A bill for an act

relating to energy; establishing the Energy Conservation and Optimization Act of 2020; amending Minnesota Statutes 2018, sections 216B.2401; 216B.241, subdivisions 1a, 1c, 1d, 1f, 2, 2b, 3, 5, 7, by adding a subdivision; proposing coding for new law in Minnesota Statutes, chapter 216B; repealing Minnesota Statutes 2018, section 216B.241, subdivisions 1, 2c, 4.

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

Section 1. **TITLE.**

Sections 2 to 15 may be cited as the "Energy Conservation and Optimization Act of 2020."

Sec. 2. **[216B.1698] INNOVATIVE CLEAN TECHNOLOGIES.**

(a) For purposes of this section, "innovative clean technology" means advanced energy technology that is:

(1) environmentally superior to technologies currently in use;

(2) expected to offer energy-related, environmental, or economic benefits; and

(3) not widely deployed by the utility industry.

(b) A public utility may petition the commission for authorization to invest in a project or projects to deploy one or more innovative clean technologies to further the development, commercialization, and deployment of innovative clean technologies that benefit utility customers.

(c) The commission may approve a petition under paragraph (b) if it finds:

(1) the technologies proposed are innovative clean technologies;

(2) the utility has demonstrated the investment in an innovative clean energy technology is likely to provide benefits to customers that exceed the cost;

(3) the utility is meeting its energy conservation goals under section 216B.241; and

(4) the petition does not result in a utility spending more than $5,000,000 per year on innovative clean technologies under this section.

(d) The commission may authorize a public utility to file a rate schedule containing provisions that automatically adjust charges for public utility service in direct relation to changes in prudent costs incurred by a utility under this section, up to $5,000,000 each year. To the extent the utility investment under this section is for a capital asset, the utility may request that the asset be included in the utility's rate base.

Sec. 3. Minnesota Statutes 2018, section 216B.2401, is amended to read:

216B.2401 ENERGY SAVINGS AND OPTIMIZATION POLICY GOAL.

(a) The legislature finds that energy savings are an energy resource, and that cost-effective energy savings are preferred over all other energy resources. In addition, the legislature finds that optimizing the timing and method used by energy consumers to manage energy use can provide significant 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~~ 2.5 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 measures, including but not limited to:

(1) cost-effective energy conservation improvement programs and efficient fuel-switching utility programs under sections 216B.2402 to 216B.241;

(2) rate design;

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

(4) advancements in statewide energy codes and cost-effective appliance and equipment 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.

(b) A utility is encouraged to design and offer to its customers load management programs that enable (1) customers to maximize the economic value gained from the energy purchased from the customer's utility service provider, and (2) utilities to optimize the infrastructure and generation capacity needed to effectively serve customers and facilitate the integration of renewable energy into the energy system.

(c) The commissioner must provide a reasonable estimate for progress toward the statewide energy-savings goal under paragraph (a) in the annual report required under section 216B.241, subdivision 1c, along with recommendations for administrative or legislative initiatives to increase energy savings toward that goal. The commissioner must also annually report on the energy productivity of the state's economy by providing an estimate of the ratio of economic output produced in the most recently completed calendar year to the primary energy inputs used in that year.

Sec. 4. **[216B.2402] DEFINITIONS.**

(a) For the purposes of section 216B.16, subdivision 6b, and sections 216B.2401 to 216B.241, the terms defined in this section have the meanings given them.

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

(c) "Cumulative lifetime savings" means the total electric energy or natural gas savings during a year from energy conservation improvements installed: (1) during the same year; or (2) in previous years, but that are still operational and have not reached the end of the improvement's useful life.

(d) "Efficient fuel-switching improvement" means a project that: replaces a fuel used by a customer with electricity or natural gas delivered at retail by a utility subject to this section, and results in a net increase in the use of electricity or natural gas and a net decrease in source energy consumption on a fuel-neutral basis; and otherwise meets the criteria

established for consumer-owned utilities in section 216B.2403, subdivision 8, and for public utilities under section 216B.241, subdivision 11. An efficient fuel-switching improvement requires the installation of equipment that utilizes electricity or natural gas, resulting in a reduction or elimination of use of the previous fuel. An efficient fuel-switching improvement is not an energy conservation improvement or energy efficiency even if it results in a net reduction in electricity or natural gas use.

(e) "Energy conservation" means an action that results in a net reduction in electricity or natural gas consumption. Energy conservation does not include an efficient fuel-switching improvement.

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

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

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

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

(j) "Gross annual retail energy sales" means the annual electric sales 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 section 216B.241, subdivision 1a, paragraph (a), 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 section 216B.241, subdivision 1a, paragraph (b), 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 section 216B.241, subdivision 1a, paragraph (a), with respect to electric sales made to the large facility; or

(3) the amount of increased electric sales associated with electric vehicle charging that are the result of a utility program or rate until December 31, 2032. Incremental increases in electric sales associated with electric vehicle charging after December 31, 2032, must be included when determining a utility's gross annual retail sales. A utility must, in consultation with the department, develop and report the relevant assumptions and calculation methodologies used to determine programmatic electric vehicle sales. The final assumptions and calculation methodologies must be complete by December 31, 2020.

