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State of Minnesota

HOUSE OF REPRESENTATIVES

NINETY-FIRST SESSION

H. F. No. 1839

02/28/2019

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The bill was read for the first time and referred to the Committee on Ways and Means

1.1A bill for an act

1.2relating to energy; updating the state's energy savings policy goal and establishing

1.3the Conservation Improvement Program Modernization Act of 2019; amending

1.4Minnesota Statutes 2018, sections 216B.2401; 216B.241, subdivisions 1c, 1d, 2,

1.52b, 7; proposing coding for new law in Minnesota Statutes, chapter 216B; repealing

1.6Minnesota Statutes 2018, section 216B.241, subdivision 1b.

1.7BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

1.8ARTICLE 1

1.9TITLE

1.10Section 1. CITATION; CONSERVATION IMPROVEMENT PROGRAM

1.11MODERNIZATION ACT.

1.12This act shall be known as the "Conservation Improvement Program Modernization Act

1.13of 2019."

1.14ARTICLE 2

1.15STATE ENERGY SAVINGS POLICY GOAL UPDATED

1.16Section 1. Minnesota Statutes 2018, section 216B.2401, is amended to read:

1.17216B.2401 ENERGY SAVINGS AND DEMAND-SIDE MANAGEMENT POLICY

1.18GOAL.

1.19The legislature finds that energy savings are an energy resource, and that cost-effective

1.20energy savings are preferred over all other energy resources. In addition, the legislature

1.21finds that optimizing when and how energy consumers manage energy use can provide

1.22significant benefits to the consumers and to the utility system as a whole. The legislature

further finds that cost-effective energy savings and load management programs should be procured systematically and aggressively in order to reduce utility costs for businesses and residents, improve the competitiveness and profitability of businesses, create more energy-related jobs, reduce the economic burden of fuel imports, and reduce pollution and emissions that cause climate change. Therefore, it is the energy policy of the state of Minnesota to achieve annual energy savings equal equivalent to at least 1.5 percent of annual retail energy sales of electricity and natural gas through ~~cost-effective energy conservation improvement programs and rate design, energy efficiency achieved by energy consumers without direct utility involvement, 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.~~ multiple means, including but not limited to:

(1) cost-effective energy conservation improvement programs, including efficient electrification, under sections 216B.2401 to 216B.241;

(2) rate design;

(3) energy efficiency achieved by energy consumers without direct utility involvement;

(4) energy codes and appliance standards;

(5) programs designed to transform the market or change consumer behavior;

(6) energy savings resulting from efficiency improvements to the utility infrastructure and system; and

(7) other efforts to promote energy efficiency and energy conservation.

### ARTICLE 3

#### CONSERVATION IMPROVEMENT PROGRAMS FOR CONSUMER-OWNED UTILITIES

##### Section 1. [216B.2402] CONSERVATION IMPROVEMENT PROGRAMS FOR CONSUMER-OWNED UTILITIES.

Subdivision 1. Definitions. For the purpose of this section, the terms defined in this subdivision have the meanings given to them:

(a) "Consumer-owned utility" means a municipal gas utility, a municipal electric utility, or a cooperative electric association.

(b) "Cumulative lifetime savings" means the total electric energy or natural gas savings in a given year from energy conservation improvements installed that year or in previous

3.1 years that are still operational and providing savings in that year because the measures have  
3.2 not reached the end of their useful lives.

3.3 (c) "Efficient electrification or conversion improvement" means a project that (1) results  
3.4 in converting a customer from use of a fuel to the use of electric energy or natural gas sold  
3.5 at retail by a utility subject to this section, resulting in a net increase of the use of electric  
3.6 energy or natural gas and a net decrease in energy consumption overall on a fuel-neutral  
3.7 basis, and (2) otherwise meets the criteria established in subdivision 7. An efficient  
3.8 electrification improvement requires the installation of equipment that utilizes electric energy  
3.9 or natural gas, resulting in a reduction or elimination of use of the previous fuel.

3.10 (d) "Electric utility infrastructure projects" means projects owned by a consumer-owned  
3.11 utility that replace or modify existing electric utility infrastructure, including utility-owned  
3.12 buildings, if the replacement or modification conserves energy or uses energy more  
3.13 efficiently.

3.14 (e) "Energy conservation" means an action that results in a net reduction in electric  
3.15 energy or natural gas consumption.

