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State of Minnesota

HOUSE OF REPRESENTATIVES

NINETY-THIRD SESSION

H. F. No. **1262**

02/02/2023 Authored by Hemmingsen-Jaeger, Kraft, Acomb, Hollins, Hornstein and others
The bill was read for the first time and referred to the Committee on Climate and Energy Finance and Policy
02/16/2023 Adoption of Report: Re-referred to the Committee on Judiciary Finance and Civil Law
03/16/2023 Adoption of Report: Amended and re-referred to the Committee on Commerce Finance and Policy

1.1 A bill for an act
1.2 relating to energy; modifying certain utility requirements; prohibiting certain
1.3 restrictions on the use of residential solar energy systems; amending Minnesota
1.4 Statutes 2022, sections 216B.164, by adding a subdivision; 515B.2-103;
1.5 515B.3-102; proposing coding for new law in Minnesota Statutes, chapter 500.

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

1.7 Section 1. Minnesota Statutes 2022, section 216B.164, is amended by adding a subdivision
1.8 to read:

1.9 Subd. 12. Customer's access to electricity usage data. A utility must provide a
1.10 customer's electricity usage data to the customer within ten days of the date the utility
1.11 receives a request from the customer that is accompanied by evidence that the energy usage
1.12 data is relevant to the interconnection of a qualifying facility on behalf of the customer. For
1.13 the purposes of this subdivision, "electricity usage data" includes but is not limited to: (1)
1.14 the total amount of electricity used by a customer monthly; (2) usage by time period if the
1.15 customer operates under a tariff where costs vary by time-of-use; and (3) usage data that is
1.16 used to calculate a customer's demand charge.

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

1.18 Sec. 2. [500.216] LIMITS ON CERTAIN RESIDENTIAL SOLAR ENERGY
1.19 SYSTEMS PROHIBITED.

1.20 Subdivision 1. Definitions. (a) For the purposes of this section, the terms defined in this
1.21 subdivision have the meanings given.

2.1 (b) "Private entity" means a homeowners association, community association, or other
2.2 association that is subject to a homeowners association document.

2.3 (c) "Homeowners association document" means a document containing the declaration,
2.4 articles of incorporation, bylaws, or rules and regulations of:

2.5 (1) a common interest community, as defined in section 515B.1-103, regardless of
2.6 whether the common interest community is subject to chapter 515B; and

2.7 (2) a residential community that is not a common interest community.

2.8 (d) "Solar energy system" has the meaning given in section 216C.06, subdivision 17.

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

2.10 (1) single-family detached dwellings whose owner is the sole owner of the entire building
2.11 in which the dwelling is located and who is solely responsible for the maintenance, repair,
2.12 replacement, and insurance of the entire building; and

2.13 (2) multifamily attached dwellings whose owner is the sole owner of the entire building
2.14 in which the dwelling is located and who is solely responsible for the maintenance, repair,
2.15 replacement, and insurance of the entire building.

2.16 Subd. 3. **General rule.** Except as otherwise provided in this section and notwithstanding
2.17 any covenant, restriction, or condition contained in a deed, security instrument, homeowners
2.18 association document, or any other instrument affecting the transfer, sale of, or an interest
2.19 in real property, a private entity must not prohibit or refuse to permit the owner of a
2.20 single-family dwelling to install, maintain, or use a roof-mounted solar energy system.

2.21 Subd. 4. **Allowable conditions.** (a) A private entity may require that:

2.22 (1) a licensed contractor install a solar energy system;

2.23 (2) a roof-mounted solar energy system not extend above the peak of a pitched roof or
2.24 beyond the edge of the roof;

2.25 (3) the owner or installer of a solar energy system indemnify or reimburse the private
2.26 entity or the private entity's members for loss or damage caused by the installation,
2.27 maintenance, use, repair, or removal of a solar energy system;

2.28 (4) the owner and each successive owner of a solar energy system list the private entity
2.29 as a certificate holder on the homeowner's insurance policy; or

3.1 (5) the owner and each successive owner of a solar energy system be responsible for
3.2 removing the system if reasonably necessary to repair, perform maintenance, or replace
3.3 common elements or limited common elements, as defined in section 515B.1-103.

3.4 (b) A private entity may impose other reasonable restrictions on installing, maintaining,
3.5 or using solar energy systems, provided that the restrictions do not (1) decrease the solar
3.6 energy system's projected energy generation by more than ten percent; or (2) increase the
3.7 solar energy system's cost by more than (i) 20 percent for a solar water heater, or (ii) \$1,000
3.8 for a solar photovoltaic system, when compared with the solar energy system's energy
3.9 generation and the cost of labor and materials as originally proposed without the restrictions,
3.10 as certified by the solar energy system's designer or installer. A private entity may obtain
3.11 an alternative bid and design from a solar energy system designer or installer for the purposes
3.12 of this paragraph.