(k) "Investments and expenses of a public utility" means the investments and expenses incurred by a public utility in connection with an energy conservation improvement.

(l) "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 purposes, 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.

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

(n) "Lifetime energy savings" means the amount of savings a particular energy conservation improvement produces over the improvement's effective useful lifetime.

(o) "Load management" means an activity, service, or technology that changes the timing or the efficiency of a customer's use of energy that allows a utility or a customer to (1) respond to local and regional energy system conditions, or (2) reduce peak demand for electricity or natural gas. Load management that reduces the customer's net annual energy consumption is also energy conservation.

(p) "Low-income household" means a household with a household income that is 60 percent or less of the state median household income.

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

(r) "Member" has the meaning given in section 308B.005, subdivision 15.

(s) "Multifamily building" means a residential building with five or more dwelling units.

(t) "Qualifying utility" means a utility that supplies a customer with energy that enables the customer to qualify as a large customer facility.

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

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

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

Sec. 5. **[216B.2403] CONSUMER-OWNED UTILITIES; ENERGY CONSERVATION AND OPTIMIZATION.**

Subdivision 1. **Applicability.** This section 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.

Subd. 2. **Consumer-owned utility; energy-savings goal.** (a) Each individual consumer-owned utility subject to this section has an annual energy-savings goal equivalent to 1.5 percent of gross annual retail energy sales. The annual energy-savings goal must be met with a minimum of energy savings from energy conservation improvements equivalent

to at least one percent of the consumer-owned utility's gross annual retail energy sales. The balance of energy savings toward the annual energy-savings goal may be achieved only by the following utility activities:

(1) energy savings from additional energy conservation improvements;

(2) electric utility infrastructure projects, as defined in section 216B.1636, subdivision 1; or

(3) net energy savings from efficient fuel-switching improvements that meet the criteria under subdivision 8.

(b) Nothing in this section limits a utility's ability to report and recognize savings from activities under paragraph (a), clauses (2) and (3), in excess of the utility's annual energy savings, provided the utility has met the minimum energy-savings goal from energy conservation improvements.

(c) The energy-savings goals specified in this section must be calculated based on the most recent three-year, weather-normalized average. A consumer-owned utility may elect to carry forward energy savings in excess of 1.5 percent for a year to the next three years, except that savings from electric utility infrastructure projects may be carried forward for five years. A particular energy savings can be used for one year's goal.

(d) A consumer-owned utility subject to this section is not required to make energy conservation improvements that are not cost-effective, even if the improvement is necessary to attain the energy-savings goal. A consumer-owned utility subject to this section must make reasonable efforts to implement energy conservation improvements above the minimum level set under this subdivision if cost-effective opportunities and utility funding are available, considering other potential investments the utility intends to make for the benefit of customers during the term of the plan filed under subdivision 3.

(e) A consumer-owned utility may request that the commissioner adjust its minimum goal for energy savings from energy conservation improvements specified under paragraph (a) for the period of the utility's most recent plan filed under subdivision 3. The request must be made by January 1 of a year when the utility must file a plan under subdivision 3. The request must be based on:

(1) historical energy conservation improvement program achievements;

(2) customer class makeup;

(3) projected load growth;

(4) an energy conservation potential study that estimates the amount of cost-effective energy conservation potential that exists in the utility's service territory;

(5) the cost-effectiveness and quality of the energy conservation programs offered by the utility; and

(6) other factors the commissioner and consumer-owned utility determine warrant an adjustment.

(f) The commissioner must adjust the energy savings goal to a level the commissioner determines is supported by the record, but must not approve a minimum energy-savings goal from energy conservation improvements that is less than three percent of gross annual retail energy sales over a consecutive three-year period that includes the year the minimum energy-savings goal is adjusted.

Subd. 3. **Consumer-owned utility; energy conservation and optimization plans.** (a) By June 1, 2022, each consumer-owned utility must file with the commissioner an energy conservation and optimization plan that describes the programs for energy conservation, efficient fuel-switching improvements and load management programs, and other processes and programs the utility plans to use to achieve its energy savings goal. The plan may cover a period not to exceed three years. For plans with a duration greater than a single year, the consumer-owned utility's plan may provide for years in which the utility may not achieve its annual energy savings goal, provided: (1) the utility's plan provides the percentage of the utility's minimum energy savings goal from energy conservation improvements the utility intends to meet in each year of the plan, with a summary detailing how the plan ultimately satisfies clause (2) for any year in which the minimum energy savings for energy conservation improvements is less than one percent of the utility's gross annual retail sales; and (2) the total energy savings at the end of the plan's duration is projected to average at least the annual energy savings goal for that utility. For existing programs, the plan must provide an analysis of the cost-effectiveness of the consumer-owned utility's programs offered under the plan, using a list of baseline energy- and capacity-savings assumptions developed in consultation with the department. For new programs, the plan must provide a preliminary analysis upon which the program begins, in parallel with further development of assumptions and standards. An individual utility program may combine elements of energy conservation, load management, or efficient fuel-switching.

