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State of Minnesota

HOUSE OF REPRESENTATIVES

NINETY-THIRD SESSION

H. F. No. 5423

04/25/2024

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

1.1 A bill for an act
1.2 relating to energy; requiring certain buildings to meet energy performance
1.3 standards; appropriating money; proposing coding for new law in Minnesota
1.4 Statutes, chapter 216C.

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

1.6 Section 1. [216C.332] BUILDING ENERGY PERFORMANCE STANDARDS.

1.7 Subdivision 1. Definitions. (a) For the purposes of this section, the following terms have
1.8 the meanings given.

1.9 (b) "Building type" means a category of buildings similar in design, function, and energy
1.10 use.

1.11 (c) "Covered building" has the meaning given to "covered property" in section 216C.331,
1.12 subdivision 1.

1.13 (d) "Energy" has the meaning given in section 216C.331, subdivision 1.

1.14 (e) "Energy use intensity" has the meaning given in section 216C.331, subdivision 1.

1.15 (f) "Energy Star Portfolio Manager" has the meaning given in section 216C.331,
1.16 subdivision 1.

1.17 (g) "Final performance standard" means the numeric value of a performance metric that
1.18 covered buildings must meet by 2045.

1.19 (h) "Financial distress" means that a covered building:

1.20 (1) is the subject of a qualified tax lien sale or public auction due to property tax
1.21 arrears;

- 2.1 (2) is controlled by a court-appointed receiver based on financial problems;
- 2.2 (3) is owned by a financial institution through default by the borrower;
- 2.3 (4) has been acquired by deed in lieu of foreclosure; or
- 2.4 (5) has a senior mortgage that is subject to a notice of default.
- 2.5 (i) "Greenhouse gas emissions" means emissions of carbon dioxide, methane, nitrous
- 2.6 oxide, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride resulting from energy
- 2.7 used at a building site.
- 2.8 (j) "Interim performance metric" means the numeric value of a performance metric that
- 2.9 covered properties must meet every five years until 2045.
- 2.10 (k) "Multifamily affordable housing" means a covered building that:
- 2.11 (1) contains five or more dwelling units;
- 2.12 (2) is encumbered by an agreement that limits rents charged to tenants or imposes income
- 2.13 limits on tenants, whether those limits are imposed by a governmental entity or self-imposed
- 2.14 by the owner; and
- 2.15 (3) receives or received financing or financial assistance from the federal government.
- 2.16 (l) "Owner" means:
- 2.17 (1) an individual or entity that possesses the title to a covered building; or
- 2.18 (2) an agent authorized to act on behalf of the covered building owner.
- 2.19 (m) "Performance metric" means an objectively verifiable numeric measure of building
- 2.20 performance with respect to energy use or greenhouse gas emissions.
- 2.21 (n) "Total floor area" has the meaning given in section 216C.331, subdivision 1.

2.22 Subd. 2. **Establishment.** The commissioner must establish and maintain a building

2.23 performance standards program. The purpose of the program is to reduce: (1) the amount

2.24 of energy used to (i) heat and cool buildings, and (ii) provide other energy services; and (2)

2.25 greenhouse gas emissions from buildings to assist the state in meeting the greenhouse gas

2.26 reduction goals under section 216H.02, subdivision 1.

2.27 Subd. 3. **Classification of covered buildings.** For the purposes of this section, a covered

2.28 building is classified as follows:

2.29	<u>Class</u>	<u>Ownership</u>	<u>Total floor area (square feet)</u>
2.30	<u>1</u>	<u>City, state, county, school district,</u>	<u>50,000 or more</u>
2.31		<u>metropolitan council</u>	

3.1	<u>2</u>	<u>Private</u>	<u>100,000 or more</u>
3.2	<u>3</u>	<u>Private</u>	<u>50,000 or more</u>

3.3 Subd. 4. **Final performance standards; establishment.** (a) No later than January 1,
 3.4 2026, the commissioner must establish final performance standards with respect to energy
 3.5 use and greenhouse gas emissions for all covered buildings. The commissioner must establish
 3.6 the final performance standards at a level so that in 2045, if the performance standards are
 3.7 met by all covered buildings:

3.8 (1) the aggregated energy use intensity of all covered buildings is reduced by 30 percent
 3.9 from a 2005 baseline; and

3.10 (2) the aggregated greenhouse gas emissions from all covered buildings is reduced by
 3.11 90 percent from a 2005 baseline.

