

This Document can be made available in alternative formats upon request

State of Minnesota

HOUSE OF REPRESENTATIVES

NINETIETH SESSION

H. F. No. 1330

02/16/2017 Authored by Bly and Hornstein The bill was read for the first time and referred to the Committee on Job Growth and Energy Affordability Policy and Finance

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

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

1.7 Section 1. [216B.152] CITATION.

1.8 Sections 216B.152 to 216B.1565 may be referred to as the "Energy Security and
1.9 Economic Development Act of 2017."

1.10 Sec. 2. [216B.1525] DEFINITIONS.

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

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

1.15 Subd. 3. Electric utility. "Electric utility" means (1) a public utility providing electric
1.16 service, or (2) a generation or cooperative electric association that elects to be subject to
1.17 rate regulation by the commission under section 216B.026.

1.18 Subd. 4. Electrical distribution system. "Electrical distribution system" means the
1.19 portion of the electric power system over which the Federal Energy Regulatory Commission
1.20 does not have authority to interconnect electric generators that sell electricity in intrastate
1.21 commerce only.

2.1 Subd. 5. **Open field project.** "Open field project" means a photovoltaic device that has
2.2 no physical connection to a building other than electric lines to transport electricity.

2.3 Subd. 6. **Photovoltaic device.** "Photovoltaic device" has the meaning given in section
2.4 216C.06, subdivision 16.

2.5 Subd. 7. **Qualifying owner.** (a) "Qualifying owner" means a:

2.6 (1) Minnesota resident individually or as a member of a Minnesota limited liability
2.7 company organized under chapter 322B and formed for the purpose of developing a C-BED
2.8 project;

2.9 (2) Minnesota nonprofit organization organized under chapter 317A;

2.10 (3) Minnesota cooperative association organized under chapter 308A or 308B, including
2.11 a rural electric cooperative association or a generation and transmission cooperative on
2.12 behalf of and at the request of a member distribution utility;

2.13 (4) Minnesota political subdivision or local government including, but not limited to, a
2.14 municipal electric utility, or a municipal power agency on behalf of and at the request of a
2.15 member distribution utility; the office of the commissioner of Iron Range resources and
2.16 rehabilitation; a county, statutory or home rule charter city, town, school district, or public
2.17 or private higher education institution; or any other local or regional governmental
2.18 organization such as a board, commission, or association;

2.19 (5) tribal council; or

2.20 (6) legal entity (i) formed for a purpose other than to participate in C-BED projects; (ii)
2.21 whose principal place of business or principal executive office is located in Minnesota; and
2.22 (iii) that provides labor, services, equipment, components, or debt financing to a C-BED
2.23 project.

2.24 (b) A public utility, as defined in section 216B.02, subdivision 4, is not a qualifying
2.25 owner.

2.26 Subd. 8. **Reasonable profit.** "Reasonable profit" means a rate of profit equal to the
2.27 average rate of return on equity approved by the commission in general rate cases for electric
2.28 utilities during the previous 12 months.

2.29 Subd. 9. **Renewable electricity generator.** "Renewable electricity generator" means a
2.30 project:

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

3.1 (2) having one or more qualifying owners with at least a 51 percent ownership interest.

3.2 Subd. 10. **Rooftop project.** "Rooftop project" means a project where a photovoltaic
 3.3 device is physically attached to the roof of a building.

3.4 Subd. 11. **Wind energy conversion system or WECS.** "Wind energy conversion system"
 3.5 or "WECS" has the meaning given in section 216C.06, subdivision 19.

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

3.7 A standard renewable rate is established to provide opportunities for Minnesotans to
 3.8 own and invest in renewable electricity generation by requiring utilities to purchase electrical
 3.9 energy at a just and reasonable price from Minnesota-owned renewable electricity generation
 3.10 projects connected to the electrical distribution system consistent with the standard terms
 3.11 and rates provided in sections 216B.152 to 216B.1565.

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

3.13 Subdivision 1. **Utilities to offer standard renewable rate.** By December 1, 2017, each
 3.14 electric utility providing electric service at retail must file for commission approval a standard
 3.15 renewable rate consistent with this section. Within 90 days of the first commission approval
 3.16 order under this section, each cooperative electric association, generation and transmission
 3.17 cooperative electric association, and municipal power agency must adopt a standard
 3.18 renewable rate that is as consistent with this section as possible.

3.19 Subd. 2. **Standard renewable rate objective.** The objective of the standard renewable
 3.20 rate is to promote a renewable electricity generator rate of development that contributes
 3.21 significantly to accomplishing the renewable energy objectives and standards in section
 3.22 216B.1691, subdivisions 2a and 2f.