(b) Plans, updates, and completion summaries must be evaluated by the commissioner based on how well the plan meets the goals set under subdivision 2 and whether the plan is likely to achieve the goals. The commissioner must review each evaluation and may also

make recommendations, where appropriate, to the consumer-owned utility regarding ways to increase the effectiveness of the utility's activities and programs under this subdivision. The commissioner may recommend that a consumer-owned utility implement a cost-effective program, including a program suggested by an outside source such as a political subdivision, nonprofit corporation, or community organization.

(c) Beginning June 1, 2023, and every June 1 thereafter, each consumer-owned utility must file: (1) an annual update identifying the status of its plan filed under this subdivision, including (i) total expenditures and investments made to date under the plan, and (ii) any intended changes to the plan; and (2) a summary of the annual energy-savings achievements under a plan. If the annual filing comes in the last year of a plan, the annual filing may contain a new plan that complies with this section.

(d) When evaluating the cost-effectiveness of utility programs, the consumer-owned utility and the commissioner must consider the costs and benefits to ratepayers, the utility, participants, and society. In addition, the commissioner must consider the rate at which the consumer-owned utility is increasing its energy savings and expenditures on energy conservation, and its lifetime energy savings and cumulative energy savings.

(e) Each consumer-owned utility subject to this subdivision may, at its discretion, annually spend and invest up to ten percent of the total amount spent and invested on energy conservation improvements under this subdivision on research and development projects that meet the definition of energy conservation improvement and that are funded directly the consumer-owned utility.

(f) A generation and transmission cooperative electric association or municipal power agency that provides energy services to consumer-owned utilities may invest in energy conservation improvements on behalf of consumer-owned utilities it serves and may fulfill the conservation, reporting, and energy-savings goals for any of those consumer-owned utilities on an aggregate basis.

(g) A consumer-owned utility is prohibited from spending for or investing in energy conservation improvements that directly benefit a large energy facility or a large electric customer facility the commissioner has issued an exemption to under section 216B.241, subdivision 1a.

(h) The energy conservation and optimization plan of each consumer-owned utility subject to this section may include activities to improve energy efficiency in the public schools served by the utility. These activities may include programs to update lighting in the school, update the heating and cooling systems of the school, provide for building

recommissioning, provide building operator training, and provide opportunities to educate students, teachers, and staff regarding energy efficiency measures implemented at the school.

Subd. 4. **Consumer-owned utility; energy savings investment.** (a) Except as otherwise provided, each consumer-owned utility subject to this section that falls short of the minimum energy savings goal from energy conservation improvements established in subdivision 2, paragraph (a), for three consecutive years must spend and invest in the following amounts for energy conservation improvements under this subdivision:

(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 Minnesota 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 Minnesota to large electric customers facilities indirectly through a distribution cooperative electric association.

(b) The spending requirement under this subdivision must not be imposed if the utility has followed the commissioner's recommendations, if any, provided under subdivision 3, paragraph (b).

(c) Upon the request of a utility that demonstrates good cause regarding why the utility was unable to achieve its minimum energy savings goal using energy conservation improvements, the commissioner may reduce either or both the amount or duration of the minimum expenditure imposed under this subdivision. The commissioner is prohibited from reducing the amount or duration of the minimum expenditure by more than 50 percent. For purposes of this paragraph, "good cause" means a response to a natural disaster declared by the executive branch through emergency executive order, a unique load distribution experienced by the utility, or other unique factors presented by the utility that the commissioner determines justifies a reduction.

(d) The spending requirement under this section remains in effect until the consumer-owned utility has met the minimum energy savings goal for three consecutive years.

Subd. 5. **Energy conservation programs for low-income households.** (a) Each consumer-owned utility subject to this section must provide energy conservation programs to low-income households. The commissioner must evaluate a utility's plans under this section by considering the utility's historic spending and participation levels, energy savings

resulting from energy conservation programs for low-income households, 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 0.4 percent of its most recent three-year average gross operating revenue from residential customers in Minnesota on energy conservation programs for low-income households. A consumer-owned utility that furnishes electric service must spend at least 0.4 percent of its gross operating revenue from residential customers in Minnesota on energy conservation programs for low-income households. The requirement under this paragraph 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 energy conservation programs for low-income households to use money contributed to the energy and conservation account under paragraph (b). When establishing energy conservation programs for low-income households, the commissioner must consult political subdivisions, utilities, and nonprofit and community organizations, including organizations engaged in providing energy and weatherization assistance to low-income households. Money contributed to the energy and conservation account under paragraph (b) must provide programs for low-income households, 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 energy conservation programs for low-income households funded through the energy and conservation account in the report required under section 216B.241, subdivision 1c, paragraph (f). 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.

(e) The commissioner must develop and establish guidelines for determining the eligibility of multifamily buildings for low-income programs. Notwithstanding the definition of

low-income household in section 216B.2402, a utility or association may apply the most recent guidelines published by the department for purposes of determining the eligibility of multifamily buildings for low-income programs. The commissioner must convene a stakeholder group to review and update guidelines by July 1, 2021, and at least once every five years thereafter. The stakeholder group must include but is not limited to stakeholders representative of public utilities as defined in section 216B.02, subdivision 4; municipal, electric, or gas utilities; electric or gas cooperative associations; multifamily housing owners and developers; and low-income advocates.