3.12 (b) When establishing final performance standards, the commissioner may utilize the
 3.13 building types used in the Energy Star Portfolio Manager benchmarking tool or other building
 3.14 types.

3.15 (c) Class 1 covered buildings must meet the final performance standard no later than
 3.16 2043. Class 2 covered buildings must meet the final performance standard no later than
 3.17 2044. Class 3 covered buildings must meet the final performance standard no later than
 3.18 2045.

3.19 (d) Final performance standards established for a covered property containing more than
 3.20 a single building type must be calculated on a pro rata basis based on the square footage of
 3.21 each building type.

3.22 Subd. 5. **Interim performance standards; establishment.** The commissioner must
 3.23 establish interim performance standards for energy use intensity and greenhouse gas
 3.24 emissions that each covered building must meet every five years, beginning in 2028 for
 3.25 class 1 covered buildings and continuing until 2045 for class 3 covered buildings. The
 3.26 interim performance standards must be calculated on a straight-line trajectory with respect
 3.27 to the final performance standards so that covered buildings meeting the interim performance
 3.28 standards demonstrate steady progress toward the final performance standards in equal
 3.29 increments. Each owner must submit a report to the commissioner, on a form prescribed
 3.30 by the commissioner, demonstrating the building's progress toward meeting the interim
 3.31 performance standards.

3.32 Subd. 6. **Performance standards; extensions; exemptions; adjustments.** (a) An owner
 3.33 may request the commissioner to issue the owner an extension, exemption, or adjustment

4.1 to an interim or final performance standard for a covered building. The commissioner may
4.2 approve the request if the commissioner determines that:

4.3 (1) the covered building is experiencing financial distress;

4.4 (2) during the 12 months before the performance standard becomes effective, the covered
4.5 building:

4.6 (i) has been less than 50 percent occupied;

4.7 (ii) does not have a certificate of occupancy or a temporary certificate of occupancy;

4.8 (iii) was issued a demolition permit that remains current; or

4.9 (iv) received no energy services for at least 30 days;

4.10 (3) meeting the performance standard would cause the owner financial hardship; or

4.11 (4) meeting the performance standard is not in the public interest.

4.12 (b) If an owner submits a request under this subdivision less than one year before the
4.13 deadline for the applicable performance standard, the owner may be subject to a penalty of
4.14 up to \$1,000, as determined by the commissioner.

4.15 (c) An owner of multifamily affordable housing is exempt from the requirements of this
4.16 section until the owner refinances the building after the effective date of this act, at which
4.17 point the multifamily affordable housing is subject to the next performance standard or
4.18 interim performance standard that covered buildings are required to meet under subdivision
4.19 3 or 4, as applicable.

4.20 (d) An owner is exempt from the requirements of this section with respect to a covered
4.21 building that the commissioner determines is subject to a performance standard required
4.22 by the state or a political subdivision that is more stringent than a performance standard
4.23 established under this section.

4.24 Subd. 7. **Interface with utility conservation programs.** Nothing in this section limits
4.25 the ability of a public utility or municipal utility to offer programs to covered buildings, or
4.26 to claim energy savings resulting from the offered programs, through the utility's energy
4.27 conservation and optimization plans approved by the commissioner under section 216B.2403
4.28 or 216B.241.