3.16 (f) "Energy conservation improvement" means a project that results in energy efficiency  
3.17 or energy conservation. Energy conservation improvement may include waste heat that is  
3.18 recovered and converted into electricity, but does not include electric utility infrastructure  
3.19 projects approved by the commission under section 216B.1636. Energy conservation  
3.20 improvement includes waste heat recovered and used as thermal energy.

3.21 (g) "Energy efficiency" means measures or programs, including energy conservation  
3.22 measures or programs, that target consumer behavior, equipment, processes, or devices  
3.23 designed to produce either an absolute decrease in consumption of electric energy or natural  
3.24 gas or a decrease in consumption of electric energy or natural gas on a per unit of production  
3.25 basis, without a reduction in the quality level of service provided to the energy consumer.

3.26 (h) "Fuel" means energy consumed by a retail utility customer. Fuel includes electricity,  
3.27 propane, natural gas, heating oil, gasoline, or diesel fuel.

3.28 (i) "Fuel neutral" means an approach that compares the use of various fuels for a given  
3.29 end use, using a common metric.

3.30 (j) "Gross annual retail energy sales" means the total annual sale of electric energy  
3.31 generated by nonrenewable resources, as determined by the percentage of renewable and  
3.32 hydroelectric sources compared to nonrenewable sources identified in the portfolio of the  
3.33 utility's electricity provider, 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. Gross annual retail energy sales does not include:

(1) gas sales to:

(i) a large energy facility;

(ii) a large customer facility whose natural gas utility has been exempted by the commissioner under subdivision 12, with respect to natural gas sales made to the large customer facility; and

(iii) a commercial gas customer facility whose natural gas utility has been exempted by the commissioner under subdivision 12, with respect to natural gas sales made to the commercial gas customer facility;

(2) electric sales to a large customer facility whose electric utility has been exempted by the commissioner under subdivision 12, with respect to electric sales made to the large facility; and

(3) increased electric or natural gas sales from efficient electrification or conversion caused by a utility program.

(k) "Large customer facility" means all buildings, structures, equipment, and installations at a single site that collectively (1) impose a peak electrical demand on an electric utility's system of at least 20,000 kilowatts, measured in the same way as the utility that serves the customer facility measures electric demand for billing purpose, or (2) consume at least 500,000,000 cubic feet of natural gas annually. When calculating peak electrical demand, a large customer facility may include demand offset by on-site cogeneration facilities and, if engaged in mineral extraction, may aggregate peak energy demand from the large customer facility's mining processing operations.

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

(m) "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 local and regional energy system conditions, or to reduce peak demand for electric energy or natural gas. Load management that reduces overall energy use is also energy conservation.

(n) "Low-income programs" means energy conservation improvement programs that directly serve the needs of low-income persons, including low-income renters and entities that serve low-income customers. Programs that aggregate resources for improvements to

5.1 low-income housing, including the upgrading of appliances, heating and air conditioning,  
5.2 and other infrastructure, are considered a direct benefit.

5.3 (o) "Member" has the meaning given to it in section 308B.005, subdivision 15.

5.4 (p) "Qualifying utility" means a utility that supplies energy to a customer that enables  
5.5 the customer to qualify as a large customer facility.

5.6 (q) "Source energy" means the total amount of fuel required for a given purpose,  
5.7 considering energy losses in the production, transmission, and delivery of that energy.

5.8 (r) "Waste heat recovered and used as thermal energy" means capturing heat energy that  
5.9 would be exhausted or dissipated to the environment from machinery, buildings, or industrial  
5.10 processes, and productively using the recovered thermal energy where it is used to reduce  
5.11 demand-side consumption of natural gas, electric energy, or both.

5.12 (s) "Waste heat recovery converted into electricity" means an energy recovery process  
5.13 that converts otherwise lost energy from the heat of exhaust stacks or pipes used for engines  
5.14 or manufacturing or industrial processes, or the reduction of high pressure in water or gas  
5.15 pipelines.

5.16 Subd. 2. **Applicability.** This section applies to:

5.17 (1) a cooperative electric association that provides retail service to more than 5,000  
5.18 members;

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

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

5.22 Subd. 3. **Savings goal.** (a) Each individual consumer-owned utility subject to this section  
5.23 has an annual energy savings goal equivalent to 1.5 percent of gross annual retail energy  
5.24 sales.