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

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

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

3.27 Subd. 4. **Standard renewable rate components.** The standard renewable rate has two
 3.28 components:

3.29 (1) the utility purchasing the energy must pay the highest price determined under section
 3.30 216B.164, based on project size; and

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

4.4 Subd. 5. **Standard renewable rate terms.** An electric utility must enter into a power
 4.5 purchase agreement with the qualifying owners of a renewable electricity generator connected
 4.6 to the electrical distribution system to purchase all of the electricity produced by the
 4.7 renewable electricity generator. The term of the power purchase agreement must not be less
 4.8 than 20 years from the date the renewable electricity generator is commissioned. The rates
 4.9 paid under the power purchase agreement must be the rates established by the commission
 4.10 under subdivision 6, 7, or 8, as applicable. The standard renewable rates established under
 4.11 this section must remain constant over the entire term of a power purchase agreement, except
 4.12 as provided in subdivision 6.

4.13 Subd. 6. **Standard renewable rate; interim values.** Until the commission determines
 4.14 the final standard renewable rates under subdivision 7, the interim standard renewable rates
 4.15 are:

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

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

4.20 (i) if the capacity is 40 kilowatts or less, \$..... per kilowatt-hour;

4.21 (ii) if the capacity exceeds 40 kilowatts but is no greater than 100 kilowatts, \$..... per
 4.22 kilowatt-hour;

4.23 (iii) if the capacity exceeds 100 kilowatts but is no greater than 1,000 kilowatts, \$.....
 4.24 per kilowatt-hour; and

4.25 (iv) if the capacity exceeds 1,000 kilowatts but is no greater than seven megawatts, \$.....
 4.26 per kilowatt-hour;

4.27 (3) for open field or rooftop solar photovoltaic devices:

4.28 (i) if the capacity is five kilowatts or less, \$..... per kilowatt-hour;

4.29 (ii) if the capacity exceeds five kilowatts but is no greater than ten kilowatts, \$..... per
 4.30 kilowatt-hour;

4.31 (iii) if the capacity exceeds ten kilowatts but is no greater than 100 kilowatts, \$..... per
 4.32 kilowatt-hour; and

5.1 (iv) if the capacity exceeds 100 kilowatts but is less than 500 kilowatts, \$..... per
5.2 kilowatt-hour.

5.3 Subd. 7. **Standard renewable rate; final values.** (a) By October 1, 2017, the commission
5.4 must determine a final standard rate for each project type and size listed under subdivision
5.5 6. The commission must review each interim standard renewable rate established under
5.6 subdivision 6 to determine whether the interim rate is a reasonable approximation of a rate
5.7 established by applying the criteria in this subdivision. If the commission determines the
5.8 interim rate is a reasonable approximation of a rate established under this subdivision, it
5.9 must approve the interim standard renewable rate as a final standard renewable rate. If the
5.10 commission determines the interim rate is not a reasonable approximation of a rate established
5.11 under this subdivision, it must calculate the final standard renewable rate by applying the
5.12 criteria in paragraph (b).

5.13 (b) The commission must calculate a final standard renewable rate by first determining,
5.14 for each project type and size listed in subdivision 6:

5.15 (1) the cost of generation, based on an economic analysis;

5.16 (2) the amount of federal, state, and utility subsidies, including grants, tax credits, and
5.17 rebates, but excluding tradeable renewable energy credits, a tax under chapter 272, or
5.18 financial incentives available to businesses that generate electricity but are not a renewable
5.19 electricity generator, that a renewable electricity generator is likely to obtain for projects;

5.20 (3) a reasonable profit; and

5.21 (4) any adjustment the commission determines is the minimum necessary to ensure the
5.22 objective in subdivision 2 is met.

5.23 (c) The commission must calculate the standard renewable rate by adding the amounts
5.24 in paragraph (b), clauses (1), (3), and (4), and subtracting the amount in paragraph (b),
5.25 clause (2), from the total.

5.26 (d) The commission shall not approve a standard rate exceeding \$..... per kilowatt-hour.

5.27 Subd. 8. **Standard renewable rate review and adjustment.** (a) Beginning February
5.28 1, 2019, and annually thereafter, the commission must review the standard renewable rate.
5.29 The commission may adjust the standard renewable rate if it determines the standard
5.30 renewable rate (1) is not a reasonable approximation of the rate that would be calculated
5.31 under subdivision 7, paragraph (b), using the most recent available data, or (2) does not
5.32 achieve the objectives described in subdivision 2. In determining whether the standard
5.33 renewable rate should be adjusted, the commission must consider:

6.1 (1) the rate of penetration for wind, photovoltaic devices, and anaerobic digester facilities
6.2 in Minnesota's electricity generation sector, compared to the state's renewable energy goals
6.3 enumerated under section 216B.1691, subdivisions 2a and 2f;

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

6.6 (3) the account balance in the public benefits surcharge account established under section
6.7 216B.155.