(f) Up to 15 percent of a consumer-owned utility's spending on low income programs may be spent on preweatherization measures. For purposes of this section, "preweatherization measures" means an improvement that is necessary to allow energy conservation improvements to be installed in a home. A utility is prohibited from claiming energy savings from preweatherization measures toward the utility's energy savings goal.

(g) The commissioner must, by order, establish a list of qualifying preweatherization measures eligible for inclusion in low-income programs no later than March 15 of the year following enactment of this section.

(h) A Healthy AIR (Asbestos Insulation Removal) account is established as a separate account in the special revenue fund in the state treasury. A utility may elect to contribute money to the Healthy AIR account to provide preweatherization measures for households that are eligible for weatherization assistance under the state weatherization assistance program in section 216C.264. Remediation activities must be executed in conjunction with federal weatherization assistance program services. Money contributed to the account counts toward: (1) the minimum low-income spending requirement under paragraph (a); and (2) the cap on preweatherization measures under paragraph (f). Money in the account is annually appropriated to the commissioner of commerce to pay for Healthy AIR-related activities.

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.** (a) A preweatherization measure or energy conservation improvement to or installed in a building under this section, excluding a system owned by the consumer-owned utility that is 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.

(b) The utility has no liability for loss, damage, or injury directly or indirectly caused by a preweatherization measure or energy conservation improvement, except that a utility is liable for the utility's negligence in purchasing, installing, or modifying a preweatherization product.

Subd. 8. **Criteria for efficient fuel-switching improvements.** (a) A fuel-switching improvement is deemed efficient if, applying the technical criteria established under section 216B.241, subdivision 1d, paragraph (b), the improvement, relative to the fuel being displaced:

(1) results in a net reduction in the 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 fuel-switching improvement installed by an electric utility, the reduction in emissions must be measured based on the hourly emissions profile of the utility or the utility's wholesale provider, if available. If the hourly emissions profile is not available, the commissioner must develop a proxy assumption for utilities to use as part of the technical criteria developed under section 216B.241, subdivision 1d, paragraph (b). Where applicable, the hourly emissions profile used must be the most recent resource plan approved by the commission under section 216B.2422;

(3) is cost-effective, considering the costs and benefits from the perspective of the utility, participants, and society; and

(4) is installed and operated in a manner that improves the utility's system load factor.

(b) For purposes of this subdivision, "source energy" means the total amount of primary energy required to deliver energy services, adjusted for conversion losses from fossil fuel combustion for electricity generation and transportation losses from transmission and distribution.

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.

(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. Electronic service may be made only to persons on the service list that have previously agreed in writing to accept electronic service at an e-mail address provided to the department for electronic service purposes.

Subd. 10. **Assessment.** The commission or department may assess utilities subject to this section to carry out the purposes of section 216B.241, subdivisions 1d, 1e, and 1f. 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. Assessments under this subdivision are not subject to the cap on assessments under section 216B.62 or any other law.

Subd. 11. **Waste heat recover; 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.

Sec. 6. Minnesota Statutes 2018, section 216B.241, subdivision 1a, is amended to read:

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

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

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

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

~~For purposes of this paragraph (a), "gross operating revenues" do not include revenues from large customer facilities exempted under paragraph (b), or from commercial gas customers that are exempted under paragraph (c) or (e).~~

~~(b)~~ (a) The owner of a large customer facility may petition the commissioner to exempt both electric and gas utilities serving the large customer facility from the investment and expenditure requirements of ~~paragraph (a)~~ a utility's plan under this section or section 216B.2403 with respect to retail revenues attributable to the large customer facility. The filing must include a discussion of the competitive or economic pressures facing the owner of the facility and the efforts taken by the owner to identify, evaluate, and implement energy conservation and efficiency improvements. A filing submitted on or before October 1 of any year must be approved within 90 days and become effective January 1 of the year following the filing, unless the commissioner finds that the owner of the large customer facility has failed to take reasonable measures to identify, evaluate, and implement energy conservation and efficiency improvements. If a facility qualifies as a large customer facility solely due to its peak electrical demand or annual natural gas usage, the exemption may be limited to the qualifying utility if the commissioner finds that the owner of the large customer facility has failed to take reasonable measures to identify, evaluate, and implement energy conservation and efficiency improvements with respect to the nonqualifying utility. Once an exemption is approved, the commissioner may request the owner of a large customer facility to submit, not more often than once every five years, a report demonstrating the large customer facility's ongoing commitment to energy conservation and efficiency improvement after the exemption filing. The commissioner may request such reports for up to ten years after the effective date of the exemption, unless the majority ownership of the large customer facility changes, in which case the commissioner may request additional reports for up to ten years after the change in ownership occurs. The commissioner may, within 180 days of receiving a report submitted under this paragraph, rescind any exemption granted under this paragraph upon a determination that the large customer facility is not continuing to make reasonable efforts to identify, evaluate, and implement energy conservation improvements. A large customer facility that is, under an order from the commissioner, exempt from the investment and expenditure requirements of paragraph (a) as of December 31, 2010, is not required to submit a report to retain its exempt status, except as otherwise provided in this paragraph with respect to ownership changes. No exempt large customer facility may participate in a utility conservation improvement program unless the owner of the facility submits a filing with the commissioner to withdraw its exemption.

