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State of Minnesota

HOUSE OF REPRESENTATIVES

NINETIETH SESSION

H. F. No. **2278**

03/09/2017 Authored by Baker
The bill was read for the first time and referred to the Committee on Job Growth and Energy Affordability Policy and Finance

1.1 A bill for an act
1.2 relating to energy; exempting certain cooperative electric associations and municipal
1.3 utilities from participation in the state energy conservation program; amending
1.4 Minnesota Statutes 2016, section 216B.241, subdivisions 1b, 1c, 2, 5, 5d, 7.

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

1.6 Section 1. Minnesota Statutes 2016, section 216B.241, subdivision 1b, is amended to read:

1.7 Subd. 1b. **Conservation improvement by cooperative association or municipality.**

1.8 (a) This subdivision applies to:

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

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

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

1.14 (b) Each cooperative electric association and municipality subject to this subdivision
1.15 shall spend and invest for energy conservation improvements under this subdivision the
1.16 following amounts:

1.17 (1) for a municipality, 0.5 percent of its gross operating revenues from the sale of gas
1.18 and 1.5 percent of its gross operating revenues from the sale of electricity, excluding gross
1.19 operating revenues from electric and gas service provided in the state to large electric
1.20 customer facilities; and

1.21 (2) for a cooperative electric association, 1.5 percent of its gross operating revenues
1.22 from service provided in the state, excluding gross operating revenues from service provided

2.1 in the state to large electric customer facilities indirectly through a distribution cooperative
2.2 electric association.

2.3 (c) Each municipality and cooperative electric association subject to this subdivision
2.4 shall identify and implement energy conservation improvement spending and investments
2.5 that are appropriate for the municipality or association, except that a municipality or
2.6 association may not spend or invest for energy conservation improvements that directly
2.7 benefit a large energy facility or a large electric customer facility for which the commissioner
2.8 has issued an exemption under subdivision 1a, paragraph (b).

2.9 (d) Each municipality and cooperative electric association subject to this subdivision
2.10 may spend and invest annually up to ten percent of the total amount required to be spent
2.11 and invested on energy conservation improvements under this subdivision on research and
2.12 development projects that meet the definition of energy conservation improvement in
2.13 subdivision 1 and that are funded directly by the municipality or cooperative electric
2.14 association.

2.15 (e) Load-management activities may be used to meet 50 percent of the conservation
2.16 investment and spending requirements of this subdivision.

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

2.27 (g) Each municipality or cooperative shall file energy conservation improvement plans
2.28 by June 1 on a schedule determined by order of the commissioner, but at least every three
2.29 years. Plans received by June 1 must be approved or approved as modified by the
2.30 commissioner by December 1 of the same year. The municipality or cooperative shall
2.31 provide an evaluation to the commissioner detailing its energy conservation improvement
2.32 spending and investments for the previous period. The evaluation must briefly describe
2.33 each conservation program and must specify the energy savings or increased efficiency in
2.34 the use of energy within the service territory of the utility or association that is the result of

3.1 the spending and investments. The evaluation must analyze the cost-effectiveness of the
 3.2 utility's or association's conservation programs, using a list of baseline energy and capacity
 3.3 savings assumptions developed in consultation with the department. The commissioner
 3.4 shall review each evaluation and make recommendations, where appropriate, to the
 3.5 municipality or association to increase the effectiveness of conservation improvement
 3.6 activities.

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

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

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

3.13 Sec. 2. Minnesota Statutes 2016, section 216B.241, subdivision 1c, is amended to read:

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

3.17 (b) Each individual utility and association shall have an annual energy-savings goal
 3.18 equivalent to 1.5 percent of gross annual retail energy sales unless modified by the
 3.19 commissioner under paragraph (d). The savings goals must be calculated based on the most
 3.20 recent three-year weather-normalized average. A utility or association may elect to carry
 3.21 forward energy savings in excess of 1.5 percent for a year to the succeeding three calendar
 3.22 years, except that savings from electric utility infrastructure projects allowed under paragraph
 3.23 (d) may be carried forward for five years. A particular energy savings can be used only for
 3.24 one year's goal.

