

# House Research Act Summary

**CHAPTER:** 136

**SESSION:** 2007 Regular Session

**TOPIC:** Energy

**Date:** June 4, 2007

**Analyst:** Bob Eleff

This publication can be made available in alternative formats upon request. Please call 651-296-6753 (voice); or the Minnesota State Relay Service at 1-800-627-3529 (TTY) for assistance. Summaries are also available on our website at: [www.house.mn/hrd](http://www.house.mn/hrd).

---

## Article 1: General Provisions

- 1 Title.** Specifies that this act is named the Next Generation Energy Act of 2007.  
**2 [216C.05] Findings and purpose.**

**Subd. 2. Energy policy goals.** Declares that the energy policy of the state is to reduce per capita fossil fuel use by 15 percent by 2015 and to derive 25 percent of total energy use from renewable sources by 2015.

## Article 2: Energy Efficiency and Conservation

- 1 [216B.16] Rate change; procedure; hearing.**

**Subd. 1. Notice.** Requires a cooperative electric association filing a rate change with the commission to reference the conservation improvement plan of the generation and transmission cooperative that provides conservation improvement program (CIP) activities to cooperative members.

- 2 Subd. 6b. Energy conservation improvement.** Provides that a utility's expenses associated with conservation investments under CIP, including the difference between market-rate and utility-subsidized loan rates, may be treated by the commission as if they were directly incurred by the utility in providing service. Current law allows such treatment only for demand-side management and load management activities, which is discontinued under this provision.

Provides that CIP expenses are excluded by the commission in its determination of just and reasonable gas rates for large energy facilities. Allows a public utility to reduce the gas rate of a large energy facility - an electric generating plant with a capacity of 50 megawatts or more - to reflect that exclusion outside of a general rate case.

**3 [216B.1636] Recovery of electric utility infrastructure costs.**

**Subd. 1. Definitions.** Defines "electric utility" as a public utility selling electricity at retail.

Defines "electric utility infrastructure projects" as those that replace or modify existing infrastructure and conserve energy or use it more efficiently, including as a result of waste heat recovery.

**Subd. 2. Filing.** Specifies what must be contained in a filing to the commission to allow recovery of electric utility infrastructure costs outside of a general rate case. A utility may recover a rate of return, income taxes thereon, incremental property taxes, and incremental depreciation associated with the project.

**Subd. 3. Commission authority; orders.** Authorizes the commission to issue orders to implement this section.

**4 [216B.2401] Energy policy conservation goal.** Specifies that state energy policy is to achieve annual energy savings equal to 1.5 percent of retail electricity and natural gas sales through energy conservation programs, rate design and other methods.

**5 [216B.241] Energy conservation improvement.**

**Subd. 1. Definitions.** Defines "energy efficiency " to include measures that target consumer behavior, equipment or processes that result in either an absolute decrease in energy use or a decrease in energy per unit of production while maintaining service quality.

Excludes gas sales to a large energy facility (see sec. 2 above) from "gross annual retail energy sales, "which is the base from which required energy savings are measured. Also excluded are gas and electric sales to a large electric customer, if exempted by the commissioner under subdivision 1a.

**Subd. 1a. Investment, expenditure, and contribution; public utility.** Provides that the commissioner of commerce may rescind an exemption from contributing revenues towards a utility's CIP granted to a large electric customer facility (defined as a facility with a peak demand of at least 20 megawatts) if the commissioner finds that the customer is not continuing to make reasonable efforts to identify, evaluate, and implement energy conservation improvements. (The current criterion for rescinding such an exemption is that cost-effective improvements are not available.)

**Subd. 1b. Conservation improvement by cooperative association or municipality.** Amends the criterion for a municipality providing natural gas service to be subject to this provision from those with gross operating revenues exceeding \$5 million to those selling more than 1 billion cubic feet of gas annually.

Strikes language requiring the commissioner of commerce to review electric cooperatives' and municipal utilities' evaluations of their CIP programs with regard to spending on programs that address renters and low-income persons (see subdivision

7).

Strikes language requiring a cooperative or municipality to file an overview of its CIP plan at least every four years, and requires submission of a CIP plan itself at least every three years, and more often if required by the commissioner of commerce.

Strikes language allowing a cooperative or municipality to spend up to 3 percent of its required CIP spending for program pre-evaluation, monitoring and evaluation, and allowing smaller cooperatives to report only the amount spent on CIP.