5.25 (b) A consumer-owned utility's savings goal is satisfied when the consumer-owned  
5.26 utility achieves a savings equivalent of at least one percent of the consumer-owned utility's  
5.27 gross annual retail energy sales from energy conservation improvements, and up to 0.5  
5.28 percent from the following utility activities:

5.29 (1) energy savings from additional energy conservation improvements;

5.30 (2) electric utility infrastructure projects; or

6.1 (3) net energy savings from efficient electrification and conversion improvements that  
6.2 meet the criteria under subdivision 8.

6.3 (c) The energy savings goals specified must be calculated based on the most recent  
6.4 three-year, weather-normalized average. When determining compliance with this subdivision,  
6.5 a consumer-owned utility may elect to average annual energy savings over a period not to  
6.6 exceed five years, as specified in the plan filed under subdivision 4. A consumer-owned  
6.7 utility that uses annual plans may carry forward for up to five years any energy savings  
6.8 exceeding 1.5 percent in a single year.

6.9 (d) Nothing in this subdivision limits a utility's ability to report and recognize savings  
6.10 in excess of 0.5 percent of the utility's gross annual retail energy sales generated under  
6.11 paragraph (b), clauses (1), (2), and (3), provided the utility has satisfied the one percent  
6.12 savings required under paragraph (b).

6.13 (e) A consumer-owned utility subject to this section is not required to make energy  
6.14 conservation improvements that are not cost-effective, even if the improvement is necessary  
6.15 to attain the energy savings goal.

6.16 (f) A consumer-owned utility may request that the commissioner adjust its annual energy  
6.17 savings goal based on its historical conservation investment experience, customer class  
6.18 makeup, load growth, a conservation potential study, impact on utility revenue that threatens  
6.19 necessary system investment, or other factors the commissioner and consumer-owned utility  
6.20 determines warrants an adjustment. The commissioner must adjust the savings goal to a  
6.21 level the commissioner determines is supported by the record.

6.22 Subd. 4. **Consumer-owned utility; energy conservation and optimization plans.** (a)  
6.23 By June 1, 2021, each consumer-owned utility must file an energy conservation and  
6.24 optimization plan with the commissioner. The plan must identify and outline the utility's  
6.25 intended conservation improvement program, efficient electrification or conversion  
6.26 improvement plans, load management plans, and other processes and programs to achieve  
6.27 the energy savings goal. The plan may cover a period of time not to exceed five years. For  
6.28 plans with a duration greater than one year, the consumer-owned utility's plan may include  
6.29 years where the consumer-owned utility may not achieve the annual savings goal, provided  
6.30 the total savings at the end of the plan meets, at a minimum, the otherwise applicable annual  
6.31 savings goal for the utility. Beginning June 1, 2022, and each June 1 thereafter, each  
6.32 consumer-owned utility must file an annual update identifying the status of, including total  
6.33 expenditures and investments made to date, and any intended changes to its multiyear plan  
6.34 filed under this subdivision. For consumer-owned utilities whose plans were completed the

7.1 prior June 1, a summary of the plan's result must be filed. A summary for a completed plan's  
7.2 result must also be filed. The summary for a completed plan must include: (1) the total  
7.3 savings achieved under the plan; (2) a breakdown of total expenditures and investments  
7.4 made; and (3) a brief discussion regarding where the utility achieved the greatest savings  
7.5 and, if areas exist where savings were less than anticipated under the plan, where the shortage  
7.6 occurred and what the suspected reason for the shortage is. For consumer-owned utilities  
7.7 that fall short of the total applicable savings goal, the final report or update on that plan  
7.8 must indicate where the actual savings differed from anticipated savings, any known reasons  
7.9 for the shortfall, and any identified changes that utility will make in future plans filed under  
7.10 this subdivision to reach the identified savings goal. A consumer-owned utility must file a  
7.11 new plan under this paragraph by June 1 of the year following the completion of the  
7.12 consumer-owned utility's most recently completed plan.

7.13 (b) Energy savings from electric utility infrastructure projects or waste heat recovery  
7.14 converted into electricity projects that may count as energy savings may be included in a  
7.15 plan submitted under paragraph (a). A consumer-owned electric facility's infrastructure  
7.16 project must result in increased energy efficiency greater than would have occurred during  
7.17 normal maintenance activities.

7.18 (c) Energy savings from thermal-to-electric efficient electrification or conversion  
7.19 improvement programs must be stated in kilowatt-hours, using a conversion rate of 3.412  
7.20 British thermal units to one kilowatt-hour.

7.21 (d) A consumer-owned utility must not spend or invest in energy conservation  
7.22 improvements that directly benefit large energy facility or a large electric customer facility  
7.23 the commissioner has issued an exemption to under subdivision 12.

