

SENATE
STATE OF MINNESOTA
EIGHTY-SEVENTH LEGISLATURE **S.F. No. 1223**

(SENATE AUTHORS: BENSON, Koch, Saxhaug, Kubly and Magnus)

DATE	D-PG	OFFICIAL STATUS
04/18/2011	1388	Introduction and first reading Referred to Energy, Utilities and Telecommunications See SF1197, Sec. 19

1.1 A bill for an act
 1.2 relating to energy; modifying provisions related to exemptions from conservation
 1.3 improvement programs; amending Minnesota Statutes 2010, sections 216B.2401;
 1.4 216B.241, subdivisions 1, 1a, 1b, 2.

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

1.6 Section 1. Minnesota Statutes 2010, section 216B.2401, is amended to read:

1.7 **216B.2401 ENERGY CONSERVATION POLICY GOAL.**

1.8 It is the energy policy of the state of Minnesota to achieve annual energy savings
 1.9 equal to 1.5 percent of annual retail energy sales of electricity and natural gas directly
 1.10 through customer-initiated conservation activities, energy conservation improvement
 1.11 programs and rate design, such as inverted block rates in which lower energy prices
 1.12 are made available to lower-usage residential customers, and indirectly through energy
 1.13 codes and appliance standards, programs designed to transform the market or change
 1.14 consumer behavior, energy savings resulting from efficiency improvements to the utility
 1.15 infrastructure and system, and other efforts to promote energy efficiency and energy
 1.16 conservation.

1.17 Sec. 2. Minnesota Statutes 2010, section 216B.241, subdivision 1, is amended to read:

1.18 Subdivision 1. **Definitions.** For purposes of this section and section 216B.16,
 1.19 subdivision 6b, the terms defined in this subdivision have the meanings given them.

1.20 (a) "Commission" means the Public Utilities Commission.

1.21 (b) "Commissioner" means the commissioner of commerce.

1.22 (c) "Customer facility" means all buildings, structures, equipment, and installations
 1.23 at a single site.

2.1 (d) "Department" means the Department of Commerce.

2.2 (e) "Energy conservation" means demand-side management of energy supplies
2.3 resulting in a net reduction in energy use. Load management that reduces overall energy
2.4 use is energy conservation.

2.5 (f) "Energy conservation improvement" means a project that results in energy
2.6 efficiency or energy conservation. Energy conservation improvement may include waste
2.7 heat recovery converted into electricity but does not include electric utility infrastructure
2.8 projects approved by the commission under section 216B.1636.

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

2.15 (h) "Gross annual retail energy sales" means annual electric sales to all retail
2.16 customers in a utility's or association's Minnesota service territory or natural gas
2.17 throughput to all retail customers, including natural gas transportation customers, on a
2.18 utility's distribution system in Minnesota. For purposes of this section, gross annual retail
2.19 energy sales exclude gas sales to a large energy facility and gas and electric sales to a
2.20 large ~~electric energy~~ customer ~~facility~~ exempted by the commissioner under subdivision
2.21 1a, paragraph (b).

2.22 (i) "Investments and expenses of a public utility" includes the investments and
2.23 expenses incurred by a public utility in connection with an energy conservation
2.24 improvement, including but not limited to:

2.25 (1) the differential in interest cost between the market rate and the rate charged on a
2.26 no-interest or below-market interest loan made by a public utility to a customer for the
2.27 purchase or installation of an energy conservation improvement;

2.28 (2) the difference between the utility's cost of purchase or installation of energy
2.29 conservation improvements and any price charged by a public utility to a customer for
2.30 such improvements.

2.31 (j) "Large ~~electric energy~~ customer ~~facility~~" means a customer with a facility or
2.32 facilities that ~~imposes~~ impose a peak electrical demand on an electric utility's system of
2.33 not less than ~~20,000~~ 10,000 kilowatts, measured in the same way as the utility that serves
2.34 the customer facility or facilities measures electrical demand for billing purposes, ~~and for~~
2.35 ~~which electric services are provided at retail on a single bill by a utility operating in the~~

3.1 ~~state~~ or a customer with a facility or facilities that consume a peak gas demand on a gas
3.2 utility's system of not less than 500,000 dekatherms annual consumption.

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

3.5 (l) "Load management" means an activity, service, or technology to change the
3.6 timing or the efficiency of a customer's use of energy that allows a utility or a customer to
3.7 respond to wholesale market fluctuations or to reduce peak demand for energy or capacity.

3.8 (m) "Low-income programs" means energy conservation improvement programs
3.9 that directly serve the needs of low-income persons, including low-income renters.