4.29 Subd. 8. **Building Performance Advisory Committee.** (a) No later than August 15,
4.30 2024, the commissioner must establish and make appointments to a Building Performance
4.31 Advisory Committee consisting of representatives from the following entities and professions:

- 5.1 (1) the commissioner, or the commissioner's designee as a non-voting member;
- 5.2 (2) a public or municipal utility providing natural gas service to Minnesota retail
- 5.3 customers;
- 5.4 (3) a public or municipal utility providing electricity service to Minnesota retail
- 5.5 customers;
- 5.6 (4) a provider of energy efficiency measures to covered buildings;
- 5.7 (5) a provider of renewable energy facilities to covered buildings;
- 5.8 (6) a professional who designs covered buildings;
- 5.9 (7) an engineer experienced in energy systems in covered buildings;
- 5.10 (8) a manager of operations in covered buildings;
- 5.11 (9) a labor union representative of workers who operate or service covered buildings;
- 5.12 (10) an owner of a covered building containing residences for families;
- 5.13 (11) an owner of a covered building providing affordable housing for families;
- 5.14 (12) a tenant in a covered building providing affordable housing for families;
- 5.15 (13) a nonprofit organization that addresses climate change, decarbonization, or green
- 5.16 building issues;
- 5.17 (14) a nonprofit organization that addresses environmental justice issues;
- 5.18 (15) an expert on sustainable buildings from the University of Minnesota's Center for
- 5.19 Sustainable Building Research; and
- 5.20 (16) a local government unit.
- 5.21 (b) The Building Performance Advisory Committee must:
- 5.22 (1) advise the commissioner on implementing and operating this section;
- 5.23 (2) recommend final performance standards for different property types;
- 5.24 (3) review and comment on building performance action plans; and
- 5.25 (4) recommend procedures for exemptions, extensions, and adjustments the commissioner
- 5.26 may grant under subdivision 5.
- 5.27 (c) The advisory committee must elect a chair by majority vote at the advisory
- 5.28 committee's initial meeting. The advisory committee must meet quarterly. Additional

6.1 meetings may be held at the call of the chair. The department must serve as staff to the
6.2 advisory committee.

6.3 (d) Advisory committee members other than state employees are governed by section
6.4 15.059.

6.5 Subd. 9. Penalties. (a) An owner whose covered building fails to meet an interim or
6.6 final performance standard by the date required, and who has not received a valid extension,
6.7 exemption, or adjustment from the commissioner under subdivision 5 with respect to the
6.8 applicable covered building and performance standard, must make a compliance payment
6.9 to the commissioner under this subdivision.

6.10 (b) This paragraph applies to an owner whose covered building fails to meet either the
6.11 applicable greenhouse gas emissions standard or the applicable energy use intensity standard,
6.12 or that meets the applicable energy use standard but fails to meet the applicable greenhouse
6.13 gas emissions standard. The owner must pay to the commissioner a penalty, determined by
6.14 the commissioner using the applicable greenhouse gas emissions valuations adopted by the
6.15 Public Utilities Commission under section 216B.2422, subdivision 3, for each metric ton
6.16 or portion thereof of greenhouse gas emissions emitted by the covered building that exceeds
6.17 the applicable standard.

6.18 (c) This paragraph applies to an owner whose covered building meets the applicable
6.19 greenhouse gas emissions standard but fails to meet the applicable energy use intensity
6.20 standard. If the covered building has been ranked by the commissioner under section
6.21 216C.331, subdivision 9, in the quartile with the highest or second-highest energy
6.22 performance score in the covered property's property class, no penalty is assessed. If the
6.23 covered building is ranked in the quartile with the lowest or second-lowest energy
6.24 performance score quartile, the owner must pay to the commissioner a penalty, as determined
6.25 by the commissioner, of up to \$0.70 for each 1,000 British Thermal units consumed by the
6.26 covered building that exceeds the applicable standard in the year in which the applicable
6.27 standard applied. This paragraph expires December 31, 2039.

6.28 (d) A compliance payment must be made under this subdivision each year a covered
6.29 building continues to fail to meet a performance standard.

6.30 (e) When determining the amount of a compliance payment, the commissioner must
6.31 consider:

6.32 (1) the magnitude of the amount by which the covered building's performance exceeds
6.33 the level of the applicable performance standard;

7.1 (2) the length of time over which the covered building has failed to meet the applicable
7.2 performance standard;

7.3 (3) the assessed value of the covered building; and

7.4 (4) the total number of performance standards the covered building has failed to meet
7.5 over time.

