

A bill for an act

relating to energy; modifying provisions relating to energy efficiency, conservation, savings, and audits; amending Minnesota Statutes 2006, sections 123B.65, subdivision 2; 216B.16, subdivisions 1, 6b; 216B.241; 216C.31; 471.345, subdivision 13; 504B.161, subdivision 1; proposing coding for new law in Minnesota Statutes, chapter 216B; repealing Minnesota Statutes 2006, sections 216B.165; 216C.27, subdivisions 1, 2, 3, 4, 5, 6, 7; 216C.30, subdivision 5; Minnesota Rules, parts 7635.0100; 7635.0110; 7635.0120; 7635.0130; 7635.0140; 7635.0150; 7635.0160; 7635.0170; 7635.0180; 7635.0200; 7635.0210; 7635.0220; 7635.0230; 7635.0240; 7635.0250; 7635.0260; 7635.0300; 7635.0310; 7635.0320; 7635.0330; 7635.0340; 7635.0400; 7635.0410; 7635.0420; 7635.0500; 7635.0510; 7635.0520; 7635.0530; 7635.0600; 7635.0610; 7635.0620; 7635.0630; 7635.0640; 7635.1000; 7635.1010; 7635.1020; 7635.1030; 7655.0100; 7655.0120; 7655.0200; 7655.0220; 7655.0230; 7655.0240; 7655.0250; 7655.0260; 7655.0270; 7655.0280; 7655.0290; 7655.0300; 7655.0310; 7655.0320; 7655.0330; 7655.0400; 7655.0410; 7655.0420.

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

ARTICLE 1

ENERGY EFFICIENCY AND CONSERVATION

Section 1. Minnesota Statutes 2006, section 216B.16, subdivision 1, is amended to read:

Subdivision 1. **Notice.** Unless the commission otherwise orders, no public utility shall change a rate which has been duly established under this chapter, except upon 60 days' notice to the commission. The notice shall include statements of facts, expert opinions, substantiating documents, and exhibits, supporting the change requested, and state the change proposed to be made in the rates then in force and the time when the modified rates will go into effect. If the filing utility does not have an approved energy conservation improvement plan on file with the department, it shall also include in its notice an energy conservation plan pursuant to section 216B.241. A filing subject to rate

regulation under section 216B.026 shall reference in its notice the energy conservation improvement plans of the generation and transmission cooperative providing energy conservation improvement programs to members of the filing utility pursuant to section 216B.241. The filing utility shall give written notice, as approved by the commission, of the proposed change to the governing body of each municipality and county in the area affected. All proposed changes shall be shown by filing new schedules or shall be plainly indicated upon schedules on file and in force at the time.

Sec. 2. Minnesota Statutes 2006, section 216B.16, subdivision 6b, is amended to read:

Subd. 6b. **Energy conservation improvement.** (a) Except as otherwise provided in this subdivision, all investments and expenses of a public utility as defined in section 216B.241, subdivision 1, paragraph ~~(e)~~ (i), incurred in connection with energy conservation improvements shall be recognized and included by the commission in the determination of just and reasonable rates as if the investments and expenses were directly made or incurred by the utility in furnishing utility service.

~~(b) After December 31, 1999, Investments and expenses for energy conservation improvements shall not be included by the commission in the determination of (i) just and reasonable electric and gas rates for retail electric and gas service provided to large electric customer facilities that have been exempted by the commissioner of the department pursuant to section 216B.241, subdivision 1a, paragraph (b); or (ii) just and reasonable gas rates for large energy facilities. However, no public utility shall be prevented from recovering its investment in energy conservation improvements from all customers that were made on or before December 31, 1999, in compliance with the requirements of section 216B.241.~~

(c) The commission may permit a public utility to file rate schedules providing for annual recovery of the costs of energy conservation improvements. These rate schedules may be applicable to less than all the customers in a class of retail customers if necessary to reflect the ~~differing minimum spending~~ requirements of section 216B.241, ~~subdivision 1a.~~ ~~After December 31, 1999, The commission shall allow a public utility, without requiring a general rate filing under this section, to reduce the electric and gas rates applicable to large electric customer facilities that have been exempted by the commissioner of the department pursuant to section 216B.241, subdivision 1a, paragraph (b), and to reduce the gas rate applicable to a large energy facility by an amount that reflects the elimination of energy conservation improvement investments or expenditures for those facilities required on or before December 31, 1999.~~ In the event that the commission has set electric or gas rates based on the use of an accounting methodology that results in the cost

of conservation improvements being recovered from utility customers over a period of years, the rate reduction may occur in a series of steps to coincide with the recovery of balances due to the utility for conservation improvements made by the utility on or before December 31, ~~1999~~ 2007.