3.10 (n) "Waste heat recovery converted into electricity" means an energy recovery
3.11 process that converts otherwise lost energy from the heat of exhaust stacks or pipes used
3.12 for engines or manufacturing or industrial processes, or the reduction of high pressure
3.13 in water or gas pipelines.

3.14 Sec. 3. Minnesota Statutes 2010, section 216B.241, subdivision 1a, is amended to read:

3.15 Subd. 1a. **Investment, expenditure, and contribution; public utility.** (a) For
3.16 purposes of this subdivision and subdivision 2, "public utility" has the meaning given it
3.17 in section 216B.02, subdivision 4. Each public utility shall spend and invest for energy
3.18 conservation improvements under this subdivision and subdivision 2 the following
3.19 amounts:

3.20 (1) for a utility that furnishes gas service, 0.5 percent of its gross operating revenues
3.21 from service provided in the state;

3.22 (2) for a utility that furnishes electric service, 1.5 percent of its gross operating
3.23 revenues from service provided in the state; and

3.24 (3) for a utility that furnishes electric service and that operates a nuclear-powered
3.25 electric generating plant within the state, two percent of its gross operating revenues
3.26 from service provided in the state.

3.27 For purposes of this paragraph (a), "gross operating revenues" do not include revenues
3.28 from large ~~electric customer facilities~~ energy customers exempted by the commissioner
3.29 under paragraph (b).

3.30 (b) ~~The owner of~~ A large ~~electric~~ energy customer facility may ~~petition~~ file with the
3.31 commissioner to exempt both electric and gas utilities serving the large energy customer
3.32 facility from the investment and expenditure requirements of paragraph (a) with respect
3.33 to retail revenues attributable to the facility customer. ~~At a minimum, The petition must~~
3.34 ~~be supported by evidence relating to~~ filing must include a discussion of the competitive
3.35 or economic pressures on the customer and ~~a showing by the customer of reasonable~~

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4.1 of the efforts taken by the customer to identify, evaluate, and implement cost-effective
4.2 conservation improvements at the facility. If a petition is filed on or before October 1 of
4.3 any year, the order of the commissioner to exempt revenues attributable to the facility can
4.4 be effective no earlier than January 1 of the following year. The commissioner shall not
4.5 grant an exemption if the commissioner determines that granting the exemption is contrary
4.6 to the public interest. The commissioner may, after investigation, rescind any exemption
4.7 granted under this paragraph upon a determination that the customer is not continuing
4.8 to make reasonable efforts to identify, evaluate, and implement energy conservation
4.9 improvements at the large electric customer facility. For the purposes of investigations by
4.10 the commissioner under this paragraph, the owner of any large electric customer facility
4.11 shall, upon request, provide the commissioner with updated information comparable to that
4.12 originally supplied in or with the owner's original petition under this paragraph. Any such
4.13 filing must be approved and become effective January 1 of the year following the filing. A
4.14 large energy customer that is exempt from the investment and expenditure requirements of
4.15 paragraph (a) under an order from the commissioner issued before the effective date of this
4.16 section does not need to resubmit a petition to retain its exempt status. No exempt large
4.17 energy customer may participate in a utility conservation improvement program unless the
4.18 large energy customer files with the commissioner to withdraw its exemption.

4.19 (c) The commissioner may require investments or spending greater than the amounts
4.20 required under this subdivision for a public utility whose most recent advance forecast
4.21 required under section 216B.2422 or 216C.17 projects a peak demand deficit of 100
4.22 megawatts or greater within five years under midrange forecast assumptions.

4.23 (d) A public utility ~~or owner of a large electric customer facility~~ may appeal
4.24 a decision of the commissioner under paragraph ~~(b)~~ or (c) to the commission under
4.25 subdivision 2. In reviewing a decision of the commissioner under paragraph ~~(b)~~ or (c),
4.26 the commission shall rescind the decision if it finds that the required investments or
4.27 spending will:

- 4.28 (1) not result in cost-effective energy conservation improvements; or
4.29 (2) otherwise not be in the public interest.

4.30 Sec. 4. Minnesota Statutes 2010, section 216B.241, subdivision 1b, is amended to read:

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

- 4.33 (1) a cooperative electric association that provides retail service to its members;
4.34 (2) a municipality that provides electric service to retail customers; and

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

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

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

5.10 (2) for a cooperative electric association, 1.5 percent of its gross operating revenues
5.11 from service provided in the state, excluding gross operating revenues from service
5.12 provided in the state to large electric customer facilities indirectly through a distribution
5.13 cooperative electric association.