Strikes language allowing a cooperative or municipality to contribute funds to the energy conservation account (see subdivision 2a) as part of its CIP spending.

**Subd. 1c. Energy-saving goals.** Requires each utility and association to have an annual energy-savings goal of 1.5 percent of gross retail energy sales, calculated on the most recent three-year weather-normalized average. The commissioner may, at a utility's request, reduce the goal to no lower than 1 percent. Electric utility infrastructure projects that increase energy efficiency and would not have occurred through normal maintenance may be counted towards the goal. A utility is not required to make an investment that is not cost-effective, i.e., where the cost savings to the utility exceed the cost of producing or purchasing an equivalent supply of new energy.

The commissioner must report annually, in aggregate and for each utility, on annual energy savings and corresponding carbon dioxide reductions realized through CIP activities during the most recent two-year period for which data is available.

By January 15, 2010, the commissioner is to report to the legislature whether the annual spending requirements in subdivisions 1a and 1b are necessary to achieve the energy savings goals.

**Subd. 1d. Technical assistance.** Strikes language applying to 2002-2005. Requires the commissioner to, by order, establish and update energy savings assumptions and an inventory of the most effective conservation programs and technologies to guide utilities in implementing them. The commissioner may assess up to \$800,000 annually through June 30, 2009, and \$450,000 annually thereafter for the purposes of this subdivision.

**Subd. 1e. Applied research and development grants.** Allows the commissioner of commerce to approve and award grants for applied R&D projects that identify new energy conservation technologies and strategies. Up to \$3.6 million annually may be assessed for these purposes.

**Subd. 1f. Facilities energy efficiency.** Requires the Departments of Administration and Commerce to maintain and, if necessary, revise the sustainable building guidelines, and to update the benchmarking tool developed in 2001 so that all public buildings may use it to track building performance. The commissioner must require utilities to include in their CIP plan programs to facilitate professional engineering verification to qualify a building as Energy Star-labeled, Leadership in Energy and Environmental Design (LEED) certified or Green Globes-certified. This subdivision sets a state goal of 1,000 commercial buildings to be Energy Star labeled and 100 to be LEED or Green Globes certified by the end of 2010. The commissioner may assess utilities up to \$500,000 annually for the purposes of this subdivision.

**Subd. 2. Programs.** Requires that public utilities' CIP plans be filed every three years, in contrast to the current four years. Prohibits a public utility from making energy conservation investments that directly benefit a large energy facility (see

section 2 above). Strikes language requiring the commissioner to insure that a portion of residential CIP expenditures are targeted to renters and low-income persons, (see subdivision 7) and allowing up to 3 percent of CIP spending for pre-evaluation, testing, monitoring, and evaluating programs.

**Subd. 2a. Energy and conservation account.** Requires the commissioner to deposit funds assessed from utilities in the energy and conservation account in the special revenue fund.

Strikes language requiring the account to be used exclusively for programs targeting low-income persons and underserved areas and specifies that funds may be spent for the purposes of subdivisions 1d, 1e, 1f, and 7.

**Subd. 2b. Recovery of expenses.** Authorizes the commission to allow a cooperative electric association subject to rate regulation to recover CIP expenditures, load management expenses, and contributions to the energy and conservation account, unless recovery is inconsistent with a financial incentive proposal approved by the commission.

**Subd. 2c. Performance incentives.** Requires the commission to review, by the end of 2008, any incentive plan for energy conservation improvements under section 216B.16 and to adjust the performance incentives in light of the energy savings goals of subdivision 1c.

**Subd. 7. Low-income programs.** Requires the commissioner to insure that each utility and association provide low-income programs, and establishes a floor for those expenditures: 0.2 percent of gross operating revenue from Minnesota residential customers for gas utilities; 0.1 percent for electric utilities and associations until 2010, and 0.2 percent afterward. In lieu of implementing programs targeting these customers, a utility may contribute funds to the energy and conservation account, to be spent on low-income programs established by the commissioner, which may be implemented by a utility, nonprofit or community organization.

**Subd. 8. Assessment.** Authorizes the commissioner or department to assess utilities subject to this section to carry out the purposes of subdivisions 1d, 1e, and 1f.

**6 [216B.2412] Decoupling of energy sales from revenues.**

**Subd. 1. Definition and purpose.** "Decoupling" means separating a utility's revenues from its fluctuations in sales in order to remove utility disincentives to promote energy efficiency.

