

**SENATE
STATE OF MINNESOTA
SPECIAL SESSION**

S.F. No. 105

(SENATE AUTHORS: RARICK)

DATE
06/15/2020

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Introduction and first reading
Referred to Rules and Administration

OFFICIAL STATUS

1.1 A bill for an act

1.2 relating to energy; establishing the Energy Conservation and Optimization Act of

1.3 2020; amending Minnesota Statutes 2018, sections 216B.2401; 216B.241,

1.4 subdivisions 1a, 1c, 1d, 1f, 1g, 2, 2b, 3, 5, as amended, 7, 8, by adding subdivisions;

1.5 proposing coding for new law in Minnesota Statutes, chapter 216B; repealing

1.6 Minnesota Statutes 2018, section 216B.241, subdivisions 1, 1b, 2c, 4, 10.

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

1.8 Section 1. TITLE.

1.9 Sections 2 to 19 may be cited as the "Energy Conservation and Optimization Act of

1.10 2020."

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

1.12 Sec. 2. [216B.1698] INNOVATIVE CLEAN TECHNOLOGIES.

1.13 (a) For purposes of this section, "innovative clean technology" means advanced energy

1.14 technology that is:

1.15 (1) environmentally superior to technologies currently in use;

1.16 (2) expected to offer energy-related, environmental, or economic benefits; and

1.17 (3) not widely deployed by the utility industry.

1.18 (b) A public utility may petition the commission for authorization to invest in a project

1.19 or projects to deploy one or more innovative clean technologies to further the development,

1.20 commercialization, and deployment of innovative clean technologies that benefit the public

1.21 utility's customers.

(c) The commission may approve a petition under paragraph (b) if it finds:

(1) the technologies proposed are innovative clean technologies;

(2) the investment in an innovative clean energy technology is likely to provide benefits to customers that exceed the technology's cost;

(3) the public utility is meeting its energy conservation goals under section 216B.241; and

(4) the project complies with the spending limits under paragraph (d).

(d) Over any three consecutive years, a public utility must not spend more on innovative clean technologies under this section than:

(1) for a public utility providing service to 200,000 or more retail Minnesota customers, \$6,000,000; or

(2) for a public utility providing service to fewer than 200,000 retail Minnesota customers, \$3,000,000.

(e) The commission may authorize a public utility to file a rate schedule containing provisions that automatically adjust charges for public utility service in direct relation to changes in prudent costs incurred by a public utility under this section, up to the amounts allowed under paragraph (d). To the extent the public utility investment under this section is for a capital asset, the utility may request that the asset be included in the utility's rate base.

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

Sec. 3. Minnesota Statutes 2018, section 216B.2401, is amended to read:

216B.2401 ENERGY SAVINGS AND OPTIMIZATION POLICY GOAL.

(a) The legislature finds that energy savings are an energy resource, and that cost-effective energy savings are preferred over all other energy resources. In addition, the legislature finds that optimizing the timing and method used by energy consumers to manage energy use provides significant benefits to the consumers and to the utility system as a whole. The legislature further finds that cost-effective energy savings and load management programs should be procured systematically and aggressively in order to reduce utility costs for businesses and residents, improve the competitiveness and profitability of businesses, create more energy-related jobs, reduce the economic burden of fuel imports, and reduce pollution and emissions that cause climate change. Therefore, it is the energy policy of the state of Minnesota to achieve annual energy savings equal equivalent to at least ~~1.5~~ 2.5 percent of

annual retail energy sales of electricity and natural gas through ~~cost-effective energy conservation improvement programs and rate design, energy efficiency achieved by energy consumers without direct utility involvement, 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.~~ multiple measures, including but not limited to:

(1) cost-effective energy conservation improvement programs and efficient fuel-switching utility programs under sections 216B.2402 to 216B.241;

(2) rate design;

(3) energy efficiency achieved by energy consumers without direct utility involvement;

(4) advancements in statewide energy codes and cost-effective appliance and equipment standards;

(5) programs designed to transform the market or change consumer behavior;

(6) energy savings resulting from efficiency improvements to the utility infrastructure and system; and

(7) other efforts to promote energy efficiency and energy conservation.

(b) A utility is encouraged to design and offer to its customers load management programs that enable: (1) customers to maximize the economic value gained from the energy purchased from the customer's utility service provider; and (2) utilities to optimize the infrastructure and generation capacity needed to effectively serve customers and facilitate the integration of renewable energy into the energy system.

(c) The commissioner must provide a reasonable estimate of progress made toward the statewide energy-savings goal under paragraph (a) in the annual report required under section 216B.241, subdivision 1c, and make recommendations for administrative or legislative initiatives to increase energy savings toward that goal. The commissioner must also annually report on the energy productivity of the state's economy by estimating the ratio of economic output produced in the most recently completed calendar year to the primary energy inputs used in that year.

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

4.1 Sec. 4. **[216B.2402] DEFINITIONS.**

4.2 Subdivision 1. **Definitions.** For the purposes of section 216B.16, subdivision 6b, and
4.3 sections 216B.2401 to 216B.241, the following terms have the meanings given them.

4.4 Subd. 2. **Consumer-owned utility.** "Consumer-owned utility" means a municipal gas
4.5 utility, a municipal electric utility, or a cooperative electric association.

4.6 Subd. 3. **Cumulative lifetime savings.** "Cumulative lifetime savings" means the total
4.7 electric energy or natural gas savings in a given year from energy conservation improvements
4.8 installed in that given year and energy conservation improvements installed in previous
4.9 years that are still in operation.

4.10 Subd. 4. **Efficient fuel-switching improvement.** "Efficient fuel-switching improvement"
4.11 means a project that:

4.12 (1) replaces a fuel used by a customer with electricity or natural gas delivered at retail
4.13 by a utility subject to section 216B.2403 or 216B.241;

4.14 (2) results in a net increase in the use of electricity or natural gas and a net decrease in
4.15 source energy consumption on a fuel-neutral basis;

4.16 (3) otherwise meets the criteria established for consumer-owned utilities in section
4.17 216B.2403, subdivision 8, and for public utilities under section 216B.241, subdivision 11;
4.18 and

4.19 (4) requires the installation of equipment that utilizes electricity or natural gas, resulting
4.20 in a reduction or elimination of the previous fuel used.

4.21 An efficient fuel-switching improvement is not an energy conservation improvement or
4.22 energy efficiency even if it results in a net reduction in electricity or natural gas use.

4.23 Subd. 5. **Energy conservation.** "Energy conservation" means an action that results in
4.24 a net reduction in electricity or natural gas consumption. Energy conservation does not
4.25 include an efficient fuel-switching improvement.

4.26 Subd. 6. **Energy conservation improvement.** "Energy conservation improvement"
4.27 means a project that results in energy efficiency or energy conservation. Energy conservation
4.28 improvement may include waste heat that is recovered and converted into electricity or used
4.29 as thermal energy, but does not include electric utility infrastructure projects approved by
4.30 the commission under section 216B.1636.

4.31 Subd. 7. **Energy efficiency.** "Energy efficiency" means measures or programs, including
4.32 energy conservation measures or programs, that (1) target consumer behavior, equipment,

processes, or devices, (2) are designed to produce a decrease in consumption of electricity or natural gas on either an absolute or per unit of production basis, and (3) do not reduce the quality or level of service provided to the energy consumer.

Subd. 8. **Fuel.** "Fuel" means energy, including electricity, propane, natural gas, heating oil, gasoline, diesel fuel, or steam, consumed by a retail utility customer.

Subd. 9. **Fuel neutral.** "Fuel neutral" means an approach that compares the use of various fuels for a given end use, using a common metric.