5.14 (c) Each municipality and cooperative electric association subject to this subdivision
5.15 shall identify and implement energy conservation improvement spending and investments
5.16 that are appropriate for the municipality or association, except that a municipality or
5.17 association may not spend or invest for energy conservation improvements that directly
5.18 benefit a large energy facility or a large electric energy customer facility for which the
5.19 ~~commissioner has issued an exemption~~ exempted under subdivision 1a, paragraph (b).

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

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

5.28 (f) A generation and transmission cooperative electric association that provides
5.29 energy services to cooperative electric associations that provide electric service at retail to
5.30 consumers may invest in energy conservation improvements on behalf of the associations
5.31 it serves and may fulfill the conservation, spending, reporting, and energy-savings goals on
5.32 an aggregate basis. A municipal power agency or other not-for-profit entity that provides
5.33 energy service to municipal utilities that provide electric service at retail may invest in
5.34 energy conservation improvements on behalf of the municipal utilities it serves and may
5.35 fulfill the conservation, spending, reporting, and energy-savings goals on an aggregate

6.1 basis, under an agreement between the municipal power agency or not-for-profit entity
6.2 and each municipal utility for funding the investments.

6.3 (g) Each municipality or cooperative shall file energy conservation improvement
6.4 plans by June 1 on a schedule determined by order of the commissioner, but at least every
6.5 three years. Plans received by June 1 must be approved or approved as modified by the
6.6 commissioner by December 1 of the same year. The municipality or cooperative shall
6.7 provide an evaluation to the commissioner detailing its energy conservation improvement
6.8 spending and investments for the previous period. The evaluation must briefly describe
6.9 each conservation program and must specify the energy savings or increased efficiency in
6.10 the use of energy within the service territory of the utility or association that is the result of
6.11 the spending and investments. The evaluation must analyze the cost-effectiveness of the
6.12 utility's or association's conservation programs, using a list of baseline energy and capacity
6.13 savings assumptions developed in consultation with the department. The commissioner
6.14 shall review each evaluation and make recommendations, where appropriate, to the
6.15 municipality or association to increase the effectiveness of conservation improvement
6.16 activities.

6.17 (h) A municipality may spend up to 50 percent of its required spending under this
6.18 section to refurbish an existing district heating or cooling system until July 1, 2007. From
6.19 July 1, 2007, through June 30, 2011, expenditures made to refurbish a district heating or
6.20 cooling system are considered to be load-management activities under paragraph (e). This
6.21 paragraph expires July 1, 2011.

6.22 (i) The commissioner shall consider and may require a utility, association, or
6.23 other entity providing energy efficiency and conservation services under this section to
6.24 undertake a program suggested by an outside source, including a political subdivision,
6.25 nonprofit corporation, or community organization.

6.26 Sec. 5. Minnesota Statutes 2010, section 216B.241, subdivision 2, is amended to read:

6.27 Subd. 2. **Programs.** (a) The commissioner may require public utilities to make
6.28 investments and expenditures in energy conservation improvements, explicitly setting
6.29 forth the interest rates, prices, and terms under which the improvements must be offered to
6.30 the customers. The required programs must cover no more than a three-year period. Public
6.31 utilities shall file conservation improvement plans by June 1, on a schedule determined by
6.32 order of the commissioner, but at least every three years. Plans received by a public utility
6.33 by June 1 must be approved or approved as modified by the commissioner by December
6.34 1 of that same year. The commissioner shall evaluate the program on the basis of
6.35 cost-effectiveness and the reliability of technologies employed. The commissioner's order

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7.1 must provide to the extent practicable for a free choice, by consumers participating in the
7.2 program, of the device, method, material, or project constituting the energy conservation
7.3 improvement and for a free choice of the seller, installer, or contractor of the energy
7.4 conservation improvement, provided that the device, method, material, or project seller,
7.5 installer, or contractor is duly licensed, certified, approved, or qualified, including under
7.6 the residential conservation services program, where applicable.

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

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

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

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

7.34 (f) The commissioner may order a public utility to include, with the filing of the
7.35 utility's proposed conservation improvement plan under paragraph (a), the results of an
7.36 independent audit of the utility's conservation improvement programs and expenditures

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8.1 performed by the department or an auditor with experience in the provision of energy
8.2 conservation and energy efficiency services approved by the commissioner and chosen by
8.3 the utility. The audit must specify the energy savings or increased efficiency in the use
8.4 of energy within the service territory of the utility that is the result of the spending and
8.5 investments. The audit must evaluate the cost-effectiveness of the utility's conservation
8.6 programs.