7.6 Subd. 10. **Technical and financial assistance hub.** The department must contract with
7.7 a nonprofit organization with extensive experience implementing energy efficiency programs
7.8 in buildings to manage a building performance technical and financial assistance hub. The
7.9 hub must assist owners to comply with this section by:

7.10 (1) offering technical assistance directly to owners regarding energy-saving and
7.11 greenhouse gas emissions reduction measures and strategies;

7.12 (2) connecting owners with other sources of technical assistance, including other building
7.13 owners who have been successful in reducing energy; and

7.14 (3) making owners aware of sources of financial assistance, including tax credits, available
7.15 to support the implementation of energy-saving measures that are offered by utilities or
7.16 available through programs administered by local, state, and federal government entities.

7.17 Subd. 11. **Program implementation.** The commissioner may contract with an
7.18 independent third party to implement any or all of the commissioner's duties required under
7.19 this section. The commissioner must assist owners to access the technical and financial
7.20 assistance hub and the building performance improvement grant program to increase energy
7.21 efficiency and reduce greenhouse gas emissions from the owners' covered properties through
7.22 outreach and training. The commissioner must begin informing owners of this section's
7.23 requirements as part of outreach for the energy benchmarking program under section
7.24 216C.331 in 2025.

7.25 Subd. 12. **Account established.** (a) A building energy performance standards program
7.26 account is established in the special revenue account in the state treasury. The commissioner
7.27 must credit to the account appropriations and transfers made to the account, and penalties
7.28 collected under this section. Earnings, including interest, dividends, and any other earnings
7.29 arising from assets of the account, must be credited to the account. Money remaining in the
7.30 account at the end of a fiscal year does not cancel to the general fund, but remains in the
7.31 account. The commissioner must manage the account.

7.32 (b) Money in the account that is not collected from penalties is appropriated to the
7.33 commissioner and may be used only to reimburse the reasonable expenses incurred by the

8.1 department to administer the building energy performance standards program under this
8.2 section.

8.3 (c) Money in the account collected from penalties is appropriated to the commissioner
8.4 and may only be used to award building performance improvement grants under subdivision
8.5 13.

8.6 Subd. 13. **Building performance improvement grants.** (a) A building performance
8.7 improvement grant program is established in the department to provide financial assistance
8.8 to eligible applicants to make improvements that increase energy efficiency and reduce
8.9 greenhouse gas emissions in order to achieve the performance standards established under
8.10 this section.

8.11 (b) An application for a grant under this section must be made to the commissioner on
8.12 a form developed by the commissioner. The application must be accompanied by
8.13 documentation, as required by the commissioner:

8.14 (1) that the applicant is the owner or representative of a covered building;

8.15 (2) that the applicant has had an energy assessment conducted of the covered building
8.16 within the last 24 months by a qualified person, as determined by the commissioner,
8.17 indicating the energy and greenhouse gas reduction opportunities of the building;

8.18 (3) indicating the total energy and greenhouse gas emission savings expected from the
8.19 proposed improvements; and

8.20 (4) indicating the total cost to purchase and install the improvements.

8.21 (c) The commissioner must develop administrative procedures governing the application
8.22 and grant award processes.

8.23 (d) The commissioner may, in consultation with the Building Performance Advisory
8.24 Committee, establish preferences for applicants seeking grants for certain building types or
8.25 energy-reduction measures.

8.26 (e) The commissioner must modify program requirements under this section when
8.27 necessary to align with comparable federal programs administered by the department under
8.28 the federal Inflation Reduction Act of 2022, Public Law 117-189.

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

9.1 Sec. 2. **APPROPRIATION.**

9.2 \$..... in fiscal year 2025 is appropriated from the general fund to the commissioner of
9.3 commerce to administer and enforce the building energy performance standards program
9.4 under Minnesota Statutes, section 216C.332. Of this amount: (1) up to \$..... may be used
9.5 to award grants to applicants under the building performance improvement grants program
9.6 established under Minnesota Statutes, section 216C.332, subdivision 13; and (2) up to \$.....
9.7 may be used to fund the technical and financial assistance hub established under Minnesota
9.8 Statutes, section 216C.332, subdivision 10.