A bill for an act

relating to the environment; enacting Global Warming Mitigation Act; setting goals and requiring plan to reduce greenhouse gas emissions; requiring Public Utilities Commission to consider greenhouse gas emissions in generation resource acquisitions; proposing coding for new law as Minnesota Statutes, chapter 216H.

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

Section 1. **[216H.001] FINDINGS; CITATION.**

(a) The legislature finds that the state has a vital interest in preventing or mitigating harms associated with global warming and in reducing Minnesota's greenhouse gas emissions. The legislature recognizes that substantial reductions in emissions of greenhouse gases are necessary to avoid dangerous climate changes in the future. The legislature finds that taking steps to reduce Minnesota's greenhouse gas emissions today and planning for long-term reductions will reduce the need for more disruptive emission reductions later, and that to achieve the purposes of this act, all emissions associated with electricity generated or consumed within the state must be subject to the state's emissions-reduction goals. The legislature further finds that Minnesota's economy will benefit by showing leadership in the transition away from climate-damaging technologies and toward renewable power, biofuels, and energy efficiency. The legislature recognizes that achieving these ends will only occur by close cooperation with other states and may require the state to enter into binding agreements with other units of government.

(b) This chapter may be referred to as the Global Warming Mitigation Act of 2007.

Sec. 2. **[216H.01] DEFINITIONS.**

Subdivision 1. **Scope.** For the purposes of this chapter, the terms defined in this section have the meanings given them.

Subd. 2. **Allowance.** "Allowance" means limited authorization from a state regulatory agency to emit up to one ton of carbon dioxide or carbon dioxide equivalent into the atmosphere. This limited authorization does not constitute a property right.

Subd. 3. **Cap and trade system.** "Cap and trade system" means a regulatory system that imposes a limit on the aggregate air pollutant emissions of a group of sources, requires those subject to the cap to own an allowance for each ton of the air pollutant emitted, and allows for market-based trading of those allowances.

Subd. 4. **Carbon dioxide equivalent.** "Carbon dioxide equivalent" means the quantity of a given greenhouse gas multiplied by its global warming potential.

Subd. 5. **Global warming potential.** "Global warming potential" means a measure of the radiative efficiency or heat-absorbing ability of a particular gas relative to that of carbon dioxide after taking into account the decay rate of each gas, that is, the amount removed from the atmosphere over a given number of years, relative to that of carbon dioxide.

Subd. 6. **Greenhouse gas emissions source.** "Greenhouse gas emissions source" means any anthropogenic physical unit or process that releases greenhouse gases into the atmosphere.

Subd. 7. **Greenhouse gases.** "Greenhouse gases" include carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride or any other chemical that is determined by the Pollution Control Agency to contribute comparably to global climate change and that is emitted by anthropogenic sources.

Subd. 8. **New large energy facility.** "New large energy facility" means a large energy facility as defined in section 216B.2421 that is not in operation as of January 1, 2007, but does not include a facility that (1) uses natural gas as a primary fuel, (2) is designed to provide peaking, emergency backup, or contingency services, (3) uses a simple cycle turbine technology, (4) is capable of achieving full load operations within 45 minutes of startup, and (5) has received a certificate of need under section 216B.243.

Subd. 9. **Person.** "Person" has the meaning given in section 216E.01.

Subd. 10. **Statewide greenhouse gas emissions.** "Statewide greenhouse gas emissions" means the total annual emissions of greenhouse gases within the state and all emissions of greenhouse gases from the generation of electricity imported from outside the state and consumed in Minnesota. Emissions associated with transmission and distribution line losses are included in this definition. Statewide emissions are expressed in tons of carbon dioxide equivalent. Carbon dioxide that is injected into geological formations to

prevent its release to the atmosphere in compliance with applicable laws, and emissions associated with the combustion of fuels other than coal, petroleum, and natural gas are not counted as contributing to statewide greenhouse gas emissions.

Subd. 11. **Statewide power sector carbon dioxide emissions.** "Statewide power sector carbon dioxide emissions" means the total annual emissions of carbon dioxide from the generation of electricity within the state and all emissions of carbon dioxide from the generation of electricity imported from outside the state and consumed in Minnesota. Emissions associated with transmission and distribution line losses are included in this definition. Carbon dioxide that is injected into geological formations to prevent its release to the atmosphere in compliance with applicable laws, and emissions associated with the combustion of fuels other than coal, petroleum, and natural gas are not counted as contributing to statewide power sector carbon dioxide emissions.

