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State of Minnesota

HOUSE OF REPRESENTATIVES

SPECIAL SESSION

H. F. No. 15

05/24/2019 Authored by Swedzinski and Baker
The bill was read for the first time and referred to the Committee on Ways and Means

1.1 A bill for an act
1.2 relating to energy; establishing various renewable energy grant programs; providing
1.3 for certain business compensation; requiring reports; appropriating money;
1.4 proposing coding for new law in Minnesota Statutes, chapter 116J.

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

1.6 Section 1. 116J.55 COMMUNITY ENERGY TRANSITION GRANTS.

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

1.9 (b) "Advisory council" means the Community Energy Transition Grant Advisory Council
1.10 created in this section.

1.11 (c) "Commissioner" means the commissioner of employment and economic development.

1.12 (d) "Eligible community" means a county, municipality, or tribal government located
1.13 within a county that hosts an investor-owned electric generating plant powered by coal,
1.14 nuclear energy, or natural gas.

1.15 Subd. 2. Establishment. The commissioner shall establish a community energy transition
1.16 grant program to award grants to promote economic development in eligible communities.

1.17 Subd. 3. Funding. (a) A community energy transition account is created in the special
1.18 revenue fund in the state treasury. Money in the account is appropriated to the commissioner
1.19 for grants as provided in this section and must be expended only as provided in this section.

1.20 (b) On July 1, 2020, \$1,000,000; on July 1, 2021, \$2,000,000; on July 1, 2022,
1.21 \$3,000,000; and on July 1, 2023, \$3,000,000 is transferred from the renewable development
1.22 account under section 116C.779 to the commissioner for deposit in the community energy

2.1 transition account. This transfer must be made before any other payments or transfers
2.2 required under section 116C.779.

2.3 (c) Grants to eligible communities in which an investor-owned electric generating plant
2.4 is located but has not been scheduled for retirement or decommissioning may not exceed
2.5 \$1,000,000. Grants to eligible communities in which an investor-owned electric generating
2.6 plant is located and is scheduled for retirement or decommissioning may not exceed
2.7 \$5,000,000.

2.8 (d) Unless amounts are otherwise appropriated for administrative costs, the commissioner
2.9 of employment and economic development may retain up to five percent of the amount
2.10 appropriated for grants under this section for administrative and personnel costs.

2.11 Subd. 4. **Cancellation of grant; return of grant money.** If after five years, the
2.12 commissioner determines that a project has not proceeded in a timely manner and is unlikely
2.13 to be completed, the commissioner must cancel the grant and require the grantee to return
2.14 all grant money awarded for that project. Grant money returned to the commissioner is
2.15 appropriated to the commissioner to make additional grants under this section.

2.16 Subd. 5. **Grants to eligible communities.** (a) The commissioner must award grants to
2.17 eligible communities through a competitive grant process. Eligible communities must be
2.18 located in the service territory of the public utility subject to section 116C.779.

2.19 (b) To receive grant funds, an eligible community must submit a written application to
2.20 the commissioner, using a form developed by the commissioner.

2.21 (c) The commissioner must consider the recommendations of the Community Energy
2.22 Transition Grant Advisory Council before selecting grant recipients.

2.23 (d) Grants must be used to plan for or address the economic and social impact on the
2.24 community of plant retirement or transition. Specific uses may include but are not limited
2.25 to:

2.26 (1) research;

2.27 (2) planning;

2.28 (3) studies;

2.29 (4) capital improvements; and

2.30 (5) incentives for businesses to open, relocate, or expand.

2.31 Subd. 6. **Priorities.** (a) In evaluating projects, the advisory council shall give priority
2.32 to eligible projects with one or more of the following characteristics:

3.1 (1) the potential of the eligible community to attract a viable business;

3.2 (2) the potential increase in the property tax base of the eligible community, considered
 3.3 relative to the fiscal impact of the retirement of the electric generating plant located in the
 3.4 eligible community;

3.5 (3) the extent to which the grant will assist the eligible community in addressing the
 3.6 fiscal and social impacts of plant retirement; and

3.7 (4) the extent to which the grant will help the state transition away from fossil fuels.

3.8 (b) The factors listed in paragraph (a) are not ranked in order of priority. The
 3.9 commissioner may weigh each factor, depending upon the facts and circumstances, as
 3.10 appropriate. The commissioner may consider other factors that support the goals of this
 3.11 program.