Sec. 3. [216B.2401] ENERGY CONSERVATION POLICY GOAL.

It is the energy policy of the state of Minnesota to achieve annual energy savings equal to 1.5 percent of retail energy sales of electricity and natural gas directly through energy conservation improvement programs and rate design, and indirectly through energy codes and appliance standards, programs designed to transform the market or change consumer behavior, energy savings resulting from efficiency improvements to the utility infrastructure and system, and other efforts to promote energy efficiency and energy conservation.

Sec. 4. Minnesota Statutes 2006, section 216B.241, is amended to read:

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) "Customer facility" means all buildings, structures, equipment, and installations at a single site.

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

(e) "Energy conservation" means demand-side management of energy supplies resulting in a net reduction in energy use. Load management that reduces overall energy use is energy conservation.

(f) "Energy 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) "Energy conservation improvement" means a project that results in energy efficiency or energy conservation.

~~(g)~~ (h) "Gross annual retail energy sales" means annual electric sales to all retail customers in a utility's or association's Minnesota service territory or natural gas

throughput to all retail customers, including natural gas transportation customers, on a utility's distribution system in Minnesota. For purposes of this section, gross annual retail energy sales exclude gas sales to a large energy facility and gas and electric sales to a large electric customer facility exempt under subdivision 1a, paragraph (b).

(i) "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.

~~(h)~~ (j) "Large electric customer facility" means a customer facility that imposes a peak electrical demand on an electric utility's system of not less than 20,000 kilowatts, measured in the same way as the utility that serves the customer facility measures electrical demand for billing purposes, and for which electric services are provided at retail on a single bill by a utility operating in the state.

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

(l) "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 ~~the overall~~ peak demand for energy or capacity.

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

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

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

(2) for a utility that furnishes electric service, 1.5 percent of its gross operating revenues 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 electric customer facilities exempted by the commissioner under paragraph (b).

(b) The owner of a large electric customer facility may petition the commissioner to exempt both electric and gas utilities serving the large energy customer facility from the investment and expenditure requirements of paragraph (a) with respect to retail revenues attributable to the facility. At a minimum, the petition must be supported by evidence relating to competitive or economic pressures on the customer and a showing by the customer of reasonable efforts to identify, evaluate, and implement cost-effective conservation improvements at the facility. If a petition is filed on or before October 1 of any year, the order of the commissioner to exempt revenues attributable to the facility can be effective no earlier than January 1 of the following year. The commissioner shall not grant an exemption if the commissioner determines that granting the exemption is contrary to the public interest. The commissioner may, after investigation, rescind any exemption granted under this paragraph upon a determination that cost-effective the customer is not continuing to make reasonable efforts to identify, evaluate, and implement energy conservation improvements are available at the large electric customer facility. ~~For the purposes of this paragraph, "cost-effective" means that the projected total cost of the energy conservation improvement at the large electric customer facility is less than the projected present value of the energy and demand savings resulting from the energy conservation improvement.~~ For the purposes of investigations by the commissioner under this paragraph, the owner of any large electric customer facility shall, upon request, provide the commissioner with updated information comparable to that originally supplied in or with the owner's original petition under this paragraph.

(c) 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.

(d) A public utility or owner of a large electric customer facility may appeal a decision of the commissioner under paragraph (b) or (c) to the commission under subdivision 2. In reviewing a decision of the commissioner under paragraph (b) or (c), 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 not be in the public interest.

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

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 ~~gross operating revenues in excess of \$5,000,000 from sales of~~ 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 ~~that do not reduce energy use but that increase the efficiency of the electric system~~ may be used to meet 50 percent of the conservation investment and spending requirements of this subdivision.

