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State of Minnesota

HOUSE OF REPRESENTATIVES

EIGHTY-SIXTH
SESSION

HOUSE FILE No. 3621

March 11, 2010
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The bill was read for the first time and referred to the Energy Finance and Policy Division

1.1 A bill for an act
1.2 relating to energy; modifying provisions relating to public utilities, energy
1.3 conservation, renewable energy, and nuclear power; amending Minnesota
1.4 Statutes 2008, sections 216B.1691, as amended; 216B.241, as amended;
1.5 216B.243, subdivision 3b; 297A.68, by adding a subdivision; repealing
1.6 Minnesota Statutes 2008, sections 216B.1612, subdivisions 1, 3, 4, 5, 6, 7, 8,
1.7 9; 216B.1681; 216B.1691, subdivision 7; 216B.2401; 216B.2412, subdivisions
1.8 1, 3; 216C.03; 216C.05, subdivision 2; 216H.01; 216H.02; 216H.03; 216H.06;
1.9 Minnesota Statutes 2009 Supplement, sections 216B.1612, subdivision 2;
1.10 216B.2412, subdivision 2.

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

1.12 ARTICLE 1

1.13 CONSERVATION

1.14 Section 1. Minnesota Statutes 2008, section 216B.241, as amended by Laws 2009,
1.15 chapter 86, article 1, section 31; Laws 2009, chapter 110, sections 15, 16, 17, 18; Laws
1.16 2009, chapter 134, section 5, is amended to read:

1.17 **216B.241 ENERGY CONSERVATION IMPROVEMENT.**

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

- 1.20 (a) "Commission" means the Public Utilities Commission.
- 1.21 (b) "Commissioner" means the commissioner of commerce.
- 1.22 (c) "Customer facility" means all buildings, structures, equipment, and installations
1.23 at a single site.
- 1.24 (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 may include waste heat recovery converted into electricity but does not include electric utility infrastructure projects approved by the commission under section 216B.1636.

~~(g) "Energy efficiency" means 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.~~

~~(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)~~ (g) "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.

~~(j)~~ (h) "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~~ 2,000 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.

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

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

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

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

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

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

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

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

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

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

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

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

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

- 4.20 (1) not result in cost-effective energy conservation improvements; or
4.21 (2) otherwise not be in the public interest.

4.22 (e) Each utility shall determine what portion of the amount it sets aside for
4.23 conservation improvement will be used for conservation improvements under subdivision
4.24 2 and what portion it will contribute to the energy and conservation account established in
4.25 subdivision 2a. A public utility may propose to the commissioner to designate that all
4.26 or a portion of funds contributed to the account established in subdivision 2a be used
4.27 for research and development projects that can best be implemented on a statewide
4.28 basis. Contributions must be remitted to the commissioner by February 1 of each year.
4.29 Nothing in this subdivision prohibits a public utility from spending or investing for energy
4.30 conservation improvement more than required in this subdivision.

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

- 4.33 (1) a cooperative electric association that provides retail service to its members;
4.34 (2) a municipality that provides electric service to retail customers; and

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

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

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

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

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

7.15 (b) Each individual utility and association shall have an annual energy-savings
7.16 goal equivalent to 1.5 percent of gross annual retail energy sales unless modified by the
7.17 commissioner under paragraph (d). The savings goals must be calculated based on the
7.18 most recent three-year weather normalized average. A utility or association may elect to
7.19 carry forward energy savings in excess of 1.5 percent for a year to the succeeding three
7.20 calendar years, except that savings from electric utility infrastructure projects allowed
7.21 under paragraph (d) may be carried forward for five years. A particular energy savings can
7.22 be used only for one year's goal.

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

7.25 (d) In its energy conservation improvement plan filing, a utility or association may
7.26 request the commissioner to adjust its annual energy-savings percentage goal based on
7.27 its historical conservation investment experience, customer class makeup, load growth,
7.28 a conservation potential study, or other factors the commissioner determines warrants
7.29 an adjustment. The commissioner may not approve a plan that provides for an annual
7.30 energy-savings goal of less than one percent of gross annual retail energy sales from
7.31 energy conservation improvements.

7.32 A utility or association may include in its energy conservation plan energy savings
7.33 from electric utility infrastructure projects approved by the commission under section
7.34 216B.1636 or waste heat recovery converted into electricity projects that may count as
7.35 energy savings in addition to the minimum energy-savings goal of at least one percent for
7.36 energy conservation improvements. Electric utility infrastructure projects must result in

8.1 ~~increased energy efficiency greater than that which would have occurred through normal~~
8.2 ~~maintenance activity.~~

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

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

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

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

8.22 ~~Subd. 1d. **Technical assistance.** The commissioner shall evaluate energy~~
8.23 ~~conservation improvement programs on the basis of cost-effectiveness and the reliability~~
8.24 ~~of the technologies employed. The commissioner shall, by order, establish, maintain, and~~
8.25 ~~update energy-savings assumptions that must be used when filing energy conservation~~
8.26 ~~improvement programs. The commissioner shall establish an inventory of the most~~
8.27 ~~effective energy conservation programs, techniques, and technologies, and encourage all~~
8.28 ~~Minnesota utilities to implement them, where appropriate, in their service territories.~~
8.29 ~~The commissioner shall describe these programs in sufficient detail to provide a utility~~
8.30 ~~reasonable guidance concerning implementation. The commissioner shall prioritize the~~
8.31 ~~opportunities in order of potential energy savings and in order of cost-effectiveness. The~~
8.32 ~~commissioner may contract with a third party to carry out any of the commissioner's duties~~
8.33 ~~under this subdivision, and to obtain technical assistance to evaluate the effectiveness of~~
8.34 ~~any conservation improvement program. The commissioner may assess up to \$800,000~~
8.35 ~~annually until June 30, 2009, and \$450,000 annually thereafter for the purposes of this~~
8.36 ~~subdivision. The assessments must be deposited in the state treasury and credited to 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.~~ (a) ~~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 in the state treasury and credited to 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.~~

~~(b) The commissioner, as part of the assessment authorized under paragraph (a), shall annually assess and grant up to \$500,000 for the purpose of subdivision 9.~~

Subd. 1f. ~~Facilities energy efficiency.~~ (a) ~~The commissioner of administration and the commissioner of commerce shall maintain and, as needed, revise the sustainable building design guidelines developed under section 16B.325.~~

~~(b) The commissioner of administration and the commissioner 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, Leadership in Energy and Environmental Design (LEED) certified, or Green Globes-certified. The state goal is to achieve certification of 1,000 commercial buildings as Energy Star-labeled, and 100 commercial buildings as LEED-certified or Green Globes-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 in the state treasury and credited to 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.~~

10.1 Subd. 1g. **Manner of filing and service.** (a) A public utility, generation and
10.2 transmission cooperative electric association, municipal power agency, cooperative
10.3 electric association, and municipal utility shall submit filings to the department via the
10.4 department's electronic filing system. The commissioner may approve an exemption
10.5 from this requirement in the event an affected utility or association is unable to submit
10.6 filings via the department's electronic filing system. All other interested parties shall
10.7 submit filings to the department via the department's electronic filing system whenever
10.8 practicable but may also file by personal delivery or by mail.