Subd. 10. **Gross annual retail energy sales.** "Gross annual retail energy sales" means a utility's annual electric sales to all Minnesota retail customers, or natural gas throughput to all retail customers, including natural gas transportation customers, on a utility's distribution system in Minnesota. Gross annual retail energy sales does not include:

(1) gas sales to:

(i) a large energy facility;

(ii) a large customer facility whose natural gas utility has been exempted by the commissioner under section 216B.241, subdivision 1a, paragraph (a), with respect to natural gas sales made to the large customer facility; and

(iii) a commercial gas customer facility whose natural gas utility has been exempted by the commissioner under section 216B.241, subdivision 1a, paragraph (b), with respect to natural gas sales made to the commercial gas customer facility;

(2) electric sales to a large customer facility whose electric utility has been exempted by the commissioner under section 216B.241, subdivision 1a, paragraph (a), with respect to electric sales made to the large facility; or

(3) the amount of electric sales prior to December 31, 2032, that are associated with a utility's program, rate, or tariff for electric vehicle charging based on a methodology and assumptions developed by the department in consultation with interested stakeholders no later than December 31, 2020. After December 31, 2032, incremental sales to electric vehicles must be included in calculating a utility's gross retail sales.

Subd. 11. **Investments and expenses of a public utility.** "Investments and expenses of a public utility" means the investments and expenses incurred by a public utility in connection with an energy conservation improvement.

Subd. 12. **Large customer facility.** "Large customer facility" means all buildings, structures, equipment, and installations at a single site that in aggregate: (1) impose a peak

electrical demand on an electric utility's system of at least 20,000 kilowatts, measured in the same way as the utility that serves the customer facility measures electric demand for billing purposes; or (2) consume at least 500,000,000 cubic feet of natural gas annually. When calculating peak electrical demand, a large customer facility may include demand offset by on-site cogeneration facilities and, if engaged in mineral extraction, may include peak energy demand from the large customer facility's mining processing operations.

Subd. 13. **Large energy facility.** "Large energy facility" has the meaning given in section 216B.2421, subdivision 2, clause (1).

Subd. 14. **Lifetime energy savings.** "Lifetime energy savings" means the amount of savings a particular energy conservation improvement is projected to produce over the improvement's effective useful lifetime.

Subd. 15. **Load management.** "Load management" means an activity, service, or technology that changes the timing or the efficiency of a customer's use of energy that allows a utility or a customer to: (1) respond to local and regional energy system conditions; or (2) reduce peak demand for electricity or natural gas. Load management that reduces a customer's net annual energy consumption is also energy conservation.

Subd. 16. **Low-income household.** "Low-income household" means a household whose household income is 60 percent or less of the state median household income.

Subd. 17. **Low-income programs.** "Low-income programs" means energy conservation improvement programs that directly serve the needs of low-income households, including low-income renters.

Subd. 18. **Member.** "Member" has the meaning given in section 308B.005, subdivision 15.

Subd. 19. **Multifamily building.** "Multifamily building" means a residential building containing five or more dwelling units.

Subd. 20. **Prewetherization measure.** "Prewetherization measure" means an improvement that is necessary to allow energy conservation improvements to be installed in a home.

Subd. 21. **Qualifying utility.** "Qualifying utility" means a utility that supplies a customer with energy that enables the customer to qualify as a large customer facility.

Subd. 22. **Waste heat recovered and used as thermal energy.** "Waste heat recovered and used as thermal energy" means capturing heat energy that would be exhausted or dissipated to the environment from machinery, buildings, or industrial processes, and

productively using the recovered thermal energy where it was captured or distributing it as thermal energy to other locations where it is used to reduce demand-side consumption of natural gas, electric energy, or both.

Subd. 23. **Waste heat recovery converted into electricity.** "Waste heat recovery converted into electricity" means an energy recovery process that converts to electricity energy from the heat of exhaust stacks or pipes used for engines or manufacturing or industrial processes, or from the reduction of high pressure in water or gas pipelines, that would otherwise be lost.

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

Sec. 5. **[216B.2403] CONSUMER-OWNED UTILITIES; ENERGY CONSERVATION AND OPTIMIZATION.**

Subdivision 1. **Applicability.** This section applies to:

(1) a cooperative electric association that provides retail service to more than 5,000 members;

(2) a municipality that provides electric service to more than 1,000 retail customers; and

(3) a municipality with more than 1,000,000,000 cubic feet in annual throughput sales to natural gas retail customers.

Subd. 2. **Consumer-owned utility; energy-savings goal.** (a) Each individual consumer-owned utility subject to this section has an annual energy-savings goal equivalent to 1.5 percent of gross annual retail energy sales, to be met with a minimum of energy savings from energy conservation improvements equivalent to at least one percent of the consumer-owned utility's gross annual retail energy sales. The balance of energy savings toward the annual energy-savings goal may be achieved only by the following consumer-owned utility activities:

(1) energy savings from additional energy conservation improvements;

(2) electric utility infrastructure projects, as defined in section 216B.1636, subdivision 1, that result in increased efficiency greater than would have occurred through normal maintenance activity;

(3) net energy savings from efficient fuel-switching improvements that meet the criteria under subdivision 8; or

(4) subject to department approval, demand-side natural gas or electric energy displaced by use of waste heat recovered and used as thermal energy, including the recovered thermal energy from a cogeneration or combined heat and power facility.

(b) The energy-savings goals specified in this section must be calculated based on weather-normalized sales averaged over the most recent three years. A consumer-owned utility may elect to carry forward energy savings in excess of 1.5 percent for a year to the next three years, except that savings from electric utility infrastructure projects may be carried forward for five years. A particular energy savings can only be used to meet one year's goal.

(c) A consumer-owned utility subject to this section is not required to make energy conservation improvements that are not cost-effective, even if the improvement is necessary to attain the energy-savings goal. A consumer-owned utility subject to this section must make reasonable efforts to implement energy conservation improvements that exceed the minimum level established under this subdivision if cost-effective opportunities and funding are available, considering other potential investments the consumer-owned utility intends to make to benefit customers during the term of the plan filed under subdivision 3.

Subd. 3. **Consumer-owned utility; energy conservation and optimization plans.** (a) By June 1, 2022, and at least every three years thereafter, each consumer-owned utility must file with the commissioner an energy conservation and optimization plan that describes the programs for energy conservation, efficient fuel-switching, load management, and other measures the consumer-owned utility intends to offer to achieve the utility's energy savings goal.

(b) A plan's term may be up to three years. A multiyear plan must identify the total energy savings and energy savings resulting from energy conservation improvements that are projected to be achieved in each year of the plan. A multiyear plan that does not, in each year of the plan, meet both the minimum energy savings goal from energy conservation improvements and the total energy savings goal of 1.5 percent, or lower goals adjusted by the commissioner under paragraph (k), must:

(1) state why each goal is projected to be unmet; and

(2) demonstrate how the consumer-owned utility proposes to meet both goals on an average basis over the duration of the plan.

(c) A plan filed under this subdivision must provide:

9.1 (1) for existing programs, an analysis of the cost-effectiveness of the consumer-owned
9.2 utility's programs offered under the plan, using a list of baseline energy- and capacity-savings
9.3 assumptions developed in consultation with the department; and

9.4 (2) for new programs, a preliminary analysis upon which the program will proceed, in
9.5 parallel with further development of assumptions and standards.

9.6 (d) The commissioner must evaluate a plan filed under this subdivision based on the
9.7 plan's likelihood to achieve the energy-savings goals established in subdivision 2. The
9.8 commissioner may make recommendations to a consumer-owned utility regarding ways to
9.9 increase the effectiveness of the consumer-owned utility's energy conservation activities
9.10 and programs under this subdivision. The commissioner may recommend that a
9.11 consumer-owned utility implement a cost-effective energy conservation program, including
9.12 an energy conservation program suggested by an outside source such as a political
9.13 subdivision, nonprofit corporation, or community organization.

9.14 (e) Beginning June 1, 2023, and every June 1 thereafter, each consumer-owned utility
9.15 must file: (1) an annual update identifying the status of its plan filed under this subdivision,
9.16 including: (i) total expenditures and investments made to date under the plan; and (ii) any
9.17 intended changes to the plan; and (2) a summary of the annual energy-savings achievements
9.18 under a plan. An annual filing made in the last year of a plan must contain a new plan that
9.19 complies with this section.