3.12 Subd. 7. **Advisory council.** (a) By September 1, 2019, the commissioner shall appoint
 3.13 representatives to a Community Energy Transition Grant Advisory Council composed of
 3.14 the following members:

3.15 (1) the commissioner of employment and economic development, or a designee;

3.16 (2) the commissioner of transportation, or a designee;

3.17 (3) the commissioner of the Minnesota Pollution Control Agency, or a designee;

3.18 (4) the commissioner of natural resources, or a designee;

3.19 (5) the commissioner of commerce, or a designee;

3.20 (6) one representative of the Prairie Island Indian community;

3.21 (7) two representatives of workers at investor-owned electric generating plants powered
 3.22 by coal, nuclear energy, or natural gas; and

3.23 (8) four representatives of eligible communities, of which, two must be counties, two
 3.24 must be municipalities, at least one must host a coal plant, at least one must host a nuclear
 3.25 plant, and at least one must host a natural gas plant.

3.26 After the initial appointments, members of the advisory council shall be appointed no later
 3.27 than January 15 of every odd-numbered year and shall serve until January 15 of the next
 3.28 odd-numbered year. Members may be removed and vacancies filled as provided in section
 3.29 15.059, subdivision 4. Appointed members are eligible for reappointment.

3.30 (b) The advisory council shall elect a chair and other officers at its first meeting.

4.1 (c) The advisory council shall review applications for community energy transition
 4.2 grants and make recommendations to the commissioner of employment and economic
 4.3 development.

4.4 (d) The commissioner of employment and economic development shall select projects
 4.5 from the recommendations made by the advisory council under this subdivision with
 4.6 consideration given to the priorities listed in subdivision 6.

4.7 (e) A member of the advisory council must not participate in the consideration of an
 4.8 application from the community that member represents.

4.9 (f) Members of the advisory council serve without compensation or payment of expenses.

4.10 (g) The commissioner of employment and economic development or the commissioner's
 4.11 designee shall provide meeting space and administrative services for the advisory council.
 4.12 All costs necessary to support the advisory council's operations must be absorbed using
 4.13 existing appropriations available to the commissioner.

4.14 (h) The advisory council is subject to chapter 13D, but may close a meeting to discuss
 4.15 sensitive private business information included in grant applications. Data related to an
 4.16 application for a grant submitted to the advisory council is governed by section 13.599.

4.17 (i) The commissioner shall convene the first meeting of the advisory council no later
 4.18 than September 1, 2019.

4.19 Subd. 8. **Reports to the legislature.** By January 15, 2021, and each January 15 thereafter,
 4.20 the commissioner must submit a report to the chairs and ranking minority members of the
 4.21 committees of the house of representatives and the senate having jurisdiction over economic
 4.22 development that details the use of grant funds. When possible, this report must include
 4.23 data on the economic impact achieved by each grant.

4.24 Sec. 2. **BIOMASS BUSINESS COMPENSATION.**

4.25 Subdivision 1. **Definitions.** (a) For the purposes of this section, the following terms have
 4.26 the meanings given.

4.27 (b) "Biomass plant" means the biomass plant identified under Minnesota Statutes, section
 4.28 116C.779, subdivision 1, paragraph (f).

4.29 (c) "Early termination" means the early termination of the power purchase agreement
 4.30 authorized under Minnesota Statutes, section 216B.2424, subdivision 9, with the biomass
 4.31 plant.

4.32 (d) "Operating income" means a business's revenue minus its operating expenses.

5.1 Subd. 2. Office of Administrative Hearings; claims process. (a) The chief
5.2 administrative law judge of the Office of Administrative Hearings must assign an
5.3 administrative law judge to administer a claims award process to compensate businesses
5.4 negatively affected by the early termination. The chief administrative law judge may develop
5.5 a process, prescribe forms, identify documentation affected businesses must submit with
5.6 claims, and issue awards to eligible businesses consistent with this section. The process
5.7 must allow, but not require, an authorized representative from each business that applies
5.8 for compensation to appear in person before the assigned administrative law judge to provide
5.9 evidence in support of the business's claim.