3.13 (c) A solar energy system must meet applicable standards and requirements imposed by
3.14 the state and by governmental units, as defined in section 462.384.

3.15 (d) A solar energy system for heating water must be certified by the Solar Rating
3.16 Certification Corporation or an equivalent certification agency. A solar energy system for
3.17 producing electricity must meet (1) all applicable safety and performance standards
3.18 established by the National Electrical Code, the Institute of Electrical and Electronics
3.19 Engineers, and accredited testing laboratories, including but not limited to Underwriters
3.20 Laboratories; and (2) where applicable, rules of the Public Utilities Commission regarding
3.21 safety and reliability.

3.22 (e) If approval by a private entity is required prior to installing or using a solar energy
3.23 system, the application for approval (1) must be processed and approved in the same manner
3.24 as an application for approval of an architectural modification to the property, and (2) must
3.25 not be willfully avoided or delayed. In no event will a private entity have less than 60 days
3.26 to approve or disapprove an application for a solar energy system.

3.27 (f) An application for approval must be made in writing and must contain certification
3.28 that the applicant must meet any conditions required by a private entity under subdivision
3.29 4. An application must include a copy of the interconnection application submitted to the
3.30 applicable electric utility.

3.31 (g) A private entity must approve or deny an application in writing. If an application is
3.32 not denied in writing within 60 days of the date the application was received, the application
3.33 is deemed approved unless the delay is the result of a reasonable request for additional
3.34 information. If a private entity determines that it needs additional information from the

4.1 applicant in order to approve or disapprove the application, the private entity must request
4.2 the additional information in writing within 60 days from the date of receipt of the
4.3 application. If the private entity makes a request for additional information within 15 days
4.4 from the date the private entity initially received the application, the private entity shall
4.5 have 60 days from the date of receipt of the additional information in which to approve or
4.6 deny the application. If the private entity makes a written request to the applicant for
4.7 additional information more than 15 days after the private entity initially received the
4.8 application, the private entity shall have 15 days after the private entity receives the additional
4.9 information it requested from the applicant in which to approve or disapprove the application,
4.10 but in no event shall the private entity have less than 60 days from the date the private entity
4.11 initially received the application in which to approve or disapprove the application.

4.12 Sec. 3. Minnesota Statutes 2022, section 515B.2-103, is amended to read:

4.13 **515B.2-103 CONSTRUCTION AND VALIDITY OF DECLARATION AND**
4.14 **BYLAWS.**

4.15 (a) All provisions of the declaration and bylaws are severable.

4.16 (b) The rule against perpetuities may not be applied to defeat any provision of the
4.17 declaration or this chapter, or any instrument executed pursuant to the declaration or this
4.18 chapter.

4.19 (c) In the event of a conflict between the provisions of the declaration and the bylaws,
4.20 the declaration prevails except to the extent that the declaration is inconsistent with this
4.21 chapter.

4.22 (d) The declaration and bylaws must comply with ~~section~~ sections 500.215 and 500.216.

4.23 Sec. 4. Minnesota Statutes 2022, section 515B.3-102, is amended to read:

4.24 **515B.3-102 POWERS OF UNIT OWNERS' ASSOCIATION.**

4.25 (a) Except as provided in subsections (b), (c), (d), and (e), and subject to the provisions
4.26 of the declaration or bylaws, the association shall have the power to:

4.27 (1) adopt, amend and revoke rules and regulations not inconsistent with the articles of
4.28 incorporation, bylaws and declaration, as follows: (i) regulating the use of the common
4.29 elements; (ii) regulating the use of the units, and conduct of unit occupants, which may
4.30 jeopardize the health, safety or welfare of other occupants, which involves noise or other
4.31 disturbing activity, or which may damage the common elements or other units; (iii) regulating
4.32 or prohibiting animals; (iv) regulating changes in the appearance of the common elements

5.1 and conduct which may damage the common interest community; (v) regulating the exterior
5.2 appearance of the common interest community, including, for example, balconies and patios,
5.3 window treatments, and signs and other displays, regardless of whether inside a unit; (vi)
5.4 implementing the articles of incorporation, declaration and bylaws, and exercising the
5.5 powers granted by this section; and (vii) otherwise facilitating the operation of the common
5.6 interest community;

5.7 (2) adopt and amend budgets for revenues, expenditures and reserves, and levy and
5.8 collect assessments for common expenses from unit owners;

5.9 (3) hire and discharge managing agents and other employees, agents, and independent
5.10 contractors;

5.11 (4) institute, defend, or intervene in litigation or administrative proceedings (i) in its
5.12 own name on behalf of itself or two or more unit owners on matters affecting the common
5.13 elements or other matters affecting the common interest community or, (ii) with the consent
5.14 of the owners of the affected units on matters affecting only those units;