6.8 (b) The commission must not approve a standard renewable rate that is less than the cost
6.9 of generating electricity from a renewable electricity generator plus a reasonable profit.

6.10 (c) After notice and hearing and upon finding that the objectives in section 216B.1691
6.11 are not likely to be met without extending this standard renewable rate to renewable electricity
6.12 projects connected to the electrical transmission system, the commission may require electric
6.13 utilities to enter into power purchase agreements with qualifying owners at rates calculated
6.14 under subdivisions 6 to 8 as necessary to achieve the objectives.

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

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

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

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

6.27 Subd. 11. **WECS capacity calculation.** For the purposes of this section and section
6.28 216B.1555, the total size of a wind energy conversion system must be determined in the
6.29 same manner as under section 216C.41, subdivision 5, paragraphs (b) and (c).

6.30 Subd. 12. **Interconnection.** (a) The standard renewable rate in this section must ensure
6.31 that electric utilities interconnect renewable energy generators to the electrical distribution
6.32 system under the commission's jurisdiction to the maximum extent allowed under federal
6.33 law.

7.1 (b) The commission must consult with the Federal Energy Regulatory Commission, the
 7.2 Midcontinent Independent System Operator, and other appropriate entities to establish an
 7.3 interconnection request review procedure that promptly and efficiently determines whether
 7.4 the commission may interconnect a renewable energy generator that requests interconnection
 7.5 under state authority.

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

7.9 (d) The commission must establish standard interconnection contracts and interconnection
 7.10 schedules.

7.11 (e) An electric utility's costs associated with the interconnection of renewable electricity
 7.12 generators, including direct interconnection costs, distribution system enhancements, and
 7.13 electric utility compliance costs, are recoverable under section 216B.154.

7.14 Subd. 13. **Standard contract.** The commission must approve a standard contract for
 7.15 use in all power purchase agreements under the standard renewable rate established under
 7.16 this section. The contract must include the price paid for each kilowatt-hour generated, a
 7.17 method to adjust the price for inflation, and the duration of the contract.

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

7.19 The commission must require an electric utility to file rate schedules containing provisions
 7.20 for the automatic adjustment of charges for electric utility service in direct relation to the
 7.21 cost of electricity purchased from renewable electricity generators under the standard
 7.22 renewable rate established under sections 216B.152 to 216B.1565, and all other costs
 7.23 required to comply with the standard renewable rate established under section 216B.1535.

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

7.25 (a) By March 1, 2019, and each year thereafter, a utility that has filed with the commission
 7.26 a standard renewable rate established in this section must report to the commission the
 7.27 following quantities for the previous calendar year:

7.28 (1) the total number of kilowatt-hours purchased under contracts using the standard
 7.29 renewable rate established under section 216B.1535;

7.30 (2) the total revenues paid by the utility for electricity purchased under contracts using
 7.31 the standard renewable rate established under section 216B.1535; and

8.1 (3) the total number of kilowatt-hours sold to Minnesota retail customers.

8.2 (b) Upon request, renewable energy generators, qualifying owners that own all or part
 8.3 of a renewable energy generator, and electric utilities must provide the commission any
 8.4 information that may be relevant to the commission performing its duties under sections
 8.5 216B.152 to 216B.1565, including but not limited to project development costs, equipment
 8.6 costs, electricity production costs, interconnection costs, automatic rate adjustments, and
 8.7 compliance costs.

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

8.9 Subdivision 1. **Surcharge.** A public benefits surcharge on each kilowatt-hour of electricity
 8.10 sold at retail to Minnesota customers by an electric utility is established. The surcharge
 8.11 must be collected by each electric utility and remitted to the commissioner of commerce
 8.12 each month.

8.13 Subd. 2. **Amount.** Beginning July 1, 2017, the public benefits surcharge is \$0.00025
 8.14 per kilowatt-hour. The public benefits surcharge increases to \$0.0005 per kilowatt-hour on
 8.15 July 1, 2018, \$0.00075 per kilowatt-hour on July 1, 2019, and \$0.001 per kilowatt-hour on
 8.16 July 1, 2020, and thereafter.

8.17 Subd. 3. **Account.** The public benefits surcharge account is established in the special
 8.18 revenue fund in the state treasury. Each month the commissioner of commerce must deposit
 8.19 all proceeds from the surcharge established under subdivision 1 into the account. Other
 8.20 funds may be deposited into the account, including those voluntarily contributed by ratepayers
 8.21 under subdivision 6. Interest accrued on the account balance remains in the account. The
 8.22 account balance at the end of a fiscal year does not cancel to the general fund, but remains
 8.23 in the account for disbursement under subdivision 4.