10.9 (b) Submission of a document to the department's electronic filing system constitutes
10.10 service on the department. Where department rule requires service of a notice, order, or
10.11 other document by the department, utility, association, or interested party upon persons on
10.12 a service list maintained by the department, service may be made by personal delivery,
10.13 mail, or electronic service, except that electronic service may only be made upon persons
10.14 on the service list who have previously agreed in writing to accept electronic service at an
10.15 electronic address provided to the department for electronic service purposes.

10.16 Subd. 2. **Programs.** (a) The commissioner may require public utilities to make
10.17 investments and expenditures in energy conservation improvements, explicitly setting
10.18 forth the interest rates, prices, and terms under which the improvements must be offered to
10.19 the customers. The required programs must cover no more than a ~~three-year~~ four-year
10.20 period. Public utilities shall file conservation improvement plans by June 1, on a schedule
10.21 determined by order of the commissioner, but at least every ~~three~~ four years. Plans
10.22 received by a public utility by June 1 must be approved or approved as modified by the
10.23 commissioner by December 1 of that same year. The commissioner shall evaluate the
10.24 program on the basis of cost-effectiveness and the reliability of technologies employed.
10.25 The commissioner's order must provide to the extent practicable for a free choice, by
10.26 consumers participating in the program, of the device, method, material, or project
10.27 constituting the energy conservation improvement and for a free choice of the seller,
10.28 installer, or contractor of the energy conservation improvement, provided that the device,
10.29 method, material, or project seller, installer, or contractor is duly licensed, certified,
10.30 approved, or qualified, including under the residential conservation services program,
10.31 where applicable.

10.32 (b) The commissioner may require a utility to make an energy conservation
10.33 improvement investment or expenditure whenever the commissioner finds that the
10.34 improvement will result in energy savings at a total cost to the utility less than the cost
10.35 to the utility to produce or purchase an equivalent amount of new supply of energy. The

11.1 commissioner shall nevertheless ensure that every public utility operate one or more
11.2 programs under periodic review by the department.

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

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

11.14 (e) The commissioner may, by order, establish a list of programs that may be
11.15 offered as energy conservation improvements by a public utility, municipal utility,
11.16 cooperative electric association, or other entity providing conservation services pursuant
11.17 to this section. The list of programs may include rebates for high-efficiency appliances,
11.18 rebates or subsidies for high-efficiency lamps, small business energy audits, and building
11.19 recommissioning. The commissioner may, by order, change this list to add or subtract
11.20 programs as the commissioner determines is necessary to promote efficient and effective
11.21 conservation programs.

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

11.28 (g) A utility, a political subdivision, or a nonprofit or community organization
11.29 that has suggested a program, the attorney general acting on behalf of consumers and
11.30 small business interests, or a utility customer that has suggested a program and is not
11.31 represented by the attorney general under section 8.33 may petition the commission to
11.32 modify or revoke a department decision under this section, and the commission may do
11.33 so if it determines that the program is not cost-effective, does not adequately address the
11.34 residential conservation improvement needs of low-income persons, has a long-range
11.35 negative effect on one or more classes of customers, or is otherwise not in the public

12.1 interest. The commission shall reject a petition that, on its face, fails to make a reasonable
12.2 argument that a program is not in the public interest.

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

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

12.15 ~~Subd. 2a. **Energy and conservation account.** The energy and conservation account~~
12.16 ~~is established in the special revenue fund in the state treasury. The commissioner must~~
12.17 ~~deposit money assessed or contributed under subdivisions 1d, 1e, 1f, and 7 in the state~~
12.18 ~~treasury and credit it to the energy and conservation account in the special revenue fund.~~
12.19 ~~Money in the account is appropriated to the commissioner for the purposes of subdivisions~~
12.20 ~~1d, 1e, 1f, and 7. Interest on money in the account accrues to the account.~~

12.21 Subd. 2b. **Recovery of expenses.** The commission shall allow a utility to recover
12.22 expenses resulting from a conservation improvement program required by the department
12.23 and contributions and assessments to the energy and conservation account, unless the
12.24 recovery would be inconsistent with a financial incentive proposal approved by the
12.25 commission. The commission shall allow a cooperative electric association subject
12.26 to rate regulation under section 216B.026, to recover expenses resulting from energy
12.27 conservation improvement programs, load management programs, and assessments
12.28 and contributions to the energy and conservation account unless the recovery would be
12.29 inconsistent with a financial incentive proposal approved by the commission. In addition,
12.30 a utility may file annually, or the Public Utilities Commission may require the utility
12.31 to file, and the commission may approve, rate schedules containing provisions for the
12.32 automatic adjustment of charges for utility service in direct relation to changes in the
12.33 expenses of the utility for real and personal property taxes, fees, and permits, the amounts
12.34 of which the utility cannot control. A public utility is eligible to file for adjustment for real
12.35 and personal property taxes, fees, and permits under this subdivision only if, in the year
12.36 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

14.1 high-intensity discharge lamps from households and from small businesses as defined in
14.2 section 645.445 that generate an average of fewer than ten spent lamps per year.