7.24 (e) A generation and transmission cooperative electric association cooperative electric  
7.25 association, a municipal power agency, or a comparable organization that provides energy  
7.26 services to consumer-owned utilities may invest in energy conservation improvements on  
7.27 behalf of the consumer-owned utilities it serves and may fulfill all aspects of the conservation,  
7.28 reporting, and energy-saving goals for any of the consumer-owned utilities on an aggregate  
7.29 basis.

7.30 Subd. 5. **Low-income programs.** (a) Each consumer-owned utility subject to this section  
7.31 must provide low-income energy conservation programs. When approving spending and  
7.32 energy-savings goals for low-income energy conservation programs, the consumer-owned  
7.33 utility must consider historic spending and participation levels, energy savings for low-income  
7.34 programs, and the number of low-income persons residing in the utility's service territory.

A municipal utility that furnishes gas service must spend at least 0.2 percent off its most recent three-year average gross operating revenue from residential customers in Minnesota on low-income programs. A consumer-owned utility that furnishes electric service must spend at least 0.2 percent of its gross operating revenue from residential customers in Minnesota on low-income programs. This requirement applies to each generation and transmission cooperative association's members' aggregate gross operating revenue from the sale of electricity to residential customers in Minnesota.

(b) To meet the requirements of paragraph (a), a consumer-owned utility may contribute money to the energy and conservation account in section 216B.241, subdivision 2a. An energy conservation improvement plan must state the amount, if any, of low-income energy conservation improvement funds the utility plans to contribute to the energy and conservation account. Contributions must be remitted to the commissioner by February 1 each year.

(c) The commissioner must establish low-income programs to use money contributed to the energy and conservation account under paragraph (b). When establishing low-income programs, the commissioner must consult political subdivisions, utilities, and nonprofit and community organizations, including 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, located in the service territory of the utility or association providing the money. The commissioner must 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 section 216B.241, 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 consumer-owned utility may petition the commissioner to modify its required spending under this subdivision if the utility and the commissioner were unable to expend the amount required for three consecutive years.

Subd. 6. **Recovery of expenses.** The commission must allow a cooperative electric association subject to rate regulation under section 216B.026 to recover expenses resulting from (1) a plan under this subdivision, and (2) assessments and contributions to the energy and conservation account under section 216B.241, subdivision 2a.

Subd. 7. **Ownership of energy conservation improvement.** An energy conservation improvement to or installed in a building under this section, except systems owned by the



consumer-owned utility and designed to turn off, limit, or vary the delivery of energy, is the exclusive property of the building owner, except to the extent that the improvement is subject 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. 8. Criteria for efficient electrification or conversion improvements and load management.** (a) Each consumer-owned utility subject to this section may form a technical consumer-owned utility working group to define and establish proposed programs for efficient electrification or conversion improvements and load management. A proposed program may be included in an energy conservation and optimization plan filed by the consumer-owned utility under subdivision 4. The technical consumer-owned utility working group may approve a proposed program for efficient electrification or conversion improvements if it finds the investment is cost-effective after considering the costs and benefits of the proposed investment to rate payers, the utility, participants, and society.

(b) The commission may permit a consumer-owned utility subject to rate regulation to file rate schedules providing for annual recovery of the costs of (1) efficient electrification or conversion improvement programs, and (2) cost-effective load management approved by the technical consumer-owned utility working group under subdivision 6, including reasonable and prudent costs associated with promoting and implementing a program approved under this subdivision.

(c) An efficient electrification or conversion improvement is deemed efficient if the technical consumer-owned utility working group finds the improvement, relative to the fuel that is being displaced:

(1) results in a net reduction in the cost and amount of source energy consumed for a particular use, measured on a fuel-neutral basis;

(2) results in a net reduction of statewide greenhouse gas emissions, as defined in section 216H.01, subdivision 2, over the lifetime of the improvement. For an efficient electrification or conversion improvement installed by an electric utility, the reduction in emissions must be measured based on the emissions profile of the utility or the utility's wholesale provider. Where applicable, the emissions profile used must be the most recent resource plan accepted by the commission under section 216B.2422;

(3) is cost-effective from a societal perspective, considering the costs associated with both the fuel used in the past and the fuel used in the future; and

(4) is planned to be installed and operated in a manner that does not unduly increase the utility's system peak demand or require significant new investment in utility infrastructure.

