State of Minnesota

HOUSE OF REPRESENTATIVES

NINETY-SECOND SESSION

H. F. No. 257

01/21/2021 Authored by Wazlawik and West
The bill was read for the first time and referred to the Committee on Climate and Energy Finance and Policy
02/10/2021 Adoption of Report: Amended and re-referred to the Committee on Judiciary Finance and Civil Law

A bill for an act

relating to energy; modifying certain utility requirements; prohibiting certain restrictions on the use of residential solar energy systems; amending Minnesota Statutes 2020, sections 216B.164, subdivision 3, by adding a subdivision; 515.07; 515B.2-103; 515B.3-102; proposing coding for new law in Minnesota Statutes, chapter 500.

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

Section 1. Minnesota Statutes 2020, section 216B.164, subdivision 3, is amended to read:

Subd. 3. **Purchases; small facilities.** (a) This paragraph applies to cooperative electric associations and municipal utilities. For a qualifying facility having less than 40-kilowatt capacity, the customer shall be billed for the net energy supplied by the utility according to the applicable rate schedule for sales to that class of customer. A cooperative electric association or municipal utility may charge an additional fee to recover the fixed costs not already paid for by the customer through the customer's existing billing arrangement. Any additional charge by the utility must be reasonable and appropriate for that class of customer based on the most recent cost of service study. The cost of service study must be made available for review by a customer of the utility upon request. In the case of net input into the utility system by a qualifying facility having less than 40-kilowatt capacity, compensation to the customer shall be at a per kilowatt-hour rate determined under paragraph (c), (d), or (f).

(b) This paragraph applies to public utilities. For a qualifying facility having less than 1,000-kilowatt capacity, the customer shall be billed for the net energy supplied by the utility according to the applicable rate schedule for sales to that class of customer. In the case of net input into the utility system by a qualifying facility having: (1) more than

40-kilowatt but less than 1,000-kilowatt capacity, compensation to the customer shall be at a per kilowatt-hour rate determined under paragraph (c); or (2) less than 40-kilowatt capacity, compensation to the customer shall be at a per-kilowatt rate determined under paragraph (c) or (d).

(c) In setting rates, the commission shall consider the fixed distribution costs to the utility not otherwise accounted for in the basic monthly charge and shall ensure that the costs charged to the qualifying facility are not discriminatory in relation to the costs charged to other customers of the utility. The commission shall set the rates for net input into the utility system based on avoided costs as defined in the Code of Federal Regulations, title 18, section 292.101, paragraph (b)(6), the factors listed in Code of Federal Regulations, title 18, section 292.304, and all other relevant factors.

(d) Notwithstanding any provision in this chapter to the contrary, a qualifying facility having less than 40-kilowatt capacity may elect that the compensation for net input by the qualifying facility into the utility system shall be at the average retail utility energy rate. "Average retail utility energy rate" is defined as the average of the retail energy rates, exclusive of special rates based on income, age, or energy conservation, according to the applicable rate schedule of the utility for sales to that class of customer.

(e) If the qualifying facility or net metered facility is interconnected with a nongenerating utility ~~which has a sole source contract with a municipal power agency or a generation and transmission utility~~, the nongenerating utility may elect to treat its purchase of any net input under this subdivision as being made on behalf of its supplier or suppliers and shall be reimbursed proportionately by its supplier or suppliers for any additional costs incurred in making the purchase. Qualifying facilities or net metered facilities having less than 1,000-kilowatt capacity if interconnected to a public utility, or less than 40-kilowatt capacity if interconnected to a cooperative electric association or municipal utility may, at the customer's option, elect to be governed by the provisions of subdivision 4.

(f) A customer with a qualifying facility or net metered facility having a capacity below 40 kilowatts that is interconnected to a cooperative electric association or a municipal utility may elect to be compensated for the customer's net input into the utility system in the form of a kilowatt-hour credit on the customer's energy bill carried forward and applied to subsequent energy bills. Any kilowatt-hour credits carried forward by the customer cancel at the end of the calendar year with no additional compensation.

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

Sec. 2. Minnesota Statutes 2020, section 216B.164, is amended by adding a subdivision to read:

Subd. 12. **Customer's access to electricity usage data.** A utility shall provide a customer's electricity usage data to the customer within ten days of receipt of a request from the customer that is accompanied by evidence that the energy usage data is relevant to the interconnection of a qualifying facility on behalf of the customer. For the purposes of this subdivision, "electricity usage data" includes but is not limited to the total amount of electricity used by a customer monthly, usage by time period if the customer operates under a tariff where costs vary by time-of-use, and usage data that is used to calculate a customer's demand charge.

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

Sec. 3. **[500.216] LIMITS ON CERTAIN RESIDENTIAL SOLAR ENERGY SYSTEMS PROHIBITED.**

Subdivision 1. **General rule.** A private entity may not prohibit or refuse to permit installation, maintenance, or use of a roof-mounted solar energy system by the owner of a single-family dwelling notwithstanding any covenant, restriction, or condition contained in a deed, security instrument, homeowners association document, or any other instrument affecting the transfer, sale of, or an interest in real property, except as provided in this section.