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

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

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

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

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

14.28 Subd. 5a. **Qualifying solar energy project.** (a) A utility or association may include
14.29 in its conservation plan programs for the installation of qualifying solar energy projects as
14.30 defined by section 216B.2411 to the extent of the spending allowed for generation projects
14.31 by section 216B.2411. The cost-effectiveness of a qualifying solar energy project may
14.32 be determined by a different standard than for other energy conservation improvements
14.33 under this section if the commissioner determines it is in the public interest to do so to
14.34 encourage solar energy projects. Energy savings from qualifying solar energy projects
14.35 may not be counted toward the minimum energy-savings goal of at least one percent

15.1 for energy conservation improvements required under subdivision 1c, but may, if the
 15.2 conservation plan is approved:

15.3 (1) be counted toward energy savings above that minimum percentage; and

15.4 (2) be eligible for a performance incentive under section 216B.16, subdivision 6c,
 15.5 ~~or 216B.241, subdivision 2c~~, that is distinct from the incentive for energy conservation
 15.6 and is based on the competitiveness and cost-effectiveness of solar projects in relation to
 15.7 other potential solar projects available to the utility.

15.8 (b) Qualifying solar energy projects may not be considered when establishing
 15.9 demand-side management targets under section 216B.2422, 216B.243, or any other
 15.10 section of this chapter.

15.11 Subd. 5b. **Biomethane purchases.** (a) A natural gas utility may include in its
 15.12 conservation plan purchases of biomethane, and may use up to five percent of the total
 15.13 amount to be spent on energy conservation improvements under this section for that
 15.14 purpose. The cost-effectiveness of biomethane purchases may be determined by a
 15.15 different standard than for other energy conservation improvements under this section if
 15.16 the commissioner determines that doing so is in the public interest in order to encourage
 15.17 biomethane purchases. Energy savings from purchasing biomethane may not be counted
 15.18 toward the minimum energy-savings goal of at least one percent for energy conservation
 15.19 improvements ~~required under subdivision 1c~~, but may, if the conservation plan is approved:

15.20 (1) be counted toward energy savings above that minimum percentage; and

15.21 (2) be considered when establishing performance incentives ~~under subdivision 2c~~.

15.22 (b) For the purposes of this subdivision, "biomethane" means biogas produced
 15.23 through anaerobic digestion of biomass, gasification of biomass, or other effective
 15.24 conversion processes, that is cleaned and purified into biomethane that meets natural gas
 15.25 utility quality specifications for use in a natural gas utility distribution system.

15.26 Subd. 6. **Renewable energy research.** (a) A public utility that owns a nuclear
 15.27 generation facility in the state shall spend five percent of the total amount that utility
 15.28 is required to spend under this section to support basic and applied research and
 15.29 demonstration activities at the University of Minnesota Initiative for Renewable Energy
 15.30 and the Environment for the development of renewable energy sources and technologies.
 15.31 The utility shall transfer the required amount to the University of Minnesota on or before
 15.32 July 1 of each year and that annual amount shall be deducted from the amount of money the
 15.33 utility is required to spend under this section. The University of Minnesota shall transfer
 15.34 at least ten percent of these funds to at least one rural campus or experiment station.

15.35 (b) Activities funded under this subdivision may include, but are not limited to:

16.1 (1) environmentally sound production of energy from a renewable energy source
16.2 including biomass;

16.3 (2) environmentally sound production of hydrogen from biomass and any other
16.4 renewable energy source for energy storage and energy utilization;

16.5 (3) development of energy conservation and efficient energy utilization technologies;

16.6 (4) energy storage technologies; and

16.7 (5) analysis of policy options to facilitate adoption of technologies that use or
16.8 produce low-carbon renewable energy.

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

16.12 (d) For the purposes of this subdivision:

16.13 (1) "renewable energy source" means hydro, wind, solar, biomass and geothermal
16.14 energy, and microorganisms used as an energy source; and

16.15 (2) "biomass" means plant and animal material, agricultural and forest residues,
16.16 mixed municipal solid waste, and sludge from wastewater treatment.

16.17 (e) This subdivision expires June 30, 2010.

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

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

~~(c) The commissioner shall establish low-income programs to utilize money 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 money. 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.~~

~~Subd. 9. **Building performance standards; Sustainable Building 2030.** (a) The purpose of this subdivision is to establish cost-effective energy-efficiency performance standards for new and substantially reconstructed commercial, industrial, and institutional buildings that can significantly reduce carbon dioxide emissions by lowering energy use in new and substantially reconstructed buildings. For the purposes of this subdivision, the establishment of these standards may be referred to as Sustainable Building 2030.~~

~~(b) The commissioner shall contract with the Center for Sustainable Building Research at the University of Minnesota to coordinate development and implementation of energy-efficiency performance standards, strategic planning, research, data analysis, technology transfer, training, and other activities related to the purpose of Sustainable Building 2030. The commissioner and the Center for Sustainable Building Research shall, in consultation with utilities, builders, developers, building operators, and experts in building design and technology, develop a Sustainable Building 2030 implementation plan that must address, at a minimum, the following issues:~~

~~(1) training architects to incorporate the performance standards in building design;~~

~~(2) incorporating the performance standards in utility conservation improvement programs; and~~

~~(3) developing procedures for ongoing monitoring of energy use in buildings that have adopted the performance standards.~~

~~The plan must be submitted to the chairs and ranking minority members of the senate and house of representatives committees with primary jurisdiction over energy policy by July 1, 2009.~~

~~(c) Sustainable Building 2030 energy-efficiency performance standards must be firm, quantitative measures of total building energy use and associated carbon dioxide emissions per square foot for different building types and uses, that allow for accurate determinations of a building's conformance with a performance standard. Performance standards must address energy use by electric vehicle charging infrastructure in or adjacent to buildings as that infrastructure begins to be made widely available. The energy-efficiency performance standards must be updated every three or five years to incorporate all cost-effective measures. The performance standards must reflect the reductions in carbon dioxide emissions per square foot resulting from actions taken by utilities to comply with the renewable energy standards in section 216B.1691. The performance standards should be designed to achieve reductions equivalent to the following reduction schedule, measured against energy consumption by an average building in each applicable building sector in 2003: (1) 60 percent in 2010; (2) 70 percent in 2015; (3) 80 percent in 2020; and (4) 90 percent in 2025. A performance standard must not be established or increased absent a conclusive engineering analysis that it is cost-effective based upon established practices used in evaluating utility conservation improvement programs.~~

