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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
03/20/2023 Adoption of Report: Amended and re-referred to the Committee on Judiciary Finance and Civil Law

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; requiring a report; appropriating money; proposing coding for new law in
1.5 Minnesota Statutes, 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) "Aggregated customer energy use data" means customer energy use data, which is
1.11 combined into one collective data point per time interval. Aggregated customer energy use
1.12 data is data with any unique identifiers or other personal information removed that a
1.13 qualifying utility collects and aggregates in at least monthly intervals for an entire covered
1.14 building.

1.15 (c) "Benchmark" means to electronically input into a benchmarking tool the total energy
1.16 use data and other descriptive information about a building that is required by a benchmarking
1.17 tool.

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

1.21 (1) address;

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

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

2.4 (4) energy use intensity;

2.5 (5) greenhouse gas emissions; and

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

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

2.10 (f) "Customer energy use data" means data collected from the utility customer meters
2.11 that reflect the quantity, quality, or timing of customers' usage.

2.12 (g) "Covered property" means any property that has one or more buildings containing
2.13 in sum 50,000 gross square feet or greater. Covered property does not include:

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

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

2.17 (3) an agricultural building; or

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

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

2.22 (i) "Energy use intensity" means the total annual energy consumed in a building divided
2.23 by the building's total floor area.

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

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

3.1 (l) "Financial distress" means a covered property that, at the time benchmarking is
3.2 conducted:

3.3 (1) is the subject of a qualified tax lien sale or public auction due to property tax
3.4 arrearages;

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

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

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

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

3.9 (m) "Local government" means a statutory or home rule municipality or county.

3.10 (n) "Owner" means:

3.11 (1) an individual or entity that possesses title to a covered property; or

3.12 (2) an agent authorized to act on behalf of the covered property owner.

3.13 (o) "Qualifying utility" means:

3.14 (1) an electric or gas utility, including:

3.15 (i) an investor-owned electric or gas utility;

3.16 (ii) a cooperative electric association; or

3.17 (iii) a municipally owned electric or gas utility;

3.18 (2) a natural gas supplier with five or more active commercial or industrial connections,
3.19 accounts, or customers in the state; or

3.20 (3) a district steam, hot water, or chilled water provider.

3.21 (p) "Tenant" means a person that, pursuant to a rental or lease agreement, occupies or
3.22 holds possession of a building or part of a building or premises.

3.23 (q) "Total floor area" means the sum of gross square footage inside a building's envelope,
3.24 measured between the outside exterior walls of the building. Total floor area includes covered
3.25 parking structures.

3.26 (r) "Utility customer" means the building owner or tenant listed on the utility's records
3.27 as the customer liable for payment of the utility service or additional charges assessed on
3.28 the utility account.

4.1 Subd. 2. **Establishment.** The commissioner must establish and maintain a building
 4.2 energy benchmarking program. The purpose of the program is to:

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

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

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

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

4.13 Subd. 4. **Benchmarking requirement.** (a) An owner must annually benchmark all
 4.14 covered property owned as of December 31 in conformity with the schedule in subdivision
 4.15 7. Energy use data must be compiled by:

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

4.17 (2) reading a master meter.

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

4.21 (c) An owner who becomes aware that any information entered into a benchmarking
 4.22 tool is inaccurate or incomplete must amend the information in the benchmarking tool within
 4.23 30 days of the date the owner learned of the inaccuracy.

4.24 (d) Nothing in this subdivision shall be construed to prohibit an owner of property that
 4.25 is not a covered property from voluntarily benchmarking a property under this section.

4.26 Subd. 5. **Exemption by individual building.** (a) The commissioner may exempt an
 4.27 owner of a covered property from the requirements of subdivision 4 if the owner provides
 4.28 evidence satisfactory to the commissioner that the covered property:

4.29 (1) is presently experiencing financial distress;

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

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

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

5.2 or

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

5.4 (b) An exemption granted under this subdivision applies only to a single calendar year.

5.5 An owner must reapply to the commissioner each year an extension is sought.

5.6 (c) Within 30 days of the date an owner makes a request under this paragraph, a tenant

5.7 of a covered property subject to this section must provide the owner with any information

5.8 regarding energy use of the tenant's rental unit that the property owner cannot otherwise

5.9 obtain and that is needed by the owner to comply with this section. The tenant must provide

5.10 the information required under this paragraph in a format approved by the commissioner.

5.11 Subd. 6. Exemption by other government benchmarking program. Owners are

5.12 exempt from the requirements of subdivision 4 for a covered property if the property is

5.13 subject to a benchmarking requirement by the state, a city, or other political subdivision

5.14 with a benchmarking requirement that the commissioner determines is equivalent or more

5.15 stringent, as determined under subdivision 11, paragraph (b), than the benchmarking

5.16 requirement established in this section. This exemption applies in perpetuity unless or until

5.17 the benchmarking requirement is changed or revoked and the commissioner deems the

5.18 benchmarking requirement no longer equivalent nor more stringent.