(f) A generation and transmission cooperative electric association that provides energy services to cooperative electric associations that provide electric service at retail to consumers may invest in energy conservation improvements on behalf of the associations it serves and may fulfill the conservation, spending, reporting, and energy savings goals on an aggregate basis. A municipal power agency or other not-for-profit entity that provides energy service to municipal utilities that provide electric service at retail may invest in energy conservation improvements on behalf of the municipal utilities it serves and may fulfill the conservation, spending, reporting, and energy savings goals on an aggregate basis, under an agreement between the municipal power agency or not-for-profit entity and each municipal utility for funding the investments.

(g) ~~At least every four years, on a schedule determined by the commissioner, each municipality or cooperative shall file an overview of its conservation improvement plan with the commissioner. With this overview,~~ Each municipality or cooperative shall file energy efficiency and conservation improvement plans by June 1 on a schedule determined by order of the commissioner, but at least every three years. Plans received by June 1 must be approved or approved as modified by the commissioner by December 1 of the same year. The municipality or cooperative shall ~~also~~ provide an evaluation to the commissioner detailing its energy conservation improvement spending and investments for the previous period. The evaluation must briefly describe each conservation program and must specify the energy savings or increased efficiency in the use of energy within the service territory of the utility or association that is the result of the spending and investments. The evaluation must analyze the cost-effectiveness of the utility's or association's conservation programs, using a list of baseline energy and capacity savings assumptions developed in consultation with the department. The commissioner shall review each evaluation and make recommendations, where appropriate, to the municipality or association to increase the effectiveness of conservation improvement activities. ~~Up to three percent of a utility's conservation spending obligation under this section may be used for program~~

~~pre-evaluation, testing, and monitoring and program evaluation. The overview and evaluation filed by a municipality with less than 60,000,000 kilowatt-hours in annual retail sales of electric service may consist of a letter from the governing board of the municipal utility to the department providing the amount of annual conservation spending required of that municipality and certifying that the required amount has been spent on conservation programs pursuant to this subdivision.~~

~~(h) The commissioner shall also review each evaluation for whether a portion of the money spent on residential conservation improvement programs is devoted to programs that directly address the needs of renters and low-income persons unless an insufficient number of appropriate programs are available. For the purposes of this subdivision and subdivision 2, "low-income" means an income at or below 50 percent of the state median income.~~

~~(i) As part of its spending for conservation improvement, a municipality or association may contribute to the energy and conservation account. A municipality or association may propose to the commissioner to designate that all or a portion of funds contributed to the account be used for research and development projects that can best be implemented on a statewide basis. Any amount contributed must be remitted to the commissioner by February 1 of each year.~~

~~(j)~~ (h) A municipality may spend up to 50 percent of its required spending under this section to refurbish an existing district heating or cooling system. This paragraph expires July 1, 2007.

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

(b) Each individual utility and association shall have an annual energy-savings goal equivalent to 1.5 percent of gross annual retail energy sales unless modified by the commissioner under paragraph (d). The savings must be calculated based on the most recent three-year weather normalized average.

(c) 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) In its energy conservation improvement plan, a 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. The commissioner may not approve a plan that provides for an annual energy savings goal of less than one percent of gross annual retail energy sales.

(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 utility is not required to make energy conservation investments that are not cost-effective even if the investment is necessary to attain the energy savings goals. For the purpose of this paragraph, "cost-effective" means that the total cost of the energy savings to the utility is less than or equal to the cost to the utility to produce or purchase an equivalent amount of new supply of energy.

(g) On an annual basis, the commissioner shall produce and make publicly available a report on the annual energy savings and estimated carbon dioxide reductions achieved by the energy conservation improvement programs for the two most recent years for which data is available. 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 under subdivisions 1a and 1b.

(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.

Subd. 1d. ~~Cooperative conservation investment increase phase-in~~ Technical assistance. ~~The increase in required conservation improvement expenditures by a cooperative electric association that results from the amendments in Laws 2001, chapter 212, article 8, section 6, to subdivision 1b, paragraph (a), clause (1), must be phased in as follows:~~

~~(1) at least 25 percent shall be effective in year 2002;~~

~~(2) at least 50 percent shall be effective in year 2003;~~

~~(3) at least 75 percent shall be effective in year 2004; and~~

~~(4) all of the increase shall be effective in year 2005 and thereafter. The~~

commissioner shall evaluate energy conservation improvement programs 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 when filing energy conservation improvement programs. 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 and to evaluate energy conservation improvement programs. The commissioner may contract with a third party to carry out any of the commissioner's duties under this subdivision, and to obtain technical assistance to evaluate the effectiveness of any conservation improvement program. The commissioner may assess up to \$800,000 annually until June 30, 2009, and \$450,000 annually thereafter for the purposes of this subdivision. The assessments must be deposited into the energy and conservation account.