~~(d) The annual amount of the contract with the Center for Sustainable Building Research is up to \$500,000. The Center for Sustainable Building Research shall expend no more than \$150,000 of this amount each year on administration, coordination, and oversight activities related to Sustainable Building 2030. The balance of contract funds must be spent on substantive programmatic activities allowed under this subdivision that may be conducted by the Center for Sustainable Building Research and others, and for subcontracts with not-for-profit energy organizations, architecture and engineering firms, and other qualified entities to undertake technical projects and activities in support of Sustainable Building 2030. The primary work to be accomplished each year by qualified technical experts under subcontracts is the development and thorough justification of recommendations for specific energy-efficiency performance standards. Additional work may include:~~

~~(1) research, development, and demonstration of new energy-efficiency technologies and techniques suitable for commercial, industrial, and institutional buildings;~~

~~(2) analysis and evaluation of practices in building design, construction, commissioning and operations, and analysis and evaluation of energy use in the commercial, industrial, and institutional sectors;~~

~~(3) analysis and evaluation of the effectiveness and cost-effectiveness of Sustainable Building 2030 performance standards, conservation improvement programs, and building energy codes;~~

~~(4) development and delivery of training programs for architects, engineers, commissioning agents, technicians, contractors, equipment suppliers, developers, and others in the building industries; and~~

~~(5) analysis and evaluation of the effect of building operations on energy use.~~

~~(c) The commissioner shall require utilities to develop and implement conservation improvement programs that are expressly designed to achieve energy efficiency goals consistent with the Sustainable Building 2030 performance standards. These programs must include offerings of design assistance and modeling, financial incentives, and the verification of the proper installation of energy-efficient design components in new and substantially reconstructed buildings. A utility's design assistance program must consider the strategic planting of trees and shrubs around buildings as an energy conservation strategy for the designed project. A utility making an expenditure under its conservation improvement program that results in a building meeting the Sustainable Building 2030 performance standards may claim the energy savings toward its energy-savings goal established in subdivision 1c.~~

~~(f) The commissioner shall report to the legislature every three years, beginning January 15, 2010, on the cost-effectiveness and progress of implementing the Sustainable Building 2030 performance standards and shall make recommendations on the need to continue the program as described in this section.~~

ARTICLE 2

RENEWABLE ENERGY

Section 1. Minnesota Statutes 2008, section 216B.1691, as amended by Laws 2009, chapter 110, section 13, is amended to read:

216B.1691 RENEWABLE ENERGY OBJECTIVES.

Subdivision 1. **Definitions.** (a) Unless otherwise specified in law, "eligible energy technology" means an energy technology that:

20.1 (1) generates electricity from the following renewable energy sources: ~~(1)~~ solar;
 20.2 ~~(2)~~ wind; ~~(3)~~ hydroelectric with a capacity of less than ~~100~~ 60 megawatts; ~~(4)~~ hydrogen,
 20.3 provided that after January 1, 2010, the hydrogen must be generated from the resources
 20.4 listed in this clause; or ~~(5)~~ biomass, which includes, without limitation, landfill gas; an
 20.5 anaerobic digester system; the predominantly organic components of wastewater effluent,
 20.6 sludge, or related byproducts from publicly owned treatment works, but not including
 20.7 incineration of wastewater sludge to produce electricity; and an energy recovery facility
 20.8 used to capture the heat value of mixed municipal solid waste or refuse-derived fuel from
 20.9 mixed municipal solid waste as a primary fuel; and

20.10 (2) was not mandated by Laws 1994, chapter 641, or by commission order issued
 20.11 pursuant to that chapter prior to August 1, 2001.

20.12 (b) "Electric utility" means a public utility providing electric service, a generation
 20.13 and transmission cooperative electric association, or a municipal power agency, ~~or a~~
 20.14 ~~power district.~~

20.15 (c) "Total retail electric sales" means the kilowatt-hours of electricity sold in a year
 20.16 by an electric utility to retail customers of the electric utility or to a distribution utility for
 20.17 distribution to the retail customers of the distribution utility.

20.18 Subd. 2. **Eligible energy objectives.** (a) Each electric utility shall make a good
 20.19 faith effort to generate or procure sufficient electricity generated by an eligible energy
 20.20 technology to provide its retail consumers, or the retail customers of a distribution utility
 20.21 to which the electric utility provides wholesale electric service, so that:

20.22 (1) commencing in 2005, at least one percent of the electric utility's total retail
 20.23 electric sales to retail customers in Minnesota is generated by eligible energy technologies;

20.24 (2) the amount provided under clause (1) is increased by one percent of the utility's
 20.25 total retail electric sales each year until 2015; and ~~seven~~

20.26 (3) ten percent of the electric utility's total retail electric sales energy provided to
 20.27 retail customers in Minnesota by 2010 is generated by eligible energy technologies.

20.28 (b) Of the eligible energy technology generation required under paragraph (a),
 20.29 clauses (1) and (2), not less than 0.5 percent of the energy must be generated by biomass
 20.30 energy technologies, including an energy recovery facility used to capture the heat value
 20.31 of mixed municipal solid waste or refuse-derived fuel from mixed municipal solid waste
 20.32 as a primary fuel, by 2005. By 2010, one percent of the eligible technology generation
 20.33 required under paragraph (a), clauses (1) and (2), must be generated by biomass energy
 20.34 technologies. An energy recovery facility used to capture the heat value of mixed
 20.35 municipal solid waste or refuse-derived fuel from mixed municipal solid waste, with a
 20.36 power sales agreement in effect as of May 29, 2003, that terminates after December 31,

21.1 2010, does not qualify as an eligible energy technology unless the agreement provides for
 21.2 rate adjustment in the event the facility qualifies as a renewable energy source.

21.3 ~~Subd. 2a. **Eligible energy technology standard.** (a) Except as provided in~~
 21.4 ~~paragraph (b), each electric utility shall generate or procure sufficient electricity generated~~
 21.5 ~~by an eligible energy technology to provide its retail customers in Minnesota, or the~~
 21.6 ~~retail customers of a distribution utility to which the electric utility provides wholesale~~
 21.7 ~~electric service, so that at least the following standard percentages of the electric utility's~~
 21.8 ~~total retail electric sales to retail customers in Minnesota are generated by eligible energy~~
 21.9 ~~technologies by the end of the year indicated:~~

21.10	(1)	2012	12 percent
21.11	(2)	2016	17 percent
21.12	(3)	2020	20 percent
21.13	(4)	2025	25 percent.

