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State of Minnesota

HOUSE OF REPRESENTATIVES

NINETY-THIRD SESSION

H. F. No. 2269

02/27/2023 Authored by Kraft, Long, Acomb, Newton and Rehm
The bill was read for the first time and referred to the Committee on Climate and Energy Finance and Policy

1.1 A bill for an act
1.2 relating to energy; requiring owners of certain buildings to enter energy use data
1.3 into a benchmarking tool; requiring public disclosure of energy use data; providing
1.4 grants; appropriating money; proposing coding for new law in Minnesota Statutes,
1.5 chapter 216C.

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

1.7 Section 1. [216C.331] ENERGY BENCHMARKING.

1.8 Subdivision 1. Definitions. (a) For the purposes of this section, the following terms have
1.9 the meanings given.

1.10 (b) "Benchmark" means to electronically input into a benchmarking tool the total energy
1.11 use data and other descriptive information about a building that is required by a benchmarking
1.12 tool.

1.13 (c) "Benchmarking information" means data related to a building's energy use generated
1.14 by a benchmarking tool, and other information about the building's physical and operational
1.15 characteristics. Benchmarking information includes but is not limited to the building's:

1.16 (1) address;

1.17 (2) owner and, if applicable, the building manager responsible for operating the building's
1.18 physical systems;

1.19 (3) total floor area, expressed in square feet;

1.20 (4) energy use intensity;

1.21 (5) greenhouse gas emissions; and

2.1 (6) energy performance score comparing the building's energy use with that of similar
2.2 buildings.

2.3 (d) "Benchmarking tool" means the United States Environmental Protection Agency's
2.4 Energy Star Portfolio Manager tool or an equivalent tool determined by the commissioner.

2.5 (e) "Covered property" means a building whose total floor area is equal to or greater
2.6 than 50,000 square feet. Covered property does not include:

2.7 (1) a residential property containing fewer than five dwelling units;

2.8 (2) a property classified as manufacturing under the North American Industrial
2.9 Classification System (NAICS);

2.10 (3) agricultural buildings classified as Class 2a or 2b under section 273.13, subdivision
2.11 23, paragraph (b) or (c); or

2.12 (4) other property types that do not meet the purposes of this section, as determined by
2.13 the commissioner.

2.14 (f) "Energy" means electricity, natural gas, steam, or another product used to: (1) provide
2.15 heating, cooling, lighting, or water heating; or (2) power other end uses in a building.

2.16 (g) "Energy use intensity" means the total annual energy consumed in a building divided
2.17 by the building's total floor area.

2.18 (h) "Energy performance score" means a numerical value from one to 100 that the Energy
2.19 Star Portfolio Manager tool calculates to rate a building's energy efficiency against that of
2.20 comparable buildings nationwide.

2.21 (i) "Energy Star Portfolio Manager" means an interactive resource management tool
2.22 developed by the United States Environmental Protection Agency that (1) enables the
2.23 periodic entry of a building's energy use data and other descriptive information about a
2.24 building, and (2) rates a building's energy efficiency against that of comparable buildings
2.25 nationwide.

2.26 (j) "Financial distress" means a covered property that, at the time benchmarking is
2.27 conducted:

2.28 (1) is the subject of a qualified tax lien sale or public auction due to property tax
2.29 arrears;

2.30 (2) is controlled by a court-appointed receiver based on financial distress;

2.31 (3) is owned by a financial institution through default by the borrower;

3.1 (4) has been acquired by deed in lieu of foreclosure; or

3.2 (5) has a senior mortgage that is subject to a notice of default.

3.3 (k) "Owner" means (1) an individual or entity that possesses title to a covered property,
3.4 or (2) an agent authorized to act on behalf of the covered property owner.

3.5 (l) "Total floor area" means the sum of gross square footage inside a building's envelope,
3.6 measured between the outside exterior walls of the building. Total floor area includes covered
3.7 parking structures.