5.19 Subd. 7. Benchmarking schedule. (a) An owner must annually benchmark each covered

5.20 property for the previous calendar year according to the following schedule:

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

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

5.23 (b) Beginning June 1, 2024, an owner who is selling a covered property must provide

5.24 the following to the new owner at the time of sale:

5.25 (1) benchmarking information for the most recent 12-month period, including monthly

5.26 energy use by source; or

5.27 (2) ownership of the digital property record in the benchmarking tool through an online

5.28 transfer.

5.29 Subd. 8. Utility data requirements. (a) On or before January 1, 2024, a qualifying

5.30 utility shall:

5.31 (1) establish and implement an aggregation standard whereby:

6.1 (i) an aggregated customer energy use data set may include customer energy use data
6.2 from no fewer than four customers. A single customer's energy use must not constitute more
6.3 than 50 percent of total energy consumption for the requested data set; and

6.4 (ii) customer energy use data sets containing three or fewer customers or with a single
6.5 customer's energy use constituting more than 50 percent of total energy consumption may
6.6 be provided upon the written consent of:

6.7 (A) all customers included in the requested data set, in cases of three or fewer customers;
6.8 or

6.9 (B) any customer constituting more than 50 percent of total energy consumption for the
6.10 requested data set; and

6.11 (2) prepare and make available customer energy use data and aggregated customer energy
6.12 use data upon the request of any owner.

6.13 (b) Any customer energy use data that a qualified utility provides an owner pursuant to
6.14 this subdivision must be:

6.15 (1) available on, or able to be requested through, an easily navigable web portal or online
6.16 request form using up-to-date standards for digital authentication;

6.17 (2) provided to the owner within 30 days after receiving the owner's valid written or
6.18 electronic request;

6.19 (3) provided for at least 24 consecutive months of energy consumption or as many
6.20 months of consumption data that are available if the owner has owned the building for less
6.21 than 24 months;

6.22 (4) directly uploaded to the owner's benchmarking tool account, delivered in the
6.23 spreadsheet template specified by the benchmarking tool, or delivered in another format
6.24 approved by the commissioner;

6.25 (5) provided to the owner on at least an annual basis until the owner revokes the request
6.26 for energy use data or sells the covered property; and

6.27 (6) provided in monthly intervals, or the shortest available intervals based in billing.

6.28 (c) A qualifying utility that is a municipal utility shall be exempt from section 13.685,
6.29 Municipal Utility Customer Data, in the sharing of aggregated customer energy use data
6.30 for purposes of whole building benchmarking.

6.31 (d) For covered properties that require customer consent under paragraph (a), clause (1),
6.32 item (ii), to access or share customer energy use data, the consent:

- 7.1 (1) may be in written or electronic form;
- 7.2 (2) may be provided in a lease agreement provision;
- 7.3 (3) is valid until the utility customer revokes it; and
- 7.4 (4) is not required if a utility customer vacates the covered building before explicitly
- 7.5 denying the owner consent to access and share the utility customer's energy-use data.

7.6 Subd. 9. **Data collection and management.** (a) The commissioner must:

- 7.7 (1) collect benchmarking information generated by a benchmarking tool and other related
- 7.8 information for each covered property;
- 7.9 (2) provide technical assistance to owners entering data into a benchmarking tool;
- 7.10 (3) collaborate with the Department of Revenue to collect the data necessary for
- 7.11 establishing the covered building list annually; and
- 7.12 (4) provide technical guidance to utilities in the establishment of data aggregation and
- 7.13 access tools.

7.14 (b) Upon request of the commissioner, a county assessor shall provide readily available

7.15 property data necessary for the development of the covered property list, including but not

7.16 limited to gross floor area, property type, and owner information by January 15 annually.

7.17 (c) The commissioner must:

- 7.18 (1) rank benchmarked covered properties in each property class from highest to lowest
- 7.19 performance score, or, if a performance score is unavailable for a covered property, from
- 7.20 lowest to highest energy use intensity;
- 7.21 (2) divide covered properties in each property class into four quartiles based on the
- 7.22 applicable measure in clause (1);
- 7.23 (3) assign four stars to each covered property in the quartile of each property class with
- 7.24 the highest performance scores or lowest energy use intensities, as applicable;
- 7.25 (4) assign three stars to each covered property in the quartile of each property class with
- 7.26 the second highest performance scores or second lowest energy use intensities, as applicable;
- 7.27 (5) assign two stars to each covered property in the quartile of each property class with
- 7.28 the third highest performance scores or third lowest energy use intensities, as applicable;
- 7.29 (6) assign one star to each covered property in the quartile of each property class with
- 7.30 the lowest performance scores or highest energy use intensities, as applicable; and

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

8.3 Subd. 10. **Data disclosure to public.** (a) The commissioner must post on the department's
8.4 website and update by December 1 annually the following information for the previous
8.5 calendar year:

8.6 (1) annual summary statistics on energy use for all covered properties;

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

8.9 (3) the percentage of covered properties in each building class listed in subdivision 3
8.10 that are in compliance with the benchmarking requirements under subdivisions 4 to 7; and

8.11 (4) for each covered property, at a minimum, report the address, the total energy use,
8.12 energy use intensity, annual greenhouse gas emissions, and an energy performance score,
8.13 if available.