21.14 ~~(b) An electric utility that owned a nuclear generating facility as of January 1, 2007,~~
 21.15 ~~must meet the requirements of this paragraph rather than paragraph (a). An electric utility~~
 21.16 ~~subject to this paragraph must generate or procure sufficient electricity generated by~~
 21.17 ~~an eligible energy technology to provide its retail customers in Minnesota or the retail~~
 21.18 ~~customer of a distribution utility to which the electric utility provides wholesale electric~~
 21.19 ~~service so that at least the following percentages of the electric utility's total retail electric~~
 21.20 ~~sales to retail customers in Minnesota are generated by eligible energy technologies by the~~
 21.21 ~~end of the year indicated:~~

21.22	(1)	2010	15 percent
21.23	(2)	2012	18 percent
21.24	(3)	2016	25 percent
21.25	(4)	2020	30 percent.

21.26 ~~Of the 30 percent in 2020, at least 25 percent must be generated by solar energy~~
 21.27 ~~or wind energy conversion systems and the remaining five percent by other eligible~~
 21.28 ~~energy technology. Of the 25 percent that must be generated by wind or solar, no more~~
 21.29 ~~than one percent may be solar generated and the remaining 24 percent or greater must~~
 21.30 ~~be wind generated.~~

21.31 ~~Subd. 2b. **Modification or delay of standard.** (a) The commission shall modify or~~
 21.32 ~~delay the implementation of a standard obligation, in whole or in part, if the commission~~
 21.33 ~~determines it is in the public interest to do so. The commission, when requested to modify~~
 21.34 ~~or delay implementation of a standard, must consider:~~

21.35 ~~(1) the impact of implementing the standard on its customers' utility costs, including~~
 21.36 ~~the economic and competitive pressure on the utility's customers;~~
 21.37 ~~(2) the effects of implementing the standard on the reliability of the electric system;~~

- 22.1 ~~(3) technical advances or technical concerns;~~
 22.2 ~~(4) delays in acquiring sites or routes due to rejection or delays of necessary siting or~~
 22.3 ~~other permitting approvals;~~
 22.4 ~~(5) delays, cancellations, or nondelivery of necessary equipment for construction or~~
 22.5 ~~commercial operation of an eligible energy technology facility;~~
 22.6 ~~(6) transmission constraints preventing delivery of service; and~~
 22.7 ~~(7) other statutory obligations imposed on the commission or a utility.~~

22.8 ~~The commission may modify or delay implementation of a standard obligation under~~
 22.9 ~~clauses (1) to (3) only if it finds implementation would cause significant rate impact,~~
 22.10 ~~requires significant measures to address reliability, or raises significant technical issues.~~
 22.11 ~~The commission may modify or delay implementation of a standard obligation under~~
 22.12 ~~clauses (4) to (6) only if it finds that the circumstances described in those clauses were due~~
 22.13 ~~to circumstances beyond an electric utility's control and make compliance not feasible.~~

22.14 ~~(b) When considering whether to delay or modify implementation of a standard~~
 22.15 ~~obligation, the commission must give due consideration to a preference for electric~~
 22.16 ~~generation through use of eligible energy technology and to the achievement of the~~
 22.17 ~~standards set by this section.~~

22.18 ~~(c) An electric utility requesting a modification or delay in the implementation of a~~
 22.19 ~~standard must file a plan to comply with its standard obligation in the same proceeding~~
 22.20 ~~that it is requesting the delay.~~

22.21 ~~Subd. 2c. **Use of integrated resource planning process.** The commission may~~
 22.22 ~~exercise its authority under subdivision 2b to modify or delay implementation of a standard~~
 22.23 ~~obligation as part of an integrated resource planning proceeding under section 216B.2422.~~
 22.24 ~~The commission's authority must be exercised according to subdivision 2b. The order to~~
 22.25 ~~delay or modify shall not be considered advisory with respect to any electric utility. This~~
 22.26 ~~subdivision is in addition to and does not limit the commission's authority to modify or~~
 22.27 ~~delay implementation of a standard obligation in other proceedings before the commission.~~

22.28 Subd. 2d. **Commission order.** (a) The commission shall issue ~~necessary orders~~ an
 22.29 order detailing the criteria and standards by which it will measure an electric utility's
 22.30 efforts to meet the renewable energy objectives of ~~subdivision 2~~ this section to determine
 22.31 whether the utility is making the required good faith effort. In this order, the commission
 22.32 shall include criteria and standards that protect against undesirable impacts on the
 22.33 reliability of the utility's system and economic impacts on the utility's ratepayers and
 22.34 that consider technical feasibility.

22.35 (b) In its order under paragraph (a), the commission shall provide for a weighted
 22.36 scale of how energy produced by various eligible energy technologies must count toward a

23.1 utility's objective. In establishing this scale, the commission shall consider the attributes
 23.2 of various technologies and fuels, and shall establish a system that grants multiple credits
 23.3 toward the objectives for those technologies and fuels the commission determines is in
 23.4 the public interest to encourage.

23.5 Subd. 3. **Utility plans filed with commission.** (a) Each electric utility shall report
 23.6 on its plans, activities, and progress with regard to ~~the these~~ objectives ~~and standards~~
 23.7 ~~of this section~~ in its filings under section 216B.2422 or in a separate report submitted
 23.8 to the commission every two years, whichever is more frequent, demonstrating to the
 23.9 commission ~~that the utility's~~ utility is making the required good faith effort ~~to comply with~~
 23.10 ~~this section~~. In its resource plan or a separate report, each electric utility shall provide a
 23.11 description of:

23.12 (1) the status of the utility's renewable energy mix relative to the good faith objective
 23.13 ~~and standards;~~

23.14 (2) efforts taken to meet the objective ~~and standards;~~

23.15 (3) any obstacles encountered or anticipated in meeting the objective ~~or standards;~~
 23.16 and

23.17 (4) potential solutions to the obstacles.

23.18 (b) The commissioner shall compile the information provided to the commission
 23.19 under paragraph (a), and report to the chairs of the house of representatives and senate
 23.20 committees with jurisdiction over energy and environment policy issues as to the
 23.21 progress of utilities in the state, ~~including the progress of each individual electric utility,~~
 23.22 in increasing the amount of renewable energy provided to retail customers, with any
 23.23 recommendations for regulatory or legislative action, by January 15 of each odd-numbered
 23.24 year.