Subd. 1e. **Applied research and development grants.** The commissioner may, by order, approve and make grants for applied research and development projects of general applicability that identify new technologies or strategies to maximize energy savings, improve the effectiveness of energy conservation programs, or document the carbon dioxide reductions from energy conservation programs. When approving projects, the commissioner shall consider proposals and comments from utilities and other interested parties. The commissioner may assess up to \$3,600,000 annually for the purposes of this subdivision. The assessments must be deposited into the energy and conservation account.

Subd. 1f. **Facilities energy efficiency.** (a) The Department of Administration and the Department of Commerce shall maintain and, as needed, revise the sustainable building design guidelines developed under section 16B.325.

(b) The Department of Administration and the Department of Commerce shall maintain and update the benchmarking tool developed under Laws 2001, chapter 212, article 1, section 3, so that all public buildings can use the benchmarking tool to maintain energy use information for the purposes of establishing energy efficiency benchmarks, tracking building performance, and measuring the results of energy efficiency and conservation improvements.

(c) The commissioner shall require that utilities include in their conservation improvement plans programs that facilitate professional engineering verification to qualify a building as Energy Star-labeled or as Leadership in Energy and Environmental Design (LEED) certified. The state goal is to achieve certification of 1,000 commercial buildings as Energy Star-labeled and 100 commercial buildings as LEED-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 into the energy and conservation account.

11.1 Subd. 2. **Programs.** (a) The commissioner may require public utilities to make
11.2 investments and expenditures in energy conservation improvements, explicitly setting
11.3 forth the interest rates, prices, and terms under which the improvements must be offered to
11.4 the customers. The required programs must cover no more than a ~~four-year~~ three-year
11.5 period. Public utilities shall file conservation improvement plans by June 1, on a schedule
11.6 determined by order of the commissioner, but at least every ~~four~~ three years. Plans
11.7 received by a public utility by June 1 must be approved or approved as modified by the
11.8 commissioner by December 1 of that same year. ~~The commissioner shall give special~~
11.9 ~~consideration and encouragement to programs that bring about significant net savings~~
11.10 ~~through the use of energy-efficient lighting.~~ The commissioner shall evaluate the program
11.11 on the basis of cost-effectiveness and the reliability of technologies employed. The
11.12 commissioner's order must provide to the extent practicable for a free choice, by consumers
11.13 participating in the program, of the device, method, material, or project constituting the
11.14 energy conservation improvement and for a free choice of the seller, installer, or contractor
11.15 of the energy conservation improvement, provided that the device, method, material, or
11.16 project seller, installer, or contractor is duly licensed, certified, approved, or qualified,
11.17 including under the residential conservation services program, where applicable.

11.18 (b) The commissioner may require a utility to make an energy conservation
11.19 improvement investment or expenditure whenever the commissioner finds that the
11.20 improvement will result in energy savings at a total cost to the utility less than the cost
11.21 to the utility to produce or purchase an equivalent amount of new supply of energy. The
11.22 commissioner shall nevertheless ensure that every public utility operate one or more
11.23 programs under periodic review by the department.

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

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

11.35 ~~(e) The commissioner may, by order, establish a list of programs that may be~~
11.36 ~~offered as energy conservation improvements by a public utility, municipal utility,~~

~~cooperative electric association, or other entity providing conservation services pursuant to this section. The list of programs may include rebates for high-efficiency appliances, rebates or subsidies for high-efficiency lamps, small business energy audits, and building recommissioning. The commissioner may, by order, change this list to add or subtract programs as the commissioner determines is necessary to promote efficient and effective conservation programs.~~

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

~~(g)~~ (e) A utility, a political subdivision, or a nonprofit or community organization that has suggested a program, the attorney general acting on behalf of consumers and small business interests, or a utility customer that has suggested a 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 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 program is not in the public interest.