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

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

8.28 (2) to reimburse the commission for reasonable costs incurred to annually review the
 8.29 standard renewable rate under section 216B.1535, subdivision 8.

8.30 Subd. 5. **Exceptions.** The public benefits surcharge must not be charged to:

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

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

9.3 Subd. 6. **Ratepayer contributions.** An electric utility must offer its customers the option
9.4 to make voluntary contributions to the account created under this section through the
9.5 customer's utility bill.

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

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

9.9 (b) Payment may only be made after the commissioner of commerce receives a standard
9.10 renewable rate incentive payment application that (1) establishes the applicant's eligibility
9.11 to receive a standard renewable rate incentive payment, and (2) satisfies other requirements
9.12 the commissioner deems necessary. The application must be in a form and submitted at a
9.13 time established by the commissioner.

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

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

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

9.21 Subd. 3. **Amount of payment.** An incentive payment is based on the number of
9.22 kilowatt-hours of electricity generated. The payment amount per kilowatt-hour generated
9.23 is the difference between (1) the average price per kilowatt-hour contained in power purchase
9.24 agreements signed during calendar year 2016 and approved by the commission for each
9.25 project type and size, and (2) the standard renewable rate established under section
9.26 216B.1535, subdivisions 6 to 8.

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

9.31 (b) Nothing in this section may be construed to deny an incentive payment to an otherwise
9.32 qualified renewable electricity generator that has obtained debt or equity financing for

10.1 construction or operation, provided the ownership requirements of section 216B.1535 are
10.2 met. If the owner of the renewable electricity generator is in default of a lending agreement
10.3 during the incentive payment period for a qualified renewable electricity generator and the
10.4 lender takes possession of, operates, and makes reasonable efforts to transfer ownership of
10.5 the renewable electricity generator to an entity other than the lender, the lender may continue
10.6 to receive the incentive payment for electricity generated and sold by the renewable electricity
10.7 generator for a period not to exceed 18 months. A lender who takes possession of a renewable
10.8 electricity generator must notify the commissioner immediately upon taking possession and
10.9 must document efforts to transfer ownership of the renewable electricity generator at least
10.10 quarterly.

10.11 (c) If a renewable electricity generator loses the right to receive the incentive because
10.12 of changes in ownership during the incentive payment period, the renewable electricity
10.13 generator may regain the right to receive the incentive upon cure of the ownership structure
10.14 that resulted in the loss of eligibility and may reapply for the incentive. In no case may the
10.15 payment period be extended beyond the original limit established in the power purchase
10.16 agreement.

10.17 (d) A subsequent or requalifying owner under paragraph (b) or (c) retains the renewable
10.18 electricity generator's original priority order for incentive payments provided the ownership
10.19 structure requalifies within two years of the date (1) the renewable electricity generator
10.20 became unqualified, or (2) a lender takes possession.

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

10.23 (1) an application for the incentive payment;

10.24 (2) one of the following:

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

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

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

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

11.1 (b) The commissioner must determine whether a renewable electricity generator qualifies
11.2 for the incentive and respond in writing to the applicant approving or denying the application
11.3 within 15 working days of the date the information required under paragraph (a) is received.
11.4 A renewable electricity generator that is not operational within 18 months of receiving a
11.5 letter of approval is no longer approved for the incentive. The commissioner must notify
11.6 an applicant of potential loss of approval no less than 60 days before the end of the 18-month
11.7 period. A renewable electricity generator that loses approval may reestablish eligibility on
11.8 the date the commissioner receives a new completed application.

11.9 **Sec. 9. [216B.1565] REPORT.**

11.10 By January 1, 2019, and January 1, 2020, and every four years thereafter, the commission
11.11 must submit a report to the governor and legislature that includes:

11.12 (1) the number of new renewable electricity generators in Minnesota and the
11.13 environmental effects of the addition of those generators, including but not limited to the
11.14 effects on progress toward achieving the renewable energy objectives and standards under
11.15 section 216B.1691;

11.16 (2) recommendations for legislative changes to the rates in section 216B.1535, if any;
11.17 and

11.18 (3) actions taken by the commission to implement sections 216B.152 to 216B.1565 and
11.19 to use the standard renewable rate to achieve the renewable energy objectives and standards
11.20 under section 216B.1691.

11.21 **Sec. 10. EFFECTIVE DATE.**

11.22 Sections 1 to 9 are effective the day following final enactment.