23.25 Subd. 4. **Renewable energy credits.** (a) To facilitate compliance with this section,
 23.26 the commission, by rule or order, ~~shall~~ may establish ~~by January 1, 2008,~~ a program
 23.27 for tradable ~~renewable energy~~ credits for electricity generated by an eligible energy
 23.28 technology. ~~The credits must represent energy produced by an eligible energy technology,~~
 23.29 ~~as defined in subdivision 1. Each kilowatt-hour of renewable energy credits must be~~
 23.30 ~~treated the same as a kilowatt-hour of eligible energy technology generated or procured~~
 23.31 ~~by an electric utility if it is produced by an eligible energy technology. The program~~
 23.32 ~~must permit a credit to be used only once. The program must treat all eligible energy~~
 23.33 ~~technology equally and shall not give more or less credit to energy based on the state~~
 23.34 ~~where the energy was generated or the technology with which the energy was generated.~~
 23.35 ~~The commission must determine the period in which the credits may be used for purposes~~
 23.36 ~~of the program. In doing so, the commission shall implement a system that constrains or~~

24.1 limits the cost of credits, taking care to ensure that such a system does not undermine the
 24.2 market for those credits.

24.3 (b) In lieu of generating or procuring energy directly to satisfy the ~~eligible renewable~~
 24.4 energy ~~technology~~ objective ~~or standard~~ of this section, an electric utility may ~~utilize~~
 24.5 ~~renewable energy credits allowed under the program to satisfy the objective or standard~~
 24.6 purchase sufficient renewable energy credits, issued pursuant to this subdivision, to
 24.7 meet its objective.

24.8 (c) Upon the passage of a renewable energy standard, portfolio, or objective in
 24.9 a bordering state that includes a similar definition of eligible energy technology or
 24.10 renewable energy, the commission shall may facilitate the trading of renewable energy
 24.11 credits between states.

24.12 ~~(d) The commission shall require all electric utilities to participate in a~~
 24.13 ~~commission-approved credit-tracking system or systems. Once a credit-tracking system is~~
 24.14 ~~in operation, the commission shall issue an order establishing protocols for trading credits.~~

24.15 ~~(e) An electric utility subject to subdivision 2a, paragraph (b), may not sell renewable~~
 24.16 ~~energy credits to an electric utility subject to subdivision 2a, paragraph (a), until 2021.~~

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

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

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

24.24 (b) An eligible energy technology may blend or co-fire a fuel listed in subdivision
 24.25 1, paragraph (a), clause ~~(5)~~ (1), with other fuels in the generation facility, but only the
 24.26 percentage of electricity that is attributable to a fuel listed in that clause can be counted
 24.27 toward an electric utility's renewable energy objectives.

24.28 ~~Subd. 7. **Compliance.** The commission must regularly investigate whether an~~
 24.29 ~~electric utility is in compliance with its good faith objective under subdivision 2 and~~
 24.30 ~~standard obligation under subdivision 2a. If the commission finds noncompliance, it may~~
 24.31 ~~order the electric utility to construct facilities, purchase energy generated by eligible~~
 24.32 ~~energy technology, purchase renewable energy credits, or engage in other activities~~
 24.33 ~~to achieve compliance. If an electric utility fails to comply with an order under this~~
 24.34 ~~subdivision, the commission may impose a financial penalty on the electric utility in an~~
 24.35 ~~amount not to exceed the estimated cost of the electric utility to achieve compliance. The~~
 24.36 ~~penalty may not exceed the lesser of the cost of constructing facilities or purchasing~~

25.1 ~~credits. The commission must deposit financial penalties imposed under this subdivision~~
 25.2 ~~in the energy and conservation account established in the special revenue fund under~~
 25.3 ~~section 216B.241, subdivision 2a. This subdivision is in addition to and does not limit any~~
 25.4 ~~other authority of the commission to enforce this section.~~

25.5 ~~Subd. 8. **Relation to other law.** This section does not limit the authority of the~~
 25.6 ~~commission under any other law, including, without limitation, sections 216B.2422 and~~
 25.7 ~~216B.243.~~

25.8 ~~Subd. 9. **Local benefits.** The commission shall take all reasonable actions within~~
 25.9 ~~its statutory authority to ensure this section is implemented to maximize benefits to~~
 25.10 ~~Minnesota citizens, balancing factors such as local ownership of or participation in~~
 25.11 ~~energy production, development and ownership of eligible energy technology facilities by~~
 25.12 ~~independent power producers, Minnesota utility ownership of eligible energy technology~~
 25.13 ~~facilities, the costs of energy generation to satisfy the renewable standard, and the~~
 25.14 ~~reliability of electric service to Minnesotans.~~

25.15 Subd. 10. **Utility acquisition of resources.** A competitive resource acquisition
 25.16 process established by the commission prior to June 1, 2007, shall not apply to a utility
 25.17 for the construction, ownership, and operation of generation facilities used to satisfy the
 25.18 requirements of this section unless, upon a finding that it is in the public interest, the
 25.19 commission issues an order on or after June 1, 2007, that requires compliance by a utility
 25.20 with a competitive resource acquisition process. A utility that owns a nuclear generation
 25.21 facility and intends to construct, own, or operate facilities under this section shall file with
 25.22 the commission on or before March 1, 2008, a renewable energy plan setting forth the
 25.23 manner in which the utility proposes to meet the requirements of this section, ~~including~~
 25.24 ~~a proposed schedule for purchasing renewable energy from C-BED and non-C-BED~~
 25.25 ~~projects.~~ The utility shall update the plan as necessary in its filing under section
 25.26 216B.2422. The commission shall approve the plan unless it determines, after public
 25.27 hearing and comment, that the plan is not in the public interest. ~~As part of its determination~~
 25.28 ~~of public interest, the commission shall consider the plan's allocation of projects among~~
 25.29 ~~C-BED, non-C-BED, and utility-owned projects, balancing the state's interest in:~~

- 25.30 ~~(1) promoting the policy of economic development in rural areas through the~~
 25.31 ~~development of renewable energy projects, as expressed in subdivision 9;~~
- 25.32 ~~(2) maintaining the reliability of the state's electric power grid; and~~
- 25.33 ~~(3) minimizing cost impacts on ratepayers.~~

25.34 Sec. 2. Minnesota Statutes 2008, section 297A.68, is amended by adding a subdivision
 25.35 to read:

26.1 Subd. 42. **Renewable energy.** An eligible technology, as defined in section
26.2 216B.1691, subdivision 1, having a capacity no greater than 25 megawatts is exempt, and
26.3 the materials used to manufacture, install, construct, repair, or replace it are exempt.