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

3.27 (d) In its energy conservation improvement plan filing, a utility or association may
 3.28 request the commissioner to adjust its annual energy-savings percentage goal based on its
 3.29 historical conservation investment experience, customer class makeup, load growth, a
 3.30 conservation potential study, or other factors the commissioner determines warrants an
 3.31 adjustment. The commissioner may not approve a plan of a public utility that provides for
 3.32 an annual energy-savings goal of less than one percent of gross annual retail energy sales
 3.33 from energy conservation improvements.

4.1 A utility or association may include in its energy conservation plan energy savings from
4.2 electric utility infrastructure projects approved by the commission under section 216B.1636
4.3 or waste heat recovery converted into electricity projects that may count as energy savings
4.4 in addition to a minimum energy-savings goal of at least one percent for energy conservation
4.5 improvements. Energy savings from electric utility infrastructure projects, as defined in
4.6 section 216B.1636, may be included in the energy conservation plan of a municipal utility
4.7 or cooperative electric association. Electric utility infrastructure projects must result in
4.8 increased energy efficiency greater than that which would have occurred through normal
4.9 maintenance activity.

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

4.13 (f) An association or utility is not required to make energy conservation investments to
4.14 attain the energy-savings goals of this subdivision that are not cost-effective even if the
4.15 investment is necessary to attain the energy-savings goals. For the purpose of this paragraph,
4.16 in determining cost-effectiveness, the commissioner shall consider the costs and benefits
4.17 to ratepayers, the utility, participants, and society. In addition, the commissioner shall
4.18 consider the rate at which an association or municipal utility is increasing its energy savings
4.19 and its expenditures on energy conservation.

4.20 (g) On an annual basis, the commissioner shall produce and make publicly available a
4.21 report on the annual energy savings and estimated carbon dioxide reductions achieved by
4.22 the energy conservation improvement programs for the two most recent years for which
4.23 data is available. The commissioner shall report on program performance both in the
4.24 aggregate and for each entity filing an energy conservation improvement plan for approval
4.25 or review by the commissioner.

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

4.29 (i) This subdivision does not apply to (1) a cooperative electric association with fewer
4.30 than 5,000 members, or (2) a municipal utility with fewer than 1,000 customers.

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

5.1 Sec. 3. Minnesota Statutes 2016, section 216B.241, subdivision 2, is amended to read:

5.2 Subd. 2. **Programs.** (a) The commissioner may require public utilities to make
5.3 investments and expenditures in energy conservation improvements, explicitly setting forth
5.4 the interest rates, prices, and terms under which the improvements must be offered to the
5.5 customers. The required programs must cover no more than a three-year period. Public
5.6 utilities shall file conservation improvement plans by June 1, on a schedule determined by
5.7 order of the commissioner, but at least every three years. Plans received by a public utility
5.8 by June 1 must be approved or approved as modified by the commissioner by December 1
5.9 of that same year. The commissioner shall evaluate the program on the basis of
5.10 cost-effectiveness and the reliability of technologies employed. The commissioner's order
5.11 must provide to the extent practicable for a free choice, by consumers participating in the
5.12 program, of the device, method, material, or project constituting the energy conservation
5.13 improvement and for a free choice of the seller, installer, or contractor of the energy
5.14 conservation improvement, provided that the device, method, material, or project seller,
5.15 installer, or contractor is duly licensed, certified, approved, or qualified, including under
5.16 the residential conservation services program, where applicable.

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

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

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

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

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

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

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

6.26 Sec. 4. Minnesota Statutes 2016, section 216B.241, subdivision 5, is amended to read:

6.27 Subd. 5. **Efficient lighting program.** (a) Each public utility, cooperative electric
 6.28 association, and municipal utility that provides electric service to retail customers and is
 6.29 subject to subdivision 1c shall include as part of its conservation improvement activities a
 6.30 program to strongly encourage the use of fluorescent and high-intensity discharge lamps.
 6.31 The program must include at least a public information campaign to encourage use of the
 6.32 lamps and proper management of spent lamps by all customer classifications.