9.20 (f) When evaluating the cost-effectiveness of a consumer-owned utility's energy
9.21 conservation programs, the consumer-owned utility and the commissioner must consider
9.22 the costs and benefits to ratepayers, the utility, participants, and society. The commissioner
9.23 must also consider the rate at which the consumer-owned utility is increasing energy savings
9.24 and expenditures on energy conservation, and lifetime energy savings and cumulative energy
9.25 savings.

9.26 (g) A consumer-owned utility may annually spend and invest up to ten percent of the
9.27 total amount spent and invested on energy conservation improvements on research and
9.28 development projects that meet the definition of energy conservation improvement.

9.29 (h) A generation and transmission cooperative electric association or municipal power
9.30 agency that provides energy services to consumer-owned utilities may file a plan under this
9.31 subdivision on behalf of the consumer-owned utilities to which the association or agency
9.32 provides energy services and may make investments, offer conservation programs, and
9.33 otherwise fulfill the energy-savings goals and reporting requirements of this subdivision
9.34 for those consumer-owned utilities on an aggregate basis.

(i) A consumer-owned utility is prohibited from spending for or investing in energy conservation improvements that directly benefit a large energy facility or a large electric customer facility the commissioner has exempted under section 216B.241, subdivision 1a.

(j) The energy conservation and optimization plan of a consumer-owned utility may include activities to improve energy efficiency in the public schools served by the utility. These activities may include programs to:

(1) increase the efficiency of the school's lighting and heating and cooling systems;

(2) recommission buildings;

(3) train building operators; and

(4) provide opportunities to educate students, teachers, and staff regarding energy efficiency measures implemented at the school.

(k) A consumer-owned utility may request that the commissioner adjust its minimum goal for energy savings from energy conservation improvements under subdivision 2, paragraph (a), for the duration of the plan filed under this subdivision. The request must be made by January 1 of the year when the consumer-owned utility must file a plan under this subdivision. The request must be based on:

(1) historical energy conservation improvement program achievements;

(2) customer class makeup;

(3) projected load growth;

(4) an energy conservation potential study that estimates the amount of cost-effective energy conservation potential that exists in the consumer-owned utility's service territory;

(5) the cost-effectiveness and quality of the energy conservation programs offered by the consumer-owned utility; and

(6) other factors the commissioner and consumer-owned utility determine warrant an adjustment.

The commissioner must adjust the energy savings goal to a level the commissioner determines is supported by the record, but must not approve a minimum energy savings goal from energy conservation improvements that is less than an average of one percent per year over the consecutive years of the plan's duration, including the year the minimum energy savings goal is adjusted.

11.1 Subd. 4. **Consumer-owned utility; energy savings investment.** (a) Except as otherwise
11.2 provided, a consumer-owned utility that the commissioner determines falls short of the
11.3 minimum energy savings goal from energy conservation improvements established in
11.4 subdivision 2, paragraph (a), for three consecutive years during which the utility has annually
11.5 spent on energy conservation improvements less than 1.5 percent of its gross operating
11.6 revenues for an electric utility or less than 0.5 percent of its gross operating revenues for a
11.7 natural gas utility, must spend no less than the following amounts for energy conservation
11.8 improvements:

11.9 (1) for a municipality, 0.5 percent of its gross operating revenues from the sale of gas
11.10 and 1.5 percent of its gross operating revenues from the sale of electricity, excluding gross
11.11 operating revenues from electric and gas service provided in Minnesota to large electric
11.12 customer facilities; and

11.13 (2) for a cooperative electric association, 1.5 percent of its gross operating revenues
11.14 from service provided in the state, excluding gross operating revenues from service provided
11.15 in Minnesota to large electric customers facilities indirectly through a distribution cooperative
11.16 electric association.

11.17 (b) The commissioner may not impose the spending requirement under this subdivision
11.18 if the commissioner has determined that the utility has followed the commissioner's
11.19 recommendations, if any, provided under subdivision 3, paragraph (d).

11.20 (c) Upon request of a consumer-owned utility, the commissioner may reduce the amount
11.21 or duration of the spending requirement imposed under this subdivision, or both, if the
11.22 commissioner determines that the consumer-owned utility's failure to maintain the minimum
11.23 energy savings goal is the result of:

11.24 (1) a natural disaster or other emergency that is declared by the executive branch through
11.25 an emergency executive order that affects the consumer-owned utility's service area;

11.26 (2) a unique load distribution experienced by the consumer-owned utility; or

11.27 (3) other factors that the commissioner determines justifies a reduction.

11.28 (d) Unless the commissioner reduces the duration of the spending requirement under
11.29 paragraph (c), the spending requirement under this subdivision remains in effect until the
11.30 consumer-owned utility has met the minimum energy savings goal for three consecutive
11.31 years.

11.32 Subd. 5. **Energy conservation programs for low-income households.** (a) A
11.33 consumer-owned utility subject to this section must provide energy conservation programs

12.1 to low-income households. The commissioner must evaluate a consumer-owned utility's
12.2 plans under this section by considering the consumer-owned utility's historic spending on
12.3 energy conservation programs directed to low-income households, the rate of customer
12.4 participation in and the energy savings resulting from those programs, and the number of
12.5 low-income persons residing in the consumer-owned utility's service territory. A municipal
12.6 utility that furnishes natural gas service must spend at least 0.2 percent of the municipal
12.7 utility's most recent three-year average gross operating revenue from residential customers
12.8 in Minnesota on energy conservation programs for low-income households. A
12.9 consumer-owned utility that furnishes electric service must spend at least 0.2 percent of the
12.10 consumer-owned utility's gross operating revenue from residential customers in Minnesota
12.11 on energy conservation programs for low-income households. The requirement under this
12.12 paragraph applies to each generation and transmission cooperative association's aggregate
12.13 gross operating revenue from the sale of electricity to residential customers in Minnesota
12.14 by all of the association's member distribution cooperatives.

12.15 (b) To meet all or part of the spending requirements of paragraph (a), a consumer-owned
12.16 utility may contribute money to the energy and conservation account established in section
12.17 216B.241, subdivision 2a. An energy conservation optimization plan must state the amount
12.18 of contributions the consumer-owned utility plans to make to the energy and conservation
12.19 account. Contributions to the account must be used for energy conservation programs serving
12.20 low-income households, including renters, located in the service area of the consumer-owned
12.21 utility making the contribution. Contributions must be remitted to the commissioner by
12.22 February 1 each year.

12.23 (c) The commissioner must establish energy conservation programs for low-income
12.24 households funded through contributions to the energy and conservation account under
12.25 paragraph (b). When establishing energy conservation programs for low-income households,
12.26 the commissioner must consult political subdivisions, utilities, and nonprofit and community
12.27 organizations, including organizations providing energy and weatherization assistance to
12.28 low-income households. The commissioner must record and report expenditures and energy
12.29 savings achieved as a result of energy conservation programs for low-income households
12.30 funded through the energy and conservation account in the report required under section
12.31 216B.241, subdivision 1c, paragraph (f). The commissioner may contract with a political
12.32 subdivision, nonprofit or community organization, public utility, municipality, or
12.33 consumer-owned utility to implement low-income programs funded through the energy and
12.34 conservation account.

13.1 (d) A consumer-owned utility may petition the commissioner to modify the required
13.2 spending under this subdivision if the consumer-owned utility and the commissioner were
13.3 unable to expend the amount required for three consecutive years.

13.4 (e) The commissioner must develop and establish guidelines for determining the eligibility
13.5 of multifamily buildings to participate in energy conservation programs provided to
13.6 low-income households. Notwithstanding the definition of low-income household in section
13.7 216B.2402, a consumer-owned utility or association may apply the most recent guidelines
13.8 published by the department for purposes of determining the eligibility of multifamily
13.9 buildings to participate in low-income programs. The commissioner must convene a
13.10 stakeholder group to review and update these guidelines by July 1, 2021, and at least once
13.11 every five years thereafter. The stakeholder group must include but is not limited to
13.12 representatives of public utilities; municipal electric or gas utilities; electric cooperative
13.13 associations; multifamily housing owners and developers; and low-income advocates.