26.4 **ARTICLE 3**

26.5 **NUCLEAR POWER**

26.6 Section 1. Minnesota Statutes 2008, section 216B.243, subdivision 3b, is amended to
26.7 read:

26.8 Subd. 3b. **Nuclear power plant; new construction ~~prohibited~~; relicensing.**

26.9 (a) The commission may ~~not~~ issue a certificate of need for the construction of a new
26.10 nuclear-powered electric generating plant.

26.11 (b) Any certificate of need for additional storage of spent nuclear fuel for a facility
26.12 seeking a license extension shall address the impacts of continued operations over the
26.13 period for which approval is sought.

26.14 **ARTICLE 4**

26.15 **REPEALERS**

26.16 Section 1. **REPEALER.**

26.17 (a) Minnesota Statutes 2008, sections 216B.1612, subdivisions 1, 3, 4, 5, 6, 7, 8, and
26.18 9; 216B.1681; 216B.1691, subdivision 7; 216B.2401; 216B.2412, subdivisions 1 and 3;
26.19 216C.03; 216C.05, subdivision 2; 216H.01; 216H.02; 216H.03; and 216H.06, are repealed.

26.20 (b) Minnesota Statutes 2009 Supplement, sections 216B.1612, subdivision 2; and
26.21 216B.2412, subdivision 2, are repealed.

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ARTICLE 1	CONSERVATION	Page.Ln 1.12
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216B.1612 COMMUNITY-BASED ENERGY DEVELOPMENT; TARIFF.

Subdivision 1. **Tariff establishment.** A tariff shall be established to optimize local, regional, and state benefits from renewable energy development and to facilitate widespread development of community-based 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 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, 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 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; the office of the commissioner of Iron Range resources and rehabilitation; 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" refers to a technology listed in section 216B.1691, subdivision 1, paragraph (a).

(g) "Community-based energy development project" or "C-BED project" means a new renewable energy project that either as a stand-alone project or part of a partnership under subdivision 8:

(1) has no single qualifying owner owning more than 15 percent of a C-BED wind energy project unless: (i) the C-BED wind energy project consists of only one or two turbines; or (ii) the qualifying owner is a public entity listed under paragraph (c), clause (5), that is not a municipal utility;

(2) demonstrates that at least 51 percent of the gross revenues from a power purchase agreement over the life of the project will flow to qualifying owners and other local entities; and

(3) 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 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, 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

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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 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.

(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 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, subject to the limits specified in this section, participate in a community-based energy project, including as an owner, equity partner, or provider of technical or financial assistance.

Subd. 9. Local government and political subdivision powers. A Minnesota political subdivision or local government may plan, develop, purchase, acquire, construct, and own a C-BED project and may sell output from that project as provided for in this section. A Minnesota political subdivision or local government may not acquire property under this subdivision through eminent domain. A Minnesota political subdivision or local government may operate, maintain, improve, and expand the C-BED project subject to any restrictions in this section.

216B.1681 CURTAILMENT PAYMENTS.

The commission shall conduct a study 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. The commission shall submit the study to the

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chairs and ranking minority members of the senate and house of representatives committees with primary jurisdiction over energy policy by January 15, 2008.

216B.1691 RENEWABLE ENERGY OBJECTIVES.

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.

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, energy savings resulting from efficiency improvements to the utility infrastructure and system, and other efforts to promote energy efficiency and energy conservation.

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 may establish these criteria and standards in a separate proceeding or in a general rate case or other proceeding in which it approves a pilot program, and 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.

216C.03 STATE GOVERNMENT ENERGY-SAVINGS PLAN.

The commissioner of commerce, in coordination with the commissioners of the agencies listed in section 15.01, the chancellor of the Minnesota State Colleges and Universities, and the president of the University of Minnesota, shall identify policy options, barriers, and economic benefits and costs for state government operations to achieve the energy-savings goals in section 216B.2401 and the resulting carbon emissions reductions. The commissioner of commerce must issue a report to the legislature by February 1, 2008.

216C.05 FINDINGS AND PURPOSE.

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

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- (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.

216H.01 DEFINITIONS.

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

Subd. 2. **Statewide greenhouse gas emissions.** "Statewide greenhouse gas emissions" include emissions of carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride emitted by anthropogenic sources within the state and from the generation of electricity imported from outside the state and consumed in Minnesota. Carbon dioxide that is injected into geological formations to prevent its release to the atmosphere in compliance with applicable laws, and carbon dioxide associated with the combustion of fuels other than coal, petroleum, and natural gas are not counted as contributing to statewide greenhouse gas emissions.

216H.02 GREENHOUSE GAS EMISSIONS CONTROL.

Subdivision 1. **Greenhouse gas emissions-reduction goal.** It is the goal of the state to reduce statewide greenhouse gas emissions across all sectors producing those emissions to a level at least 15 percent below 2005 levels by 2015, to a level at least 30 percent below 2005 levels by 2025, and to a level at least 80 percent below 2005 levels by 2050. The levels shall be reviewed based on the climate change action plan study.

Subd. 2. **Climate change action plan.** By February 1, 2008, the commissioner of commerce, in consultation with the commissioners of the Pollution Control Agency, the Housing Finance Agency, and the Departments of Natural Resources, Agriculture, Employment and Economic Development, and Transportation, and the chair of the Metropolitan Council, shall submit to the legislature a climate change action plan that meets the requirements of this section.

Subd. 3. **Stakeholder process.** The plan required by subdivision 2 must be developed through a structured, broadly inclusive stakeholder-based review of potential policies and initiatives that will reduce statewide greenhouse gas emissions from a broad range of sources and activities. The commissioner shall engage a nationally recognized independent expert entity to conduct the stakeholder process. The report of the stakeholder process must form the basis for the plan submitted by the commissioner under subdivision 2.