Sec. 3. **[216H.02] GREENHOUSE GAS EMISSIONS-REDUCTION GOALS.**

It is the state's goal to reduce statewide greenhouse gas emissions to a level at least 15 percent below 2005 emission levels by 2015, to a level at least 30 percent below 2005 emission levels by 2025, and to a level at least 80 percent below 2005 emission levels by 2050.

Sec. 4. **[216H.04] GREENHOUSE GAS EMISSIONS-REDUCTION PLAN.**

Subdivision 1. **Plan for achieving reductions.** (a) By February 1, 2008, the commissioners of the Pollution Control Agency and the Department of Commerce shall submit a plan to the chairs of the senate and house of representatives committees with jurisdiction over energy and environmental policy that contains recommendations on how best to achieve the statewide greenhouse gas emissions-reduction goals established under section 216H.02. The plan must also identify how best to reduce statewide greenhouse gas emissions to a level at least 45 percent below 2005 levels by 2025. The plan must identify, develop, and integrate a full range of greenhouse gas emissions-reduction activities across all economic sectors, regions, and energy uses in the state, and estimate the costs and benefits of each action. The plan must:

(1) estimate statewide greenhouse gas emissions for 2005 and make projections of statewide greenhouse gas emissions for 2015, 2025, and 2050;

(2) estimate the statewide greenhouse gas emissions reductions anticipated from implementation of existing state policies;

(3) include a cap and trade system as described in subdivision 3;

(4) recommend additional policies to achieve statewide greenhouse gas emissions-reduction goals;

(5) include provisions that will ensure that existing policies are evaluated, and that at least every five years any policy changes needed to achieve the statewide greenhouse gas emissions-reduction goals are developed and recommended for legislative action;

(6) recommend a system to require the reporting of statewide greenhouse gas emissions, identifying which facilities must report, how emission estimates should be made, and other reporting requirements that will ensure the collection of emissions information needed to reliably document statewide greenhouse gas emission levels and implement the plan; and

(7) evaluate the option of exempting a project from the prohibitions contained in section 216H.05, subdivision 1, if the project contributes a specified fee per ton of carbon dioxide emissions emitted annually by the project, the proceeds of which would be used to fund permanent, quantifiable, verifiable, and enforceable reductions in greenhouse gas emissions that would not otherwise have occurred.

(b) In formulating the plan, the commissioners shall consider the broadest possible set of mechanisms to reduce emissions, including, but not limited to, expanding the electric sector cap and trade system established under subdivision 3 to include emissions sources other than electricity generation and greenhouse gases other than carbon dioxide; scheduling reductions of the emissions cap; imposing greenhouse gas taxes, fines, and other penalties; adopting emissions-reduction performance standards for sources of greenhouse gases; establishing financial or other incentives to promote activities that will reduce greenhouse gases; and enhancing existing policies that have the effect of lowering greenhouse gas emissions.

Subd. 2. **Planning process.** The plan required under subdivision 1 must be developed through a structured, broadly inclusive stakeholder-based review of potential policies and initiatives that can be implemented in Minnesota to reduce greenhouse gas emissions. The stakeholder-based review process must be conducted by a nationally recognized independent expert entity. The commissioner of commerce shall coordinate executive branch participation with this stakeholder process.

Subd. 3. **Cap and trade system.** (a) The plan must include a cap and trade system incorporating, at a minimum, statewide power sector carbon dioxide emissions. The cap and trade plan must:

(1) set an emissions cap at an initial level to prevent significant increases in statewide greenhouse gas emissions above current levels, with a schedule for lowering the cap periodically to help meet the state's emissions-reduction targets;

(2) maximize Minnesota's ability to enter into allowance trading relationships with other states that have established or are in the process of establishing a cap and trade system regulating greenhouse gas emissions;

(3) evaluate the feasibility of implementing a cap and trade system that does not encompass the entire United States, and identify the impacts on the efficiency and effectiveness of the cap and trade system if restricted to Minnesota alone, if expanded to include surrounding midwestern states, and if Minnesota were to join other emerging regional systems with states that are planning to implement a cap and trade system;

(4) evaluate whether and to what extent a party subject to the cap should receive credit for offsetting emissions by implementing projects that reduce greenhouse gas emissions from sources not subject to the cap or absorb and sequester greenhouse gases from the atmosphere;

(5) include methods to ensure that all emissions reductions associated with projects listed in clause (4) are permanent, quantifiable, verifiable, enforceable, and would not have otherwise occurred;

(6) be designed to ensure that the proceeds from auctioning allowances are used to benefit the public, including to help meet the state's emissions-reduction goals in the most efficient and least disruptive way;

(7) estimate likely allowance prices under various scenarios, including the impact on allowance prices of constructing additional power plants subject to the cap and trade system;

(8) recommend ways to minimize any rate impacts on energy consumers;

(9) suggest procedures to award appropriate credit to entities that have voluntarily reduced their greenhouse gas emissions prior to implementation of the cap and trade system;

(10) ensure to the extent practicable that emissions reductions made in this state do not cause emissions increases outside the state;

(11) identify technologies and industries likely to thrive in a carbon-constrained future;

(12) maximize economic development in rural areas from the development of renewable energy sources and proven terrestrial sequestration practices; and

(13) suggest methods to calculate carbon dioxide emissions associated with electricity imported from outside the state.