13.14 (f) Up to 15 percent of a consumer-owned utility's spending on low-income energy
13.15 conservation programs may be spent on preweatherization measures. A consumer-owned
13.16 utility is prohibited from claiming energy savings from preweatherization measures toward
13.17 the consumer-owned utility's energy savings goal.

13.18 (g) The commissioner must, by order, establish a list of preweatherization measures
13.19 eligible for inclusion in low-income energy conservation programs no later than March 15,
13.20 2021.

13.21 (h) A Healthy AIR (Asbestos Insulation Removal) account is established as a separate
13.22 account in the special revenue fund in the state treasury. A consumer-owned utility may
13.23 elect to contribute money to the Healthy AIR account to provide preweatherization measures
13.24 for households eligible for weatherization assistance from the state weatherization assistance
13.25 program in section 216C.264. Remediation activities must be executed in conjunction with
13.26 federal weatherization assistance program services. Money contributed to the account by a
13.27 consumer-owned utility counts toward: (1) the minimum low-income spending requirement
13.28 under paragraph (a); and (2) the cap on preweatherization measures under paragraph (f).
13.29 Money in the account is annually appropriated to the commissioner of commerce to pay for
13.30 Healthy AIR-related activities.

13.31 Subd. 6. **Recovery of expenses.** The commission must allow a cooperative electric
13.32 association subject to rate regulation under section 216B.026 to recover expenses resulting
13.33 from: (1) a plan under this section; and (2) assessments and contributions to the energy and
13.34 conservation account under section 216B.241, subdivision 2a.

14.1 Subd. 7. **Ownership of preweatherization measure or energy conservation**

14.2 **improvement.** (a) A preweatherization measure or energy conservation improvement
14.3 installed in a building under this section, excluding a system owned by a consumer-owned
14.4 utility that is designed to turn off, limit, or vary the delivery of energy, is the exclusive
14.5 property of the building owner, except to the extent that the improvement is subject to a
14.6 security interest in favor of the consumer-owned utility in case of a loan to the building
14.7 owner for the improvement.

14.8 (b) A consumer-owned utility has no liability for loss, damage, or injury directly or
14.9 indirectly caused by a preweatherization measure or energy conservation improvement,
14.10 unless a consumer-owned utility is determined to have been negligent in purchasing,
14.11 installing, or modifying a preweatherization product.

14.12 Subd. 8. **Criteria for efficient fuel-switching improvements.** (a) A fuel-switching
14.13 improvement is deemed efficient if, applying the technical criteria established under section
14.14 216B.241, subdivision 1d, paragraph (b), the improvement, relative to the fuel being
14.15 displaced:

14.16 (1) results in a net reduction in the amount of source energy consumed for a particular
14.17 use, measured on a fuel-neutral basis;

14.18 (2) results in a net reduction of statewide greenhouse gas emissions, as defined in section
14.19 216H.01, subdivision 2, over the lifetime of the improvement. For an efficient fuel-switching
14.20 improvement installed by an electric consumer-owned utility, the reduction in emissions
14.21 must be measured based on the hourly emissions profile of the consumer-owned utility or
14.22 the utility's electricity supplier, as reported in the most recent resource plan approved by
14.23 the commission under section 216B.2422. If the hourly emissions profile is not available,
14.24 the commissioner must develop a method consumer-owned utilities must use to estimate
14.25 that value;

14.26 (3) is cost-effective, considering the costs and benefits from the perspective of the
14.27 consumer-owned utility, participants, and society; and

14.28 (4) is installed and operated in a manner that improves the consumer-owned utility's
14.29 system load factor.

14.30 (b) For purposes of this subdivision, "source energy" means the total amount of primary
14.31 energy required to deliver energy services, adjusted for losses in generation, transmission,
14.32 and distribution, and expressed on a fuel-neutral basis.

15.1 Subd. 9. **Manner of filing and service.** (a) A consumer-owned utility must submit the
15.2 filings required under this section to the department using the department's electronic filing
15.3 system. The commissioner may approve an exemption from this requirement if an affected
15.4 consumer-owned utility is unable to submit filings via the department's electronic filing
15.5 system. All other interested parties must submit filings to the department via the department's
15.6 electronic filing system whenever practicable but may also file by personal delivery or by
15.7 mail.

15.8 (b) The submission of a document to the department's electronic filing system constitutes
15.9 service on the department. If a department rule requires service of a notice, order, or other
15.10 document by the department, a consumer-owned utility, or an interested party upon persons
15.11 on a service list maintained by the department, service may be made by personal delivery,
15.12 mail, or electronic service. Electronic service may be made only to persons on the service
15.13 list that have previously agreed in writing to accept electronic service at an e-mail address
15.14 provided to the department for electronic service purposes.

15.15 Subd. 10. **Assessment.** The commission or department may assess consumer-owned
15.16 utilities subject to this section to carry out the purposes of section 216B.241, subdivisions
15.17 1d, 1e, and 1f. An assessment under this paragraph must be proportionate to the
15.18 consumer-owned utility's respective gross operating revenue from sales of gas or electric
15.19 service in Minnesota during the previous calendar year. Assessments under this subdivision
15.20 are not subject to the cap on assessments under section 216B.62 or any other law.

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

15.22 Sec. 6. Minnesota Statutes 2018, section 216B.241, subdivision 1a, is amended to read:

15.23 Subd. 1a. ~~Investment, expenditure, and contribution; public utility~~ Large customer
15.24 facility. ~~(a) For purposes of this subdivision and subdivision 2, "public utility" has the~~
15.25 ~~meaning given it in section 216B.02, subdivision 4. Each public utility shall spend and~~
15.26 ~~invest for energy conservation improvements under this subdivision and subdivision 2 the~~
15.27 ~~following amounts:~~

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

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

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

~~For purposes of this paragraph (a), "gross operating revenues" do not include revenues from large customer facilities exempted under paragraph (b), or from commercial gas customers that are exempted under paragraph (c) or (e).~~

~~(b)~~ (a) The owner of a large customer facility may petition the commissioner to exempt both electric and gas utilities serving the large customer facility from ~~the investment and expenditure requirements of paragraph (a)~~ contributing to investments and expenditures made under an energy and conservation optimization plan filed under subdivision 2 or section 216B.2403, subdivision 3, with respect to retail revenues attributable to the large customer facility. The filing must include a discussion of the competitive or economic pressures facing the owner of the facility and the efforts taken by the owner to identify, evaluate, and implement energy conservation and efficiency improvements. A filing submitted on or before October 1 of any year must be approved within 90 days and become effective January 1 of the year following the filing, unless the commissioner finds that the owner of the large customer facility has failed to take reasonable measures to identify, evaluate, and implement energy conservation and efficiency improvements. If a facility qualifies as a large customer facility solely due to its peak electrical demand or annual natural gas usage, the exemption may be limited to the qualifying utility if the commissioner finds that the owner of the large customer facility has failed to take reasonable measures to identify, evaluate, and implement energy conservation and efficiency improvements with respect to the nonqualifying utility. Once an exemption is approved, the commissioner may request the owner of a large customer facility to submit, not more often than once every five years, a report demonstrating the large customer facility's ongoing commitment to energy conservation and efficiency improvement after the exemption filing. The commissioner may request such reports for up to ten years after the effective date of the exemption, unless the majority ownership of the large customer facility changes, in which case the commissioner may request additional reports for up to ten years after the change in ownership occurs. The commissioner may, within 180 days of receiving a report submitted under this paragraph, rescind any exemption granted under this paragraph upon a determination that the large customer facility is not continuing to make reasonable efforts to identify, evaluate, and implement energy conservation improvements. A large customer facility that is, under an order from the commissioner, exempt from the investment and expenditure requirements of paragraph (a) as of December 31, 2010, is not required to

submit a report to retain its exempt status, except as otherwise provided in this paragraph with respect to ownership changes. No exempt large customer facility may participate in a utility conservation improvement program unless the owner of the facility submits a filing with the commissioner to withdraw its exemption.