6.33 (b) A public utility that provides electric service at retail to 200,000 or more customers
 6.34 shall establish, either directly or through contracts with other persons, including lamp

7.1 manufacturers, distributors, wholesalers, and retailers and local government units, a system
7.2 to collect for delivery to a reclamation or recycling facility spent fluorescent and
7.3 high-intensity discharge lamps from households and from small businesses as defined in
7.4 section 645.445 that generate an average of fewer than ten spent lamps per year.

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

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

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

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

7.27 (g) All the costs incurred by a public utility, cooperative electric association, or municipal
7.28 utility for promotion and collection of fluorescent and high-intensity discharge lamps under
7.29 this subdivision are conservation improvement spending under this section.

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

7.31 Sec. 5. Minnesota Statutes 2016, section 216B.241, subdivision 5d, is amended to read:

7.32 Subd. 5d. **On-bill repayment programs.** (a) For the purposes of this subdivision:

8.1 (1) "utility" means a public utility, municipal utility, or cooperative electric association
8.2 subject to subdivision 1c that provides electric or natural gas service to retail customers;
8.3 and

8.4 (2) "on-bill repayment program" means a program in which a utility collects on a
8.5 customer's bill repayment of a loan to the customer by an eligible lender to finance the
8.6 customer's investment in eligible energy conservation or renewable energy projects, and
8.7 remits loan repayments to the lender.

8.8 (b) A utility may include as part of its conservation improvement plan an on-bill
8.9 repayment program to enable a customer to finance eligible projects with installment loans
8.10 originated by an eligible lender. An eligible project is one that is either an energy conservation
8.11 improvement, or a project installed on the customer's site that uses an eligible renewable
8.12 energy source as that term is defined in section 216B.2411, subdivision 2, paragraph (b),
8.13 but does not include mixed municipal solid waste or refuse-derived fuel from mixed
8.14 municipal solid waste. An eligible renewable energy source also includes solar thermal
8.15 technology that collects the sun's radiant energy and uses that energy to heat or cool air or
8.16 water, and meets the requirements of section 216C.25. To be an eligible lender, a lender
8.17 must:

8.18 (1) have a federal or state charter and be eligible for federal deposit insurance;

8.19 (2) be a government entity, including an entity established under chapter 469, that has
8.20 authority to provide financial assistance for energy efficiency and renewable energy projects;

8.21 (3) be a joint venture by utilities established under section 452.25; or

8.22 (4) be licensed, certified, or otherwise have its lending activities overseen by a state or
8.23 federal government agency.

8.24 The commissioner must allow a utility broad discretion in designing and implementing an
8.25 on-bill repayment program, provided that the program complies with this subdivision.

8.26 (c) A utility may establish an on-bill repayment program for all customer classes or for
8.27 a specific customer class.

8.28 (d) A public utility that implements an on-bill repayment program under this subdivision
8.29 must enter into a contract with one or more eligible lenders that complies with the
8.30 requirements of this subdivision and contains provisions addressing capital commitments,
8.31 loan origination, transfer of loans to the public utility for on-bill repayment, and acceptance
8.32 of loans returned due to delinquency or default.

9.1 (e) A public utility's contract with a lender must require the lender to comply with all
9.2 applicable federal and state laws, rules, and regulations related to lending practices and
9.3 consumer protection; to conform to reasonable and prudent lending standards; and to provide
9.4 businesses that sell, maintain, and install eligible projects the ability to participate in an
9.5 on-bill repayment program under this subdivision on a nondiscriminatory basis.

9.6 (f) A public utility's contract with a lender may provide:

9.7 (1) for the public utility to purchase loans from the lender with a condition that the lender
9.8 must purchase back loans in delinquency or default; or

9.9 (2) for the lender to retain ownership of loans with the public utility servicing the loans
9.10 through on-bill repayment as long as payments are current.

9.11 The risk of default must remain with the lender. The lender shall not have recourse against
9.12 the public utility except in the event of negligence or breach of contract by the utility.

9.13 (g) If a public utility customer makes a partial payment on a utility bill that includes a
9.14 loan installment, the partial payment must be credited first to the amount owed for utility
9.15 service, including taxes and fees. A public utility may not suspend or terminate a customer's
9.16 utility service for delinquency or default on a loan that is being serviced through the public
9.17 utility's on-bill repayment program.