~~(h)~~ (f) The commissioner may order a public utility to include, with the filing of the utility's proposed conservation improvement plan under paragraph (a), the results of an independent audit of the 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 utility. The audit must specify the energy savings or increased efficiency in the use of energy within the service territory of the utility that is the result of the spending and investments. The audit must evaluate the cost-effectiveness of the utility's conservation programs.

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

Subd. 2a. **Energy and conservation account.** The commissioner must deposit money ~~contributed under subdivisions 1a and 1b~~ assessed or contributed under

subdivisions 1d, 1e, 1f, and 7 in the energy and conservation account in the general fund. Money in the account is appropriated to the department for ~~programs designed to meet the energy conservation needs of low-income persons and to make energy conservation improvements in areas not adequately served under subdivision 2, including research and development projects included in the definition of energy conservation improvement in subdivision 1~~ the purposes of subdivisions 1d, 1e, 1f, and 7. Interest on money in the account accrues to the account. ~~Using information collected under section 216C.02, subdivision 1, paragraph (b), the commissioner must, to the extent possible, allocate enough money to programs for low-income persons to assure that their needs are being adequately addressed. The commissioner must request the commissioner of finance to transfer money from the account to the commissioner of education for an energy conservation program for low-income persons. In establishing programs, the commissioner must consult political subdivisions and nonprofit and community organizations, especially organizations engaged in providing energy and weatherization assistance to low-income persons. At least one program must address the need for energy conservation improvements in areas in which a high percentage of residents use fuel oil or propane to fuel their source of home heating. The commissioner may contract with a political subdivision, a nonprofit or community organization, a public utility, a municipality, or a cooperative electric association to implement its programs. The commissioner may provide grants to any person to conduct research and development projects in accordance with this section.~~

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

has spent or invested at least 1.75 percent of its gross revenues from provision of electric service, excluding gross operating revenues from electric service provided in the state to large electric customer facilities for which the commissioner has issued an exemption under subdivision 1a, paragraph (b), and 0.6 percent of its gross revenues from provision of gas service, excluding gross operating revenues from gas services provided in the state to large electric customer facilities for which the commissioner has issued an exemption under subdivision 1a, paragraph (b), for that year for energy conservation improvements under this section.

Subd. 2c. **Performance incentives.** By December 31, 2008, the commission shall review any incentive plan for energy conservation improvement it has approved under section 216B.16, subdivision 6c, and adjust the utility performance incentives to recognize the energy savings goals established in subdivision 1c.

Subd. 3. Ownership of energy conservation improvement. An energy conservation improvement made to or installed in a building in accordance with this section, except systems owned by the utility and designed to turn off, limit, or vary the delivery of energy, are the exclusive property of the owner of the building except to the extent that the improvement is subjected to a security interest in favor of the utility in case of a loan to the building owner. The utility has no liability for loss, damage or injury caused directly or indirectly by an energy conservation improvement except for negligence by the utility in purchase, installation, or modification of the product.

Subd. 4. Federal law prohibitions. If investments by public utilities in energy conservation improvements are in any manner prohibited or restricted by federal law and there is a provision under which the prohibition or restriction may be waived, then the commission, the governor, or any other necessary state agency or officer shall take all necessary and appropriate steps to secure a waiver with respect to those public utility investments in energy conservation improvements included in this section.

Subd. 5. Efficient lighting program. (a) Each public utility, cooperative electric association, and municipal utility that provides electric service to retail customers shall include as part of its conservation improvement activities a program to strongly encourage the use of fluorescent and high-intensity discharge lamps. The program must include at least a public information campaign to encourage use of the lamps and proper management of spent lamps by all customer classifications.

(b) A public utility that provides electric service at retail to 200,000 or more customers shall establish, either directly or through contracts with other persons, including lamp manufacturers, distributors, wholesalers, and retailers and local government units, a system to collect for delivery to a reclamation or recycling facility spent fluorescent and

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 fluorescent or high-intensity discharge 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 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 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 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 utility for promotion and collection of fluorescent and high-intensity discharge lamps under this subdivision are conservation improvement spending under this section.

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

16.1 (b) Research funded under this subdivision shall include:

16.2 (1) development of environmentally sound production, distribution, and use of
16.3 energy, chemicals, and materials from renewable sources;

16.4 (2) processing and utilization of agricultural and forestry plant products and other
16.5 bio-based, renewable sources as a substitute for fossil-fuel-based energy, chemicals, and
16.6 materials using a variety of means including biocatalysis, biorefining, and fermentation;

16.7 (3) conversion of state wind resources to hydrogen for energy storage and
16.8 transportation to areas of energy demand;

16.9 (4) improvements in scalable hydrogen fuel cell technologies; and

16.10 (5) production of hydrogen from bio-based, renewable sources; and sequestration
16.11 of carbon.