5.10 (b) The chief administrative law judge may contract with and use the services of financial
5.11 or other consultants to examine financial documentation presented by claimants or otherwise
5.12 assist in the evaluation and award of claims.

5.13 (c) Records submitted to the Office of Administrative Hearings as part of the claims
5.14 process constitute business data under Minnesota Statutes, section 13.591.

5.15 (d) An award made under this section is final and is not subject to judicial review.

5.16 (e) An award made under this section does not constitute an admission of liability by
5.17 the state for any damages or other losses suffered by a business affected by the early
5.18 termination.

5.19 Subd. 3. Eligibility. To be eligible for an award of compensation, an affected business
5.20 must meet the following criteria:

5.21 (1) as of May 1, 2017, the affected business was operating under the terms of a valid
5.22 written contract, or an oral contract that is sufficiently supported by business records, with
5.23 the company operating the biomass plant or the fertilizer plant integrated with the biomass
5.24 plant to supply or manage material for, or receive material from, the biomass plant or the
5.25 fertilizer plant integrated with the biomass plant;

5.26 (2) the affected business is located in the state; and

5.27 (3) as the result of the early termination, the affected business suffered:

5.28 (i) decreased operating income; or

5.29 (ii) the loss of value of investments in real or personal property essential to its business
5.30 operations with the biomass plant.

5.31 Subd. 4. Types of claims. (a) An eligible business may make claims for a compensation
5.32 award based on either or both:

6.1 (1) decreased operating income; or

6.2 (2) the loss of value of investments in real or personal property essential to its business
6.3 operations with the biomass plant.

6.4 (b) To establish and quantify a claim for decreased operating income, an eligible business
6.5 must:

6.6 (1) demonstrate its operating income over the past five years derived from supplying or
6.7 managing material for, or receiving material from, the biomass plant;

6.8 (2) present evidence of any alternative business opportunities it has pursued or could
6.9 pursue to mitigate the loss of revenue from the termination of its contract with the biomass
6.10 plant; and

6.11 (3) demonstrate the amount that the business's annual operating income, including
6.12 operating income from any alternative business opportunities, after the termination of the
6.13 business's contract with the biomass plant is less than the five-year average of the business's
6.14 annual operating income before the early termination.

6.15 (c) To establish and quantify a loss of value of investments in real or personal property
6.16 claim, an eligible business must provide sufficient evidence of:

6.17 (1) the essential nature of the investment made in the property to fulfill the contract with
6.18 the biomass plant;

6.19 (2) the extent to which the eligible business is able to repurpose the property for another
6.20 productive use after the early termination, including but not limited to the use, sales, salvage,
6.21 or scrap value of the property for which the loss is claimed; and

6.22 (3) the value of the eligible business's nondepreciated investment in the property.

6.23 Subd. 5. **Limitations on awards.** (a) A compensation award for a decreased operating
6.24 income claim must not exceed the amount calculated under subdivision 4, paragraph (b),
6.25 clause (3), multiplied by two.

6.26 (b) The use, sales, salvage, or scrap value of the property for which a loss is claimed
6.27 must be deducted from a compensation award for a loss of value of investments in real or
6.28 personal property claim.

6.29 (c) A payment received from business interruption insurance policies, settlements, or
6.30 other forms of compensation related to the termination of the business's contract with the
6.31 biomass plant must be deducted from any compensation award provided under this section.

7.1 Subd. 6. **Priority.** The chief administrative law judge may give priority to claims by
7.2 eligible businesses that demonstrate a significant effort to pursue alternative business
7.3 opportunities or to conduct other loss mitigation efforts to reduce its claimed losses related
7.4 to the termination of its contract with the company operating the biomass plant.

7.5 Subd. 7. **Awarding claims.** If the amount provided for compensation in the biomass
7.6 business compensation account established under section 3 is insufficient to fully award all
7.7 claims eligible for an award, all awards must be adjusted proportionally based on the value
7.8 of the claim.

7.9 Subd. 8. **Deadlines.** The chief administrative law judge must make the application
7.10 process for eligible claims available by August 1, 2019. A business seeking an award under
7.11 this section must file all claims with the chief administrative law judge within 60 days of
7.12 the date the chief administrative law judge makes the application process for eligible claims
7.13 available. All preliminary awards on eligible claims must be made within 120 days of the
7.14 deadline date to file claims. Any requests to reconsider an award denial must be filed with
7.15 the chief administrative law judge within 60 days of the notice date for preliminary awards.
7.16 All final awards for eligible claims must be made within 60 days of the deadline date to file
7.17 reconsideration requests. The commissioner of management and budget must pay all awarded
7.18 claims within 45 days of the date the commissioner of management and budget receives
7.19 notice of the final awards from the chief administrative law judge.