**Subd. 2. Decoupling criteria.** Requires the Public Utilities Commission to establish, by order, criteria and standards for decoupling that mitigate the impact on public utilities of meeting the energy savings goals while not adversely affecting ratepayers.

**Subd. 3. Pilot programs.** Authorizes the commission to allow one or more utilities to file a decoupling pilot plan for commission review and to implement it on a pilot basis for up to three years. The commission must report program results to the legislature.

**7 State government energy savings plan.** Requires the commissioner of commerce, in conjunction with other state agency commissioners and officers of the state's higher education system, to identify costs and benefits of, and barriers to, altering state government operations in order to achieve the energy savings goals of this section, and submitting a

report to the legislature by February 1, 2008.

8 **Revisor's instruction.** Specifies a reference change.

9 **Effective date.** This section is effective July 1, 2007

### Article 3: Miscellaneous

1 [123B.65] **Energy efficiency projects.**

**Subd. 2. Energy efficiency contract.** Requires a school board entering into a guaranteed shared savings contract to provide a copy to the commissioner of education within 30 days of the contract's effective date.

2 [216C.051] **Legislative Electric Energy Task Force**

**Subd. 8a. Manitoba Hydro information.** Requires the Legislative Electric Energy Task Force to annually request certain information from the Manitoba Hydro-Electric Board.

3 [216C.31] **Energy audit programs.** Strikes language requiring the commissioner of commerce to administer certain energy audits required under an expired federal law. Requires the commissioner to develop programs to train energy auditors for residential and commercial buildings under section 216B.241.

4 [471.345] **Uniform municipal contracting law.**

**Subd. 13. Energy efficiency projects.** Requires a municipality to provide a copy of any guaranteed shared savings contract it enters into to the commissioner of commerce within 30 days of the contract's effective date.

5 [504B.161] **Covenants of landlord or licensor.**

**Subd. 1. Requirements.** Requires the landlord to provide in a rental contract that the landlord will make the premises reasonably energy efficient, through installation of caulking, weather-stripping, storm windows, and storm doors.

6 **Nuclear energy study.** Requires the Legislative Electric Energy Task Force to conduct an analysis of the economic and environmental costs of constructing a nuclear power plant in Minnesota, compared with the cost of constructing a pulverized coal and coal gasification plants with carbon capture and sequestration technology, and report to the legislature by March 1, 2008.

7 **Repealer.** Repeals as of July 1, 2007, Minnesota Statutes, sections 216B.165 (governing residential energy audits performed under an expired federal law); 216C.27 (requiring the commissioner to adopt rules containing energy efficient standards for existing residences; and inspection and enforcement of those standards); and 216C.30, subdivision 5 (regarding enforcement against violations of chapter 216C and a provision of chapter 325F concerning specifications for the manufacture, labeling, and installation of insulation); and Minnesota Rules, chapter 7635 (pertaining to the Department of Commerce's residential energy conservation program) and chapter 7655 (pertaining to the qualification and certification of energy auditors, rules regarding energy audits, and minimum efficiency standards for rental buildings).

### Article 4: C-BED and Related Issues

1 [216B.1612] **Community-based energy development; tariff.**

**Subd. 1. Tariff establishment.** Specifies that the tariff established pertains to renewable energy projects, not just wind energy projects.

2

**Subd. 2. Definitions.** Allows a rural electric cooperative, generation and transmission cooperative, and political subdivision, including a municipal electric utility or a municipal power agency, to be a qualified community-based energy development (C-BED) project owner on behalf of and at the request of a member distribution utility.

“Renewable” means solar, wind, hydropower, hydrogen and biomass, including municipal solid waste and refuse-derived fuel.

Wind projects consisting of more than two turbines may not have a single qualifying owner own more than 15 percent of the project. For a wind energy C-BED project, a public entity, except for a municipal utility, may own more than 15 percent of a project.

3

**Subd. 3. Tariff rate.** Removes the 2.7 cents per kWh cap in current law.

4

**Subd. 4. Utilities to offer tariff.** Requires utilities to file a C-BED tariff with the Public Utilities Commission by December 1, 2007.

5

**Subd. 5. Priority for C-BED projects.** Requires a utility subject to a renewable energy standard under section 216B.1691 to take reasonable steps to ascertain whether any C-BED projects could contribute toward fulfilling the standard.