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

16.15 (d) This subdivision expires June 30, 2008.

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

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

16.35 (c) The commissioner shall establish low-income programs to utilize funds
16.36 contributed to the energy and conservation account under paragraph (b). In establishing

low-income programs, the commissioner shall consult political subdivisions, utilities, and nonprofit and community organizations, especially organizations engaged in providing energy and weatherization assistance to low-income persons. Money contributed to the energy and conservation account under paragraph (b) must provide programs for low-income persons, including low-income renters, in the service territory of the utility or association providing the funds. The commissioner shall record and report expenditures and energy savings achieved as a result of low-income programs funded through the energy and conservation account in the report required under subdivision 1c, paragraph (g). The commissioner may contract with a political subdivision, nonprofit or community organization, public utility, municipality, or cooperative electric association to implement low-income programs funded through the energy and conservation account.

(d) A utility or association may petition the commissioner to modify its required spending under paragraph (a) if the utility or association and the commissioner have been unable to expend the amount required under paragraph (a) for three consecutive years.

Subd. 8. **Assessment.** The commission or department may assess utilities subject to this section in proportion to their respective gross operating annual retail energy sales during the last calendar year to carry out the purposes of subdivisions 1d, 1e, and 1f.

Sec. 5. **[216B.2412] DECOUPLING OF ENERGY SALES FROM REVENUES.**

Subdivision 1. **Definition and purpose.** For the purpose of this section, "decoupling" means a regulatory tool designed to separate a utility's revenue from changes in energy sales. The purpose of decoupling is to reduce a utility's disincentive to promote energy efficiency.

Subd. 2. **Decoupling criteria.** The commission shall, by order, establish criteria and standards for decoupling. The commission shall design the criteria and standards to mitigate the impact on public utilities of the energy savings goals under section 216B.241 without adversely affecting utility ratepayers. In designing the criteria, the commission shall consider energy efficiency, weather, and cost of capital, among other factors.

Subd. 3. **Pilot programs.** The commission shall allow one or more rate-regulated utilities to participate in a pilot program to assess the merits of a rate-decoupling strategy to promote energy efficiency and conservation. Each pilot program must utilize the criteria and standards established in subdivision 2 and be designed to determine whether a rate-decoupling strategy achieves energy savings. On or before a date established by the commission, the commission shall require electric and gas utilities that intend to implement a decoupling program to file a decoupling pilot plan. A pilot program may not exceed three years in length. Any extension beyond three years can only be approved in a general

18.1 rate case, unless that decoupling program was previously approved as part of a general
18.2 rate case. The commission shall report on the programs annually to the chairs of the house
18.3 of representatives and senate committees with primary jurisdiction over energy policy.

18.4 Sec. 6. **EFFECTIVE DATE.**

18.5 This article is effective July 1, 2007.

18.6 **ARTICLE 2**

18.7 **MISCELLANEOUS**

18.8 Section 1. Minnesota Statutes 2006, section 123B.65, subdivision 2, is amended to read:

18.9 Subd. 2. **Energy efficiency contract.** (a) Notwithstanding any law to the contrary,
18.10 a school district may enter into a guaranteed energy savings contract with a qualified
18.11 provider to significantly reduce energy or operating costs.

18.12 (b) Before entering into a contract under this subdivision, the board shall comply
18.13 with clauses (1) to (5).

18.14 (1) The board must seek proposals from multiple qualified providers by publishing
18.15 notice of the proposed guaranteed energy savings contract in the board's official newspaper
18.16 and in other publications if the board determines that additional publication is necessary to
18.17 notify multiple qualified providers.

18.18 (2) The school board must select the qualified provider that best meets the needs of
18.19 the board. The board must provide public notice of the meeting at which it will select the
18.20 qualified provider.

18.21 (3) The contract between the board and the qualified provider must describe the
18.22 methods that will be used to calculate the costs of the contract and the operational and
18.23 energy savings attributable to the contract.