~~(e)~~ (b) A commercial gas customer that is not a large customer facility and that purchases or acquires natural gas from a public utility having fewer than 600,000 natural gas customers in Minnesota may petition the commissioner to exempt gas utilities serving the commercial gas customer from ~~the investment and expenditure requirements of paragraph (a)~~ contributing to investments and expenditures made under an energy and conservation optimization plan filed under subdivision 2 or section 216B.2403, subdivision 3, with respect to retail revenues attributable to the commercial gas customer. The petition must be supported by evidence demonstrating that the commercial gas customer has acquired or can reasonably acquire the capability to bypass use of the utility's gas distribution system by obtaining natural gas directly from a supplier not regulated by the commission. The commissioner shall grant the exemption if the commissioner finds that the petitioner has made the demonstration required by this paragraph.

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

~~(e)~~ (c) A public utility, consumer-owned utility, or owner of a large customer facility may appeal a decision of the commissioner under paragraph (a) or (b), ~~(e), or (d)~~ to the commission under subdivision 2. In reviewing a decision of the commissioner under paragraph (a) or (b), ~~(e), or (d),~~ the commission shall rescind the decision if it finds ~~that the required investments or spending will:~~

~~(1) not result in cost-effective energy conservation improvements; or~~

~~(2) otherwise~~ the decision is not be in the public interest.

(d) A public utility is prohibited from spending for or investing in energy conservation improvements that directly benefit a large energy facility or a large electric customer facility the commissioner has issued an exemption to under this section.

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

Sec. 7. Minnesota Statutes 2018, section 216B.241, subdivision 1c, is amended to read:

Subd. 1c. **Public utility; energy-saving goals.** (a) The commissioner shall establish energy-saving goals for energy conservation ~~improvement expenditures~~ improvements and shall evaluate an energy conservation improvement program on how well it meets the goals set.

(b) ~~Each individual~~ A public utility and association shall have providing electric service has an annual energy-savings goal equivalent to ~~1.5~~ 1.75 percent of gross annual retail energy sales unless modified by the commissioner under paragraph (d). (c). A public utility providing natural gas service has an annual energy-savings goal equivalent to one percent of gross annual retail energy sales, which cannot be lowered by the commissioner. The savings goals must be calculated based on the most recent three-year weather-normalized average. A public utility or association providing electric service may elect to carry forward energy savings in excess of 1.5 1.75 percent for a year to the succeeding three calendar years, except that savings from electric utility infrastructure projects allowed under paragraph (d) may be carried forward for five years. A public utility providing natural gas service may elect to carry forward energy savings in excess of one percent for a year to the succeeding three calendar years. A particular energy savings can only be used only for to meet one year's goal.

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

~~(d)~~ (c) In its energy conservation ~~improvement~~ and optimization plan filing, a public utility ~~or association~~ may request the commissioner to adjust its annual energy-savings percentage goal based on its historical conservation investment experience, customer class makeup, load growth, a conservation potential study, or other factors the commissioner determines warrants an adjustment.

(d) The commissioner may not approve a plan of a public utility that provides for an annual energy-savings goal of less than one percent of gross annual retail energy sales from energy conservation improvements.

~~A utility or association may include in its energy conservation plan energy savings from~~
The balance of the 1.75 percent annual energy savings goal may be achieved through energy savings from:

(1) additional energy conservation improvements;

~~(2) electric utility infrastructure projects approved by the commission under section 216B.1636 that result in increased efficiency greater than would have occurred through normal maintenance activity; or waste heat recovery converted into electricity projects that may count as energy savings in addition to a minimum energy savings goal of at least one percent for energy conservation improvements. Energy savings from electric utility infrastructure projects, as defined in section 216B.1636, may be included in the energy conservation plan of a municipal utility or cooperative electric association. Electric utility infrastructure projects must result in increased energy efficiency greater than that which would have occurred through normal maintenance activity~~

(3) subject to department approval, demand-side natural gas or electric energy displaced by use of waste heat recovered and used as thermal energy, including the recovered thermal energy from a cogeneration or combined heat and power facility.

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

~~(f) An association or~~ (e) A public utility is not required to make energy conservation investments to attain the energy-savings goals of this subdivision that are not cost-effective even if the investment is necessary to attain the energy-savings goals. For the purpose of this paragraph, in determining cost-effectiveness, the commissioner shall consider: (1) the costs and benefits to ratepayers, the utility, participants, and society. In addition, the commissioner shall consider; (2) the rate at which an association or municipal a public utility is increasing both its energy savings and its expenditures on energy conservation; and (3) the public utility's lifetime energy savings and cumulative energy savings.

~~(g) (f)~~ (f) On an annual basis, the commissioner shall produce and make publicly available a report on the annual energy and capacity savings and estimated carbon dioxide reductions achieved by the ~~energy conservation improvement~~ programs under this section and section 216B.2403 for the two most recent years for which data is available. The report must also include information regarding any annual energy sales or generation capacity increases resulting from efficient fuel-switching improvements. The commissioner shall report on program performance both in the aggregate and for each entity filing an energy conservation improvement plan for approval or review by the commissioner, and must estimate progress made toward the statewide energy-savings goal under section 216B.2401.

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

~~(i) This subdivision does not apply to:~~

~~(1) a cooperative electric association with fewer than 5,000 members;~~

~~(2) a municipal utility with fewer than 1,000 retail electric customers; or~~

~~(3) a municipal utility with less than 1,000,000,000 cubic feet in annual throughput sales to retail natural gas customers.~~

(g) For the report under paragraph (f) that is due by December 31, 2023, the department shall include analysis of the impacts of the adoption of fuel-switching improvements on the propane and fuel oil industries. To facilitate this analysis, the propane and fuel oil industries are required to provide the data requested by the department on a form and schedule prescribed by the commissioner. The report shall be submitted to the chairs and ranking minority members of the senate and house of representatives committees with jurisdiction over energy policy.

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

Sec. 8. Minnesota Statutes 2018, section 216B.241, subdivision 1d, is amended to read:

Subd. 1d. **Technical assistance.** (a) The commissioner shall evaluate energy conservation improvement programs filed under this section and section 216B.2403 on the basis of cost-effectiveness and the reliability of the technologies employed. The commissioner shall, by order, establish, maintain, and update energy-savings assumptions that must be used by utilities when filing energy conservation improvement programs. The department must track a public utility's or consumer-owned utility's lifetime energy savings and cumulative lifetime energy savings reported in plans submitted under this section and section 216B.2403.

(b) The commissioner shall establish an inventory of the most effective energy conservation programs, techniques, and technologies, and encourage all Minnesota utilities to implement them, where appropriate, in their service territories. The commissioner shall describe these programs in sufficient detail to provide a utility reasonable guidance concerning implementation. The commissioner shall prioritize the opportunities in order of potential energy savings and in order of cost-effectiveness.

21.1 (c) The commissioner may contract with a third party to carry out any of the
21.2 commissioner's duties under this subdivision, and to obtain technical assistance to evaluate
21.3 the effectiveness of any conservation improvement program.

21.4 (d) The commissioner may assess up to \$850,000 annually for the purposes of this
21.5 subdivision. The assessments must be deposited in the state treasury and credited to the
21.6 energy and conservation account created under subdivision 2a. An assessment made under
21.7 this subdivision is not subject to the cap on assessments provided by section 216B.62, or
21.8 any other law.

21.9 ~~(b) Of the assessment authorized under paragraph (a), the commissioner may expend~~
21.10 ~~up to \$400,000 annually for the purpose of developing, operating, maintaining, and providing~~
21.11 ~~technical support for a uniform electronic data reporting and tracking system available to~~
21.12 ~~all utilities subject to this section, in order to enable accurate measurement of the cost and~~
21.13 ~~energy savings of the energy conservation improvements required by this section. This~~
21.14 ~~paragraph expires June 30, 2018.~~

21.15 (e) The commissioner must work with stakeholders with technical expertise representing
21.16 the propane and fuel oil industries, public and consumer-owned electric and natural gas
21.17 utilities, organizations protecting the interests of residential utility customers, and other
21.18 interested parties to develop technical guidelines that public utilities and consumer-owned
21.19 utilities must use to:

21.20 (1) determine whether deployment of a fuel-switching improvement meets the criteria
21.21 established in subdivision 11, paragraph (e), or section 216B.2403, subdivision 8, as
21.22 applicable; and

21.23 (2) calculate the amount of energy saved by deployment of a fuel-switching improvement.