~~(c)~~ (b) A commercial gas customer that is not a large customer facility and that purchases or acquires natural gas from a public utility having fewer than 600,000 natural gas customers in Minnesota may petition the commissioner to exempt gas utilities serving the commercial gas customer from the investment and expenditure requirements of ~~paragraph (a)~~ a utility's plan under this section or section 216B.2403 with respect to retail revenues attributable to

the commercial gas customer. The petition must be supported by evidence demonstrating that the commercial gas customer has acquired or can reasonably acquire the capability to bypass use of the utility's gas distribution system by obtaining natural gas directly from a supplier not regulated by the commission. The commissioner shall grant the exemption if the commissioner finds that the petitioner has made the demonstration required by this paragraph.

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

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

~~(1) not result in cost-effective energy conservation improvements; or~~

~~(2) otherwise~~ the decision is not ~~be~~ in the public interest.

(e) A public utility is prohibited from spending for or investing in energy conservation improvements that directly benefit a large energy facility or a large electric customer facility the commissioner has issued an exemption to under this section.

Sec. 7. Minnesota Statutes 2018, section 216B.241, subdivision 1c, is amended to read:

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

(b) Each individual public utility ~~and association shall have~~ providing electric service has an annual energy-savings goal equivalent to ~~1.5~~ 1.75 percent of gross annual retail energy sales unless modified by the commissioner under paragraph ~~(d).~~ (c). A public utility providing natural gas service has an annual energy-savings goal equivalent to one percent of gross annual retail energy sales, which cannot be lowered by the commissioner. The savings goals must be calculated based on the most recent three-year weather-normalized average. A public utility ~~or association~~ providing electric service may elect to carry forward energy savings in excess of ~~1.5~~ 1.75 percent for a year to the succeeding three calendar years, except that savings from electric utility infrastructure projects allowed under paragraph

(d) may be carried forward for five years. A public utility providing natural gas service may elect to carry forward energy savings in excess of one percent for a year to the succeeding three calendar years. A particular energy savings can be used only for one year's goal.

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

~~(d)~~ (c) In its energy conservation ~~improvement~~ and optimization plan filing, a public utility ~~or association~~ may request the commissioner to adjust its annual energy-savings percentage goal based on its historical conservation investment experience, customer class makeup, load growth, a conservation potential study, or other factors the commissioner determines warrants an adjustment. The commissioner may not approve a plan of a public utility that provides for an annual energy-savings goal of less than one percent of gross annual retail energy sales from energy conservation improvements.

(d) A public utility ~~or association~~ may include in its energy conservation and optimization plan energy savings from electric utility infrastructure projects approved by the commission under section 216B.1636 or waste heat recovery converted into electricity projects that may count as energy savings in addition to a minimum energy-savings goal of at least one percent for energy conservation improvements. ~~Energy savings from electric utility infrastructure projects, as defined in section 216B.1636, may be included in the energy conservation plan of a municipal utility or cooperative electric association. Electric utility infrastructure projects must~~ The balance of energy savings contributing toward the annual energy savings goal must be achieved by: (1) energy savings from additional energy conservation improvements; or (2) electric utility infrastructure projects, as defined in section 216B.1636, subdivision 1, that result in increased energy efficiency greater than that which would have occurred through normal maintenance activity.

~~(e) An energy-savings goal is not satisfied by attaining the revenue expenditure requirements of subdivisions 1a and 1b, but can only be satisfied by meeting the energy-savings goal established in this subdivision.~~

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

energy savings and its expenditures on energy conservation, as well as the public utility's lifetime energy savings and cumulative energy savings.

~~(g)~~ (f) On an annual basis, the commissioner shall produce and make publicly available a report on the annual energy and capacity savings and estimated carbon dioxide reductions achieved by the ~~energy conservation improvement~~ programs under this section and section 216B.2403 for the two most recent years for which data is available. The report must also include information regarding any annual energy sales or generation capacity increases resulting from efficient fuel-switching improvements. The commissioner shall report on program performance both in the aggregate and for each entity filing an energy conservation improvement plan for approval or review by the commissioner, and must provide an estimate for progress toward the statewide energy-savings goal under section 216B.2401.