18.24 (4) The qualified provider shall issue a report to the board giving a description of all
18.25 costs of installations, modifications, or remodeling, including costs of design, engineering,
18.26 installation, maintenance, repairs, or debt service, and giving detailed calculations of the
18.27 amounts by which energy or operating costs will be reduced and the projected payback
18.28 schedule in years.

18.29 (5) The board must provide published notice of the meeting in which it proposes to
18.30 award the contract, the names of the parties to the proposed contract, and the contract's
18.31 purpose.

18.32 (c) The board must provide a copy of any contract entered into under paragraph (a)
18.33 and the report provided under paragraph (a), clause (4), to the commissioner within 30
18.34 days of the effective date of the contract.

Sec. 2. Minnesota Statutes 2006, section 216C.31, is amended to read:

216C.31 ENERGY AUDIT PROGRAMS.

The commissioner shall develop ~~and administer~~ state programs of energy audits of residential and commercial buildings including ~~those required by United States Code, title 42, sections 8211 to 8222 and sections 8281 to 8284. The commissioner shall continue to administer the residential energy audit program as originally established under the provisions of United States Code, title 42, sections 8211 to 8222; through July 1, 1986 irrespective of any prior expiration date provided in United States Code, title 42, section 8216. The commissioner may approve temporary programs if they are likely to result in the installation of as many conservation measures as would have been installed had the utility met the requirements of United States Code, title 42, sections 8211 to 8222. The Consumer Services Division and the attorney general may release information on consumer comments about the operation of the program to the commissioner~~ the training and qualifications necessary for the auditing of residential and commercial buildings under the auspices of a program created under section 216B.2412.

Sec. 3. Minnesota Statutes 2006, section 471.345, subdivision 13, is amended to read:

Subd. 13. **Energy efficiency projects.** The following definitions apply to this subdivision.

(a) "Energy conservation measure" means a training program or facility alteration designed to reduce energy consumption or operating costs and includes:

- (1) insulation of the building structure and systems within the building;
- (2) storm windows and doors, caulking or weatherstripping, multiglazed windows and doors, heat absorbing or heat reflective glazed and coated window and door systems, additional glazing, reductions in glass area, and other window and door system modifications that reduce energy consumption;
- (3) automatic energy control systems;
- (4) heating, ventilating, or air conditioning system modifications or replacements;
- (5) replacement or modifications of lighting fixtures to increase the energy efficiency of the lighting system without increasing the overall illumination of a facility, unless an increase in illumination is necessary to conform to the applicable state or local building code for the lighting system after the proposed modifications are made;
- (6) energy recovery systems;
- (7) cogeneration systems that produce steam or forms of energy such as heat, as well as electricity, for use primarily within a building or complex of buildings;
- (8) energy conservation measures that provide long-term operating cost reductions.

(b) "Guaranteed energy savings contract" means a contract for the evaluation and recommendations of energy conservation measures, and for one or more energy conservation measures. The contract must provide that all payments, except obligations on termination of the contract before its expiration, are to be made over time, but not to exceed 15 years from the date of final installation, and the savings are guaranteed to the extent necessary to make payments for the systems.

(c) "Qualified provider" means a person or business experienced in the design, implementation, and installation of energy conservation measures. A qualified provider to whom the contract is awarded shall give a sufficient bond to the municipality for its faithful performance.

Notwithstanding any law to the contrary, a municipality may enter into a guaranteed energy savings contract with a qualified provider to significantly reduce energy or operating costs.

Before entering into a contract under this subdivision, the municipality shall provide published notice of the meeting in which it proposes to award the contract, the names of the parties to the proposed contract, and the contract's purpose.

Before installation of equipment, modification, or remodeling, the qualified provider shall first issue a report, summarizing estimates of all costs of installations, modifications, or remodeling, including costs of design, engineering, installation, maintenance, repairs, or debt service, and estimates of the amounts by which energy or operating costs will be reduced.

A guaranteed energy savings contract that includes a written guarantee that savings will meet or exceed the cost of energy conservation measures is not subject to competitive bidding requirements of section 471.345 or other law or city charter. The contract is not subject to section 123B.52.

