including but not limited to project development
 7.8 costs, equipment costs, electricity production costs, interconnection costs, automatic
 7.9 rate adjustments, and compliance costs.

7.10 **Sec. 7. [216B.155] PUBLIC BENEFITS SURCHARGE.**

7.11 Subdivision 1. **Surcharge.** There is established a public benefits surcharge on each
 7.12 kilowatt-hour of electricity sold at retail to Minnesota customers by an electric utility. The
 7.13 surcharge must be collected by each electric utility and remitted to the commissioner of
 7.14 commerce monthly.

7.15 Subd. 2. **Amount.** Beginning July 1, 2010, the public benefits surcharge is
 7.16 \$0.00025 per kilowatt-hour, and increases to \$0.0005 per kilowatt-hour on July 1, 2011,
 7.17 to \$0.00075 per kilowatt-hour on July 1, 2012, and to \$0.001 per kilowatt-hour on July
 7.18 1, 2013, and thereafter.

7.19 Subd. 3. **Account.** The public benefits surcharge account is established. The
 7.20 commissioner of commerce shall deposit all proceeds from the surcharge established in
 7.21 subdivision 1 into the account monthly. Other funds may be deposited into the account,
 7.22 including those voluntarily contributed by ratepayers under subdivision 6. Interest accrued
 7.23 on the account balance remains in the account. The account balance does not cancel to the
 7.24 general fund, but remains in the account for disbursement under subdivision 4.

7.25 Subd. 4. **Expenditures.** The commissioner of commerce may make expenditures
 7.26 from the account for the following purposes:

7.27 (1) to make incentive payments to owners of renewable electricity generators, as
 7.28 specified in section 216B.1555; and

7.29 (2) to reimburse the commission for reasonable costs of annually reviewing the
 7.30 standard renewable rate under section 216B.1535, subdivision 8.

7.31 Subd. 5. **Exceptions.** The public benefits surcharge may not be charged to:

7.32 (1) the electricity consumption of a retail industrial electric customer that exceeds
 7.33 kilowatt-hours in a month; or

7.34 (2) a residential customer who receives the low-income electric rate discount under
 7.35 section 216B.16, subdivision 14.

8.1 Subd. 6. **Ratepayer contributions.** An electric utility must offer its customers the
8.2 option of making voluntary contributions to the account created in this section through
8.3 the utility bill.

8.4 Sec. 8. **[216B.1555] STANDARD RENEWABLE RATE INCENTIVE**
8.5 **PAYMENTS.**

8.6 Subdivision 1. **Incentive payment; appropriation.** (a) Incentive payments to a
8.7 project that receives a rate under section 216B.1535 must be made according to this
8.8 section.

8.9 (b) Payment may only be made upon receipt by the commissioner of commerce of
8.10 a standard renewable rate incentive payment application that establishes the applicant's
8.11 eligibility to receive a standard renewable rate incentive payment and that satisfies other
8.12 requirements the commissioner deems necessary. The application must be in a form and
8.13 submitted at a time established by the commissioner.

8.14 (c) There is annually appropriated from the public benefits surcharge account under
8.15 section 216B.155 to the commissioner of commerce funds sufficient to make the payments
8.16 required under this section.

8.17 Subd. 2. **Payment period.** (a) A facility may receive payments under this section
8.18 throughout the term of the power purchase agreement.

8.19 (b) The payment period begins and runs consecutively from the date the facility
8.20 begins generating electricity.

8.21 Subd. 3. **Amount of payment.** An incentive payment is based on the number of
8.22 kilowatt-hours of electricity generated. The amount of the payment per kilowatt-hour
8.23 generated is the difference between the average price per kilowatt-hour contained in power
8.24 purchase agreements signed during calendar year 2009 and approved by the commission
8.25 for C-BED projects under section 216B.1612, and the standard renewable rate established
8.26 in section 216B.1535, subdivisions 6 to 8.

8.27 Subd. 4. **Ownership; financing; cure.** (a) A subsequent owner of a renewable
8.28 electricity generator receiving payments under this section may continue to receive the
8.29 incentive payment for the duration of the original payment period if the subsequent owner
8.30 qualifies for the incentive under section 216B.1535.