Subd. 2. **Applicability.** This section applies to single-family dwellings, whether attached or detached, where the dwelling owner is responsible for maintenance, repair, replacement, and insurance of the roof of the dwelling.

Subd. 3. **Definitions.** (a) The definitions in this subdivision apply to this section.

(b) "Private entity" means a homeowners association, community association, or other association that is subject to a homeowners association document.

(c) "Homeowners association document" means a document containing the declaration, articles of incorporation, bylaws, or rules and regulations of:

(1) a common interest community, as defined in section 515B.1-103, regardless of whether the common interest community is subject to chapter 515B; and

(2) a residential community that is not a common interest community.

(d) "Solar energy system" has the meaning given in section 216C.06, subdivision 17.

Subd. 4. **Allowable conditions.** (a) This section does not prohibit a private entity from requiring that:

(1) a licensed contractor install a solar energy system;

(2) a roof-mounted solar energy system not extend above the peak of a pitched roof or beyond the edge of the roof;

(3) the owner or installer of a solar energy system indemnify or reimburse the private entity or its members for loss or damage caused by the installation, maintenance, use, repair, or removal of a solar energy system;

(4) the owner and each successive owner of a solar energy system list the private entity as a certificate holder on the homeowner's insurance policy; or

(5) the owner and each successive owner of a solar energy system be responsible for removing the system if reasonably necessary for the repair, maintenance, or replacement of common elements or limited common elements, as defined in section 515B.1-103.

(b) A private entity may impose other reasonable restrictions on the installation, maintenance, or use of solar energy systems, provided that those restrictions do not decrease the projected generation of energy by a solar energy system by more than 20 percent or increase its cost by more than (1) 20 percent, for a solar water heater, or (2) $2,000, for a solar photovoltaic system, compared with the generation of energy and the cost of labor and materials certified by the designer or installer of the solar energy system as originally proposed without the restrictions. A private entity may obtain an alternative bid and design from a solar energy system designer or installer for the purposes of this paragraph.

(c) A solar energy system must meet applicable standards and requirements imposed by the state and by governmental units, as defined in section 462.384.

(d) A solar energy system for heating water must be certified by the Solar Rating Certification Corporation (SRCC) or an equivalent certification agency. A solar energy system for producing electricity must meet all applicable safety and performance standards established by the National Electrical Code, the Institute of Electrical and Electronics Engineers, and accredited testing laboratories, including, but not limited to, Underwriters Laboratories and, where applicable, rules of the Public Utilities Commission regarding safety and reliability.

(e) If approval by a private entity is required for the installation or use of a solar energy system, the application for approval must be processed and approved in the same manner as an application for approval of an architectural modification to the property, and must not

be willfully avoided or delayed. A private entity shall approve or deny an application in writing. If an application is not denied in writing within 60 days from the date of receipt of the application, the application is deemed approved unless the delay is the result of a reasonable request for additional information.

Sec. 4. Minnesota Statutes 2020, section 515.07, is amended to read:

515.07 COMPLIANCE WITH COVENANTS, BYLAWS, AND RULES.

Each apartment owner shall comply strictly with the bylaws and with the administrative rules adopted pursuant thereto, as either of the same may be lawfully amended from time to time, and with the covenants, conditions, and restrictions set forth in the declaration or in the owner's deed to the apartment. Failure to comply with any of the same shall be ground for an action to recover sums due, for damages or injunctive relief or both maintainable by the manager or board of directors on behalf of the association of apartment owners or, in a proper case, by an aggrieved apartment owner. This chapter is subject to ~~section~~ sections 500.215 and 500.216.

Sec. 5. Minnesota Statutes 2020, section 515B.2-103, is amended to read:

515B.2-103 CONSTRUCTION AND VALIDITY OF DECLARATION AND BYLAWS.

(a) All provisions of the declaration and bylaws are severable.

(b) The rule against perpetuities may not be applied to defeat any provision of the declaration or this chapter, or any instrument executed pursuant to the declaration or this chapter.

(c) In the event of a conflict between the provisions of the declaration and the bylaws, the declaration prevails except to the extent that the declaration is inconsistent with this chapter.

(d) The declaration and bylaws must comply with ~~section~~ sections 500.215 and 500.216.

Sec. 6. Minnesota Statutes 2020, section 515B.3-102, is amended to read:

515B.3-102 POWERS OF UNIT OWNERS' ASSOCIATION.