8.14 (b) The commissioner must post the information required under this subdivision for:

8.15 (1) all Class 1 properties by November 1, 2025, and by every November 1 thereafter;

8.16 and

8.17 (2) all Class 2 properties by November 1, 2026, and by every November 1 thereafter.

8.18 Subd. 11. **Coordination with other benchmarking programs.** (a) The commissioner
8.19 shall coordinate with any state agency or local government that implements its own energy
8.20 benchmarking program, including the coordination of reporting requirements.

8.21 (b) This section does not restrict a local government from adopting or implementing an
8.22 ordinance or resolution that imposes more stringent benchmarking requirements. For purposes
8.23 of this section, a local government benchmarking program is more stringent if it:

8.24 (1) requires buildings to be benchmarked that are not required to be benchmarked under
8.25 this section; or

8.26 (2) requires benchmarking of information that is not required to be benchmarked under
8.27 this section.

8.28 (c) Benchmarking program requirements of local governments must:

8.29 (1) be at least as comprehensive in scope and application as the program operated under
8.30 this section; and

9.1 (2) include annual enforcement of a penalty on covered properties that do not comply
9.2 with the local government's benchmarking ordinance.

9.3 (d) Local governments must notify the commissioner of the local government's existing
9.4 benchmarking ordinance requirements. Local governments must notify the commissioner
9.5 of new, changed, or revoked ordinance requirements, which when made by December 31
9.6 would apply to the benchmarking schedule for the following year.

9.7 (e) The commissioner shall make available for local governments who request it, all
9.8 benchmarking data for covered properties within the local government's jurisdiction by
9.9 December 1, annually.

9.10 Subd. 12. **Building performance disclosure to occupants.** The commissioner must
9.11 provide disclosure materials for public display within a building to building owners, such
9.12 that building owners can prominently display the performance of the building. The materials
9.13 must include the number of stars assigned to the building by the commissioner under
9.14 subdivision 9, paragraph (c), and relevant explanation of rating.

9.15 Subd. 13. **Notifications.** By March 1 each year, the commissioner must notify the owner
9.16 of each covered property required to benchmark for the previous calendar year of the
9.17 requirement to benchmark by June 1 of that year.

9.18 Subd. 14. **Program implementation.** The commissioner may contract with an
9.19 independent third party to implement any or all of the commissioner's duties required under
9.20 this section. To implement the benchmarking program, the commissioner shall assist building
9.21 owners to increase energy efficiency and reduce greenhouse gas emissions from their
9.22 buildings, including by providing outreach, training, and technical assistance to building
9.23 owners to help their buildings come into compliance with the benchmarking program.

9.24 Subd. 15. **Enforcement.** By June 15 each year, the commissioner must notify the owner
9.25 of each covered property required to comply with this section that has failed to comply that
9.26 the owner has until July 15 to come into compliance, unless the owner requests an extension,
9.27 in which case the owner has until August 15 to come into compliance. If an owner fails to
9.28 comply with the requirements of this section by July 15 and fails to request an extension
9.29 by that date, or is given an extension and fails to comply by August 15, the commissioner
9.30 may impose a civil fine of \$1,000 on the owner. The commissioner may by rule increase
9.31 the civil fine to adjust for inflation.

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

10.1 Sec. 2. **APPROPRIATION.**

10.2 (a) \$1,000,000 in fiscal year 2024 and \$1,000,000 in fiscal year 2025 are appropriated
10.3 from the general fund to the commissioner of commerce to implement Minnesota Statutes,
10.4 section 216C.331. These appropriations are available until expended.

10.5 (b) \$750,000 in fiscal year 2024 is appropriated from the general fund to the commissioner
10.6 of commerce to award grants to qualifying utilities that are not investor-owned utilities to
10.7 support the development of technology for implementing Minnesota Statutes, section
10.8 216C.331. Any balance does not cancel but is available until June 30, 2026.

10.9 (c) \$750,000 in fiscal year 2023 is appropriated from the general fund to the commissioner
10.10 of higher education for a grant to Building Owners and Managers Association Greater
10.11 Minneapolis to establish partnerships with three technical colleges and high school career
10.12 counselors with a goal of increasing the number of building engineers across Minnesota.
10.13 Any balance does not cancel but is available until June 30, 2028. The grant recipient must
10.14 provide a detailed report to the chairs and ranking minority members of the legislative
10.15 committees having jurisdiction over higher education by January 15 of each year until 2028,
10.16 describing how the grant funds were used. The report must describe the progress made
10.17 toward the goal of increasing the number of building engineers and strategies used.

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