21.24 The guidelines must be issued by the commissioner by order no later than March 15, 2021,
21.25 and must be updated as the commissioner determines is necessary.

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

21.27 Sec. 9. Minnesota Statutes 2018, section 216B.241, subdivision 1f, is amended to read:

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

21.31 (b) The commissioner of administration and the commissioner of commerce shall maintain
21.32 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.

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

Sec. 10. Minnesota Statutes 2018, section 216B.241, subdivision 1g, is amended to read:

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

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

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

23.1 Sec. 11. Minnesota Statutes 2018, section 216B.241, subdivision 2, is amended to read:

23.2 Subd. 2. ~~Programs~~ **Public utility; energy conservation and optimization plans.** (a)

23.3 The commissioner may require ~~a public utilities~~ utility to make investments and expenditures
23.4 in energy conservation improvements, explicitly setting forth the interest rates, prices, and
23.5 terms under which the improvements must be offered to the customers. ~~The required~~
23.6 ~~programs must cover no more than a three-year period.~~

23.7 (b) A public utilities utility shall file an energy conservation improvement plans and
23.8 optimization plan by June 1, on a schedule determined by order of the commissioner, but
23.9 at least every three years. Plans received As provided in subdivisions 11 to 13, plans may
23.10 include programs for efficient fuel-switching improvements and load management. An
23.11 individual utility program may combine elements of energy conservation, load management,
23.12 or efficient fuel-switching. The plan must estimate the lifetime energy savings and cumulative
23.13 lifetime energy savings projected to be achieved under the plan. A plan filed by a public
23.14 utility by June 1 must be approved or approved as modified by the commissioner by
23.15 December 1 of that same year.

23.16 (c) The commissioner shall evaluate the program plan on the basis of cost-effectiveness
23.17 and the reliability of technologies employed. The commissioner's order must provide to the
23.18 extent practicable for a free choice, by consumers participating in the an energy conservation
23.19 program, of the device, method, material, or project constituting the energy conservation
23.20 improvement and for a free choice of the seller, installer, or contractor of the energy
23.21 conservation improvement, provided that the device, method, material, or project seller,
23.22 installer, or contractor is duly licensed, certified, approved, or qualified, including under
23.23 the residential conservation services program, where applicable.

23.24 ~~(b)~~ (d) The commissioner may require a utility subject to subdivision 1c to make an
23.25 energy conservation improvement investment or expenditure whenever the commissioner
23.26 finds that the improvement will result in energy savings at a total cost to the utility less than
23.27 the cost to the utility to produce or purchase an equivalent amount of new supply of energy.
23.28 ~~The commissioner shall nevertheless ensure that every public utility operate one or more~~
23.29 ~~programs under periodic review by the department.~~

23.30 ~~(e)~~ (e) Each public utility subject to this subdivision ~~1a~~ may spend and invest annually
23.31 up to ten percent of the total amount ~~required to be~~ spent and invested on energy conservation
23.32 improvements under this section by the public utility on research and development projects
23.33 that meet the definition of energy conservation improvement ~~in subdivision 1 and that are~~
23.34 ~~funded directly by the public utility.~~

~~(d) A public utility may not spend for or invest in energy conservation improvements that directly benefit a large energy facility or a large electric customer facility for which the commissioner has issued an exemption pursuant to subdivision 1a, paragraph (b).~~

(f) The commissioner shall consider and may require a public utility to undertake a an energy conservation program suggested by an outside source, including a political subdivision, a nonprofit corporation, or community organization.

~~(e)~~ (g) A public utility, a political subdivision, or a nonprofit or community organization that has suggested a an energy conservation program, the attorney general acting on behalf of consumers and small business interests, or a public utility customer that has suggested a an energy conservation program and is not represented by the attorney general under section 8.33 may petition the commission to modify or revoke a department decision under this section, and the commission may do so if it determines that the energy conservation program is not cost-effective, does not adequately address the residential conservation improvement needs of low-income persons, has a long-range negative effect on one or more classes of customers, or is otherwise not in the public interest. The commission shall reject a petition that, on its face, fails to make a reasonable argument that a an energy conservation program is not in the public interest.

~~(f)~~ (h) The commissioner may order a public utility to include, with the filing of the public utility's annual status report, the results of an independent audit of the public utility's conservation improvement programs and expenditures performed by the department or an auditor with experience in the provision of energy conservation and energy efficiency services approved by the commissioner and chosen by the public utility. The audit must specify the energy savings or increased efficiency in the use of energy within the service territory of the public utility that is the result of the public utility's spending and investments. The audit must evaluate the cost-effectiveness of the public utility's conservation programs.

~~(g) A gas utility may not spend for or invest in energy conservation improvements that directly benefit a large customer facility or commercial gas customer facility for which the commissioner has issued an exemption pursuant to subdivision 1a, paragraph (b), (c), or (e). The commissioner shall consider and may require a utility to undertake a program suggested by an outside source, including a political subdivision, a nonprofit corporation, or a community organization.~~

(i) The energy conservation and optimization plan of each public utility subject to this section must include activities to improve energy efficiency in public schools served by the utility. As applicable to each public utility, at a minimum the activities must include programs

25.1 to increase the efficiency of the school's lighting and heating and cooling systems, and to
25.2 provide for building recommissioning, building operator training, and opportunities to
25.3 educate students, teachers, and staff regarding energy efficiency measures implemented at
25.4 the school.

25.5 (j) The commissioner may require investments or spending greater than the amounts
25.6 proposed in a plan filed under this subdivision or section 216C.17 for a public utility whose
25.7 most recent advanced forecast required under section 216B.2422 projects a peak demand
25.8 deficit of 100 megawatts or more within five years under midrange forecast assumptions.

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

25.10 Sec. 12. Minnesota Statutes 2018, section 216B.241, subdivision 2b, is amended to read:

25.11 Subd. 2b. **Recovery of expenses.** (a) The commission shall allow a public utility to
25.12 recover expenses resulting from a an energy conservation improvement program required
25.13 and optimization plan approved by the department under this section and contributions and
25.14 assessments to the energy and conservation account, unless the recovery would be
25.15 inconsistent with a financial incentive proposal approved by the commission. The commission
25.16 shall allow a cooperative electric association subject to rate regulation under section
25.17 216B.026, to recover expenses resulting from energy conservation improvement programs,
25.18 load management programs, and assessments and contributions to the energy and
25.19 conservation account unless the recovery would be inconsistent with a financial incentive
25.20 proposal approved by the commission. In addition,

25.21 (b) A public utility may file annually, or the Public Utilities Commission may require
25.22 the public utility to file, and the commission may approve, rate schedules containing
25.23 provisions for the automatic adjustment of charges for utility service in direct relation to
25.24 changes in the expenses of the public utility for real and personal property taxes, fees, and
25.25 permits, the amounts of which the public utility cannot control. A public utility is eligible
25.26 to file for adjustment for real and personal property taxes, fees, and permits under this
25.27 subdivision only if, in the year previous to the year in which it files for adjustment, it has
25.28 spent or invested at least 1.75 percent of its gross revenues from provision of electric service,
25.29 excluding gross operating revenues from electric service provided in the state to large electric
25.30 customer facilities for which the commissioner has issued an exemption under subdivision
25.31 1a, paragraph (b), and 0.6 percent of its gross revenues from provision of gas service,
25.32 excluding gross operating revenues from gas services provided in the state to large electric
25.33 customer facilities for which the commissioner has issued an exemption under subdivision
25.34 1a, paragraph (b), for that year for energy conservation improvements under this section.