A municipality may enter into a guaranteed energy savings contract with a qualified provider if, after review of the report, it finds that the amount it would spend on the energy conservation measures recommended in the report is not likely to exceed the amount to be saved in energy and operation costs over 15 years from the date of installation if the recommendations in the report were followed, and the qualified provider provides a written guarantee that the energy or operating cost savings will meet or exceed the costs of the system. The guaranteed energy savings contract may provide for payments over a period of time, not to exceed 15 years.

A municipality may enter into an installment payment contract for the purchase and installation of energy conservation measures. The contract must provide for payments of not less than 1/15 of the price to be paid within two years from the date of the first

21.1 operation, and the remaining costs to be paid monthly, not to exceed a 15-year term from
21.2 the date of the first operation.

21.3 A municipality entering into a guaranteed energy savings contract shall provide a
21.4 copy of the contract and the report from the qualified provider to the commissioner of
21.5 commerce within 30 days of the effective date of the contract.

21.6 Guaranteed energy savings contracts may extend beyond the fiscal year in which
21.7 they become effective. The municipality shall include in its annual appropriations measure
21.8 for each later fiscal year any amounts payable under guaranteed energy savings contracts
21.9 during the year. Failure of a municipality to make such an appropriation does not affect
21.10 the validity of the guaranteed energy savings contract or the municipality's obligations
21.11 under the contracts.

21.12 Sec. 4. Minnesota Statutes 2006, section 504B.161, subdivision 1, is amended to read:

21.13 Subdivision 1. **Requirements.** In every lease or license of residential premises, the
21.14 landlord or licensor covenants:

21.15 (1) that the premises and all common areas are fit for the use intended by the parties;

21.16 (2) to keep the premises in reasonable repair during the term of the lease or license,
21.17 except when the disrepair has been caused by the willful, malicious, or irresponsible
21.18 conduct of the tenant or licensee or a person under the direction or control of the tenant or
21.19 licensee; and

21.20 (3) to make the premises reasonably energy efficient by installing such measures
21.21 as weatherstripping, caulking, storm windows, and storm doors when any such measure
21.22 will result in energy procurement cost savings, based on current and projected average
21.23 residential energy costs in Minnesota, that will exceed the cost of implementing that
21.24 measure, amortized over the ten-year period following the incurring of the cost; and

21.25 (4) to maintain the premises in compliance with the applicable health and safety
21.26 laws of the state, including the weatherstripping, caulking, storm window, and storm door
21.27 energy efficiency standards for renter-occupied residences prescribed by section 216C.27,
21.28 subdivisions 1 and 3, and of the local units of government where the premises are located
21.29 during the term of the lease or license, except when violation of the health and safety
21.30 laws has been caused by the willful, malicious, or irresponsible conduct of the tenant or
21.31 licensee or a person under the direction or control of the tenant or licensee.

21.32 The parties to a lease or license of residential premises may not waive or modify the
21.33 covenants imposed by this section.

21.34 Sec. 5. **REPEALER.**

H.F. No. 1221, 1st Committee Engrossment - 85th Legislative Session (2007-2008)

22.1 Minnesota Statutes 2006, sections 216B.165; 216C.27, subdivisions 1, 2, 3, 4, 5,
22.2 6, and 7; and 216C.30, subdivision 5, Minnesota Rules, parts 7635.0100; 7635.0110;
22.3 7635.0120; 7635.0130; 7635.0140; 7635.0150; 7635.0160; 7635.0170; 7635.0180;
22.4 7635.0200; 7635.0210; 7635.0220; 7635.0230; 7635.0240; 7635.0250; 7635.0260;
22.5 7635.0300; 7635.0310; 7635.0320; 7635.0330; 7635.0340; 7635.0400; 7635.0410;
22.6 7635.0420; 7635.0500; 7635.0510; 7635.0520; 7635.0530; 7635.0600; 7635.0610;
22.7 7635.0620; 7635.0630; 7635.0640; 7635.1000; 7635.1010; 7635.1020; 7635.1030;
22.8 7655.0100; 7655.0120; 7655.0200; 7655.0220; 7655.0230; 7655.0240; 7655.0250;
22.9 7655.0260; 7655.0270; 7655.0280; 7655.0290; 7655.0300; 7655.0310; 7655.0320;
22.10 7655.0330; 7655.0400; 7655.0410; and 7655.0420, are repealed, effective July 1, 2007.

22.11 Sec. 6. **EFFECTIVE DATE.**

22.12 This article is effective July 1, 2007.