Subd. 9. **Manner of filing and service.** (a) A consumer-owned utility must submit the filings required by this section to the department using the department's electronic filing system. The commissioner may exempt a consumer-owned utility from this requirement if the utility is unable to submit filings using the department's electronic filing system. All other interested parties must submit filings to the department using the department's electronic filing system whenever practicable, but may also file by personal delivery or by mail.

(b) The submission of a document to the department's electronic filing system constitutes service on the department. If a department rule requires service of a notice, order, or other document by the department, utility, or interested party upon persons on a service list maintained by the department, service may be made by personal delivery, mail, or electronic service, except that electronic service may only be made to persons on the service list that have previously agreed in writing to accept electronic service at an electronic address provided to the department for electronic service purposes.

Subd. 10. **Assessment.** (a) The commission or department may assess utilities subject to this section to carry out the purposes of section 216B.241, subdivision 1d. An assessment under this paragraph must be proportionate to the utility's respective gross operating revenue from sales of gas or electric service in Minnesota during the previous calendar year.

(b) The commission or department may annually assess a utility subject to this section to carry out the purposes of section 216B.241, subdivisions 1e and 1f, upon notice from the utility of its desire to discontinue the assessment. An assessment under this paragraph must be proportionate to the utility's respective gross revenue from sales of gas or electric service in Minnesota during the previous calendar year. Assessments under this paragraph are not subject to the cap on assessments provided by section 216B.62, or any other law.

Subd. 11. **Waste heat recovery; thermal energy distribution.** Subject to department approval, demand-side natural gas or electric energy displaced by use of waste heat recovered and used as thermal energy, including the recovered thermal energy from a cogeneration or combined heat and power facility, is eligible to be counted toward a consumer-owned utility's natural gas or electric savings goals.

Subd. 12. **Large customer facilities.** (a) The owner of a large customer facility may petition the commissioner to exempt municipal electric utilities, municipal gas utilities, and cooperative electric associations serving the large customer facility from the investment and expenditure requirements of the municipal electric utility, municipal gas utility, or

11.1 cooperative electric association's plan under this section with respect to retail revenues  
11.2 attributable to the large customer facility. The filing must include a discussion of the  
11.3 competitive or economic pressures facing the owner of the facility and the efforts taken to  
11.4 identify, evaluate, and implement energy conservation and efficiency improvements. A  
11.5 filing submitted on or before October 1 of any year must be approved within 90 days and  
11.6 becomes effective January 1 of the year following the filing, unless the commissioner finds  
11.7 the owner of the large customer facility has failed to take reasonable measures to identify,  
11.8 evaluate, and implement energy conservation and efficiency improvements. If a facility  
11.9 qualifies as a large customer facility solely due to its peak electrical demand or annual  
11.10 natural gas usage, the exemption may be limited to the qualifying utility if the commissioner  
11.11 finds that the owner of the large customer facility has failed to take reasonable measures to  
11.12 identify, evaluate, and implement energy conservation and efficiency improvements with  
11.13 respect to the nonqualifying utility. Once an exemption is approved, the commissioner may  
11.14 request the owner of a large customer facility to submit a report demonstrating the large  
11.15 customer facility's ongoing commitment to energy conservation and efficiency improvement  
11.16 after the exemption filing. The commissioner may request a report under this paragraph not  
11.17 more than once every five years for up to ten years after the effective date of the exemption.  
11.18 If the majority ownership of the large customer facility changes, the commissioner may  
11.19 request additional reports for up to ten years after the change in ownership occurs. The  
11.20 commissioner may, within 180 days of receiving a report submitted under this paragraph,  
11.21 rescind any exemption granted under this paragraph upon a determination that the large  
11.22 customer facility is not continuing to make reasonable efforts to identify, evaluate, and  
11.23 implement energy conservation improvements. A large customer facility that is exempt  
11.24 from the investment and expenditure requirements of this section under an order from the  
11.25 commissioner as of December 31, 2010, is not required to submit a report to retain its exempt  
11.26 status, except as otherwise provided in this paragraph with respect to ownership changes.  
11.27 An exempt large customer facility is prohibited from participating in a municipal electric,  
11.28 municipal gas, or cooperative electric association utility's conservation improvement program  
11.29 unless the owner of the facility files with the commissioner to withdraw its exemption.