A municipal power agency or generation and transmission cooperative must provide notice to its distribution utilities that they may propose C-BED projects for consideration.

6

**Subd. 7. Other C-BED tariff issues.** Allows joint ventures for a renewable, not just wind, C-BED project.

7

**Subd. 8. Community energy partnerships.** Allows and encourages utilities and independent power producers to participate in C-BED projects.

8

**[216B.1645] Power purchase contract or investment.**

**Subd. 2b. Cost recovery for owned renewable facilities.** Sets forth procedures a utility may use to recover costs of constructing, owning and operating a facility to satisfy its renewable energy standard obligation, provided that the Public Utilities Commission previously approved the facilities as part of an integrated resource plan or certificate of need.

9

**[216B.1681] Curtailment payments.** Requires the commission to assess whether utilities are unduly discriminating among different project ownership structures in making curtailment payments to wind projects, and submit a report on its findings to the legislature by January 15, 2008.

10

**[216B.1691] Renewable energy objectives.**

**Subd. 7. Utility acquisition of resources.** Declares a utility constructing, owning and operating a facility to satisfy the utility’s renewable energy standard obligation exempt from a competitive resource acquisition process established before June 1, 2007, unless the commission determines that compliance with such a process is in the public interest.

Xcel Energy must file a plan with the commission before March 1, 2008, explaining how it will meet its renewable energy standard obligation, including a proposed

schedule of purchases from C-BED and non C-BED projects. The commission must approve such a plan, which Xcel must update biennially, unless it determines that the plan is not in the public interest.

- 11 **[216C.052] Reliability Administrator.** Transfers the Reliability Administrator position from the commission to the Department of Commerce, and extends the expiration of the position until June 30, 2012. Establishes qualification for the position.
- 12 **[216F.011] Size determination.** Specifies how wind projects may be aggregated in order to determine whether the state or a county may issue siting permits.
- 13 **[216F.08] Permit authority; assumption by counties.** Authorizes counties to issue site permits for wind energy projects under 25 megawatts. Requires the commission to establish general permit standards governing these permits as well as those issued by the commission for larger projects.
- 14 **[216F.081] Application of county standards.** Allows a county to adopt standards for wind permits that are more stringent than those specified by the commission.
- 15 **[500.30] Solar or wind easements.**

**Subd. 2. Like any conveyance.** Specifies that an easement to install a wind turbine on real property, or a similar grant of legal rights for that purpose, terminates in seven years if commercial operations have not begun.

- 16 **Resource assessment.** Requires the reliability administrator to assess Minnesota electricity needs through 2025, focusing on baseload resources.
- 17 **Statewide study of dispersed generation potential.** Requires electric utilities subject to the Renewable Energy Standard (RES) statute (section 216B.1691) to participate in a two-phase study of the impact of adding 600 megawatts of small generating projects (10 to 40 megawatts) throughout the state. The goal is to examine the feasibility of adding small-scale generation while minimizing the need for constructing new transmission lines. A technical review committee is to be appointed by the commissioner of commerce to oversee the conduct of the studies. Reports are to be submitted to the Public Utilities Commission by June 15, 2008, and September 15, 2009.
- 18 **Wind development property agreements; study.** Requires the Legislative Electric Energy Task Force to study whether the state should regulate the duration and other terms of wind easements to promote wind development. The study is to be submitted to the legislature by February 1, 2008.
- 19 **C-BED advisory task force.** Requires the Legislative Electric Energy Task Force to appoint and convene an advisory task force to make recommendations to the legislature by January 15, 2008 on several C-BED issues, including: definition of a C-BED owner; definition of gross revenues with respect to community benefits; community energy models/project structure; the availability of capital from Minnesota and non-Minnesota financial institutions.
- 20 **Transferring reliability administrator responsibilities.** Transfers the position's responsibilities from the Public Utilities Commission to the Department of Commerce.

## **Article 5: Global Climate Change; Greenhouse Gas Emissions**

- 1 **[216H.011] Definitions.** Defines "statewide greenhouse gas emissions."
- 2 **[216H.02] Greenhouse gas emissions control.**

**Subd. 1. Greenhouse gas emissions reduction goal.** Establishes goals to reduce statewide greenhouse gas emissions from a 2005 baseline, by 15 percent by 2015, 30 percent by 2025, and 80 percent below by 2050. These goals are to be reviewed

based on the climate change action plan.