7.20 Subd. 9. **Expiration.** This section expires June 30, 2022.

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

7.22 Sec. 3. **BIOMASS BUSINESS COMPENSATION ACCOUNT.**

7.23 Subdivision 1. **Account established.** A biomass business compensation account is
7.24 established as a separate account in the special revenue fund in the state treasury.
7.25 Appropriations and transfers to the account must be credited to the account. Earnings, such
7.26 as interest, and any other earnings arising from the assets of the account are credited to the
7.27 account. Funds remaining in the account as of December 31, 2021, must be transferred to
7.28 the renewable development account established under Minnesota Statutes, section 116C.779.

7.29 Subd. 2. **Funding for the special account.** Notwithstanding Minnesota Statutes, section
7.30 116C.779, subdivision 1, paragraph (j), on July 1, 2019, \$40,000,000 must be transferred
7.31 from the renewable development account under Minnesota Statutes, section 116C.779, to
7.32 the biomass business compensation account established under subdivision 3. The transferred

8.1 funds are appropriated to pay eligible obligations under the biomass business compensation
8.2 program established under section 2.

8.3 Subd. 3. **Payment of expenses.** The chief administrative law judge must certify to the
8.4 commissioner of management and budget the total costs incurred to administer the biomass
8.5 business compensation claims process. The commissioner of management and budget must
8.6 transfer an amount equal to the certified costs incurred for biomass business compensation
8.7 claim activities from the renewable development account under Minnesota Statutes, section
8.8 116C.779, and deposit it in the administrative hearings account under Minnesota Statutes,
8.9 section 14.54. Transfers may occur quarterly throughout the fiscal year and must be based
8.10 on quarterly cost and revenue reports, with final certification and reconciliation after each
8.11 fiscal year. The total amount transferred under this subdivision must not exceed \$200,000.

8.12 Subd. 4. **Expiration.** This section expires June 30, 2022.

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

8.14 Sec. 4. **PRAIRIE ISLAND NET ZERO PROJECT.**

8.15 Subdivision 1. **Program established.** The Prairie Island net zero project is established
8.16 with the goal of the Prairie Island Indian community developing an energy system that
8.17 results in net zero emissions.

8.18 Subd. 2. **Grant.** The commissioner of employment and economic development must
8.19 enter into a grant contract with the Prairie Island Indian community to provide the amount
8.20 appropriated under section 5 to stimulate research, development, and implementation of
8.21 renewable energy projects benefiting the Prairie Island Indian community or its members.
8.22 Any examination conducted by the commissioner of employment and economic development
8.23 to determine the sufficiency of the financial stability and capacity of the Prairie Island Indian
8.24 community to carry out the purposes of this grant is limited to the Community Services
8.25 Department of the Prairie Island Indian community.

8.26 Subd. 3. **Plan; report.** The Prairie Island Indian community must file a plan with the
8.27 commissioner of employment and economic development no later than July 1, 2019,
8.28 describing the Prairie Island net zero project elements and implementation strategy. The
8.29 Prairie Island Indian community must file a report on July 1, 2020, and each July 1 thereafter
8.30 until the project is complete, describing the progress made in implementing the project and
8.31 the uses of expended funds. A final report must be completed within 90 days of the date
8.32 the project is complete.

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

9.1 Sec. 5. **APPROPRIATION; PRAIRIE ISLAND NET ZERO PROJECT.**

9.2 Notwithstanding Minnesota Statutes, section 116C.779, subdivision 1, paragraph (j),
9.3 \$8,000,000 each year in fiscal years 2020 and 2021; \$15,000,000 in fiscal year 2022; and
9.4 \$15,200,000 in fiscal year 2023 are appropriated from the renewable development account
9.5 under Minnesota Statutes, section 116C.779, subdivision 1, to the commissioner of
9.6 employment and economic development for a grant to the Prairie Island Indian community
9.7 to establish the net zero project under section 4.

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