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

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

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

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

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

Sec. 8. Minnesota Statutes 2018, section 216B.241, subdivision 1d, is amended to read:

Subd. 1d. **Technical assistance.** (a) The commissioner shall evaluate energy conservation improvement programs under this section and section 216B.2403 on the basis of cost-effectiveness and the reliability of the technologies employed. The commissioner shall, by order, establish, maintain, and update energy-savings assumptions that must be used when filing energy conservation improvement programs. The department must track a public utility's or consumer-owned utility's lifetime energy savings and cumulative lifetime energy savings provided to the commissioner in plans submitted under this section. The commissioner shall establish an inventory of the most effective energy conservation programs, techniques, and technologies, and encourage all Minnesota utilities to implement them, where appropriate, in their service territories. The commissioner shall describe these programs in sufficient detail to provide a utility reasonable guidance concerning implementation. The commissioner shall prioritize the opportunities in order of potential energy savings and in order of cost-effectiveness. The commissioner may contract with a

third party to carry out any of the commissioner's duties under this subdivision, and to obtain technical assistance to evaluate the effectiveness of any conservation improvement program. The commissioner may assess up to $850,000 annually for the purposes of this subdivision. The assessments must be deposited in the state treasury and credited to the energy and conservation account created under subdivision 2a. An assessment made under this subdivision is not subject to the cap on assessments provided by section 216B.62, or any other law.

(b) ~~Of the assessment authorized under paragraph (a), the commissioner may expend up to $400,000 annually for the purpose of developing, operating, maintaining, and providing technical support for a uniform electronic data reporting and tracking system available to all utilities subject to this section, in order to enable accurate measurement of the cost and energy savings of the energy conservation improvements required by this section. This paragraph expires June 30, 2018.~~ By March 15 of the year following the enactment of this section, the commissioner must, by order, develop and publish technical information necessary to evaluate whether deployment of a fuel-switching improvement meets the criteria established under subdivision 11, paragraph (c), and section 216B.2403, subdivision 8, including the formula to account for the energy saved by a fuel-switching improvement on a fuel-neutral basis. When developing the technical information under this paragraph, the commissioner must work with interested stakeholders. The commissioner must update the technical information as necessary.

Sec. 9. Minnesota Statutes 2018, section 216B.241, subdivision 1f, is amended to read:

Subd. 1f. **Facilities energy efficiency.** (a) The commissioner of administration and the commissioner of commerce shall maintain and, as needed, revise the sustainable building design guidelines developed under section 16B.325.

(b) The commissioner of administration and the commissioner of commerce shall maintain and update the benchmarking tool developed under Laws 2001, chapter 212, article 1, section 3, so that all public buildings can use the benchmarking tool to maintain energy use information for the purposes of establishing energy efficiency benchmarks, tracking building performance, and measuring the results of energy efficiency and conservation improvements.

(c) The commissioner shall require that utilities include in their conservation improvement plans programs that facilitate professional engineering verification to qualify a building as Energy Star-labeled, Leadership in Energy and Environmental Design (LEED) certified, or Green Globes-certified. ~~The state goal is to achieve certification of 1,000 commercial~~

~~buildings as Energy Star-labeled, and 100 commercial buildings as LEED-certified or Green Globes-certified by December 31, 2010.~~

(d) The commissioner may assess up to $500,000 annually for the purposes of this subdivision. The assessments must be deposited in the state treasury and credited to the energy and conservation account created under subdivision 2a. An assessment made under this subdivision is not subject to the cap on assessments provided by section 216B.62, or any other law.

Sec. 10. Minnesota Statutes 2018, section 216B.241, subdivision 2, is amended to read:

Subd. 2. **~~Programs~~ Public utility; energy conservation and optimization plans.** (a) The commissioner may require public utilities to make investments and expenditures in energy conservation improvements, explicitly setting forth the interest rates, prices, and terms under which the improvements must be offered to the customers. The required programs must cover no more than a three-year period. Public utilities shall file energy conservation ~~improvement~~ and optimization plans by June 1, on a schedule determined by order of the commissioner, but at least every three years. As provided in subdivision 11, plans may include programs for efficient fuel-switching improvements and load management. An individual utility program may combine elements of energy conservation, load management, or efficient fuel-switching. 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 plan must account for the lifetime energy savings and cumulative lifetime savings under the plan. 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 this 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 a petition that, on its face, fails to make a reasonable argument that a program is not in the public interest.

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

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

(g) The energy conservation and optimization plan for each public utility subject to this section must include activities to improve energy efficiency in public schools served by the utility. At a minimum, the efficiency in schools component must consist of programs to update lighting in schools, update heating and cooling systems in schools, provide for building recommissioning, provide building operator training, and provide opportunities to educate students, teachers, and staff regarding energy efficiency measures implemented at the school.