11.30 (b) A commercial gas customer that is not a large customer facility and that purchases  
11.31 or acquires natural gas from a municipal gas utility may petition the commissioner to exempt  
11.32 the commercial gas customer from the municipal gas customer from the municipal gas  
11.33 utility's plan under this section with respect to gas sales attributable to the commercial gas  
11.34 customer. The petition must be supported by evidence demonstrating that the commercial  
11.35 gas customer has acquired or can reasonably acquire the capability to bypass use of the  
11.36 municipal utility's gas distribution system by obtaining natural gas directly from a supplier

12.1 other than the municipal gas utility. The commissioner must grant the exemption if the  
 12.2 commissioner finds the petitioner has made the demonstration required by this paragraph.

12.3 (c) A municipal electric utility, municipal gas utility, cooperative electric association,  
 12.4 or the owner of a large customer facility may appeal the commissioner's decision under  
 12.5 paragraph (a) or (b) to the commissioner under subdivision 2. When reviewing a decision  
 12.6 of the commissioner under paragraph (a) or (b), the commission must rescind the decision  
 12.7 if it finds the decision is not in the public's interest.

12.8 (d) A municipal electric utility, municipal gas utility, or cooperative electric association  
 12.9 is prohibited from spending for or investing in energy conservation improvements that  
 12.10 directly benefit a large facility or a large electric customer facility that the commissioner  
 12.11 has issued an exemption for under this section.

## 12.12 **ARTICLE 4**

### 12.13 **PUBLIC UTILITIES**

12.14 Section 1. Minnesota Statutes 2018, section 216B.241, subdivision 1c, is amended to read:

12.15 Subd. 1c. **Public utility; energy-saving goals.** (a) The commissioner shall establish  
 12.16 energy-saving goals for energy conservation improvement expenditures and shall evaluate  
 12.17 an energy conservation improvement program on how well it meets the goals set.

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

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

12.28 ~~(d)~~ (c) In its energy conservation improvement plan filing, a public utility ~~or association~~  
 12.29 may request the commissioner to adjust its annual energy-savings percentage goal based  
 12.30 on its historical conservation investment experience, customer class makeup, load growth,  
 12.31 a conservation potential study, or other factors the commissioner determines warrants an  
 12.32 adjustment. The commissioner may not approve a plan of a public utility that provides for

13.1 an annual energy-savings goal of less than one percent of gross annual retail energy sales  
13.2 from energy conservation improvements.

13.3 A public utility or association may include in its energy conservation plan energy savings  
13.4 from electric utility infrastructure projects approved by the commission under section  
13.5 216B.1636 or waste heat recovery converted into electricity projects that may count as  
13.6 energy savings in addition to a minimum energy-savings goal of at least one percent for  
13.7 energy conservation improvements. ~~Energy savings from electric utility infrastructure~~  
13.8 ~~projects, as defined in section 216B.1636, may be included in the energy conservation plan~~  
13.9 ~~of a municipal utility or cooperative electric association.~~ Electric utility infrastructure projects  
13.10 must result in increased energy efficiency greater than that which would have occurred  
13.11 through normal maintenance activity.

13.12 ~~(e) An~~ (d) A public utility's energy-savings goal is not satisfied by attaining the revenue  
13.13 expenditure requirements of subdivisions 1a and 1b, but can only be satisfied by meeting  
13.14 the energy-savings goal established in this subdivision.

13.15 ~~(f) An association or~~ (e) A public utility is not required to make energy conservation  
13.16 investments to attain the energy-savings goals of this subdivision that are not cost-effective  
13.17 even if the investment is necessary to attain the energy-savings goals. For the purpose of  
13.18 this paragraph, in determining cost-effectiveness, the commissioner shall consider the costs  
13.19 and benefits to ratepayers, the utility, participants, and society. In addition, the commissioner  
13.20 shall consider the rate at which ~~an association or~~ municipal utility is increasing its energy  
13.21 savings and its expenditures on energy conservation.

13.22 ~~(g) (f)~~ On an annual basis, the commissioner shall produce and make publicly available  
13.23 a report on the annual energy savings and estimated carbon dioxide reductions achieved by  
13.24 the energy conservation improvement programs for the two most recent years for which  
13.25 data is available. The commissioner shall report on program performance both in the  
13.26 aggregate and for each entity filing an energy conservation improvement plan for approval  
13.27 or review by the commissioner.