3.8 Subd. 2. **Establishment.** A building energy benchmarking program is established in the
3.9 department. The purpose of the program is to:

3.10 (1) make a building's owners, tenants, and potential tenants aware of (i) the building's
3.11 energy consumption levels and patterns, and (ii) how the building's energy use compares
3.12 with that of similar buildings nationwide; and

3.13 (2) enhance the likelihood that owners adopt energy conservation measures in the owners'
3.14 buildings as a way to reduce energy use, operating costs, and greenhouse gas emissions.

3.15 Subd. 3. **Classification of covered properties.** For the purposes of this section, a covered
3.16 property is classified as follows:

3.17	<u>Class</u>	<u>Total Floor Area (sq. ft.)</u>
3.18	<u>1</u>	<u>100,000 or more</u>
3.19	<u>2</u>	<u>50,000 to 99,999</u>

3.20 Subd. 4. **Benchmarking requirement.** (a) In conformity with the schedule in subdivision
3.21 6, an owner must annually benchmark all covered property owned as of December 31 during
3.22 the previous calendar year. Energy use data must be compiled by:

3.23 (1) obtaining the data from the utility providing the energy; or

3.24 (2) reading a master meter.

3.25 (b) Before entering information in a benchmarking tool, an owner must run all automated
3.26 data quality assurance functions available within the benchmarking tool and must correct
3.27 all data identified as missing or incorrect.

3.28 (c) An owner who becomes aware that any information entered into a benchmarking
3.29 tool is inaccurate or incomplete must amend the information in the benchmarking tool within
3.30 30 days of the date the owner learned of the inaccuracy.

4.1 Subd. 5. Exemption. (a) The commissioner may exempt an owner of a covered property
4.2 from the requirements of subdivision 4 if the owner provides evidence satisfactory to the
4.3 commissioner that the covered property:

4.4 (1) is presently experiencing financial distress;

4.5 (2) has been less than 50 percent occupied during the previous calendar year;

4.6 (3) does not have a certificate of occupancy or temporary certificate of occupancy for
4.7 the full previous calendar year;

4.8 (4) was issued a demolition permit during the previous calendar year that remains current;

4.9 (5) received no energy services for at least 30 days during the previous calendar year;

4.10 or

4.11 (6) is participating in a benchmarking program operated by a city or other political
4.12 subdivision that the commissioner determines is equivalent to the benchmarking program
4.13 established under this section.

4.14 (b) An exemption granted under this subdivision applies only to a single calendar year.
4.15 An owner must reapply to the commissioner each year an extension is sought.

4.16 (c) Within 30 days of the date an owner makes a request under this paragraph, a tenant
4.17 of a covered property subject to this section must provide the owner with any information
4.18 regarding energy use of the tenant's rental unit that the property owner cannot otherwise
4.19 obtain and that is needed by the owner to comply with this section. The tenant must provide
4.20 the information required under this paragraph in a format approved by the commissioner.

4.21 Subd. 6. Benchmarking schedule. An owner must annually benchmark each covered
4.22 property for the previous calendar year according to the following schedule:

4.23 (1) all Class 1 properties by June 1, 2024, and by every June 1 thereafter; and

4.24 (2) all Class 2 properties by June 1, 2025, and by every June 1 thereafter.

4.25 Subd. 7. Data collection and management. (a) The commissioner must:

4.26 (1) collect benchmarking information generated by a benchmarking tool and other related
4.27 information for each covered property;

4.28 (2) provide technical assistance to owners entering data into a benchmarking tool; and

4.29 (3) collaborate with utilities regarding the provision of energy use information to owners
4.30 and tenants to enable owners to comply with this section.

5.1 (b) A utility must comply with a request from the commissioner to provide the
5.2 commissioner or an owner with energy use information that is needed to effectively operate
5.3 the energy benchmarking program.