Sec. 11. Minnesota Statutes 2018, section 216B.241, subdivision 2b, is amended to read:

Subd. 2b. **Recovery of expenses.** The commission shall allow a public utility to recover expenses resulting from ~~a~~ an energy conservation ~~improvement program required~~ and optimization plan approved by the department under this section and contributions and assessments to the energy and conservation account, unless the recovery would be inconsistent with a financial incentive proposal approved by the commission. ~~The commission shall allow a cooperative electric association subject to rate regulation under section 216B.026, to recover expenses resulting from energy conservation improvement programs, load management programs, and assessments and contributions to the energy and conservation account unless the recovery would be inconsistent with a financial incentive proposal approved by the commission.~~ In addition, a public utility may file annually, or the Public Utilities Commission may require the utility to file, and the commission may approve, rate schedules containing provisions for the automatic adjustment of charges for utility service in direct relation to changes in the expenses of the utility for real and personal property taxes, fees, and permits, the amounts of which the utility cannot control. A public utility is eligible to file for adjustment for real and personal property taxes, fees, and permits under this subdivision only if, in the year previous to the year in which it files for adjustment, it has spent or invested at least 1.75 percent of its gross revenues from provision of electric service, excluding gross operating revenues from electric service provided in the state to large electric customer facilities for which the commissioner has issued an exemption under subdivision 1a, paragraph (b), and 0.6 percent of its gross revenues from provision of gas service, excluding gross operating revenues from gas services provided in the state to large electric customer facilities for which the commissioner has issued an exemption under subdivision 1a, paragraph (b), for that year for energy conservation improvements under this section.

Sec. 12. Minnesota Statutes 2018, section 216B.241, subdivision 3, is amended to read:

Subd. 3. **Ownership of energy conservation improvement.** ~~An~~ A preweatherization measure or energy conservation improvement made to or installed in a building in accordance with this section, except systems owned by the utility and designed to turn off, limit, or vary the delivery of energy, are the exclusive property of the owner of the building except to the extent that the improvement is subjected 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~~ a preweatherization measure or energy conservation improvement except for negligence by the utility in purchase, installation, or modification of the product.

Sec. 13. Minnesota Statutes 2018, section 216B.241, subdivision 5, is amended to read:

Subd. 5. **Efficient lighting program.** (a) Each public utility, cooperative electric association, and municipal utility that provides electric service to retail customers and is subject to subdivision 1c shall include as part of its conservation improvement activities a program to strongly encourage the use of ~~fluorescent and high-intensity discharge lamps~~ LEDs. The program must include at least a public information campaign to encourage use of ~~the lamps~~ LEDs and proper management of spent lamps and LEDs by all customer classifications.

(b) A public utility that provides electric service at retail to 200,000 or more customers shall establish, either directly or through contracts with other persons, including lamp manufacturers, distributors, wholesalers, and retailers and local government units, a system to collect for delivery to a reclamation or recycling facility spent fluorescent and high-intensity discharge lamps from households and from small businesses as defined in section 645.445 that generate an average of fewer than ten spent lamps per year.

(c) A collection system must include establishing reasonably convenient locations for collecting spent lamps from households and financial incentives sufficient to encourage spent lamp generators to take the lamps to the collection locations. Financial incentives may include coupons for purchase of new fluorescent or high-intensity discharge lamps, a cash back system, or any other financial incentive or group of incentives designed to collect the maximum number of spent lamps from households and small businesses that is reasonably feasible.

(d) A public utility that provides electric service at retail to fewer than 200,000 customers, a cooperative electric association, or a municipal utility that provides electric service at retail to customers may establish a collection system under paragraphs (b) and (c) as part of conservation improvement activities required under this section.

(e) The commissioner of the Pollution Control Agency may not, unless clearly required by federal law, require a public utility, cooperative electric association, or municipality that establishes a household fluorescent and high-intensity discharge lamp collection system under this section to manage the lamps as hazardous waste as long as the lamps are managed to avoid breakage and are delivered to a recycling or reclamation facility that removes mercury and other toxic materials contained in the lamps prior to placement of the lamps in solid waste.

(f) If a public utility, cooperative electric association, or municipal utility contracts with a local government unit to provide a collection system under this subdivision, the contract must provide for payment to the local government unit of all the unit's incremental costs of collecting and managing spent lamps.

(g) All the costs incurred by a public utility, cooperative electric association, or municipal utility for promotion and collection of fluorescent and high-intensity discharge lamps under this subdivision are conservation improvement spending under this section.

(h) For the purposes of this section, "LED" means a light-emitting diode bulb or lighting product.

Sec. 14. Minnesota Statutes 2018, section 216B.241, subdivision 7, is amended to read:

Subd. 7. **Low-income programs.** (a) The commissioner shall ensure that each public utility ~~and association~~ subject to subdivision 1c provides ~~low-income~~ energy conservation programs to low-income households. When approving spending and energy-savings goals for low-income programs, the commissioner shall consider historic spending and participation levels, energy savings for low-income 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, and a~~ public utility furnishing gas service must spend at least ~~0.4~~ 0.8 percent, of its most recent three-year average gross operating revenue from residential customers in the state on low-income programs. A public utility ~~or association~~ that furnishes electric service must spend at least ~~0.1~~ 0.4 percent of its gross operating revenue from residential customers in the state on low-income programs. ~~For a generation and transmission cooperative association, this requirement shall apply to each association's members' aggregate gross operating revenue from sale of electricity to residential customers in the state. Beginning in 2010, A utility or association that furnishes electric service must spend 0.2 percent of its gross operating revenue from residential customers in the state on low-income programs.~~