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

13.31 (i) ~~This subdivision does not apply to:~~

13.32 (1) ~~a cooperative electric association with fewer than 5,000 members;~~

13.33 (2) ~~a municipal utility with fewer than 1,000 retail electric customers; or~~

14.1 ~~(3) a municipal utility with less than 1,000,000,000 cubic feet in annual throughput sales~~  
14.2 ~~to retail natural gas customers.~~

14.3 Sec. 2. Minnesota Statutes 2018, section 216B.241, subdivision 1d, is amended to read:

14.4 Subd. 1d. **Technical assistance.** (a) The commissioner shall evaluate energy conservation  
14.5 improvement programs under this section and section 216B.2402 on the basis of  
14.6 cost-effectiveness and the reliability of the technologies employed. The commissioner shall,  
14.7 by order, establish, maintain, and update energy-savings assumptions that must be used  
14.8 when filing energy conservation improvement programs. The commissioner shall establish  
14.9 an inventory of the most effective energy conservation programs, techniques, and  
14.10 technologies, and encourage all Minnesota utilities to implement them, where appropriate,  
14.11 in their service territories. The commissioner shall describe these programs in sufficient  
14.12 detail to provide a utility reasonable guidance concerning implementation. The commissioner  
14.13 shall prioritize the opportunities in order of potential energy savings and in order of  
14.14 cost-effectiveness. The commissioner may contract with a third party to carry out any of  
14.15 the commissioner's duties under this subdivision, and to obtain technical assistance to  
14.16 evaluate the effectiveness of any conservation improvement program. The commissioner  
14.17 may assess up to \$850,000 annually for the purposes of this subdivision. The assessments  
14.18 must be deposited in the state treasury and credited to the energy and conservation account  
14.19 created under subdivision 2a. An assessment made under this subdivision is not subject to  
14.20 the cap on assessments provided by section 216B.62, or any other law.

14.21 (b) Of the assessment authorized under paragraph (a), the commissioner may expend  
14.22 up to \$400,000 annually for the purpose of developing, operating, maintaining, and providing  
14.23 technical support for a uniform electronic data reporting and tracking system available to  
14.24 all utilities subject to this section, in order to enable accurate measurement of the cost and  
14.25 energy savings of the energy conservation improvements required by this section. This  
14.26 paragraph expires June 30, 2018.

14.27 Sec. 3. Minnesota Statutes 2018, section 216B.241, subdivision 2, is amended to read:

14.28 Subd. 2. **Programs.** (a) The commissioner may require public utilities to make  
14.29 investments and expenditures in energy conservation improvements, explicitly setting forth  
14.30 the interest rates, prices, and terms under which the improvements must be offered to the  
14.31 customers. The required programs must cover no more than a three-year period. Public  
14.32 utilities shall file conservation improvement plans by June 1, on a schedule determined by  
14.33 order of the commissioner, but at least every three years. Plans received by a public utility

by June 1 must be approved or approved as modified by the commissioner by December 1 of that same year. The commissioner shall evaluate the program on the basis of cost-effectiveness and the reliability of technologies employed. The commissioner's order must provide to the extent practicable for a free choice, by consumers participating in the program, of the device, method, material, or project constituting the energy conservation improvement and for a free choice of the seller, installer, or contractor of the energy conservation improvement, provided that the device, method, material, or project seller, installer, or contractor is duly licensed, certified, approved, or qualified, including under the residential conservation services program, where applicable.

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

(c) Each public utility subject to subdivision 1a 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 section by the utility on research and development projects that meet the definition of energy conservation improvement in subdivision 1 and that are funded directly by the public utility.

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

(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

16.1 a petition that, on its face, fails to make a reasonable argument that a program is not in the  
16.2 public interest.

16.3 (f) The commissioner may order a public utility to include, with the filing of the utility's  
16.4 annual status report, the results of an independent audit of the utility's conservation  
16.5 improvement programs and expenditures performed by the department or an auditor with  
16.6 experience in the provision of energy conservation and energy efficiency services approved  
16.7 by the commissioner and chosen by the utility. The audit must specify the energy savings  
16.8 or increased efficiency in the use of energy within the service territory of the utility that is  
16.9 the result of the spending and investments. The audit must evaluate the cost-effectiveness  
16.10 of the utility's conservation programs.