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

Sec. 13. Minnesota Statutes 2018, section 216B.241, subdivision 3, is amended to read:

Subd. 3. **Ownership of preweatherization measure or energy conservation improvement.** ~~An~~ A preweatherization measure or energy conservation improvement made to or installed in a building in accordance with this section, except systems owned by ~~the~~ a public 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 public utility in case of a loan to the building owner. The public utility has no liability for loss, damage or injury caused directly or indirectly by ~~an~~ a preweatherization measure or energy conservation improvement except for negligence by the utility in purchase, installation, or modification of the product.

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

Sec. 14. Minnesota Statutes 2018, section 216B.241, subdivision 5, as amended by Laws 2020, chapter 105, section 1, is amended to read:

Subd. 5. **Efficient lighting program.** (a) Each public utility, ~~cooperative electric association, and municipal~~ and consumer-owned utility that provides electric service to retail customers and is subject to subdivision 1c or section 216B.2403 shall include as part of its conservation improvement activities a program to strongly encourage the use of LED lamps. The program must include at least a public information campaign to encourage use of LED lamps and proper management of spent lamps and LED 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 high-intensity discharge lamps from households and from small businesses as defined in section 645.445 that generate an average of fewer than ten spent lamps per year.

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

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

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

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

(g) All the costs incurred by a public utility, ~~cooperative electric association, or municipal~~ or consumer-owned utility to promote the use of and to collect LED lamps ~~and to collect fluorescent and high-intensity discharge lamps~~ under this subdivision are conservation improvement spending under this section.

(h) For the purposes of this subdivision, "LED lamp" means a light-emitting diode lamp that consists of a solid state device that emits visible light when an electric current passes through a semiconductor.

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

Sec. 15. Minnesota Statutes 2018, section 216B.241, subdivision 7, is amended to read:

Subd. 7. **Low-income programs.** (a) The commissioner shall ensure that each public utility ~~and association~~ subject to subdivision 1c provides low-income energy conservation programs to low-income households. When approving spending and energy-savings goals for low-income programs, the commissioner shall consider historic spending and participation levels, energy savings for achieved by low-income programs, and the number of low-income persons residing in the utility's service territory. A ~~municipal utility that furnishes gas service must spend at least 0.2 percent, and a public utility furnishing gas service must spend at least 0.4~~ 0.8 percent, of its most recent three-year average gross operating revenue from residential customers in the state on low-income programs. A public utility ~~or association~~

that furnishes electric service must spend at least ~~0.1~~ 0.4 percent of its gross operating revenue from residential customers in the state on low-income programs. ~~For a generation and transmission cooperative association, this requirement shall apply to each association's members' aggregate gross operating revenue from sale of electricity to residential customers in the state. Beginning in 2010, a utility or association that furnishes electric service must spend 0.2 percent of its gross operating revenue from residential customers in the state on low-income programs.~~

(b) To meet the requirements of paragraph (a), a public utility ~~or association~~ may contribute money to the energy and conservation account established under subdivision 2a. An energy conservation improvement plan must state the amount, if any, of low-income energy conservation improvement funds the public utility ~~or association~~ will contribute to the energy and conservation account. Contributions must be remitted to the commissioner by February 1 of each year.

(c) The commissioner shall establish low-income energy conservation programs to utilize ~~money contributed~~ contributions made 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~~ households. ~~Money contributed~~ Contributions made to the energy and conservation account under paragraph (b) must provide programs for low-income ~~persons~~ households, including low-income renters, in the service territory of the public 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)~~ (f). The commissioner may contract with a political subdivision, nonprofit or community organization, public utility, ~~municipality,~~ or cooperative electric association consumer-owned utility to implement low-income programs funded through the energy and conservation account.

(d) A public 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.

(e) The commissioner must develop and establish guidelines to determine the eligibility of multifamily buildings to participate in low-income energy conservation programs. Notwithstanding the definition of low-income household in section 216B.2402, for purposes of determining the eligibility of multifamily buildings for low-income programs, a public utility may apply the most recent guidelines published by the department. The commissioner

29.1 must convene a stakeholder group to review and update guidelines by July 1, 2021, and at
29.2 least once every five years thereafter. The stakeholder group must include but is not limited
29.3 to representatives of public utilities as defined in section 216B.02, subdivision 4; municipal
29.4 electric or gas utilities; electric cooperative associations; multifamily housing owners and
29.5 developers; and low-income advocates.

29.6 (f) Up to 15 percent of a public utility's spending on low-income programs may be spent
29.7 on preweatherization measures. A public utility is prohibited from claiming energy savings
29.8 from preweatherization measures toward the public utility's energy savings goal.

29.9 (g) The commissioner must, by order, establish a list of preweatherization measures
29.10 eligible for inclusion in low-income programs no later than March 15, 2021.

29.11 (h) A Healthy AIR (Asbestos Insulation Removal) account is established as a separate
29.12 account in the special revenue fund in the state treasury. A public utility may elect to
29.13 contribute money to the Healthy AIR account to provide preweatherization measures to
29.14 households eligible for weatherization assistance under section 216C.264. Remediation
29.15 activities must be executed in conjunction with federal weatherization assistance program
29.16 services. Money contributed to the account counts toward: (1) the minimum low-income
29.17 spending requirement in paragraph (a); and (2) the cap on preweatherization measures under
29.18 paragraph (f). Money in the account is annually appropriated to the commissioner of
29.19 commerce to pay for Healthy AIR-related activities.

29.20 ~~(e)~~ (i) The costs and benefits associated with any approved low-income gas or electric
29.21 conservation improvement program that is not cost-effective when considering the costs
29.22 and benefits to the public utility may, at the discretion of the utility, be excluded from the
29.23 calculation of net economic benefits for purposes of calculating the financial incentive to
29.24 the public utility. The energy and demand savings may, at the discretion of the public utility,
29.25 be applied toward the calculation of overall portfolio energy and demand savings for purposes
29.26 of determining progress toward annual goals and in the financial incentive mechanism.

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

29.28 Sec. 16. Minnesota Statutes 2018, section 216B.241, subdivision 8, is amended to read:

29.29 Subd. 8. **Assessment.** The commission or department may assess public utilities subject
29.30 to this section in proportion to their respective gross operating revenue from sales of gas or
29.31 electric service within the state during the last calendar year to carry out the purposes of
29.32 subdivisions 1d, 1e, and 1f. Those assessments are not subject to the cap on assessments
29.33 provided by section 216B.62, or any other law.

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

30.2 Sec. 17. Minnesota Statutes 2018, section 216B.241, is amended by adding a subdivision
30.3 to read:

30.4 Subd. 11. **Programs for efficient fuel-switching improvements; electric utilities.** (a)

30.5 A public utility providing electric service at retail may include in the plan required under
30.6 subdivision 2 programs to implement efficient fuel-switching improvements or combinations
30.7 of energy conservation improvements, fuel-switching improvements, and load management.
30.8 For each program, the public utility must provide a proposed budget, an analysis of the
30.9 program's cost-effectiveness, and estimated net energy and demand savings.

30.10 (b) The department may approve proposed programs for efficient fuel-switching
30.11 improvements if it determines the improvements meet the requirements of paragraph (d).
30.12 For fuel-switching improvements that require the deployment of electric technologies, the
30.13 department must also consider whether the fuel-switching improvement can be operated in
30.14 a manner that facilitates the integration of variable renewable energy into the electric system.
30.15 The net benefits from an efficient fuel-switching improvement that is integrated with an
30.16 energy efficiency program approved under this section may be counted toward the net
30.17 benefits of the energy efficiency program, if the department determines the primary purpose
30.18 and effect of the program is energy efficiency.

30.19 (c) A public utility may file a rate schedule with the commission that provides for annual
30.20 cost recovery of reasonable and prudent costs to implement and promote efficient
30.21 fuel-switching programs. The commission may not approve a financial incentive to encourage
30.22 efficient fuel-switching programs operated by a public utility providing electric service.