Subd. 4. **General elements of the plan.** The plan must:

- (1) estimate 1990 and 2005 greenhouse gas emissions in the state and make projections of emissions in 2015, 2025, and 2050;
- (2) identify, evaluate, and integrate a broad range of statewide greenhouse gas reduction options for all emission sectors in the state;
- (3) assess the costs, benefits, and feasibility of implementing the options;
- (4) recommend an integrated set of reduction options and strategies for implementing the options that will achieve the goals in subdivision 1, including analysis of the associated costs and benefits to Minnesotans;
- (5) estimate the statewide greenhouse gas emissions reductions anticipated from implementation of existing state policies;
- (6) recommend a system to require the reporting of statewide greenhouse gas emissions, identifying which facilities must report, and how emission estimates should be made; and
- (7) evaluate the option of exempting a project from the prohibitions contained in section 216H.03, subdivision 3, 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.

Subd. 5. **Specific plan requirements.** (a) The plan must evaluate and recommend interim goals as steps to achieve the goals in subdivision 1.

(b) The plan must determine the feasibility, assess the costs and benefits, and recommend how the state could adopt a regulatory system that imposes a cap 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. The evaluation must contain an analysis of the state implementing a cap and trade system alone, in coordination with other states, and as a requirement of federal law applying to all states.

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The plan must recommend the parameters of a cap and trade system that includes a cap that would prevent significant increases in greenhouse gas emissions above current levels with a schedule for lowering the cap periodically to achieve the goals in subdivision 1 and interim goals recommended under paragraph (a). The plan must consider cost savings and cost increases on energy consumers in the state.

(c) The plan must include recommendations for improvements in the emissions inventory and recommend whether the state should require greenhouse gas emissions reporting from specific sources and, if so, which sources should be required to report. The plan must also evaluate options for an emissions registry after reviewing registries in other states and recommend a registry that will insure the greatest opportunity for Minnesota entities to obtain marketable credits.

Subd. 6. Regional activities. The state must, to the extent possible, with other states in the Midwest region, develop and implement a regional approach to reducing greenhouse gas emissions from activities in the region, including consulting on a regional cap and trade system. 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. The commissioner of commerce, as part of the activities required under this subdivision, must meet with responsible officials from bordering states, other states in the Midwest region, and states in other regions of the country to:

- (1) determine whether other states are interested in establishing and cooperating in a multistate or regional greenhouse gas cap and trade allowance program;
- (2) identify and prepare an inventory of greenhouse gas reduction resources available to support a multistate or regional greenhouse gas cap and trade allowance program;
- (3) seek cooperation on a regional inventory of greenhouse gas emission sources; and
- (4) prepare an inventory of available renewable energy resources within a state or region.

The commissioner of commerce must develop a definition of scope of this regional activity that is in addition to the components described in clauses (1) to (4). The commissioner must report on the additional scoping definitions to the chairs and ranking minority members of the legislative committees with jurisdiction over energy and environmental finance and policy on or before the commencement of the 2008 regular legislative session.

216H.03 FAILURE TO ADOPT GREENHOUSE GAS CONTROL PLAN.

Subdivision 1. Definition; new large energy facility. For the purpose of this section, "new large energy facility" means a large energy facility, as defined in section 216B.2421, subdivision 2, clause (1), 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, intermediate, emergency backup, or contingency services, (3) uses a simple cycle or combined cycle turbine technology, and (4) is capable of achieving full load operations within 45 minutes of startup for a simple cycle facility, or is capable of achieving minimum load operations within 185 minutes of startup for a combined cycle facility.

Subd. 2. Definition; statewide power sector carbon dioxide emissions. For the purpose of this section, "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 of carbon dioxide 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 of carbon dioxide associated with the combustion of biomass, as defined in section 216B.2411, subdivision 2, paragraph (c), clauses (1) to (4), are not counted as contributing to statewide power sector carbon dioxide emissions.

Subd. 3. Long-term increased emissions from power plants prohibited. Unless preempted by federal law, until a comprehensive and enforceable state law or rule pertaining to greenhouse gases that directly limits and substantially reduces, over time, statewide power sector carbon dioxide emissions is enacted and in effect, and except as allowed in subdivisions 4 to 7, on and after August 1, 2009, 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

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agreement means an agreement to purchase 50 megawatts of capacity or more for a term exceeding five years.

Subd. 4. **Exception for facilities that offset emissions.** (a) The prohibitions in subdivision 3 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 in an amount equal to or greater than the proposed 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; or

(2) by purchasing carbon dioxide allowances from a state or group of states that has a 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. This section does not exempt emissions that have been offset under this subdivision and emissions exempted under subdivisions 5 to 7 from a cap and trade system if adopted by the state.

Subd. 5. **Exception for new steel production facility.** The prohibitions in subdivision 3 do not apply to increases in statewide power sector carbon dioxide emissions from a new steel production project located in a taconite relief area that has filed an application for an air quality permit from the Pollution Control Agency prior to January 1, 2007.

Subd. 6. **Exception for iron nugget production facility.** The prohibitions in subdivision 3 do not apply to an iron nugget production facility that began construction prior to January 31, 2007, nor to associated mining activities and beneficiation facilities with a concentrate capacity of up to three million tons annually. For the purposes of this subdivision, "iron nugget" means a product with at least 90 percent iron content.

Subd. 7. **Other exemptions.** The prohibitions in subdivision 3 do not apply to:

(1) a new large energy facility under consideration by the Public Utilities Commission pursuant to proposals or applications filed with the Public Utilities Commission before April 1, 2007, or to any power purchase agreement related to a facility described in this clause. The exclusion of pending proposals and applications from the prohibitions in subdivision 3 does not limit the applicability of any other law and is not an expression of legislative intent regarding whether any pending proposal or application should be approved or denied;

(2) a contract not subject to commission approval that was entered into prior to April 1, 2007, to purchase power from a new large energy facility that was approved by a comparable authority in another state prior to that date, for which municipal or public power district bonds have been issued, and on which construction has begun; or

(3) a new large energy facility or a power purchase agreement between a Minnesota utility and a new large energy facility located outside Minnesota that the Public Utilities Commission has determined is essential to ensure the long-term reliability of Minnesota's electric system, to allow electric service for increased industrial demand, or to avoid placing a substantial financial burden on Minnesota ratepayers. An order of the commission granting an exemption under this clause is stayed until the June 1 following the next regular or annual session of the legislature that begins after the date of the commission's final order.

Subd. 8. **Enforcement.** Whenever the commission or the Department of Commerce determines that any person is violating or about to violate this section, it may 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, except that the remedies provided by section 8.31, subdivision 3a, do not apply to a violation of this section.

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 conducted by the commissioners of commerce and pollution control that allow interested parties to submit comments.