(a) Except as provided in subsections (b), (c), (d), and (e), and subject to the provisions of the declaration or bylaws, the association shall have the power to:

(1) adopt, amend and revoke rules and regulations not inconsistent with the articles of incorporation, bylaws and declaration, as follows: (i) regulating the use of the common elements; (ii) regulating the use of the units, and conduct of unit occupants, which may jeopardize the health, safety or welfare of other occupants, which involves noise or other disturbing activity, or which may damage the common elements or other units; (iii) regulating or prohibiting animals; (iv) regulating changes in the appearance of the common elements and conduct which may damage the common interest community; (v) regulating the exterior appearance of the common interest community, including, for example, balconies and patios, window treatments, and signs and other displays, regardless of whether inside a unit; (vi) implementing the articles of incorporation, declaration and bylaws, and exercising the powers granted by this section; and (vii) otherwise facilitating the operation of the common interest community;

(2) adopt and amend budgets for revenues, expenditures and reserves, and levy and collect assessments for common expenses from unit owners;

(3) hire and discharge managing agents and other employees, agents, and independent contractors;

(4) institute, defend, or intervene in litigation or administrative proceedings (i) in its own name on behalf of itself or two or more unit owners on matters affecting the common elements or other matters affecting the common interest community or, (ii) with the consent of the owners of the affected units on matters affecting only those units;

(5) make contracts and incur liabilities;

(6) regulate the use, maintenance, repair, replacement, and modification of the common elements and the units;

(7) cause improvements to be made as a part of the common elements, and, in the case of a cooperative, the units;

(8) acquire, hold, encumber, and convey in its own name any right, title, or interest to real estate or personal property, but (i) common elements in a condominium or planned community may be conveyed or subjected to a security interest only pursuant to section 515B.3-112, or (ii) part of a cooperative may be conveyed, or all or part of a cooperative may be subjected to a security interest, only pursuant to section 515B.3-112;

(9) grant or amend easements for public utilities, public rights-of-way or other public purposes, and cable television or other communications, through, over or under the common elements; grant or amend easements, leases, or licenses to unit owners for purposes authorized

by the declaration; and, subject to approval by a vote of unit owners other than declarant or its affiliates, grant or amend other easements, leases, and licenses through, over or under the common elements;

(10) impose and receive any payments, fees, or charges for the use, rental, or operation of the common elements, other than limited common elements, and for services provided to unit owners;

(11) impose interest and late charges for late payment of assessments and, after notice and an opportunity to be heard before the board or a committee appointed by it, levy reasonable fines for violations of the declaration, bylaws, and rules and regulations of the association;

(12) impose reasonable charges for the review, preparation and recordation of amendments to the declaration, resale certificates required by section 515B.4-107, statements of unpaid assessments, or furnishing copies of association records;

(13) provide for the indemnification of its officers and directors, and maintain directors' and officers' liability insurance;

(14) provide for reasonable procedures governing the conduct of meetings and election of directors;

(15) exercise any other powers conferred by law, or by the declaration, articles of incorporation or bylaws; and

(16) exercise any other powers necessary and proper for the governance and operation of the association.

(b) Notwithstanding subsection (a) the declaration or bylaws may not impose limitations on the power of the association to deal with the declarant which are more restrictive than the limitations imposed on the power of the association to deal with other persons.

(c) Notwithstanding subsection (a), powers exercised under this section must comply with ~~section~~ sections 500.215 and 500.216.

(d) Notwithstanding subsection (a)(4) or any other provision of this chapter, the association, before instituting litigation or arbitration involving construction defect claims against a development party, shall:

(1) mail or deliver written notice of the anticipated commencement of the action to each unit owner at the addresses, if any, established for notices to owners in the declaration and, if the declaration does not state how notices are to be given to owners, to the owner's last

known address. The notice shall specify the nature of the construction defect claims to be alleged, the relief sought, and the manner in which the association proposes to fund the cost of pursuing the construction defect claims; and

(2) obtain the approval of owners of units to which a majority of the total votes in the association are allocated. Votes allocated to units owned by the declarant, an affiliate of the declarant, or a mortgagee who obtained ownership of the unit through a foreclosure sale are excluded. The association may obtain the required approval by a vote at an annual or special meeting of the members or, if authorized by the statute under which the association is created and taken in compliance with that statute, by a vote of the members taken by electronic means or mailed ballots. If the association holds a meeting and voting by electronic means or mailed ballots is authorized by that statute, the association shall also provide for voting by those methods. Section 515B.3-110(c) applies to votes taken by electronic means or mailed ballots, except that the votes must be used in combination with the vote taken at a meeting and are not in lieu of holding a meeting, if a meeting is held, and are considered for purposes of determining whether a quorum was present. Proxies may not be used for a vote taken under this paragraph unless the unit owner executes the proxy after receipt of the notice required under subsection (d)(1) and the proxy expressly references this notice.

(e) The association may intervene in a litigation or arbitration involving a construction defect claim or assert a construction defect claim as a counterclaim, crossclaim, or third-party claim before complying with subsections (d)(1) and (d)(2) but the association's complaint in an intervention, counterclaim, crossclaim, or third-party claim shall be dismissed without prejudice unless the association has complied with the requirements of subsection (d) within 90 days of the association's commencement of the complaint in an intervention or the assertion of the counterclaim, crossclaim, or third-party claim.