Subd. 4. **Regional activities.** It shall be an executive branch responsibility to work with other states in the midwest region to develop and implement a regional approach to reducing greenhouse gas emissions from activities in the region, including consulting

on expanding the cap and trade system described in subdivision 3. The commissioner of commerce shall coordinate Minnesota's regional activities under this subdivision and report to the legislative committees in the senate and house of representatives with jurisdiction over energy and environmental policy by February 1, 2008, and February 1, 2009, on the progress made and recommendations for further action.

Sec. 5. **[216H.05] NO LONG-TERM INCREASE FROM POWER PLANTS.**

Subdivision 1. **Long-term increased emissions from power plants prohibited.** Until the cap and trade system described in section 216H.04, subdivision 3, is fully implemented, and except as allowed in subdivision 2, no person shall:

(1) construct within the state a new large energy facility that would contribute to statewide power sector carbon dioxide emissions;

(2) import or commit to import from outside the state power from a new large energy facility that would contribute to statewide power sector carbon dioxide emissions; or

(3) enter into a new long-term power purchase agreement that would increase statewide power sector carbon dioxide emissions. For purposes of this section, a long-term power purchase agreement means an agreement to purchase 50 megawatts of capacity or more for a term exceeding five years. This prohibition does not apply to an agreement in effect as of January 1, 2007, nor to the renewal of such an agreement.

Subd. 2. **Exception for facilities that offset emissions.** (a) The prohibitions in subdivision 1 do not apply if the project proponent demonstrates to the Public Utilities Commission's satisfaction that it will offset the new contribution to statewide power sector carbon dioxide emissions with a carbon dioxide reduction project identified in paragraph (b) and in compliance with paragraph (c).

(b) A project proponent may offset the new contribution to statewide power sector carbon dioxide emissions in either, or a combination of both, of the following ways:

(1) by reducing an existing facility's contribution to statewide power sector carbon dioxide emissions in an amount equal to or greater than the proposed new contribution to statewide power sector carbon dioxide emissions; or

(2) by purchasing carbon dioxide allowances from a state or group of states that has a mandatory carbon dioxide cap and trade system in place that produces verifiable emissions reductions.

(c) The Public Utilities Commission shall not find that a proposed carbon dioxide reduction project identified in paragraph (b) acceptably offsets a new contribution to statewide power sector carbon dioxide emissions unless the proposed offsets are permanent, quantifiable, verifiable, enforceable, and would not have otherwise occurred.

Emissions that have been offset under this subdivision and emissions exempted under subdivision 3 continue to be subject to the requirements of the cap and trade system described in section 216H.04, subdivision 3, when implemented.

Subd. 3. **Exception for new steel production facility.** The prohibitions in subdivision 1 do not apply to increases in statewide power sector carbon dioxide emissions from that portion of a new large energy facility or new long-term power purchase agreement that supplies electricity to a new steel production project located in a taconite tax relief area that has applied for an air quality permit from the Pollution Control Agency prior to January 1, 2007, provided that the commission determines that the new steel production project is designed to meet the highest energy efficiency standards in its industry.

Subd. 4. **Enforcement.** Whenever the commission or department determines that any person is violating or about to violate this section, it shall refer the matter to the attorney general who shall take appropriate legal action. This section may be enforced by the attorney general on the same basis as a law listed in section 8.31, subdivision 1.

Sec. 6. **[216H.06] GREENHOUSE GAS EMISSIONS CONSIDERATION IN RESOURCE PLANNING.**

By January 1, 2008, the Public Utilities Commission shall establish an estimate of the likely range of costs of future carbon dioxide regulation on electricity generation. The estimate, which may be made in a commission order, must be used in all electricity generation resource acquisition proceedings. The estimates, and annual updates, must be made following informal proceedings that allow interested parties to submit comments.

Sec. 7. **[216H.07] ENFORCEABILITY.**

In addition to any other remedies provided by law, the failure to carry out any requirement established by or pursuant to this chapter shall be treated as a violation of an environmental standard and is enforceable under chapter 116B.