8.31 (b) Nothing in this section may be construed to deny an incentive payment to
8.32 an otherwise qualified renewable electricity generator that has obtained debt or equity
8.33 financing for construction or operation as long as the ownership requirements of section
8.34 216B.1535 are met. If, during the incentive payment period for a qualified renewable
8.35 electricity generator, the owner of the renewable electricity generator is in default of a

9.1 lending agreement and the lender takes possession of and operates the renewable electricity
9.2 generator and makes reasonable efforts to transfer ownership of the renewable electricity
9.3 generator to an entity other than the lender, the lender may continue to receive the incentive
9.4 payment for electricity generated and sold by the renewable electricity generator for a
9.5 period not to exceed 18 months. A lender who takes possession of a renewable electricity
9.6 generator shall notify the commissioner immediately on taking possession and, at least
9.7 quarterly, document efforts to transfer ownership of the renewable electricity generator.

9.8 (c) If, during the incentive payment period, a qualified renewable electricity
9.9 generator loses the right to receive the incentive because of changes in ownership, the
9.10 renewable electricity generator may regain the right to receive the incentive upon cure
9.11 of the ownership structure that resulted in the loss of eligibility and may reapply for the
9.12 incentive, but in no case may the payment period be extended beyond the original limit
9.13 established in the power purchase agreement.

9.14 (d) A subsequent or requalifying owner under paragraph (b) or (c) retains the
9.15 renewable electricity generator's original priority order for incentive payments as long as
9.16 the ownership structure requalifies within two years from the date the renewable electricity
9.17 generator became unqualified or two years from the date a lender takes possession.

9.18 Subd. 5. **Eligibility process.** (a) A qualifying renewable electricity generator is
9.19 eligible for the incentive on the date the commissioner receives:

9.20 (1) an application for payment of the incentive;

9.21 (2) one of the following:

9.22 (i) a copy of a signed power purchase agreement;

9.23 (ii) a copy of a binding agreement other than a power purchase agreement to sell
9.24 electricity generated by the project to a third person; or

9.25 (iii) if the renewable electricity generator's developer or owner will sell electricity to
9.26 its own members or customers, a copy of the purchase order for equipment to construct
9.27 the renewable electricity generator with a delivery date and a copy of a signed receipt
9.28 for a nonrefundable deposit; and

9.29 (3) any other information the commissioner deems necessary to determine whether
9.30 the proposed renewable electricity generator qualifies for the incentive under this section.

9.31 (b) The commissioner shall determine whether a renewable electricity generator
9.32 qualifies for the incentive and respond in writing to the applicant approving or denying the
9.33 application within 15 working days of receipt of the information required in paragraph

9.34 (a). A renewable electricity generator that is not operational within 18 months of receipt
9.35 of a letter of approval is no longer approved for the incentive. The commissioner shall
9.36 notify an applicant of potential loss of approval not less than 60 days before the end of the

10.1 18-month period. Eligibility for a renewable electricity generator that loses approval may
10.2 be reestablished as of the date the commissioner receives a new completed application.

10.3 **Sec. 9. [216B.156] LOAN ELIGIBILITY.**

10.4 A renewable electricity generator is eligible for a loan under section 216C.39,
10.5 subdivision 5.

10.6 **Sec. 10. [216B.1565] REPORT.**

10.7 By January 1 of 2012 and 2013 and every four years thereafter, the commission shall
10.8 submit a report to the governor and legislature that must include all of the following:

10.9 (1) the number of new renewable electricity generators in this state and the
10.10 environmental effects of the addition of those generators, including, but not limited to, the
10.11 effects on progress toward achieving the renewable energy objectives and standards in
10.12 section 216B.1691;

10.13 (2) recommendations for legislation and changes to the rates in section 216B.1535,
10.14 if any; and

10.15 (3) actions taken by the commission to implement sections 216B.152 to 216B.1565
10.16 and to use the standard renewable rate to achieve the renewable energy objectives and
10.17 standards in section 216B.1691.

10.18 **Sec. 11. EFFECTIVE DATE.**

10.19 Sections 1 to 10 are effective the day following final enactment.