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

(c) The commissioner shall establish low-income programs to utilize money contributed to the energy and conservation account under paragraph (b). In establishing low-income programs, the commissioner shall consult political subdivisions, utilities, and nonprofit and community organizations, especially organizations engaged in providing energy and weatherization assistance to low-income ~~persons~~ households. Money contributed to the energy and conservation account under paragraph (b) must provide programs for low-income ~~persons~~ households, 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 commissioner must develop and establish guidelines to determine the eligibility of multifamily buildings for low-income programs. Notwithstanding the definition of low-income household in section 216B.2402, for purposes of determining the eligibility of multifamily buildings for low-income programs, a utility or association may apply the most recent guidelines published by the department. The commissioner must convene a stakeholder group to review and update guidelines by July 1, 2021, and at least once every five years thereafter. The stakeholder group must include but is not limited to stakeholders representative of public utilities as defined in section 216B.02, subdivision 4; municipal, electric, or gas utilities; electric or gas cooperative associations; multifamily housing owners and developers; and low-income advocates.

(f) Up to 15 percent of a public utility's spending on low-income programs may be spent on preweatherization measures. For purposes of this section and section 216B.241, subdivision 3, "preweatherization measure" means an improvement that is necessary to

allow energy conservation improvements to be installed in a home. A utility is prohibited from claiming energy savings from preweatherization measures toward the utility's energy savings goal.

(g) The commissioner must, by order, establish a list of qualifying preweatherization measures eligible for inclusion in low-income programs no later than March 15 of the year following enactment of this section.

(h) A Healthy AIR (Asbestos Insulation Removal) account is established as a separate account in the special revenue fund in the state treasury. A public utility may elect to contribute money to the Healthy AIR account to provide preweatherization measures to households eligible for weatherization assistance under section 216C.264. Remediation activities must be executed in conjunction with federal weatherization assistance program services. Money contributed to the fund counts toward: (1) the minimum low-income spending requirement in paragraph (a); and (2) the cap on preweatherization measures under this paragraph. Money in the account is annually appropriated to the commissioner of commerce to pay for Healthy AIR-related activities.

~~(e)~~ (g) 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.

Sec. 15. Minnesota Statutes 2018, section 216B.241, is amended by adding a subdivision to read:

Subd. 11. **Programs for efficient fuel-switching improvements and load management.** (a) A public utility subject to this section may include in its plan required under subdivision 2 programs for (1) efficient fuel-switching improvements and load management, or (2) combinations of energy conservation improvements, fuel-switching improvements, and load management. For each program, the utility must provide proposed budgets, cost-effectiveness analyses, and estimated net energy and demand savings.

(b) The department may approve proposed programs for efficient fuel-switching improvements if it finds the improvements meet the requirements of paragraph (e). For improvements requiring the deployment of electric technologies, the department must also consider whether the fuel-switching improvement can be operated in a manner that facilitates

the integration of variable renewable energy into the electric system. The net benefits from an efficient fuel-switching improvement that is integrated with an energy efficiency program approved under this section may be counted toward the net benefits of the energy efficiency program, provided the department finds the primary purpose and effect of the program is energy efficiency.

(c) The department may approve a proposed program in load management if it finds the program investment is cost-effective after considering the costs and benefits of the proposed investment to ratepayers, the utility, participants, and society. The net benefits from a load management activity that is integrated with an energy efficiency program approved under this section may be counted toward the net benefits of the energy efficiency program, provided the department finds the primary purpose and effect of the program is energy efficiency.

(d) The commission may permit a public utility to file rate schedules that provide for annual cost recovery for efficient fuel-switching improvements and cost-effective load management programs approved by the department, including reasonable and prudent costs to implement and promote programs approved under this subdivision. The commission may approve, modify, or reject a proposal made by the department or a utility for an incentive plan to encourage investments in load management programs, applying the considerations established under section 216B.16, subdivision 6c, paragraphs (b) and (c). The commission must not approve a financial incentive to encourage efficient fuel-switching programs. The commission may structure an incentive plan to encourage cost-effective load management programs as a regulatory asset on which a public utility could earn a rate of return. A utility is not eligible for a financial incentive under this subdivision in any year the utility does not achieve its minimum energy-savings goal.

(e) A fuel-switching improvement is deemed efficient if, applying the technical criteria established under section 216B.241, subdivision 1d, paragraph (b), the improvement meets the following criteria, relative to the fuel that is being displaced:

(1) results in a net reduction in the 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 fuel-switching improvement installed by an electric utility, the change in emissions must be measured based on the hourly emission profile of the electric utility, using the hourly emissions profile in the most recent resource plan approved by the commission under section 216B.2422;

(3) is cost-effective, considering the costs and benefits from the perspective of the utility, participants, and society; and

(4) is installed and operated in a manner that improves the utility's system load factor.

(f) For purposes of this subdivision, "source energy" means the total amount of primary energy required to deliver energy services, adjusted for conversion losses from fossil fuel combustion for electricity generation and transportation losses from transmission and distribution.

Sec. 16. **REPEALER.**

Minnesota Statutes 2018, section 216B.241, subdivisions 1, 2c, and 4, are repealed.

Sec. 17. **EFFECTIVE DATE.**

Sections 1 to 16 are effective the day following final enactment.