9.18 (h) An outstanding balance on a loan being repaid under this subdivision is a financial
9.19 obligation only of the customer who is signatory to the loan, and not to any subsequent
9.20 customer occupying the property associated with the loan. If the public utility purchases
9.21 loans from the lender as authorized under paragraph (f), clause (1), the public utility must
9.22 return to the lender a loan not repaid when a customer borrower no longer occupies the
9.23 property.

9.24 (i) Costs incurred by a public utility under this subdivision are recoverable as provided
9.25 in section 216B.16, subdivision 6b, paragraph (c), including reasonable incremental costs
9.26 for billing system modifications necessary to implement and operate an on-bill repayment
9.27 program and for ongoing costs to operate the program. Costs in a plan approved by the
9.28 commissioner may be counted toward a utility's conservation spending requirements under
9.29 subdivisions 1a and 1b. Energy savings from energy conservation improvements resulting
9.30 from this section may be counted toward satisfying a utility's energy-savings goals under
9.31 subdivision 1c.

10.1 (j) This subdivision does not require a utility to terminate or modify an existing financing
10.2 program and does not prohibit a utility from establishing an on-bill financing program in
10.3 which the utility provides the financing capital.

10.4 (k) A municipal utility or cooperative electric association that implements an on-bill
10.5 repayment program shall design the program to address the issues identified in paragraphs
10.6 (d) through (h) as determined by the governing board of the utility or association.

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

10.8 Sec. 6. Minnesota Statutes 2016, section 216B.241, subdivision 7, is amended to read:

10.9 Subd. 7. **Low-income programs.** (a) The commissioner shall ensure that each utility
10.10 and association subject to subdivision 1c provides low-income programs. When approving
10.11 spending and energy-savings goals for low-income programs, the commissioner shall
10.12 consider historic spending and participation levels, energy savings for low-income programs,
10.13 and the number of low-income persons residing in the utility's service territory. A municipal
10.14 utility that furnishes gas service must spend at least 0.2 percent, and a public utility furnishing
10.15 gas service must spend at least 0.4 percent, of its most recent three-year average gross
10.16 operating revenue from residential customers in the state on low-income programs. A utility
10.17 or association that furnishes electric service must spend at least 0.1 percent of its gross
10.18 operating revenue from residential customers in the state on low-income programs. For a
10.19 generation and transmission cooperative association, this requirement shall apply to each
10.20 association's members' aggregate gross operating revenue from sale of electricity to residential
10.21 customers in the state. Beginning in 2010, a utility or association that furnishes electric
10.22 service must spend 0.2 percent of its gross operating revenue from residential customers in
10.23 the state on low-income programs.

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

10.29 (c) The commissioner shall establish low-income programs to utilize money contributed
10.30 to the energy and conservation account under paragraph (b). In establishing low-income
10.31 programs, the commissioner shall consult political subdivisions, utilities, and nonprofit and
10.32 community organizations, especially organizations engaged in providing energy and
10.33 weatherization assistance to low-income persons. Money contributed to the energy and
10.34 conservation account under paragraph (b) must provide programs for low-income persons,

11.1 including low-income renters, in the service territory of the utility or association providing
11.2 the money. The commissioner shall record and report expenditures and energy savings
11.3 achieved as a result of low-income programs funded through the energy and conservation
11.4 account in the report required under subdivision 1c, paragraph (g). The commissioner may
11.5 contract with a political subdivision, nonprofit or community organization, public utility,
11.6 municipality, or cooperative electric association to implement low-income programs funded
11.7 through the energy and conservation account.

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

11.11 (e) The costs and benefits associated with any approved low-income gas or electric
11.12 conservation improvement program that is not cost-effective when considering the costs
11.13 and benefits to the utility may, at the discretion of the utility, be excluded from the calculation
11.14 of net economic benefits for purposes of calculating the financial incentive to the utility.
11.15 The energy and demand savings may, at the discretion of the utility, be applied toward the
11.16 calculation of overall portfolio energy and demand savings for purposes of determining
11.17 progress toward annual goals and in the financial incentive mechanism.

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