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

16.17 Sec. 4. Minnesota Statutes 2018, section 216B.241, subdivision 2b, is amended to read:

16.18 Subd. 2b. **Recovery of expenses.** The commission shall allow a public utility to recover  
16.19 expenses resulting from a conservation improvement program required by the department  
16.20 and contributions and assessments to the energy and conservation account, unless the  
16.21 recovery would be inconsistent with a financial incentive proposal approved by the  
16.22 commission. The commission shall allow a cooperative electric association subject to rate  
16.23 regulation under section 216B.026, to recover expenses resulting from energy conservation  
16.24 improvement programs, load management programs, and assessments and contributions to  
16.25 the energy and conservation account unless the recovery would be inconsistent with a  
16.26 financial incentive proposal approved by the commission. In addition, a public utility may  
16.27 file annually, or the Public Utilities Commission may require the utility to file, and the  
16.28 commission may approve, rate schedules containing provisions for the automatic adjustment  
16.29 of charges for utility service in direct relation to changes in the expenses of the utility for  
16.30 real and personal property taxes, fees, and permits, the amounts of which the utility cannot  
16.31 control. A public utility is eligible to file for adjustment for real and personal property taxes,  
16.32 fees, and permits under this subdivision only if, in the year previous to the year in which it  
16.33 files for adjustment, it has spent or invested at least 1.75 percent of its gross revenues from  
16.34 provision of electric service, excluding gross operating revenues from electric service



17.1 provided in the state to large electric customer facilities for which the commissioner has  
17.2 issued an exemption under subdivision 1a, paragraph (b), and 0.6 percent of its gross revenues  
17.3 from provision of gas service, excluding gross operating revenues from gas services provided  
17.4 in the state to large electric customer facilities for which the commissioner has issued an  
17.5 exemption under subdivision 1a, paragraph (b), for that year for energy conservation  
17.6 improvements under this section.

17.7 Sec. 5. Minnesota Statutes 2018, section 216B.241, subdivision 7, is amended to read:

17.8 Subd. 7. **Low-income programs.** (a) The commissioner shall ensure that each public  
17.9 ~~utility and association~~ subject to subdivision 1c provides low-income programs. When  
17.10 approving spending and energy-savings goals for low-income programs, the commissioner  
17.11 shall consider historic spending and participation levels, energy savings for low-income  
17.12 programs, and the number of low-income persons residing in the utility's service territory.  
17.13 ~~A municipal utility that furnishes gas service must spend at least 0.2 percent, and a public~~  
17.14 ~~utility furnishing gas service must spend at least 0.4 percent, of its most recent three-year~~  
17.15 ~~average gross operating revenue from residential customers in the state on low-income~~  
17.16 ~~programs. A utility or association that furnishes electric service must spend at least 0.1~~  
17.17 ~~percent of its gross operating revenue from residential customers in the state on low-income~~  
17.18 ~~programs. For a generation and transmission cooperative association, this requirement shall~~  
17.19 ~~apply to each association's members' aggregate gross operating revenue from sale of~~  
17.20 ~~electricity to residential customers in the state. Beginning in 2010, A public utility or~~  
17.21 ~~association that furnishes electric service must spend 0.2 percent of its gross operating~~  
17.22 ~~revenue from residential customers in the state on low-income programs.~~

17.23 (b) To meet the requirements of paragraph (a), a public utility ~~or association~~ may  
17.24 contribute money to the energy and conservation account. An energy conservation  
17.25 improvement plan must state the amount, if any, of low-income energy conservation  
17.26 improvement funds the public utility ~~or association~~ will contribute to the energy and  
17.27 conservation account. Contributions must be remitted to the commissioner by February 1  
17.28 of each year.

17.29 (c) The commissioner shall establish low-income programs to utilize money contributed  
17.30 to the energy and conservation account under paragraph (b). In establishing low-income  
17.31 programs, the commissioner shall consult political subdivisions, utilities, and nonprofit and  
17.32 community organizations, especially organizations engaged in providing energy and  
17.33 weatherization assistance to low-income persons. Money contributed to the energy and  
17.34 conservation account under paragraph (b) must provide programs for low-income persons,

including low-income renters, in the service territory of the public utility ~~or association~~ providing the money. 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 public 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.

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

## ARTICLE 5

### REPEALER

#### Section 1. REPEALER.

Minnesota Statutes 2018, section 216B.241, subdivision 1b, is repealed.

**216B.241 ENERGY CONSERVATION IMPROVEMENT.**

Subd. 1b. **Conservation improvement by cooperative association or municipality.** (a) This subdivision applies to:

- (1) a cooperative electric association that provides retail service to more than 5,000 members;
- (2) a municipality that provides electric service to more than 1,000 retail customers; and
- (3) a municipality with more than 1,000,000,000 cubic feet in annual throughput sales to natural gas 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 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) Each municipality or cooperative shall file energy 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 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.

(h) 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.