5.15 (5) make contracts and incur liabilities;

5.16 (6) regulate the use, maintenance, repair, replacement, and modification of the common
5.17 elements and the units;

5.18 (7) cause improvements to be made as a part of the common elements, and, in the case
5.19 of a cooperative, the units;

5.20 (8) acquire, hold, encumber, and convey in its own name any right, title, or interest to
5.21 real estate or personal property, but (i) common elements in a condominium or planned
5.22 community may be conveyed or subjected to a security interest only pursuant to section
5.23 515B.3-112, or (ii) part of a cooperative may be conveyed, or all or part of a cooperative
5.24 may be subjected to a security interest, only pursuant to section 515B.3-112;

5.25 (9) grant or amend easements for public utilities, public rights-of-way or other public
5.26 purposes, and cable television or other communications, through, over or under the common
5.27 elements; grant or amend easements, leases, or licenses to unit owners for purposes authorized
5.28 by the declaration; and, subject to approval by a vote of unit owners other than declarant
5.29 or its affiliates, grant or amend other easements, leases, and licenses through, over or under
5.30 the common elements;

5.31 (10) impose and receive any payments, fees, or charges for the use, rental, or operation
5.32 of the common elements, other than limited common elements, and for services provided
5.33 to unit owners;

6.1 (11) impose interest and late charges for late payment of assessments and, after notice
6.2 and an opportunity to be heard before the board or a committee appointed by it, levy
6.3 reasonable fines for violations of the declaration, bylaws, and rules and regulations of the
6.4 association;

6.5 (12) impose reasonable charges for the review, preparation and recordation of
6.6 amendments to the declaration, resale certificates required by section 515B.4-107, statements
6.7 of unpaid assessments, or furnishing copies of association records;

6.8 (13) provide for the indemnification of its officers and directors, and maintain directors'
6.9 and officers' liability insurance;

6.10 (14) provide for reasonable procedures governing the conduct of meetings and election
6.11 of directors;

6.12 (15) exercise any other powers conferred by law, or by the declaration, articles of
6.13 incorporation or bylaws; and

6.14 (16) exercise any other powers necessary and proper for the governance and operation
6.15 of the association.

6.16 (b) Notwithstanding subsection (a) the declaration or bylaws may not impose limitations
6.17 on the power of the association to deal with the declarant which are more restrictive than
6.18 the limitations imposed on the power of the association to deal with other persons.

6.19 (c) Notwithstanding subsection (a), powers exercised under this section must comply
6.20 with ~~section~~ sections 500.215 and 500.216.

6.21 (d) Notwithstanding subsection (a)(4) or any other provision of this chapter, the
6.22 association, before instituting litigation or arbitration involving construction defect claims
6.23 against a development party, shall:

6.24 (1) mail or deliver written notice of the anticipated commencement of the action to each
6.25 unit owner at the addresses, if any, established for notices to owners in the declaration and,
6.26 if the declaration does not state how notices are to be given to owners, to the owner's last
6.27 known address. The notice shall specify the nature of the construction defect claims to be
6.28 alleged, the relief sought, and the manner in which the association proposes to fund the cost
6.29 of pursuing the construction defect claims; and

6.30 (2) obtain the approval of owners of units to which a majority of the total votes in the
6.31 association are allocated. Votes allocated to units owned by the declarant, an affiliate of the
6.32 declarant, or a mortgagee who obtained ownership of the unit through a foreclosure sale
6.33 are excluded. The association may obtain the required approval by a vote at an annual or

7.1 special meeting of the members or, if authorized by the statute under which the association
7.2 is created and taken in compliance with that statute, by a vote of the members taken by
7.3 electronic means or mailed ballots. If the association holds a meeting and voting by electronic
7.4 means or mailed ballots is authorized by that statute, the association shall also provide for
7.5 voting by those methods. Section 515B.3-110(c) applies to votes taken by electronic means
7.6 or mailed ballots, except that the votes must be used in combination with the vote taken at
7.7 a meeting and are not in lieu of holding a meeting, if a meeting is held, and are considered
7.8 for purposes of determining whether a quorum was present. Proxies may not be used for a
7.9 vote taken under this paragraph unless the unit owner executes the proxy after receipt of
7.10 the notice required under subsection (d)(1) and the proxy expressly references this notice.

7.11 (e) The association may intervene in a litigation or arbitration involving a construction
7.12 defect claim or assert a construction defect claim as a counterclaim, crossclaim, or third-party
7.13 claim before complying with subsections (d)(1) and (d)(2) but the association's complaint
7.14 in an intervention, counterclaim, crossclaim, or third-party claim shall be dismissed without
7.15 prejudice unless the association has complied with the requirements of subsection (d) within
7.16 90 days of the association's commencement of the complaint in an intervention or the
7.17 assertion of the counterclaim, crossclaim, or third-party claim.