5.4 (c) The commissioner must:

5.5 (1) rank benchmarked covered properties in each property class from highest to lowest
5.6 performance score, or, if a performance score is unavailable for a covered property, from
5.7 lowest to highest energy use intensity;

5.8 (2) divide covered properties in each property class into four quartiles based on the
5.9 applicable measure in clause (1);

5.10 (3) assign four stars to each covered property in the quartile of each property class with
5.11 the highest performance scores or lowest energy use intensities, as applicable;

5.12 (4) assign three stars to each covered property in the quartile of each property class with
5.13 the second highest performance scores or second lowest energy use intensities, as applicable;

5.14 (5) assign two stars to each covered property in the quartile of each property class with
5.15 the third highest performance scores or third lowest energy use intensities, as applicable;

5.16 (6) assign one star to each covered property in the quartile of each property class with
5.17 the lowest performance scores or highest energy use intensities, as applicable; and

5.18 (7) serve notice in writing to each owner identifying the number of stars assigned by the
5.19 commissioner to each of the owner's covered properties.

5.20 Subd. 8. **Data disclosure to public.** (a) The commissioner must post on the department's
5.21 website and update annually the following information for the previous calendar year:

5.22 (1) annual summary statistics on energy use for all covered properties in Minnesota;

5.23 (2) annual summary statistics on energy use for all covered properties, aggregated by
5.24 covered property class, as defined in subdivision 3, city, and county;

5.25 (3) the percentage of covered properties in each building class listed in subdivision 3
5.26 that are in compliance with the benchmarking requirements under subdivisions 4 to 6; and

5.27 (4) for each covered property, at a minimum, the total energy use, energy use per square
5.28 foot of total floor area, annual greenhouse gas emissions, and an energy performance score,
5.29 if available.

6.1 (b) The commissioner must post the information required under this subdivision for each
6.2 class of covered property beginning one year after the date the initial benchmarking
6.3 submission is made by the owner under the schedule in subdivision 6.

6.4 Subd. 9. **Building performance disclosure to potential tenants.** An owner must, on
6.5 any application provided to a potential tenant seeking to rent a unit in a covered property,
6.6 include the following language in a 12-point or larger font on the first page of the application:
6.7 "This building has received a [insert number of stars assigned to the building by the
6.8 commissioner under subdivision 8, paragraph (c)] star rating of the building's energy
6.9 efficiency from the Minnesota Department of Commerce, where four stars represents the
6.10 most energy efficient buildings and one star represents the least energy efficient buildings."

6.11 Subd. 10. **Notifications.** (a) By March 1 each year, the commissioner must notify the
6.12 owner of each covered property required to benchmark for the previous calendar year of
6.13 the requirement to benchmark by June 1 of that year.

6.14 (b) By July 15 each year, the commissioner must notify the owner of each covered
6.15 property required to benchmark for the previous calendar year that has failed to benchmark
6.16 that the owner has 30 days to comply with the benchmarking requirement.

6.17 Subd. 11. **Program implementation.** The commissioner may contract with an
6.18 independent third party to implement any or all of the commissioner's duties required under
6.19 subdivisions 2 to 10.

6.20 Subd. 12. **Enforcement.** (a) If the commissioner determines an owner has failed to
6.21 benchmark in a timely, complete, and accurate fashion as required under this section, the
6.22 commissioner must (1) provide written notice of the determination to the owner, and (2)
6.23 advise the owner that the commissioner has the authority to impose a civil fine for violation
6.24 of this section. The notice must include a request that the owner provide a written response,
6.25 within 30 days of the date the notice is received, regarding the owner's intent and ability to
6.26 benchmark.

6.27 (b) If the building owner does not respond to the notice under paragraph (a), or the
6.28 commissioner determines that the response is inadequate, the commissioner may impose
6.29 on the owner a civil fine of \$..... Each day that the owner fails to benchmark to the
6.30 satisfaction of the commissioner for each covered property owned by the owner constitutes
6.31 a separate offense and the commissioner may impose a separate civil penalty.

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

7.1 Sec. 2. **APPROPRIATION.**

7.2 \$..... in fiscal year 2024 and \$..... in fiscal year 2025 are appropriated from the general
7.3 fund to the commissioner of commerce to award grants under and implement Minnesota
7.4 Statutes, section 216C.331. These appropriations are available until expended.

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