**Subd. 2. Climate change action plan.** Requires the commissioner of commerce, in consultation with several other state agency commissioners, to submit a climate change action plan to the legislature by February 1, 2008.

**Subd. 3. Stakeholder process.** Specifies that the climate change action plan must be developed through a broadly-based stakeholder process conducted by a nationally-recognized independent expert.

**Subd. 4 General elements of plan.** Specifies requirements of the plan, including:

- estimates of baseline greenhouse gas emissions (2005) and projections of emissions in the target years;
- identification of a broad range of reduction options and an evaluation of their costs, benefits and the feasibility of implementing them;
- recommendations for an integrated set of reduction options and implementation strategies to achieve reduction goals; and
- recommendations for a greenhouse gas reporting system.

**Subd. 5. Specific plan requirements.** Specifies required plan elements, including recommended interim goals and how the state could implement a cap-and-trade system.

**Subd. 6. Regional activities.** Requires Minnesota, to the extent possible, to develop and implement a regional approach to emissions reduction. Regional activities are to be coordinated by the commissioner of commerce, who is to report on progress to the legislature by February 1 of 2008 and 2009.

### 3 [216H.03] Failure to adopt greenhouse gas control plan.

**Subd. 1. Definition; new large energy facility.** Defines a “new large energy facility” as an electric generating plant with a capacity of 50 megawatts or more that was not operating on January 1, 2007, excluding natural gas peaking and intermediate plants.

**Subd. 2. Definition; statewide power sector carbon dioxide emissions.** Defines “statewide power sector carbon dioxide emissions” to include emissions from generation within Minnesota and from electricity imported into the state and consumed here, excluding carbon dioxide injected into geologic reservoirs and emissions resulting from the combustion of certain types of biomass.

**Subd. 3. Long-term increased emissions from power plants prohibited.** Prohibits the construction of a new large energy facility in the state, or the importation of electricity from a new large energy facility in another state, or a new long-term power purchase agreement (50 megawatts or more for a term exceeding five years) unless a comprehensive and enforceable state law or rule that substantially reduces statewide power sector carbon dioxide emissions is in effect by August 1, 2009, provided that no federal law preempts this provision, or subdivisions 4 to 7 do not apply.

**Subd. 4. Exception for facilities that offset emissions.** Specifies that the prohibitions in subdivision 3 do not apply if the Public Utilities Commission determines that the proposed offset project reduces emissions by an amount equal to or greater than the new contribution to emissions. An offset project may consist of reducing emissions from an existing facility or purchasing allowances from a state



with a mandatory carbon dioxide cap-and-trade system. In order to approve an offset project, the commission must find that a project produces offsets that are quantifiable, verifiable, enforceable, and would not have occurred otherwise. Emissions offset under this subdivision and exempted under subdivisions 5 to 7 are still subject to a statewide cap-and-trade system.

**Subd. 5. Exemptions for new steel production facility.** Exempts a new steel production facility located in a taconite tax relief area that filed an application for an air quality permit before January 1, 2007, from the prohibitions in subdivision 3.

**Subd. 6. Exception for iron nugget production facility.** Exempts an iron nugget production facility that began construction prior to January 31, 2007, and associated mining and beneficiation facilities from the prohibitions in subdivision 3.

**Subd. 7. Other exceptions.** The prohibitions in subdivision 3 do not apply to the proposed Mesaba coal gasification plant in northern Minnesota, or the Big Stone II coal plant in South Dakota, or to a new large energy facility or power purchase agreement determined by the Public Utilities Commission to be essential to the long-term reliability of the state's electric system, or that is needed for increased industrial demand.

**Subd. 8. Enforcement.** Provides that the commission or department may refer a violation or expected violation to the attorney general for appropriate legal action. The attorney general may enforce this chapter by seeking an injunction or a civil penalty in a court.

## **Article 6: Renewable Energy Standards**

### **1 [216B.1691] Renewable energy objectives.**

**Subd. 1. Technology based on fuel combustion.** Establishes conditions under which electricity produced by fuel blending may be counted towards a utility's objective or standard.

### **2 Subd. 7. Compliance.** Specifies that the commission must deposit any penalties imposed on utilities for noncompliance with this section in the energy and conservation account established in the special revenue fund under section 216B.241, subdivision 2a. (Laws 2007, chapter, 3, section 1)