30.23 (d) A fuel-switching improvement is deemed efficient if, applying the technical criteria
30.24 established under section 216B.241, subdivision 1d, paragraph (b), the improvement meets
30.25 the following criteria, relative to the fuel that is being displaced:

30.26 (1) results in a net reduction in the amount of source energy consumed for a particular
30.27 use, measured on a fuel-neutral basis;

30.28 (2) results in a net reduction of statewide greenhouse gas emissions as defined in section
30.29 216H.01, subdivision 2, over the lifetime of the improvement. For an efficient fuel-switching
30.30 improvement installed by an electric utility, the reduction in emissions must be measured
30.31 based on the hourly emission profile of the electric utility, using the hourly emissions profile
30.32 in the most recent resource plan approved by the commission under section 216B.2422;

(3) is cost-effective, considering the costs and benefits from the perspective of the utility, participants, and society; and

(4) is installed and operated in a manner that improves the utility's system load factor.

(e) For purposes of this subdivision, "source energy" means the total amount of primary energy required to deliver energy services, adjusted for losses in generation, transmission, and distribution, and expressed on a fuel-neutral basis.

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

Sec. 18. Minnesota Statutes 2018, section 216B.241, is amended by adding a subdivision to read:

Subd. 12. **Programs for efficient fuel-switching improvements; natural gas utilities.** (a) As part of a public utility's plan filed under subdivision 2, a public utility that provides natural gas service to Minnesota retail customers may propose one or more programs to install electric technologies that reduce the consumption of natural gas by the utility's retail customers as an energy conservation improvement. The commissioner may approve a proposed program if the commissioner, applying the technical criteria developed under section 216B.241, subdivision 1d, paragraph (b), determines that:

(1) the electric technology to be installed meets the criteria established under section 216B.241, subdivision 11, paragraph (d), clauses (1) and (2); and

(2) the program is cost-effective, considering the costs and benefits to ratepayers, the utility, participants, and society.

(b) If a program is approved by the commission under this subdivision, the public utility may count the program's energy savings toward its energy savings goal under section 216B.241, subdivision 1c. Notwithstanding section 216B.2402, paragraph (e), efficient fuel-switching achieved through programs approved under this subdivision is energy conservation.

(c) A public utility may file rate schedules with the commission that provide annual cost-recovery for programs approved by the department under this subdivision, including reasonable and prudent costs to implement and promote the programs.

(d) The commission may approve, modify, or reject a proposal made by the department or a utility for an incentive plan to encourage efficient fuel-switching programs approved under this subdivision, applying the considerations established under section 216B.16, subdivision 6c, paragraphs (b) and (c). The commission may approve a financial incentive

32.1 mechanism that is calculated based on the combined energy savings and net benefits that
32.2 the commission has determined have been achieved by a program approved under this
32.3 subdivision, provided the commission determines that the financial incentive mechanism
32.4 is in the ratepayers' interest.

32.5 (e) A public utility is not eligible for a financial incentive for an efficient fuel-switching
32.6 program under this subdivision in any year in which the utility achieves energy savings
32.7 below one percent of gross annual retail energy sales, excluding savings achieved through
32.8 fuel-switching programs.

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

32.10 Sec. 19. Minnesota Statutes 2018, section 216B.241, is amended by adding a subdivision
32.11 to read:

32.12 Subd. 13. **Cost-effective load management programs.** (a) A public utility may include
32.13 in the utility's plan required under subdivision 2 programs to implement load management
32.14 activities, or combinations of energy conservation improvements, fuel-switching
32.15 improvements, and load management activities. For each program the public utility must
32.16 provide a proposed budget, cost-effectiveness analysis, and estimated net energy and demand
32.17 savings.

32.18 (b) The commissioner may approve a proposed program if the commissioner determines
32.19 that the program is cost-effective, considering the costs and benefits to ratepayers, the utility,
32.20 participants, and society.

32.21 (c) A public utility providing retail electric service to Minnesota customers may file rate
32.22 schedules with the commission that provide for annual cost recovery of reasonable and
32.23 prudent costs incurred to implement and promote cost-effective load management programs
32.24 approved by the department under this subdivision.

32.25 (d) The commission may approve, modify, or reject a proposal made by the department
32.26 or a public utility for an incentive plan to encourage investments in load management
32.27 programs if the commission determines that the program:

32.28 (1) is needed to increase the public utility's investment in cost-effective load management;

32.29 (2) is compatible with the interest of the public utility's ratepayers; and

32.30 (3) links the incentive to the public utility's performance in achieving cost-effective load
32.31 management.

33.1 (e) The commission may structure an incentive plan to encourage cost-effective load
33.2 management programs as an asset on which a public utility earns a rate of return at a level
33.3 the commission determines is reasonable and in the public interest.

33.4 (f) The commission may include the net benefits from a load management activity
33.5 integrated with an energy efficiency program approved under this section in the net benefits
33.6 of the energy efficiency program for purposes of a financial incentive program under section
33.7 216B.16, subdivision 6c, if the department determines the primary purpose of the load
33.8 management activity is energy efficiency.

33.9 (g) A public utility is not eligible for a financial incentive for a load management program
33.10 in any year in which the utility achieves energy savings below one percent of gross annual
33.11 retail energy sales, excluding savings achieved through load management programs.

33.12 (h) The commission may include net benefits from a particular load management activity
33.13 in an incentive plan under this subdivision or section 216B.16, subdivision 6c, but not both.

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

33.15 Sec. 20. **REPEALER.**

33.16 Minnesota Statutes 2018, section 216B.241, subdivisions 1, 1b, 2c, 4, and 10, are
33.17 repealed.

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

216B.241 ENERGY CONSERVATION IMPROVEMENT.

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

(a) "Commission" means the Public Utilities Commission.

(b) "Commissioner" means the commissioner of commerce.

(c) "Department" means the Department of Commerce.

(d) "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.

(e) "Energy conservation improvement" means a project that results in energy efficiency or energy conservation. Energy conservation improvement may include waste heat that is recovered and converted into electricity, but does not include electric utility infrastructure projects approved by the commission under section 216B.1636. Energy conservation improvement also includes waste heat recovered and used as thermal energy.

(f) "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.

(g) "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:

(1) gas sales to:

(i) a large energy facility;

(ii) a large customer facility whose natural gas utility has been exempted by the commissioner under subdivision 1a, paragraph (b), with respect to natural gas sales made to the large customer facility; and

(iii) a commercial gas customer facility whose natural gas utility has been exempted by the commissioner under subdivision 1a, paragraph (c), with respect to natural gas sales made to the commercial gas customer facility; and

(2) electric sales to a large customer facility whose electric utility has been exempted by the commissioner under subdivision 1a, paragraph (b), with respect to electric sales made to the large customer facility.

(h) "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.

(i) "Large customer facility" means all buildings, structures, equipment, and installations at a single site that collectively (1) impose a peak electrical demand on an electric utility's system of not less than 20,000 kilowatts, measured in the same way as the utility that serves the customer facility measures electrical demand for billing purposes or (2) consume not less than 500 million cubic feet of natural gas annually. In calculating peak electrical demand, a large customer facility may include demand offset by on-site cogeneration facilities and, if engaged in mineral extraction, may aggregate peak energy demand from the large customer facility's mining and processing operations.

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

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

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

(m) "Qualifying utility" means a utility that supplies the energy to a customer that enables the customer to qualify as a large customer facility.

(n) "Waste heat recovered and used as thermal energy" means capturing heat energy that would otherwise be exhausted or dissipated to the environment from machinery, buildings, or industrial processes and productively using such recovered thermal energy where it was captured or distributing it as thermal energy to other locations where it is used to reduce demand-side consumption of natural gas, electric energy, or both.

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

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

(1) a cooperative electric association that provides retail service to its members;

(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 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 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

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1 of the same year. The municipality or cooperative shall 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.

(h) MS 2010 [Expired, 1Sp2003 c 11 art 3 s 4; 2007 c 136 art 2 s 5]

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

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. 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. 10. **Waste heat recovery; thermal energy distribution.** Demand-side natural gas or electric energy displaced by use of waste heat recovered and used as thermal energy, including the recovered thermal energy from a cogeneration or combined heat and power facility, is eligible to be counted towards a utility's natural gas or electric energy savings goals, subject to department approval.